

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 29

An Act for preventing Trespasses

Whereas sundry disputes have arisen and may arise between the occupiers of lands lying adjoining to each other respecting the fences and inclosures of the same.

II. Be it enacted by the Governor, Council and Assembly, That the fences dividing improved lands belonging to any person or persons from improved lands belonging to any other person or persons, shall be built up, made and maintained at the joint and equal expense of the occupiers of the said lands lying on each side of such fence or line whereon the fence is to be erected on notice from the occupiers of any such lands, to the occupier of such adjoining lands which fence shall be a good strong and sufficient fence and not less than four feet six inches high. And in case any person or persons occupying such lands on receiving such notice shall neglect or refuse so to do, within ten days after due notice given him or them, it shall and may be lawful to apply to any one of the fence viewers, who is hereby empowered to view such fence, or place where the same is proposed to be erected, and to cause such part as is deficient to be made, or otherwise to repair any already made if inefficient, and the person or persons whose right it was to build and maintain the same, or any part thereof, and shall have refused, or neglected so to do, shall pay all the costs, or charges arising from such default.

III. Provided always, That no fence viewer shall be allowed more than five shillings per day for his own trouble. And if any fence viewer shall when notified neglect his duty, he shall for every such offence forfeit the sum of twenty shillings.

IV. And be it further enacted, That the justices in their quarter sessions of the peace shall and are hereby empowered to make such other regulations for preventing trespasses by horses, swine, sheep, goats, and neat cattle, as shall be most expedient and agreeable to the nature and circumstances of the several counties, towns, and parishes therein.

V. Provided always, That the owner, or occupier of any wood, barren, or burn'd land, and not under any improvement but adjoining to improved or cultivated lands, shall not be obliged to erect, or make, or maintain any part of the fence dividing such wood, barren, burn'd or unimproved land, from lands so improved or cultivated, any law, usage or custom to the contrary notwithstanding.

VI. And be it further enacted That when any damage shall be done by any horses, sheep, swine, goats, or neat cattle, by breaking any field or inclosure, fenced as aforesaid, and destroying the produce thereof the owners of such trespassing cattle shall pay to the party injured the amount of such damages to be ascertained by

appraisement of three credible freeholders where such lands lie, being sworn before a justice of peace, truly and impartially to value the same; and any such person or persons sustaining such injury may impound the said horses, sheep, swine, goats or neat cattle, and the pound keeper shall cause the same to be cried as soon as may be. And if the owners thereof shall neglect to pay such damages, as also to the pound-keeper one shilling per day for keeping each horse or neat cattle, and six pence per day for each sheep, swine, or goats, with charges of crying the same, within fourteen days after the same shall be impounded, such horses, cattle, sheep, goats, or swine, shall be publicly sold, or so many of them as may be necessary to defray the damages and charges, and the monies arising from such sale after deducting the damages and charges, shall be paid to the owner or owners thereof, and if no person appears, then to the overseers of the poor, for the use of the poor of such town or parish.

VII. And be it further enacted, That if any person or persons shall rescue any horses, cattle, sheep, goats, or swine, from any hogreeve or other person whatsoever, driving such horses, cattle, sheep, goats or swine, to pound, the offender shall forfeit for such rescue twenty shillings, over and above all damages that may be sustained by the trespass, which penalty may be recovered, before any one of his Majesty's justices of the peace, on the oath of one credible witness, and to be levied by warrant of distress, and sale of the offender's goods. And if any person or persons shall make a breach of any pound, or shall by any indirect means deliver any horses, cattle, sheep, goats or swine, so impounded, the person or persons so offending and every of them shall upon conviction before any two justices *quorum unus*, forfeit for every such offence three pounds, which said penalties shall be applied to the use of the poor after deducting damages, charges, and expense of repairing such pound breach.

VIII. And be it further enacted, That every town or parish shall be provided with a sufficient pound, or pounds, as shall be thought necessary for such town or parish or place, to be fix'd in the most convenient situation as the justices in their general sessions shall think fit, and at the expense of the inhabitants of such town or parish, to be assessed and collected, as other town or parish charges are.