

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the fifth day of December 1785, in the Twenty Sixth Year of his said Majesty's Reign, and there continued by several Prorogations unto the Eighth Day of June, 1786, in the Twenty Sixth Year of his said Majesty's Reign, being the Second Session of the Sixth General Assembly convened in the said Province.

26 George III – Chapter 7

An Act in Addition to, and Amendment of an Act, made in the third Year of the Reign of His present Majesty intituled, "An Act to prevent Nuisances by Hedges, Wares [weirs], and other Incumbrances, obstructing the Passage of Fish in the Rivers in this Province."

Whereas by an Act made in the third year of the reign of his present Majesty, the Justices in their first General Quarter Sessions, thereafter to be held annually, in each county in this province, were empowered and directed to make certain rules and orders for the regulation of the river fisheries in their respective counties; by which Act divers penalties were inflicted on the breach or violation of such rules and orders: And whereas none of the provisions of said Act appear to extend to the construction or formation of any mill dams, or other obstruction, that have been or may be erected, put or placed, on, or across rivers in this province, should be formed or made in such manner, as not to impede the course of the fish, and also that some effectual alterations and amendments should be made in such mill dams, or other obstructions as may have been already built on, or across said river or streams, to the prejudice of the fisheries before mentioned.

I. Be it therefore enacted, by the governor, council and assembly, and by the authority of the same it is hereby enacted, that all mill dams, or other obstructions which may hereafter be made, put or placed, on or across any river or stream in this province, which is, or may in future be resorted to by fish from the sea at the time of their seasons for spawning shall be constructed or built with a waste gate, or slope, sufficient for said fish to pass up in the spring or summer months of the year, and to return down again in the fall months thereof, and which said waste gate shall be kept open, or slope kept up and in repair for the aforesaid purpose during the whole season of the fish passing up, and returning down, on the pains and penalties hereafter declared.

II. And be it further enacted by the authority aforesaid, that if any mill dam, or other obstruction shall be made, put or placed on or across any such river or stream in this province without a wast gate or slope sufficient for the purpose aforesaid, then, (on complaint thereof duly made an oath, in writing to the justices in their General Quarter Sessions whereof the owner or owners of such mill dam shall have timely notice also in writing) it shall and may be lawful for the said Justices in Sessions, and they are hereby directed, forthwith to issue their precept to the sheriff in due form of law, commanding him to impanel twelve good and lawful men in the county, where the mill dam or other obstruction so complained of, shall be, and with the said jury to repair to, and view the same: and the said sheriff, after due consideration being had by the jury touching the

matters and things charged or set forth in such complaint, and after the examination of such witnesses on oath to be by him administered, as may be produced by either party shall the inquest, so taken, to said Justices in their Sessions, and thereupon the said Justices shall, (in case the jury do find the said complaint to be well grounded and proved,) make up an order in writing on such finding, thereby directing the owner or owners of such mill dam, or other obstruction, to construct or form in the same a sufficient waste gate, or slope, within a reasonable time therein to be limited, according to the true intent and meaning of this present Act, and requiring the part convicted to pay a fine not exceeding fifty pounds, nor less than ten pounds, immediately into the hands of the clerk of the peace, and if any offender or offenders shall refuse or neglect to pay said fine, together with such reasonable charges of prosecution as may be taxed and allowed by the court, it shall and may be lawful for the said Justices in their Sessions, and they are hereby directed, to issue a warrant for levying said fine, and charges by distress and sale made of the goods and chattels of the said offender or offenders, and if no sufficient distress can be found, then, on due return made thereof by the sheriff, the said Justices in session shall, by a further warrant to be by them issued in due form of law, commit such offender or offenders, to His Majesty's goal within the county, where the offence shall have been committed, there to remain for the space of three months, or until he shall have paid the said fine and charges.

III. And be it further enacted by the authority aforesaid, that if the party so convicted, shall not within the time limited in the aforesaid order of the General Quarter Sessions, make a sufficient waste gate, or slope in exact conformity thereto, then it shall and may be lawful for three or more Justices within the county, where the said offence shall have been committed (either on their own view, or on complaint being made to them of said neglect) to hold a special sessions of the peace for the purpose of proceeding further in the premises, and they are hereby further impowered and directed, after the aforesaid neglect of the owner or owners of said mill dam or other obstruction, shall be made to appear to them, to issue a precept to the sheriff of that county, requiring him to take with him sufficient aid to the place where such mill dam, or other obstruction, shall have been made, for the purpose of prostrating and wholly destroying the same and all persons whose aid shall be required on that occasion by the sheriff, are hereby commanded to be assisting to him for the purpose aforesaid, and if any action shall be commenced or brought against the sheriff or his aid, for any thing done by him or them, in obedience to the commands of said precept, he or they may plead the general issue, and give the special matter in evidence to the jury.

IV. And be it further enacted by the authority aforesaid, that the owners or proprietors of all mill dams or other obstructions already made on or across any river or stream in this province, to which fish from the sea are or have been accustomed to resort, shall on or before the twentieth day of September in the present year of our Lord one thousand seven hundred and eighty six, make a waste gate or slope in the same for the purposes herein before declared, and if any such owner or owners shall refuse or neglect so to do, he or they so refusing or neglecting, shall be subject to be proceeded against in the same manner, and be liable to the same distress, penalty and imprisonment, as such person or persons are subject liable to by this Act, who shall have violated, or who shall have neglected or refused

to obey the order of the said General Quarter Sessions in cases of mill dams, or other obstructions to be made in future on rivers or streams within this province; and in all cases where the jury shall find the complaint against any mill dam, or other obstruction to be groundless, he or they so complaining, shall by the said General Quarter Sessions, be adjudged to pay the owner or proprietor the charges of said inquest, to be taxed and allowed by the court; and all the fines which shall or may be levied and paid by virtue of this Act, are hereby directed to be paid and applied to the purposes of making public roads within the county, where the offence shall have been committed.

V. And be it further enacted by the authority aforesaid, that all and every of His Majesty's subjects, owning or lawfully possessing lands by or thorough or over which any river or stream in this province shall or may run, shall be deemed to have the sole and exclusive right of taking fish therein, while and so long as the fish shall or may remain in such parts of said rivers or streams; and no person or persons whatsoever shall or may lawfully take fish while being or remaining in rivers running by, through or over such lands except the owner or owners, possessor or possessors thereof, or persons by virtue of their leave or licence; any usage, law, or custom to the contrary in any wise notwithstanding.

VI. Provided nevertheless, and it is hereby declared and enacted, that this Act or any thing therein contained, shall not extend or be construed to extend to the depriving of any of His Majesty's subjects within this province of the liberty of taking fish, in any such place or places as the Justices of the said General Quarter Sessions shall or may from time to time appoint for that purpose; and the said Justices in every county which is now, or may be in future established in this province, are hereby empowered and directed at their first General Quarter Session to be there annually holden to appoint such place or places on the several rivers or streams therein for the inhabitants in general to resort to, for the purpose of taking fish, as have heretofore been fixed on, or as shall appear to them just and necessary, and which shall be attended with the least loss or inconvenience to the owners or proprietors of the soil on such rivers, and provided also, that nothing in this Act shall extend or be construed to extend to any kind or species of fish from the sea except such as are particularly enumerated in the herein before recited Act.

VII. "And whereas there is no Act or Law of this Province distinguishing river therein as are fit and useful for the conveying down of timber, fire wood, saw mill logs, and boards, from such as are not; and whereas it is highly necessary that the same should be known and distinguished in order that persons desirous of making, or that persons who may already have made, any mill dam or other obstructions on or across certain rivers or streams should be apprised of the necessity of building or enlarging the waste gates or apertures thereof, in such manner as to admit a passage for said timber, fire wood, saw mill logs and boards through the same."

IX. Be it therefore enacted by the authority aforesaid, that it shall and may be lawful for the Justices in their first General Quarter Sessions to be holden in each county in this province, and there are hereby directed, either by their own view or knowledge or by the view or

knowledge of three persons of their appointment to distinguish such rivers or streams in their respective counties, as shall appear to them to be of public utility in respect to the furnishing or supplying of said timber, fire wood, saw mill logs and boards; and thereupon, the said Justices shall make an order in writing therein requiring all persons who may in future make any mill dam, or other obstruction on or across any such rivers or streams to form in the same a waste gate or other aperture sufficient not only for the fish to pass through but also for a convenient passage of said timber, fire wood or saw mill logs and boards; a copy of which order the said Justices shall cause to be duly published by fixing up the same at several of the most public or frequented places in the said counties respectively, and all persons making mill dams or other obstructions, on or across rivers or streams in this province, so distinguished, contrary to the true intent and meaning of this Act, shall be subject to be proceeded against in the same manner, and be liable to the same distress, penalty and imprisonment, as persons are subject and liable to by this Act, in the cases herein before expressed and declared, and all such mill dams or cases herein before expressed and declared, and all such mill dams or other obstructions, as shall appear not to be so construed or formed as to admit a passage, as well for timber, fire wood, saw mill logs and boards, as for the several kinds of fish herein before enumerated, shall be subject to be prostrated and destroyed by virtue of such process; and in such manner as is hereby directed in cases in mill dams, or other obstructions on or across rivers or streams, which are not so distinguished by the said Justices in session.

X. Provided nevertheless, and it is hereby enacted, that none of the penalties or forfeitures inflicted by this Act shall extend, or be construed to extend, or applied to such person or persons, who may heretofore have erected a mill dam on or across any river or stream in this province with the general consent and approbation of the people, living or inhabiting near the same, and against the erecting of which no complaint shall appear to have been made to any court having cognizance thereof, but in all cases where a waste gate or other aperture shall by the said Justices in session be judged necessary to be made in such mill dams for a passage to the said fish, timber, fire wood, saw mill logs and boards, the same shall be done under the inspection and direction of one or more persons, whom the said Justices shall, or may appoint for that purpose with as little damage or injury as possible to the owner or owners of said mill dam, and at the expence of the town, wherein the same shall happen to be.

“And whereas it is also highly necessary for the preservation of several kinds or species of fish, whose course has been greatly obstructed or diverted of late in divers parts of this province by the injudicious placing of seines and nets in certain havens, creeks and harbours therein, to the manifest injury of Individuals, and of the community at large; for remedy where.”

XI. Be it further enacted by the authority aforesaid, that it shall and may be lawful for three or more Justices of the several counties throughout the province, and they are hereby directed to hold a special session in their respective counties or district, as soon as may be, for the purpose of regulating the manner of placing nets and seines in all such havens, rivers,

creeks and harbours therein, as they shall or may judge necessary to prevent the aforesaid evil, and under such forfeitures and penalties, as are expressed in the herein before recited Act, made in the third year of His Majesty's reign. And all persons violating such orders, rules or regulations, as the said justices may from time to time make in their respective counties, touching the premises, shall be subject or liable to, who violate or disobey the several rules, orders or regulations, that the Justices in their said first General Quarter Sessions to be holden annually, are empowered to make by virtue of the said recited Act, and this Act is to continue and be in force from the publication thereof, until the end of the year of our Lord one thousand seven hundred and eighty seven.