

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-THIRD LEGISLATURE

OF THE

S T A T E O F M A I N E ,

A. D. 1843.

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1843.

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PUBLIC LAWS

OF THE

STATE OF MAINE,

1843.

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**Chapter 23.**

AN ACT to extend the powers of the constables of the town of Bristol in the county of Lincoln.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. The constables of the town of Bristol, in the county of Lincoln, shall have the same powers to serve and levy all writs, executions and other precepts to them directed, and issuing from competent authority, on the islands, called Muscongus and Harbor islands in said county of Lincoln, that they now have or may have, within the said town of Bristol, until said islands shall be legally entitled to elect their own constables.

Power of constables to serve writs in certain cases.

SECT. 2. This act shall take effect from and after its approval by the governor.

[Approved March 22, 1843.]

**Chapter 24.**

AN ACT authorizing selectmen of towns and assessors of plantations to license auctioneers, not inhabitants of such towns and plantations.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. The selectmen of any town, and the assessors of any plantation, may license any suitable inhabitant of the county in which such town or plantation may be situated, by a writing under their hands, to be an auctioneer within their respective towns or plantations for one year.

Auctioneers to be licensed for towns and plantations where they are not residents.

SECT. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

[Approved March 22, 1843.]

**Chapter 25.**

AN ACT for the preservation of salmon, shad, and alewives in Penobscot river and bay, and their tributary streams.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. The governor with advice of council, shall appoint and commission three suitable persons, one of whom shall be a resident of each of the counties of Penobscot, Hancock and Waldo,

Appointment of county fish wardens.

**CHAP. 25.**

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| <p>Vacancies, how filled.</p> <p>Chairman.</p> <p>To be sworn.</p> | <p>Duties.</p> <p>Annual meeting.</p> | <p>To examine dams and obstructions.</p> <p>To maintain suitable fish ways.</p> <p>Notice to proprietors.</p> <p>Limitation.</p> <p>Penalty.</p> | <p>to be called county fish wardens; to hold said office three years unless sooner removed. And all vacancies happening in said office shall be immediately filled by appointments, to be made by the governor with advice of council. And one of said persons shall be designated in his commission as chairman. Before entering upon the duties of said office, said county fish wardens shall be sworn, as other civil officers, to the faithful discharge of their respective trusts.</p> <p><b>SECT. 2.</b> It shall be the duty of said board of county fish wardens to maintain a general supervision over the fisheries of salmon, shad and alewives, in the waters of Penobscot bay, river and streams, emptying into the same.</p> <p><b>SECT. 3.</b> The said county fish wardens shall hold an annual meeting at Bangor, on the first Monday of April, with power to adjourn to such places and times as they may think expedient. And a majority of said board shall constitute a quorum for the transaction of business.</p> <p><b>SECT. 4.</b> The said county fish wardens shall from time to time examine all dams and obstructions in said Penobscot river, and the streams entering into the same, in which salmon, shad and alewives abound, and after notice in writing to one or more of the parties interested, and a hearing thereon, shall decide what would be a suitable fish way by or through such dams or obstructions, and in deciding thereon the said fish wardens shall consult, as far as practicable, the convenience, and also the safety of the structures by or through which said fish way shall pass; and said fish wardens shall define and prescribe such fish way as they may judge suitable and sufficient, not exceeding one foot in width in fifteen of the length of the dam, running directly across any stream or river, and give written notice thereof to some owner or owners, occupant or occupants of said dam, and in said notice to require the fish way to be made according to said description without delay, at any time between the fifteenth day of July and the first day of November following, in any year, so that the same shall be kept open from the first day of May to the fifteenth day of July of each year, for the passage of fish. And if such fish way shall not be made and opened to the satisfaction of said board, within twenty days from the giving of said notice, any owner or owners, occupant or occupants of said dam, or of any mills or machinery, benefitted by such dam, shall forfeit and pay such penalty as the court before which any complaint or indictment may be tried, shall in its discretion determine, not exceeding five dollars per day, reckoning the time of such neglect, for so much of the time between the first day of May and the fifteenth day of July of each year, during which said</p> |
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neglect may continue. And the said board shall define and describe in writing the extent and limits of such fish way, and the distance from said fish way at which fish shall be taken, and cause the same to be entered upon the records of the city, town or plantation in which said fish way is situated. And if any person shall take any of the fish aforesaid in any such fish way or within the distance prescribed by said fish wardens, or shall by placing any impediment in or near such fish way, or by any other means hinder or obstruct the passage up, through, or over such fish way, between the first day of May and the fifteenth day of July in each year, the person so offending shall forfeit and pay a penalty of twenty dollars for each and every offence. *Provided*, that nothing in this section shall be so construed, as to prevent any person or persons, who may be sued or indicted for any penalty or forfeiture incurred on account of any neglect or omission to open or make any fish way prescribed by said fish wardens, from showing in defence thereto, that the existing fish way, if there be one, is amply sufficient, or the fish way prescribed as aforesaid, to be unnecessary for the preservation of the fish in said river, or that the requisition of the fish wardens in regard to the opening of fish ways was unreasonable, or could not be complied with within the time prescribed, by reason of the height of water, or otherwise.

Proviso.

SECT. 5. Said board of county fish wardens shall appoint deputy fish wardens in such places as they may deem proper, not exceeding one in any city, town or plantation, who shall be sworn to the faithful discharge of the trust, and shall forward a certificate of said oath to the county fish warden of his county, within ten days from the time of being notified of his appointment. All deputies shall be removable at the pleasure of the county fish wardens, and it shall be the duty of said county fish wardens, without delay, to fill all vacancies in the office of deputy wardens occasioned by death, removal or otherwise.

Deputies.

To be sworn.

Removable.

SECT. 6. It shall be the duty of all county and all deputy wardens, by all lawful means, to prevent the taking or destroying any of the fish aforesaid, in any of said waters in violation of law, and also to institute prosecutions for all such offences against this act as shall come to their knowledge, and prosecute the same to final judgment. And in such prosecutions any county or deputy fish warden is hereby made a competent witness, and shall be allowed for travel and attendance as such, although he may be a prosecutor in the suit. And any county or deputy warden shall have right and authority to visit any dam, weir, boat, net, trap, or other machine, erected or placed for the purpose of taking or destroying any of said

Duties of deputies.

Competent witnesses.

Rights and powers.

CHAP. 25.

fish, at any time or place where or when the taking or destruction of said fish is prohibited by law. And the power of each county, and of each deputy warden shall and is made to extend equally to every portion of the waters before described in every county, city, town or plantation into which said waters extend.

When fish shall not be taken.

SECT. 7. Between the first day of April and the fifteenth day of July in each year, no person shall take or destroy, in any of said waters, any of the fish aforesaid, either by means of weirs, nets, or any other implement, apparatus or machinery whatever, except between sunrise of Monday, and sunrise on Friday of any week.

Penalty.

And any person committing any offence against this provision, or aiding or abetting the same, shall forfeit and pay for every such offence the sum of ten dollars.

Weirs to have gates.

SECT. 8. Every weir shall be provided with a gate or passage way at least three feet wide, and extending from the bottom or floor thereof to high water line, which gate or door shall be in the pound or apartment wherein said fish are secured and taken.

When to be open.

And the said gate shall be left open without impediment to the passage of said fish from sunrise on Friday of each week to sunrise on the succeeding Monday, between the first day of April and the fifteenth day of July in each year; and if any weir shall be made without such gate or door, or if any such gate or door shall not be kept open as herein required, the owner or occupant of such weir shall forfeit for each offence, ten dollars.

Penalty for neglect.

Weirs to be stripped.

SECT. 9. All weirs shall be stripped so as to admit the free passage of fish through the same, on or before the fifteenth day of July in each year. And the owner or owners of any weir who shall neglect so to strip the same, shall forfeit five dollars for every day until the same is stripped as aforesaid.

Forfeiture.

When warden is resisted in his duty.

SECT. 10. Any county or deputy fish warden who shall be forcibly resisted in the discharge of any duty, or in the exercise of any right prescribed by this act, is hereby authorized to require of any person or persons the assistance which may be requisite for his protection to enable him to discharge the duty or exercise the rights aforesaid. And if any person who shall be by him called upon for that purpose, shall unreasonably refuse, or neglect to render the required assistance, he shall be liable to forfeit and pay a penalty of ten dollars.

Penalty.

Capacity of nets.

SECT. 11. No net or string of nets for the taking of any of said fish, shall ever be used in any of said waters, extending more than eighty fathoms in length, or more than fifteen feet in depth; and every person violating this provision shall forfeit ten dollars.

Forfeiture for violation.

Fish not to be taken at certain times.

SECT. 12. No person or persons shall take or destroy any of the

fish aforesaid in any of said waters, between the fifteenth day of July, in one year, and the first day of April, in the succeeding year. And each and every person violating this provision shall forfeit and pay the sum of twenty dollars for each offence. Penalty.

SECT. 13. All forfeitures prescribed by this act, exceeding twenty dollars, shall be recoverable by indictment in the supreme judicial court, or district court, and all forfeitures not exceeding twenty dollars, shall be recoverable by complaint in behalf of the state, before a justice of the peace for the county in which the offence shall have been committed. And such justice is hereby empowered, on conviction, to impose said penalties to an amount not exceeding the sum of twenty dollars, and in case any person convicted and sentenced by such justice, shall neglect or refuse to pay such penalty with costs of prosecution, the justice, by his writ of *mitimus*, may cause said offender to be committed to the jail of the county, there to be detained, till discharged by order of law, reserving however to every person accused, the right to appeal to the district court on entering into recognizance as in other cases of appeal from justices of the peace in criminal suits. Complaints for any of the offences mentioned in this act may be made by any county or deputy warden, or any other person, and all forfeitures and penalties recovered for any such offences, shall go, one half to the use of the county and one half to the use of the town in which the same were committed. Forfeitures.  
How recoverable.

SECT. 14. Each county warden, for his services, shall be entitled to receive the sum of two dollars, for each and every day by him actually occupied in any of the duties and employments devolving upon him by virtue of said office, to be paid from the treasury of the county in which he resides. *Provided, however,* that said county warden shall first make oath to the truth and correctness of his account, which shall then be presented to the county commissioners to be audited and allowed. And each deputy warden, for his services, shall be allowed one dollar for each and every day by him actually employed in any of the duties devolving upon him in virtue of said office, to be paid by the city, town or plantation in which he resides. *Provided,* that said deputy warden shall first make oath to the truth and correctness of his account, which shall be presented to the selectmen or assessors for allowance. Complaints, how made.  
Disposition of fine.  
Pay of wardens.  
Accounts allowed by county commissioners.  
Pay of deputy wardens.  
Accounts allowed by selectmen and assessors.

SECT. 15. The mill privileges on Blackman's, Kenduskeag, Brewers' and Cold streams, and the towns of Castine, Brooksville, Penobscot and Orland, are hereby exempt from the provisions of this act. *Provided,* that the provisions of this act shall not extend Mill privileges exempted.  
Proviso.

CHAP. 26.

and apply to any portion of said Penobscot river, or its tributaries, below Orphan's island.

SECT. 16. All acts or parts of acts inconsistent with this act, are hereby repealed.

[Approved March 23, 1843.]

### Chapter 26.

AN ACT additional to an act to prevent obstructions in the navigation of Union river.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

Penalty,

SECT. 1. If any person or persons shall be guilty of any of the offences specified in the act to which this is additional, he or they shall forfeit and pay for each offence, a sum not exceeding twenty dollars, nor less than five dollars, to any person who may prosecute for the same, to be recovered upon conviction thereof before any justice of the peace, within the county in which such offence shall have been committed, and shall also be liable to pay all damages which any individual may suffer by reason of such obstructions, in an action of the case in any court competent to try the same.

How recoverable,

SECT. 2. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

[Approved March 23, 1843.]

### Chapter 27.

AN ACT relating to hawkers and pedlers.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

Allens not allowed to act as hawkers, &c.

SECT. 1. Every hawker, pedler or petty chapman, or other person, not a citizen of the United States, going from town to town on foot, or with a horse, carriage or otherwise, carrying to sell, or exposing to sale, any goods, wares or merchandise, shall forfeit a sum, not exceeding fifty dollars, nor less than twenty dollars, to be recovered by complaint or indictment; and all articles and merchandise aforesaid; one half to the town where the offence is committed, and the other half to the prosecutor.

Penalty,

Disposition of fines,