



ANNO DECIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 10.

*By His Excellency SIR WILLIAM THOMAS DENISON, Knight,
Lieutenant-Governor of the Island of Van Diemen's Land
and its Dependencies, with the Advice and Consent of the
Legislative Council.*

*AN ACT for the Improvement and Regulation of the
Oyster Fisheries in Van Diemen's Land.*

[29th September, 1853.]

WHEREAS it is expedient to promote the Cultivation and Improvement of Oyster Fisheries in this Colony, and for that Purpose to permit the Formation of artificial Oyster Beds or Layings of Oysters on the Shore above the Level of the lowest Water of Spring Tides, and to provide for the Protection of the same, and also to provide for the Preservation and Protection of the natural Oyster Beds and Fisheries of this Colony, and to prevent the Destruction of the Oyster Brood therein,—Be it enacted by His Excellency SIR WILLIAM THOMAS DENISON, Knight, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, by and with the Advice and Consent of the Legislative Council thereof, as follows:—

Commencement
of this Act.

I. This Act shall come into operation on, from, and after the First Day of November next.

Power, with Per-
mission of Lieut.-
Governor, to form
artificial Oyster
Beds.

II. It shall be lawful for any Person or associated Body of Persons, with the Permission in Writing of the Lieutenant-Governor, to form or plant any Oyster Bed or Laying on the Shore adjacent to any Lands bordering on the Sea or any Estuary the Property of Her Majesty, Her Heirs and Successors, and between high and lowest Water-mark of Spring Tides, and also for the Owner or Occupier of any Lands bordering on the Sea, or any Estuary, with the Permission in Writing of the Lieutenant-Governor, or for any Person or associated

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Body of Persons with the Consent of such Owner or Occupier, and with the Permission in Writing of the said Lieutenant-Governor to form or plant any Oyster Bed or Laying on the Shore adjacent to such last-mentioned Lands, and between high and lowest Water-mark of Spring Tides; and it shall be lawful for the Person or associated Body of Persons forming or planting any such Oyster Bed or Laying to hold the same as private Property, and to exercise an exclusive control over the same: Provided always, that the forming and planting of such Oyster Beds as aforesaid shall not give any exclusive Right or Title to the Occupancy of the said Shore except for the Purpose aforesaid, or to the Appropriation of any natural Banks or Beds at present resorted to for Oysters, but the Rights hereinbefore granted and conferred are to be considered as exclusively applying to Places where no such natural Oyster Beds at present exist; saving to the Queen's Most Excellent Majesty, and all Her Subjects, the free and full Exercise and Enjoyment of all other Rights whatsoever in or along the said Shore, subject to the Provisions herein contained.

III. If, after the Formation and Laying of any such Oyster Bed as aforesaid, any Person shall interfere with or take away any of the Oysters from such Bed without the Consent of the Owners or Occupiers of such Bed, every Person so offending shall be deemed guilty of an Offence against this Act, and shall for every such Offence forfeit and pay a Penalty of not less than Twenty Pounds nor more than Fifty Pounds, and shall also in addition to such Penalty pay to the Party aggrieved such Sum of Money as shall appear to the Justices before whom such Person shall be convicted to be a reasonable Compensation for the Damage and Injury done, and every such Sum of Money so awarded by way of Compensation shall be recoverable in the same Manner as the aforesaid Penalty.

Penalty for interfering with such artificial Oyster Beds.

IV. If any Person shall by any Means whatsoever take or catch any Oysters or Oyster Brood, or shall dredge for Oysters or Oyster Brood, or use any Oyster Dredge or any Net, Instrument, or Engine whatsoever for the Purpose of taking or catching Oysters or Oyster Brood, although no Oysters or Oyster Brood shall be actually taken, or shall with any Net, Instrument, or Engine drag upon the Ground or Soil of any natural Oyster Bed or Fishery, or any such artificial Oyster Bed or Laying as aforesaid, or shall cry or carry about, sell, offer or expose to or for Sale, or shall knowingly have in his Possession, either on the Water or on the Shore, or in any Place whatsoever, any Oysters or Oyster Brood, between the First Day of November in any Year and the Thirty-first Day of March in the next succeeding Year (both Days being inclusive), every such Person shall be guilty of an Offence against this Act, and shall for every such Offence forfeit and pay a Penalty not exceeding Ten Pounds.

Any Person catching, dredging for, &c. Oysters between 1st of November and 31st of March subject to Penalty.

V. Provided always, that for the Purpose of supplying and replenishing such artificial Oyster Beds or Layings as aforesaid, and for no other Purpose whatever, it shall be lawful for any Person or associated Body of Persons having such Permission to form or plant such artificial

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Power to take Oysters during Part of close Season for supplying artificial Oyster Beds.

Oyster Beds or Layings as aforesaid, or being Proprietors or Tenants thereof, and for any Person authorised in Writing by any such Person, associated Body of Persons, Proprietors or Tenants as aforesaid, to dredge for and take Oysters and Oyster Brood from any natural Bed or Fishery lying below the Level of the lowest Water of Spring Tides during such Part only of the Close Season fixed by the last preceding Section, as the Lieutenant-Governor shall by Notice in the *Hobart Town Gazette* from Time to Time appoint.

Any Person (except for his own Consumption) catching or dredging for, &c. Oysters without a Licence liable to a Penalty.

VI. If any Person (excepting for Consumption *bonâ fide* by himself, his Family and Servants only, and for no other Purpose) shall by any Means whatsoever take or catch any Oysters in or from any natural Oyster Bed or Fishery, or shall dredge for Oysters, or use any Oyster Dredge, or any Net, Instrument or Engine whatsoever in or upon any natural Oyster Bed or Fishery for the Purpose of taking or catching Oysters, although no Oysters shall be actually taken; or shall with any Net, Instrument, or Engine drag upon the Ground or Soil of any natural Oyster Bed or Fishery without having first obtained such Licence as is hereinafter mentioned, every such Person shall be guilty of an Offence against this Act, and shall for every such Offence forfeit and pay a Penalty not exceeding Five Pounds.

Chief Police Magistrate to grant Licences.

VII. It shall be lawful for the Chief Police Magistrate for the Time being, upon written Application in that Behalf made to him by any Person who shall appear to him in his Discretion to be a fit and proper Person to receive the same, and upon Payment of the Sum of Ten Shillings, to grant to such Person a Licence to dredge for, take and catch Oysters between the First Day of April and the Thirty-first Day of October in any Year; and every such Licence shall be in the Form contained in the Schedule to this Act annexed, and shall contain the Particulars therein mentioned; and such Licence shall continue in force until the Thirty-first Day of October inclusive in the Year in which it shall be granted, and no longer: Provided, that no such Licence shall have the effect of conferring a Right of Entry upon the Lands of any Person without or against the Consent of such Person.

Oyster Brood, Spat, Cultch and small Oysters to be returned to Place whence taken within Six Hours under a Penalty.

VIII. If any Person, whilst lawfully taking, catching, or dredging for Oysters on or from any natural Oyster Bed or Fishery, shall happen to raise, take, or catch any Oyster Brood, Spat or Cultch, or any unsizeable Oysters (that is to say, Oysters less than a Crown Piece in Circumference), and shall not within Six Hours thereafter return such Brood, Spat, Cultch, or unsizeable Oysters as aforesaid to the Bed or Fishery from which the same shall have been so raised, taken, or caught as aforesaid, or if any Person shall kill or destroy, or bring to shore, or knowingly have in his Possession on Shore any such Brood, Spat, Cultch or unsizeable Oysters as aforesaid, every such Person shall be guilty of an Offence against this Act, and shall for every such Offence forfeit and pay a Penalty not exceeding Ten Pounds: Provided that nothing in this Section contained shall apply to any Person raising, taking, or catching such Oyster Brood, Spat, Cultch, or unsizeable Oysters as aforesaid, for the Purpose only of supplying or replenishing any such artificial Oyster Bed or Laying as aforesaid.

IX. All Offences against this Act shall be heard and determined, and all Penalties in respect of such Offences awarded and imposed in a summary Way, by and before any Two Justices of the Peace in the Manner prescribed by *The Summary Proceedings Act*, and the Informer shall be a competent Witness on the hearing of any Complaint under this Act; and all such Penalties not otherwise by this Act specifically appropriated shall go and be distributed, and all Persons aggrieved by any summary Conviction under this Act shall be entitled to appeal therefrom, in the Manner also by the said recited Act prescribed.

Offences heard and Penalties levied in a Summary Way.

Appropriation of Penalties.

X. Provided nevertheless, for the more certain and effectual bringing to justice of Offenders against this Act, that upon Complaint made on Oath before any Justice of the Peace (which Oath he is hereby empowered to administer) that any Person has, within Thirty Days next preceding such Complaint, interfered with or taken away any of the Oysters from any such artificial Oyster Bed or Laying as aforesaid without the Consent of the Owner or Occupier of such Bed or Laying; or that any Person has (except for the Purpose of supplying or replenishing any such artificial Oyster Bed or Laying as aforesaid) taken or caught any Oysters or Oyster Brood, or dredged for Oysters or Oyster Brood, or used any Oyster Dredge, or any Net, Instrument, or Engine whatever for the Purpose of taking or catching Oysters or Oyster Brood, although no Oysters or Oyster Brood shall be actually taken, or with any Net, Instrument, or Engine dragged upon the Ground or Soil of any natural Oyster Bed or Fishery, between the said First Day of November in any Year and the Thirty-first Day of March in the succeeding Year, or (excepting for Consumption by himself, his Family and Servants as aforesaid) without having obtained such Licence as is hereinbefore provided; or that any Person has, within Thirty Days next preceding such Complaint, (except for the Purpose of supplying or replenishing any such artificial Oyster Bed or Laying as aforesaid) taken, raised, or caught any such Oyster Brood, Spat, Cultch, or unsizeable Oysters as aforesaid, and has not, within the Time for that Purpose limited as aforesaid, returned the same to the Bed or Laying from which the same was taken, raised, or caught, or has killed or destroyed, or (except for the Purpose of supplying or replenishing any such artificial Bed or Laying as aforesaid) brought to Shore, or knowingly had in his Possession on the Shore, any such Oyster Brood, Spat, Cultch, or unsizeable Oysters as aforesaid, it shall be lawful for such Justice, and he is hereby authorised and empowered in any such Case, if he shall so think fit, to issue a Warrant under his Hand and Seal for the apprehending of the Person so offending, and for bringing him before any Justice of the Peace; and it shall be lawful for the Justice before whom such Person shall be brought, and he is hereby authorised if he see cause, to commit such Person to Prison for any Period not exceeding Seven Days, there to remain until he can be brought before any Two Justices of the Peace for the Hearing and Determination in manner aforesaid of such Complaint, unless such Person shall enter into Recognizance before such Justice with such sufficient Surety or Sureties, and in such reasonable Penalty as such

Offenders (in certain Cases) may be apprehended by Warrant of a Magistrate.

Offender on Apprehension may be committed or held to Bail to appear before Two Magistrates.

Justice shall approve of, to appear before any Two Justices of the Peace at such Time within Seven Days thereafter and at such Place as such Justice shall appoint; or to discharge such Person if in the Discretion of such Justice he ought to be discharged.

Offenders (in certain Cases) found in the actual Commission of Offence may be apprehended without Warrant.

XI. Provided also nevertheless, for the more effectual securing of Offenders against this Act, that if any Person shall be found actually interfering with or taking away any of the Oysters from any such artificial Oyster Bed or Laying as aforesaid without the Consent of the Owner or Occupier of such Bed or Laying; or if any Person (except for the purpose of supplying or replenishing any such artificial Oyster Bed or Laying as aforesaid) shall be found actually taking or catching any Oysters, or Oyster Brood, or using any Oyster Dredge, or any Net, Instrument, or Engine whatever for the Purpose of taking or catching Oysters or Oyster Brood, although no Oysters or Oyster Brood shall be actually taken, or with any Net, Instrument, or Engine dragging upon the Ground or Soil of any natural Oyster Bed or Fishery, between the First Day of November in any Year and the Thirty-first Day of March in the succeeding Year, or (except for Consumption by himself, his Family and Servants as aforesaid) without having obtained a Licence under this Act, or who having obtained such a Licence shall refuse, on being required so to do, to produce such Licence, or if any Person shall be found actually killing or destroying, or except for the purpose of supplying or replenishing any such artificial Oyster Bed or Laying as aforesaid, bringing to Shore, or knowingly having in his Possession on Shore, any such Oyster Brood, Spat, Cultch, or unsizeable Oysters as aforesaid, it shall be lawful for any other Person to apprehend, secure, and detain such Person so being found in any of the Cases aforesaid without Warrant, and forthwith to take him, or to give him into the Custody of any Constable to be taken before any Justice of the Peace, and every Constable is hereby authorised and required to take such Person into his Custody, and to convey him forthwith before a Justice of the Peace; and it shall be lawful for any Justice before whom any such Person shall be brought, and he is hereby required, upon Oath being made before him (which Oath he is hereby empowered to administer) of the Offence against this Act for which such Person was apprehended or secured and detained or given into Custody, to proceed against such Person in the same Manner as if he had been apprehended and brought before such Justice by virtue of a Warrant issued for that Purpose under the Authority of this Act.

Limitation of Actions.

XII. No Action at Law shall be brought or commenced against any Person for any Arrest authorised to be made, or any other Matter or Thing done or to be done by virtue of this Act, until after Twenty-one Days' Notice thereof in Writing shall have been given to the Person against whom such Action is intended to be brought, or left at his last or usual Place of Abode, setting forth the Cause of such Action; and every such Action shall be brought within the Space of Three Months next after the Cause of Complaint shall arise; and the Defendant in such Action may plead the General Issue, and on the Trial thereof give this Act and the special Matter in Evidence; and if

General Issue.

on the Trial of such Action it shall appear that the same was commenced without having given such Notice, or before the Expiration of Twenty-one Days next after such Notice shall have been so given or left as aforesaid, or after the End of Three Months next after the Cause thereof shall have arisen, or after sufficient Tender of Amends shall have been made to the Party aggrieved, then and in any of the Cases aforesaid a Verdict shall be entered as found for the Defendant; and in all Cases where a Verdict shall be found or entered for the Defendant in any such Action, or if the Plaintiff shall discontinue the same after Appearance or shall be nonsuited, or if upon Demurrer Judgment shall be given against the Plaintiff, the Defendant in such Action shall have double Costs, and the like Remedies for recovering the same as Defendants have by Law for recovering their Costs in other Cases. Double Costs.

XIII. All Sums received by the said Chief Police Magistrate for Licences granted under this Act shall be by him paid into the Hands of the Colonial Treasurer for the Use of Her Majesty, Her Heirs and Successors. Appropriation of Licence Fees.

XIV. In referring to this Act in other Acts of Council, and in legal Proceedings and otherwise, it shall be sufficient to use the Expression *The Oyster Fishery Act, 1853.* Short Title.

SCHEDULE.

WHEREAS [insert the Name and Residence of Licensee] has applied to me, being Chief Police Magistrate of Van Diemen's Land, to grant him a Licence under the *Oyster Fishery Act, 1853*, and has paid into my hands the sum of Ten Shillings: Now therefore I, the said Chief Police Magistrate, do hereby license the said _____ to dredge for, take, and catch Oysters in the natural Oyster Beds and Fisheries of this Island between the First Day of April and the Thirty-first Day of October inclusive in this present Year.

Dated this _____ Day of _____

To be signed by the Chief Police Magistrate.

RICHARD DRY, *Speaker.*

Passed the Legislative Council this twenty-first day of September one thousand eight hundred and fifty-three.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.

W. DENISON,
Lieut.-Governor.

Government House, Hobart Town,
29th September, 1853.

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