



ANNO TRICESIMO

VICTORIÆ REGINÆ.

Cap. lxxii.

An Act to alter and amend the "*Rochester Oyster Fishery Act, 1865*," and to make further and better Provision as to the raising of Money on Mortgage of the Fishery and otherwise; and for other Purposes. [17th June 1867.]

WHEREAS by the "*Rochester Oyster Fishery Act, 1865*," 28 & 29 Vict. c. ccxxvii. after reciting that it was of Importance not only to the Dredgers but also to the Public that the then existing Powers of the Jury of the Dredgers with respect to the borrowing and repaying of Monies should be extended, Power was conferred (Section 15) upon the Jury, in the Manner and subject to the Conditions by that Act provided, to borrow at Interest on Mortgage of the Fishery, and Provisions were thereby made (Sections 50, 51, 52, and 54) with respect to the Repayment of the Principal Monies and Interest so borrowed, and it is thereby among other things expressly provided (Section 52) that the current Year's Mortgages shall, with respect to the Monies applicable in respect of the current Year for Payment of the Principal Monies and Interest thereby secured, have Priority to and Preference over all the postponed Mortgages, in which are or will be included all unpaid Mortgages of any previous Year: And whereas it has been found that these Provisions,

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or some of them, are inconvenient and objectionable, and that it is not practicable to borrow Money on Mortgage under the said Provisions, and in fact no Money has been borrowed, and no Mortgages have been executed or issued, under the Authority of the said Act: And whereas it is expedient that the said Provisions as to the borrowing on Mortgage, and the repaying of Monies so borrowed, should be altered and amended, and that the said Act should be in other respects altered and amended; but these things cannot be done without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Short Title.

1. This Act may be cited for all Purposes as the "*Rochester Oyster Fishery (Borrowing Powers) Act, 1867.*"

Act to be read as amending recited Act.

2. This Act shall be read in connexion with the recited Act, and as altering and amending the same.

Parts of 10 & 11 Viet. c. 16. incorporated.

3. So much of the "*Commissioners Clauses Consolidation Act, 1847,*" as relates to the Mortgages to be executed by the Commissioners, (except where expressly varied by this Act,) are incorporated with and form Part of this Act.

Interpretation of Terms.

4. In this Act, unless there be something in the Subject or Context repugnant to such Constructions, the several Words and Expressions to which Meanings are assigned by the recited Act, or by the Act partially incorporated herewith, shall have the same respective Meanings, and the Expression "*the Fishery Year*" shall mean any Year commencing with the First Day of *July* in one Year and ending with the Thirtieth Day of *June* in the then next Year.

Application of the Oyster Fishery General Account.

5. Notwithstanding anything in the Fiftieth Section of the recited Act contained, the Monies now and from Time to Time carried to the General Oyster Fishery Account under that Section (so far as the same will suffice) shall henceforward be applied only as follows:

(a) In Payment of the Wages or Remuneration and Commission on buying Oysters from Time to Time respectively payable under the recited Act, and the necessary Expenses of the Court and the Three Bodies respectively of and incident to the Execution of this and the recited Act:

And after and subject to these Payments,

(b) In or towards Payment, according to their several Preferences and Priorities as herein-after provided for, of the Principal Monies and Interest secured by Mortgages made under the Authority of the recited Act or of this Act:

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And after and subject to the Payment of the Principal Monies and Interest secured by all Mortgages made under the Authority of the recited Act or this Act,

(c) In Payment to the present Creditors rateably of the Interest and Arrears of Interest upon the Principal Monies forming Part of the present Debt; and after and subject to that Payment,

(d) In setting apart the Sinking Fund by the recited Act prescribed for paying off the present Debt :

And after and subject to those several Payments, and when the Amount set apart for the current Year in respect of the Sinking Fund is not less than One Fifteenth Part of the aggregate Amount of the Principal Monies forming Part of the present Debt,

(e) The Surplus (if any) for the current Year shall be carried to a Fund to be called "the Accumulating Fund."

6. The Fifty-first and Fifty-second Sections of the recited Act shall be and are hereby repealed, and instead thereof the Priority and Preference of the several Mortgages shall be as follows :

(a) All Mortgages made and dated in the same Fishery Year shall have Priority over each other in Order of Date, and shall entitle the several Holders thereof to Payment of the Principal Monies and Interest thereon according to Priority of Date, and Two or more Mortgages of the same Date shall entitle the several Holders thereof to Payment of the Principal Monies and Interest thereon "*pari passu*" and rateably according to their respective Amounts :

(b) All Mortgages made and dated in the same Fishery Year shall have Priority to and Preference over all the Mortgages made and dated in any subsequent Fishery Year, and shall entitle the several Holders thereof to Payment of all Principal Monies and Interest due thereon before and in preference to any Payment of Principal Monies or Interest upon the Mortgages of any subsequent Fishery Year.

7. The Fifty-fourth Section of the recited Act shall be and is hereby repealed, and instead thereof the Persons for the Time being entitled to Mortgages under the recited Act and this Act may, in default of due Payment of Principal or Interest upon such Mortgages out of the Oyster Fishery General Account under the Provisions of this Act, enforce the Payment of such Principal or Arrears of Interest or Principal and Interest by the Appointment of a Receiver, but so that in order to authorize the Appointment of a Receiver the Amount of Principal Monies and Interest owing to the Mortgagees by whom

Sects. 51 and 52 of 28 & 29 Vict. c. cccxxvii, repealed.

Priority of Mortgage.

Sect. 54 of 28 & 29 Vict. c. cccxxvii, repealed.

Arrears of Principal and Interest to be enforced by Appointment of a Receiver.

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the Application for a Receiver is made shall not be less than One hundred Pounds in the whole.

Application
for Receiver.

8. Every Application for a Receiver in the Cases aforesaid shall be made to the Court, and on any such Application the Court may by Order in Writing, after hearing the Parties, appoint some Person as such Receiver to exercise the Powers and Authorities hereby given to a Receiver, and any Mortgagee may be appointed as a Receiver.

Receiver to
receive and
apply Monies
of the Oyster
Fishery
General
Account.

9. The Receiver so appointed may and shall during such Time as his Duties and Powers shall continue receive and take all Monies from Time to Time payable to the Oyster Fishery General Account, and shall have the Control and Disposition of all such Monies, and shall from Time to Time appropriate and apply the same in accordance with the Provisions of this Act, and shall keep all Accounts in relation to the same.

Exercise by
Receiver of
Powers of
Jury.

10. The Receiver so appointed may and shall, with the Leave and subject to the Order and Control of the Court, have and exercise during the Time of his Appointment in the Place of the Jury such of the Powers of the Jury under the recited Act, or the Act 2 Geo. II. c. 19. as amended thereby, as the Court may from Time to Time think fit and may by their Order direct; and in the Exercise of such Powers (if and when granted to him) the Receiver may and shall carry on the Business and Affairs of the Oyster Fishery, or of such Part thereof as the Court shall order, and employ Dredgers (being Persons in the recited Act called "Dredgers"), and appoint and receive Agents for selling Oysters, and buy, lay down, dredge, cleanse, make marketable, and sell Oysters, and generally may manage such Fishery in such Manner as he may think most advantageous, and for all or any the Purposes aforesaid may lay out and expend such Sums of Money as he may think fit, but so as all such Things shall be done by him only in accordance with the Provisions of the recited Act, and the Act 2 Geo. II. c. 19. as amended thereby, and the Rules, Orders, and Regulations from Time to Time made under the said Acts respectively and from Time to Time in force, and for these several Purposes the Receiver shall have and may exercise all the Rights and Authorities which the Jury would otherwise have had and might have exercised in relation thereto respectively; and all Amounts received by him for the Sale of Oysters in the Exercise of such Powers shall, subject to the Repayment of the Monies laid out and expended by him under the Provisions hereof, with Interest at the Rate of Five Pounds *per Centum per Annum* from the respective Times of the same being advanced and paid, be disposed of and applied in the same Manner as if they had been received by the Jury under

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under the recited Act as amended by this Act; and during the Continuance in Office of the Receiver all Powers given by the recited Act to the Creditors, or any Committee appointed by the Creditors, shall cease.

11. The Persons for the Time being entitled to Mortgages under the recited Act and this Act may, in default of due Payment of Principal or Interest on such Mortgages under the Provisions of this Act, grant Leases of any of the Oyster Grounds, and the exclusive User and Enjoyment of the same, and of the Oyster Fishery there, and of all or any other Rights to be specified in such Lease with respect to the same, and the Leases may be for any Periods not exceeding Twenty-one Years, and either on a Fine or yearly Rent, or both.

Power to Mortgagees to grant Leases.

12. Every Lease under this Act may, so far as the same is applicable, be in the Form given in the Second Schedule to the recited Act, with such Modifications as the Case may require, and every such Lease shall have the like Effect as Leases granted under the Thirty-eighth Section of the recited Act, and the Thirty-ninth Section of the recited Act shall extend and be applicable to Leases granted under this Act and the Premises thereby demised.

Form of Lease.

13. Notwithstanding anything in the recited Act contained, all Monies from Time to Time received as Fines or Rents on Leases granted by the Mortgagees under this Act shall be applied in like Manner as Monies carried to the General Oyster Fishery Account are under the Fifth Section of this Act directed to be applied (except the Payment (a) therein mentioned).

Application of Monies.

14. After Default shall have been made in due Payment of Principal or Interest upon such Mortgages, and until full Payment of all Principal Monies and Interest thereby secured, no Lease shall be granted under the recited Act or this Act of any of the Oyster Grounds, or the User and Enjoyment of the same, or any Rights with respect to the same, except with the previous Consent of the Mortgagees testified by Writing under their Hands; and during the Continuance in Office of the Receiver all Rents received from Leases granted under the recited Act shall be disposed of and applied in like Manner as Monies received as Fines or Rents in Leases granted by the Mortgagees under this Act are by this Act directed to be applied.

Leases not to be granted except with Consent of Mortgagees.

15. The Court may allow to any such Receiver, as the Remuneration for the Exercise and Execution by him of any Powers so given to him, such a Sum, not exceeding for any One Year the Sum of One hundred Pounds, as the Court may think fit and direct.

Remuneration of Receiver.

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16. All

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Expenses of
Act.

16. All the Costs, Charges, and Expenses of and incidental to the preparing, applying for, and obtaining this Act may and shall be paid by the Jury out of the Monies which by the recited Act were made applicable to the Payment of the Costs, Charges, and Expenses of and incidental to that Act, or out of any Monies borrowed on Mortgage under the recited Act and this Act.

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