

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1831. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1831.

1 William IV – Chapter 9

An Act to repeal all the Acts in Force relating to Trespasses, and to make more effectual Provision for the same. Passed 25th March 1831.

Whereas the Laws now in Force relating to Trespasses have been found ineffectual:

I. Be it therefore enacted by the President, Council, and Assembly, That an Act made and passed in the Forty first Year of the Reign of King George the Third, intituled *An Act to repeal all the Acts now in Force relating to Trespasses, and for making new Regulations to prevent the same*; likewise the Twenty fifth, Twenty sixth and Twenty seventh Sections of an Act made and passed in the Fiftieth Year of the Reign of King George the Third, intituled *An Act to regulate the Proceedings in Actions of Replevin, and to enable the Sale of Goods distrained for Rent*, in case the Rent be not paid in a reasonable Time, and for the more effectual securing the Payment of Rents, and preventing Fraud by Tenants; also an Act made and passed in the Fifty fourth Year of the Reign of King George the Third, intituled *An Act in Amendment of an Act, intituled An Act to repeal all the Acts now in Force relating to Trespasses, and for making new Regulations to prevent the same*; likewise an Act made and passed in the Second Year of the Reign of His late Majesty King George the Fourth, intituled *An Act to amend the Laws now in Force relating to Trespasses, and to make further Regulations to prevent the same*; and likewise an Act made and passed in the Third Year of the Reign of His late Majesty King George the Fourth, intituled *An Act further to amend the Laws now in Force relating to Trespasses*, be and the same are hereby repealed.

II. And be it further enacted, That the Fences dividing improved Lands shall be erected, 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 to the Occupiers of the 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, on the particular Part or Portion 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 Portion that it may be equitable each of the Occupiers of such improved Lands should erect; and if either of the Parties, after Six Days' Notice of the Determination of the said Fence Viewer, shall not make and erect his Portion of the said Fence in the Manner herein before directed, it shall and may be lawful for the Fence Viewer to employ any Person to make such Fence, who shall be paid for his Labour in making such Fence at the rate of Seven Shillings and Sixpence per Day, besides the Expense of procuring Materials for the same; all which shall be recovered from the Person refusing to erect his Part of such Fence, in the Name of the Person so employed by the Fence Viewer, with Costs of Suit, before any Court competent to try the same; and where Fences are already made and wanting immediate Repair, the said Fence Viewer shall, on Application, forthwith summon the Parties concerned, and view

the same, and also direct such Repairs 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 from the Person refusing or neglecting to repair such Fence: Provided always, that no Fence Viewer should be allowed more than Seven Shillings and Sixpence per Day for Fence-viewing, to be paid by, and in case of Refusal to be recovered from, the Party who shall have neglected to keep his Fence in Repair, or who shall neglect or refuse, when so ordered by the Fence Viewer, to repair the same; and if any Fence Viewer shall, when notified, neglect his duty, he shall for every such Offence forfeit the Sum of Two Pounds, 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, towards the Support of the Poor of the said Parish.

III. And be it further enacted, That the Justices in their General Sessions of the Peace shall be and they 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 Regulation relating to the Islands, Low Lands and Meadows in their respective Counties as they may think necessary, and to determine, and order what Waters and 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 such Rules and Regulations so to be made by the Justices in their General Sessions, it shall and may be lawful for the Hog Reeve, or other Parish Officer to be by them named and appointed for that Purpose, to take up and impound in the Parish Pound any Horses, Swine, Sheep, Goats and Neat Cattle found going at large contrary to any Regulations so to be made, and shall and may receive a Sum, to be specified in such Regulations, not exceeding Five Shillings for each and every Beast so taken up and impounded, to be paid together with the Charges of the Pound Keeper by the Owner or Owners of such Beast before the same shall be delivered from the Pound.

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 Customs to the contrary notwithstanding.

V. And be it further enacted, That it shall and may be lawful for the Justices of the Peace, in their General Sessions, to divide each Town or Parish into as many Districts as shall be thought necessary, and that a sufficient Pound shall be built in each District; and in case the Inhabitants of such Districts shall not build the Pound by Subscription or otherwise, the Justices may authorize an Assessment upon the Inhabitants of such District for the building of a Pound, to be assessed and collected as other Town or Parish Charges are.

VI. And be it further enacted, That when any Horses, Sheep, Swine, Goats or Neat Cattle shall break into any Field or Enclosure under lawful Fence, or into any of the Islands, Low Lands or

Meadows in the respective Counties, contrary to any Regulations made or to be made under and by virtue of the Third Section of this Act, or shall be found trespassing therein, the Owner or Owners of any such Beast so trespassing, shall forfeit and pay, to the Use of the Poor of the Town or Parish wherein the Lands lie, a Fine of Five Shillings per Head for Horses, Neat Cattle, Swine or Goats, and a Fine of One Shilling for each Sheep so breaking or found trespassing as aforesaid, to be recovered with Costs of Prosecution before any One of His Majesty's Justices of the Peace, and shall also pay to the Party injured the Amount of any Damages sustained by such Trespasses, to be ascertained by Three credible Freeholders where such Lands lie, being sworn before any Justice of the Peace truly and impartially to value the same; and the Party injured may impound each and every such Beast so trespassing, and the Pound Keeper shall cause the same to be advertised in Three of the most public Places in the Neighbourhood of the Pound, and if the Owner or Owners thereof shall neglect to pay such Fine, Costs and Damages, and also to the Pound Keeper Two Shillings per Day for each Head of Horses or Neat Cattle, and Sixpence per Day for each Sheep, Swine or Goat, with Charges for advertising the same, within Fourteen Days after the same shall be impounded, such Beast or Beasts shall be publicly sold, or so many of them as may be necessary to defray the said Fine, Costs, Damages and Charges, and the Overplus (if any) shall be paid to the Owner or Owners thereof; and if the Owner or Owners do not appear within Fourteen Days to demand the same, then to be paid 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 Beast or Beasts, so found trespassing as aforesaid, from any Hog Reeve or other Person whatsoever driving or leading such Beast or Beasts as aforesaid to Pound, each and every Offender shall forfeit for such Rescue the sum of Five Pounds, 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 in case sufficient Distress cannot be found whereon to levy the same, then such Offender or Offenders shall be committed to the common Gaol or House of Correction of the County, there to remain without Bail or Mainprize for a Term not exceeding Fifteen days; and if any Person or Persons shall make a Breach in any Pound, or if any Pound Keeper or any other Person or Persons shall unduly, or by any indirect Means, deliver or set at large any Beast so impounded, such Pound Keeper or other Person or Persons so offending, and every of them, shall, upon conviction before any Two Justices Quorum Unus, forfeit for every such Offence Ten Pounds, and in case sufficient Distress cannot be found whereon to levy the same, such Offender or Offenders shall be committed to the common Gaol or House of Correction of the County, there to remain without Bail or Mainprize for a Term not exceeding Thirty Days; and that the several Penalties in this Section mentioned, shall upon Recovery be paid and applied, One Half to the Person prosecuting, and the other Half to the use of the Poor, after deducting the Charges and Expenses of repairing such Pound Breach.

VIII. And be it further enacted, That all good, strong and sufficient Fences, Four Feet Six Inches in Height, shall be deemed and adjudged lawful Fences under this Act: Provided always, that nothing in this Act contained shall prevent the Provisions of this Law from taking Effect in any Case Where it shall appear that the Breach into any Field has been made in a Place where the Fence is lawful:

And provided also, and be it further enacted, That in Cases where it shall be made to appear that the Trespass has been committed by breaking through that Part of a Division Fence which the Owner of the trespassing Cattle or Swine ought to keep in Repair, the Want of Reparation or Defect of such Fence shall not be deemed, taken or considered to be any Excuse for such Trespass; any Thing herein contained to the contrary notwithstanding.

IX. And Whereas the Expenses attending the Process in suing out Replevin in the Courts of Record in Cases of Trespasses by Horses, Neat Cattle, Sheep, Goats and Swine, where the Value of the Damage does not exceed Five Pounds, should be prevented; Be it further enacted, That in all Cases where a Trespass or supposed Trespass shall have been committed by Horses, Neat Cattle, Sheep, Goats or Swine, and the Value of the Damage alleged to be suffered shall not exceed the Sum of Five Pounds, the same shall be heard and tried by One Justice of the Peace, in the same Manner, and agreeable to the Provisions of an Act for the more speedy Recovery of small Debts.

X. And be it further enacted, That in all such Cases as aforesaid, where it may become necessary, any Justice of the Peace in the County shall grant a Replevin in Manner and Form following, to wit:

'To either of the Constables of the Parish of _____.
You are hereby commanded to replevy A. B. his _____ which C. D. unjustly, as is alleged, detains under Pretence of having committed a Trespass not exceeding Five Pounds; and also to summon the said C. D. to be and appear before me, on the _____ day of _____ at _____ o'Clock in the _____ noon, then and there to answer such Things as shall be objected against him by the said A. B.
Witness my Hand and Seal the _____ day of _____ 183__ .
_____ J. Peace.'

and on Return thereof, shall hear the Merits of the Case between the Parties, and shall give Judgment and grant Execution as in other Cases to the same Amount, and shall receive no more nor greater Fees than in such other Cases as aforesaid.

XI. And be it further enacted, That every Constable who may be required to serve such Writ of Replevin, before proceeding to execute the same, shall take from the Person to whom the said Replevin is granted, a Bond in a Sum not exceeding Five Pounds, with Two sufficient Sureties, to prosecute such Replevin with Effect within Seven Days; and in case the said Party should fail to prosecute the said Replevin within the Time specified, the said Constable is hereby authorized and required to assign the said Bond to the Defendant, who is hereby authorized and empowered to sue for and recover the same in his own Name, in any Court competent to try the same.

XII. And be it further enacted, That the Bond so described to be taken by the Constable in the preceding Section shall be in the Form following, to wit:

'We A. B. of _____, C. D. of _____, and E. F. of _____, are jointly and severally bound to G. H. Constable of the Parish of _____

_____, in the Sum of _____, to be paid to the said Constable, his Executors,
Administrators or Assigns.

Sealed with our Seals, and dated this _____ Day of _____ 183__.

The Condition of the above Obligation is such, that if the above bound A. B. shall appear before J. K. a Justice of the Peace for the County of _____, (or before, the Clerk's Court in the City of Saint John, as the Case may be,) on _____ (here insert the Time and Place specified in the Replevin,) and do prosecute his Suit with Effect against L. M. for taking and unjustly detaining his Goods, (here the same are 'to be enumerated,) and do make Return, if a Return shall be adjudged by the said Justice (or in the Clerk's Court in the City of Saint John, as the Case may be) then the said Bond to be void, otherwise to be in Force and Effect.

XIII. And be it further enacted, That the Clerk's Court in the City of Saint John shall have the like Powers as are given in the Two last preceding Sections to a Justice of the Peace, and shall and may proceed in the like Cases, according to the Form and Course of Proceeding in the said Clerk's Court.