

CHAPTER 86.

PROTECTION OF TREES AND CONSERVATION OF SOIL AND WATER.

(24/A *September*, 1954.)

8/195-1
9/1955

1. This Ordinance may be cited as the Protection of Short tide. Trees and Conservation of Soil and Water Ordinance.

2. In this Ordinance—

Interpretation.

"Chief Agricultural Officer" means the officer for the time being in charge of the Agricultural Department of the Territory;

"Crown land" includes—

(a) the waste or vacant land of the Crown within the Territory; and

(/>) all lands now vested in Her Majesty, or which may hereafter be so vested, whether as *bona vacantia* or by forfeiture, purchase or exchange;

"livestock" includes cattle, horses, mules, asses, sheep, goats and swine;

"private land" means land other than Crown land;

"protected area", "forestry area" and "water area", mean, respectively, a protected area, a forestry area and a water area declared as such by an Order made under section 3;

"protected tree" means any tree which is of economic value, or of scientific interest, or of value in preserving the amenities of a locality and which is declared by order of the Governor in Council under section 3 to be a protected tree for the purposes of this Ordinance.

3. (1) Subject to the provisions of section 4, it shall be lawful for the Governor in Council by Order to declare—

(a) any tree to be a protected tree; or

**Declaration as to
ait-a • and
protected trees.**

{b) any land to be a protected area or a forestry area or a water area,

for the purposes of this Ordinance.

(2) Every Order made under this section shall clearly specify the protected tree and describe the area to which it relates; and the Chief Agricultural Officer shall, in the case of such protected tree, protected area, forestiy area or water area, after the publication of the Order cause the said tree or areas to be indicated by marks, painted posts or other signs so that they may be readily identified.

(3) Any Order made under diis section may exempt either the whole or any part or parts of an area to which the Order relates from any of the restrictions imposed by section 5 on the use to which land or its produce in the area may be put.

(4) Every Order made under this section may be cancelled or varied in like maimer.

(5) Ever)- Order made under this section shall be published either in the Gazette or by posting copies thereof on the doors of any court house, church, chapel, school-house or other building in the Territory which in the opinion of the Governor will give publicity thereto or by both gazetting and posting, as the Governor may decide:

Provided that in places where there is no building as aforesaid a copy of the Order may be affixed to a board and fastened up in a conspicuous place.

4. (1) Before making any Order under the provisions of section 3, the Governor in Council shall satisfy himself that the declaration of the area under the Order is necessary—

(a) in the case of a protected area, in order to maintain and preserve protected trees growing therein;

(>) in the case of a forestiy area, in order to— (i) prevent the de-afforestation and denudation of land on steep slopes, or

(ii) prevent soil erosion and the deposit of earth, mud, stones and sand upon agricultural land, or

(iii) protect roads and highways;

(c) in the case of a water area, in order to—

Im poses for
which areas may
be declared.

- (i) maintain water supplies within the area or on land adjacent to it, or
- (ii) maintain such supplies in guts, springs, streams, watercourses or reservoirs, or
- (iii) prevent the silting of sources of water supply, or
- (iv) prevent or reduce the pollution of any water supply.

(2) Before making any Order, as aforesaid, the Governor in Council shall request the Chief Agricultural Officer to inquire into the necessity of making the Order, and thereupon the Chief Agricultural Officer shall hold, or shall depute an officer to hold, a public inquiry into the necessity for making the Order, and the Chief Agricultural Officer or officer so deputed as the case may be, shall report his findings to the Governor in Council as to the necessity for making the order, the extent to which it should be made and the conditions which it should include.

(3) The validity of any Order made under section 3 shall not be impugned on the grounds that there was no necessity for its being made or that the findings of the Chief Agricultural Officer or officer as aforesaid were at variance with the Order as made.

5. (1) Subject to the provisions of section 6, no person shall, except to the extent to which an exemption in an Order may otherwise allow, do any of the following acts, that is to say—

^{ACTS} forbidden in
declared areas.

- (a) in a protected area fell, cut, girdle, bark, lop, tap, bleed, burn, injure or remove any protected tree growing therein;
- (b) in a forestry area—
 - (i) fell, cut, girdle, bark, lop, tap or bleed or in any way injure any tree, or
 - (ii) kindle, keep or carry any fire; or
- (iii) depasture any livestock or permit any livestock to trespass;
- (c) in a water area—
 - (i) fell, cut, girdle, bark, lop, tap or bleed any tree or in any way injure any tree, or
 - (ii) kindle, keep or carry any fire, or
- (iii) depasture any livestock or permit any livestock to trespass, or

- (iv) clear any land for cultivation, pasturage, or any other purpose, or
- (v) pollute in any way the water therein.

(2) Any person who does any act forbidden to be done by subsection (1) shall be guilty of an offence against this Ordinance.

Licence by Chief
Agricultural
Officer.

6. (1) The Chief Agricultural Officer may in his discretion issue licences on such terms and conditions as he may think fit to do all or any of the acts forbidden to be done by section 5 and may by endorsement on a subsisting licence extend the period for which such licence shall be valid.

(2) A licence under subsection (1), when it has reference to an act to be done in a protected area, shall be issued only for specified protected trees, and no licence to cut any protected tree in a protected area shall be issued until the Chief Agricultural Officer, or some other officer generally or specially authorised by him, has marked the tree to which the licence relates.

(3) The Chief Agricultural Officer may refuse to issue a licence without giving the reasons for his refusal, but an appeal shall lie from such refusal to the Governor in Council whose decision shall be final.

Works in water
areas or on water
sources.

7. In order to achieve all or any of the purposes specified in regard to water areas in paragraph (c) of subsection (1) of section 4, or in order to implement any regulations made by the Governor in Council under section 14, the Governor may direct that such works as he may deem necessary shall be carried out in any water area or at or around any source of water supply in such manner as he may prescribe.

Entry on private
land.

8. The Governor or the Chief Agricultural Officer or any person authorised by either of them in writing in that behalf may, without notice, enter any private land for any of the following purposes, that is to say—

(a) to ascertain whether it is desirable or necessary to make any order in relation thereto, or to direct the execution of any work under this Ordinance; or

(b) to execute any work as aforesaid; or

(c) to inspect and maintain any such work; or

(d) to inspect such land in cases where an inquiry under the provisions of subsection (2) of section 4 is being or is likely to be held;

(e) to ascertain, in the case of any land to which section 3 applies, whether any offence is being or has been committed against this Ordinance or against any order or regulation made thereunder.

9. Every person who assaults, molests, obstructs, or resists the Governor or the Chief Agricultural Officer or any person authorised by either of them in the execution of any duty imposed on or in the exercise of any power vested in him by this Ordinance, or who aids or incites any other person so to assault, molest, obstruct or resist the Governor or the Chief Agricultural Officer, or such authorised person, shall be guilty of an offence against this Ordinance.

Obstruction of officers and others.

10. (1) Where after the publication of an Order declaring any private land or portion thereof to be a protected area or a forestry area or a water area, as the case may be, any person commits on the said land or portion thereof any act contrary to the provisions of this Ordinance, the person committing such act and every owner or occupier of such land or portion thereof who in any way directly or indirectly contributes to the commission of such act shall be guilty of an offence.

Liability for offences committed after publication of protection orders.

9/1955.

(2) An owner or occupier of any land or portion thereof shall be deemed to have contributed to the commission of an offence on the said land or portion thereof contrary to subsection (1) if he does not with all due diligence and to the best of his ability give such information or evidence within his knowledge as may lead to the discovery of the person so offending.

11. (1) Any member of the police force or any person authorised by the Governor or the Chief Agricultural Officer to execute any work or perform any duty under this Ordinance may, without warrant, arrest any person found within a protected area or a forestry area or water area who is reasonably suspected of having committed an offence within such area if—

Power to arrest without warrant.

(a) such person refuses to give his name and address: or

(b) such person gives a name and address either of which is false; or

(c) there is reason to believe that such person will abscond.

(2) Every person authorised as aforesaid shall with all convenient despatch deliver the person so arrested by him under this section to the police officer in charge of the nearest police station.

Impounding of livestock in forestry and water areas.

9/1955.

Cap. 215.

12. (1) It shall be lawful for any authorised person to impound or otherwise deal with any livestock found within any protected area or forestry area or water area contrary to the provisions of this Ordinance as though such livestock were, when so found, trespassing on that person's land and as though the provisions of the Pound Ordinance, as amended applied to the trespass. In this subsection "authorised person" means the Governor or the owner of the protected area, forestry area or water area concerned, or such persons as they may respectively depute.

(2) The impounding or other dealing with any livestock under subsection (1) shall not be a bar to proceedings being taken against the owner thereof for having committed an offence against section 5, and an entry in the pound keeper's book relating to the impounding of any livestock found as aforesaid shall be prima facie evidence that such an offence was committed.

Compensation for loss.

13. (1) Subject to the provisions of subsection (2), no compensation under this Ordinance shall be payable to any person who claims that he has suffered or is likely to suffer loss—

(a) through the declaration of any area to be a protected area; or

(b) on account of the refusal to grant or extend the validity of a licence under section 6; or

(c) caused by or arising out of any work executed under section 7; or

(d) as a result of entry on land under section 8; or

(e) by reason of the provisions of any regulation made under section 14.

(2) When the owner of any private land which is included within a protected area or forestry area or water area claims

that he ought to be pecuniarily compensated for loss suffered or likely to be suffered as a result of such inclusion, he shall within three months of the making of the Order lodge at the Governor's office a statement of his claim with full particulars of his estimated loss.

(3) Within thirty days of such claim being lodged as aforesaid the Governor shall appoint a Board consisting of—

(a) a government officer chosen by him;

(b) such person as the claimant may nominate; and

(c) such other person, as may be agreed upon between the Governor and the claimant who shall be Chairman of the Board.

(4) The Board shall hear the claimant and such persons as he may bring before the Board and such government officers as the Governor may direct to appear before the Board and shall make recommendations in accordance with the provisions of this section as to the compensation, if any, to be paid to the claimant and shall forward their recommendations in the form of a report to the Governor in Council.

(5) In making recommendations under subsection (4), the Board shall—

(a) not take into account—

(i) any remote, contingent or possible uses to which the land might in future be put, and

(ii) any loss suffered as a result of a change of system in cases where the effect of the inclusion of the land within a prohibited, forestry or water area is to compel the owner to adopt a better system of husbandry than he had practised before, or when it may reasonably be expected that the inclusion will have that effect;

(b) have regard to—

(i) the actual use of the land at the date when the Order was made and during the three years immediately preceding that date, and

(ii) evidence adduced, if any, as to the progressive deterioration of the land through soil erosion or other causes which might reasonably be expected to be arrested by its inclusion within the area;

(c) assume, unless in any case the Chief Agricultural Officer shall indicate to the Board that the forest cover on the land ought, by reason of the steepness or otherwise of the said land, to be permanently left undisturbed, that the forest produce of the land will in the future accrue to the owner under a proper system of selective felling by means of licences to fell trees to be issued from time to time under section 6.

(6) Before recommending pecuniary compensation the Board shall consider whether, without prejudice to the objects for which the Order was made, the loss could not be made good to the owner, in whole or in part, by the addition to the Order of an exemption under subsection (3) of section 3 or by the issue of licences under section 6.

(7) The Governor in Council shall consider every report forwarded under the provisions of subsection (4) and shall decide what compensation, if any, shall be paid, and the decision of the Governor in Council shall be final.

(8) It shall be lawful for the Governor to direct the Financial Secretary to pay from the general revenue of the Territory as compensation to the owner of the land such sum of money as may be decided by the Governor in Council under subsection (7).

(9) In this section, the word "owner" shall include a tenant whose contract of tenancy is for such a period as to give him the right to occupy the land for five years or more from the date when the Order is made.

Power to make
regulations.

14. (1) The Governor in Council may make regulations permitting, prohibiting, regulating or controlling the access of persons or livestock to any source of water supply, or restricting the use thereof to particular classes of persons or types of consumers, or prescribing the charges, if any, to be made for the water, whether or not the source is on Crown or private land or whether or not it is included in a water area; and such regulations may be made in respect of a particular source or sources or generally for all sources or for all sources of a particular type.

(2) The Governor in Council may attach to any breach of any regulations made under this section a fine not exceeding eighty-five dollars or a term of imprisonment not exceeding three months or both such fine and imprisonment.

(3) No regulation made under the provisions of 9/1955. subsection (1) shall have effect unless and until it has been approved by a resolution of the Legislative Council.

(4) All regulations made and approved under this section shall be published in the same manner provided for the publication of Orders by subsection (5) of section 3.

15. Any person guilty of an offence against this Penaltie Ordinance shall on summary conviction be liable to a fine not exceeding one hundred and seventy dollars or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.