

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbyshire & George Desbarats, 1857.

20 Victoria – Chapter 40

An Act to amend the several Acts to remedy abuses prejudicial to Agriculture. Assented to 10th June, 1857.

Whereas it is expedient to consolidate into one general Act, the several Acts to remedy abuses prejudicial to Agriculture: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The following Acts are hereby repealed:

1. *An Act to repeal two certain Acts therein mentioned relating to agriculture, and to provide for the remedy of abuses prejudicial to agriculture*: Passed in the thirteenth and fourteenth years of Her Majesty's reign, chapter forty;

2. *An Act to amend an Act passed in the thirteenth and fourteenth years of Her Majesty's reign, relating to agriculture in Lower Canada, in so far as the said Act concerns navigable rivers and rivulets and the banks thereof, used in the floating and conveyance of wood and timber*: Passed, in the fourteenth and fifteenth years of Her Majesty's reign, and chaptered one hundred and two;

3. *An Act to amend the Act intituled, An Act to repeal two certain Arts therein mentioned relating to agriculture, and to provide for the remedy of abuses prejudicial to agriculture*: Passed in the sixteenth year of Her Majesty's reign, and chaptered two hundred and ten;

4. And all other laws, acts and ordinances, contrary to this Act; this Act, however, shall in no respect affect the powers and duties of the Municipal Councils, whether local or County.

Chapter I.

Damages caused by individuals to the property of others.

II. 1. No person shall enter upon or pass over the land of another without permission of the owner or his representative, upon pain of incurring a fine of not less than five, nor more than thirty shillings, excepting, however, any person in the discharge of any of the duties imposed by law;

2. It shall be lawful, nevertheless, to make use of any navigable river or water-course, and the banks thereof, for the conveyance of all kinds of lumber, and for the passage of all boats, ferries and canoes, subject to the charge of repairing, as soon as possible¹, all damages resulting from the enjoyment of such right, and all fences, drains or ditches which may have been so damaged;

3. It shall be lawful for the proprietor, or his representative or servant, to arrest without warrant any person in the act of contravening the first section, and to bring him forthwith before a Justice of the Peace;

III. 1. Any person who shall during the day, upon the property of any other person, leave any gate open, take down, cut, break, remove or damage any fence, cut or destroy any hedge, cut, shatter, break down, remove or damage any tree, shrub, or plant, remove any canoe, landing-place, ferry or boat from the bank of any river or other place, or shall burn or remove from such bank, any wood, shall incur a penalty of not less than five, nor more than thirty shillings; if such offence be committed during the night, the penalty shall be doubled, and in either case he may be condemned to the payment of damages;

2. Any person who shall have pulled down or removed any part of a fence, or who shall be found upon any land, highway or road, having in his possession any part, of the materials of any fence, may be arrested without any warrant, either by the owner or one of his servants, or by any person cognizant of the offence, and brought before any Justice of the Peace, who may imprison him with a view to further examination, for any period not exceeding twenty-four hours, or admit him to bail if he can furnish it to the satisfaction of the Justice of the Peace;

3. The person so arrested may, however, arrange with the proprietor or complainant, and may be discharged upon payment of all costs, damages and penalties theretofore incurred.

IV. If the person contravening the provisions of this Act be a stranger, or possess no real property in the Parish or Township, and have no means of paying the fine, damages, and costs of conviction, it shall be lawful for the Justice of the Peace to order that the defendant, should be confined in a place of security until the return of the writ of seizure shall have been made, or until he shall produce sufficient security, as provided by section nineteen of the Act fourteenth and fifteenth Victoria, chapter ninety-five.

Chapter II.

Damages caused by Animals.

V. No person shall be allowed to permit his horses, mules, homed cattle, sheep, goats, pigs, fowls, or other animals to stray upon the property of another, without the permission of the owner or tenant, nor on the bank of any stream, nor on the public roads or places, subject to the penalties following:

For each Stallion not under two years of			
	age, not less than £1 5s. nor		
	more than	£2	10 0
"	" Bull, boar, or ram not less than		
	5s. nor more than	1	0 0
"	" Gelding, mare, ox, cow or hog	0	1 3
"	" Colt, filly, calf, or goat	0	1 0
"	" Sheep	0	0 6
"	" Goose, duck, turkey, or other		
	poultry	0	0 3

And such penalties Shall be doubled for the second offence, whether or not any arrangement shall have been come to between the parties, or judgment shall have been rendered.

VI. Any person who shall allow a pig to stray, without having ringed it, shall pay a fine of not less than five, nor more than ten shillings.

VII. 1. The owner or tenant of any land shall be responsible for damages caused by any animal he may receive to pasture, as though it were his own property;

2. If the animal cause damage, the complainant may give verbal notice of his complaint by speaking to any reasonable person in the house built upon the land on which the animal is at pasture, or at the domicile of the person who has received the animal to pasture, by speaking to him personally or to any reasonable member of his family.

VIII. 1. Any person who shall have suffered damages caused by any horses, mules, cattle, poultry or other domestic animals, may make complaint thereof, before any Justice of the Peace, either for the damages only or for the penalty and, the damages together, and if the Justice of the Peace shall be convinced that no damage has been caused (if the action is only brought for damages), he shall dismiss the complaint and condemn the complainant to the payment of costs;

2. But if the action is brought for both penalty and damages, he shall condemn the offender to costs; provided that any part of such complaint be well founded; if, however, the complaint is unfounded, except in so far as it relates to the penalty, and costs have been incurred to ascertain the damages, he shall only condemn the offender to the costs of the complaint and the penalty, and the complainant to the costs incurred to ascertain the damages;

3. If the Justice shall have reason to believe that damages have been done, he shall forthwith order the parties contesting, unless they shall forthwith arrange the matter in dispute between them in his presence, each to name an *expert*, and the Justice himself shall appoint a third, and the two others also, if the parties refuse to name them; The *experts*, if so named, shall proceed as soon as possible to ascertain the damages in the presence of the parties, or in their absence after having given them

special notice, and they shall report in writing to the Justice of the Peace the conclusion arrived at by them in the matter;

4. The Justice of the Peace after notifying the parties, and having heard them, if present, either in favor of or against the report, shall award to the complainant, the amount of damages set forth in the report, together with the costs of inspection, return and prosecution, to be taxed by such Justice, and may cause the amount to be raised in the manner hereinafter prescribed;

5. If, however, before making complaint to a Justice of the Peace, the party who has suffered the damages and the party against whom complaint is laid shall voluntarily consent to abide by the decision of *experts* to be named by themselves, the decision of such *experts* shall be binding upon both parties; But if the two *experts* in case of contrary opinion are unable to agree as to the selection of a third, any Justice of the Peace upon the application of one of the parties may appoint a third *expert*;

6. If the party condemned shall neglect or refuse to pay the sum fixed by the *experts*, such party may be sued by the person to whom such sum is payable or by his representative, before any Justice of the Peace.

IX. 1. Any owner or occupier of land, or his servants or representatives, and any inspector may seize and impound where public pounds exist, or take and retain at his own place of abode any animal he may find wandering upon his property or in the public roads or places, or on the banks of any stream, until the owner of such animal shall have paid the fines, damages and costs imposed by this Act, as the case may be.

2. The person who shall have confined such animal shall be bound to provide it with proper food, in sufficient quantity, and to give it water and take proper care of it under a penalty of two shillings for each day during which he shall neglect to do so, besides the damages occasioned by such neglect. This penalty, and these damages, if any, shall belong to the owner of such animal, and may be recovered by him before a Justice of the Peace if the person who shall have confined the animal refuse or neglect to pay them after having been required so to do;

3. If the owner of such animal be unknown to the person who has taken it in possession, such person shall give public notice on two consecutive Sundays at the door of the Church, in the Parish or Township, and if there are more Churches than one, then at the door of the Church which is nearest to the locality in which such seizure has been effected, that the animal so taken by such party will be sold at such a time, hour and place, unless the owner shall, before that time, claim back his property;

4. If the owner does not reclaim his property before the Monday following the day on which the last notice shall have been given, and pay the fine, costs and damages, the animal shall be sold on the said Monday by one of the inspectors, who shall have been notified to that effect by the party seizing;

5. If, however, the owner reclaims his animal at any time soever between the date of the seizure and the Monday after the day on which the last notice shall have been given, he shall, in such case be bound to pay the costs and damages as well as the fine;

6. The inspector shall receive the proceeds of the sale and thereout shall pay the fine, the costs of all kinds as estimated by a Justice of the Peace, and the damages, and shall remit the balance to the Secretary-Treasurer of the Parish or Village Municipality in which such contravention shall have been committed, as the case may be; The Municipality shall be bound to pay over such balance to the owner, if such owner shall come to the knowledge of such Municipality within the period of one year, but if not, shall retain the amount for the improvement of bridges, roads and works under its control;

7. The inspector shall render an account to the Secretary of the Village or Township Municipality in which such contravention shall have taken place, of the due application of the moneys arising out. of the sale of the said animal, within thirty days after such sale, upon payment of the line imposed by this Act;

8. But if the person know the owner of the animal seized by him, he shall give him notice thereof, as speedily as possible, and if such owner do not reclaim his animal and pay the fine, damages and costs, as the case may be, within twenty-four hours, the difficulty shall be arranged as provided by the second, third, fourth and fifth paragraphs of this section; but if the sale of such animal do not realize sufficient to pay the penalty damages and costs, as the case may be, the offender shall nevertheless be bound to pay any balance remaining due;

9. In any case it shall not be obligatory to seize and confine fowls or other species of domestic poultry, to be entitled to claim damage, but only to prove by one credible witness, other than the complainant, that they have really caused the damage complained of; nevertheless whoever chooses to seize them shall be entitled to do so.

X. 1. The inspector shall be entitled to refuse the offers or bids at the sale of any animal, of any person who is unknown or insolvent, or a stranger to the parish or township in which the sale is held, unless he give security to the satisfaction of the inspector, of his ability to pay;

2. If after the sale of any animal the purchaser does not immediately pay the price, the inspector may forthwith re-sell the animal, and so continue to do until the price be paid, and shall only give up possession after such payment;

3. Within one month from the day of sale the owner of any animal sold may reclaim it from the purchaser, provided he pay him at once ten percent, upon the purchase money, over and above all his disbursements, for purchase, keep, and other charges;

4. Provided, however, that to entitle the owner to avail himself of the preceding paragraph, he must be a stranger to the parish in which the animal is sold;

5. If there be no bidders present upon the day fixed for the sale, the inspector shall adjourn it to another day, and shall give public notice thereof.

XI. 1. The owner, or his representative, of any animal confined by the keeper of any public pound, or by any person whomsoever, may demand the release thereof between five o'clock in the morning and nine o'clock in the evening, upon payment or legal tender to the keeper, of the fine, damages and costs; the said keeper, upon refusal to release such animal shall be subject to a penalty of not more than ten shillings currency, for every day he shall afterwards unjustly detain such animal, in addition to the damages incurred;

2. Any person who shall take and convey away any animal so impounded or detained for damages it may have caused, for respecting which a complaint shall have been made, shall incur and pay a fine equal to the whole amount of the damages and penalty for which the proprietor of the animal¹ was liable, and be further liable to a fine of ten shillings currency, or be imprisoned for eight days, or both.

Chapter III.

Dogs.

XII. 1. Any Justice of the Peace, upon a complaint made to him that a dog is vicious or supposed to be attacked by hydrophobia, that it is in-the-habit of attacking individuals, or animals at large, or in harness, without the limits Of its master's property, after hearing the parties in a summary manner, may, if he is convinced that the complaint is well founded, condemn the proprietor or possessor of such dog to confine it or cause it to be confined for a period of forty days, or may order that such dog be killed, with costs against such owner or possessor;

2. If the owner or possessor of such dog permits it to go at large, or fails to kill it, in contravention of the judgment or order of the Justice, such owner or possessor shall incur a penalty of not more than five shillings per diem;

3. But if it be proved that the said dog have bitten any individual outside the limits of its master's property, and that the dog is vicious, the Justice of the Peace shall condemn the owner or possessor to kill it;

4. It shall be lawful nevertheless to kill any dog who shall, without the limits of its master's property pursue or be known to pursue and strangle sheep, or to make a, complaint to a Justice of the Peace, who shall condemn the owner to kill such dog and to pay the costs, upon the testimony of one credible person, without prejudice, to the right of claiming any damage caused by the loss of the sheep.

Chapter IV.

Obstructions upon Lands.

XIII. 1. If any description of timber or wood of any kind be carried in any manner whatsoever upon the land or upon the banks of any lakes or navigable streams, and shall remain there until the first day of June, tin; owner or occupier of such land or beach may then cause such timber to be hauled up and deposited in a place of safety;

2. Such owner or occupier shall then give public notice, that such timber; (describing the same and any marks thereon), has been found upon his land or beach, that it is in such a place, and that if the expenses incurred for the publication of the notice and in hauling the timber to such place, and the damages, if any, be not paid before such a day and before the sale, such timber will be publicly sold by an Inspector to the highest bidder;

3. The proceeds of the sale shall be applied to the payment of all expenses and damages occasioned by such timber, and if there be any surplus, it shall be handed over to the Secretary of the parish, township, or village municipality in which the timber shall have been found, and if there be no such municipalities, then to the Secretary of the County municipality, to form part of the funds in his hands, if, within the period of one year from the sale of such timber, the surplus arising from such sale be not claimed by the proprietor of the timber or his representative.

Chapter V.

Filth.

XIV. 1. Any person who shall deposit or cause to be deposited any filth or dead animal in any rivers, streams or water-courses, or upon any public highway, or upon the property of another, shall incur a penalty of twenty shillings, without prejudice to any other damages, upon the oath of the prosecutor and one credible witness, and such person shall be bound to remove such filth or dead animal, under a penalty of five shillings for every day he shall neglect to do so, without prejudice to the further damage caused by any neglect so to do;

2. If such person be unknown or cannot be discovered, the Inspector shall, in such case, cause the animal to be buried, and cause all filth to be removed from the rivers, streams or water-courses, public road or private property, within twenty-four hours after he shall have been notified, and such burial or removal shall be effected at the cost of the Local Municipality, if any exist, if not, at the cost of the County Municipality;

3. Any person may compel any one retaining on his own property any dead animal or filth to bury the same, under a penalty of five shillings fine for each day.

CHAPTER VI.

Noxious Weeds.

XV. 1. Any person may, by special notice require any owner, occupier or holder of lands or common not actually under seed, or any person bound to keep in order any public or private road or by-road to cut and destroy between the twentieth of June and the first of August, the daisies, thistles, wild endive, chicory, celadine and all other noxious weeds or plants considered as such, growing on the said lands or commons or public or private road or by-road;

2. In case of refusal or neglect, within eight days after notice shall have been given, any Justice of the Peace may condemn the delinquent upon complaint supported by the oath of one credible witness, other than the complainant, or upon the confession of the party prosecuted, to a penalty of two shillings for every day he shall so refuse or neglect, over and above the costs and charges incurred in obtaining such judgment, and such judgment shall be rendered in a summary manner;

3. Any person who shall scatter, or cause to be scattered, the seeds of weeds, to the prejudice of another person, shall incur a penalty of not less than five nor more than forty shillings;

4. Any person may, after special notice, compel his neighbour to pull up wild mustard, even in a sown field, so soon as it flowers, under the penalty imposed by the preceding section.

Chapter VII.

Découverts.

XVI. 1. Any owner or occupant of any cultivated land may, by the intervention of an Inspector, compel his neighbour, whether he be owner, possessor or occupant, to grant him *découvert*;

2. Such *découvert* shall be forty-five feet in breadth adjacent to the line of separation, and of the length of the cultivated land;

3. The Inspector, before ordering the making of such *découvert* shall visit the localities, after having given special notice of his visit to the parties interested, and upon his order the *découvert* shall be made within any period not exceeding one month;

4. Whoever shall neglect or refuse to obey the orders of the Inspector shall pay for each arpent in length of such *découvert* a fine of two shillings for the first year, and double that amount for the second year;

5. The *découvert* shall not extend to fruit trees, nor to hard and soft maple trees north trees retained for the embellishment of the property, but to all other trees and shrubs whatsoever;

6. Any person availing himself of the two foregoing paragraphs shall, nevertheless, be bound to pay the damages as ascertained by *experts* to be chosen, one by each neighbour, and the third, if required, by any Justice of the Peace, unless the two *experts* already appointed shall themselves agree in the choice of a third;

7. If one of the neighbours refuse to name his *expert*, any Justice of the Peace may name him on the requisition of any person interested in the carrying out of such *expertise*;

XVII. 1. It shall not be lawful for the Inspector to order that the *découvert* be made unless the complainant prove that he has given special notice to the person from whom he demands such *découvert*, or to his representatives, before the first day of December preceding his complaint;

2. If the complaint is brought against a person who does not reside in the district or who has no known agent, the complainant shall be bound to prove that the notice has been posted up at the door of the Church in the place in which the property is situated, and upon the property itself, for four consecutive Sundays, at any time whatsoever within the year preceding the first day of December then last;

3. After the order shall have been given by the Inspector, the complainant alone shall be entitled to bring an action, if required, to enforce the execution of the works, and this in conformity with the provisions of this Act.

Chapter VIII.

Water-Courses.

XVIII. On or before the fifteenth day of July in each year, all water-courses shall be thoroughly opened, cleansed and rendered fit for the passage of all water that may flow into the same, and any person failing to do the said work shall incur a penalty of two shillings for each and every day after he shall have been notified by one or more of the parties interested to do the said work.

XIX. 1. Any proprietor or occupant of land, may call upon the Inspector to visit and examine all water-courses common to several lands, the labour relating to which shall have been regulated by a *procès-verbal*, or by an agreement made by the parties interested, or by Municipal authority to order that the said water-courses be made, repaired and kept in order in the manner stated in the *procès-verbal* or agreement, or by Municipal authority, and in all cases relating to repairing and keeping water-courses in order, it shall, for that purpose, be lawful to choose an Inspector from the said Parish or Township, whether he be an interested party or not, the provisions of the twentieth and twenty-first sections of this Act to the contrary notwithstanding;

2. Any person who shall refuse to obey the decision of the Inspector shall incur a penalty of two shillings currency for each and every day the work shall remain undone after the delay fixed by the Inspector;

3. The Inspector upon the expiration of the specified delay, shall if required so to do, authorize the complainant to do the works which he shall have ordered to be done, or cause them to be performed, and the complainant shall be entitled to recover the cost of the said labour and all His just expenses if the person condemned to do the work shall refuse or neglect to pay the amount;

4. The lands for which the said expenses are incurred, may be sold in the manner hereinafter prescribed in the thirty third section of the present Act.

XX. 1. If it be necessary to open, deepen, enlarge or divide a water-course common to several lands, the works connected with which shall not have been apportioned and regulated by any *procès-verbal* or agreement, or by municipal authority, the matter in dispute shall be adjusted on the requisition of

one of the parties interested, by two disinterested Inspectors in the Parish or Township in which such work is to be done;

2. If there be no disinterested Inspector in the said Parish or Township, then by two disinterested Inspectors in the neighboring Parish or Township, and so whenever their services shall be required according to the provisions of this Act.

XXI. 1. It shall be lawful for any person interested in the opening of a water-course or the widening thereof or its division into several branches, when it crosses two or more Townships or Parishes, to call in a disinterested Inspector from each of The said Townships or Parishes to regulate and determine as to the making of the said water-course or the widening thereof;

2. If the Inspectors be equally divided upon the matter in dispute, they may call in another disinterested Inspector, and if they shall be unable to agree as to the choice of such other disinterested inspector, any Justice of the Peace shall appoint him upon the requisition of an interested party or of an Inspector, and the decision of the majority shall be final;

3. The proceedings shall be carried on in the manner and form prescribed for the establishment of a water-course in which but one Parish or Township is interested; and this shall apply to the homologation of the *procès-verbal*;

XXII. 1. It shall be the duty of the Inspector, upon the day and hour fixed upon, to repair to the premises, accompanied by the parties interested if they think proper to be there, and having ascertained the most suitable place to establish the watercourse, to give their decision and prepare a *procès-verbal* of their proceedings, setting forth the works to be done, in what manner and by whom they are to be erected and maintained, with any other details they may deem it advisable to insert in the said *procès-verbal*;

2. The Inspectors shall enter in the *procès-verbal* a statement of the expenses incurred in the examination of the premises, the advertisements, and the drawing out of the *procès-verbal*;

3. The said *procès-verbal* shall be prepared by an authentic notarial deed or before two witnesses if the Inspectors are unable to sign their names; it may, however, be prepared either by a notarial deed, or by the Inspectors themselves, if they are able to sign their names;

4. An authentic copy of the said *procès-vnrbal*, when it shall have been executed before notaries, or a duplicate thereof, when it shall have been executed under the hands of the Inspectors, shall be deposited, on the day following that of the first notice, in the following places:

5. With the Secretary of the Parish or Township Municipality in which the said *procès-verbal* is to be presented for homologation;

6. If there be no Parish or Township Municipality, then with the School Secretary of the said Parish or the said Township, and in either the one or the other place, it shall be lawful for the parties interested to have access gratuitously to the said *procès-verbal*;

7. It shall be the duty of the Secretary in whose office the said *procès-verbal* shall be deposited, to register the same together with the apportionment of all the works relative to the water-courses in the Parish or Township in which he resides, and to keep an index of these registers for the facilitating of searches;

8. If there shall be neither a local nor a School Municipality in any Parish or Township, then the deposit of *procès-verbaux* or apportionments shall be made with the Secretary of the County Council.

XXIII. 1. It shall be the duty of the Inspectors after having prepared their *procès-verbal*, to give public notice to the parties interested, of the name of the Justice of the Peace before whom the said *procès-verbal* is to be presented for homologation, so that they may be enabled to be present at the place and hour, and upon the day fixed in the notice, to urge their objections thereto (if any) before the said Justice of the Peace;

2. It shall be lawful for the Inspectors to have the said *procès-verbal* from The person with whom it is deposited in order to be homologated, provided they return it immediately afterwards;

3. In any case the *procès-verbal* shall not be homologated until the tenth day following the day upon which the first notice shall have been given;

4. As soon as the said *procès-verbal* shall have been homologated, a certified copy thereof shall be given by the person charged with the registration according to the provisions of this Act, to the senior of the Inspectors who shall have prepared it, that he may cause the works therein mentioned to be performed;

5. If, however, the *procès-verbal* relates to several Parishes or Townships, a copy thereof shall be given to the Inspector, of each Parish or Township, because in that case the works will be conducted by each Inspector in his own Parish;

6. It shall be the duty of each of the Inspectors to cause his copy of the *procès-verbal* to be registered by the Clerk of the Parish or Township in which he resides, as well as the apportionment of the works on the water-course in question, and this at the cost of the parties interested in the said water-course;

7. The said Inspector shall be bound to grant communication of the said *procès-verbal* to all persons interested therein, *gratis*, whensoever they shall require it;

8. Inspectors retiring from office shall hand over to their successors the *procès-verbaux*, apportionments, and all other documents they may have in their possession;

9. It shall be lawful for any Justice of the Peace, with the unanimous consent, of the parties present in Court, at the time of the homologation of the *procès-verbal*, to make amendments thereto, and the said amendments shall be entered in the Act of homologation.

XXIV. 1. If any one or more of the parties interested in the said *procès-verbal* shall deem themselves injured or aggrieved thereby, it shall be lawful for him or them to bring a complaint before the Justice of the Peace to whom the said *procès-verbal* is to be presented for homologation;

2. The said complaint shall be brought within eight days after the first day upon which the notice of homologation shall have been given;

3. It shall be the duty of the Justice of the Peace before whom the said complaint shall have been laid, prior to the expiration of the ten days mentioned in paragraph three of the preceding section, to give communication to any person desiring the same, of the complaint, in question;

4. The Justice of the Peace shall not decide the question in dispute, without the assistance of another Justice of the Peace, and they shall both hear the witnesses and the parties;

5. If, upon the said day, the Justices of the Peace do not agree, or it be necessary to have additional witnesses and the presence of a third Justice of the Peace, they may adjourn to some subsequent day for that purpose;

6. The parties interested and their witnesses shall appear upon the said day before the Justices of the Peace;

7. The Justices of the Peace after having maturely considered the allegations on both sides, shall deliver their judgment in presence of the parties, if they be present in Court;

8. If they see that the formalities have been observed, that there has been neither partiality, injustice or negligence, in the conduct of the Inspector, it shall be lawful for them to homologate the *procès-verbal*, and it shall be put into execution according to its form and tenor;

9. If, on the contrary, it appears to them that there has been partiality, want of exactitude or negligence in the examination of the premises, or that the labor has not been equitably apportioned, they shall submit the question to three *experts*, to be appointed as follows: one by the Justices of the Peace, one by the plaintiff and one by the defendant;

10. If one or both parties refuse to appoint their *experts*, the Justices of the Peace may appoint them;

11. It shall be the duty of the *experts*, after having been sworn by a Justice of the Peace authorized for that purpose by this Act, and after having given public notice thereof to the Inspector and the parties interested, at least eight days previously, to visit in their presence, if they think proper to be present, those places only of which the *procès-verbal* makes mention, and to hear the allegations on both sides;

12. After such visit the *experts* shall report their decision to one of the Justices of the Peace who has already heard the case; the said decision shall be final and conclusive to all intents and purposes whatsoever;

13. If by their decision, the majority of the *experts* affirm that of the Inspectors, the *procès-verbal* of the latter shall be homologated by the Justices of the Peace and put into execution:

14. If, on the contrary, the majority of the *experts* reverse the decision of the Inspectors, it shall be lawful for them to prepare a new *procès-verbal*; Provided, however, that the said new *procès-verbal* shall not affect any other property than that affected by the *procès-verbal* of the Inspectors;

15. If, however, the *experts* cannot prepare a new *procès-verbal* because they might deem it to be their duty to change the direction of the water-course, apportion differently the works to be done, or make any other change which might affect property which was not affected by the *procès-verbal* of the Inspectors, it shall be their duty purely and simply to annul the said *procès-verbal*, and matters shall be in the same position as they were before the completion of the *procès-verbal*;

16. In all cases, however, in which there shall be an appeal from a *procès-verbal*, the Inspectors who shall have prepared the said *procès-verbal* shall have a right to compel the parties at whose request they have prepared the said *procès-verbal*, to appear and defend the same, and to pay the costs and expenses thereof if, through any fault of theirs, it be found defective;

17. If, however, it is on account of any negligence or partiality on the part of the Inspectors that the *procès-verbal* is defective, then the Inspectors shall defray the costs and expenses thereof.

XXV. The Inspector shall determine where, the bridges required upon the public roads to pass over the water-courses shall be made — the sites upon which they are to be built, and point out the lands of the proprietors which shall be subject to completing and keeping them in repair.

XXVI. 1. The owner of any land higher than that of his neighbour shall not be bound or required in any case, by an Inspector, to make or assist in making a water-course through his land of any greater depth than may be necessary for draining his own land;

2. It shall be lawful for the possessor or proprietor of any low or swampy land to make a water-course through the high land of his neighbour to drain his own, and it shall also be lawful for him to make use of that already made, deepen the same if it be not deep enough, and repair and keep the same in order at his own expense.

XXVII. 1. Any person or persons who shall obstruct, any water-course or allow it to be obstructed, shall incur a penalty not exceeding five shillings for every day such obstruction shall remain after the expiration of two days from the time upon which he shall have received notice to remove the same;

2. Any person interested in the water-course in which the obstruction shall be found, shall give notice to the person in default, and may recover the penalty with costs against such person.

XXVIII. 1. It shall be lawful for any person interested in a water-course to require the Inspector to call a public meeting of the parties interested in the said water-course, to decide whether the said work shall be performed by statute labour (*corvées*), by separate shares or by contract;

2. The Inspector shall call the said meeting by giving public notice thereof, to the parties interested;

3. The majority of the interested parties present shall decide what is to be done with respect to the apportionment of the works on the said water-course, or part of the said water-course, as the case may be, and may order the Inspector to make or cause to be made an apportionment, in which shall be shewn the portion which each of the parties interested will have to pay in money or perform in work;

4. The said apportionment, before it shall go into operation, shall be ratified before a Justice of the Peace and amended if there be occasion therefor, and the formalities for the homologation of the said apportionment shall be the same as those required for the homologation of the *procès-verbal* for a watercourse;

XXIX. 1. The Inspector shall give public notice of the day which he shall appoint for each person interested to perform his share of the works according to the tenor of the *procès-verbal*, whether the works are to be done in common or according to the apportionment made for that purpose;

2. Whosoever shall refuse or neglect to repair to the spot on the day appointed, and to perform his share of the work, shall incur a penalty of two shillings currency, for each and every day he shall refuse or neglect to execute the orders of the Inspector;

3. It shall be lawful for the Inspector, after the expiration of eight days from the time appointed for beginning the work, to cause the work of any of the persons who shall have neglected to have done it, to be done, and to recover the expenses with costs from the party or parties in default;

4. Upon the requisition of one or more of the parties interested in a water-course, the Local Municipality, whenever required so to do, shall appoint a Trustee from among the parties interested in such water-course ordered by any *procès-verbal* or Act of Agreement or by Municipal authority to see to the execution of the works relating to such water-course; such Trustee shall have all the powers and fulfil all The duties of the Inspector, with respect to the water-course in which he is interested; and such Trustee shall be subject to the penalties imposed by this Act with respect to neglect in the performance of his duties, he shall not be bound to serve more than two years, and shall act gratuitously; the Trustee shall have precedence over the Inspector, and when he shall be compelled to prosecute, and in that case only, shall be entitled to six pence per hour.

Line Ditches.

- XXX. 1. The Inspector, upon the application of any owner or occupant of any land through which it is proposed to make a line ditch (*fossé de ligne*), shall visit the place, command the performance of the necessary works, and determine how and by whom they shall be executed;
2. It shall be the duty of the Inspector, when required so to do by the proprietor or occupant of any land, to inspect the ditch which separates the land of the party complaining from that of any other person, and determine whether the said ditch is sufficient for his use;
3. It shall be lawful for the Inspector, if he declare the said ditch to be insufficient, to order the person of whom complaint is made, to deepen, cleanse and repair the same within a delay which shall not exceed the time strictly necessary to perform the said works;
4. If the Inspector finds that the line ditch of the party complaining is equally insufficient, and if he is required so to do by the person of whom complaint is made, he shall immediately condemn the party complaining to deepen, cleanse or repair his line ditch within a delay which shall not exceed the time strictly necessary;
5. For every day upon which the said person shall fail to comply with the order of the Inspector, he shall incur a penalty of two shillings for each and every arpent. in length of such ditch, (any fraction being reckoned as a whole arpent);
6. It shall be lawful for the Inspector, after the expiration of the delay, to authorize, if required so to do, the complainant mentioned in the preceding sections to perform or cause the work to be performed, the execution of which he shall have ordered, and such complainant alone shall be entitled to recover the costs of such works and all his fair expenses, if the person condemned to do such work shall neglect or refuse to pay the amount;
7. In the Townships in which lands have been set aside by Government for public roads, the said lands shall be subject to the same provisions as lands belonging to private individuals;
8. If a proprietor or occupant, of cultivated land suffers from the over-flowing or Hooding of such land, occasioned by the insufficiency of the ditches which his neighbour may have upon any land in standing timber or brushwood, it shall be lawful for him to require the Inspector to visit the premises in question;
9. After his visit the Inspector may order, if it be necessary for the purpose, of putting a stop to the said inundation or overflowing of water, that the necessary work be done either within the lines or in any other part of the land in standing timber or brushwood;
10. The power conferred by the two preceding paragraphs upon the Inspector shall only be exercised in so far as regards land in standing timber or brushwood, and not otherwise;

11. The establishment of a front road between two ranges or concessions shall in no respect alter the obligations between neighbors, when such road shall be entirely within one of the ranges or concessions;

12. Whoever shall obstruct or allow to be obstructed in any manner whatsoever, any line ditch, shall be liable to a penalty not exceeding five shillings for each day such ditch shall be so obstructed.

Chapter IX.

Line Fences.

XXXI. 1. It shall be the duty of the Inspector, upon the requisition of any proprietor or occupant of land, to proceed to inspect the line which divides his land from that of his neighbor, and on which it is proposed to erect a new *mitoyen* fence, and to determine in what manner the said *mitoyen* works shall be done or apportioned, and to prescribe the shortest possible delay for the execution thereof;

2. Upon a similar requisition, it shall further be his duty to visit any fence separating the land of the complainant from that of his neighbor, and to determine whether the said fence be sufficient;

3. If he declare the same to be insufficient, it shall be lawful for him to order the person complained of to repair it within a delay which shall not exceed the time strictly necessary to do the said work;

4. If the Inspector finds that the line fence of the complainant is equally insufficient, and if he is required so to do by the person complained of, he shall immediately condemn the complainant to repair it within a delay which shall not exceed the time strictly necessary;

5. For every day during which the said party shall fail to conform to the order of the Inspector, such person shall incur a penalty of two shillings for each and every arpent in length of such fence (any fraction being reckoned as a whole arpent);

6. It shall be lawful for the Inspector, after the expiration of the delay, to authorize, if required so to do, the complainant to perform or cause the work to be performed, the execution of which he shall have ordered, and such complainant alone shall be entitled to recover the costs of such works and all his fair expenses, if the person condemned to do such work shall neglect or refuse to pay the amount;

7. In the Townships in which lands have been set aside by Government for public roads, the said lands shall be subject to the same provisions as lauds belonging to private individuals;

8. The establishment of any front road between two ranges or concessions shall in no respect alter the obligations of one neighbor to another when such road shall be entirely within one of the ranges or concessions.

XXXII. 1. When the matter in question shall relate to the making of a new fence or the repairing of one which is in such a state that the cost of repairing it would be equal to that of a new one, the Inspector

shall not condemn the party against whom complaint shall have been made, unless the party complaining shall prove that he had given the party complained against or the party usually acting in his behalf, special notice thereof before the first day of December preceding such complaint;

2. If the party complained against does not reside within the Parish or Township, or has no known agent, or tenant, or party acting in his behalf, the complainant must prove that a notice has been posted up at the door of some church in the parish or township in which the property is situated for four consecutive Sundays, during any time of the year preceding the first day of December then last past.

Chapter X.

Fees and recovery of Costs.

XXXIII. 1. Every Inspector, whenever required to act in virtue of this Act, shall be entitled to six pence for every hour he shall be necessarily employed in the execution of his duty;

2. In cases of joint labor (*travaux mitoyens* or *en commun*), the costs shall be paid by the party in default whether it be the party at whose instance he acted or the adverse party; or they shall be paid in equal portions by the parties interested in the matter in dispute, if the Inspector have condemned them respectively to perform their joint labour or cause it to be performed;

3. When the Inspector shall have been called upon to visit a water-course, he shall also be entitled to six pence per hour and to the expenses incurred for the advertisements, homologation and registry of the *procès-verbaux*, apportionments and the copies thereof, necessary for the Inspector charged with the superintendence of the works;

4. The Inspector shall also be entitled to six pence per hour for superintending the construction of a water-course;

5. All these costs shall be recovered by him and apportioned in equal parts among all the parties interested, without regard to the value or extent of their respective lands;

6. If, however, he shall have made but one visit to the premises and decided that it is not advisable to make or change a *procès-verbal*, he shall still be entitled to six pence per hour and his expenses, if any be incurred, to be paid by the person who shall have employed him;

7. The Inspector shall be entitled to six pence for every hour necessarily employed, when he shall be obliged to sue any person for the recovery of the costs incurred for the establishing of a water-course, of which the *procès-verbal* shall have been homologated;

8. It shall be lawful for any Justice of the Peace, if he find the complaint brought before him to be proven, to give judgment in favor of the Inspector for the amount which he claims for neglect or refusal

to pay the costs of the *procès-verbal* and other expenses, together with the amount to which the Inspector is himself entitled;

9. Every Secretary-Treasurer shall be entitled to three pence per one hundred words, for the registration of *procès-verbaux* and apportionments, and also for certified copies of all documents delivered by him in virtue of this Act. The copies thus certified shall be received in evidence in all Courts of competent jurisdiction or before any Justice of the Peace.

XXXIV. It shall be lawful for any person who shall have made or caused to be made any water-course, ditch, bridge, fence or *découvert*, in conformity with the provisions of this Act, to recover the amount of the expense incurred in performing such work from the person bound to perform such work or from the owner of the land on which it has been performed before any Court of competent jurisdiction or before any Justice of the Peace if the person bound to perform such work shall neglect or refuse to pay such amount; and such amount may also be recovered in the manner prescribed by the laws and statutes in force, or which shall be in force, in Lower Canada.

Chapter XI.

Alteration of a Procès-verbal.

XXXV. 1. It shall be lawful for any party interested in a *procès-verbal* of a water course duly homologated or regulated by Act of Agreement or by Municipal authority, to demand a change in or amendment to the said *procès-verbal*, Act of Agreement or Municipal By-law; Provided his said demand be supported by the affidavits of two of the parties interested in the water-course regulated by a *procès-verbal*, Act of Agreement or Municipal By-law sought to be amended, or by one affidavit only, if such *procès-verbal*, Act of Agreement or Municipal Bylaw only concerns two interested parties;

2. It shall be sufficient to state in the said affidavits that useful or necessary changes may be made, without specifying or enumerating the said changes, to entitle any of the parties interested to require a visit from the Inspector to see and decide upon the said changes;

3. These affidavits shall be annexed to the *procès-verbal* drawn up on the occasion, and copies of these affidavits, certified by the person charged with the enregistrement of the *procès-verbal* shall be sufficient proof before any Court of competent jurisdiction or before any Justice of the Peace;

4. Any change in any *procès-verbal* shall be made by a second *procès-verbal*, but not, however, until all the formalities required for the making of a new *procès-verbal* shall have been fulfilled;

5. By virtue of a new *procès-verbal* as aforesaid, any watercourse may be divided if the water is too abundant for a single water-course, either by directing the water into a water-course already verbalised, or by causing it to flow in any other direction.

Chapter XII.

Complaints.

- XXXVI. 1. Any person who shall make a complaint in virtue of this Act before a Justice of the Peace, shall (make his declaration under oath, unless it be otherwise provided for by this Act, and it shall be lawful for the Justice of the Peace to issue his warrant or summons to appear against, the person whom the complaint affects, ordering him to appear before him or any other Justice of the Peace, and to render judgment in a summary manner upon the oath of one credible witness other than the party: bringing the said complaint; Provided however, that if the person reside within the same Parish or Township as the complainant, he shall only issue a summons;
2. It shall and may be lawful for a Justice of the Peace to issue a warrant eight, days after judgment, ordering the sale of the goods and chattels of the person condemned;
3. When the Justice of the Peace shall acquit the defendant, he shall dismiss the complaint with costs against the complainant;
4. It shall not be lawful for any Justice of the Peace to hear any complaint or give any decision, if he is related within the third degree to the parties in the said suit, or in any wise interested therein;
5. With the exception of the cases for which it is otherwise provided by this Act no Inspector shall act as such in any matter in which he shall be interested or in which any one of his relations within the third degree shall be interested, if it be impossible to find in the parish or township in which the services of an Inspector are required, any disinterested Inspector not related as aforesaid, an Inspector shall be chosen: from one of the neighbouring parishes or townships.

Chapter XIII.

Suits. — Penalties.

XXXVII. 1. All actions and proceedings brought or taken in virtue of this Act shall be brought or taken before one or more Justices of the Peace, as the case may require; such Justices of the Peace shall only have jurisdiction when they reside in the County in which the offence shall have been committed, and when it relates to the homologation of *procès-verbaux* and apportionments, in the County or Counties in which the properties affected are situated;

All suits for penalties or damages shall be commenced within, three months after the commission of the offence on which they are founded.

XXXVIII. 1. All the penalties, damages and taxes imposed by virtue of this Act may be sued for and recovered summarily by one and the same action against the same person (if it be not provided for otherwise) upon the oath of one credible person, other than the party complaining, or upon the confession of the person sued, and the amount may be levied together with the costs, by a warrant under the hand and seal of the said Justice of the Peace, and by seizure and sale of the moveable effects of the offending party;

2. One half of the penalty shall belong to the party informing, and the other to the Municipality within the limits of which the offence has been committed unless it is otherwise provided: If, however, the party informing or suing be an Inspector, the penalty shall, in that case go to the local Municipality in which the offence shall have been committed;

3. Any Inspector may in his quality of Inspector sue for all infringements or contraventions of the provisions of this Act, unless otherwise provided for, and he shall have the same rights and privileges as any informer or party complaining for the recovery of his costs, expenses, or other claims;

4. Whoever shall refuse or neglect, when required, to fulfil the duties imposed upon him by this Act, shall incur a penalty of five shillings for each time he shall so refuse or neglect to act.

XXXIX. 1. Any penalty for contravening the provisions of this Act, for which provision is not made by this Act, shall be not less than five nor more than forty shillings, and may be sued for, recovered and made payable in the same manner as the penalties for which the present Act provides;

2. Any person condemned to pay a penalty or damages and costs, as the case may be, and who shall not pay the same within eight days after judgment, shall be punishable by imprisonment for a period not exceeding thirty days, if the party have no goods, moveables or effects, and the fact be proved to the satisfaction of the Justice of the Peace by the return of the person charged with the warrant of same execution.

Chapter XIV.

General Provisions.

XL. Any person who shall knowingly take a false oath, in whatever case it may be, shall be liable to the pains and penalties provided by law for wilful and corrupt perjury.

Appeals.

XLI. 1. It shall be lawful for any person who shall deem himself aggrieved by any judgment rendered in virtue of the provisions of this Act, to appeal to the Circuit Court for the Circuit within the limits of which the judgment shall have been rendered;

2. The Appellant shall give notice in writing of his intention to appeal to the Justice of the Peace who shall have rendered judgment, or to his Clerk, within twenty-four hours after such judgment shall have been so rendered, and within the three days succeeding such judgment, he shall give sufficient security under bond, with two sufficient sureties, to the satisfaction of the Justice or Justices of the Peace who shall have rendered the said judgment, to prosecute the said appeal, and to pay the penalties, fines, damages and costs which shall be adjudged, together with the costs of such appeal in case the said judgment shall be confirmed; and after the said notice and security shall have been given, the execution of the judgment shall be suspended until the appeal shall have been decided. If, however,

the Appellant fails to give the said notice, or if, after having given the said notice, he fails to give security as aforesaid, the judgment given shall be put into execution;

3. This appeal shall be 'brought in the Circuit Court by petition setting forth the grounds of appeal, a copy of which shall be served on the opposite party within eight days from the rendering of the judgment, together with a notice of the day upon which the said petition will be presented to the Circuit Court, and the said petition shall be presented to the Circuit Court on the first juridical day of the said Court next following the expiration of ten days from the rendering of the judgment;

4. The Appellant shall file with his petition a certified copy of the bond or security by him given, and also of the notice of appeal, together with the return of a Bailiff proving the service of such notice, and upon this the said appeal shall be heard and decided in a summary manner;

5. After the Appellant shall have given security to the satisfaction of the Justice of the Peace who shall have rendered judgment, it shall be the duty of the said Justice of the Peace to transmit the record to the Clerk of the Circuit Court, certifying, under his hand and seal, that the documents by him transmitted are all the papers, documents and evidence belonging to the said suit;

6. In such appeal it shall not be lawful to produce fresh evidence, and no judgment shall be set aside on account of any trifling variance or *objection à la forme*, but only when a real act of injustice shall have been committed; and when objections shall have been raised which shall not affect the ground of action, the Circuit Court may, if it be necessary, order its Clerk to make any amendment whatever to the proceedings, which, as so amended, shall be executed as if it had been regular in the first place;

7. The Circuit Court shall have the power to adjudge the costs upon such appeal, and to order that the Record be transmitted to the Justice or Justices of the Peace who shall have rendered judgment, and such transmission shall be made by the Clerk of the Circuit Court, who shall annex to the said record a copy of the judgment of the said Court, as also a certificate of the amount of costs allowed upon such appeal; and the said costs shall be levied by the same means and in the same manner as the judgment of the Justices of the Peace is put into execution according to law;

8. The execution of the judgment against the party condemned shall not deprive the party who shall have succeeded, of his recourse against the securities for all or any part of the costs of appeal, remaining unpaid — to the payment of which the said securities shall be jointly and severally liable under pain of a writ of execution, in the same manner, and to the same degree as the principal;

9. No judgment rendered in virtue of this Act shall be declared null by any other means than the appeal hereinabove prescribed, and no such judgment shall be removed by or quashed upon writ of certiorari.

Manner of Giving Public or Special Notice When not Otherwise Provided for by This Act.

Public Notice.

XLII. 1. Whoever shall have to give public notice, shall, after having signed or attested it in the presence of two witnesses, cause it to be read and posted for two consecutive Sundays at the principal door of the Parish Church or Chapel or other place of public worship in the parish or township, at the issue of Divine Service in the morning;

2. Such notice shall also be posted up in some frequented place in the parish or township;

3. If the notice relates to works to be executed in two or more parishes or townships, the notice shall be given in those parishes or townships in the manner provided by the two preceding paragraphs.

Special Notice.

1. Every special notice required by this Act shall be given eight days in advance, either in writing or *vivâ voce* before two witnesses, whose evidence shall be the proof of such notice;

2. If the notice is given in writing, it shall not be necessary to adopt any particular form; it shall suffice that the purport of the notice be set forth in an intelligible manner, that it be in all cases dated, and that it be attested before two witnesses or a notary, if the person giving it be unable to sign it, and that, it mention the official capacity, if any, of the signer.

XLIII. Each Inspector shall receive a copy of this Act, and upon going out of office shall transfer it to his successor, under a penalty of from not less than five nor more than ten shillings.

XLIV. This Act shall be called the "Agricultural Act," and shall apply to Lower Canada only.

Interpretation.

XLV. The word "land" (*terrain*) shall also mean land generally (*terre*);

2. The word "water-courses" shall also signify "ditches," "drains" or "streams" in which one or more persons are interested;

3. Words importing the singular number or the masculine gender, shall comprehend more than one person, part or thing of the same description, men as well as women, males as well as females, and *vice versa*;

4. The word "person" shall mean equally and include any body corporate or politic, and the heirs, executors, administrators or other legal representatives of such person;

5. The word "Inspector," shall be taken to mean either "Road inspector" or "Inspector of Fences and Ditches;"

6. By the word “disinterested,” shall be understood “who has no personal interest or is under no obligation with respect to the works to be done, and is not related to or connected with any of the parties interested, within the third degree.”