

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FORTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE.

1869.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1869.

CHAP. 68.

Chapter 68.

An act to repeal chapter one hundred and fifty-eight of the public laws of the year eighteen hundred and sixty-eight, entitled "an act to amend section fifty-five of chapter eighty-six of the revised statutes in relation to trustee process."

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

Public laws 1868,
chap. 158, relat-
ing to trustee
process, repealed.

SECT. 1. Chapter one hundred and fifty-eight of the public laws of eighteen hundred and sixty-eight, entitled "an act to amend section fifty-five of chapter eighty-six of the revised statutes in relation to trustee process," is hereby repealed.

R. S., chap. 86,
sect. 1, specifica-
tion 1, revived.

SECT. 2. The first specification of section fifty-five, chapter eighty-six of the revised statutes, is hereby revived ; *provided* this act shall not apply to actions now pending.

SECT. 3. This act shall take effect when approved.

Approved March 12, 1869.

Chapter 69.

An act to enlarge the provisions of section twenty-eight of chapter eleven of the revised statutes, relating to the location of school-houses.

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

Provisions of
sect. 28, chap. 11
R. S. changed to
allow cities to
take land for
school houses and
play ground.

SECT. 1. Any incorporated city may take real estate for the enlargement or extension of any location designated for the erection or removal of a school-house and necessary buildings, and for necessary play grounds, as provided in section twenty-eight of chapter eleven of the revised statutes ; *provided* that no real estate shall be so taken within thirty feet of a dwelling house.

SECT. 2. This act shall take effect when approved.

Approved March 12, 1869.

Chapter 70.

An act to regulate the river and interior fisheries.

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

Limits of this act.

SECT. 1. The provisions of this act shall apply to all the fresh waters of this state above the flow of the tide, and to all the tidal waters that are included within the limits of the fishery districts hereinafter established, with such exceptions as may be hereinafter mentioned.

SECT. 2. For the purposes of this act the term "salmon" shall mean the common migratory salmon of the sea-coast and rivers; the term "landlocked salmon" shall mean any of the species or varieties of salmon that do not periodically and habitually run to the sea, being the same that are locally known as "salmon trout" and "black-spotted trout"; the term "alewife" shall mean the small species of migratory fish commonly called "alewife," but known also by the local names of "herring" and "gaspereau," and shall also include the similar species found in tidal waters and known as "blue-back"; the term "bass" shall mean the striped bass of the tidal waters.

Definition of terms as used in this act.

SECT. 3. The governor, with the advice of the council, shall appoint one person to be commissioner of fisheries, who shall hold office for three years, unless sooner removed, and have a general supervision of the fisheries regulated by this act. He shall examine dams and other obstructions existing in all rivers and streams in the state and determine the necessity of fishways, and the location, form and capacity thereof; shall visit those sections where fisheries regulated by this act are carried on and examine into the working of the laws; shall introduce and disseminate valuable species of fish; and perform all other duties prescribed by law. He shall report annually on or before the thirty-first day of December to the governor, who shall cause three thousand copies of each report to be printed. He shall be entitled to receive his travelling and other expenses necessarily connected with his duties, and such compensation for his services as may be determined by the governor and council, who shall audit his accounts; *provided*, that the total amount of his pay and expenses shall not exceed two thousand dollars annually.

A commissioner of fisheries to be appointed.

His duties.

SECT. 4. Every dam or other artificial obstruction in any river or stream naturally frequented by salmon, shad or alewives, shall be provided by the owner or occupant thereof with a durable and efficient fishway, of such form and capacity and in such location as may be determined by the commissioner of fisheries or by any person authorized by him to determine the same. It shall also be incumbent on the owner or occupant of the dam to keep the fishway in repair and open and free from obstruction for the passage of fish during such times as may be prescribed by law.

Fishways.

SECT. 5. In cases where he deems it expedient the commissioner of fisheries may after notice in writing to one or more of the owners or occupants of a dam, and a hearing thereon, decide what would be a suitable fishway or passage through such dam, consulting as far as practicable the convenience and safety thereof, and give written notice to some owner or occupant, specifying the location, form and capacity of the required fishway, and requiring the same to be built within a specified time.

Commissioner may order fishways to be built

CHAP. 70.

Penalty for not complying with order of commissioner.

SECT. 6. If a fishway thus required to be built is not completed to the satisfaction of the commissioner within the time specified, any owner or occupant shall forfeit a sum not exceeding fifty nor less than ten dollars for every day between the first day of May and the first day of November during which such neglect continues.

Commissioner to prescribe the time when the fishways shall be open.

SECT. 7. On the completion of any fishway to the satisfaction of the commissioner, or at any subsequent time, he shall prescribe in writing the time during which the same shall be kept open and free from obstruction to the passage of fish each year, and a copy of such prescription shall be served on some owner or occupant of the dam. The commissioner may afterwards change the time so fixed as he may see fit. In the absence of any other regulation in the premises, a fishway shall be kept open and unobstructed from the first day of May to the fifteenth day of July, of each year. The penalty for neglecting to comply with the provisions of this section or any regulations made in accordance herewith, shall be not less than five nor more than twenty dollars for each day that said neglect continues.

To be open from May to July 15, if not otherwise ordered.

Penalty for neglecting to comply.

SECT. 8. In case the commissioner finds any fishway out of repair or needing alterations to make it efficient, he may, as in the case of new fishways, require the owner or occupant to make such repairs or alterations; and all the proceedings in such cases, and the penalty for neglect, shall be as provided in the fifth and sixth sections of this act.

Repairs and alterations of fishways.

Fishery districts.

SECT. 9. Each of the following rivers with its tributaries, and the adjoining sea-coast, as far as the same is frequented by salmon, shad, alewives, bass or smelts, shall constitute a fishery district: namely: the Presumpscot, Androscoggin, Kennebec, Georges, Penobscot and St. Croix; the Androscoggin district shall only extend to its junction with the Kennebec in Merrymeeting bay. In cases of doubt, the commissioner of fisheries may determine more exactly the limits of any fishery district, and in case of dispute as to jurisdiction of wardens appointed under this act, it shall be his duty to examine as soon as practicable and determine as aforesaid; any regulations made in accordance with this clause, shall be submitted to the governor and council, who may approve, amend or reject the said regulations. Any regulations so approved or amended, shall, after publication two weeks in the state paper, be deemed to have the full force and effect of law.

Regulations to be approved and published.

Fish wardens to be appointed.

SECT. 10. The governor, with the advice of the council, shall appoint persons in each fishery district to be fish wardens, as follows: One in the Presumpscot district, one in the Androscoggin district, three in the Kennebec district, one in the Georges district, three in the Penobscot district, and one in the St. Croix district. The wardens of the Kennebec and Penobscot districts shall have

joint and several jurisdiction over the fisheries of their respective districts and shall meet annually, on the first Tuesday of April, at Augusta and Bangor respectively, with power to adjourn to such time and place as they may choose. The wardens thus appointed, shall hold office for three years, unless sooner removed, and shall be duly sworn. They shall make an annual report of their doings to the commissioner of fisheries, on or before the first day of November. They shall receive three dollars for each day they are occupied in their official duties; their accounts shall be audited by the governor and council and paid from the state treasury; *provided* that in no case shall any one warden receive more than one hundred dollars for his services in any one year.

Tenure of office and compensation.

SECT. 11. Fish wardens shall endeavor to enforce the laws in regard to the fisheries within their respective districts, shall prosecute for all offences that come to their knowledge, shall be entitled to their pay as witnesses in said cases although they are complainants, and have a right at all times to visit any dam, or any weir or other apparatus for taking fish; and when they are resisted in the discharge of their duties, they may require the aid of as many persons as they deem necessary, and any person neglecting or refusing to render aid when thus required shall forfeit ten dollars.

Duties of fish wardens.

SECT. 12. There shall be between the first day of April and the fifteenth day of July each year, a weekly closetime of forty-eight hours, from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives or bass, shall be taken from the waters covered by this act. During the weekly closetime all seines, nets and other movable apparatus, shall be removed from the water. Every weir shall have, in that part thereof where the fish are usually taken, an opening three feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing, shall be taken out, carried on shore, and there remain during the weekly closetime. In case the enclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir shall be held equivalent to extending from the bottom to the top. The penalty for the violation of this section shall be twenty dollars for each offence.

From April to July 15, a weekly closetime of forty-eight hours, to be established.

SECT. 13. No weir, hedge, set-net, or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than two feet depth of water at ordinary low water, under a penalty of not more than one hundred nor less than fifty dollars, and forfeiture of all apparatus and material so unlawfully used. This provision shall apply to any seine or drift-net that shall at any time be attached to a stationary object, but shall not apply to fykes or bag-nets used in the winter fishery for smelts

Limit of stationary fixtures for taking fish.

Exception.

CHAP. 70.

and tomcods, nor to any implement that may be lawfully used in waters above the flow of the tide, nor to any portion of the Penobscot river, bay or tributaries.

Fishing for salmon, shad and alewives, except by hook, to cease annually July 15th.

SECT. 14. All fishing for salmon, shad, alewives, or any other migratory fish, except by hook and line, shall cease on the fifteenth day of July annually, and shall be unlawful after that date, and within five days thereafter all of the walls of that enclosure of a weir in which fish are usually taken shall be removed, and no contrivance shall be placed therein to hinder the free passage of fish through the weir. The penalty for the violation of this section shall not be more than one hundred nor less than twenty dollars, and forfeiture of apparatus and materials so unlawfully used. This section shall not apply to weirs for the taking of smelts after the first day of October, nor to the taking of porgies or menhaden.

For period of five years salmon and shad fishing prohibited in certain rivers.

SECT. 15. For the period of five years from the passage of this act, no salmon, shad, alewives, or any other migratory fish, shall be taken, nor shall any structure or implement for their capture be used above the flow of the tide in the Presumpscot, Androscoggin, Kennebec, Georges, or Saint Croix rivers, nor above the flow of the tide in any tributary of either of said rivers, under penalty of not more than fifty nor less than ten dollars for each offence, and ten dollars for each salmon, one dollar for each shad, and twenty cents for each alewife so taken.

Between April and November salmon and shad fishing prohibited within 200 yards of any fishway or mill-race.

SECT. 16. No salmon, shad, alewives, or other migratory fish, shall be taken within two hundred yards of any fishway, or within one hundred yards of any dam or mill-race, nor shall any structure or implement except hook and line be used for taking any fish within the above limits, between the first day of April and the first day of November, without the written permission of the wardens of the district in which it is situated, approved by the commissioner of fisheries; nor shall hook and line be used within fifty yards of any fishway. The penalty for the violation of this section shall be a fine of not more than fifty nor less than ten dollars for each offence, and a further fine of ten dollars for each salmon, one dollar for each shad, and twenty cents for each alewife or other fish so taken.

Penalty.

Closetime for salmon.

SECT. 17. There shall be a yearly closetime for salmon from the first day of September of each year to the first day of April following, during which no salmon shall be taken or killed in any manner, under a penalty of not more than fifty nor less than ten dollars, and a further penalty of ten dollars for each salmon so taken or killed.

Closetime for land-locked salmon, trout and togue.

SECT. 18. There shall be a yearly closetime for landlocked salmon, trout and togue during the months of October, November, December and January, during which none of the fish mentioned above shall be taken or killed in any manner under a penalty of

not more than thirty nor less than ten dollars, and a further fine of one dollar for each fish so taken or killed; *provided*, that this section shall not apply to the taking of blueback trout in Franklin and Oxford counties, nor to any person taking fish on his own premises for the purpose of cultivation.

SECT. 19. Any person who shall have in his possession any fish taken in violation of the seventeenth and eighteenth sections of this act, shall be punished by a like penalty as if he had taken them; and any person having in possession any fresh salmon between the fifth day of September of any year and the first day of April following, or any fresh land-locked salmon, trout or togue between the fifth day of October of any year and the first day of February following, shall be deemed guilty of a violation of this section, and shall be held to prove that the fish in his possession were not taken unlawfully.

Penalty for violations of 17th and 18th sections.

SECT. 20. No weir, hedge, trap, trawl, or any net other than a dip-net shall be used for the capture of any fresh water fish under a penalty of not more than fifty nor less than ten dollars, and a further penalty of one dollar for every fish so taken. And such structure or implement used in any fresh water above the flow of the tide, shall be deemed to be used in violation of this section unless it shall be shown to be authorized by some special act or to have been used in a bona-fide fishery for salmon, shad or alewives.

No weir, hedge, trap or trawl to be used in capture of fresh water fish.

SECT. 21. No mascallonge, pickerel, pike, sunfish or bream, yellow perch or black bass shall be introduced, by means of the live fish or spawn, to any waters where they do not now severally exist, except as hereinafter provided, under a penalty of not more than two hundred nor less than fifty dollars.

The introduction by means of live fish or spawn of certain fish, prohibited.

SECT. 22. The commissioner of fisheries may take fish of any kind at such time and place and in such manner as he may choose, for the purposes of science and of cultivation and dissemination; and he may grant permits to other persons to take fish for the same purposes, and may introduce or cause or permit to be introduced any kind of fish to any waters he may see fit, anything in this or any other act to the contrary notwithstanding.

Fish for purposes of science may be taken by fish commissioner or his permit.

SECT. 23. The commissioner of fisheries may set apart any waters for the purpose of cultivation of fish; and after three weeks' notice, published in the paper nearest the locality where such waters are set apart, no person shall take or kill any fish therein under a penalty of not more than one hundred nor less than ten dollars, and a further penalty of two dollars for each fish so taken or killed.

Any waters may be set apart by fish commissioner for cultivation of fish.

SECT. 24. All boats, implements and materials used in violation of this act, and all fish taken in violation of the same shall be forfeited.

Penalty for violation of this act.

CHAP. 70.

Fines and forfeitures, how recovered.

SECT. 25. All fines and forfeitures provided for in this act may be recovered before any competent tribunal by complaint, indictment or action of debt. In cases where the offence is committed in any river or stream forming a boundary between two counties, or in any lake or other body of standing water lying partly in two or more counties, the action may be brought in either county. One half of all fines and forfeitures recovered shall be for the benefit of the person prosecuting therefor.

Constables and police officers to prosecute violations of this act.

SECT. 26. It shall be the duty of constables and police officers to prosecute for all offences against this act that come to their knowledge.

Implements used in illegal fishing may be seized.

SECT. 27. Any fish warden, constable or police officers may seize any implement used in illegal fishing, and may render any weir, built or maintained contrary to law, incapable of taking fish. Any such officer may, on view, appropriate to his own use or gift any fish taken or possessed in violation to this act.

Commissioner of fisheries may delegate all his powers over fishways.

SECT. 28. The commissioner of fisheries can delegate to any fish warden or other lawful officer of fisheries any of the powers given to the said commissioner in relation to the construction of fishways.

Waters and their tributaries exempt from the operation of the provisions of this act relating to migratory fishes and supervision of fishways.

SECT. 29. That portion of the Saint John river and its tributaries lying above Grand Falls in New Brunswick, shall be exempt from all the provisions of this act.

SECT. 30. The following waters and their tributaries are exempt from the operation of the provisions of this act relating to the migratory fishes, and the supervision of fishways by the commissioner, that is to say: Royall's river in North Yarmouth; Sewall's pond or its outlet in Arrowsic; Nequasset stream in Woolwich; Damariscotta river; Duck trap stream in Lincolnville and Belmont; the Eastern Penobscot river in Orland; Winslow's and Leach's streams in Penobscot; the stream from Walker's pond in Brooksville; all waters in Vinalhaven, Bluehill, Tremont, Mount Desert, Eden, Franklin and Sullivan; Tunk river in Steuben; Pleasant river in Washington county; East Machias river and Cobscook or Orange river in Whiting; that portion of the Penobscot river and its tributaries below Orphan's island; also the Kennebec river below Lee's island.

Exemption relating to construction of fishways.

SECT. 31. The following named waters with their tributaries are subject to this act only so far as relates to the construction of fishways, namely: Harraseekit and Little rivers in Freeport; the stream from Gray's pond in Sedgwick and Brooksville; Denny's river and Pinnaquan.

This act not to limit rights of fish growers.

SECT. 32. No provisions of this act shall interfere with any rights and privileges granted to persons engaged in the cultivation of fish.

Acts and resolves repealed in whole or part.

SECT. 33. The following acts, parts of acts, and resolves are hereby repealed, namely: all acts and parts of acts relating to the

fisheries for salmon, shad, alewives and bass in the Presumpscot, Kennebec, Androscoggin, Georges, Penobscot and St. Croix rivers and their tributaries, except an act entitled "an act to regulate the shad and alewife fisheries in the town of Warren," passed March sixth, eighteen hundred and two, and an act amendatory thereto, approved February twenty-four, eighteen hundred and sixty-eight, which shall remain in full force so far as their provisions are not inconsistent with the provisions of this act. There are further repealed the twenty-second to the twenty-sixth sections inclusive, of chapter forty of the revised statutes; "an act to regulate certain fisheries," approved February twenty-sixth, eighteen hundred sixty-eight; "an act giving certain powers to the commissioners of fisheries," approved February twenty-nine, eighteen hundred sixty-eight; a "resolve relative to the restoration of sea fish to the rivers and inland waters of Maine," approved January twenty-eight, eighteen hundred and sixty-seven; a "resolve to continue in force and amendatory of chapter seventy-eight of the resolves of eighteen hundred and sixty-seven, in relation to the restoration of sea fish to the rivers and inland waters of Maine," approved March sixth, eighteen hundred sixty-eight, and all other acts and parts of acts inconsistent with the provisions of this act.

SECT. 34. This act shall take effect when approved.

Approved March 12, 1869.

Chapter 71.

An act to provide for taxing bank stock.

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

SECT. 1. Section one of chapter one hundred and ninety-three of the public laws of eighteen hundred and sixty-three is hereby amended by striking out the word "unknown" in the seventh line, and inserting instead thereof the following words: 'whose residence is unknown to the assessors,' so that the section as amended shall read as follows:

'Sect. 1. The stock of any bank held by persons out of the state, or unknown, and that has not been certified according to the provisions of chapter forty-six, section twenty-one of the revised statutes, in any city or town in this state, and is not there assessed; and the stock of any bank appearing by the books of such bank to be held by persons residing beyond the limits of this state, or whose residence is unknown to the assessors, shall be assessed for its proportion of any state, county or town tax, in

Public laws 1863, chap. 193, relating to taxing bank stock owned out of the state, amended.

Taxation of bank stock owned out of the state.