

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Thursday, the Fourteenth Day of February, 1822, in the Third year of the Reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. and ended on the Third Day of March, in the Second Year of the Reign of our Sovereign Lord George the Fourth, being the First Session of the Twelfth General Assembly, convened in the said Province.

3 George IV – Chapter 32

An Act for consolidating and reducing into one Act all the Acts, heretofore made, relating to Trespasses.

Be it enacted by the Lieutenant-Governor, Council and Assembly, that all fences, belonging to any enclosed lands, shall be built or made with stones, pickets, boards, logs, poles, brush, or posts and rails, unless the lands are bounded by ponds, unfordable rivers or the sea, or surrounded by good and sufficient hedges: and such fences and hedges shall be at least four feet and a half high, except on the peninsula of Halifax, where four feet in height shall be adjudged a legal fence, under this act; and if any damage be done by breaking such enclosures and destroying any of the product thereof, by horses, sheep, hogs and neat cattle, if such enclosures shall, at the time of such damage, be enclosed by a good and sufficient fence, agreeable to this law, in the judgment of the fence viewer, who is hereby appointed to view the same, the owner of such cattle, so trespassing, shall pay, to the party injured, the value of all such damages, to be ascertained on an appraisement thereof by three credible persons living in the neighbourhood, being first sworn before one of His Majesty's justices of the peace of the county where such lands lie, truly to value the same; and in case the owner of the said cattle, or hogs, shall refuse to pay the value of such appraisement, upon notice thereof given to him, the injured party may have and maintain his action therefor, before any one or more of the said justices, or before the inferior court of common pleas, according to the value of such damage.

And whereas, the owners and proprietors of fields lying adjoining to other enclosed fields do neglect to fence a proportionable part of such fields:

II. Be it enacted, by the authority aforesaid, that the proprietor of any field adjoining to another enclosed and improved, shall build up and maintain his part or proportion of fencing, with a good and sufficient fence of four feet and a half high, on that part of such land, as is adjoining to his own: and in case he neglects so to do, within the space of ten days after notice given him, it shall and may be lawful, and any one of the fence viewers, upon application being made to him, in such case, is hereby empowered forthwith to cause such deficient fence to be raised or made, or otherwise to repair any fence already made, if in his judgment the same is insufficient, and the person or persons, that of right ought to build and maintain the same, shall pay double the costs and charges expended for the closing thereof; and, in case of refusal, such fence-viewers may recover the same by action, on the case, according to the value, in manner aforesaid. Provided always, that no fence-viewer shall be

allowed more than three shillings per day in his account, for his own trouble and time expended therein. And if any fence-viewer, when notified, shall neglect his duty herein, he shall forfeit forty shillings for every offence.

III. Provided always, and be it further enacted, that nothing herein contained shall extend, or be construed to extend, to compel any owner or proprietor of any wood, barren, or burnt land, and not under improvement, to make any part of the fence against or on the said wood, barren or burnt land, any law or usage to the contrary notwithstanding.

IV. And be it further enacted by the authority aforesaid, that if any damage shall be done by breaking any enclosure, and destroying any of the product thereof, by any horses, sheep, goats, swine or neat cattle, it shall and may be lawful for the person or persons whose fence or fences shall have been so broken, and whose enclosures shall have received such damage, to cause the said horses, sheep, goats, swine or neat cattle, to be impounded until the owner or owners of such cattle, so trespassing, shall claim the same; and the keeper shall cause the same to be cried or advertised in three of the most public places in the township or settlement wherein the trespass shall be committed, as soon as may be, in order that the person or persons injured may proceed against the said owner or owners of such horses, sheep, goats, swine or neat cattle, as is directed by the first clause of this act; and the owner or owners of such horses, sheep, goats, swine or neat cattle, shall pay to the keepers of the pound, over and above the damages which shall be adjudged to have been done by the said horses, sheep, goats, swine or neat cattle, for the support of the same, for each and every day the same shall have been impounded, one shilling for each and every horse and heat of neat cattle, and six pence for every sheep, goat or swine; and if the owners of such horses, sheep, goats or swine, or neat cattle, shall refuse to pay the same to the keeper of the pound, together with the charge, of crying or advertising the same, within eight days after the same shall be impounded, the said horse or horses, neat cattle, sheep, goats or swine, shall be publicly sold, and the money arising from such sale, after deducting therefrom the pay of the keeper for supporting them, and the damages done by the horse or horses, neat cattle, sheep, goats or swine, the remainder shall be paid to the owner, and if no owner shall appear within thirty days, then to the overseers of the poor for the township or settlement wherein the trespass has been committed.

V. And be it further enacted, that if any person or persons shall rescue any swine, horses, sheep, goats or neat cattle, from any hogleave or other person, driving such swine, horses, sheep, goats or neat cattle, to the pound, the offenders shall forfeit and pay, for such rescue, the sum of twenty shillings, over and above all damages that may be sustained by the trespass of such swine, horses, sheep, goats or neat cattle; which penalty and damages shall be recovered by the oath of one credible witness, before any one of His Majesty's justices; and to be levied by warrant of distress, and sale of the offender's goods and chattles; and if any person or persons shall make any breach of the said pound, or shall, by any other indirect means, deliver any swine, horses, sheep, goats or neat cattle, out of the same, the person or persons so offending, being duly convicted thereof, before any two of His Majesty's justices of the peace, shall forfeit and pay the sum of five pounds, to be levied as

aforesaid; and the said penalties for every rescue and pound-breach, shall be paid to the overseers of the poor, for the township or settlement in which the offence shall have been committed, for the use of the poor of such township or settlement, after deducting the charges of repairing any such breach of the pound.

VI. And be it further enacted, that the justices, in their general sessions of the peace, in the several counties and districts within the province, shall be empowered, and are hereby directed, to make regulations for preventing trespasses by horses, swine, sheep, goats and neat cattle, going astray or at large, in manner as shall be most agreeable to the circumstances of the county or districts, or townships therein.

VII. And be it further enacted, by the Lieutenant-Governor, Council and Assembly, that if any person shall transgress any regulations made by the justices, in the sessions as aforesaid, for the preventing of trespasses as aforesaid, shall be subject to a fine not exceeding forty shillings, to be recovered on complaint or information before any two of His Majesty's justices of the peace, for the county wherein the offence shall have been committed, or before the sessions in the said county.

VIII. And be it further enacted, that it shall and may be lawful, for any person whatsoever, to take and seize all swine and goats, going at large within any township or settlement in the province, and upon proof thereof, on the oath of one credible witness, before any one of His Majesty's justices of the peace, for the county or district in which such township or settlement shall be situated, the same shall be by him declared forfeited, one third of the value of which to be paid to the prosecutor, and the remainder to and for the use of the township or settlement, wherein the same shall have been so seized and taken, and shall be accordingly disposed of by him for their use. Provided the general sessions of the peace shall not have made regulations to the contrary, under the provisions of this act.

IX. And be it further enacted, that if any person or persons (not being the proprietor or proprietors or having legal authority) shall throw down or remove any fence or stone wall, or any part thereof, enclosing any parcel of ground within this province, or shall carry away any rails, posts, gates, bars, boards, or any other materials, whereof fences are made, or shall level any ditches, or cut down any hedges, such person or persons shall, upon conviction thereof, before the general sessions of the peace, or before any court of record within this province, (over and above the damages given to the party injured) forfeit and pay a sum not exceeding ten pounds, one half to His Majesty, for the support of the Government of the Province, and the other half to the prosecutor; and if such person or persons shall be unable to pay the same, he or they shall be committed to the house of correction or Gaol, there to be kept to hard labour for the space of two months, or to be whipped at the discretion of the court.

X. And be it further enacted, that for all horses that shall be found astray in the town or within the peninsula of Halifax, or that shall be found trespassing therein, the owner of such horse or horses shall forfeit and pay the sum of ten shillings for each and every such horse,

over and above the damages: which forfeiture and damages shall be recovered, on proof thereof, before any one of His Majesty's justices of the peace for the county of Halifax, one half thereof to the prosecutor, and the other half to the use of the poor of the town of Halifax, and where no owner shall appear to pay the costs, damages and fine, it shall and may be lawful for the justices of the peace, who has heard and determined the same, after public advertisements given for ten days, to sell the said horse; and the surplusage, over and above the payment of the costs, damages and fine, to be restored to the owner, when he appears.

And whereas, the preservation of the trees, and under-brush, growing on the lands lying on the road leading to Fort Sackville, between the said road and Bedford Basin, has been found useful and necessary for the preservation of the said road:

XI. Be it therefore further enacted, by the authority aforesaid, that if any person or persons shall cut down, or otherwise destroy, any trees or underbrush, growing (within thirty feet of the road) on the land that lies between the said road, leading from Halifax to Fort Sackville, on that side next Bedford Basin, shall, on proof thereof, by the oath of one credible witness, before one of His Majesty's justices of the peace for the county of Halifax, be convicted, forfeit and pay the sum of forty shillings, to be levied by warrant of distress on the offender's goods and chattles: which fine, so levied, shall be applied, one half to the informer, and the other half to and for the use of the said road.

And whereas the expense attending the process in suing out replevins in the court of law in cases of trespasses by horses, neat cattle, sheep goats, and swine, where the value of the damage does not exceed three pounds, is found to be grievous:

XII. Be it therefore enacted, by the authority aforesaid, that, in all cases where a trespass, or supposed trespass, shall have been committed by horses, neat cattle, sheep, goats or swine, and that the value of the damage, alleged to be suffered shall not exceed the sum of three pounds, the same shall be heard and tried before one or more justices of the peace, who shall summon the parties before him or them, and proceed thereon as in cases of debt, to determine the amount of the damages and cost, and give judgment accordingly: any law, usage or custom, to the contrary notwithstanding.

XIII. And be it further enacted, that in all such cases where it may be necessary, the justices of the peace shall grant replevins, and take security for prosecuting the same with effect, within a term not exceeding seven days, which replevins shall be in the form following:—
“You are hereby commanded to replevy to A. B. his _____ which C. D. unjustly, as is alleged, detains, under pretence of having committed a trespass, not exceeding the sum of three pounds; and also to summon the said C. D. to be and appear before me, the _____ day of _____ at _____ o'clock in the _____ there to answer such things as shall be objected against him by the said A. B. Witness my hand and seal, this _____ day of _____ A. D.” and shall hear the merits of the case between the parties, and shall give judgment and grant

execution, as in cases of debt, and shall receive no more or greater fees than justices of the peace have been heretofore allowed in such cases.

XIV. And be it further enacted, that any person or persons who shall cut or carry away any sod or sods from off any common in the province, whereby the pasturage shall be injured, or the ground defaced, her or they shall, on conviction, forfeit and pay for every such offence, a sum not exceeding twenty shillings, to be recovered, on due proof, before any one justice of the peace, and be for the use of the prosecutor; and, in case the party convicted shall be unable to pay the fine imposed, it shall and may be lawful for such justice to commit him to the common gaol of the county, there to remain for eight days, or until he pay such fine.

XV. And be it further enacted, that such rivers, creeks, bays, harbours and inlets, of the sea, only shall be deemed sufficient and lawful fences, as in the judgment of the fence-viewers of the township or place, where such lands lie, shall be sufficiently deep and inaccessible to prevent the passing of cattle.

XVI. And be it further enacted, that it shall and may be lawful, for the justices of the peace, in the general or special sessions of the peace, at Halifax, when five justices at the least shall be attending, to make and publish, from time to time, as they may judge necessary, such regulations respecting the places and manner of slaughtering cattle, as they may think best calculated to cleanliness, and prevent risk or injury to the health of the inhabitants in the town and suburbs of Halifax, and also for the cleansing of the streets, and for disposing of, and removing, heaps of dung, ashes, or offals, which may be laid therein, and suffered to remain to the annoyance of the neighbourhood or passengers, or to the incumbrance of the streets thereof.

XVII. And be it further enacted, that all persons, whether butchers, carmen, farmers, gardners, or others, who shall offend against such regulations, after the same shall have been published in some or one of the newspapers, or proclaimed by the town crier, as the said justices may direct, shall, for each and every offence, be liable to a fine not exceeding forty shillings, to be recovered before the general sessions, or any two justices of the peace, for the county of Halifax, resident at Halifax, and to be applied by the said general sessions, to the cleansing the drains and gutters of the streets and lanes thereof.

XVIII. And be it further enacted, that all fines and forfeitures arising in the town of Halifax, from the breach of the fifteenth section of the act for repairing and mending highways, roads and bridges, and streets, and for appointing surveyors of highways, within the several townships in this province, shall in future be applied to the cleansing of the drains and gutters, of the streets and lanes of Halifax, and not to the support of the poor, any thing in the said act to the contrary notwithstanding.

XIX. And be it further enacted, that if any person or persons shall be found trespassing in any meadow, orchard, garden or fenced field, under cultivation and improvement, in any township or place in this province, with a gun, or otherwise, unless by leave of the owner or

occupier, he or they, for every such offence, shall forfeit and pay a sum not exceeding ten shillings, nor less than five shillings, with costs, to be recovered on due proof before any justice of the peace of the county or district in which such meadow, orchard, garden or fenced field, shall lie; one half for the use of the owner or occupier of the land, and the other half for the poor of the township or place where the trespasses shall be committed.

XX. And be it further enacted, that if any person or persons shall cut down or injure any tree or trees, growing on the lands of any person or persons within any township or place in this province, or carry the same away without his or their leave, he or they, for every such offence, shall forfeit and pay a sum not exceeding forty shillings, nor less than five shillings for each and every tree so cut and carried away, with costs: to be recovered on due proof, before any justice of the peace for the county or district in which such lands shall lie: one half for the use of the owner of the land, and the other half for the poor of the township or place where the trespass shall be committed.

XXI. And be it further enacted, that if any person or persons shall cut down or injure any tree or trees planted for ornament, or left growing on the sides of any of the public squares, streets or public highways, in this province, he or they shall pay for each and every ornamental tree so cut or injured, forty shillings, to be applied by the person or persons having the care or management of such public square, street or highway, in replacing or planting other ornamental trees on the sides thereof: to be recovered in the King's name, by such ways and means as are provided in and by the nineteenth section of this act. Provided always, that nothing herein contained, shall extend, or be construed, to prevent any overseer of the highways, under the order and direction of the court of general sessions of the peace, from removing and taking away any tree or trees so planted, or left growing for ornament as aforesaid, as may be injurious to the said public squares, highways or streets.

XXII. And be it further enacted, that if any person or persons, shall cut, pull down, damage, or injure, any railing, stone wall or fence, of any kind, placed on the side or sides of any public square, bridge or causeway, throughout the province, such person or persons, for each and every offence, shall forfeit and pay a penalty not less than five shillings, nor greater than forty shillings, the same to be recovered as directed in and by the twentieth section of this act, and shall be expended by the proper officer or officers in repairing the damage and injury so done.

XXIII. And be it further enacted, that in case any such trespasser or trespassers shall refuse or neglect to pay such fine or fines, it shall and may be lawful to commit him or them to the common jail of the county or district, where the fine does not exceed ten shillings, for a term not exceeding one day for every two shillings and sixpence that such fine shall exceed the said sum of ten shillings, or until such fine or fines shall be paid.

XXIV. And be it further enacted, that nothing in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act, shall extend, or be construed to extend, to take away from the party or parties injured by any trespass or trespasses therein

mentioned, any right of action at law, which he, she or they, are now entitled to have and maintain for the damage so done, against any person or persons trespassing as aforesaid; and that all prosecutions for penalties, under the provisions of this act, shall be had within six months after the offence committed, and not afterwards.

XXV. And be it further enacted, that an act, passed in the thirty-second year of the reign of George the Second, entitled, "An Act for preventing Trespasses," and all Acts since passed, in amendment, extension or alteration, of the same, or in addition thereto; and also, an act, passed in the fifty-eighth year of His late Majesty's reign, entitled, "An Act relating to Trespasses" shall be, and the same are hereby, repealed.

XXVI. And be it further enacted, that this act shall be and continue in force for two years, and from thence to the end of the next session of the General Assembly.