

1st Session, 4th Parliament, 16th Victoriae, 1852-3.

B I L L .

An Act to make better provisions for the
Management of the public Timber,
and for the collection of the dues
thereon.

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(500 Copies.)

HON. MR. ROLPH.

S. Derbishire & G. Desbarats, Queen's Printer.

An Act to make better provisions for the Management of the public Timber, and for the collection of the dues thereon.

- W**HEREAS it is expedient to amend the law to protect the Timber growing upon the Public Lands of the Province, and to regulate the granting of Licenses to cut such Timber, as well as to provide a more secure and less expensive mode of collecting the Crown dues thereon : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That an Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act for the Sale and better Management of Timber upon the Public Lands*, shall be and the same is hereby repealed : Provided always, that nothing in this Act shall invalidate any License already granted, or any obligation contracted for payment of dues under any such License, or invalidate the lien of the Crown on any Timber cut upon Public Lands, now within the limits of the Province, and upon which the dues heretofore payable have not been paid.
- II. And be it enacted, That it shall be lawful for the Commissioner of Crown Lands to grant Licenses not exceeding fifteen months in their duration, to cut Timber on the Public Lands of the Province, subject to such conditions, regulations and restrictions as may from time to time be established by the Governor in Council, and of which due notice shall be given in the *Canada Gazette*.
- III. And be it enacted, That every License so granted shall have the effect of giving to the grantee, the right of ownership, in respect of all Timber cut during the period of his license, and if through any error, the limits described in any such license, be found to cover ground previously granted by any other unexpired license, every license so erroneously granted shall be void, except in so far only as it does not interfere with any license previously granted, and the right of occupying the land described in any such license by the grantee, shall extend only to such occupation as may be necessary for the purpose of enabling the grantee to cut Timber thereon, and shall not be so construed as to prevent the Crown from disposing of any portion of such land for the purpose of settlement,

Preamble.

Act 12 V. c. 30, repealed.

Proviso : Licenses dues, &c., under it to remain in force.

Commissioner of Crown Lands to grant Licenses to cut Timber on Public Lands.

Legal effect of such License, as to rights of ownership.

provided proper reservation of all timber growing thereon, and the right of entry for the purpose of cutting and carrying away such timber be made in favor of the license holder.

Timber cut without License may be seized with all horses, implements, &c.

IV. And be it enacted, That if any person trespass upon any of the Public Lands of the Province, and cut or cause to be cut, any timber thereon, it shall be lawful for the Commissioner of Crown Lands, or any Officer or Agent acting under him, upon being satisfied thereof, to seize or cause to be seized, the timber so cut, and all provisions, horses, harness, sleighs, axes, implements and utensils of every description whatsoever, which may be found on such lands, in the possession of any person or persons so trespassing, or their Agents, and the same shall be forfeited to the Crown. 5

When Timber unlawfully cut has been mixed with other Timber.

V. Provided always, and be it enacted, That whenever the Timber so cut in trespass has been rafted or mixed up with other Timber lawfully cut, the whole of such Timber shall be held to have been cut without authority, and be liable to seizure and forfeiture accordingly. 15

Officer seizing may call in aid.

VI. And be it enacted, That it shall be lawful for any such Officer in the discharge of his duty to call in such lawful aid and assistance in the name of the Queen as may be necessary for securing and protecting the property so seized as aforesaid ; and any person who shall, under any pretence, either by actual force or by threat of force in any way obstruct any Officer, or person acting in his aid or assistance, in the discharge of his duty under the authority of this Act, shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punishable accordingly. 20 25

Penalty for obstructing him.

Proceedings by the Commissioner or his Agent after the seizure.

VII. And be it enacted, That the Commissioner of Crown Lands, or his Agent, shall, upon every such seizure, make or cause to be made a statement or *Procès-verbal* of the Timber and other articles by him seized, and shall, with the least possible delay after such seizure, cause a notice thereof, together with a copy of such statement or *Procès-verbal*, to be delivered to the owner or person in charge of the property at the time of seizure, if any such person be then present, and shall cause a similar notice, together with a copy of the said statement or *Procès-verbal*, to be inserted during thirty days from the date of its first insertion, in two newspapers both in the English language, if the seizure be made in Upper Canada, and one in the English and another in the French language if the seizure be made in Lower Canada, published in the parish, Township or County within which such seizure shall have been made, and if there be no such newspaper published within such limits, then in such two newspapers as aforesaid published nearest, according to the ordinary and practicable road, to such place of seizure in Lower or Upper Canada, according as the seizure may have been made in the one or other of those Sec- 30 35 40 45

Notice to be published.

tions of the Province ; and in and by the said notice all persons having or pretending to have any legal claim to the property so seized, shall be called upon to make known such claim within *sixty* days from the date of such seizure in the manner hereinafter prescribed.

Persons having claims to be called upon.

VIII. And be it enacted, That any person who shall either secretly or openly, with or without force, unlawfully take or carry away, or cause to be taken or carried away, any property seized and detained under this Act, being the property of Her Majesty, shall be deemed to be guilty of a misdemeanor, and liable to punishment accordingly.

Penalty for removing property seized.

IX. And be it enacted, That all timber or other articles seized under the foregoing provisions of this Act, shall be deemed to be forfeited to the Crown at the expiration of sixty days from the day of the date of the seizure, unless it or they be previously claimed in the manner hereinafter prescribed.

To be forfeited at the end of 60 days if not claimed.

X. And be it enacted, That any person disputing the validity of the seizure may, by petition, setting forth in a clear and distinct manner, the grounds of his appeal against the seizure, addressed to a Circuit Judge of Lower Canada, to a County Judge of Upper Canada, or to a Judge of any Superior Court of original civil jurisdiction in civil matters, either in Lower or Upper Canada, according as the seizure may have been made in Upper or Lower Canada, obtain delivery and repossession of the property so seized, on entering into a Bond (in the form C contained in the Schedule annexed to this Act) with at least two good and sufficient sureties, who shall justify as to their sufficiency before such Judge, for the payment of a sum of money equal in amount to double the value of the property so seized.

Proceedings to be had by any person claiming the property seized.

Bond.

XI. And be it enacted, That the said Petition and Bond shall be filed in the Circuit, County or other Court nearest, according to the ordinary travelled road or route, to the place of seizure, and that notice of at least days, of the intention to present such petition, and of the names, addition and residences of the persons to be offered as sureties, shall be served upon the Commissioner of Crown Lands or his Agent nearest the place of seizure by leaving a copy thereof at his Office ; and that no such petition shall be entertained or received, nor such security taken until proof of the service of such notices shall be made : Provided always, that if, on the day appointed for presenting such petition and offering such security, no Judge be present at the time and place indicated by such notice, it shall be lawful for the Sheriff or Clerk of the Court to take the required security, on being satisfied of the sufficiency of the sureties.

How the claim shall be filed and served.

Proviso.

Jurisdiction of
County and
Circuit Court
extended to
such cases.

XII. And be it enacted, That the jurisdiction of the County Courts in Upper Canada, and of the Circuit Courts in Lower Canada, shall extend to all proceedings to be taken under the provisions of this Act, notwithstanding the value of the property seized, or the amount for which a Bond is given, may exceed the extent of their jurisdiction in ordinary civil actions. 5

Proceedings
after the filing
of the claim.

XIII. And be it enacted, That the same proceedings shall be had on every such Petition after its presentation as in an action of revendication in Lower Canada, or an action of replevin in Upper Canada after the return of the Writ, and that the first day of the term succeeding the day of the filing of such Petition shall be deemed the day of return of such Petition into the Court, and in every such case the burthen of proof that the Timber so seized was cut under legal authority, or that it was cut elsewhere than on the public lands shall rest upon the Claimant. 10 15

Onus of proof.

If no claim be
filed within
the 60 days.

XIV. And be it enacted, That if at the expiration of the sixty days mentioned in the ninth section of this Act no Petition shall have been filed or no security given, the Commissioner of Crown Lands, or Agent acting under him, shall cause the Timber and other Articles seized to be disposed of in such manner as the Governor in Council may direct. 20

Claimant may
proceed with-
out giving
security, -
allowing the
property to be
sold.

XV. And be it enacted, That nothing in the foregoing sections contained shall prevent any Claimant from filing a Petition without giving security, but in such case, the Timber and other Articles seized shall be disposed of in the manner prescribed by the last preceding section, and the proceeds of any sale shall be paid over to the Commissioner of Crown Lands, to be by him held until the judgment of the Court be pronounced in the case. 25 30

Effect of judg-
ment in favor
of Claimant.

XVI. And be it enacted, That in cases where the judgment of the Court shall be in favor of the Claimant, he shall be entitled only to the restoration of the property and to the cost incurred by him in presenting and maintaining his Petition, and if from failure to give security the Timber and other Articles seized have been sold, to the net proceeds of such sale. 35

Governor in
Council to fix
rates of pay-
ment.

XVII. And be it enacted, That the Governor in Council shall from time to time fix the rates at which timber cut upon the public lands of the Province shall be paid for, and the manner in which such rates shall be levied. 40

Timber cut on
private lands
exempt from
duty, on due
proof.

XVIII. And be it enacted, That upon such proof as the Governor in Council may from time to time appoint and direct, all timber cut upon private lands shall be exempt from any rates or charges imposed under the authority of this Act, but all timber shall be deemed to have been cut upon public lands and shall be charged accordingly, until the contrary has been proved in such manner as may be provided. 45

- XIX. And be it enacted, That timber cut upon any lot of public land sold but on which the purchase money has not been paid in full, shall be deemed to have been cut upon public land, and shall be paid for accordingly. Timber cut on lands not paid for in full.
- 5 XX. And be it enacted, That a true account of all timber cut upon public or private lands in any part of the Province shall be rendered to the Commissioner of Crown Lands or any Officer or Agent acting under his authority, whenever it may be deemed expedient to demand the same. Accounts of timber cut on public lands to be rendered when called for.
- 10 XXI. And be it enacted, That upon the arrival of any Raft or parcel of timber at any port or place within this Province for sale or shipment, the owner or person in charge shall within twenty four hours after such arrival give notice thereof to the Officer or Agent appointed to collect the timber dues at such Port or place, specifying the quantity and description of timber; and in default of such notice a penalty shall be exacted of *Ten Pounds* if the quantity of timber contained therein be equal to five hundred tons or upwards, and of *Five Pounds* if the quantity be less than five hundred tons, for every twenty-four hours any such 15 Raft or parcel of timber shall remain unreported. Rafts, &c., arriving at any port to be immediately reported. Penalty for default.
- XXII. And be it enacted, That if any Raft or parcel of timber, after its arrival in Quebec shall be moved from one cove to another before payment has been made of all dues and penalties imposed thereon by or under the authority of this Act, notice of 25 such removal shall be given within twenty-four hours to the Collector of Timber dues, under a penalty of *Five Pounds* for every such removal without notice. Raft, &c., moved from cove to cove, to be reported.
- XXIII. And be it enacted, That it shall be lawful for the Supervisor or Deputy Supervisor of Cullers in any port where 30 the Act passed in the eighth year of the Reign of Her Majesty, chapter forty-nine, and intituled, "An Act to regulate the culling and measurement of timber, masts, spars, deals, staves and other articles of a like nature, and to repeal a certain Act therein mentioned," may be in force, 35 to endorse the amount of Crown dues accrued upon any parcel of timber on the specification thereof, and such endorsement shall have the effect of rendering any purchaser of such timber liable for the amount, which, in case the timber shall be removed without payment beyond the reach of the 40 Collector of Timber dues, shall be recovered in the name of the Crown from any effects in his possession. Supervisor of Cullers under 8 V. c. 49, may endorse amount of Crown dues, on specification. Effect of such endorsement.
- XXIV. And be it enacted, That the amount to be endorsed on the specification of any Raft or parcel of Timber shall be the sum which the total quantity of timber contained therein would 45 amount to, at such rates as may under the authority of this Act be in force at the time of measurement, after deducting such portion thereof as may have been satisfactorily proved to have been cut upon private lands. How the sum to be so endorsed shall be calculated.

Forfeiture for shipping or removing timber until the dues are paid.

XXV. And be it enacted, That if any attempt be made to ship or export, or in any other way to remove any timber out of the reach of the Collector of Timber dues or Officer or Agent appointed to act in that behalf, without payment having been first made of all dues or penalties imposed by or under the authority of this Act, or satisfactory proof given, in such manner as may be prescribed by order in Council, that it was cut upon private lands, such Timber shall be seized and shall be forfeited.

Forfeiture of timber for fraudulent statements.

XXVI. And be it enacted, That in the event of any fraud for the purpose of evading any payments required to be made under the authority of this Act, or any false statement for the purpose of proving that any timber was cut upon certain lands, being private property, all timber in relation to which any such fraud may be attempted or false statement made, shall be seized and shall be forfeited to the Crown: And if such timber has been carried beyond reach of the Commissioner of Crown Lands or his Agents, the value thereof shall be recovered from the person or persons in whose behalf or at whose instance such fraud may have been committed.

Commissioner of C. L. may examine private lands.

XXVII. And be it enacted, That it shall be lawful for the Commissioner of Crown Lands to cause such examination of any private lands to be made, as may be necessary to ascertain the truth of any statement on which exemption from any rates imposed under the authority of this Act, may have been claimed for timber said to have been cut thereon.

Reeves and Mayors may make examination as to whether timber was really cut on private lands.

XXVIII. And be it enacted, That upon being furnished by the Commissioner of Crown Lands, or any Officer or Agent acting under his authority, with a statement of the timber exempted from Crown dues as having been cut upon private lands, it shall be lawful for the Reeve of the Township, if it be in Upper Canada, and the Mayor of the Municipality, if it be in Lower Canada, to institute any examination of the premises, and if it appear that the timber was not cut upon the lands stated and that the evidence used to evade the dues thereon was fraudulent or false, it shall be lawful for the said Reeve or Mayor on behalf of the Municipality to sue and recover from the person guilty of such fraud, an amount equal to the whole value of the timber in relation to which the fraud may have been committed.

Who may administer oaths under Act. this

False swearing to be perjury.

XXIX. And be it enacted, That it shall be lawful for any Justice of the Peace, or to administer any oath required by this Act to be sworn to before them respectively; and that whosoever shall make any wilful false oath in any case where by this Act an oath is required or authorized, shall be guilty of wilful and corrupt perjury, and be liable to the punishment provided for that offence,

notwithstanding any civil action relating to the same matter may have been already brought.

XXX. And be it enacted, That it shall and may be lawful for the Governor in Council from time to time to make such orders
 5 as may be necessary to carry out the provisions of this Act according to their obvious intent and meaning; Provided always, that such orders shall not be inconsistent with this Act; And provided also, that such orders shall be duly published in the Official Gazette and in such other newspapers
 10 as the Commissioner of Crown Lands may direct, and shall be laid before each branch of the Legislature within the first ten days of the Session next after the date of such orders respectively.

Governor in Council to make order for giving effect to this Act.
 Proviso.

Proviso.

XXXI. And be it enacted, That in this Act, the word
 15 "Timber," shall be understood to mean all timber, lumber, or other wood howsoever manufactured, and in whatsoever shape or form it may be, and that the Interpretation Act shall apply to this Act.

Interpretation.

SCHEDULE OF FORMS.

A.

NOTICE OF SEIZURE.

(Place.) (Date.)

Notice is hereby given to all whom it may concern, that I
 20 (A. B.) being duly authorized by the Commissioner of Crown Lands for the Province of Canada, have this day seized (or caused to be seized,) the following timber, to wit: (*here describe the number of pieces and the quality of the timber*) reported to me to have been cut without license or legal authority on (*here*
 25 *describe the land as clearly as it can be ascertained if unsurveyed, and if surveyed, mention lots, &c.*) together with (*here mention any other articles than timber seized*) and that the said timber (and the said above mentioned articles) will, at the expiration of *sixty* days from the date hereof, become forfeited to the
 30 Crown, unless previously claimed in the manner prescribed by law (16 Vic. Cap. Sec.) by some person having any right or claim thereto; and that I do estimate the value of the timber (and other articles) so seized, at the sum of
 currency.

B.

35 Sir,

You are hereby notified that on _____ day, the
 of _____ (instant or next,) I shall present
 to such Judge of the _____ Court sitting at
 in the County of _____ as may be then and there pre-

sent, a Petition, by which I claim (*here mention the articles seized, or such part thereof as are claimed,*) seized by at (*mention and describe place of seizure*) on (*date*) within your agency, (*if security is to be offered, add*) and that I shall then and there offer A. B. of and C. D. of (*Here, insert name, addition and residence of the proposed Sureties,*) as the Sureties required by the 16 Vict. Cap. sect.

To

Crown Land Agent.

C.

PROVINCE OF CANADA.

Know all Men by these presents, that we A. B. and

are held and firmly bound unto our Sovereign Lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the sum of of good and lawful money of Canada, to be paid to our said Lady the Queen, Her Heirs and Successors: to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally for and in the whole, our heirs, executors and administrators, and every of them, firmly by these presents. Sealed with our Seals.
 Dated this day of in the year of the Reign of Her said Majesty, and in the year of our Lord, one thousand eight hundred and

Whereas on the (*here mention date of seizure*) at (*here mention and describe the place of seizure, as mentioned and described in the notice*) (*here follows the list of the timber, &c., seized,*) were seized by (*seizing Officer's name,*) the said timber being alleged to have been cut without license or legal authority; and whereas the said bounden A. B. hath this day filed in the Office of the Court at in the County of in that part of the Province of Canada called Canada, a petition by which he claims the said (*timber and other articles so seized or such part thereof as he claims*) valued at pounds.

Now the condition of this obligation is such, that if the said bounden A. B. shall well and truly pay to Her Majesty, Her Heirs and Successors, the said sum of (*value of things seized,*) together with all costs, or such sum as by the judgment of the said Court he shall be condemned to pay, then this obligation shall be void, but otherwise shall be and remain in full force and virtue.