

*Thos. W. Moore*

A C T S  
OF THE  
GENERAL ASSEMBLY  
OF  
HIS MAJESTY'S PROVINCE  
OF  
NEW-BRUNSWICK,

PASSED IN THE YEAR 1797.



F R E D E R I C T O N :  
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KING'S MOST EXCELLENT MAJESTY, 1797.

Rec. Aug. 14, 1906.

ANNO REGNI

# Georgii III. Regis

Magnæ Britanniae, Franciæ & Hiberniæ,

TRICESIMO SEPTIMO.

**A**CTS passed by the GENERAL ASSEMBLY of the Province of NEW-BRUNSWICK begun and holden at FREDERICTON on the TWELFTH day of FEBRUARY, Anno Domini 1793, in the THIRTY-THIRD Year of the reign of our Sovereign Lord GEORGE the THIRD by the Grace of GOD, of Great Britain, France and Ireland, KING, Defender of the Faith, &c.

And from thence continued by several prorogations, to TUESDAY the SEVENTEENTH January 1797; being the SECOND Session of the THIRD GENERAL ASSEMBLY convened in the said Province:

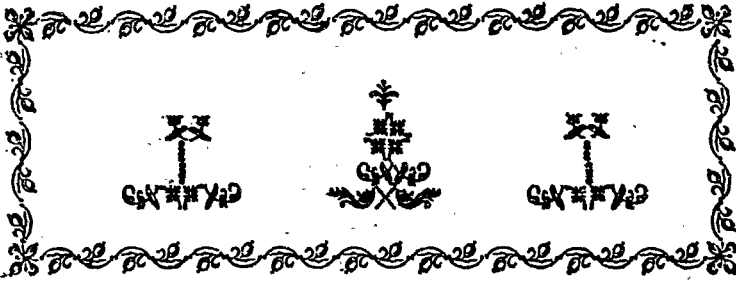


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ANNO TRICESIMO SEPTIMO

# Georgii III. Regis.



C. A P. I.

An ACT to continue an Act, intituled  
“ An Act for the more EASY and  
“ SPEEDY Recovery of SMALL  
“ D E B T S.” Passed the 18th Feb-  
ruary, 1797.

I. **B**E IT ENACTED, by the Lieutenant Governor  
Council and Assembly, That an act made and passed  
in the thirty fifth year of HIS MAJESTY'S reign intituled “ An  
“ Act for the more easy and speedy Recovery of Small Debts” be  
continued; and the said act is hereby continued, and declared  
to be in full force for the term of *five years* and no longer.

A.

C A P.

## C A P. II.

An ACT to alter and amend an Act, passed in the twenty sixth Year of His MAJESTY's reign, intituled, "An ACT " for PREVENTING TRESPASSES." Passed the 18th February, 1797.

Part of the said act repealed.

Provision in lieu of that which is hereby repealed.

The nearest Fence-viewer is to determine the proportions of fence to be made by the respective owners of adjacent lands

Owner neglecting to make or repair his proportion of fence, to be liable to all damages,

**B**E IT ENACTED, by the Lieutenant Governor, Council and Assembly, that from and after the first day of May next, the following provision in the second Section of the said act be repealed, to wit, that " In case any person or persons occupying such lands on receiving such notice shall neglect or refuse so to do within ten days after due notice given him or them, it shall and may be lawful to apply to any one of the Fence-viewers, who is hereby empowered to view such Fence or Place where the same is proposed to be erected, and to cause such part as is deficient to be made, or otherwise to repair any already made if insufficient; and the person or persons whose right it was to build and maintain the same, or any part thereof, and shall have refused or neglected so to do, shall pay all the costs or charges arising from such default." And in lieu thereof it be enacted, that in case any dispute shall arise between the occupiers of such lands on which the said Fence should be erected, or the particular part or proportion of the Fence to be by them erected, it shall and may be lawful to apply to the nearest Fence-viewer, who is hereby empowered (notice being given to the parties to attend) to view such place where the same is proposed to be erected, and to determine the part or proportion that it may be equitable each of the occupiers of such improved lands should erect. And if either of the parties, after ten days notice of the determination of the said Fence-viewer, shall not make and erect his proportion of the said Fence in manner herein before directed, or shall not immediately repair any already made on notice being given of the necessity of such repair the person so neglecting shall be liable to all the damages that may ensue in consequence of such neglect, whether such damage be committed by the Horses, Sheep, Swine or Neat-Cattle of such delinquent, or by the Horses, Sheep, Swine or Neat-Cattle of any other person, to be recovered by action of Trespass in any of His MAJESTY's Courts of Record in this province with costs of suit.

C A P. III.

An ACT to authorize the Erection of FENCES and GATES across CERTAIN Roads in the several Counties in this Province where the same shall be found necessary. Passed the 18th February, 1797.

BE it enacted, by the Lieutenant Governor Council and Assembly, That from and after the first day of March next, when any inhabitant of, or proprietor of lands in any town or parish in this province, shall think it necessary or expedient that any temporary Swinging Gate or Gates should be erected across any road laid out, or hereafter to be laid out in such town or parish, or that Water Fences should be erected on the shores of the rivers there; it shall and may be lawful for such inhabitant or proprietor to prefer a petition in writing to any three Justices of the Peace in such county, setting forth particularly the object and grounds of such application, for either of the purposes aforesaid, which petition being presented, the said Justices shall and may and they are hereby authorized and required forthwith to appoint five good substantial, disinterested freeholders and inhabitants of and in the said county not resident in the town or parish in which any such Gates or Fences as aforesaid, are prayed for, to be commissioners to examine and report upon such petition.—And a copy of the order for such appointment, shall be annexed to the said petition, and given to such person so petitioning and the said Commissioners shall be sworn to the faithful discharge of their trust before one or more of the said Justices, and a certificate of their being so sworn shall be indorsed upon the said copy of the order for such appointment. And the said Commissioners shall, as soon thereafter as may be, proceed to view the premises where any such Gates or Fences are prayed for, and thereupon to report in writing whether any, either, and which of the Gates or Fences prayed for, are proper or expedient to be erected, or made, and in such report shall be specified the particular Gates or Fences so to be made; and upon such report, made and signed by the said five Commissioners or any three of them, being returned, together with the said petition, and filed in the office of the Clerk of the Sessions, if the Justices of the General Sessions, in the county, or the major part of them, assembled in there

Any inhabitant or proprietor of land, desirous to erect temporary Swinging Gates or Water Fences to petition three Justices of the Peace,

who are to appoint five freeholders of the county, but not resident in the parish, to be Commissioners to examine and report upon such petition.

Commissioners to be sworn,

and to report to the Justices in the Sessions of the Peace.

Such report being approved by the Justice in



their Sessions,  
the petitioner  
may erect such  
Gates, &c.

there General Sessions, shall approve of such report or any part thereof, then it shall and may be lawful for the said party so petitioning forthwith, at his own expence, to erect such Gates and Fences as shall be so approved of by the said Justices in their General Sessions as aforesaid. PROVIDED ALWAYS, that the expences attending such appointment, view and report of such Commissioners shall be borne and paid by the said party praying the same.

Ten shillings  
penalty to be  
paid by any per-  
son who shall  
block up and fa-  
sten, or stake  
open or take  
down or destroy  
any such gate  
&c.

II. *And be it further enacted*, That if any person or persons shall block up and fasten, or stake open, or take down, or destroy any Gate or Gates so to be erected, by virtue or in pursuance of this act, such offender or offenders, shall upon conviction before any of his MAJESTY'S JUSTICES of the Peace for the county where such offence shall be committed, upon the oath of one or more creditable witness or witnesses, forfeit and pay the sum of *ten shillings* for each and every offence, to be levied by warrant of distress and sale of the offenders goods, under the hand and seal of such Justice, rendering the overplus if any after deducting the costs and charges of distress and sale, to the offender; which penalty and forfeiture shall be to the use of the poor and be paid into the hands of the Overseers of the Poor of the town or parish where such offence shall be committed and such offender or offenders shall be further liable to an Action of Trespass for any damages sustained thereby: PROVIDED ALWAYS, that if any Gate or Gates, erected by virtue or in pursuance of this act shall not be kept in good order and sufficient repair by the proprietor or proprietors thereof at his or their own expence; that, he or they shall not have any benefit or advantage from this act.

Provision for  
discontinuing  
such gates, on  
report of Com-  
missioners to be  
in like manner  
appointed.

III. PROVIDED ALWAYS, That whenever it shall appear to the Justices of any county, in their General Sessions, by report of Commissioners, to be in such case appointed as herein before directed on the petition for erecting any Gate or Fence by virtue of this act, that the object or ground for erecting any such Gate or Fence within the said county no longer exists, the said Justices, in their General Sessions, may, and they are hereby empowered to order such Gate or Fence to be removed and discontinued, and the proprietor or proprietors of such Gate or Fence, shall not, after such order, have any further benefit or advantage from this act, and the continuance of such Gate shall thereafter be considered and adjudged as a nuisance upon the high way.

IV. *And be it further enacted*, That this act shall continue and be in force till the *first* day of *March* which will in the year of our LORD *one thousand eight hundred and two*, and no longer. Limitation.

C A P. IV.

An ACT for REGULATING the Exportation of FISH and LUMBER, and for repealing the LAWS now in force regulating the same. Passed the 18th February, 1797.

WHEREAS, the laws now in force for regulating the exportation of FISH and LUMBER are found to be inadequate to the purposes intended. Preamble.

I. *Be it therefore enacted by the Lieutenant Governor, Council and Assembly*, That an act made and passed in the *twenty sixth* year of His MAJESTY's reign intituled "An Act for regulating the exportation of *Fish* and *Lumber* and for ascertaining the Quality of the same" and an act made and passed in the *twenty seventh* year of His MAJESTY's reign, intituled "An Act in addition to an Act intituled 'An Act for regulating the exportation of *Fish* and *Lumber* and for ascertaining the quality of the same,' and also an act made and passed in the *twenty eighth* year of His MAJESTY's reign intituled "An Act to amend an Act intituled 'An Act for regulating the exportation of FISH and LUMBER and for ascertaining the Quality of the same'—be and the same are hereby repealed. Former Acts repealed.

II. *And be it further enacted*, That from and after the *first* day of *April* next, all Pickled Herrings, Mackarel, Cod, and Scale-Fish for exportation, shall be packed in barrels of *twenty eight* gallons at least, which barrels shall be made of well seasoned timber free from sap, and have three sufficient hoops on each bilge and three on each end—the fish shall be all of one kind, sweet, free from rust, and closely packed, and the barrels full of strong pickle; and that all Salmon for exportion, shall be packed Herrings, Mackarel, Cod and Scale Fish to be packed in barrels of twenty eight gallons, to be made of well seasoned timber & requisite qualities of the several sorts of fish  
Salmon to be packed in tier-

B.

ces, half tierces, barrels and half barrels, each tierce to contain three hundred pounds, &c. in proportion.

Barrels containing less than twenty eight gallons to be forfeited and destroyed.

All fish shipped in casks of less size, or Salmon in casks containing less weight than hereby required, to be forfeited.

Quality of fish for European markets, and

for West-India markets.

Forfeiture for shipping un-merchantable fish.

Qualities, of merchantable boards and other lumber, to be surveyed by sworn Surveyors.

packed Tierces, Half Tierces, Barrels, and Half Barrels, which Tierces, Half Tierces, Barrels and Half Barrels, shall be made of sound seasoned wood, free from sap, sufficient to hold pickle, and shall be full bound;—each Tierce shall contain *three hundred pounds*, each Half Tierce *one hundred and fifty pounds*, each Barrel *two hundred pounds*, and each Half Barrel *one hundred pounds*, exclusive of the Salt, and shall be full of strong pickle. And all Barrels hereafter made which shall contain less than *twenty eight* gallons shall be forfeited; and on complaint and proof before any *two* of HIS MAJESTY'S Justices of the Peace for the county, the same shall be adjudged to be burnt or destroyed by a Constable of the Town or Parish where such offence shall be committed: And all Pickled Fish shipped in Barrels of a smaller size, or Salmon shipped in Tierces, Half Tierces, Barrels, or Half Barrels containing less weight shall be forfeited. PROVIDED ALWAYS, That it shall and may be lawful to export Herrings without pickle if the same are in every other respect conformable to this act.

III. *And be it further enacted*, That all Cod and Scale-Fish for exportation, shall be of the following description and qualities—viz—Fish for the European Markets shall be of the first quality, properly cured, not salt burnt nor broke, smoothly split, and perfectly sound: Fish for the West India Market, if well cured and dried, shall not be required to have the other qualities before mentioned, and no fish which have not the qualities above described shall be deemed merchantable, and all persons shipping un-merchantable fish shall on conviction forfeit *three shillings* for each Quintal so shipped by them.

IV. *And be it further enacted*, That all Boards, Plank, and Scantling for exportation, shall, before they are shipped, be surveyed by a sworn Surveyor: All merchantable Boards shall be square edged and *seven eighths* of an inch thick, except such as are for the New-Foundland and Kingston in Jamaica Markets which shall be one inch thick,—and all clear Boards shall be full inch thick: No Board or Plank shall be deemed merchantable if the same be split at both ends, or be split in any part more than *one quarter* of the length of such Board or Plank, or be not of equal thickness throughout—and a reasonable allowance shall be made to the purchaser for all splits, rents, and knot holes—all Boards and Planks shall be marked at the but end—the full contents shall be marked on each Board and Plank—*one half* of the split shall be allowed for splits, and a reasonable allowance for rents or knot-holes, which shall be deducted from the amount of such contents: And that all Scantling whether sawed or hewed shall

shall be properly squared and the contents in board-measure marked on each piece—all Boards, Plank, or Scantling over or under marked shall be marked properly a-new—and no more than *four* Plank, shall be allowed to *one thousand feet* of Boards—the Surveyor shall be allowed *eight pence per thousand feet board measure* for surveying, to be paid by the purchaser, and *four pence* additional *per thousand feet* for new marking, to be paid by the seller: And all persons shipping Boards, Plank, or Scantling, not surveyed as aforesaid, shall, on conviction, forfeit *ten shillings* for every *thousand feet* so shipped by them.

Allowances to Surveyors.

V. *And be it further enacted*, That all Shingles for exportation, of *eighteen inches* long, shall be not less than *four inches* wide and *half an inch* thick at the thick end, free from worm-holes, shakes, and sap; all Shingles of *twenty two inches* long shall be not less than *three and an half inches* wide, and *half an inch* thick at the thick end, and be free from worm holes, rots, and shakes; and all such Shingles shall be surveyed by a sworn Surveyor who shall receive *two pence per thousand* for the survey of Shingles of *eighteen inches* long and *four pence per thousand* for the survey of Shingles of *twenty two inches* long, to be paid by the purchaser: And all persons shipping Shingles, not surveyed as aforesaid, shall forfeit *two shillings* for each *thousand* so shipped by them.

Qualities of merchantable Shingles, to be surveyed by sworn Surveyors

Allowances to Surveyors.

VI. *And be it further enacted*, That all Square Timber for the British Market shall be not less than *ten inches* square, nor shorter than *sixteen feet*, well squared, square butted, and free of bark, shakes and rotten knots; and that all Spars shall be free from shakes and rotten knots: All such Timber and Spars shall, before shipped for exportation be surveyed by a sworn Surveyor, who shall mark and number the same, and ascertain the contents; which Surveyor shall for such surveying, marking and ascertaining the contents receive *six pence per Ton* for the Timber, and in like proportion for the Spars, to be paid for by the purchaser: And all persons shipping Timber or Spars, not surveyed as aforesaid, shall forfeit *five shillings* for every *Ton* so shipped by them.

Square timber and spars to be surveyed by a sworn Surveyor and the contents to be marked.

VII. *And be it further enacted*, That it shall and may be lawful for the Justices of the Peace in each county at their *first* General Sessions annually, or the Mayor, Aldermen and Commonalty of the city of Saint John, to appoint fit persons to be Surveyors of Lumber in each county, town, and place where such may be necessary; which persons shall give bond in the sum

Justices in their first General Sessions, annually, to appoint fit persons to be Surveyors of lumber.

of

of *fifty pounds*, with two sufficient Sureties, and shall be sworn to the diligent and faithful discharge of their trust, and shall continue in such office until other proper persons are appointed in their stead.

Half the forfeitures to be to the benefit of the county, and the other half to the prosecutors.

How recoverable.

VIII. *And be it further enacted*, That *one half* of all forfeitures or fines arising by virtue of this act, shall be to him or them who shall sue for the same, and the other half to the benefit of the county where such offence shall be committed; and if the same shall not exceed *twenty shillings* it shall be recoverable before any one of HIS MAJESTY'S Justices of the Peace, or where the same shall be more than *twenty shillings* and shall not exceed *three pounds*, before any *two* of HIS MAJESTY'S Justices of the Peace, on the oath of one or more credible witness or witnesses, by warrant of distress and sale of the offender's goods and chattels under the hand and seal of such Justice or Justices, and for want of sufficient distress, such offender shall suffer not less than *ten*, nor more than *thirty* days imprisonment; and in case such fine or the value thereof shall exceed *three pounds* the same may be recovered in any of HIS MAJESTY'S Courts of Record in this province with costs of suit.

Prosecutions to be within six months.

IX. *And be it further enacted*, That all prosecutions by force of this act shall be commenced within *six months* after the time such offence was committed.

This act to be read at the Court of Sessions of the peace in each county.

X. *And be it further enacted*, That this act shall be read and published at the opening of the next Court of General Sessions of the Peace for the several counties within this province.

C A P. V.

An Act to PREVENT the GROWTH of THISTLES. Passed the 18th February 1797.

Preamble.

WHEREAS, the growth and increase of Thistles tend to impede the cultivation and improvement of lands in many parts of this province: AND WHEREAS, it is difficult to make regulations that will be beneficial to the different counties.

I. Be

I. Be it therefore enacted, by the Lieutenant Governor, Council and Assembly, That the Justices of the Peace or the major part of them in the severall and respective counties be and they are hereby empowered and authorised at any General Session, upon presentment of the Grand Jury that the same is necessary, to make such rules and regulations for the destruction of Thistles and to prevent the growth and increase thereof as to them shall seem meet. And to enforce such rules and regulations with such rewards, penaltics, and forfeitures as they in their discretion shall think fit.

Regulations to be made by the Justices in their Sessions of the Peace upon presentment of the Grand Jury, for destruction of Thistles.

Justices to appoint rewards or penaltics.

PROVIDED, That no penalty or forfeiture to be incurred by any regulation, so to be made, shall for any one offence exceed the sum of *twenty shillings*.

None to exceed twenty shillings.

II. And be it further enacted, That this act shall continue and be in force *five years* and no longer.

Limitation.

C A P. VI.

An ACT to ALTER and AMEND an Act, intituled " An Act for regulating, laying out and repairing Highways and Roads and for appointing Commissioners and Surveyors of Highways within the severall Towns or Parishes in this Province; and for suspending for a limited time all the Laws now in force relating to the same." Passed the 18th February, 1797.

WHEREAS, in and by an act made and passed in the *thirty-sixth* year of HIS MAJESTY'S reign, intituled " An Act for regulating, laying out, and repairing Highways and Roads, and for appointing Commissioners and Surveyors of Highways within the severall Towns or Parishes in this Province — and for suspending for a limited Time all the Laws now in force

Preamble.

C.

" relating

“relating to the same” it is enacted in and by the ninth section thereof “That the Surveyors of Highways in their respective Districts shall be and are hereby empowered in the fittest and most seasonable Time, between the first Day of May and the first Day of November yearly, to summon the Inhabitants contained in their respective Lists giving them at least six days notice of the Time and Place where they are to be employed, and shall there oversee and order the Persons so summoned to labour in making, mending or repairing the Highways, Roads, Streets, and Bridges in the most useful manner during the Number of Days appointed for each Person to labour; and when any Surveyor of Highways shall judge the use of Carts, Waggon, Trucks, Ploughs or Harrows more necessary than the labour of Men, in that case he may call on any Person within his District keeping any Cart, Truck, Plough, or Harrow with two Oxen or two Horses; which Cart, Truck, Plough, or Harrow with two Oxen or two Horses shall be equal to two Days labour; and such Surveyors of Highways shall be excused from any other Service on the Highways than the summoning, ordering and directing thereof.”—AND WHEREAS, great inconveniences and difficulties have been experienced by the Surveyors of Highways as well as the Inhabitants of the parishes of *Magerville* and *Sheffield* within the county of *Sunbury* arising from the periods limited by the herein before recited ninth section of the said act within which the Surveyors of Highways in their respective districts are thereby empowered to summon the Inhabitants contained in their respective lists to labour in making, mending or repairing the highways, roads, streets, and bridges during the number of days appointed for each person to labour; the said parishes of *Magerville* and *Sheffield* being so formed and under such a state of enclosure as to make it very difficult to procure the necessary timber for making, mending, or repairing the highways, roads, streets, and bridges within the said parishes during the periods aforesaid.

Inhabitants of the parishes of *Magerville* and *Sheffield* may perform part, not more than half, of the days labour by law required, at any time between the first day of November and the first day of May yearly.

I. Be it therefore enacted, by the Lieutenant Governor, Council and Assembly, That from and after the passing of this act, the Surveyors of Highways for the said parishes of *Magerville* and *Sheffield* for the time being, within their respective districts, shall be and are hereby empowered to summon the Inhabitants contained in their respective lists in manner prescribed by the herein before recited ninth section of the said act, at such time as they shall judge to be most proper and seasonable, between the first day of November and the first day of May yearly, and shall there oversee and order the persons so summoned to labour in cutting, procuring and hawling to the High roads of the said parishes

rishtes all such timber as they may judge necessary for making, mending or repairing the highways, roads, streets, and bridges in the most useful manner, as well as in making, mending, or repairing the same during such number of days (not exceeding *half* the number of days appointed for each person to labour and to be considered and allowed by the said Surveyors as a part thereof) as they the said Surveyors shall judge to be requisite for providing for or accomplishing the purposes aforesaid, any thing in the herein before recited *ninth* section of the aforesaid act to the contrary notwithstanding.