



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor-General of all Her Majesty's Australian Possessions, and Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the advice and consent of the Legislative Council.

No. VII.

An Act to prevent the denudation of the Sand Hills, in the neighbourhood of Sydney. [Assented to, 4th December, 1851.]

WHEREAS it is expedient to prevent the denudation of the Sand Hills, in the neighbourhood of Sydney: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That if any person, other than the lawful owner thereof, or having specific permission or license in that behalf, shall cut down, root up, or otherwise destroy any tree, sapling, or shrub growing upon any of the Sand Hills between the waters of Port Jackson and Botany Bay, and eastward of the City of Sydney, and the Cook's River Road to the Sea Coast, or shall remove or destroy any roots, grasses, or growing plants from or upon such Sand Hills, or shall take or carry away any such tree, sapling, shrub, underwood, root, grass, or growing plant which shall have been so unlawfully cut down, broken, rooted up, removed, or destroyed as aforesaid, and which such person shall know to have been so unlawfully cut down, rooted up, removed, or destroyed, every person shall be liable, on conviction, to the penalties following, that is to say; for the first offence he shall forfeit and pay a sum not exceeding twenty shillings; for the second offence a sum not exceeding two pounds, nor less than ten shillings; and for the third or any subsequent offence a sum not exceeding five pounds, nor less than two pounds.

Preamble.

Unlicensed Persons cutting down, &c., any tree, sapling, or shrub, growing upon any of the Sand Hills, near Sydney, subject to a penalty.

II.

Sand Hills.—1851.

Recovery of penalties.

II. And be it enacted, That the penalties hereinbefore imposed shall be recovered on behalf of Her Majesty, for the public uses of the Colony, together with the prosecutor's reasonable costs, in a summary way, before any one or more Justices of the Peace, upon the complaint on oath, and without any formal information, of any Commissioner of Crown Lands, or other person duly authorised in that behalf by the Governor of the Colony for the time being; and that such Commissioner or other person shall be a competent witness upon the hearing of any such complaint, and that it shall not be necessary for him to prove that the person charged was not at the time of the commission of the alleged offence, an owner or person having a sufficient permission and license as hereinbefore expressed, but the burthen of proving the contrary thereof shall be upon the party charged.

Any Commissioner of Crown Lands, or any Ranger appointed by the Governor, may arrest any person offending against the provisions of this Act.

III. And be it enacted, That it shall be lawful for any Commissioner of Crown Lands, or any Ranger appointed by the said Governor, to arrest any person whom he shall find offending against the provisions of this Act, or any of them, and to take such person before some Justice of the Peace, who shall thereupon take bail for the appearance of such person to answer any information or complaint to be laid or brought against him or her as aforesaid, or in default of such bail may commit such person to custody, by way of remand, to answer such charge, for not more than twenty-four hours, or may upon hearing the matters alleged against such person, forthwith discharge such person absolutely, or upon his or her recognizance to appear at a certain time as to such Justice shall seem fit.

Limitation of actions

IV. And for the protection of persons acting in execution of this Act, be it enacted, That all actions or other proceedings for anything done under this Act, shall be commenced within two calendar months after the matter complained of was committed, and not otherwise; and notice in writing of such action and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in every such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been paid into Court, after such action brought by or on behalf of the defendant, together with costs incurred up to that time; and if a verdict shall pass for the defendant, or the plaintiff become non-suited, or discontinue such action after issue joined, or if upon demurrer, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and although a verdict shall be given for the plaintiff in such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereupon.

No certiorari.

V. And be it enacted, That no order, judgment, or other proceeding made, touching, or concerning the matters aforesaid, or touching or concerning the conviction of any offender or offenders against this Act, shall be quashed or vacated for want of form only, or be removed or removable by certiorari or any writ or process whatsoever, into the Supreme Court of the said Colony.

Passed the Legislative Council, this third day of December, one thousand eight hundred and fifty-one.

CHARLES NICHOLSON,
SPEAKER.

WM. MACPHERSON,

CLERK OF THE COUNCIL.

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

CH^s. A. FITZ ROY,
GOVERNOR-GENERAL.

Govt. House, Sydney, 4th December, 1851.