

including every description of expenditure by items, the amount claimed and the amount allowed in each instance, for what purpose, by whom ordered, and to whom paid; also, a full statement of all moneys paid on account of matters incident to the war, for bounties to volunteers, substitutes, or drafted men, and to whom paid, including discounts or commissions allowed to any person or corporation for negotiating the sale of bonds, notes, or other obligations issued by said boards.

When clerk to cause statement to be published.

Penalty.

45. SEC. 2. It shall be the duty of the clerk of the board to make out and cause such annual statement to be published in the newspapers printed in the county, within thirty days after the annual meeting of the board, and for every neglect so to do such clerk shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding fifty dollars.(1)(2)

Supplement.

Approved March 31, 1875.

P. L. 1875, p. 44.

Special meetings, how convened.

46. SEC. 1. That whenever it shall be necessary to convene a special meeting of any board of chosen freeholders of this state, as is directed by the tenth section of the act to which this is a supplement, it shall and may be lawful for the clerk of said corporation, upon receiving notice in writing as required by said tenth section of said original act, to do so by writing under his hand, directed to the respective members of said board and mailed to the post office nearest to the respective places of abode, which said mailing done by said clerk as aforesaid, shall be at least ten days prior to the day of meeting.

(1) In Camden county annual statement to be published in pamphlet form, (P. L. 1874, p. 174; Hudson county, (1874, p. 244); Middlesex county, (P. L. 1875, p. 308).

(2) Supplement of April 6, 1865, not to apply to Gloucester county, (P. L. 1874, p. 255); Sec. 2 of supplement of 1866, repealed as to Union county, (P. L. 1870, p. 451).

Clams and Oysters.

1. Beds not to be raked at certain times.
2. Penalty for using dredges. Proviso.
3. Justices of the peace to issue warrants, etc.
4. Penalty for offering oysters for sale at certain seasons.
5. Penalty for gathering oysters for lime.
6. Vessels not to carry dredge.
7. Non-residents not to gather oysters, clams, etc.
8. Actions under this act, how commenced.
9. Offenders, how proceeded against.
10. Penalty for resisting officers.
11. Owners of marsh, etc., may plant clams, oysters, etc.
12. Penalty for breaking down fences, etc.
13. Oysters, how taken in Navesink river.
14. Owners of flats between Great and Little Eggharbor rivers may plant oysters.
15. Penalty for taking oysters without permission.
16. Owners of lands along Newark bay, etc., may plant clams, oysters, etc. Proviso.
17. Penalty for taking oysters within certain limits without permission.
18. Setting up stakes may be omitted in certain cases.
19. Time for taking oysters in certain counties.
20. Old shells not to be removed from natural beds.
21. Penalty for selling clams under certain size taken in Atlantic county.
22. Non-residents of State not to gather oysters, etc. Penalty.
23. Additional penalty for violating section 12.
24. Time for taking and vending oysters extended in Cape May county. Proviso.
25. Owners of marsh and meadow land may plant clams and oysters.
26. Penalty for violation of act.
27. Oysters not to be taken out of natural beds in counties of Burlington, Atlantic and Ocean, between May and October, only by daylight.
28. Owners of flats and coves along tidewater in Burlington county may plant oysters.
29. Penalty for taking oysters or clams so planted without permission.
30. Construction of the words "dredge or instruments so called."
31. Penalties for using rake or other instrument in waters of Burlington county.
32. Assessments on vessels engaged in catching, planting and growing oysters in Maurice River Cove and Delaware bay.
33. Special officer, how appointed, duties and salary.
34. Special officer to have power to arrest all persons violating this act.
35. Penalty for refusing to assist officer in performance of his duties.
36. Collector appointed. Duties.
37. Collector to give bonds and record licenses.
38. Captains of vessels shall take oath.
39. Proceeds of sale to be paid to the collector.
40. Persons growing oysters to meet and organize.
41. Repealed.
42. Vessels and boats licensed to be numbered.
43. Certain oyster beds not to be occupied except for the growth of natural oysters.
44. Assessments on vessels catching, planting and growing oysters in Maurice River Cove and Delaware bay.
45. Penalty for catching oysters for planting during certain periods.
46. Time and place of holding annual meeting provided for in section 40.
47. Proceedings in case of application by inhabitants and residents of this state.
48. Clerk of court to give certificate to applicant.
49. Collector to issue license on filing of certificate by applicant.

- 50. Fees to be paid by applicant.
- 51. Moneys arising from the oyster fund when in excess of \$2,000 for any year to be applied to State School fund.
- 52. Repealer. Proviso.
- 53. Penalty for catching or assisting in catching oysters before sunrise or after sunset in Maurice River Cove and Delaware bay.
- 54. Special officer may arrest any person or persons found stealing oysters.
- 55. Certain natural oyster beds not to be occupied for planting oysters, nor be dredged upon.
- 56. Time and place of annual meeting for election of officers.
- 57. Election of an auditing committee.

An act for the preservation of clams and oysters.

Rev. 757.

Approved April 14, 1846.

Harr. 46, 56, 124,
143, 159.

R. S. 492.

Beds not to be raked at certain times.

[P. L. 1873, p. 399]

1. That from and after the first day of May until the first day of September, yearly and every year, no person, under pretence of taking clams or shell-fish, or under any other pretence whatsoever, shall rake on any oyster bed in this state, or gather any oysters or shells on any banks or beds within the same; and in case any person shall so do, whether oysters be taken or not, he shall for every offence forfeit and pay [fifty] dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same in any court of record in this state having cognizance of that sum, one moiety thereof to the use of the prosecutor, and the other moiety to the county collector, for the use of the county in which the offence was committed; *provided*, that nothing in this section shall be so construed as to prohibit any person or persons from taking oysters from beds planted out by him or them pursuant to this law.(1)

Penalty for using dredges.

2. That in case any person residing in or without this state, shall at any time hereafter rake for or gather oysters in any of the rivers, bays, or waters of this state with a dredge, or instrument so called, or shall be on board of any canoe, boat or vessel employed in raking with such implement, such person so offending shall forfeit and pay the sum of fifty dollars to be recovered in the manner and for the use mentioned in the next preceding section; *provided*, that this and the sixth section shall not extend, so far as regards persons residing in this state, to the Delaware bay.

Proviso.

3. That it shall be the duty of every justice of the peace, upon his own view or the information of any person on oath or affirmation, to issue his warrant to one or more of the constables in his county, commanding him or them to require such and so many persons as he or they deem necessary to aid and assist him or them in apprehending every person offending against either of the preceding sections, in any of the bays, rivers, or waters of this state, and forthwith to bring such offender, when apprehended, before the said justice, or any other justice of the peace of said county, to be proceeded against in the manner herein before directed.

Justices of the peace to issue warrant, etc.

4. That if any person shall hereafter sell, or offer for sale, oysters, in any part of this state, between the first day of May and the first day of September, such person shall, for every such offence, forfeit and pay five dollars, to be recovered and applied in manner directed in and by the first section of this act.

Penalty for offering oysters for sale at certain seasons.

5. That if any person shall at any time hereafter rake or gather oysters in any of the rivers, bays, or waters of this state, for the purpose of burning or converting them into lime, or for the purpose of conveying them to any of the landings to be used in the manufacture of iron in any of the furnaces in this state, or shall land them on any bank or landing for either of the purposes aforesaid, every person so offending shall forfeit and pay fifty dollars for each and every offence, to be recovered and applied in manner directed by the first section of this act.

Penalty for gathering oysters for lime.

6. That no canoe, scow, boat, or vessel, employed in navigating any of the waters, bays, or rivers of this state, shall have on board of the same any instrument called a dredge, for catching or raking oysters, or shell-fish; and the master or owner or owners of every such canoe, scow, boat, or vessel, that shall have on board of the same any such instrument, shall forfeit the sum of fifty dollars, to be recovered in the manner and for the use mentioned in the first section of this act.

Vessels not to carry dredge.

(1) By supplement of March 18, 1852, (P. L. 1852, p. 232), the period for raking or taking clams and oysters in the county of Hudson is extended from the first day of May to the first day of July in each and every year. By supplement of April 1, 1869, (P. L. 1869 p. 1193), the time for gathering oysters in Cumberland county, is extended to the first day of July. A penalty is also prescribed for taking oysters on Sunday or at night between 8 p. m. and 4 a. m. By supplement of March 17, 1874, (P. L. 1874, p. 278), the time for raking and taking oysters in Union county is extended from the first day of May to the first day of July. See also *post*, sec. 19. 24.

- Non-residents not to gather oysters, clams, etc.
7. That it shall be not lawful for any person who is not at the time an actual inhabitant and resident of this state, and who has not been for six months next preceding an actual inhabitant or resident as aforesaid, to rake or gather clams, oysters, or shell fish, either on his own account and benefit or on account and benefit of his employer, in any of the rivers, bays, or waters of this state, on board of any canoe, flat, scow, boat, or other vessel; and every person who shall offend herein shall forfeit and pay twenty dollars, to be recovered and applied in the manner directed by the first section of this act; and the said canoe, flat, scow, boat, or other vessel, used and employed in the commission of such offence, with all the clams, oysters, clam-rakes, tongs, tackle, furniture, and apparel, shall be forfeited, and the same seized, secured, and disposed of, in the manner prescribed in the ninth and tenth sections of this act. (a) (See *Sec. 22*).
- Actions under this act, how commenced.
8. That any action under the first, sixth, or seventh sections of this act, may be commenced by warrant in the court for the trial of small causes, and be proceeded in as in other cases when the same are commenced by warrant, any law, usage, or custom to the contrary notwithstanding.
- Offenders, how proceeded against.
9. That it shall be the duty of all sheriffs and constables, and may be lawful for any other person or persons, to seize and secure any such canoe, flat, scow, boat, or other vessel as aforesaid, and immediately thereupon give information thereof to two justices of the peace of the county where such seizure shall have been made, who are hereby empowered and required to meet at such time and place as they shall appoint for the trial thereof, and hear and determine the same; (b) and in case the same shall be condemned, it shall be sold by the order and under the direction of the said justices, who, after deducting all legal costs and charges, shall pay one half of the proceeds of said sale to the collector of the county in which such offence shall have been committed, and the other half to the person who shall have seized and prosecuted the same.
- Penalty for resisting officers.
10. That if any person or persons, on board of any such canoe, flat, scow, boat, or other vessel aforesaid, shall refuse and not suffer to enter the same, or resist before or after entering, any of the said officers or other person or persons seizing the same, or otherwise resist them, or any of them, in the lawful seizing of the same, then every person so offending shall forfeit and pay the sum of thirty dollars, to be recovered and applied in manner directed by the first section of this act.
- Owners of marsh, etc., may plant clams, oysters, etc.
11. That it shall be lawful for any person or persons owning marsh or meadow in this state, within the boundaries of which there shall be creeks, ditches, or ponds wherein oysters do or will grow, and where such creeks or ditches do not lead to any public landing, to lay or plant clams or oysters therein, for the use and benefit of such owners, and for the preservation of which to erect a fence, hang or affix gates or locks across said creeks or ditches, to prevent any person or persons from entering the same.
- Penalty for breaking down fences, etc.
12. That if any person be found with any craft, boat, or raft, above or within the aforesaid fences, gates, or locks, without leave from the owner or occupant of any creek, ditch, or pond, fenced, gated, or locked as aforesaid, wherein clams or oysters may be laid or planted, or shall in any way break or destroy such fence, gate, or lock, he, she, or they so offending shall severally forfeit and pay, for each and every offence, the sum of fifty dollars, to be recovered by action of debt, with costs, in any court having cognizance thereof, by any person who shall prosecute for the same, one half to the use of the owner or occupant of such creek, ditch, or pond, and the other half to the person who shall sue for the same; *provided*, that nothing herein contained shall be so construed or understood as to obstruct or prevent the free navigation of any thoroughfare, creek, or channel leading from or out of any of the bays or principal waters to any other bay or principal water, or to any accustomed landing place in this state, any thing herein before contained to the contrary notwithstanding. (See *Sec. 23*).
13. That it shall not be lawful for any person or persons to rake or take with tongs, or otherwise gather or carry away, any oysters, other than by

(a) This section is not unconstitutional as a regulation of commerce with foreign nations or among the states, *Coryell v. Coryell*, 4 Wash. C. C. 371. *Haney v. Compton*, 7 Vr. 507. There is no distinction made between natural oysters and those planted, *Ibid*.

(b) The seizure of the vessel, &c., without judicial process first issued, is not a deprivation of property without due process of law. A trial without a jury is also constitutional, *Haney v. Compton*, 7 Vr. 507. See *Edwards v. Elliott*, 7 Vr. 449.

wading in and picking up by hand the same, within the following bounds in the river commonly called or known by the name of the North or Navesink river, lying within the county of Monmouth, and dividing the township of Shrewsbury from the township of Middletown, above a direct line from the store-house of Eseek White, on the Shrewsbury side of the river, to the dwelling house of Thomas Layton, on the Middletown side of the river aforesaid; and in case any person or persons shall be found offending against this prohibition, he, she or they so offending shall forfeit and pay for every such offence the sum of ten dollars, to be recovered in an action of debt, with costs, before any justice of the peace in the county of Monmouth, by any person who shall sue for the same, the one-half to the use of the prosecutor, and the other half to be paid to the county collector, to and for the use of the county.(1)

Oysters, how taken in Navesink river.

14. That it shall and may be lawful for any person or persons owning flats or coves along the shores of the tide waters in the county of Atlantic, between the Great Eggharbor and Little Eggharbor rivers, inclusive of the shores of so much of the said rivers as lie within the said county of Atlantic, to mark out, by fixing stakes across or around the same, at the distance of two rods from each other, and of such length as to be at least two feet above the ordinary high water, and plant or lay clams, oysters, or other shell fish within or above the same; *provided*, said stakes shall not include any natural oyster beds always covered with water beyond low water mark; *and provided also*, it shall not be lawful to stake out beyond the ordinary low water mark, nor injure any navigation publicly used.(a)

Owners of flats between Great and Little Egg Harbor rivers may plant oysters.

15. That if any person or persons shall gather or take away any oysters or clams, above or within the line of stakes aforesaid, without permission first had or obtained from the owner or owners, occupant or occupants, of the flats or coves so staked in, he, she, or they so offending shall forfeit and pay, for each offence, the sum of twenty dollars, to be recovered and applied in manner directed by the twelfth section of this act, and shall moreover be liable to an action at the suit of the owner or owners, occupant or occupants, for his, her, or their damages.

Penalty for taking oysters without permission.

16. That it shall and may be lawful for the owner or owners, or any person or persons having a license in writing from the owner or owners of meadow or other lands, which are opposite or contiguous to flats which are at any time bare, or coves, upon or within which flats or coves there have not been heretofore any natural oyster beds, along the shores of such parts of the Newark bay and Staten Island sound as lie within the township of Elizabeth, to plant and lay clams, oysters, or other shell fish upon, within, or above such flats and coves, and one chain beyond the same; *provided*, the clams and oysters thus planted shall be enclosed and designated by stakes placed beyond them within the prescribed limits, not less than six rods apart, and of such length as to be at least two feet above ordinary high water; *and provided also*, that this section shall not be so construed as to take away or in any wise impair the common rights of citizens to any natural oyster beds which may be embraced by the boundary herein specified.

Owners of lands along Newark bay, etc., may plant clams, oysters, etc.

Proviso.

17. That any person or persons who shall gather or take away any oysters or clams upon, above, or within the limits aforesaid, without permission first had and obtained from such owner or owners, person or persons occupying under such owner or owners as aforesaid, shall be liable to the same forfeitures and the like suits for damages, to be recovered and sued for in manner as is directed and provided in the fifteenth section of this act; *provided*, that nothing in this act shall prevent the legislature from the repeal or modification of this and the last foregoing section, at their pleasure.

Penalty for taking oysters within certain limits without permission.

18. That in coves and places where notorious and plain ranges or landmarks can be erected and established on contiguous shores, whereby the boundaries of planted beds of oysters may be clearly known and

Setting up stakes may be omitted in certain cases.

(a) This section does not authorize the owner of flats to stake off oyster beds below low water mark, *Townsend v. Brown*, 4 Zab. 80. See *infra*. § 25.

(1) By supplement of March 16, 1870 (P. L. 1870, p. 591), it shall not be lawful for any person to erect stakes or any other artificial means for the purpose of using wares or fike-nets for the taking of fish upon the bottom of North Shrewsbury river, where oysters are planted, without permission of the persons occupying the same.

distinguished without danger of mistake, and where in such coves or places such notorious or plain ranges or marks on contiguous meadows or shores shall have been erected and established by stakes or other plain monuments, so that they may be plainly known and distinguished without danger of mistake, and due notice thereof being given, that then and in such cases the provisions of the two last foregoing sections in regard to the planting and setting up of stakes, may be dispensed with, in respect to such places as above described.

Time for taking oysters in certain counties.

19. That the time within which the taking and vending of oysters is prohibited by the first and fourth sections of this act, is hereby extended to the first day of October, yearly and every year, in the counties of Burlington, Monmouth, and Atlantic only, under the same penalties and regulations as are therein contained; *provided*, that planted oysters may be taken up at any time by the person owning the same.(1)

Old shells not to be removed from natural beds.

20. That no person or persons, under any pretence of taking oysters, or under any other pretence whatever, shall take, remove, or carry off from any natural oyster banks or beds, in this state, any old shells, other than such as cannot be removed or separated from the oysters, without injuring the same; and all such shells shall be culled and separated from the oysters, and thrown back again upon the said natural banks or beds; and in case any person or persons shall so take, remove, or carry off from said natural banks or beds, whether oysters be taken or not, without first so separating the old shells from the oysters, he or they shall for every offence forfeit and pay ten dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same, in any court of record in this state having cognizance of that sum, one half thereof to the use of the prosecutor, and the other to the overseer of the poor, for the use of the poor of the township in which the offence was committed, and the canoe, flat, scow, boat, and other vessel, used and employed in the commission of the offence in this section mentioned, shall be liable to seizure, and be applied to the payment of such penalty; *provided however*, that nothing in this act contained shall be so construed as to prohibit any person or persons from taking, removing, or carrying any shells from beds planted out by him or them pursuant to law.

Penalty for selling clams under certain size taken in Atlantic county.

21. That it shall not be lawful for any person or persons, to sell, or offer for sale, by the bushel or otherwise, any small clams which may have been taken in the waters of the county of Atlantic, unless the said clams shall be of such a size that a bushel will not contain more than four hundred; and if any person or persons shall so sell, or offer for sale, any such clams, four hundred of which will not make a bushel, such person or persons shall for every such offence forfeit and pay ten dollars, to be recovered, with costs, by action of debt, by any person who shall prosecute for the same, in any court of record in this state having cognizance of that sum, one half to the overseer of the poor, for the use of the poor of the township in which the offence shall have been committed, and the other half to the person who shall sue for the same.(2)

Supplement.

Approved March 19, 1831.

P. L. 1831, p. 439.

Non-residents of state not to gather oysters, etc.

Penalty.

22. SEC. 1. It shall not be lawful for any person who is not at the time an inhabitant and resident of this state, and who shall not have been for six months next preceding an inhabitant and resident as aforesaid, to take, rake, or gather oysters, clams, or shell fish, in any of the rivers, bays, or waters of this state; and every person offending herein shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court before which the

(1) By an act entitled "an act to authorize the planting of oysters on lands covered by water in Shark river, in the county of Monmouth, and for the protection of the same," approved March 14, 1861, (P. L. 1861, p. 436), the Board of Chosen Freeholders are authorized to occupy a part of said river designated in the act; to appoint commissioners to stake off that part of the river in subdivisions and lease the same for terms not less than one nor more than five years. It further gives the lessees the sole right to plant and gather oysters within the aforesaid boundaries, and prescribes penalty for trespassing. By a supplement approved March 17, 1870, (P. L. 1870, p. 692), the boundary lines of the part the freeholders were authorized to occupy were enlarged, and the commissioners were authorized to extend the term of leases from five to ten years.

(2) By a supplement to the supplement of March 26, 1862, approved April 4, 1873, (P. L. 1873, p. 681), the Board of Freeholders of Ocean county are authorized to appoint a commissioner to enforce the act in said county and regulate his compensation. The act to which this purports to be a supplement was repealed in 1869, (P. L. 1869, p. 1100).

conviction shall be had; *provided*, such imprisonment shall not exceed, in any case, the term of six months, nor the fine exceed the sum of one hundred and fifty dollars.(a)

23. SEC. 2. Every person offending against the provisions of the twelfth section of the act to which this is a supplement, shall, in addition to the penalty therein mentioned, be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court before which the conviction shall be had; *provided*, such imprisonment shall not exceed, in any case, the term of six months, nor the fine exceed the sum of one hundred dollars.

Additional penalty for violating section 12.

Supplement.

Approved February 22, 1853. P. L. 1853, p. 139.

24. SEC. 1. The time, within which the taking and vending oysters is prohibited by the first and fourth sections of the act to which this is a supplement, is and that the same be extended to the first day of October, yearly and every year, in the county of Cape May, under the same penalties and regulations as are therein contained; *provided*, that nothing contained in this act shall prevent the owners of planted oysters, from, at any time, taking up and vending the same.

Time for taking and vending oysters extended in Cape May county. Proviso.

Supplement.

Approved March 9, 1855. P. L. 1855, p. 216.

25. SEC. 1. It shall be lawful for any person or persons owning marsh or meadow lands in this state, within the boundaries of which there shall be creeks, ditches, or ponds wherein clams and oysters do or will grow, to lay or plant clams and oysters therein, for the use and benefit of such owners, and for the preservation of which he is to properly stake off such clam and oyster ground as not to interfere with the passing and repassing of vessels, but sufficient to designate where the same is planted.(b)

Owners of marsh and meadow lands may lay and plant oysters.

26. SEC. 2. Any person or persons violating the provisions of this act shall be subject to all the fines and penalties contained in the act to which this is a further supplement.(1)

Penalty for violation of provisions of act.

Supplement.

Approved March 31, 1864. P. L. 1864, p. 00.

27. SEC. 1. It shall not be lawful for any person or persons to take any oysters out of the natural beds of the counties of Burlington, Atlantic and Ocean, between the first day of May, and sunrise of the first day of October, yearly, only by daylight, under the penalty of twenty-five dollars for each and every offence.

Oysters not to be taken out of natural beds in certain counties except by daylight.

Supplement.

Approved March 14, 1871. P. L. 1871, p. 493.

28. SEC. 1. That it shall and may be lawful for any person or persons owning flats or coves along the shores of the tide waters in the county of Burlington, between the lines separating Burlington from Ocean and Atlantic counties, to mark out, by fixing stakes across or around the same, at the distance of two rods from each other, and of such length as to be at least two feet above the ordinary high water, and plant or lay oysters, or other shell fish, within or above the same; *provided*, said stakes shall not

Owners of flats and coves along tide waters in Burlington county may plant or lay oysters.

Proviso.

(a) An indictment will lie for stealing oysters planted in navigable waters, if they are planted in a place where oysters do not grow naturally, and the spot is designated by stakes or otherwise. Nor has any one the right to remove them as a nuisance, unless they interfere with public rights, as fishing or navigation, and even then an individual has no right to take them away and convert them to his own use. *State v. Taylor*, 3 *Dutch*, 117.

(b) Fishing for oysters in the navigable waters of the state is a right common to all its citizens, unless restrained by a positive law of the legislature. *Arnold v. Mundy*, 1 *Hal.* 1. *Martin v. Waddell*, 3 *Harr.* 496. *Gough v. Bell*, 1 *Zab.* 156; 2 *Zab.* 441; 3 *Zab.* 624. *Wooley v. Campbell*, 8 *Vr.* 163. See

Associates &c. v. Jersey City, 4 *Hal. Ch.* 715. *Stevens v. Paterson &c. R. R. Co.*, 5 *C. E. Gr.* 135. *Shepard v. Layton*, *Pen.* *391. *Yard v. Curman*, *Pen.* *943. The right of navigation is superior to that of fishing. *Post v. Mann*, 1 *South.* *61. The legislature may grant the right to plant oysters in the bed of navigable streams to one citizen to the exclusion of others. *Paul v. Hazleton*, 8 *Vr.* 106. *Wooley v. Campbell*, 8 *Vr.* 163. *Delaware &c. Canal Co. v. Baritan &c. R. R. Co.*, 1 *C. E. Gr.* 366. *Bennett v. Boggs*, *Bald. C. C.* 60. See *Howell v. Robb*, 3 *Hal. Ch.* 17. *Stevens v. Paterson R. R. Co.*, 5 *Vr.* 532. Several lessees may use jointly lands which have been granted to them severally and may join in an action for taking their oysters therefrom, *Wooley v. Campbell*, 8 *Vr.* 163.

(1) A further supplement to this act, (P. L. 1866, p. 484), authorizes persons owning marsh or meadow lands bounding on Cedar creek, Fairfield township, Cumberland county, to lay or plant oysters—also to stake off such clam or oyster grounds.

Proviso. include any natural oyster beds always covered with water beyond low water mark; *and provided also*, it shall not be lawful to stake out beyond the ordinary low water mark, nor injure any navigation publicly used.

Penalty for taking oysters or clams so planted without permission. 29. SEC. 2. That if any person or persons shall gather or take away any oysters or clams, above or within the line of stakes aforesaid, without permission first had or obtained from the owner or owners, occupant or occupants, of the flats or coves so staked in, he, she or they so offending shall forfeit and pay for each offence, the sum of twenty dollars, to be recovered and applied in manner directed by the twelfth section of the act to which this act is a further supplement, and shall moreover be liable to an action at the suit of the owner or owners, occupant or occupants, for his, her or their damages.

Supplement.

Approved March 12, 1873.

P. L. 1873, p. 44.

Construction of the words "dredge or instrument so called."

Penalty for using rake or other instrument in waters of Burlington county.

30. SEC. 1. That the words "dredge or instrument so called," in sections two and six of the act to which this act is a further supplement, shall be and is hereby taken, deemed and intended to mean and apply to any rake or other instrument designed and intended to be used or which shall be used and dragged by any canoe, boat or vessel in any of the rivers, bays or waters of Burlington county, in this state, as a dredge and for the uses and purposes of a dredge, whether called by that name or otherwise.

31. SEC. 2. That all the penalties in sections two and six of the act to which this act is a further supplement, shall and hereby do apply to all such person or persons using such rake or rakes, or other instruments, or canoe, boat or vessel having on board such rake or other instrument to be employed and used in raking and dredging or which shall be found employed and using such rake or other instrument in like manner as dredges are used, and for the same purposes for which dredges are used, in any of the rivers, bays or waters of the county of Burlington, in this state, whether such rake or other instrument be called by the name of dredge or otherwise.

An act for the better enforcement in Maurice River Cove and Delaware Bay, of the act entitled "An act for the preservation of clams and oysters," approved April fourteenth, eighteen hundred and forty-six, and of the supplements thereto.

P. L. 1871, p. 642.

Preamble.

WHEREAS, the flats and grounds in Delaware bay and Maurice river cove, covered with water, adjoining the counties of Cumberland and Cape May, are occupied by citizens of this state for the purpose of catching, planting and growing oysters; and whereas, great losses are annually sustained by the depredations of persons who steal and carry away the oysters planted and growing in said cove; and whereas, the means of enforcing the present laws of the state for the protection of the said oyster grounds are inadequate; therefore,

Assessments on vessels engaged in catching, planting and growing oysters.

[Altered by act of Feb. 27, 1873, vide post, sec. 44].

32. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That there shall hereafter be assessed on every boat or vessel lawfully engaged in catching, planting and growing oysters on the flats and grounds of Delaware bay and Maurice river cove, adjoining the counties of Cumberland and Cape May, to be paid by the master or captain of the same, the following sums annually, viz.: [for every boat or vessel not exceeding ten tons, the sum of ten dollars; exceeding ten tons and not exceeding fifteen, the sum of fifteen dollars; exceeding fifteen and not exceeding twenty tons, the sum of twenty dollars; exceeding twenty and not exceeding twenty-five tons, the sum of twenty-five dollars; exceeding twenty-five and not exceeding thirty tons, the sum of thirty dollars; exceeding thirty tons and not exceeding forty, the sum of forty dollars; exceeding forty tons and not exceeding fifty, the sum of fifty dollars; exceeding fifty tons and not exceeding sixty, the sum of sixty dollars;] which said sums shall be assessed and paid to the collector of the oyster fund as hereinafter provided in this act, between the first day of March and the first day of May of each and every year.

33. SEC. 2. That Gilbert Compton be appointed a special officer, whose duty it shall be, until the first Tuesday of March, eighteen hundred and seventy-two, and until his successor is chosen as is hereinafter provided, to attend to the enforcement in the said Delaware bay and Maurice river cove, of the provisions of the law of this state entitled "An act for the preservation of clams and oysters," approved April fourteenth, eighteen hundred and forty-six, and of the supplements thereto, and who shall receive for his services the annual salary of five hundred dollars, to be paid as hereinafter mentioned out of the fund provided by the first section of this act.

Special officer,
how appointed,
duties and salary.

34. SEC. 3. That for the better carrying out of the provisions of this act, that the said special officer shall have and occupy an office at or near the village of Port Norris, in said county, where complaints of the violation of the oyster laws of New Jersey may be made, and it shall be the duty of the said special officer, at all times, upon his own view, or upon the information of any other person or persons, to proceed at once to arrest any person or persons so complained of, and he may employ for his aid in the prosecution of this duty, any number of men, and any steamboat, steam tug or sail vessel, as may seem most expedient to him, the expenses of which shall be paid out of the fund provided by the first section of this act, and an account of such expenses shall be kept by the said special officer, and furnished under oath to the collector of the oyster fund.

Special officer to
have power to ar-
rest all persons
violating this act.

35. SEC. 4. That it shall be the duty of all citizens, when called upon by the said special officer, to aid in the capture and arrest of all persons charged with the violation of the oyster laws of New Jersey, in the said Delaware bay and Maurice river cove, and it shall be the duty of the captain or commander of any steamboat, steam tug or sail vessel, when called upon for that purpose, to assist with his vessel and crew in making such captures and arrests, and any person duly notified, who shall himself refuse to aid, or any captain or commander who shall refuse to allow his vessel or boat to be used in the arrest and capture of any persons violating the laws, as aforesaid, shall forfeit and pay a fine of fifty dollars, with costs of suit, to be sued for and recovered in any court having jurisdiction thereof; and any person or persons guilty of obstructing or hindering the said special officer in the performance of his duty, under this act, shall be subject to all the penalties imposed by law for hindering and obstructing other officers of this state in the performance of their duties.

Penalty for refus-
ing to assist the
officer in per-
formance of his
duties.

36. SEC. 5. That for the better carrying out of the provisions of this act, that Daniel T. Howell be appointed collector of the oyster fund of Maurice river cove, who shall hold his office until the first Tuesday of March, one thousand eight hundred and seventy-two, and until his successor is elected, whose duty it shall be to assess and collect all the moneys due from the several boats and their captains or commanders, as set forth in the first section of this act; to issue a license duly certified by himself, to each and every captain or commander of a boat or vessel lawfully engaged in the business of catching, planting and growing oysters in the said Delaware bay and Maurice river cove, that shall pay the taxes required by the first section of this act; to refuse licenses to all who do not comply with the provisions of this act, or are not entitled by the laws of this state to catch, plant and grow oysters in the said Delaware bay and Maurice river cove, and to pay the salary of the said special officer and all expenses incurred by him in the performance of his duties; and the said collector shall receive for such services the sum of five per centum of all moneys by him received and collected.

Collector appoin-
ted and his duties

License to be
issued to all cap-
tains of vessels.

37. SEC. 6. That the said collector shall keep a true and faithful record of all his transactions during the year, shall record all licenses granted by him as required by the fifth section of this act, in a book provided for that purpose, and shall receive, in addition to the compensation allowed him for his services as collector, twenty-five cents for each license recorded by him; shall keep a true record of all moneys received and expended by him, and make a true and faithful report of the condition of the finances at each annual meeting hereinafter provided for, and shall be required before entering upon the duties of his office, to give bonds to the collector of the county of Cum-

Collector to give
bonds and to re-
cord all licenses.

berland, with at least two responsible freehold securities, in the sum of two thousand dollars, for the faithful performance of the duties imposed on him by this act.

Captains of ves-
sels shall take
oath.

38. SEC. 7. That each and every captain or commander of any boat or vessel engaged in the business of catching, planting and growing oysters in the said Delaware bay and Maurice river cove, shall upon taking out the license directed by the fifth section of this act, take an oath or affirmation before the said collector, that he will at all times diligently aid and assist in the enforcement of the laws of New Jersey for the preservation of clams and oysters, and will faithfully and promptly report to the special officer provided for in this act, any knowledge that he may in anywise obtain of the violation of the said laws in Delaware bay and Maurice river cove; and any captain or commander who shall neglect or refuse to take out the said license, and to make the said oath or affirmation, and to pay the assessments prescribed by this act, shall forfeit his right to catch, plant and grow oysters in the said Delaware bay and Maurice river cove, and if found planting or taking oysters in said bay or cove without the license required by this act, he shall be considered a trespasser, and subject to all the fines and penalties imposed by the act entitled "An act for the preservation of clams and oysters," approved April fourteenth, one thousand eight hundred and forty-six, and the supplements thereto.

Penalty for not
taking license
and making oath.

Proceeds of sale
to be paid to the
collector.

39. SEC. 8. That the proceeds of all sales of boats and property seized in the said Maurice river cove or Delaware bay by the said special officer, and sold according to the provisions of the act entitled "An act for the preservation of clams and oysters," and of the supplements thereto, shall be paid to the said collector and added to the common fund provided for in the first section of this act.

Persons growing
oysters to meet
and organize.

40. SEC. 9. That all persons lawfully holding using or occupying a lot of ground for growing oysters, and in any way engaged directly in the business of planting and growing oysters in said cove, are hereby authorized to meet on the first Tuesday of March, in each and every year, at the village of Dividing Creek, in Cumberland county, and there organize by the election of a chairman to preside at said meeting, and also a secretary, who shall keep a true record of the proceedings of said meetings, and when the meeting shall be so organized they may proceed to elect, by ballot, a special officer and a collector, to serve for one year, in place of those named in this act, and who shall have the same powers and perform the duties required of them by the previous sections of this act; and the said meeting shall also have power to change the amount of compensation for the services of the said special officer and collector, and the first meeting for the election of the officers named above, shall be held on the first Tuesday of March, one thousand eight hundred and seventy-two, and on the same day of the month in each succeeding year. (See *Sec. 46*).

41. SEC. 10. Repealed, *vide post, sec. 52*.

Vessels and boats
licensed to be
numbered.

42. SEC. 11. That every boat or vessel engaged in the business of catching, planting and growing oysters in the said Delaware bay and Maurice river cove, to which a license shall be given as in this act directed, shall wear in the middle of the mainsail, one-third of the way from the head thereof, a number painted in black, eighteen inches long, and to be designated in the license.

Certain oyster
beds not to be
occupied except
for the growth of
natural oysters.

43. SEC. 12. That the natural oyster beds known as the East Point beds in said Maurice river cove, and all the dry beds, or beds that fall bare in said bay or cove at low water, shall not be occupied or planted on, or be used for any purpose but for the natural growth of oysters, and all citizens of this state shall have free access to them. (See *Sec. 55*).

Supplement.

Approved February 27, 1873.

Assessments on
vessels catching,
planting and
growing oysters,
etc.

44. SEC. 1. That the annual tax imposed by the said act to which this is a supplement, and by the supplements thereto, upon every boat or vessel lawfully engaged in catching, planting and growing oysters on the flats and grounds of Delaware bay and Maurice river cove, shall be five dollars on all boats not over five tons by United States custom house measurement, and on all boats over five tons by said measurement the sum of one dollar

per ton; and all licenses duly issued according to the provisions of the act to which this is a supplement, to any captain or vessel, shall continue in force and effect for the space of one year from the date thereof.

45. SEC. 2. That it shall not be lawful for any person or persons to catch oysters in Delaware bay for the purpose of planting the same on the flats and grounds of Delaware bay and Maurice river cove from the first day of November to the fifteenth day of March in each year, and any person or persons so offending shall for every such offence forfeit and pay the sum of fifty dollars, to be recovered, with costs, in an action of debt by any person who shall prosecute the same in any court in this state having cognizance of that sum; one-half of the said fine to be added to the oyster fund provided for under the provisions of the act to which this is a supplement, and the other half to go to the person who shall sue for the same.

Penalty for catching oysters for planting during certain periods.

46. SEC. 3. That the place for holding the annual meeting on the first Tuesday of March in each and every year, as provided for in the ninth section of the act to which this is a supplement, shall be hereafter held in the village of Port Norris instead of the village of Dividing Creek; and it shall and may be lawful at the next annual meeting held as aforesaid, by the consent of two-thirds of those present and entitled to vote, to raise a tax of one dollar per ton per annum upon all boats of over five tons by custom house measurement, in addition to the tax now imposed by the first section of this act; said additional tax to be imposed for one year only at a time, and not to be continued except by the consent of two-thirds of those present and entitled to vote at any subsequent annual meeting. (See Sec. 56.)

Time and place of holding the annual meeting.

47. SEC. 4. That it shall be lawful for any person who is at the time an actual inhabitant and resident of this state, and who has been for six months next preceding the time of his said application, an actual inhabitant and resident of this state as aforesaid, to make application in writing, to the clerk of the court of common pleas of the county in this state in which said applicant resides, for a certificate as hereinafter provided; said application shall set forth that the applicant is an actual inhabitant and resident of this state and of the county where said applicant resides, and has been such actual inhabitant or resident of this state for six months next preceding the time of said application; and that said applicant is not engaged in the business of planting, raking or gathering clams, oysters or shell fish within the waters of this state, and that said applicant is desirous to rake or gather clams, oysters and shell fish, for his own use and not for sale, in and upon the natural beds in Maurice river cove and Delaware bay, and shall designate the canoe, flat, scow, boat, or other vessel on board of which he intends to rake or gather said oysters, clams and shell fish, which application shall be signed by said applicant.

Proceedings in case of application by inhabitant and resident of this state.

48. SEC. 5. That upon receiving and filing said application, it shall be the duty of the said clerk of the court of common pleas, having first satisfied himself of the truth of the statements made therein, by affidavit, or otherwise, to give to the said applicant a certificate, under the hand of the said clerk, and the seal of the said court, which said certificate shall recite the said application at length, and state that the same has been received and filed by the said clerk.

Clerk of court to give certificate to applicant.

49. SEC. 6. That upon the presentation in person, or otherwise, of the said certificate to the collector of the oyster fund of Cumberland county, it shall be the duty of said collector to file said certificate in his office, and thereupon to issue to the said applicant, without charge, except for his own fees as hereinafter allowed, a license in writing, under the hand of the said collector, which said license shall authorize the said applicant to rake and gather oysters, clams, and shell fish, upon the natural beds in Maurice river cove and Delaware bay, on board the canoe, flat, scow, boat or other vessel named in said license.

Collector to issue license on filing certificate by applicant.

50. SEC. 7. That the fees to be paid by the said applicant for the different services required by this act shall be as follows:

Fees to be paid by applicant.

To the clerk of the court of common pleas for receiving and filing the application and giving the certificate, twenty-five cents;

To the collector of the oyster fund for issuing the license, twenty-five cents.

When moneys arising from oyster fund to be applied to state school fund.

51. SEC. 8. That whenever at the end of any year the sum arising from the oyster fund, after all expenses are paid, shall exceed the sum of two thousand dollars, it shall be the duty of the collector of the said fund to pay the same to the treasurer of the state of New Jersey, to be applied to the school fund of the said state; the first payment to be made to the said treasurer on the first Tuesday in March, one thousand eight hundred and seventy-four.

Repealer.

52. SEC. 9. That section ten of the act to which this act is a further supplement, and all acts or parts of acts in conflict with the provisions of this act, be and the same are hereby repealed; *provided nevertheless*, that nothing herein contained shall be construed in any wise to alter or repeal section one of the act entitled, "An act for the preservation of clams and oysters," approved April fourteenth, one thousand eight hundred and forty-six, or section one of the supplement to said act, approved April first, one thousand eight hundred and sixty-nine.

Proviso.

Supplement.

Approved February 18, 1875.

P. L. 1875, p. 15.

Penalty for catching or assisting in catching oysters before sunrise or after sunset.

53. SEC. 1. That it shall not be lawful for any person or persons to catch or assist in catching oysters in Maurice river cove, or on any planting ground or grounds in the waters of Delaware bay, before sunrise or after sunset, and any person or persons so offending, shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered, with costs, in an action of debt, by any person who shall sue for the same in any court in this state having cognizance of that sum, one-half of the said fine to be added to the oyster fund provided for in the act to which this is a supplement, and the other half to go to the person who shall sue for the same.

Special officers may arrest any person or persons found stealing oysters.

54. SEC. 2. That the special officer created by the act to which this is a supplement, shall have full power to seize and arrest any person or persons found stealing oysters in Maurice river cove or Delaware bay, or from the banks in Maurice river, or in any of the rivers or creeks of Cumberland county, and any person or persons convicted of such offence, shall, for every bushel of oysters found in his or their possession, pay the sum of one dollar and fifty cents, and shall also, for every such offence, forfeit and pay the sum of one hundred dollars, to be recovered, with costs, in an action of debt, by any person or persons who shall sue for the same in any court in this state having cognizance of that sum; one-half of said fine to be added to the oyster fund provided for by the act to which this is a supplement, and the other half to the person who shall sue for the same.

Penalty.

Certain natural oyster beds not to be occupied for planting oysters, nor be dredged upon.

55. SEC. 3. That the natural oyster beds in Maurice river cove and Delaware bay, known severally as the East Point beds, Andrew's ditch beds, the Pepper beds and the Ballast beds, and the beds that fall bare at low tide, shall not be occupied for planting oysters, nor be dredged upon, nor shall oysters be taken from the said beds, nor from any of the rivers or creeks of Cumberland county for the purpose of planting (but all citizens of this state shall have free access to them to catch oysters for their own use); and any person or persons so offending, shall, for every such offence, forfeit and pay the sum of fifty dollars, to be recovered, with costs, in an action of debt, by any person who shall sue for the same in any court of this state having cognizance of that sum; one-half of the said fine to be added to the oyster fund provided for in the act to which this is a supplement, and the other half to go to the person who shall sue for the same.

Time and place of annual meeting for election of officers.

56. SEC. 4. That the annual meeting for the election of officers as directed in the act to which this is a supplement, shall be held at the town hall in the village of Port Norris, in the county of Cumberland, between the hours of nine o'clock in the morning and two o'clock in the afternoon, on the first Tuesday of March, one thousand eight hundred and seventy-five, and annually thereafter at the same place and on the same day of the month.

Election of an auditing committee.

57. SEC. 5. That at the next annual meeting to be held as aforesaid, there shall be elected a committee, consisting of five, to be called the auditing committee, whose duty it shall be to examine and audit the accounts and vouchers of the collector of the oyster fund and make reports thereon at each annual meeting.