

AN ACT for the preservation of Fish in the Merrimac River.

Chap. 289

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

SECT. 1. The Essex Company shall, before the first day of February which will be in the year one thousand eight hundred and fifty-seven, make, and forever thereafter maintain in or around their dam in Lawrence, a suitable and sufficient fishway for the usual and unobstructed passage of fish during the months of April, May, June, September and October, in every year, under a penalty of not less than one hundred dollars nor more than five hundred dollars, for every day said company shall neglect to make and maintain such fishway after said first day of February, to be recovered by indictment in either county of Essex or Middlesex, one-half to the use of the complainant and one-half to the use of the Commonwealth.

Fishway to be maintained.

Penalty for neglect.

SECT. 2. No person shall take any fish with a spear, net, hook or seine, during either of the months aforesaid, in any year, within eighty rods of said dam or the entrance of said fishway.

Restrictions on fishing.

SECT. 3. Every person offending against the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars for each offence, one-half of which shall inure to the use of the complainant and the other half to the use of the Commonwealth.

Penalty for violating.

SECT. 4. All acts or parts of acts, inconsistent herewith, are hereby repealed. [*Approved by the Governor, June 6, 1856.*]

AN ACT concerning the Cambridge Water Works.

Chap. 290

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

SECT. 1. The Cambridge Water Works are hereby authorized, for the purpose of furnishing the inhabitants of Cambridge with a supply of soft water, to raise the waters of Fresh Pond by steam-power into a receiving reservoir, and conducting the same by pipes from thence through the city of Cambridge: *provided, however*, that they shall not, at any time, draw the waters of said pond, or of Spy and Little Ponds, below low-water mark of said ponds.

May draw water from Fresh Pond.

Proviso.

SECT. 2. Said Cambridge Water Works may construct a dam at the outlet of Fresh Pond, at some convenient place near the Concord Avenue, and also a dam on the outlets of

May construct dams.

Spy and Little Ponds, at some convenient place on the same, near the place where said streams pass under the Lexington Branch Railroad: *provided, however*, that they shall not, at any time, raise the waters of Fresh, Spy or Little Ponds, by means of said dams, so that they shall rise above high-water mark of said ponds.

Proviso.

Commissioner to be appointed upon application, &c.

SECT. 3. A commissioner shall be nominated by the governor and council, on application of said Cambridge Water Works, or of any party in interest, who shall, at the cost and expense of said water works, after notice to all parties in interest, ascertain the points between which the waters of said ponds and said brooks rise and fall, and shall erect permanent monuments showing the same, and shall make a full report of all his doings to the governor and council.

May lay pipes, build aqueducts, &c.

SECT. 4. The said Cambridge Water Works may lay pipes, build and maintain aqueducts and reservoirs, for conducting, holding and distributing water, may erect and maintain engine-houses, and may construct and maintain any other works necessary for the carrying on the purposes for which they are chartered.

May take, hold and convey lands, &c.

Proviso.

SECT. 5. For the purposes aforesaid, the Cambridge Water Works may take, hold and convey, land, water and water-rights: *provided, however*, that before entering upon the lands and water-rights, or taking any water of any person or corporation, they shall file their petition before the supreme judicial court for the county of Suffolk, praying for the appointment of three commissioners, to assess the damages, if any, caused by taking land, water or water-rights; and such commissioners shall have full power, after due notice to each party, to assess the damages, if any, which shall be paid by said Cambridge Water Works, and their determination, or that of the major part of them, being returned into and accepted by said court, shall be final and binding upon both parties, and judgment shall be rendered thereon, unless one of the said parties shall claim a trial by jury, as is hereinafter provided.

Commissioners to assess damages.

Either party may claim trial by jury.

SECT. 6. In case either party shall claim a jury trial, as provided in the last section, such party may, at the term at which such award is accepted, or the next term thereafter, claim, in writing, a trial at the bar of said court, and have a jury to hear and determine all questions of fact relating to such damages, and to assess the amount thereof; and in case a greater sum is not awarded than that allowed by said commissioners, such party shall pay the costs in the petition, and the verdict of such jury being accepted and recorded by said court, shall be final and conclusive, and judgment shall be rendered thereon.

Costs.

Verdict to be final.

SECT. 7. Whenever judgment shall have been rendered for any damages assessed, as before provided, the said Cambridge Water Works shall thereupon pay to the clerk of the court the amount of said judgment, with interest thereon, together with the costs of court taxed by the clerk, which sum shall be in full satisfaction of said judgment; and until it is satisfied, as aforesaid, said Cambridge Water Works shall have no right to enter upon said land, water or water-rights.

Judgment to be satisfied before entering upon lands, &c.

SECT. 8. The said Cambridge Water Works shall keep open a good and sufficient way, for the passage of the fish that usually go up into Fresh, Spy and Little Ponds, in their usual and proper season in the year, between the first day of March and last day of June, inclusive: *provided*, such fishway need not be kept open in the spring of the year, before the persons having a right of fishing in said streams, or some one of them, shall have notified the water works to open them. And said water works, if they do not comply with the provisions of this section, shall forfeit and pay the sum of five hundred dollars for each and every day during which they shall wilfully neglect to comply therewith, to be recovered in an action of tort, to the use of any person or persons who shall suffer therefrom, who shall sue for the same in any court of competent jurisdiction.

Fishway to be kept open.

Proviso.

Penalty.

SECT. 9. The occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement, and the owner thereof shall be also liable if, on being notified of such use, he does not object thereto; and if any person or persons shall use any of said water raised as aforesaid, in the city of Cambridge, without the consent of said water works, an action of tort may be maintained against him for the recovery of damages therefor.

Liability for water rent.

SECT. 10. If any person or persons shall, wantonly or maliciously, divert the water or any part thereof, of any of the ponds, streams or water sources, which shall be used by the Cambridge Water Works, pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, reservoir, pipe, hydrant, building, machinery, or other property held, owned, or used by said Cambridge Water Works, by the authority and for the purposes for which they are chartered, every such person or persons shall forfeit and pay to said water works, three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action,—and every such person or persons may, moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be

Penalty for diverting water, &c.

Proviso. punished by fine not exceeding five hundred dollars, and imprisonment not exceeding three months: *provided*, that nothing in this section contained, shall be construed to prevent the abutters on said pond, from entering upon said pond during the winter season, for the purpose of cutting ice, with men and horses, and the proper implements for preparing and cutting the said ice, and securing the same in the manner heretofore practised.

Not to affect pending suits. **SECT. 11.** Nothing in this act contained shall be construed to affect, in any manner, the rights of any party or parties to any suit or proceeding in law or equity, now pending.

When and how to take effect. **SECT. 12.** This act shall not take effect unless the legal voters of the city of Cambridge, at a meeting notified for that purpose, at least thirty days before the day appointed for such meeting, shall, by a majority of the votes cast at such meeting, agree to accept the same. [*Approved by the Governor, June 6, 1856.*]

Chap. 291 **AN ACT** to authorize the Commissioners of the County of Bristol to borrow Money either to repair or to build a House of Correction.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

May borrow \$60,000. **SECT. 1.** The county commissioners for the county of Bristol are hereby authorized and empowered to borrow, on the credit of said county, in addition to the amount of debt they are now authorized to contract, a sum not exceeding sixty thousand dollars, the same to be expended by the said commissioners, or their successors in office, either in repairing and enlarging the present house of correction, or in erecting a new one, as they in their judgment shall deem best.

Former act repealed. **SECT. 2.** Chapter two hundred and nineteen of the statutes of the year eighteen hundred and fifty-five, is hereby repealed.

When to take effect. **SECT. 3.** This act shall not take effect until after the next election of a county commissioner for said county. [*Approved by the Governor, June 6, 1856.*]