



CHAPTER ccxl.

An Act to make certain provisions in regard to the Salmon Fisheries in the Solway Firth and its affluents. A.D. 1877.

[14th August 1877.]

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:

1. This Act may be cited for all purposes as the "Solway Salmon Fisheries Commissioners (Scotland) Act, 1877," and shall extend to Scotland only. Short title and extent of Act.

2. Her Majesty may by warrant under Her Sign Manual, on the recommendation of one of Her Majesty's Principal Secretaries of State, appoint any number of persons, not exceeding three, of whom one shall be a member of the Faculty of Advocates of Scotland (herein-after called an advocate) of not less than seven years standing at the bar, to be Commissioners under this Act during Her Majesty's pleasure, and upon every vacancy in the office of any Commissioner by death, resignation, or incapacity to act, may appoint some other fit person to fill the vacancy: Provided always, that in the case of a vacancy by the death, resignation, or incapacity of the Commissioner required by this Act to be an advocate, another advocate, qualified as aforesaid, shall be appointed in his place. Appointment of Commissioners under Sign Manual.

The Commissioners appointed under this Act shall be styled "the Special Commissioners for Solway Fisheries."

3. Subject to such appeal as is herein-after mentioned, the Commissioners appointed under this Act shall inquire into the legality of all fixed engines erected or used for the taking of salmon in the waters and on the shores of the Solway Firth in Scotland, as the same have been fixed under the authority of "The Salmon Fisheries (Scotland) Act, 1862," and in the rivers flowing into the Commissioners to inquire as to fixed engines.

A.D. 1877. same, and shall abate and remove all such fixed engines as are not proved to their satisfaction to be privileged as herein-after provided.

Amendment
of provisions
relating to
fixed engines.

4. In this Act, and in "The Salmon Fisheries (Scotland) Act, 1862," and in any Act therewith incorporated, "fixed engine" shall include any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a cruiue or mill dam; and "privileged fixed engine" shall only include such fixed engines as were in use for taking salmon during the open season of one or more of the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, and eighteen hundred and sixty-four, in pursuance of any grant or charter or immemorial usage: Provided always, that no person shall, by proving the use of different fixed engines during the said years, or any of them, be allowed to maintain a number of privileged fixed engines exceeding the greatest number of such engines in use by him during any one of the years foresaid.

Certificate as
to privileged
engines.

5. Where a claim is made by any person on behalf of a fixed engine that it is privileged, the Commissioners shall, on proof being given to their satisfaction that such engine is in whole or to any extent privileged, certify to that effect, and shall state in their certificate the situation and also the size and description of the engine so far as the same is privileged. A certificate given in pursuance of this section shall be deemed to be an order of the Commissioners and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be conclusive evidence that the engine is a privileged fixed engine within the meaning and for the purposes of this Act and of "The Salmon Fisheries (Scotland) Act, 1862," and any Act therewith incorporated, but the certificate shall not render any engine legal that would be otherwise illegal by reason of its being injurious to navigation.

Notices of
courts of
Commis-
sioners.

6. The Commissioners shall advertise in some newspaper circulating in the district notice of the places and times at which they are to hold courts for determining the legality of fixed engines in any part or parts of the water or shores of the Solway Firth, or of the rivers flowing into the same, at least twenty-eight days before the time at which any court mentioned therein is appointed to be held; and they shall also, at least fourteen clear days before entering upon an inquiry as to the legality of any fixed engine, serve a notice on the owner or owners of such fixed engine to appear before them at a place and time mentioned in such notice. Service of a notice under this section may be made by delivering

the notice personally to such owner, or sending it by post in a registered letter to his last known place of abode, and in cases when a corporation is the owner, by delivering such notice to the clerk to such corporation personally, or by sending the same in a registered letter to his known address. In addition to any owner, the Commissioners shall hear any person appearing before them, whether having a legal estate or interest or not having such estate or interest in any fixed engine. A.D. 1877.

7. On the appearance of the owner or other persons either for or against any fixed engine, and after receiving any competent evidence that may be tendered for or against the legality of such fixed engine, and after hearing parties, or in the absence of such persons, if they or any of them do not appear, and the Commissioners are satisfied by evidence on oath that the notices required by this Act have been duly given, the Commissioners shall decide as to the legality or illegality of the fixed engine, and in the event of their decision being in favour of its illegality, they may, by warrant under their hands, order such fixed engine to be removed within a reasonable time to be prescribed in the order, not being less than three months; and in case the owner fail to comply with such order, the Commissioners may, by warrant under their hands, authorise any constable or other person to carry the order into effect at the expense of the owner. The Commissioners may sell any fixed engine removed in pursuance of this Act and apply the proceeds of the sale in defraying any expense incident to their carrying the order into effect in reference to such fixed engine, and shall pay the surplus, if any, to the persons they may deem entitled thereto. Hearing as to legality of fixed engines.

8. If any person feels aggrieved by any decision of the Commissioners he may appeal as follows; that is to say, Appeals.

(1.) The appeal shall be to one of the divisions of the Court of Session in Scotland, and shall be by special case setting forth the facts and the grounds of the decision:

(2.) The special case shall be settled by the Commissioners upon the application of the appellant, to be made in writing within fourteen days after the delivery of the decision; and if the appellant be dissatisfied with the special case as settled by the Commissioners, he may have the same settled in chambers by any judge of the division of the Court of Session to which the appeal is taken:

(3.) The special case shall be signed by the Commissioners and shall be delivered by them to the appellant or to his known

A.D. 1877.

agent, who shall within fourteen days transmit the same to the principal clerk of session officiating in the division to which the appeal is taken :

- (4.) When any party gives in good faith notice of an appeal under this section, but omits through mistake to do some act necessary to perfect the appeal, the division to which the appeal is taken may permit an amendment in such terms as it thinks just :
- (5.) After the decision of the said division has been given on a case stated as aforesaid, the Commissioners shall have the same power to enforce that decision as they would have had to enforce their own decision had it not been appealed from :
- (6.) Any act required by this section to be done by the Commissioners may be done by two Commissioners, of whom the advocate herein-before mentioned shall be one.

Acts of the
Commissioners.

9. All warrants for the removal of any fixed engine shall be signed by two at least of the Commissioners ; and all cases relating to the removal of such fixed engine shall be tried and heard by all the Commissioners, but the opinion of two of them, of whom the said advocate shall be one, shall, in case of difference, decide any question ; any other acts, except as aforesaid, authorised to be done by the Commissioners, may be done by any one of them, and any notice or other instrument under the hand of one of the Commissioners shall be deemed to be sufficiently executed.

The Treasury
to fix salaries,
&c. and ap-
point ad-
ditional
officers.

10. The Commissioners of Her Majesty's Treasury may, out of moneys provided by Parliament for the purpose, pay such remuneration as they may think fit to the Commissioners hereby appointed, and may also appoint a clerk to the said Commissioners at such rate of remuneration, to be paid out of moneys provided as aforesaid, as the said Commissioners of the Treasury may think proper and necessary, and may from time to time dismiss such clerk and appoint another in his place.

Duration of
office of Com-
missioners.

11. The offices of the said Commissioners, and all powers, rights, and privileges thereto belonging, shall continue in force for one year, and from thenceforth until the end of the next session of Parliament.

Commis-
sioners not to
sit in Par-
liament.

12. No Commissioner shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.

13. The Commissioners may examine any witness on oath, and with respect to enforcing the attendance of witnesses, and the production of deeds, books, papers, and documents, shall have the same power as any judge officiating as Lord Ordinary in the Court of Session has for such or the like purposes. A.D. 1877.
Powers of
Commis-
sioners.

14. Every person who upon examination before the Commissioners wilfully gives false evidence shall be liable to the pains and penalties of perjury. Penalty for
false swear-
ing.

15. Proceedings before the Commissioners shall not abate by reason of any death, or transmission, or change of interest, but in any such case it shall be lawful to the Commissioners, when they shall see fit, to require notices to be given to persons becoming interested, or to make any order for continuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to the Commissioners may appear just. Proceedings
not to abate
by death, &c.

16. Any decision of the Commissioners not appealed against in terms of this Act, and any decision of a division of the Court of Session upon any appeal, shall be final and not subject to review, and the Commissioners and the division may dispose of all questions of expenses. Decisions
to be final.
Expenses,

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