



CAP. X.

An Act to regulate the exportation of Lumber.

Passed 1st March 1837.

BE it enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the first day of April next, no lumber of the descriptions hereinafter mentioned shall be shipped for exportation from this Province until the same has been surveyed and measured, under the penalty for every offence not exceeding fifty pounds nor less than five pounds currency, to be forfeited and paid by the person or persons who knowingly shall have shipped or caused the same to be shipped for exportation, without having been so surveyed and measured.

II. And be it enacted, That it shall and may be lawful for the Justices of the Peace in each County, at their first general Sessions annually, to appoint a sufficient number of fit persons in their respective Counties to be surveyors of lumber in each County, Town or place where such may be necessary; which persons so appointed shall enter into bonds to His Majesty, his heirs and successors, in the sum of one hundred pounds, with two good and sufficient sureties in the sum of fifty pounds each, conditioned for the due performance of his duty as surveyor of lumber, to be filed in the office of Clerk of the Peace in such County, and shall take and subscribe the following oath before one of His Majesty's Justices of the Peace, or before the Clerk of the Peace for the County in which he may be appointed, either of whom is hereby authorized and required to administer the same without any fee, that is to say:

"I do solemnly swear, that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute, do and perform the office and duty of a surveyor of lumber, according to the true intent and meaning of an Act, intituled 'An Act to regulate the exportation of lumber,' and that I will give a true and faithful account of the number, dimensions or measurement of all such lumber as may be submitted to my inspection, according to the best of my knowledge, and that I will not survey any lumber in which I may be directly or indirectly interested otherwise than for the compensation prescribed in the said Act, and that I will not change any article of lumber that may be delivered or entrusted to me for the purpose of being so surveyed."

Which affidavit every surveyor so appointed and sworn shall deliver unto the Clerk of the Peace for the County in which he shall be appointed, together with the private mark which he shall adopt; and the said Clerk of the Peace is hereby required to grant a certificate to every such person of his having taken and subscribed the said oath, and of his having filed the said bond, and to furnish him with a copy of this Act, for which copy so furnished he is to receive one shilling from the Sessions of said County; and it shall be lawful for them to survey lumber in any part of the County in which they shall be appointed, and it shall be their duty respectively, personally, diligently and carefully to ascertain the qualities of the articles submitted to their inspection, and after rejecting all such as in their opinion may appear objectionable under this Act, so far as the same can be then ascertained, of which each surveyor is hereby required to provide himself with and retain a copy, they shall when required furnish the buyer and seller each with a true and faithful account, in writing, of the number, length, dimensions or measurement of the articles they shall respectively find to be merchantable: Provided always, that when any dispute shall arise between the buyer or seller and the surveyor, and a re-survey shall be required, it shall and may be lawful for the party requiring such re-survey, and for the said surveyor respectively, to choose one disinterested surveyor duly appointed under this Act, which two surveyors so appointed shall choose a third disinterested surveyor duly appointed under this Act, whose duty it shall be to examine and re-survey said lumber, and the decision of the said three surveyors or of any two of them as to the said re-survey shall be final and conclusive, and when such dispute shall arise between the buyer and seller, it shall and may be lawful for the party who shall have had the choice of the first surveyor to choose one disinterested surveyor, and for the other party to choose two disinterested surveyors, which said three surveyors so chosen shall proceed to examine and re-survey the said lumber, and the decision of the said three surveyors or of any two of them shall be final and conclusive, and should the original survey be confirmed, then and in such case the person requiring said re-survey shall pay the expenses thereof; and should the said original survey not be confirmed, then and in such case the expenses of the said re-survey shall be paid by the person requiring such re-survey, who shall and is hereby authorized to recover the same again from the first surveyor: Provided also, that if any surveyor shall pass any article of lumber contrary to the provisions of this Act, such surveyor so offending shall be liable to the party injured for all damages sustained by him or them, and be subject to the following penalties, namely: for every forty cubic feet of timber so passed, the sum of two shillings and sixpence; for every thousand superficial feet of plank, deals, boards or scantling, the sum of five shillings; for every spar, the sum of one shilling; for every thousand shingles, the sum of two shillings and sixpence; for every thousand staves, the sum of five shillings; for every cord of lathwood, the sum of two shillings and sixpence; and if any surveyor appointed under this Act shall at any time wilfully change any article of lumber submitted to him for inspection, or to be surveyed, by substituting any other article of lumber, he shall upon due conviction thereof incur a penalty not exceeding fifty pounds nor less than five pounds, to be recovered as is hereinafter prescribed in the ninth section of this Act: Provided also, that if any surveyor shall at any time be found guilty of wilful neglect of duty, or of partiality in the execution of his office, or of wilfully giving a false account of the article or articles submitted to him for inspection, the conviction for any such offence shall be deemed and taken to be a dismissal from his office as surveyor.

III. And be it enacted, That all square timber shall not be less than ten inches square nor shorter than sixteen feet, except pine timber over sixteen inches square and hardwood over twelve inches square, which may be twelve feet long, to be square and smoothly hewed, and free from knotty tops, plugs, rots, rotten or concave knots, decayed sap and worm holes, to be square butted, and the taper not to exceed one inch for every eighteen feet in length, the wane not to exceed one inch on each and every corner where the square is under sixteen inches and from sixteen to twenty inches square, on each and every corner two inches wane, and from twenty one inches square and upwards, three inches wane on each and every corner; and in order to ascertain the contents of such timber, the surveyor shall girth or measure the same at the middle of the stick, and the difference of the squares between any two of the sides shall not exceed two inches; and no log shall have a sweep unless it has two straight sides, and such sweep shall not exceed the rate of five inches to every forty feet in length: Provided nevertheless, that all pine timber over sixteen inches square, smoothly hewed and free from the knots and defects aforesaid, shall be deemed merchantable if over twelve feet long; all merchantable boards shall be seven eighths of an inch thick, and all boards, plank, deals and scantling shall be square edged with the saw; no board or plank shall be deemed merchantable if split at both ends, or have one continued split of more than two feet at one end, that is less than twelve feet long and nine inches wide, and that is not sawed of equal thickness throughout; all merchantable boards, plank, deals and scantling shall be free from rots, bad or large knots (not exceeding two of two and a half inches diameter), rents, shakes, worm holes, wane and auger holes; and purchasers shall not be obliged to take planks with boards unless by special agreement, and the breadth of boards, plank and scantling to be taken at the middle for measurement; clear boards may be sawed out of the round log without being edged (optional with the party manufacturing the same), to be free from rots, knots, rents, shakes, worm holes and auger holes, the width of which for measurement to be taken at the centre, inside of and not including the wane and dark sap; masts shall not be less than three feet and one fourth of a foot in length to every inch of diameter, to be hewed smoothly and reduced sufficiently to shew the real wood free from sap on the centre of all the four sides at the partners, to be as small at the butt as at the partners and of proportionate and full size at the top, to be straight, free from rot, ring shakes, butt rots, concave or rotten knots, large knots at the top, bark on the wanes, auger holes and other defects, to be square butted, the diameter for measurement to be taken at the partners one third from the butt, exclusive of sap; spars shall be of straight growth, free from large knots, rots and other defects, to be of proportionate size at the top with the butt, to be square butted and the diameter for measurement to be taken one third of the length from the butt, exclusive of bark, and to be four and one half feet in length for every inch of diameter where the

spar exceeds nine inches in diameter, and five feet at least for all spars under nine inches diameter; lathwood shall be of straight rift, free from bark, hearts, knots and rots, to be measured by the cord of four feet high and eight feet long, and piled as close as it can be laid; pine shingles shall be eighteen inches long, not less than four inches wide and three eighths of an inch thick at the butt, free from sap, rot and worm holes, to be put up in bundles not less than twenty five tiers or courses of twenty inches wide, four of which bundles shall be reckoned a thousand; cedar shingles for exportation shall be twenty two inches long and half an inch thick at the butt, the said thickness to be continued three fourths of the length and shaved from thence to the point, to be from four to four and one half inches in width, and the account shall be taken by tale of ten hundred to the thousand, and that all pine shingles manufactured in the same manner for exportation shall be subject to the like rules and regulations, the whole of which cedar and pine shingles for exportation to be free from the defects above mentioned relative to shingles; hoghead staves shall be forty two inches long, three fourths of an inch thick on the thinnest edge, and not exceeding one and one eighth inches thick on the back, and shall also be from three and one half to five and one half inches wide; barrel staves shall be thirty two inches long, half an inch thick on the thinnest edge, and not exceeding seven eighths of an inch thick on the back; the whole to be of good rift, free from twists, fairly split and free from knot holes, rotten knots, worm holes and shakes, and the account shall be taken by tale of twelve hundred to the thousand.

IV. And whereas certain articles of lumber are measured afloat and cannot conveniently be inspected: Be it therefore further enacted, That when such lumber or any part thereof shall prove unmerchantable, it shall be the duty of the purchaser or purchasers of such lumber to give the seller or sellers or his or their agent, ten days notice that such lumber has so proved unmerchantable, in order that the same may be removed, and if the seller or sellers or his or their agent shall not within the time of such notice given as aforesaid, apply for such lumber and remove the same from the possession of such purchaser or purchasers, then the said purchaser or purchasers shall and he or they are hereby required to call upon the surveyor who first measured such lumber or some other surveyor, which surveyor shall examine the said lumber so found defective, and take an account of the marks and contents of the same, and the purchaser shall put or cause the said lumber to be put in merchantable order under the superintendence of such surveyor by having the same overhauled, lined, hewed, sawed or repaired in any way that may be thought advisable by such surveyor, and the purchaser or purchasers shall be at liberty to charge the seller or sellers of such lumber with the expense of putting the same in order as aforesaid, and with any deficiency thereon; which said expenses and deficiency shall be kept account of and estimated by such superintending surveyor: Provided always, that no purchaser or purchasers of any lumber shall be allowed to have the same repaired or re-surveyed at the risk or expense of the seller or sellers after he has had the same in possession more than twelve months; and provided also, that the seller or sellers of any lumber, in order to avail himself or themselves of the provisions contained in this section, if he or they reside more than twenty miles from the place where such sale is made, shall at the time of making sale of any such lumber nominate and appoint an agent or agents to attend to such unmerchantable lumber, and the person or persons so nominated and appointed agent or agents shall be made known to the purchaser of such lumber at the time of such sale and purchase.

V. And whereas some evil disposed persons are in the habit of plugging or wedging timber and masts, for the purpose of passing such timber, masts or spars by such deceptions as merchantable: Be it therefore enacted, That any person or persons convicted of plugging any timber, spars or masts, when any defect is covered by such plugging or wedging shall be liable to pay a fine of five pounds currency for each and every offence.

VI. And be it enacted, That each of the surveyors so appointed shall mark or score in large and legible figures or characters on one of the sides near the butt end of each piece of timber inspected by him his own mark, the length, the purchaser's mark and the contents, and shall at the place of girthing the same, mark or score the girth thereof for measurement; masts and spars shall be marked in the same manner, having instead of the contents the diameter at the partners: Provided always, that any person or persons adopting or using the private mark of any surveyor of lumber under this Act, by placing the same upon any piece of timber, scantling, mast, spar or other article of lumber, other than such surveyor of lumber shall be liable for each and every such offence liable to the penalty of five pounds, currency, to be sued for and recovered as is prescribed in all penalties of the like amount in this Act.

VII. And be it enacted, That the persons so appointed surveyors as aforesaid shall respectively be entitled to ask, demand and receive for their skill and labour in surveying, marking and re-surveying, at and after the following rates, (that is to say): for every forty cubic feet of timber, fourpence; for every thousand superficial feet of deals, plank, scantling and boards, one shilling; for masts under seventeen inches diameter, one shilling and sixpence each, and if larger, two shillings each; for spars under six inches diameter, twopence each; being nine inches diameter and upwards, fourpence each; for lathwood, one shilling and threepence per cord; for pine shingles, ninepence per thousand; for cedar shingles, one shilling per thousand; for hoghead staves, three shillings per thousand; and for barrel staves, one shilling and sixpence per thousand; which rates for the survey of merchantable lumber shall be paid by the first buyer after the survey, provided it be purchased within four months, and should it not be purchased within that term, the surveyor to be paid by the person who employed him, and the seller shall remove or cause to be removed at his own expense whatever may obstruct or prevent the surveyor from ascertaining with facility the measurement, manufacture or quality of any article of lumber, and when required the same shall be canted, and should the seller or sellers refuse or neglect to do the same, it shall and may be lawful to do so or cause it to be done, and to charge the seller with the necessary expense of the same, which expense to be sued for and recovered in any Court competent to try the same.

VIII. And be it enacted, That if any person appointed to be a surveyor in any Town or Parish or any other person whatsoever, shall measure or survey any lumber intended for exportation before filing bond or taking the oath required in and by the second section of this Act, such person so measuring or surveying any lumber as aforesaid shall upon conviction thereof forfeit and pay the sum of five pounds.

IX. And be it enacted, That one half of the forfeitures or fines arising by virtue of this Act shall be paid to the person or persons who shall sue for the same, and the other half to the overseer of the poor of the Parish in which such forfeitures shall have been incurred for the use of the poor of said Parish; and where any of the penalties imposed by this Act shall not exceed five pounds they shall be recovered together with the costs of prosecution before any one of His Majesty's Justices of the Peace of the County in which the offence shall be committed, and where the same shall be more than five pounds and shall not exceed ten 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 (which warrant to be under the hand and seal of such Justice or Justices); and for want of sufficient distress shall suffer not less than ten days nor more than thirty days imprisonment; and in case such forfeiture or the value thereof shall exceed ten pounds the same shall be recovered in any of His Majesty's Courts of Record competent to try the same, with costs of suit.

X. And be it enacted, That all prosecutions by virtue of this Act shall be commenced within twelve months from and after the time any offence shall have been committed.

XI. And be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent the exportation of lumber of other qualities not merchantable, provided always that such lumber be actually shipped as of its proper denomination.

XII. And be it enacted, That this Act shall commence and come into operation on the first day of April in the present year, and shall continue and be in force until the first day of April one thousand eight hundred and forty.

CAP. XI.

An Act for the more effectual prevention of Fires within the City of Saint John.

Passed 1st March 1837.

BE it enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, no dwelling house, store house or other building whatsoever shall be erected of wood or other combustible materials in the City of Saint John, of greater height than twenty six feet, from the level or line of the street or wharf whereon the same may front or of the ground whereon the same is erected

to the top of the corner posts of such building, and the ridge of the roof of which shall exceed fifteen feet perpendicular from the wall plate.

II. And be it further enacted, That no dwelling house, store house or other building whatsoever in the said City already erected and covered with boards or shingles or other combustible materials shall be raised up or built upon so as to exceed the height mentioned and limited in the first section of this Act.

III. And be it further enacted, That if any dwelling house, store house or other building already erected in the said City and now covered with boards or shingles shall at any time hereafter require to be roofed or otherwise repaired, it shall and may be lawful to roof and repair the same with boards and shingles or in such other manner as was customary before the passing of this Act, any thing herein contained to the contrary thereof notwithstanding.

IV. And be it further enacted, That all dwelling houses, store houses and other buildings which shall from and after the passing of this Act be made, built and constructed of stone or brick within the said City, shall be roofed or covered with tile, slate or other fire proof material, shall at all times have window shutters and outer doors made of iron, copper, or other fire proof material, properly, securely and sufficiently hung and fixed for all the windows and outer doors of such building, where such windows and doors are at a less distance than fifty feet from any other building in front of or opposite to such windows or doors; and where any two such buildings constructed of stone or brick shall adjoin each other, the division or party wall between them shall be carried up and remain two feet at the least above the roof of the highest building which shall adjoin such party wall; provided that nothing in this section shall extend to buildings composed of stone or brick not exceeding twenty feet in height from the ground whereon the same may stand to the highest part of the roof or ridge thereof.

V. And be it further enacted, That every such dwelling house, store house or other building which after the passing of this Act shall be erected, built, raised up, built upon, roofed or repaired contrary to the provisions of this Act, and if constructed of stone or brick, shall not have iron, copper or other fire proof window shutters and outer doors as is herein before provided for, shall be deemed a common nuisance.

CAP. XII.

An Act to provide for increasing the number of Constables in the City of Saint John and for appointing special Constables in the City and County of Saint John.

Passed 1st March 1837.

WHEREAS the number of constables authorized by law to be appointed for the City of Saint John is insufficient in the present increased state of the population of the said City, and circumstances may from time to time arise rendering the appointment of a number of special constables necessary;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Mayor, Aldermen and Commonalty of the said City of Saint John, or the major part of them in Common Council convened, shall on the first Tuesday in April in each and every year, or so soon after as may be convenient, name and appoint such and so many of the inhabitants of the said City, being freeholders there or freemen of the said City, as they shall see convenient to appoint, not to exceed the number of twenty two, to be Constables in the said City for the ensuing year, in addition to the number which may be elected or appointed under and by virtue of the charter of the said City or any Act of Assembly now in force, which said additional constables shall be subject to the same rules, regulations, pains, penalties and forfeitures, and liable to the same proceedings under the like circumstances, and in all respects, as the said constables appointed or to be appointed under and by virtue of an Act made and passed in the fifty sixth year of the reign of King George the third, intituled 'An Act to increase the number of constables in the City of Saint John.'

II. And be it enacted, That if any constable in the said City, whether elected under the charter or appointed by virtue of this or any other Act of Assembly, shall be guilty of any neglect of duty or misbehaviour in the execution of his office, the said Mayor, Aldermen and Commonalty of the said City, or the major part of them in common Council convened, shall and may have full power to dismiss such constable from his office and appoint any other person, being a freeholder or freeman of the said City, in his stead.

III. And be it enacted, That in all cases where it shall appear to the Mayor or Recorder of the City of Saint John and one Justice of the Peace for the City and County of Saint John, that any tumult, riot or felony has taken place or may be reasonably apprehended in the City of Saint John or its vicinity, and such Mayor or Recorder and Justice shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants, and the security of the property in the said City of Saint John or its vicinity, then and in every such case the said Mayor or Recorder and Justice are hereby authorized to nominate, appoint and swear in so many as they shall think fit of the householders or other persons residing in such City or its vicinity as aforesaid, to act as special constables, for such time and in such manner as to the said Mayor or Recorder and Justice aforesaid shall seem fit and necessary for the preservation of the public peace and for the protection of the inhabitants, and for the security of the property in the said City and its vicinity; and the vicinity of the City of Saint John, shall for the purposes of this Act be deemed to include each of the Parishes in the County of Saint John, immediately adjoining the said City; and any two Justices of the Peace in the County of Saint John shall under like circumstances have like power and authority to appoint persons residing in the said County to act as special constables for the said County, and the said Mayor or Recorder and Justices aforesaid respectively shall at the time of such appointment administer to each of the said special constables so to be appointed the following oath (that is to say):

"I do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable for the City of Saint John and its vicinity or in the County of Saint John, as the case may be, without favour or affection, malice or ill will, and that I will to the best of my power cause the peace to be kept and preserved and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God."

IV. And be it enacted, That the said Mayor or Recorder and one of the Justices of the Peace aforesaid in regard to the said City and its vicinity or any two Justices aforesaid in regard to the said County, shall have full power and authority to remove any such special constable from his office for any misconduct or neglect of duty therein, and may at any time discharge any such special constable from the duties of his office when they shall be satisfied that it is no longer necessary to continue him therein.

V. And be it enacted, That every special constable appointed under this Act shall within the said City and its vicinity or in the said County respectively, have, exercise and enjoy all such powers, authorities, advantages and immunities as any constable duly appointed now has within his constableness by virtue of the common and statute Laws and Acts of Assembly in force within this Province.

VI. And be it enacted, That if any person shall assault or resist any special constable appointed by virtue of this Act, whilst in the execution of his office, or shall promote or encourage any other person so to do, every such person shall on conviction thereof before two Justices of the Peace, forfeit and pay for such offence any sum not exceeding twenty pounds, or shall be liable to such other punishment upon conviction on any indictment or information for such offence, as any persons are by law liable to for assaulting any constable in the execution of the duties of his office, and in case of proceeding for such penalty, the same shall be recovered and levied pursuant to the Act of Assembly made and passed in the fourth year of his present Majesty's reign, intituled 'An Act to facilitate summary proceedings before Justices of the Peace and the execution of warrants by constables,' and shall be paid over by the said two Justices into the hands of the County Treasurer of the City and County of Saint John as a part of the public funds of the said City and County.

VII. And be it enacted, That the Justices of the General Sessions of the Peace shall have power to make an allowance to such special constables and to all or any of the constables of the City of Saint John or of the City and County of Saint John for any services performed by them in the execution of their office, or in attending any of the Courts held in the said City of Saint John as they in their discretion shall think useful in promoting the due and proper execution of such duties; and shall order the same to be paid by the County Treasurer out of the public funds of the County, and in case of any deficiency in such funds shall and may from time to time order an assessment to be made on the inhabitants of the said City and County for the payment thereof, to be assessed, collected and paid over to the County Treasurer in