

C A P . XXXVI.

An Act to Regulate the Fisheries in the District of Gaspé.

[18th September, 1841.]

WHEREAS the Fisheries in the Inferior District of Gaspé are of great importance to the Trade of this Province; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, in the Session held in the third and fourth years of Her Majesty's Reign, and intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*; and it is hereby enacted, by the authority of the same, that all and every Her Majesty's subjects shall peaceably have, use and enjoy the freedom of taking bait, and of fishing in any river, creek, harbor, or road, with liberty to go on shore on any part within the Inferior District of Gaspé, between Cape Chat, on the South side of the River Saint Lawrence, and the first rapid of the River Ristigouche within the said District, and on the Island of Bonaventure, opposite Percé, for the purpose of salting, curing and drying fish there, to cut wood for making and repairing stages, flakes, hurdles, cook-rooms and other purposes necessary for preparing their fish for exportation, or that may be useful to their fishing trade, without hindrance, interruption, denial, or molestation from any person or persons, whomsoever: Provided such river, creek, harbour, or road, or the land upon which such wood may be cut doth not lie within the bounds of any private property by grant from Her Majesty, or Her Royal Predecessors, or other title proceeding from such grant by Her Majesty, or Her Royal predecessors or by grant made prior to the year one thousand seven hundred and sixty, or held under and by virtue of any location certificate, or title derived therefrom, or under and by virtue of any title derived under any Act of the Legislature of the late Province of Lower Canada or of this Province.

Preamble.

Right to fish
& land on the
shores of Gas-
pé.

II. And be it further enacted by the authority aforesaid, that the Master or Commander of any Vessel fitted out from the United Kingdom of Great Britain and Ireland, or the Dominions thereunto belonging, as well as all other subjects of Her Majesty, may take possession of so much of the unoccupied beach within the aforesaid Inferior District of Gaspé, as may be necessary for curing his fish, and preparing it for exportation, and to retain and enjoy the same so long as he shall not leave it unoccupied for the space of twelve calendar months, in which case it shall be lawful for any other person or persons to take possession thereof in part or the whole, for the same purposes and on the same condition: Provided that

Occupation
of the Beach.

Proviso.

that such beach be not private property by grant from Her Majesty, or Her Royal Predecessors, or other title proceeding therefrom; or by grant prior to the year one thousand seven hundred and sixty, or held under and by virtue of any location certificate, or title derived therefrom; or in virtue of any title derived under any Act of the Legislature of the late Province of Lower Canada, or of this Province: Provided also, that such new occupier shall, when thereunto required by the preceding possessor, or his lawful attorney, the demand being made within one year after the possession taken, pay him for such parts of the flakes and stages, as such new occupier shall take possession of; And provided further, that the said preceding possessor, not having been paid, as aforesaid, may remove any building or other improvement erected or made by him on the unoccupied beach, as aforesaid, so that such removal be not made during, and before, the close of the fishing season in which the new occupier shall have taken possession.;

Proviso.

Persons fishing to do no injury:

III. And be it further enacted by the authority aforesaid, that no ballast, or any thing else injurious or hurtful to any of the rivers, harbours, or roads within the said Inferior District of Gaspé, shall be thrown out of any vessel, or discharged into any stream, basin, or road in the said Inferior District, but that the same shall be carried on shore and deposited where no public or private injury may be sustained thereby, nor shall any person or persons throw any fish, guts, offals, or gurry overboard within the distance of six leagues from the shore and Islands of the Inferior District of Gaspé, aforesaid; nor on any fishing bank, under a penalty not exceeding twenty pounds, current money of this Province.

And not to obstruct other fishing.

IV. And be it further enacted by the authority aforesaid, that no person or persons shall cast anchor near the shore, or do any thing within the aforesaid limits so as wilfully to annoy or obstruct the hauling of seines, or to obstruct or prevent the setting of nets, nor shall any nets be wilfully set or placed so as to prevent or obstruct the hauling of seines under a penalty not exceeding five pounds, current money of this Province, for every such offence, exclusive of such damages as may be recovered at law by the proprietor or proprietors of the seines or nets which may be thereby injured or destroyed: Provided always, that no such nets or seines, as aforesaid, shall be set or used so as to incommode or obstruct the navigation or anchorage in any harbour, roadstead, cove, or place necessary for the common purposes of navigation.

V. And be it further enacted by the authority aforesaid, that all pickets, building timber, or other timber of any description whatsoever, placed or used in the several rivers in the Inferior District of Gaspé, or in the sea along the beach in any part of the said Inferior District, whether for the use of fisheries or for the purpose of building, repairing or launching any vessel or vessels, barge or boats, or for

for any other purpose whatsoever, shall be removed and carried by the person or persons who shall have so placed them, or caused the same to be so placed, to some part of the beach above high water mark, within the space of eight days from the day on which such person or persons shall have ceased to use said pickets, building timber, or other timber, of whatever description, under a penalty not exceeding five pounds, currency, of this Province, for every offence against this Section.

VI. And be it further enacted by the authority aforesaid, that it shall not be lawful under any pretext whatsoever, during the Fishing season in the said Inferior District of Gaspé, that is to say, between the first day of May and the first day of November, inclusively, to seize or attach any boat or boats, tackle, nets, rigging, or implements of Fishing of any kind whatsoever, or any provisions whatever belonging to any fisherman in the said Inferior District, and being necessary for his subsistence, or to enable him to follow his customary occupation in Fishing for the cod, mackerel, herring, salmon, whale, seal fisheries, or any other kind of fish; and every person herein offending shall be liable to a penalty of not more than ten pounds, currency, nor less than two pounds ten shillings, currency, to be recovered by the person who shall sue for the same, without prejudice to such damages as the party injured may lawfully demand and prove.

Fishing implements not seizable during fishing season.

VII. And be it further enacted by the authority aforesaid, that any person hired to assist in any Fishery who shall leave the service of his employer without just cause before the end of the term for which he shall have been so hired, or any person who shall hire or attempt to hire any person already hired, as aforesaid, knowing him to be so hired, before the term of his engagement shall have expired may, on complaint and legal proof thereof, made by such employer, before one Justice of the Peace, at a Special Session, be condemned to pay a fine not exceeding ten pounds, currency, and in default of payment may be imprisoned in the Common Gaol of the said Inferior District of Gaspé, for a term not exceeding one month.

Persons hired to assist quitting before the end of their engagement.

VIII. And be it further enacted by the authority aforesaid, that every person so hired to assist in any Fishing shall, for the payment of his wages or salary, have a privilege in preference to every other creditor on the produce of the Fishery belonging to the merchant, or other person who shall have so hired him, and that all proceedings had under or in execution of this clause shall be had before the Provincial Court of the Inferior District of Gaspé, or any other Court of competent Jurisdiction.

Wages or salary constitute a privileged creditor.

IX. And be it further enacted by the authority aforesaid, that it shall be lawful for

Grand Jury to make rules and regulations for the Fisheries.

for the several Grand Juries for the said Inferior District of Gaspé at their General Sessions of the Peace, upon the recommendation and with the concurrence of the Justices of the Peace attending the Session, or a majority of them, to make, for the temporary and local regulation of the Fisheries in the said Inferior District, such further rules and regulations as to them shall appear most expedient for the general welfare and advantage of the said Fisheries, not being contrary to the intent and meaning of this Act.

Such Rules, &c., to be sanctioned by the Provincial Court, notified in Gazette, &c.

X. Provided always, and be it further enacted by the authority aforesaid, that no rule or regulation that may be so, as aforesaid, made, shall have force or effect until the same shall have been approved and sanctioned by the Provincial Court in and for the Inferior District of Gaspé, or of the fourth division of the Court of Common Pleas, whenever the said Court shall be in operation, duly notified in the Quebec Gazette, and by an advertisement in the English and French languages, publicly posted up by the Clerk of the Peace in and for the said Inferior District, whose duty it shall be to attend to the same and see, or cause, such advertisement to be duly posted up as hereby directed, with the least possible delay at the Church doors of each and every Church, Chapel, or other place of Divine Service, in the said Inferior District of Gaspé, or at the most public places of each and every settlement in the said Inferior District where the Fisheries are carried on, in case there should be no such Church, Chapel or other place of Divine Service, as aforesaid: And provided also, that no fine to be imposed by such rules and regulations shall in any case exceed the sum of five pounds, currency, and that no rule or regulation that may at any time be made under and in virtue of this Act shall have force and effect after the expiration of this Act; and a copy of the rules and regulations that may, as aforesaid, be made and confirmed under and in virtue of this Act, shall, at the ensuing Session of the Legislature, be laid before the three Branches of the same, in the English and French languages, by the Prothonotaries of the aforesaid Provincial Court, or of the fourth division of the Court of Common Pleas, aforesaid, within fifteen days after the opening of the Session.

Main channels and water courses to be always open & unobstructed.

XI. And whereas it is necessary for the preservation of the salmon fisheries, that the main channels or water courses of the several rivers in the said Inferior District of Gaspé, should at all times remain open and unobstructed; Be it therefore further enacted by the authority aforesaid, that all channels, or main water courses of the several rivers in the said District shall at all times remain free and open, nor shall any bar-nets or swing nets, or other obstructions of any kind, for the purpose of catching salmon, be placed in any such channel or main water course, neither by fixture nor by drifting, and that any person herein offending shall for every such offence incur a penalty not exceeding five pounds, and the forfeiture of the net or nets which shall have been placed in contravention to this Act,

Act, in any such channel or main water course, or with which he shall have been found drifting, as aforesaid ; and that it shall be lawful for any Justice of the Peace of the said Inferior District to convict, upon view, any person or persons so found offending contrary to the meaning and intent of this clause.

XII. And be it further enacted by the authority aforesaid, that six months after the passing of this Act no pickled mackerel, cod, or pickled or smoked herring, shall be shipped for exportation, nor exported from the said Inferior District to any place out of the said Province, but in barrels containing twenty eight gallons, each, or in half-barrels containing fourteen gallons each, wine measure.

Pickled fish to be exported in barrels of a certain size.

XIII. And be it further enacted by the authority aforesaid, that the fines, penalties and forfeitures by this Act imposed, that may be incurred in the said Inferior District of Gaspé, with regard to which no other provision is hereby made, exceeding in amount the sum of five pounds, current money, aforesaid, shall be recoverable by suit before the Provincial Court, in and for the said Inferior District, or before the said fourth division of the Court of Common Pleas, or before the Court of General Sessions of the Peace in and for the said Inferior District, at the ensuing term of either of the said Courts, which may be held nearest to the place where the offence may have been committed, and not afterwards ; or before any three Justices of the Peace for the said District.

Fines, &c., how recoverable.

XIV. And be it further enacted by the authority aforesaid, that such fines, penalties, and forfeitures imposed by this Act, or that may hereafter be imposed in virtue of and under the authority of the same, and that may be incurred in the said Inferior District of Gaspé, and with regard to which no other provision is hereby made, not exceeding five pounds, current money, aforesaid, may be recoverable by suit in a summary manner before at least two Justices of the Peace of the said Inferior District, at any time within three months next after the commission of the offence, and not afterwards.

Fines, &c., recoverable only within 3 months.

XV. And be it further enacted by the authority aforesaid, that the testimony on oath of two credible witnesses shall be sufficient to convict any person offending against this Act, and that the aforesaid Provincial Court, or the fourth division of the Court of Common Pleas, aforesaid, and the Court of General Sessions of the Peace and Justices of the Peace shall, respectively, have power to issue Subpœnas, and compel the attendance of witnesses, whenever the same may be necessary ; who are hereby required and commanded to obey such subpœnas under the pains and penalties of the Law in case of disobedience ; and the subpœnas which it shall be necessary to issue to compel the attendance of witnesses may be in the form prescribed in the Appendix of this Act, letter (A.)

Testimony of two credible witnesses on oath sufficient to procure a conviction under this Act.

Fines leviable
by distress.

XVI. And be it further enacted by the authority aforesaid, that the fines, penalties, and forfeitures by this Act imposed, or that may hereafter be imposed, in virtue of and under the authority of the same, and that may be incurred in the said Inferior District of Gaspé, shall, in case of non-payment, be levied by distress and sale of the goods and effects of the offender, in virtue of a warrant in the form prescribed in the Appendix to this Act letter (B.) under the hand of the Provincial Judge for the said Inferior District, or of the presiding Judge of the fourth division of the Court of Common Pleas, aforesaid, or of the Justices of the Peace, or of the senior Justice of the Court of General Sessions of the Peace, before whom or which the conviction may have taken place, directed to any Constable or Peace Officer, and the overplus of money raised, after deducting the penalty and costs, shall be returned to the offender.

Offender may
be imprisoned
for non-pay-
ment of fine.

XVII. And be it further enacted by the authority aforesaid, that in all cases not otherwise provided for, if the offender convicted shall not have sufficient goods or effects whereon to levy the penalty and costs, he shall, if the penalty in which he may have been condemned, exceed ten pounds, currency, be liable to be, and may be, committed to prison for a term not exceeding thirty days, and in cases where the penalty shall not exceed that sum for a term not exceeding fifteen days.

Forms of
proceedings.

XVIII. And be it further enacted by the authority aforesaid, that the information or plaint, and the summons pursuant to the same, which may at any time be made to, and issued by any Justice or Justices of the Peace against any person offending against this Act in the said Inferior District of Gaspé, shall be in the form prescribed in the Appendix to this Act, letters (C. and D.) and when the offence committed may be above the jurisdiction of two Justices of the Peace, as by this Act provided, and cognizable in the aforesaid Provincial Court, Court of Common Pleas, or Court of General Session of the Peace, such summons shall be according to the course and practice of the said Courts, respectively.

Interval al-
lowed between
service and re-
turn of sum-
mons.

XIX. And be it further enacted by the authority aforesaid, that between the service and return of every such summons, as aforesaid, there shall at least be three intermediate days for the first five leagues, and one additional day for every five leagues there may be between the place of residence of the Justice or Justices of the Peace, or place where the Court may be held, and the usual residence or domicile of the defendant.

In the case
of non-resi-
dents summons
may be made
immediately re-
turnable.

XX. Provided always, and be it further enacted by the authority aforesaid, that in case where the defendant may not be a resident in the said Inferior District, and circumstances may render it expedient to enforce, without delay, the penalties by this Act imposed, it shall be lawful for any Justice or Justices of the Peace before whom the plaint or information may have been lodged to issue a summons,
returnabl e

returnable before him or them immediately after service thereof, or within such reasonable time as he shall, by the said summons, appoint; and, if on the return of such summons, or at the time thereby appointed, the defendant shall not appear to answer thereto, the Justice or Justices of the Peace, who may have issued such summons, on receiving satisfactory proof of the service thereof upon the defendant, shall proceed, in a summary manner, to receive evidence of and concerning the offence alleged against the defendant, and if such evidence be sufficient to warrant a conviction, such Justice or Justices of the Peace shall forthwith, after entry of the conviction on a register to be by him or the senior of them kept for the purpose, be authorized and empowered to enforce the same according to the provisions of this Act.

XXI. Provided always, and be it further enacted by the authority aforesaid that in cases circumstanced as last above mentioned, exceeding the jurisdiction of two Justices of the Peace, the Provincial Judge of the said Inferior District, or the Judge of the said fourth division of the Court of Common Pleas, shall be authorized and he is hereby required and empowered to proceed, as last above mentioned and directed, to take cognizance of, hear, try, and determine, in a summary manner, such offences against this Act as are by the same made cognizable by him, and upon conviction, as aforesaid, the penalties by this Act imposed to enforce and levy according to the provisions thereof.

Provincial
Judge in cer-
tain cases to
try offences.

XXII. And be it further enacted by the authority aforesaid, that every conviction that may take place in the said Inferior District of Gaspé, under and in virtue of this Act, shall be drawn up in the form prescribed in the Schedule to this Act, letter (E.)

Form of con-
viction.

XXIII. And be it further enacted by the authority aforesaid, that for each and every summons, including the information or plaint that may at any time issue in virtue of this Act, no greater sum than one shilling and sixpence, current money, aforesaid, shall be demanded, charged, or paid, and for each and every subpoena that may issue to compel the attendance of any necessary witness, no greater sum than one shilling, current money, aforesaid, including the copy that may be served upon such witness, shall be demanded, charged or paid; and for each and every conviction, including the entry of the same on the register as aforesaid, no greater sum than one shilling and three pence, current money, aforesaid, shall be demanded, charged or paid; and for a warrant of distress no greater sum than two shillings, current money, aforesaid, shall be demanded, charged or paid; nor shall any Justice of the Peace, Clerk or Prothonotary of the said Provincial Court, Court of Common Pleas, or Court of General Sessions of the Peace, claim, exact or receive, under any cause or pretext whatever, any greater recompense fee, with respect

Fees payable
for Summons,
Subpoena, &c.

respect to any such summons, subpœna or copy of subpœna, conviction and entry thereof, as aforesaid, or warrant of distress, or for any service, or extra service in relation with the same, than is hereby above allowed and specially authorized.

Fees to Officers of the Court.

XXIV. And be it further enacted by the authority aforesaid, that for the service made by any Constable or Peace Officer in and about any prosecution, under or in virtue of this Act, no greater recompense or remuneration shall be allowed than is herein specified, that is to say, for the service and certificate thereof of every summons one shilling, current money, aforesaid; for the service and certificate thereof of every copy of a subpœna, six pence, current money, aforesaid; for levying any penalty not exceeding five pounds, currency, pursuant to a warrant of distress, two shillings and sixpence, current money, aforesaid; and for any penalty exceeding five pounds, currency, a sum to be specified in the warrant proportionate to the labour, time, and trouble of such Constable or Peace Officer, as the Justices of the Peace, or Provincial Judge, or Judge of the Court of Common Pleas may deem a suitable recompense, not exceeding in the whole seven shillings and six pence, currency; and these allowances shall be exclusive of mileage at the rate of one shilling, currency, for each and every league which such Constable or Peace Officer must, in the due execution of such warrant of distress, or of any other duty to be by him performed under this Act, necessarily and unavoidably travel from his home or domicile (distances in returning from the place of service, seizure or sale not counted) and which mileage shall be in lieu of all travelling expenses.

Limitation of process against offenders.

XXV. And be it further enacted by the authority aforesaid, that all fines, penalties and forfeitures incurred by reason of any thing done against this Act, shall be sued for within six months next after the commission of the offence, and not afterwards.

Duration of Act to 1st May, 1844.

XXVI. And be it further enacted by the authority aforesaid, that this Act shall be and remain in force until the first day of May, one thousand eight hundred and forty four, and from thence until the end of the then ensuing Session of the Legislature, and no longer.

APPENDIX A.

Province of Canada, }
Inferior District of Gaspé. } Victoria, by the Grace of God, of the United Kingdom
of Great Britain and Ireland, Queen, Defender of
the Faith, etc.

To

Greeting :

We

We command you and each of you, that all excuses being laid aside, you and each of you be in your proper persons before A. B. Esquire, our Justice (or) one of our Justices of the Peace for the Inferior District of Gaspé, at
 on the _____ day of _____ instant, (or next, as the case may be,) by _____ o'clock, in the forenoon of the same day, to testify all and singular, what you or any of you know concerning a certain cause or plaint, there to be tried and determined by and before our aforesaid Justice (or Justices) at the suit of _____ against _____ for an alleged disobedience to an Act of the Legislature of this Province passed in the _____ year of our Reign, intituled, *An Act to regulate the Fisheries in the District of Gaspé*, and this you nor any of you are in no wise to omit under penalty upon each of you of currency.

Form of Subpoena.

Witness our aforesaid Justice (or Justices) of the Peace, at this _____ day of _____ 18_____
 (Signature of the Justice or Justices of the Peace.)

B.

Province of Canada, } Victoria, by the Grace of God, of the United Kingdom
 Inferior District of Gaspé. } of Great Britain and Ireland, Queen, Defender of the Faith, etc.

To _____ and to all and every the Constables and Peace Officers, in and for the Inferior District of Gaspé.

Form of Distress Warrant.

Greeting :

We command you, that you cause forthwith by distress and sale of the goods, chattels and moveable effects of _____ to be levied according to Law the sum of _____ with _____ costs being the penalty in which he the said _____ hath been convicted before me (or us) (or this Court) on the _____ day of _____ one thousand eight hundred and _____ by reason of disobedience of a certain Act of the Legislature of this Province passed in the _____ year of our Reign, intituled, *An Act to regulate the Fisheries in the District of Gaspé* ; and which said penalty and costs remain unpaid.

Witness F. G. (and H. J.) Esquire, (or Esquires,) one (or two) of our Justices of the Peace for the said Inferior District, at _____ this _____ day of _____ one thousand eight hundred and _____ and of our Reign

(Signature of the Justice or Justices of the Peace.)

C.

C.

Province of Canada, }
Inferior District of Gaspé. }

Form of In-
formation of
Plaint.

The information and complaint of C. D. of the _____ in the County
and Inferior District of Gaspé who, as well for our Sovereign Lady, the Queen, as
for himself in this behalf prosecutes, made before _____ of Her Ma-
jesty's Justices of the Peace, for the Inferior District of Gaspé, (wherein the offence
hereinafter mentioned was committed) the _____ day of

_____ in the year of our Lord one thousand eight hundred and
who, as well for our Sovereign Lady, the Queen, as for
the said Justice (or Justices) to under-
himself, giveth
stand and be informed.

That at _____ on the _____ day
in the year

(Here state the particular act which constitutes the offence complained of and
the day upon which the same was committed, in order that the defendant may be
fully and precisely acquainted of the charge against him, as to time, place and
circumstances) against the form of the Statute in such case made and provided,
whereby and by force of the said Statute the said A. B. hath incurred a penalty
of _____ (if the offender be liable to be imprisoned state it so.)

Wherefore the said C. D. as well for our said Lady the Queen, as for himself,
prayeth the adjudication of the said Justice in the premises, and the said A. B. may
be adjudged to forfeit the said penalty (and to be imprisoned, etc. if the offender
be liable to imprisonment) and that he the said C. D. may have one half of the
said forfeiture according to the form of the Statute, aforesaid, and the said A. B.
may be summoned to make his defence hereto before the said Justice or Justices
with costs.

Dated at _____ this _____ day of _____ 184

D.

Province of Canada, }
Inferior District of Gaspé. }

Form of
Summons.

To A. B. of _____ in the Inferior District of Gaspé.
F. G. (and H. J. if two be required) one (or two) of Her Majesty's Justices of the
Peace in and for the said Inferior District of Gaspé, hereby gives you notice
that C. D. of _____ in the said inferior District of Gaspé hath
exhibited

exhibited an information against you for a penalty of which hath been incurred by you for having heretofore to wit :

(Here state the offence as to time, place, and circumstances as mentioned in the preceding form of the information) against the form of the Statute in such case made and provided.

You are hereby required personally to be and appear before at the house of on the day of one thousand eight hundred and at of the clock of the forenoon to answer and make defence to the said information, so exhibited against you, but if you neglect so to do shall proceed as if you were personally present.

Given under hand at in the said Inferior District of Gaspé, on the day of in the year of our Lord one thousand eight hundred and

Dated at this day of 184

(Signature of the Justice or Justices.)

E.

Province of Canada, } Inferior District of Gaspé. }

Be it remembered that on this day of in the year of our Lord one thousand eight hundred and A. B. is convicted before me (or us) one (or two) of Her Majesty's Justices of the Peace for the Inferior District of Gaspé (or before this Court as the case may be,) for (here set forth the offence) and I do (or we do or this Court doth) accordingly adjudge him in virtue of an Act passed by the Legislature of this Province in the year of Her Majesty's Reign, intituled An Act to regulate the Fisheries in the District of Gaspé, to pay and forfeit by reason of the offence aforesaid, whereof he the said A. B. stands convicted, the sum of (and if the offence be punished by imprisonment) and that he the said A. B. be committed to the Common Gaol for and during

Form of conviction.

Given under my hand and seal (or our hands and seals or under the order of this Court) the day and year aforesaid.

(Signature as the case may be.)

CAP.

K k