

## CHAPTER DLXXVIII.

## AN ACT FOR REGULATING THE FISHERY IN THE RIVER BRANDYWINE.

Whereas it hath been represented to the assembly by petition from a number of the freeholders of the county of Chester that live on or near the river called Brandywine that their ancestors, themselves and the poor adjacent inhabitants have formerly enjoyed great advantages from the fishery in the same river; and although no person owning lands below the fork or main branches can claim any right by survey to the lands covered with the waters thereof, yet divers persons have erected dams across the said river, to the almost total obstruction of the fish running up the same:

Wherefore [for] remedying the mischiefs aforesaid:

[Section I.] Be it enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That all and every person and persons whatsoever having already erected or that shall hereafter erect any mill-dam or other obstruction across the said river below the forks thereof within this province shall make, open and leave the space of nine feet in breadth near the middle of the said dam at least fourteen inches lower than any other part thereof, so that there be at least twelve inches depth of water during the months of March, April and May in every year constantly running through the same; and for every foot that the dam is or shall be raised perpendicular from the bottom of the said river there shall be laid a platform either of stone or timber or of both, with proper walls on each side to confine the waters, which shall extend at least four feet down the stream, and of the breadth aforesaid, to

form a slope for the water's gradual descent; and that all and every person and persons who shall refuse or neglect to make or alter his, her or their dams in the manner directed as aforesaid within the term of one year next after this act shall be in force, every such person 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 witnesses or by his or her own confession shall forfeit and pay the sum of one hundred pounds lawful money of this government for every such offense or suffer nine months' imprisonment without bail or mainprise, 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 they shall be apprehended.

[Section II.] And be it further enacted by the authority aforesaid, That if any person or persons whatsoever from and after this act shall be in force shall erect, build, set up, repair or maintain or shall be aiding, assisting or abetting in erecting, building, setting up, repairing or maintaining any weir, rack, basket, fishing dam, pound or other device or obstruction whatsoever within the said river of Brandywine below the forks thereof (mill-dams made with the opening in the manner aforesaid only excepted), or that shall fix or fasten any net or nets across the same or any part thereof whereby the fish may be obstructed from going up the same, or that shall take, destroy or spoil any spawn, fry or brood of fish of any kind whatsoever in any such weir, rack, basket, pound or other device aforesaid, every such person so offending, being thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of fifty pounds lawful money of this government for every such offense or suffer six months' imprisonment without bail or mainprise, one moiety of which forfeitures shall be paid to the informer or person who shall prosecute for the same, the other moiety to the use of the poor of the township where such offender shall reside.

And for the more effectual detecting and punishing offenders against this act:

[Section III.] Be it enacted by the authority aforesaid, That the constables of each respective township which shall be bounded by or adjoining to any part of the said river shall and they are hereby enjoined and required, under the penalty of five pounds, to be recovered as debts not exceeding five pounds are directed by law to be recovered and to be applied in the manner last aforesaid, carefully and diligently to inspect and view once at least in every two weeks from the first of March to the last of May in every year after this act shall be in force such parts of the said river as shall be adjoining to his respective township, and having any knowledge of any offense against this act he shall forthwith give information to the next justice of the peace, who shall call such offender before him by warrant or summons, and if, on hearing, he shall appear to be guilty of any offense against this act the said justice shall take his recognizance with one sufficient surety for his appearance at the next court of general quarter sessions of the peace to be held for the said county.

[Section IV.] And be it further enacted by the authority aforesaid, That after the mill-dams shall be altered and built agreeable to the true intent and meaning of this act no person or persons whatsoever shall cast or draw any net or seine in the said river within twenty perches next below or above the said opening hereby directed to be left in the said dams under the penalty of fifty pounds, to be recovered and applied in manner first aforesaid.

Provided always nevertheless, That nothing in this act contained shall be construed or understood to deprive or hinder any person from drawing a seine or net for the taking of fish in any part of the river except near the dams as aforesaid.

[Section V.] Provided also, and be it further enacted by the authority aforesaid, That the several and respective provisions, matters and things hereinbefore made, enumerated and expressed for regulating the fishery in the river Brandywine shall be and shall be deemed, held, construed and taken to be of no force, validity or effect until a bill for remedying the same mischiefs and inconveniencies hereby intended to be remedied in the said river shall be passed and enacted into a law by the legis-

lature of the three lower counties of Newcastle, Kent and Sussex upon Delaware, and be in full force and virtue, anything herein contained to the contrary thereof notwithstanding.

Passed February 20, 1768. Considered by the King in Council, March 6, 1769, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXVI, Section III, and the Acts of Assembly passed March 23, 1803, P. L. 389; March 7, 1860, P. L. 120; March 26, 1860, P. L. 265; April 14, 1863, P. L. 390; April 21, 1869, P. L. 34; March 25, 1871, P. L. 456; May 24, 1871, P. L. 275; (the two Acts of Assembly passed) May 1, 1873, P. L. 82, (886), 89; May 5, 1876, P. L. 104; June 3, 1878, P. L. 160; June 11, 1879, P. L. 163; June 10, 1881, P. L. 101; June 11, 1885, P. L. 109; May 23, 1887, P. L. 165; May 22, 1889, P. L. 267; April 15, 1891, P. L. 19; May 12, 1891, P. L. 52; June 24, 1895, P. L. 241; June 25, 1895, P. L. 236; March 22, 1899, P. L. 17.