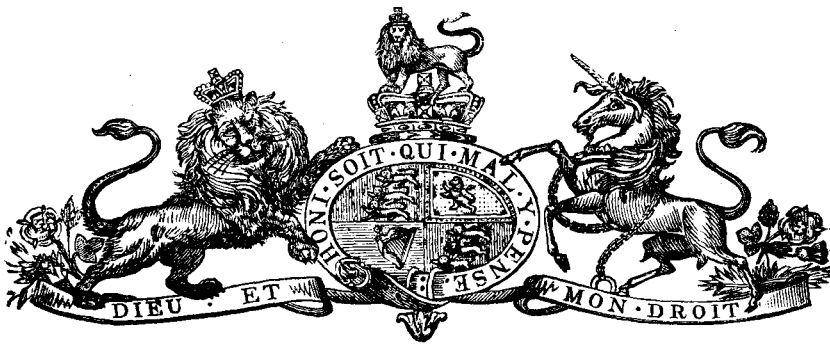


T A S M A N I A.



1889.

ANNO QUINQUAGESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 11.

*Amended 63 Vic No. 36  
(Double Cast Act)*

AN ACT to consolidate and amend the Law A.D. 1889.  
relating to the Fisheries of *Tasmania*.

[28 October, 1889.]

WHEREAS it is expedient to consolidate and amend the Law PREAMBLE.  
relating to the Fisheries of *Tasmania* :

Be it therefore enacted by His Excellency the Governor of *Tasmania*,  
by and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:—

**1** This Act may be cited for all purposes as “The Fisheries Act, Short title.  
1889.”

**2** The Acts set forth in Schedule (1.) are hereby repealed; and on Repeal.  
and after the day on which this Act comes into operation any Act or  
document referring to any Act hereby repealed shall, for the purposes  
of such reference, be construed to refer to this Act:

Provided that this repeal shall not affect—

- (a) The past operation of any Act hereby repealed, nor anything  
duly done or suffered under any such Act; nor
- (b) Any obligation or liability accrued or incurred under any  
such Act; nor
- (c) Any penalty, forfeiture, or punishment incurred in respect  
of any offence committed against any such enactment; nor
- (d) Any investigation, legal proceeding, or remedy in respect of  
any such obligation, liability, penalty, forfeiture, or punish-

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Definition of terms.

ment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

**3** In this Act, unless the context otherwise requires,—

“Person” shall include any body of persons corporate or incorporate:

“Salmon” shall include all migratory fish of the genus *Salmon*, whether known by the names hereinafter mentioned; that is to say, salmon, grilse, sea-trout, salmon-trout, smolt, parr, or by any other local name:

“Trout” shall include non-migratory fish of the genus *Salmon*:

“Young of Salmon” shall include all young of the salmon species which measure less than Twelve inches from the eye to the fork of the tail, whether known by the names of spawn, fry, parr, smolt, peal, grilse, or by any other name, local or otherwise:

“Young of any Trout or Fry” shall include Young of Trout which measure less than Six inches from the eye to the fork of the tail:

“Oyster” shall include the brood, ware, half-ware, spat, and spawn of Oysters:

“Owner of Land” shall mean any person entitled to the possession or receipt of the rents and profits of such land for an estate for his own life, or for years determinable on his own life, or for any greater estate, exclusive of any person entitled to such land by virtue of any lease for lives or years at a rack-rent:

“Tidal waters” shall include the sea and all rivers, creeks, streams, and other waters, so far as the tide flows and reflows:

“Inland waters” shall mean all waters that are not tidal waters:

“Fixed engine” shall include stake-nets, bag-nets, putts, putchers, night lines, and all fixed implements or engines for catching or for facilitating the catching of fish:

“Rod and line” shall mean a single rod and line:

“Commissioners” shall mean the Commissioners of Fisheries appointed under this Act:

“Minister” means the Responsible Minister for the time being administering this Act:

“Prescribe” means prescribed by Regulations to be made under this Act:

“Gazette” means *The Hobart Gazette*:

“This Act” includes any Regulations made under the provisions hereof.

Commissioners  
may be appointed.

**4**—(1.) The Governor in Council is hereby empowered to appoint during pleasure any number of persons, not exceeding in the whole Twenty-five, as and to be Commissioners, who shall be styled or called “The Commissioners of Fisheries,” and in whom shall be vested the general superintendence, management, and protection of all the Fisheries in the Colony, including Shell-fish, Crustaceans, Seals, and all other Fish; and upon any vacancy in the office of any Commissioner by death, resignation, or incapacity to act or otherwise, the Governor in Council may appoint some other person to fill the vacancy.

(2.) The Commissioners shall have a Common Seal, and any summons, order, warrant, or other instrument, or copy thereof, purporting

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to be sealed with the seal of the Commissioners, shall be received in evidence without any further proof. A.D. 1889

**5** The Commissioners may, with the consent of the Minister, from time to time appoint during pleasure such and so many persons to be Secretary, Inspectors of Fisheries, Clerks, Bailiffs, or other Officers as may be necessary for the purposes of this Act; and it shall be lawful to pay to such officers so appointed such sum or sums of money by way of salary or remuneration as may be approved by the Minister: Provided always, that no such salaries, or the amount expended in carrying out the provisions of this Act, shall exceed the amount voted by Parliament for such purpose. Commissioners may appoint Officers.

**6** The Commissioners shall from time to time, as occasion may require, appoint one of themselves to act as Chairman at all Meetings of the Commissioners; and all proceedings at any Meeting of the Commissioners, together with the names of the Commissioners present at every such Meeting, shall be entered in a Book to be kept by the Commissioners for that purpose, and be signed by the Chairman of the Meeting at which such proceedings are, from time to time, confirmed; and all entries of any such proceedings so confirmed and signed by the Chairman of such Meeting shall be received in all Courts as evidence of the matters therein recorded until the contrary be proved. Chairman to be appointed. Orders and proceedings of Commissioners to be recorded.

**7** The Commissioners may sue or be sued by the name of "The Commissioners of Fisheries," without otherwise naming such Commissioners; and no action, suit, or other proceedings commenced or had by or against the Commissioners shall abate or be in any way affected by reason of the death, resignation, absence, or new election or appointment of any Commissioner, but the same may be carried on and proceeded with as if no such change had taken place; and service or notice of any proceedings upon the Secretary of the Commissioners for the time being shall be sufficient service on the Commissioners. Commissioners how to sue and be sued.

**8** In any proceeding, civil or criminal, relating to any property or money vested in the Commissioners for the purposes of this Act, it shall be sufficient to describe such property or money as the property or money of "The Commissioners of Fisheries," without otherwise naming such Commissioners. Property may be laid in the Commissioners.

**9** The Commissioners, or any of their number deputed by them under any order made in writing by them, may hold meetings at any time and place and inquire into the state of the Fisheries, and the best means to be adopted for the regulation, improvement, or protection thereof, or of any part thereof, and may issue summonses requiring the attendance of such witnesses as they shall think fit, and may examine on oath touching any matter or thing in any way connected with the Fisheries, which oath the said Commissioners or any number deputed by them, or any one of them, are hereby authorised and empowered to administer; and all witnesses shall be liable to the same penalties for neglecting or refusing to attend or to give evidence before the Commissioners as are provided in the case of any person refusing to attend or give evidence before any Justice of the Peace; and any person giving false evidence, or who wilfully swears, affirms, or declares falsely in any examination relating to any matter within the cognizance Enquiry may be made as to mode of protecting fish.

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of the Commissioners, shall be liable to the pains and penalties of Perjury.

Experiments may be made.

**10** The Commissioners may, from time to time and at all seasons, direct such experiments as they may think fit with the view of obtaining information as to the actual state of the Fisheries, or of any branch thereof; and no person acting under the direction of the Commissioners shall be liable to any penalty by reason of such experiments or of acting under the direction of the Commissioners.

Commissioners may make Regulations.

**11** The Commissioners may, from time to time, as may become necessary, make, repeal, rescind, or vary such Regulations (in addition to those herein specifically enacted) as to them the said Commissioners shall seem expedient, for the following purposes; namely,—

- I. The more effectual government, protection, management, and improvement of the Fisheries of *Tasmania*, including shell-fish, crustaceans, seals, and all other fish :
- II. The registering of all boats engaged therein :
- III. The issuing of licences for all engines used for the capture of fish, and the fees to be paid for the same :
- IV. The times, seasons, and places at which the taking of the several species of fish shall commence and cease, or be prohibited, or permitted :
- V. Prescribing the minimum size of fish to be taken, and the description and form of nets that may be permitted or be prohibited to be used, and the size of the meshes thereof; or of any practice whatsoever tending, in the opinion of the said Commissioners, to be detrimental to the Fisheries, or any branch thereof :
- VI. Imposing and prescribing any conditions for the preservation of good order among the persons engaged in the Fisheries :
- VII. Providing for the sale or other disposal of anything forfeited to the use of the Commissioners under the provisions of this Act : and
- VIII. Any other matter or thing which shall in any manner relate to the Fisheries :

And any person committing any breach of such Regulations shall be liable to such penalty, not exceeding Five Pounds, as may be prescribed by such Regulations, and shall forfeit all boats, engines, nets, or other instruments whatsoever used contrary to any such Regulations.

Regulations to be approved by Governor in Council.

**12** All Regulations made by the Commissioners under the authority of this Act, and all amendments thereof, shall be approved and may from time to time be amended or rescinded by the Governor in Council, and shall be published in the *Gazette*, and laid before both Houses of Parliament within Fourteen days of the approval or amendment thereof if Parliament is in Session, and if not then within Fourteen days after the commencement of the next Session ; and, after such approval and publication as aforesaid, all such Regulations shall have the force of law, so far as they are not inconsistent with or repugnant to this Act or any other Act.

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**13** At least One month before any such Regulations shall be laid before the Governor in Council for approval and confirmation, a copy of such proposed Regulations shall be published in a newspaper circulating in the locality affected by such Regulations; and any person or persons feeling themselves aggrieved by any such proposed Regulations may appeal in writing to the Governor in Council against such Regulations or any of them.

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Regulations to be published in newspaper before submitted to Governor in Council.

**14** All Regulations made under any Act hereby repealed shall continue to be Regulations under this Act until they shall be rescinded by the Commissioners or the Governor in Council under this Act.

Regulations continued.

*Prohibition of certain Modes of destroying Fish.*

**15** Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters, or into any tributaries of such waters, any liquid or solid matter to such an extent as to cause the waters to poison or kill the fish in such waters, or shall use or cause to be used in any waters dynamite or other explosive substance for the purpose of killing fish, shall incur the following penalties; that is to say,—

Penalty on mixing poisonous substances in rivers, or using dynamite, &amp;c.

1. Upon the first conviction a penalty not exceeding Five Pounds:
2. Upon the second conviction a penalty not exceeding Ten Pounds, and a further penalty not exceeding Two Pounds for every day during which such offence is continued:
3. Upon the third or any subsequent conviction a penalty not exceeding Twenty Pounds, and a further penalty of Five Pounds a day for every day during which such offence is continued.

But nothing herein contained shall exempt any person from any punishment to which he would otherwise be subject, or legalise any act or default that would but for this Act be deemed to be a nuisance or otherwise be contrary to Law.

**16** No person shall do the following things or any of them; that is to say,—

Penalty on fishing with lights, spears, &amp;c.

1. Use any light for the purpose of catching Salmon or Trout:
2. Use any spear, leister, gaff, strokehall, snatch, or other like instrument for catching Salmon or Trout:
3. Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the Court before whom he is tried that he intended at the time to catch Salmon or Trout by means thereof:

And any person acting in contravention of this Section shall incur a penalty not exceeding Five Pounds, and shall forfeit any instrument used by him or found in his possession in contravention of this Section; but this Section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

**17** No person shall do the following things or any of them; that is to say,—

Penalty for using roe as bait.

1. Use any fish roe for the purpose of fishing:
2. Buy, sell, or expose for sale, or have in his possession any Salmon or Trout Roe:

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And any person acting in contravention of this Section shall for each offence incur a penalty not exceeding Two Pounds, and shall forfeit all Roe found in his possession ; but this Section shall not apply to any person who uses or has in his possession Roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the Court by whom he is tried for having the same in his possession.

**Penalty on using  
certain nets.**

**18** No person shall take or attempt to take Salmon or Trout with any net having a mesh of less dimensions than Two inches and one-half inch in extension from knot to knot, the measurement to be made on each side of the square, or Ten inches measured round each mesh when wet ; and any person acting in contravention of this Section shall forfeit all nets and tackle used by him in so doing, and shall for each offence incur a penalty not exceeding Five Pounds ; and the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of this Section with respect to the mesh of nets, shall be deemed to be an act in contravention of this Section.

**Penalty on placing  
or fixing fixed  
engines.**

**19** No fixed engine of any description shall be placed or used for catching Salmon or Trout in any inland or tidal waters ; and any engine placed or used in contravention of this Section may be taken possession of or destroyed ; and any engine so placed or used, and any Salmon or Trout taken by such engine, shall be forfeited, and in addition thereto the owner of any engine placed or used in contravention of this Section shall for each day of so placing or using the same incur a penalty not exceeding Ten Pounds ; and for the purposes of this Section a net that is secured by anchors or otherwise temporarily fixed to the soil shall be deemed to be a fixed engine.

**Regulations with  
respect to dams.**

**20** The following regulations shall be observed with respect to Dams :—

(1.) No Dam shall be used for the purpose of catching or facilitating the catching of Salmon or Trout :

1. Any person catching or attempting to catch Salmon or Trout in contravention of this Section shall incur a penalty not exceeding Five Pounds for each offence, and a further penalty not exceeding One Pound for each Salmon or Trout which he catches :
2. All traps, nets, and contrivances used in or in connection with the dam for the purpose of catching Salmon or Trout shall be forfeited :
3. All Salmon or Trout caught in contravention of the above prohibition shall be forfeited.

(2.) No person shall catch or attempt to catch, except by rod and line, any Salmon or other fish in the head-race or tail-race of any mill or factory, or in any works appurtenant to any mill or factory ; and in case the person who has actually committed such offence shall not be known, or cannot be found, and that such offence has been caused by means of shutting down or closing any gate or sluice which is under the exclusive power of the occupier of such mill or factory, or if such offence has been committed under such circumstances

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as appear to the Justices before whom any complaint is made to afford reasonable grounds for believing that such offence was committed by some person in the employment or under the control of the owner or occupier of such mill or factory with the knowledge or connivance of such owner or occupier, or the person in charge of such mill or factory, or through the default of reasonable precaution on the part of such owner or occupier to prevent such offence, such owner or occupier shall be liable to and incur the penalty for such offence as if such offence had been actually committed by him.

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- (3.) No person shall catch or attempt to catch Salmon or Trout, except by rod and line, within Fifty yards below any dam, unless such mill or dam has attached thereto a fish-pass of such form and dimensions as may be approved by the Commissioners, and such fish-pass has constantly running through it such a flow of water as will enable Salmon or Trout to pass up and down it. And if any person acts in contravention of any of the foregoing provisions—

1. He shall incur a penalty not exceeding Two Pounds for each offence, and a further penalty not exceeding One Pound for every Salmon or Trout so caught :
2. He shall forfeit all Salmon or Trout caught in contravention of this Section, and all nets or other instruments used or placed for catching the same.

**21** If Salmon or Trout or the young of Salmon or Trout are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for working any mill, or for purposes of irrigation, or for any other purpose, the person having the control over such artificial channel shall, within Two months after written notice shall have been given to the said person by the Commissioners to comply with this Section, put up and shall maintain at his own costs and charges a grating or gratings across such channel for the purpose of preventing the descent of the Salmon or Trout or the young of Salmon or Trout, and such grating or gratings shall be placed in such form and manner as the Commissioners may prescribe; and any person failing to put a grating or gratings in cases where he is required to do so by this Section shall incur a penalty not exceeding Five Pounds for every day after the expiration of such period of Two months during which such person shall fail to comply with the provisions of this Section; and any such person failing so to maintain the same shall incur a penalty not exceeding One Pound for every day during which such failure continues. Provided always, that where it shall be proved to the satisfaction of the Commissioners that exemption from compliance with this Section is necessary for the effective working of any machinery such person shall not be liable to the penalty aforesaid if he obtain an exemption from the Commissioners, and which they are hereby empowered to give in such cases in which and for such periods during which it shall be proved to their satisfaction to be necessary.

Penalty on person not erecting gratings to prevent the descent of Salmon into artificial streams.

**22** Every dam, weir, dyke, or other erection placed in or across any river frequented by Salmon or Trout for sustaining the water of such river for mill power, navigation, irrigation, or other purposes which may in the opinion of the Commissioners form an obstruction to the free passage of Salmon or Trout, shall be so built, constructed, or altered as

Dams, &c., not to obstruct free passage of Salmon.

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to permit in one or more parts of the same the free run or migration of the Salmon, Trout, or other fish at all periods of the year; and such provision shall be made at the expense of the person forming such dam, weir, dyke, or other erection, or of the overseer or occupier of such dam, weir, dyke, or other erection in such manner as the Commissioners shall approve; and any person failing to comply with this Section after service of notice on him by the Commissioners, and which service may be made by registered letter to his last known place of abode or residence, shall forfeit and pay a penalty of Five Pounds a day for every day after Two months shall have elapsed from the date of the service of such notice that such dam, weir, dyke, or other erection is kept up without such provision for the free run of fish; and the Commissioners shall have full power if they think fit to cause such passage for the free run of fish to be made at the expense of the person owning or occupying the said erection, the same to be recovered in a summary manner before a Justice of the Peace; and the wash-gates, sluices, or overfalls of such premises shall at all seasons of the year when and during the time such mills and factories shall not be in use for milling purposes be kept open if no passage for fish be provided; and when such passage shall be provided the sluices as aforesaid shall be kept down or shut to force the water through such passage; and if the owner or occupier of any mill or factory neglect to comply with this provision he shall incur a penalty of Five Pounds for every such offence.

Gratings, &c. to  
be erected where  
turbines used.

**23** Where turbines or similar hydraulic machines are used, the person owning or using the same shall, during the descent of Salmon or young of Salmon to the sea, provide a grating, lattice, or other efficient means, to prevent such fish passing into such machine; and every person failing to comply with this Section shall be liable to a penalty of Ten Pounds for each offence.

Commissioners  
may alter bed of  
river.

**24** If in any river reefs or ledges of rocks, shoals, or other natural obstructions prevent and impede the free passage and migration of Salmon, Trout, or other fish, and hinder the approach and access of the same to the upper parts of the rivers or any lakes communicating therewith and depositing their spawn therein, the Commissioners may, if they so think fit, make such alterations in the bed of such river as shall effectually secure a free and uninterrupted passage at all seasons of the year for all fish.

Penalty for  
destroying fish in  
passages.

**25** Any person taking, killing, or destroying any Salmon or other fish, or hanging, fixing, using, or setting in any such passage so made as aforesaid, in or through any such natural obstructions, dams, weirs, dykes, or other erections, any net, basket, or other engine or contrivance whatsoever for the taking of fish, or placing any obstacle or contrivance of any nature or kind soever in or near thereto that would have the effect of deterring or preventing fish from freely entering or passing up and down through the same at all periods of the year, shall forfeit and pay a penalty of Five Pounds, and shall cause such obstructions to be forthwith removed under a further penalty of Five Pounds: Provided always, that, in the case of dams, weirs, dykes, or other erection used for the purpose of mill power, navigation, or irrigation, and in which such passages have been formed, the occupier of such premises shall be liable to such penalty if the person who actually committed the offence shall not be known.



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**26** Where a fish-pass is attached to any dam in pursuance of this Act, the sluices, if any, for drawing off the water which would otherwise flow over the dams shall be kept shut at all times when the water is not required for milling purposes, or for irrigation purposes, in such manner as to cause such water to flow through the fish-pass; and any person making default in complying with the requisitions of this Section shall incur a penalty not exceeding Five Shillings per hour for every hour during which such default continues; but this Section shall not preclude any person from opening a sluice for the purpose of letting off water in cases of flood, or for milling purposes, or for irrigation purposes, or when necessary for cleaning or repairing any dam or mill or the appurtenances thereof.

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Supply of water to fish-passes.

*Prohibition of the Destruction of Unseasonable Fish.*

**27** No person shall do any of the following things; that is to say,—

Penalty on taking unclean fish.

- (1.) Wilfully take any unclean or unseasonable Salmon or Trout:
- (2.) Buy, sell, or expose for sale, or have in his possession any unclean or unseasonable Salmon or Trout, or any part thereof:

and any person acting in contravention of this Section shall incur the following penalties; that is to say,—

- (1.) He shall forfeit any fish taken, bought, sold, or exposed for sale or in his possession:
- (2.) He shall incur a penalty not exceeding Five Pounds in respect of each fish taken, sold, or exposed for sale or in his possession:

But this Section shall not apply—

- (1.) To any person who takes such fish accidentally and forthwith returns the same to the water with the least possible injury:
- (2.) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes.

**28** No person shall do the following things or any of them; that is to say,—

Penalty on taking the young of Salmon.

1. Wilfully take or destroy the young of Salmon or Trout:
2. Buy, sell, or expose for sale or have in his possession the young of Salmon or Trout:
3. Place any device for the purpose of obstructing the passage of the young of Salmon or Trout:
4. Wilfully injure the young of Salmon or Trout:
5. Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of Salmon and Trout may be:

And any person acting in contravention of this Section shall incur the following penalties; that is to say,—

1. He shall forfeit all the young of Salmon or Trout found in his possession:
2. He shall forfeit all rods, lines, nets, devices, and instruments used in committing any of the above offences:
3. He shall for each offence pay a penalty not exceeding Five Pounds:

But nothing herein contained shall apply to any person who may have obtained such young of Salmon or Trout for artificial propagation or other scientific purposes, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream.

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Penalty on disturbing fish when spawning.

**29** If any person wilfully disturbs or attempts to catch Salmon or Trout when spawning, or when on or near their spawning beds, he shall for each offence incur a penalty not exceeding Five Pounds; but this Section shall not apply to any person who may catch or attempt to catch Salmon or Trout for the purposes of artificial propagation or other scientific purposes.

Persons not licensed liable to penalty for using nets.

**30** All nets or other engines, save rod and line, used for the taking of Salmon or Trout, shall have attached thereto such form of label with the number of the Licence for same printed or sufficiently marked thereon as the Commissioners may prescribe; and if any person shall, after the passing of this Act, use any net or other engine for the purpose of catching Salmon or Trout contrary hereto, without being duly licensed under this Act to keep or use the same (except persons keeping or using nets for the purpose of catching Salmon for artificial propagation or other scientific purposes, under the sanction of the Commissioners), he shall forfeit and pay a penalty not exceeding Ten Pounds in respect of every net so used by him; and every such offender shall forfeit every such net used by him, and shall also be liable to the payment to the Commissioners of the full Licence Duty payable in respect of each net used by such person over and above the said penalty.

Appropriation of fees.

**31** All Licences issued, and all moneys paid for Licences under this Act, shall be paid to the Commissioners, or to any person appointed by them in any district or locality to issue Licences, and shall be brought to account of the Commissioners, and be applied towards the purposes of this Act.

Penalty for taking Eels

**32** No person shall, between sunset and sunrise, hang, fix, or in anywise use, in such waters as the Commissioners may prescribe, except when and where permitted by any order of the Commissioners, any Coghill, Eel, or other net, or basket or basket-work, or make use of any other fixed engine for taking of Eels, under a penalty of Five Pounds, and forfeiture of engine, net, basket, or other device.

Penalty for using nets at the mouth of rivers.

**33** No person shall use any nets or other engines for the capture of Fish, save rod and line only, within such distance as shall be prescribed by Regulation seawards, coastwards, or inwards of the mouth of any river, such mouth to be defined by the Commissioners; and any person acting in contravention hereto shall pay a penalty of any sum not exceeding Ten Pounds and forfeiture of engine so used.

Nets not to be used in fresh waters.

**34** No person shall, in any river, lake, or stream in *Tasmania*, above the flow of the salt-water tide, lay, draw, make use of, or fish with any kind of net or other engine, instrument, or device, excepting rod and line, and a landing-net used in connection therewith, for the purpose of taking any Fish, or shall take any fish by means of any kind of net or other engine, instrument, or device, excepting rod and line and landing-net as aforesaid; and if any person offends contrary hereto, he shall forfeit all such nets, or other engines, instruments, or devices so used, and shall also, for every such offence, incur a penalty not exceeding Ten Pounds: Provided always, that it shall be lawful for the Commissioners to permit, by order in writing, the use of nets in such places, and during such seasons and for such periods and under such conditions, as they may consider advisable;

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and if any person makes use of any nets contrary to any order made as aforesaid, or fails to comply with the conditions therein, he shall forfeit or pay a penalty of Ten Pounds for each offence. A.D. 1889.

**35** If any person shall, at any time after the passing of this Act, either buy or sell, or cause to be bought or sold, or shall offer or expose for sale, or shall have in his possession or control, any fish known as or called the Crayfish, of a size less than shall be prescribed by the Commissioners as aforesaid, or any female of such fish of whatsoever size having eggs or spawn attached beneath its body, or which has been captured with eggs or spawn so attached, he shall upon conviction forfeit and pay for every such offence a penalty or sum not exceeding Five Pounds. Penalty for buying or selling Crayfish under a certain size, or female fish with spawn.

**36** If any person shall, at any time after the passing of this Act, either buy or sell, or cause to be bought or sold, or shall offer or expose for sale, or shall have in his possession or control any fish of a size less than shall be prescribed by the Commissioners as aforesaid, he shall, upon conviction, forfeit and pay for every such offence a penalty or sum not exceeding Five Pounds. Penalty for buying or selling fish under a certain size.

**37** It shall be lawful for any Constable, authorised in writing by any Justice of the Peace, or by any Superintendent of Police or any officer appointed by the Commissioners, without warrant, to enter any fishing-boat, or boat containing fish, for the purpose of searching for fish of a less size than is prohibited by this Act or any Regulation made hereunder, or for fish unlawfully taken or captured; and also, for the like purposes, to enter and search the shop or place of business of any dealer where fish are publicly exposed, and to search the basket, tray, or other vessel in the possession or control of any fisherman, angler, or itinerant vendor of fish; and any person resisting or obstructing such Constable or officer in the execution of any of the powers hereby conferred on him shall, for each offence, be liable to a penalty not exceeding Five Pounds. Constables may search boats, &c.

**38** Every such fish as aforesaid of a less size than is prescribed, or unlawfully taken or captured, so bought or sold, or offered or exposed for sale as aforesaid, or being in the possession or control of any person or persons as aforesaid, or found in boats as aforesaid, may be forthwith seized by any Constable or officer appointed by the Commissioners; and, being taken by him without delay before any Justice of the Peace, the same fish shall, upon proof of the fact of such illegal purchase, sale, offer, or exposing as aforesaid, or of being in possession or control as aforesaid, or found in boats as aforesaid, be forthwith condemned, and shall thereupon become forfeited. Fish may be seized.

*Private Oyster Fisheries.*

**39** It shall be lawful for the Governor, upon the recommendation of the Commissioners, to lease on such terms and conditions as he sees fit, for a period not exceeding Thirty years, any portion of the shore and bed of the sea or of an estuary or tidal river, above or below, or partly above and partly below low-water mark, which shore and bed are hereinafter referred to as "the sea shore." Governor in Council may lease any portion of the sea shore.

Provided that nothing herein contained shall be held to authorise

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the Governor to grant any lease of any portion of the sea shore which is not the property of the Crown or whereby the rights of any person whose land may abut thereon shall be interfered with without the consent, in writing, of the owner of such land.

Natural Oyster-bed may be leased to discoverer thereof.

**40** It shall be lawful for the Governor, upon the recommendation of the Commissioners, to lease any natural Oyster-bed to the discoverer thereof, upon such terms and conditions and for such period not exceeding Thirty years as the Governor sees fit.

Such lease to be in writing under hand of Governor.

**41** Every lease shall be under the hand and seal of the Governor, and shall, by reference to a map or otherwise, as to the Governor seems best, define the position and limits of such Oyster-bed or Laying.

Notice to be given previously to the granting of such Lease.

**42** Previously to granting any such lease as aforesaid a notice stating the application for such lease shall be inserted Three times in the *Gazette*; and no such lease shall be granted in any place where the Governor is of opinion that the public exercise and enjoy *bonâ fide* a substantially profitable fishing for Oysters, nor within the limits of any Oyster-bed or Oyster fishery the property of any private person.

Copy of lease to be forwarded to Commissioners.

**43** A copy of every lease issued by the Governor under this Act shall be forwarded to the Commissioners, who shall cause the same to be recorded in a book to be kept for that purpose.

A copy of lease certified to be evidence.

**44** The production of a copy of any such lease certified under the hand of the Chairman of the Commissioners shall be evidence in all Courts that the lease of which the same may purport to be a copy was duly granted by the Governor, and that all matters and things by this Act required to be done previously to the granting of such lease have been duly done and performed.

Power to lessee to remove Oysters from public beds at all seasons.

**45** The holder or holders of any lease granted under this Act or their assigns, their agents, servants, and workmen, may at any season, with the consent of the Commissioners, and under and subject to such conditions as they may prescribe, dredge for and take Oysters from any unleased natural public Oyster-bed for the purpose of supplying or replenishing therewith any Oyster-bed held or made or in course of being made under any such lease, and may apply the Oysters so taken accordingly; but if any person applies or uses, or if any lessee knowingly authorises or permits to be applied or used otherwise than in manner authorised by this Section, any Oysters so taken, such person or lessee shall be liable to all the like penalties and consequences to which he would have been liable if this Section had not been inserted in this Act.

Effect of lease of Oyster fishery.

**46** Every lessee under this Act shall have, by virtue of the lease granted to him, within the limits of the fishery, the exclusive right of depositing, propagating, dredging, fishing for and taking Oysters; and in the exercise of that right may, within the limits of the fishery, proceed as follows; namely,—make and maintain Oyster-beds, and (notwithstanding anything in or done under any other Act) at any season collect Oysters, and remove the same from place to place, and deposit the same as and where he thinks fit, and do all other things

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which he may think proper for obtaining, storing, and disposing of the produce of the fishery. A.D. 1889.

**47** All Oysters being in or on any Oyster-bed held under any such lease shall be the absolute property of the lessee; and in all Courts of Law and Equity and elsewhere, and for all purposes, civil, criminal, or other, shall be deemed to be in the actual possession of the lessee. Property in Oysters in beds held under lease.

**48** Every lessee shall mark out and keep marked by clear and distinct marks the limits of any portion of the sea shore comprised in any such lease: and no person shall be liable to any proceedings for unlawfully taking any Oysters within such limits, unless the same have been marked and kept marked as required by this Section. Limits of sea shore leased to be marked.

**49** In any case where any such lease is granted by the Governor, if it appears to the Commissioners that the lessee under such lease, or his assigns, within the period of Three years from the date of such lease, has not taken steps proper in their opinion to form the Oyster-bed or Laying in such lease mentioned, then and in such case it shall be lawful for the Governor, by an order in writing under his hand, to revoke such lease, and thereupon all the rights and privileges created by such lease shall cease and determine: Provided always, that previously to the making of such order the Governor shall cause a notice in writing, stating his intention to make such order, to be served upon the person for the time being entitled to such lease, or in case such person cannot be found the Governor shall cause such notice to be inserted twice in the *Gazette*; and no such order shall be made until after the expiration of One month from the service of such notice, or from the date of the last of such notices in the *Gazette*. Power to the Governor to revoke leases in certain cases.

**50** Notwithstanding anything in any lease heretofore granted or hereafter to be granted by the Governor, the same shall be determinable by a Proclamation by the Governor in the *Gazette* (which Proclamation he is hereby empowered to make), declaring that the Commissioners are not satisfied that the lessee is properly cultivating the Oyster ground within the limits of such lease; and on any such Proclamation being made, the right by such lease conferred shall by virtue of this Act and of the Proclamation as aforesaid be absolutely determined, and all the provisions of this Act shall cease to operate in relation to such lease as an Oyster fishery or otherwise; and for the purposes of this provision the Commissioners may from time to time, with respect to such lease or Oyster fishery, make such enquiries and examinations by an Inspector or otherwise, and require from such lessee such information as the Commissioners may think necessary or proper; and the lessee shall afford all facilities for such inquiries and examinations, and give such information accordingly. Lease may be determinable by Proclamation by the Governor.

**51** It shall not be lawful for any person other than the lessees, or their assigns, their agents, servants, and workmen, within the limits of any Oyster-bed or Laying, knowingly to do any of the following things:— Penalties for injuring Oyster-beds.

To use any implement of fishing except a line and hook:

To dredge for any ballast, or other substance, except under a lawful authority for improving the navigation:

To deposit any stone, ballast, rubbish, or other substance:

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To place any implement, apparatus, or thing prejudicial or likely to be prejudicial to any Oyster-bed or Oysters, or Brood or Spawn thereof, or to the Oyster Fishery, except for a lawful purpose of navigation or anchorage :

To disturb or injure in any manner, except as last aforesaid, any Oyster-bed or Oysters, or Brood or Spawn thereof, or the Oyster Fishery :

To interfere with or take away any of the Oysters from such Bed without the consent of the licensees, or Owners or Occupiers of such Bed :

And if any person does any act in contravention of this Section he shall, on conviction, be liable to the following penalty ; namely, to a penalty not exceeding Two Pounds for the first offence, and not exceeding Five Pounds for the second offence, and not exceeding Ten Pounds for the third and every subsequent offence ; and also such further sum of money as appears to the Justices to be a reasonable compensation for the damage sustained, not exceeding the sum of Ten Pounds, which last-mentioned sum of money shall be paid to the party aggrieved ; and if such sums of money, together with costs (if ordered), are not paid either immediately after the conviction or within such period as the Justices at the time of the conviction appoint, the Justices may commit the offender to any Gaol or House of Correction, there to be imprisoned only or to be imprisoned and kept to hard labour as the Justices think fit, for any term not exceeding Two months, unless such sums and costs are sooner paid.

*Public Oyster Fisheries.*

Regulations in  
respect of public  
Oyster Fisheries.

**52** The Commissioners may make Regulations for any of the following purposes relating to public Oyster Fisheries :—

- i. To determine the seasons during which Oysters may be fished, taken, and sold :
- ii. To regulate the manner of fishing, and the size of Oysters that may be taken :
- iii. From time to time to close and open any Beds, or supposed Beds, for such time as they think fit :
- iv. To restrain persons from fishing and taking Oysters who are not licensed, and to prescribe the mode for issuing such licences, and the fees to be paid for such licences, not exceeding Ten Pounds in any case ; and also to make such licences, subject to such limitations and conditions as they think fit :
- v. Generally to regulate the Oyster Fisheries of this Colony :

And if any person does any act in contravention of any such Regulation, he shall on conviction be liable to forfeit and pay a penalty not exceeding Five Pounds, and forfeit all Oysters taken contrary to any such Regulations.

Penalty for taking  
small Oysters.

**53** All persons engaged in fishing for or taking Oysters shall cull all such Oysters as may be taken or caught, and shall not remove from any fishing-ground or Oyster-bed any Oyster of less dimensions than the Commissioners may prescribe, and shall immediately throw back into the water all Oysters of less dimensions than prescribed, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing ; and any person acting in

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contravention of this Section, and any person buying, selling, or having in his possession any Oysters of less dimensions than prescribed, shall be liable to a penalty of Five Pounds for each and every such offence, together with forfeiture of such undersized Oysters as may be taken or had in possession contrary to this Section. A.D. 1889.

*Protection of Seals.*

**54** The Commissioners may from time to time make, alter, and revoke regulations, not inconsistent with this Act, for the following purposes :— Commissioners may make regulations for licensing Seal-fisheries.

1. Setting out or describing the limits or parts of the Colony, being waste lands of the Crown not otherwise alienated or disposed of, including any lands below high-water mark, in respect of which licences may be issued conferring the right of taking Seals :
2. Prescribing the form of such licences, the fee or royalty to be paid for each Seal taken, and generally the terms, conditions, and restrictions upon which the same shall be issued :
3. Prescribing any security to be given by the licensee for the due performance of the terms and conditions of his licence.

**55** Every licence granted for the taking or killing of Seals, under the authority of this Act or any regulations made thereunder, shall empower the licensee to hold, use, and occupy such land of the Crown available for occupation as may from time to time be authorized by the Minister, and as may be necessary for the erection of dwelling-houses or other buildings or works to carry on the business of taking and killing Seals. Licensee may use certain Crown lands for works.

**56** Every person holding any licence granted as aforesaid shall, in addition to any security given under this Act or provided for in the licence, be liable to a penalty not exceeding Five Pounds for default in carrying out and observing the terms, conditions, and restrictions therein mentioned or referred to. Penalty prescribed for breach of conditions.

**57** Every person who, without the authority of the holder of a licence granted as aforesaid, shall take any Seal within the limits comprised in any such licence, shall be liable to a penalty not exceeding Five Pounds for every Seal so taken. Penalty for unauthorised taking of Seals.

*Registration of Fishing Vessels and Boats.*

**58** The following Regulations shall in future be observed by owners and masters of all fishing vessels and boats belonging to *Tasmania*, of whatever size and however propelled or navigated, which find any portion of their ordinary employment in fishing, for purposes of sale, subject to such modifications or alterations therein as may be made by the Commissioners :— Regulations as to registration of boats.

- (a) Every fishing vessel or boat shall be lettered and numbered, and have a Certificate of Registry, and shall for that purpose be entered or registered in a Register of Fishing Boats, to be kept at the Office of the Commissioners.

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Application for letters, numbers, and Certificates of Registry shall be made by all owners of fishing boats to the Commissioners.

(b) Boats shall be divided into Three Classes :—

1st Class.—Boats of Fifteen tons burthen and upwards.

2nd Class.—Boats of less than Fifteen tons.

3rd Class.—Boats navigated by oars only.

(c) For boats of the above Classes, the positions and dimensions of the numbers shall be as follows :—

1st Class.—For the hulls, Eighteen inches in height and Two and one half inches in breadth ; and for the sails, one-third larger in every way.

2nd Class.—For the hulls, Ten inches in height and One and Three-quarter inches in breadth ; and for the sails, one-third larger in every way.

3rd Class.—Three inches at least in height, and Half an inch in breadth.

Provided, that in boats having a “ bead piece ” or “ rubbing streak ” the numbers shall be as high as the space above them will admit.

(d) Small boats carried as tenders or otherwise shall be marked with same numbers and names.

(e) All boats shall have their names and numbers, and the names of their owners, painted on the bows in white oil colour on a black ground, or on the outside of their sterns, in letters and numbers not less than Three inches in height and Half an inch in breadth.

(f) The numbers and names placed on boats or vessels shall not be effaced, covered, or concealed in any manner.

(g) All buoys, barrels, and principal floats of nets, and all other implements of fishing, shall be marked with the same numbers.

(h) The master of every boat registered shall have on board his boat at all times the Certificate of Registry hereby required to be obtained ; and any owner or master of a boat fishing without having his boat duly registered as herein provided, or not having his Certificate as herein required, or not furnishing the Commissioners with such statistical information as they may require from time to time, shall be liable to a penalty for each offence of Five Pounds, together with forfeiture of his boat or vessel.

(i) After registration no change shall be made in the name of any boat or vessel.

(k) The Commissioners shall provide and supply to all owners of fishing vessels forms of application for Certificates of Registry in the Form (A.) in Schedule (2) hereto, and shall also furnish a certificate to such owners in the Form (B.) in Schedule (2) hereto, and shall keep a Registry in Form (C.) in Schedule (2) hereto.

Provided always, that in case of any yachts and boats not engaged in fishing for sale, the Commissioners may give such exemptions as may be necessary from the obligation contained in this Act for the registration of all fishing boats, subject to such conditions as they may impose or regulations they may consider necessary.



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**59** The Minister, by direction of the Governor, is hereby authorised to purchase and take, in the mode prescribed by *The Lands Clauses Act*, any land, being part of the bed or soil of or adjoining any river or stream, which may be required for the purposes of this Act; and *The Lands Clauses Act* shall be incorporated with this Act, and, for the purposes of such incorporation, the Minister shall be deemed to be the promoter of the undertaking.

Land may be  
taken for purposes  
of Act.

21 Vict. No. 11.

**60** Every officer appointed by the Commissioners is hereby empowered, for the enforcement of the provisions of this Act and of any regulations made thereunder, to exercise the powers and authorities of a Constable; and every officer so appointed shall be at liberty at all times and seasons, without any let or hindrance whatsoever, to enter into and pass through or along the banks or borders of all waters in *Tasmania*, and with boats or otherwise to enter upon such waters, and to enter upon and examine all tributaries, sluices, mill-pools, mill-dams, mill-races, and watercourses communicating therewith, and to pass along the same, and to enter any boat or boats engaged in fishing, and to examine all standing, floating, or other nets whatsoever, and to demand the production of all licences issued under this Act, and the register of all boats engaged in fishing, and to seize all illegal nets, fixed engines, instruments, and devices whatsoever, and all and every other nets, engines, and instruments whatsoever when used illegally, and to do all such other acts and things as he is required to do by this Act and by such regulations as aforesaid; and the production of his appointment, in writing, shall be sufficient warrant for such officer so acting in any of the cases aforesaid:

Powers of  
Officers.

Provided, that nothing herein contained shall be construed to authorise any such officer to enter any garden enclosed with a wall or paling, nor any dwelling-house or the curtilage thereof, except where the ordinary passage to any such inland or tidal waters, or to any sluice, mill-pool, mill-dam, mill-race, or watercourse is through any such garden or curtilage as aforesaid, save when thereunto authorised by the Warrant of a Justice of the Peace as hereinafter provided.

**61** It shall be lawful for any Justice of the Peace, upon an information on oath that there is probable cause to suspect any breach of this Act or of such regulations as aforesaid to be committed within any of the hereinbefore excepted grounds and premises, by Warrant under his hand, to authorise and empower any such officer as aforesaid to enter the said excepted premises for the purpose of detecting such offence, at such time or times in the day or night as in such Warrant is mentioned: Provided, that no such Warrant shall continue in force for more than Fourteen days from the date thereof.

Justice may grant  
Warrant to enter  
suspected places.

**62** If any person assaults, resists, or obstructs any Commissioner or duly appointed Officer in the execution of any of the powers conferred on him by this Act, or by any regulation made thereunder, every person so offending shall for every such offence incur a penalty not exceeding Fifty Pounds.

Penalty for ob-  
structing Officers.

**63** When any person is found offending against this Act or any such regulations as aforesaid, it shall be lawful for any person to require the person so found offending forthwith to desist from such offence, and also to tell his name and place of abode; and in case

Apprehension of  
offenders.

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such person so found offending, after being so required, refuses to tell his real name or place of abode, or gives such a general description of his place of abode as is illusory for the purpose of discovery, or wilfully continues such offence, it shall be lawful for the person so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender; and to seize any net or other engine or instrument illegally used by such offender, and to convey him, or cause him to be conveyed, as soon as conveniently may be before One or more Justices of the Peace, to be dealt with according to Law: Provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than Twenty-four hours from the time of his apprehension before he is brought before One or more Justices of the Peace; and that if he cannot, on account of the absence or distance of the residence of any such Justice or Justices of the Peace, or owing to any other reasonable cause, be brought before One or more Justices of the Peace within such Twenty-four hours as aforesaid, then the person so apprehended shall be discharged, but may, nevertheless, be proceeded against for his offence by Summons or Warrant as if no such apprehension had taken place.

Penalty on  
selling fish during  
close season.

**64** No person shall buy, sell, or expose for sale, or have in his possession any Salmon or Trout during any period which the Commissioners may by Regulation prohibit the taking of Salmon or Trout. And any person acting in contravention of this Section shall forfeit any fish so bought, sold, or exposed for sale or in his possession, and shall incur a penalty not exceeding Two Pounds for each such fish; but this Section shall not apply to any person buying, selling, or exposing for sale or having in his possession Salmon cured, pickled, or dried; or prevent the sale of Salmon or Trout, or the ova or young of Salmon or Trout, during the close season by any person or persons appointed by the Commissioners for the purpose of stocking any *Tasmanian, Australian, or New Zealand* waters.

One moiety of  
penalty to  
informer.

**65** One moiety of every penalty recovered under this Act shall go to the informer or person suing for the same, and the remaining moiety of every such penalty shall be paid to the Commissioners, and may be appropriated as the Commissioners may think fit for the purposes of this Act.

All forfeitures to  
become the pro-  
perty of the  
Commissioners.

**66** All fish, boats, nets, engines, and other instruments forfeited under the provisions of this Act shall, upon forfeiture, become the property of the Commissioners, and may be sold or disposed of in such mode as they may from time to time prescribe, and the proceeds of such sale or disposal may be appropriated as the Commissioners may think fit for the purposes of this Act.

Recovery of  
Penalties.

**67** All offences against this Act, or any such regulations as aforesaid, shall be heard and determined, and all nets or other engines, instruments, or devices directed to be forfeited by this Act, or by any such regulation as aforesaid, be adjudged forfeited, and all penalties be recovered in a summary way, by and before any One or more Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*.

19 Vict. No. 8.

Limitation of  
actions.

**68** No action shall be brought against any person for anything done in pursuance of this Act, or any such regulations as aforesaid, unless such action is commenced within Three months after the cause of action

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has arisen, nor unless notice in writing of such action, and the cause thereof, is given to the defendant One month at least before the commencement of the action; and the defendant may plead the general issue, and give this Act and the special matter in evidence; and the plaintiff shall not recover in such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into Court after action brought; and if a verdict is given for the defendant, or the plaintiff is nonsuited or discontinues his action, or if judgment is given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and though a verdict is given against the defendant, the plaintiff shall not have costs against the defendant unless the Judge who tries the case certifies his approbation of the action and of the verdict.

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Notice of action.

General issue.

Tender of amends.

Costs.

**69** In all legal proceedings taken against any person for any breach of or non-compliance with the provisions of this Act, the onus of proving that such person was duly licensed or was otherwise exempted from any penalty or forfeiture imposed by this Act shall in all such cases rest upon the defendant, who shall in all such proceedings be competent but not compellable to give evidence, anything contained in any law or practice to the contrary notwithstanding.

Onus of proof.

## SCHEDULE.

(1.)

## REPEAL.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
23 Vict. No. 10	An Act for the Preservation of Fish in the Rivers of this Colony.	The whole Act.
29 Vict. No. 6	<i>The Salmon Act, 1865.</i>	The whole Act.
32 Vict. No. 16	"The Oyster Fisheries Act."	The whole Act.
34 Vict. No. 24	An Act to prevent the Sale or Purchase of Flounders under a certain size.	The whole Act.
42 Vict. No. 3	"The Salmon Act, 1878."	The whole Act.
42 Vict. No. 4	"The Trout Act, 1878."	The whole Act.
42 Vict. No. 31	An Act to make provision for the issue of Licences to fish for Salmon and Trout.	The whole Act.
44 Vict. No. 19	"The Oyster Fisheries Amendment Act."	The whole Act.
48 Vict. No. 23	"The Fisheries Inspection Act, 1884."	The whole Act.
49 Vict. No. 27	"The Crayfish Protection Act, 1885."	The whole Act.
49 Vict. No. 28	An Act to make better provision for regulating the Close Season for Salmon and Trout.	The whole Act.

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(2.)

FORM A.

APPLICATION TO REGISTER A VESSEL OR BOAT.

Port of  
 The  
 Port or place to which belonging—  
 Owner—  
 Master—  
 Description of vessel or boat, how rigged, what sail used, &c.—  
 Mode of fishing—  
 Tonnage—  
 Length of keel—  
 No. of men } usually employed.  
 No. of boys }  
 Signature of applicant—  
 Residence—

FORM B.

Port of  
 CERTIFICATE OF REGISTRY.  
 , named

of  
 of  
 Owner  
 Master

Registered No. of Class  
 Signature of Registering Officer—  
 Date—

FORM C.

REGISTRY OF VESSELS AND BOATS ENGAGED IN FISHING.

Date of Registry.	Name of Vessel.	Port or Place to which belonging.	Name of Owner.	Name of Master.	Description.		Registered No.			Size.		No. of Crew usually employed.		Remarks.
					Of Vessel or Boat, how rigged, what Sails used, &c.	Ordinary Mode of Fishing.	1st Class.	2nd Class.	3rd Class.	Ton-nage.	Length of Keel.	Men.	Boys.	