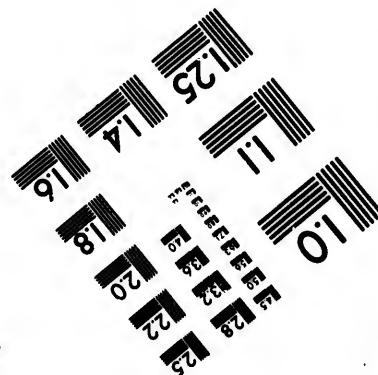
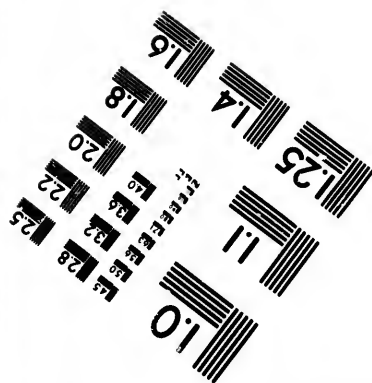
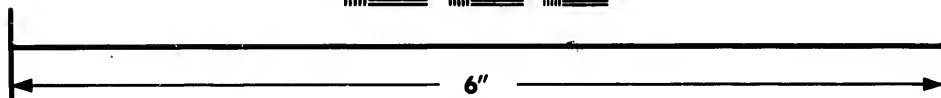
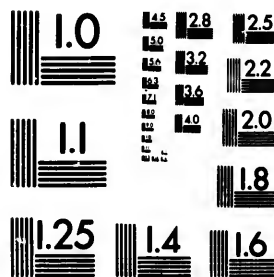


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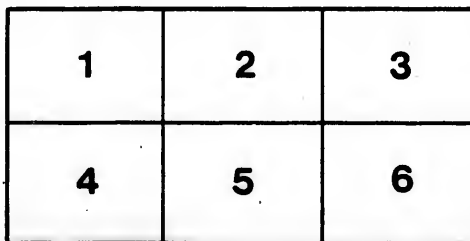
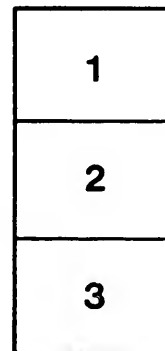
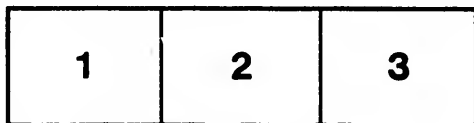
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AN ACT

TO

REPEAL TWO CERTAIN ACTS

THEREIN MENTIONED

RELATING TO AGRICULTURE,

AND TO

PROVIDE FOR THE REMEDY

OF

ABUSES PREJUDICIAL TO AGRICULTURE.



QUEBEC:

PRINTED BY STEWART DERBISHIP & GEORGE DESBARATS,
Printer to the Queen's Most Excellent Majesty.

1851.

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VICTORIÆ REGINÆ.

CAP. XL.

An Act to repeal two certain Acts therein mentioned relating to Agriculture, and to provide for the remedy of abuses prejudicial to Agriculture.

[10th August, 1850.]

WHEREAS it is expedient to repeal the Act Preamble and Ordinance hereinafter mentioned, and to provide more effectually for the prevention of certain trespasses, abuses and evil practices which prevail in Lower Canada, and retard the progress of Agriculture therein : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act of the Legislature of Lower Canada, passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to repeal a certain Act therein mentioned, and more effectually to remedy divers abuses prejudicial to Agriculture*, and the Ordinance of the Province of Quebec, passed in the thirtieth year of the Reign of King George the Third, intituled, *An Act or Ordinance for preventing Cattle from going at large*, be, and the same are hereby repealed, but no Act or Law thereby repealed shall revive, but shall be and remain repealed; this Act being substituted for all other Acts heretofore passed on the subject to which it relates.

Repeal of 6 Wm. 4 c. 56 and 30 Geo. 3, c. 4.

Repealed Acts not to revive.

Penalty for trespassing on the lands of another,

II. And be it enacted, That from and after the passing of this Act, no person shall enter into or pass through any field, whether it be sown or unsown, nor along the banks of any river or rivulet, nor into, nor through any garden, coppice or other property whatsoever, without the permission of the proprietor, or some person duly authorized by him to grant such permission, under a penalty of not less than five shillings nor more than thirty shillings currency, for every such offence, and over and above the amount of all damages occasioned thereby, any law, usage or custom to the contrary notwithstanding; which penalty or damages, or both, may be recovered before any one Justice of the Peace, who shall decide the matter in a summary way, either on view or on confession of the party complained against, or on the oath of one credible witness: Provided always, that it shall be lawful for any landholder, or for his representative or servant, to arrest, without warrant, any person taken in the act or contravening this section, and to carry him or cause him to be carried forthwith before one of the nearest Justices of the Peace, in order that such Justice of the Peace may decide summarily on the complaint.

Proviso.

Penalty for destroying fences, hedges, trees, &c.

III. And be it enacted, That any person who shall leave open any gate, or pull down, cut, break, remove or injure any fence or part of any fence, or cut or destroy any hedge, or shall cut, bark, fell or remove any tree, shrub or plant, or fell or cut or remove any tree, or any part of a tree on the land of any other person, or take any skiff, scow, batteau or canoe belonging to any other person from the banks of any river, for any purpose whatsoever, or shall burn any wood on any such land for any purpose whatsoever, without leave from the proprietor or his representative, every such person shall, for every such offence committed in the day time, incur a penalty which shall not be less than five shillings nor more than thirty shillings currency, and shall be double the said sums if the offence be committed in the night time, over and above all damages; which damages

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or penalty not exceeding six pounds five shillings, or both, may be recoverable before one Justice of the Peace; and that any person who shall have thrown down or carried away any part of any fence, or shall be found on any land, highway or by-road, with any portion of the materials of any fence in his possession, may be detained by any landholder of the vicinage, or any person in the service of such landholder, and carried before one of the nearest Justices of the Peace, who may cause the person so accused to be detained until more ample enquiry can be made, for any time not exceeding twenty-four hours, and who may deal with such person according to the circumstances of the case and according to the requirements of this Act.

Detention of offender.

IV. And be it enacted, That any Justice of the Peace, upon complaint on oath before him of any infringement of the provisions in this Act contained, shall issue his warrant, directed to a bailiff, constable or sergeant of militia, for the apprehension of any person charged with any offence against any of the provisions of this Act, or his summons for the appearance before him or any other Justice of the Peace, of any such person, and shall summarily hear and determine upon the complaint, on the evidence of one credible witness other than the prosecutor, and pronounce a judgment according to the requirements of this Act: Provided always, that the penalties hereby imposed or authorized to be imposed, shall be levied forthwith by warrant of distress and sale of the goods and chattels of the offender, and if sufficient goods and chattels cannot be found, or if the penalties shall remain unpaid for the space of eight days after such conviction, such Justice shall commit the offender to the Common Gaol until such penalty with the costs of prosecution shall be paid; Provided always, that no person shall remain so committed for a longer time upon any one conviction for the cause aforesaid than thirty days.

Justice to summon before him parties infringing this Act.

Proviso: how penalties shall be enforced.

Proviso.

V. And be it enacted, That whenever it shall appear to such Justice of the Peace, by the oath of

When offender is a squatter, &c., he may be committed.

the prosecutor, or that of one witness, that an offender against any of the provisions of this Act, is a squatter, or a stranger or person without real property in the Parish or Township, or other means to secure the payment of such penalty and costs imposed under authority of this Act, such Justice of the Peace shall commit him to the Common Gaol for a time not exceeding sixty days.

Complaint for damages by trespass of animals how to be laid.

VI. And be it enacted, That for damages sustained by the trespassing of horses, mules, cattle, or other domestic animals, or poultry, any person may lay his complaint before one of the nearest Justices of the Peace, who shall immediately command the Road Surveyor for the Division of the Parish or Township in which the offence is committed, forthwith to give notice to the complainant, as well as to the person or persons complained of, and immediately thereafter to proceed to assess the damages in the presence of the parties, or in their absence when duly notified; and thereupon the said Road Surveyor shall report the same in writing to such Justice of the Peace, who shall hear the parties, and if good cause be not shown to the contrary, thereupon, allow the prosecutor the amount thereof, with the costs and charges of the view and report, and of prosecution, and shall cause the same to be levied in the manner prescribed by this Act: Provided always, that if on hearing the parties the Justice of the Peace shall see fit to acquit the defendants, then the complainant shall be condemned to pay the costs; And provided also, that the said Justice of the Peace shall allow to the Road Surveyor a reasonable remuneration for his trouble, and in case of the Road Surveyor being sick, absent, interested or otherwise unable to act, the Justice of the Peace shall name another respectable and competent person.

Provido.

Provido.

Witnesses may be summoned.

VII. And be it enacted, That every such Justice of the Peace may, on the application of either party, issue subpoenas to compel the attendance of witnesses before him or before the said Road Surveyor or other person named as aforesaid, and may swear them in the usual manner, to give true evidence, and may

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enforce obedience to every such subpoena, and punish or cause to be punished any disobedience thereto, *Proviso.* by the usual course of law: Provided that the Road Surveyor, or other person named as aforesaid, shall also have the power to swear such witnesses as may appear before him to give evidence.

*Abandon of animals-
forbidden.*

VIII. And be it enacted, That it shall not be lawful for any person whomsoever, at any season of the year, to allow his horses, mules, neat cattle, sheep, goats, hogs or any other animal whatever, or poultry, to stray upon any land which does not belong to him, without the permission of the owner thereof, or of his representative, or upon any beach, highway or public place; and whenever any horse, mule, neat cattle, sheep, goat or hog, or any other animal whatever, or poultry, shall be found straying in any such place, the owner of any such horse, mule, neat cattle, sheep, goats, hogs, or any other animal whatever, or poultry, shall (over and above the damages which he may be condemned to pay to the person complaining) incur the following penalties, that is to say: for each mare, gelding, colt or filly, One Shilling and Three pence currency; for each ox, cow or calf, One Shilling currency; for each sheep or goat, Three Pence currency; for each hog, Two Shillings and Six Pence currency; for each bull or boar or ram, Twenty Shillings currency; for each stallion, Fifty Shillings currency; for each goose, duck, turkey or head of other poultry of any kind, Three Pence currency; and double the said sum for the second time, treble for the third time, quadruple the fourth time, and in that proportion on every subsequent occasion that such animals or poultry shall respectively be seen or found straying upon any lands or fields without the permission of the proprietor thereof or his representative, or on any highway, beach or public place.

*Penalties for contra-
vention.*

IX. And whereas it is expedient to give proprietors or occupiers of lands, who take animals or poultry straying on their lands or in their fields, the right of detaining and keeping them until the penalty and damages by this Act attached to the offence committed,

*Proprietors, &c. of
land may seize and
impound animals
straying on their land.*

shall have been paid, Be it enacted, That any proprietor or occupier of land, or his servants or representatives, may seize and send to the Pound, or may take and detain any animal or poultry which he or they shall find straying on his land, or in his fields without his permission, and may detain the same until the owner thereof shall have paid the penalty and damages hereby attached to the offence committed; and that when any animal shall be seen straying on any beach, road or public place, it shall be lawful for the Road Surveyor, or any Overseer under him, or for any freeholder whomsoever of the Parish or Township, to take and send to the Pound, or to detain such animal until the proprietor thereof shall have paid the fine hereby attached to the offence committed: Provided always, that the person who shall have so taken any animal, shall give notice thereof as early as possible to the owner, if known to him, and to the nearest Pound-Keeper in the Parish or Township, if there be a Pound established therein; and if the owner of such animal shall not, within twenty-four hours, come forward and claim the same, and pay to the person seizing or detaining them, the penalty incurred, with the cost of keeping such animal, or if the person detaining it shall not know the owner thereof, he shall cause public notice to be given that such animal has been so taken and detained, with a description thereof, at the doors of the churches of the Parish or Township on two consecutive Sundays, immediately after divine service in the forenoon, and in the same manner on the second Sunday at the doors of the churches in the nearest Parish or Township to the spot where the animal is found, if before that time the owner shall not claim the said animal, and pay the penalty and costs of keeping the same, in which notice the time and place of sale shall be specified; or if there should be no church in the place, he shall give such other public notice as may be considered sufficient, according to the custom of the Parish or Township or Settlement in which such animal shall be so detained: Provided always, that

Proviso: proceedings
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when notice shall have been given in the manner Proviso: if animal be not claimed,
 aforesaid, on two consecutive Sundays, of the seizure
 and detention of any horse, mule, neat cattle, sheep,
 goats, hogs or any other animal whatever or poultry,
 when if such animal or poultry is not claimed and the
 penalty and costs paid as aforesaid, it shall be lawful
 for the person who shall have such animal or poultry
 in his possession, to cause the same to be sold on the
 Monday next after the last notice shall have been
 given, by public auction, at the hour of noon: Proviso.
 Provided always, that the said auction shall take place
 near some church door or other place of public
 worship in the locality, or at the most public and
 frequented place: Proviso: notice of sale: how the proceeds shall be applied. Provided the persons intending to
 sell such animal shall give at least two days' notice
 of such sale to the Road Surveyor, who shall be
 bound to attend at such sale, or in case of his absence,
 through sickness or otherwise, one of the Overseers
 under him shall, upon being notified of such sickness
 or absence, act for him, and who shall sell the animal
 in the capacity of auctioneer, and receive the proceeds
 of the sale, and out of the proceeds of the sale, which
 shall be paid to the Road Surveyor or the person
 acting for him, by the purchaser, the person having
 detained the animal shall be entitled to receive from
 the Road Surveyor the penalty incurred and the
 reasonable costs of keeping the animal while detained,
 (which shall be estimated by any Justice of the
 Peace) with all damages sustained by such detainer;
 and the balance shall be paid into the hands of the
 Secretary-Treasurer of the Municipality, who shall
 pay it over to the owner of the animal as soon as he
 shall be known; or if such owner shall not become
 known to him within a year, it shall become the
 property of the Parish or Township, and be applied
 to the improvement of the bridges and highways
 therein, under the supervision of the Municipality;
 and such Surveyor or Overseer of Roads shall report
 to the nearest Justice of the Peace the due application
 of the proceeds of the sale of any such animal, within
 always, that

Biddings of strangers
may be refused.

eight days after the sale, under a penalty of Ten Shillings currency.

Proviso.

X. And be it enacted, That the Road Surveyor, or his representative, shall have the right of refusing all biddings at the sale of any such animal or poultry from any person unknown, or a stranger in the Parish or Township, or known to be insolvent, until such person shall have given security to the satisfaction of such Road Surveyor or his representative; and the person becoming surety in such case shall be responsible for the price in the same manner as if he were the purchaser: Provided always, that if the Road Surveyor should see fit the sale shall not be binding unless the price be instantly paid, in which case, at the option of the Road Surveyor, the animal or poultry shall be put up and sold again under the same rules: And provided also, that if any such animal or poultry is sold at any such subsequent sale for a less amount than was bid at the first or any former sale, the Surveyor may sue the party who shall have made such bid at such first or former sale before a Justice of the Peace for the recovery of the difference between the amount bid at such first or former sale and the amount for which such animal or poultry shall be sold at such subsequent sale; and the oath of such Surveyor shall be good and sufficient evidence in the said suit, and shall entitle him to the recovery of the said difference with costs.

Proviso:

Parties receiving
cattle to pasture, res-
ponsible for damage
done by them.

XI. And be it enacted, That any proprietor or occupier of land, who shall receive cattle to pasture on his lands or grounds, or shall permit cattle belonging to others to stray or pasture on his lands or grounds, shall be responsible for such cattle as if he were the owner thereof, without its being necessary that the name of the owner should be ascertained: Provided always, that the complainant may in any case cause the summons or complaint to be served on any grown-up person belonging to the family, in any house built on the land whereon the animals committing the damage are at pasture, and that such service shall be sufficient even if the owner or occupant of

Proviso.

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the land should not have his domicile there or should be absent.

XII. And be it enacted, That it shall be the duty of every Justice of the Peace, on complaint to him made, that any dog belonging to or kept by any person, has bitten any person, horse, cattle or sheep on any spot not included within the property of his owner, or is supposed to be rabid, or has pursued any person or ridden horse, or any horse harnessed to any carriage on the highway, after having heard such complaint in a summary manner, to condemn the person against whom such complaint shall have been made, to pay the costs incurred on such complaint, if proved according to the provisions of this Act, and to order, by a writing under his hand, the owner or keeper of such dog, to keep or cause the same to be shut up for forty days, under a penalty, to be paid by such owner or keeper of such dog, not exceeding Two Shillings currency, for each day that such dog shall be suffered to be at large before the expiration of the said forty days; Provided always, that in all cases wherein it shall be proved before such Justice of the Peace, by two or more witnesses worthy of credit, that the dog concerning which such complaint shall have been made, is vicious both with regard to travellers or ridden or harnessed horses, and is in the habit of pursuing or biting them, then and in such case, such Justice of the Peace may in the manner herein set forth, order the owner or keeper of such dog to kill it or cause it to be killed, and condemn such owner or keeper thereof, to pay, in addition to the costs above mentioned, a penalty of Five Shillings currency, for every day such dog shall be allowed to live after the said order.

XIII. And whereas it frequently happens that great mischief is done in the country parts by dogs which chase and strangle sheep; and whereas it is sometimes very difficult to prove that the mischief has been occasioned by such dogs: Be it therefore enacted, That it shall be lawful for any person to kill any dog which shall be seen at large in any field being

Duty of Justice of the Peace in the case of rabid dogs.

Penalty.

Proviso: evidence required.

Provision in case of dogs strangling sheep.

the property or in the occupation of such person or his employer, and chasing or known to have chased sheep, or to complain thereof to any Justice of the Peace, who shall on such complaint summon the owner of the dog to appear before him, and may order him to kill such dog, and shall condemn such owner to pay the costs of such complaint, and such owner shall incur a fine of Five Shillings currency, for every day during which such dog shall be suffered to live after such order.

Pigs at large without rings.

XIV. And be it enacted, That every person who shall allow any hog or pig to be at large without a ring in its nose, shall incur a penalty not exceeding Ten Shillings, nor less than Five Shillings currency; the amount whereof shall go to the informer, and double the said sum for the second time.

When fine, &c. is tendered to pound-keeper, he shall deliver the animal to its owner.

XV. And be it enacted, That it shall be the duty of every keeper of a Pound, when the fine and expenses incurred as above for the damage caused by or for the impounding of any horse, mule, neat cattle, sheep, goat, hog or any other animal whatever, shall be tendered to him, to deliver the animal so impounded to the owner thereof, or to any other person duly authorized on his part, under pain of incurring a penalty not exceeding Ten Shillings currency, for refusal, and of Five Shillings currency a day, for every day he shall afterwards unjustly detain any such horse, mule, neat cattle, sheep, goat, hog, or any other animal whatever: Provided always, that any person or persons removing or taking away any animal or animals detained for damage done or complained of, or who shall rescue such on the way to the Pound or place of detention, shall forfeit and pay a penalty equal to the whole amount of the damage and penalty to which the owner of the said animals was subject, and also another and further sum of Ten Shillings currency, and eight days' imprisonment, or either; and provided also that such proprietor shall have his recourse at law for the recovery of the said animal or animals.

Proviso: penalty for rescuing animals impounded.

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XVI. And whereas it is expedient to provide cheap and summary means of adjusting the difficulties which may arise in the country parts respecting fences and ditches necessary for the draining of lands or roads, Be it enacted, That it shall be the duty of the Surveyors of Roads, within their respective divisions, to act as Inspectors of fences, ditches and drains, when and so often as they or any of them may be required so to do; provided no Inspectors of fences or ditches are separately appointed.

Surveyors of roads may act as Inspectors of fences, &c.

XVII. And be it enacted, That every Road Surveyor, and in the event of his being interested, absent or sick, every Overseer of Roads in the same division, or Surveyor of Roads of any other division in the same Parish or Township, shall perform the duty of an Inspector of fences and ditches, and shall before entering on the duties of his office, as Inspector of fences, ditches and drains, take an oath as required by the sixteenth and seventeenth sections of the Act passed in the Session held in the tenth and eleventh years of Her Majesty's Reign, and intituled, *An Act to make better provision for the establishment of Municipal Authorities in Lower Canada.*

Surveyors of roads acting as Inspectors of fences, to take oath required by 10 and 11 Vict. c. 7.

XVIII. And whereas it is expedient to enable the proprietors of cultivated lands to compel the owners or tenants of adjoining lands to make a *découvert* on the said lands, along the line separating their respective lands, of not less than forty-five feet in width from the said line: Be it enacted, That it shall be the duty of every Road Surveyor, when and so often as he shall be thereunto required by the proprietor of any lands in his division, in a fit state of cultivation, to visit and examine the said lands and the adjoining lands (giving previous notice of the day and hour when such examination will take place, either personally or by notice left at the residence of the proprietor or tenant of such adjoining lands, or of his agent or person usually acting in his behalf, and if any lands be not represented by any proprietor, agent or person usually acting in his behalf, within the Parish or Township, then a notice, posted on the

Provision for *découvert* between neighbours.

Church doors of the Parish, or at the most public place of the Township, at least eight days before making such examination, will be sufficient) and the said Road Surveyor shall determine whether the lands of the party requiring the said *découvert* are in the state of cultivation required by law, and if they are, he shall thereupon order the proprietor or tenant of such adjoining lands to make the said *découvert* within a certain time to be fixed by the said Road Surveyor, which time shall not exceed two months, and if the said proprietor or tenant shall neglect to make the said *découvert* within the time so fixed, he shall incur a penalty of Two Shillings and Six Pence currency for each and every arpent in length of such *découvert*, (any fraction being reckoned as a whole arpent;) Provided always, that no such *découvert* shall extend to any orchard, fruit tree or maple tree.

Proviso.

Penalty on neglect of duty by Road Surveyors.

XIX. And be it enacted, That every Road Surveyor or Overseer of Roads shall, for every neglect or refusal to perform any of the duties with which he is hereby charged, when thereunto required, incur a penalty of Ten Shillings currency, to be sued for and recovered in the manner herein provided.

Water courses to be cleansed before a certain day in each year:

XX. And be it enacted, That on or before the fifteenth day of July of each and every year, every brook, water course, drain or ditch shall be thoroughly opened, cleansed and rendered fit for the flowing and passing through the same of all water that may during any period of the year flow into the same, and that any person or persons failing so to open and cleanse every part of any ditch, drain, water course or brook which may be upon his land or to which he may by law be subjected, shall incur and pay a penalty of Two Shillings and Six Pence currency, for each and every day during which such drain, ditch, water course or brook shall remain unopened and uncleansed.

Penalty.

Road Surveyors to visit fences, &c., when required.

XXI. And be it enacted, That it shall be the duty of every Road Surveyor, when and so often as he shall be thereunto required by any person being proprietor or occupant of lands within his division, to

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visit and examine the drains or ditches and the line
 fences separating the lands belonging to the complain-
 ant from the lands of any other person, or of the public,
 (giving previous notice of the day and hour when
 such examination will take place, either personally,
 or by notice left at the residence of the person against
 whom complaint shall have been made, or of his
 agent, tenant or person usually acting in his behalf,
 and if any lands be not represented by any proprietor,
 agent, tenant or person usually acting in his behalf,
 within the parish, then a notice, posted on the church
 doors of the parish, at least eight days before making
 such examination, will be sufficient;) and the Road
 Surveyor shall determine whether the fence belonging
 to the person against whom such complaint shall have
 been made be sufficient or the drain insufficient to
 carry off the water; and if the fence or drain belonging
 to the said party be declared insufficient, such party
 shall be ordered to make, repair or deepen or clean
 out the same within a certain time to be fixed by the
 said Road Surveyor, which time shall not exceed
 four days in any case wherein it shall be possible to
 perform the work required within that time; and in
 all other cases such Surveyor shall allow such further
 delay as he shall think necessary; and if the person
 whose fence or drain shall have been so declared
 insufficient, shall fail to conform to the order made
 concerning such fence or drain, such person shall
 incur a penalty of Two Shillings and Six Pence
 currency for each and every arpent in length of such
 fence or drain (any fraction being reckoned as a
 whole arpent) for each and every day such fence or
 drain shall remain unrepaired after the expiration of
 the time so fixed; Provided always, that no fence or
 drain shall be considered insufficient which shall not
 be inferior to the fence or drain on the same line or
 boundary and in a similiar position in the same field
 or enclosure by the party complaining.

XXII. And be it enacted, That it shall be the duty
 of every such Road Surveyor after the expiration of
 the time he shall have fixed for the making or

Proviso: what shall
 be a sufficient fence.

Provision if the fence
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 time fixed.

repairing of such fence or drain, or deepening or clearing of such drain or of making such *découvert* as aforesaid, to authorize the party requiring the same, to make or repair the said fence or *découvert* or drain, to proceed to the place and determine upon the value of the said repairing, or of making the said drain or *découvert*, and as soon as the said work is finished, the Surveyor shall determine the value of the same, and shall give his certificate approving the same and stating the value of the work, and also his expenses for attendance to the party who has performed the work, and such certificate, if sworn to by the Surveyor before a Magistrate, shall be received as a sufficient proof in any Court of Justice or before any Judge, of the value and performance of the said work and of the expenses incurred.

As to bridges crossing any water course,

XXIII. And be it enacted, That it shall also be the duty of the said Road Surveyors respectively to determine where and by whom any bridge for the purpose of crossing any water course, ditch or drain shall be made and kept up; and the party by whom they shall determine any such bridge to be made shall make and keep up the same in a good and sufficient manner to the satisfaction of the said Surveyors.

As to cases where a new fence or a *découvert* shall be ordered to be made.

XXIV. And be it enacted, That whenever the matter in question shall relate to the making of a *découvert*, or to the erection of a fence where there shall have been none before, or where although there has been a fence, the old fence shall be in such a state that the labour of repairing it shall be equal to that of making a new one, such Inspector shall not condemn the party against whom complaint shall have been made, unless the party complaining shall prove that the party complained against, or his agent or party usually acting in his behalf, was called upon to make the said *découvert*, or to erect the said fence before the first day of December preceding the time at which such complaint shall have been made: Provided always, that if the party complained against does not reside within the District and has no tenant or known agent, or party usually acting in his interest,

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the complaining party must prove that a notice has been posted to the foregoing effect on the Church doors of the Parish or Township wherein the property is situated for four consecutive Sundays, during any time of the year immediately preceding the first day of December then last past, or if there be no Church therein, then at one of the most public places therein.

XXV. And be it enacted, That it shall be the duty of every such Road Surveyor, whenever he shall be thereunto required by one or more proprietors or occupants of land, to proceed to inspect all lines dividing their lands from their neighbours', whereon it is proposed to erect a new fence; all ditches opened or to be opened, and all other ditches, drains or water-courses commonly known as work to be jointly performed (*travaux mitoyens* or arising therefrom,) and then and there to order such work as he shall deem necessary, and shall determine the parties by whom the same shall be performed and kept in repair, as well as the manner in which the same shall be done, and the time within which it shall be completed, as he shall deem it just and conformable to the custom and laws of this Province in that behalf; and every proprietor or occupant of land as aforesaid, who shall refuse or neglect to make, repair, take care of and keep in order any line fence, ditch or other ditch as aforesaid according to the order made by such Surveyor, within four days, or within the time fixed by such Surveyor not exceeding six additional days (where he shall have thought fit to grant a longer delay,) after a written or verbal notice to such person given, shall incur a penalty of Two Shillings and Six Pence currency, for every day that such fence or ditch shall remain unmade or unrepaired in the manner aforesaid.

Duty of Road Surveyor as to work to be done by joint labour.

XXVI. And be it enacted, That it shall also be the duty of every such Surveyor within his division, so often as he shall be thereunto required, to visit and examine all outlets, water-courses and brooks common to several lands or to any number of proprietors or occupants of land, the necessary labour concerning

As to water-courses, &c. where the labour shall have been regulated by *procès-verbal*.

which shall have been regulated by *procès-verbal* duly homologated, or by *procès-verbal* heretofore made by any Inspector of fences and ditches, or by an agreement made by the parties interested, or by direction of the Municipal Council, and to see whether such work has been done conformably to such *procès-verbal* or agreement, and to order that the same be done, repaired and kept in order in the manner stated in such *procès-verbal* or agreement; and every person refusing or neglecting to conform to and obey such order, within four days after written or verbal notice to that effect shall have been given to such person, or within the time fixed by the said Inspector, shall incur a penalty of Two Shillings currency for each and every day such work shall thereafter remain unperformed: Provided always, that in all cases provided for by this and by any section of this Act, it shall be the duty of every such Road Surveyor, after the expiration of the delays therein specified, to authorize the work to be performed by any party or parties interested in having it made, and after it is so made to give his certificate of the cost and value of the work and also of his expenses for attendance, to the party or parties who have performed the same, and such certificate, if sworn to by the Surveyor before a Justice of the Peace, shall be received as a sufficient proof in any Court of Justice or before any Judge or Justice of the Peace, of the value and performance of such work, and such amount and all expenses may be recovered by suit before any Justice of the Peace, or the land for which such disbursements have been made may be sold, as provided for by this Act.

Proviso.

Where a water-course shall be common to the lands of several proprietors.

XXVII. And be it enacted, That in all cases when it shall be necessary to open any outlet or water-course, or to enlarge or deepen any brook common to the lands of several persons, the work connected with which shall not have been apportioned and regulated by any *procès-verbal* or agreement, the matter in dispute shall be adjusted, on the requisition of one of the parties interested, by two Road

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Surveyors, conversant with such matters and in no wise interested, and residing nearest to the place where such work is to be done, and in case there shall be no such Road Surveyors so conversant and not interested in the Parish or Township, then by two Overseers qualified as aforesaid.

XXVIII. Provided always, and be it enacted, That ^{Previous notice to be given.} before any such Surveyor shall proceed to the execution of the duties hereinbefore assigned to them, public notice shall be given by them, either verbally or by advertisement in writing, posted at the doors of the Churches or other places of public worship, in the Parish or Township where the work is to be done, immediately after Divine Service in the morning, and posted thereon on the Sunday immediately preceding the day on which they intend to visit the place, requiring all persons interested to take notice of the same, and to attend at the time and place appointed; and in places where there shall be no Church or place of public worship, then the said notice shall be posted in one of the most public places in the said Parish or Township.

XXIX. And be it enacted, That after having given ^{Proceedings on the day fixed by the Surveyor for deciding the matter.} the notice aforesaid, the said Road Surveyors shall, on the day and at the hour fixed, proceed to the place accompanied by the parties interested if they see fit, and after inspecting the place or places, and becoming competently acquainted therewith, and after being fully informed of the matter in dispute, shall give their decision, and shall draw up a *procès-verbal* of their proceedings, setting forth every thing to be done with respect to such outlet, water-course or brooks, for the general advantage of all parties interested, and the time at which it shall be done, with such further particulars as they shall judge necessary or expedient concerning the matter, comprising also the expenses incurred as well for the examination of the place as for the advertisements, and for drawing up the *procès-verbal*; which *procès-verbal* shall be deposited in the office of the nearest Notary or Justice of the Peace, and such Notary or

Justice of the Peace shall give a certified copy thereof to any of the parties interested therein who shall require it, on the payment of the expense of such copy, at the rate of six pence currency for every hundred words; Provided always, that each *procès-verbal* so made, whether it concern one or more Parishes, Townships or Settlements, shall be homologated before one or more Justices of the Peace in the manner hereafter prescribed, and the homologation, and a copy or copies of such *procès-verbal* certified by such Justice or Justices of the Peace, shall be deposited with the Secretary-Treasurer of the Municipality or Municipalities having jurisdiction over every Parish or Township containing land thereby affected, and the Secretary-Treasurer of such Municipality shall give a copy thereof certified by him or the Mayor to any party requiring the same on the payment of the expense of such copy at the rate of six pence for every hundred words; and provided always, that whenever the said Surveyors shall differ in opinion as to a decision and the *procès-verbal* to be drawn up, it shall be their duty to call in a third Surveyor of Roads without delay, and after being competently acquainted therewith and fully informed of the matter in dispute, the majority of the said Surveyors shall give their decision, and shall draw up a *procès-verbal* of their proceedings which shall be deposited by them as above provided.

Proviso: homologation of *procès-verbal*.

Proviso: when the Surveyors differ.

Owners of higher lands exempted.

Proviso: as to water-courses through such lands.

XXX. Provided always, and be it enacted, That the owners of lands which shall be higher than those of their neighbours shall not in any wise be bound or required by any Road Surveyor to make or assist in making the drains or water courses through their lands of any greater depth than may be necessary for draining their own lands; unless so ordered by any *procès-verbal* which shall or may be made to that effect: Provided further nevertheless, that it shall in all cases be lawful for the persons owning any adjacent lands or swampy grounds, to make use of such drains or water-courses as aforesaid, through higher grounds, to clean out and deepen the same at their own

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expense, or where there are no such drains already existing, to cause the same to be opened in the manner and after the formalities hereinbefore prescribed by this Act, in such manner as to carry off the water from their own lands, or to prevent the same from coming, lodging or remaining thereon: And whereas it has been the custom in Lower Canada to name a third Inspector of fences and ditches when the two named in conformity with the provisions of the hereby repealed Act could not agree in their decision or *procès-verbal*, although doubts could be entertained of the legality of such proceeding, Be it declared and enacted, That any *procès-verbal* made by or with the assistance of a third Inspector named in the manner aforesaid, and homologated by any Justice or Justices of the Peace under the aforesaid hereby repealed Act, shall not be held or declared to be invalid, but on the contrary shall be and is hereby declared valid to all intents and purposes.

Declaratory: as to P.
V. made by assistance
of a third Inspector,
&c.

XXXI. Provided always, and be it enacted, That it shall be the duty of all Road Surveyors, who shall draw up any *procès-verbal* as aforesaid, to select and appoint from among the parties interested, and after having consulted with them, one or more Overseers, according to the importance of the work to be done, who shall, after their names shall have been inserted in the said *procès-verbal*, carry the same into effect, and see that the work therein ordered to be done, as well with respect to the immediate performance thereof as to the keeping the same in repair in future, be duly performed for the general advantage of the parties interested therein: Provided further, that the persons so named as Overseers shall not be bound to act as such during more than four successive years, if they shall consider the office burthensome and wish to be relieved therefrom, in which case, (or in case of death or infirmity, or absence of one or more of such Overseers,) or in case one or more of such Overseers shall sell or dispose of his property, the persons interested shall, when thereunto required by one or more such persons, who shall give notice thereof in

Overseers of joint
work to be appointed.

Proviso: period of
service.

the manner hereinbefore set forth respecting the view of the place, meet for the purpose of proceeding to a new election which shall be made by the majority of the persons interested, then and there present, who shall cause a record thereof to be drawn up, and shall deposit the same in the place where the *procès-verbal* to which it has reference, shall have been deposited : Provided always, that it shall be lawful for all the persons interested in any *procès-verbal* of a water course, homologated, in any Court of Law, or in any such *procès-verbal* made by any Road Surveyor or Inspector of fences and drains, or made by agreement, to proceed in the manner above mentioned, to an election for the purpose of filling up the place of any Overseer or Overseers deceased, absent, or having sold their lands, or desirous to resign their office after four years of service ; and when such water-course shall concern two Parishes, Townships or Settlements, one or more Overseers from each place shall be appointed to see such *procès-verbal* carried into effect ; and any such Overseer who shall neglect or refuse to cause such *procès-verbal* to be carried into effect according to its form and tenor, after having been required so to do by one or more of the parties interested, at least eight days before, shall incur a penalty not exceeding Five Shillings currency, for each day during which such work shall not be done in the manner provided by the *procès-verbal* ; allowing four days for performing such work.

XXXII. And be it enacted, That the Surveyors, after having drawn up their *procès-verbal* as aforesaid, shall have a copy thereof prepared, which they shall cause to be posted or read on the following Sunday after Divine Service in the forenoon, at the Church doors or other places of public worship, and when there is none, then at one of the most central or public places of the parish or Township, for which such *procès-verbal* shall be made, and such public notice shall mention the time when such *procès-verbal* will be presented for confirmation, and the name of the Justice of the Peace to whom it will be so

Proviso : parties interested may proceed to an election.

Procès-verbal to be publicly read, &c.

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presented ; and that all persons interested therein may appear before such Justice of the Peace for the purpose of stating their reason (if any they have), why such *procès-verbal* should not be confirmed, and a copy of the said *procès-verbal*, after it shall have been confirmed, shall be deposited in the keeping of such Overseer or Overseers, to be by them kept as a guide in the direction of the work, and for the information of all persons interested, to whom he or they shall give communication thereof, gratis, whenever they shall require it ; and every such Overseer shall deliver the said *procès-verbal*, and all other records and papers relating to his office, to his successor or successors in office ; and every such *procès-verbal* and certified copies thereof shall be deposited after its homologation with the Secretary-Treasurer of the Municipality in which any Township or Parish having lands affected thereby shall be.

Opposition may be heard.

Custody of P. V.

XXXIII. And whereas the erroneous construction put by certain Justices of the Peace upon the obligation of the Inspectors of Fences and Ditches to prosecute the homologation of the *procès-verbans* by them made according to the requirements of the Act, passed in the Session of the Parliament of Lower Canada, held in the tenth and eleventh years of the Reign of His late Majesty King George the Fourth, intituled, *An Act to amend an Act passed in the ninth year of His Majesty's Reign, intituled, 'An Act for the more speedy remedy of divers abuses prejudicial to Agricultural improvement in this Province,' and to make further provision to the same effect*, and the Act passed in the Session of the same Parliament, held in the third year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to repeal a certain Act therein mentioned and to provide more effectually for the remedy of divers abuses prejudicial to Agriculture*, and referred to in the forty-third section of the Act passed in the Session of the same Parliament, held in the sixth year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to repeal a certain Act therein*

Recital 10 & 11 G.
 J. c. 1, 3 W. 4. c. 31,
 6 W. 4. c. 56.

mentioned, and more effectually to remedy divers abuses prejudicial to Agriculture, hereby repealed, has become prejudicial to opposants, and tends to impede the purposes of Justice: Be it therefore enacted, That any *procès-verbal* drawn up under the authority of the Acts hereby repealed, and concerning one or more localities, which shall have been homologated before one or before two Justices of the Peace, shall be null and of no effect until it shall have been homologated conformably to the requirements of the Act in that behalf, before the Justice or Justices of the Peace nearest to the locality where the work is to be performed.

Certain *procès-verbaux* to be null unless homologated.

Time to be fixed within which the work is to be done under P. V.

XXXIV. And whereas it is necessary to fix the time within which the work ordered in any *procès-verbal* shall be done, Be it therefore enacted, That the Overseer or Overseers chosen to superintend the execution thereof, shall give public notice at the doors of the Churches or of any place of public worship, on the two Sundays next preceding the day they shall appoint as hereinafter set forth, after Divine Service in the forenoon, and when there is no place of worship, then at one of the most public places in the Settlement, Parish or Township, of the day and hour when they will repair to the spot to cause the work to be begun and performed, whether it is to be done in common, or severally by the persons interested accordingly, as by the *procès-verbal* it may have been appointed; and any person interested who shall refuse or neglect to repair to the spot on the day appointed, and to perform his share of the work within the time appointed by the Overseer or Overseers, shall incur a penalty of Two Shillings currency for each and every day during which he shall have neglected to do and perform his share of the work; and if on the expiration of eight days from the time appointed for beginning the work, any of the persons interested shall have neglected to perform it, the said Overseer may cause it to be done, and may recover the expenses from the parties in default, by prosecution before any Justice of the Peace, with costs: Provided

Penalty for neglect.

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always, that in cases wherein a work is to be performed in common, the Overseer may at once employ one or more men instead of such of the persons interested as shall neglect their duty, and may recover from every such person in default the amount disbursed in paying the men employed, by prosecution before a Justice of the Peace as aforesaid, with costs.

XXXV. And whereas it is just to allow an indemnification to the Road Surveyors for the time they may employ in the execution of the duties hereby assigned them: Be it enacted, That there shall be allowed to every such Road Surveyor, employed by virtue of this Act, and to every *Expert*, and he shall be entitled to recover Six Pence for every hour he may be so necessarily employed, which shall be paid by the party in default or in the wrong, whether such party be that at whose instance he acted, or be the adverse party in cases of *travaux mitoyens* or *en commun*, (joint labour,) and when he shall have been called on for a water-course, outlet, rivulet or other stream whatsoever, then the Six Pence per hour, and all the expenses incurred for carrying into effect the notices and *procès-verbal*, the copy and other expenses deemed necessary, shall be paid by all the persons interested in such water-course, outlet, rivulet or other stream, and in either case shall be recovered with costs, in a summary manner before a Justice of the Peace.

Allowance to Road Surveyors, *Experts*, &c.

How recoverable.

XXXVI. And be it enacted, That when the inhabitants of any two or more Parishes or Townships, shall be interested in the opening of any such new outlet or water-course, or in the widening or deepening of any old water-course, outlet or brook, the matter in dispute shall be regulated on the requisition of any person interested therein in each of the said Parishes or Townships, by applying to a Road Surveyor of each Parish, Township or Settlement, if he be not interested, and if he be interested, to an Overseer of Roads in each such place respectively, who shall act and proceed in the manner prescribed by this Act, and the *procès-verbaux* shall be homologated.

Provision where inhabitants of two or more Townships, &c., are interested in any water-course.

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gated as provided by this Act for the homologation of one Parish or Township only : Provided always, that where the said Surveyors of Roads are of equal number, and shall disagree, they shall call in another person disinterested in the matter as umpire, and his decision shall be final.

Majority of those interested may have the work performed by collective labour, after public notice.

XXXVII. And whereas great inconvenience might result from the performing of the work by the persons interested, by reason of their great number, and the difficulty of the work : Be it therefore enacted, That at a public meeting, the majority of the persons interested may cause the said work or any part thereof to be performed by collective labour, by separate shares or by contract, each of them paying his share in money, or performing his share in work, according to an apportionment to be made by one or more persons conversant in the matter, which apportionment, before it shall go into operation, shall be ratified by one Justice of the Peace, after having been first read or posted, during two consecutive Sundays, at the doors of the Churches, or any places of public worship in the Parishes or Townships concerned, making known to the persons interested the day and hour and the place where such Justice of the Peace is to sit to take cognizance of the grounds of opposition if any, to the ratification of such apportionment : Provided also, that in the case of the non-performance of any share of work or of the non-payment of any sum of money imposed by this clause, it shall be the duty of the Overseer or Overseers to apportion such shares and payments amongst the remaining parties interested in such work, and the lands of the defaulting parties shall be subject to the provisions of the forty-first clause, in payment for the same.

Proviso.

Surveyors to collect moneys due from parties interested.

XXXVIII. And be it enacted, That it shall be the duty of the Surveyors appointed, with respect to every such outlet, water-course or brook, to collect such sums of money as each of the parties interested shall be liable to pay by reason of the said apportionment, with all expenses incurred therein, and in case of refusal or negligence on the part of any such person,

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to compel the payment thereof by suit before any Justice of the Peace, resident in the place, with costs, including an allowance of six pence per hour to the said Surveyor for the time he shall have lost by reason of the said suit, and the disbursements he may have been obliged to make for the payment of a Clerk, if it shall have been necessary for him to employ one.

XXXIX. Provided always, and be it enacted, That the powers hereby given shall not in any case extend to authorize any Surveyor or Inspector to make any change concerning the work connected with any outlet, water-course or brook which shall have been previously regulated by a *procès-verbal*, lawfully made, whether such outlet or brook be common to several Parishes or Townships, or only one such place be interested therein, unless two thirds, at least, of the persons interested in such work shall require him to do so, and consent to a departure from the old *procès-verbal*.

XL. And be it enacted, That if any of the parties interested in the decision given or orders made by any Surveyor or Surveyors, by virtue of any of the provisions of this Act, relating to outlets, water-courses and brooks, as well those concerning one Parish or Township, as those which concern several, shall deem himself aggrieved thereby, and shall be dissatisfied therewith, such party shall, within eight days (reckoning from the day on which the *procès-verbal* shall have been publicly read or posted as aforesaid, at the Church doors or other places of public worship, or public place) lay his complaint before a Justice of the Peace, neither interested therein nor related to any one so interested within the degree prohibited by law in such cases, that is to say, within the third degree, and the said Justice shall, before the expiration of the said term of eight days, summon the Surveyor or Surveyors to appear before him, and the Justice of the Peace before whom the *procès-verbal* is to be presented for homologation on the day and at the place fixed for the said homologation, and to have with them the *procès-verbal*, which, as well as

Inspector not to make any change concerning water-courses regulated by *procès-verbaux*.

Appeal given from the decision of Surveyors in certain cases, and proceedings on such appeal.

the reasons in favour of or against it (if any there be) alleged by the parties or their witnesses, shall be maturely examined by the said Justices, and if it shall appear to them that the reasons alleged against the same are insufficient, and that the requisite formalities have been observed, and that there has been no partiality or injustice or negligence in the conduct of the Surveyors, then the said *procès-verbal* shall be ratified, and shall be executed according to the form and tenor thereof; and if on the contrary it shall appear to the said Justices, that there has been partiality or a want of exactness and diligence in examining the place, or that the work has not been equitably apportioned according to the custom of the country, then three *experts* shall be appointed, one by the plaintiff or plaintiffs, another by the defendant or defendants, and the third by the said Justices of the Peace, and if either of the parties shall refuse to name an *expert*, the said Justices shall name one instead of such party; and such *experts*, after being duly sworn before a Justice of the Peace (who is hereby authorized to administer the necessary oath) shall proceed to view the place concerning which the dispute shall have arisen, in the presence of the said Surveyors and of the parties interested, who shall be duly notified by the said *expert*, at least eight days before such second view shall take place, by notice given at the doors of the Churches in the Parish or Township wherein the lands of the parties interested are situated, and the decision of the majority of the said *experts*, whether it be to confirm or set aside the decision given by the Surveyors, shall be final and conclusive to all intents and purposes whatsoever; and if the said *experts* shall set aside the decision given by the Surveyors, or if they shall deem it advisable to change the direction of the water-courses, concerning which the dispute shall be, then the said *experts* shall make a fresh *procès-verbal*, which shall be confirmed by the Justices of the Peace: Provided always, that in every case of such appeal to the decision of the *experts*, the Surveyors by whom the *procès-*

Proviso: parties may
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procès-verbal appealed from shall have been made, may cause the parties at whose requisition it was made, to intervene and defend such *procès-verbal*, and to pay the costs attending the same, if it be by the fault of the said parties that it is defective, but if it shall appear that such defect shall have arisen from negligence or partiality of the Surveyors, then the said Surveyors shall pay the costs thereof, and the said Justices of the Peace shall homologate such *procès-verbal*, if it be confirmed by such *experts*, and if it be disallowed, they shall homologate that made by such *experts*.

XLI. And whereas it is expedient to provide a simple mode for the sale of the lands of parties who shall have refused or neglected to make, repair or keep up the water-courses or bridges over the same fences and *découvert*s which, under any *procès-verbal* or any provision of this Act, they are required to make, repair or keep up: Be it enacted, That it shall be lawful for any proprietor who shall have made, repaired or kept up any such water-course or bridge over the same fence or *découvert* in the place of the party whose duty it was to make, repair or keep up the same, to apply to the Secretary-Treasurer of the Municipality within which the lands on or respecting which such water-course, bridge, fence or *découvert* ought to have been made, repaired or kept up, shall be to sell the said lands for the payment of the expenses incurred in the making, repairing or keeping up of the said water-course, bridge, fence or *découvert*, and a copy, or extract of such *procès-verbal*, accompanied by the certificate mentioned in the foregoing sections, shall be *prima facie* evidence in support of the said application, and the amount mentioned in the said certificate as being the value of the work performed by such proprietor towards the making and repairing or keeping up of such water-course, bridge, fence or *découvert*, shall entitle the said proprietor to a privileged claim upon the said lands in preference to any mortgage, hypothèque, seigniorial dues, and all other debts or demands whatsoever, for or respecting the said lands: and the said Secretary-Treasurer on

a Mode of selling lands for defraying expense of making water-courses, &c. if the proprietor does not pay the same.

such application being made in due form as aforesaid, shall proceed to the sale and adjudication of the said lands for the expenses so incurred in the manner and after the advertisements, publications and other formalities provided and required by an Act passed during the present Session of Parliament, and intitled, *An Act to amend the Municipal Laws of Lower Canada*, and the amount of expenses incurred by the proprietor applying for such sale, shall be paid over to him by the Secretary-Treasurer, who shall retain the costs incurred in and about such sale, and in and about the proceedings preparatory thereto and incident thereon, and the said Secretary-Treasurer shall have power and authority to execute a deed or deeds of sale of all lands so sold, and any such deed shall have the same force and effect as a deed executed under the authority of the said last recited Act.

Application of the proceeds of the sale.

Certified copies of P. V. to be deposited with the Secretary-Treasurer of the Municipality.

XLII. And be it enacted, That a certified copy of every *procès-verbal* homologated under this Act, shall be deposited with the Secretary-Treasurer of the Municipality within which any lands thereby affected are situated within ten days after the homologation thereof, by the party applying for the homologation, or by the Surveyors who shall have acted in the premises, and such certified copy shall be received as evidence in all Courts of Justice.

Parties may be required to cut down noxious weeds on their lands.

XLIII. And whereas the seeds of noxious weeds growing on the land or ground of one proprietor, or upon a common, are frequently driven by the winds and otherwise conveyed upon the lands and grounds of the adjoining proprietors, where, to the injury of such proprietors, and their discouragement with respect to agricultural improvement, they grow: Be it enacted, That it shall be lawful for any proprietor or occupier of land, at any time between the twentieth day of June and the first day of the month of August, in each year, by verbal notice in the presence of one witness, or by notice in writing, in the form of Schedule A, left at the domicile of the person to whom it may be addressed, or in case of a common in which several persons have shares or are interested, by notice

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published at the Church door of the Parish within which such common shall be situate, on a Sunday or Holiday, (*Fête d'Obligation*), immediately after Divine Service in the forenoon, to require any proprietor or occupier of any adjoining land, or a meadow not being then sown or under crop, or the persons having shares or being interested in common as aforesaid, to destroy or cut down all such noxious weeds, to wit: those commonly called ox-eyed daisies, crowsfoot, thistles, wild endive, succory and swallow-wort, and all other noxious weeds whatsoever as may be then growing on such adjoining land or piece of ground, and if the weeds so required to be destroyed or cut down are not entirely destroyed or cut down at the expiration of six days from the date of such notice, then it shall be lawful for any Justice of the Peace, upon complaint duly made before him, on the oath of one credible witness other than the complainant, or on the confession of the party or parties complained of, to order, in writing, the proprietor or occupier, or other person or persons against whom such complaint shall be made, to pay day by day to the party claiming, a penalty of Two Shillings and Six Pence currency, for every day that any such weeds shall remain standing or growing from and after the time at which such notice shall have been served, with the costs and expenses incurred in obtaining such order, according to this Act; Provided always, that such order shall be pronounced in a summary way, and shall be in the form of Schedule B.

XLIV. And be it enacted, That it shall not be lawful to scatter or allow to be scattered, the seeds of any noxious weeds, to the prejudice of any party whatever. As to seeds of noxious weeds.

XLV. And be it enacted, That it shall be the duty of the Surveyors and Overseers of highways, within the time limited in the next but one foregoing section, to cause to be destroyed or cut down by the persons or companies bound to make or keep in repair the highways, by-roads, canal banks, rail-road lands, and all public works and places whatever, in their res- Surveyors to cause weeds growing on highways to be destroyed.

pective divisions, all weeds growing on highways, by-roads, canal banks, rail-road lands, and all public works and places whatever in their whole width, to the fences inclosing such highways or roads, under the same penalties on the said Surveyors or Overseers, and persons bound to make and keep and repair the said highways and by-roads, as are provided in the Acts now in force for neglect or default in keeping such highways and roads in repair, and such penalties shall be recoverable in the same manner.

Persons employed by Companies liable for penalties.

XLVI. And be it enacted, That any person in the employment of Incorporated Companies or of any other party, and receiving moneys on his or their behalf, shall be liable to prosecution for penalties under this Act, and shall be answerable as though he were proprietor of the land.

Dead animals to be buried.

XLVII. And whereas it also frequently happens that animals dying of disease or otherwise, remain exposed in public or private roads, fields and other places, whereby travellers are incommoded and exposed to danger, and dangerous disease may be produced: Be it therefore enacted, That the owners of any such animal of what kind soever, who shall refuse or neglect to bury the same at least three feet under ground, and to cover the same with two feet of earth at least, shall incur a penalty of not more than Ten Shillings currency, nor less than Five Shillings currency.

Penalty for throwing filth into brooks, &c.

XLVIII. And whereas it also frequently happens that animals dying of disease or otherwise are thrown into brooks, rivulets and rivers; and whereas individuals are in the habit of carrying filth in summer, and more particularly in winter, into the brooks, rivulets and rivers, and upon ice of the said brooks, rivulets and rivers: Be it therefore enacted, That every person who shall be convicted, on the oath of a credible witness other than the informer, of having so thrown any such animal, or so carted any such filth (unless in or to a place appointed for that purpose by the competent local authorities) shall incur a penalty of not more than Twenty Shillings

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currency, nor less than Ten Shillings currency, in addition to all damages: Provided that in all cases where the owners or the offending parties are not known or cannot be reached, then it shall be the duty of the Surveyors and Overseers of roads, within their respective divisions, to bury such animal so found in public or private roads, fields or other places, or in brooks, rivulets or rivers, or to remove such filth within twenty-four hours after he shall have been informed of the existence of such nuisance, and for such service the Municipality within which his division is situated, shall pay him.

XLIX. And be it enacted, That all fines and penalties incurred under this Act, may be sued for and recovered within three months after the offence may have been committed, and not afterwards. Limitation of suits.

L. And be it enacted, That whenever any lumber of any kind shall be carried by Spring floods, or otherwise, unto the lands or banks adjoining any floatable river, and shall be there left until the first day of June, or shall from any cause be upon such lands or banks on the said day, it shall be lawful for the proprietor or occupant of such lands or banks, upon, or at any time after the said day, to cause such lumber to be hauled from off his lands or banks to any safe place, at the expense of the owner of such lumber, and to cause notice to be posted up at the Church doors, (or if there be none, at some public place in the Parish or Township,) and to be read aloud by a Bailiff of the Circuit Court at such Church door (if any there be) on two Sundays immediately after Divine Service, (or if there be no service, at the usual hour of closing Divine Service,) in the forenoon, stating that such lumber (describing it generally) was found on the lands of the proprietor or occupant, and the place where the same then lies, and that if the expenses of hauling it to such place, and of such notice, be not paid before a certain day (naming it,) the same will be then sold at the place where it lies, by some Bailiff of the said Court; and if such expenses be not paid before such day, Provision as to lumber carried upon lands by Spring floods.

or on such day, and before the sale, such lumber shall be then sold by a Bailiff of the said Court by public auction to the highest and best bidder, and out of the proceeds of the sale, all the expenses aforesaid and those of the sale, (all which expenses shall be those allowed to a Bailiff for like service under a Writ of Execution from the Circuit Court,) shall be first paid, and the remainder shall be paid over to the Treasurer of the Municipality and make part of the funds thereof; any law to the contrary notwithstanding,

Fines, &c. how to be sued for and applied.

LI. And be it enacted, That all fines, penalties and forfeitures imposed or incurred for offences against this Act, and not otherwise provided for, shall be sued and recovered on the oath of one credible witness other than the informer or prosecutor, or by confession of the defendant before any one Justice of the Peace for the District wherein the offence shall have been committed, and shall be levied, as well as the costs, by Warrant under the hand and seal of the Justice of the Peace before whom the conviction of the offender or offenders shall be had, and by seizure and sale of the goods and chattels, and one half of all penalties shall go to the informer or prosecutor, whether he be or be not interested, and the other half shall be paid to the Secretary-Treasurer of the Municipal Council of the Municipality within which the offence shall have been committed.

Offences may be tried in District where offender is found.

LII. And be it enacted, That for the more effectual prosecution of offences committed under this Act, all such offences may be tried, determined and punished in any District of Lower Canada where the party accused may be found; any law to the contrary notwithstanding.

As to Writs of Certiorari.

LIII. And be it enacted, That if there be any Writ of *Certiorari* at any time heretofore issued, or at any time after the passing of this Act to be issued for reviewing any decision of any Justice of the Peace, rendered upon any matter growing out of the Act first above cited and repealed by this Act, or out of this Act, the Court out of which such Writ of *Certiorari*

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shall have issued shall determine the question according to law and practice, and shall award costs to the successful party.

LIV. And be it enacted, That every person who shall be convicted of having wilfully taken a false oath in a case wherein a Justice of the Peace in the due fulfilment of his duties, pursuant to this Act may deem it necessary to administer an oath, shall incur the pains and penalties by law provided against wilful and corrupt perjury.

False swearing, perjury.

LV. And be it enacted, That all duties relating to fences and water-courses hereby imposed on Surveyors of Roads shall be performed by Inspectors of fences and ditches in all Parishes and Townships where such may be chosen and named by the Municipal Council, and they shall be entitled to the same remuneration and subject to the same penalties as herein provided for Road Surveyors.

Certain duties to be performed by Inspectors, if appointed.

LVI. And be it enacted, That one copy of this Act shall be forwarded to each of the Road Surveyors for his guidance in the performance of the duties hereby required of him; and that every such Surveyor upon retiring from office shall transfer such copy of this Act to his successor in office for his guidance; and that every such Surveyor who shall retire from office and refuse or neglect to transmit such copy to his successor in office, shall incur a penalty of not less than Five Shillings currency, nor more than Ten Shillings currency.

Copies of this Act to be sent to Road Surveyors.

LVII. And be it enacted, That any contravention of this Act, whether by doing any thing hereby forbidden, or leaving undone any thing hereby required to be done, and for which no other penalty is hereby provided, shall be an offence by which the party guilty thereof shall incur a penalty of not more than Fifty Shillings, to be recovered with costs in the manner herein provided for the recovery of other penalties not exceeding that amount, and all parties incurring penalties under this Act, if the same be not paid immediately after judgment, may be punished by imprisonment not exceeding thirty days.

Penalty for contraventions not otherwise provided for.

Justices may convict
on view.

LVIII. And be it enacted, That a Justice of the Peace having under this Act cognizance of any offence, may convict a party of such offence on the personal view of such Justice, if the offence be committed in his presence; any law, custom or usage to the contrary notwithstanding.

Justices, &c., not to
determine cases in
which parties are
related to them.

LIX. And be it enacted, That it shall not be lawful for any Justice of the Peace, Road Surveyor, Overseer or Inspector of fences and ditches, to hear or determine any matter or case brought before them in their respective capacities wherein they may be interested either in the subject matter before them, or in the event of their determination, or in any case in which the parties litigant before them are related to them within the degree prohibited by the Law regarding witnesses in Courts of Law.

Commencement of
Act.

LX. And be it enacted, That this Act shall come into force on the First of January one thousand eight hundred and fifty-one.

SCHEDULE A.

To _____ of

Take notice that you are required to cut down, destroy and root out all the noxious weeds on your property, whether the same be oxeyed daisies, crows-foot, thistles, wild endive, succory, and swallow-worth, or any other noxious weed whatsoever, within four days from this day, and in default of your so doing I do hereby summon and enjoin you to be and appear before

Esquire, Justice of the Peace, at his house, in _____ at the hour of

in the _____ noon, on the _____ day of _____ (being the day immediately following the said fourth day, or) then and there to show cause if any you have, why you should not be condemned to pay me Ten Shillings currency for the said four days, and a further sum of Two Shillings and Six Pence for each succeeding day during which any of the said noxious

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weeds shall remain on your said property ; the said sum to be levied day by day by distress ; Herein fail not.

(Date)

(Signature.)

SCHEDULE B.

Judgment of the Justice of the Peace.

Be it Remembered, that having upon the complaint of _____ heard him and _____, and examined the witnesses by them produced (or visited the spot and judged upon my own view, *as the case may be*) (I do hereby acquit the defendant *or*) I do hereby enjoin and command _____ to pay to the said _____ the sum of _____ Shillings ; and also a further sum of Two Shillings and Six Pence for each succeeding day during which the noxious weeds specified in the annexed complaint shall not be cut down and destroyed ; the said sum of Two Shillings and Six Pence currency to be levied by distress day by day.

And these are to empower and command all Bailiffs and other Peace Officers to make such distress accordingly with costs taxed at the sum of _____

As witness my hand.

(Signature)

QUEBEC : Printed by S. DERBISHIRE & G. DESBARATS, Law Printer to the Queen's Most Excellent Majesty.

