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CHAPTER 240.
FORESTS.

An Ordinance to consolidate and amend the law relating to forests. 15 of 1953.

[2ND MAY, 1953.]

1. This Ordinance may be cited as the Forests Ordinance. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpretation.
 - “cattle” includes, horses, mules, asses, sheep, goats and swine;
 - “Commissioner” means the Commissioner of Lands and Mines;
 - “Conservator” means any person holding the office of Conservator of Forests;
 - “constable” means any member of the police force;
 - “firewood” includes parts of trees made up into bundles or loads, or cut up in the manner in which it is usual to cut wood for burning, and all refuse wood generally, but does not include sound straight timber logs or poles of any kind;
 - “forest officer” means anyone whom the Governor, or any person empowered by the Governor, from time to time appoints by name, or as holding an office, to carry out all or any of the purposes of this Ordinance, or to do anything thereby, or by any regulations made thereunder, required to be done by a forest officer;
 - “forest produce” includes—
 - (a) timber, trees, charcoal and firewood;
 - (b) the following when found in or brought from a crown forest—

plants, and all parts and produce of plants, latex, resins, gums, soil and peat; and

(c) such other things as the Governor may, by notice in the Gazette, declare to be forest produce;

“prescribed” means prescribed by regulations;

“river” includes streams, canals, creeks, reservoirs, lakes, ponds, and other channels natural and artificial;

“sawmill” includes—

(a) any sawpit; or

(b) any premises where timber is stored or kept for the purposes of a sawmill;

“timber” includes a tree or any ligneous part of a tree whether standing, fallen or felled, and all wood, whether or not sawn, split, hewn or otherwise cut up or fashioned but does not include firewood.

CROWN FORESTS.

Declaration
of crown
forests.

3. (1) The Governor in Council may, by proclamation published in the Gazette, declare any area of crown land to be a crown forest and may, from time to time, vary or revoke such proclamation.

(2) Each proclamation declaring any area of crown land to be a crown forest shall exclude all land owned by any person in such area.

Certain
Ordinances
not to apply.
Cap. 170.
Cap. 175.

4. Unless expressly provided to the contrary by this Ordinance, the provisions of the Lands and Mines Department Ordinance and of the Crown Lands Ordinance shall not apply to crown forests.

Grant of
leases for
agricultural
purposes.
Cap. 175.

5. (1) The Commissioner may, subject to the provisions of the Crown Lands Ordinance, lease land in a crown forest for agricultural purposes:

Provided that such a lease shall in no case be granted of land in respect of which a wood cutting lease exists:

Provided further that such a lease shall in no case be granted without the approval of the Conservator unless the Governor otherwise directs.

(2) The lessee shall in every case be responsible for the proper demarcation and maintenance of the boundaries of the area leased.

(3) (a) A lease granted under the provisions of this section shall give to the lessee the right to use forest produce therefrom for domestic and estate purposes within the boundaries of the area leased;

(b) the sale of forest produce obtained from the area leased and its removal to places outside the boundaries thereof shall be subject to the provisions of this Ordinance, and royalty shall be payable on all forest produce so removed at the rates prescribed by this Ordinance.

CONTRACTS, LEASES AND PERMITS FOR FOREST PRODUCE.

6. The Conservator or forest officers authorised by the Conservator may, with the approval of the Governor, authorise the sale of forest produce from crown forests by auction or tender or on the payment of the prescribed fees, if any, subject to such general conditions as may be prescribed and to such special conditions as the Conservator or forest officers so authorised may deem necessary in the particular case.

Sale of forest produce.

7. (1) The Conservator or forest officers authorised by the Conservator may grant leases giving to holders thereof the right to obtain forest produce or any specified kind of forest produce from crown forests. Such leases may be for the grant of exclusive rights to the holder thereof:

Leases.

Provided that no lease shall be granted without the prior approval of the Governor, where it is proposed to grant thereunder exclusive rights to any person over an area estimated to exceed three thousand acres or for a period exceeding three years.

(2) Such leases shall be issued subject to such general conditions as may be prescribed and to such special conditions as the Governor may deem necessary in particular cases.

8. In no case whatsoever shall it be compulsory on the Governor, the Conservator or any forest officer to sell, lease or dispose of any forest produce or of any portion of the crown forests of this Colony, or to issue any permission under this Ordinance.

No right to issue of grant.

9. No right of any description shall be acquired in or over a crown forest except by succession, or under a contract or lease in writing made by or on behalf of the Governor, or of someone in whom the right was vested at the time of the proclamation of the crown forest:

No right acquired over crown forest except as herein provided.

Cap. 175. Provided that such existing leases, licences and other interests in land as shall have been granted under the provisions of the Crown Lands Ordinance and in force at the time of the commencement of this Ordinance shall take effect in crown forest as if they had been granted under the provisions of sections 5, 6 and 7 of this Ordinance.

Grants under
Cap. 196.

10. A lease, licence or concession in crown forest granted under the provisions of the Mining Ordinance, shall be subject to the provisions of this Ordinance except when such lease, licence or concession contains any express condition to the contrary.

Suspension
and cancella-
tion of leases.

11. (1) Where any condition of any lease made under the provisions of section 7 of this Ordinance is not fulfilled, or where any regulation is not observed, the Conservator may by notice to the lessee suspend the lease whereupon it shall cease to be lawful for the said lessee to carry out any operations on the leased land.

(2) Upon taking such action under subsection (1) of this section, the Conservator shall forthwith make a full report to the Governor of the circumstances of the suspension of the lease, whereupon the Governor may order—

(a) the cancellation of the lease;

(b) the suspension of the lease for such time as he may determine; or

(c) the withdrawal of the notice of the suspension given by the Conservator:

Provided that no order under paragraph (a) or (b) of this subsection shall be made without first affording any person whose rights under the lease may thereby be affected an opportunity of stating his case.

OWNERSHIP OF FOREST PRODUCE.

Ownership of
forest
produce.

12. (1) All forest produce from crown forests shall remain the property of the Crown until the prescribed royalty thereon has been paid by the person in possession thereof.

(2) Royalty shall become payable on forest produce from crown forests and may lawfully be demanded as soon as such produce is cut, felled or otherwise severed from the ground.

(3) Where the person in possession of forest produce from crown forests declines or is unable to pay the prescribed royalty

thereon after the same has been lawfully demanded from him, the Conservator or any person authorised by him may sell such of the forest produce as may be sufficient to pay the prescribed royalty and shall pay into revenue the proceeds of such sale.

13. When in any proceedings under this Ordinance a question arises as to whether any forest produce belongs to the Crown or any land is crown forest, such forest produce shall be presumed to belong to the Crown or such land shall be presumed to be crown forest until the contrary is proved.

Presumption that forest produce and land belongs to the Crown.

14. All timber found adrift, beached, stranded or sunk, and all timber which has not been correctly marked in accordance with the provisions of this Ordinance shall be deemed to be crown property until the contrary is proved.

Timber found adrift or not correctly marked.

THE PROTECTION OF FORESTS.

15. (1) No person shall in any crown forest negligently light or throw down any match or other lighted or inflammable material, or light or leave any fire without taking due precautions against the fire spreading or causing injury, or do anything in consequence of which any forest produce may be burnt or injured, or may be in danger of being burnt or injured:

Precautions against fire. ●

Provided that it shall not be a breach of this section for a forest officer to burn, or empower other persons to burn, such fire-lines or grass or other inflammable material as may in his opinion be necessary for the better protection or better management of any part of a crown forest.

(2) Any person who contravenes any of the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred dollars.

16. (1) It shall be lawful for any forest officer, constable, officer of the Lands and Mines Department or district commissioner, to require any person who lives or is resident within a reasonable distance of any crown forest to assist in averting, or extinguishing any fire in such forest or in securing any property within the forest from loss or damage arising from fire or other natural causes.

Public to assist in extinguishing fires.

(2) Such person shall be entitled to pay or compensation for any work he is required to do under subsection (1) of this section. Pay shall be determined by the Conservator and be met by funds approved for that purpose by the Legislative Council.

Cap. 111.

(3) Where any person so assisting sustains bodily injury in the circumstances specified in subsection (1) of this section, and is permanently disabled (either totally or partially) as a result thereof, or dies as a result of the aforesaid bodily injury, the provisions of the Workmen's Compensation Ordinance, or any Ordinance amending or replacing the same shall apply.

(4) Any person who fails to assist in averting or extinguishing any fire or in securing any property from loss or damage when required to do so under subsection (1) of this section shall be guilty of an offence and on summary conviction thereof shall be liable to a penalty not exceeding fifty dollars.

Damage to
forest
produce.

17. (1) Any person lawfully cutting or removing forest produce from any crown forest shall take all necessary precautions to prevent damage to other forest produce.

(2) Any person unnecessarily damaging other forest produce when lawfully cutting or removing forest produce from any crown forest shall be guilty of an offence and on summary conviction thereof, shall be liable to a fine not exceeding fifty dollars.

OFFENCES AND LEGAL PROCEEDINGS.

Penalty.

Cap. 175.

Cap. 196.

18. Any person who in any crown forest, except in accordance with the terms of a contract or lease granted under the provisions of this Ordinance or of the Crown Lands Ordinance or of the Mining Ordinance—

- (a) cuts, fells, lops, damages or removes forest produce;
- (b) grazes or pastures cattle;
- (c) cleans, cultivates, cuts, digs or turns the soil;

shall be liable on summary conviction to a penalty not exceeding one hundred dollars.

Contra-
ven-
tions.

19. (1) Any person who contravenes any of the regulations made under this Ordinance or any of the terms or conditions of a contract made or lease granted under this Ordinance or who knowingly receives any forest produce which has been cut, felled, lopped, damaged or removed in contravention of the provisions of this Ordinance or any regulations made thereunder or of any of the terms or conditions of a contract made or lease granted under this Ordinance shall be guilty of an offence, and on summary conviction thereof shall be liable to a penalty not exceeding one hundred dollars:

Provided that a lessee of crown forest shall be liable for any such contravention within the premises of his lease unless he can

prove to the satisfaction of the magistrate that such contravention was not committed by or on the authority of himself, his agents or servants.

(2) The burden of proof that forest produce has not been taken in contravention of the provisions of this Ordinance shall rest upon the person in whose possession such produce is found:

Burden of proof.

Provided that such person shall not be deemed to have discharged this burden of proof unless he also shows that the forest produce was lawfully obtained.

20. Anyone who removes or receives, or is found in possession of, any forest produce with respect to which a forest offence has been committed shall, unless he can account for the possession or show that he removed or came by that produce innocently and without knowledge of the offence, be guilty of an offence and be liable, on summary conviction thereof, to a fine not exceeding one hundred dollars, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment, and the forest produce shall be liable to forfeiture.

Unlawful possession of forest produce.

21. Any person who—

(a) counterfeits or fraudulently without due authority uses upon forest produce any registered mark or any mark used by forest officers;

(b) counterfeits or issues without due authority any licence or permit for forest produce;

(c) counterfeits, alters, obliterates, defaces or removes any stamp, mark, sign, licence, permit or forest fee receipt used or issued under this Ordinance or any regulations made thereunder;

(d) without due authority alters, moves, destroys or defaces any boundary mark of a crown forest;

shall be guilty of an offence, and on summary conviction thereof, shall be liable to a fine not exceeding five hundred dollars or imprisonment for a period not exceeding six months.

Counterfeiting and similar offences.

22. (1) When any person is convicted of an offence under this Ordinance or any regulations made thereunder all forest produce in respect of which such offence has been committed, and all livestock, tools, boats, vehicles, machinery and other implements used in committing such offence shall be liable to be forfeited by order of the court. Such forfeiture shall be in addition to any other punishment that may be awarded.

Power of court to confiscate produce, and order restitution.

(2) Any forest produce forfeited under subsection (1) of this section shall, unless otherwise ordered by the court, be sold or otherwise disposed of as the Conservator may, by general or special order, direct.

(3) When any person is convicted of an offence under this Ordinance, or any regulations made thereunder, the court may, in addition to any other punishment that it may award, order the convicted person to restore to the owner any forest produce that such person has obtained in contravention of this Ordinance or any regulations made thereunder or pay to the owner compensation for the loss he has sustained by such contravention.

Penalty for erection of unauthorised buildings and enclosures.

23. (1) Any person who erects any building or enclosure or plants any crop in a crown forest without the permission of the Conservator first had and obtained, shall be guilty of an offence and shall be liable, on summary conviction thereof, to a fine not exceeding one hundred dollars.

(2) When any person is convicted of erecting any unauthorised buildings or enclosures or of planting any unauthorised crops in a crown forest the court shall in addition to any penalty it may impose fix a period in which such buildings or enclosures or crops shall be removed and the land restored to its previous condition.

(3) Any person failing to obey an order made under subsection (2) of this section within the time fixed shall, unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine not exceeding five dollars for every day during which the default continues.

(4) Notwithstanding the provisions of subsection (3) of this section where an order has been made under subsection (2) of this section, in the event of such order not being carried out within the time fixed, the Conservator may cause the buildings, enclosures or crops in respect of which the order was made to be removed or destroyed, and may recover the expenses of such removal or destruction from the person convicted.

Arrest without warrant.

24. A forest officer, district commissioner, justice of the peace or constable may arrest without warrant any person whom he reasonably suspects has committed an offence under this Ordinance or under any regulations made thereunder and who, on demand of such officer, district commissioner or justice of the peace or constable, refuses or fails to give his name and address or who gives a name and address which such officer or constable believes to be false, or who such officer or constable has good reason to believe will abscond.

25. Whenever a forest officer, district commissioner, justice of the peace, constable or an officer of the Department of Lands and Mines suspects that any person has been guilty of an offence under this Ordinance or of any regulations made thereunder or is in possession of any forest produce unlawfully obtained, he may search such person or any baggage, package, parcel, conveyance, tent or building under the control of such person.

Power to search for forest produce.

26. (1) A forest officer, district commissioner, justice of the peace, constable or an officer of the Department of Lands and Mines may seize or detain any forest produce, livestock, tools, boats, vehicles, machinery, or other implements which he reasonably suspects are liable to be forfeited under this Ordinance.

Power to seize and detain.

(2) Every officer and every constable seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall as soon as may be make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure was made:

Provided that where the forest produce is the property of the Crown and the offender is unknown, it shall be sufficient if the officer or constable makes a report as soon as possible to the Conservator.

(3) If the officer seizing anything under subsection (1) of this section is of the opinion that such thing is subject to speedy and natural decay he may, with the approval of a forest officer not below the rank of Assistant Conservator of Forests, sell such thing, and the proceeds of such sale shall be paid by the officer into revenue.

(4) An officer seizing or detaining anything under subsection (1) of this section shall commence proceedings in respect of which such thing has been seized without delay and in the event of such proceedings not being commenced within three months of the seizure he shall return the thing seized to the person from whom it was seized.

(5) Any person who unlawfully removes or attempts to remove any property seized under this section shall be guilty of an offence and on summary conviction thereof shall be liable to a fine not exceeding five hundred dollars.

(6) A court convicting any person of an offence under this Ordinance or any regulations made thereunder may order the person convicted to pay, in addition to any penalty it may impose, the expenses of seizure and detention of any thing seized in connection with such offence under subsection (1) of this section.

Penalty for vexatious seizure of property.

27. Any forest officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Ordinance shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding five hundred dollars, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Power to accept compensation for offences.

28. Notwithstanding any other provisions of this Ordinance the Conservator or any Assistant Conservator may, in any case he deems proper and in substitution for any proceedings, accept on behalf of the Crown a sum of money by way of compensation from any person reasonably suspected of a contravention of this Ordinance or any regulations made thereunder not being an offence under section 21 of this Ordinance:

Provided that—

(i) such compensation shall be accepted only where the person reasonably suspected of such contravention has expressed his willingness in the prescribed form that the contravention as aforesaid shall be so dealt with, and where the estimated value of the forest produce or thing in respect of which contravention has taken place does not exceed one hundred dollars if the forest officer accepting the compensation is other than the Conservator or two hundred and fifty dollars where such officer is the Conservator;

(ii) such compensation shall not exceed three times the value of the forest produce or thing in respect of which contravention has taken place, or alternatively, where the value of the forest produce cannot be estimated, the sum of twenty-five dollars.

Recovery of sums due under bond.

29. When anyone, in accordance with any provision of this Ordinance or in compliance with any regulation hereunder, binds himself by bond or instrument to perform any duty or act, or to abstain from any act, the whole sum mentioned in the bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, in case of the breach and notwithstanding any enactment to the contrary, be recovered from him or from his surety or sureties.

Penalties under Ordinance not substituted for others, but no conviction twice for the same offence.

30. Nothing in this Ordinance shall be deemed to prevent anyone from being prosecuted under any other law for an act or omission which constitutes a forest offence, or from being liable under that other law to any higher punishment or penalty than is provided by this Ordinance, but no one shall be punished twice for the same offence.

31. Any person who obstructs any forest officer or person acting under the provisions of this Ordinance shall be guilty of an offence and, on summary conviction thereof, shall be liable to a penalty not exceeding one hundred dollars.

Penalty for obstructing officer.

32. (1) If any officer authorised by this Ordinance to seize an article makes a collusive seizure, or delivers up, or makes any agreement to deliver up, or not to seize, an article liable to forfeiture, or takes a bribe, gratuity, recompense, or reward, for neglect or non-performance of his duty, the officer shall be guilty of an offence and shall on summary conviction thereof, forfeit for each offence the sum of five hundred dollars, and be rendered incapable of serving Her Majesty in any office whatever in the Colony.

Collusive seizure or non-seizure, or abandonment of seizure.

(2) Everyone who gives or offers, or procures to be given or offered, any bribe, recompense, or reward to, or makes any collusive agreement with, any officer aforesaid to induce him in any way to neglect his duty, or to do, conceal, or connive at any act whereby any of the provisions of this Ordinance may be evaded, shall be guilty of an offence and shall, on summary conviction thereof, forfeit the sum of five hundred dollars.

Bribing officer.

33. The provisions of section 22 of the Crown Lands Ordinance shall apply to crown forests.

Impeding navigation of river and creek in crown forests. Cap. 175.

MISCELLANEOUS.

34. The Governor, by notice in the Gazette, may exempt any person or class of persons or any land or class of land from any or all of the provisions of this Ordinance.

Power of exemption.

35. No suit shall lie against any public officer or other person for anything done by him in good faith in the execution or intended execution of his duties or powers under this Ordinance.

Acts done in good faith.

36. Nothing in this Ordinance shall be construed to prejudice, alter, or affect any right or privilege heretofore legally possessed, exercised, or enjoyed by any Amerindian in the Colony:

Protection of rights of Amerindians.

Provided that the Governor from time to time by publication in the Gazette may make any regulations to him seeming meet defining the privileges and rights to be enjoyed by Amerindians in relation to the crown forests.

Civil remedy reserved.

37. Nothing contained in this Ordinance shall take away or interfere with the right of the Crown or of anyone to sue for and recover at common law or otherwise compensation for or in respect of damage or injury caused by an offence under this Ordinance.

Penalties, fines, costs, etc., enforceable under the Summary Jurisdiction Ordinances.

38. All penalties, fines, and costs may be imposed, sued for, prosecuted, realised and recovered in the manner provided by the Summary Jurisdiction Ordinances.

Powers of entry given to certain officers.

39. (1) Any officer of the Department of Lands and Mines, any forest officer under this Ordinance, and any district commissioner, by himself or with any servants and assistants he desires may enter any crown forest held under a grant which has been issued subject to any conditions, and may inspect the lands.

(2) The Commissioner and the Conservator may authorise in writing any public officer to exercise all or any of the powers conferred on an officer under subsection (1) of this section.

(3) Any officer of the Department of Lands and Mines may enter any crown forest held under a grant which has been issued subject to any conditions and may survey, demarcate and make a map thereof.

Powers of forest officers.

40. (1) The Governor in Council, by proclamation published in the Gazette, may from time to time empower a forest officer by name or as holding an office to hold an inquiry into forest offences and, in the course of the inquiry, to receive and record evidence.

(2) Any evidence recorded under subsection (1) of this section shall be admissible in any subsequent trial before a magistrate if it has been taken in the presence of the accused person.

Regulations.

41. The Governor in Council may make regulations—

(a) prescribing forest produce in crown forests which may be cut or removed, the seasons for cutting or removing such produce, the quantity of such produce that may be cut or removed, and the manner in which such produce may be removed or cut;

(b) prohibiting the carrying of materials likely to cause fire or other danger to forest produce in crown forests and prohibiting or regulating the lighting of fires;

(c) prohibiting or regulating the export of forest produce from crown forests;

(d) prohibiting or regulating the quarrying of stone, kiln burning, or the collecting or manufacturing of forest produce, in crown forests;

(e) prohibiting or regulating the transport of timber by land or water and prescribing the conditions under which timber obtained from private properties may be conveyed through crown forests by land or water;

(f) prescribing standards for forest produce from crown forests;

(g) providing for the grading of forest produce from crown forests and prohibiting or regulating the sale of forest produce falling below prescribed standards;

(h) prescribing the fees, if any, to be paid for, the manner of application for, and the conditions subject to which, any lease may be issued under this Ordinance;

(i) prescribing the fees and royalty to be paid for cutting or removal of forest produce either generally or in respect of any particular produce or area, or prescribing the maximum and minimum fees and royalty that the Conservator may charge for such cutting or removal either generally or in respect of any particular produce or area;

(j) prohibiting or regulating the construction, erection or operation of sawmills and the importation of sawmilling machinery;

(k) the registration of premises wherein timber is stored or kept for the purposes of a sawmill;

(l) the keeping and inspection of books and records in connection with sawmills and the returns to be submitted in connection therewith to such persons as may be specified in the regulations;

(m) the submission of returns showing the number and categories of all persons employed on wood cutting grants, or in sawmills, and in all operations incidental thereto;

(n) the provision of medical attention on woodcutting grants and sawmills;

(o) prescribing the records and documents which shall be kept by persons felling, manufacturing, transporting, sawing or dealing with timber and forest produce and providing for the disposal of such records and documents;

(p) prescribing the general conditions under which forest officers may sell forest produce;

(q) regulating the marking of timber and requiring and regulating the registration, possession and use of property marks;

(r) defining the rights and privileges of Amerindians and regulating the exercise of such rights in crown forests;

(s) providing for the transfer of titles in crown forests;

(t) providing for the better carrying out of the provisions of this Ordinance.
