

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1801.* Saint John, NB: John Ryan, Printer to the King's Most Excellent Majesty, 1801.

41 George III – Chapter 3

**An Act to repeal all the Acts now in force relating to Trespasses, and for making new Regulations to prevent the same Passed the 4th of February, 1801.**

Whereas the Acts now in force relating to Trespasses are found inconvenient, and it is necessary that new and farther regulations be made to prevent the same

I. Be it therefore enacted, by the Lieutenant Governor, Council and Assembly, That an Act made and passed in the twenty-sixth year of His Majesty's Reign, intituled "an Act for preventing Trespasses," and likewise an Act made and passed in the thirty-seventh year of His Majesty's Reign, intituled "an Act to alter and amend an Act passed in the twenty-sixth year of His Majesty's Reign, intituled an Act for preventing Trespasses" be repealed, and the same are hereby repealed.

II. And be it further enacted, That the fences dividing improved lands belonging to any person or persons from improved lands belonging to any other person or persons, shall be erected, made and maintained at the joint and equal expence 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 occupier 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 dispute shall arise between the occupiers of such lands on which the said fence should be erected, or the particular part or proportion of the fence to be erected by them, it shall and may be lawful to apply to the nearest Fence Viewer who is hereby empowered (notice being given to the parties to attend) to view such place where the same is proposed to be erected, and to determine the part or proportion that it may be equitable each of the occupiers of such improved lands should erect: And if either of the parties, after ten days notice of the determination of the said Fence Viewer, shall not make and erect his proportion of the said fence in the manner herein before directed, it shall and may be lawful for the Fence Viewer to make, or cause such part as is deficient to be made, or to authorize the other party to make the same, the labor in making such fence to be estimated at ten shillings per day for each day's labor, and recovered with costs of suit before any Court competent to try the same, together with all damages that may ensue in consequence of the neglect of the person refusing to erect his part of such fence. And where fences already made want immediate repair, the said Fence Viewer shall, on application, forthwith summon the parties concerned and view the same, and also direct such repair to be immediately made; and in case of the refusal or neglect of the party complained of, it shall be lawful for the Fence Viewer to repair such fence, or direct the person complaining to make such repair, the value thereof to be ascertained at the rate above mentioned, and recovered in the manner before directed, together, with all damages that may have arisen in consequence of the delinquent refusing immediately to repair such fence. Provided Always, that no Fence Viewer shall be allowed more than seven shillings and six pence per day for fence viewing—and if any Fence Viewer shall, when notified, neglect his duty, he shall, for every such offence, forfeit the sum of twenty shillings, to be recovered with costs by the person injured;

one half thereof to the complainant and the other half to the overseers of the Poor of the Parish where the offence is committed.

III. And be it further enacted, That the Justices in their General Sessions of the Peace shall be 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. And the said Justices are further empowered to make such regulations relating to the Islands and Low Lands in their respective Counties as they may think necessary, and to determine and order what waters or water fences shall be necessary and sufficient for the protection of the same. And if any Horses, Swine, Sheep, Goats or Neat Cattle shall be found going at large, contrary to any regulations so made, the owner or owners thereof shall forfeit and pay to the use of the Poor of the Parish where such Horses, Swine, Sheep, Goats or Neat Cattle shall be so found going at large, a fine not exceeding five shillings for each and every of them so found going at large as aforesaid, to be recovered on complaint to a Justice of the Peace, who is hereby empowered to hear and determine the same, provided the said complaint be prosecuted within one month.

IV. Provided always, and be it further enacted, That the owner or occupier of any wood, barren, or burned 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, burned or unimproved Land from Lands so improved or cultivated; any law usage or custom to the contrary notwithstanding.

V. 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 enclosure fenced as aforesaid, or on the Islands and Low Lands contrary to any regulations so made, and destroying the produce thereof, the owner or 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 the 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 advertised 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 Goat, with charges of advertising 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.

VI. And be it further enacted, That if any person or persons shall rescue any Horses, Cattle, Sheep, Goats or Swine from any Hog-reeve 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 levied by Warrant of Distress and sale of the offender's goods. And if any person or persons shall make a breach of any Pounds 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 Units,) forfeit for every such offence three pounds; which said penalties shall be paid and applied one half to the person prosecuting, and the other half to the use of the Poor, after deducting the damages, charges, and expence of repairing such Pound breach.

VII. 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, to be fixed in the most convenient situation as the Justices in their General Sessions shall think fit, and at the expence of the Inhabitants of such Town or Parish, to be assessed and collected as other Town or Parish charges are.