

C A P. LVI.

An ACT to repeal a certain Act therein mentioned, and more effectually to remedy divers abuses prejudicial to Agriculture.

[21st March, 1836.]

Preambils.

WHEREAS it is expedient to repeal a certain Act passed in the third year of the Reign of His present Majesty, intituled, "An Act to repeal a certain Act therein mentioned, and to provide more effectually for the remedy of divers abuses prejudicial to Agriculture," and to provide more effectually for the prevention of certain trespasses, abuses and evil practices which prevail in this Province, and retard the progress of Agriculture therein :—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 to make 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 third year of His Majesty's Reign, intituled, "An Act to repeal a certain Act therein mentioned, and to provide more effectually for the remedy of divers abuses prejudicial to Agriculture," shall be and is hereby repealed, and that said Act thereby repealed and passed in the tenth and eleventh years of the Reign of George the Fourth, and intituled, "An Act to amend an Act passed in the ninth year of His Majesty's Reign, intituled, 'An Act for the more speedy remedy of divers abuses prejudicial to agricultural improvement in this Province, and to make further provision to the same effect,'" shall nevertheless be and remain repealed as if this Act had never been passed, this Act being substituted for all other Acts heretofore passed on the subject to which it relates.

Act 3 Wil. IV. cap. 31. and Act 10 and 11 Geo. IV. cap. 1. repealed.

Penalty on persons entering into any closed field or garden &c. without the permission of the proprietor.

II. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, no person shall enter into or pass through any field, whether it be sown or unsown, nor into nor through any enclosed garden, coppice, or other enclosed property whatsoever, without the permission of the proprietor, or of some person duly authorized by him to grant such permission, under a penalty of not less than five shillings, nor more than thirty shillings currency, for every such offence, and over and

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and above the amount of all damages occasioned thereby, and which may be recovered before one Justice of the Peace; and such penalty shall be recoverable before any one Justice of the Peace, who shall decide the matter in a summary way, either on his personal knowledge of the fact, or on the confession of the party complained against, or on the oath of one credible witness. Provided always, that it shall be lawful for any landholder, or for his representative or servant to arrest any person taken in the fact of contravening this section, and to carry him or cause him to be carried forthwith before the nearest Justice of the Peace not interested, in order that such Justice of the Peace may decide summarily on the complaint.

Penalty on persons pulling down any fence or cutting down any tree &c. without the permission of the proprietor.

III. And be it further enacted by the authority aforesaid, that any person who shall pull down, cut, break, remove or injure any fence or part of any fence, or cut or destroy any hedge which may have been planted as a line fence, or shall cut, bark, fell or remove any tree, shrub or plant, or fell, cut, or remove any tree or any part of a tree, in the wood of any other person, for the purpose of making shingles, or for any other purpose, or shall therein burn any wood to make potash or sugar, without leave from the proprietor or his representative, every such person shall, for every such offence committed in the day time, incur a penalty which shall not be less than five shillings, nor more than thirty shillings, currency; and shall be double the said sums if the offence be committed in the night time, over and above all damages which may be recoverable before one Justice of the Peace, not exceeding the amount of sixty shillings, and that any person who shall have thrown down or carried away any part of any fence, or shall be found on any land, highway or bye-road with any portion of the materials of any fence in his possession, may be detained by any landholder of the vicinage or any person in the service of such landholder, and carried before the nearest Justice of the Peace, who may cause him to be detained until more ample inquiry can be made, for any time not exceeding twenty-four hours.

Justice of the Peace on complaint authorized to issue his warrant against trespassers.

IV. And be it further enacted by the authority aforesaid, that any Justice of the Peace, upon complaint on oath before him, shall issue his warrant directed to a constable or peace officer, for the apprehension of any person charged with any offence against any of the provisions of this Act, and shall, without unnecessary delay, hear and determine upon the complaint, on the evidence of one credible witness other than the prosecutor, the penalties hereby imposed, or authorized to be imposed, shall be levied forthwith by Warrant of Distress and sale of the goods and chattels of the offender, and if sufficient goods and chattels cannot be found, or if the said penalties shall remain unpaid for the space of eight days after such conviction, such Justice of the Peace shall commit the offender to the common

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mon gaol, until such penalty with the costs of prosecution shall be paid. Provided always, that no person shall remain so committed for a longer time, upon any one conviction for the cause aforesaid, than eight days.

Certain fees allowed to the Clerk of the Peace for a Warrant, and to the Constable for executing it.

The fees.

V. And whereas it is expedient to ascertain the several fees to be paid to the Clerk of such Justice of the Peace, for such warrant, and to the constable or peace officer executing the same: Be it therefore enacted by the authority aforesaid, that there shall be allowed to such clerk, or person acting as such, for every warrant for such apprehension, one shilling and six pence, currency, and to the constable, bailiff or peace officer for the execution thereof, one shilling and three pence, currency, and an additional sum of one shilling, currency, for every league travelled by him to execute the same, the distance travelled in returning not being reckoned.

If offender be an alien or squatter, and have no means to pay the penalty or costs, he may be committed to prison.

VI. And be it further enacted by the authority aforesaid, that whenever it shall appear to such Justice of the Peace, by the oath of the prosecutor, or that of one witness, that such offender is a foreigner, or is a squatter, or that he has no real property or other means to secure the payment of such penalty and costs, such Justice of the Peace shall commit him to the Common Gaol for a time not exceeding thirty nor less than eight days.

In case of damages by the trespassing of the cattle, any person may lay his complaint before a Justice of the Peace.

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VII. And be it further enacted by the authority aforesaid, that when any person shall have sustained damage by the trespassing of cattle, poultry or other domestic animal, he may lay his complaint before one of the nearest Justices of the Peace, who by summons under his hand and seal in the form prescribed in the Schedule (A.) hereunto annexed, directed to any bailiff or peace officer, shall require the person against whom such summons shall be demanded to appear before him, and such Justice having heard the parties, shall refer the matter to two arbitrators, of whom each party shall name one, and who in case of difference of opinion shall name a third, and such arbitrators shall take cognizance of the damage sustained, and report the same in writing to such Justice of the Peace, who shall thereupon allow the prosecutor the amount thereof, with the costs and charges of the view and report, and of prosecution, and in case the defendant shall refuse or neglect to pay the same within fifteen days, such Justice of the Peace shall cause the same to be levied by warrant under his hand and seal, observing the usual formalities. Provided always, that the damage had not been occasioned by the bad state of the prosecutor's fence, nor by the want of one, and do not in the whole amount exceed the sum of four pounds three shillings and four pence, currency. Provided further, that if the defendant

make

make default or refuse to name his arbitrator, or if the arbitrators named by the parties shall not agree in naming a third, then the Justice of the Peace shall appoint such arbitrator, or third arbitrator, and the said arbitrators, before proceeding, shall make oath before a Justice of the Peace, well and faithfully to examine the matter and make a faithful report to the best of their skill and understanding, and without any partiality or favour.

Justice of the Peace may issue subpoenas on the application of either party.

VIII. And be it further enacted by the authority aforesaid, that every such Justice of the Peace may, on the application of either party, issue Subpœnas to compel the attendance of witnesses before him or before the arbitrators, and may swear them in the usual manner, to give true evidence, and may enforce obedience to every such subpœna, and punish or cause to be punished any disobedience thereto by the usual course of law.

Registers are to be kept.

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IX. And be it further enacted by the authority aforesaid, that Registers shall be kept by such Justice of the Peace, of all proceedings hereby authorized respecting damages to be sued for by virtue of this Act, to the end that all persons interested may obtain copies on payment of six pence for every hundred words: Provided always, that every Justice of the Peace who shall neglect to keep such Register, shall incur a penalty of not less than ten shillings, nor more than twenty shillings, currency, for every case in which the proceedings shall not be so enregistered.

Horses, &c. not allowed to stray on any land without the permission of the owner.

Penalty.

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X. And be it further enacted by the authority aforesaid, that it shall not be lawful for any person whomsoever, at any season of the year, to allow his horses, mules, or cattle to stray upon any land which does not belong to him, without the permission of the owner thereof, or of his representative, or upon any beach, highway, or public place; and whenever any horse, neat cattle, sheep, goat, or hog shall be found straying in any such place, the owner of such animal shall, (over and above the damages which he may be condemned to pay in the manner hereinafter prescribed,) incur the following penalties, that is to say:—for each mare or gelding, one shilling and three pence, currency; for each ox, cow, or calf, one shilling, currency; for each sheep or goat, three pence, currency; for each hog, two shillings and six pence, currency; for each bull or boar, five shillings, currency; for each ram, five shillings, currency; between the first of May and the first of December, and two shillings and six pence, currency, between the first of December and the first of June; for each goose, duck, turkey, or head of other poultry of any kind, three pence, currency; and double the said sums for the second time that such animals shall respectively be seen or found straying on any lands or fields, without the permission of the proprietor thereof or his representative, or on any highway, beach or public place. Provided always, that the provisions

sions of this section may be altered, modified or restricted with regard to their effect, in certain places, by any Act which may be passed during the present Session of the Provincial Parliament.

Landholders
may secure
cattle trespass-
ing on their
lands until pe-
nalty is paid.

XI. And whereas it is expedient to give proprietors or occupiers of lands, who take animals straying on their lands or in their fields, the right of detaining and keeping them until the penalty by this Act attached to the offence committed, shall have been paid, without prejudice to the damages; such proprietor or occupier of land may recover against the owner of such animals; Be it therefore enacted by the authority aforesaid, that any proprietor or occupier of land, or his servants, or representatives, may seize, take and detain any animal which he or they shall find straying on his land, or in his fields without his permission, and may detain the same until the owner thereof shall have paid the penalty hereby attached to the offence committed: and that when any animal shall be seen straying on any beach or public place, it shall be lawful for the Road Surveyor, or any overseer under him, or for any freeholder whomsoever of the Parish, Seignior, or Township, to take and detain such animal until the proprietor thereof shall have paid the fine hereby attached to the offence committed: Provided always, that the person who shall have so taken any animal, shall give notice thereof as early as possible to the owner, if known to him; and if the owner of such animal shall not, within twenty-four hours, come forward and claim the same, and pay to the person so seizing or detaining them, the penalty incurred with the cost of keeping such animal, or if the person detaining it shall not know the owner thereof, he shall cause public notice to be given that such animal has been so taken and detained, with a description thereof, at the door of the Church of the Parish, on three consecutive Sundays, immediately after divine service in the forenoon, and in the same manner on the third Sunday at the door of the Churches of the neighbouring Parishes, if before that time the owner shall not claim the said animal, and pay the penalty and the costs of keeping the animal; or if there should be no Church in the place, he shall give such other public notice as may be considered sufficient, according to the custom of the Parish, Seignior, Township, or Settlement in which such animal shall be so detained; Provided always, that when notice shall have been given in the manner aforesaid on three consecutive Sundays, of the seizure and detention of any horse, ox, or cow, or any other animal whatever, then, if such animal is not claimed, and the penalty and costs paid as aforesaid, it shall be lawful for the person who shall have such animal in his possession, to cause the same to be sold on the Sunday next after the last notice shall have been given, by public auction, at the Church door, immediately after divine service, in the forenoon, or if there be no Church or other place of public worship in the locality, then at the most public and frequented place as aforesaid, or on the Monday next after such notice, at eleven o'clock in the forenoon: provided

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provided he shall have given at least two days notice of such sale to the Road Surveyor, who shall be bound to attend at such sale, or in case of his absence through sickness or otherwise, shall direct one of the overseers under him to act for him;— and out of the proceeds of the sale, which shall be paid to the Road Surveyor, or the person acting for him, by the purchaser, the person having detained the animal shall be entitled to receive from the Road Surveyor the penalty incurred, and the reasonable costs of keeping the animal while detained, (which shall be estimated by such Road Surveyor and one of the overseers under him, who shall not be related to the detainer within the degree prohibited by the Law, that is to say, the third degree,) with all damages sustained by such detainer; and the balance shall remain in the hands of the Road Surveyor, who shall pay it over to the owner of the animal so soon as he shall be known; or if such owner shall not become known to him within a year, it shall be lawful for the Road Surveyor to cause such balance to be applied to the improvement of the bridges and highways. And such Surveyor or Overseer of roads shall account to the nearest Justice of the Peace for the due application of the proceeds of the sale of any such animal or animals, within fifteen days after the sale, under a penalty of ten shillings currency.

Road Surveyor, or, or his representative may refuse all biddings at the sale of any animal, from a person unknown.

XII. And be it further enacted by the authority aforesaid, that the Road Surveyor, or, or his representative, shall have the right of refusing all biddings at the sale of any such animal from any person unknown, or a stranger in the Parish, or known to be insolvent, until such person shall have given security to the satisfaction of such Road Surveyor, or his representative; and the person becoming surety in such case shall be responsible for the price in the same manner as if he were the purchaser.

If price is not paid, the Road Surveyor may cause the same to be levied, by seizure and sale of the goods of the purchaser.

XIII. Provided always, and be it further enacted by the authority aforesaid, That if such price be not paid, the Road Surveyor or his representative may, eight days after the adjudication, bring complaint thereof before any Justice of the Peace of the Parish, Seignior, or Township, who is hereby authorized and directed, on the oath of one credible witness, (other than the Road Surveyor or his representative) to cause the same to be levied immediately by warrant under his hand and seal, by seizure and sale of the goods and chattels of the purchaser or of his surety.

Proprietor or occupier of land, receiving cattle to pasture on his lands or to permit cattle belonging to

XIV. And be it further enacted by the authority aforesaid, that any proprietor or occupier of land, who shall receive cattle to pasture on his lands or grounds, or shall permit cattle belonging to others to stray or pasture on his lands or grounds, shall be responsible for such cattle as if he were the owner thereof, without its being

others to stray on his lands, to be responsible for such cattle.

ing necessary that the name of the owner should be ascertained. Provided always, that the complainant may in any case cause the summons or complaint to be served on any reasonable person in any house built on the land whereon the animals committing the damage are at pasture, and that such service shall be sufficient, even if the owner or occupant of the land should not have his domicile there, or should be absent.

Persons keeping a vicious horse or other animal and doing damage subject to a penalty.

XV. And be it further enacted by the authority aforesaid, that it shall be lawful for any Justice of the Peace, on complaint to him made, that any person keeps on the land belonging to such person, a vicious horse or other animal being the property of such person, (in which complaint the said horse or other animal shall be as exactly described as may be,) and that the said horse or other animal has broken down or overleapt any fence in good repair, or has attacked and pursued any person, or done him or her any mischief, or has gored any other animal, on any land, or on the highway, or on the beaches or other public ground, or has done any other harm to such animal, after having heard such complaint in a summary manner, to order the person against whom such complaint shall have been made, to pay the costs which may have been incurred on such complaint according to the provisions of this Act, and that the horse or other animal concerning which such complaint shall have been made, be clogged or fettered so as to prevent his doing any further mischief, under a penalty of two shillings and six pence, currency, to be paid by the owner or person in possession thereof, for every day during which such horse or other animal, concerning which such complaint shall have been made, shall thereafter be allowed to remain unfettered and at large.

Stallions to be kept in a stable and not allowed to go at large.

Penalty.

XVI. And be it further enacted by the authority aforesaid, that every person who shall own or keep a stallion of twenty months old or upwards, shall keep such stallion in a stable or other building, and shall not allow him to be at large on the highway or in any field, other than a field surrounded with a good and sufficient fence, at least five feet high, under a penalty not exceeding ten shillings, currency, nor less than five shillings, currency, for each offence.

Dogs having bitten any person, how persons that complain are to proceed.

XVII. And be it further enacted by the authority aforesaid, that it shall be the duty of every Justice of the Peace, on complaint to him made, that any dog belonging to or kept by, or being on the land, or near the house of any person, has bitten any person, horse, cattle, or sheep, or is supposed to be rabid, or has pursued any person or ridden horse, or any horse harnessed to any carriage on the highway; after having heard such complaint in a summary manner, to condemn the person against whom such complaint shall have been made, to pay the costs incurred on such

such complaint, according to the provisions of this Act, and to order, by a writing under his hand, the owner or keeper of such dog, to keep, or cause the same to be kept shut up for forty days, under the penalty, to be paid by such owner or keeper of such dog, not exceeding two shillings, currency, for each day that such dog shall be suffered to be at large before the expiration of the said forty days: *Provido.* Provided always, that in all cases wherein it shall be proved before such Justice of the Peace; by one or more witnesses worthy of credit, that the dog concerning which such complaint shall have been made, is very mischievous both with regard to travellers and ridden or harnessed horses, and is in the habit of pursuing them, and of startling or biting them, then and in such case, such Justice of the Peace may in the manner herein set forth, order the owner or keeper of such dog, to kill it or cause it to be killed, and condemn such owner or keeper thereof, to pay in addition to the costs above mentioned, a penalty of five shillings, currency, for every day such dog shall be allowed to live after the said order.

How to proceed against persons having dogs that pursue cattle.

XVIII. And whereas it frequently happens that great mischief is done in the country parishes by dogs which chase and strangle sheep, and whereas it is sometimes very difficult to prove that the mischief has been occasioned by such dogs: Be it therefore further enacted by the authority aforesaid, that it shall be lawful for any person to kill any dog which shall be seen at large in any field being the property of such person or his employer, unaccompanied by the master thereof or by any person belonging to his family, or in his employ, and chasing and annoying any sheep, being the property of such person or of his employer, or to complain thereof to any Justice of the Peace, who shall on such complaint summon the owner of the dog to appear before him, and shall order him to kill such dog, and shall condemn such owner to pay the costs of such complaint, and such owner shall incur a fine of five shillings, currency, for every day during which such dog shall be suffered to live after such order.

Penalty.

Persons keeping hogs or pigs without ringing the same subject to a penalty.

XIX. And be it further enacted by the authority aforesaid, that every person who shall allow any hog or pig to be at large without ringing the same, shall incur a penalty not exceeding ten shillings, nor less than five shillings, currency; one moiety whereof shall go to the informer, and the other moiety to His Majesty.

Pounds may be established.

XX. And whereas the establishment of pounds for the impounding of horses, horned cattle, sheep, goats and hogs, which may be found astray, and impounded by private persons or by the public officers hereinbefore mentioned, would much facilitate the safe-keeping thereof in the Cities, Towns, Villages, Country Parishes and Townships of this Province: Be it therefore further enacted by the authority aforesaid,

aforesaid, that it shall be lawful for the Justices of the Peace, in any of their weekly sittings, in either of the Cities of Quebec or Montreal, to authorize the erection or establishment of a pound in any fit and proper place, in or near either of the said Cities, for the shutting up and impounding therein of all the horses, horned cattle, sheep, goats and hogs, found straying on or damaging the property of any person, or straying on the beaches, highways or public grounds, and to place such public pounds under the charge and management of any fit person, who shall be responsible for his conduct touching the care and management of the said pounds to the Justices of the Peace in their Weekly Sessions, and shall be liable to be dismissed by them, and to have his place filled by another person, from time to time, whenever it may become necessary.

A meeting to be called for establishing the Pound.

XXI. And be it further enacted by the authority aforesaid, that three inhabitants of the Town of Three-Rivers, being freeholders therein, or three inhabitants of the Borough of William Henry, being freeholders therein, or three inhabitants of any Village in this Province, containing more than thirty-inhabited houses within the space of fifteen arpents in superficies content, being freeholders in such Village, may require any Justice of the Peace to call a meeting of the inhabitants of such town, or borough, or village, being freeholders, for the purpose of considering and determining upon the expediency of erecting and establishing a pound for the purposes aforesaid, and if at such meeting, (which shall not be held less than six days after public notice shall have been given thereof,) it shall be decided by the majority of the persons present at the said meeting, that such pound shall be erected and established, then and in that case the Surveyor of Highways for the said Town, Borough, or Village, may erect and keep such pound, or if he shall refuse to do so, the first freeholder who shall be willing to erect the same at his own cost and charge may do so, and shall have the keeping thereof for the purposes aforesaid.

Three inhabitants may require the surveyor of highways to call such meeting.

XXII. And be it further enacted by the authority aforesaid, that three inhabitants of any division whatever of any Parish, Seigniorly or Township, being freeholders therein, may require the Overseer of Highways in such division, to call a meeting of the inhabitants thereof, being freeholders therein, after notice thereof as aforesaid, for the purpose of considering and determining whether it be expedient to erect and establish a pound in such division for the purposes aforesaid; and if at such meeting it shall be decided by a majority of the persons present thereat, that such pound shall be erected and established, the same may be erected and kept by the Overseer of highways for such division, or if he shall refuse to do so, by any other person who shall be willing and shall offer to erect the same at his proper cost

cost and charge, and when it shall be so erected, such person shall have the keeping thereof for the purposes of this Act.

When pound
is established,
animals to be
impounded.

XXIII. And be it further enacted by the authority aforesaid, that when and so soon as any such pound shall have been erected and established as aforesaid, according to the provisions of this Act, all horses, horned cattle, sheep, goats or hogs, found straying on the land of any person or on the beach, highway or public ground within the place for which such pound shall have been erected and established, shall be within twenty-four hours taken to the said pound, by or at the expense of the person who shall have so found them, under a penalty of five shillings, currency, for every offence, and shall be there impounded, and shall so remain until they shall be reclaimed by the owner thereof, and until the fine incurred and the reasonable expense of feeding the said horses, horned cattle, sheep, goats or hogs, during the time they shall have remained impounded, shall have been paid to the pound keeper, and one half of the said penalty, and the whole of the sum paid for such feeding as aforesaid, shall go to the keeper of the pound, as an indemnification for his expenses in erecting the said pound, and the other half of the said fines shall belong to the person or persons who shall have impounded the said horses or other cattle as aforesaid, any law to the contrary notwithstanding. Provided always, that in case any difficulty shall arise respecting the amount of the expenses incurred for the feeding of such horses or other animals so impounded, the said amount shall be ascertained by two arbitrators, one of whom shall be chosen by the keeper of the said pound, and the other by the owner of the horses or other animals so impounded, which arbitrators shall, in case of difference of opinion, appoint a third, whose decision shall be final.

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Expenses of
the impound-
ing having
been paid, ani-
mal to be
released.

XXIV. And be it further enacted by the authority aforesaid, that it shall be the duty of every proprietor of a pound, when the fine and the expenses incurred as above for the impounding of any horse or horned cattle, or other beast whatsoever, shall be tendered to him, to deliver the animal so impounded to the owner thereof, or to any other person duly authorized on his part, under pain of incurring a penalty not exceeding ten shillings, currency, for refusal, and of five shillings, currency, a day for every day he shall afterwards unjustly detain any such horse, horned cattle, sheep, goat or hog.

Animals im-
pounded to be
cried.

XXV. Provided always, and be it further enacted by the authority aforesaid, that it shall be the duty of every keeper of a pound in which any horse, horned cattle, sheep, goat, or hog, shall have been impounded, to cause it to be cried in the manner hereby provided, at the door of the church of the place where it shall have been taken: or if there shall be in such place no church or building for public worship, then at the most public and frequented place as aforesaid.

XXVI.

Persons allowing horses, &c. to go at large, subject to damages.

XXVI. Provided always, and be it further enacted by the authority aforesaid, that nothing contained in this Act shall prevent any person from recovering in due course of law, from the owner of the horses, horned cattle, sheep, goats or hogs, geese, ducks, turkeys, or other fowl whatsoever, so allowed to go at large, the amount of the damage he shall prove that he has sustained therefrom.

Freeholders to elect persons to be inspectors of ditches.

XXVII. And whereas it is expedient to provide cheap and summary means of adjusting the difficulties which may arise in the country Parishes, respecting fences or ditches necessary for the draining of lands, be it further enacted by the authority aforesaid, that it shall be the duty of the freeholders in each Parish, Seignior, Township or settlement, to elect (in the manner in which overseers of roads are elected,) as many freeholders as there shall be overseers in the locality, to be Inspectors of fences and drains for such locality; and the persons so elected shall serve as Inspectors of fences and drains until their places shall be taken by others who shall be elected in like manner, at the expiration of two years.

Nothing in this Act contained to prevent freeholders who may not have elected inspectors, before the passing of the act, to meet for such election.

Proviso.

XXVIII. Provided always, and be it further enacted by the authority aforesaid, that nothing contained in this Act shall be construed to prevent such inhabitants being freeholders in any Parish, Seignior or Township as have not yet elected Inspectors of fences and ditches, from meeting at any time whatever after the passing of this Act, to proceed to the election of Inspector of fences and ditches as aforesaid, in the same manner and with the formalities prescribed for elections of overseers of roads: Provided further, that in case of the death of any Inspector of fences and ditches in any division for which he may have been appointed there shall be immediately appointed in the manner prescribed by the foregoing section, another Inspector, who shall serve until the expiration of the two years.

Inspectors of fences and drains elected under former Act, to continue to act, until election next after passing of this Act.

XXIX. And whereas it is desirable that there should be no interruption in the exercise of the powers and authority hereby vested in the Inspectors of fences and drains: Be it therefore further enacted by the authority aforesaid, that the Inspectors of fences and drains elected under the authority of the Act passed in the third year of His Majesty's Reign, and hereby repealed, shall continue to act as such until the election next after the passing of this act, but shall nevertheless conform to all the enactments of this Act, and shall exercise all the new powers hereby vested in Inspectors of fences and drains.

Penalty on inspector's refusal to do their duty.

XXX. And be it further enacted by the authority aforesaid, that every person who shall be chosen and elected Inspector, in the manner hereinbefore provided, who shall refuse or neglect to enter forthwith on the execution of the functions of his said office, according to the provisions of this Act, after such election shall have been made known to him by notice in writing duly left at his domicile, by or under the directions of the person who shall have presided at such meeting as aforesaid, (which notice such person shall be bound to give within seven days after such election,) shall incur a penalty of thirty shillings currency.

Inspectors to take an oath for the faithful discharge of their duty.

XXXI. And be it further enacted by the authority aforesaid, that every person chosen and elected to be an Inspector of fences and ditches, shall, before entering on the duties of his office, make an oath before some Justice of the Peace, that he will well and faithfully perform the duties of the office of Inspector of fences and ditches, to the best of his knowledge, ability and understanding, without fear, favor or affection for any person whatsoever, according to the provisions of this Act, and that he will in all cases decide and determine impartially and to the best of his judgment, and in such manner only as to law and justice shall appertain; which oath any Justice of the Peace is hereby empowered to administer.

Penalty on Inspectors for neglect of duty.

XXXII. And be it further enacted by the authority aforesaid, that every Inspector of fences and ditches, shall, for every neglect or refusal to perform any of the duties with which he is hereby charged, when thereunto required, incur a penalty of ten shillings currency, to be sued for and recovered in the manner herein provided.

Duty of Inspectors.

XXXIII. And be it further enacted by the authority aforesaid, that it shall be the duty of every inspector of fences and ditches, when and so often as he shall be thereunto required by any person being proprietor or occupant of more than one fourth of a superficial arpent of land, and residing within his division, to visit and examine the line fences, separating the lands belonging to or occupied by different persons, (giving previous notice of the day and hour when such examination will take place, either personally or by notice left at the residence of the person against whom complaint shall have been made,) and the said Inspector of fences and ditches shall determine whether the fence belonging to the person against whom such complaint shall have been made, be sufficient; and if the fence belonging to the said party be declared insufficient, such party shall be ordered to repair the same within a certain time, to be fixed by the said Inspector of fences and ditches, which time shall not exceed four days in any case wherein it shall be possible to perform the work required within that time; and in all other cases such Inspector shall allow such further delay as he shall think necessary; and if the person whose fence shall have

have been so declared insufficient shall fail to conform to the order made concerning such fence, such person shall incur a penalty of two shillings and six pence currency, for each and every day such fence shall remain unrepaired after the expiration of the time so fixed : Provided always, that no fence shall be considered as insufficient, which shall not be inferior to the fence erected on the same line or boundary, and in a similar position, in the same field or inclosure by the party complaining : And provided also; that it shall be the duty of every such Inspector of fences and ditches after the expiration of four days, or of the time which he shall have fixed for the making or repairing of any fence as aforesaid, to cause it to be erected or repaired at the expense of the person who having been adjudged to erect or repair the same, shall have neglected so to do, and to recover the expense thereof by suit before a Justice of the Peace, with costs, including a just allowance for the time he shall be employed in the execution of his duty : Provided always, that if the party in default is absent from the Province, deceased or unknown, or has abandoned his land, or if the land of such party is seized by the Sheriff, then, the Inspector after having caused to be made or repaired the fences or drains of the party who shall have been condemned to make or repair the same, shall have for the recovery of the expences incurred in so doing, a privileged mortgage on such land from the day on which such work shall have been completed ; and such land may be seized and sold under a judgment of any competent Court; on a petition to such Court, setting forth the facts, and on proof of the allegations of such petition, to the satisfaction of such Court ; without its being necessary that the name of the owner of such land should be ascertained in the proceedings had before such Court in conformity to the foregoing enactments. Provided always, that if the owner of such land shall at any time before the sale thereof under such judgment as aforesaid, pay to the said Inspector of fences, or if there shall then be no such officer, to the Surveyor of roads, or to the overseer of roads for the division in which such lands shall be situate, the amount of the expences so incurred with all such costs and expences as shall or may have been incurred in suing for such judgment and causing such lands to be seized, then and in such case such mortgage shall be deemed and taken to be satisfied and discharged.

How Inspectors to proceed when the matter relates to fines.

XXXIV. And be it further enacted by the authority aforesaid, that whenever the matter in question shall relate to the erection of a fence where there shall have been none before, or where although there has been a fence, the old fence shall be in such a state that the labour of repairing it shall be equal to that of making a new one, such inspector shall not condemn the party against whom complaint shall have been made, unless the party complaining shall prove that the party complained against, was called upon to erect the said fence before the tenth day of January preceding the time at which such complaint shall be made.

Inspectors to
examine dit-
ches.

XXXV. And be it further enacted by the authority aforesaid, that it shall be the duty of every such Inspector, whenever he shall be thereunto required by one or more proprietors or occupants of land, to proceed to inspect all ditches opened or to be opened on any line separating the lands of one person from those of another, and all other ditches, drains, or water courses commonly known as work to be jointly performed (*travaux mitoyens*) or therewith connected, and to order such work as they shall deem necessary, and shall determine the parties by whom the same shall be performed and kept in repair, as well as the manner in which the same shall be done, and the time within which it shall be completed, as he shall deem it just and conformable to the custom and laws of this Province in that behalf; and every proprietor, or occupant of land as aforesaid, who shall refuse or neglect, to make, repair, take care of and keep in order any line ditch or other ditch as aforesaid, according to the order made by such inspector within four days, or within the time fixed by such inspector, (when he shall have thought fit to grant a longer delay,) after a written or verbal notice to such person given, shall incur a penalty of two shillings and six pence currency, for every day that such ditch shall remain unmade or unrepaired in the manner aforesaid.

Duty of In-
spectors, when
necessary, to
visit all outlets
of water.

XXXVI. And be it further enacted by the authority aforesaid, that it shall also be the duty of every such Inspector within his division, and so often as he shall be thereunto required, to visit and examine all outlets, water courses and brooks common to several lands or to any number of proprietors or occupants of land, the necessary labour concerning which shall have been regulated by *procès verbal* duly homologated, or by a *procès verbal* heretofore made by any Inspector of fences and drains, or by an agreement made by the parties interested, and to see whether such work has been done conformably to such *procès verbal* or agreement, and to order that the same be done, repaired and kept in order in the manner stated in such *procès verbal* or agreement; and every person refusing or neglecting to conform to, and obey such order, within four days after written or verbal notice to that effect shall have been given to such person, or within the time fixed by the said Inspector shall incur a penalty of two shillings currency for each and every day such work shall thereafter remain unperformed: Provided always, that in all cases provided for by this and by the preceding section, it shall be the duty of every such Inspector of fences and ditches after the expiration of the delays therein specified, to cause to be performed the work ordered and remaining undone at the expense of the persons bound to perform such works, and to recover the expenses thereof by suit before a Justice of the Peace, with costs and expenses as directed by the fifth section of this Act.

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XXXVII.

Duty of inspectors, when necessary to open any outlet.

XXXVII. And be it further enacted by the authority aforesaid, that in all cases when it shall be necessary to open any outlet or water course, or to cleanse any brook common to the lands of several persons, the work connected with which shall not have been apportioned and regulated by any *procès verbal* or agreement, the matter in dispute shall be adjusted on the requisition of one of the parties interested, by two Inspectors resident in the Parish, Seigniorly or Township, conversant with such matters and in no wise interested, and residing nearest to the place where such work is to be done, and in case there shall be no such Inspector so conversant or not interested in the Parish, Seigniorly or Township, then by two Inspectors of the neighbouring Parish, Seigniorly or Township, qualified as aforesaid.

Before inspectors proceed to the execution of their duty, to give public notice of their intention to visit the place and to require all persons interested to attend thereat.

XXXVIII. Provided always, and be it further enacted by the authority aforesaid, that before any such Inspectors, (who shall not be interested in the matter, nor related to any of the parties within the degree prohibited by law with regard to witnesses in Courts of Law,) shall proceed to the execution of the duties hereinbefore assigned to them, public notice shall be given by them, either verbally or by advertisement in writing, read at the door of the Church, or other place of public worship, in the Parish, Seigniorly or Township, immediately after divine service in the morning, and posted thereon on the two Sundays immediately preceding the day on which they intend to visit the place, requiring all persons interested to take notice of the same, and to attend at the time and place appointed; and in the Townships and other places where there shall be no Church or place of public worship, then the said notice shall be given personally, or in writing left at the residence of the parties interested.

After having given the notice aforesaid, inspectors to attend at the place, and after being informed of the matter in dispute, to give their decision.

XXXIX. And be it further enacted by the authority aforesaid, that after having given the notice aforesaid, the said Inspectors shall, on the day and at the hour fixed, proceed to the place, and after having become competently acquainted therewith, and after being fully informed of the matter in dispute, shall give their decision, and shall draw up a *procès verbal* of their proceedings, setting forth every thing to be done with respect to such outlet, water course and brooks, for the general advantage of all the parties interested, and the time at which it shall be done, with such further particulars as they shall judge necessary or expedient concerning the matter, comprising also the expenses incurred as well for the examination of the place as for the advertisements, and for drawing up the *procès verbal*; which *procès verbal* shall be deposited in the office of the nearest Notary, (or in the keeping of the nearest Justice of the Peace, if such *procès verbal* be made in any Township,) and such Notary or Justice of the Peace shall give a certified copy thereof to any of the parties interested therein who shall require it, on the payment of the expense of such copy, at the rate of sixpence currency for every hundred words: Provided

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always, that each *procès verbal* so made, whether it concern one or more Parishes, Seigniories, Townships, or Settlements, shall be homologated before one or more Justices of the Peace, in the manner hereinafter prescribed.

Owners of lands higher than those of their neighbours, not bound to make their drains deeper than for draining their own lands.

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XL. Provided always, and be it further enacted by the authority aforesaid, that the owners of lands which shall be higher than those of their neighbours shall not in any wise be bound or required by any Inspector or Inspectors to make or assist in making the drains or water courses through their lands of any greater depth than may be necessary for draining their own lands : Provided further nevertheless, that it shall in all cases be lawful for the persons owning any adjacent land or swampy grounds, to make use of such drains or water courses as aforesaid, through higher grounds, to clear out and deepen the same at their own expense, or where there are no such drains already existing, to cause the same to be opened in the manner and after the formalities herein before prescribed in the thirty seventh section of this Act, in such manner as to carry off the water from their own lands, or to prevent the same from coming, lodging or remaining thereon.

Duty of the inspectors who shall have drawn up any *procès verbal*.

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XLI. Provided always, and be it further enacted by the authority aforesaid, that it shall be the duty of all Inspectors who shall draw up any *procès verbal* as aforesaid, to select and appoint from among the parties interested, and after having consulted with them, one or more overseers, according to the importance of the work to be done, who shall, after their names shall have been inserted in the said *procès verbal*, carry the same into effect, and see that the work therein ordered to be done, as well with respect to the immediate performance thereof as to the keeping the same in repair in future, be duly performed for the general advantage of the parties interested therein. Provided further, that the persons so named as overseers shall not be bound to act as such during more than four successive years, if they shall consider the office burthensome and wish to be relieved therefrom, in which case, (as in case of death or infirmity, or absence of one or more of such overseers;) or in case one or more of such overseers shall sell his property, the persons interested shall when thereunto required by one or more such persons, who shall give notice thereof in the manner hereinbefore set forth respecting the view of the place, meet for the purpose of proceeding to a new election, which shall be made by the majority of the persons interested, then and there present, who shall cause a record thereof to be drawn up, and shall deposit the same in the place where the *procès verbal*, to which it has reference, shall have been deposited. Provided always, that it shall be lawful for all the persons interested in any *procès verbal* of a water course, homologated in any Court of Law, or in any such *procès verbal* made by any Inspector of fences and drains,

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drains, or made by agreement, to proceed in the manner above mentioned, to an election for the purpose of filling up the place of any overseer or overseers deceased, absent, or having sold their lands, or desirous to resign their office, after four years of service ; and when such water course shall concern two Parishes, Seignories, Townships, or settlements, one or more overseers from each place shall be appointed to see such *procès verbal* carried into effect ; and any such overseer who shall neglect or refuse to cause such *procès verbal* to be carried into effect according to its form and tenor, after having been required so to do by one or more of the parties interested, at least eight days before, shall incur a penalty not exceeding five shillings currency, for each day during which such work shall not be done in the manner provided by the *procès verbal* ; allowing four days for performing such work.

Inspectors
also having
drawn up their
procès verbal
to have them
publicly read.

XLII. And be it further enacted by the authority aforesaid, that the Inspectors after having drawn up their *procès verbal* as aforesaid, shall have a copy thereof prepared, which they shall cause to be read on the following Sunday after Divine Service in the forenoon, at the Church door or other place of public worship, and when there is none, then at the most central or public place of the Parish, Seignory or Township, for which such *procès verbal* shall be made, and immediately after such reading, shall give public notice of the time when such *procès verbal* will be presented for confirmation, and of the name of the Justice of the Peace to whom it will be so presented ; and that all persons interested therein may appear before such Justice of the Peace for the purpose of stating their reasons, (if any they have) why such *procès verbal* should not be confirmed, and a copy of the said *procès verbal*, after it shall have been confirmed, shall be deposited in the keeping of such overseer or overseers, to be by them kept as a guide in the direction of the work, and for the information of all persons interested, to whom he or they shall give communication thereof, gratis, whensoever they shall require it ; and every such overseer shall deliver the said *procès verbal* and all other records and papers relating to his office, to his successor or successors in office ; and every such *procès verbal* shall be deposited after its homologation, in the office of the Justice of the Peace who shall have homologated it, under a penalty of twenty shillings, currency, against any Justice of the Peace neglecting to do so.

Erroneous
construction
put by certain
Justices of the
Peace, how to
be corrected.

XLIII. And whereas the erroneous construction put by certain Justices of the Peace, upon the obligation of the Inspectors of fences and drains to prosecute the homologation of the *procès verbaux* by them made according to the requirements of the Act hereby repealed, has become prejudicial to opposants, and tends to impede the purposes of justice : Be it therefore further enacted by the authority aforesaid, that

that any *procès verbal* drawn up under the authority of the Act hereby repealed, and concerning one or more localities, which shall not have been homologated before one or before two Justices of the Peace, shall be null and of no effect until it shall have been homologated conformably to the requirements of the Act in that behalf, before the Justice or Justices of the Peace nearest to the residence of the persons interested in such *procès verbal*.

Time fixed
within which
the work is to
be done.

XLIV. And whereas it is necessary to fix the time within which the work ordered in any *procès verbal* shall be done: Be it therefore enacted by the authority aforesaid, that the overseer or overseers chosen to superintend the execution thereof, shall give public notice at the door of the church, or of any place of public worship, on the two Sundays next preceding the day they shall appoint as hereinafter set forth, after Divine Service in the forenoon, and when there is no place of worship, then at the most public place in the settlement, Parish, Seignior, or Township, of the day and hour when they will repair to the spot to cause the work to be begun and performed, whether it is to be done in common, or severally by the persons interested accordingly, as by the *procès verbal* it may have been appointed, and any person interested, who shall refuse or neglect to repair to the spot, on the day appointed, and to perform his share of the work within the time appointed by the overseer, shall incur a penalty of two shillings, currency, for each and every day during which he shall have neglected to do and perform his share of the work; and when at the expiration of eight days from the time appointed for beginning the work, none of the persons interested shall have done it, the said overseer may cause it to be done, and may recover the expenses from the parties in default, by prosecution before any Justice of the Peace, with costs. Provided always, that in cases wherein a work is to be performed in common, the overseer may employ one or more men instead of such of the persons interested as shall have neglected to attend their duty, and may recover from every such person in default, the amount disbursed in paying the men employed, by prosecution before a Justice of the Peace as aforesaid, with costs.

Proviso.

Indemnification
allowed to
Inspectors.

XLV. And whereas it is just to allow an indemnification to the Inspectors for the time they may employ in the execution of the duties hereby assigned them: Be it therefore enacted by the authority aforesaid, that there shall be allowed to every Inspector of fences and ditches, employed by virtue of this Act, and to every *Expert*, and he shall be entitled to recover six pence for every hour he may be so necessarily employed, which shall be paid by the party in default or in the wrong, whether such party be that at whose instance he acted, or be he the adverse party in cases of *travaux mitoyens*, (joint labour,) and when he shall have been called on for a water-course,

course, outlet, rivulet, or other stream whatsoever, then the six pence per hour and all the expenses incurred for carrying into effect the notices and *procès verbal*, the copy and other expenses deemed necessary, shall be paid by all the persons interested in such water-course, outlet, rivulet, or other stream, and in either case shall be recovered with costs, in a summary manner, before a Justice of the Peace.

When inhabitants of any two or more Parishes are interested in the opening of any water course, the matter in dispute, how to be regulated.

XLVI. And be it further enacted by the authority aforesaid, that when the inhabitants of any two or more Parishes, Seigniories or Townships, shall be interested in the opening of any such new outlet or water course, or in the widening of any old outlet or brook, the matter in dispute shall be regulated on the requisition of any person interested therein in each of the said Parishes, Seigniories, or Townships, by applying to the Road Surveyor of each Parish, Seigniorie, Township, or settlement, if he be not interested, and if he be interested, to an overseer of roads in each such place respectively, who shall appoint two inspectors of fences and drains, conversant in such matters, and disinterested, in each Parish, Seigniorie, or Township, who after having agreed upon the preliminary points of their operation, shall in the manner aforesaid, notify the persons of their respective Parishes, Seigniories or Townships, who are interested in the matter, in order that they may, (if they think fit) attend at the view of the spot, and give the Inspectors all the information in their power, towards enabling them to do justice to the persons interested in the *procès verbal*, which they shall draw up after having observed the formalities herein before prescribed, and they shall deposit the said *procès verbal* in the office of the Notary, (and if there be no Notary, then with the Justice of the Peace,) nearest to such outlet, water course or brook, and shall have a copy thereof made for each of the Parish, Seigniories' or Townships interested, which copy shall be deposited in the hands of the overseer or overseers whom they shall have chosen and named as above for conducting and superintending the performing and keeping up of the works. Provided that in all cases of difference of opinion and equal division of votes among such Inspectors, upon any point or matter submitted to them as herein before enacted, they shall apply to the Inspector nearest the place, and not interested in the matter in dispute, as an umpire, who shall have the casting vote. Provided always, that the overseers chosen and appointed as aforesaid, shall in the execution of their duties, act in the manner herein prescribed, respecting outlets, water courses and brooks, which are common to the inhabitants of one Parish, Seigniorie, or Township, only.

Previous

Majority of persons interested in the performance of

XLVII. And whereas in certain cases great inconvenience might result from the performing of the work by the persons interested, by reason of their great number and the difficulty of the work : Be it therefore enacted by the authority aforesaid,

the work to cause the work to be done, each person his share.

aforesaid, that on every such occasion the majority of the persons interested, may cause the said work, or any part thereof, to be performed by contract, each of them paying his share in money, according to an apportionment to be made by one or more persons conversant in the matter, which apportionment, before it shall go into operation, shall be ratified by one Justice of the Peace, after having been read during two successive Sundays, at the door of the Church, or of any place of public worship in the Parishes, Seigniories, or Townships concerned, immediately after divine service in the forenoon, each reading and publication being followed by a hand-bill posted at the door of the Church or other place of worship, making known to the persons interested the day and hour, and the place where such Justice of the Peace is to sit to take cognizance of the grounds of opposition, if any, to the ratification of such apportionment.

Duty of overseers, as to such outlets, water courses, &c.

XLVIII. And be it further enacted by the authority aforesaid, that it shall be the duty of the overseers appointed, with respect to every such outlet, water course, or brook, to collect such sums of money as each of the parties interested shall be liable to pay by reason of the said apportionment, with all expences incurred therein, and in case of refusal or negligence on the part of any such person, to compel the payment thereof by suit, before any Justice of the Peace resident in the place, with costs, including an allowance of sixpence per hour to the overseer for the time he shall have lost by reason of the said suit, and the disbursements he may have been obliged to make for the payment of a Clerk, if it shall have been necessary for him to employ one.

Limitation of powers of Inspectors as to any work connected with any outlet.

XLIX. Provided always, and be it further enacted by the authority aforesaid, that the powers hereby given, shall not in any case extend to authorize any Inspector to make any change concerning the work connected with any outlet, water course or brook, which shall have been previously regulated by a *procès verbal*, lawfully made, whether such outlet, water course, or brook, be common to several Parishes, Seigniories or Townships, or only one such place be interested therein, unless two thirds at least, of the persons interested in such work shall require him to do so, and consent to a departure from the old *procès verbal*.

Parties complaining of the decision of Inspectors, how to proceed.

L. And be it further enacted by the authority aforesaid, that if any of the parties interested in the decision given or orders made by an Inspector or Inspectors, by virtue of any of the provisions of this Act, relating to outlets, water courses and brooks, as well such decisions or orders as concern only one Parish, Seigniorie, or Township as those which concern several, shall deem himself aggrieved thereby, and shall be dissatisfied therewith, such party shall within eight days (reckoning from

from the day on which the *procès verbal* shall have been publicly read as aforesaid, at the church door or other place of public worship or public place, lay his complaint before a Justice of the Peace, neither interested therein nor related to any one so interested within the degree prohibited by law in such cases, that is to say, within the third degree, and the said Justice shall before the expiration of the said term of eight days summon the Inspector or Inspectors to appear before him and one other Justice of the Peace, residing in the same County, not being interested in the matter in dispute or related to any one so interested within the degree aforesaid, some certain day, and to have with them *procès verbal*, which, as well as the reasons in favor of, or against it (if any there be) alleged by the parties or ths witnesses, shall be maturally examined by the said Justices, and if it shall appear to them that the reasons alleged against the same are insufficient, and that the requisite formalities have been observed, and that there has been no partiality, or injustice or negligence in the conduct of the Inspectors, then the said *procès verbal* shall be ratified, and shall be executed according to the form and tenor thereof; and if on the contrary it shall appear to the said Justices that there has been partiality or a want of exactness and diligence in examining the place, or that the work has not been equitably apportioned according to the custom of the country, then three *experts* shall be appointed, one by the plaintiff or plaintiffs, another by the defendant or defendants, and the third by the said Justices of the Peace, and if either of the parties shall refuse to name an *expert*, the said Justices shall name one instead of such party; and such *experts*, after being duly sworn before a Justice of the Peace (who is hereby authorized to administer the necessary oath) shall proceed to view the place concerning which the dispute shall have arisen, in the presence of the said Inspectors and of the parties interested, (who shall be duly notified by the said *expert*, at least eight days before such second view shall take place, by notice given at the door of the church, or at the most public place in the Parish, Seignior, or Township, wherein the parties interested reside, and the decision of the majority of the said *experts*, whether it be to confirm or to set aside the decision given by the Inspectors, shall be final and conclusive to all intents and purposes) whatsoever; and if the said *experts* shall set aside the decision given by the Inspectors, or if they shall deem it advisable to change the direction of the water courses concerning which the dispute shall be, then the said *experts* shall make a fresh *procès verbal* which shall be confirmed by the Justices of the Peace: Provided always, that in every case of such appeal to the decision of the *experts*, the Inspectors by whom the *procès verbal* appealed from shall have been made, may cause the parties at whose requisition it was made, to intervene and defend such *procès verbal*, and to pay the costs attending the same, if it be by the fault of the said parties that it is defective, but if it shall appear that such defect shall have arisen from negligence or partiality of

of the Inspectors, then the said Inspectors shall pay the costs thereof, and the said Justices of the Peace shall homologate such *procès verbal*, if it be confirmed by such *experts*; and if it be disallowed, they shall homologate that made by such *experts*.

Manner of proceeding for the destruction of noxious weeds.

LI. And whereas the seeds of noxious weeds growing on the land or ground of one proprietor, or upon a common, are frequently driven by the winds, and otherwise conveyed upon the lands and grounds of the adjoining proprietors, where to the injury of such proprietors, and their discouragement with respect to agricultural improvements, they grow: Be it further enacted by the authority aforesaid, that it shall be lawful for any proprietor or occupier of land, at any time between the twentieth day of June and the first day of the month of August, in each year, by verbal notice, in the presence of one witness, or by notice in writing, left at the domicile of the person to whom it may be addressed, or in case of a common in which several persons have shares or are interested, by notice published at the church door of the parish within which such common shall be situated, on a Sunday or Holiday (*Fête d'Obligation*), immediately after divine service in the forenoon, to require any proprietor or occupier of any adjoining land, or a meadow not being then sown or under crop, or the persons having shares or being interested in a common as aforesaid, to destroy or cut down all such noxious weeds, to wit: those commonly called *marguerites*, also ranuncules, commonly called *marguerites jaunes*, and thistles, wild endive (*chicorée*), and *cotonniers*, and all other noxious weeds whatsoever as may be then growing on such adjoining land or piece of ground, the proprietor or occupier of land giving such notice, having himself first destroyed or cut down all such weeds on his fields or grounds adjoining: and if the weeds so required to be destroyed or cut down are not entirely destroyed or cut down at the expiration of six days from the date of such notice, then it shall be lawful for any Justice of the Peace, upon complaint duly made before him, and the oath of one credible witness other than the complainant, or on the confession of the party or parties complained of, to order in writing, the proprietor or occupier or other by whom such complaint shall be made, to destroy or cut down such weeds within a period to be assigned by such Justice of the Peace, under a penalty on such proprietor or occupier, of two shillings and six pence, currency, for every day that such weeds shall remain standing or growing from and after the time at which such notice shall have been served upon him, with the expenses incurred in obtaining such order according to this Act.

Duties of Surveyors and Overseers of Highways, to cause noxious weeds to be cut down.

LII. And be it further enacted by the authority aforesaid, that it shall be the duty of the surveyors and overseers of highways, within the time limited in the foregoing section, to cause to be destroyed or cut down, by the persons bound to make
and

and keep in repair the highways and bye-roads in their respective divisions, all weeds growing on highways or bye-roads, in their whole width, to the fences inclosing such highways or roads, under the same penalties on the said surveyors or overseers, and persons bound to make and keep in repair the said highways and bye-roads, as are provided in the Acts now in force for neglect or default in keeping such highways and roads in repair, and recoverable in the same manner.

Proprietors of animals dead near public roads or on lands, to cause them to be buried.

LIII. And whereas it frequently happens that animals dying of disease or otherwise remain exposed in fields and other places, whereby travellers are incommoded and exposed to danger, and dangerous disease may be produced: Be it therefore enacted by the authority aforesaid, that the owner of any such animal of what kind soever, who shall refuse, or neglect to bury the same at least three feet underground, and to cover the same with two feet of earth at least, shall incur a penalty of not more than ten shillings currency, nor less than five shillings currency.

Penalty.

Animals dying of disease and thrown into brooks, every person convicted of doing so, subject to a penalty.

LIV. And whereas it also frequently happens that animals dying of disease or otherwise, are thrown into brooks, rivulets and rivers, and whereas individuals are in the habit of carrying filth in summer, and more particularly in winter, into the brooks, rivulets and rivers, and upon ice of the said brooks, rivulets and rivers: Be it therefore enacted by the authority aforesaid, that every person who shall be convicted, on the oath of the informer or other credible witness, of having so thrown any such animal, or so carted any such filth, (unless in or to a place appointed for that purpose by the competent local authorities,) shall incur a penalty of not more than twenty shillings, currency, nor less than ten shillings currency, in addition to all damages.

Fines incurred under this Act, to be prosecuted within one month.

LV. And be it further enacted by the authority aforesaid, that all fines and penalties incurred under this Act, may be sued for and recovered within three months after the offence may have been committed, and not afterwards.

Justices of the Peace not entitled to any fee. Certain fees allowed to their Clerks.

LVI. And be it further enacted by the authority aforesaid, that no Justice of the Peace, acting in obedience to, or under the authority of this Act, shall be entitled to any fee or emolument in any case or under any pretext whatsoever, provided always, that the following fees may be allowed and paid to such Clerk as he shall have been under the necessity of employing to assist him in the performance of the duties with which he is charged by this Act; and that such Clerk or other person shall

The fees. shall not be entitled to more than one shilling currency, for any summons, and six pence currency for every copy thereof, nor to more than one shilling currency for any subpoena, and sixpence currency for every copy thereof, nor to more than one shilling and three pence currency for enregistering any conviction; and shall be paid for drawing up any order in pursuance of such conviction, and for every other paper writing made with relation to any prosecution instituted under this Act, at the rate of six pence currency for every hundred words, and no more, which said fees, as well as the allowance made to the witnesses, shall be taxed by the Justice of the Peace before whom such prosecution shall have taken place, and the taxed account of such costs and allowance shall be annexed to the judgment, and make part thereof; and no bailiff, constable, or peace officer employed in the execution of any thing to be done in conformity to this Act, shall be entitled to more than one shilling currency for every league he shall be obliged to travel in the performance of such duty, the distance travelled in returning not being reckoned, nor to more than one shilling currency for the service of any summons or subpoena; nor to more than seven shillings and six pence currency for making a seizure under the authority of any order, or for levying any penalty under the authority of this Act: Provided always, that no bailiff, constable or officer of the peace, by whom several summonses or subpoenas shall be served in one day at the requisition of the same plaintiff, and on the same road, shall be entitled to more than one shilling currency per league for the distance travelled to serve the same, the distance travelled in returning not being reckoned, as aforesaid.

Bailiff's fees.

Proviso.

Fines how recoverable.

LVII. And be it further enacted by the authority aforesaid, that all fines, penalties and forfeitures imposed and incurred for offences against this Act, and not otherwise provided for, shall be sued and recovered on the oath of one credible witness other than the informer, or by confession of the defendant before any one Justice of the Peace for the District wherein the offence shall have been committed, and shall be levied by warrant under the hand and seal of the Justice of the Peace before whom the conviction of the offender or offenders shall be had, and by seizure and sale of the goods and chattels, and one moiety of such penalty shall go to His Majesty, his heirs and successors, and shall be paid into the hands of the Receiver General, for the public uses of the Province, and the other moiety shall go to the prosecutor, (provided always that he be not a trustee or inspector, in which case, the whole penalty shall belong to His Majesty, his heirs and successors); and the surplus of the monies levied by such sale, shall be returned to the offender after the amount of the fine and the costs of suit and execution shall have been satisfied.

Penalty against persons committing wilful perjury.

LVIII. And be it further enacted by the authority aforesaid, that every person who shall be convicted of having wilfully taken a false oath in a case wherein a Justice

tice

tice of the Peace, in the due fulfillment of his duties, pursuant to this Act, may deem it necessary to administer an oath, shall incur the pains and penalties by law provided against wilful and corrupt perjury.

Act 30. Geo. III. cap. 4 sus-
pended during
the continuance
of this Act.

LIX. And whereas the provisions of a certain Act or Ordinance, made in the thirtieth year of the Reign of His Majesty George the Third, intituled, “ An Act “ or Ordinance for preventing Cattle from going at large,” (or *l'abandon des animaux*;) are contained in this Act, and the said Act or Ordinance thereby rendered unnecessary: Be it therefore enacted by the authority aforesaid, that from and after the passing of this Act, the said Act or Ordinance, made in the thirtieth year of His late Majesty's Reign, chapter four, intituled, “ An Act or Ordinance for preventing Cattle from going at large;” (or *l'abandon des animaux*;) shall be, and the same is hereby suspended, for and during the continuance of this Act.

One copy of
this Act to be
forwarded to
each Inspector,
for his guidance.

LX. And be it further enacted by the authority aforesaid, that one copy of this Act, and no more, shall be forwarded to each of the Inspectors of fences and ditches for his guidance in the performance of the duties hereby required of him, and that every such Inspector upon retiring from office, shall transfer such copy of this Act, to his successor in office for his guidance; and that every such Inspector who shall retire from office, and shall refuse or neglect to transmit such copy to his successor in office for his guidance, shall incur a penalty of not less than five shillings, currency, nor more than ten shillings, currency.

Course to be
adopted for
preventing the
obstruction of
the navigation
of rivers occasioned
by the falling
of trees.

LXI. And whereas great inconvenience is frequently suffered, and much injury done to navigation, and to mills, and the cultivation of low lands is impeded by the obstructions occasioned by the felling of trees in rivers and rivulets, for remedy thereof;—Be it therefore further enacted by the authority aforesaid, that every person who shall fell any tree, or shall allow any tree thrown down by the wind or otherwise, to remain in and obstruct any river, rivulet or water course, shall incur a penalty not exceeding five shillings, currency, nor less than two shillings and six pence, currency, for every day during which such tree shall remain therein after the expiration of four days from the time he shall have been required by the person or persons interested, to remove the same, over and above all damages which may arise therefrom, and which may be recovered to the amount of four pounds three shillings and four pence, currency, before one Justice of the Peace, and if the damages shall exceed that sum, then before any Civil Court of competent jurisdiction.

Application of
the monies to
be accounted
for to His Ma-
jesty.

LXII. And be it further enacted by the authority aforesaid, that the due applica-
tion of the monies received for the public uses of the Province, under the authority
of this Act, shall be accounted for to His Majesty, his heirs and successors, through
the Lords Commissioners of His Majesty's Treasury, for the time being, in such
manner and form as His Majesty, his heirs and successors shall direct.

Duty of the
senior Captain
of Militia in
each Seignory
&c. in respect
of this Act.

LXIII. And be it further enacted by the authority aforesaid, that it shall be the
duty of the Senior Captain of Militia in each Seignory, Township, Parish or extra
Parochial place, to publish or cause to be published on the second, third, tenth,
twelfth, fourteenth, sixteenth, eighteenth, fifty-second, fifty-third, and sixtieth sec-
tions of this Act, at the Church door, immediately after Divine Service in the fore-
noon, or if there be no Church therein, then the most frequented place in such
Seignory, Township, Parish, or extra Parochial place, on three successive Sundays
in the month of March, in each and every year, and any such Senior Captain of Mi-
litia who shall refuse or neglect so to publish the same, or to cause them to be pub-
lished; shall for every such refusal or neglect, incur a penalty of twenty shillings,
currency.

Continuance of
this Act.

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

SCHEDULE A.

DISTRICT OF } By A. B., of the Parish, Seigniory, or Township of
 Majesty's Justices of the Peace for the District of } Esquire, one of His
 To C. D. of the (Parish, Seigniory or Township of

GREETING :—

You are hereby required, in His Majesty's name, personally to be and appear
 before me, the said Justice
 of the Peace at in the (Parish, Seigniory, or Town-
 ship) of the - day of
 one thousand eight hundred and at the hour of
 in the noon, to answer to the complaint of
 of the said (Parish, Seigniory, or Township,) of
 (Prosecutor's addition,) for having, at the (Parish, Seigniory, or
 Township) of on the day of
 one thousand eight hundred and
 (set forth the offence,) against the form of the Statute in such case made and pro-
 vided ; hereof fail not at your peril.

Given under my hand and seal, at the (Parish, Seigniory, or Township,) this
 day of one thousand eight hundred
 and

A. B.
L. S.