

No. 125.

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

B I L L .

The Fishery Act.

Received and read first time, Friday, 30th April,
1858.

Second reading, Friday, 7th May, 1858.

Hon. MR. SICOTE.

S, Derbishire & G. Desbarats, 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.

I. The Act eighteenth Victoria chapter one hundred and forty four,—the Act twentieth Victoria chapter twenty-one, and the fourth section of the Act of the Legislature of Upper Canada, third William the fourth, chapter twenty-nine, are hereby repealed.

Acts and parts of Acts repealed.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 No provision of law repealed by any Act cited in the next preceding Section shall revive by the repeal of the said Laws.

Acts repealed not to revive.

III. Notwithstanding the repeal of the Acts enumerated in Section one, 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incurred shall remain recoverable; and every legal proceeding commenced may be continued as if the said Acts were not repealed.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.

PROTECTION OF FISHERIES.

IV. It shall and may be lawful for the Governor in Council to grant special and exclusive fishing leases and licenses, or to sell or dispose of any right of fishing in any manner which may be found most advisable, and to make all and every such regulation or regulations as may be found necessary or expedient for the better management and regulation of the Fisheries of the Province.

Governor in Council may grant exclusive fishing licenses and leases, &c.

Regulations.

V. 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, but any appointment made under the fourth section of the Act twentieth Victoria chapter twenty-one, shall remain valid as if made under this Act. Overseers may be appointed by the Commissioner of Crown Lands, in such places, and in such divisions of territory, as may be considered necessary, to perform such duties under this Act; and the regulations to be made under it as may be required by the Commissioner of Crown Lands.

Superintendents of Fisheries.

Inspectors of Fisheries.

VI. All subjects of Her Majesty, but none other, may, for the purposes of trade and commerce---

Rights of fisherman.

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

Secr. 6 not to affect private property, &c. VII. But nothing contained in the sixth section, shall affect private property or prevent the Crown from disposing or taking possession of any public land or beach so occupied for fishing 25 purposes.

Waters may be set apart for propagation of fish. VIII. The Governor in Council may cause to be set apart any river or other water for the natural or artificial propagation of Salmon, Trout, or other fish.

Fishing with- in the King's Posts. IX. The Governor in Council may grant permission to fish 30 in the Rivers within the King's Posts.

Powers under Sect. 49, to apply to U. C., as well as L. C. X. The same powers that, by the fiftieth section of this Act, are vested in the Governor in Council, in relation to Lower Canada, shall and are hereby made to apply to the Upper Canada. 35

Throwing Ballast, offal &c., prohibited. XI. Whoever shall throw overboard, ballast in any river, harbour or roadstead, where fishing is carried on, or the remains of offal of fish, in any such river, or 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*, and 40 the Master or Owner of such Vessel or Boat, from which such ballast or offal of fish shall have been thrown, shall be held

liable for every such offence; provided always that it shall be lawful for any person to bury such offal of fish on the mainland or any island at a distance of not less than an acre from the beach thereof. Proviso.

5 XII. No one shall anchor near the shore in such a manner as to impede the throwing and hauling of seines, or the setting of standing nets. Impeding fishing.

XIII. No one shall set standing nets in such a manner so to impede the throwing or the hauling of seines. The same.

10 XIV. No one shall set seines or nets in such a manner as to impede the navigation or anchorage in any bay, harbour or roadstead, or other place required for navigation. Impeding navigation.

XV. Any person contravening any of the three next preceding sections, shall for each offence incur a fine not exceeding *five pounds*, and shall nevertheless remain liable for any damage which the party injured by such contravention may recover against him by Law. Penalty for contravening sects. 12, 13, 14.

XVI. Any 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 it shall have been last used. Removal of fishing stakes.

XVII. No one shall between the first of May, and the first of November in any year, seize or attach any boat or vessel, tackle, net, seine or other fishing utensils, or any provisions belonging to any fisherman, or necessary for his subsistence, or his fishing operations, except for the recovery of penalties of fines imposed under this Act. Exemption of fishing tackle from seizure, &c.
Exception.

XVIII. Any person, who, having been engaged by any written agreement to fish on any conditions, or assist in any fishing, shall refuse to fulfill any such engagement, or 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. Penalty for deserting fishing service.

35 XIX. Whoever shall engage or endeavour to engage any person then engaged as aforesaid in any way to fish, or assist in any fishery, shall thereby incur a penalty not exceeding *ten pounds*, or imprisonment for not more than one month. Or seducing away persons engaged therefrom.

40 XX. Any person engaged to fish, or assist in any fishery, shall, for securing his wages, or share, have a first lien, preferable to that of any other creditor, upon the produce of his employer's fishery, and may recover the sum or share due to him before the nearest competent tribunal. Lien in favor of fishermen.

Penalty for disturbing oyster beds, except at times permitted by order of the Commissioner of Crown Lands.

XXI. With a view to protect the Oyster Beds to be formed on the different parts of the Canadian bays and coasts, it shall not be lawful for any person to take Oysters, or in any way to injure or disturb such Oyster beds, until permitted to do so, by an order from the Commissioner of Crown Lands, which order shall be published in the Official Gazette and in such other newspapers as the Commissioner may direct, under a penalty of not more than *twenty-five pounds*, nor less than *ten pounds*, together with the forfeiture of the vessel and all the apparatus employed therein. 5 10

Meshes of cod seines not to be under a certain size.

XXII. It shall not be lawful to use Mackerel, Herring, nor Caplin seines, for the taking of Codfish; and no Codfish seine shall be of a less sized mesh than three inches in extension in the arms, and two and a half inches in the bunt or bottom of the seine, under penalty, and on pain of the forfeiture of the seine. 15

Nets not to be used in Burlington Bay, &c.

XXIII. It shall not be lawful to fish with any kind of net or seine in Burlington Bay nor Dundas Marsh.

Period for salmon fishing limited.

XXIV. It shall not be lawful to fish for, catch or kill salmon in any way whatever, between the first day of August, and the first day of March in any year; Except only, that it shall be lawful to fish for salmon, with a rod and line, in the manner known as fly-surface fishing, from the first of March to the first of September in any year, in Upper or Lower Canada. 20 25

Certain modes of killing salmon prohibited.

XXV. It shall not be lawful at any time to fish for, catch or kill salmon, salmon trout, or any kind of trout, white fish, bass, or maskinongé, by the aid of spears, grapnel hooks, nigog, nor by the aid of torch-light or other artificial light, in Upper or Lower Canada. 30

Also killing at certain places.

XXVI. It shall not be lawful to use any net, or to take salmon in any way whatever, at any salmon-leap, or where any artificial salmon pass shall have been constructed, nor in any pools or ponds where salmon are wont to spawn.

Main channel of Rivers not to be obstructed.

XXVII. 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. 35 40

Fishways to be attached to dams.

XXVIII. The owner of any dam or slide where salmon may ascend, shall, for the purpose of affording a passage to the fish, attach and maintain to each dam or slide, a fishway of such 45

form and dimensions as shall be determined by the Superintendent of Fisheries, under a penalty of *One Pound* for each day on which he shall fail so to do. Penalty.

XXIX. Any Salmon taken in contravention of the *twenty-fourth* or *twenty-fifth* sections of this Act, shall subject all parties concerned in the breach of the said sections, whether the actual transgressors or accessories, to a penalty of not more than *ten pounds*, nor less than *five pounds*, together with the forfeiture of the fish, canoe, boat or other vessel in which the fish may have been placed, or to imprisonment for a period of not more than six months, nor less than three months. Penalty for taking salmon in contravention of Sects. 24 and 25.

XXX. The meshes of any net used for the taking of Salmon, shall not be less than five inches in extension, knot to knot, under penalty and on pain of forfeiture of the nets. Size of meshes of Salmon nets.

XXXI. It shall not be lawful to fish with any net or seine whatever, of a less sized mesh than two inches on the square in any Lake, River or Bay or in any of the waters of Upper Canada. No net to be less than two inches mesh.

XXXII. It shall not be lawful to fish for, catch or kill any kind of trout in any way whatever, between the twentieth of October, and the first of February in any year, in Lower Canada. Period for killing trout.

XXXIII. It shall not be lawful to kill any kind of speckled trout, in any way whatever between the first of October and the first of April in any year; nor shall any Speckled Trout be killed at any time by means of nets or seines in any Inland Lake, River nor Stream in Upper Canada. And for killing speckled trout. Not to be taken with nets in U. C.

XXXIV. It shall not be lawful to catch trout, by means of nets, or seines, in any lake, or at the outlet or inlet of any lake in Lower Canada. Nor in L. C., at certain places.

XXXV. It shall not be lawful to catch Salmon trout, nor White fish between the fifteenth day of November, and the first day of June. Time for killing salmon-Trout, &c.

XXXVI. It shall not be lawful to catch Maskinongé, Pickerel, nor Black Bass, between the First of February and the Fifteenth day of May. And for certain other fish.

XXXVII. It shall not be lawful for any person, to buy, sell or have in possession any Salmon, Salmon Trout, nor any kind of Trout, White fish, Bass, nor Maskinongé, taken in contravention of this Act; and any fish so taken, may be declared forfeited, by any Magistrate whomsoever, and any person so found in possession of any of the aforementioned fish, or of any part or portion thereof, shall be held to have obtained the same, in violation of the provisions of this Act, except Fish not to be bought or sold in the close season.

- Proof.** only upon legal proof to the contrary, which proof shall devolve wholly upon the person accused.
- Fish-pounds.** XXXVIII. It shall not be lawful to construct any fish pound in any river.
- Permission may be given to take fish for spawn in the close season, &c.** XXXIX. The Superintendent of Fisheries may grant written permission to any person or persons who may be desirous of obtaining spawn for *bond fide* artificial or scientific purposes, to fish for that purpose, during the close season. And any person who may wilfully injure or destroy any place set apart for the artificial propagation of fish, shall incur a fine of not less than *five pounds* nor more than *ten pounds*. 5
- Right of possession in fishing stations.** XL. Every subject of Her Majesty, who shall be in peaceable possession of any fishing Station at the time of the passing of this Act, shall be deemed the owner thereof, for the purposes of this Act and 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 fish so as to injure his fishery. 15
- Recovery of penalties.** XLI. Every penalty or forfeiture imposed by this Act or the regulations to be made under it, may be recovered on complaint before the Superintendent of fisheries, or any Stipendiary or other Magistrate, in a summary manner, and the proceedings and the costs to be recovered shall be the same as provided by law in either Section of the Province in other cases where summary jurisdiction is given to Magistrates, except in so far as it may be otherwise herein provided. 25
- Penalty where no other is provided.** XLII. 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. 30
- Limitation of suits.** XLIII. All penalties incurred under this Act, must be sued for within twelve months from the commission of the offence.
- Committal for non-payment.** XLIV. Any offender who shall not forthwith pay the fine and costs he may have been condemned to pay, shall be committed to Goal for a term of not less than one month, nor more than six months, at the discretion of the Magistrate before whom the offender may have been convicted. 35
- Delay between service and return.** XLV. 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 Summons is dated, and the place where it is served. 40

XLVI. The Superintendent of Fisheries, or any Stipendiary or other Magistrate, may convict upon view, of any of the offences punishable under the provisions of this Act. Conviction on view.

XLVII. When the defendant shall not be a resident in the Province, and it shall be expedient to proceed against him without delay, the Superintendent of Fisheries, or any Stipendiary or other Magistrate may, upon complaint, issue a Summons returnable immediately, to compel the defendant to appear before him without delay, or he may issue a Warrant for the apprehension of such defendant simultaneously with the Summons. Defendant compellable to appear immediately in certain cases.

XLVIII. The Superintendent of Fisheries, or any Stipendiary or other Magistrate, may search, or grant a warrant to have searched, any vessel or place where he may have cause to believe that any fish taken in contravention of this Act, may have been concealed. Searches and search warrants in certain cases.

XLIX. One moiety of the pecuniary fines and of the forfeitures under this Act, or under the regulations to be made by virtue thereof, shall belong to Her Majesty, and the other moiety to the complainant. Application of fines and forfeitures.

L. The powers heretofore vested in the Municipalities by the Seventh sub-section of the Nineteenth Section of the Act Eighteenth Victoria, Chapter One hundred, and by the Eighteenth sub-section of the Sixtieth section of the Act Twelfth Victoria, Chapter Eighty-one, as the said sub-section is extended by the Sixty-seventh and One hundred and Sixth Sections of the said Act, are hereby transferred to and vested in the Governor in Council. Powers to make regulations transferred to Governor in Council.

LI. Complaints under this Act may be in the form A ;-- Summonses in the form B ;--Supenas in the form C ;--Convictions in the form D,--and Warrants in the form E., of the Schedule hereunto annexed, or in any other form ; and in other respects the Acts relative 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 appointed, whether otherwise qualified or not ; and in any proceeding under this Act, an offence against any regulation made under this Act may be stated as an offence against this Act. Forms under this Act.

Development and Encouragement of Fisheries.

And for the further developement of the fisheries of the Province, and for the encouragement of all parties, residents of Canada, who may engage therein, it is further enacted, that---

Bounty to
Canadian
fishing ves-
sels.*

LII. The owner or owners of a vessel built in Canada, when employed in the following fisheries, viz: Seals, Codfish, Mackarel, Herring and Whale, for at least three consecutive months, shall be entitled to a bounty of--

1. *Three dollars* per ton, for three months consecutive fishing; 5

2. *Three dollars and a half* per ton for three months and a half, consecutive fishing;

3. And *four dollars* per ton for four months, consecutive fishing. But no vessel shall receive the bounty for more than 10 one voyage.

How such ves-
sels must be
named.

LIII. All vessels, to be entitled to the bounty, must be manned in accordance with the following rates, viz:

Vessels from 20 to 40 tons, to carry 8 men.

Vessels from 40 to 60 tons, to carry 10 men. 15

Vessels from 60 to 80 tons, to carry 12 men.

And register-
ed.

And such vessel or vessels must be registered in the Office of the Collector of Customs in accordance with the provisions of this Act and of the Law, and the tonnage for the purposes of this Act shall be calculated as provided by the Act eighth 20 Victoria, chapter five.

And licensed.

LIV. The owner or owners of all vessels about to be employed in the Fisheries having conformed to the regulations of this Act, must obtain a license from the Superintendent of Fisheries or from the nearest Inspector of Fisheries. 25

Crew to be $\frac{3}{4}$
Canadian.

LV. The vessel to be entitled to the bounty, must be manned by at least three-fourths British Canadian subjects.

And the ves-
sel Canadian
owned.

LVI. No vessel shall be entitled to the bounty, that is not the property of a Canadian British subject.

Not under 20
tons.

LVII. No vessel under twenty tons register, shall be entitled 30 to receive the bounty.

No bounty for
more than 80
tons.

LVIII. The bounty shall not be given for more than eighty tons, even should the vessel exceed that tonnage.

Fish must be
inspected.

LIX. No owner of a vessel shall be entitled to receive the bounty, unless the fish taken shall have been inspected in accord- 35
ance with the Act for the Inspection of Fish.

LX. No vessel, employed as aforesaid shall be entitled to the allowance granted by this Act, unless the master or owner thereof shall, before he proceeds on any fishing voyage make an agreement in writing or print with every fisherman employed therein. Fishermen must be under articles.

LXI. If any duly licensed vessel be wrecked on her homeward voyage, upon its being proved (under oath) that she has been engaged in the fisheries, the owner thereof shall receive such portion of the bounty as it shall be proved he is legally entitled to. As to fishing vessels wrecked.

LXII. No trading vessel or vessels engaged in carrying cargoes during the fishing season, shall be entitled to receive the bounty. Fishing vessels not to carry cargoes.

LXIII. One-third of such bounty shall be distributed between the crew of the fishing vessel in equal proportions, and the remaining two-thirds to the owner thereof--or the bounty may be distributed, as it may be agreed upon by an instrument or declaration to be made in writing by the parties. Bounty divided between crew and owner.

LXIV. When any vessel shall have ended her fishing voyage, the owner thereof must report to the Superintendent of Fisheries or to the nearest Inspector of Fisheries who, upon proof given under oath, may grant a certificate, that the owner of such vessel is entitled to the bounty. Report when the voyage is ended.

LXV. Any company who may form an association for the purpose of carrying on the fisheries, shall receive such portions of the bounty, as accords with the number of shares, which individually may be held by the members of such association. As to fishing companies.

LXVI. All parties who may be entitled to a bounty shall transmit or cause to be transmitted to the Superintendent of Fisheries, the certificate shewing that they are entitled to a bounty; and upon the receipt of such certificate, the Superintendent of Fisheries is authorised to pay to such party, or his representatives, the sum to which he is entitled, after having obtained the approval of the Commissioner of Crown Lands. By whom and on what proof &c., the bounty shall be paid.

LXVII. The said bounty shall be paid out of the revenue arising or that may arise from the lease or license of any Salmon or other fishery, but the amount of bounty to be paid shall not exceed *three thousand five hundred* pounds per annum. Out of what funds.

LXVIII. Any person who shall make a false oath or affirmation, with intent to obtain the bounty fraudulently, shall, upon being duly convicted thereof, in any Court of Justice having jurisdiction of such offence, shall be deemed guilty of wilful and corrupt forgery, and shall be punished accordingly. False swearing &c., to be perjury.

Licensed vessels found with foreign goods on board to be forfeited, &c. LXIX. If any Vessel licensed to carry on the fishery be found within three miles of the coast with any goods, wares or merchandise of foreign produce or manufacture, except such as are necessary for the maintenance and use of the crew, such vessel together with such goods, wares or merchandise shall be subject to seizure and forfeiture. 5

Customs' Officers &c., to be found in provisions, &c. LXX. Any Custom House, or other officer, while performing duty on board of any such vessel shall be entitled to receive from the master thereof, such provision and other accommodation, free of expense, as are usually supplied to passengers, or 10 as the state and condition of the vessel will admit.

Special registry of fishing vessels, &c. LXXI. A special registry of all vessels licensed for the Fisheries, shall be kept by the Collectors of Customs, who shall cause correct copies of the same to be sent to the Superintendent of Fisheries, on or before the first day of January in 15 each year.

Formation of oysters beds. LXXII. The sum of *one hundred and fifty* pounds per annum (for three years) may be applied for the formation of Oyster beds in the various bays and waters of the Province that may be found best adapted for that purpose. 20

SCHEDULE A.

Form of Complaint.

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

This day of 18

To J. S. 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.]

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.]

SCHEDULE F.

No. 1.

FORM OF APPLICATION FOR FISHING LICENSE.

A. B., _____ owner of the _____, built at _____, Tons register, and carrying _____ men, being about to engage in the Fisheries of the Province, requests that you will grant him a License under the Act 20th Vict., chap. _____.

To C. D.,
Collector of Customs.

No. 2.

FORM OF FISHING LICENSE.

Your application for a License being in accordance with the requirements of the Act 20th Vict., chap. _____ in virtue of the authority given me. I, hereby grant you the said License to fish in conformity therewith.

To _____ Owner of the _____ Collector of Customs.

No. 3.

FORM OF CERTIFICATE.

A. B., _____ owner of the _____ of _____ Tons register, and carrying _____ men, having conformed in every respect to the requirements of the law, relating to bounties, and having been engaged _____ months constant fishing, is entitled to the sums of _____ dollars in accordance with the Act 20th Vict., chap. _____.

