

of this commonwealth relating to the poor of York county as is by this act altered or supplied be and the same is hereby repealed.

Approved February 6, 1804. Recorded in L. B. No. 9, p. 312.

Note (*). Chapter 2398; Supra this volume, p. 498.

CHAPTER MMCDXXVI.

AN ACT TO REGULATE THE FISHERIES IN THE RIVER DELAWARE AND ITS BRANCHES, AND FOR OTHER PURPOSES.

Whereas experience hath fully shown, that the existing laws for regulating the fisheries, and preserving the young fish in the river Delaware and its branches, are ineffectual: Therefore,

Section I. (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That no seine, or net, shall be cast, or drawn, or in anywise made use of, by any person, or persons whatsoever, in the river Delaware, or its branches, so far as the same is, or shall be hereafter declared a public highway, for the purpose of taking fish, from sun setting on Saturday evening, until sun rising on Monday morning next following; and that no more than one seine, or net, shall be drawn, or in anywise made use of, in any one pool or fishing place, by any person, or persons whosoever, in the aforesaid river, or its branches, from the station point, or northwest corner of the state of New Jersey, to the southern point of Newbold's island; nor more than two seines, or nets, from the said Newbold's island to the circular boundary of the state of Delaware, within any one term of twenty-four hours, to begin at sun rising and to continue until sun rising the next day following; and if any person, or persons whosoever, shall cast, draw, or make use of any seine, or net, in the said river, or its branches, or shall be aiding, or assisting therein, within the term, or terms aforesaid contrary to the true intent and meaning of this act; every person, or persons so offending, and being thereof legally convicted, before any justice of the peace, of

the county where the offense is committed, shall forfeit and pay the sum of fifty dollars, for each and every such offense, together with the costs of prosecution, to be paid to, and applied by the supervisor, or supervisors of the roads, in the township where the offense has been committed, for repairing the public roads in the same.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That if any person, or persons, shall cast, draw, or make use of any seine, or net, for the purpose of catching shad, in the river Delaware, within the limits of this state, below the falls of Trenton, after the twenty-fifth day of May, or between the said falls, and opposite the mouth of the river Lehigh, after the first day of June, or in any other part of the said river Delaware, or its branches, between the mouth of the river Lehigh, and the station point, or northwest corner of the state of New Jersey, after the fifth day of June, in each, and every year; every person or persons, so offending and being thereof legally convicted, before any justice of the peace, in, and for the county, where he, or they may be apprehended, shall forfeit and pay the sum of fifty dollars, for each, and every such offense, to be applied to the use aforesaid, and likewise to pay the costs of prosecution.

Section III. (Section III, P. L.) And in order to ascertain what shall be deemed and held to be a pool or fishing place, within the meaning of this act, Be it enacted by the authority aforesaid, That from the place, or places, where seines, or nets, have been usually thrown into the water, to the place or places, where they have been usually taken out or from the place or places, where they may be hereafter thrown into the water, to the place or places, where they may be taken out, shall be deemed, and held, and is hereby declared, to be a pool, or fishing place, within the meaning of this act.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That wherever any fishery is occupied upon the river Delaware, within the limits aforesaid, either the landholder, tenant in possession, or some respectable person, appointed by the fishing company, shall apply to

the prothonotary of the respective county, where such fishery may be, and give bond, with one or more sufficient sureties, in the sum of three hundred dollars, conditioning to be accountable to the supervisors of the roads, of the respective township, where such fishery may be, for all fines and penalties, that may occur on account of any transgressions of this act, that may, or shall be committed, at his, or their respective fishery; and shall moreover give unto the said prothonotary, a description in writing of their pool, or fishing-place, together with the name of the township, or place, in which it is situated; which the said prothonotary shall file, together with the bond, in his office, and give them a certificate, with a receipt for the same, on their paying him the sum of seventy-five cents; and if any person or persons, shall undertake, and fish contrary to the true intent and meaning of this act, without having previously entered security as aforesaid, or without the permission of the person that has entered security; he, or they, shall forfeit and pay the sum of one hundred dollars, for each and every such offense, together with costs, to be levied and recovered as other sums to the same amount, are recoverable by the laws of this state, to be paid, and applied for the use as aforesaid.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That if any person or persons, shall be found making use of any seine, or net, contrary to the true intent and meaning of this act, every such person, or persons, so offending, shall in addition to the penalty aforesaid, forfeit the seine or net, so made use of, which seine or net, shall by order of the justice of the peace, or justices of the courts of quarter sessions, before whom such person or persons, shall be convicted, be exposed to public sale, after giving five days previous notice thereof by advertisement; and the money arising therefrom, shall be paid and applied in the manner, and for the use aforesaid, the costs of such prosecution and sale being first deducted.

Section VI. (Section VI, P. L.) And whereas the existing laws, for preventing the erection of fish-dams, baskets, &c. have been found ineffectual: Therefore, Be it enacted by the

authority aforesaid, that if any person or persons whosoever, shall erect, build, set up, repair or maintain, or shall be aiding, assisting and abetting, in erecting, building, setting up, repairing or maintaining any weir, rack, basket, fishing-dam or pound, or shall make use of any swab, or bushnet, or shall fix, fasten or set, any gilling seine, anchor any engine, or make use of any device whatsoever, except fishing with sweeping-seines, hooks and lines, darts, hoop-nets and eel-boxes, for taking fish in the river Delaware, or its branches, which are, or may be hereafter declared public highways; every person, or persons so offending, contrary to the true intent and meaning of this act, and being legally convicted thereof, by the oath or affirmation of one or more credible witnesses, or by his, or their own confession before the justices of the court of quarter sessions, of the proper county, where such offender may be apprehended, shall forfeit and pay the sum of one hundred and forty dollars, together with costs of suit, to be applied as aforesaid.

Section VII. (Section VII, P. L.) And whereas, various wing-dams, and other obstructions, have been erected and set up, prejudicial to the navigation of said river: For remedy whereof, be it enacted by the authority aforesaid, That if any person or persons whosoever, shall erect, build, set up, repair, or maintain, or shall be aiding, or assisting in erecting, building, setting up, repairing or maintaining any wing-dam, or placing any other obstruction, injurious to the navigation of said river, or its branches as aforesaid, except such mill-dams as have been heretofore erected, in pursuance of any special act of the legislature; and being thereof legally convicted, before the court of quarter sessions, of the county where the offense has been committed, shall forfeit and pay the sum of one hundred dollars to be paid to, and applied for the use as aforesaid.

Section VIII. (Section VIII, P. L.) And for the more effectual detecting and punishing offenders against this act: Be it enacted by the authority aforesaid, that the constable of each respective township, borough or district, which shall

be bounded by, or adjoining to any part of the river Delaware, or its branches, as aforesaid, shall, and he is hereby strictly enjoined, and required diligently to enquire, and carefully to inspect, and view once every week from the first day of April, until the tenth day of June, in every year, such parts of the said river, or its branches, as shall be adjoining his respective township, borough or district; and having any knowledge, of any offenses against this act, he shall forthwith give information thereof, to some justice of the peace, who shall immediately issue forth his warrant, directing the constable to bring forthwith before him, such transgressor, or transgressors, and have them dealt with according to law; and if any of the aforesaid constables, shall neglect or refuse to perform the duties enjoined on him, or them by this act, he, or they so offending, and being thereof legally convicted, before any justice of the peace, or before the justices of the court of quarter sessions, of the proper county, where such delinquent may reside, shall forfeit and pay the sum of twenty-five dollars, to be levied, and recovered as other sums, to the same amount, are recoverable by the laws of this state, to be paid to, and applied for the use as aforesaid. And each of the constables, while performing the duties enjoined on them by this act, shall be allowed at the rate of one dollar per day, to be paid by the supervisor of their respective township, borough or district; each constable having an exact account of the number of days, he, or they have been employed, under the directions of this act, regularly attested before one of the justices of the peace, of their respective township.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the supervisors of the public highways of each township, borough or district, which shall be bounded by, or adjoining to any part of the said river, or its branches as aforesaid, shall every year, before they settle their accounts, enquire of the justices of the peace of their respective townships, to know whether they have any money in their hands, arising from such forfeitures as aforesaid; which money, if any there should be, they are hereby authorized to receive, with giving the magistrate a receipt, and their re-

spective township credit for the same; and if either of the supervisors, from his, or their own knowledge, or the information of any other person, shall have any knowledge of any transgressions against this act, which either of the aforesaid constables have either neglected or refused to prosecute, agreeably to the directions of this act, he, or they, are hereby strictly enjoined and required, under the penalty of twenty-five dollars, immediately to give information to one of the justices of the peace of their respective township, borough or district, which said justice is hereby enjoined, and required, forthwith to proceed against any such delinquent, agreeably to the directions of this act.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That the constables of each respective township, borough or district, which shall be bounded by, or adjoining to the said river Delaware, or its branches, from the tide-water up to the station point, or northwest corner of the state of New Jersey, which have been, or may hereafter be declared a public highway, shall be, and they are hereby enjoined, and required under the penalty of fifty dollars, to 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 river, and its branches, as shall be adjoining his, or their respective township, borough or district, or bounding on the same; and if on any such view, he, or they shall find any fish-dam, basket, pound or such like device for taking fish, within the said river, or its branches, he shall, thereupon give notice to the next justice of the peace, of the township, or county so adjoining, which justice is hereby enjoined and required, to issue forth his warrant to the supervisors of the highways of each, and every township, next adjacent to the fish-dam, basket, pound or other device as aforesaid, so erected, or in which they, or any of them, shall be erected, enjoining and requiring the said supervisors, respectively forthwith to remove, or cause to be removed, every such fish-dam, basket, pound or other device aforesaid; and for that purpose to summon so many of the inhabitants of the respective townships as may be necessary, to throw down, remove

and destroy, such fish-dam, basket, pound or other device aforesaid, giving them three days previous notice; and the said supervisors shall make return of their proceedings, to the next court of quarter sessions, of the county, in which the said fish-dam, basket, pound or other device, shall have been so destroyed; and if any such supervisor, or supervisors of the highways, to whom such warrant shall be directed, shall refuse, or neglect to discharge and perform the duty hereby 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 court of quarter sessions, shall for every such offense, forfeit and pay to the overseers of the poor of the township, borough or district, where such offender, or offenders shall reside, the sum of one hundred dollars, for the use of the poor of said township, borough or district; 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 fish-dam, basket, pound or other device aforesaid, so erected, built or set up, in such manner as the said supervisor, or supervisors shall order and direct, he shall forfeit and pay the sum of four dollars, for every such offense, to the overseers of the poor of the township, borough or district, whose inhabitants are so summoned, for the use of the poor, of the same, to be recovered and levied as debts of like amount are by law recoverable: Provided always, that any person, or persons who shall be convicted under this act, before any justice of the peace, he, or they shall have a right to appeal to the court of quarter sessions, within ten days after such conviction, and be entitled to a trial by jury.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That all, and every of the offenses, which shall hereafter be committed against the true intent and meaning of this act, within the said river, or its branches as aforesaid, the justices of the court of quarter sessions, of the county, which shall so adjoin the part of the said river, or its branches, where the offence is committed, are hereby authorized, empowered and required, to hear, try and deter-

mine the same, by a jury of the county, in the same manner as other criminal offenses committed within their respective counties, are usually heard, tried and determined before them; and the constables of each respective township, borough or district, which shall so adjoin the said river Delaware, or its branches, as aforesaid, shall to the best of their knowledge, present on oath or affirmation, every such offense to the justices of the court of quarter sessions, of their respective counties, together with the name, or 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.

Section XII. (Section XII, P. L.) And whereas the river Delaware, is the division line between this commonwealth and the state of New Jersey, and without a mutual cooperation of both states, the evils complained of, can never be effectually removed: Therefore, be it enacted by the authority aforesaid, that so soon as the legislature of the state of New Jersey, shall have enacted a law containing provisions similar to those hereinbefore enacted, that then this act shall, and is hereby declared, to be in full force and effect.

Section XIII. (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That all laws, and parts of laws, heretofore passed, upon the same subject, so far as they relate to the river Delaware, or its branches, excepting the river Schuylkill, which is hereby exempted from the restrictions, and regulations of this act, which are altered or supplied by the provisions contained in this act, be, and the same are hereby repealed, so soon as this act shall go into operation.⁽¹⁾

Approved February 8, 1804. Recorded in L. B. No. 9, p. 320.

Note ⁽¹⁾. See Chapter 465. 6 Statutes at Large, p. 93, and note p. 99; Chapter 1092; 11 Statutes at Large, p. 300; Chapter 1222, 12 Statutes at Large, p. 218.