

The Provincial Statutes of Lower-Canada, Being the second session of the twelfth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1826.

6 George IV – Chapter 9

An Act to continue for a limited time and amend an Act passed in the Fourth year of His Majesty's Reign, intituled, "An Act for the more speedy remedy of divers abuses, prejudicial to Agricultural Improvement and Industry, in this Province, and for other purposes." (29th March, 1825)

Whereas it is necessary to continue for a limited time and amend an Act passed in the fourth year of His Majesty's Reign, intituled, "An Act for the more speedy remedy of divers abuses, prejudicial to Agricultural Improvement and Industry in this Province, and for other purposes," the duration of which said Act is limited to the first day of May, one thousand eight hundred and twenty-six; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great-Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and for making further provision for the Government of the said Province;" And it is hereby enacted by the authority of the same, that the said Act passed in the fourth year of His Majesty's Reign, intituled, "An Act for the more speedy remedy of divers abuses prejudicial to Agricultural Improvement and Industry in this Province and for other purposes," shall continue to be and remain in force until the first day of May one thousand eight hundred and twenty-eight and no longer.

II. And whereas it is expedient to make further provision to facilitate the operation of the aforesaid Act, with respect to the opening of new water courses or discharges of water and for widening old water courses or discharges of water: Be it therefore further enacted by the authority aforesaid, that in all cases where difficulties may arise among those interested in the opening of any new water courses or discharging of water or widening any old water course or discharge of water, the matter in dispute shall on the requisition of any person interested therein be adjusted by any two Fence Viewers and Inspectors of Drains proper for the purpose (idoincs) and in no wise interested, of the Parish, Seigniorie [Seigneurie], Township or Settlement, or any of the neighbouring Parishes, Seigniories [Seigneuries], Townships or Settlements, who, having visited the ground and sufficiently informed themselves of the matter in dispute, shall make their determination, award and proces verbal of their operations, mentioning what ought to be done in and about such water course or discharge of water for the common benefit of all concerned, and apportioning the share of labour which each and every person therein interested ought to contribute thereto, and the time wherein the same ought to be done by the several persons concerned in the same, and such other particulars as they shall deem necessary or expedient concerning the

matter in dispute, including the costs and charges incurred in examining the premises and for the proces verbal; which proces verbal shall be deposited and remain of record in the office of one of the nearest Notaries, and every person concerned who within a time not exceeding four days after notice, verbally or in writing, at the Church door of the Parish, Seignior, Township or Settlement, or when there is no Church then at the most public place in such Parish, Seignior, Township or Settlement, shall refuse or neglect to comply with the requirements of such award and proces verbal, shall be under the same liabilities and incur the penalties as are in the like cases specified in the eleventh and twelfth clauses of the above recited Act, subject always to appeal, as it is in such case also provided by the said Act.

III. And be it further enacted by the authority aforesaid, that the appeal thereby granted, as well as that granted by the said Act hereby continued, shall be instituted by Petition in the superior Terms of the Court of King's Bench for the District in which the ditch or water course in question or the greater part thereof may be situate, and on that appeal, the said Court may hear, adjudge and determine the whole issue whether as to form, pleas in Bar, fins de non recevoir, or on the merits after legal Trial.

IV. Provided always, and be it further enacted by the authority aforesaid, that before such Fence Viewers and Inspectors of Drains, shall proceed to the duties hereby assigned thorn, public notice shall be given verbally or by an advertisement in writing affixed to the Church door of the Parish, immediately after Divine Service in the forenoon of the Sunday immediately preceding the day when they intend to visit the premises and proceed to the duties which they are to perform, requiring all persons whom it may concern to take notice thereof and to attend if they see fit, at the time and place appointed; and where there is no Church, then such notice shall be given at the most public place in the settlement.

V. And be it further enacted by the authority aforesaid, that in cases where the Inhabitants of two or more Parishes are concerned in the opening of any such new water course or discharge of water or widening any old water course or discharge of water, the matter in dispute shall on the requisition of any person therein interested in each of the Parishes, Seignior, Townships or Settlements, be adjusted by disinterested fence viewers and inspectors of drains proper for the purpose (idoincs) two from each Parish, Seignior, Township or Settlement, who shall meet and proceed upon the matter in dispute in manner as herein above provided and whose proceedings, award or Proces Verbal shall have the same force and effect and be attended in case of disobedience with the like penalties, liable to appeal nevertheless as aforesaid in the proceeding clause.

VI. Provided always and be it further enacted by the authority aforesaid, that in all cases of difference of opinion and equality of votes between such Fence-viewers and Inspectors of drains, on any point or matter by this Act to them committed, one of the nearest Fence-viewers or Inspectors of Drains disinterested in the point or matter in difference, shall be referred to an umpire and shall have a casting vote.

VII. Provided also and be it further enacted by the authority aforesaid, that the Fence-viewers and Inspectors of Drains to whom such adjustment as last aforesaid is committed, shall be named in each of the Parishes, Seigniories, Townships or Settlements interested by the Fence viewer and Inspector of Drains nearest to the Place where the opening such new water course or widening any old water course or discharge of water is projected, if he be disinterested and in case he be interested therein, then such Fence-viewers and Inspector of Drains shall be named by the nearest disinterested Serjeant of Militia, he being thereunto required, and whose duty it shall be to notify the Fence-viewers and Inspectors of Drains of such their nomination to the end that they may proceed to the performance of the duty hereby imposed upon them.

VIII. And whereas proprietors of land which has been sown meadows, orchards, coppice or other land sustain considerable damage from the practice of going across such sown land, meadows, orchards, coppice or other land without permission of the proprietors, and that experience proves, that, in going over the fences enclosing such sown land, meadows, orchards, coppice or other land, the persons so doing often bear down and leave prostrate part of such enclosures to the great damage of the proprietors:—Be it therefore further enacted by the authority aforesaid, that from and after the passing of this Act any person who shall go over any sown land, meadow, orchard, coppice or other enclosed land without permission of the proprietor or his representative, shall incur a penalty not less than two shillings and six pence currency, and not exceeding thirty shillings currency, which fine shall be levied upon plaint before any one of His Majesty's Justices of the Peace, in the manner prescribed by the second section of the Act hereby continued, without prejudice to his legal recourse for damages and interest.

IX. And be it further enacted by the authority aforesaid, that the thirty-second clause or section of the above recited Act, shall be and the same is hereby repealed, and that the thirtieth clause or section of the said Act shall be publicly read by or under the direction of the senior Captain of Militia in each and every Parish, Township or Settlement in this Province, in which there is a Church, at the Church door immediately after the forenoon service, on some Sunday in the month of July every year, during the continuance of the said Act.

X. And he it further enacted by the authority aforesaid, that a sufficient number of copies of this Act and of the above recited Act, to which this is supplementary, shall at the public expense be printed separately, and two copies of each, be distributed to each and every of the Surveyors of highways and bridges in the several Parishes, Seigniories, Townships or Settlements in this Province, to be by them kept for the use of the Fence-viewers and Inspectors of Drains in their respective Parishes, Seigniories, Townships and Settlements, which copies shall be transmitted to their successors in office.

XI. And he it further enacted by the authority aforesaid, that the penalties by this Act imposed shall be sued for, recovered, applied and accounted for as the penalties imposed by the above recited Act are by the same to be sued for, recovered, applied and accounted for.

XII. And be it further enacted by the authority aforesaid, that this Act shall continue to be and remain in force until the first day of May, one thousand eight hundred and twenty-eight and no longer.