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DOMINION OF CANADA.

THE FISHERY ACTS.

1868.

347.-

DOMINION OF CANADA.

THE FISHERY ACTS,

CONSISTING OF :

- “ An Act for the Regulation of Fishing and Protection of Fisheries ;”
- “ An Act respecting Fishing by Foreign Vessels,” passed by the Parliament of Canada, in 1868, applicable generally to the Fisheries of Canada ; also certain Provincial Statutes continued in force in the Provinces of Nova Scotia and New Brunswick.

REGULATIONS adopted from time to time under these Acts are published separately for action in the different localities to which they apply.

DEPARTMENT OF MARINE AND FISHERIES,
FISHERIES BRANCH,
Ottawa, 23rd May, 1868.

W. F. WHITCHER,
For the Minister.

OTTAWA :
PRINTED BY I. B. TAYLOR, 29, 31 AND 33, RIDEAU STREET.

1873.





ANNO TRICESIMO-PRIMO.

VICTORIÆ REGINÆ.

CAP. LX.

An Act for the regulation of Fishing and protection of Fisheries.

[Assented to 22nd May, 1868.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: Preamble.

FISHERY OFFICERS.

1. The Governor may appoint Fishery Officers, whose powers and duties shall be defined by this Act and the Regulations made under it, and by instructions from the Department of Marine and Fisheries; and every Officer so appointed under oath of office and instructed to exercise magisterial powers, shall be *ex-officio* a Justice of the Peace for all the purposes of this Act and the Regulations made under it, within the limits for which he is appointed to act as such Fishery Officer: Fishery Officers to be appointed.
Powers and duties.

2. Each Fishery Officer shall take and subscribe the following oath:— Oath of Office.

“I, A. B., a Fishery Officer in and for the district described in my appointment, do solemnly swear, that to the best of my judgment I will faithfully, honestly and impartially fulfil, execute and perform the office and duty of such Officer according to the true intent and meaning of the Fisheries Act and Regulations, and in accordance with my instructions. So help me God.” Form.

FISHERY LEASES AND LICENSES.

2. The Minister of Marine and Fisheries may, where the exclusive right of fishing does not already exist by law, issue or authorize to be issued fishery leases or licenses for fisheries and fishing wheresoever situated or carried on; but leases or licenses for any term exceeding nine years, shall be issued only under authority of an Order of the Governor in Council. Fishery leases and licenses.
If for more than nine years.

DEEP SEA FISHERIES.

As to right to use vacant public property for fishing purposes, and as to taking bait, &c.

3. Every subject of Her Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation, for the purposes of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station, unless it shall have been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of flakes and stages, and other property thereon of which he may take possession, or the buildings and improvements may be removed by the original owner; and all subjects of Her Majesty may take bait or fish in any of the harbors or roadsteads, creeks or rivers; subject always, and in every case, to the provisions of this Act as affects the leasing or licensing of fisheries and fishing stations; but no property leased or licensed shall be deemed vacant.

Proviso.

COD FISHERY.

Nets for taking cod.

4. No one shall use mackerel, herring, nor caplin seines for taking codfish, and no codfish seine shall be of a less sized mesh than four inches in extension in the arms, and three inches in the bunt or bottom of the seine.

WHALE FISHERY.

Whales, &c., not to be killed by rockets or shells. Penalty.

5. Whales, seals and porpoises shall not be hunted or killed by means of rockets, explosive instruments or shells, under a penalty not exceeding three hundred dollars, or at least three months', and not exceeding six months' imprisonment, in default of payment.

SEAL FISHERY.

Sedentary fisheries not to be disturbed.

Penalty.

6. During the time of fishing for seals, no one shall, with boat or vessel, knowingly or wilfully, disturb, impede or injure any sedentary seal fishery, nor prevent, hinder or frighten the shoals of seals coming into such fishery, under a penalty not to exceed sixty dollars for each offence, or imprisonment in default of payment not exceeding one month; the defendant, being also liable for damages, to be adjudged by any Fishery Officer or other magistrate before whom the injured party may complain:

Disputes as to seal fisheries, how settled.

2. Disputes between occupiers of seal fisheries concerning limits and the mode of fishing or setting nets, shall be decided summarily by any Fishery Officer or other magistrate, on the report of arbitrators, and any damages assessed or accrued, or that may afterwards arise out of a repetition or continuance of the difficulty ordered to be remedied, may be levied under the warrant of any Fishery Officer or other magistrate.

SALMON FISHERY.

Close season for salmon.

Proviso as

7. Salmon shall not be fished for, caught or killed, between the thirty-first day of July and the first day of May, in the Provinces of Ontario and Quebec, and in the River Restigouche, and between the fifteenth day of August and the first day of March, in the Province of New Brunswick; provided always, that it shall be lawful to fish for,

catch and kill salmon with a rod or line, in the manner known as fly- to fly-surface surface fishing, between the thirtieth day of April and the thirty-first fishing. day of August, in the Provinces of Ontario and Quebec, and between the first day of March and the fifteenth day of September, in the Province of New Brunswick :

2. Salmon shall not be fished for, caught or killed in the Province of Nova Scotia, save as provided and authorized by the laws now in force in that Province; In Nova Scotia.

3. Foul or unclean salmon shall not be at any time caught or killed; Foul salmon.

4. Salmon fry, parr and smolt, shall not be at any time fished for, caught or killed, and no salmon or grilse of less weight than three pounds shall be caught or killed ; but where caught by accident in nets lawfully used for other fish, they shall be liberated alive at the cost and risk of the owner of the fishery, on whom shall in every case devolve the proof of such actual liberation ; Fry, parr, or smolt not to be killed.

5. Meshes of nets used for capturing salmon, shall be at least five inches in extension, and nothing shall be done to practically diminish or nullify their size : Size of meshes of salmon nets.

6. The use of nets or other apparatus which capture salmon shall, except in the Provinces of Nova Scotia and New Brunswick, be confined to tidal waters, and any Fishery Officer may determine the length and place of each net or other apparatus used in any of the waters of the Dominion ; provided, that nothing contained in this section shall prevent the use of nets for catching salmon in the lakes of the Province of Ontario, nor preclude the Minister from authorizing, by special fishery licenses or leases, the capture of salmon by nets in fresh water streams ; Use of nets regulated. Proviso as to Ontario, &c.

7. The Minister, or any Fishery Officer authorized to such effect, shall have power to define the tidal boundary of estuary fishing for the purposes of this Act ; and above the actual limit so to be laid down, it shall be unlawful, without the special fishery lease or license above provided for, to fish for salmon except with a rod and line, in the manner known as fly-surface-fishing, under a penalty not to exceed one hundred dollars, and imprisonment in default of payment for any term not exceeding two months ; Boundaries of estuary fishing to be defined. Penalty for fishing above limits, except with a rod and line, &c.

8. All nets, or other lawful appliances which capture salmon, shall be placed at distances of not less than two hundred and fifty yards apart, without intermediate fishing materials of any kind being set or used in and about any other part of the stream, and drifting for salmon shall be illegal ; Distance of nets apart, &c.

9. Any Fishery Officer may prescribe either in writing or orally on sight if deemed necessary, a further distance apart to be left between salmon nets, or other fishing apparatus, and their dimensions and extension ; but gill or float nets shall not be used to lengthen, extend or enlarge any other kind of fishery ; Further distance may be prescribed. Proviso.

As to spawn-
ing rivers.

10. No salmon shall be captured within two hundred yards of the mouth of any tributary, creek or stream which salmon frequent to spawn ;

Mode of
killing at
certain places.

11. Except in the manner known as fly-surface-fishing with a rod and line, salmon shall not be fished for, caught or killed at any artificial pass or salmon leap, nor in any pool where salmon spawn ;

Salmon
spawn.

12. Except under the authority and for the special purpose provided for in this Act, no one shall take, buy, sell, destroy, use or possess any salmon roe, nor injure any spawning bed.

LAKE AND RIVER TROUT FISHERY.

Not to be kill-
ed in certain
ways and at
certain sea-
sons.

8. It shall not be lawful to fish for, catch or kill any kind of trout (or "lunge") in any way whatever between the first day of October and the first day of January ; and no one shall at any time fish for, catch or kill trout by other means than angling by hand with hook and line, in any inland lake, river or stream, except in tidal waters ; Provided always, that as affecting the waters of the Province of Ontario, such prohibitions shall apply only to the kind known as "speckled trout."

Proviso.
Speckled
trout.

Exception as
to fish used
for bait, &c.

2. Nothing in the above clause shall prevent the use of small sized trout for the *bond fide* purpose of baiting traps, nor affect the taking and using the same by fishermen as bait for codfishing in tidal waters, nor subject them to penalty if by accident in *bond fide* fishing for herrings or white-fish by means of nets, trout shall become enclosed or taken.

WHITE-FISH AND SALMON TROUT FISHERY.

Close season
for white fish.

9. It shall not be lawful to fish for or catch white-fish in any manner between the nineteenth day of November and the first day of December, nor by means of any kind of seine, between the thirtieth day of May and the first day of August, in the Province of Ontario, or between the thirty-first day of July and first day of December in the Province of Quebec, nor shall the fry of the same be at any time destroyed :

Gill nets.

2. Gill nets for catching salmon trout or white-fish, shall have meshes of at least five inches extension measure ; and gill nets shall not be set within two miles of any seining ground ;

Seines.

3. Seines for catching white-fish shall have meshes of not less than four inches extension measure.

BASS AND PICKEREL FISHERY.

Close season.

10. Close-seasons for bass, pike, pickerel (*dorée*), maskinongé and other fish, may be fixed by the Governor in Council to suit different localities.

POSSESSION OF FISH.

Prohibition to

11. No one shall, without lawful excuse, the proof of which shall devolve wholly on the party charged, buy, sell or possess any fish

named in this Act, or parts thereof, caught or killed during seasons when and by means whereof catching or killing the same is prohibited by law : buy, sell, or have in close season.

2. It shall be the duty of every customs officer, excise officer, police officer or constable, clerk of a market or other party in charge of any market place in any village, town or city, to seize and forfeit on view to his own proper use, or gift, any fish enumerated in this act, caught or killed during prohibited seasons, or which appears to have been killed by unlawful means; but every such seizure and appropriation, with the date, place and circumstances thereof, shall be duly reported together with the name, residence and calling of the person in whose possession such fish was found, to the Fishery Officer having jurisdiction over the district within which such seizure, forfeiture and appropriation have taken place. Certain officers to seize fish exposed for sale in close season. And report the same.

CONSTRUCTION OF FISHWAYS.

12. Every dam, slide, or other obstruction across or in any stream where the Minister may determine it to be necessary for the public interest that a fish-pass should exist, shall be provided by the owner or occupier with a durable and efficient fishway, to be maintained in practical and effective condition, in whatever place and of whatever form and capacity will admit of the passage of fish through the same, (which place, form and capacity any Fishery Officer may by written notice determine) under a penalty of four dollars for each day during which any such obstruction remains unprovided with a fishway, after three days' notice in writing to the owner or occupier thereof : To be made where and in such manner as Fishery Officer may determine. Penalty for contravention.

2. Fishways shall be kept open and unobstructed and be supplied with a sufficient quantity of water to fulfil the purposes of this enactment, during such times as may be required by any Fishery Officer ; To be kept open, &c.

3. The Minister may authorize the payment of one-half of the expenses incurred by such owner or occupier in constructing and maintaining any fishway ; Minister may pay one-half the cost.

4. Should it be expedient to procure the construction of any fishway pending proceedings against any owner or occupier for the penalty imposed by this Act, the Minister may give directions to make and complete the same forthwith, and to enter upon the premises with the necessary workmen, means and materials, and may recover from the owner or occupier the whole expense so incurred by action before any competent tribunal ; May construct and recover the cost in certain cases.

5. No person shall injure or obstruct any fishway, nor do anything to deter or hinder fish from entering and ascending or descending the same, nor injure or obstruct any authorized barrier. Not to be obstructed or injured.

GENERAL PROHIBITIONS.

13. Whosoever fishes for, takes, catches or kills fish in any water, or along any beach, or within any fishery limits described in any lease or license, or places, uses, draws or sets therein any fishing gear or Penalty for fishing in limits

- leased to another. apparatus, except by permission of the occupant under such lease or license for the time being, or disturbs or injures any fishery, shall incur a penalty not exceeding one hundred dollars with costs, or imprisonment not exceeding two months, and the forfeiture of fishing apparatus so used, and all fish taken or caught; and any Fishery Officer or any such lessee or licensee may, upon his own view, forthwith seize and remove any net or apparatus so used in trespass, to be afterwards dealt with according to law; provided always, that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing shall not interfere with the taking of bait used for codfishing, nor prevent angling for other purposes than those of trade and commerce :
- Right of lessee, &c.
- Proviso : as to taking bait or angling.
- Navigation not to be obstructed.
2. Seines, nets or other fishing apparatus, shall not be set in such a manner or in such places as to obstruct the navigation with boats and vessels, and no boats or vessels shall be permitted to destroy or wantonly injure in any way, any seines, nets or other fishing apparatus lawfully set ;
- Stakes to be removed.
3. Stakes or other timber placed for fishing purposes in any water shall be removed by the user within forty-eight hours after last using the same, or at the expiry of the fishing season ;
- Main channels not to be obstructed.
4. The main channel or course of any stream shall not be obstructed by any nets or other fishing apparatus ; and one-third of the course of any river or stream, and not less than two-thirds of the main channel at low tide, in every tidal stream shall be always left open, and no kind of fishing apparatus or material shall be used or placed therein ; provided that weirs used exclusively for catching eels, and the usage of mill-dams for catching eels, shall be subject to interference only in cases where, and at times when, they injure other fisheries, or by completely barring any passage, shall deprive other weirs of a share in the run of eels, and such place, time and circumstances may be determined by any Fishery Officer ;
- Proviso : as to eel fishing.
- No net, &c. to obstruct entirely the passage of fish.
5. No net or other device shall be so used as entirely to obstruct the passage of fish to and from any of the waters of the Dominion by any of the ordinary channels connecting such waters, or debar their passage to and from accustomed resorts for spawning and increasing their species ;
- Killing fish at certain places forbidden.
6. The catching, killing or molesting of fish when passing or attempting to pass through any fishway, or fish-pass, or in surmounting any obstacle or leaps—the use of any invention to catch, kill or molest fish in the mill dams, fishways, mill-heads and water courses appurtenant thereto, are hereby forbidden ;
- Certain nets forbidden.
7. Bag-nets and trap-nets and fish-pounds are prohibited, except under special licenses for capturing deep-sea fishes other than salmon ;
- Fish not to be killed in
8. It shall not be lawful to fish for, catch or kill salmon, trout (or "lunge") of any kind, maskinongé winnoniche, bass, bar-fish, pickerel, white-fish, herring, or shad by means of spear, grapnel hooks, negog,

or nishagans; provided, the Minister may appropriate and license or lease certain waters in which certain Indians shall be allowed to catch fish for their own use in and at whatever manner and time are specified in the license or lease, and may permit spearing in certain localities;

certain ways.
 Proviso: as to Indians.

9. No person shall fish for, catch, kill, buy, sell or possess the young of any of the fish named in this Act, or in any Regulation or Regulations under it;

Young of fish not to be taken.

10. Seines for bar-fish shall have meshes of not less than three inches, extension measure;

Seines for bar-fish.

11. Fishery Officers may determine or prescribe the distance between each and every fishery, and shall forthwith remove any fishery which the owner neglects or refuses to remove, and such owner shall be moreover liable for a breach of this Act, and for the cost and damages of removing the same;

Distance between fisheries.

12. Every fascine fishery with a box-trap (*coffre*), instead of pound, shall have across the outside end of such box (*coffre*) a wire covering or a net work, the meshes of which shall be at least one inch square; but this shall not apply to eel weirs during autumn;

Fascine fisheries with box-traps.

13. Nets or other fishing apparatus shall not be so used as to impede or divert the course of fish in any small rivers;

Nets, &c., in small rivers.

14. From the time of low water nearest six of the clock in the evening on every Saturday, to the time of low water nearest six of the clock in the morning on every Monday, in tidal waters, and from six of the clock in the evening on every Saturday to six of the clock in the morning of the following Monday, in fresh water,—seines, nets, or other apparatus used for catching fish shall be so raised or adapted as to admit of the free passage of fish through, past, or out of the same, for the purpose of affording, a free pass from six of the o'clock on every Saturday evening to six of the clock on every following Monday morning; and during this close time it shall be unlawful to catch fish by such means; and any fish so taken, caught or killed, together with the nets or other apparatus used, shall be forfeited, in addition to the penalties imposed by this Act.

Fish to be allowed free passage on Sunday.

And forfeited if then taken.

INJURIES TO FISHING GROUNDS AND POLLUTION OF RIVERS.

14. Whoever throws overboard ballast, coal, ashes, stones, or other prejudicial or deleterious substances, in any river, harbour or roadstead, or any water where fishing is carried on, or throws overboard or lets fall upon any fishing bank or ground, or leaves, or deposits, or causes to be thrown, left, or deposited upon the shore, beach, or bank of any water, or upon the beach between high and low water mark, inside of any tidal estuary, or within two hundred yards of the mouth of any salmon river, remains or offals of fish, or of marine animals, or leaves decayed, or decaying fish in any net or other fishing apparatus, shall incur for any such offence a fine not exceeding one hundred dollars, or imprisonment for not more than two months; and

Penalty for throwing overboard certain substances prejudicial to fisheries.

Proviso : as to the disposal of offal.

every person so doing, whether master or servant, and the master or owner of any vessel or boat from which such ballast, or offals or other prejudicial substance are thrown, shall severally become liable for each offence; provided always, that it shall be lawful to bury such remains, or offals ashore, beyond high water mark, and at establishments situated inside of the mouths of rivers, for carrying on deep sea fisheries, to drop the same into perforated boxes or inclosures built upon the beach, or under stage-heads, in such manner as to prevent the same from being floated or drifted into the streams, or to dispose of them in such other manner as may be prescribed by any Fishery Officer :

Poisonous substances not to be used.

2. Lime, chemical substances or drugs, poisonous matter, (liquid or solid), dead or decaying fish, or any other deleterious substance, shall not be drawn into, or allowed to pass into, be left or remain in any water frequented by any of the kinds of fish mentioned in this Act; and saw-dust or mill-rubbish shall not be drifted or thrown into any stream frequented by fish, under a penalty not exceeding one hundred dollars : Provided always that the Minister shall have power to exempt from the operation of this sub-section, wholly or from any portion of the same, any stream or streams in which he considers that its enforcement is not requisite for the public interest ;

Mill rubbish. Saw-dust.

Proviso : Minister may exempt any stream, &c.

Penalty for kindling fires in certain places at certain times.

3. Whoever at any time between the first day of June and the thirtieth day of September, of any year, kindles, makes or places any fire in or near any wood, trees, brushwood, or any wild or uncultivated land, at any place north of the River or Gulf of St. Lawrence, to the east or north of the Saguenay River, or on any of the islands below or to the eastward of Red Island, within the said river or gulf, whereby the fire spreads or extends through standing trees, brushwood or scrub, to a distance exceeding one arpent, shall for such offence, incur a penalty not exceeding fifty dollars, and shall besides be responsible to the Crown, or whoever may be the owner of the land, for all damages occasioned by such fire ; provided, that nothing herein contained shall prevent proprietors or those having licenses to cut timber or wood from burning the wood, trees or brushwood on their own land, or otherwise using fire to clear their lands, without injury or prejudice to their neighbours.

Proviso : as to burning for clearance.

MISCELLANEOUS PROVISIONS.

Waters may be set apart for the propagation of fish.

15. The Minister may authorize to be set apart, and to be leased, any river or other water for the natural or artificial propagation of fish ; and any person who wilfully destroys or injures any place set apart or used for the propagation of fish, or fishes therein without written permission from a Fishery Officer, or from the holder under lease or license, or uses therein any fishing light or other implement for fishing, during the period for which such waters are so set apart, shall incur a fine not exceeding two hundred dollars, or in default of payment, shall be imprisoned for not more than four months :

Penalty for trespass.

Licenses to take spawn, &c.

2. Nothing contained in this Act shall preclude the granting by the Minister of written permission to obtain fish and fish spawn, for purposes of stocking or artificial breeding, or for scientific purposes ;

2. Lessees or licensees of fisheries shall have no claim to renewal of leases or licenses if in arrears of rent or percentage, during four months after the same is due, and any lessee or licensee convicted of an infraction of this Act, or any Regulation or Regulations under it, shall be liable to forfeit his lease or license ;

Fishery lessees
in arrears.

4. Special licenses and leases for any term of years, may be granted to any party or parties who may wish to plant or form oyster beds in any of the bays, inlets, harbours, creeks or rivers, or between any of the islands on the coast of Canada ; and the holder of any such lease or license shall have the exclusive right to oysters produced or found on the beds, within the limits of such license, for the term of such lease ;

Special
licenses for
oyster beds.

5. The Minister may authorize to be expended annually any sum appropriated by Parliament, for the formation of oyster beds in various waters and places found adapted for that purpose, and transplanting oysters, and towards re-stocking exhausted fisheries by natural or artificial means, and to improve streams where natural obstructions exist, and may authorize the construction, erection or placing of any artificial barrier or grating in any stream or river, or in any water-course, and in the channels or beds thereof ;

Minister may
expend Par-
liamentary
grant for
making or
re-stocking
oyster beds.

6. With a view to protect the oyster beds in different parts of the bays and coasts of the Dominion, it shall not be lawful for any person to take oysters, or in any way to injure or disturb such oyster beds, except during times and on terms permitted by Regulation or Regulations under this Act, under a penalty of not more than one hundred dollars nor less than forty dollars together with the forfeiture of the vessel and all the apparatus employed therein ; and in default of payment, the party convicted shall be imprisoned for not less than one month, nor more than two months ;

Protection of
oyster beds.

Penalty for
injuring them.

7. Shell-fish fisheries shall be subject to the provisions of this Act, and any Regulation or Regulations to be made under it.

Shell-fish
fisheries.

FINES AND FORFEITURES.

16. Except for offences to which penalties are already attached, each and every offender against the provisions of this Act, or the Regulations under it, shall for each offence incur a fine of not more than twenty dollars, besides all costs ; and in default of payment of each fine, shall be imprisoned in each case for not less than eight days, and not exceeding one month ; provided, whenever it shall appear to the satisfaction of the convicting magistrate, that the offence has been committed in ignorance of the law, and that because of the poverty of the defendant, the penalty imposed would be oppressive, a discretionary power may be exercised ; and any Fishery Officer or other magistrate may grant a warrant of distress for the amount of fine and costs imposed in any case :

Penalty in
cases where
no other is
provided.

Proviso:
discretionary
power in cer-
tain cases.

2. The contravention on any day of any of the provisions of this Act, or of any Regulation made under it, shall constitute a separate offence, and may be punished accordingly ;

Separate of-
fence on
each day.

Distress for penalty, &c.

3. Should any defendant have goods and chattels whereon the costs may be levied, the complainant may distress for the amount under warrant by any Fishery Officer, or other magistrate, notwithstanding the imprisonment of the party convicted and fined ;

Forfeiture of articles used in contravention of this Act.

4. All materials, implements or appliances used, and all fish had in contravention to this Act or any Regulation or Regulations under it, shall be confiscated to Her Majesty, and may be seized and confiscated on view by any Fishery Officer, or taken and removed by any person for delivery to any magistrate, and the proceeds of disposal thereof may be applied towards defraying expenses under this Act ;

Appropriation of pecuniary penalties.

5. One moiety of every fine or penalty levied by virtue of this Act, shall belong to Her Majesty, and the remaining half thereof shall be paid to the prosecutor, together with costs taxed to him for attendance as a witness or otherwise ;

How to be applied.

6. Her Majesty's share of each fine or penalty and all proceeds derived from the sale of confiscated articles under this Act, shall be paid to the Receiver General through the Department of Marine and Fisheries, and be applied towards the expenses incurred for the protection of fisheries ; and persons aggrieved by any such conviction may appeal by petition to the Minister, who shall have power to remit fines and restore forfeitures under this Act.

Appeal to Minister.

MODE OF RECOVERY.

Before whom to be sued for.

17. Each penalty or forfeiture imposed by this Act, or Regulations made under it, may be recovered, on parole complaint, before any Fishery Officer, stipendiary or other magistrate, in a summary manner on the oath of one credible witness :

Service of Summons, &c.

2. Three days shall elapse between the service and the return of summons to any defendant for the first five leagues, and one day more for each additional five leagues of the distance between the place at which the summons is dated and the place of service ; Provided that when it is expedient to proceed against a defendant without delay, any Fishery Officer or other magistrate may issue a summons, returnable immediately, to compel the defendant to appear before him forthwith, or may issue a warrant for the apprehension of such defendant simultaneously with the summons ;

Proviso : for cases not admitting delay.

Limitation of suits.

3. Penalties incurred under this Act, or the Regulations made under it, shall be sued for within two years from the commission of the offence ;

Who shall be liable.

4. When not otherwise specified, every proprietor or proprietress, owner, agent, tenant, occupier, partner, or person actually in charge, either as occupant or servant, shall be deemed to be jointly and severally liable for penalties or moneys recoverable under any of the provisions of this Act or any Regulation or Regulations under it ;

No quashing for want of form, &c.

5. No proceeding under this Act or under any Regulation or Regulations made under it shall be dismissed, and no conviction thereunder shall be quashed for want of form ; nor shall any warrant of arrest or

commitment be held void by reason of any defect therein, provided it is therein alleged that party has been convicted, and there is a good and valid conviction to sustain the same.

POWERS OF FISHERY OFFICERS AND OTHER MAGISTRATES.

18. Any Fishery Officer or other magistrate may convict upon his own view of any of the offences, both as infractions and for non-compliance, punishable under the provisions of this Act; and shall remove or cause to be removed instantly and detain any materials illegally in use: Fishery Officer may convict on view.

2. Any Fishery Officer or other magistrate may search, or shall grant a warrant to have searched, any vessel or place where there is cause to believe that any fish taken in contravention of this Act, or anything used in violation thereof may be concealed; May cause search to be made.

3. Where any offence under this Act is committed in, upon or near any waters forming the boundary between different counties or districts, or fishery districts, such offence may be prosecuted before any magistrate in either of such counties or districts, or before the Fishery Officer for either contiguous fishery district; In what locality to be prosecuted.

4. In the discharge of his duties any Fishery Officer, or other person or persons by him accompanied or authorized to such effect, may enter upon and pass through or over private property without being liable for trespass; Right of Fishery Officer to pass over lands.

5. Disputes between parties relative to fishing limits or claims to fishery stations, or position and usage of nets and other fishing apparatus, shall be settled by the local Fishery Officer; Disputes as to boundaries.

6. Gurry-grounds may be designated or defined by any Fishery Officer. Gurry-grounds.

7. Any Fishery Officer, stipendiary magistrate, or commissioned officer of Her Majesty's Navy, on board of any vessel belonging to or chartered by the Canadian Government, employed in the service of protecting fisheries, and each commissioned officer of Her Majesty's Navy serving on board of any vessel cruising and being in the waters, harbors or ports of Canada, for the purposes of affording protection to Her Majesty's subjects engaged in the fisheries, and to enforce any laws relating to such fisheries, shall exercise magisterial powers in all the waters, harbors or ports, and on all the coasts of the Dominion of Canada where for the time being and for the purposes above described they are so engaged, without property qualification and without taking any oath of office; Certain Officers in the Canadian or British Navy to have magisterial powers under this Act.

8. Seizures made by any Fishery Officer, Stipendiary Magistrate or Naval Officer, so acting as aforesaid, may be taken for disposal to the nearest or most convenient port where there shall reside any revenue officer or other public officer empowered to dispose of the case; Seizures, how to be dealt with.

9. Whenever it may be impracticable for any Fishery Officer, stipen- Powers of

Fishery Officer, &c., for the detention of prisoners when he cannot convey them to gaol.

diary magistrate or naval officer, acting in such capacity, to cause any prisoner or prisoners to be conveyed to, and committed to the nearest Common Gaol, he shall have power to detain him or them on board of the vessel, or transfer him or them to another vessel for conveyance and delivery at the most convenient place, and with all convenient despatch, where he or they can be duly committed into the custody of the Sheriff or other officer of the county or district in which the Common Gaol is situated to which he or they shall be ordered to be committed; and until such prisoner or prisoners shall be so delivered into the immediate custody of any Sheriff or Gaoler, the Fishery Officer, Stipendiary Magistrate or Naval Officer having him or them in charge, shall have in all parts through which it may be necessary to convey any prisoner or prisoners, the same authority and power over and in regard to such person or persons and to command the aid of any of Her Majesty's subjects in preventing his or their escape, or in retaking him or them in case of escape, as any county or district sheriff or peace officer would have while lawfully conveying a prisoner from one part to another of his own district;

Where the offence shall be held to have been committed.

10. The offence for which any person or persons may be so committed to any Common Gaol shall always be held to have taken place in the county or district to the Common Gaol of which the commitment has been actually made.

FISHERY REGULATIONS.

Governor in Council may make fishery regulations.

19. The Governor in Council may from time to time make, and from time to time vary, amend or alter, all and every such Regulation or Regulations as shall be found necessary or deemed expedient for the better management and regulation of the sea-coast and inland fisheries, to prevent or remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish and to forbid fishing except under authority of leases or licenses, every of which Regulations shall have the same force and effect as if herein contained and enacted, notwithstanding that such Regulations may extend, vary or alter any of the provisions of this Act respecting the places or modes of fishing or the terms specified as prohibited or close seasons, and may fix such other modes, times or places as may be deemed by the Governor in Council to be adapted to different localities, or may be thought otherwise expedient:

And may thereby vary certain provisions of this Act.

Publication and proof of regulations.

2. The publication of such Regulations in the *Canada Gazette*, shall be sufficient notice to give legal effect to the same; and the production of a copy of a paper purporting to be "The *Canada Gazette*" and containing any such Regulation or Regulations, shall be admitted as full and sufficient evidence of the same in all courts of law or equity in Canada;

Stating offences against this Act.

3. Every offence against any Regulation or Regulations made under this Act may be stated as in contravention of the *Fisheries Act*.

PROVINCIAL ACTS AND REGULATIONS REPEALED OR CONTINUED.

20. The following Acts and parts of Acts are hereby repealed :

Acts and parts of Acts repealed.

The Act passed by the Legislature of the late Province of Canada, (29 Vic., Cap. 11) intituled : *An Act to amend chapter sixty-two of the Consolidated Statutes of Canada, and to provide for the better regulation of Fishing and protection of Fisheries*, and also the several sections of the said sixty-second chapter of the Consolidated Statutes of Canada therein excepted from repeal ; Provided, always, that the Regulations of 7th May, 1859, adopted under chapter 62 of the said Consolidated Statutes of Canada, and relating to fisheries at and around the Magdalen Islands, and the Regulations of 4th August, 1866, 9th August, 1866, and 26th April, 1867, adopted under the Statute 29 Victoria, Cap. 11, shall continue in force in the Provinces of Quebec and Ontario, until amended or superseded by other regulations under this Act :

Can. 29 V.
C. 11.

Proviso :
as to certain regulations.

The Act passed by the Legislature of the Province of New Brunswick, (23 Vic. Cap. 52) intituled : *An Act relating to the Fisheries of the County of Restigouche* ;

N. B. 23 V.
C. 52.

The Act passed by the said Legislature, (26 Vic. Cap. 6) intituled : *An Act relating to the Coast and River Fisheries* ;

N. B. 26 V.
C. 6.

The Act passed by the said Legislature, (30 Vic. Cap. 14) intituled : *An Act to encourage the formation of Oyster Beds* ; but any Regulation or Regulations made under either of the three last mentioned Acts, and not inconsistent with the provisions of the present Act, shall remain in force in the Province of New Brunswick until amended or superseded by Regulation or Regulations to be made under this Act, and shall be subject in every respect to the authority by this Act vested in the respective Fishery Officers appointed under this Act, who are hereby empowered to enforce the same.

N. B. 30 V.
C. 14.

Proviso :
as to regulations under it.

21. The following Acts shall continue in force in the Provinces of New Brunswick and Nova Scotia :

Acts continued in N. B. and N. S.

An Act passed by the Legislature of the Province of New Brunswick, (16 Vic. Cap. 69) intituled : *An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade* ;

N. B. 16 V.
C. 69.

Chapter 94, Revised Statutes, *third series*, " *Of the Coast and Deep Sea Fisheries*," as amended by subsequent Acts of the Legislature of Nova Scotia ; Provided always, that such Fishery Officers as may be especially empowered in that behalf by the Governor in Council, shall also exercise the powers by the said recited Acts and chapter of Acts vested in Revenue and other Officers, Sheriffs Magistrates, and all penalties and forfeitures imposed under the same shall be paid over to the Receiver General through the Department of Marine and Fisheries to be applied to yards the Fisheries Protection Service, in like manner as other fines and confiscations under the present Act ;

N. S. Revised Stat. C. 94.

Proviso :
certain powers under that Act may be exercised by Fishery Officers.

Chapter 95 of the Revised Statutes of Nova Scotia, *third series*, " *Of River Fisheries*."

Same, Cap. 95.

N. S. 28 V.
C. 35. The Act (28 Vic. Cap. 35) intituled : *An Act to amend Chapter 95 of the Revised Statutes, "Of River Fisheries ;"*

N. S. 29 V.
C. 35. The Act (29 Vic. Cap. 35,) intituled : *An Act to amend Chapter 94 of the Revised Statutes, "Of the Coast and Deep Sea Fisheries ;"*

N. S. 29 V.
C. 36. The Act (29 Vic. Cap. 36,) intituled : *An Act to amend Chapter 95 of the Revised Statutes, "Of River Fisheries ;"*

And regulations under them. And all Regulations adopted in pursuance of the said chapter of the said Revised Statutes or of the said Acts amending the same shall remain in force until amended or superseded by any Regulation or Regulations under this Act ;

Proviso :
as to the exercise of powers under the said Acts. Provided always, that the powers and duties in the above named chapters and Acts devolving on the Governor in Council under the said Acts, shall vest in the Governor of Canada in Council, and the powers and duties belonging to the General or Special Sessions, and the Grand Jury, shall, as effects the making of any Regulation or Regulations, order or orders, be vested in the Governor General in Council, and as affecting the appointment and control of Fishery Inspectors or Wardens, and the declaring of exemptions, shall vest in the Minister ; and any Fishery Officer or Officers appointed under this Act shall fulfil the duties of Fishery Inspectors or Wardens, and exercise the functions which by the said above recited chapters and Acts attach to justices and sheriffs, for all the purposes of the aforesaid chapters and Acts or any such Regulation or Regulations ;

Fishery Officers may perform certain duties.

Fishery Officers to exercise powers under Rev. Stat. N. S. Cap. 103. Each and every Fishery Officer shall also exercise the power and perform the duty assigned to Commissioners or Overseers of River Fisheries by the second section of Chapter 103, of the Revised Statutes, (*third series*,) of the Province of Nova Scotia ;

As to penalties under the said Acts. **22.** All fines and penalties levied under the several chapters and Acts recited, or under any Regulation or Regulations referred to in the two next preceding sections, shall be disposable in the same manner as if imposed and levied under the present Act.

FORMS OF PROCEDURE.

Forms of proceedings under this Act. **23.** Forms of proceedings, Orders and Notices used under this Act and Regulations, may for respective processes, be in the forms prescribed in the Schedule hereunto annexed, or in any other form ; and in other respects the laws relating to summary convictions and orders, shall apply to cases under this Act.

Short Title. **24.** This Act shall be known and cited as *The Fisheries Act.*

SCHEDULE A.

Form of Complaint.

Province of }
 County (or District) of }
 This day of , 18

To J. S., a Justice of the Peace
 for the said County (or District).

A. B., of , complains C. D. of , hath
 (*state the offence briefly in any intelligible terms with the time and place
 at which it was committed.*) in contravention of the Fisheries Act;
 Wherefore the complainant prays that judgment may be given against
 the said C. D., as by the said Act provided.

(Signature)

A. B.

SCHEDULE B.

Summons to Defendant.

Province of }
 County (or District) of 18 . }
 To C. D., of , &c.

Whereas complaint has (*this day*) been made before me that you
 (*state the offence in the words of the complaint, or to the like effect*) in
 contravention of the Fisheries Act: Therefore you are hereby com-
 manded to come before me, at
 on the day of , at o'clock in the
 , to answer the said complaint and to be dealt with accord-
 ing to law.

Witness my hand and seal, this day of , 18
 Justice of the Peace for

[L. S.]

SCHEDULE C.

Subpoena to a Witness.

Province of }
 County (or District) of }
 To E. F., of &c.

Whereas complaint has been made before me that C. D. did (*state the
 offence as in the Summons*), and I am informed that you can give

material evidence in the case: Therefore, you are commanded to appear before me, at _____, on the _____ day of _____, at _____ o'clock in the _____, to testify what you know concerning the matter of the said complaint.

Witness my hand and seal, this _____ day of _____ 18 _____

J. S.,
(as in Summons.)
[L. S.]

SCHEDULE D.

Form of Conviction.

Province of _____ }
County (or District) of _____ }

Be it remembered, that on this _____ day of _____ 18 _____, at _____ in the said County (or District), C. D., of _____, is convicted before me, for that he did, &c. (*stating the offence briefly and the time and place where committed*), in contravention of the Fisheries Act; And I adjudge the said C. D. to forfeit (and pay) the sum of _____ (*or mention the thing forfeited under this Act*), to be applied according to law, and also to pay to A. B., (*the complainant*) the sum of _____ for costs:

(*If the penalty be not forthwith paid, add*), and the said C. D. having failed to pay the said penalty and costs forthwith after the said conviction, I adjudge him to be committed to and imprisoned in the Common Gaol of the County (or District) of _____ for the period of _____

Witness my hand and seal, this _____ day of _____, 18 _____
J. S.,
(as in Summons.)
[L. S.]

SCHEDULE E.

Form of Warrant of Commitment for non-payment of penalty or forfeiture and costs.

Province of _____ }
County (or District) of _____ }

To the Constable and Peace Officers of the County (or District) of _____ and the Keeper of the Common Gaol of the said County (or District), at _____

Whereas C. D., of _____, was on the _____ day of _____ 18 _____, convicted before me, for that he, &c. (*as in Con-*

viction), and I did thereupon adjudge the said C. D. to forfeit and pay to A. B., &c., (*as in Conviction*;) And whereas the said C. D. hath not paid the said penalty or forfeiture and costs: Therefore, I command you, the said Constables and Peace Officers, or any of you, to convey the said C. D. to the Common Gaol for the of , at and deliver him to the keeper thereof with this warrant; and I command you the said keeper of the said Gaol, to receive the said C. D. into your custody, and keep him safely imprisoned in the said Gaol for the space of , and for so doing this shall be your sufficient warrant.

Witness my hand and seal, this day of , 18 .

J. S.,

(*as in Summons.*)

[L. S.]

C A P. L X I.

An Act respecting fishing by foreign Vessels.

[Assented to 22nd May, 1868.]

HER Majesty, by and with the advice and consent of the Preamble. Senate and House of Commons of Canada, enacts as follows:

1. The Governor may, from time to time, grant to any foreign ship, vessel or boat, or to any ship, vessel or boat not navigated according to the laws of the United Kingdom, or of Canada, at such rate, and for such period not exceeding one year, as he may deem expedient, a license to fish for or take, dry or cure any fish of any kind whatever, in British waters, within three marine miles of any of the coasts, bays, creeks or harbours whatever, of Canada, not included within the limits specified and described in the first article of the convention between His late Majesty King George the Third and the United States of America, made and signed at London on the twentieth day of October, 1818.

Governor may grant licenses to foreign vessels, &c., to fish in British waters, within three miles of the coasts of Canada.

2. Any commissioned officer of Her Majesty's Navy serving on board of any vessel of Her Majesty's Navy cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's Subjects engaged in the fisheries, or any commissioned officer of Her Majesty's Navy, Fishery officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat, within any harbour in Canada or hovering (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours in Canada, and stay on board so long as she may remain within such place or distance.

Certain British or Canadian officers may board vessels hovering in British waters within the said limits.

Such vessels refusing to depart may be brought into port, &c.

3. If such ship, 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 such officers or persons as are above mentioned may bring such ship, vessel or boat into port and search her cargo, and may 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 put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel or boat under the first section of this Act, such ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

And forfeited in certain cases.

Vessels, &c., forfeited may be seized.

Penalty for resisting seizures.

4. All goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

How such vessels, &c. shall be secured and kept.

5. Goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized as liable to forfeiture under this Act, shall be forthwith delivered into the custody of the Collector or other principal officer of the Customs at the port nearest to the place where seized, to be secured and kept as other goods, ships, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo seized are directed by the laws in force in the Province in which such port is situate to be secured and kept, or into such other custody and keeping as the Governor in Council, or a court of Vice-Admiralty shall order.

When condemned to be sold by auction.

Application of proceeds of sale.

6. All goods, vessels and boats and the tackle, rigging, apparel, furniture, stores and cargo, condemned as forfeited under this Act shall by direction of the Collector or other principal officer of the Customs at the port where the seizure has been secured be sold at public auction; and the proceeds 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 without deduction to the officer or person seizing the same; and the other half, after first deducting therefrom all costs incurred, shall be paid to the Receiver General of Canada, through the Department of Marine and Fisheries; but the Governor in Council, may, nevertheless, direct that any ship, vessel, boat or goods and the tackle, rigging, apparel, furniture, stores and cargo seized and forfeited, shall be destroyed, or be reserved for the public service.

Proviso: vessels, &c., may be reserved for public service.

7. Any penalty or forfeiture under this Act may be prosecuted and recovered in any court of Vice-Admiralty within Canada. Forfeiture how enforced;

8. The Judge of the court of Vice-Admiralty may, with the consent of the person seizing any goods, ship, vessel or boat and the tackle, rigging, apparel, furniture, stores and cargo, as forfeited under this Act, order the re-delivery thereof, on security by bond to be given by the party, with two sureties, to the use of Her Majesty: and in case any goods, ship, vessel or boat or the tackle, rigging, apparel, furniture, stores, and cargo so re-delivered is condemned as forfeited the value thereof shall be paid into court and distributed as above directed. Vessel, &c., may be released on security being given. Value to be distributed in case of condemnation.

9. Her Majesty's Attorney General for Canada may sue for and recover in Her Majesty's name any penalty or forfeiture incurred under this Act. Attorney General of Canada to sue

10. In case a dispute arises as to whether any seizure has or has not been legally made or as to whether the person seizing was or was not authorized to seize under this Act, oral evidence may be heard thereupon, and the burden of proving the illegality of the seizure shall be upon the owner or claimant. As to proof of legality of seizure.

11. No claim to anything seized under this Act and returned into any 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. Claims must be made on oath.

12. No person shall enter a claim to anything seized under this Act until security has been given in a penalty not exceeding two hundred and forty dollars 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. And security must be given.

13. No writ shall be sued out against any officer or other person authorized to seize under this Act for anything done under this Act, 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. Protection of officers, &c., acting under this Act.

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

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, nor shall the person who made the seizure be liable to any indictment or suit or ac- If judgment be for the claimant but there was probable cause of seizure, no

- Costs allowed.** count thereof; and if any suit or prosecution be brought against any person on account of any seizure under this Act and judgment be given against him, and the Court or Judge 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 three and a half cents damages, nor any costs of suit, nor shall the Defendant be fined more than twenty cents.
- Tender of amends.** **16.** Any officer or person who has made a seizure under this Act may, within one month after notice of action received tender amends to the party complaining or to his Attorney or Agent, and may plead such tender.
- Limitation of suits for penalties.** **17.** All actions for the recovery of penalties or forfeitures imposed by this Act must be commenced within three years after the offence committed.
- As to appeals from decrees under this Act.** **18.** No appeal shall be prosecuted from any decree, or sentence of any Court touching any penalty or forfeiture imposed by this Act, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.
- Governor in Council may relieve from penalty.** **19.** In cases of seizure under this Act, the Governor in Council may, by order, direct a stay of proceedings; and in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as may be deemed right.
- Act to apply to inland waters; and other Courts substituted for Vice-Admiralty in such case.** **20.** The several provisions of this Act shall apply to any foreign ship, vessel or boat in or upon the Inland Waters of Canada; and the provisions hereinbefore contained in respect to any proceedings in a court of Vice-Admiralty shall, in the case of any foreign ship, vessel or boat, in or upon the Inland Waters of Canada, apply to, and any penalty or forfeiture in respect thereof shall be prosecuted and recovered in one of the Superior Courts of the Province within which such cause of prosecution may arise
- Certain enactments of N. S. and N. B. not to apply to cases provided for by this Act.** **21.** Neither the ninety-fourth chapter of the Revised Statutes of Nova Scotia, (third series,) "*Of the Coast and Deep Sea Fisheries,*" nor the Act of the Legislature of the Province of Nova Scotia, passed in the twenty-ninth year of Her Majesty's Reign, chapter thirty-five amending the same, nor the Act of the Legislature of the Province of New Brunswick passed in the sixteenth year of Her Majesty's reign, chapter sixty-nine, intituled: "*An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade,*" shall apply to any case to which this Act applies; and so much of the said chapter and of each of the said Acts as makes provision for cases provided for by this Act, is hereby declared to be inapplicable to such cases.



TITLE XXV.

OF THE FISHERIES

NOVA SCOTIA.

CHAPTER 94.

Of the Coast and Deep Sea Fisheries.

I. 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.

II. 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 four hundred dollars; 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.

III. 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.

IV. 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 eight hundred dollars.

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

Custody of
vessels and
goods seized.

V. 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.

Condemned
vessels and
goods how
disposed of,
and the pro-
ceeds, how
applied.

VI. 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 proceeds 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.

Penalties and
forfeitures,
how prose-
cuted.

VII. All penalties or forfeitures hereunder shall be prosecuted and recovered in the Court of Vice-Admiralty.

Vessels and
goods to be re-
delivered on
security.

VIII. 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
authority of
seizing officer.

IX. 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.

X. 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 of prop-
erty seized to
be under oath.

XI. 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.

XII. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding two hundred and forty dollars 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

XIII. 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.

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

Limitation of action, &c.

XV. 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 a 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 three and a half cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents.

Certificate of probable cause of seizure shall prevent the recovery of costs.

XVI. 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.

Amends may be tendered, &c.

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

Limitation of actions, &c.

XVIII. 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.

Appeals, within what time to be prosecuted

XIX. 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.

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

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

Forfeiture for destroying nets where coasters are not so provided.

Definition of terms.

XXI. In this chapter "vessels" shall include ships; and "harbors" shall include ports, bays and creeks.

Suspension of the first eighteen sections.

XXII. The first eighteen sections are suspended as regards citizens and inhabitants of the United States of America, and shall continue so suspended and not in force so long as the treaty between Her Majesty and that country, signed on the fifth day of June, 1854, shall continue and be in force.

Agreement to be entered into between master and crew.

XXIII. The master of any vessel registered and belonging to this province, and bound from any port therein, to be employed in the deep sea fishery, shall before proceeding on such fishing voyage, enter into an agreement in writing with every person on board, apprentices excepted; which agreement shall express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the crew of such vessel, shall be divided among them in proportion to the quantity or number of fish which they may respectively have caught; which agreement in addition to the signatures of the master and crew shall be countersigned by the owner of such fishing vessel, or his agent, and shall be as nearly as possible in the form given in the annexed schedule.

Terms of agreement.

Penalties for desertion.

XXIV. Any person having engaged for a voyage or for the fishing season, as before provided, who shall while the agreement therefor continues in force, desert or absent himself from the vessel in which he shipped, without leave of the master, shall be liable to the same penalties and forfeitures imposed on the like offences under chapter seventy-five; and every master of a fishing vessel taking any person on a deep sea voyage without entering into the before required agreement, shall be liable to the penalty imposed on that offence by the same chapter.

Schedule in this chapter referred to.

Form of agreement.

An agreement made in pursuance of chapter ninety-four of an Act of the general assembly of Nova Scotia, passed in the twenty-seventh year of the reign of Her Majesty Queen Victoria, entitled "An Act for revising and consolidating the general statutes of Nova Scotia," between——, master of the ship——, of the port of——, of the burthen of——tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board said ship in the capacities set opposite their respective names, on a fishing voyage from the port——to——, [here the intended voyage is to be described, and the duration of the same, and the nature of the same as nearly as can be done, and if the same is to continue for the fishing season,] and back to the port of——; and the said crew agree to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores and cargo thereof; in consideration of which

services to be duly, honestly, faithfully and carefully performed; the said master doth hereby promise and agree with the said crew; [*here insert the particular agreement with reference to the division of the fish among the sharmen at end of voyage.*] In witness whereof the said parties have hitherto subscribed their names on the days against ther respective signatures mentioned.

Place and time of entry.			Men's name.	Age.	Place of birth	Quality.	Amount of shares.	Sureties.	Witness to execution.
Day.	Month.	Year.							

29 VICT. CHAPTER 35.

An Act to amend Chapter ninety-four of the revised Statutes of Nova Scotia "Of the Coast and Deep Sea Fisheries."

Be it enacted by the Governor, Council, and Assembly, as follows :

I. Section four of chapter ninety-four of the revised statutes is hereby amended as follows : "And shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years." Sec. 4 cap. 94 Revised Statutes amended, &c.

II. Section five of the said chapter is hereby amended by the addition of the following words : "Or into such other custody and keeping as the Governor in Council or Court of Vice Admiralty shall order." Sec. 5 amended.

III. In case of seizure under the said Act, the Governor in Council may, by order, direct a stay of proceedings; and in case of condemnation, may relieve from the penalty in whole or in part, and on such terms as may be deemed right. In cases of seizure, Governor in Council may, &c.

ARTICLE I OF CONVENTION BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA, SIGNED AT LONDON, OCTOBER 20, 1818.

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 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 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 hereabove described, and of the coast of Labrador; but as 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 harbours 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.



TITLE XXV.

Nova Scotia.

CHAPTER 95.

OF RIVER FISHERIES.

1. Hereafter no salmon shall be taken in any of the rivers of this province westward of the harbour of Halifax between the thirty-first day of July and the first day of March; nor in any river running into the Bay of Fundy, nor in any river in the Island of Cape Breton, nor in any river to the eastward of Halifax harbour, between the fifteenth day of August and the first day of March, except in salt water below low water mark and in salt water not later than the twentieth of October. Any person taking any salmon in any of the rivers of this province within the times specified shall be liable to a penalty not exceeding forty dollars for every salmon taken by him.

Time for taking salmon
Penalty.

2. The sessions shall annually appoint such and so many places on the rivers and streams as may be attended with the least inconvenience to the owners of the soil, or the rivers, as resorts for the purpose of taking fish; but the same and the enactments herein contained shall not extend to any species of fish taken from the sea except salmon, bass, shad, alewives, gaspereaux, trout and small mackerel.

Fisheries on rivers running through private lands, &c.

3. In cases where a river shall be the dividing line between two counties the orders and regulations of the sessions in each county shall have force and effect only to the centre of the channel of the river being such dividing line.

Sessions' orders to extend to centre &c.

4. The sessions shall from time to time make orders for the setting and drifting of nets, the erecting and place of weirs, and generally for the conducting of fisheries in all the bays, harbours, rivers, streams or creeks, or on the shores thereof, to be enforced by penalties not exceeding forty dollars for the breach of any such order.

Sessions to make orders for setting of nets, &c.

5. No bag nets shall be used for the purpose of taking salmon within any river or harbour, not within a mile from the mouth of any river, and no nets shall be set or placed or allowed to remain set or placed from one hour before sunset on Saturday night until an hour after sunrise on Monday morning.

Penalties. Bag nets not allowed. Time when nets shall not be set.

Spearing or sweeping for forbidden.

6. No person shall by spearing or sweeping with net or seine take or attempt to take any salmon in any river, stream, lake or water course; and nets for the taking of salmon or any other fish shall be set and placed only on one side of such river, stream, lake or water course.

Nets, how set.

Not to be within one-eighth of a mile, &c.

7. No stake, seine, weir, net or other contrivance for taking fish, shall be set or placed, within one-eighth of a mile from where some other stake, seine, weir, net or other contrivance for taking fish is previously set or placed, or within one-eighth of a mile next below or above any mill or dam erected across or partially across any such river, stream, or water course; and no seine, net, or other contrivance for taking fish shall extend more than one-third of the distance in a straight line across such river, stream or water course.

Not to exceed more than one-third across river.

Penalty for violation of last three sections.

Forfeiture; trial of offenders; appeal.

8. Any person who shall violate any provision of the last three sections shall forfeit a sum not exceeding forty dollars; and all spears, implements, canoes, boats, nets, seines, weirs, and other contrivances used or employed in, about or preparatory, to the taking of salmon or any other fish contrary to the preceding sections, or to any order of sessions made or to be made thereunder, shall be liable for forfeiture, and may be seized by any person and detained until the trial of the offender, when they may be declared forfeited and become the property of the person prosecuting; if, however, upon appeal from the judgment of the justices, the owner or possessor of the articles so declared forfeited shall give sufficient security by bond with sureties to pay the prosecutor the value thereof and the amount of any penalty that may have been imposed with the costs then incurred and thereafter to be incurred in case the judgment appealed from shall be confirmed, then such owner or possessor shall be entitled to their immediate restoration.

Nets illegally set may be destroyed.

9. Any person finding a net, seine or weir set or placed contrary to the provisions of this chapter or of such order of sessions may destroy the same—provided nevertheless that no person shall be allowed in any action, indictment or other proceedings against him to justify the destruction of or injury to any net, seine or weir, under the authority of this section, unless such person shall within one week after he shall have done any such act post up in a conspicuous place in the neighborhood, and also file in the office of a neighboring justice of the peace, a notice signed by him, acknowledging the act and stating the time and place of doing the same, and also the address, addition and place of residence of the party subscribing the same.

Persons equipped by night for fishing to be considered in the act of fishing.

10. Every person discovered at night with a spear and torch or a torch only in or about any river, stream, lake or water course above the rise and fall of the tide, either in a boat or canoe or otherwise, and apparently equipped for taking or spearing salmon, shall be considered in the act of spearing salmon, and the burthen of disproving the same shall be on the party so discovered.

Owner of mill to keep open waste gate, &c.

11. The owner or the occupier of any mill to which any dam, lock or obstruction made or to be made on or across any river, resorted to by salmon or gaspereaux, is appurtenant, who shall not during such per-

iods while fish are passing up from and returning to the sea, as shall be prescribed by the regulations of sessions, or in case there are no regulations on the subject as shall be fixed by the river inspector, when no such regulation shall be made by the sessions or river inspector, then within the period prescribed in the first section of this chapter, have and keep open a waste gate or slope sufficient to allow such fish to pass and repass, shall be liable to a penalty not exceeding forty dollars. Penalty.

12. When such owner or occupier having a sufficient waste gate or slope shall keep the same shut or otherwise impede the passage of such fish during such periods, he shall be liable to a penalty not exceeding forty dollars for every time he shall close the said passage. Penalty for closing passage.

13. When such owner shall have had ten days notice in writing from the river inspector or any justice of the peace of the want or insufficiency of such waste gate or slope and shall have for that space of time neglected or refused to construct such waste gate or slope, he shall be liable to a penalty of one hundred dollars, and if he shall neglect or refuse to construct such waste gate or slope for ten days after such penalty shall have been inflicted the justices inflicting such penalty, or any judge of the supreme court may upon sufficient proof of such neglect or refusal order the sheriff of the county to prostrate and wholly destroy the said mill-dam, and the expenses attendant upon such application and of the removal of the said dam, shall be taxed by the said justices or by a judge who may direct an execution to issue therefor against the said owner. Penalty for refusing to construct gates, &c. Upon continued refusal mill-dam may be destroyed.

14. The sessions of each county shall at the first meeting after the passing of this chapter by a memorandum in writing, declare specifically the rivers and streams within the county to which the provisions of this chapter shall not apply. Sessions may declare what rivers exempt.

15. The grand jury in each county shall present and the sessions shall appoint in the same manner as county and township officers are appointed, for each river or part of a river which the sessions shall make into a separate district or jurisdiction, an officer to be called inspector of river fisheries, to be paid such salary as the grand jury and sessions may allow who shall be sworn into office as other township officers are sworn, and who shall be liable and bound to protect the fisheries and carry out the provisions of this chapter on the river or stream for which he is so appointed. Sessions to appoint inspectors. Salary. To be sworn. Duties of, &c.

16. Any river inspector neglecting to be sworn into office on receiving notice of his appointment shall be liable to a penalty of ten dollars; and any such river inspector neglecting his duty after being sworn into office shall be liable to a penalty of forty dollars. Penalty for neglecting to be sworn, &c.

17. For the protection of the young fish coming down the rivers of the province in the fall of the year, sufficient stop gates shall be made in all dams and obstructions across the rivers sufficient for such young fish to pass through. Stop gates to be made in dams.

18. All prosecutions for penalties under this chapter shall be had either before two justices of the peace or before a judge of the supreme court Prosecutions for

penalties; how as a summary suit, and any person may prosecute for any violation of
had, &c. this chapter or of any order of sessions made thereunder, and the pen-
alties when recovered shall go to the prosecutor.

Process to state 19. Where proceedings are before two justices the following form of
complaint. summons may be used, but any process which shall substantially state
the violation complained of shall be sufficient.

Form of Summons.

To any of the constables —————

Summons. You are hereby commanded to summons A. B. of —————, in the
county of —————, to appear before us at —————, on the ——— day
of ————— next, to answer to the suit of C. D., who says that the said
A. B. hath violated the provisions of the acts made for the protection
of the river fisheries in not providing a sufficient waste gate or slope in
his milldam, or in not keeping the waste gate of his milldam open, or in
allowing the waste gate or slope of his milldam to be so obstructed as to
prevent the free passage of fish in unlawfully setting nets, weirs or
seines, or in spearing salmon.

Witness our hands this ——— day of ———, A. D. 18—

E. F. (seal.)

G. H. (seal.)

Conviction. The conviction may be in the following form :—“The within named
A. B. having been duly summoned under the annexed writ, and having
been duly convicted of having violated the chapter of the revised
statutes “of river fisheries,” as therein mentioned, we hereby give
judgment for the plaintiff for the sum of ——— with his costs.

E. F. (seal.)

G. H. (seal.)

CHAPTER 35.

An Act to amend Chapter 95 of the Revised Statutes, “Of River
Fisheries.

Nova Scotia

(Passed the 2nd day of May, A. D. 1865.)

Be it enacted by the Governor, Council, and Assembly, as follows :

Fish-way re- 1. In all dams or obstructions now erected, or hereafter to be erected
quired in all across any river or stream frequented by salmon or gaspereaux, either
dams. one third of the main channel shall be left open, or a fish ladder shall
be placed and kept therein.

Fish ladder, 2. Such fish ladder shall have a slope of not more than one foot in
description of. seven, shall have an opening of not less than three feet in width at the
top of the dam, and shall be so placed that there shall at all times be

at least one foot in depth of water running over the mouth thereof; the bottom of such ladder to be water-tight and to be covered with stone, and at every six feet pieces of wood or stone to be fastened at right angles to the sides thereof, and to be secured to each side alternately, so as to make the current of water flow from side to side,—the openings to be not less than one foot in width, and the pieces of wood or stone so jutting out from the sides to be not less than two feet in height; the lower end of such fish ladder to be secured to the bottom of the main channel of the river, or otherwise shall be conformable to the model of the fish ladder now deposited in the office of the Provincial Secretary.

3. Whenever the words "waste-gate" or "slopes" occur in the chapter hereby amended, the same shall be construed to mean the fish ladder described in the second section of this act. Definition of terms.

4. No fish shall be taken within such fish ladder, nor within the locks of the Snubenacadie Canal, nor within sixty yards therefrom, under a penalty of forty dollars for every offence. Penalty for taking fish, &c.

5. Section eleven of Chapter 95 of the Revised Statutes, third series, "Of River Fisheries," is hereby repealed. Sec. 11, cap. 95 repealed.

6. Every mill owner who shall not erect and maintain a suitable and efficient fish-way as hereinbefore provided, or shall not leave the channel open, on or before the thirtieth day of September next, shall be liable to a penalty of one hundred dollars; and if any dam now existing, or hereafter to be erected, shall be kept up contrary to this act, the same may be prostrated under the terms and provisions of section thirteen of said chapter. Penalty for not providing fishway.

CHAPTER 36.

An Act to amend Chapter 95 of the Revised Statutes, "Of River Fisheries."

Nova Scotia.

(Passed the 7th day of May, A. D., 1866.)

Be it enacted by the Governor, Council, and Assembly, as follows :

1. Section 4 of the said chapter is amended as follows :—"The Sessions shall have power to make orders for the prevention of traps or such other contrivances as they may consider objectionable being set for catching or destroying fish in any of the bays, harbours, rivers, streams, or creeks in this Province, or on the shores thereof, to be enforced by penalties not exceeding forty dollars for each breach thereof." Sessions may make order for prevention of traps, &c.

2. Section 7 of the said chapter is hereby amended, by making the distance mentioned in said section between contrivances for catching fish one hundred yards, instead of one-eighth of a mile. Distance between contrivances.

Grand Jury
and Sessions
shall appoint
inspectors.

3. The Grand Jury and Sessions shall appoint officers to be inspectors of bays, harbours, creeks, and streams, set off into districts, or of either of them, in the same mode as inspectors of river fisheries are provided to be appointed by section 15 of the chapter hereby amended.

Chap. 35 Act
1865 in part
repealed.

4. Chapter 35 of the acts of 1865, except as regards the county of Halifax and the Clyde River, in the county of Shelburne, and so much of chapter 95 of the Revised Statutes, "Of River Fisheries," as is hereby amended are repealed.

Proceedings
at law.

5. All proceedings in law now pending under the provisions of the act of 1865 shall determine on the passage of this act by the defendant paying costs, otherwise such proceedings shall not be affected by this act.

Sec. 11, cap.
95, revived.

6. Section 11 of the chapter hereby amended is hereby revived and re-enacted, except as regards the county of Halifax.

Halifax coun-
ty Sessions to
make regula-
tions.

7. The General or Special Sessions of the county of Halifax shall make such regulations for the passing of fish through the dams and locks of the Shubenacadie Canal as they shall deem proper, to be enforced by penalties not exceeding forty dollars for each breach thereof.

Regulations
made for pres-
ent year to re-
main in force,
&c.

8. All regulations made by the various Sessions throughout the Province relative to the fisheries for the present year shall be effective for such year, notwithstanding anything under this act to the contrary; and all proceedings taken by the sessions in relation to the appointment of Wardens are hereby declared legal and valid, although not made in strict accordance with the provisions of the act hereby amended.



16th VICTORIA—CHAPTER 69.

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

New Brunswick.

Passed 3rd May, 1853.

*Be it enacted, &c., as follows:—*I. 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.

II. 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, and 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.

III. 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, &c.

IV. 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 oppositions, shall forfeit two hundred pounds.

Vessels and goods may be seized, &c.

V. 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.

Proceeds of
condemned
vessels and
goods, how
applied and
distributed.

VI. 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 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 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.

Penalties and
forfeitures,
&c.

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

Vessels and
goods deliver
ed on security

VIII. 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.

Suits, how
brought.

IX. All suits for 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.

Proof to rest
with claimant.

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

Claim for pro-
perty seized to
be under oath.

XI. No claim to anything seized under this Act, and returned into 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.

Security

XII. 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 claim, and in default of such security, the things seized shall be adjudged forfeited, and shall be condemned.

Month's no-
tice to officer
before action.

XIII. 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.

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

XV. If an 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 there was probable cause for the seizure, then the plaintiff, besides the thing seized, or its value, shall not recover more than two pence damages, and no costs of suit; and the defendant shall not be fined more than one shilling. If Judge certifies probable cause for seizure, no costs allowed.

XVI. 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. Amends may be tendered.

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

XVIII. 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. Appeals.

XIX. 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. Coasting vessels.

XX. 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 rights at common law for any further damages. Forfeiture for destroying nets.

XXI. The owner of every vessel or boat under the burthen 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 Vessel or boat under fifteen tons to have distinguishing number.

length, and on the mainsail of such vessel or boat in figures not less than three feet in length.

Color of numbers.

XXII. 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.

Vessel or boat to be seized and forfeited.

XXIII. Every vessel or boat under the burthen 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.

Penalty.

XXIV. If the owner of any vessel or boat under the burthen 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 proceedings, &c.

XXV. 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 burthen 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.

Lieutenant Governor may grant Commission of the Peace, &c.

XXVI. The Lieutenant Governor may by Commission under the Great Seal, appoint the officer in command of any of Her Majesty's Vessel 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.

Definition of terms.

XXVII. In this Chapter, "Vessels" shall include Ships, and "Harbours" shall include Ports, Bays, and Creeks.

Suspending clause.

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

[This Act was specially confirmed, ratified, and finally enacted, by an order of Her Majesty in Council dated the 24th day of October, 1853, and published and declared in the Province the 16th day of November, 1853.]