

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1837.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1837.

7 William IV – Chapter 10 (Session 1)

**An Act to regulate the exportation of Lumber. Passed 1st March 1837.**

I. Be it enacted the Lieutenant Governor, Legislative Council and Assembly, That from and after the first day of April next, no lumber of the descriptions hereinafter mentioned shall be shipped for exportation from this Province until the same has been surveyed and measured, under the penalty for every offence not exceeding fifty pounds nor less than five pounds currency, to be forfeited and paid by the person or persons who knowingly shall have shipped or caused the same to be shipped for exportation, without having been so surveyed and measured.

II. And be it enacted, That it shall and may be lawful for the Justices of the Peace in each County, at their first General Sessions annually, to appoint a sufficient number of fit persons in their respective Counties to be surveyors of lumber in each County, Town or place where such may be necessary; which persons so appointed shall enter into bonds to His Majesty, his heirs and successors, in the sum of one hundred pounds, with two good and sufficient sureties in the sum of fifty pounds each, conditioned for the due performance of his duty as surveyor of lumber, to be filed in the office of Clerk of the Peace in such County, and shall take and subscribe the following oath before one of His Majesty's Justices of the Peace, or before the Clerk of the Peace for the County in which he may be appointed, either of whom is hereby authorized and required to administer the same without any fee, that is to say:

'I do solemnly swear that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute, do and perform the office and duty of a surveyor of lumber, according to the true intent and meaning of an Act, intituled "An Act to regulate the exportation of lumber;" and that I will give a true and faithful account of the number, dimensions or measurement of all such lumber as may be submitted to my inspection, according to the best of my knowledge; and that I will not survey any lumber in which I may be directly or indirectly interested, otherwise than for the compensation prescribed in the said Act; and that I will not change any article of lumber that may be delivered or intrusted to me for the purpose of being so surveyed.'

Which affidavit every Surveyor so appointed and sworn shall deliver unto the Clerk of the Peace for the County in which he shall be appointed, together with the private mark which he shall adopt; and the said Clerk of the Peace is hereby required to grant a certificate to every such person of his having taken and subscribed the said oath, and of his having filed the said bond, and to furnish him with a copy of this Act, for which copy so furnished he is to receive one shilling from the Sessions of said County; and it shall be lawful, for them to survey lumber in any part of the County in which they shall be appointed, and it shall be their duty respectively, personally, diligently and carefully to ascertain the qualities of the articles submitted to their inspection, and after rejecting all such as in their opinion may appear objectionable under this Act, so far as the same can be then ascertained, (of which each surveyor is hereby required to provide himself with

and retain a copy,) they shall when required furnish the buyer and seller each with a true and faithful account, in writing, of the number, length, dimensions or measurement of the articles they shall respectively find to be merchantable: Provided always, that when any dispute shall arise between the buyer or seller and the Surveyor, and a re-survey shall be required, it shall and may be lawful for the party requiring such re-survey, and for the said Surveyor respectively, to choose one disinterested Surveyor duly appointed under this Act, which two Surveyors so appointed shall choose a third disinterested Surveyor duly appointed under this Act, whose duty it shall be to examine and re-survey said lumber, and the decision of the said three Surveyors or of any two of them as to the said re-survey shall be final and conclusive; and when such dispute shall arise between the buyer and seller, it shall and may be lawful for the party who shall have had the choice of the first Surveyor to choose one disinterested Surveyor, and for the other party to choose two disinterested Surveyors, which said three Surveyors so chosen shall proceed to examine and re-survey the said lumber, and the decision of the said three Surveyors or of any two of them shall be final and conclusive; and should the original survey be confirmed, then and in such case the person requiring said re-survey shall pay the expenses thereof; and should the said original survey not be confirmed, then and in such case the expenses of the said re-survey shall be paid by the person requiring such re-survey, who shall and is hereby authorized to recover the same again from the first Surveyor: Provided also, that if any Surveyor shall pass any article of lumber contrary to the provisions of this Act, such Surveyor so offending shall be liable to the party injured for all damages sustained, by him or them, and be subject to the following penalties, namely: for every forty cubic feet of timber so passed, the sum of two shillings and sixpence; for every thousand superficial feet of plank, deals, boards or scantling, the sum of five shillings; for every spar, the sum of one shilling; for every thousand shingles, the sum of two shillings and sixpence; for every thousand staves, the sum of five shillings; for every cord of lathwood, the sum of two shillings and sixpence; and if any Surveyor appointed under this Act shall at any time wilfully change any article of lumber submitted to him for inspection, or to be surveyed, by substituting any other article of lumber, he shall upon due conviction thereof incur a penalty not exceeding fifty pounds nor less than five pounds, to be recovered as hereinafter prescribed in the ninth section of this Act; Provided also, that if any Surveyor shall at any time be found guilty of wilful neglect of duty, or of partiality in the execution of his office, or of wilfully giving a false account of the article or articles submitted to him for inspection, the conviction for any such offence shall be deemed and taken to be a dismissal from his office as Surveyor.

III. And be it enacted, That all square timber shall not be less than ten inches square nor shorter than sixteen feet, except pine timber over sixteen inches square and hardwood over twelve inches square, which may be twelve feet long, to be squared and smoothly hewed, and free from knotty tops, plugs; rots, rotten or concase knots, decayed sap and worm holes, to be square butted and the taper not to exceed one inch for every eighteen feet in length, the wane not to exceed one inch on each and every corner where the square is under sixteen inches, and from sixteen to twenty inches square on each and every corner two inches wane, and from twenty one inches square and upwards, three inches wane on each and every corner; and in order to ascertain the contents of such timber, the Surveyor shall girt or measure the same at the middle of the stick, and the difference of the squares between any two of the sides shall not exceed two inches; and no log shall have a sweep unless it has two straight sides, and such sweep shall not exceed the rate of five

inches to every forty feet in length: Provided nevertheless, that all pine timber over sixteen inches square, smoothly hewed and free from the knots and defects aforesaid, shall be deemed merchantable if over twelve feet long: all merchantable boards shall be seven eighths of an inch thick; and all boards, plank, deals and scantling shall be square edged with the saw; no board or plank shall be deemed merchantable if split at both ends, or have one continued split of more than two feet at one end that is less than twelve feet long and nine inches wide and that is not sawed of equal thickness throughout; all merchantable boards, plank, deals and scantling shall be free from rots, bad or large knots (not exceeding two of two and a half inches diameter), rents, shakes, worm holes, wane and auger holes; and purchasers shall not be obliged to take planks with boards unless by special agreement; and the breadth of boards, plank and scantling to be taken at the middle for measurement; clear boards may be sawed out of the round logs without being edged (optional with the party manufacturing the same), to be free from rots, knots, rents, shakes, worm holes and auger holes, the width of which for measurement to be taken at the centre, inside of and not including the wane and dark sap: Masts shall not be less than three feet and one fourth of a foot in length to every inch of diameter, to be hewed smoothly and reduced sufficiently to shew the real wood free from sap on the centre of all the four sides at the partners, to be as small at the butt as at the partners and of proportionate and full size at the top, to be straight, free from rot, ring shakes, butt rots, concase or rotten knots, large knots at the top, bark on the waness, auger holes and other defects, to be square butted, the diameter for measurement to be taken at the partners one third from the butt, exclusive of sap: Spars shall be of straight growth, free from large knots, rots and other defects, to be of proportionate size at the top with the butt, to be square butted and the diameter for measurement to be taken one third of the length from the butt, exclusive of bark, and to be four and one half feet in length for every inch of diameter where the spar exceeds nine inches in diameter, and five feet at least for all spars under nine inches diameter: Lathwood shall be of straight rift, free from bark, hearts, knots and rots, to be measured by the cord of four feet high and eight feet long, and piled as close as it can be laid: pine Shingles shall be eighteen inches long, not less than four inches wide and three eighths of an inch thick at the butt, free from sap, rot and worm holes, to be put up in bundles not less than twenty five tiers or courses of twenty inches wide, four of which bundles shall be reckoned a thousand; cedar Shingles for exportation shall be twenty two inches long and half an inch thick at the butt, the said thickness to be continued three fourths of the length, and shaved from thence to the point, to be from four to four and one half inches in width, and the account shall be taken by tale of ten hundred to the thousand, and that all pine shingles manufactured in the same manner for exportation shall be subject to the like rules and regulations, the whole of which cedar and pine shingles for exportation to be free from the defects above mentioned relative to shingles: hogshead Staves shall be forty two inches long, three fourths of an inch thick on the thinnest edge, and not exceeding one and one eighth inches thick on the back, and shall also be from three and one half to five and one half inches wide: barrel Staves shall be thirty two inches long, half an inch thick on the thinnest edge, and not exceeding seven eighths of an inch thick on the back; the whole to be of good rift, free from twists, fairly split and free from knot holes, rotten knots worm holes and shakes, and the account shall be taken by tale of twelve hundred to the thousand.

IV. 'And whereas certain articles of lumber are measured afloat and cannot conveniently be inspected;' Be it therefore further enacted, That when such lumber or any part thereof shall prove

unmerchantable, it shall be the duty of the purchaser or purchasers of such lumber to give the seller or sellers, or his or their agent, ten days notice that such lumber has so proved unmerchantable, in order that the same may be removed; and if the seller, or sellers or his or their agent shall not within the time of such notice given as aforesaid, apply for such lumber and remove the same from the possession of such purchaser or purchasers, then the said purchaser or purchasers shall and he or they are hereby required to call upon the Surveyor who first measured such lumber or some other Surveyor, which Surveyor shall examine the said lumber so found defective, and take an account of the marks and contents of the same, and the purchaser shall put or cause the said lumber to be put in merchantable order under the superintendence of such Surveyor, by having the same overhauled, lined, hewed, sawed or repaired in any way that may be thought advisable by such Surveyor, and the purchaser or purchasers shall be at liberty to charge the seller or sellers of such lumber with the expense of putting the same in order as aforesaid, and with any deficiency thereon; which said expenses and deficiency shall be kept account of and estimated by such superintending Surveyor: Provided always, that no purchaser or purchasers of any lumber shall be allowed to have the same repaired or re-surveyed at the risk or expense of the seller or sellers after he has had the same in possession more than twelve months; and provided also, that the seller or sellers of any lumber, in order to avail himself or themselves of the provisions contained in this section, if he or they reside more than twenty miles from the place where such sale is made, shall at the time of making sale of any such lumber nominate and appoint an agent or agents to attend to such unmerchantable lumber, and the person or persons so nominated and appointed agent or agents shall be made known to the purchaser of such lumber at the time of such sale and purchase.

V. 'And whereas some evil disposed persons are in the habit of plugging or wedging timber and masts, for the purpose of passing such timber, masts or spars by such deceptions as merchantable;' Be it therefore enacted, That any person or persons convicted of plugging any timber, spars or masts, when any defect is covered by such plugging or wedging, shall be liable to pay a fine of five pounds currency for each and every offence.

VI. And be it enacted, That each of the Surveyors so appointed shall mark or score in large and legible figures or characters, on one of the sides near the butt end of each piece of timber inspected by him, his own mark the length, the purchaser's mark and contents, and shall at the place of girting the same, mark or score the girth thereof for measurement; masts and spars shall be marked in the same manner, having instead of the contents the diameter at the partners: Provided always, that any person or persons adopting or using the private mark of any Surveyor of lumber under this Act, by placing the same upon any piece of timber, scantling, mast, spar or other article of lumber, other than such Surveyor of lumber, shall be for each and every such offence liable to the penalty of five pounds currency, to be sued for and recovered as is prescribed in all penalties of the like amount in this Act.

VII. And be it enacted, That the persons so appointed Surveyors as aforesaid shall respectively be entitled to ask, demand and receive for their skill and labour in surveying, marking and re-surveying, at and after the following rates, (that is to say): for every forty cubic feet of timber, fourpence; for every thousand superficial feet of deals, plank, scantling and boards, one shilling;

for masts under seventeen inches diameter, one shilling and sixpence each, and if larger, two shillings each; for spars under six inches diameter, twopence each; being nine inches diameter and upwards fourpence each; for lathwood, one shilling and threepence per cord; for pine shingles, ninepence per thousand; for cedar shingles, one shilling per thousand; for hogshead staves, three shillings per thousand; and for barrel staves, one shilling and sixpence per thousand: which rates for the survey of merchantable lumber shall be paid by the first buyer after the survey, provided it be purchased within four months, and should it not be purchased within that term, the Surveyor to be paid by the person who employed him; and the seller shall remove or cause to be removed at his own expense whatever may obstruct or prevent the Surveyor from ascertaining with facility the measurement, manufacture or quality of any article of lumber, and when required the same shall be canted, and should the seller or sellers refuse or neglect to do the same, it shall and may be lawful to do so or cause it to be done, and to charge the seller with the necessary expense of the same, which expense to be sued for and recovered in any Court competent to try the same.

VIII. And be it enacted, That if any person appointed to be a Surveyor in any Town or Parish or any other person whatsoever, shall measure or survey any lumber intended for exportation before filing bond or taking the oath required in and by the second section of this Act, such person so measuring or surveying any lumber as aforesaid shall upon conviction thereof forfeit and pay the sum of five pounds.

IX. And be it enacted, That one half of the forfeitures or fines arising by virtue of this Act shall be paid to the person or persons who shall sue for the same, and the other half to the overseer of the poor of the Parish in which such forfeitures shall have been incurred for the use of the poor of said Parish; and where any of the penalties imposed by this Act shall not exceed five pounds, they shall be recovered together with the costs of prosecution before any one of His Majesty's Justices of the Peace of the County in which the offence shall be committed, and where the same shall be more than five pounds and shall not exceed ten pounds, before any two of His Majesty's Justices of the Peace on the oath of one or more credible witness or witnesses, by warrant of distress and sale of the offenders goods and chattels (which warrant to be under the hand and seal of such Justice or Justices), and for want of sufficient distress shall suffer not less than ten days nor more than thirty days imprisonment; and in case such forfeiture or the value thereof shall exceed ten pounds the same shall be recovered in any of His Majesty's Courts of Record competent to try the same, with costs of suit.

X. And be it enacted, That all prosecutions by virtue of this Act shall be commenced within twelve months from and after the time any offence shall have been committed.

XI. And be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent the exportation of lumber of other qualities not merchantable, provided always that such lumber be actually shipped as of its proper denomination.

XII. And be it enacted, That this Act shall commence and come into operation on the first day of April in the present year, and shall continue and be in force until the first of April one thousand eight hundred and forty.