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No. 31.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

(The Lower Canada Game Act.)

An Act to consolidate and amend the Game Laws relating to Lower Canada ; and to provide against further destruction of the Eggs of Wild Fowl in that Province, and in the Gulf and River St. Lawrence.

Received and read, first time, Friday, 9th April, 1858.

Second reading, Monday, 12th April, 1858.

MR. PRICE.

TORONTO.

An Act to consolidate and amend the Game Laws relating to Lower Canada; and to provide against further destruction of the Eggs of Wild Fowl in that Province, and in the Gulf and River St. Lawrence.

WHEREAS it is expedient to consolidate and amend the legal Preamble. provisions for better protecting certain descriptions of Game in the Province of Lower Canada; Therefore Her Majesty, &c., enacts as follows:

- 5 I. The Act Seventh Victoria, chapter twelve,
2. The Act Eighth Victoria, chapter forty-six,
3. The Act Ninth Victoria, chapter seventy-six,
4. The first section of the Act Twelfth Victoria, chapter sixty (in so far only as the same relates to Lower Canada),
- 10 5. The sixth section of the Act Fourteenth and Fifteenth Victoria, chapter one hundred and seven,
6. The Act Sixteenth Victoria, chapter one hundred and seventy-one,
7. The Act Twentieth Victoria, chapter thirty-nine, and—
- 15 8. The Act Twentieth Victoria, chapter fifty-one,—are hereby repealed, except only in so far as provided by the next following section.

Acts and parts of Acts repealed.

II. No provision of law repealed by any Act cited in the next preceding section shall revive by the repeal of the said laws; and notwithstanding the repeal of the Acts enumerated in such section, every act done, and every right acquired by virtue of the said Acts shall remain valid; every penalty incurred shall also remain recoverable; and every legal proceeding commenced may be continued as if the said Acts were not repealed.

Acts repealed by said Acts not to revive.

III. From and after the passing of this Act, it shall not be lawful to hunt, kill or destroy any red or grey deer, moose, elk, reindeer, cariboo, nor the young of any of the same, between the 1st day of March and the 1st day of September in every year,—nor to buy, sell, offer for sale, or have in possession any of the above named species of animals, or any parts thereof, so taken within the periods hereinbefore mentioned.

Period for hunting deer limited.

IV. It shall not be lawful to hunt, kill, destroy, nor attempt to capture or kill,—or to buy, sell, offer for sale, or have in possession, any woodcock or snipe between the 1st day of March and the 1st day of August in every year.

Woodcock and snipe.

Grouse, partridge, &c.

V. It shall not be lawful to snare at any time, or to hunt or kill, to buy, sell, offer for sale, or have in possession, any grouse, partridge, ptarmigan, or pheasant between the 1st day of March and the 20th day of August in every year.

Wild swans, geese, and ducks.

VI. It shall not be lawful to hunt, take, shoot, kill, or destroy, nor to buy, sell, offer for sale or possess, any wild swan, wild goose or wild duck of the kinds known as mallard, grey-duck, black duck, wood duck, teal, widgeon, or any other kind of wild duck whatsoever, at any time between the 20th day of May and the 20th day of August in every year. 5 10

Muskrats.

VII. It shall not be lawful to hunt, trap, shoot, kill or destroy, nor to buy, sell, offer for sale, or have in possession, any musk-rat, between the 10th day of May in any year and the 1st day of March following, in every year.

Persons in possession of said game during above periods, how dealt with.

VIII. Every person so found having actual possession of any of the 15 aforementioned game, or of any portion thereof, within the respective periods above prescribed, shall be held to have obtained the same in violation of the provisions of this Act, except only upon legal proof to the contrary, the burden of which proof shall lie wholly upon the person accused, and such game may be seized by any person and carried before a Justice of the Peace. 20

Use of strychnine and other poisonous prohibited.

IX. It shall not be lawful at any time to use strychnine, or other deadly poison, either mineral or vegetable, for the purpose of killing or catching any kind of wild animal, or animals of any species whatsoever, in Lower Canada. 25

Offences against this Act, how punished.

X. All offences against any of the provisions of this Act shall be punished by a separate fine for each and every offence of not less than two dollars, and not exceeding forty dollars in addition to all costs, in the discretion of any Justice of the Peace, stipendiary or other Magistrate before whom any complaint herein may be tried 30 and determined; And in default of immediate payment, on conviction, of such fine and costs, the offender shall be forthwith imprisoned in the nearest common gaol for a term of not less than fourteen days, and not to exceed three calendar months, at the discretion of such committing Magistrate, and in proportion in his judgment 35 to the amount of penalty imposed, or until such fine and costs shall have been fully paid.

Upon failure to pay fines.

Game so seized to be forfeited.

XI. Any article of game so seized as hereinbefore provided shall be forfeited; and it shall, thereupon be, by any Justice of the Peace before whom the conviction shall be had, appropriated at his discretion to purposes of charity within the limits of the Parish or District over which his jurisdiction extends. 40

Duties of officers in charge of markets.

XII. It shall be the duty of every Police Officer or Constable, Clerk of the Market or other party in charge at the market place in every Village, Town and City to seize and forfeit at sight to his own proper use any game enumerated in the foregoing section, which may be found exposed for sale or otherwise, during prohibited seasons; Provided always, that every such seizure and appropriation shall be duly reported, together with a full description of the person or persons in 40

Proviso.

whose possession such game may be found, to some Justice of the Peace, having jurisdiction over the district within which such proceedings shall have taken place.

XIII. All penalties incurred under this Act shall be recoverable with costs as aforesaid, by summary proceeding before any stipendiary or other Magistrate, upon the oath or affirmation of at least one credible witness, other than the prosecutor, or of the prosecutor, alone if he renounces all claim to any share of the penalty,—or upon view had of any such offence by any Justice of the Peace; and a prosecution under this Act may be commenced at any time within twelve months after the commission of the offence.

Proceedings under this Act to be summary.

XIV. One third of every fine levied by virtue of this Act shall be paid to Her Majesty, to be applied for the public uses of the Province, and the remaining two-thirds thereof shall be paid to the prosecutor, together with costs taxed to him for attendance as a witness, or otherwise, unless the prosecutor has been examined as a witness, and has renounced his share of the penalty, in which case he shall have his costs only, and the whole penalty shall belong to the Crown for the uses aforesaid.

Appropriation of fines.

XV. Complaints under this Act may be in the form A. Summonses in the form B. Warrants to arrest Defendant in the form C. Subpoenas in the form D. Convictions in the form E, and Warrants to commit in the form F, G and H, of the Schedule hereunto annexed.

Forms for proceedings under this Act.

XVI. If a witness so summoned shall refuse or neglect to attend in obedience thereto, any such Stipendiary or other Magistrate (on proof of due service and the lapse of such reasonable time as fixed by the said Summons) may thereupon issue a Warrant, in the form G of the Schedule hereto annexed, returnable immediately, to compel the attendance of such witness to give evidence in the premises, under pain of committal to the common gaol during eight successive days, for the contempt.

In case witness refuse to attend warrant may be issued.

XVII. When any person or persons shall be charged upon oath, or otherwise in writing, before any Justice of the Peace with any offence against the provisions of this Act, the said Justice shall forthwith summon the person so charged to appear before him at a reasonable time and place to be named in such Summons according to the discretion of the Magistrate issuing the same; and if such person or persons shall fail or neglect to appear accordingly, then, upon proof of the personal service of such summons, or the exercise of due diligence to effect a service of the Summons, (either personally in view of such Justice, or by delivering or leaving a copy thereof at the Defendant's usual place of abode or of common resort, or by reading the same to the defendant in person) the said Justice may either proceed therewith *ex parte*, or issue his Warrant, (in the form C of the Schedule hereto annexed) for apprehending such person or persons and bringing him or them before himself, or some other Justice of the Peace within the Province in which last mentioned case such other Justice shall thereupon proceed to hear and determine the case as if he had himself proceeded therein *ab initio*.

Summons and summary procedure under this Act.

Warrant if summons is not obeyed.

Case where the defendant is not a resident in the Province.

XVIII. In case any defendant shall not be resident in this Province, and it shall be deemed expedient to proceed against such Defendant without delay, any Stipendiary or other Magistrate may, upon complaint, issue a Summons, returnable before him immediately after the service thereof, or within a reasonable time to be stated in the Summons; and if deemed necessary by the Magistrate, the process provided by the next preceding section for apprehending the defendant shall be likewise issued simultaneously with such summons. 5

Proceedings in cases not specially provided for.

XIX. Every proceeding under this Act and not specially directed by its provisions, and also all costs recoverable thereunder, shall be the same as provided by law in other cases where summary jurisdiction is given to Magistrates. 10

Penalty for carrying eggs of sea-fowl between certain periods.

XX. Any party, or parties, found engaged in collecting, carrying away, destroying or attempting to gather, carry away or destroy, or having in possession (being so gathered) or in the act of carrying away any of the eggs of any species of Wild Fowl from any part of Lower Canada or in the Gulf of or River Saint Lawrence or Islands therein, after the 1st day of June in each year, shall be severally liable to a penalty of not less than twenty dollars, nor more than one hundred dollars, to be recovered either on complaint and conviction according to the form already prescribed in this Act, or upon view had by any Stipendiary or other Magistrate; and in default of the instant payment of such penalty, and all costs incurred, the offender shall be committed to the nearest gaol for a term of not less than two months, nor more than four months. 20 25

Forfeiture of vessels employed in contravening the next preceding section.

XXI. Every boat or other vessel found employed in gathering or carrying away the eggs of any species of Wild Fowl in contravention of the preceding section, shall be and is hereby declared absolutely forfeited and confiscated to Her Majesty for the public uses of this Province and may be immediately seized and taken possession of, either upon view of any Stipendiary or other Magistrate or by order of, or under warrant (in the form H of the annexed Schedule) from any Justice of the Peace, Stipendiary or other Magistrate, who shall cause the property so seized to be disposed of at public auction, and the proceeds thereof to be paid over to Her Majesty's Commissioner of Crown Lands for the public uses of this Province; Provided always, that out of the proceeds of such confiscation and sale, all reasonable costs and charges attending the seizure and disposal of any boat or vessel so seized and sold as aforesaid, shall first be defrayed. 30 35

Proviso.

Provision in favour of Indians.

XXII. This Act shall not be held to preclude Indians from killing or possessing any species of game, eggs, wild fowl or animals mentioned therein, provided the same can, by reasonable presumption, be deemed to be for their own immediate and personal use and consumption, but in no wise intended nor offered for sale, barter or gift, either within the Province of Canada or in any other country; and the burden of furnishing evidence of such reasonable presumption shall lie upon such Indians. 40 45

Convictions not void for want of form, &c.

XXIII. No proceeding under this Act shall be dismissed, and no conviction had under this Act shall be quashed for want of form; nor shall any warrant of arrest or commitment be held 50

void by reason of any defect therein, provided that it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

XXIV. Every Justice of the Peace before whom any person shall have been convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions, which shall be holden for the District wherein the offence shall be committed, there to be kept by the proper Officer, among the Records of the said Court.

Convictions to be transmitted to the proper clerk of the Peace.

XXV. For all the purposes of this Act the Superintendent of Fisheries for Lower Canada shall be deemed a Justice of the Peace for the whole of that section of the Province, whether otherwise qualified or not.

Repealing clause.

Extent of Act.

XXVI. All Acts, Ordinances or parts thereof being contrary to or inconsistent with the provisions of this Act, are hereby repealed.

Short title.

XXVII. This Act shall be deemed a public Act and shall apply to Lower Canada only.

XXVIII. This Act shall be known and cited as "The Lower Canada Game Act."

SCHEDULE A.

Form of Complaint.

Lower Canada }
to wit : }

This day of &c., 18

To

A. B. actually at , complains that C. D. of , hath (*state the offence briefly, either with the time and place at which it was committed, or between two given dates extending over a period not exceeding thirty days inclusive*) in contravention of the Lower Canada Game Act; wherefore the complainant prays that judgment may be given against the said C. D. as by the said Act provided.

(Signature) A. B.

SCHEDULE B.

Summons to Defendant.

Lower Canada }
to wit : }

To C. D. actually at &c.

Whereas complaint hath this day been made before me that you (*state the offence laid in the complaint*) in contravention of the Lower Canada Game Act, therefore you are hereby commanded to come before me (*forthwith or at a specified time and place which state here*) to answer the said complaint and be dealt with according to law.

Witness my hand and seal, this day of 18

J. S.
Justice of the Peace for

(L. S.)

SCHEDULE F.

Form of Warrant of Commitment for non-payment of penalty or forfeiture and costs.

Lower Canada }
to wit :

To the Constables and Peace Officers of the District of _____,
and the Keeper of the Common-Gaol of the District of _____,
at _____

Whereas C. D. actually of _____ was on the _____ day
of _____ (*as in conviction*) and I did thereupon adjudge the
said C. D. to forfeit and pay to A. B., &c. (*as in conviction*);

And whereas the said C. D. hath not paid the said penalty or forfeiture and costs.

Therefore I command you the said Constables and Peace Officers,
or any of you, to arrest and convey the said C. D. to the Common
Gaol for the _____ at _____ and deliver him to the
Keeper thereof with this Warrant; And I command you the said
Keeper of this said gaol to receive the said C. D. into your custody,
and keep him safely imprisoned in the Gaol for the space of _____
and for so doing this shall be your sufficient warrant.

Witness my hand and seal this _____ day of _____ 18

J. S.

(*As in Summons.*)

(L. S.)

SCHEDULE G.

Form of Warrant for Witness.

Lower Canada }
to wit :

To the Constables and Peace Officers at the _____
of _____

Whereas E. F. of _____ having been duly subpœnaed to appear
before me on _____ at _____ to give evidence in a matter of
complaint for contravention of the Lower Canada Game Act and not-
withstanding due service of such Subpœna certified before me hath neg-
lected and doth wilfully neglect to appear in obedience thereto;

Therefore this is to command you, or any of you, to forthwith arrest
the said E. F. so that you shall have him before me to be dealt
with according to law.

Witness my hand and seal, this _____ day of _____ 18

J. S.

(*As in Summons.*)

(L. S.)

SCHEDULE H.

Form of Warrant to attach forfeited Vessel or Boat.

Lower Canada }
to wit :

To the Constables and Peace Officers, Officers of Militia, &c.,
of _____ or actually within the _____ of _____

Whereas a certain (*here describe succinctly the property illegally em-*

ployed, and the nature of the offence committed) in contravention of the provisions of the Lower Canada Game Act, in such case made and provided.

Therefore I command you, or any of you, forthwith to take possession of and seize the vessel (*or* boat) above described, and deliver up the same into my immediate custody, to be dealt with as the law directs.

Witness my hand and seal, this day of 18

J. S.

(As J. P., Stipendiary or other Magistrate.)

(L. S.)