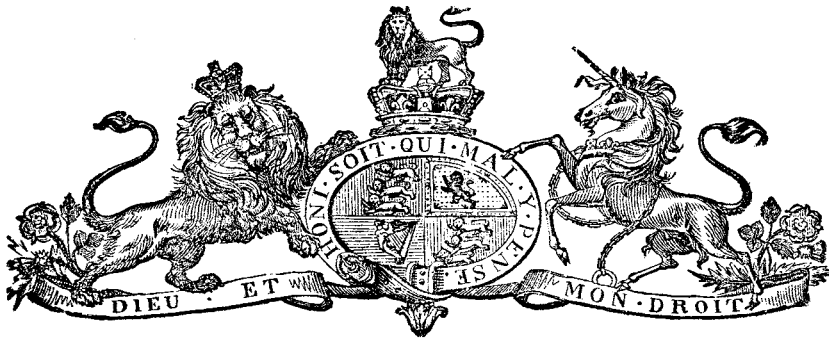


T A S M A N I A.

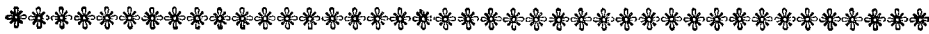


1865.

ANNO VICESIMO-NONO

VICTORIÆ REGINÆ,

No. 6.



AN ACT to make provision for the Preservation of Salmon in this Colony, and to regulate the Fishing for the same. [15 September, 1865.]

WHEREAS Salmon have been introduced into this Colony from abroad: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

Preliminary.

- 1 This Act may be cited for all purposes as *The Salmon Act, 1865.* Short Title.
- 2 This Act shall come into operation on the Second day of *October,* 1865. Commencement of Act.
- 3 In this Act, unless there is something inconsistent in the context, the words and expressions hereinafter mentioned shall have respectively the meanings hereby assigned to them; that is to say,—
“Person” shall include any body of persons corporate or unincorporate:
“Salmon” shall include all migratory fish of the genus Salmon whether known by the names hereinafter mentioned,—that is to say, salmon, grilse, sea-trout, salmon-trout, smolt, parr,—or by any other local name: Definition of terms.

Salmon Fishery.

“Young of Salmon” shall include all young of the Salmon species, whether known by the names of spawn, fry, smolt, parr, or by any other name, local or otherwise :

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

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

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

Prohibition of certain Modes of destroying Fish.

Penalty on mixing
poisonous sub-
stances in rivers.

4 Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters for the time being containing Salmon, or into any tributaries of such waters, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties ; that is to say,—

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

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

Penalty on fishing
with lights, spears,
&c.

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

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

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

Salmon Fishery.

6 No person shall do the following things or any of them ; that is to say,— Penalty for using roe as a bait.

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

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

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

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

9 The following regulations shall be observed with respect to Dams :— Regulations with respect to dams.

- (1.) No Dam shall be used for the purpose of catching or facilitating the catching of Salmon :
 1. Any person catching or attempting to catch Salmon in contravention of this Section shall incur a penalty not exceeding Five Pounds for each offence, and a further penalty not exceeding One Pound for each Salmon which he catches :
 2. All traps, nets, and contrivances used in or in connection with the dam for the purpose of catching Salmon shall be forfeited :
 3. All Salmon caught in contravention of the above prohibition shall be forfeited :
- (2.) No person shall catch or attempt to catch except by rod and line any Salmon in the head-race or tail-race of any mill, or within Fifty yards below any dam, unless such mill or

Salmon Fishery.

dam has attached thereto a fish-pass of such form and dimensions as may be approved by the Governor in Council, and such fish-pass has constantly running through it such a flow of water as will enable Salmon to pass up and down it; and if any person acts in contravention of the foregoing provision,

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

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

10 If Salmon or the young of Salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for working any mill, or for purposes of irrigation, or for any other purpose, the person having the control over such artificial channel shall, within Two months after written notice shall have been given to the said person by the Superintendent of Fisheries or other proper Officer for the time being to comply with this Section, put up and shall maintain at his own costs and charges a grating or gratings across such channel for the purpose of preventing the descent of the Salmon or the young of Salmon, and such grating or gratings shall be placed in such form and manner as may be approved by the Governor in Council; and any person failing to put a grating or gratings in cases where he is required to do so by this Section shall incur a penalty not exceeding Five Pounds for every day after the expiration of such period of Two months during which such person shall fail to comply with the provisions of this Section; and any such person failing so to maintain the same shall incur a penalty not exceeding One Pound for every day during which such failure continues.

Prohibition of the Destruction of Unseasonable Fish.

Penalty on taking unclean fish.

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

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

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

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

But this Section shall not apply

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

Salmon Fishery.

12 No person shall do the following things or any of them ; that is to say,— Penalty on taking the young of Salmon.

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

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

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

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

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

Restrictions as to Times of Fishing.

14 No person shall fish for, catch, or attempt to catch or kill Salmon between the days hereinafter mentioned (which interval is herein referred to as the close season) ; that is to say,—between the First day of *March* and the First day of *September* following, both inclusive, except only that it shall be lawful to fish with a rod and line between the First day of *March* and the First day of *May* following, both inclusive ; and any person acting in contravention of this Section shall forfeit any Salmon caught by him, and shall in addition thereto incur a Penalty not exceeding Five Pounds, and a further penalty not exceeding Two Pounds in respect of each Salmon so caught. Close time.

15 No person shall buy, sell, or expose for sale, or have in his possession for sale, any Salmon between the Third day of *March* and the Second day of *September* following ; and any person acting in contravention of this Section shall forfeit any fish so bought, sold, or exposed for sale or in his possession for sale, and shall incur a penalty not exceeding Two Pounds for each such fish ; but this Section shall not apply to any person buying, selling, or exposing for sale or having in his possession for sale Salmon cured, pickled, or dried. Penalty on selling fish during close time.

*Salmon Fishery.**Fish Passes.*

Fish-passes to be attached to future dams.

16 Every person who after the passing of this Act, in waters where Salmon are found, constructs a new dam, or raises or alters so as to create increased obstruction to fish a dam already constructed, shall attach and maintain attached thereto in an efficient state a fish-pass of such form and dimensions as may be determined by the Governor in Council, and if such person do not comply with this provision he shall incur a penalty not exceeding Five Pounds; and it shall be lawful for the Superintendent of Fisheries, or other proper Officer for the time being, to cause any work to be done by this Section required to be done by such person, and to recover the expense of doing the same in a summary manner from the person in default; but this Section shall not authorise anything to be done which may injuriously affect any navigable river or inland navigation, nor shall anything in this Section prevent any person from removing a fish-pass for the purpose of repairing or altering a dam, so that within a reasonable time he restore such fish-pass in as an efficient a state as it was before he removed the same.

Supply of water to fish-passes.

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

Licences to fish.

No person to keep or use nets for Salmon fishing unless licensed.

18 It shall not be lawful for any person to use or have in his possession any net for the purpose of catching Salmon in inland or tidal waters who shall not be the holder of a licence issued under the provisions of this Act; but this Section shall not apply to any person who uses or has in his possession a net for catching Salmon for artificial propagation or other scientific purposes.

Persons licensed may keep and use nets.

19 Every person who shall desire to keep or use any net or nets for the purpose of catching Salmon in any inland or tidal waters may apply in writing to the Colonial Treasurer for a Licence under this Act, stating in such application the number of nets which he desires to keep or use, and the length of every such net; and the Colonial Treasurer may thereupon issue to such person a Licence giving authority to such person to keep and use for the catching of Salmon such net or such number of nets, and of such lengths as may be mentioned in such Licence, until the Second day of *October* then next: Provided always, that previously to the issuing of every such Licence the person obtaining the same shall pay such sum as shall be from time to time fixed by the Governor in Council in respect of such nets; but nothing in this Section contained shall entitle any person holding such Licence as aforesaid to enter upon the land of any private owner or owners adjoining inland or tidal waters for the purpose of catching Salmon without the consent of such owner or owners.

Salmon Fishery,

20 If any person shall, after the Second day of *October*, 1865, use or have in his possession any net for the purpose of catching Salmon without being duly licensed under this Act to keep or use the same, (except persons keeping or using nets for the purpose of catching Salmon for artificial propagation or other scientific purposes), he shall forfeit and pay a penalty not exceeding Ten Pounds in respect of every net so kept or used by him; and every such offender shall forfeit every such net kept or used by him, and shall also be liable to the payment to the Colonial Treasurer for the time being of the full Licence Fee payable in respect of each net kept or used by such person over and above the said penalty.

Persons not licensed liable to penalty for using nets.

Central Authority.

21 The general superintendence of the Salmon Fisheries throughout *Tasmania* shall be vested in the Governor in Council.

General superintendence of Salmon Fisheries vested in Governor in Council.

22 It shall be lawful for the Governor in Council from time to time, as may become necessary, to make such Regulations as to the Governor in Council seems expedient;

Governor in Council empowered to make Regulations for certain purposes.

(1.) For prohibiting or restricting from time to time, for any period which the Governor in Council thinks necessary, fishing in any inland or tidal waters:

(2.) For prohibiting the use of nets or other engines, instruments, or devices for taking fish in any inland or tidal waters which contain Salmon or the young of Salmon, or any other practice tending in the opinion of the Governor in Council to be in any manner detrimental to the increase of Salmon:

And from time to time to rescind or vary such Regulations or any of them and substitute others in lieu thereof; and in and by any such Regulations to impose any penalty not exceeding Ten Pounds for any breach of such Regulations, and also to direct that all nets or other engines, instruments, or devices whatsoever used contrary to such Regulations shall be seized, forfeited, destroyed, or removed, as the case may require; and all such Regulations shall be published in the *Gazette*, and when so published shall be binding and conclusive on all persons whomsoever as if the same had been contained in and enacted by this Act: Provided that any such Regulation or Regulations shall, if Parliament is in Session, be laid before it within Seven days; and if Parliament is not in Session, within Seven days after its meeting.

23 The *Gazette* containing any such Regulations shall be received and taken as conclusive evidence of such Regulations, and that the same were duly made.

Gazette to be evidence of Regulations.

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

Land may be taken for purposes of Act.

Salmon Fishery.

Governor to
appoint necessary
Officers.

25 It shall be lawful for the Governor from time to time to appoint, during pleasure, all such Officers, Servants, and other persons as may appear to him to be necessary for the due management and protection of Salmon in any inland or tidal waters, and for the prevention and detection of offences against this Act and such Regulations as aforesaid, and enforcing this Act and such Regulations in respect of such inland or tidal waters.

Powers of
Officers.

26 Every such Officer is hereby empowered, for the enforcement of the provisions of this Act and of such Regulations as aforesaid, to exercise the powers and authorities of a Constable, and shall be at liberty at all times and seasons, without any let or hindrance whatsoever, to enter into and pass through or along the banks or borders of the waters in respect of which he is appointed, and with boats or otherwise to enter upon such waters, and to enter upon and examine all tributaries, sluices, mill-pools, mill-dams, mill-races, and watercourses communicating therewith, and to pass along the same, and to enter any boat or boats engaged in fishing, and to examine all standing, floating, or other nets whatsoever, and to seize all illegal nets, fixed engines, instruments, and devices whatsoever, and all and every other nets, engines, and instruments whatsoever when used illegally, and to do all such other acts and things as he is required to do by this Act and by such Regulations as aforesaid; and the production of his appointment, under the hand of the Colonial Secretary, shall be sufficient warrant for such Officer so acting in any of the cases aforesaid: Provided, that nothing herein contained shall be construed to authorise any such Officer to enter any garden enclosed with a wall or paling, nor any dwelling house or the curtilage thereof, except where the ordinary passage to any such inland or tidal waters, or to any sluice, mill-pool, mill-dam, mill-race, or watercourse is through any such garden or curtilage as aforesaid, save when thereunto authorised by the Warrant of a Justice of the Peace as hereinafter provided.

Justice may grant
Warrant to enter
suspected places.

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

Penalty for ob-
structing Officers.

28 If any person assaults, resists, or obstructs any such Officer in the execution of any of the powers conferred on him by this Act, or by any such Regulation as aforesaid, every person so offending shall for every such offence incur a penalty not exceeding Fifty Pounds.

Apprehension of
offenders.

29 When any person is found offending against this Act or any such Regulations as aforesaid, it shall be lawful for any person to require the person so found offending forthwith to desist from such offence, and also to tell his Christian name, surname, and place of abode; and in case such person so found offending, after being so required, refuses to tell his real name or place of abode, or gives such a general description of his place of abode as is illusory for the purpose of discovery, or wilfully continues such offence, it shall be lawful for the person so requiring as aforesaid, and also for any person acting by his order and in his aid, to

Salmon Fishery.

apprehend such offender, and to seize any net or other engine or instrument illegally used by such offender, and to convey him, or cause him to be conveyed, as soon as conveniently may be before One or more Justices of the Peace, to be dealt with according to Law: Provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than Twenty-four hours from the time of his apprehension before he is brought before One or more Justices of the Peace; and that if he cannot, on account of the absence or distance of the residence of any such Justice or Justices of the Peace, or owing to any other reasonable cause, be brought before One or more Justices of the Peace within such Twenty-four hours as aforesaid, then the person so apprehended shall be discharged, but may, nevertheless, be proceeded against for his offence by Summons or Warrant as if no such apprehension had taken place.

30 All offences against this Act, or any such Regulations as aforesaid, shall be heard and determined, and all nets or other engines, instruments, or devices directed to be forfeited by this Act, or by any such Regulation as aforesaid, be adjudged forfeited, and all Penalties be recovered in a summary way, by and before any Two or more Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*. Recovery of Penalties.
19 Vict. No. 8.

31 No action shall be brought against any person for anything done in pursuance of this Act, or any such Regulations as aforesaid, unless such action is commenced within Three months after the cause of action has arisen; nor unless notice in writing of such action, and the cause thereof, is given to the Defendant One month at least before the commencement of the action, and the Defendant may plead the general issue, and give this Act and the special matter in evidence; and the Plaintiff shall not recover in such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into Court after action brought; and if a verdict is given for the Defendant, or the Plaintiff is nonsuited or discontinues his action, or if judgment is given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and though a verdict is given against the Defendant, the Plaintiff shall not have costs against the Defendant unless the Judge who tries the case certifies his approbation of the action and of the verdict. Limitation of actions.
Notice of action.
General issue.
Tender of amends.
Costs.

