



ANNO TERTIO

VICTORIÆ REGINÆ.

No. XI.

AN ACT for the Regulation and Protection of the Whale Fisheries.

WHEREAS various Fishing Stations have been established in or near to several of the Inlets or Bays of this Province for the purpose of killing and taking Whales and a considerable number of Vessels and Boats are engaged in such Fishery therein and also on the High Seas: And whereas disputes often arise as to the property in fish when struck by several harpooners and also respecting the settlement of the accounts of the persons engaged in the said Fisheries: And whereas it is expedient that for affording encouragement to the said Fisheries the rights of the several persons engaged therein should be better defined and a summary remedy be given for the punishment of misconduct on the part of the men engaged in such Fisheries and also for protecting them in their rights:

BE IT THEREFORE ENACTED by His Excellency Lieutenant-Colonel GEORGE GAWLER Knight of the Royal Hanoverian Guelphic Order Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice and consent of the Legislative Council thereof That after the passing of this act in every case where a whale shall be struck in any river bay or inlet of this Province or on the high seas within twenty miles of the shore with a harpoon or other instrument used in the killing or taking of whales the following shall be the rules for deciding on the property in any such fish so struck (that is to say) First—Where the harpoon or instrument shall remain in the fish so struck and a line and boat shall be attached thereto and continue in the power of the striker or headsman such whale shall be deemed a fast fish and every harpoon or instrument struck by any other person shall in such case be considered a friendly harpoon and the fish shall be the property only of the first striker or headsman. Secondly—In case the line affixed to the first harpoon or other instrument so struck shall break or the line attached thereto shall not be in the power of the striker but the harpoon or instrument shall nevertheless remain fast in the fish then the fish taken or killed by any second or subsequent harpoon shall be the joint property

Rules for deciding property in whale when struck with more than one harpoon.

property of the first and second or subsequent striker in equal proportions. Thirdly—If the first iron or harpoon so struck as aforesaid shall break or shall become disengaged from the fish then the fish shall be considered a loose fish.

Persons destroying or cutting any harpoon line.

II. And be it further enacted that if after any harpoon shall be struck into a whale any person shall wilfully cut or destroy any line attached to any such harpoon whilst the same shall remain in such whale in order to prevent the striker of such harpoon from killing or taking or having any power over such fish the person so offending shall forfeit and pay a sum of not less than ten pounds nor more than one hundred pounds.

Articles to be in writing.

III. And be it further enacted that articles of agreement between the person or persons providing any vessel boat or materials engaged or to be engaged in the fisheries and the several persons engaged or to be by him or them engaged therein shall after the passing of this act be in writing and signed by the parties to be charged therewith and may be entered into in the form or to the effect of the form in the schedule to this act annexed.

Breach of such articles punishable by a Justice of the Peace.

IV. And be it further enacted that in case any person having signed any such articles binding himself to any duty or service in the whale fishery shall during the period thereby prescribed for his service under such articles absent himself from his duty or refuse or neglect to obey any lawful command given to him or shall otherwise misconduct himself or refuse or neglect to enter into the service for which he shall have contracted or shall during the continuance of his intended term of service hire himself out to any other employment contrary to the true intent and meaning of the said articles it shall be lawful for the person or persons thereby aggrieved (upon complaint against the party so offending made on oath before any Resident Magistrate or two Justices of the Peace) to cause such party to be summoned to appear before such Resident Magistrate Justices or any other two Justices of the Peace who are respectively hereby authorised to enquire and determine touching the matters so complained of in a summary manner and to examine on oath or affirmation the witness or witnesses produced concerning the same and in case any such Resident Magistrate or Justices shall convict the party so complained against of any offence so charged then they shall have power in their discretion to award not only a forfeiture of any wages or lay or lays or any part thereof then or thereafter payable or deliverable under the said articles but also a fine of not less than forty shillings nor more than forty pounds for such offence or (if they shall see fit) imprisonment with hard labour for any period not exceeding six calendar months at their discretion.

Persons employing any seamen in violation of such articles.

V. And be it further enacted that if any person shall during the continuance of the term of service contracted for in or by any such articles knowingly employ or retain or assist in employing contrary to the true intent and meaning of such articles any person who shall have by such articles bound himself to the performance of any service still unperformed the person so employing or retaining or assisting in employing shall for every such offence forfeit and pay a penalty or sum of not less than five pounds nor more than one hundred pounds.

Articles to be deposited in the Resident Magistrate's office.

VI. And be it further enacted that for the purpose of better enabling seamen and others signing any such articles as aforesaid to prove the execution thereof and to enforce payment of their respective lays or wages under the same all such articles shall be signed only in the presence of some Justice of the Peace and the owner or owners or other person or persons with

with whom any seamen or other person shall have thereby contracted shall on or before the first day of June in each year or as soon after as may be practicable deliver into the office of the Resident Magistrate at Adelaide the original articles so signed as aforesaid and such Magistrate is hereby required on payment of the sum of five shillings to receive and retain the same in his custody and to grant office copies thereof to any person interested therein on payment of five shillings for each such office copy if duly certified to be a true copy of such articles by the said Magistrate which copy shall on proof of the signature to the original of the party sought to be charged be equivalent to such original: And in case the said articles shall not be so delivered into the said office as aforesaid the person or persons wilfully neglecting to deliver the same shall forfeit and pay a penalty or sum of not less than five pounds nor more than fifty pounds.

VII. And be it further enacted that every seaman or other person having performed his contract under any such articles as aforesaid and being in consequence thereof entitled to any such lay or lays, as aforesaid may recover the amount or value of such lay or lays in an action as for money had and received against the person or persons having in or by such articles contracted for the service of such seaman or other person and such articles or any office copy thereof as aforesaid shall be evidence in support of such action and the plaintiff shall be entitled to recover the amount or value of such lay or lays although the defendant or defendants may not have actually sold or disposed of the oil and bone or either of them in respect of which the said lay or lays may be demanded but the value thereof shall be estimated at the amount specified in the said articles or in case no sum shall have been so specified then at the fair market price for which the same might be sold in this Province.

Seamen may sue on articles to recover lays.

VIII. And be it enacted that all offences against this act not otherwise provided for shall be heard and determined and all fines and penalties in respect thereof be awarded and imposed in a summary way by or before any Resident Magistrate or two or more Justices of the Peace: Provided always that no Justice of the Peace who is beneficially or as agent for another interested in the whale fisheries shall in any case adjudicate in any manner under this or any other section of this Act under a penalty of one hundred pounds.

IX. And be it further enacted that all fines penalties and forfeitures imposed under the provisions of this act shall be paid into the hands of the Colonial Treasurer of the said Province for the general uses of the said Province and for the support of the Government thereof.

X. And be it further enacted that all persons aggrieved by any summary judgment or conviction under this act shall be entitled to appeal therefrom to the next Court of General Quarter Sessions provided that the person or persons so appealing (in case a pecuniary penalty shall have been awarded) shall pay into the hands of the convicting Justice the full amount of such penalty together with the assessed costs and charges within one week next after such conviction or in case no pecuniary penalty shall have been awarded shall within one month next after the date or time of such judgment or conviction had enter into a bond to the convicting Justice to the uses of Her Majesty her heirs and successors with two sufficient sureties to be approved by such Justice conditional to prosecute such appeal with effect and to abide the event of the same and to pay the full amount of all such costs as shall or may on such appeal be awarded against the appealing party: Provided that the matter of every such appeal shall be heard and determined by the

Justices so assembled and meeting at a Court or adjourned Court of Quarter Sessions holden at Adelaide or at such one of the places hereafter appointed for the holding of General Quarter Sessions as shall happen to be the place (or nearest to the place) where the judgment or conviction appealed from shall have been had and the Justices at such Sessions so assembled shall hear and thereupon finally determine the matter of such appeal in a summary way and their judgment thereon shall be final and conclusive to all intents and purposes nor shall any writ of *certiorari* afterwards be allowed and such Justices at such Sessions so assembled are upon such appeal hereby authorised to award in all cases such costs as to them shall appear proper to be paid by either party not exceeding in the whole the sum of ten pounds on any one appeal and in case the appeal shall be allowed and the conviction or judgment appealed from be quashed then (in cases where a pecuniary penalty was awarded) the whole amount of such penalty and of the costs and charges aforesaid shall be forthwith on demand returned to the party so appealing.

GEORGE GAWLER,
Governor of South Australia.

Passed in Council this 2nd day of March, 1840.

GEORGE HALL,
Clerk of Council.

SCHEDULE.

ARTICLES OF AGREEMENT, made at
South Australia between

in the Province of

on the one part and the several seamen whose names are hereunder subscribed opposite their respective seals on the other part: Whereas the said seamen have respectively agreed and engaged in the Whale Fishery in the service of the said _____ in name and for the consideration hereinafter mentioned: Now these present witness that each of them the said seaman for himself agrees with the said _____ in consideration of the lay or share hereinafter more particularly mentioned and hereunder written opposite to his name: That he will at such time during the ensuing Whaling Season as he shall be required proceed in such boat or vessel as the said

may direct to any river creek or place on or near the coasts of the said Province of South Australia and its dependencies or in or near the coast of New South Wales New Holland or any other part

part of Australia or Van Diemen's Land or to any place in the high seas as the said may require for the purpose of killing whales and trying down the same and obtaining and preserving the whalebone thereof and that he such seaman will continue in such employment under the direction control and management of the said

the whole of the next ensuing whaling season also so long as the said may deem it necessary to remain in any bay river creek or place on the coast of South Australia New South Wales New Holland or any part of Australia or Van Diemen's Land or elsewhere: And each of the said several seamen hereby promises that he will faithfully do his duty by day and by night during the continuance of his term of service under this agreement and obey the lawful commands of the said or of the officer or officers from time to time appointed over him and take care of all matters and things from time to time committed to his charge and assist in conveying them as may be required: And it is distinctly agreed that in case any such seaman party hereto shall on any pretence unlawfully desert or absent himself from the service of the said

before the said term of service hereby engaged for shall be fully ended he shall forfeit the whole of his said lay or portion of oil and whatever and all right to any remuneration of any kind under these articles or otherwise: And it is hereby agreed that absence from the Fishery Station for twenty-four hours without lawful excuse shall be deemed a total desertion and shall render the person so absent liable to such forfeiture: Provided that at the close of such term of service and so soon as the quantity of oil and whalebone procured by the said fishing party shall be ascertained the said

shall pay for the lays or shares of the said Seamen of and in such oil and whalebone at the rate or rates set against their respective names in the schedule at the foot of this agreement for every imperial ton of marketable black whale oil and for every ton of marketable whalebone it being understood that three boats form one entire party and the lays are to be calculated accordingly: And the said several seamen agree to accept the same in payment for such lays or shares and in lieu of all wages or other compensation: But it is hereby agreed nevertheless that out of the said lays or shares the said

may deduct all advances previously made to the said parties hereto of the second part in money clothing slops or tobacco: And lastly the said

agree to provide for and supply to each of the said seamen weekly during the said term of service the following provisions and other necessaries of good quality that is to say twelve pounds of beef or nine pounds of pork twelve pounds of bread or flour four ounces of tea and two pounds of sugar: And all provisions required by any seaman in addition to the said quantities and supplied to him accordingly are to be chargeable against him as in the case of clothing and money: For the due performance of all and every of which above mentioned articles the said parties have hereto each and every of them subscribed their names and placed their seals the month and day against their respective names and seals hereunder written: And further the parties whose names are hereunto subscribed do agree that they will assist in shipping the oil and whalebone on board any vessel free of expense to the said if required by them at the conclusion of the season: And it is further agreed that one eighth shall be deducted from the several lays or shares for the fourth boat employed in the said Fishery

