

141

Hon. Mr. McKenzie.

CODLIN-MOTH.

ANALYSIS.

- | | |
|--|---|
| <p>Title.</p> <ol style="list-style-type: none">1. Short Title.2. Interpretation.3. Governor may prohibit importation of fruit or fruit-trees.4. Governor may establish and vary fruit districts.5. Clean and infected districts.6. Act not invalidated through informality in any Order in Council.7. Election of first Board.8. Members of Board to retire biennially.9. Ordinary elections to supply vacancies. On failure to elect, Governor to nominate Board.10. Extraordinary vacancies.11. Conduct of business.12. Board may appoint District Inspectors and other officers.13. Chief Inspectors to be appointed by the Governor.14. Special administration if Board refuses to act.15. Regulations for administration of Act.16. Powers and duties of Inspectors.17. Fruit-growers to make return of acreage of fruit-trees.18. Roll of fruit-growers in district.19. Return to be furnished to Minister.20. Board may levy acreage contribution.21. Fine added thereto if unpaid.22. Notice of contribution sufficient.23. Contribution to be a debt due to Board.24. Occupier liable for contributions.25. Contributions to be paid into bank.26. Audit of accounts. | <ol style="list-style-type: none">27. Salaries of Chief Inspectors to be paid by Board.28. District to defray cost of special administration of Act.29. Apportionment of liabilities on division or abolition of districts.30. Destruction of fruit pests optional; but compulsory in certain cases.31. Annual inspection of fruit-trees.32. Nurseries to be annually certified as clean.33. Infected nursery to be quarantined. Penalty for moving trees or vines therefrom.34. Penalty for not giving notice of phylloxera.35. Vine-roots to be inspected.36. Penalty for not giving notice of moth.37. Penalty for not rooting up diseased or dead trees on notice.38. Penalty for infringement of Act.39. Penalty for removing infected fruit within the colony.40. Penalty for introducing into the colony fruit from infected country.41. Penalty for selling or exposing for sale infected fruit.42. Penalty for obstructing Inspectors.43. Owner of unoccupied land to be liable as occupier.44. Officers exempted from fees in legal proceedings.45. Onus of proof as to liability in legal proceedings.46. Limitation of actions.47. Penalties recoverable summarily.48. Repeal. <p style="text-align: center;">Schedules.</p> |
|--|---|

A BILL INTITULED

AN ACT to provide for the Destruction of Insects and Fungus Title.
Diseases injurious to Fruit-culture.

BE IT ENACTED by the General Assembly of New Zealand in
5 Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is “The Codlin-moth Act, Short Title.
1892.”

10 2. In this Act, if not inconsistent with the context,— Interpretation.
“Board” means a Board elected or otherwise appointed
under the provisions of this Act:
“Clean certificate” means the certificate to be granted by
an Inspector for and in respect of a district which he
shall be satisfied is not infected:

No. 145—1.

- “District” or “fruit district” means a district proclaimed as a fruit district under this Act:
- “Fruit” means pepin, stone, and citrus fruits of any kind whatsoever:
- “Fruit-grower” means any owner or occupier of an orchard in the fruit district to which reference is made in the context: 5
- “Fruit pests” or “pests” mean the several pests enumerated in the Schedule A to this Act, and any other pests injurious to fruit-culture, which the Governor may hereafter from time to time, by Order in Council, declare to be a pest for the purposes of this Act: 10
- “Infected” means actually infected with the moth or other fruit pest, according to the context:
- “Inspector” means any Chief Inspector or any District Inspector appointed under this Act: 15
- “Minister” means the responsible Minister of the Crown for the time being charged with the administration of this Act:
- “Nursery” means and includes every piece of land in which young trees or grape vines are grown for sale: 20
- “Orchard” means and includes every piece of land in which pepin, stone, and citrus fruit-trees of any description are growing:
- “Prescribed” means prescribed by this Act or by regulations under this Act: 25
- “Public notification,” “publicly notify,” and “public notice” respectively mean the insertion of a notice in one or more newspapers generally circulating in the district or place to be affected by the matter in such notice: 30
- “The moth” means the insect known as *Carpocapsa pomonella*, or “the codlin-moth,” in any stage:
- “This Act” includes regulations made by the Governor:
- “Trees” mean pepin, stone, and citrus fruit-trees of any kind whatsoever. 35

Governor may prohibit importation of fruit or fruit-trees.

3. The Governor may from time to time, by Proclamation, prohibit the importation into the colony of any fruit or fruit-trees grown in or coming from any country or colony where any fruit pests enumerated in Schedule A, or any other insect or disease injurious to fruit-culture, is or is supposed to be prevalent; and if any fruit or fruit-trees so prohibited are imported they shall be forfeited to Her Majesty, together with the boxes, cases, barrels, or other receptacles in which they are contained, and may be disposed of as the Commissioner of Trade and Customs may direct. 40

Governor may establish and vary fruit districts.

4. As soon as conveniently may be after the passing of this Act, and thereafter from time to time, the Governor may, by Order in Council published in the *New Zealand Gazette*, declare any county or borough, or any county together with any one or more boroughs, to be a fruit district for the purposes of this Act, and may amend, vary, or revoke any such Order in Council in part or in whole; and either limit, extend, amalgamate, divide, or abolish any district, as he shall think fit. In the case of harbours and rivers dividing or extending into more than one district, the districts to which they shall be attached shall be specified by Order in Council. 50

201

5. (1.) The Governor shall, by notice in the *Gazette*, from time to time declare which districts are infected codlin-moth districts and which are clean codlin-moth districts, and may by like notice revoke or renew any such declaration; and every such notice, until revoked, shall be conclusive evidence that the district or districts named therein as infected or clean respectively is or are infected or clean districts as the case may be.

Clean and infected districts.

(2.) No district shall be declared clean until twelve months following the date on which a clean certificate shall have been received by the Chief Inspector from the District Inspector or District Board, and during which twelve months no appearance of the codlin-moth shall have been detected.

6. Every Order in Council under the provisions of this Act shall be published in the *Gazette*, and shall take effect as from the day of such publication. And no errors, omissions, or misdescription in any such Order in Council shall in any wise suspend or prevent the operation of this Act, but such errors, omissions, or misdescription may be rectified by any subsequent Order in Council.

Act not invalidated through informality in any Order in Council.

7. By any Order in Council constituting a fruit district under this Act, or by a subsequent Order, the Governor shall appoint the time, which shall not be less than seven nor more than fourteen days after the publication of such order, and the place at which a meeting of the fruit-growers within the said district shall be held, for the purpose of electing from amongst such fruit-growers five persons to be the Board of such district for the purposes of this Act.

Election of first Board.

(1.) At every such meeting a Chairman shall be chosen to preside and to act as Returning Officer at the election then to be held; and the voting at all such elections shall be by ballot, and shall be conducted in all matters of detail as the meeting shall determine; and seven or any larger number of fruit-growers shall constitute a meeting for the purpose of electing a Board.

(2.) The Chairman of every such meeting shall appoint a time, not being less than half an hour nor more than one hour, for receiving nominations of candidates for election, and shall also fix a time for commencing and closing the poll, if any, for such election, but every such poll shall remain open for two hours at least.

(3.) All nominations of candidates shall be in writing and signed by at least two fruit-growers entitled to vote at such elections, and must contain the consent of the person nominated.

(4.) If no greater number of persons are nominated for election than the number of fruit-growers then to be elected as members of the Board, the Chairman shall, at the expiration of the time appointed for receiving nominations, without any poll being held, declare the persons so nominated to be elected as members of the Board, and the persons so declared to be elected shall thenceforth be members of the Board for the purposes of this Act.

Forthwith after the election of any Board the Chairman presiding at the meeting at which such election took

place shall notify to the Minister in writing, signed by such Chairman, the names and places of residence respectively of every member of the Board so elected.

The Minister, upon receipt of such notice, shall cause to be published in the *Gazette* the names of the members of the Board so elected. 5

Members of Board to retire biennially.

8. On the thirty-first day of August in the year one thousand eight hundred and ninety-five, and on the same day and month in every second year thereafter, the members of the Board then in office shall retire. All retiring members shall be eligible for re-election. 10

Ordinary elections to supply vacancies.

9. On the second Thursday of August in the year one thousand eight hundred and ninety-five, and on the same day and month in every second year thereafter, a meeting of the fruit-growers of every district shall be held for the purpose of filling the vacancies caused by the retirement of members as aforesaid. 15

All the proceedings in and about such election shall be had and taken in the same manner as prescribed in section *seven* upon the first election of Boards; and the members elected at any such election shall come into office on the thirty-first day of August next ensuing their election. 20

On failure to elect, Governor to nominate Board.

In case no election of members is held in manner herein directed, the Governor shall appoint such persons as he shall think fit to be the members of the Board. All persons so appointed shall be deemed to be elected members of the Board.

Extraordinary vacancies.

10. (1.) If any member of a Board shall be absent from three consecutive meetings of the Board, after having had due notice of each such meeting, without leave of absence granted to him by resolution of the Board on account of illness or other sufficient cause, the Board shall declare the place of such member to be vacant. 25

(2.) If from any cause whatsoever a vacancy or vacancies shall occur in the membership of any Board before the annual meeting, the remaining members of such Board may appoint some other fruit-grower or fruit-growers of the district to fill such vacancy or vacancies until the next annual meeting of such Board as hereinafter provided. 30 35

Conduct of business.

11. (1.) The Board shall hold their first meeting within fourteen days after their election, and shall at such first meeting appoint a Chairman; and, in the absence of the Chairman from any meeting of the Board, the members present shall elect a Chairman from those present, who shall preside at such meeting. 40

(2.) Any three members of the Board shall constitute a quorum for the transaction of business, and all questions considered at any meeting shall be decided by a majority of the votes of those members present, and if there is an equal division of votes upon any question it shall be deemed to be lost. 45

(3.) All proceedings at any meeting of any Board, together with the names of the members present at every such meeting, shall be entered in a book to be kept by the Board for that purpose, and be signed by the Chairman of the meeting at which such proceedings are confirmed; and such proceedings so confirmed and signed by the Chairman of such meeting shall be received in all Courts as evidence of the matters recorded until the contrary is proved. 50

Board may appoint District Inspectors and other officers.

12. (1.) The Board may from time to time appoint a Secretary, a Collector, a Treasurer, a District Inspector or Inspectors, and such

other officers as the Board think necessary and proper; and from time to time may remove any of such officers and appoint others in the room of such as are so removed, or as may die, resign, or discontinue their offices. The offices of Collector and Treasurer shall not be held by the same person.

(2.) No member of the Board shall receive any payment for his services; but any officer of the Board, not being a member of the Board, may be paid out of the moneys at the disposal of the Board such salary or allowance as the Board shall determine.

(3.) The Chairman of the Board shall publicly notify all appointments under this section signed by him, within fourteen days after the meeting at which any such appointment was made.

13. The Governor from time to time may appoint and remove one or more Chief Inspectors and such other officers as he sees fit for the purposes of this Act. And all powers and duties imposed by this Act, or by any regulations issued hereunder, upon District Inspectors appointed under this Act may be exercised by any such Chief Inspector appointed by the Governor as aforesaid.

Chief Inspectors to be appointed by the Governor.

14. (1.) Upon the report of any Chief Inspector that the Board elected by the fruit-growers of any district neglects or refuses to carry out the provisions of this Act in an efficient manner, the Governor, by Order in Council, may appoint for such district such officer or officers as he shall see fit to carry out the provisions of this Act in such district; and a notice signed by the Minister that it has been made to appear to the satisfaction of the Governor in Council that such Board is refusing to carry out the provisions of this Act as aforesaid, and that the officer or officers named in such notice has or have been appointed by the Governor in Council to carry out the provisions of this Act in such district, shall thereupon be published in the *Gazette*.

Special administration if Board refuses to act.

(2.) Every such officer or officers appointed by the Governor as aforesaid shall have and may exercise all the powers, duties, and functions of a Board elected under this Act, and shall be paid such salary or salaries as the Governor shall see fit, out of the proceeds of any contribution levied upon the orchards in the district or districts to which such officer or officers may be appointed.

15. The Governor may from time to time, by Order in Council, gazetted, prescribe regulations for all purposes of the administration of this Act, and—

Regulations for administration of Act.

For the guidance of Boards and their officers, and prescribing the duties of Chief Inspectors or of officers appointed by the Governor under this Act to act in the place of a Board, which neglects or refuses to act; and for imposing and collecting contributions within any such district;

For prescribing—

(1.) The manner in which and the time or times when the occupier of every orchard shall bandage, dress, or otherwise treat infected trees in his orchard:

(2.) The manner in which and the time or times when infected fruit shall be destroyed, or rendered fit for the food of any animal:

(3.) The manner in which and the time or times when bandages used upon infected trees shall be destroyed, or cleansed, or otherwise rendered fit to be again used for such purpose:

(4.) The manner in which and the time or times when any box, barrel, bag, or other receptacle which has contained the moth or any infected fruit shall be cleansed and rendered fit for further use ; and

Generally for the destruction of the moth or other fruit pests, and as to all other matters of detail for carrying this Act into full effect :

and may prescribe a penalty not exceeding *five* pounds, and not less than *ten* shillings, for breach of or non-compliance with any such regulation.

Powers and duties of Inspectors.

16. Every Chief Inspector and District Inspector shall have, exercise, and discharge the several powers, authorities, and duties prescribed, and may at any reasonable time enter upon any orchard or nursery in any district for the purpose of inspecting the trees in such orchard or nursery, and the fruit thereon and all other fruit, and may at any reasonable time also enter any wharf, shop, store, mart, or other building or place in any district wherein he may have reason to believe there are any trees, fruit, cases, boxes, barrels, or other receptacles containing or supposed to contain fruit, or in which fruit has at any time been placed or deposited, for the purpose of inspecting the state and condition thereof, and examining the same, or the fruit therein, and may open or cause to be opened any such case, box, barrel, or other receptacle, in the presence of the owner or consignee, or his representative.

Fruit-growers to make return of acreage of fruit-trees.

17. The owner or occupier of every orchard shall, on or before the first day of October in every year, deliver to the Chairman of the Board or to such person as the Board may appoint, or, if there be no Board for the district in which the orchard is situate, then to such officer as the Governor may appoint, a return in the form in Schedule B, stating the number of acres or parts of acres planted with fruit-trees owned or occupied by him on the above date, and whether such fruit-trees are infected or not ; and every such owner or occupier who refuses or neglects to make such return within the prescribed time, or makes a false return, shall forfeit and pay a penalty not exceeding *five* pounds and not less than *one* pound.

Roll of fruit-growers in district.

18. The Board shall on or before the last day of March in every year prepare a roll of fruit-growers of the district, in which roll there shall be set opposite the name of each fruit-grower, in separate columns, the number of acres and parts of acres in the orchard or orchards owned or occupied by him, and the amount of the contribution payable by such fruit-grower in respect of such orchard or orchards upon the basis of the last contribution levied by the Board, and such roll shall be the roll of fruit-growers to be used at the next election of a Board in such district: Provided that the Chairman of the meeting held for the purpose of such election shall have power to insert in such roll the name of any fruit-grower of the district whose name has been omitted therefrom.

Return to be furnished to Minister.

19. The Chairman of every Board shall, on or before the first day of May in every year, furnish to the Minister a return, signed by such Chairman, showing the number of fruit-growers of the district whose names are on such roll as aforesaid, and the acreage of all the orchards owned or occupied by such fruit-growers as shown by such

205

roll as aforesaid, and the total amount of the contribution payable by such fruit-growers, and the amount of contributions collected from such fruit-growers up to the date of the return.

5 20. The Board shall have the power, by resolution, to impose annually a contribution not exceeding two shillings per half-acre or part thereof on every orchard within the district, which shall be made payable on a day not earlier than fourteen days after the day on which such contribution is imposed; and every owner or occupier of an orchard shall pay such contribution to the Collector of the Board or
10 such other person as may be authorised by the Board to receive the same.

Board may levy acreage contribution.

21. Every owner or occupier who, upon the expiration of one month after the same becomes payable by him, omits or refuses to pay any contribution imposed under this Act, shall be liable to pay an
15 additional amount of one shilling for every ten shillings or part of ten shillings of the amount of such contribution, or of any part unpaid thereof; and the Collector may in his own name sue for and recover such contribution, and such additional amount, at any time after the expiration of the said period of one month not being more
20 than one year after the date on which such contribution was payable.

Fine added thereto if unpaid.

22. A notice of every contribution imposed under this Act, signed by the Chairman and Treasurer of the Board, shall be publicly notified in one newspaper circulating in the district within fourteen days after the same has been imposed, and such notice shall specify
25 the amount of the contribution and the day upon which the same is payable; and no proceedings shall be commenced against any person for the recovery of such contribution until the expiration of one month after the date mentioned in such notice as the day on which the same is payable.

Notice of contribution sufficient.

30 23. All contributions due, and every sum of money payable under the provisions of this Act, by the owner or occupier of any orchard, other than by way of penalty, shall be a debt owing by such owner or occupier to the Board, and may be sued for and recovered as such in a summary manner in the name of the Collector of the
35 Board, or of any Chief Inspector, as the case may be.

Contribution to be a debt due to Board.

24. Every contribution imposed under this Act shall be payable by the occupier of the orchard, in respect of which the contribution is made payable, at the time the contribution is imposed, or by the owner of such orchard if he be also the occupier hereof.

Occupier liable for contributions.

40 25. All moneys received by the Collector of any Board shall be paid over by him to the Treasurer of such Board, and all moneys received by the Treasurer of any Board shall be paid by him into a bank to the credit of an account in the name of the Board of which he is Treasurer, and all moneys disbursed by the Board shall be
45 paid by cheques drawn upon such account; and all such cheques shall be signed by the Treasurer and Chairman of the Board, or, in the absence of either the Chairman or Treasurer, by two other members of the Board and the Chairman or Treasurer, as the case may be.

Contributions to be paid into bank.

50 26. The Treasurer of every Board shall submit accounts of all moneys received and disbursed by such Board for inspection by the Auditor-General as often as he shall be required to do so.

Audit of accounts.

Salaries of Chief
Inspectors to be
paid by Board.

27. The Board shall in every year contribute towards the salary or salaries of any Chief Inspector or officer appointed by the Governor under the authority of this Act, or towards any expenses incurred by the Governor under the authority of this Act, such sum not exceeding *sixpence* per acre as shall be prescribed in that behalf; and such contribution shall be paid by the Board to such person and at such time as the Governor shall appoint, out of the proceeds of any contributions imposed in the district by such Board under the authority of this Act; and in the event of the Board omitting to levy the necessary contribution, or omitting or neglecting or being unable from any cause whatever to pay such contribution when the same is demanded, the Governor shall impose and collect a sufficient contribution upon the orchards of such district to provide the amount of contribution demanded from such district, and all costs of imposing and collecting the same, and every such contribution shall be recoverable in the same manner as is provided in the case of contributions imposed by a Board.

District to defray
cost of special
administration
of Act.

28. Within districts where the Governor appoints officers for the administration of this Act in substitution of a Board, every contribution imposed by regulations upon the orchards of any district under the authority of this Act shall be a contribution of a fixed sum per half-acre or part thereof, and may be demanded, collected, and recovered by any Chief Inspector or other person appointed by the Governor for that purpose; and a notice of the day on which every such contribution is payable shall be publicly notified; and every such contribution shall be recoverable in the same manner and by the same process as any contribution imposed by any Board is made recoverable by this Act.

Apportionment of
liabilities on division
or abolition of
districts.

29. Whenever any district is abolished, or is divided into two or more districts,—

- (1.) The liabilities duly incurred by the Board of any such district shall be divided between the Board or Boards of the district or districts in which the area of the abolished or divided or united district is contained, in such proportions as shall be determined by any person appointed by the Governor to apportion the same; and
- (2.) All moneys in any bank to the credit of the Board of the district which has been abolished or divided, or whose powers and functions have been transferred as aforesaid, 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 be available by such Board for the discharge of any liabilities previously incurred by such Board, and the balance, if any, shall be paid over in such proportions as the Governor shall determine to the Boards of the districts into which such fruit districts as first aforesaid has been divided, or, in the case of the abolition of any district, may be appropriated in such manner as the Governor may prescribe to the purposes of this Act; and any unpaid contribution imposed by the Board of such first-mentioned fruit district may be collected and

207

recovered by the Collector of such district notwithstanding its division or abolition as aforesaid.

- (3.) In any case in which the fruit-growers of any district are, or have been, liable to the payment of a contribution imposed by the Board of another district in which such first-mentioned district as aforesaid was included at the date such contribution was imposed, the amount of the contribution paid by such fruit-growers shall be repaid by the Board which has collected the same to the Board of such first-mentioned district as aforesaid, subject to such deductions for the cost of collection or other expenditure incurred by the Board which had collected the contribution as the Governor shall determine; and such repayment of the amount of the contribution so paid by such fruit-growers shall be enforceable by order of the Supreme Court on petition by the Board to which such repayment is to be made: Provided that the costs and expenses incurred by the Board which has collected the contribution by reason of the appointment of any officer for any fixed period shall be apportioned between the two districts.

30. (1.) It shall be optional for each Board to direct their Inspector to enforce the regulations for the destruction of the fruit pests enumerated in Schedule A of this Act, other than codlin moth and phylloxera, excepting when a fruit-grower shall make a complaint in writing to the Board or District Inspector that the orchard or orchards enumerated in the complaint are infected with any of such fruit pests specified, and thereby proving a nuisance to him.

Destruction of fruit pests optional; but compulsory in certain cases.

(2.) On receipt of any such complaint the District Inspector shall visit the orchard or orchards complained of, and, if found infected with any of the aforesaid fruit pests, he shall forthwith order the destruction of such pests.

31. It shall be the duty of every District Inspector to carefully examine during the month of April in each year all nurseries in his district, and report to the Chief Inspector if infected by the fruit pests mentioned in Schedule A to this Act.

Annual inspection of fruit-trees.

32. The Chief Inspector shall, immediately on receiving a report from the District Inspector in each year, issue a clean nursery certificate to all nurseries reported clean, and shall notify in the *New Zealand Gazette* all nurseries unclean.

Nurseries to be annually certified as clean.

33. Any nursery reported infected with "mussel scale," "red-spider," "woolly aphid," or "phylloxera" shall be publicly notified in the *Gazette* as quarantined, and the owner or occupier thereof shall not send out from the said nursery any trees or vines liable to be affected by such pests until the said nursery has been cleansed to the full satisfaction of the Chief Inspector, who shall then grant a permit to send out to said owner or occupier; but no clean certificate shall be issued until after the April inspection in the year following that in which the nursery was declared quarantined.

Infected nursery to be quarantined.

The owner or occupier of any quarantined nursery who shall send out of such nursery any trees or vines without a permit shall

Penalty for moving trees or vines therefrom.

be liable to a penalty not exceeding *twenty* pounds nor less than *ten* pounds.

Penalty for not giving notice of phylloxera.

34. The owner or occupier of every orchard which is affected in any degree with the *Phylloxera vastatrix* who shall not within seven days after becoming aware of such infection give notice thereof to the Inspector of such district, shall be liable to a penalty not exceeding *five* pounds for each offence, and not less than *one* pound. 5

Vine-roots to be inspected.

35. It shall be the duty of every Inspector on observing unhealthy grape-vines to carefully examine the roots of such grape-vines, and if found infected in any degree with phylloxera to forthwith order the destruction of such vines. 10

Penalty for not giving notice of moth.

36. The owner or occupier of every orchard in which no moth or no infected tree or fruit has previously been found shall, upon discovering or becoming aware of the presence of the moth or any infected tree or fruit thereon, give notice within seven days, to the Board or Inspector administering the Act, of such orchard being so infected; and every such owner or occupier who fails or neglects in any such case as aforesaid to give such notice as aforesaid shall be liable to a penalty not exceeding *ten* pounds nor less than *one* pound. 15

Penalty for not rooting up diseased or dead trees on notice.

37. The Board of any district from time to time may require the owner or occupier of any orchard within such district to cut down or root up, within one month after receiving notice in writing, signed by the Chairman of the Board so to do, and within such distance from the ground as shall be required by such notice, any dead or hopelessly-diseased trees growing in such orchard; and every occupier failing to comply with any such notice shall for every such offence forfeit and pay a penalty of not less than *ten* shillings and not exceeding *five* pounds. 20 25

Penalty for infringement of Act.

38. If the owner or occupier of any orchard neglects or refuses to comply with the provisions of this Act, or with any regulation made hereunder for the destruction of the moth, scale, or other fruit pest, the Board or the Governor may authorise an Inspector to enter upon such orchard, with so many assistants as he shall deem necessary for the purpose, and to perform all such acts as this Act or the regulations direct or require occupiers of orchards to perform for the destruction of the moth, scale, or other fruit pest; and all the costs and expenses incurred by the Inspector in so doing shall be recoverable from the owner or occupier of such orchard by action or plaint in any Court of competent jurisdiction, or by complaint under "The Justices of the Peace Act, 1882." 30 35 40

Penalty for removing infected fruit within the colony.

39. Every person who conveys, or causes or permits to be conveyed, from one part of the colony to another part thereof, any fruit infected with the moth, or any case, box, barrel, bag, or other receptacle infected with the moth, or which contains or has contained infected fruit, or any fruit or trees infected with scale or other communicable fruit pest, unless the same has been previously cleansed in accordance with the regulations made under this Act, or otherwise to the satisfaction of an Inspector, is liable for each such offence to a penalty of not less than *ten* shillings and not exceeding *ten* pounds. 45

Penalty for introducing into the colony fruit from infected country.

40. Every person who conveys, or causes or permits to be conveyed, into any part of the colony any apple, pear, or quince grown in or coming from any codlin-moth infected country, is liable for each 50

209

offence to a penalty not exceeding *ten* pounds and confiscation of the fruit. Every person who conveys, or causes or permits to be conveyed, into any clean district any apple, pear, or quince grown in or coming from any unclean district, whether such be infected or not, is liable for each such offence to a penalty not less than *ten* shillings and not more than *five* pounds.

41. Every person who sells, or offers or exposes for sale, any fruit infected with the moth, except as provided for in the regulations under this Act, is liable to a penalty of not less than *ten* shillings and not more than *five* pounds.

Penalty for selling or exposing for sale infected fruit.

42. Every person who refuses to allow any Inspector to enter at any reasonable time on his land, nursery, orchard, shop, store, mart, or other building or place, or to examine any trees, fruit, cases, boxes, barrels, or other receptacles being therein or thereon, or impedes, hinders, or attempts to impede or hinder, any Inspector from examining any such trees, fruit, cases, boxes, barrels, or other receptacles, is liable to a penalty not less than *ten* shillings nor exceeding *five* pounds for each offence.

Penalty for obstructing Inspectors.

43. All the provisions of this Act shall be applicable to the owner of any unoccupied land, orchard, or nursery in the same manner in all respects as if such owner were the actual occupier of such land, orchard, or nursery.

Owner of unoccupied land to be liable as occupier.

44. No fee or fees shall be payable by any officer appointed respectively by any Board or the Governor in connection with any legal proceedings instituted by such officer against any person for any breach of this Act, or any regulation made hereunder, or for any contribution due, or for any expenses incurred under this Act.

Officers exempted from fees in legal proceedings.

45. In any proceedings under this Act for any breach of or non-compliance with the provisions thereof, a copy of 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.

Onus of proof as to liability in legal proceedings.

46. No action shall lie against any person for anything done in pursuance of this Act unless such action is commenced within three months after the cause of action has arisen; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence.

Limitation of actions.

47. All penalties under this Act may be recovered in a summary way before a Resident Magistrate or any two or more Justices of the Peace in the manner provided by "The Justices of the Peace Act, 1882," and when recovered shall be paid in to the fund of the district in which the action arose or the penalty was incurred.

Penalties recoverable summarily.

48. The "Codlin-moth Act, 1884," is hereby repealed.

Repeal.

Schedules.

SCHEDULES.

SCHEDULE A.

FRUIT PESTS.

<i>Carpocapsa pomonella</i> , or "Codlin-moth."	<i>Phylloxera vastatrix</i> , or "Grape-vine root-louse."
<i>Mytilaspis pomorum</i> , or "Mussel-scale."	<i>Tetranychus telarius</i> , or "Red spider."
<i>Schizoneura lanigera</i> , or "Woolly aphid."	<i>Selandria cerasi</i> , or "Cherry- and pear-leaf slug."
<i>Phyllosticta circumcisa</i> , or "Shot-hole Fungus."	<i>Fusicladium dentriticum</i> , and
<i>Ascomyces deformans</i> , or "Peach-curl."	<i>Fusicladium pyrinum</i> , or "Scab of the apple and pear."
<i>Uncinula ampelopsidis</i> , or "Oidium mildew of the grape."	
<i>Spaeloma ampelinum</i> , or "Black spot of the grape."	

SCHEDULE B.

RETURN of Number of Acres and Fruit-trees planted in Orchards occupied by the undersigned on the 1st October, 189 , in the Fruit District of

Name and Address.	Area of Orchard.	No. of Section and Survey District.	Varieties.	Number of each.	State whether Infected or not with Codlin-moth or other Fruit Pests.
			Apples ...		
			Pears ...		
			Quinces ...		
			Medlars ...		
			Apricots ...		
			Cherries ...		
			Figs ...		
			Grape-vines ...		
			Lemons ...		
			Loquats ...		
			Mulberries ...		
			Nectarines ...		
			Nuts (various) ..		
			Olives ...		
			Oranges ...		
			Peaches ...		
			Persimmons ...		
			Plums ...		
			Prunes ...		
			Small Fruits ...		

I, of , do hereby solemnly and sincerely declare that the above return contains a just and true account of the several matters therein set forth, all which matters I conscientiously believe to be true.

(Signature).

SCHEDULE C.

"THE CODLIN-MOTH ACT, 1892."

TAKE notice that your orchard, in the Fruit District of , is infected with , and you are hereby required forthwith to destroy such in manner prescribed by the regulations made under this Act, or otherwise as I may lawfully in writing direct.

Dated this day of , 18 .

C.D., Inspector,
Fruit District.

To E.F., of _____.

211

SCHEDULE D.

CLEAN CERTIFICATE TO BE GRANTED BY INSPECTOR.

I, _____, Inspector of Fruit Pests, do hereby certify that I have examined the orchards in _____ District, and that in my opinion such orchards are free from codlin-moth.

Given under my hand at _____, this _____ day of _____, 18 ____ .
C.D., Inspector,
Fruit District.

SCHEDULE E.

CLEAN NURSERY CERTIFICATE TO BE GRANTED BY INSPECTOR.

I, _____, Inspector of Fruit Pests, do hereby certify that I have examined the nursery of _____, in _____ District, and that in my opinion such nursery is entirely free from mussel-scale, red-spider, woolly aphis, and phylloxera.

Given under my hand at _____, this _____ day of _____, 18 ____ .
C.D., Inspector,
Fruit District.