

ANNO QUINTO.

Gulielmi IV. Regis.

No. 13.

*BY His Excellency Colonel GEORGE ARTHUR Lieutenant
Governor of the Island of Van Diemen's Land and its
Dependencies.*

*AN ACT for the Regulation and Protection of the Whale
Fisheries and for extending to this Island the Statute for
facilitating the recovery of Seamen's Wages.*

WHEREAS various Fishing Stations have been established in or near to several of the Inlets and Bays of this Island for the purpose of killing and taking Whales and a considerable number of Vessels and Boats are engaged in such Fishery there and also on the High Seas.

Preamble.

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.

Rules for deciding Property
in Whales when struck by
more than one Harpoon.

BE IT THEREFORE ENACTED by His Excellency Colonel GEORGE ARTHUR Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that after the passing of this Act in every case where a Whale shall be struck in any River Bay or Inlet of this Island 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 to 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 Headsmen 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 if taken or killed by any second or subsequent Harpoon shall be the joint Property of the first and second or subsequent Striker. **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 and become the Property of the first actual taker thereof.

Persons destroying or cutting
any Harpoon Line.

II.—AND BE IT 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 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 Justices.

IV.—AND BE IT 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 two Justices of the Peace) to cause such party to be summoned to appear before such Justices or any other two Jus-

tices of the Peace who are hereby authorised to inquire 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 such 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 Three Calendar Months at their discretion.

V.—AND BE IT 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 Seaman 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 Forty Shillings nor more than Forty Pounds.

Persons employing any Seaman in violation of such Articles.

VI.—AND BE IT ENACTED that for the purpose of the 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 whom any Seamen 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 Chief Police Magistrate at Hobart Town or the Police Magistrate at Launceston (if the Articles shall have been signed there) 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 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.

Articles to be deposited in the Police Office.

VII.—AND BE IT 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

Seamen may sue on Articles to recover Lays.

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 Colony.

Proceeding for Penalties.

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 two Justices of the Peace. And all such Fines and Penalties shall go and be distributed and all persons aggrieved by any summary judgment under this Act shall be entitled to appeal therefrom in the manner respectively provided by the Act intituled “An Act to regulate summary proceedings before Justices of the Peace.”

59 Geo. III. c. 58. relating to Seamen's Wages extended to this Island.

IX.—AND WHEREAS a Statute was passed in England in the Fifty-ninth year of the Reign of King George the Third intituled “An Act for facilitating the recovery of the Wages of Seamen in the Merchant Service” the Provisions of which Statute might advantageously be extended to this Colony. BE IT ENACTED that after the passing of this Act the Provisions of the said Statute for facilitating the recovery of Seamen's Wages shall extend to and be in force in this Island and its Dependencies and be applicable equally to the case of Lays where the amount or value shall be under Twenty Pounds as to the case of Wages. PROVIDED ALWAYS that every Order for payment of Lays or Wages under the Provisions of the said Act shall be made by not less than two Justices and that it shall be lawful for any Master or Owner against whom any such Order shall be made to appeal therefrom in the manner provided by the said Act for regulating summary proceedings before Justices of the Peace.

GEO. ARTHUR,

Lieutenant Governor.

Passed the Legislative Council this
twenty-sixth day of March one thousand
eight hundred and thirty-five.

ADAM TURNBULL, Clerk of the Council.

NOW THESE PRESENTS WITNESS that each of them the said Seamen for himself agrees with the said A. B. C. that in consideration of the lay or share hereinafter more particularly mentioned and hereunder written opposite to his name he will at such time during the present [*or now approaching*] Whaling Season as he shall be required proceed in such boat or vessel as the said A. B. C. may direct to any river creek or place on or near the Coasts of this Island or its Dependencies [*or to any place on the High Seas*] as the said A. B. C. may require for the purpose of killing and taking Whales and trying down the same and obtaining and preserving the Whalebone thereof and that he will continue in such Employment of the said A. B. C. during the whole of the said Whaling Season [*or from the day of next until the day of 183 if so long required*] and each of the said several Seamen hereby promises that he will diligently and 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 A. B. C. or 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 he 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 A. B. C. before the said Whaling Season [*or before the term of service hereby engaged for*] shall be fully ended he shall forfeit the whole of his said lay or proportion of Oil and Whalebone and all right to remuneration of any other kind under these Articles or otherwise and it is agreed that absence from the Fishing 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 and it is hereby agreed that at the close of the said Season [*or term of service*] and so soon as the quantity of Oil and Whalebone procured by the said A. B. C.'s Fishing Party (*to which*

the said Seamen shall belong) shall have been ascertained the said A. B. C. shall pay for the said lays or shares of the said Seamen of and in such Oil and Whalebone at the rate of for every Imperial Ton of marketable Oil and for every Ton of Whalebone 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 it being understood nevertheless that out of the said lays or shares the said A. B. C. may deduct all advances previously made to the said parties in money clothing slops or tobacco. Lastly the said A. B. C. agrees to provide for and supply to each of the said Seamen weekly during the said season [*or term of service*] the following provisions and other necessities of good quality [*here specify them and the quantities*] all provisions required by any Seaman in addition to the said quantities and supplied to him accordingly to be chargeable against him as in the case of clothes or money.

Dated this

day of

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[*Signature of Owner or Owners*][*Signatures of Seamen.*][*Lay or Share agreed for.*]