Anno tricesimo primo

Georgii II. Regis.

An Act for regulating, governing, preserving, and improving, the Oyster Fishery, in the River *Colne*, and Waters thereto belonging.

WHEREAS the Oyster Fishery in the River of Colne, extending from a certain Place called North Bridge, in the Borough of Colchester, in the County of Essex, to a Place called Westness, otherwise Saint Osith Point, and in the Creeks and Branches of the said River, within the said Extent, hath, for Time immemorial, belonged to, and been under the Jurisdiction of the Burgesses of the said Borough of Colchester; and which said Fishery was, by certain Letters Patent under the Great Seal of England, in the First Year of the Reign of King Richard the First, granted and confirmed to the Burgesses of the said Borough; and in the First Year of the Reign of King Richard the Second, was confirmed to the Bailiffs and Burgesses of the said Borough; and Preamble.

in the First Year of the Reign of King Edward the Fourth, was granted and confirmed to the Bailiffs and Commonalty of the said Borough; and which said Fishery was also by other Letters Patent under the Great Seal of England, in the Fifteenth Year of the Reign of King Charles the Second, and in the Fifth Year of the Reign of his late Majesty King William, further confirmed to the Mayor and Commonalty of the said Borough, together with all their prescriptive Rights: And whereas the said Mayor and Commonalty, and their Predecessors, have for Time immemorial, as well by virtue of their prescriptive Rights, as of the said Letters Patents, granted Licences to Oyster Dredgers, to dredge and take Oysters in the said Fishery, and have held Courts which have been commonly called Admiralty Courts, at a Place called the Blockhouse upon the said River, in the Parish of Eastmersea, in the said County of Essex, and made Rules and Orders for governing and preserving the said Fishery; and at such Courts Offenders and Trespassers upon the said River and Fishery, have been, upon Presentments, punished and fined; and the said Mayor and Commonalty, and their Predecessors, have also, from time to time, appointed a Water Serjeant or Bailiff, who exercised a Power and Authority of entering and going on Board the Boats and Vessels of the Fishermen and Dredgermen, and of viewing and measuring the Oysters, and when any Quantity of Oysters more than was allowed by such Rules and Orders have been taken, or if the Oysters were undersized, or any Brood of Oysters or Spat was taken away with the Culch, such Water Serjeant or Bailiff has seized, and put such Oysters, Brood, and Culch back again into the said River and Creeks; And whereas by several Judgements lately obtained in his Majesty's Court of King's Bench, upon Informations in the Nature of Quo Warranto, against several Persons exercising the Offices of Mayor and Aldermen within the said Borough, and by virtue of their Offices and Charters claiming to be, and exercising the Office of Justices of the Peace within the same, and the Liberties thereof, such Persons have been respectively ousted of the said several Offices, so that there now remains no Mayor, Aldermen, or Justices of the Peace, nor any Person or Persons to hold the said Courts of Admiralty, or to make and establish any necessary Rules and Orders, or to inforce such as have been formerly made for the Government and Preservation of the said Fishery: And whereas many disorderly Persons have, in Contempt of the Rules and Orders made and established by the said Mayor and Commonalty, and their

Predecessors, entered the said Fishery, before the Times appointed for opening the same, and have caught great Quantities of Oysters more than their Due, and taken the Brood and unsizeable Oysters at a Time when they should be preserved, and have also taken and carried away the Culsh upon which they cast their Spat; and if such Practices are not prevented, the said Fishery will be ruined and destroyed: May it therefore please your Majesty that it may be enacted; and be it enacted by the King'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, That from and after the passing of this Act, it shall and may be lawful to and for the Justices of the Peace for the time being for the said County of Essex, residing within the said Borough of Colchester, and the Liberties thereof, or within the Colchester Division of the said County of Essex, or any Three or more of them, and they are hereby authorized and required once or oftener in every Year, to keep and hold the said Court, commonly called the Admiralty Court, as aforesaid, at the said Blockhouse, or at some other convenient Place within the aforesaid Jurisdiction; and from time to time to appoint a Water Serjeant or Bailiff, and such other Officers as they shall think necessary; and to grant Licences to such Oyster Dredgerman, or Oyster Dredgermen, as shall apply for the same, under the usual and accustomed Payments and Fees, and in such Manner as the said Mayor and Commonalty, or their Predecessors, have heretofore used to grant such Licences, to be paid in Manner herein after mentioned; and also from time to time, to issue out Summonses to the licensed Dredgermen of the said Fishery, at least Eight Days before the holding of such Court, to attend at the same; and in case any such Dredgerman refuses, or makes Default to appear at any such Court pursuant to such Summons, not having a reasonable Excuse to be allowed by the said Justices, or the major Part of them so assembled, it shall and may be lawful to and for the Jury at the said Courts, or the said Justices, in Default of the Appearance of a sufficient and proper Number, whereout to impanel a Jury, to impose upon any such Dredgerman for Non Appearance, on Non Attendance at such Court upon such Summons, the Sum of Ten Shillings, which shall be recovered and applied in such Manner as the Fines and Forfeitures herein after mentioned are directed to be recovered and applied; and the said Justices assembled at such Courts, or the major Part of them so assembled, shall and may, from time to

Three or more Justices impowered to hold the *Admiralty Court*, yearly,

and to appoint a Water Bailiff, and other Officers, and grant Licences to Dredgermen, under the usual Payments and Fees;

and to summon Dredgermen,

and fine them for Non-appearance;

and cause the Water Bailiff to summon Juries;

time, at such Courts, as often as shall be necessary, cause their Water Serjeant or Bailiff, to impanel and return a Jury of Twelve or more of the most sufficient and intelligent Men amongst the said licensed Dredgermen; and to every Person serving upon such Jury, the usual Oath shall be administered, to which shall be added, for every such Juryman to repeat, as follows (that is to say)

and administer the usual Oath, with the following Addition, to the Jury.

"And I will faithfully, impartially, and honestly, according to the best of my Skill and Knowledge, execute "the several Powers and Trusts reposed in me as a Juryman at this Court, by an Act of Parliament made in the "Thirty first Year of the Reign of King *George* the Second, for regulating, governing, preserving, and improving the Oyster Fishery in the River *Colne*, and Waters thereto belonging."

Jury impowered to make Rules and Orders for regulating, governing, preserving, and improving, the Oyster Fishery;

And such Jury, so sworn, may and shall, from time to time, as often as shall be necessary, at such Courts, or any Adjournment thereof, make, frame, and set down in Writing, and sign such Rules and Orders for limiting the Times when the said Fishery, or any Part or Parts thereof within the Limits aforesaid, shall or may be opened, and Oysters taken therein; and also the Times when the said Fishery, or any Part or Parts thereof, shall be shut, and no Oysters taken therein; and also to state and appoint the Quantities or Stints of Oysters each Dredgerman may take or dredge in a Day, and order and set a certain Measure for such Stint; and shall also make such other Rules and Orders as they shall judge necessary as well for the Preservation of the Brood, Culch, and Spat of Oysters, as otherwise, for preserving, well regulating, and ordering the said Oyster Fishery; and such Juries shall and may set and impose Fines, and pecuniary Penalties for Breach of any of the said Rules and Orders, not exceeding the Sum of Forty Shillings for any One Offence; and the said Rules and Orders so to be made as aforesaid, being approved, altered, or amended, and confirmed by the Justices assembled at such Admiralty Court as aforesaid, or the major Part of them so assembled, shall be fairly written and ingrossed on a Parchment Roll, and be signed and sealed by the Justices so assembled, or the major Part of them; and being so signed and sealed, shall be proclaimed and published by Order of the said Justices, in the Moothall of the said Borough of Colchester, within Ten Days after making thereof; and true printed Copies thereof shall be forthwith fixed up at the Fore Door of the said Moothall,

and enforce the same by pecuniary Penalties;

and after the same shall be amended and confirmed by the Justices, and signed and sealed by them, after being ingrossed,

and duly published;

and printed Copies thereof fixed up in proper Places;

Moothall, and at some conspicuous Place in all the Fishing Towns bordering on the said River Colne; and such Rules and Orders so to be made and published, not being repugnant to the Laws of this Realm, shall be valid and effectual in Law, and shall be observed by all Dredgermen accordingly; and that the said Justices, or any Three or more of them, assembled at such Courts, shall and may do all such Matters and Things for the Preservation, well-ordering, regulating, and improving the said Fishery, as they shall see fit, in as full and ample Manner as the said Mayor and Commonalty ever had Power to do.

they are to have all the due Force of a Law, and be observed as such.

And be it further enacted by the Authority aforesaid, That if any Person or Persons not being licensed by the said Court, shall at any Time enter the said Fishery, and dredge for, or take Oysters therein, every such Person shall forfeit the Sum of Five Pounds for every Time he shall commit such Offence.

5 *l.* Penalty on Persons unlicensed entering the Fishery, and dredging therein for Oysters.

And, to the Intent the said Rules and Orders so made, approved, and confirmed, as aforesaid, may be better observed and performed, and the Breaches thereof duly discovered and punished; be it enacted by the Authority aforesaid, That it shall and may be lawful to and for the said Water Serjeant or Bailiff, to be appointed by virtue of this Act, and such Person or Persons as shall be assisting him in the Execution of his Office, from time to time, and at all Times, to enter and go on Board the Boats and Vessels of all and every or any of the said licensed Dredger-men, or of any other Person or Persons presuming to dredge and take Oysters within the said Limits, and there to view, measure, size, and examine the Oysters by them caught and dredged; and thereout to take and throw over Board into the said Oyster Grounds and Fishery, all such Spat, Culsh, and Brood of Oysters, as shall be found unsizeable, and also all such Oysters as shall have been taken by any Person or Persons not being licensed as aforesaid, and also such Oysters as any Dredger-man shall have caught more than his Stint, or contrary to the Intent and Meaning of this Act, or to any Rule or Order made at any of said Courts pursuant to the Powers hereby given; and if any Oyster Dredger-man or Men, his or their Servant or Servants, or other Person or Persons, shall resist, oppose, or refuse to permit or suffer any such Water Serjeant, or Bailiff, as aforesaid, or Person or Persons assisting him in the Execution of his Duty, to come on Board any Boat or Vessel for the Purpose aforesaid, or being on Board, shall not permit or suffer him or them to view, measure, size, or examine the Oysters there, or to throw over Board the Spat, Brood,

Water Bailiff and his Assistants impowered to enter all Boats dredging for Oysters,

and to take and throw over Board all Spat, Culsh, and Brood of Oysters that shall be unsizeable; and also the Oysters taken by unlicensed Persons; and such also as shall exceed the Stint allowed to the Dredgermen.

40 *l.* Penalty of opposing the Water Bailiff, &c. in the Execution of his Duty;

Brood, Culch, or Oysters, not sizeable there found, and all Oysters which shall be taken as aforesaid, every such Dredgerman or other Person, shall, for every such Offence, forfeit the Sum of Forty Shillings; and the said Justices assembled at such Court, or the major Part of them, so assembled, are hereby authorized and impowered to hear any Complaint that shall or may be exhibited before them, against any Person or Persons who shall beat, wound, or otherwise ill-treat, such Water Serjeant, or Bailiff, or any Person or Persons assisting him in the due Execution of his said Office, or any Complaint against the said Water Serjeant, or Bailiff, or such Assistant or Assistants, for Misbehaviour; and at any of the said Courts, to hear and determine the same in a summary Way, by Fine and Pecuniary Mulct, not exceeding the Sum of Forty Shillings upon any One Person, for any One Offence; to be levied and applied as the other Fines and Forfeitures are herein after directed to be levied and applied.

Court to hear and determine all Complaints in a summary Way.

Fees for Licences, and Fines, &c. to be paid, *pro tempore*, to the Justices;

and after Reincorporation of the Borough to the Chief Magistrate, or to such Person as the Justices shall appoint, in Trust, for discharging the Expences of this Act;

and afterwards the Incumbrances of the Corporation Estate;

and then to go to the Corporation, and to be applied in defraying the Charges of executing this Act.

And be it further enacted by the Authority aforesaid, That all the Payments and Fees for granting Licences, and also all Fines, Penalties, and Forfeitures, herein before mentioned, and to be set and imposed by the said Jury or Justices at any of the said Courts, shall be paid to the said Justices; and after a Reincorporation of the said Borough, to the Chief Magistrate thereof, or to such Person or Persons as such Justices, or any Three or more of them, assembled at such Courts, or such Chief Magistrate respectively, shall appoint to receive the same, in Trust, that the same shall be applied in the First Place, in Payment of the necessary Charges of obtaining this Act; and afterwards, that such Payments and Fees for granting Licences shall be paid upon Demand to the Assignees of the Mortgagee of the Estates of the late Mayor and Commonalty, or the Lessee or Lessees of such Assignees, for the time being, subject to Redemption of such mortgaged Estates; and after such Incumbrances shall be fully paid off and discharged, to the Use and Benefit of the Corporation of the said Borough, however styled or distinguished; and that such Fines, Penalties, and Forfeitures, shall be applied in and towards defraying the necessary Expences of carrying this Act into Execution, and to no other Purpose whatsoever; and that it shall and may be lawful to and for the said Justices, or any Two or more of them, and after such Incorporation for the Chief Magistrate of the said Borough for the time being, by Warrant or Warrants under his or their Hand, and Seal, or Hands and Seals,

to cause such Fines, Penalties, and Forfeitures, to be levied and recovered by Distress and Sale of the Goods and Chattles of the Offender or Offenders, rendering the Overplus to the Owner or Owners of such Goods and Chattles, after the Charges of such Distress and Sale are satisfied. Fines, &c. to be levied by Distress and Sale.

Provided always, and it is hereby further enacted and declared, That the Powers and Authorities hereby given to the Justices of the Peace residing within the said Borough of Colchester, and the Liberties thereof, and within the Colchester Division of the said County, shall continue and be in force only and until His Majesty, His Heirs, or Successors, shall please to reincorporate the said Town and Borough of Colchester; and that from such Incorporation, all the Powers and Authorities hereby vested in the said Justices, shall cease to be in such Justices, and shall from thenceforth be and remain in such Body Corporate, for the Ules aforesaid, by whatsoever Name or Style they shall be called; and all the other Powers, Matters, and Things, hereby enacted, shall stand ratified and confirmed to such Corporation; any thing herein contained to the contrary in any wise notwithstanding. Powers granted to the Justices to cease after Reincorporation of the Borough, and vest in the Corporation.

And be it further enacted by the Authority aforesaid, That if any Person or Persons shall be sued for any Matter or Thing which he or they shall do, or cause to be done, in Execution or by virtue of this Act, he or they may plead the General Issue, and give this Act, and the Special Matter in Evidence, at any Trial to be had thereupon, and that the same was done in pursuance of this Act; and every such Action or Suit shall be brought within Six Calendar Months after the Fact committed, and not afterwards; and shall be laid or brought in the County of Essex, and not elsewhere; and if any Action shall be brought after the Time before limited for bringing the same, as aforesaid; or shall be brought in any other County; then, and in every such Case or Cases, the Jury shall find for the Defendant or Defendants; or if the Plaintiff or Plaintiffs shall become Nonsuited, or suffer a Discontinuance of his or their Action or Actions; or if a Verdict shall pass against the Plaintiff or Plaintiffs; or if upon Demurrer, Judgement shall be given against the Plaintiff or Plaintiffs, the Defendant or Defendants shall have Treble Costs, upon Affidavit made, or Certificate of the Judge before whom such Cause shall be tried, whereby it may appear that such Action or Suit was prosecuted against the Defendant or Defendants, for Matters contained in this Act; and such Defendant or Defendants, shall have such Remedy for the same, as any Defendant Limitation of Actions. General Issue. Treble Costs.

fendant or Defendants hath or have for Costs of Suit, in any other Cases by Law.

Reservation of Rights to the Lords of the Manors to dredge and fish for Oysters.

Provided nevertheless, and it is hereby declared, That nothing herein contained shall be deemed or construed to take away, deprive, lessen, or otherwise prejudice the Right or Claim of any Lord or Lords of any Manor or Manors, to fish and dredge for Oysters, within any of the Creeks of the said River Colne, wherein they have usually and customarily for Time immemorial, used to fish and dredge for Oysters, and enjoy Layings for that Purpose, but that such Right and Claim shall be and remain the same, as if this Act had never been made.

Reservation of Rights to the Crown.

Saving always, to the King's most excellent Majesty, His Heirs, and Successors, His and Their Prerogatives, and all Jurisdictions, Estates, Rights, and Titles whatsoever, as fully as if this Act had never been made.

Publick Act.

And be it further enacted by the Authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Publick Act; and be judicially taken Notice of as such, by all Judges, Justices, and all other Persons whatsoever, without specially pleading the same.

FINIS.