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No. 279

3rd Session, 5th Parliament, 20 Victoria, 1857.

B I L L :
The Fishery Act.

Received and read first time, Friday, 24th
April, 1857.

Second reading, Tuesday, 23rd April, 1857.

Hon. Mr. CAUCHON.

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

The Fishery Act.

WHEREAS it is expedient to make better provision for the preservation and regulation of the fisheries of this Province : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts, as follows :

Preamble.

- 1.—1. The Act Ninth George the Fourth, Chapter Fifty-one ;
 2. The Act Fourth and Fifth Victoria, Chapter Thirty-six ;
 3. The Act Seventh Victoria, Chapter Thirteen ;
 - 10 4. The Act Sixteenth Victoria, Chapter Ninety-two ;
 5. The Seventh paragraph of the Nineteenth Section of the Act Eighteenth Victoria, Chapter One hundred ;
 6. The Act Eighteenth Victoria, Chapter One hundred and Fourteen ;
 - 15 7. The Act of Sixth William the Fourth, Chapter Fifteen ;
 8. The Act Eighth Victoria, Chapter Forty-seven ;
 9. The Sixtieth, Sixty-seventh and One hundred and Sixth Sections of the Act Twelfth Victoria, Chapter eighty-one
- 20 Are hereby repealed.

Acts and parts of Acts repealed.

II. No provision of laws repealed by any Act cited in the next preceding Section shall revive by the repeal of the said Laws.

Acts repealed not to revive.

III. Notwithstanding the repeal of the Acts enumerated in Section one, every act done, and every right acquired by virtue of the said Acts shall remain valid ; every penalty incurred shall remain recoverable ; and every legal proceeding commenced may be continued as if the said Acts were not repealed.

Repeal not to affect penalties incurred, &c.

IV. The Governor may, as occasion shall require, appoint two Superintendents of Fisheries, one for Upper and one for Lower Canada, whose powers and duties shall be defined by this Act and the regulations to be made under it.

Two Superintendents of Fisheries to be appointed.

Rights of
Fishermen.

V. Every subject of Her Majesty may—

1. Take bait and fish in any of the harbours, roadsteads, bays, creeks or rivers of the Province, except the Rivers lying within the limits of the territory known as the King's Posts ; 5
2. Land any where on public property for the purpose of salting, curing and drying his fish ;
3. Cut wood there for the purpose of repairing his stages, drying places, flakes, hurdles, cook-rooms and other purposes necessary or useful for preparing or dealing with his fish ; 10
4. Take possession of any unoccupied portion of the beach which may be necessary for curing his fish, and hold the same so long as he shall not have abandoned it during twelve consecutive months ; 15
5. During the year next after he shall have been twelve months without occupying it, demand personally or by his Attorney, the value of his flakes and stages, of which a new occupant shall have taken possession ;
6. Carry away his buildings and improvements, after the close of the fishing season, after having so demanded the value thereof, if he shall not have received the same from the new occupant. 20

Sect. 5 not to
affect private
property, &c.

VI. But nothing contained in the fifth section, shall affect private property or prevent the Crown from disposing or taking possession of any public land or beach so occupied for fishing purposes. 25

King's Posts.

VII. The Governor in Council may grant permission to fish in the Rivers within the King's Posts.

Throwing ballast, &c., prohibited in certain cases.

VIII. Whoever shall throw overboard ballast in any River, Harbour or Roadstead, or the remains of offal of fish within three miles of the coast of the mainland or of any Island, or on any fishing bank, shall incur a fine not exceeding *Twenty Pounds*. 30

Impeding fishing.

IX. No one shall anchor near the shore in such manner as to impede the throwing and hauling of seines or the setting of standing nets. 35

The same.

X. No one shall set standing nets in such manner as to impede the throwing and hauling of seines.

Impeding navigation.

XI. No one shall set nets or seines in such manner as to impede the navigation or anchorage in any Harbour, Roadstead, Bay or other place required for navigation. 40

XII. Any person contravening any provision of the three preceding sections, shall for each offence, incur a fine not exceeding *Five Pounds*, and shall nevertheless remain liable for any damages which any party injured by such contravention may recover against him at Law. Penalty for contravening sects. 9, 10, 11.

XIII. Every person who shall, for fishing purposes, have placed in any River, or in the sea, near the shore, any stake or other timber whatever, shall, on pain of a fine not exceeding *Five Pounds*, remove the same within eight days from that on which he shall have last used the same. Removal of fishing stakes.

XIV. No one shall between the First of May and the First of November in any year, seize or attach any boat, tackle, net, seine, rigging or other fishing utensils, or any provisions, belonging to any Fisherman and necessary for his subsistence or his fishing operations. Exemption of fishing tackle from seizure.

XV. Any person who, having been engaged to fish on any conditions or assist in any fishery, shall abandon his Employer's service during the term of his engagement, shall thereby incur a fine not exceeding *Ten Pounds*, or imprisonment for not more than one month in the nearest Gaol within the Province. Penalty for deserting fishing service.

XVI. Whoever shall engage or endeavour to engage any person then engaged in any way to fish or assist in any fishery, shall thereby incur a fine not exceeding *Ten Pounds* or imprisonment for not more than one month. Or seducing away persons engaged.

XVII. Any person engaged to fish or assist in any fishery, shall for securing his wages, salary or share, have a first lien preferable to that of any other Creditor, on the produce of his Employer's fishery, and may recover the sum or share due to him, before the nearest competent tribunal. Lieu in favor of fishermen.

XVIII. Whoever shall obstruct the main channel or course of any river, either by placing therein nets or fishing apparatus of any kind, or any obstacle of any kind whatever, for the purpose of taking salmon or any other species of fish, shall thereby incur for each offence, a fine not exceeding *Five Pounds*, and the forfeiture of his fishing apparatus; and in no case shall the said channel or course so left open be less than one third of the whole breadth of such river. Main channel of rivers not to be obstructed.

XIX. Every penalty or forfeiture imposed by this Act or the regulations to be made under it, may be recovered for by complaint before the Superintendent of fisheries, or any Stipendiary or other Magistrate, in a summary manner. Recovery of penalties.

XX. Any offender who shall not forthwith pay the fine he may have been condemned to pay, shall be committed to Gaol for any term not exceeding one month. Committal for non-payment.

Forms under
this Act.

XXI. Complaints under this Act may be in the form A ;—
Summonses in the form B ;—Supœnas in the form C ;—Con-
victions in the form D,—and Warrants in the form E, of the
Schedule hereunto annexed ;—in other respects the Acts rela- 5
tive to summary convictions by Justices of the Peace shall
apply to cases under this Act, and the Superintendent of
Fisheries shall, as regards such cases, be deemed a Justice of
the Peace for that section of the Province for which he is ap-
pointed, whether otherwise qualified or not ; and in any pro-
ceedings under this Act, an offence against any regulation 10
made under this Act may be stated as an offence against this
Act.

Application of
fines.

XXII. One moiety of the pecuniary fines and of the forfeitures
under this Act or the regulations to be made by virtue thereof,
shall belong to Her Majesty, and the other moiety to the com- 15
plainant.

Delay be-
tween service
and return.

XXIII. There shall not be less than three days between the
service and the return of the summons, to any Defendant, for the
first five leagues, and one day more for each additional five
leagues, of the distance between the place at which the Sum- 20
mons is dated, and the place where it is served.

Summons re-
turnable im-
mediately in
certain cases.

XXIV. When the Defendant shall not be resident in this
Province, and it shall be expedient to proceed against him
without delay, the Superintendent of Fisheries, or any Stipendi- 25
ary or other Magistrate, may, upon complaint, issue a Sum-
mons, returnable before him immediately after the service
thereof, or within a reasonable time mentioned in the Sum-
mons.

Limitation of
suits.

XXV. All penalties incurred under this Act must be sued for
within twelve months from the commission of the offence. 30

Fish ways to
be attached to
dams.

XXVI. From the first of June to the twentieth of October
in each year, the owner of any dam or slide on any river
which salmon may ascend, shall for the purpose of affording a
passage to the fish, attach to each dam or slide a fish-way of such
form and dimensions as shall be determined by the Governor 35
in Council, under a penalty of *One Pound* for each day on
which he shall fail so to do.

Close season
for salmon.

XXVII. It shall not be lawful to catch salmon in any way
whatever except with a rod and line, between the first of August
and the first of March in Lower Canada, and the first of 40
September and the tenth of March in Upper Canada.

And for trout,
&c.

XXVIII. It shall not be lawful to catch in any way what-
ever except with a rod and line, maskinongé, speckled trout,
or black bass, between the first of November and the first of 45
May.

XXIX. It shall not be lawful for any person to buy or sell salmon, maskinongé, speckled trout, or black bass, taken in contravention of the preceding sections; and any fish so taken in contravention of the Law, may be declared forfeited to the complainant by any Magistrate whomsoever.

Fish not to be brought or sold in the close season.

XXX. After the first of August in Lower Canada, and the first of September in Upper Canada, all apparatus for catching salmon shall be removed on pain of forfeiture thereof.

Salmon nets, &c., when to be removed.

XXXI. After the first of November, all apparatus for catching maskinongé, speckled trout, or black bass, shall be removed, on pain of forfeiture thereof.

And so as to trout, &c.

XXXII. In every case of contravention of this Act or of the regulations to be made under it, for which no other penalty is provided, the offender shall incur a fine of not less than *Two Pounds* nor more than *Five Pounds*.

Penalty when no other is provided.

XXXIII. It shall not be lawful to construct any fish pound in any River or brook.

Fish pounds.

XXXIV. Every person who shall be in peaceable possession of any fishing Station for Salmon or Seals, at the time of the passing of this Act, shall be deemed the owner thereof for the purposes of this Act; he shall be deemed so to be when he shall not have abandoned it during twelve consecutive months, and it shall not be lawful for any other person to set therein any apparatus for catching Salmon or Seals, so as to injure his fishery.

Right of possession in fishing stations.

XXXV. The heretofore powers vested in the Municipalities by the Seventh paragraph of the Nineteenth Section of the Act Eighteenth Victoria, Chapter One hundred, and by the Sixtieth, Sixty-seventh and One hundred and Sixth Sections of the Act Twelfth Victoria, Chapter Eighty-one, are hereby transferred to and vested in the Governor in Council.

Powers to make regulations about fishing transferred to Governor in Council.

XXXVI. For the purpose of encouraging and affording information with respect to the production of salmon and other fish, the Commissioner of Crown Lands shall keep in his department an apparatus for the artificial propagation of fish.

Commissioner of Crown Lands to propagate fish in his office.

XXXVII. The production of a copy purporting to be printed in the Canada Gazette or otherwise by the Queen's Printer, of any Regulation to be made by the Governor in Council under this Act, shall be *prima facie* evidence of such Regulation, and that it is in force as Law.

Proof of regulation under this Act.

SCHEDULE A.

Form of Complaint.

Upper (or Lower) Canada, }
 County (or District) of . }

This day of 18

Superintendent of Fisheries,
 (or a Justice of the Peace for the said County or District.)

A. B. of complains that C. D. of hath (*state the offence briefly in any intelligible terms, with the time and place at which it was committed,*) in contravention of the Fishery 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.

Upper (or Lower) Canada, }
 County (or District) of . }

To C. D. of &c.

Whereas complaint hath (*this day*) been made before me that you (*state the offence in the words of the complaint or to like effect*) in contravention of the Fisheries Act; Therefore you are hereby commanded to come before me, at at o'clock in the to answer the said complaint and be dealt with according to Law. Witness my hand and seal, this
 day of 185

J. S., Superintendent of
 Fisheries for Lower Canada, (or
 Justice of the Peace for)
as the case may be.

[L. S.]

SCHEDULE C.

Subpœna to a Witness.

Upper (or Lower) Canada, }
 County (or District) of . }

To E. F. of &c.

Whereas complaint has been made before me that C. D. did
(state the offence as in the Summons) ; and I am informed that
 you can give material evidence in the case ; Therefore you are
 commanded to appear before me, at o'clock in the
 to testify what you know concerning the matter of the said
 complaint. Witness my hand and seal this day of
 185 .

J. S., Superintendent, &c.,
(as in Summons).

[L. S.]

SCHEDULE D.

Form of Conviction.

Upper (or Lower) Canada, }
 District (or County) of . }

Be it remembered, that on this day of
 18 at in the said County (or District) C. D.
 of , is convicted before me, for that he did, &c.
(stating the offence briefly, and the time and place where com-
mitted,) in contravention of the Fisheries Act ; And I adjudge
 the said C. D. to forfeit (and pay) the sum of *(or*
mention the thing forfeited under this Act,) to be applied accord-
 ing to law, and also to pay to A. B. *(the complainant)* the sum
 of for costs :

If the penalty be not forthwith paid add,—and the said C. D.
 having failed to pay the said penalty and costs forthwith after
 the said conviction, I adjudge him to be committed to and im-
 prisoned in the Common Gaol of the County (or District) of
 for the period of

Witness my hand and seal this day of
 185 .

J. S.
(as in Summons).

[L. S.]

SCHEDULE E.

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

Upper (or Lower) Canada, }
District (or County) of . }

To the Constables and Peace Officers of the District (or
County) of and the Keeper of the Common
Gaol of the said District (or County), at

Whereas C. D. of was on the day of
18, convicted before me, for that he, &c.
(*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 forfeiture and costs.
Therefore I command you the said Constables and Peace
Officers, or any of you, to convey the said C. D. to the Common
Gaol for the of 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 said 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.]