

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

NO. 373

H. P. 712

House of Representatives, Feb. 1, 1933.

Referred to Committee on Inland Fisheries and Game and 500 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Sterling of Caratunk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

AN ACT Relative to Search and Seizure of Fish and Game and Equipment Used in Hunting, Trapping, and Fishing.

Be it enacted by the People of the State of Maine, as follows :

R. S. c. 38, § 96, amended. Section 96 of chapter 38 of the revised statutes is hereby repealed and the following enacted in place thereof :

Sec. 96. Seizure of game and equipment for violation of law. All birds, fish, game or other wild or fur-bearing animals, or parts thereof, hunted, bought, sold, carried, transported, or found in possession of any person or corporation in violation of the provisions of this chapter, or any boat, car, conveyance or equipment used in hunting, trapping or fishing in violation of the provisions of this chapter, shall be contraband and shall be forfeited to the state. And in all cases where a warden may seize birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing, he may seize the same without a warrant, and keep them in some safe place for a reasonable time until he can procure such warrant.

When any birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing, are seized as provided in the preceding paragraph, and a warrant is issued, the officer who made such seizure, in case of reasonable doubt existing as to the ownership of such articles, shall within

reasonable time file with the magistrate before whom such warrant is returnable, a libel against such birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing, setting forth their seizure by him, describing such birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing, and that they were hunted, taken, caught, killed, used or had in possession in violation of the provisions of this chapter, and pray for a decree of forfeiture thereof, and such magistrate shall thereupon fix a time for the hearing of such libel, and shall issue his monition and notice of the same, to all persons interested, citing them to appear at the time and place appointed and show cause why said birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing should not be declared forfeited, by causing a true and attested copy of said libel and monition to be posted in two conspicuous places in the town or place where such birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing were seized, or in such place or places as is ordered by the magistrate, ten days at least before the day to which said libel is returnable.

In case the magistrate finds that the birds, fish, game, or other wild or fur-bearing animals, or parts thereof, seized, will be unsuitable for food (or other use) at the day to which said libel is returnable, he shall order the officer making the seizure to dispose of the same; and the officer so disposing of the same shall, in case of sale, hold the proceeds of said sale subject to order of the court for decision as to the right of the claimant, if any appear, to said birds, fish, game or other wild or fur-bearing animals, or parts thereof. If the magistrate finds the claimant, if any appear, is not entitled to said birds, fish, game, or other wild or fur-bearing animals, or parts thereof, the officer making such seizure shall turn over to the magistrate the proceeds of such sale, and such magistrate shall forward the proceeds thereof to the commissioner of inland fisheries and game in the same manner as is provided by section 99 of this chapter.

If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare the same forfeited to the state. If any person appears and claims such articles, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed, and the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer by whom the same were seized, and in it declare that they were not hunted, taken, caught, killed, used or had

in possession in violation of the provisions of this chapter, as alleged in said libel and monition, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon the hearing, satisfied that said birds, fish, game or other wild or fur-bearing animals, or parts thereof, or any boat, car, conveyance or equipment used in hunting, trapping or fishing were not hunted, taken, caught, killed, used or had in possession in violation of the provisions of this chapter, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer having the same in custody, commanding him to deliver to said claimant the articles, or proceeds derived from the sale of the same, to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said articles so seized, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said articles forfeited to the state. The claimant may appeal and shall recognize with sureties as on appeals in civil causes from a magistrate.

The forms herein set forth, with such changes as adapt them for use in cities, towns, and plantations, are sufficient in law, for all cases arising under the foregoing provisions, to which they purport to be adapted; and the costs to be taxed and allowed for the libel, shall be fifty cents; for entering the same, thirty cents; for trying the same, one dollar; for a monition, fifty cents; for posting notices and return, one dollar; order to restore or deliver, twenty-five cents; executing the order, fifty cents; and ten cents per mile for all necessary travel.

Form of monition and notice

STATE OF MAINE

“County of, ss.

(L. S.) To all persons interested in”
 (here insert the description of the birds, fish, game, wild or fur-bearing animals, or parts thereof, or boats, cars, conveyances or equipment used in hunting, trapping or fishing, as in the libel.)

“The libel of, hereunto annexed, this day filed with me,, esquire, a trial justice, judge or recorder of a municipal court, in and for said county, shows that he has seized said articles, because” (insert as in the libel,) “and

prays for a decree of forfeiture of the same according to the provisions of law in such case made and provided.

You are, therefore, hereby notified thereof, that you may appear before me, the said justice, judge or recorder, at in said county, on the day of, 19....., and then and there show cause why said articles should not be forfeited. Given under my hand and seal at, on the day of, in the year of our lord nineteen hundred

.....
Trial Justice, Judge or Recorder.”

Form of Libel

STATE OF MAINE

“County of, ss. To a trial justice, judge or recorder of a municipal court, in and for said county:

The libel of, of, shows that he has, by virtue of a warrant duly issued on the day of, A. D. 19....., by, esquire, a trial justice, judge or recorder of a municipal court in and for said county, seized certain birds, fish, game, wild or fur-bearing animals, or parts thereof, or certain boats, cars, conveyances or equipment used in hunting, trapping or fishing, described as follows:” (here follows a description of articles seized,) “because the same were hunted, taken, caught, killed, used or had in possession in violation of the provisions of this chapter, as follows:” (here follows statement alleging the particular violation or violations of the fish and game laws for which said articles were seized,) “which said articles were kept and deposited at” (describing the place) “in the said county of Wherefore he pray for decree of forfeiture of said articles, according to the provisions of law in such case made and provided.

Dated at, in said county, this day of, in the year of our Lord nineteen hundred

(Signed)