

CAP. XVI.

An Act to amend chapter 39 of the Consolidated Statutes for Lower Canada respecting Letters-Patent issued before the 2nd of August 1851.

[Assented to 12th July, 1888.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows;

C. S. L. C., c. 39, ss. 6 and 7, replaced.

1. Sections 6 and 7 of chapter 39 of the Consolidated Statutes for Lower Canada, are repealed and replaced by the following.

Provincial Registrar not to have custody of originals of certain letters-patent.

“6. After the passing of this act, the Registrar of the Province of Quebec shall no longer be charged with the custody of the originals of the letters-patent whereby any Crown Lands, situated in Lower Canada at the time of their granting, were granted before the second day of August, 1851, and, upon application for that purpose and the payment of the fees which a copy would cost, he may hand over such originals to the proprietors of the lands which these letters-patent purport to grant, after having ascertained that they have been duly registered in the office of the Registrar at the time of their issue, in conformity with the provisions of the law in force at the time of of their registration.

Such originals to be handed over to owners of lands on payment of certain fee, &c.

Validity of copies of registered letters-patent.

“7. All copies of letters-patent, so registered before the second day of August eighteen hundred and fifty-one, certified as such by the Registrar of the Province of Quebec or his deputy, shall be deemed authentic and shall be evidence of such letters-patent and of the contents thereof in all courts and for all lawful purposes.”

Coming into force.

2. This act shall come into force on the day of its sanction.

CAP. XVII.

An Act to amend and consolidate the laws relating to fisheries.

[Assented to 12th July, 1888.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

FISHING LEASES.

Reserve for fishing purposes to be made on sales and grants.

1. A reserve of at least three chains in depth of the lands bordering on the rivers and lakes in the Province shall be made at the time of the sale or gratuitous grant of the lands belonging to the Crown, for fishing purposes.

2. These lands, as well as those already reserved for that purpose, may be leased, for a period not exceeding ten consecutive years, to the highest bidder when relating to salmon river, after at least one month's notice in the Quebec Official Gazette, and further published in such other manner as the Commissioner of Crown Lands deems most advantageous.

Lease of reserves after month's notice in Quebec Official Gazette.

3. The Commissioner may, however, in the interval between two public sales, grant, without a public competition leases for lands bordering on "salmon rivers" when such lands, having once been put up to public competition, have had no purchasers or, when during such interval, the lease of any of them has been cancelled or resiliated, but then such leases shall not be granted at a rent less than the upset price in the first case, or the rate of the first lease, in the second case.

Between two public sales, Commissioner may, without public competition, grant leases on salmon rivers in certain cases.

4. Powers similar to those mentioned in the preceding paragraph are also given to the Commissioner of Crown Lands, in cases in which "salmon rivers" may be leased in the interval between two public sales, and it is evident that the cost of the required notices would occasion expenses out of proportion to the profits to be received.

Commissioner may likewise grant such leases, when cost of notices out of proportion to profits to be received.

5. The Lieutenant-Governor in Council may, when the public interest requires it, authorize the leasing by private agreement of lands, reserved for fishing purposes, bordering on lakes and rivers.

Private lease of land on lakes and rivers.

2. Whenever any lease of lands previously under lease to any person is adjudged to another person, the new lessee shall be bound to indemnify the previous lessee for the real value of the buildings or useful improvements existing on the leased land, and which must not surpass in value the improvements which he would have to make for his own use during the existence of his lease.

New lessee of lands previously adjudged to another, to pay for improvements.

This value, in case of difference of opinion, is definitely fixed and determined by the Commissioner of Crown Lands, and the new lessee shall not be entitled to receive his lease until he shall have furnished proof that he has so indemnified the previous lessee, provided that the latter has sent in his claim within a delay of one month.

Value to be determined by Commissioner, and to be paid before issue of lease. Proviso.

If, in consequence of any incorrectness in the surveys, or other errors or causes whatsoever, it be discovered that a lease includes lands already comprised in a lease of a prior date, the lease last granted is null, in so far as it concerns such lands; and the holder or possessor of such lease, thus annulled in part, shall have no right to claim an indemnity or compensation for the fact that his lease has become partially null.

Nullity of leases owing error in surveys, &c.

Rights of lessee.

3. The lease confers upon the lessee, for the time therein determined, the right to take and retain exclusive possession of the lands therein described, subject to the regulations and restrictions which may be established, and gives him the right to fish in the waters adjacent to such lands in conformity with the provincial and federal regulations then in force, and also to prosecute in his own name any illegal possessor or offender, and to recover damages, if such exist, but not against any person who may pass over such lands or the adjacent waters, or who engages in any occupation not inconsistent with the provisions of the present act, nor against the holder of a license to cut timber, who has at all times, in accordance with his license, the right to cut and remove trees, lumber and saw logs and other timber, within the limits of his license, and, during the term thereof, it shall be lawful for him to make use of any floatable river or water course or of any lake, pond or other body of water and the banks thereof for the conveyance of all kinds of lumber, and for the passage of all boats, ferries and canoes required therefor, subject to the charge of repairing all damages resulting from the exercise of such right.

Rights of passage reserved.

The general right of passage to and from the water shall also be reserved in leases, in favor of the occupants, if any, under title from the Crown, of lands immediately in rear of those leased.

Penalties upon persons fishing, &c., upon lands so leased.

4. If any person, without the permission of the lessee or his representative, fishes, or employs any other person to fish, or assists in fishing in waters in front of any such leased land, he shall not acquire any right to the fish so caught, which may be forfeited and become the absolute property of the lessee, and such person shall therefor be liable to a fine or the imprisonment mentioned in article 18 of this act.

Forfeiture of fish.

Fine and imprisonment.

Reserve for residents in new townships to fish for subsistence of family.

The Lieutenant-Governor in Council shall, in future, reserve in each new township one or more lakes or rivers in which the residents of such township may freely fish for their subsistence and that of their family only, by complying with the laws in force on the subject, and such reserve shall continue to exist until the lands bordering on such lakes or rivers shall be sold.

Lease of fishing rights to be made in name of one person or of club.

5. The leases of lands conferring fishing rights are made in the name of one person or of a club incorporated under the Act 48 Victoria, chapter 12, respecting the protection of fish and game.

Lessee to establish guardianship.

6. Each lessee shall be bound to establish and maintain, in the territory covered by his lease, an efficient

guardianship, to secure a complete protection of the fishery rights belonging to it.

He shall further be answerable for damages caused by himself or the people under his control, to the timber growing on said territory, or on the adjoining territory, either from waste or from want of sufficient precaution in lighting, watching over or putting out fires, and it shall be incumbent on him in case of damage done by fire, to prove that all such precautions have been taken.

Lessee answerable for damages to timber by waste, &c., fire, &c., unless he prove that all due precautions have been taken.

7. The lessee shall be obliged to transmit to the Department of Crown Lands, as soon as possible after the close of each angling season, a statement of the number and weight of fish caught in the waters affected by such lease.

Lessee to transmit each season statement of fish caught.

8. The rent shall be paid in advance, and any lessee who fails thus to pay in advance, shall not have a right to the renewal of his lease.

Rent payable in advance.

The lease of any person, convicted of an infringement of this act or of any regulation under it, may be annulled by the Commissioner.

Lease annulled for infringements.

9. Excessive or wasteful fishing or fishing during prohibited seasons shall also involve the cancellation of the lease covering the waters in which it has taken place with the knowledge or participation of the lessee.

Excessive or illegal fishing incurs cancellation of lease.

The lessee, who has been so guilty, shall not obtain another lease or license to fish within the limits of the Province, during the five years which follow such cancellation of lease.

Lessee so found guilty deprived of right to obtain another lease.

10. No lessee or his representative shall have the right to sublet any privilege granted him under the provisions of this act, without first notifying the Department of Crown Lands and receiving the written consent of the Commissioner or of some other person authorized to give such consent.

Subleasing prohibited without consent of Commissioner.

For receiving such transfer, a fee of five dollars shall be exacted.

Fee on transfer of lease.

CONTROL OF FISHING RIGHTS AND REGULATIONS.

11. The Commissioner may, with the consent of the owners and for the purposes of management only, assume the control of fishing rights pertaining to granted lands, situate along a river or lake, with a view of giving them greater value or of leasing the same in conjunction with those pertaining to ungranted lands along such rivers or lakes.

Commissioner may assume control of rights for certain purposes.

Regulations in interest of good management of fishing.

12. The Lieutenant-Governor in Council may, in his discretion, make such regulations as he may deem necessary, in the interest of the good management of fishing in this Province.

LICENSES.

Line fishing alone permitted.

13. Line fishing only (rod and line) is permitted in the waters of lakes and non-floatable rivers of the Province of Quebec.

Authorization for other manner.

For any other mode of fishing a special authorization of the Commissioner of Crown Lands is required.

Persons domiciled in Province do not require license.

14. Persons having their domicile in the Province of Quebec do not require licenses to angle in the waters of the lakes and rivers which are not under lease, and which are the property of the Crown.

Persons not so domiciled must procure license.

15. Any person not having his domicile in the Province of Quebec who desires to fish therein, must, before beginning to fish, procure a license to that effect from the Commissioner of Crown Lands or from any person by him authorized.

Fee on license.

The fee required is determined, in each case, by the Commissioner of Crown Lands, but it shall never be less than ten dollars.

License where and when and for whom valid.

16. Licenses are only valid for the time, place and persons therein indicated.

PROSECUTIONS AND FINES.

Any infringement a distinct contravention and so punishable.

17. Any infringement, at any time, of any provision of this act, or of any regulation made under its authority, is a distinct contravention and may be punished accordingly.

Fine for such offence.

18. Any infringement of any provision of this act, or of any regulation under its authority, is punishable, for each offence, by a fine not less than five dollars not more than twenty dollars in addition to the costs.

Fine discretionary in certain cases.

If it appear to the magistrate who gives judgment that the offence was committed through ignorance of the law, and that the fine is too great owing to the poverty of the defendant, he may exercise a discretionary power.

If fine not paid, goods may be seized, if insufficient, defendant may be imprisoned.

19. If the defendant does not pay the fine with costs within the time determined by the tribunal, his goods and chattels may be seized and sold to pay them, and in the event of there not being any moveables and effects

he shall be liable to an imprisonment of not less than eight days nor more than one month.

20. The whole of each of the fines levied under the present act or of the regulations made under its provisions, belongs in each case to the person who has obtained the judgment of condemnation. Fine to belong to complainant.

21. All fines imposed under the present act or by the regulations made under its authority, may be summarily recovered on complaint before a magistrate, on such proof as he may judge necessary. Fines may be recovered summarily.

22. There shall be three days interval between the service and the return of a summons to a defendant for the first five leagues, and one day more for every additional five leagues or fraction of five leagues, of distance between the place where the summons is dated and that in which the service takes place. Delays for service of summons.

When it is expedient to proceed without delay against a defendant, any magistrate may issue a writ of summons, returnable immediately to compel the defendant to appear before him without delay, or he may issue, at the same time as the writ of summons, a warrant of arrest against the defendant. Proceedings in cases of urgency.

23. The suit for the recovery of fines incurred under the present act or under regulations made in virtue of its provisions, must be taken within six months, counting from the day that the contravention took place. Prescription of suits.

24. The fishery overseer, when the judgment has been obtained through his intervention, shall within a delay of five days after the judgment, make a report to the Commissioner of Crown Lands. Report of suits by fishery overseer.

25. No proceedings, had under the present act or under any regulation made under its authority, shall be dismissed nor any condemnation annulled, by reason of any defect in form. Proceedings not invalid through defects in form.

No warrant of arrest or imprisonment shall be annulled by reason of irregularity, if it be therein alleged that the person was found guilty and if there be good and valid reasons to justify such condemnation. Warrants not invalid for informalities.

26. The forms of proceedings, summonses and notices made use of under the present act and under the regulations made in virtue thereof, may be according to the forms A, B, C, D, E, hereto annexed or in any other form; in other respects, the laws relating to summary pro- Forms to be used under this act.

ceedings before justices of the peace apply to cases provided for by this act.

FISHERY DIVISIONS AND OVERSEERS.

Fishery divisions and appointment of overseers.

27. The Lieutenant-Governor in Council, may, if he considers it expedient for the better protection of fisheries, divide the Province into fishery divisions, and may appoint a fishery overseer for each division, whose duties shall be defined by special regulations.

Remuneration of overseers and others.

28. The remuneration of such fishery overseers, and of all other persons specially employed to perform any duty imposed by the present act or by the regulations made under it, shall, if required, be determined by the Commissioner of Crown Lands, by commission or otherwise, and in either case it shall be paid out of the revenue arising from of the operations of this act.

Appointment of overseers for protection of fisheries in lakes and rivers under lease.

29. The Commissioner of Crown Lands, upon the recommendation of lessees of fishing rights, or without such recommendation in their default so to do, or if their recommendation be not acceptable, may appoint as many overseers as he may deem necessary for the effectual protection of the fisheries in the lakes and rivers under lease.

Overseers to be sworn.

Such overseers shall be sworn to the faithful discharge of their duties in enforcing the execution of the provincial laws and regulations in force, and they shall be employed for such length of time as the Commissioner shall consider necessary. Their services shall be paid by the lessees.

To be paid by lessees.

Agents, etc., of Crown Lands and Forests to be *ex-officio* overseers.

30. The agents and sub-agents of the Crown Lands and Forests, the wood rangers and their superintendents, and the game-keepers appointed by the Commissioner of Crown Lands are *ex-officio* fishery overseers while in office, each for the division confided to his superintendence.

No additional salary.

The Commissioner may also appoint such local fishery overseers as he may deem necessary; they shall not have any right to additional salary for such services.

Fishery overseers to have powers of a justice of the peace.

31. The fishery overseers, under the present act, shall have all the powers of a justice of the peace, each in his division, as well for the purposes of the present act as for those which may concern the efficient execution of the laws and regulations within the limits of such division.

Overseers, etc., may condemn on view and confiscate materials, etc., prohibited by law.

32. Every fishery overseer or other magistrate may convict, on view, within the limits of his division, all persons guilty of an infringement or of an act of negligence punishable under the provisions of the present act, and he is authorized to remove or cause to be removed

immediately and retain all materials and fishing appliances prohibited by of the law.

33. Every fishery overseer or other magistrate may make searches or grant a warrant to search in any craft or places where he has reason to suspect that there may be fish, taken in contravention of the provisions of this act and of the regulations made under its authority, or any object whose use is prohibited. Overseers, etc., may make searches or grant search warrant.

34. When an offence against the provisions of the present act and the regulations made under its authority in this Province, is committed on or near the waters serving as limits between several counties or several judicial districts or fishery divisions, such offence may be prosecuted before any magistrate of such districts or divisions, or before any fishery overseer for any one or other of such districts or divisions. When offence committed near limits of several divisions, etc., offence may be prosecuted before magistrate, etc., of any of such divisions.

35. In the performance of his duties, every fishery overseer and other person accompanying him or authorized by him for that purpose, may enter upon or pass over private property, provided that the rights of property are not violated. Overseers, etc., may enter on private property.

36. The word "fishery overseer," wherever used in the present act, designates every person invested with the powers of such office under the provisions of this act. "Fishery overseer" defined.

37. The acts 46 Victoria, chapter 8, 47 Victoria, chapter 27 and 50 Victoria, chapter. 17, are hereby repealed. 46 V., c. 8 ; 47 V., c. 27 and 50 V., c. 7, repealed.

38. The present act shall come into force on the day of its sanction. Coming into force.

SCHEDULE.

FORMS OF PROCEEDINGS.

FORM A.

Complaint.

Province of Quebec, }
District of . }

On this _____ day of _____ 18 .
To J. S., Justice of the Peace, of the said county (or district

A B of _____, complains that C. D. _____,
of _____, (state briefly in clear terms the offence

and the place where it occurred) in contravention of the law relating to fisheries.

Wherefore the complainant prays for judgment against the said C. D., as prescribed by the said act.

(Signature) A. B.

FORM B.

Summons to Defendant.

Province of Quebec, }
District of }

To C. D., of , &c.

Whereas complaint has (*this day*) been made before me that you (*state the offence in the words of the complaint, or to the like effect*) in contravention of the law relating to fisheries ; Therefore you are hereby commanded to appear before me, at on the day of , at o'clock in the to answer the said complaint and to be dealt with according to law.

Witness my hand and seal, at , this day of , 18 .

J. S.,
Justice of the Peace for
[L. S.]

FORM C.

Subpœna to a Witness.

Province of Quebec, }
District of }

To E. F., of &c.

Whereas complaint has been made before me that C. D. did (*state the offence as in the Summons*), and I am informed that you can give material evidence in the case : Therefore, you are commanded to appear before me, at , on the day of , at o'clock in the , to testify what you

know concerning the matter of the said complaint.

Witness my hand and seal at , this day of 18 .

J. S.,

(as in Summons.)

[L. S.]

FORM D.

Conviction.

Province of Quebec, }
District of }

Be it remembered, that on this day of 18 .
at in the said district, C. D., of
is convicted before me, for that he did, &c., (*stating the
offence briefly and the time and place where committed*), in con-
travention of the law relating to fisheries; And I adjudge
the said C. D. to forfeit (and pay) the sum of (or
mention the thing forfeited) to be applied according to law,
and also to pay A. B., (*the complainant*) the sum of
for costs:

(*If the penalty be not forthwith paid, add*), and the said C.
D. having failed to pay the said penalty and costs forth-
with after the said conviction, I adjudge him to be com-
mitted to and imprisoned in the common gaol of the
district of for the period of

Witness my hand and seal, at , this day of
, 18 .

J. S.,

(as in summons.)

[L. S.]

FORM E.

*Warrant of Commitment for non-payment of penalty or
forfeiture and costs.*

Province of Quebec, }
District of }

To the Constables and Peace Officers of the District of
and to the Keeper of the Common Gaol
of the said District, at :

Whereas C. D., of _____, was on the _____ day of _____ 18____, convicted before me, for that he, &c. (*as in conviction*), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c., (*as in conviction*); And whereas the said C. D. hath not paid the said forfeiture and costs: Therefore, I command you, the said Constables and Peace Officers, or any of you, to convey the said C. D. to the Common Gaol for the _____ of _____, at _____ and deliver him to the keeper thereof with this warrant; and I command you the said keeper of the said Gaol, to receive the said C. D. into your custody, and keep him safely imprisoned in the said Gaol for the space of _____, and for so doing this shall be your sufficient warrant.

Witness my hand and seal at _____, this _____ day of _____, 18____

J. S.,

(*as in summons*)

[L. S.]

C A P. X V I I I .

An Act to amend the act 47 Victoria, chapter 8, respecting the holding of the Superior Court and the Circuit Court and the Code of Civil Procedure.

[Assented to 12th July, 1888.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

47 V., c. 8, s. 4, amended.

1. Section 4 of the act 47 Victoria, chapter 8, is amended by adding after the words: "with respect to *enquêtes* in the districts of Quebec, Montreal, Three Rivers and St. Francis," the words: "and of Arthabaska."

Coming into force.

2. This act shall come into force on the day of its sanction.

C A P. X I X .

An Act to give the civil courts of the district of Quebec concurrent jurisdiction over the county of Bellechasse.

[Assented to 12th July, 1888.]

Preamble.

WHEREAS the county of Bellechasse is situated near the city of Quebec, and it is desirable to allow of litigants of the county to bring their suits there if they