

No 250.

3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to amend the Act regulating the culling and measurement of lumber, and to extend the provisions of the same.

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MR. BENJAMIN.

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An Act to amend the Act regulating the culling and measurement of Lumber, and to extend the provisions of the same.

WHEREAS the provisions of the Act regulating the culling and measurement of lumber, passed in the 8th year of Her Majesty's Reign, and chaptered 49, have been found insufficient to protect the owners of saw-logs and timber against persons fraudulently obtaining possession of the same, and it is expedient to make the necessary provisions for the protection of such property : Therefore Her Majesty, &c., enacts as follows :

Preamble.

I. From and after the passing of this Act, if any saw-log or other timber shall be found within the boom, mill-pond, or otherwise in the possession of any person not owning the same, he shall upon demand in writing made by the person whose mark such log or timber bears, or upon the like demand made by his authorised agent, remove the same into the open water adjacent to said boom, pond or premises ; and if within twenty-four hours after such demand shall have been made, such property shall not have been removed from the boom, pond, or premises where found, he shall be liable to pay a fine of not less than *two* pounds nor more than *ten* pounds at the discretion of the Justice of the Peace before whom the party so offending shall be tried ; and if within twenty-four hours after such judgment the said party so offending and being duly convicted, shall have failed to deliver the property as aforesaid, then in addition to the judgment rendered and fee and costs imposed, the Justice of the Peace before whom any such case shall be heard, shall direct a further sum equal to twice the amount of the value of the property so detained, to be added to the execution, and shall direct his Bailiff to levy the whole amount within four days, and as soon as collected shall pay the whole amount except the fine and costs to the party owning the property so held and retained by the party convicted.

Persons owning booms or ponds, to remove timber having other marks into the open water on demand.

Penalty for not doing so and how levied.

II. The owner or owners, or occupier or occupiers of any saw mill, shall exhibit in a conspicuous place in his or their mill, a true representation of all the marks of saw logs which he or they claims or claim either as his or their own particular mark or marks, or the mark or marks of his or their customers' logs ; and in default thereof he or they upon conviction before any Justice of the Peace shall pay a fine of not less than *two* pounds *ten* shillings nor more than *ten* pounds, and in default of payment shall be confined in the County Gaol for any period not exceeding 30 days.

Owners of saw mills to exhibit openly their log marks and those of their customers.

III. Any mill-owner or occupier, or mill-owners or occupiers, who shall exhibit any marks to which he or they have no legal claim, shall upon conviction thereof before any magistrate, be subject to the penalties in the second clause of this Act imposed.

Penalty for exhibiting marks to which the owner of the mill has no claim.

Penalty for sawing up logs having strangers' marks.

IV. Any servant or workman employed by the owner or occupier of a saw mill, who shall saw up or superintend the sawing up of any log or other timber, marked with any other marks than those exhibited in the mill where he shall be at work, and which are claimed to be the marks of his employer, or the marks of the customers of his employer, or who shall cut off or deface any mark on any saw-log or other timber, not the mark of his employer, or the mark of the customers of his employer, shall upon conviction before any magistrate be fined in any sum not less than *two* pounds *ten* shillings, nor more than *ten* pounds for each saw log, and in default of payment shall be sent to the Common Gaol of the County for any period not exceeding thirty days.

Penalty on persons having in their possession sawed lumber bearing marks to which they have no claim.

V. If any board, deal, or other piece of sawed lumber, upon which any other mark than that of the owner or occupier of the mill premises shall be found in any pile of lumber, in the possession of the person who shall have manufactured the same, or in the possession of his agent or workman, it shall be deemed to be the property of the owner of such mark, unless the manufacturer shall show he became possessed of the same in some lawful manner, and in case of conviction he shall be sentenced to pay a fine of not less than *fifty* shillings, nor more than *ten* pounds, and in default of payment shall be sent to the Common Gaol of the County for any period not exceeding 30 days, and for every deal, plank, scantling, or other sawed lumber so found with such mark, not his or their own, shall restore to the owner the lumber found in his possession two hundred feet of the same quality of lumber, within 24 hours after judgment is given against him by the magistrate, and in default, the magistrate before whom any such case shall be tried shall add an amount equal to the value of said lumber to be restored to the execution, and shall issue his warrant for the collection of the same, and shall cause the same to be paid over to the party complaining, after deducting the fine and costs in the case.

Search warrant for lumber may be granted in certain cases.

VI. If the owner of any saw-log or timber, or his agent or servants shall have good and sufficient reason to believe that such property is in the boom or yard or upon the premises of any owner or occupier of a saw-mill, and such owner or occupier shall refuse to the party so claiming such property the right to enter upon his or their premises to search for the same, either by himself or agent, or if found thereon, shall refuse to deliver up such property to the party so identifying the same by his marks, then it shall be lawful for the party claiming such property, or for his agent or servant, to apply to any Justice of the Peace having jurisdiction within the limits, for a search warrant, and if, upon the affidavit of either of the parties aforesaid, such Justice of the Peace shall be satisfied that there is good reason to suppose that such property is in the possession of the party designated, he shall grant a search warrant for the same, directed to some constable of the County, and to the owner, his agent or servant: Such search warrant shall be in the usual terms of all such instruments; and if upon search such property shall be found, then the officer in charge of said warrant shall remove the property and place the same in the possession of the owner, and shall by virtue of the warrant aforesaid apprehend and bring before the Magistrate the person or persons in whose possession such property was found, and if, upon the hearing of the case, no sufficient reason shall be assigned by the parties arrested, for their having possession of the property, then he or they shall be fined in any sum not exceeding *ten* pounds, and in default of payment shall be confined in the common gaol of the County for any period not exceeding thirty days; Provided

Form of warrant and proceedings thereon.

Proviso.

always, that in making such search no unnecessary damage or injury shall be done to the property of the person or persons supposed to have possession of the same; And provided also, that it shall not be lawful for any Magistrate or other Justice of the Peace to grant any such warrant upon the mere supposition of any individual, but the affidavit shall in all cases set forth the grounds for believing the property to be in the party's possession, and shall be from facts within the knowledge of the party making the affidavit, and not from hearsay or common report. **Proviso.**

VII. In estimating the value of any property under the provisions of this Act, it shall be the value of the article in its condition as found upon the premises of the party, whether saw-logs, timber or sawed lumber, and not what would be the value if manufactured or taken to another place or market. **How the value of any article shall be estimated.**

VIII. All fines to be recovered under the provisions of this Act shall be sued for and levied, collected and applied in the same manner as provided for the suing, levying, collecting and application of fines, under the summary conviction Acts. **Proceedings to be under summary conviction Acts.**

IX. All Acts or parts of Acts contrary to the provisions of this Act be and the same are hereby repealed. **Inconsistent enactments repealed.**