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2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act for the Sale and better Management of Timber upon the Public Lands.

Received and Read a first time, Tuesday, 3rd
April, 1849.

Second Reading, Tuesday, 10th April, 1849.

HON. MR. PRICE.

PRINTED BY LOVELL AND GIBSON.

BILL.

An Act for the Sale and better Management of Timber upon the Public Lands.

WHEREAS it is deemed expedient and proper to provide by Law as well for the Sale of the Timber growing on the Public Lands of the Province, as for the protection of the said Timber against the frequent and extensive depredations committed upon it in various parts of the Province: Be it therefore enacted &c.

Preamble.

And it is hereby enacted by the authority of the same, That it shall and may be lawful for the Commissioner of Crown Lands, or any officer or agent under him duly authorized to that effect, to grant licenses to cut Timber on the ungranted Lands of the Province, at such rates, and subject to such conditions, regulations and restrictions as may from time to time be established by the Governor of the Province by and with the advice of the Executive Council, and of which due notice shall be given in the Canada Gazette: Provided always, that no license shall be so granted for a longer period than twelve months from the date thereof; And provided further, that if in consequence of any incorrectness of survey or other error or cause whatsoever, a license shall be found to cover grounds already included in a license of a prior date, the license last granted shall become null and void in so far as it may interfere with the one previously issued, and the holder or proprietor of the license so rendered null and void shall have no claim whatsoever upon the Government for indemnity or compensation by reason of such cancellation.

Commissioner of Crown Lands may grant licenses to cut Timber on Public Lands.

Proviso.

Proviso: as to interfering licenses.

II: And be it enacted, That the licenses so granted shall describe as accurately as circumstances will permit the ground or grounds upon which the Timber shall be cut, and shall be held to confer for the time being on the nominee, the right to take and keep possession of the premises described to the exclusion of all other parties, subject to such regulations and restrictions as may be established; and such licenses shall have the effect of vesting in the holders or possessors thereof all rights of property whatsoever in all such trees, timber and lumber as shall or may be cut upon or within the limits of any such license during the term thereof, whether such trees, timber and lumber shall have been cut by or under the authority of the holder or proprietor of such license or by any other person with or without his consent, and such licenses shall be deemed sufficient authority to

Form of license and its legal effect.

entitle the holders or proprietors thereof to seize or cause to be seized, by way of revendication, *saisie revendication*, such trees, timber or lumber where the same shall be found in Lower Canada in the possession of any unauthorized person, and shall also be deemed sufficient authority, to institute any action or suit at law or equity against any wrongful possessor or trespassers, as well as to prosecute all trespassers and other offenders to punishment, and to sue for and recover damages if any shall have been sustained; and all proceedings pending at the expiration of any such license shall or may be continued and carried to final termination in the same manner as if the said license had not expired.

Proceedings pending when the license expires.

Return to be made by persons obtaining licenses.

To be attested on oath, &c.

Timber liable to payment of dues may be followed until they are paid.

The giving of bonds or notes, not to effect the lien on the Timber.

Sale of Timber seized for non-payment of dues.

III. And be it enacted, That all persons obtaining licenses shall, at the expiration of the said licenses, make to the officer or agent granting the same, or to the Commissioner of Crown Lands, a return of the number and kinds of trees cut, and of the quantity and description of saw logs, or of the number and description of sticks of square timber he has manufactured and carried away under such license; which statement shall be sworn to by the proprietor of the license, and by his foreman or principal man, before one of the Justices of the Peace, who are hereby authorized to administer all oaths required by this Act; and persons refusing or neglecting to furnish such statement, or evading or attempting to evade any regulation hereafter to be established by Order in Council, shall be held to have cut without authority, and the timber made shall be dealt with accordingly.

IV. And be it enacted, That all timber cut under licenses granted shall be held liable for the payment of the dues established thereon, so long as and wheresoever the said timber or any part of it may be found within the limits of the Province, whether in the original logs or manufactured into deals, boards or other stuff, and it shall be lawful for all officers or agents entrusted with the collection of such dues to follow all such timber and to seize and detain the same wherever it may be found until the dues are paid or satisfactorily secured.

V. And be it enacted, That bonds or promissory notes which may be taken for the amount of dues either before or after the cutting of the timber, as collateral security or to facilitate collection, shall not in any way affect or invalidate the lien of Crown on any part of the said timber, but the lien shall subsist in full force until the dues are actually discharged.

VI. And be it enacted, That if any timber so seized and detained for non-payment of dues shall remain more than twelve months in the custody of the agent or person appointed to guard the same without the dues and expenses

being paid, then it shall be lawful for the Commissioner of Crown Lands, with the previous and special sanction of the Governor in Council to that effect, to order a sale of the said timber to be made after sufficient notice, and the balance of the proceeds of such sales, after retaining the amount of dues and costs incurred, shall be handed over to the owner or claimant of such timber.

VII. And be it enacted, That each and every person who without competent authority shall cut, or who may employ or induce any other person or persons to cut, or who shall assist in cutting any timber of any kind whatsoever on any of the Crown, Clergy, School or other Public Lands of the Province, or who shall remove or carry away or employ or induce or assist any other person or persons to remove or carry away any timber of any kind so cut from any of the Public Lands aforesaid, shall not acquire any right to the timber so cut, or claim to any remuneration for cutting, preparing the same for market, or conveying the same to or towards market, but he shall in addition to the loss of his labour and disbursements, forfeit a sum of _____ for each and every tree which he shall be proved to have cut or cause to be cut or carried away, which shall be recoverable with costs, at the suit, and in the name of the Commissioner of Crown Lands or resident agent, in any Court having jurisdiction in civil matters to the amount of the penalty; and that in all cases under this Act, it shall be incumbent on the party charged to prove license or authority to cut, and the averment of the party seizing or prosecuting, that he is duly employed under the authority of this Act, shall be deemed sufficient proof thereof, unless the Defendant shall prove to the contrary.

Penalty on persons cutting timber without license, &c.

Party accused must prove the granting of licence.

VIII. And be it enacted, That whenever satisfactory information, supported if necessary by the affidavit of one or more persons, made before a Justice of the Peace or before any other competent party, shall be received by the Commissioner of Crown Lands or any other officer or agent of the Crown Land Department, that any timber or quantity of timber has been cut without authority on Crown, Clergy, School or other Public Lands, and describing where the said timber may be found, it shall and may be lawful for the said Commissioner, officer or agent, or any one of them to seize or cause to be seized in Her Majesty's name the timber so reported to be cut without authority, wherever it may be found within the limits of this Province, and to secure and place the same under proper custody, until such time as a decision can be had in the matter from competent authority: Provided always, that where the timber so reported to have been cut without authority on the Public Lands aforesaid without license, has been made up with other timber into crib, dram or raft, or in any other manner has been so mixed up at

Timber alleged to be unlawfully cut may be seized on a sufficient affidavit, &c.

Proviso: as to Timber so cut and mixed up with other timber.

the mills or elsewhere, as to render it impossible or very difficult to distinguish the timber so cut on the lands aforesaid without license from other timber with which it may be mixed up, the whole of the said timber shall be held as having been cut without authority on Public Lands, and be liable to seizure and forfeiture accordingly. 5

Seizing officer may command assistance.

Violent resistance to be felony.

Carrying away timber under seizure to be deemed a stealing thereof.

Burden of proof that dues have been paid, on whom to lie.

Timber seized to be condemned if not claimed within a certain time, &c.

IX. And be it enacted, That it shall and may be lawful for any such officer in the discharge of his duty to call in such lawful aid and assistance in the name of the Queen as may be necessary for securing and protecting the timber so seized; and if any person or persons whatsoever shall under any pretence either by actual assault, force or violence, or by threat of such assault, force or violence, in any way resist, oppose, molest or obstruct any officer or person acting in his aid or assistance, in the discharge of his or their duty under the authority of this Act, such person or persons being convicted thereof, shall be adjudged guilty of felony and shall be punishable accordingly. 10 15

X. And be it enacted, That if any person or persons whatsoever, whether pretending to be the owner or not, shall either secretly or openly, and whether with or without force or violence take or carry away, or caused to be taken and carried away, any timber which shall have been seized and detained as subject to forfeiture under this Act, before the same shall have been declared by competent authority to have been seized without due cause, or without permission of the officer or person having seized the same, or of some competent authority, such person or persons shall be deemed to have stolen such timber being the property of Her Majesty, and to be guilty of felony and liable to punishment accordingly; And be it further enacted, that whenever any timber shall be seized for non-payment of duties or for any other cause of forfeiture, or any prosecution shall be brought for any penalty or forfeiture under this Act, and any question shall arise whether the dues have been paid on such timber, or whether the said timber has been cut on other than any of the public lands aforesaid, the burden of proving payment, or on what land the such timber has been cut, shall lie on the owner or claimant of such timber, and not on the officer who shall seize and stop the same or the party bringing such prosecution. 20 25 30 35 40

XI. And be it enacted, That all timber seized under this Act, shall be deemed and taken to be condemned, unless the person from whom it was seized or the owner thereof shall within one calendar month of the day of the seizure, give notice to the seizing officer or nearest officer or agent of the Crown Lands Office, that they claim or intend to claim the same; failing such notice, the officer or agent seizing or causing to be seized, shall report the circumstance to the Commissioner of Crown Lands, who 45 50

shall or may order the sale of the said timber by the said officer or agent, after a notice on the spot of at least thirty days; Provided always, that it shall and may be lawful for any Judge having competent jurisdiction to try and determine such seizures, and with the consent of the agent at the place where such seized timber as aforesaid may be secured, to order the delivery thereof to the alleged owner on receiving security by bond with two sufficient sureties to be first approved by the said agent, to pay double value in case of condemnation, which bond shall be taken to Her Majesty's use in the name of the Commissioner of Crown Lands, and shall be delivered up to and kept by such Commissioner, and in case such seized timber shall be condemned, the value thereof shall be forthwith paid to the Commissioner of Crown Lands or agent, and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered: Provided always, that it shall be lawful for the Governor in Council, in such cases to allow to the informer or informers a proportion not exceeding one half the proceeds of such seizure after deducting duties and costs.

Proviso: judge may order timber to be delivered on security being given.

Proviso: half the proceeds may be given to the informer.

XII. And be it enacted, That if any wilful false oath be made in any case where by this Act an oath is required or authorized, the party wilfully making the same, shall be guilty of wilful and corrupt perjury, and be liable to the punishment provided for that offence; and any persons availing themselves of any false statement or oaths to evade the payment of duties shall forfeit the timber on which duty is attempted to be evaded.

Wilfully false oath to be perjury.

Forfeiture of the Timber.

XIII. Provided always, and be it enacted, That nothing in this Act contained shall be construed as in any way invalidating or affecting licenses already granted or any obligation contracted for payment of dues under such licenses, or invalidate or affect the lien of the Crown on any timber cut, upon Public Lands now within the limits of the Province, and upon which the dues heretofore exacted have not been paid, notwithstanding any bond or promisory note which may have been taken to the amount of such dues.

Existing licenses or liens saved.