

L A W S
OF THE
STATE OF DELAWARE,
PASSED AT THE SESSION
OF THE
GENERAL ASSEMBLY,

**MENCED AND HELD AT DOVER, ON TUESDAY, THE SIXTH
DAY OF JANUARY A. D. 1863 :**

**AT THE ADJOURNED SESSION COMMENCED ON TUESDAY
JUNE 9, 1863.**

PUBLISHED BY AUTHORITY.

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CHAPTER 328.

An Act to amend Chapter 55 of the Revised Code of the State of Delaware, entitled "For the protection of Fish, Oysters and Game."

Revised
Code 150,

SECTION 1. *Be it enacted by the Senate and House of Representatives of State of Delaware in General Assembly met, That Sections Ten and Twelve of Chapter fifty-five of the Revised Code of the State of Delaware, entitled "For the protection of Fish, Oysters and Game," be and the same are hereby repealed.* Sec. 10 & 12 repealed.

SECTION 2. *Be it further enacted, That said Section Ten be* Rev. Code 152.
and the same is hereby amended and supplied by and with the following, that is to say:

SECTION 10. It shall be unlawful for any person not being a citizen of this State, to catch, take or kill, by himself or by his agent, or as the agent for or in the employment of any other person, whether such other person be or be not a citizen of this State, any fish, wild goose, wild duck or other wild fowl, upon any of the waters of this State, or upon any marsh or land bordering thereon, or to enter upon such waters, land or marsh for such unlawful purpose, and any person offending against the provisions of this Section, shall be deemed guilty of a misdemeanor, and shall pay a fine of not less than fifty dollars and not more than one hundred dollars, and any boat or vessel, with her tackle, apparel and furniture, and any gun, decoy-geese or decoy-ducks, used with the consent or knowledge of the owner thereof, shall be forfeited and may be seized, condemned and sold as hereinafter provided. Sec. 10 of original act supplied. Non-residents or agents prohibited from fishing or fowling. Fine \$50 to \$100. Boat forfeited.

But this Section shall not prohibit a citizen of this State nor any person, being a citizen thereof, regularly in his employment, from catching, taking or killing any such fish, or wild fowl, upon any of said waters or land and marsh.

It shall be the duty of any Justice of the Peace, upon affidavit made that a person has violated this Section, forthwith to issue his warrant, directed to the Sheriff, or in his absence, to any constable, commanding him to arrest the person so charged and to bring him forthwith before such Justice for trial. If upon such trial the said justice shall find that the person arrested has violated this Section, he shall thereupon fine such person in a sum not exceeding one hundred dollars and not less than fifty dollars, and shall commit him to the custody of said sheriff or constable, who made the arrest, until said fine Justice of Peace to issue warrant. Fined.

and costs are paid: Provided, that if the person so arrested shall, upon appearing before the justice, elect in writing, to be tried by a jury in the Court of General Sessions of the Peace and Jail Delivery and shall enter into a recognizance to the State of Delaware, with one or more sufficient sureties in the sum of two hundred dollars for his appearance at said court for trial, then and in that case the said justice shall have no further jurisdiction, and shall return the said affidavit, election and recognizance to the Clerk of the Peace in and for the County in which such offence is alleged to have been committed.

Defendant
may elect to
be tried by
Jury.

Recogni-
zance.

Return of
proceedings
to Clerk of
Peace.

Clerk to
hand over to
Attorney
General.

The said Clerk of the Peace shall on the first day of the Term of said court to which they are returned, deliver the said affidavit, election and recognizance to the Attorney General, who shall cause the person charged to be prosecuted as in other cases of misdemeanor.

Form of re-
cognizance.

The said recognizance shall be according to the form prescribed in Section 8 of Chapter 97 of the Revised Code, except that after the word "answer" in the ninth line of said form it shall be as follows: "a certain charge made in and by the affidavit of C. D., that he the said A. B., has violated Section Ten of Chapter fifty-five of the Revised Code of the State of Delaware, entitled "For the protection of fish, oysters and game," and shall not depart the Court without leave thereof; then this recognizance to be void, otherwise to be and remain in full force and virtue. Taken, signed and acknowledged before me, a Justice of the Peace for said county, the day of A. D. 18 ."

Justice to
issue war-
rant of sel-
zure of
boat, &c.

Trial.

If condemned
to be sold.

Notice.

Proceeds
how dis-
posed of.

Appeal from
condemna-
tion.

It shall be the duty of any Justice of the Peace upon affidavit made that a boat or vessel, gun, decoy-geese or decoy-ducks, is or are used or have been used in violation of the provisions of this Section forthwith to issue his warrant to the sheriff, or in his absence to any constable, commanding him to seize and detain such boat or vessel, and all guns and decoys used as aforesaid, for trial before said Justice; and if upon such trial the justice shall find that such boat, vessel, gun or decoys have been or are used with the consent or knowledge of the owner thereof, in violation of this Section, he shall thereupon issue his warrant to the sheriff or constable who seized such property, commanding him to sell the same at public auction; upon five days notice, posted at five several places in the county where said property is to be sold, and to divide the proceeds of such sale, after deducting costs and charges, equally among the captors and informers: Provided, that in case of the condemnation of such property, an appeal shall be allowed from the judgment of said justice, if applied for within ten days to the Court of General Sessions of the Peace and Jail

Delivery, on security being given by bond and sufficient surety, in the full value of the property condemned, conditioned to be void if such judgment shall be reversed by said court. Upon such appeal a jury trial shall be had on the issue Trial by Jury. whether the property seized has been used in violation of this Section; and if it be found in the affirmative, the Court shall affirm the judgment of the justice, otherwise such judgment shall be reversed, and the property seized shall be sold or released accordingly.

The Attorney General shall appear for the captors and defend the appeal. Attorney General to appear for captors.

The Sheriff or constable, in the execution of either or both of said warrants, may if necessary summon the posse-comitatus armed with fire-arms and ammunition, and may require the assistance of any other boat or vessel, on paying or tendering just compensation therefor. It shall not be necessary that Officer may summon posse. either of the affidavits or warrants herein provided shall state Non-regu- lates of affidavit or warrant. the name of the person charged, nor of the boat or vessel, nor of the owner or owners of such boat or vessel or other property; such name or names may be inserted in the proceedings after the arrest or seizure. If any person shall resist or oppose the Resistance to officer. sheriff or constable, or other person in the execution of said warrant or warrants, or shall resist the lawful seizure of such Penalty. boat, vessel or other property, such person shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of one hundred dollars. The said sheriff or constable to whom such warrant is delivered for execution may execute the same in either county of this State, and if after due diligence the sheriff or constable cannot arrest the person charged as afore-said, because of his absence from the State, he shall return Officer may execute process in any county. said warrant or warrants to said justice with the endorsement "non est inventus" thereon, whereupon the said justice shall forth- with deliver the said affidavit and warrant to the Clerk of the Peace, for the county wherein such offence is charged to have been committed. It shall be the duty of the Attorney General to cause the person therein charged to be indicted, and with all others indicted under this Chapter who are out of the State; to be demanded and brought to trial. The sheriff or constable shall be entitled to five dollars per day, when the person charged shall be brought for trial and each person summoned by him and rendering him aid to one dollar per day, but if the person charged shall not appear before said justice, the said officer shall be entitled to two dollars per day, and the persons summoned and rendering him aid, to fifty cents per day each. Attorney General to indict and cause to be demanded. Fees of officer and posse.

The Justice of the Peace shall be entitled to fifty cents for taking and filing said affidavit and issuing said warrant, and to Justice fees.

one dollar for each trial and judgment under this Section, all which fees and costs shall be paid by the person convicted, or the property condemned and sold as aforesaid, or by the State in case of acquittal.

SECTION 3. *Be it further enacted*, That said Section Twelve of said Chapter fifty-five, be and the same is hereby amended and supplied by and with the following, that is to say:

**Killing cer-
tain game
prohibited.**

Penalty.

SECTION 12. If any person not a citizen of this State, shall himself or by his agent, or by acting as the agent for or in the employment of another person, whether such other person be or be not a citizen of this State, kill any partridge, pheasant, robin or rabbit in this State, upon land not owned by himself, without license from the owner or occupant thereof, he shall forfeit and pay five dollars for each bird or rabbit so killed, and shall be liable as a trespasser.

**Justice to
issue war-
rant.**

Fine.

It shall be the duty of any Justice of the Peace, upon information in writing to him that a person has violated, or is violating this Section, to issue his warrant directed to the sheriff or to any constable, commanding him to arrest such person and to bring him before said justice for trial. The said justice shall fine such person five dollars for each bird or rabbit killed by himself, or by his agent, or by another person for his use, in violation of this Section, and if such person shall fail or refuse to pay such fine and all costs immediately, the said justice shall forthwith commit him to the custody of the sheriff until the same are paid. If such person shall be in the possession of such bird or rabbit it shall be evidence of his killing the same, or that it was killed for his use, in violation of this Section, unless otherwise proved. The one half of said fine shall be paid to the State, and the other half to the informer.

**Possession
evidence of
guilt unless
rebutted.**

Fees.

The fee to the said justice for filing said information and issuing said warrant under this Section, shall be one dollar, and the fee to the sheriff or constable for executing said warrant, when the person charged shall appear for trial, shall be two dollars, otherwise it shall be fifty cents, to be paid by the person offending against this Section or by the State when not fined.

**Penalty for
neglect of
officers to
perform
their duty.**

If any Justice of the Peace shall refuse or neglect to forthwith issue his warrant as directed in this Section and in Section Ten, as the same are herein amended and supplied, and if any sheriff or constable shall refuse or neglect to promptly execute such warrant, he shall be deemed guilty of a misdemeanor, and shall upon indictment and conviction be fined fifty dollars.

SECTION 4. *Be it further enacted*, That the Secretary of State ^{Sec. of State to republish Chap. 55.} be and he is hereby directed to cause the said Chapter fifty-five; to be republished as herein amended, and supplied, with the acts of this present General Assembly.

SECTION 5. *And be it further enacted*, That so much of Sec. ^{Repeal of so much of Sec. 1, Chap. 55, as is repugnant.} tion one of said Chapter fifty-five as is inconsistent with or repugnant to said Sections ten and twelve, as herein amended and supplied is hereby repealed:

Passed at Dover, March 10, 1863.

This act though purporting to be passed March 10, 1863, was not signed until June 10, 1863.

N. B. SMITHERS, *Sec. of State.*

CHAPTER 329.

REPUBLICATION.

CHAPTER 55, REVISED CODE, AS AMENDED.

For the Protection of Fish, Oysters and Game.

SECTION 1. It shall be unlawful for any person, not being a ⁹⁵³ citizen of this State, to catch, or take oysters, clams, or terrapins in the Delaware Bay, within the limits of this State, without having first obtained from the clerk of the peace of one of the counties, a license therefor, which license shall be granted ^{Non-residents shall not catch oysters, etc in the bay without license.} on paying to said clerk, for the use of the State, fifty dollars, ^{Tax \$50.} and shall be in force for one year from its date, and shall be confined to one boat, or vessel, named therein: Provided, that ^{Proviso.} transient vessels may catch oysters, or clams, for their own immediate use.

If any master of a boat, or vessel, or other person, shall violate this Section, he shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of fifty dollars; and ⁹⁵⁴ the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for taking oysters, and all oysters, clams, or terrapins so taken, shall be forfeited and may be seized and detained for trial by any officer or person. ^{Penalty. \$50. Forfeiture.}

Such trial may be had before any justice of the peace, and ⁹⁵⁵ if condemned, the property seized shall be sold by his order; ^{Trial.} and the proceeds, deducting costs and charges, be equally di-