

99.—AN ACT TO PROHIBIT FISHING BY STEAM VESSELS WITH SHIRRED OR PURSE SEINES IN ANY OF THE WATERS WITHIN THE JURISDICTION OF THE STATE OF NEW JERSEY.

Introduced by Mr. W. B. MILLER.

[Passed April 8, 1884, without the signature of the governor.]

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That it shall not be lawful for any person with steam vessels to take with purse or shirred nets any menhaden, porgies, herring, or other fish, in any waters within the jurisdiction of this State, including the waters of the Atlantic Ocean within three nautical miles of the coast-line of said State, either on his own account and benefit or on account and benefit of his employer; and every person who shall offend herein shall forfeit and pay two hundred dollars, to be recovered and applied in the manner hereinafter directed by section four of this act; and the said steam vessel used and employed in the commission of such offense, with all the fish, tackle, furniture, and apparel, shall be forfeited, and the same seized, secured, and disposed of in the manner hereinafter prescribed.

2. *And be it enacted*, That no steam vessel found in any of the waters within the jurisdiction of this State, including the waters of the Atlantic Ocean within three nautical miles of the coast-line thereof, shall have on board of the same any purse or shirred nets, or seine or seines, with the necessary instruments and appliances for catching any of the fish mentioned in the first section of this act; and the master, or owner or owners, of every such steam vessel that shall have on board the same any such nets, instruments, or appliances named in this section shall forfeit the sum of one hundred dollars, to be recovered in the manner and for the use mentioned in section four of this act; and said vessel, with all of the rigging, furniture, and appliances attached to the same, shall be liable to be seized, condemned, and disposed of in the manner directed in the said last-named section.

3. *And be it enacted*, That any action under the first and second sections of this act may be commenced by warrant in the court for the trial of small causes and be proceeded in as in other cases when the same are commenced by warrant; any law, usage, or custom to the contrary notwithstanding.

4. *And be it enacted*, That it shall be the duty of all sheriffs and constables, and may be lawful for any other person or persons, to seize and secure any such steam vessel as aforesaid, and immediately thereupon give information thereon to two justices of the peace of the county

* Official copy kindly furnished the United States Fish Commission, by Henry C. Kelsey, secretary of state.

where such vessel shall be held and secured, who are hereby empowered and required to meet at such time and place as they shall appoint for the trial thereof, and hear and determine the same, having first given notice of the time and place so appointed by notice in writing, over their hands, set up in at least three public places within the township where the said vessel is held, at least five days prior thereto, and also served at least five days previously upon the owner or master of said vessel, if he can be found within the county; and in case the same shall be condemned, it shall be sold by the order and under the direction of the said justices, who, after deducting all legal costs and charges, and paying the penalty provided for by the first section of this act, shall pay over the remainder of the proceeds of such sale to the owner or claimant of such steam vessel so seized as aforesaid; one-half of said penalty shall go to the person or persons making the seizure, and the remainder shall be paid to the treasurer of this State for the use of this State.

5. *And be it enacted*, That if any person or persons on such vessel aforesaid shall refuse and not suffer to enter the same or resist, before or after entering, any of the said officers, or other person or persons seizing the same, or otherwise resist them, or any of them, in the lawful seizing of the same, then every person so offending shall forfeit and pay the sum of fifty dollars, to be recovered and applied in the manner hereinbefore directed.

6. *And be it enacted*, That the sale and disposition of the property seized and condemned, as provided for in this act, shall be conducted in the same manner and upon the same notice as prescribed for the sale of personal property seized under execution issued under the act of the legislature of this State entitled "An act constituting courts for the trial of small causes"; and all fish and property of a perishable nature, found in and upon said vessel, shall be sold under the order of said two justices, by giving one day's notice of the time and place of such sale, by setting up advertisements thereof in three public places in the township where such property shall be held, and the proceeds thereof applied in the same manner as hereinbefore provided.

7. *And be it enacted*, That if any owner or claimant of said vessel or vessels and property seized as hereinbefore provided for shall desire to retain possession of the said property so seized, the owner or claimant of such property shall notify the officer or officers before whom the case is being prosecuted, in writing, and request that the property so seized shall be appraised; and the said officers shall be and they are hereby required to prepare a true statement of all property coming into their hands under the provisions of this act; and upon such request of said owner or claimant, three disinterested men shall be appointed, one by the officers, one by the claimant, and one by the joint action of the two appraisers, who shall appraise said vessel and property, the same to be surrendered to said claimant on his giving bonds for the amount of such appraisement, with good and sufficient security for the same and

the payment of all fines, costs, and expenses connected with such seizure and prosecution, otherwise the said vessel or vessels and apparatus to be held as security until all of said expenses incurred are fully paid; and in case of failure on the part of said claimant to comply with the provisions of this section, said property shall be sold as provided for in section four of this act.

8. *And be it enacted*, That the fees and costs and charges under this act shall be as follows: to the two justices, for all services thereunder, five dollars each; to the person making the seizure, or watchman placed in charge of said vessel, two dollars for each day and two dollars for each night that services shall be actually rendered; to the person putting up the advertisements or notices or serving the same, fifty cents for each notice posted or served; for all other services, the same fees that are paid in justices' courts for similar services.

9. *And be it enacted*, That this act shall take effect immediately.

(State of New Jersey, Laws of 1884, chapter 96.)

100.—BRIEF OF THE OBJECTIONS MADE BEFORE LEON ABBOTT, GOVERNOR OF NEW JERSEY, TO THE "ACT TO PROHIBIT FISHING BY STEAM VESSELS WITH SHIRRED OR PURSE SEINES IN ANY OF THE WATERS WITHIN THE JURISDICTION OF THE STATE OF NEW JERSEY."

By LOUIS C. d'HOMERGUE.*

1. The bill in question in its essential features is similar to the one vetoed by Governor Ludlow on the opinion of the then as well as now attorney-general of the State—said opinion being at present on record in your excellency's office, and which I respectfully desire to submit as part and parcel of this brief against this present bill.

2. The letter I wrote to Governor Ludlow under date of January 25, 1882, a copy of which is here appended, as a part of this argument.

3. This present bill is illegal as it is class legislation; it permits one class of vessels to engage in the said fishing and use of described nets, while it excludes another class of vessels from so doing.

4. The State of New Jersey, in becoming a part and parcel of these United States, ceded to the Federal Government the right to make treaties with foreign Governments, and in so doing parted with necessary jurisdiction in all matters pertaining thereto. The United States Government having made a reciprocal treaty with Great Britain to permit the citizens of either country to fish within its limits established by international law, the State of New Jersey cannot pass any laws conflicting with the jurisdiction of the Federal Government, thereby annulling the provisions of foreign treaties.

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