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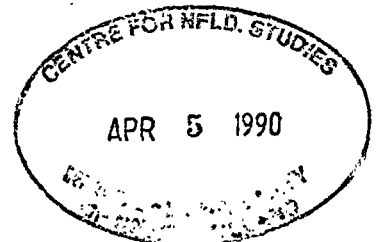
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REGULATIONS OR LAWS

NOW IN FORCE IN THE UNDER-MENTIONED
COLONIES,



WITH REFERENCE TO THE

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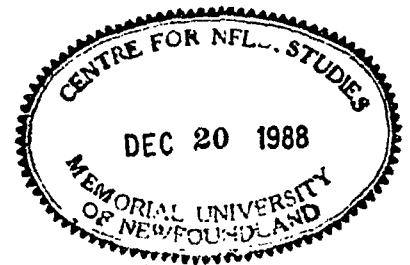
AND ESPECIALLY IN CONNEXION WITH THE

CONVENTION WITH THE UNITED STATES OF
20th OCTOBER 1818,

AND THE

STATUTE 59 Geo. III. Cap. 38.

NEWFOUNDLAND.	NEW BRUNSWICK.
PRINCE EDWARD ISLAND.	CANADA.
NOVA SCOTIA.	



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY,
FOR HER MAJESTY'S STATIONERY OFFICE.

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(Circular.)

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CIRCULAR DESPATCH addressed to the Governors of Canada and Newfoundland, and to the Lieutenant-Governors of Nova Scotia, New Brunswick, and Prince Edward Island. NEWFOUNDLAND.

SIR,

Downing Street, July 22, 1853.

HER Majesty's Legal Advisers having represented that it would greatly facilitate the despatch of public business, and conduce to their convenience in delivering their opinion on the questions repeatedly submitted to them relating to the fisheries in the British North American colonies, if strictly correct returns or answers could be obtained from each of the colonies on the following question: "What are the regulations or laws now in force in the colony of _____ with reference to the fisheries, and especially in connexion with the convention with the United States of the 20th October 1818 and the statute 59 Geo. 3. cap. 38?"

I have directed a collection to be made of the different regulations, laws, and Orders in Council within the cognizance of this office on this subject, which I propose to communicate to the law officers of the Crown for their information and guidance. But, previously to forwarding this collection to them, I have to request you to direct the Law Officers of your government to examine the accompanying copy which I send you, and if it is complete to verify the fact with their signatures. If there are any omissions in the collection you will request them to make it perfect.

It is important that there should be no delay in attending to this instruction, and returning the collection.

I have, &c.
(Signed) NEWCASTLE.

NEWFOUNDLAND.

No. 1.

No. 1.

COPY of a DESPATCH* from the Right Hon. Earl BATHURST to the
Lieut.-Governor of Newfoundland.

MY LORD,

Downing Street, April 7, 1819.

I AM commanded by His Royal Highness the Prince Regent to transmit to you a Convention which has been agreed upon and ratified between His Royal Highness in the name and on the behalf of His Majesty and the United States of America. This Convention cannot be fully carried into effect without the aid of legislative provisions; but as the fishing season will have commenced before it will be possible that your Lordship should receive my instructions founded upon such provision as Parliament may find it necessary to enact, I am commanded to transmit to your Lordship these provisional instructions for the guidance of your conduct in the execution of the said Convention.

Your Lordship will observe that under the treaty the fishermen of the United States are excluded from fishing within three marine miles of any part of the coasts of His Majesty's dominions in North America, with the exception of the Magdalen Islands, and of those parts of the coast of Newfoundland and Labrador which are particularly described in the first article of the Convention. Their right also to dry and cure fish is limited to the unsettled bays, harbours, and creeks on the southern coast of Newfoundland, from Cape Ray to the Rameau

* Similar Despatches addressed to the Lieut.-Governors of Nova Scotia, Prince Edward Island, and Newfoundland.

NEWFOUNDLAND. Islands, and to that part of the coast of Labrador on which they have, under the Convention, a right of fishery. I am, therefore, to signify to your Lordship the pleasure of His Royal Highness, that if any vessels or inhabitants of the United States should be found fishing or preparing to fish within three marine miles of any part of the coasts of Nova Scotia, or should attempt to use any part of the coast of the province for drying and curing fish, or for other purposes connected with the fishery, you should take the necessary measures for enforcing a due adherence on their part to the stipulations of this Convention, by instituting the necessary legal proceedings against those who may be found acting in violation of its provisions.

I have, &c.
(Signed) BATHURST.

Encl. in No. 1.

Enclosure in No. 1.

CONVENTION between HIS BRITANNIC MAJESTY and the UNITED STATES OF AMERICA.
Signed at London, October 20, 1818.

HIS Majesty The King of the United Kingdom of Great Britain and Ireland, and the United States of America, desirous to cement the good understanding which happily subsists between them, have, for that purpose, named their respective Plenipotentiaries, that is to say, His Majesty, on His part, has appointed the Right Honourable Frederick John Robinson, Treasurer of His Majesty's Navy, and President of the Committee of Privy Council for Trade and Plantations; and Henry Goulburn, Esquire, one of His Majesty's Under Secretaries of State:—And the President of the United States has appointed Albert Gallatin, their Envoy Extraordinary and Minister Plenipotentiary to the Court of France; and Richard Rush, their Envoy Extraordinary and Minister Plenipotentiary to the Court of His Britannic Majesty: Who, after having exchanged their respective full powers, found to be in due and proper form, have agreed to and concluded the following Articles:—

ARTICLE I. Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbours, and creeks of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straights of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company. And that the American fishermen shall also have liberty, for ever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland here-above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbour of His Britannic Majesty's dominions in America, not included within the above-mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

ARTICLE II. It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be in the line of demarcation between the territories of His Britannic Majesty and those of the United States; and that the said line shall form the southern boundary of the said territories of His Britannic Majesty, and the northern boundary of the territories of the United States, from the Lake of the Woods to the Stony Mountains.

ARTICLE III. It is agreed, that any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present Convention to the vessels, citizens, and subjects of the two Powers: it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two High Contracting Parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country, the only object of the High Contracting Parties in that respect being to prevent disputes and differences amongst themselves. NEWFOUNDLAND.

ARTICLE IV. All the provisions of the Convention "to regulate the commerce between the territories of His Britannic Majesty and of the United States," concluded at London on the 3d day of July in the year of our Lord 1815, with the exception of the clause which limited its duration to four years, and excepting also, so far as the same was affected by the Declaration of His Majesty respecting the island of St. Helena, are hereby extended and continued in force for the term of ten years from the date of the signature of the present Convention, in the same manner as if all the provisions of the said Convention were herein specially recited.

ARTICLE V. Whereas it was agreed by the first Article of the Treaty of Ghent, that "All territory, places and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this Treaty, excepting only the islands herein-after mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the artillery or other public property originally captured in the said forts or places, which shall remain therein upon the exchange of the Ratifications of this Treaty, or any slaves or other private property:" And whereas, under the aforesaid article, the United States claim for their citizens, and as their private property, the restitution of, or full compensation for, all slaves who, at the date of the exchange of the Ratifications of the said Treaty, were, in any territory, places, or possessions whatsoever, directed by the said Treaty to be restored to the United States, but then still occupied by the British forces, whether such slaves were at the date aforesaid on shore, or on board any British vessel, lying in waters within the territory or jurisdiction of the United States: And whereas differences have arisen, whether, by the true intent and meaning of the aforesaid Article of the Treaty of Ghent, the United States are entitled to the restitution of, or full compensation for, all or any slaves, as above described; the High Contracting Parties hereby agree to refer the said differences to some friendly Sovereign or State, to be named for that purpose; and the High Contracting Parties further engage to consider the decision of such friendly Sovereign or State to be final and conclusive on all the matters referred.

ARTICLE VI. This Convention, when the same shall have been duly ratified by His Britannic Majesty and the President of the United States, by and with the advice and consent of their Senate, and the respective Ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said United States; and the Ratifications shall be exchanged in six months from this date, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have thereunto affixed the seal of their arms.

Done at London, this twentieth day of October in the year of our Lord one thousand eight hundred and eighteen.

(L.S.)	FREDERICK JOHN ROBINSON.
(L.S.)	HENRY GOULBURN.
(L.S.)	ALBERT GALLATIN.
(L.S.)	RICHARD RUSH.

No. 2.

No. 2.

ORDER IN COUNCIL of 19th June 1819.

At the Court at Carlton House, the 19th June 1819,

PRESENT,

His Royal Highness the Prince Regent in Council.

WHEREAS an Act was passed in the present session of Parliament, entitled "An Act to enable His Majesty to make regulations with respect to the taking and curing fish in certain parts of the coasts of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America," wherein it is enacted, that "whereas a Convention between His Majesty and the United States of America was made and signed at London on the 20th day of October 1818, and by the first article of the said Convention it is agreed that

For Act 59 Geo. 3.
c. 38., passed 14th
June 1819, vide
Statutes at large.

NEWFOUNDLAND. the inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Juniper Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks from Mount Joly, on the southern coasts of Labrador, and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and it was also by the said article of the said Convention agreed, that the American fishermen should have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland above described, and of the coast of Labrador; but that so soon as the same or any portion thereof should be settled, it should not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground: And whereas it is expedient that His Majesty should be enabled to carry into execution so much of the said Convention as is above recited, and to make regulations for that purpose:" "it shall and may be lawful, from and after the passing of the said Act, for His Majesty, by and with the advice of His Majesty's Privy Council, by any Order or Orders in Council to be from time to time made for that purpose, to make such regulations and to give such directions, orders, and instructions to the Governor of Newfoundland, or to any officer or officers on that station, or to any other person or persons whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said Convention with relation to the taking, drying, and curing of fish by inhabitants of the United States of America in common with the British subjects, within the limits set forth in the said article of the said Convention, any Act or Acts of Parliament, or any law, custom, or usage to the contrary in anywise notwithstanding:" It is ordered by His Royal Highness the Prince Regent, in the name and on the behalf of His Majesty, by and with the advice of His Majesty's Privy Council, in pursuance of the powers vested in His Majesty by the said Act, that the Governor of Newfoundland do give notice to all His Majesty subjects being in or resorting to the said ports, that they are not to interrupt in any manner the aforesaid fishery so as aforesaid allowed to be carried on by the inhabitants of the said United States in common with His Majesty's subjects on the said coasts, within the limits assigned to them by the said Treaty; and that the Governor of Newfoundland do conform himself to the said Treaty, and to such instructions as he shall from time to time receive thereon in conformity to the said Treaty, and to the above-recited Act, from one of His Majesty's Principal Secretaries of State, anything in His Majesty's Commission under the Great Seal, constituting him Governor and Commander-in-Chief in and over the said island of Newfoundland in America, and of the islands and territories thereunto belonging, or in His Majesty's general instructions to the said Governor, to the contrary notwithstanding; and His Royal Highness, in the name and on the behalf of His Majesty, doth hereby annul and make void each and every of the said general instructions which are or shall be deemed contrary to the intent and meaning of the said Convention and of the said Act. And the Right Honourable Earl Bathurst, one of His Majesty's Principal Secretaries of State, is to take the necessary measures herein accordingly.

JAS. BULLER.

No. 3.

No. 3.

6° GULIELMI IV. REGIS.

Cap. III.

An Act to prevent the encroachments of Aliens on the Fisheries of this Island, and for the further Protection of the said Fisheries. [6th May 1836.]

Preamble.

WHEREAS foreigners have of late years been in the practice of unlawfully resorting in great numbers to the various harbours and coves of Fortune Bay

and other places adjacent thereto, eastward of Cape Ray, for the purpose of cutting down and carrying away timber and brushwood, and of procuring caplin and other bait for the use of their fishery, to the great injury and detriment of the trade and fisheries of His Majesty's subjects carried on in this colony: And whereas it is necessary to adopt prompt and effectual measures for suppressing the unlawful practices above mentioned, and for preventing similar encroachments in future:

I. Be it therefore enacted, by the Governor, Council, and Assembly of Newfoundland, that no alien or stranger whatsoever shall at any time hereafter take bait or use any sort of fishing whatsoever in Newfoundland or the coasts, bays, or rivers thereof, or on the coast of Labrador, or in any of the islands or places within or dependant on the Government of the said colony; always excepting the rights and privileges granted by treaty to the subjects or citizens of any foreign state or power in amity with His Majesty.

No alien to take bait or fish on any part of the coast of Newfoundland or Labrador; except such as are allowed by treaty.

II. And be it further enacted, that if any such alien or aliens shall take caplin, herring, mackerel, lance, clams, or other bait, or use any such fishery as aforesaid, or shall cut down or carry away any timber or brushwood upon or from any part of this island or its dependencies (excepting as before excepted), such alien or aliens, and all and every person or persons aiding or assisting them, shall, on conviction thereof in any Court of Record in this island, forfeit and pay to our Lord the King a fine not exceeding one hundred pounds nor less than ten pounds, at the discretion of such Court, to be disposed of in manner herein-after mentioned; and that all and every the ships, vessel, boats, or other craft, with the tackle, apparal, and furniture thereof, and all seines, nets, lines, hooks, or other fishing craft used or employed in the taking, receiving, or transporting of such bait or timber, or other materials aforesaid, together with such bait or timber, shall be forfeited to His Majesty, and the same shall be sold at public auction, and the proceeds thereof applied in the manner herein-after directed.

Penalty;

to be recovered on conviction, in any court of record; with forfeiture of vessels, boats, tackle, &c.

III. And whereas it is of the utmost importance to protect and encourage the fishery carried on by His Majesty's subjects in this colony, at present greatly depressed by the injurious privilege enjoyed by foreigners of taking and curing fish on the shores thereof, and to preserve for the use of His Majesty's subjects the shoals of bait which visit the coasts of this island and its dependencies; and to that end it is above all things necessary to prohibit the selling and disposing of bait to foreigners, who are thereby enabled to prosecute their fisheries much more advantageously than they otherwise might, to the great detriment of the trade and fisheries carried on by His Majesty's subjects in this colony: Be it therefore further enacted, that from and after the passing of this Act it shall not be lawful for any person or persons to sell or dispose of any such caplin or other bait as aforesaid to any alien or aliens, or to any person or persons for their use, and that it shall not be lawful for any person or persons to export from this island or its dependencies, or knowingly sell or dispose of to the end that the same may be exported from this island for the purpose of being used or employed in any fishery or fisheries carried on by aliens or any other persons other than liege subjects of His Majesty, any such caplin or other bait whatsoever.

Sale of bait to foreigners prohibited.

IV. And be it further enacted, that if any person or persons shall so sell or dispose of to any alien or aliens, or so export or cause to be exported from this island or its dependencies, or knowingly sell or dispose of, to the end that the same may be exported from this island or its dependencies, other than for the purpose of being used and employed in the fisheries so carried on by His Majesty's subjects as aforesaid, any such caplin or other bait whatsoever, he or they so offending shall, on conviction thereof in any Court of Record in this colony, forfeit and pay to our Lord the King a fine not exceeding one hundred pounds nor less than ten pounds, at the discretion of such Court, and shall also forfeit all and every of the ships, vessels, boats, or other craft used or employed in such exportation, with the tackle, apparel, and furniture thereto belonging, together with the bait, or the money, goods, or effects for which the same shall have been sold or exchanged, or which may be found on

Penalty.

And forfeiture of vessels, boats, &c.

NEWFOUNDLAND. board any such ship, vessel, boat, or other craft, belonging to the owners, masters, or crews of such ship, vessel, boat, or other craft as aforesaid, to His Majesty, and the proceeds thereof shall be applied in the manner herein-after directed.

Persons authorized to make seizures under this Act.

V. And be it further enacted, that it shall and may be lawful for any officer of His Majesty's navy, or of His Majesty's customs, or for any Justice of the Peace, constable, or other peace officer, to seize and detain all and every such ships, vessels, or boats, nets, seines, or other fishing craft, as may be in any manner used or employed in the unlawful taking or exportation of bait, or the transporting or carrying away of wood or timber, in contravention of this Act, together with the bait, timber, brushwood, and all other goods, chattels, money, and effects found on board the same, or recently removed therefrom to avoid seizure, and to detain and keep the same, subject to the order, judgment, or decree of any court having jurisdiction therein.

Recovery and appropriation of penalties.

VI. And be it further enacted, that all fines and penalties imposed by this Act shall and may be sued for and recovered in any Court of Record in this island; and in default of payment thereof, the offender or offenders shall be committed by such Court to the nearest gaol, there to remain for any period not exceeding six months; and the monies arising from all fines and forfeitures imposed by this Act shall, as to one moiety thereof, be paid to the treasurer of this colony to and for the use of our sovereign Lord the King, his heirs and successors, and as to the other moiety thereof, the same shall be paid to the use of such person or persons as shall inform and sue for the same.

Offenders against this act may be apprehended and held to bail, or in default committed to prison.

VII. And be it further enacted, that upon an affidavit being made before any of His Majesty's Justices of the Peace, or before a Commissioner of the Supreme Court appointed by His Majesty's Chief Justice of the island to take affidavits in the said court, setting forth that any alien or stranger not residing in this colony has committed any offence which by the provisions of this Act is subjected to any penalty imposed by this Act, it shall and may be lawful for any such Justice to issue his warrant for the apprehension of such person, and to hold him to bail to appear at the next term of the Supreme or Circuit Court to answer for such offence; and in default of bail to commit him to prison, there to remain until delivered by due course of law.

Seizures under 50*l*. value may be heard and determined, summarily, in any Court of Sessions.

VIII. And be it further enacted, that all seizures made under this Act, which shall upon the oath of two competent sworn appraisers be valued under fifty pounds, may be heard and determined in a summary way before any Court of Sessions of the Peace in the district where the seizure shall be made.

Seizing officers prosecuted for anything done under this Act may plead the general issue.

IX. And be it further enacted, That if any officer of His Majesty's navy, or of His Majesty's customs, justice of the peace, constable, or other peace officer, or person aiding or assisting them or any of them in the seizure of any ship, vessel, boat, net, seines, or other fishing craft or tackle, or of any bait, timber, brushwood, goods, chattels, money or effects, or other thing whatsoever, shall be sued or prosecuted for anything done under and by virtue of the powers and authority of this Act, he may plead the general issue, and give this Act and the special matter in evidence; and if in such suit the plaintiff shall be nonsuited, or judgment be given against him, the defendant shall recover double costs; and in case any information shall be commenced and brought to trial on account of the seizure of any ship, vessel, boat, net, seine, craft, tackle, bait, timber, brushwood, goods, chattels, money, or effects whatsoever, as seized or forfeited under this Act, wherein judgment shall be given for the claimant, and it shall appear to the court or justices before whom the same shall be tried that there was a probable cause of seizure, the court or justices shall certify on the record that there was a probable cause of seizing the same, and in such case the defendant shall not be entitled to any costs whatsoever, nor shall the person who seized, or those acting in his aid, be liable to any action or prosecution on account of such seizure; and in case any action or prosecution shall be commenced and brought to trial against any person whatsoever on account of any such seizure as aforesaid, and whether the cause of such seizure shall have been heard and determined or not, if the court

Judge may certify probable cause of seizures.

before whom such action shall be brought shall certify as aforesaid that there NEWFOUNDLAND.
 was a probable cause for such seizure, then the plaintiffs (besides the ship,
 vessel, boat, or other thing seized, or the value thereof when the same shall
 not have been restored,) shall not be entitled to more than one shilling damages,
 nor to any costs of suit.

No. 4.

No. 4.

ORDER IN COUNCIL of 21st September 1836.

At the Court at St. James's, the 21st September 1836.

PRESENT,

The King's most Excellent Majesty in Council.

WHEREAS the Governor of His Majesty's island of Newfoundland, with the Council and Assembly of the said island, did, in the month of May 1836, pass an act, which has been transmitted, intituled as follows, viz. "No. 63., An Act to prevent the Encroachments of Aliens on the Fisheries of this Island, and for the further Protection of the said Fisheries:" And whereas the said act has been referred to the Committee of the Lords of His Majesty's Most Honourable Privy Council appointed for the consideration of all matters relating to trade and foreign plantations, and the said Committee have reported as their opinion to His Majesty that the said act should not receive His Majesty's royal confirmation; His Majesty was thereupon this day pleased, by and with the advice of his Privy Council, to declare his disallowance of the said act, and the same is hereby disallowed accordingly. Whereof the governor, lieutenant-governor, or commander in chief of His Majesty's island of Newfoundland for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) C. C. GREVILLE.

EXTRACT from Report of the Committee in Council for trade and foreign plantations, recommending the disallowance of a Newfoundland act (No. 63.), passed in May 1836.

Because it interferes with Your Majesty's prerogative in negotiating treaties for securing to the subjects of foreign states a participation with Your Majesty's subjects in these fisheries, and because it encroaches upon the province of parliament, by assuming to the local legislature the right to regulate interests of this description.

No. 5.

No. 5.

St. John's Newfoundland,
 August 10, 1853.

THE foregoing Order in Council (No. 2.) of the 19th June 1819 is the (Vide page 5.)
 only regulation in force in Newfoundland with reference to the fisheries, and especially in connexion with the convention with the United States of October 1818 and the statute 59 Geo. 3. cap. 38. There are no local statutes in force for the regulation of the fisheries.

(Signed) E. M. ARCHIBALD, Attorney General.
 H. W. HOYLES, Acting Solicitor General.

PRINCE EDWARD ISLAND.

No. 6.

No. 6.

6° VICTORIÆ, CAP. XIV.

AN ACT relating to the Fisheries, and for the Prevention of Illicit Trade in Prince Edward Island, and the Coasts and Harbours thereof.

[15th April 1843.]

Section.

1. Officers of customs and excise, sheriffs and magistrates, and any person holding a commission from lieut.-governor for that purpose, authorized to board vessels, &c., within three marine miles of the coast of this island; power of such officers, &c.; further power of such officers, &c. prohibited goods on board such vessel to be forfeited, and vessel, &c., if foreign and found fishing, or preparing to fish, within such distance of three miles, to be forfeited; penalty on master, &c. not truly answering questions.
2. Further powers of officers of customs, excise, magistrates, &c.; penalty on persons molesting or obstructing officers of customs, excise, magistrates, &c.
3. Goods, vessels, &c. seized under this Act to be delivered to nearest collector of customs; collector of customs to keep and secure the same, &c.
4. Goods, vessels, &c. condemned under this Act to be sold under the direction of the officer customs or excise at public auction; appropriation of proceeds of such goods and vessels, &c.; lieut.-governor may direct articles condemned to be destroyed or reserved for public service.
5. Mode of recovery of penalties imposed by this Act.
6. Judge of court having jurisdiction in case of goods, vessels, &c. seized, may, on consent of seizing party, release the same, on security being given therefor; requisites of bond to be taken for same; amount of bond to be distributed by collectors of customs if goods, vessels, &c. be condemned.
7. Regulates the mode of prosecuting suits for penalties under this Act.
8. Onus of proof of illegality of seizure to be on claimant.
9. No claim to anything seized under this Act to be admitted until certain requisites be complied with.
10. No claims to be admitted until security be given; amount of security and condition thereof.
11. Defines mode of proceeding against any officer of customs, excise, magistrate, &c. for any thing done under this Act.
12. Limits time for bringing any action against any officer of customs, &c., for anything done under this Act; regulates mode of proceeding in such actions.
13. If verdict be found for any claimant on certificate of judge or court of probable cause of seizure, no costs to be allowed to claimant, nor seizing officers liable to any action, &c.
14. Seizing officer, &c. may tender amends within one month after notice of action, and plead such tender, &c.; if jury find amends sufficient, verdict to be given for defendant; and in such case or in case of nonsuit or judgment on demurrer in favour of officer, &c. same costs to be given as if he had pleaded the general issue; officer &c. may pay money into court.
15. If judge or court certifies probable cause of seizure plaintiff only to be entitled to 2*d.* damages and to no costs.
16. All penalties or forfeitures under this Act may be recovered within three years after the offence committed or forfeiture incurred.
17. No appeal allowed from sentence of any court under this Act unless applied for within twelve months after.
18. Suspending clause.

WHEREAS by the Convention made between His late Majesty King George the Third, and the United States of America, signed at London, on the Twentieth day of October in the year of our Lord One thousand eight hundred and eighteen, and the Statute made and passed in the Parliament of Great Britain, in the Fifty-ninth year of the reign of His late Majesty King George the Third, all foreign ships, vessels, or boats, or any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing or to have been fishing or preparing to fish within certain distances of any coasts, bays, creeks, or harbours whatever in any part of His Majesty's dominions in America, not included within the limits specified in the first article of the said Convention, are liable to seizure: And whereas the United States did, by the said Convention, renounce for ever any liberty enjoyed or claimed by the inhabitants thereof, to

take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen should be permitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purposes whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges thereby reserved to them: And whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this Island are materially impaired: And whereas the said Act does not designate the persons who are to make such seizure as aforesaid; and it frequently happens that persons found within the distances of the coasts aforesaid, infringing the articles of the Convention aforesaid, and the enactments of the Statute aforesaid, on being taken possession of, profess to have come within said limits for the purpose of shelter, and repairing damages therein, or to purchase wood and obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into this Island, and the fishery carried on, contrary to the said Convention and Statute: Be it therefore enacted, by the Lieutenant-Governor, Council, and Assembly, that from and after the passing of this Act it shall be lawful for the officers of Her Majesty's Customs, the officers of Impost and Excise, the sheriffs and magistrates throughout this Island, and any person holding a commission for that purpose from his Excellency the Lieutenant-Governor for the time being, to go on board any ship, vessel, or boat within any port, bay, creek, or harbour in this Island, and also to go on board any ship, vessel, or boat hovering within three marine miles of any of the coasts, bays, creeks, or harbours thereof, and in either case freely to stay on board such ship, vessel, or boat, as long as she shall remain within such port or distance; and if any such ship, vessel, or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above enumerated officers or persons to bring such ship, vessel, or boat into port, and to search and examine her cargo, and to examine the master upon oath, touching the cargo and voyage, and if there be any goods on board prohibited to be imported into this Island, such ship, vessel, or boat, and the cargo laden on board thereof, shall be forfeited; and if the said ship, vessel, or boat shall be foreign, and not navigated according to the law of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within such distance of such coasts, bays, creeks, or harbours of this Island, such ship, vessel, or boat, and their respective cargoes, shall be forfeited, and if the master or person in command thereof shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of One hundred pounds.

II. And be it further enacted, That all goods, ships, vessels, and boats liable to forfeiture under this Act shall and may be seized and secured by any such officer of Her Majesty's Customs, officer of Impost and Excise, sheriffs, magistrates, or other person holding such commission as aforesaid; and every person who shall in any way oppose, molest, or obstruct any officer of the Customs, officer of Impost and Excise, sheriff, magistrate, or other person so commissioned and employed as aforesaid, in the exercise of his office, or shall in any way oppose, molest, or obstruct any person acting in aid or assistance of such officer of Customs, officer of Impost and Excise, sheriff, magistrate, or other person so commissioned and employed as aforesaid, shall, for every such offence, forfeit the sum of Two hundred pounds.

III. And be it further enacted, That all goods, ships, vessels, and boats which shall be seized, as being liable to forfeiture under this Act, shall be taken forthwith and delivered into the custody of the collector of the customs, at the custom house next to the place where the same were seized, who shall secure and keep the same in such manner as other vessels and goods seized are directed to be secured by the Commissioners of Her Majesty's Customs.

IV. And be it further enacted, That all goods, ships, vessels, boats, or other things which shall have been condemned, as forfeited under this Act, shall, under the direction of the principal officer of the Customs or Excise, where

such seizure shall have been secured, be sold by public auction, to the best bidder, and the produce of such sale be applied as follows; that is to say,—the amount chargeable for the custody of said goods, ship, vessel, boat, or any other thing so seized as aforesaid shall be first deducted and paid, and the residue divided into two equal moieties, one of which shall be paid to the officer or other person or persons legally seizing the same, without deduction, and the other moiety to the Government, and paid into the Treasury of this Island, all costs incurred having been first deducted therefrom: Provided always, that it shall be lawful for the Lieutenant-Governor in Council to direct that any of such things shall be destroyed, or reserved for the public service.

V. And be it further enacted, That all penalties and forfeitures which may be hereafter incurred under this Act shall and may be prosecuted, sued for, and recovered in the Court of Vice Admiralty having jurisdiction in this Island.

VI. And be it further enacted, That if any goods, or any ship, vessel, or boat, shall be seized, as forfeited under this Act, it shall be lawful for the judge or judges of any court having jurisdiction to try and determine such seizures, with the consent of the person seizing the same, to order the delivery thereof, on security, by bond, with two sufficient sureties, to be first approved by such seizing officer or person, to answer double the value of the same in case of condemnation; and such bond shall be taken to the use of Her Majesty, in the name of the collector of the Customs in whose custody the goods or ship, vessel or boat, may be lodged; and such bond shall be delivered and kept in the custody of such Collector; and in case the goods or ship, vessel or boat, shall be condemned, the value thereof shall be paid into the hands of such collector, who shall cancel such bond, and distribute the money paid in such manner as is above directed.

VII. And be it further enacted, That no suit shall be commenced for the recovery of any penalty or forfeiture under this Act, except in the name of Her Majesty, and shall be prosecuted by Her Majesty's Advocate or Attorney General, or, in his absence, by the Solicitor General, for this Island; and if any question shall arise whether any person is an officer of the Customs, Excise, sheriff, magistrate, or other person authorized to seize as aforesaid, *vivâ voce* evidence may be given of such fact, and it shall be deemed legal and sufficient evidence.

VIII. And be it further enacted, That if any goods, ship, vessel, or boat shall be seized for any cause or forfeiture under this Act, and if any dispute shall arise whether the same has been lawfully seized, the proof touching the illegality thereof shall be on the owner or claimant of such goods, ship, vessel, or boat, and not on the officer or person who shall seize and stop the same.

IX. And be it further enacted, That no claim to any thing seized under this Act and returned into Her Majesty's Court of Vice Admiralty for adjudication shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief; and every person making a false oath thereto shall be deemed guilty of a misdemeanor, and shall be liable to the pains and penalties to which persons are liable for a misdemeanor.

X. And be it further enacted, That no person shall be admitted to enter a claim to any thing seized in pursuance of this Act, and prosecuted in this Island, until sufficient security shall have been given in the court where such seizure is prosecuted, in a penalty not exceeding sixty pounds, to answer and pay the costs occasioned by such claim; and in default of giving such security, such things shall be adjudged to be forfeited, and shall be condemned.

XI. And be it further enacted, That no writ shall be sued out against, nor a copy of any process served upon, any officer of the Customs, Excise, sheriff, magistrate, or other person, authorized to seize as aforesaid, for any thing done in the exercise of his office until one calendar month after notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent of the party who intends to sue out such writ or pro-

cess; in which notice shall be clearly and explicitly contained the cause of action, and the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and no evidence of the cause of such action shall be produced, except of such as shall be contained in such notice; and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given; and in default of such proof the defendant shall receive in such action a verdict and costs, or judgment of nonsuit shall be awarded against the plaintiff, as the court shall direct.

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XII. And be it further enacted, That every such action shall be brought within three calendar months after the cause thereof, and shall be laid and tried in Her Majesty's Supreme Court of Judicature for this Island, and the defendant may plead the general issue, and give the special matter in evidence; and if the plaintiff shall become nonsuited, or shall discontinue the action, or if upon a verdict or demurrer judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

XIII. And be it further enacted, That in case any information or suit shall be brought to trial, on account of any seizure made under this Act, and a verdict shall be found for the claimant thereof, and the judge or court before whom the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution, on account of any such seizure; and if any such action, indictment, or other suit or prosecution shall be brought to trial against any person on account of such seizure wherein a verdict shall be given against the defendant, the plaintiff, besides the thing seized or the value thereof, shall be entitled to no more than twopence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling.

XIV. And be it further enacted, That it shall be lawful for any such officer of the Customs, Excise, or sheriff, or magistrate, or other person authorized to seize as aforesaid, within one calendar month after such notice, to tender amends to the party complaining, or his agent, and to plead such tender in bar to any action, together with other pleas; and if the jury shall find the amends sufficient they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuit, or shall discontinue his action, or judgment shall be given for the defendant, upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only: Provided always, that it shall be lawful for such defendant, by leave of the court where such action shall be brought, at any time before or after issue joined, to pay money into court as in other actions.

XV. And be it further enacted, That in any such action, if the judge or court before whom such action shall be tried shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than twopence damages, nor to any costs of suit.

XVI. And be it further enacted, That all actions or suits for the recovery of any of the penalties or forfeitures imposed by this Act may be commenced or prosecuted at any time within three years after the offence was committed by reason whereof such penalties or forfeitures shall be incurred, any law, usage, or custom to the contrary notwithstanding.

XVII. And be it further enacted, That no appeal shall be prosecuted from any decree or sentence of any of Her Majesty's courts in this Island touching any penalty or forfeiture imposed by this Act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced.

XVIII. And be it further enacted, That this Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto; and an order made by Her Majesty in Council, that the clauses and provisions of this Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the island of Prince Edward.

ORDER IN COUNCIL of 3d September 1844.

No. 7.

At the Court at St. James's, the 3d day of September 1844.

PRESENT,

The Queen's most Excellent Majesty in Council.

WHEREAS the Lieutenant-Governor of Her Majesty's island of Prince Edward, with the Council and Assembly of the said island, did in the month of April 1843 pass an Act, which has been transmitted, intituled as follows, viz., "An Act relating to the Fisheries, and for the Prevention of illicit Trade in Prince Edward's Island and the Coasts and Harbours thereof:" And whereas the said Act has been referred to the Committee of the Lords of Her Majesty's Most Honourable Privy Council appointed for the consideration of all matters relating to trade and foreign plantations, and the said Committee have reported as their opinion to Her Majesty that the said Act should receive Her Majesty's special confirmation: Her Majesty was thereupon this day pleased, by and with the advice of her Privy Council, to declare her special confirmation of the said Act; and the same is hereby specially confirmed, ratified, and finally enacted accordingly. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief for the time being of Her Majesty's island of Prince Edward, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) C. C. GREVILLE.

No. 8.

No. 8.

ORDER IN COUNCIL of 3d September 1844.

At the Court at Windsor, the 3d September 1844.

PRESENT,

The Queen's most Excellent Majesty in Council.

WHEREAS by an Act passed by the Lieutenant-Governor, Council, and Assembly of Prince Edward's Island, on the 15th of April 1843, intituled "An Act relating to the Fisheries, and for the Prevention of illicit Trade in Prince Edward's Island, and the Coasts and Harbours thereof," it is amongst other things enacted, that the said Act shall not go into force or be of any effect until Her Majesty's assent shall be signified thereto, and an order be made by Her Majesty in Council, that the clauses and provisions of the said Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the island of Prince Edward: And whereas Her Majesty hath, by an Order in Council, bearing even date herewith, signified her royal assent to the aforesaid Act, by specially confirming the same: And whereas it is expedient that, in pursuance of the said recited enactment, the rules, regulations, and restrictions respecting the fisheries in the said Act mentioned should be confirmed; and Her Majesty was this day pleased, by and with the advice of her Privy Council, and in pursuance of the said Act, to declare, and it is hereby accordingly declared, that the clauses and provisions of the aforesaid Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the island of Prince Edward. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of Her Majesty's said island of Prince Edward for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) C. C. GREVILLE.

EXTRACT of a Despatch from the Lieut.-Governor Sir Alexander Bannerman, dated Government House, Prince Edward Island, 23d May 1853, addressed to his Grace the Duke of Newcastle.

IN reference to your Despatch of the 27th April, No. 12, requiring information as to the regulations now considered to be in force in this colony with respect to the fisheries, whether carried on by colonial, British, or foreign vessels, I have the honour to acquaint your Grace that no regulations respecting the fisheries exist in Prince Edward Island, excepting what are contained in the enclosed Act, copies of which I sometime ago forwarded to Her Majesty's Government.

Charlotte Town, Prince Edward Island,
16th August 1853.

To his Excellency Sir ALEXANDER BANNERMAN Knt., &c. &c. &c.

May it please your Excellency,

I HAVE looked over the printed collection of regulations or laws in force in the British North American colonies with reference to the fisheries, and more particularly in connexion with the convention with the United States of America of the 20th October 1818, and the British statute 59 Geo. 3. c. 38., forwarded by your Excellency to me, and also Despatch No. 21, dated Downing Street, 22d July 1853, from his Grace the Duke of Newcastle, which contains the following question, which I am desired to answer.

“What are the regulations or laws now in force in the Island of Prince Edward with reference to the fisheries, and especially in connexion with the convention with the United States of the 20th October 1818 and the statute 59th George 3, chapter 38?”

I am also desired to look over the above printed collection of regulations so far as they relate to Prince Edward Island, and if I find it complete to verify the fact with my signature, and if there are any omissions in the collection to make it perfect.

The only Act contained in the collection relating to this island is the 6th Victoria, chapter 14, printed on the 9th, 10th, 11th, and 12th pages thereof, and this is in truth the only statute which we have on our book which has any connexion with the American convention, or relates in any way to foreign fishermen.

It is true we have several other statutes relating to the fisheries, but these principally contain local regulations, and relate, generally speaking, to the persons and property of our own people, and on that account I do not conceive that it will be necessary to have them added to the collection, because it is not likely that any questions will arise on them, except such as arise between Her Majesty's subjects in this island and within the limits of our local jurisdiction, and to which these regulations alone extend.

Lest, however, his Grace the Duke of Newcastle or the law officers of the Crown in England should deem it advisable to have our other island statutes relating to the fisheries, although only local in their operation, added to the collection, I think it better to recite these statutes and leave it to the authorities at home to act as they think advisable in the matter.

The following statutes are now in force in Prince Edward Island.

5 George 4, chapter 12: “An Act to regulate the Fisheries of this Island.”

This Act points out the mode in which agreements between owners, &c. of vessels engaged in the fisheries and their seamen shall be entered into; gives a lien on fish and oil taken, to the seamen to secure payment of their wages, and gives the next preference to those creditors who have furnished the vessels' supplies; punishes seamen, &c. absenting themselves without leave, and tavern-keepers for secreting them; gives fishermen certain privileges from arrest, points out the manner in which vessels shall clear out from the customs for the fisheries, and limits the duration of the fishing season.

7 Victoria, chapter 29: “An Act for the Preservation of the Herring and Alewives Fisheries in this Island.”

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Enacts that nets for the purpose of catching herrings and alewives shall not be set between sunrise and sunset in any of the bays, harbours, rivers, or creeks of this island, under a penalty.

It also inflicts a penalty on persons injuring or breaking nets properly set, or setting nets across the mouths, &c. of streams to prevent fish passing.

14th Victoriæ, chapter 18: "An Act for the Encouragement of the Cod and Mackerel Fisheries."

Grants bounties for the encouragement of the fisheries named in its title.

15th Victoriæ, chapter 42: "An Act relating to the Alewives and other Fisheries, and the Appointment of Protectors or Overseers of Fisheries, and to prohibit the taking of Salmon after a certain Period of the Year, and for certain Purposes therein mentioned."

Authorizes the appointment of protectors or overseers of the alewives and other fisheries, whose duties are particularly to enforce the provisions of the other local Acts relating to the fisheries before alluded to, and to prevent the improper setting of nets, &c.

It also prohibits the taking of salmon between the 1st October and 1st May in the rivers, bays, creeks, &c. of this island.

All the above statutes appear in the statute book of this island as printed by the Queen's Printer, and are, I presume, lodged in the Colonial Office in London, and copies can therefore be there obtained if requisite to add to the collection above mentioned.

I therefore now beg leave to return to your Excellency the Despatch No. 21, and also the printed collection of regulations, &c. I have signed it as correct so far as relates to the convention of 1818; but if it be deemed necessary to add our local statutes, I have, to enable it to be done, noted at the foot of the collection those which I have above referred to, and have called attention to this letter to your Excellency, which, I presume, will be forwarded to the Colonial Office.

I have, &c.

(Signed) JOSEPH HENSLEY,
Attorney General for Prince Edward Island.

NOVA SCOTIA.

NOVA SCOTIA.

No. 11.

No. 11.

6 Will. IV. Cap. 8.

AN ACT relating to the Fisheries, and for the prevention of illicit Trade in the Province of Nova Scotia, and the Coasts and Harbours thereof.

[Passed the 12th day of March 1836.]

WHEREAS by the Convention made between His late Majesty King George the Third and the United States of America, signed at London on the twentieth day of October, in the year of our Lord One thousand eight hundred and eighteen, and the Statute made and passed in the Parliament of Great Britain in the fifty-ninth year of the reign of His late Majesty King George the Third, all foreign ships, vessels, or boats, or any ship, vessel, or boat other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, found fishing, or to have been fishing, or preparing to fish within certain distances of any coasts, bays, creeks, or harbours whatever in any part of His Majesty's dominions in America not included within the limits specified in the first article of the said Convention, are liable to seizure: And whereas the United States did by the said Convention renounce for ever any liberty enjoyed for or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen should be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever, but under such restrictions as might be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges

thereby reserved to them : And whereas no rules or regulations have been made for such purpose, and the interests of the inhabitants of this province are materially impaired: And whereas the said Act does not designate the persons who are to make such seizure as aforesaid, and it frequently happens that persons found within the distances of the coasts aforesaid infringing the articles of the Convention aforesaid, and the enactments of the Statute aforesaid, on being taken possession of profess to have come within said limits for the purpose of shelter and repairing damages therein, or to purchase wood and to obtain water, by which the law is evaded, and the vessels and cargoes escape confiscation although the cargoes may be evidently intended to be smuggled into this province, and the fishery carried on, contrary to said Convention and Statute :

I. Be it therefore enacted, by the Lieutenant-Governor, Council, and Assembly, That from and after the passing of this Act it shall be lawful for the officers of His Majesty's Customs, the officers of Impost and Excise, the sheriffs and magistrates throughout this province, and any person holding any commission for that purpose from his Excellency the Lieutenant-Governor for the time being, to go on board any ship, vessel, or boat within any port, bay, creek, or harbour in this province, and also to go on board of any ship, vessel, or boat hovering within three marine miles of any of the coasts, bays, creeks, or harbours thereof, and in either case freely to stay on board such ship, vessel, or boat as long as she shall remain within such port or distance, and if any such ship, vessel, or boat be bound elsewhere, and shall continue so hovering for the space of twenty-four hours after the master shall have been required to depart, it shall be lawful for any of the above-enumerated officers or persons to bring such ship, vessel, or boat into port, and to search and examine her cargo, and to examine the master upon oath touching the cargo and voyage, and if there be any goods on board prohibited to be imported into this province, such ship, vessel, or boat, and the cargo laden on board thereof, shall be forfeited ; and if the said ship, vessel, or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing within such distances of such coasts, bays, creeks, or harbours of this province, such ship, vessel, or boat, and their respective cargoes, shall be forfeited ; and if the master or person in command thereof shall not truly answer the questions which shall be demanded of him in such examination, he shall forfeit the sum of One hundred pounds.

II. And be it further enacted, That all goods, ships, vessels, and boats liable to forfeiture under this Act shall and may be seized and secured by any such officer of His Majesty's Customs, officer of Impost and Excise, sheriffs, magistrates, or other person holding such commission as aforesaid, and every person who shall in any way oppose, molest, or obstruct any officer of the Customs, officer of Impost and Excise, sheriffs, magistrates, or other person so commissioned and employed as aforesaid, in the exercise of his office, or shall in any way oppose, molest, or obstruct any person acting in aid or assistance of such officer of the Customs, officer of Impost and Excise, sheriff, magistrate, or other person so commissioned and employed as aforesaid, shall for every such offence forfeit the sum of Two hundred pounds.

III. And be it further enacted, That all goods, ships, vessels, and boats which shall be seized as being liable to forfeiture under this Act shall be taken forthwith and delivered into the custody of the collector and controller of the Customs at the custom house next to the place where the same were seized, who shall secure and keep the same in such manner as other vessels and goods seized are directed to be secured by the Commissioners of His Majesty's Customs.

IV. And be it further enacted, That all goods, ships, vessels, boats, or other thing which shall have been condemned as forfeited under this Act, shall, under the direction of the principal officer of the Customs or Excise where such seizures shall have been secured, be sold by public auction to the best bidder, and the produce of such sale shall be applied as follows ; that is to say, the amount chargeable for the custody of said goods, ship, vessel, boat, or any other thing so seized as aforesaid shall be first deducted and paid, and the residue divided into two equal moieties, one of which shall be paid to the officer or other person or persons legally seizing the same, without deduction, and the other moiety to the Government and paid into the treasury of this province, all costs incurred having been first deducted therefrom ; provided

always, that it shall be lawful for the Commissioners of the Revenue to direct that any of such things shall be destroyed or reserved for the public service.

V. And be it further enacted, That all penalties and forfeitures which may be hereafter incurred under this Act shall and may be prosecuted, sued for, and recovered in the Court of Vice-Admiralty having jurisdiction in this province.

VI. And be it further enacted, That if any goods or any ship, vessel, or boat shall be seized as forfeited under this Act, it shall be lawful for the judge or judges of any court having jurisdiction to try and determine such seizures, with the consent of the person seizing the same, to order the delivery thereof on security by bond, with two sufficient sureties, to be first approved by such seizing officer or person, to answer double the value of the same in case of condemnation; and such bond shall be taken to the use of His Majesty in the name of the collector of the Customs in whose custody the goods or ship, vessel or boat may be lodged; and such bond shall be delivered and kept in the custody of such collector, and in case the goods or the ship, vessel, or boat shall be condemned, the value thereof shall be paid into the hands of such collector, who shall cancel such bond, and distribute the money paid in such manner as above directed.

VII. And be it further enacted, That no suit shall be commenced for the recovery of any penalty or forfeiture under this Act except in the name of His Majesty, and be prosecuted by His Majesty's Advocate or Attorney-General, or in his absence by the Solicitor-General, for this province; and if any question shall arise whether any person is an officer of the Customs, Excise, sheriff, magistrate, or other person authorized to seize as aforesaid, *vivâ voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.

VIII. And be it further enacted, That if any goods, ship, vessel, or boat shall be seized for any cause or forfeiture under this Act, and any dispute shall arise whether the same have been lawfully seized, the proof touching the illegality thereof shall lie on the owner or claimant of such goods, ship, vessel, or boat, and not on the officer or person who shall seize and stop the same.

IX. And be it further enacted, That no claim to anything seized under this Act and returned into His Majesty's Court of Vice-Admiralty for adjudication shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, nor unless oath to the property in such thing be made by the owner, or by his attorney or agent, by whom such claim shall be entered, to the best of his knowledge and belief, and every person making a false oath thereto shall be deemed guilty of a misdemeanor, and shall be liable to the pains and penalties to which persons are liable for a misdemeanor.

X. And be it further enacted, That no person shall be admitted to enter a claim to anything seized in pursuance of this Act, and prosecuted in this province, until sufficient security shall have been given in the court where such seizure is prosecuted in a penalty not exceeding sixty pounds to answer and pay the costs occasioned by such claim, and, in default of giving such security, such things shall be adjudged to be forfeited and shall be condemned.

XI. And be it further enacted, That no writ shall be sued out against nor a copy of any process served upon any officer of the Customs, Excise, sheriff, magistrate, or other person authorized to seize as aforesaid for anything done in the exercise of his office, until one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent, and no evidence of the cause of such action shall be produced except of such as shall be contained in such notice; and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs, or judgment of nonsuit shall be awarded against the plaintiff, as the court shall direct.

XII. And be it further enacted, That every such action shall be brought within three calendar months after the cause thereof, and shall be laid and tried in any of His Majesty's courts of record in this province, and the

defendant may plead the general issue and give the special matter in evidence; and if the plaintiff shall become nonsuited or shall discontinue the action, or if upon a verdict or demurrer judgment shall be given against the plaintiff, the defendant shall receive treble costs, and have such remedy for the same as any defendant can have in other cases where costs are given by law.

XIII. And be it further enacted, That in case any information or suit shall be brought to trial on account of any seizure made under this Act, and a verdict shall be found for the claimant thereof, and the judge or court before whom the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any indictment, action, or other suit or prosecution on account of such seizure; and if any action, indictment, or other suit or prosecution shall be brought to trial against any person on account of such seizure wherein a verdict shall be given against the defendant, the plaintiff, besides the thing seized or the value thereof, shall be entitled to no more than twopence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling.

XIV. And be it further enacted, That it shall be lawful for any such officer of the Customs, Excise, or sheriff, or magistrate, or other person authorized to seize as aforesaid, within one calendar month after such notice, to tender amends to the party complaining or his agent, and to plead such tender in bar to any action, together with other pleas; and if the jury shall find the amends sufficient they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall become nonsuit or shall discontinue his action, or judgment shall be given for the defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; provided always, that it shall be lawful for such defendant, by leave of the court where such action shall be brought, at any time before or after issue joined, to pay money into court as in other actions.

XV. And be it further enacted, That in any such action, if the Judge or court before whom such action shall be tried shall certify upon the record that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than twopence damages, nor to any costs of suit.

XVI. And be it further enacted, That all actions or suits for the recovery of any of the penalties or forfeitures imposed by this Act may be commenced or prosecuted at any time within three years after the offence committed, by reason whereof such penalty or forfeiture shall be incurred, any law, usage, or custom to the contrary notwithstanding.

XVII. And be it further enacted, That no appeal shall be prosecuted from any decree or sentence of any of His Majesty's courts in this province touching any penalty or forfeiture imposed by this Act, unless the inhibition shall be applied for and decreed within twelve months from the time when such decree or sentence was pronounced.

XVIII. And be it further enacted, That this Act shall not go into force or be of any effect until His Majesty's assent shall be signified thereto, and an order made by His Majesty in Council that the clauses and provisions of this Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the province of Nova Scotia.

No. 12.

No. 12.

ORDER IN COUNCIL of 15th June 1836.

At the Court at St. James's, the 15th day of June 1836.

PRESENT,

The King's most Excellent Majesty in Council.

WHEREAS the Governor of His Majesty's province of Nova Scotia, with the Council and Assembly of the said province, did, in the month of March 1836, pass an act, which has been transmitted, intituled as follows, viz., "An Act relating to the Fisheries, and for the prevention of illicit Trade, in the Province of Nova Scotia and the Coasts and Harbours thereof:" And whereas the said Act has been referred to the Committee of the Lords of His Majesty's Most Honourable Privy Council appointed for the consideration of all matters

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relating to trade and foreign plantations, and the said Committee have reported as their opinion to His Majesty that the said Act should receive His Majesty's special confirmation; His Majesty was thereupon pleased, by and with the advice of his Privy Council, to declare his special confirmation of the said Act, and the same is hereby specially confirmed, ratified, and finally enacted accordingly. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief for the time being of His Majesty's province of Nova Scotia, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) W. L. BATHURST.

No. 13.

No. 13.

ORDER IN COUNCIL of 6th July 1836.

At the Court at St. James's, the 6th of July 1836.

PRESENT,

The King's most Excellent Majesty in Council.

WHEREAS by an Act passed by the Lieutenant-Governor, Council, and Assembly of the province of Nova Scotia, on the 12th day of March 1836, intituled "An Act relating to the Fisheries, and for the prevention of illicit Trade, in the Province of Nova Scotia and the Coasts and Harbours thereof," it is amongst other things enacted, that the said Act shall not go into force or be of any effect until His Majesty's assent be signified thereto, and an order be made by His Majesty in Council, that the clauses and provisions of the said Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the province of Nova Scotia: And whereas His Majesty hath, by an Order in Council, bearing date the 15th June 1836, signified his royal assent to the aforesaid Act, by specially confirming the same: And whereas it is expedient that, in pursuance of the said recited enactment, the rules, regulations, and restrictions respecting the fisheries in the said Act mentioned should be confirmed; His Majesty was this day pleased, by and with the advice of his Privy Council, and in pursuance of the said Act, to declare, and it is hereby accordingly declared, that the clauses and provisions of the aforesaid Act shall be the rules, regulations, and restrictions respecting the fisheries on the coasts, bays, creeks, or harbours of the province of Nova Scotia. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of His Majesty's province of Nova Scotia for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) W. L. BATHURST.

No. 14.

No. 14.

COPY of a DESPATCH from Lieut.-Governor Sir GASPARD LE MARCHANT to the Duke of NEWCASTLE.

Government House, Halifax, Nova Scotia,
May 12, 1853.

MY LORD DUKE,

I HAVE the honour to acknowledge the receipt of your Grace's despatch, No. 19, dated the 27th ultimo, respecting the case of the Creole, and in accordance with the directions contained therein I have called on the Attorney-General to supply the documents required by the Queen's advocate.

I now have the honour to transmit the same, together with a further report from the Attorney-General of Nova Scotia, and accompanied with a series of questions put by that officer on the case; and I trust that the information and papers now transmitted by the Attorney-General will be satisfactory to the law advisers of the Crown in England, as I have directed Mr. Uniacke's especial attention to the observations of your Grace on the manner in which the case was first drawn out, and have requested him so to prepare his present report, that unnecessary correspondence may be avoided, and no further delay occasioned in the settlement of the question.

I have, &c.

(Signed) GASPARD LE MARCHANT

Enclosure 1 in No. 14.

NOVA SCOTIA.

Encl. 1 in No. 14.

To his Excellency Sir GASPARD LE MARCHANT, Governor of NOVA SCOTIA.

Sir,

I have perused the despatch to your Excellency from his Grace the Duke of Newcastle, dated 27th April 1853, with the enclosure from J. D. Harding, Doctors Commons, 23d April last, and have to observe, that being unable to procure an authentic copy of the Judge of Vice Admiralty's letter, 31st March last, I can only remark on the despatch referred; and, first, the 6th Will. 4. cap. 8. contains regulations for the fisheries in Nova Scotia, and were ordained by His late Majesty in Council under the Imperial Act 59th Geo. 3. cap. 38., and is in full force unless repealed by the revised statutes; and which last Act professed to re-enact the former one. I enclose copies of these Acts marked A and B.

Colonial Act
6 Will. 4. cap. 8.,
Enclosure A.,
*Printed at page 16
of this collection of
papers.*

This is the only provincial legislation on the subject. The points of law taken in my note, if passed upon by the Crown officers opinion, will prove whether legislation is necessary.

I am not aware of any further statement having been made by the Judge on delivering his opinion, except as to the power of the provincial legislation to extend to the seas, which involves the existence of the statute 6 Will. 4. cap. 8.

Of course my opinion given on the legal questions in the Judge's letter I presume would have their weight in adopting any regulations for the guidance of those protecting the fishery.

I concurred in some points of law assumed by the Judge, and although I thought it unnecessary to do more than report the case,—no judgment, but merely an opinion, being given,—yet I have stated a few questions which will dispose of the difficulties.

I have, &c.

(Signed) JAMES B. UNIACKE,
Advocate-General.

 QUESTIONS on the Case of the Creole.

1. Are vessels not navigated according to the laws of Great Britain and Ireland liable to forfeiture if engaged in the fishery in British reserved waters under the second section of 59 Geo. 3. cap. 38.; or are persons on board such vessels liable to penalties only under the fourth section of said Act?

2. Does the Imperial Act of 59 Geo. 3. cap. 38. give power to His Majesty to impose the rules and regulations in the Provincial Act 6 Will. 4. cap. 8., they being more severe than the Imperial Act would seem to contemplate?

3. Can a vessel exceeding thirty tons burthen, British-built, but not navigated according to the laws of Great Britain and Ireland, and not duly registered, be engaged in the fishery within the limit of a marine league of the shore of Nova Scotia, without being liable to seizure and condemnation, or what penalty do those on board incur?

4. Does the twelfth section of 8 & 9 Vict. cap. 89. still confine the ownership of ships or vessels to the persons therein named, or is it controlled by the 12 & 13 Vict. cap. 29. sect. 17.?

5. What number of the crew are required to be British subjects to navigate a British vessel according to the law of Great Britain and Ireland since the passing of 12 & 13 Vict. cap. 29. sect. 7.

6th. Can a foreign fishing vessel enter British waters in America within the reserved limits, be sold to a British subject, be manned with a British master, and one British subject for every twenty tons burthen, and then prosecute the fishery with the privileges of a British bottom?

7. If a ship owned by British subjects be deficient in any of the requirements of the laws of navigation, and for the registry of British shipping, be found fishing within the limits and is above thirty tons, is she liable to seizure and condemnation?

 Enclosure B in No. 14.

OF THE FISHERIES.

Encl. B in No. 14.

Section 1st. Officers of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose may go on board any vessel or boat within any harbour in the province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance.

2d. If such vessel or boat be bound elsewhere, and shall continue within such harbour or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat and the cargo thereof shall be forfeited.

3d. If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been

fishing within three marine miles of such coasts or harbours, such vessel or boat and the cargo shall be forfeited.

4th. All goods, vessels, and boats liable to forfeiture may be seized and secured by any such officers or persons so commissioned, and every person opposing them, or any one aiding such opposition shall forfeit 200*l*.

5th. Goods, vessels, and boats seized as liable to forfeiture under this chapter, shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized are directed to be secured and kept by law.

6th. All goods, vessels, and boats condemned as forfeited under this chapter shall, by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the produce of such sale shall be applied as follows:— the amount chargeable for the custody of the property seized shall first be deducted and paid over for that service, one half of the remainder shall be paid to the officer or person seizing the same, without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the province; but the board of revenue may nevertheless direct that any vessel, boat, or goods seized and forfeited shall be destroyed, or reserved for the public service.

7th. All penalties and forfeitures hereunder shall be prosecuted and recovered in the Court of Vice Admiralty.

8th. If any goods, vessel, or boat shall be seized as forfeited under this chapter, the judge of the Vice Admiralty, with the consent of the persons seizing the same, may order re-delivery thereof, on security by bond to be made by the party with two sureties, to the use of Her Majesty. In case the property shall be condemned the value thereof shall be paid into the Court, and distributed as above directed.

9th. All suits for the recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Advocate General, or in case of his absence by the Solicitor General. If a dispute arise whether any person is authorized to seize under this chapter, oral evidence may be heard thereupon.

10th. If any seizure take place under this chapter, and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

11th. No claim to anything seized under this chapter, and returned into the Court of Vice Admiralty for adjudication, shall be admitted, unless the claim be entered under oath, with the name of the owner, his residence, and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

12th. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding sixty pounds to answer and pay costs occasioned by such claim, and in default of such security the things seized shall be adjudged forfeited and shall be condemned.

13th. No writ shall be sued out against any officer or other person authorized to seize under this chapter for anything done thereunder until one month after notice in writing delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent, in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent, and no evidence or cause of action shall be produced except such as shall be contained in such notice.

14th. Every such action shall be brought within three months after the cause thereof has arisen.

15th. If on any information or suit brought to trial under this chapter on account of any seizure judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than twopence damages, nor any costs of suit, nor shall the defendant be fined more than one shilling.

16th. The seizing officer may, within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender.

17th. All actions for the recovery of penalties or forfeitures imposed by this chapter must be commenced within three years after the offence committed.

18th. No appeal shall be prosecuted from any decree or sentence of any court in this province touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19th. All coasting vessels under sixty tons burthen owned in this province, and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the sternpost and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the sternpost and rudder.

20th. Any owner or master of a coasting vessel not so furnished and built running foul of any net set off the harbours, bays, and rivers of the coast shall upon due proof thereof

forfeit five pounds, to be recovered by the party injured to his own use as a private debt, leaving to the party grieved, nevertheless, his rights at common law for any further damage.

21st. In this chapter "vessels" shall include ships, and "harbours" shall include ports, bays, and creeks.

NOVA SCOTIA

No. 15.

REVISED STATUTES of NOVA SCOTIA, passed March 31, 1851,
14 & 15 Victoria.

CHAPTER 94.

OF THE COAST FISHERIES.

No. 15.

Section.

1. Revenue officers may board vessels hovering within three miles of the coast, &c.
2. Proceedings when the master, bound elsewhere, refuses on notice to depart.
3. Foreign vessels, fishing or preparing to fish, and their cargoes, forfeited.
4. Vessels and goods forfeited liable to seizure; penalty for obstructing officers.
5. Custody of vessels and goods seized.
6. Condemned vessels and goods, how disposed of, and the proceeds how applied.
7. Penalties and forfeitures, how prosecuted.
8. Vessels and goods to be delivered on security.
9. Suits, how brought and prosecuted; oral evidence admissible as to the authority of seizing officers.
10. Burden of proof in cases of seizure to rest with claimant.
11. Claims upon property seized to be under oath.
12. Security to be given before claim entered.
13. Month's notice to officer before action.
14. Limitation of action against seizing officers.
15. Certificate of probable cause of seizure shall prevent the recovery of costs, &c.
16. Amends may be tendered within one month.
17. Limitation of actions for penalties, &c.
18. Appeals, within what time to be prosecuted.
19. Coasting vessels to have a narrow piece of plank or iron extending aft of the stern post.
20. Forfeiture for destroying nets where coasters are not so provided.
21. Definition of terms.

1. Officers of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbour in the province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance.

Revenue Officers may board vessels hovering within three miles of the coast, &c.

2. If such vessel or boat be bound elsewhere and shall continue within such harbour, or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage, and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

Proceedings where the master, bound elsewhere, refuses on notice to depart.

3. If the vessel or boat shall be foreign and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within three marine miles of such coasts or harbours, such vessel or boat and the cargo shall be forfeited.

Foreign vessels fishing or preparing to fish, and their cargoes forfeited.

4. All goods, vessels, and boats liable to forfeiture may be seized and secured by any of such officers or persons so commissioned, and every person opposing them or any one aiding such opposition shall forfeit two hundred pounds.

Vessels and goods forfeited liable to seizure; penalty for obstructing officers.

5. Goods, vessels, and boats seized, as liable to forfeiture under this chapter, shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized, are directed to be secured and kept by law.

Custody of vessels and goods seized.

6. All goods, vessels, and boats condemned as forfeited under this chapter shall, by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the produce of

Condemned vessels and goods how disposed of,

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and the proceeds
how applied.

such sale shall be applied as follows: The amount chargeable for the custody of the property seized shall first be deducted, and paid over for that service, one half of the remainder shall be paid to the officer or person seizing the same, without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the province; but the board of revenue may nevertheless direct that any vessel, boat, or goods seized and forfeited shall be destroyed or reserved for the public service.

Penalties and
forfeitures now
prosecuted.

7. All penalties and forfeitures hereunder shall be prosecuted and recovered in the court of Vice Admiralty.

Vessels and goods
to be re-delivered
on security.

8. If any goods, vessel, or boat, shall be seized as forfeited under this chapter, the judge of the Vice-Admiralty, with the consent of the person seizing the same, may order re-delivery thereof, on security by bond, to be made by the party, with two sureties, to the use of Her Majesty. In case the property shall be condemned, the value thereof shall be paid into the court, and distributed as above directed.

Suits, how brought
and prosecuted;
oral evidence
admissible as to
the authority of
seizing officers.

9. All suits for the recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Advocate-General or in case of his absence by the Solicitor-General; if a dispute arise whether any person is authorized to seize under this chapter, oral evidence may be heard thereupon.

Burden of proof in
cases of seizure to
rest with claimant.

10. If any seizure take place under this chapter, and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

Claims upon pro-
perty seized to be
under oath.

11. No claim to anything seized under this chapter, and returned into the Court of Vice Admiralty for adjudication, shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney, or agent, and to the best of his knowledge and belief.

Security to be
given before claim
entered.

12. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding sixty pounds to answer and pay costs occasioned by such claim, and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

Month's notice to
officer before
action.

13. No writ shall be sued out against any officer or other person authorized to seize under this chapter for anything done thereunder, until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent, in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent, and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

Limitation of
action against
seizing officers.

14. Every such action shall be brought within three months after the cause thereof has arisen.

Certificate of pro-
bable cause of
seizure shall pre-
vent the recovery
of costs, &c.

15. If on any information or suit brought to trial under this chapter on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than twopence damages, nor any costs of suit, nor shall the defendant be fined more than one shilling.

Amends may be
tendered within
one month.

16. The seizing officer may within month after notice of action received tender amends to the party complaining, or his attorney or agent, and plead such tender.

Limitation of ac-
tions for penalties,
&c.

17. All actions for the recovery of penalties or forfeitures imposed by this chapter, must be commenced within three years after the offence committed.

Appeals within
what time to be
prosecuted.

18. No appeal shall be prosecuted from any decree or sentence of any court in this province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19. All coasting vessels under sixty tons burthen, owned in this province, and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern-post and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern-post and rudder.

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Coasting vessels to have a narrow piece of plank or iron extending aft of the stern post.

20. Any owner or master of a coasting vessel not so furnished or built, running foul of any net set off the harbours, bays, and rivers of the coast shall upon due proof thereof forfeit five pounds, to be recovered by the party injured to his own use as a private debt, leaving to the party grieved, nevertheless, his rights at common law for any further damage.

Forfeiture for destroying nets where coasters are not so provided.

21. In this chapter "vessels" shall include ships, and "harbours" shall include ports, bays, and creeks.

Definition of terms.

By chapter 170 of the revised Statutes, page 510, the 6th William the Fourth, chapter 8, entitled "An Act relating to the Fisheries, and for the prevention of illicit Trade in the province of Nova Scotia, and the Coasts and Harbours thereof," is repealed.

No. 16.

No. 16.

Revised STATUTE of NOVA SCOTIA. Passed 31st March 1851.
14 & 15 Vict.

CHAPTER 170.

OF THE REPEAL OF STATUTES, REVISED AND CONSOLIDATED.

Section.

1. Commencement of operation of preceding chapter.
2. Act, how cited.
3. Repeal of acts not to affect existing rights.
4. Offences committed not to be affected by repealing chapter, except where the punishment, &c. has been mitigated.
5. Suits and prosecutions pending not affected hereby, except as to the proceedings thereon.
6. Office-holders not affected hereby, except when an office is abolished.
7. Acts repealed not to be revived hereby.
8. Acts enumerated and specified which are repealed by this Act coming into operation.
9. Acts specially repealed.

1. The provisions of the preceding chapters, unless therein otherwise respectively expressed, shall come into operation on the First day of September One thousand eight hundred and fifty-one.

Commencement of operation of preceding chapter.

2. This Act may be cited as the revised statutes, adding when necessary the number of the chapter and section.

Act how cited.

3. The repeal of such acts shall not affect any act done, or any right accruing, accrued, or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect, but the proceedings in such cases shall be conformed, when necessary, to the provisions of this Act.

Repeal of Acts not to affect existing rights.

4. No offence committed, and no penalty or forfeiture incurred under any of the acts hereby repealed, shall be affected by the repeal, except that where any punishment, penalty, or forfeiture shall have been mitigated by the provisions of this Act, such provisions may be extended and applied to any judgments to be pronounced after such repeal.

Offences committed not to be affected by repealing chapter, except where the punishment, &c. has been mitigated.

5. No suit or prosecution pending at the time of such repeal for any offence committed, or for the recovery of any penalty or forfeiture incurred, under any act repealed, shall be affected by the repeal, except that the proceedings in such suit or prosecution shall be conformed, when necessary, to the provisions of this Act.

Suits and prosecutions pending not affected hereby, except as to the proceedings thereon.

6. All persons who at the time when such repeal shall take effect shall hold office under any of the acts repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision shall have been made by this Act.

Office-holders not affected hereby, except when an office is abolished, &c.

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 Acts repealed not
 to be revived
 hereby.
 Acts enumerated
 and specified,
 which are repealed
 by this Act coming
 into operation.
 Acts specifically
 repealed.

7. No act heretofore repealed shall be revived by the repeal contained in this chapter or in any of the acts herein-before mentioned.

8. All acts extending the acts concerning fires and firewards, and respecting commissioners of streets, to different towns and places, and also acts making perpetual other acts, shall be repealed so soon as this act comes into operation.

9. The following acts passed in the several years of the respective reigns herein-after mentioned shall be repealed so soon as this Act comes into operation, viz.: (here follows a list of the acts repealed, amongst which is the Act 6 Will. IV. cap. 8.)

12th August 1853.

I have examined these laws contained between pages 16 and 26 relating to Nova Scotia, and they are correct and complete.

(Signed) JAMES B. UNIACKE,
 Attorney General.

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No. 17.

No. 17.

EXTRACT from an Act, intituled "An Act to consolidate and amend the Laws relating to the Government of Counties, Towns, and Parishes in this Province."
 [Passed 26th April 1850.]

Plea and evidence
 in action for killing
 dog.

Art. 6. In any action of trespass against any person for so killing a dog, the defendant may plead in general issue, and give this Act and the special matter in evidence.

SECTION 10.—*Power to make rules and regulations in certain cases.*

SUMMARY OF CONTENTS.

- Art. 1. Enumeration of subjects.
 Art. 2. Proviso.
 Art. 3. Penalties and recovery.
 Art. 4. Commissioners of Sewers authorized to assess.

Sessions em-
 powered to make
 regulations touch-
 ing,—

Art. 1. The General Sessions, in addition to the powers otherwise specially conferred upon them by this Act, shall have full power and authority from time to time to make, revise, alter, amend, and to enforce all such rules as may be deemed by them necessary and proper for the following purposes; namely,—

Markets.

1. For the establishment and regulation of markets, market houses, and fairs, and for the slaughtering of animals and the sale of dead meats.

Ferries.

2. For the licensing and regulation of ferries, and fixing the rates and fares therefor, and for carrying passengers to and from steam-boats on their passage along the rivers.

Streets, trees, &c.

3. For the protection of streets, squares, side-walks, and pavements, and of the posts, railings, trees, or other defences, and ornaments thereof.

Wharves.

4. For the use and management of public docks, wharves, landings, and cranes, and fixing the rates of dockage, wharfage, and cranage.

Carriages and
 truckage.

5. For the regulation of carriages for hire, cartage and truckage, and the lading and unlading of vessels.

Coals and salt.

6. For the measurement of coals and salt, and fixing the rates therefor.

Hay and straw.

7. For the weighing of hay and straw, and fixing the rates therefor.

Fences and gates
 across highways.

8. For the erection of and keeping in repair fences and gates across highways for the protection of intervale lands, provided that no gate or fence be erected across any highway not heretofore authorized by law.

Marshes and
 island..

9. For the occupation and grazing of marshes and other low lands and islands, and the erection of water and other fences thereon, and for determining what lakes, swamps, creeks, rivers, and fences shall be deemed lawful inclosures of the same.

Pounds.

10. For the regulation of pounds, and fixing the fees and rates therefor.

- | | |
|--|---------------|
| 11. For the regulation of the fisheries and of seines, nets, and fish weirs within the rivers and harbours. | Fisheries. |
| 12. For the regulation and management of school reserves, town commons, and other lands for public uses. | Public Lands. |
| 13. For imposing and collecting a tax on dogs. | Dog Tax. |
| 14. For the government of pilots, and fixing the rates of pilotage. | Pilots. |
| 15. For the regulation and management of booms for holding timber, logs, and other lumber, and for the driving of timber and logs. | Booms. |
| 16. For the preservation of the navigation of rivers and harbours. | Navigation. |

SECTION II.—*Dams and Sluiceways and Fishways.*

Art. 5.—In all mill dams or other dams which have been or shall be hereafter erected or placed across any river situate wholly or in part in this province, and which has been or may be resorted to by fish from the sea at the season for spawning, there shall be a fishway sufficient for such fish to pass up and return without any such hindrance, as may in future tend to divert them from such resort. Fishways in dams where fish resort to spawn.

Art. 6.—If any mill dam erected as aforesaid shall at any time be without such fishway as required by the preceding article, the overseers of the fisheries shall give notice in writing to the owner or occupier of such dam to make a good and sufficient fishway therein within forty days after service of such notice. If no fishway, notice by overseers.

Art. 7.—In case the owner or occupier of such dam shall refuse or neglect to make such fishway to the satisfaction of the said overseers of the fisheries within the time so limited for that purpose, the said dam shall be thenceforth deemed a public nuisance; and upon the conviction of such owner or occupier on an indictment therefor before the General Sessions, he shall be liable to be fined at the discretion of the court, in a sum not less than twenty pounds and not exceeding forty pounds; and the said court shall order the said nuisance forthwith to be abated. Neglect to make fishway dam a nuisance, and penalty.

Art. 8. If the owner or occupier of the dam refuse to pay such fine the said sessions may issue a warrant for levying such fine by distress and sale of the offender's goods and chattels; and if no sufficient distress can be found the offender may be committed to the common gaol for the space of four months, or until the said fine be paid. Remedy for penalty.

Art 9. Nothing herein contained shall affect any Act of Assembly now in force concerning any river or stream therein named, or the rules and regulations made under the authority of such enactment, or the common law rights of any individual. Proviso for local enactments.

No. 18.

No. 18.

14^o VICTORIÆ, Cap. XXXI.

AN ACT for the Protection and Regulation of the Sea and River Fisheries of this Province. [Passed 30th April 1851.]

BE it enacted by the Lieutenant-Governor, Legislative Council and Assembly, That no salmon shall be taken in any manner whatever on the coasts of this province, or in any of the bays, rivers, or harbours of the same, where the tide ebbs and flows, after the thirty-first day of August in any year, nor shall any salmon be taken by any device whatever in any of the fresh water rivers or streams of this province after the said thirty-first day of August in any year, under the penalty of ten shillings for each and every salmon taken in any year after the several days mentioned and before the first day of April in the succeeding year. No salmon to be taken between 31st August and 1st of April.

II. And be it enacted, That whoever shall take any salmon in this province after sunset on Saturday night and before sunrise on Monday morning shall for each and every salmon so taken forfeit and pay the sum of ten shillings. Penalty.

III. And be it enacted, That whoever shall take any salmon by spearing either in the daytime or by spearing with torchlight at any time between the thirty-first day of August and the first day of April, or in any place, shall forfeit and pay for every salmon so taken the sum of ten shillings, and shall further be liable to be imprisoned for any period not exceeding two days, at the discretion of the magistrate before whom such penalty shall be recovered; Penalty for taking salmon after sunset on Saturday, and before sunrise on Monday.
Penalty for spearing salmon, or selling or purchasing them, between 31st August and 1st April.

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and whoever shall sell or offer for sale, or shall between the thirty-first day of August in any year and the first day of April in the next succeeding year purchase, any salmon caught or taken by spearing, shall forfeit and pay the sum of ten shillings for each salmon so sold or offered or exposed for sale or purchased as aforesaid.

Governor in Council empowered to make regulations for the protection of all fisheries off the sea coast or islands, with penalties.

IV. And for the better regulation of the sea fisheries of this province, be it enacted, That the Lieutenant-Governor in Council may make rules and regulations for the management and protection of all fisheries on the sea coast of this province, or around any island laying off the said sea coast, between low-water mark and three marine miles of such coast or island; and all orders made by the Lieutenant-Governor in Council, and published in the Royal Gazette, shall have the like force and effect as if contained in this Act; provided always, that such Orders in Council shall not impose any greater penalty than fifteen pounds, or any longer term of imprisonment than ten days.

Governor in Council may appoint not exceeding two wardens of the fisheries in any county. Their duty and liability.

V. And be it enacted, That the Lieutenant-Governor in Council may appoint wardens of the fisheries, not exceeding two in any county of this province, whose duty it shall be to watch over and protect the sea and river fisheries, and to enforce or cause to be enforced all the provisions of the Acts of Assembly, the rules and regulations of the justices in sessions or municipal authorities, or Orders in Council, with relation to such fisheries, which wardens shall be subject to the directions of the Governor in Council, and liable to such penalties as may be imposed by Order in Council for misconduct or neglect of duty.

Governor in Council may grant leases of fishing stations on the ungranted shores.

Leases to be sold at auction when there are several applicants for the same station.

VI. And be it enacted, That the Lieutenant-Governor in Council may grant leases or licences of occupation for fishing stations on the ungranted shores, beaches, or islands of this province at fair and reasonable rents, such leases or licences of occupation not to be for any longer term or period than five years, and to terminate whenever the fishing station shall cease to be used for fishery purposes; and no fishing station shall be allowed to occupy the whole of any locality where there is space for more than one such station; and in the event of several parties applying for the same station, the lease of such station shall be sold at public auction after thirty days notice, the upset price being determined by the Lieutenant-Governor in Council; provided always, that nothing herein contained shall interfere with or be construed to affect the rights of parties in lands or privileges heretofore granted.

Taking of herrings prohibited on the spawning ground at specified places

VII. And be it enacted, That no herrings whatsoever shall be taken or caught in any manner on the spawning ground at the southern head of Grand Manan between the fifteenth day of July and fifteenth day of October in any year, such spawning ground commencing at the eastern part of Seal Cove at a place commonly known as Red Point, and thence extending along the coast westerly, and around the southern head of Bradford's Cove, a distance of about five miles, and extending to the distance of one mile from the shore; and all nets or engines used for catching herrings on the said spawning ground within the period above limited shall be seized and forfeited; and every person engaged in using the same shall be deemed guilty of a misdemeanor, and shall be arrested, prosecuted, and punished, as in other cases of misdemeanor.

Recovery of fines and penalties.

VIII. And be it enacted, That all fines and penalties recoverable under and by virtue of any section of this Act, not exceeding fifteen pounds, shall and may be recovered before any two justices of the peace, with costs of prosecution, and beyond that sum shall and may be recovered before any court of competent jurisdiction, with costs of prosecution; such penalty, when recovered, to be paid into the county treasury, and to be appropriated one half to and for the warden or wardens who may have instituted proceedings for the recovery thereof, and the other half to and for the use of the said county.

Act not to prevent a warden from being a competent witness.

IX. And be it enacted, That nothing herein contained shall be construed to prevent the warden or wardens from being competent witnesses for the recovery of any penalties under this Act for or by reason of their being entitled to any portion of the penalty so to be recovered.

Wardens to receive 40L per annum from the provincial treasury if the county for which they are

X. And be it enacted, That the wardens to be appointed under and by virtue of the sixth section of this Act shall, in addition to the proportion of any penalties recovered under and by virtue of the eighth section of this Act to which they may be entitled, shall be entitled to receive and demand of and from the Provincial Government the sum of forty pounds for his services

during the current year; provided always, that before any such sum shall be drawn from the public funds it shall be certified to the Lieutenant-Governor in Council that the county for which such warden or wardens has or have been appointed has provided a similar sum for the payment of the said warden or wardens.

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appointed pay the like amount.

XI. And be it enacted, That in every dam now built or hereafter to be built or placed across the various streams and rivers in this province a proper and suitable fishway shall be made and kept; provided that in those already erected the proprietors thereof shall be allowed until the first day of October next to make the fishway required in and by this Act.

Fishway to be made in dams across streams.

XII. And be it enacted, That no slabs or edgings or other mill rubbish, sawdust excepted, shall be allowed or put, directly or indirectly, by any person or persons in any of the rivers or streams of this province.

No mill rubbish, except saw dust, to be thrown into streams.

XIII. And be it enacted, That whoever shall be convicted of any breach of the provisions of the eleventh and twelfth sections of this Act shall be subject to the like pains and penalties as provided in and by the third section of this Act, and be recoverable as herein-before provided.

Penalties for breaches of sections 11 and 12 to be as in section 3.

XIV. And be it enacted, That any person or persons prosecuting or giving evidence on any prosecution for the recovery of any penalty or penalties under the provisions of this Act who shall be guilty of wilful and corrupt false swearing on such prosecution shall be deemed guilty of perjury, and on conviction thereof before any Court of competent jurisdiction shall be liable to all the pains and penalties imposed by law upon persons guilty of perjury.

Wilful and corrupt false swearing to be deemed perjury.

No. 19.

15^o VICTORIÆ, Cap. LIII.

AN ACT in amendment of the Act for the Protection and Regulation of the Sea and River Fisheries of this Province. [Passed 7th April 1852.]

No. 19.
14 Vict. c. 31.

BE it enacted by the Lieutenant-Governor, Legislative Council, and Assembly as follows :—

1. The thirteenth section of an Act made and passed in the fourteenth year of the reign of Her present Majesty, intituled “ An Act for the Protection and Regulation of the Sea and River Fisheries of this Province,” is hereby repealed.

14 Vict. c. 31.
s. 13. repealed.

2. Whoever shall be convicted of any breach of the provisions of the eleventh and twelfth sections of the said recited Act shall forfeit and pay a sum not less than ten shillings and not exceeding fifteen pounds for each and every offence, at the discretion of the justices of the peace before whom the case may be tried, together with the costs of prosecution as provided in and by the eighth section of the herein-before recited Act.

Penalty for breach of sections 11 and 12 as to dams and rubbish.

3. The streams and rivers of the province to which fish have not at any time heretofore been in the habit of resorting shall be considered as exempt from the operation of the eleventh section of the said recited Act, and it shall be the duty of the warden or wardens within whose jurisdiction such streams and rivers shall fall to determine upon such exemption.

Streams to which fish have not been in the habit of resorting exempted.

4. The justices of the peace for any county or counties to which any warden or wardens may have been appointed under the aforesaid Act may at any general sessions of the peace, or at any special sessions of the peace for that purpose convened, be and they are hereby authorized to make such rate and assessment upon the inhabitants of the said county or counties as will raise the sum of forty pounds for each warden appointed under the said Act, the same to be assessed, levied, collected, and paid agreeably to any Acts now or hereafter to be in force for the assessing, collecting, and levying county rates.

Justices authorized to assess for 40^l. to each warden.

5. That angling for salmon shall be permitted until the fifteenth day of September, anything in the first section of the herein-before recited Act to the contrary notwithstanding.

Angling for salmon permitted till 15th September.

AN ACT to revive and amend an Act to regulate the Herring Fishery in the Parishes of Grand Manan, West Isles, Campo Bello, Pennfield, and Saint George, in the County of Charlotte. [Passed 3d May 1853.]

Preamble.

‘WHEREAS great injury has been done to the Herring Fishery within the county of Charlotte by the erection of weirs, fishgarths, and other obstructions, and the placing and setting of seines and nets across the several havens, rivers, creeks, and harbours therein:’

Be it enacted by the Lieutenant-Governor, Legislative Council and Assembly, as follows:—

The placing of seines or nets restricted in certain places in the county of Charlotte.

1. No seine or net shall be set across the mouth of any haven, river, creek or harbour within the Parishes of Grand Manan, West Isles, Campo Bello Pennfield, and Saint George, in the County of Charlotte, and no seine or net shall be set in any such haven, river, creek, or harbour, which shall extend more than one third the distance across the same, or be within forty fathoms of each other, or which shall be set within twenty fathoms of the shore at low water mark of the same.

Penalty for offending, &c.

2. Any person offending against the preceding section, upon due conviction thereof, or by confession before one of Her Majesty’s Justices of the Peace for the County of Charlotte, shall for the first offence forfeit the sum of five pounds, to be levied by warrant of distress and sale of the offender’s goods; and for the second offence shall forfeit the sum of ten pounds, to be recovered with costs in an action of debt in any Court of Record in this Province; and for the third and any subsequent offence, shall forfeit the sum of fifteen pounds, to be recovered with costs in like manner; one half of such penalties, when recovered, to be paid to the overseers of the poor of the parish where the offence was committed, for the use of the poor, and the other half to the person who shall sue for the same.

Recovery and application.

Wardens may order gates to be made in weirs dry at low water.

3. Every fish weir in the parishes before mentioned which is dry at low water, or which in the opinion of the wardens of the fisheries for the County of Charlotte requires the same, shall have a gate therein of such width and in such position as the said wardens may determine; and the owner or occupier of any fish weir who shall neglect or refuse to place a gate therein according to the directions of the said wardens, shall forfeit and pay the sum of five pounds for each day he shall so neglect and refuse after due notice.

Authority to seize nets, weirs, &c., set contrary to this Act.

4. The said wardens and the overseers of the fisheries in the parishes before mentioned, shall severally have power to seize and remove any net, hedge, weir, fishgarth, seine, or other obstruction, set or placed contrary to the provisions of this Act, and after five days notice may sell the same in some public place in the parish where the seizure is made, together with any fish found therein; after deducting from the proceeds the charges of such seizure and sale, the residue shall be applied to the payment of any penalty incurred under this Act, and the overplus, if any, shall be paid to the overseers of the poor for the parish where the offence was committed, for the use of the poor thereof.

Gurry grounds to be marked out, and limits published.

5. The said wardens shall have power to mark out and designate in proper positions at the Island of Grand Manan and other fishing stations in this province, if necessary, fit places for the deposit of fish offal, to be called “gurry grounds;” they shall post up notices in the said Island at the several school houses, describing the limits and position of such “gurry grounds,” and publish the like notice in the Royal Gazette; and if after the posting and publication of such notice, any person shall cast overboard from a boat or vessel the heads, bones, or other offal of fish into the waters of or near the Island of Grand Manan, at any place except the said “gurry grounds,” such person shall forfeit and pay a fine not exceeding five pounds nor less than ten shillings for each offence.

Penalty for casting gurru at other places.

Recovery and application of penalties.

6. The penalties in the two preceding sections may be sued for and recovered by summary proceedings before one or more Justices of the Peace together with costs, and when recovered shall be paid over to the person who shall prosecute for the same.

An Act relating to the Coast Fisheries, and for the prevention of illicit Trade.

[Passed 3d May 1853.]

Confirmed by Order in Council, 24th October 1853.

Section.

1. Vessels hovering within three miles of the coast may be boarded.
2. Proceedings when master refuses to depart.
3. Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.
4. Vessels and goods may be seized. Penalty for obstructing officers.
5. Custody of vessels and goods seized.
6. Proceeds of condemned vessels and goods how applied and distributed.
7. Penalties and forfeitures how prosecuted.
8. Vessels and goods to be delivered on security.
9. Suits how brought and prosecuted. Oral evidence as to seizing officer.
10. Burden of proof to rest with claimant.
11. Claim for property seized to be under oath.
12. Security to be given before claim entered.
13. Month's notice to officer before action.
14. Limitation of action against seizing officer.
15. If judge certifies probable cause for seizure no costs allowed.
16. Amends may be tendered within one month.
17. Limitation of action for penalties.
18. Appeals within what time to be prosecuted.
19. Coasting vessels to have narrow plank or iron extending aft of stern-post.
20. Forfeiture for destroying nets if not so provided.
21. Vessels or boats under fifteen tons to have distinguishing number on bows and mainsail.
22. Colour of numbers in Bay of Fundy and Gulf of St. Lawrence respectively.
23. Vessels or boats without distinguishing number to be seized and forfeited.
24. Penalty for false or fraudulent description of vessel or boat.
25. Penalty for false or fraudulent proceedings with reference to vessels above fifteen tons burden or foreign vessels.
26. Lieutenant-Governor may grant commission of the peace to officer in command of Her Majesty's vessel of war while protecting the fisheries.
27. Definition of terms.
28. Suspending clause.

BE it enacted by the Lieutenant-Governor, Legislative Council, and Assembly as follows:—

1. Officers of the Provincial Treasury, and any other person duly appointed by the Lieutenant-Governor in Council for that purpose, may go on board any vessel or boat within any harbour in this province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance. Vessels hovering within three miles of the coast may be boarded.
2. If such vessel or boat be bound elsewhere, and shall continue within such harbour, or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers or persons above mentioned may bring such vessel or boat into port, search her cargo, and also examine the master upon oath; and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited. Proceedings when master refuses to depart.
3. If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall be found fishing (or to have been fishing), or preparing to fish within three marine miles of such coasts or harbours, such vessel or boat and the cargo shall be forfeited. Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.
4. All goods, vessels, and boats liable to forfeiture may be seized and secured by any of such officers or persons so appointed, and every person opposing them, or any one aiding such opposition, shall forfeit two hundred pounds. Vessels and goods may be seized. Penalty for obstructing officers.
5. Goods, vessels, and boats seized as liable to forfeiture under this Act shall be forthwith delivered into the custody of the officers of the Provincial Revenue next to the place where seized, to be secured and kept as other vessels, boats, and goods seized are directed to be secured and kept by law. Custody of vessels and goods seized.
6. All goods, vessels, and boats condemned as forfeited under this Act shall, by direction of the principal officer of the provincial revenue where the seizure shall have been effected, be sold at public auction, and the produce Proceeds of condemned vessels and goods, how applied.

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Penalties and forfeitures, how prosecuted.

Vessels and goods to be delivered on security.

Suit, how brought and prosecuted; oral evidences as to seizing officer.

Burden of proof to rest with claimant.

Claim for property seized to be under oath.

Security to be given before claim be entered.

Month's notice to officer before action.

Limitation of action against seizing officer.

If judge certifies probable cause for seizure, no costs allowed.

Amends may be tendered within one month.

Limitation of action for penalties.

Appeals, within what time to be prosecuted.

of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted and paid over for that service; one half of the remainder shall be paid to the officer or person seizing the same, without deduction, and the other half, after first deducting all costs incurred, shall be paid into the treasury of this province; but the Lieutenant-Governor in Council may nevertheless direct that any vessel, boat, or goods seized and forfeited shall be reserved for the public service or destroyed.

7. All penalties and forfeitures imposed by this Act shall be prosecuted and recovered in the Supreme Court.

8. If any goods, vessel, or boat shall be seized as forfeited under this Act, the Judge of the said Court, with the consent of the persons seizing the same, may order re-delivery thereof, on security by bond to Her Majesty, to be made by the party claiming the same, with two sureties. In case the property is condemned the value thereof shall be paid into the Court, and distributed as above directed.

9. All suits for the recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Attorney-General, or in his absence by the Solicitor-General. If a dispute arise whether any person is authorized to seize under this Act, oral evidence may be heard thereupon.

10. If any seizure take place under this Act, and a dispute arise, the proof touching the illegality shall be upon the owner or claimant.

11. No claim to anything seized under this Act and returned into the said Court for adjudication shall be admitted unless the claim be entered, under oath, with the name of the owner, his residence, and occupation, and the description of the property claimed, which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief, before any Justice of the Peace.

12. No person shall enter a claim to anything seized under this Act until security shall have been given in a penalty not exceeding sixty pounds to answer and pay costs occasioned by such claims, and in default of such security the things seized shall be adjudged forfeited, and shall be condemned.

13. No writ shall be sued out against any officer or other person authorized to seize under this Act for anything done thereunder until one month after notice in writing delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent, in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be admitted except such as shall be contained in the notice.

14. Every such action shall be brought within three months after the cause thereof has arisen.

15. If on any information or suit brought to trial under this Act on account of any seizure judgment shall be given for the claimant, and the Judge or Court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, and the person who made the seizure shall not be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the Judge or Court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized, or its value, shall not recover more than twopence damages, and no costs of suit, and the defendant shall not be fined more than one shilling.

16. The seizing officer may, within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender.

17. All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.

18. No appeal shall be prosecuted from any decree or sentence of any Court in this province touching any penalty or forfeiture hereby imposed, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

19. All coasting vessels under sixty tons burden owned in this province, and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern-post and rudder, and well secured on the keel; but this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern-post and rudder.

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Coasting vessels to have narrow plank or iron extending aft of stern-post

20. Any owner or master of a coasting vessel not so furnished or built running foul of any net set within or off the harbours, bays, or rivers of the coast of this province shall, upon due proof thereof, forfeit five pounds, to be recovered by the party injured to his own use as a private debt, leaving to such party grieved nevertheless his right at common law for further damages.

Forfeiture for destroying nets, if not so provided.

21. The owner of every vessel or boat under the burden of fifteen tons belonging to this province, and employed in fishing, coasting, or piloting, shall furnish a written description of the same, together with his own name, place of abode, and occupation to the chief officer of the provincial treasury of the district wherein the owner resides; such officer shall thereupon grant to the owner a certificate that the requisite description has been filed with him, and that a certain number has been affixed thereto; which number shall thereafter be painted conspicuously on both bows in figures not less than nine inches in length, and on the mainsail of such vessel or boat in figures not less than three feet in length.

Vessel or boats under fifteen tons to have distinguishing number on bows and mainsails.

22. Vessels or boats belonging to owners residing within the Bay of Fundy shall be distinguished by numerals in red on the bows and mainsail, and vessels or boats belonging to owners residing on the Gulf Coast of this province shall be distinguished by numerals in black upon a white patch on each bow and in black upon the mainsail of such boat or vessel.

Colour of numbers in Bay of Fundy and Gulf of St. Lawrence respectively.

23. Every vessel or boat under the burden of fifteen tons belonging to this province, and found fishing, coasting, or piloting near its shores without bearing a distinguishing number on the bows and mainsail as above provided, shall be seized and detained until properly numbered, and until the payment of a fine not exceeding five pounds.

Vessels or boats without distinguishing number to be seized and detained.

24. If the owner of any vessel or boat under the burden of fifteen tons shall make any false or fraudulent description of the same, or any misrepresentation whatsoever, in order to obtain a certificate and number therefor, he shall forfeit twenty pounds.

Penalty for false or fraudulent description of vessel or boat.

25. If any person shall make a false or fraudulent declaration, oath or representation with reference to the sale, transfer, registry, or re-registry of any ship or vessel above the burden of fifteen tons, or shall conspire or collude with a foreigner in any false or fraudulent transfer of a foreign ship or vessel, either to obtain a British register therefor, or for any false, fraudulent, or deceptive purpose, or shall wilfully and knowingly aid in giving to the master or owner of a foreign vessel being a foreigner the character of a British subject, or to a foreign vessel the character of a British vessel, he shall forfeit one hundred pounds.

Penalty for false or fraudulent proceedings with reference to vessels above fifteen tons burden, or foreign vessels.

26. The Lieutenant-Governor may, by commission under the great seal, appoint the officer in command of any of Her Majesty's vessels of war employed on the coasts of this province in the protection of the fisheries to be a Justice of the Peace in any or every county of this province, such commission to be in force while such officer is employed on the coast in the protection of the fisheries and in command of one of Her Majesty's vessels.

Lieut. Governor may grant Commissions of the Peace to officer in command of H.M. vessel of war, while protecting the fisheries.

27. In this chapter "vessels" shall include ships, and "harbours" shall include ports, bays, and creeks.

Definition of terms.

28. This Act shall not come into operation until Her Majesty's approbation is thereunto had and declared.

Suspending Clause.

J. R. Partelow,
Provincial Secretary.

EDMUND HEAD.

COPY of a DESPATCH from Lieutenant-Governor Sir EDMUND HEAD to the
DUKE of NEWCASTLE.

Government House, Fredericton, N.B.,

June 1, 1853.

MY LORD DUKE,

May 19. 1853.

IN reply to your Grace's despatch of the 27th April (No. 22.) I have the
honour to transmit—

1. A copy of a letter from Mr. William Wright, the Advocate-General of
New Brunswick, addressed to my private secretary, and enclosing a case
prepared by him on the subject of seizures of American Vessels made by
officers of Her Majesty's Navy in protection of the fisheries.

2. The opinion of the Attorney-General respecting this case, together with
copies of all local Acts cited by the Advocate-General as touching the question
raised, and now in force in this colony.

With regard to the concluding paragraph of the Advocate-General's letter,
I have to state to your Grace that I am not aware of any regulations on this
subject having been sent out to this province.

I trust these documents will be found sufficient for the information of the
Queen's Advocate, to whom your Grace referred the question.

I have, &c.

His Grace the Duke of Newcastle,
&c. &c. &c.

(Signed) EDMUND HEAD.

Encl. in No. 22.

Enclosure in No. 22.

SIR,

Saint John, New Brunswick, May 19, 1853.

I HAVE the honour to acknowledge your letter of the 16th instant, enclosing, by the
directions of his Excellency the Lieutenant-Governor, a copy of a despatch received from
the Colonial Secretary on the subject of seizures made in protection of the fisheries, and
requesting me either to prepare a formal case of the question raised by me, (having reference
to all local Acts in force on the subject,) or to furnish his Excellency with notes, &c. from
which the Attorney-General might form such a case.

I have accordingly lost no time in drawing up the case required of me, and which I here-
with enclose, referring therein to all Acts in force, local or otherwise, bearing on the
question.

I observe that the Queen's Advocate, in his letter of 23d April last to the Duke of New-
castle, calls for "a copy of the existing regulations made by Order in Council under Statute
59 Geo. III. c. 38," presuming, doubtless, that regulations were made by the King in Council
pursuant to the first section of that Act, which provides as follows: "That from and after the
passing of this Act it shall and may be lawful for His Majesty, by and with the advice of His
Majesty's Privy Council, by any Order or Orders in Council to be from time to time made
for that purpose, to make such regulations and to give such directions, orders, and instruc-
tions to the Governor of Newfoundland, or any officer or officers on that station, or to any
other person or persons whomsoever, as shall or may be from time to time deemed proper
and necessary for the carrying into effect the purposes of the said convention with relation
to the taking, drying, and curing of fish by inhabitants of the United States of America, in
common with British subjects, within the limits set forth in the said article of the said
convention."

Whether such regulations were made I have been unable as yet to ascertain. The naval
officers on this station last year knew of none; and I think it right to call his Excellency's
attention to the matter, in order that, if any such regulations were sent out to this province,
the Queen's Advocate may be furnished with a copy, together with the enclosed case; or if
none exist, that he should be made acquainted with that fact.

I have, &c.

W. C. Drury, Esq.,
&c. &c.

(Signed) W. M. WRIGHT,
Advocate General.

CASE.

By an Act of the Parliament of Great Britain and Ireland, 59 Geo. III. cap. 38., intituled
"An Act to enable His Majesty to make Regulations with respect to the taking and curing
Fish on certain Parts of the Coasts of Newfoundland, Labrador, and His Majesty's other
Possessions in North America, according to a Convention made between His Majesty and
the United States of America," it is among other things enacted (sec. 2.) "That from
and after the passing of this Act, it shall not be lawful for any person or persons, not being

a natural-born subject of His Majesty, in any foreign ship, -vessel, or boat, nor for any person in any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure, any fish of any kind whatever within three marine miles of any coasts, bays, creeks, or harbours whatever in any part of His Majesty's dominions in America not included within the limits specified and described in the first article of the said convention, and herein-before recited; and that if any such foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbours within such parts of His Majesty's dominions in America out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned, by such and the like ways, means, and methods, and in the same courts, as ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offence against any laws relating to the revenue of customs or the laws of trade and navigation, under any Act or Acts of the Parliament of Great Britain, or of the United Kingdom of Great Britain and Ireland; provided that nothing in this Act contained shall apply or be construed to apply to the ships or subjects of any prince, power, or state in amity with His Majesty, who are entitled by treaty with His Majesty to any privilege of taking, drying, or curing fish on the coasts, bays, creeks, or harbours, or within the limits in this Act described."

At the time of the passing of the above Act offences against "laws relating to the revenue of customs or the laws of trade and navigation" were prosecuted in the British colonies in America, under the authority of the Act of Parliament 49 Geo. III. cap. 107, 49 Geo. 3. c. 107. which enacts, "that all penalties or forfeitures incurred in the British colonies or plantations in America under any law relative to the trade or revenue of the said colonies or plantations shall and may be prosecuted and recovered in any Court of Record or of Vice Admiralty having jurisdiction in the colony or plantation where the cause of prosecution arises, and where there are no such courts then in any Court of Record or of Vice Admiralty having jurisdiction in some British colony or plantation near to that where the cause of prosecution arises."

Under this Act it was the invariable practice in the province of New Brunswick (and it is believed in the adjacent British colonies also) to prosecute seizures to condemnation in the Courts of Vice Admiralty.

The last-mentioned Act remained in force until the year 1825, when it was repealed by 6 Geo. IV. cap. 105., intituled "An Act to repeal the several laws relating to Customs;" and the purposes for which the repealed statutes had been passed were embodied in an Act passed in the same session of Parliament, intituled "An Act to regulate the Trade of the British Possessions abroad," by which it was enacted (sect. 57.) "that all penalties and forfeitures which may have been heretofore or may be hereafter incurred shall and may be prosecuted, sued for, and recovered in any Court of Record or of Vice Admiralty having jurisdiction in the colony or plantation where the cause of prosecution arises, and in cases where there shall happen to be no such Courts, then in any Court of Record or of Vice Admiralty having jurisdiction in some British colony or plantation near to that where the cause of prosecution arises."

This Act was in its turn repealed by the 3 & 4 Will. IV. cap. 50., but by an Act of the same session, bearing the same title as the repealed Act, the 57th section of the latter, above recited, was re-enacted.

The Act 3 & 4 W. IV. c. 59. was with other Acts relating to colonial trade consolidated by 8 & 9 Vict. c. 93., which is still in force, except so far as the same is repealed by 12 & 13 Vict. c. 29. s. 1., and the 73d section of which is in terms identical with the 64th section of 3 & 4 Will. IV. c. 59., and the 57th section of the 6 Geo. IV. c. 114. above recited, authorizing prosecutions in the colonial Courts of Vice Admiralty.

The practice accordingly continued of prosecuting seizures in the Courts of Vice Admiralty, which being, by their constitution and forms of procedure, free from all undue pressure of popular feeling, were preferable to the Supreme or other Courts of Record, in which trials by jury were, in most revenue cases, exposed to such influences.

But by the 69th section of the same Act it is also provided, "that all vessels, boats, goods, and other things which shall have been or shall hereafter be seized as forfeited in or near any of the British possessions abroad, under this or any Act relating to the customs, or to trade or navigation, shall be deemed and taken to be condemned, and may be dealt with in the manner directed by law in respect to vessels, boats, goods, and other things seized and condemned for breach of any such Act, unless the person from whom such vessels, boats, goods, and other things shall have been seized, or the owner of them, or some person authorized by him, shall, within one calendar month from the day of seizing the same, give notice in writing to the person or persons seizing the same, or to the collector, comptroller, or other chief officer of customs at the nearest port, that he claims the vessel, boat, goods, or other things, or intends to claim them."

By virtue of this section the customs officers at St. John, New Brunswick, have ceased to prosecute any seizures except in cases where claims are put in as provided by the Act, but, treating all other seizures as condemned by default, have proceeded at the expiration of the calendar month to sell the same at auction; and they further maintain that seizures made

under the Act 59 Geo. III. c. 38., notwithstanding their international character, are to be dealt with in the same way.

The foregoing are the only Acts of the Imperial Parliament having any direct bearing on the present inquiry.

The local or provincial Acts requiring any notice are the following:—

Laws of the Province of New Brunswick,
15 Vict. c. 28.

1st. An act passed in the 15th Victoria, cap. 28., intituled "An Act to consolidate and amend the Laws relating to the Collection and Protection of the Revenue of this Province," by which it is among other things enacted (sec. 61.), "That all articles, ships, and vessels not exceeding one hundred tons register, boats, carriages, and other articles, which shall or may be seized as liable to forfeiture under the provisions of this act, shall and may be deemed and taken to be condemned for breach of any law or laws of this province relating to revenue, unless the owner or owners of the articles so seized as forfeited, or the person from whom they were so seized, or some person duly authorized by him, shall, within one calendar month from the day of seizing the same, give notice in writing to the treasurer, deputy treasurer, or other authorized officer at or nearest the place where such seizure shall have been made, that he claims the articles or things so seized: provided always, that in case the articles so seized be live stock or dead meats, or any description of perishable articles, unless claim to the same shall be made, and notice thereof given, within forty-eight hours after such seizure made, the same shall be taken and deemed to be forfeited, and sold at public auction, after twenty-four hours notice being given."

And by section 68.,—

Sec. 68.

"That any penalty or forfeitures inflicted under and by virtue of this or any Act relating to the revenue of this province may be prosecuted, sued for, and recovered by action of debt, bill, plaint, or information, in any of Her Majesty's Courts of Record within this province, in the name of the treasurer or deputy treasurer, or in the name of Her Majesty's attorney or solicitor general.

Province Laws,
16 Vict. c. 1.

2dly. An Act passed at the late session of the provincial legislature with a suspending clause, and consequently awaiting Her Majesty's approval, entitled "An Act relating to the Coast Fisheries, and for the prevention of illicit Trade;" whereby (sec. 1.) "officers of the provincial treasury, and any other person duly appointed by the Lieutenant Governor in council for that purpose, may go on board any vessel or boat within any harbour in this province, or hovering within three marine miles of any of the coasts or harbours thereof, and stay on board so long as she may remain within such place or distance."

Ibid. s. 3.

"If the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall be found fishing, or to have been fishing, or preparing to fish within three marine miles of such coasts or harbours, such vessel or boat and the cargo shall be forfeited."

Ibid. s. 7.

"All penalties and forfeitures imposed by this Act shall be prosecuted and recovered in the Supreme Court."

It will be observed that both these enactments in terms apply only to offences against those or other provincial Acts. They cannot, it is submitted, affect seizures made under the Imperial Act, 59 Geo. III. cap. 38., the Supreme Court of this province having repeatedly held that Acts of Parliament cannot be controlled or limited in their operation by any colonial Acts.

In this state of the law the opinion of counsel is required on the following points:—

1st. Whether the mode of prosecution of seizures under the second section of the Act 59 Geo. III. cap. 38. is limited to "the ways, means, and methods" prescribed by the law then in force "relating to the revenue of customs, or the laws of trade and navigation;" or whether the form and mode of procedure may not be regulated in accordance with laws in *pari materia* subsequently passed?

2d. Supposing the 59 Geo. III. cap. 38. to authorize prosecutions only according to the practice existing at the time of the passing of that Act under the laws "relating to the revenue of customs, or the laws of trade and navigation," then in force, whether such authority did not necessarily cease upon the repeal of those laws effected by 6 Geo. IV. cap. 105.; and if so, by what "ways, means, and methods" can seizures made under the 59 Geo. III. cap. 38. be now prosecuted?

3d. If the second section of the 59th George III. cap. 38. can be construed to authorize prosecutions in accordance with the practice founded upon subsequent Acts of Parliament above cited, whether by virtue of the same acts the Colonial Courts of Vice-Admiralty are not the proper tribunals for the adjudication of forfeitures under the 59th Geo. III. cap. 38.?

Lastly. Whether the sixty-ninth section of the 8th and 9th Vict. cap. 93. extends to seizures made under the 59th Geo. III. cap. 38., the latter being of an international character? Or whether the penalty of condemnation by default imposed by the sixty-ninth section of the former Act must not be limited merely to seizures made under that Act, or other Acts of a similar character?

I beg to report for the information of his Excellency the Lieutenant Governor, that I have examined the annexed case of the Advocate General, and believe the same to be a pretty correct statement of the case. There are no other provincial Acts in force touching the question beyond those cited by Mr. Wright, the Advocate General. All other provincial Acts relative to the fisheries are purely of a local character, as will be seen by reference to the copies thereof sent herewith.

The titles are as follows :—

- | | |
|---|--|
| 1st. An Act to consolidate and amend the Laws relating to the local Government of Counties, Towns, and Parishes in this Province. | 13 Vict. c. 30. s. 10.
art. 1., and s. 11. |
| 2d. An Act for the Protection and Regulation of the Sea and River Fisheries of this Province. | art. 5, 6, and 7.
14 Vict. c. 31. |
| 3d. An Act in amendment of the Act for the Protection and Regulation of the Sea and River Fisheries of this Province. | 15 Vict. c. 53. |
| 4th. An Act to revive and amend an Act to regulate the Herring Fishery in the Parishes of Grand Manan, West Isles, Campo Bello, Pennfield, and Saint George in the County of Charlotte. | 16 Vict. c. 89.
<i>The above will be
found at page 26—
30 of this collection.</i> |

Respectfully submitted,
(Signed) L. F. STREET,
Attorney General.

Fredericton, May 26, 1853.

No. 23.

No. 23.

COPY of a DESPATCH from Lieut.-Governor Sir EDMUND HEAD to His
Grace the Duke of NEWCASTLE.

Government House, Fredericton, N.B.,

August 13, 1853.

My LORD DUKE,

ON the receipt of your Grace's despatch of July 22, No. 37., I forwarded a copy of such despatch, with its printed enclosure, to the Attorney and Solicitor General, who happened to be engaged in conducting the criminal business of the circuit in the city of Saint John.

I requested these gentlemen to look over the printed paper in question, and comply with your Grace's directions as conveyed in your despatch.

I have this day received the enclosed report from the Attorney and Solicitor General; but I fear that they have not done exactly what your Grace wished, inasmuch as they have not signed the printed paper itself, which is therefore not returned herewith.

The mail leaves this place for England so soon that there is not time sufficient for me to send back the paper to St. John and receive it again before the bag is made up. Looking, however, to the desire expressed by your Grace that no time should be lost, I think it better to write at once and enclose the report of the law officers as it is.

With regard to what they say of regulations made by the sessions of the different counties under the Act of 1850, your Grace will see, by reference to the Act, that such regulations are operative only "within the rivers and harbours," and do not therefore appear material. There is a regulation made by the administrator of the Government in Council last year, during my absence on leave, which affects the outside fisheries in the county of Northumberland, and of this I send a copy, as printed in the number of the Gazette enclosed.

So far as I can learn, this order, with those already printed, completes the collection of Acts and Regulations in force in New Brunswick.

I have, &c.

E. HEAD.

His Grace the Duke of Newcastle,

Enclosure in No. 23.

Encl. in No. 23.

MAY IT PLEASE YOUR EXCELLENCY,

St. John, August 10, 1853.

IN obedience to your Excellency's commands, we have the honour to report that we have carefully examined the Acts of Assembly on the subject of the fisheries, and find none in force beyond those stated in the printed paper submitted by your Excellency to our perusal.

It is possible that rules and regulations may have been made by the sessions of the several counties under the authority of the Act of 1850, referred to in the same paper, and we

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have requested the secretary to search the minutes of council for any such which may have been submitted for your Excellency's approval in council; and, should there be any, that he may require copies from the clerks of the peace in the counties where the same may be found, to enable your Excellency to transmit them to the home government.

We have &c.

J. S. STRUT, Attorney General.

W. B. KINNEAR, Solicitor General.

Encl. in No. 23.

Enclosure in No. 25.

GOVERNMENT NOTICE.

The following REGULATIONS for the outside FISHERIES in NORTHUMBERLAND have been duly approved by his Honour the Administrator of the Government in Council; viz.—

1st. That between Grand Downs and Hay Island, including Burnt Church, and also in front of lots 78 to 81, both inclusive, in the parish of Alnwick in the county of Northumberland, from the nets in that district being set on killocks, and from the warden for Northumberland having represented the impossibility of taking the nets up on Sunday, unless at a ruinous expense to the fishermen, the warden be not required to enforce the law for taking up the nets on Sunday in that district; but, notwithstanding, all persons are hereby prohibited from taking fish or fishing their nets in the above district between eleven o'clock on Saturday night and one o'clock on Monday morning, under a penalty of five pounds for each and every breach of this order.

2d. That from and after the publication of this order, the length of salmon nets set between Escuminac and the west end of Hucklebury Island shall not respectively exceed in length two hundred fathoms, under the penalty of fifteen pounds for each and every breach of this order; and from the westerly end of Hucklebury Island to within one mile and a half of the northerly end of Fox Island the length of salmon nets respectively shall not exceed two hundred and fifty fathoms, under the like penalty for each and every breach of this order; and from the southerly end of Passage or Portage Island down the north shore to the boundary line between Northumberland and Gloucester the length of salmon nets respectively shall not exceed two hundred fathoms, under a like penalty for each and every breach of this order; all commencing from three feet water at low-water mark.

By his Honour's command,

J. R. PARTELOW.

Secretary's Office, July 12, 1852.

CANADA.

CANADA.

16 VICTORIA, Cap. xv.

No. 24.

No. 24.

An Act to extend and amend an Act passed in the ninth year of Her Majesty's reign, intituled "An Act to provide for the appointment of magistrates for the more remote parts of this province."

[Assented to 10th November 1852.]

Preamble.

WHEREAS it is expedient that more ample provisions should be made for the appointment of justices of the peace to act and have jurisdiction in the remote parts of this province: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and

of the Legislative Assembly of the province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled "An Act to re-unite the provinces of Upper and Lower Canada, and for the Government of Canada," and it is hereby enacted by the authority of the same, That it shall be lawful for the Governor in Council, in the manner provided for in an Act passed in the ninth year of Her Majesty's reign, intituled "An Act to provide for the appointment of magistrates for the more remote parts of this province," to name and appoint such and so many fit and proper persons as may be deemed expedient to be and act as justices of the peace within, and whose jurisdiction as such justices of the peace shall extend over such remote part or parts of Lower Canada, as the Governor in Council may by proclamation define and declare, although such remote part or parts may be comprised within the constituted limits of any district of this province, any thing to the contrary in the said Act contained notwithstanding; and that all the provisions of the said Act shall be deemed to apply and shall apply, to any justice of the peace to be appointed by virtue of this Act, and also to any officer or officers in command of any of Her Majesty's vessels in the gulf and river St. Lawrence, and to any other person who may have been or shall have been appointed a justice of the peace, with instructions to act as such in the gulf and river St. Lawrence, and on the shores of the said gulf and river, for the better protection of those of Her Majesty's subjects who are or shall be engaged in the trade of the fisheries in the said gulf and river, in the same manner as if the said places and persons above mentioned and described were specially named and described in the said Act; anything to the contrary in the said Act contained notwithstanding.

Provisions of 9 Vict. cap. 41. extended to justices appointed in certain places, and for certain purposes.

16 VICTORIA, Cap. xcii.

No. 25.

No. 25.

An Act relating to the Fisheries on the Labrador and North Shore of the Gulph of St. Lawrence. [Assented to 22d April 1853.]

WHEREAS the whale, seal, cod, mackarel, herring, and other fisheries in the Gulph of St. Lawrence are of great importance to Her Majesty's subjects in this province, several of whom concerned in those fisheries have been of late years by strong hand prevented by persons residing on or frequenting the Labrador or North Shore of the said Gulph from making on the coasts thereof and islands contiguous thereto, although uninhabited and waste, the temporary buildings, try houses, sheds, stages, flakes, and other erections necessary to the carrying on of those fisheries, but who nevertheless, in the lawful pursuit of such fisheries, have, as British subjects, a right to land and construct such erections on the waste and unoccupied parts of the coast, not disturbing nor interfering with previous occupants, and are entitled, as pursuing an important branch of public and national industry, to protection, and every facility which, without injury to planters and those permanently settled on the coast, the various localities on the said coast and islands contiguous thereto afford, and it therefore is expedient to declare and enact as herein-after it is done: Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the legislative council and of the legislative assembly of the province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby declared and enacted by the authority of the same, That all and every Her Majesty's subjects carrying on or concerned in the whale, seal, cod, and other fisheries in the Gulph of St. Lawrence, shall peaceably have, use, and enjoy the freedom of taking bait and of fishing in any and every river, creek, harbour, or road, with liberty to go on shore on any part or parts of the Labrador or North Shore of the Gulph of St. Lawrence, and upon any islands contiguous thereto, within the limits of the province of the Gulph Shore or Labrador, for the purposes of the whale and other fisheries, and for salting, curing, and drying fish there, to cut wood for making and repairing stages, flakes, hurdles, cook-rooms, and other purposes necessary for preparing their

Preamble.

All Her Majesty's subjects to have certain privileges on the said shore and in the said Gulf.

CANADA.

Proviso.

oil and fish for exportation, or that may be useful to their fishing trade, without hindrance, interruption, denial, or molestation from any person or persons whomsoever; provided that such river, creek, harbour, or road be navigable by boats and craft usually employed in the fisheries, and as such not private property, and the land upon which such wood may be cut be unconceded by the seignior, or proprietor of the seigniority within which the same is situated, or, if conceded, remains unimproved or unoccupied at the time when such wood is cut for the aforesaid purposes.

Masters of British vessels may take possession of ground for certain purposes.

II. And be it enacted, That the master and commander of every vessel fitted out from the United Kingdom of Great Britain and Ireland, or any of the dominions thereunto belonging, for the whale, cod, or other fisheries, may take possession of so much of the unconceded beach of any of the islands of the said Labrador, or of any unoccupied beach on the mainland thereof, within the limits of the province as may be necessary for trying his blubber and rendering the same into oil, or for curing his fish and preparing it for exportation, and to retain and enjoy the same so long as he shall not leave it unoccupied for the space of twelve calendar months, in which case it shall be lawful for any other person or persons to take possession thereof in part or the whole for the same purposes, and on the same condition; provided that such beach be not private property, pursuant to a concession or title deed therefor from the seignior or proprietor of the seigniority to which the same may appertain or be held by virtue of a location certificate from the Crown or title derived therefrom: Provided also, that such new occupier shall, when thereunto required by the preceding possessor or his lawful attorney, such demand being made within one year after possession taken, pay him for such part of the flakes and stages as such new occupier shall have taken possession of; and provided further, that the said preceding possessor not having been paid as aforesaid may remove any building or other improvement erected or made by him on the unoccupied beach aforesaid, so that such removal be not made during and before the close of the fishing season in which the new occupier shall have taken possession.

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Rights of Her Majesty, &c. not affected.

III. Provided always, and be it enacted, That nothing herein contained shall be construed or held in anywise to alter, prejudice, or affect the rights of Her Majesty, Her heirs or successors, or of any body corporate or politic, person or persons whomsoever other than those to whom this Act may relate.

Duration of this Act.

IV. And be it enacted, That this Act shall be in force until the first day of May one thousand eight hundred and fifty-six, and no longer.

Verified as correct by

LEWIS F. DRUMMOND,
Attorney General, Lower Canada.

JOHN ROSS,
Attorney General, Upper Canada.

P. J. O. CHAUVEAU,
Solicitor General, Lower Canada.

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