

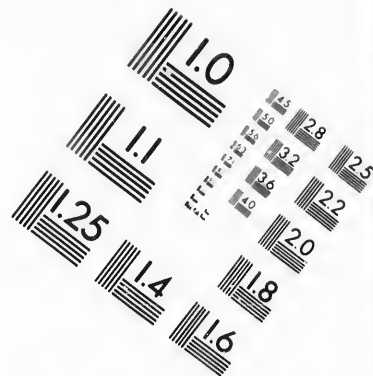
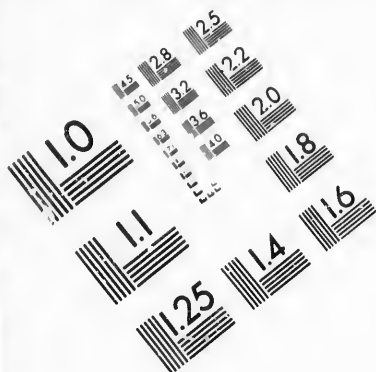
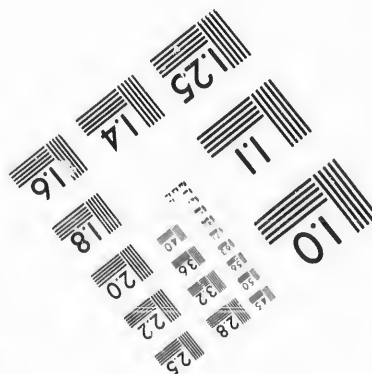
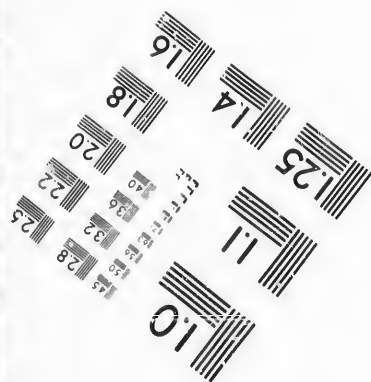
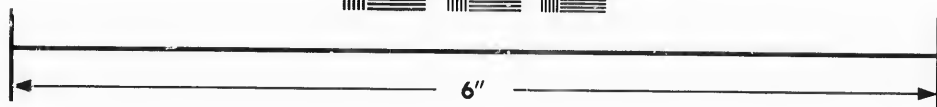
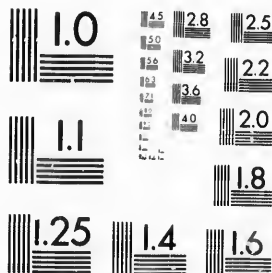


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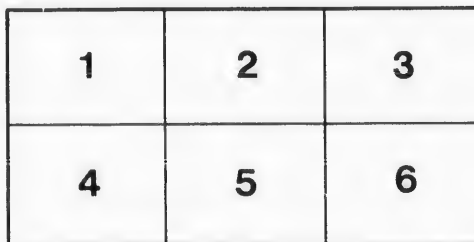
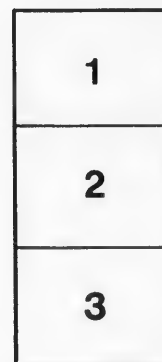
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EXTRACTS

FROM THE

MUNICIPAL AND ROAD ACTS.

AND

AGRICULTURAL ACTS OF LOWER CANADA

RELATIVE TO THE DUTIES OF INSPECTORS OF ROADS, INSPECTOR OF
FENCES AND DITCHES, AND POUND KEEPERS,

INTENDED AS A

GUIDE FOR MUNICIPAL OFFICERS.

Printed by order of the Municipal Council of Chatham, C. E.

Montreal:

PRINTED BY JOHN LOVELL, ST. NICHOLAS STREET,
1867.

PRICE, 25 CENTS.

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GUIDE FOR MUNICIPAL OFFICERS.

INTERPRETATION.

Section 5, Sub-Section 8. The term "local council" means the municipal council of a local municipality.

Sub. 11. The term "local councillor" means a member of a local council.

Sub. 12. The term "owner" applies not only to an individual proprietor, but also to several co-proprietors and to any corporation or association of persons in whom the right of ownership in any real or personal property mentioned in this Act is vested.

13. The term "road" means a public highway, and includes all bridges upon it, and all ditches, fords, and other works and things therewith connected.

14. The term "public bridge" means any bridge of more than eight feet in span.

15. The term "lot" means not only a lot of land in any range or concession in its entirety, but signifies also any subdivision of such lot, and any parcel of land owned or occupied by any one person or by several persons conjointly, and includes all buildings and other improvements thereon.

16. The term "public notice" means a notice, given or to be given, to the inhabitants of the whole, or of any part or parts of any municipalities, or of several municipalities.

17. The term "special notice" means a notice given or to be given to any member or officer of any municipal council, or to any other person under this or any other Act relating to municipal purposes, or in pursuance of any by-law passed by any such council, for the purpose of informing him of any appointment or of any other fact, or of requiring him personally to attend or be present at any particular place or for any other object.

NOTICES UNDER THIS ACT.

PUBLIC NOTICE.

Section 6. Every public notice, under this Act, shall be given in the manner following, that is to say.

2. The person required to give such notice shall cause the same to be drawn up, and shall give it in the English and French languages unless the use of either of the said languages be dispensed with in the manner hereinafter provided (Section II), and then in the one of the said languages which should be used.

3. After signing it, he shall publish it by causing a true copy thereof certified by him to be posted up on the front-door of at least one church or chapel, or other place of public worship, if any there be,—and whether there be or be not any place of public worship, at some other place of public resort in the local municipality or in each of the local municipalities to the inhabitants of which such notice is addressed; and every local council may from time to time, by-law indicate and determine the place where such publication shall be made as such place of public resort; and the secretary-treasurer of the local council shall give special notice to the secretary-treasurer of the county council of every such by-law within eight days from the date thereof.

4. If such notice be given within the limits of a parish, the person required to give the same shall cause it to be read at the door of every such church or chapel at the issue of Divine service in the forenoon, if any such service be celebrated on the Sunday next following the day in which the same was published by posting as aforesaid.

5. If such notice be for the purpose of announcing a public meeting or the future adoption of any proceeding under this Act, the person required to give it shall specify therein the day, hour, and place, at which such public meeting is to be held, and the purpose or purposes for which it is convened, or the day, hour, and place, at which such proceedings is to be had.

6. And every such notice shall be published by posting a copy thereof, as aforesaid at least seven clear days before the day appointed for such public meeting or proceeding.

SPECIAL NOTICE.

Section 7. Every special notice shall be given in the manner following, that is to say:

2. The person required to give such notice shall cause it to be drawn up in the language of the person to whom it is addressed, if such language be the English or the French; or if it be any other language, then in either the English or the French language, and after having signed it shall serve it on the person to whom it is addressed, by causing a true copy thereof to be delivered to him personally, or left with some grown person at his domicile.

3. And in every such special notice the person required to give the same shall mention distinctly the fact intended to be communicated to the person to whom it is addressed, the time and place he is required to attend or be present or such other object as the notice is given for.

CERTIFICATE.

Section. 9. The person required to give any notice, whether it be a public or a special notice, shall cause a certificate or certificates of the publication or service of such notice to be annexed to, or endorsed upon the original notice, stating distinctly the manner in which, and the time or times, and place or places at which the same was so published or served.

2. The truth of the facts stated in every such certificate shall be attested on oath by the person making the same, and the person required to give such notice shall deliver the original notice with such certificate

or certificates to the secretary-treasurer of the council, to the affairs of which it relates, and the secretary-treasurer shall file the same amongst the records of the council.

4. And no default, defect or informality of or in any notice, public or special, shall be available to any person who shall have acquiesced in the thing or things required by such notice, or who shall have otherwise acquired a knowledge of the tenor or object thereof.

SECOND PART.

ROADS, BRIDGES, AND OTHER PUBLIC WORKS.

Classification and General Provisions applicable to them.

Section 40. Roads, bridges, and other public works shall for the purposes of this Act be divided into three classes.

4. Local works, comprising all roads, bridges, and other public works made or maintained at the expense of any one local municipality or of the inhabitants of any portion thereof.

5. Roads are further distinguished as front-roads and by-roads.

6. Front-roads are those whose general course is across the lots in any range or concession, and which do not lead from one range or concession to the other in front or rear thereof.

7. By-roads (routes) are those whose general course is lengthways of the lots in any range or concession, or which lead from one range or concession to another in front or rear thereof, or to a banal mill or to a bridge or ferry not on the line of a front road; and all other roads not being on front roads; but any council may, by resolution, declare any other road to be a by-road.

8. A front-road passing between two ranges or concessions is the front-road of both, unless one of them only has another front-road, in which case it is the front-road of the range or concession not having another front-road; but any council may, by resolution, declare any other road to be a front-road.

9. That part of the front-road of any range or concession which is upon, or in front of any lot, is the front-road of such lot.

10. No front-road opened after the first of July, one thousand eight hundred and fifty-five, shall be less than thirty-six feet, French measure, in width between the lines of the fences on each side thereof.

11. No by-road and no road leading to a banal-mill opened after the day last aforesaid, shall be less than twenty-six feet, French measure, in width, between the lines of the fences on each side thereof.

12. Nothing herein contained shall be construed to prevent any road from being made wider than is above provided, if it is so ordered by *procès-verbal* or by-law.

13. Except where it is otherwise provided by some *procès-verbal* or by-law there shall be, on each side of any road, a ditch, three feet in width, properly constructed, and having sufficient fall in the direction of its length to carry off the water; and there shall be small drains across the road at all places where the same are necessary for the free passage of the water from one ditch to the other, these ditches and drains shall be held to be part of the road.

14. Ditches may be dispensed with, or made less width than is above provided, if the nature of the ground renders it advisable, and if it is so ordered by any *procès-verbal* or by-law.

15. If, in order to convey the water from off any road, it is deemed necessary to make any water-course upon or through the lands of any person, such necessity shall be declared by the *procès-verbal* or by-law which regulates the making and maintaining such water-course as part of the work belonging to the road.

16. Every person upon whose lands such water-course has been directed to be made shall allow the same, and shall also allow free access thereto for the purpose of making and maintaining it; being first compensated (if he has not before received compensation) in the manner hereinafter provided.

17. No council shall direct the demolition of a mill-dam on the ground that the same is an obstruction to a water course, but the right to erect any dam, and the rights and liabilities of all parties in respect thereof whether for damage, or otherwise shall be adjudicated on, and determined according to the ordinary rules of law.

18. The ground occupied by any road shall be rested in the local municipality in which it lies, and such road may be discontinued, or its position in any part may be altered by *procès-verbal*, but shall not be otherwise alienated; and whenever a road is discontinued, if the land on each, belong to the same person, the said ground shall *pleno jure* become the property of such person; or if the land on each side belongs to two different owners, then half the breadth of the road shall become the property of each of them, unless one of them has furnished land for a road in the place of that so discontinued, in which case the whole shall become his property.

WINTER ROADS.

Section 42. On or before the first day of December in each year, every owner or occupant of land shall take or cause to be taken down to within twenty-four inches of the ground (leaving only the upright posts standing above that height) all fences by the sides of roads, and all line fence or fences making an angle with the road, to the distance of at least twenty-five feet from it, except only within the limits of villages, and in places where the fences stand at least twenty-five feet from the side of the highway, or where in consequence of hedges or fences not removable without great expense having been erected, the local council or the inspector may permit them to remain, on such condition as may be deemed proper; and the fences so taken down shall not be replaced until the first day of April of the next following year, unless the local council shall have passed a by-law fixing other periods for taking down and replacing such fences, or for dispensing with the removal of the same, or declaring that the parties bound to keep up the roads shall take down and replace such fences.

2. Winter roads shall be laid out in such places as the inspectors shall from time to time determine.

3. They may be laid out and carried through any field or any enclosed ground except such as are used as orchards, gardens, or yards, or are

fenced with quick hedges, or with fences which cannot without great difficulty or expense be removed or replaced through which they shall not be carried without the consent of the occupant.

4. They shall be kept in order by the persons who are bound to keep the same roads (or the roads for which they are substituted) in repair in summer, including the municipality when it is so bound.

5. For the purpose of making and maintaining winter roads on the frozen surface of rivers, lakes, and other waters flowing or lying between two or more municipalities, the powers, duties, and authority of the councils of the several municipalities lying on each shore, and of their officers respectively, shall extend beyond the ordinary limits of such municipalities as far as the centre of every such river, lake, or other water.

6. Every such road shall be maintained by the local municipality through whose limits as defined by this section it passes, unless it has been substituted for a summer road in which case if parties other than the municipality were bound to keep the summer road in repair, the same parties shall maintain the winter road.

7. Every such road leading from one local municipality to another (when such local municipalities are not situate fronting on the river St. Lawrence) shall be traced out, and maintained at the joint expense of both municipalities, and under the joint direction of the inspectors of both municipalities.

11. The proper council may by resolution order that any winter road may be made double, having a row of *balises* in the middle, and a track on one side thereof for vehicles going in one direction, and on the other for those going in the opposite direction; and the said council may from time to time make such other general or special orders concerning the mode of keeping the said roads as it may deem expedient, and such orders shall be binding on the road officers and on all parties concerned.

12. All winter roads shall be marked by *balises* of spruce, cedar, hemlock, pine, or other wood of at least eight feet in length, fixed at a distance of not more than thirty-six feet one from the other, on each side of the road if the road be single, and in the middle of the road if it be double.

BY WHOM ROADS ARE TO BE MADE AND MAINTAINED IN THE ABSENCE OF ANY BY-LAW OR "PROCES-VERBAL," REGULATING THE MAKING AND MAINTAINING THEREOF.

Section 43. If there be no valid *procès-verbal*, by-law, or order, providing otherwise, then:—

2. The front-road of each lot shall be made and kept in repair by the owner or occupant of such lot; and if there be two or more owners or occupants, then by them jointly, and severally saving their recourse against each other; but the owner or occupant of any lot shall not be bound to make or repair more than one front-road on the breadth of such lot, unless such lot be more than thirty arpents in depth; and if there be more than one front any lot not exceeding that depth, and it be not regulated as aforesaid, which of them shall be made and maintained by the owner or occupant thereof; then the inspector of roads for the division

shall, on the application of such owner or such occupant, declare which of such front-roads shall be made and maintained by him, and the other or others shall be made and maintained as a by-road.

3. The front-road of any lot shall be that designated or intended as such in the original title, or which appears to be such front by the roads laid down on the original plan if the lot is in a township; although the owner of the lot has placed his buildings or dwelling-houses on some other part of the lot, and even although the concession line should form the boundary between two municipalities or parishes.

4. Every ford and every public bridge shall be made or maintained by all the owners or occupants of lots in the parish or township on the front-road upon which such ford or bridge is situated.

5. Every by-road shall be made and maintained by the owners or occupants of the lots in the concession to which it leads from a front or older concession, in proportion to the value of the lots so occupied by them.

6. Every by-road leading exclusively to a mill ferry or toll bridge, shall be made and maintained by the occupant of such mill ferry or toll bridge.

7. Front-roads on ungranted lands of the crown shall be made and maintained as by-roads.

10. The burden of proving that any road is not subject to the foregoing provisions shall always be upon the party claiming exemption from them.

OLD "PROCES-VERBALS," BY-LAWS, AND REPARTITIONS.

Section 44. Every *procès-verbal*, by-law, or order touching any road, bridge, or water-course in force on the first day of July, one thousand eight hundred and fifty-five, and not since repealed, shall remain in full force until it be repealed or altered by competent authority.

2. Any apportionment of any work among the persons jointly bound to perform the same, legally made, and in force on the day last mentioned, shall remain in force until the expiration of the time for which it was made, unless it has been altered or until it be altered under this Act.

3. Every such *procès-verbal*, by-law, or order, as aforesaid, may be annulled, repealed, or altered by a *procès-verbal* or by-law made under the authority of this Act.

POWERS AND DUTIES OF ROAD OFFICES.

Section 48. All municipal works of which a *procès-verbal* has been homologated as aforesaid, shall be executed, maintained, and repaired under the direction of the proper council, or of the road inspector or other municipal officers in the manner prescribed by this Act.

2. The special superintendent appointed for that purpose by the proper council, or the inspector of roads, or any surveyor or person accompanying him, or authorized in writing by him, may enter, in the day time, upon the lands of any person, whether occupied or unoccupied, enclosed or unenclosed, for the purpose of making a survey for any road; and may also enter upon any unoccupied land for the purpose of searching for timber, stone, or other materials for making or repairing any road, or any bridge, or work therewith connected, doing no willful and unnecessary damage, and making compensation only for actual damage done; and such officer or person need not give any notice whatever before entering upon any land for any of the purposes above specified.

3. Every inspector of roads superintending the making or repairing of any road, or bridge, or work therewith connected, may enter in the day time upon any unoccupied land to the distance of one arpent from such road, bridge, or work, and take from of the same any stone, gravel, earth or materials requisite for making or repairing the roads; but he shall as soon thereafter as may be declare on oath before some justice of the peace what he believes to be the damage done to such land by the taking of such materials; and the amount, so sworn to, shall be set off against any road contributions or penalty due in respect of such land, or by the owner thereof; or if such amount exceeds the sum so due, the balance shall be paid to such owner by the inspector out of any money in his hands for defraying the costs of making or repairing such road, bridge, or work; and if he has not sufficient, the money shall be raised by assessment as other moneys required for such purpose.

4. Provided that if the amount of such damage exceed twenty dollars, the sum shall be assessed by the valuers of the municipality or any two of them in like manner as the value of ground taken for a road or other public work, and their award or awards of any two of such persons as may be appointed in their stead as hereinafter provided shall be final.

5. Every inspector in every municipality not situate in a township shall upon all roads in his division, whether the council has so ordered or not, cause to be traced at the beginning of every winter, and maintained during the whole season, a double track of twenty-five feet in length at distances of not more than four arpents from each other, and every such double track shall be separated by balises.

6. Each inspector of roads, whenever required by the council, shall pass over and examine every road in his division or over which he has any authority or superintendence, and make notes of the state in which he finds each road or any work thereon or therewith connected—and he shall note every case in which he finds any person to have neglected to perform any duty imposed on him by this act, and shall prosecute any such officer or person in the name of the municipality for such neglect.

7. Each inspector of roads shall, whenever required by the proper council, make a report in writing to such council containing the substance of the notes he has made and all the information he has obtained since his last report.

RELATIVE TO THE OBSTRUCTION OF PUBLIC WORKS.

Section 49. Each inspector of roads shall cause all obstructions or nuisances to be removed from of the roads, bridges, ferries or fords under his superintendence respectively, and shall report all encroachments thereupon to the proper council, to the end that such council may compel their removal, if the person making such encroachments do not, on being thereunto required by the inspector, desist from such encroachments.

2. It shall be deemed an obstruction to leave or place anything upon a road or bridge or in any ditch or water-course therewith connected, or to make any trench or opening in the road, or to do any other act whereby in either case the free passage of vehicles or foot passengers over any part of the road may be obstructed, impeded or rendered inconvenient, or the free passage of the water prevented, unless the act be done in the

course of some duly authorized work upon the road or bridge, or by the command or with the permission of some road officer under the authority of some by-law of the proper municipal council; and the anchoring or mooring of any vessel at the landing place of any ferry so as to impede free approach to the beach, shall also be deemed an obstruction.

3. Any justice of the peace resident in the county may hear and determine any complaint of such obstruction or nuisance, and order the removal thereof at the expense of the offender by such person as he shall by his warrant authorize to remove the same, and may tax the costs of such removal and cause the same to be levied with the penalty and costs of prosecution and by the same process.

4. Whenever a road, bridge or other public work is encroached upon, the local municipality may bring an action against the person so encroaching to compel him to desist from encroachments.

5. Such action shall be brought in the Circuit Court in and for the County; or the District in which County or District the local municipality or any part thereof lies which shall have jurisdiction in all such cases and with power of the encroachment, be proved to adjudge that the property taken by such encroachment be restored to the municipality; and if such judgment is not complied with within fifteen days after service of a copy thereof on the defendant, then any judge of the said court may in term or out of term, on the application of the municipality, direct a writ of possession to any bailiff commanding him to remove from the property in question all buildings or fences erected thereon, and give possession of such property to the said municipality, which such bailiff, taking with him sufficient assistance, shall accordingly do.

6. The cost in every such action shall be those allowed in actions of the first class in the said court and the costs on the writ of possession and proceedings thereupon shall be taxed by the judge of the said court at such sum as in his discretion he thinks right until they be regulated by a tariff of the court, under which the clerk of the court shall thereafter tax such costs.

COMPENSATION FOR LANDS TAKEN IN CONNECTION WITH PUBLIC WORKS.

Section 50. Whenever any land is taken for a road or bridge, or for the site of any building required for municipal purposes, or for any other public work, the owner thereof shall receive fair compensation for the same—the parties who by the *procès verbal* or by-law are bound to pay the same or from the municipality if such work has been or is to be performed at the expense of the municipality, unless it be decided that such owner is not entitled to compensation.

2. In estimating the compensations, or deciding whether the owner of the land taken for a road is entitled to any of the advantages which he derives from the road or from the change in the position thereof, or from his receiving any land no longer to be used as a road, as well as his liability to furnish land for road purposes or his exemption therefrom (as the fact is), shall always be taken into consideration; and if they are equal to the damage sustained by the taking of the new land, then he shall be entitled to no compensation; nor shall he be entitled to any damage arising from his supposed affection for the land so taken (*prix d'affection*); but in no case shall he be called upon to pay compensation.

3. No compensation shall be allowed for the land itself taken for the first front road made upon it, nor for any road, unless the quantity so taken exceeds the allowance for roads made in the original grant or concession of such land from the crown.

4. The valuers of the local municipality in which the land is situate, or any two of them, shall ascertain the compensation (if any) to be paid after public notice has been previously given of the day and hour, when they will attend upon the ground to hear the parties and estimate the compensation, which time shall be appointed by the proper council.

5. Any two of the valuers may act on the absence of the third; and if any one or more of them be absent at the time appointed as aforesaid, or be disqualified by direct interest or by relationship to the party whose land is taken or otherwise, or refuse or be unable to act, then the proper council shall appoint another person or other persons to act in his or their stead, and may, for like cause and in like manner, appoint a person to act instead of any person so appointed.

6. It shall not be an objection to any such valuator or person acting as aforesaid that he is related to some one or more of the parties by whom the compensation is payable; and every objection to the competency of any such valuator or person must be made before the delivery of the certificate hereinafter mentioned, otherwise it shall not avail.

7. The valuers, or the persons acting in their stead, or any two of them, after examining the land and hearing the parties attending as aforesaid, shall by one or more certificates under their hands, ascertain whether any compensation and if any, then what compensation, shall be paid for the land taken, and shall transmit such certificate to the secretary-treasurer of the proper council, and the award made by such certificate shall be final and conclusive.

8. It shall suffice in any such certificate to mention the lot of which the land forms part, referring to the *procès verbal* or by-law under which it is to be taken, and to state what compensation, if any, is to be paid for it; but any lot may be described as being supposed to belong to, or as being in the possession of any person.

ROAD WORKS.

Section 51. It shall be the duty of each inspector of roads pursuant to the provisions of this act and the orders and directions of the proper council, to give notice to the inhabitants of his division of the time and place where and when any joint labour is to be performed or materials to be furnished, and the amount of labour, quantity and description of materials to be then and there furnished by each, which notice may be given verbally to each of such inhabitants in person, or left in writing at his residence, and shall specify the tools and implements (being those ordinarily used by farmers) which each person is required to bring with him.

2. And if the nature of the work requires it the inspector may command any person having the same to bring with him or to send with a man to work them, a horse or horses, an ox or oxen, with proper harness and cart, waggon or plough; and every day's labour of a horse or ox with such harness and vehicle or plough as aforesaid shall be credited to the person furnishing the same as one day's work.

3. Each inspector shall also superintend and direct the performance of joint labour on roads, he shall appoint the hour of commencing and leaving off, and the time to be taken for rest or meals, the day's work to be ten clear hours of labour, on the spot where the work is to be done he shall dismiss any man who shall not attend during the hours appointed for labour, or who is idle or refuses to obey his orders, or does not work faithfully, or hinders others from working.

4. No notice shall be required to compel any person to make or repair any front road, which ought to be made or repaired by him alone.

5. Whenever any road work which ought to be done or any materials which ought to be furnished upon or for any front road, by-road, or bridge, in respect of any lot or by any person, remains unperformed or unfurnished after the owner or occupant of such lot or such person has been required as aforesaid to perform or furnish the same, the inspector of roads may cause such work to be done or such materials to be furnished by some other person, and may recover before any court of competent jurisdiction the value of such work or materials from such owner, or occupant, or person in default, with twenty per cent in addition thereto, and the costs of suit as a debt due such inspector.

6. Or the inspector of roads may report to the council that any such work remains unperformed or any such materials unfurnished, and that the person, who ought to perform the same or furnish the same, has been by him required so to do, or that such person has no residence in the division;—And on such report the council shall authorize such inspector to cause the work to be done, or the materials to be furnished by some person or persons to be employed by him for that purpose, and the sum expended shall be recoverable by the municipality from the person in default, with twenty per cent in addition thereto, as a penalty for such default and costs;—And the sum actually expended shall be paid by the secretary-treasurer of the municipality, to the order of the inspector, out of any moneys in his hands applicable to road purposes or to the general purposes of the municipality; and if the amount of any judgment obtained against any person so in default, be not recovered, the same may be levied with interest and costs as arrears of taxes due to the municipality in the manner hereinafter provided.

7. The testimony of the inspector that the formalities of the law were complied with, and that the work was done or the materials furnished, that the sum charged is the true value thereof, and that the defendant is the person liable for the same by law, shall be *prima facie* evidence of such facts, and if not controverted shall be sufficient to maintain the claims and demands of the municipality, or of such inspector.

8. In either case last above mentioned, the person in default shall not be liable to a penalty, but the twenty per cent. above mentioned shall stand instead thereof.

9. The actual occupant of any lot shall always be liable for the work or contribution assigned to such lot, and for one year's arrears thereof saving his recourse (if any) against any previous occupant or against the owner of the lot, or any other person;—And if any lot be divided after the making of the *procès verbal*, or there be from any other cause more than one occupant thereof, they shall be jointly and severally liable, saving to each his recourse against the others.

10. Every person shall be liable for all damages arising from the non-performance of work he is bound to perform, and if any persons are jointly and severally so bound, they shall be jointly and severally liable.

11. Each inspector shall from time to time report to the council of his division the arrears of labour and materials remaining unperformed and undelivered in his division, and of penalties remaining unpaid, specifying the lands in respect of which the sums are due, the owners or occupants of such lands if known, and the value in money of such materials delivered at the place where they ought to have been delivered by the persons in default;—And it shall be the duty of the inspector to sue for and recover the same in the name of, and on behalf of, the municipality from the persons liable.

WORKS BY CONTRACT.

Section 52. It may be ordered by any *procès verbal*, or by any by-law or resolution, by any municipal council, that any work shall be submitted to public competition for a fixed price in money, or partly in money, and partly by means of materials and day's labour or either, to be furnished by the persons bound to contribute to such work.

2. For the purpose of obtaining tenders, the proper council shall cause public notice to be given specifying clearly the work to be so given out, and the day on or until which tenders for the performance thereof will be received; and such notice shall be given in one or more newspapers published in the county or the district in which it is situate; or if there is no newspaper published therein, in an adjoining county or district.

3. The contract for the said work shall be adjudged to the person tendering for the lowest price and on the most favourable terms, provided he fulfils the conditions, and gives the security required for the execution thereof.

4. Every such contract shall be entered into with the proper Council, in the name of the municipality, and shall be accepted by the chief officer of, or by any other person specially authorized by such council.

5. Every such contract shall be binding on every municipality interested in the work to which it relates.

FOURTH PART.

PENALTIES.

Section 62. Every person who, being elected or appointed to any office mentioned in the following lists, and not being exempted by law, and claiming such exemption, refuses, or neglects to accept such office, or to perform the duties thereof, during any portion of the period for which he was so elected or appointed, shall incur the penalty mentioned in such list, opposite the name or designation of such office, that is to say:

2. Whenever the valuers of a local municipality neglect to make the valuation for which they are required to make under this Act—or neglect to draw up, sign and deliver the valuation roll containing such valuation to the secretary-treasurer of the local council, between the first day of June, and the first day of August in the years in which such valuation roll

is required to be made—every such valuator shall incur a penalty of two dollars for each day which elapses between the expiration of the said period of two months and the day upon which such valuation roll is so delivered or upon which their successors in office are appointed.

3. Every member of any municipal council, every officer appointed by such council, every justice of the peace, and every other person who refuses or neglects to do any act, or perform any duty required of or imposed upon him by this Act, shall incur a penalty not exceeding twenty dollars, and not less than four dollars.

5. Every person who votes at any election of municipal councillors without having, at the time of giving his vote at such election, the qualification by law required to entitle him to vote at such election, shall incur a penalty of twenty dollars.

6. Every inspector of roads who refuses, or neglects to perform any duty assigned to him by this Act, or to obey any lawful order of any municipal council, or special superintendent, shall for each day on which such offence is committed or continues, incur a penalty of not more than five, nor less than two dollars, unless some other and heavier penalty is by law imposed on him for such offence.

7. Every person who refuses or neglects to obey any lawful order of any special superintendent and inspector of roads, or other municipal officer, relating to anything done or to be done under the authority of this Act, shall incur a penalty of not more than five, and not less than two dollars, for every such offence.

8. Every person who places *balises* on a public summer road, after an inspector of roads has determined that the winter road shall be made to deviate from the line of such summer road, and run through any field or enclosed ground, shall incur a penalty of eight dollars.

9. Any person bound to make or repair any front road, who neglects to make and repair the same in the manner required by the *procès verbal* regulating it, or by this or any other Act, shall incur a penalty of from one to twelve dollars, whether notified to make or repair such road or not; and if he neglects to make or repair any such road after having been notified to do so by the inspector of roads, or any other municipal officer, he shall incur a penalty of not more than four dollars, nor less than one dollar for each day on which it remains unmade or out of repair after such notification.

10. Every penalty mentioned in the last sub-section shall be paid to the inspector for the division, and applied to the same purpose for which the labour for the due performance of which it was incurred, would have been applicable:—And the payment of the penalty shall be set off in favour of the offender against the road labour for which he is liable, at the rate of one day's labour for each dollar of the penalty paid.

11. The penalty may be paid to the inspector before any suit for it is commenced, and in that case it shall be payable without costs.

12. Every person who makes or creates, or causes any obstruction or nuisance in or upon any highway, ferry or ford, shall thereby incur a penalty of not more than ten nor less than two dollars, and an additional penalty of not more than two dollars nor less than one dollar for every day during which the same continues, over and above all costs, expenses and damages recoverable in the manner hereinbefore provided.

13. Every person who shall act as ferry-man at any ferry under the control of any municipal council, without a license from such council, or from the Governor, or beyond the limits assigned to him by such license, shall incur a penalty of four dollars, for each person or thing so ferried over by him.

14. Every person who hinders, or prevents, or attempts to hinder or prevent any municipal officer in the exercise of any of the powers, or in the performance of any of the duties conferred or imposed upon him by this Act, shall incur a penalty of twenty dollars for every such offence, over and above any damages for which he is liable.

15. Every person who willfully tears down, injures, or defaces any advertisement, notice, or other document required by this Act to be posted up at any public place for the information of persons interested, shall incur a penalty of eight dollars for every such offence.

16. Every person who shall drive at any pace faster than a walk over any bridge exceeding twenty feet in length, unless such bridge is wholly of brick or stone; and every person who shall cut, deface, or injure any part of any bridge, rail, or post, or any mile stone, or mile post, or any inscription thereon, or any work or thing forming part of, or serving to the use of any road, or any trees lawfully planted on any side-walk, or shall in any way obstruct or render inconvenient or dangerous the use of any road, shall incur a penalty of not more than five dollars, nor less than two dollars.

17. Every person who refuses permission to enter his house to any officer authorised by the council of any municipality to seize and sell the goods and chattels of such person, is guilty of *rebellion à justice*, and shall be punished therefor by the mayor or justice of the peace who signed the warrant, by imprisonment for any period not exceeding one month, and such mayor or justice of the peace may, moreover, give an order to cause the doors to be opened, entrance through which has been refused, and the officer charged with such order may, by virtue thereof, cause any such doors to be opened in the presence of one or more witnesses, and may for that purpose avail himself of the assistance of such persons as he deems advisable, at the cost of the person who refused such entrance, which said costs the said officer shall levy by virtue of the same warrant.

RECOVERY OF PENALTIES, TAXES, &c.

Section 63. All penalties imposed by this Act, or by any by-law, lawfully made under it, shall be recoverable before the Circuit Court in and for the county, or the Circuit Court of the district in which the local municipality, or the major part thereof is situated, or before any justice of the peace sitting in the municipality, or in any adjoining municipality. All the fines and penalties incurred by any one person may be included in the same suit; and the cost of any such suit before a justice shall be taxed according to the tariff of the Court of Commissioners for the trial of small causes.

2. Every judgment rendered in any such suit shall be so rendered with costs, and execution may issue thereon at the expiration of eight days from the date of the judgment.

3. The secretary-treasurer of the local municipality in which such suit is brought, shall *ex-officio* be clerk to the justice of the peace in such suit, unless the justice appoints another clerk under the next following paragraph, and shall keep in a faithful and correct manner a separate register, in which he shall enter the judgments of the justices of the peace in all such suits; and the summons and every other proceeding relating to such suit, shall remain of record in his office.

4. Any justice of the peace may appoint his own clerk in any such suit, but every clerk so appointed, shall within three days after the date of the judgment rendered in any such suit transmit to the secretary-treasurer of the local municipality a duly certified copy of the proceedings therein, and every such clerk shall be deemed to be a municipal officer in so far as relates to the duties imposed upon him by this Act.

5. On the day of the return of the summons, and at every other stage of the proceedings thereon, the justice of the peace who signed the summons shall have the right to sit in the case in preference to, and to the exclusion of any other justice of the peace present.

6. There shall be an interval of at least three clear days between the day of the service of the summons and the day of the return thereof.

7. Every such suit shall be decided upon the oath of any municipal councillor, or of any inspector or other municipal officer, or of any other credible witness.

8. Every suit brought for the recovery of penalties under this Act, must be commenced within six months of the day on which such penalty was incurred, and all penalties paid either before or after such suit as aforesaid, shall belong one half to the municipality, with reference to which, or to the infraction of the by-laws of which such suit is brought, and the other half to the prosecutor, unless such suit is instituted by the order of any municipal council or by any of its officers, in which case the whole of the penalty shall belong to such municipality.

SUITS UNDER THIS ACT AND DECLARATORY, TEMPORARY, AND SPECIAL PROVISIONS.

Section 64. Every person of the age of twenty-one years has and shall have a right to institute any prosecution authorised by the provisions of this Act.

2nd. Every municipality may be sued for any neglect in making or maintaining roads, bridges, or other public works, as required by this Act, or any other Act concerning municipal affairs, saving any legal recourse it may have against its officers and all other persons.

9th. Any person who on the requisition or with the sanction of any municipal authority, road officer, or court of justice, has or shall have performed, or paid for the performance of any public work required by law, to be done in any municipality, has and shall have a right to recover from the person or persons bound by law, to perform such work, or from the municipality before any court having competent jurisdiction, the value of such work with interest at the rate of six per centum from the time of completing such work, or of paying for the same.

APPEALS.

FROM LOCAL TO COUNTY COUNCILS.

Section 66. Whenever a majority of the persons interested, if they be less than ten in number, and when any number not less than five of the assessable inhabitants of a local municipality do, within fifteen days after the homologation of any valuation roll or *procès verbal*, or after the expiration of the period within which such valuation roll or *procès verbal* is allowed, to be revised and homologated by a local council, or within fifteen days after the first publication of any by-law passed by the council of such local municipality, file in the office of any county council a petition in appeal, praying for the revision or amendment of such valuation-roll or *procès verbal*, or for the amendment or disallowance of such by-law, and setting forth the grounds or reasons for which such revision, amendment or disallowance is prayed for, the warden of the county shall convene a special session of the County Council, and give public notice of such special session, and every such special session shall be held within twenty days from the dates of the filing of such petition.

FORMS.

Section 71. The forms given in the Schedule to this Act shall suffice for the purposes for which they are given, but any other form to the like effect shall be sufficient, and any form shall be sufficient for such purposes or any under this Act, if according to the ordinary construction of the language the purport and intent thereof can be *bonâ fide* understood from the words used; and no unnecessary or irrelevant allegations or expressions in any such form shall affect the validity thereof, if by passing them over as mere surplusage, the remainder can be made to bear the sense required; the rules of construction embodied in the Interpretation Act, and in this Act shall apply to the forms here given, and to any other such form as aforesaid, as to the allegations, statements, orders, or directions therein contained, and no objections of mere form shall be allowed to prevail in any action, suit, or proceeding under this Act, unless substantial injustice would be done by not allowing such objection.



CAP. XXVI.

AN ACT RESPECTING ABUSES PREJUDICIAL TO
AGRICULTURE.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

I. This Act shall not affect the powers and duties of the Municipal Councils, whether local or County, excepting in so far only as herein expressly provided.

DAMAGES BY TRESPASS ON THE PROPERTY OF OTHERS.

II. Except in the discharge of any duty imposed by law, no person shall enter upon or pass over the land of another without permission of the owner or his representative, on pain of incurring a fine of not less than one, nor more than six dollars :

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

3. The proprietor, or his representative or servant, may arrest without warrant any person in the act of contravening this section, and bring him forthwith before a Justice of the Peace. 20 V. c. 40, s. 2.

III. Any person who, during the day, upon the property of any other person, leaves any gate open, takes down, cuts, breaks, removes or damages any fence, cuts or destroys any hedge, cuts, shatters, breaks down, removes or damages, any tree, shrub, or plant, removes any canoe, craft, ferry or boat from the bank of any river or other place, or burns or removes from such property, any wood, shall incur a penalty of not less than one nor more than six dollars ; if such offence be committed during the night, the penalty shall be doubled ; and whether the offence be committed by day or by night, the offender may be condemned to the payment of damages ;

2. Any person who has pulled down or removed any part of a fence, or who is found upon any land, highway or road, having in his possession any part of the materials of any fence, may be arrested without any warrant either by the owner or one of his servants, or by any person cognizant of

the offence, and brought before any Justice of the Peace, who may imprison him with a view to further examination, for any period not exceeding twenty-four hours, or admit him to bail if he can furnish it to the satisfaction of the Justice of the Peace;

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

IV. If the person contravening the provisions of this Act is a stranger, or has no real property in the Parish or Township, and has no means of paying the fine, damages and costs of conviction, the Justice of the Peace may order that the defendant be confined in a place of security until the return of the Writ of seizure, or until he shall produce sufficient security, as provided by section sixty of chapter one hundred and three of the Consolidated Statutes of Canada. *Ibid*, s. 4.

DAMAGES CAUSED BY ANIMALS.

V. No person shall permit any horse, mule, horned cattle, sheep, goat, pig, fowl, or other animal belonging to him to stray upon the property of another, without the permission of the owner or tenant thereof; nor on the bank of any stream, nor on any public road or place, under the following penalties:

	\$	cts.
For each Stallion not under two years of age, not less than \$5, nor more than .	10	00
“ “ Bull, boar, or ram not less than \$1 nor more than	4	00
“ “ Gelding, mare, ox, cow, or hog	00	25
“ “ Colt, filly, calf, or goat	00	20
“ “ Sheep	00	10
“ “ Goose, duck, turkey, or other poultry	00	5

And such penalties shall be doubled for the second or any subsequent offence, whether any arrangement has or has not been come to between the parties, or judgment has or has not been rendered with regard to any prior offence. 20 V. c. 40, s. 5.

VI. Any person who allows a pig to stray, without having ringed it, shall pay a fine of not less than one, nor more than two dollars. *Ibid*, s. 6.

VII. The owner or tenant of any land shall be responsible for damages caused by any animal he receives to pasture, as though such animal were his own property:

2. If the animal causes damage, the complainant may give verbal notice of his complaint by speaking to any reasonable person in any house built upon the land on which the animal is at pasture,—or at the domicile of the person who has received the animal to pasture, by speaking to him personally or to any reasonable member of his family. *Ibid*, s. 7.

VIII. Any person who has suffered damage by any horse, mule, cattle, poultry or other domestic animal, may make complaint thereof, before any Justice of the Peace, either for the damages only, or for the penalty and the damages together; and if the Justice of the Peace shall be convinced

that no damage has been caused (if the action is only brought for damages), he shall dismiss the complaint and condemn the complainant to pay costs :

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

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

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

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

6. If the party condemned neglects or refuses to pay the sum fixed by the *experts*, such party may be sued by the person to whom such sum is payable or by his representative, before any Justice of the Peace. 20 V. c. 40, s. 8.

IX. Any owner or occupier of land, or his servant or representative, and any Inspector may seize and impound where a public pound exists, or take and retain at his own place of abode, any animal he finds wandering on his property or on a public road or place, or on the bank of any stream, until the owner of such animal has paid the fine, damages and costs imposed by this Act, as the case may be :

2. The person who has confined such animal shall provide it with proper food, in sufficient quantity, and give it water and take proper care of it under a penalty of forty cents for each day during which he neglects to do so, besides the damages occasioned by such neglect :—The said penalty and damages, if any, shall belong to the owner of such animal, and may be recovered by him before a Justice of the Peace if the person who has confined the animal does not pay them after being required so to do ;

3. If the owner of such animal is unknown to the person who has taken it in possession such person shall give public notice on two consecutive Sundays at the door of the church, in the parish or township, and

if there are more churches than one, then at the door of the church which is nearest to the locality in which the animal was seized, that such animal will be sold at such a time, hour and place unless the owner do, before that time, claim back his property ;

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

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

6. The Inspector shall receive the proceeds of the sale and thereout shall pay the fine, the costs of all kinds as estimated by a Justice of the Peace, and the damages, and shall remit the balance to the Secretary-Treasurer of the parish, township or village municipality in which the offence was committed, as the case may be ;—the municipality shall pay over such balance to the owner of the animal, if such owner becomes known to such municipality within one year ; but if not, shall retain the amount for the improvement of bridges, roads and works under its control ;

7. The Inspector shall render an account of the due application of the moneys arising out of the sale of the said animal to the Secretary of the parish, township or village municipality in which the offence was committed, within thirty days after such sale, on pain of the fine imposed by this Act ;

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

9. In any case it shall not be necessary to seize and confine any fowl or other species of domestic poultry, in order to be entitled to claim damages, but only to prove by one credible witness, other than the complainant, that they have really caused the damage complained of ; nevertheless whoever chooses to seize them may do so. 20 V. c. 40, s. 9.

X. The Inspector may, at the sale of any animal, refuse the offer or bid of any person who is unknown or insolvent, or a stranger in the parish or township in which the sale is made, unless he gives security to the satisfaction of the Inspector, of his ability to pay :

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

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

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

5. If there be no bidder on the day fixed for the sale, the Inspector shall adjourn it to another day, and shall give public notice thereof. 20 V. c. 40, s. 10.

XI. The owner (or his representative) of any animal confined by the keeper of any public pound, or by any person whomsoever, may demand delivery thereof between five o'clock in the morning and nine o'clock in the evening, upon payment, or legal tender to the keeper of the fine, damages and costs, and the keeper shall incur a penalty not exceeding two dollars for every day he shall afterwards unjustly detain such animal, in addition to the damages thereby occasioned :

2. Any person who takes and conveys away any animal so impounded or detained for damages it may have caused, or respecting which a complaint has been made, shall be liable to a penalty equal to the whole amount of the damages and penalty for which the proprietor of the animal was liable, and to a further fine of two dollars, or to be imprisoned for eight days, or both. 20 V. c. 40, s. 11.

DOGS.

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

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

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

4. It shall nevertheless be lawful to kill any dog which, without the limits of its master's property, pursues or is known to pursue and strangle sheep,—or to make a complaint to a Justice of the Peace, who shall condemn the owner to kill such dog and to pay the costs, upon the testimony of one credible person, without prejudice to any claim for damages caused by the loss of the sheep. 20 V. c. 40, s. 12.

OBSTRUCTIONS UPON LANDS.

XIII. If any description of timber or wood of any kind be carried in any manner whatever upon the beach of any lake or floatable or navigable stream or upon the land adjoining, and remains there until the first day of June, the owner or occupier of such land or beach may then cause such timber to be hauled up and deposited in a place of safety :

2. Such owner or occupier shall then give public notice, that such timber (describing the same and any marks thereon) has been found upon

his land or beach, that it is in such a place, and that if the expenses incurred for the publication of the notice and in hauling the timber to such place, and the damages, if any, are not paid before such a day and before the sale, such timber will be publicly sold by an Inspector to the highest bidder;

3. The proceeds of the sale shall be applied to the payment of all expenses and damages occasioned by such timber, and if there be an surplus, it shall be handed over to the Secretary-Treasurer of the local municipality, in which the timber was found, and if there is no such municipality, then to the Secretary-Treasurer of the county municipality, to form part of the funds in his hands, if, within the period of one year from the sale of such timber, the surplus arising from such sale is not claimed by the owner of the timber or his representative. *Ibid*, s. 13.

RIVERS AND STREAMS.

XIV. Whoever throws into any river, rivulet, or water-course in Lower Canada, any slabs, bark, waste stuff, or other refuse of any saw-mill, (except saw-dust, or any stumps, roots, or waste timber, and allows the same to remain in and to obstruct such river, rivulet, or water-course, shall thereby incur a penalty not exceeding two dollars, and not less than one dollar, for every day during which such obstruction remains therein after he is required by the party interested to remove the same, over and above all damages arising therefrom. 6 V. c. 17, s. 1.

FILTH.

XV. Any person who deposits or causes to be deposited any filth or dead animal in any river, stream or water-course, or upon any public highway, or upon the property of another, shall incur a penalty of four dollars, (without prejudice to any other damages,) recoverable upon the oath of the prosecutor and one credible witness, and such person shall be bound to remove such filth or dead animal, under a penalty of one dollar for every day he neglects to do so, without prejudice to any further damage caused by such neglect:

2. If such person be unknown or cannot be discovered, the Inspector shall cause the animal to be buried, and shall cause all filth to be removed from the river, stream or water-course, public road or private property, within twenty-four hours after he has been notified so to do, and such burial or removal shall be effected at the cost of the local municipality, if any exist; if not, at the cost of the county municipality;

3. Any person may compel any one retaining on his own property any dead animal or filth, to bury the same, under a penalty of one dollar for each day he neglects so to do. 20 V. c. 40, s. 14.

NOXIOUS WEEDS.

XVI. Any person may, by special notice, require any owner, occupier or holder of any land or common not actually under seed, or any person bound to keep in order any public or private road or by-road, to cut and destroy between the twentieth of June and the first of August, the daisies,

thistles, wild endive, chicory, celadine and all other noxious weeds or plants considered as such growing on the said land, or common or public or private road or by-road :

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

3. Any person who scatters, or causes to be scattered, the seeds of weeds, to the prejudice of another person, shall incur a penalty of not less than one nor more than eight dollars ;

4. Any person may, after special notice, compel his neighbor to pull up wild mustard, even in a sown field, so soon as it flowers, under the penalty mentioned in the preceding paragraph. 20 V. c. 40, s. 15.

DÉCOUVERTS.

XVII. Any owner or occupant of any cultivated land may, by the intervention of an Inspector, compel his neighbor, whether he be owner, possessor or occupant, to grant him *découvert* :

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

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

4. Whoever refuses or neglects to obey the order of the Inspector shall pay for each arpent in length of such *découvert* a fine of forty cents for the first year, and double that amount for any subsequent year ;

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

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

7. If one of the neighbors refuse to name his *expert*, any Justice of the Peace may name him on the requisition of any person interested in the carrying out of such *expertise*. 20 V. c. 40, s. 16.

XVIII. The Inspector shall not order that the *découvert* be made, unless the complainant proves that he has given special notice to the person from whom he demands such *découvert*, or to his representative, before the first day of December next preceding his complaint :

2. If the complaint is brought against a person who does not reside in the district or who has no known agent, the complainant must prove that the notice has been posted up at the door of the Church of the place in

which the property is situate, and upon the property itself for four consecutive Sundays, at any time whatsoever within the year preceding the first day of December then last :

3. After the order given by the Inspector, the complainant alone shall be entitled to prosecute, if necessary, for the execution of the works, and this in conformity with the provisions of this Act. 20 V. c. 40, s. 17.

WATER-COURSES.

XIX. On or before the fifteenth day of July in each year, all water-courses shall be thoroughly opened, cleansed and rendered fit for the passage of all water flowing into the same ; and any person failing to do the said work shall incur a penalty of forty cents for each and every day after he has been notified by one or more of the parties interested to do the said work. 20 V. c. 40, s. 18.

XX. Any proprietor or occupant of land may call upon the Inspector to visit and examine any water-course common to several lands, the labor relating to which has been regulated by a *procès-verbal*, or by an agreement made by the parties interested, or by municipal authority, to the end that he may order that the said water-course be made, repaired and kept in order in the manner stated in the *procès-verbal* or agreement. or by municipal authority ;—and in any cases relating only to repairing and keeping a water-course in order, it shall, for that purpose, be lawful to take an Inspector of the said Parish or Township, whether he be an interested party or not, the provisions of the twentieth and twenty-first sections of this Act to the contrary notwithstanding :

2. Any person who fails to obey the decision of the Inspector shall incur a penalty of forty cents for each day the work shall remain undone after the delay fixed by the Inspector ;

3. The Inspector, upon the expiration of the specified delay, shall, if required so to do, authorize the complainant to do or cause to be done the work which the Inspector has ordered, and the complainant shall be entitled to recover the cost of the said work and all his just expenses ;

4. If the person condemned to do the work refuses or neglects to pay the amount, the same may be recovered in the manner hereinafter prescribed in the thirty-fifth section of this Act. 20 V. c. 40, s. 19.

XXI. Whenever it becomes necessary to open, deepen, enlarge or divide a water-course common to several lands, the work connected with have not been appointed and regulated by any *procès-verbal* or agreement, or by municipal authority, the matter in dispute shall, on the requisition of one of the parties interested be adjusted by two disinterested Inspectors in the Parish or Township in which such work is to be done : or

2. If there be no disinterested Inspector in the said Parish or Township, then by two disinterested Inspectors in a neighboring Parish or Township, and so whenever the services of Inspectors are required according to the provisions of this Act. 20 V. c. 40, s. 20.

XXII. Any person interested in the opening of a water-course or the widening thereof, or its division into several branches, may, if it crosses two or more Townships or Parishes, call upon a disinterested Inspector from each of the said Townships or Parishes to regulate and determine as to the making of the said water-course or the widening thereof :

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

3. The proceedings shall be carried on in the manner and form prescribed for the establishment of a water-course in which but one Parish or Township is interested; and the same rule shall apply to the homologation of the *procès-verbal*. 20 V. c. 40, s. 21.

XXIII. The Inspectors, upon the day and hour fixed upon, shall repair to the premises, accompanied by the parties interested if they think proper to be there, and having ascertained the most suitable place for the water-course, shall give their decision and prepare a *procès-verbal* of their proceedings, setting forth the work to be done, in what manner and by whom it is to be done and maintained, with any other details they deem it advisable to insert in the said *procès-verbal*:

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

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

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

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

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

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

8. If there is neither a local nor a School Municipality in any Parish or township, then the deposit of *procès-verbaux* or apportionments shall be made with the Secretary-Treasurer of the County Council. 20 V. c. 40, s. 22.

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

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

3. In any case the *procès-verbal* shall not be homologated until the tenth day after the day upon which the first notice was given :

4. As soon as the said *procès-verbal* is homologated, a certified copy thereof shall be given by the person charged with the registration thereof under this Act, to the senior in age of the Inspectors who prepared it, that he may cause the work therein mentioned to be performed :

5. If, however, the *procès-verbal* relates to several parishes or townships, a copy thereof shall be given to the Inspector of each parish or township, because in that case the work will be conducted by each Inspector in his own parish ;

6. Each of the Inspectors shall cause his copy of the *procès-verbal* as well as the apportionment of the work on the water-course in question, to be registered by the Secretary-Treasurer of the parish or township in which he resides, and this at the cost of the parties interested in such water-course ;

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

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

9. Any Justice of the Peace, with the unanimous consent of the parties present in court, may, at the time of the homologation of the *procès-verbal*, make amendments thereto, and the said amendments shall be entered in the Act of Homologation. 20 V. c. 40, s. 23.

XXV. If any one or more of the parties interested in any such *procès-verbal* deem themselves aggrieved thereby, he or they may complain thereof to the Justice of the Peace to whom the *procès-verbal* is to be presented for homologation :

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

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

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

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

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

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

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

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

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

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

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

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

14. If, on the contrary, the majority of the *experts* reverse the decision of the Inspectors, such majority shall prepare a new *procès-verbal*; But such new *procès-verbal* shall not affect any other property than that affected by the *procès-verbal* of the Inspectors;

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

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

17. If, however the *procès-verbal* is defective, through any negligence or partiality on the part of the Inspectors, then the Inspectors shall pay the cost and expenses thereof. 20 V. c. 40, s. 24.

XXVI. The Inspector shall determine the bridges required upon any public road to pass over the water-courses, and the sites upon which they are to be built, and shall point out the lands of the proprietors liable to complete and keep them in repair. *Ibid*, s. 25.

XXVII. The owner of any land higher than that of his neighbor shall not in any case be required by an Inspector to make or assist in making a water-course through his land of any greater depth than is necessary for draining his own land:

2. The possessor or owner of any low or swampy land may make a water-course through the high land of his neighbor to drain his own, and may make use of any one already made, may deepen the same if it is not deep enough, and repair and keep the same in order,—at his own expense. 20 V. c. 40, s. 26.

XXVIII. Whoever obstructs any water-course or allows it to be obstructed, shall incur a penalty not exceeding one dollar for every day such obstruction remains after the expiration of two days from the time upon which he receives notice to remove the same :

2. Any person interested in the water-course in which the obstruction is found, shall give notice to the person in default, and may recover the penalty with costs against such person. *Ibid*, s. 27.

XXIX. Any person interested in a water-course may require the Inspector to call a public meeting of the parties interested in the said water-course, to decide whether the work appertaining thereto shall be performed by joint labor (*corvées*), by separate shares, or by contract :

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

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

4. The said apportionment, before it goes into operation, shall be ratified before a Justice of the Peace and amended if there be occasion therefor, and the formalities for the homologation of the said apportionment shall be the same as those prescribed for the homologation of the *procès-verbal* for a water-course. *Ibid*, s. 28.

XXX. The Inspector shall give public notice of the day which he shall appoint for each person interested to perform his share of the work according to the tenor of the *procès-verbal*, whether such work is to be done in common or according to the apportionment made for that purpose :

2. Whosoever refuses or neglects to repair to the spot on the day appointed, and to perform his share of the work, shall incur a penalty of forty cents, for each day during which he refuses or neglects to execute the orders of the Inspector ;

3. The Inspector, after the expiration of eight days from the time appointed for beginning the work, may cause the work of any of the person who has neglected to perform it, to be done, and may recover the expenses with costs from the party or parties in default ;

4. Upon the requisition of one or more of the parties interested in a water-course, the Local Municipality, whenever required so to do, shall appoint a Trustee from among the parties interested in such water-course regulated by any *procès-verbal* or act of agreement or by municipal authority, to see to the execution of the work relating to such water-course : such trustee shall have all the powers and fulfil all the duties of the Inspector, with respect to the water-course in which he is interested, and shall be subject to the penalties imposed by this Act for any neglect to perform his duties ; he shall not be bound to serve more than two years, and shall act gratuitously ; the trustee shall have precedence over the Inspector, and when he is compelled to prosecute, and in that case only, shall be entitled to ten cents per hour. 20 V. c. 40, s. 29.

LINE DITCHES.

XXXI. The Inspector, upon the application of any owner or occupant of any land through which it is proposed to make a line ditch (*fossé de ligne*), shall visit the place, command the performance of the necessary work, and determine how and by whom it shall be executed :

2. The Inspector, when required so to do by the proprietor or occupant of any land, shall inspect the ditch which separates the land of the party complaining from that of any other person, and determine whether the said ditch is sufficient for his use ;

3. If the Inspector declares the said ditch to be insufficient, he may order the person of whom complaint is made, to deepen, cleanse and repair the same within a delay which shall not exceed the time strictly necessary to perform the said work ;

4. If the Inspector finds that the line ditch of the party complaining is equally insufficient, and if he is required so to do by the person of whom complaint is made, he shall immediately condemn the party complaining to deepen, cleanse or repair his line ditch within a delay which shall not exceed the time strictly necessary ;

5. For each day upon which the said person fails to comply with the order of the Inspector, he shall incur a penalty of forty cents for each arpent in length of such ditch (any fraction being reckoned as a whole arpent) ;

6. The Inspector, after the expiration of the delay granted by him, may, if required so to do, authorize the complainant to perform or cause to be performed the work, the execution of which he has ordered, and such complainant alone shall be entitled to recover the costs of such work and all his fair expenses, if the person condemned to do such work neglects or refuses to pay the amount ;

7. In the townships in which lands have been set apart by government for public line-roads (*routes*), the said lands shall be subject to the same provisions as lands belonging to private individuals ;

8. If a proprietor or occupant of cultivated land suffers from the overflowing or flooding of such land, occasioned by the insufficiency of the ditches which his neighbor has upon any land in standing timber or brushwood, he may require the Inspector to visit the premises in question ;

9. After his visit the Inspector may order, if it is necessary for the purpose of putting a stop to the said inundation or overflowing of water, that the necessary work be done either upon the lines or in any other part of the land in standing timber or brushwood ;

10. The power conferred by the two preceding paragraphs upon the Inspector shall only be exercised in so far as regards land in standing timber or brushwood, and not otherwise ;

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

12. Whoever obstructs or allows to be obstructed in any manner whatsoever, any line ditch, shall be liable to a penalty not exceeding one dollar for each day such ditch is so obstructed. 20 V. c. 40, s. 30.

LINE FENCES.

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

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

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

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

5. For each day during which the said party fails to conform to the order of the Inspector, he shall incur a penalty of forty cents for each arpent in length of such fence (any fraction being reckoned as a whole arpent);

6. The Inspector, after the expiration of the delay, may, if required so to do, authorize the complainant to perform or cause to be performed, the work the execution of which he has ordered, and such complainant alone shall be entitled to recover the costs of such work and all his fair expenses, if the person condemned to do such work neglects or refuses to pay the amount;

7. In the Townships in which lands have been set apart by Government for public line-roads (*routes*) the said lands shall be subject to the same provisions as lands belonging to private individuals;

8. The establishment of any front road between two ranges or concessions shall in no respect alter the obligations of one neighbor to another when such road is entirely within one of the ranges or concessions. 20 V. c. 40, s. 31.

XXXIII. When the matter in question relates to the making of a new fence or the repairing of one which is in such a state that the costs of repairing it would be equal to that of a new one, the Inspector shall not condemn the party against whom complaint is made unless the party complaining proves that he gave the party complained against or the party usually acting in his behalf, special notice thereof before the first day of December next preceeding such complaint:

2. If the party complained against does not reside within the Parish or Township, or has no known agent, or tenant, or party acting in his behalf, the complainant must prove that a notice was posted up at the door of some church in the parish or township in which the property is situate for four consecutive Sundays, during any time of the year preceeding the first day of December then last past. *Ibid*, s. 32.

FEES AND RECOVERY OF COSTS.

XXXIV. Each Inspector, whenever required to act by virtue of this Act, shall be entitled to ten cents for every hour he is necessarily employed in the execution of his duty :

2. In case of joint labor (*travaux mixtes* or *en commun*), the costs shall be paid by the party in default, whether that be the party at whose instance the Inspector acted or the adverse party ;—or they shall be paid in equal portions by the parties interested in the matter in dispute, if the Inspector has condemned them respectively to perform their joint labor or caused it to be performed ;

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

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

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

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

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

8. If any Justice of the Peace finds the complaint brought before him to be well founded, he may give judgment in favor of the Inspector for the amount which he claims for neglect or refusal to pay the costs of the *procès-verbal* and other expenses, together with the amount to which the Inspector is himself entitled ;

9. Every Secretary-Treasurer shall be entitled to five cents per one hundred words, for the registration of *procès-verbaux* and apportionments, and also for certified copies of all documents delivered by him in virtue of this Act ; The copies thus certified shall be received in evidence in all Courts of competent jurisdiction or before any Justice of the Peace. 20 V. c. 40, s. 33.

XXXV. Any person who has made or caused to be made any water-course, ditch, bridge, fence or *découvert*, in conformity with the provisions of this Act, may recover the amount of the expense incurred in performing such work from the person bound to perform such work or from the owner of the land on which it has been performed, before any Court of competent jurisdiction or before any Justice of the Peace, if the person bound to perform such work neglects or refuses to pay such amount ; and such amount may also be recovered in the manner prescribed by the laws and statutes then in force in Lower Canada. 20 V. c. 40, s. 34.

ALTERATION OF A PROCES-VERBAL.

XXXVI. Any party interested in a *procès-verbal* of a water-course duly homologated or regulated by act of agreement or by Municipal authority, may demand a change in or amendment to the said *procès-verbal*, act of agreement or Municipal By-law ; provided his said demand be supported by the affidavits of two of the parties interested in the water-course regulated by the *procès-verbal*, act of agreement or Municipal By-law sought to be amended, or by one affidavit only, if such *procès-verbal*, act of agreement or Municipal By-law only concerns two interested parties :

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

3. These affidavits shall be annexed to the new *procès-verbal* founded upon them ; and copies of these affidavits, certified by the person charged with the enregistration of the *procès-verbal*, shall be sufficient proof before any Court of competent jurisdiction or before any Justice of the Peace ;

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

5. By virtue of a new *procès-verbal* as aforesaid, any water-course may be divided if the water is too abundant for a single water-course, either by directing the water into a water-course already verbalised, or by causing it to flow in any other direction. *Ibid*, s. 35.

COMPLAINTS.

XXXVII. Any person making a complaint in virtue of this Act before a Justice of the Peace, shall make his declaration under oath, unless it is otherwise provided for by this Act, and the Justice of the Peace may issue his warrant or summons to appear against the person whom the complaint affects, ordering him to appear before him or any other Justice of the Peace, and may render judgment in a summary manner upon the oath of one credible witness other than the party bringing the said complaint ; Provided however, that if the defendant resides within the same parish or township as the complainant, the Justice shall only issue a summons ;

2. The Justice of the Peace may issue a warrant eight days after judgment, for seizure and sale of the goods and chattels of the person condemned :

3. When the Justice of the Peace acquits the defendant, he shall dismiss the complaint with costs against the complainant ;

4. No Justice of the Peace shall hear any complaint or give any decision, if he is related within the third degree to any of the parties in the said suit, or in any wise interested therein ;

5. With the exception of the cases for which it is otherwise provided by this Act, no Inspector shall act as such in any matter in which he is interested or in which any one of his relations within the third degree is interested :—And if it be impossible to find in the parish or township in which the

services of an Inspector are required, any disinterested Inspector not related as aforesaid, an Inspector shall be chosen from one of the neighboring parishes or townships. 20 V. c. 40, s. 36.

SUITS.—PENALTIES.

XXXVIII. Actions and proceedings brought or taken in virtue of this Act shall be brought or taken before one or more Justices of the Peace as the case may require; such Justices of the Peace shall only have jurisdiction, when they reside in the county in which the offence has been committed,—or when the question relates to the homologation of *procès-verbaux* and apportionments, in the county or counties in which the properties affected are situate:

2. All suits for penalties or damages must be commenced within three months after the commission of the offence on which they are founded. *Ibid*, s. 37.

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

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

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

4. Whoever refuses or neglects, when required, to fulfil the duties imposed upon him by this Act, shall incur a penalty of one dollar for each time he so refuses or neglects to act. 20 V. c. 40, s. 38.

XI. Any penalty for contravening the provisions of this Act, the amount of which is not fixed by this Act, shall be not less than one nor more than eight dollars, and may be sued for, recovered and made payable in the same manner as the penalties expressly fixed by this Act:

2. Any person condemned to pay a penalty or damages and costs, as the case may be, and who does not pay the same within eight days after judgment, shall be punishable by imprisonment for a period not exceeding thirty days, if the party has no goods, moveables or effects, and this fact be proved to the satisfaction of the Justice of the Peace by the return of the person charged with the warrant of distress (*saisie exécution*). *Ibid*, s. 39.

TIMBER IN FORESTS.

XLI. Any person found either in a forest reserved chiefly for fire-wood or for the making of sugar or for other purposes, or on any road in

its vicinity, in Lower Canada, and having in his possession any tree or part of a tree, who, on being thereunto required by any person having a right of property or the right to cut wood in any such forest, or part thereof, whether divided or undivided, or by any one acting on behalf of such person, or by any keeper of such forest or part thereof, refuses to give a satisfactory account of the manner in which he became possessed of any such tree or part of a tree, may be carried, by the party interrogating him, before any Justice of the Peace, and if such person does not satisfy the Justice that he came lawfully by the said tree or part of a tree, he shall, on conviction by such Justice, forfeit and pay, over and above the value of such tree or part of a tree so found, any sum not exceeding eight dollars; and every such fine shall form part of the building and jury fund for the district in which it is imposed:

2. This section shall extend to any Indian Reserve in Lower Canada, and to any person purchasing either within or without the limits of an Indian Reserve, any tree or part of a tree from an Indian, and to any Indian selling the same; and the Chief of any Tribe or any person authorized to take charge of a Reserve, or portion thereof, by competent authority, may act under the provisions of this section;

3. The provisions of the four next preceding sections of this Act, shall not apply to complaints, suits and penalties under this section. 23 V. c. 63, ss. 1 & 2.

XLII. Any person who knowingly takes a false oath, in whatever case it may be, shall be liable to the pains and penalties provided by law for wilful and corrupt perjury. 20 V. c. 40, s. 40.

MANNER OF GIVING PUBLIC OR SPECIAL NOTICE WHEN NOT OTHERWISE PROVIDED FOR BY THIS ACT.

Public Notice.

XLIII. Whoever has to give public notice, shall, after having signed or attested it in the presence of two witnesses, cause it to be read and posted for two consecutive Sundays at the principal door of the parish church or chapel or other place of public worship in the parish or township, immediately after Divine service in the morning:

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

3. If the notice relates to work to be executed in two or more parishes or townships, the notice shall be given in each of such parishes or townships in the manner provided by the two next preceding paragraphs.

Special Notice.

XLIV. Every special notice required by this Act shall be given during eight days, and either in writing, or *viva voce* before two witnesses, whose evidence shall be the proof of such notice:

2. If the notice is given in writing, it shall not be necessary to adopt any particular form; it shall suffice that the purport of the notice be set forth in an intelligible manner; that the notice in all cases be dated;—and that it be attested before two witnesses or a notary, if the person giving it be unable to sign it,—and that it mention the official capacity, if any, of the signer. *Ibid*, s. 42.

INTERPRETATION.

XLV. In this Act the word "land" (*terrain*) means also land generally (*terre*) :

2. The word "water-course" includes any "ditch," "drain" or "stream" in which one or more persons are interested ;

3. The word "inspector" means either "road inspector" or "inspector of fences and ditches ;"

4. By the word "disinterested," shall be understood "who has no personal interest or is under no obligation with respect to the work to be done, and is not related to or connected with any of the parties interested, within the third degree." 20 V. c. 40, s. 45.

SHORT TITLE.

XLVI. This Act shall be called the "Agricultural Act." *Ibid*, s. 44.

CAP. XXX.

AN ACT TO AMEND THE AGRICULTURAL ACT.

[Assented to 18th May, 1861.]

Whereas it is expedient to continue the right of Appeal from Judgments rendered in virtue of the Agricultural Act, chapter twenty-six of the Consolidated Statutes for Lower Canada, and to amend the said Act in the manner hereinafter provided: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

APPEAL TO THE CIRCUIT COURT.

1. An Appeal from any Judgment rendered in virtue of the Agricultural Act, or of this Act, may be brought in the Circuit Court either of the District or County in which the Judgment was rendered, or in any of the Counties adjacent to such County or District.

2. The Appeal shall be brought in the manner following: No such Judgment shall be executory until the expiration of fifteen days after the date thereof; and in the course of the said fifteen days the party intending to appeal shall give a simple notice of his intention to the Justice, or one of the Justices of the Peace, or to the Clerk of the said Justices of the Peace, or of the Court by which such Judgment was rendered.

3. Within fifteen judicial days next after the rendering of the Judgment, the appellant shall give security before the Clerk of the Court to which he intends appealing (by a surety who shall justify his sufficiency to the amount of at least one hundred dollars), that the appellant will effectively prosecute the said appeal, and will satisfy the Judgment, and pay the damages and costs in case the appeal is not prosecuted, or the Judgment appealed from is confirmed.

4. The surety shall justify his sufficiency upon oath before the said Clerk, who may make any examination or put any question necessary for that purpose.

5. The security bond may be in the form number one, annexed to this Act, or in any analogous form.

6. The clerk shall deliver a copy of the security bond to any one requiring the same, and any copy certified by him as a true copy, shall be authentic.

7. Within the said fifteen days the Appellant, after having given the security above prescribed, may obtain from the Clerk of the Circuit Court in which the Appeal is brought, a Writ of Appeal in the English or French

language, under the seal of the said Court (but the absence of such seal shall not invalidate the writ), signed by the said Clerk, and setting forth that the Appellant deems himself aggrieved by the Judgment appealed from, and ordering the Justice or Justices of the Peace or Court to transmit all the documents, proceedings, and papers forming the record, or contained in any register and relating to the cause.

8. The said Writ shall be returnable, in term or in vacation, within fifteen days from its date, and a duplicate thereof shall be served five days at least before the return day, upon the Respondent or his Attorney, and also upon the Clerk of the Justice or Justices of the Peace, or of the Court, by whom the Judgments appealed from shall have been rendered; and thereupon it shall be the duty of the said Justices and of the said Clerk to transmit the said record forthwith, and not later than the day fixed for the return of the said Writ to the Clerk of the Circuit Court in which the Appeal shall have been brought, with a certificate signed and sealed by one Justice at least, or by the Clerk, certifying that the documents transmitted are all the documents relating to the cause.

9. The writ may be in the form number two, annexed to this Act, or in any form to the like effect.

10. On the return day of the Writ of Appeal, or on the following day, each party, or his Attorney, shall file an appearance, and at any time after, on the inscription for hearing by either party, one day's notice of which in term, and three days of which in vacation, shall have been given to the opposite party, the Appeal shall be heard for all purposes whatsoever, and decided summarily; And no new evidence shall be adduced.

11. The Circuit Court shall adjudge the costs on such Appeal, and if the Judgment appealed from be fully confirmed, it shall order that the record be remitted to the Justice or Justices, or Court who shall have pronounced the Judgment or conviction, and such remission shall be effected by the Clerk of the Circuit Court, who shall annex to the record a copy of the Judgment of the said Court and a certificate of the costs allowed on the said Appeal, and the said costs shall be levied by the same means, and in the same manner in which the Judgment of the Justice or Justices, or of the Court below, is carried into effect according to law.

12. But if, on the other hand, the said Judgment be modified or set aside, in whole or in part, the record and proceedings on the Judgment appealed from, and any proceedings upon the Appeal, shall remain to form part of the records of the Circuit Court, by which and under the authority of which, whatever shall have been adjudged, ordered, confirmed, modified, or amended by the Judgment of the said Court, shall be carried into effect, and that by the same means and in the same manner as the Judgment appealed from might itself have been carried into effect.

13. Any Appellant who shall have neglected to cause the Writ of Appeal above-mentioned to be served as aforesaid, or who, having caused it to be served, shall fail effectually to prosecute the said Appeal, shall be deemed to have abandoned the said Appeal, and upon application of the Respondent, the Circuit Court shall declare forfeited all the rights and claims founded on the said Appeal, and shall allow costs to the Respondent, and shall order that the record (if it has been transmitted) be sent back to the Court or Judge below; and if the record has not been transmitted, then, upon production of the notice of Appeal or Writ of Appeal, the said Respondent shall obtain such costs as the Court may adjudge.

14. The execution of the Judgment against the party condemned shall not deprive the party who shall have succeeded, of his recourse against the sureties for the whole or any part of the costs of the Appeal remaining unpaid, to the payment of which every surety shall be bound, under the penalty of seizure and execution, in the same manner and to the same degree as the principal parties.

15. No Judgment rendered in virtue of the said Act, or of this Act, shall be contested or set aside by writ of *certiorari*.

16. To remove all doubts, it is declared that any appeal instituted before this Act goes into force from any Judgment rendered in virtue of the *Agricultural Act*, shall be proceeded with, decided, and carried into execution in the same manner, and shall be deemed as valid to all intents and purposes whatsoever, as though the twentieth section of the Act twenty-second Victoria, chapter one hundred and one, had never been repealed and had always remained in force, but only as regards those cases, the said twentieth section being hereby repealed as regards any appeal to be instituted after this Act goes into force.

WATER COURSES.

17. The first paragraph of the twenty-third section of the *Agricultural Act* is not to be interpreted as compelling Inspectors to make the apportionment of the work required for the opening or keeping in repair of a water-course, at the same time as the *procès verbal* ordering such work ; but the apportionment shall be made in accordance with the twenty-ninth section of the said Act.

COMPLAINTS.

18. After the word "townships," at the end of the fifth paragraph of section thirty-seven of the said Act, the following words shall be added: "or if there is not any such Inspector in one of the neighboring parishes or townships, then from any one of the parishes or townships in the county."

SUITS—PENALTIES.

19. After the second paragraph of the fortieth section of the said Act, the following paragraph shall be added :

"3. Any Inspector refusing or neglecting to perform any duty imposed on him by this Act, shall incur a penalty of not less than five nor more than ten dollars for each such refusal or neglect."

INTERPRETATION.

20. The word "land" or "property," in the second, third, and fifth sections of the said Act, shall include any beach land belonging to any person or corporation.

21. Any Act or part of an Act inconsistent with this Act, is repealed.

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C. E.
C. C. C.

To (names of the Justice or Justices.)

A. B.
Plaintiff (or Complainant,)

C. D.

Defendant.

The said C. D., (or A. B.,) deems himself aggrieved by the said judgment, and has provided the securities required by law—We command you, and

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By order,

ALFRED CENTER,
Secretary-Treasurer of Chatham.

Chatham, 25th October, 1866.

