

New Zealand.



ANALYSIS.

Title.

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1928, No. 4.

AN ACT to consolidate certain Enactments of the General Assembly relating to Orchard and Garden Diseases. [13th September, 1928.] Title.

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

1. This Act may be cited as the Orchard and Garden Diseases Act, 1928, and it shall come into force on the first day of January, nineteen hundred and twenty-nine. Short Title and commencement.

2. In this Act, if not inconsistent with the context,—

“Disease” means any of the diseases named in the First Schedule hereto, and includes any disease (other than the diseases mentioned in the Second Schedule hereto) which the Governor-General from time to time, by Order in Council gazetted, declares to be a disease within the meaning of this Act; and includes, but subject in every case to the provisions of the next succeeding section, any of the diseases named in the Second Schedule hereto:

“Fruit” means the edible product of any plant; and includes the peel, skin, or shell of such product, and also the seeds of such plant, whether such fruit is or is not attached to the plant:

Interpretation.

1908, No. 138, s. 2
1914, No. 69, s. 2

“ Infected ” means infected with disease :

“ Infected package ” includes every case or other package in which any diseased plant or fruit is or has been contained or with which any such plant or fruit has come in contact :

“ Minister ” means the Minister of Agriculture :

“ Occupier,” in the case of any orchard or land which is unoccupied or whose actual occupier is unknown or cannot be found, includes the owner :

“ Orchard ” means any land used for the purpose of an orchard, garden, nursery, vinery, or vineyard, and includes any land on which fruit-trees, garden shrubs, or vines are growing :

“ Plant ” means any tree, flower, shrub, vegetable, or other vegetation.

3. (1) The Council of any county may from time to time, by special order gazetted, declare that the Second Schedule hereto shall (in respect of all or any one or more of the diseases mentioned therein) be suspended within its jurisdiction.

(2) In a county wherein the Counties Act, 1920, is suspended, or has never been in operation, a like declaration shall be made by the Minister, by notice in the *Gazette*, on the petition of a majority of the local authorities within the limits of the county.

(3) Any such declaration may in like manner be rescinded, and thereupon the said Second Schedule shall again have operation within the limits of the county.

(4) For all the purposes of this section a borough shall be deemed to be within the limits of the county within whose boundaries the borough is situate, and similarly in the case of a town district which is not part of the county.

4. The Governor-General may from time to time, by Order in Council gazetted,—

(a) Prohibit, absolutely or except in accordance with regulations under this Act,—

(i) The introduction into New Zealand, either generally or from any specified colony, country, port, or place, of any plant, fruit, fungus, parasite, insect, or any other thing which in his opinion is likely to introduce any disease into New Zealand ; or

(ii) The bringing into any specified portion of New Zealand from any other portion or specified portion of New Zealand of any specified plant, fruit, fungus, parasite, insect, or other thing which in his opinion is diseased or is likely to spread disease :

(b) Appoint any specified ports to be the only ports of entry for plants or fruit, or for any specified plant or fruit :

(c) Appoint quarantine grounds where plants or fruit, and the packages containing the same or with which the same may have come in contact, may be detained for the purpose of being inspected, disinfected, destroyed, or otherwise disposed of :

(d) Extend the First Schedule hereto by including therein any disease other than those mentioned therein.

Second Schedule
may be suspended in
any county.

1908, No. 138, s. 3

Powers of Governor-
General for
preventing
introduction of
diseased plants, &c.

Ibid., s. 4

Other diseases may
be included in
First Schedule.

5. The Minister may from time to time, by notice in the *Gazette*,—
- (a) Appoint any specified ports to be the only ports at which any fruit, or any specified class of fruit, may lawfully be exported, either generally or to any specified country or place;
 - (b) Appoint fit buildings to be stores for the inspection and grading therein of fruit;
 - (c) Appoint fit buildings to be stores for the pre-cooling or other treatment of fruit prior to export; and
 - (d) Prescribe the manner in which and the conditions subject to which stores for the inspection, grading, or treatment of fruit shall be used.
6. There may from time to time be appointed such Inspectors and other officers, with such powers and functions, as are deemed necessary in order to carry out the provisions of this Act.
7. The occupier of every orchard shall at all times do whatever is necessary in order to eradicate disease from such orchard and prevent the spread thereof.
8. The occupier of every orchard in which any disease appears shall, within forty-eight hours after first discovering or becoming aware of its presence, send written notice thereof to the Director of the Horticultural Division of the Department of Agriculture at Wellington.
9. (1) Any Inspector or other authorized officer may at any time enter into any conveyance, or upon any orchard, land, or premises, or on board any ship; for the purpose of inspecting any plants or fruit, or the packages containing the same or with which the same may have come in contact, and shall have all such powers and authorities (including power to dig up plants, open packages, and otherwise) as he deems necessary for enabling him to enforce the provisions of this Act.
- (2) If the Inspector or other officer declares any such plants, fruit, or packages to be diseased or infected with disease he shall give notice thereof to the owner or person in charge thereof, who shall forthwith take such measures and do such acts as are necessary in order to eradicate or prevent the spread of the disease.
- (3) If such owner or person fails so to do to the satisfaction of the Inspector or other officer, such Inspector or other officer may do the same at the expense in all things of such owner or person, who nevertheless shall not thereby be relieved from his other liabilities under this Act.
- (4) In the exercise of the powers conferred upon him by this section the Inspector or other officer may remove, treat, disinfect, destroy, or otherwise dispose of any such plants, fruit, or packages in such manner as he thinks fit.
10. (1) Any plant, fruit, fungus, parasite, insect, or other thing introduced or attempted to be introduced into New Zealand from abroad, or brought or attempted to be brought into any portion of New Zealand from any other portion thereof, contrary to any Order in Council under this Act, may, together with any package containing the same or with which the same may have come in contact, be seized by an Inspector or other authorized officer, or an officer of Customs, and be disinfected, destroyed, or otherwise disposed of as such Inspector or

Minister may
appoint ports for
export of fruit, &c.
1914, No. 69, s. 3

Appointment of
officers.
1908, No. 138, s. 5
1912, No. 23, s. 60
(3)

Eradication of
disease.
1908, No. 138, s. 6

Occupier to give
notice of any disease.
Ibid., s. 7

Inspector may enter
and give notice to
eradicate disease.
Ibid., s. 8

Plants, &c.,
unlawfully
introduced may be
destroyed.
Ibid., s. 9

officer deems fit at the expense of the owner or person in charge thereof.

Postal officers and
officers of Customs
to assist herein.

(2) It shall be the duty of all officers of the Postal Department and of the Customs respectively to assist in carrying out the provisions of this section and in preventing the introduction into New Zealand or the bringing to any portion of New Zealand of anything contrary to any such Order, and for that purpose they may, in respect of anything so introduced or attempted to be introduced or brought, exercise all the powers conferred by the Post and Telegraph Act, 1928, in the case of postal packets posted in breach of that Act, and by the Customs Act, 1913, in the case of uncustomed or prohibited goods.

Inspector may
employ assistants.
1908, No. 138, s. 10

11. (1) An Inspector or other authorized officer may employ such assistants as he deems necessary in carrying out the provisions of this Act, and may pay them such remuneration as may be approved.

Recovery of
expenses.

(2) The owner, occupier, or other person through whose neglect, omission, or other default, or by reason of the infection of whose orchard, plants, fruit, or packages, the expenses of such employment were incurred shall repay the same to the Inspector on demand; and in default of payment such expenses may be recovered as a debt due to the Crown.

Inspector may
employ force.
Ibid., s. 11

12. For the purpose of making any entry or removal, or otherwise performing his duties under this Act, an Inspector or other authorized officer or assistant may, in case of resistance, use all necessary force.

Person obstructing
or hindering
Inspector commits
an offence.
Ibid., s. 12

13. (1) Every person commits an offence against this Act who directly or indirectly obstructs, hinders, or interrupts, or threatens, or assaults, or uses improper or abusive language to any Inspector or other authorized officer or assistant while in the performance of his duty under this Act.

(2) Proceedings for the recovery of any fine for such offence, or the payment thereof, shall not be a bar to any action at law by any such Inspector or other authorized officer or assistant; but every such action may be commenced and proceeded with as if this Act had not been passed, any rule of law to the contrary notwithstanding.

Protection of
Inspectors.
Ibid., s. 13

14. An Inspector or other authorized officer or assistant shall not be deemed to be a trespasser by reason of any entry or removal under this Act, or be liable for any damage occasioned in carrying out the provisions of this Act.

How notices may
be given.
Ibid., s. 14

15. Any notice to be given to any occupier or other person by an Inspector or other authorized officer or assistant in the performance of his duties under this Act may be given either by delivering the same to such person or by leaving it at or posting it addressed to him at his usual or last known place of abode or business in New Zealand, or if he is unknown or cannot be found in New Zealand, then by affixing such notice on a conspicuous place on the land to which the notice relates.

Definition of
offences.
Ibid., s. 15

16. Every person commits an offence against this Act who directly or indirectly by himself, his servant or agent,—

(a) Sells or offers or exposes for sale or distributes in any manner any plant, fruit, or package which to his knowledge is diseased or infected, or (except under the direction of an Inspector or other authorized officer) brings or suffers the same to be brought upon, or removes or suffers the same to be removed from, his premises; or

- (b) Sells or offers or exposes for sale or distributes in any manner any plant, fruit, or thing which to his knowledge has been introduced into New Zealand contrary to any Order in Council under this Act, or (except under the direction of an Inspector or other authorized officer) brings or suffers the same to be brought upon, or removes or suffers the same to be removed from, his premises; or
- (c) Does or attempts to do any other act in breach of this Act or of any regulation or Order in Council thereunder; or
- (d) Fails to faithfully observe and perform any duty or obligation imposed on him by this Act or by any Order in Council or regulation thereunder:

Provided that it shall be lawful to sell or offer for sale in the Provincial District of Auckland, or convey from one part of the said provincial district to any other part thereof, fruit affected with codlin-moth to the extent of not more than five per centum.

17. (1) Notwithstanding anything in the last preceding section, the Governor-General may from time to time by Order in Council make regulations authorizing the sale, under such conditions as may be prescribed in those regulations, of fruit affected with any of the diseases mentioned in the Third Schedule hereto.

Governor-General may authorize sale in New Zealand of fruit affected by black spot or pear-scab.
1920, No. 59, ss. 2, 3

(2) Such regulations may apply generally throughout New Zealand or within any specified part or parts thereof.

(3) The Governor-General may from time to time by Order in Council extend the Third Schedule hereto by including therein any disease other than those mentioned therein.

Power to extend Third Schedule.

18. Every person who commits an offence against this Act is liable to a fine not exceeding twenty pounds.

Fine for offences.
1908, No. 138, s. 16

19. All fines under this Act shall be recovered in a summary way under the Justices of the Peace Act, 1927, before a Magistrate alone, and upon prosecution by an Inspector or some person authorized by the Minister in that behalf.

Recovery of fines.
Ibid., s. 17

20. (1) All fines and other moneys recovered or received under this Act shall be paid into the Public Account and form part of the Consolidated Fund.

Fines to be paid into Public Account.
Ibid., s. 18

(2) All expenses incurred in the administration of this Act shall be paid out of moneys to be appropriated by Parliament for that purpose.

Expenses of administration.

21. (1) An action shall not be brought against an Inspector or other authorized officer or assistant acting in execution of this Act for anything done in pursuance thereof or under the authority thereof unless such action is commenced within three months after the cause of action arose.

Limitation of actions against Inspectors.
Ibid., s. 19

(2) The defendant in any such action may give this Act and any special matter in evidence.

22. (1) The Governor-General may from time to time, by Order in Council gazetted, make regulations—

Regulations.
Ibid., s. 20
1914, No. 69, s. 4 (1)

(a) Prescribing the manner in which diseased plants or fruit and infected packages shall be treated, cleansed, destroyed, or otherwise disposed of;

(b) Prescribing the conditions under which any package or case may be used more than once for the carriage of fruit or plants;

(c) Providing for the registration of orchards and the terms and conditions of such registration;

- (d) Prescribing the matters in respect whereof fees shall be payable under this Act, fixing the amount of such fees, and the mode of the payment and recovery thereof; and
- (e) Generally for any other purpose for which regulations are contemplated by this Act, or which he deems necessary in order to give full effect to this Act.

(2) All such regulations shall, within fourteen days after the gazetting thereof, be laid before Parliament if sitting, or if not, then within fourteen days after the commencement of the next ensuing session.

23. (1) In addition to the powers conferred by the last preceding section, the Governor-General may from time to time, by Order in Council gazetted, make regulations—

- (a) Providing for the grading of fruit-trees and other trees intended for sale from nurseries, and prescribing conditions in respect of the sale of such trees;
- (b) Prescribing standard packages for fruit intended for export or for sale for consumption in New Zealand;
- (c) Providing for the branding or marking of packages of fruit, and for the registration of brands and marks;
- (d) Providing for the inspection, grading, packing, and stamping of fruit; and
- (e) Prescribing modes of treatment of fruit prior to export, and prescribing such other things as may be necessary with respect to the export of fruit.

(2) The provisions of subsection two of the last preceding section shall apply to regulations under this section in the same manner as if such regulations were made under that section.

24. The enactments mentioned in the Fourth Schedule hereto are hereby repealed, and with respect to those enactments the following provisions shall apply:—

- (a) All Orders in Council, regulations, orders, special orders, notices, appointments, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.
- (b) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

SCHEDULES.

FIRST SCHEDULE.

Apple-aphis (*Aphis mali*).
 Apple-blossom weevil (*Anthonomus pomorum*).
 Apple-bud moth (*Hedya ocellana*).
 Apple-canker (*Nectria galligena*).
 Downy mildew of hop
 (*Pseudoperonospora Humuli*): Gaz. 1929 p. 2873.

Apple-maggot (*Trypeta pomonella*).
 Apple-pith moths (*Blastodacna hillerella*
 and *B. vinolentella*).
 Apple-root borer (*Leptops hopei*).
 Apple saw-fly (*Hoplocampa testudinea*).

Bean wilt (*Ascochyta Blight*): Gaz. 1931 p. 950.

Additional power to
 make regulations.
 1914, No. 69, s. 4

Repeals.

Savings.
 1908, No. 138, s. 1
 (2)

Schedules.
 Sections 2, 4.
 1908, No. 138,
 Second Schedule.
 Gazette—

1908, p. 2408
 1911, p. 2658
 1912, p. 2941
 1915, p. 3098
 1917, p. 1402
 1918, p. 1694
 1920, p. 3218
 1922, pp. 1582,
 2431

- Apple-sucker (*Psylla mali*).
 Apple-tree borer (*Chrysobothris femorata* and *C. mali*).
 Apple-tree borer (*Rhizopertha collaris*).
 Asparagus-rust (*Puccinia asparagi*).
 Bark-rot (*Polystictus cinnabarinus*).
 Bean-anthraxnose (*Glomerella cingulata*).
 Bean-rust (*Uromyces fabae*).
 Beet-rust (*Uromyces betae*).
 Bitter pit.
 Bitter rot (*Glomerella cingulata*).
 Black aphid (*Myzus cerasi*).
 Black dot of potato, tomato, &c. (*Vermicularia varians*).
 Black knot (*Plowrightia morbosa*).
 Blister disease (*Coniothecium chomatosporum*).
 Brown rot (*Sclerotinia cinerea*).
 Bulb-bacteriosis (*Bacterium hyacinthi*).
 Bulb-mite (*Rhizoglyphus echinopus*).
 Cabbage-leaf spot (*Mycosphaerella brassicaecola*).
 Carnation fairy-ring (*Heterosporium echinulatum*).
 Carnation-rust (*Uromyces dianthi*).
 Carrot-disease (*Phoma sanguinolenta*).
 Celery-leaf spot (*Phyllosticta apii*).
 Celery-rust (*Puccinia bullata*).
 Chrysanthemum - leaf blight (*Cylindrosporium chrysanthemi*).
 Chrysanthemum-rust (*Puccinia chrysanthemi*).
 Citrus-anthraxnose (*Phoma citricarpa*).
 Citrus-canker of Japan.
 Citrus-verrucosis (*Sporotrichum citri*).
 Collar-rot (*Ascochyta pisi*).
 Collar-rot (citrus) (*Fusarium limonis*).
 Colorado beetle (*Doryphora decemlineata*).
 Coral-spot (*Nectria cinnabarina*).
 Cucumber and melon mildew (*Peronospora cubensis*).
 Currant gall-mite or Big bud (*Eriophyes ribis*).
 Currant or gooseberry borer (*Aegeria tipuliformis*).
 Currant-aphid (*Rhopalosiphum ribis*).
 Currant-clearwing (*Sesia tipuliformis*).
 Currant-leaf spot (*Septoria ribis*).
 Currant-shoot borer (*Incurvaria capitella*).
Dacus cucumis.
Dacus facialis.
Dacus Kerki.
Dacus melanotus.
Dacus passiflorae.
Dacus rarotongiensis.
Dacus tongiae.
Dacus virgatus.
 Die-back (*Clasterosporium carpophilum*).
 Downy mildew of grape (*Plasmopara viticola*).
 Early blight (*Alternaria solani*).
 Eelworm (*Tylenchus devastatrix*).
 Fire-blight (*Bacillus amylovorus*).
 Fruit-bark beetle (*Scolytus rugulosus*).
 Gooseberry - mildew (*Sphaerotheca morsuvae*).
 Gooseberry saw-fly (*Nematus ribesii*).
 Gooseberry-leaf mildew (*Microsphaera grossulariae*).
 Green peach-aphid (*Aphis persicae*).
 Grey scab of lemon (*Sporodesmium griseum*).
 Gypsy-moth (*Ocneria dispar*).
 Haricot-bean rust (*Uromyces appendiculatus*).
 Heart-rot (*Mycosphaerella tabifica*).
 Hop-aphid (*Phorodon humuli*).
 Hop-mildew (*Erysiphe cichoraceum*).
 Indian meal-moth (*Plodia interpunctella*).
 Late blight (*Phytophthora infestans*).
Laverna herellara.
 Leaf-curl (*Exoascus deformans*).
 Leaf-roller caterpillar (*Cacoecia excessana*).
 Leaf-rust (*Puccinia pruni spinosae*).
 Lemon-bacteriosis.
 Lemon brown rot (*Pythiacystis citrophthora*).
 Lesser narcissus-fly (*Eumerus strigatus*).
 Light-brown apple-moth (*Cacoecia postvittana*).
 Mediterranean or West Australian fruit-fly (*Halterophora capitata*).
 Melanose.
 Narcissus-fly (*Meredon equestris*).
 New Caledonian fruit-fly (*Dacus psidii*).
 New Hebrides fruit-fly (*Trypeta musae*).
 Onion and hyacinth sclerotinia (*Sclerotinia bulborum*).
 Onion-fly (*Hylemyia antiqua*).
 Onion-mildew (*Peronospora schleideni*).
 Onion-scab (*Vermicularia circinans*).
 Onion-smut (*Urocystis Cepulae*).
 Peach-moth (*Anarsia lineatella*).
 Peach-root borer (*Samenoidea opalescens*).
 Pear-midge (*Diplosis pyrivora*).
 Pear-mite (*Eriophyes pyri*).
 Pear-scab (*Venturia pirina*).
 Pineapple fruit-fly (*Dacus xanthodes*).
 Plum-aphid (*Aphis prunifoliae*).
 Potato-bacteriosis (*Bacillus solanacearum*).
 Potato black-leg (*Bacillus phytophthorus*).
 Potato collar-fungus (*Rhizoctonia solani*).
 Potato dry rot (*Fusarium oxysporum*).
 Potato wart-disease (*Synchytrium endobioticum*).
 Potato wet rot (*Bacillus* sp.).
 Potato-moth (*Lita solanella*).
 Potato-scab (*Oospora scabes*).
 Powdery mildew (*Podosphaera leucotricha*).
 Queensland fruit-fly (*Tephrytes tryoni*).
 Raspberry root-knot (*Hypholoma fasciculare*).
 Raspberry-beetle (*Byturus tomentosus*).
 Raspberry-moth (*Lampronia rubiella*).
 Raspberry-rust (*Phragmidium rubi-idaei*).
 Raspberry-spot (*Gloeosporium venetum*).

Raspberry-weevil (*Otiorrhynchus picipes*).
 Rose black-blotch (*Actinonema rosae*).
 Rose leaf-spot (*Septoria rosae*).
 Rose-aphis (*Siphonophora rosae*).
 Rose-mildew (*Sphaerotheca pannosa*).
 Rose-rust (*Phragmidium mucronatum*).
 Round-headed tree-borer (*Saperda candida*)
 Rutherglen bug (*Nysius vinitor*).
 Sclerotium (*Sclerotinia sclerotiorum*).
 Shot-hole (*Phyllosticta prunicola*).
 Sleepy disease (*Fusarium lycopersici*).
 Soft rot (*Pseudomonas campestris*).
 Stringy rot (*Armillaria mellea*).

Sweet-potato weevil (*Cyclas formicarius*).
 Thrips (*Euthrips fuscus*).
 Thrips (*Euthrips pyri*).
 Tomato black-spot (non-parasitic).
 Tomato fruit-fly (*Lonchoea splendida*).
 Tomato leaf-blight (*Cladosporium fulvum*).
 Tomato-caterpillar (*Heliothis obsoleta*).
 Vine-louse, or phylloxera (*Phylloxera vastatrix*).
 Wither-tip, foot-rot (citrus trees), (*Phoma omnivora*).
 Woolly currant-scale (*Pulvinaria vitis*).

SCALES.

Antonina crawi.
Aspidiotus camelliae (Camellia scale).
 „ *coccineus* (Red scale).
 „ *cryptoxanthus*.
 „ *destructor transparens* (Banana scale).
 „ *ficus* (Fig scale).
 „ *latamiae*.
 „ *nerii*.
 „ *perniciosus* (San José scale).
 „ *Rossi* (Ross's scale).
Asterolecanium variolosum.
Chionaspis citri (White scale).
 „ *eugeniae*.
 „ *furfurus* (Scurfy scale).
 „ *quercus* (Oak-tree scale).
Dactylopius adonidum }
 „ *bromiliae* } (Mealy-bug).
 „ *citri* }
 „ *destructor* }

Diaspis amygdali (Almond scale).
 „ *pyricola*.
 „ *rosae* (Rose scale).
Eriococcus araucariae (Norfolk Island pine scale).
 „ *coriaceus* (Blue-gum scale).
 „ *eucalypti* (Eucalyptus scale).
Eulecanium persicae (Soft peach scale).
Fiorinia camelliae.
Icerya purchasi (Cottony cushion scale).
Lecanium cerasarum (Cherry scale).
 „ *depressum*.
 „ *hemisphaericum* (Round scale).
 „ *hesperidum* (Holly and ivy scale).
 „ *longulum*.
 „ *oleae* (Olive scale).
Mytilaspis citricola (Purple scale).
Parlatoria zzyphus.
Pseudolecanium tokionis.
Pulvinaria camellicola.

Sections 2, 3.
 1908, No. 138,
 Third Schedule.

SECOND SCHEDULE.

Black spot (*Venturia inaequalis*).
 Codlin-moth (*Carpocapsa pomonella*).
 Mussel or oyster scale (*Mytilaspis pomorum*).
 Red mite (*Bryobia pratensis*).
 Woolly aphis (*Schizoneura lanigera*).

Section 17.
 1920, No. 59,
 Schedule.

THIRD SCHEDULE.

Black spot (*Venturia inaequalis*).
 Pear-scab (*Venturia pirina*).

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

1908, No. 138.—The Orchard and Garden Diseases Act, 1908.
 1914, No. 69.—The Orchard and Garden Diseases Amendment Act, 1914.
 1920, No. 59.—The Orchard and Garden Diseases Amendment Act, 1920.