

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1760,  
and ended September 26th, 1761.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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### CHAPTER CCCCLVIII.

*An ACT to enable the owners and possessors of the northern district of Kingsess meadow land, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates, in repair, and to raise a fund to defray the expense thereof.*

Passed 14th March, 1761.—Private Act.—Recorded A. vol. IV. page 197.

[The subject of this act is fully explained in the title.]

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### CHAPTER CCCCLXII.

*An ACT to enable the owners and possessors of the meadow, at the west side of the mouth of Darby creek, by the river Delaware, in the township of Ridley, in Chester county, to keep the banks, dams, sluices, and flood-gates, in repair for ever, and to raise a fund to defray the expense thereof.*

Passed 14th March, 1761.—Private Act.—Recorded A. vol. IV. page 206.

[The title fully explains the subject of this act.]

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### CHAPTER CCCCLXIII.

*An ACT for the preservation of fish in the rivers Delaware, Susquehanna, and the Lehigh, commonly called the Western Branch of Delaware.*

**WHEREAS** it is found by experience, that large quantities of the fry and brood of fish, as well as young fish unfit for use, have

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Penalty on erecting wears, &c.

been, for many years past, killed and destroyed by wears, racks, baskets, dams, pounds, and other like engines and devices, formed and erected in the rivers Delaware, Susquehanna, and the Lehigh, commonly called The Western Branch of Delaware, for taking of larger fish, whereby the great quantities of fish, which were formerly to be found and taken in the said rivers, are much diminished, to the great damage and injury of the public: For remedy whereof, *Be it enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, baskets, fishing-dam, pound, or other device whatsoever, for the taking of fish within the said rivers, or any or either of them; or that shall fix or fasten any net or nets across, or in any of the said rivers, or any part thereof, by which the fish may be obstructed from going up the said rivers; or that shall take, destroy, or spoil any spawn, fry or brood of fish, or any kind of fish whatsoever, in any such wear, rack, baskets, fishing-dam, pound, or other device aforesaid; every such person or persons so offending, contrary to the true intent and meaning of this act, being legally convicted thereof, by the oath or affirmation of one or more credible witnesses, or by his own confession, shall forfeit and pay the sum of twenty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or mainprize: one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township, city or borough, where such offender shall reside, for the use of the poor of the said township, city or borough, if resident within this province, if otherwise, where he shall be apprehended.

Offences against this act to be tried in the county next adjoining where they were committed.

*II. And be it enacted*, That all and every of the offences, which shall be hereafter committed against the true intent and meaning of this act within either of the said rivers Delaware or Susquehanna, shall be laid to be committed within the said rivers respectively, in the county which shall lie next to or adjoin that part of the said rivers respectively where the offence is committed; and the Justices of the County Court of Quarter Sessions of the said county, which shall so adjoin the part of the said river where the offence is committed, are hereby authorized, empowered and required, to hear, try, and determine the same, by a jury of the county, in the same manner as other criminal offences, committed within their respective counties, are usually heard, tried, and determined before them.

*III.* And whereas part of the said river Susquehanna divides the counties of Lancaster, York and Cumberland, and some doubts may arise in which of the said counties the offences committed within the said river, against this act, ought to be tried: For removing whereof, *Be it enacted*, That all and every such offence and offences, which shall be committed within the said river Susquehanna, shall be laid to be committed in any or either of the said counties, joining on that part of the said river where such offence shall be committed, and heard, tried and determined, in the Court of Quarter Sessions of the same county, in manner aforesaid.

IV. And for the more speedy removal of such wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, as are already or hereafter shall be made in any of the said rivers, *Be it enacted*, That the Justices of the County Court of Quarter Sessions of the several counties within this province, bounded on and adjoining to any of the said rivers, or in which the same are included, at their next Court of Quarter Sessions, after the publication of this act, and as often after as there shall be occasion, and that any Justice or Justices of the Peace, out of term time, shall, and they are hereby enjoined and required, to issue forth their warrants to the Overseers of the highways of each and every township, next adjacent to the wear, rack, fishing-dam, pound, or other device aforesaid, so erected, or in which they, or any of them, shall be erected, enjoining and requiring them the said Overseers respectively forthwith to remove, or cause to be removed, every such wear, rack, basket, fishing-dam, pound, or other device aforesaid; and for that purpose to summon the inhabitants of their respective townships, giving them three days notice, to repair to, throw down, remove and destroy such wear, rack, basket, fishing-dam, pound, or other device aforesaid, so erected, built or set up, in manner aforesaid, and to make return of such their proceedings to the said Justices at their next Court of Quarter Sessions, by whom such warrants shall be respectively issued; and if any such Overseer or Overseers of the highways, to whom such warrant shall be directed, shall refuse, or neglect to discharge and perform the duty thereby enjoined and required of him or them, he or they so offending, and being thereof legally convicted by a jury of the county, or by his or their own confession, before the said Justices, in their said Court of Quarter Sessions, shall, for every such offence, forfeit and pay to the Overseers of the poor of the township where such offender or offenders shall reside, the sum of ten pounds, for the use of the poor of the said township; and if any inhabitant, so summoned, shall refuse or neglect to attend in person, or to send another able person in his room, to assist in throwing down, removing and destroying such wear, rack, fishing-dam, basket, pound, or other device aforesaid, so erected, built or set up, in such manner as the said Overseer or Overseers shall order and direct, he shall forfeit and pay the sum of ten shillings for every such offence, to the Overseers of the poor of the township whose inhabitants are so summoned, for the use of the poor; to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

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Justices of the Court of Quarter Sessions to issue their warrants to the Overseers of highways, for removing wears, &c.

V. And to prevent any delay that may happen, through default of any of the said Justices, the said Overseers of the highways or of any other person or persons whatsoever, *Be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever to break, throw down, remove and destroy, all or any wear or wears, fishing-dams, racks, baskets, pounds, or other device whatsoever, built, set up or laid, or to be built, set up or laid, within any of the aforesaid rivers, for catching of fish as aforesaid: and that every person or persons, who shall assault, hinder or obstruct, any person in pulling down, breaking, removing or destroying, any of the aforesaid devices, in any of the rivers aforesaid, and being

Penalty on persons obstructing the removing of wears, &c.

1761. thereof legally convicted before any one of the said Justices of the said Courts, shall forfeit and pay for every such offence five pounds, lawful money as aforesaid; one moiety thereof to the use of the poor as aforesaid, and the other moiety to the person or persons assaulted or obstructed in removing or destroying any of the said devices, to be recovered by a warrant from any of said Justices, as debts of five pounds, or under, are recoverable by the laws of this province.

Constable to inspect, and give information of offences against this act, &c.

VI. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the constable of each respective township, which shall be bounded by or adjoined to any part of any or either of the said rivers, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, carefully and diligently to inspect and view, once at least in every fourteen days, from the first day of August to the first day of December, in every year, such parts of the said rivers as shall be adjoining his respective township; and having any knowledge of any offences against this act, he shall forthwith give information thereof to some Justice of the Peace, who shall immediately issue his warrant to the Overseers of the highways aforesaid, for the purposes aforesaid; and the said constable shall also present, on oath or affirmation, every such offence to the Justices of the Court of Quarter Sessions of their respective counties, together with the name and names of such offender or offenders, that he or they may be tried according to the directions of this act; which oath or affirmation the said Justices are hereby required duly and carefully to administer.

What relates to wears, &c. already erected in Delaware or Susquehanna, to be of no force, until laws are passed for the same purpose in New Jersey and Maryland.

VII. *Provided always nevertheless, and be it further declared and enacted*, That so much of this act as relates to the wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, already erected, or hereafter to be erected, in the river Delaware, shall be, and shall be deemed, held, construed and taken, to be of no force, validity or virtue, until a bill for remedying the same mischiefs and inconveniences, hereby intended to be remedied in the said river, shall be passed and enacted into a law by the Legislature of the province of New-Jersey, and be in full force and virtue; and that so much of this act as relates to the wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, already erected, or hereafter to be erected, in the river Susquehanna, shall be, and shall be deemed, held, construed and taken, to be of no force, validity or virtue, until a bill for remedying the same mischiefs and inconveniences thereby intended to be remedied in the said river, shall be passed and enacted into a law by the Legislature of the province of Maryland, and be in full force and virtue, any thing herein contained to the contrary thereof in any wise notwithstanding.

Passed 14th March, 1761.—Recorded A. vol. IV. page 220. (b)

(b) By chap. 626, the rivers Delaware and Lehigh, and parts of Neshaminy creek, as far as Barnesly's ford, and the stream called Lechawaxen, as far up as the falls thereof, were declared to be common highways. The same

act appointed Commissioners, with power to lay out a subscription fund for improving the navigation of the Delaware and Lehigh; it prohibited drawing the waters of those rivers from their natural channels, for the use of any mill

or water-work ; it imposed a penalty on any person, who should erect any dam, &c. to impede the navigation, or who should destroy the works erected by the Commissioners ; it declared that offences committed in the rivers against the act, should be tried in the adjoining county ; it tolerated, all previously erected mill-dams in the river Delaware ; and it directed the Commissioners to keep a record of their proceedings, and report the same annually to the Legislature.

By chap. 627, post, the river Susquehanna, as far as Wright's ferry ; the river Juniata, up to Bedford and Franks-town ; the following streams, to wit, Bald-Eagle, as far up as Spring-creek ; Penn's-creek, twenty miles up ; Swatara, as far up as Kettle's mill-dam ; Conestogoe, as far up as Matthias Slough's mill-dam ; Conedogwinet, as far up as the Cove fording, which leads to Forty Shilling Gap ; Machanoy and Kiskiminetas, are all declared to be highways ; Commissioners are appointed to clear the same, and various regulations are established, for preserving the navigation and fisheries thereof. So much of the act in the text, as relates to the obstructions in the river Susquehanna, above Wright's ferry, is also repealed and supplied. But see chapter 1144. [New Commissioners appointed, &c.]

For the act providing for clearing obstructions in the river Susquehanna, down to the Maryland line and joining the river Delaware and Chesapeake bay by a canal, see chap. 2175.

By an act the 25th September, 1786, (chap. 1234,) provision is made for distributing and annexing the State jurisdiction upon the river Delaware, and certain islands therein.

For general laws for improving the navigation of rivers and streams, see chap. 1558, 1634, 1683, and the title *Roads and Rivers*, in the index to this edition. (Note to former edition.)

All such parts of this act as relates to the rivers *Delaware* and *Lehigh*, are repealed by an act passed March 9th, 1771, (post. chap. 638.)

March 30th, 1784, (chap. 1081,) a

new act was passed to regulate the fisheries in the river Delaware and Lehigh, and for the preservation of the fish in the said rivers.

By a supplement passed April 7th, 1786, the second section was rescinded, so far as it relates to the Delaware below the head of the falls of Trenton, and the sixth section was entirely repealed, and some further regulations with respect to the fisheries were introduced, (chap. 1211.)

February 8th, 1804, (chap. 2414,) "an act to regulate the fisheries in the river Delaware and its branches, and for other purposes," was passed, which repeals all former laws and parts of laws on the same subject, thereby altered ; but the river Schuylkill is excepted from the regulations thereof—and the operation of the act is suspended, until a similar law should be passed in the state of *New Jersey*.

Such act was passed in the state of New Jersey, with certain amendments and additions, which were adopted by the state of Pennsylvania by an act passed February 23d, 1809, which repeals such parts of the act of 1804, as is thereby altered, and all other parts of the said act of 1804 are declared to be in full force and effect.

(To this act is annexed the act of New Jersey.)

The state of New Jersey passed a supplement to their act, in November, 1809, which was ratified and confirmed by Pennsylvania, by act of March 19th, 1810, to which latter act, the supplement of New Jersey is also annexed.

With respect to the Susquehanna, April 8th, 1799, (chap. 2052), an act was passed to prevent the erection of fish dams and baskets, in the rivers Schuylkill, Susquehanna and Juniata, and the branches thereof. And, another act was passed March 16th, 1807, (chap. 2773,) "to regulate the fisheries in the river Susquehanna and its branches.

See title *Conestogoe*, in the general index to this edition—and the general act, authorizing mill dams on navigable streams, passed March 23d, 1803, (chap. 2342.)

## CHAPTER CCCCLXV.

An ACT for making the river Schuylkill navigable, and for the preservation of the fish in the said river.

WHEREAS the river Schuylkill is navigable for rafts, boats, and other small craft, in times of high freshes only, occasioned by