

IN THE  
Supreme Court of the United States

STATE OF NEW JERSEY,  
*Plaintiff,*

v.

STATE OF DELAWARE,  
*Defendant.*

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**DELAWARE'S APPENDIX  
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

**VOLUME 3 (1525 – 2280)**

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**DELAWARE  
COMMISSIONERS**

**DE-NJ FISHERIES  
COMPACT**

**MINUTE BOOK  
1905-1908**

907 Market Street,  
Wilmington, Delaware, April 1, 1905.

PRESENT:

Alexander B. Cooper, Walter H. Hayes and William S. Hilles, the Commissioners named in an Act of the General Assembly of the State of Delaware, approved March 23rd, A.D. 1905, entitled "An Act to appoint three Commissioners on the part of the State of Delaware, to confer with three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the compact between the States of New Jersey and Delaware, respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the expenses thereof.

On motion of Mr. William S. Hilles, Alexander B. Cooper, Esquire, was elected Temporary Chairman, and on a similar motion Walter H. Hayes, Esquire was elected Temporary Secretary. Whereupon the Temporary Chairman declared that a Temporary Organization had been effected, and the Secretary then read the above entitled Act in the words, letters and figures following, to wit:

An Act appointing Three Commissioners on the part of the State of Delaware, to confer with Three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the compact between the States of New Jersey and Delaware respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

Whereas the Senate and House of Representatives of the State of Delaware in General Assembly met have passed an act entitled "An Act to Ratify and Confirm a Compact or Agreement between the states of New Jersey and Delaware, respecting the Delaware River and Bay, and to authorize the execution thereof," which act hath received the approval of the Governor of the State of Delaware; and the Legislature of the State of New Jersey hath passed an act of the same title and of the same purport, which act hath received the approval of the Governor of the State of New Jersey;

And Whereas the said Compact or agreement between said two states hath been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphey and Chauncey G. Parker, commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates,

commissioners on the part of the State of Delaware, one of which duplicate originals hath been retained by said Commissioners of Delaware to be delivered to the Governor of that State and the other of which duplicate originals hath been retained by the Commissioners of New Jersey to be delivered to the Governor of that State;

And Whereas, it is provided and agreed by said compact or agreement between said States, among other things, as follows:

"Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two State, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislature of said two States said laws shall constitute

the sole laws for the regulation of the taking and catching of fish in the said river and Bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and Bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and Bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

The faith of said contracting States is hereby pledged to the enactment of said laws so recommended by said commissioners, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

Each state shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein provided for."



"Article V. All laws of said States relating to the regulation of fisheries in the Delaware river not inconsistent with the right of common fishery hereinabove mentioned, shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided."

Now Therefore, in pursuance of the terms of said Compact,

Be It Enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met

Section 1. That Alexander B. Cooper, William S. Hilles and Walter H. Hayes, be and they are hereby appointed Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed or to be appointed by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement hereinabove mentioned, to be by them done and performed. That in and upon said Commissioners are hereby vested and conferred all powers and authorities necessary and convenient for the full and complete performance of all the duties, acts, matters and things by this Act imposed upon them. Said Dela-

ware Commissioners shall fill any vacancies occurring in the membership of said Delaware Commission, by the selection of some other suitable citizen or citizens of the State of Delaware.

Section 2. Said Commissioners shall, on or before the first day of June A.D. 1905, organize by the election from their number of a president and secretary. The president so elected shall be the presiding officer at all separate meetings of said commissioners, and the general executive head of said commission. The secretary so elected shall conduct the correspondence of said commission under its direction and keep a record of all the meetings, acts and proceedings of said Delaware Commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties, acts matters and things stipulated for the said compact.

Said Delaware Commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint Commission, witnesses, expert and otherwise, the testimony of which, in the opinion of said Commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the President of

said Delaware Commission, and shall be paid for attendance and mileage, the fees usually paid in the State of Delaware for the attendance of witnesses at the trial of civil causes in the Superior Court of said State. The attendance of witnesses before said Delaware Commission or before said joint Commission may be compelled by attachments issued by said Delaware Commission to the Sheriff of any County in the State of Delaware; said attachments shall be signed by the President of said Delaware Commission, and countersigned by the Secretary thereof, and shall be executed and returned by the Sheriff to whom the same shall be directed. Each of said Commissioners shall have power and authority to administer oaths or affirmations to witnesses appearing before them or before said joint commission.

Section 3. The sum of fifteen hundred dollars is hereby appropriated out of the monies in the Treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said Commissioners. Said monies shall be drawn from the said Treasury, from time to time as occasion shall demand, upon the warrant of the Governor of this State drawn upon the State Treasurer, upon the certificate in writing to said Governor signed by the President and countersigned by the Secretary of said Delaware Commission,

giving the details of such expenditures made or to be made  
as aforesaid.

Passed at Dover, Del.,

March 21, A. D. 1905.

Wm. D. Denney,

Speaker of the House of Representatives.

Isaac T. Parker,

President of the Senate,

Approved this the twenty-third day of March A.D.1905.

Preston Lea,

Governor.

Each of the said Commissioners took and subscribed the Constitutional oath, each of which oaths is in the words, letters and figures following, viz:-

State of Delaware, §  
New Castle County. § ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Mannering, a Notary Public for the County and State aforesaid, Alexander B. Cooper, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before §  
me the day and year aforesaid. §

*Alex. B. Cooper*

*Clifford V. Mannering*  
Notary Public.

State of Delaware, §  
New Castle County. § ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Mannering, a Notary Public for the County and State aforesaid, Walter H. Hayes, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before  
me the day and year aforesaid.

§  
§ Walter H. Hayes  
§

Clifford V. Mannering  
Notary Public.

State of Delaware, }  
New Castle County. } ss.

BE IT REMEMBERED, That on this First day of April, A. D. nineteen hundred and five, personally came before me, Clifford V. Mannering, a Notary Public for the County and State aforesaid, William S. Hilles, who being by me duly sworn according to law, says: I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of Delaware Commissioner under the Act of Assembly approved the twenty third day of March, A. D. 1905, according to the best of my ability. So help me God.

Sworn to and Subscribed before  
me the day and year aforesaid.

*Wm. S. Hilles*  
-----  
}

*Clifford V. Mannering*  
Notary Public.



On motion of Mr. Hilles, duly seconded, it was resolved that the Commissioners proceed to effect a permanent organization. Alexander B. Cooper Esquire, was then nominated and unanimously elected President of said Commission, and Walter H. Hayes, Esquire, was nominated and unanimously elected Secretary of said Commission. On motion of Mr. Hilles, duly seconded, the name of "Delaware Commissioners (Delaware-New Jersey Fisheries Compact)" was adopted for the name of this body.

Upon motion of Mr. Hilles, duly seconded, it was resolved that the Secretary procure necessary books, papers, stationery, postage and other supplies. Upon motion, duly seconded it was resolved that the Secretary is hereby instructed to notify the Governor of the organization of this Commission.

Mr. Hilles moved that no money be paid <sup>out</sup> ~~in~~ for any purpose by this Commission, except by check, signed by the President and countersigned by the secretary, and that the Equitable Guarantee and Trust Company, be designated as the depository bank of the commissioners, which motion, being duly seconded, was unanimously adopted.

Upon motion of Mr. Hayes, duly seconded, it was resolved that the following form of certificate be used, in certifying in writing to the Governor, for the purpose of obtaining the necessary money to pay the expenses of the Commissioners, viz:-

No. \_\_\_\_\_

Wilmington, Delaware,

190\_\_

To the Governor of the State of Delaware:

The Delaware Commissioners (Delaware-New Jersey Fisheries Compact), hereby certify that they have occasion, at this time, to use the sum of \_\_\_\_\_ dollars, for the following expenditures, made or to be made, by them, viz:

President.

Countersigned

Secretary.

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Mr. Hilles moved that these Commissioners shall meet upon the call of the President, in writing, at such time and place as he shall therein specify, whenever occasion shall require a meeting, which motion, duly seconded, was unanimously adopted.

On motion, duly seconded, the meeting adjourned.

  
Secretary.

907 Market Street.

Wilmington, Delaware, Nov., 9, 1905.

11 o'clock A.M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:-

"October 8, 1905.

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market street, in this city on Thursday, November 9, 1905, at 11 o'clock A.M.

PRESENT: Messrs Cooper, Hilles and Hayes.

Minutes of the last meeting were read and approved.

Secretary presented bills of Charles M. Smith, Printing and Stationery Company, amounting to \$41.75; of Joseph L. Cahall, Secretary of State, amounting to \$4.00, and his own bill for postage, amounting to \$1.00, making total amount \$46.75.

On motion of Mr. Hilles, the bills were allowed as correct, and a requisition for \$46.75 was directed to be made on the Governor.

Upon his further motion the Secretary was directed to pay the above bills upon the receipt of the money from the State Treasurer.

Mr. Hilles moved that the Secretary communicate with the New Jersey Commissioners for the purpose of securing a conference or meeting with them, to discuss the question whether or not the several Commissioners shall act until Congress of the United States had approved of the Compact, which motion being duly seconded, was adopted unanimously.

Mr. Hayes moved that Mr. Hilles be requested to see the Attorney General and obtain his official opinion for the use of this Commission, on the questions:

1.- Whether the sum of Fifteen Hundred Dollars appropriated by the Legislature for the use of this Commission, came under the provisions of the General Appropriation Bill for the year 1905.

2.- Whether or not this Commission has power to take any official action in reference to the objects for which it was appointed, before the approval of the Delaware-New Jersey Compact by Congress.

Which motion, being duly seconded, was unanimously adopted.

On motion the Commission adjourned, to meet  
when called together in writing, by the President.

*Walter N. Hayes*  
Secretary.

1510 Walnut Street, Philadelphia, Pa.

December 15, 1905,

2.30 P.M.

PRESENT:

Hon. William J. Bradley, and Hon. J. Boyd Avis, Commissioners of the State of New Jersey; Hon. A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

Mr. Bradley called meeting to order and moved that A. B. Cooper, be Chairman of the Joint Commission, which motion being duly seconded, was put by Mr. Bradley and unanimously adopted.

Mr. Hilles moved that Mr. Avis be the Secretary of the Joint Commission, which motion being duly seconded, was adopted. Mr. Avis was declared Secretary of the Joint Commission.

The Compact, as printed in the Laws of Delaware and the Laws of New Jersey, the several Acts of the Legislature of the State of New Jersey, and the several Acts of Assembly, were read by each party and found to be substantially correct.

Secretary Bradley called attention to the fact that an Island on the New Jersey shore about three miles long and fifteen hundred feet in width near Stony Point and Alloway Creek, and stated that it was not mentioned in the Compact or any of the Acts of the Legislature or Assembly.

The matter was considered by the Commissions and further consideration of it was postponed.

Mr. Hilles offered the following Resolution:

RESOLVED THAT the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request.

This Resolution was adopted after discussion as to agreement on joint fishing laws, the members of the commission believing that it would be well to defer action on the compact until some understanding could be arrived at on this subject by the members of the two Commissions.

Mr. Avis moved that Mr. Hilles be the Committee upon rules, to report at the next meeting of the Joint Commission, which motion being duly seconded, was adopted.

Mr. Hilles moved that when the Joint Commission adjourn, it be to meet at the call of the Chairman, who shall call a meeting of the Joint Commission upon the request of the President of either said Commissions.

On motion of Mr. Hilles, Joint Commission adjourned.



Secretary for Delaware Commission.



907 Market Street.  
Wilmington, Delaware, April 4, 1906.  
2 o'clock P. M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:-

"April 3, 1906.

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market Street, in this city on the 4th day of April, 1906, at 2 o'clock P. M."

PRESENT: Messrs Cooper, Hilles and Hayes.

The President stated the object of the meeting was to consider the advisability of holding public meetings in Kent and Sussex County's and other places.

After discussion on motion of Mr. Hilles, it was decided to hold a public meeting in the Town of Lewes on Friday the 13th day of April at 8 o'clock P. M. and in Dover on Saturday morning at 10 o'clock A. M.

Mr. Hayes moved, that the requisition be drawn on the Governor for \$200 for the purpose of paying the costs of public meetings at Newcastle, Delaware City, Lewes and Dover,

for typewriting copies of existing laws and traveling expenses of the Commissioners &c., which motion, seconded by Mr. Hilles prevailed.

On motion of Mr. Hilles duly seconded, it was decided that a check be drawn in favor of Walter H. Hayes for the sum of forty dollars(\$40) to pay the expenses of the Commissioners, Stenographer &c., in attending Lewes and Dover public meetings.

On motion the meeting adjourned.

  
Secretary.

907 Market Street.

Wilmington, Delaware, May 2, 1906.

11 o'clock A. M.

The Commissioners met pursuant to the following notice in writing of the President, viz:-

"April 30, 1906.

A meeting of the Delaware Commissioners (Delaware New-Jersey Fisheries Compact), will be held at the office of the Commissioners, 907 Market Street, in this City on the 2nd day of May 1906, at 11 o'clock A. M. "

Present: Messrs Cooper, Hilles and Hayes.

The minutes of the two previous meetings were read and approved. The President stated that Public meetings had been held in New Castle on March 14th 1906, in Delaware City, March 16th, 1906, in Lewes April 13th, 1906, and in Dover, April 14th, 1906, and at the office of the Commissioners in Wilmington on April 26, 1906.

The four first mentioned meetings, were meetings principally of Fishermen, and much interest was manifested therein by the Fishermen of the State, that the meetings had been successful and that the information furnished by the Fishermen, at their meetings would aid greatly in the matter of drafting the proposed laws for regulating the taking and

catching of fish in the Delaware River and Bay.

That the last mentioned meeting was held at the request of the parties engaged in the menhaden fishing in the Delaware Bay ~~and River~~ and was addressed by Mr. Walter E. Hatheway on behalf of the American Fishery Company of which Company he was the Secretary. That all the proceedings of said meetings had been taken in shorthand by Mr. Charles G. Guyer and were reduced to typewriting, a copy of the report of which meetings had been furnished each of the Commissioners and that there was filed with the Secretary a full and complete report of all the proceedings of said meetings.

The question of where the boundary should be fixed between the Bay and the River was discussed and the Commissioners decided to call the matter to the attention of the Joint meeting on May the 8th next.

The President submitted the following bills,  
Florence Preston, making four typewritten copies of existing laws in relating to fishing in the Bay and River, \$5.  
P. J. Mulligan, Hall rent for meeting at Delaware City \$5.  
Bennett Lancasters rent for Hall meeting at New Castle \$1.50.  
The Bross-Willard Printing Company, printing posters of the Delaware City and New Castle Meetings, \$3.50.  
Mercantile Printing Company, printing posters of the Lewes and Dover meetings, \$4.60.  
Charles G. Guyer, for paper and backing on which to write and bind the typewritten copies of laws, \$3.05, and Charles G.

Guyer for stenographic services at the above mentioned Public meetings and for his expenses to New Castle and Delaware City \$123.50.

Mr. Hayes reported that the expenses of the Commissioners and Stenographer in attending the Lewes and Dover meetings were \$33.49, made up as follows; Railroad expenses from Wilmington and return, \$26.14, Telegram \$.50, Hotel at Lewes, \$6 and four lunches at Dover \$.85 which had been paid by him out of the funds of the Commission as directed at the last meeting.

On motion of Mr. Hilles duly seconded the above bills were approved and ordered paid and the President and Secretary were instructed to draw checks to the order of the respective parties for the respective amounts.

The President was requested to ascertain the probable cost of a suitable monument to be placed on the Delaware shore indicating the boundary between the River and Bay.

On motion adjourned.



Secretary.

1516 Walnut Street, Philadelphia, Pa.

May 8th, 1906,

2.30 P. M.

PRESENT: Hon. William J. Bradley, and Hon. J. Boyd Avis, Commissioners of the State of New Jersey; Hon. A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

President Cooper of the Joint Commission, called the meeting to order. The minutes of the last meeting were read and approved.

Mr. Hilles, Committee on rules, reported that he had considered the matter of rules and concluded that no rules were required, except a standing rule in relation to the manner of calling meetings of the Joint Commission; he reported further that the motion adopted at the last Joint meeting as follows;

"That when the Joint Commission adjourned, it be to meet at the call of the chairman, who may on his own initiative call a meeting of the Joint Commission and shall call such meeting upon the request of said Commissioners,"

was favored by him as a standing rule and so reported it from the said Committee.

On motion of Mr. Hayes, duly seconded by Senator Bradley the report of the Committee on rules was adopted.

The President laid before the Commission the matter of the ratification of the Compact. The President stated

that a Joint Resolution of Congress had been presented to the Senate of the United States, ratifying said Compact, and had been adopted by the Senate and sent to the House of Representatives. Upon receiveing information of the above facts, the Delaware Commission had communicated with Congressman Burton from Delaware and secured his aid and the aid of Senator Allee, to have further action on the ratification, postponed, that in this, Congressman Loudenslager of New Jersey had assisted Congressman Burton. That he, the President had immediately communicated with Senator Bradley of the New Jersey Commission, who heartily concurred in the action taken by the Delaware Commission and as he understood it, Senator Bradley expressed the opinion of the New Jersey Commissioners. That bearing upon the ratification of the Compact by Congress was the disposition of the case of the State of New Jersey vs. the State of Delaware, pending in the Supreme Court of the United States which case now stands continued until the first day of October Term next of said Supreme Court, at which, from present information, the case must be finally disposed of.

The commission then decided that it was most important that uniform fishing laws for the Delaware Bay and River should be agreed upon, if possible, before Congress adjourns.

Mr. Hayes, called attention to the matter of the monuments to be erected on the Delaware and New Jersey shores marking the boundary line between the Bay and the River and stated that the time was getting short for the erection of

said monuments. The President produced photographs of the monument erected at New Castle on the site of Old Fort Casimer and stated that he had made effort to ascertain the probable cost of two monuments somewhat larger but of the same material to be erected, one on the Delaware shore and one on the New Jersey shore and stated that the contractor, Mr. Hunter, would take the contract to furnish, finish and erect the two monuments for \$500.

There was considerable discussion as to where the Joint Commission would fix the boundary line between the Bay and the River and the Joint Commission finally decided to go upon the lands in that neighborhood on or about June first.

Mr Hilles invited the Joint Commission to be his guests on his yacht down the River and Bay, which invitation was accepted.

The New Jersey Commissioners through Senator Bradley, reported that they had received all the information they could on the subject of the laws to be drawn and President Cooper on behalf of the Delaware Commission reported the same. The provisions of Delaware existing law and existing New Jersey law in relation to fishing in the river and Bay were compared and found to differ very little. The commission then discussed at length the matter of the uniform laws and the procedure to enforce them and decided that each commission draft a law and that they be submitted to a meeting of the Joint Commission as soon as possible.



President Cooper stated the views of the Delaware Fishermen as gathered from the meetings held by that Commission and Senator's Avis and Bradley stated the views of the New Jersey Fishermen which they had gained by similar methods. These views were found to be practicably harmonious, except in relation to stake nets and menhaden fishing.

On motion adjourned.

  
Secretary.

Friday, June 22nd, 1906.

All the Delaware Commissioners, accompanied by President William T. Braley and Secretary J. Boyd Avis of the New Jersey Commission, met at Delaware City and proceeded on the tug-boat Taurus down the River to ascertain and fix the boundary line between the Delaware River and the Delaware Bay. After landing on the Delaware shore at several points and on the Jersey shore near the mouth of Hope Creek, it was finally decided by the Joint Commission that a monument should be erected on the Delaware Shore at or near Liston's Point, and that a similar monument should be erected on the Jersey shore near the mouth of said Creek and that a straight line drawn through the centre of said monument across the body of water intervening, should be the line dividing the Delaware River from the Delaware Bay.

It was further agreed by the Joint Commission that the uniform laws should be drafted at once and immediately thereafter, steps should be taken to erect the above mentioned monuments with their proper inscriptions.

The Commissioners returned to Wilmington at Six o'clock.

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The Commission by a unanimous vote adopted a resolution expressing its thanks to the Wilmington City Railway Company, Mr. Samuel S. Hoff Superintendent thereof, The Wilmington New Castle and Southern Railway Company and Mr. Chauncy P. Holcomb Superintendent thereof, for their respective kindness and courtesy in transporting their Commission to and from Delaware City.

  
Secretary.

907 Market Street,  
Wilmington Del., Sept., 4, 1906.

The Commissioners met pursuant to the following notice in writing, of the President, viz:

907 Market Street,  
City.

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Tuesday) at 11 o'clock. A. M. is hereby requested.

Yours truly,

Alex. B. Cooper,

Sept. 3. 1906.

Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

Minutes of the meetings of April 4, May 2nd, and June 22nd, were read and approved.

President Cooper reported an interview between him and Robert Pennington, Esq., Attorney for the Fisheries Company, in reference to the proposed legislation in reference to the menhaden fishing and stated that he had received the following letter from Mr. Pennington which was read and ordered filed:

August 21, 1906.

Alexander B. Cooper, Esquire,  
907 Market Street,  
Wilmington, Delaware.

Dear Sir:

In reply to your inquiry as to the effect upon the catch of fish by The Fisheries Company in the event of the season closing on September 1st, I beg to advise you that I submitted your inquiry to the General Manager of The Fisheries Company and I am to-day in receipt of a letter from him in which he states that if the season were closed on September 1st it would mean that there would be no profitable fishing in Delaware Bay. It would, of course, mean the closing of the Lewes Plant. Take the present season for an instance; we have not as yet caught any fish in Delaware Bay and it would not be necessary for us to license any boats for that purpose but as evidence of our desire to be fair to the State of Delaware, we have instructed eight of the steamers to take out licenses for fishing in Delaware Bay. These licenses cost \$100.00 each and the fish caught thus far will not pay for the licenses. We are in hopes, however, that during the month of September the fish on their way South from Maine may strike in the Bay and we will be able to recoup our losses. The Lewes plant has been running all summer but the fish have all been caught in Long Island Sound and along the North Jersey coast. We have kept the Lewes plant running for the reason that citizens of that Town have shown a kindly disposition towards our company and we desire to reciprocate by keeping that profitable industry running there as long as possible. In order to do this it has been necessary for us to close down our plant at Crab Island, Little Egg Harbor, New Jersey. I think that you and the other Commissioners are convinced that The Fisheries Company under its present management intends to meet your wish and our only request is that you take into consideration the fact that the profits of a very large industry are absolutely at your mercy and that if you were to stop the fishing in September you would do something that no other State on the Atlantic Coast has ever thought of doing.

If you desire any more facts or any more information I will gladly furnish the same.

Yours truly,

Robert Penington,  
General Counsel.

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A rough draft of the uniform Fishing Laws as drawn by the Commission was presented and discussed.

On motion of Mr. Hilles, it was decided that when this meeting adjourned, it adjourn to meet Tuesday September 11th, 1906 at 2.30 P. M.

Mr. Hayes reported that he had written Mr. Albert W. Cummings the following letter in reference to land at Listons Point viz:

Wilmington, Del., July 19, 1906.

Mr. Albert W. Cummings,

Morning News Office,

Wilmington, Del.

Dear Sir:-

The above Commission is charged with the duty, among other things, of ascertaining and fixing the line dividing the Delaware Bay from the Delaware River, and also with the duty of erecting on the Delaware Shore at said dividing point, a suitable monument to mark it. The Commission has investigated the matter and has tentatively fixed upon a point at or near Liston's Point. The Commission deem it advisable to secure title to the State of Delaware for a small piece of ground upon which said monument will be erected. We are informed that you are one of the owners of the land at Liston's Point. Will you please give me such information as will enable the Commission to investigate the title of said land and let me know whether or not the land can be purchased or acquired of the State.

I should think a piece of land not more than Twenty-five feet square with the right of going to and fro for the purpose of erecting, repairing and keeping in condition of said monument would be all that would be required.

Yours respectfully,  
Walter H. Hayes.

And stated that Mr. Cummings had informed him the land belonged to him and his sister and he did not think there would be any difficulty in acquiring the land.

Mr. Hilles moved that the Secretary ascertain from bidders in Wilmington, Smyrna and New Castle, the cost of constructing and erecting on a good cement foundation, two monuments of Brandywine Granite with an inscription thereon in letters, said monument to be one foot and six inches square at the base tapering to one foot square at the top, to be eight feet and four inches high with the top bevelled to a point; the inscription to include about 450 letters. The concrete foundation to be about three feet deep and laid on good plank bottom, which motion being duly seconded it was adopted. Mr Hayes moved that a requisition be drawn on the Governor for \$73.85 to pay bills and expenses of trip down the River to mark the boundary between the Bay and the River, said bill being as follows;

Charter of Tug Taurus \$45, A. L. Ainscow's bill for lunch &c., \$28.85, which motion being duly seconded was adopted.

Upon motion the Commission then adjourned.

  
Secretary.

907 Market Street,  
Wilmington, Del., Sept. 11, 1906.  
2.30 P. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to adjournment and discussed and prepared uniform laws.

Adjourned to meet September 12, at 2.30 P. M.



Secretary.

907 Market Street,  
2.30 P. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to the adjournment and finished draft of uniform laws .

On motion adjourned to meet September 15th at 10 o'clock A. M.



Secretary.

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907 Market Street,  
Wilmington, Del., Sept 15, 1906.  
10 o'clock A. M.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The Commission met pursuant to the adjournment. The President submitted to the Commission, typewritten copies of the uniform law drawn by the Commission and stated that the Commission, after working diligently during the summer months had finally accomplished its work in the matter of drawing the law.

Upon motion of Mr. Hilles duly seconded, it was resolved that a copy of said laws be furnished to each member of the Commission, one to the Attorney General for his opinion and one mailed to each member of the New Jersey Commission.

It was ordered by the Commission that the law be spread upon the minutes of this meeting.

On motion adjourned to meet at the call of the chair.

The above draft of laws is in the words, letters and figures following, viz:

Walter H. Hayes,  
Comr.

An Act Providing Uniform Laws to Regulate  
the Catching and Taking of Fish in the Delaware River  
and Bay Between the State of Delaware and the State of  
New Jersey, Including the Ascertainment of the Dividing  
Line Between said River and Bay.

CHAS. G. GUYER,  
COURT STENOGRAPHER,  
826 MARKET STREET,  
WILMINGTON, DEL.

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay, Between the State of Delaware and the State of New Jersey, Including the Ascertainment of the Dividing Line Between said River and Bay.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the

said Compact or Agreement; and

WHEREAS, by a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the

same, erected a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That the provisions of this Act shall effect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey, shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall

affect the territorial limits, rights or jurisdiction of either of said states, of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as herein-after provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or

net of any character, the meshes of which shall be less than five and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to

attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever during the months of May, June, July and August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock



fish weighing more than twenty pounds or measuring less than eight inches in length; and should any such fish weighing over twenty pounds, or measuring less than eight inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon under five feet in length, and if any such sturgeon under five feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

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Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout with a net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way in said waters, across the same, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful

for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, cocculus-indicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance, to be turned into or allowed to run into any of the waters aforesaid in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than

two hundred dollars nor more than one thousand dollars, or shall be imprisoned not less than two months nor more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except carp, cat fish or eels), any fish basket, eel weir, fyke net, pound net, shore net, drift net, dip net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided.

Section 15. That hereafter it shall be unlawful

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for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall pay to the State of Delaware a fine of not less than twenty-five dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof, shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than six months.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the

tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the state. In the event that the said person, so charged

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as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was, at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are, or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of said county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may acquire the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19: That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars (\$5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars (\$2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer,



before whom the proceedings were had.

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this Section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels, licensed as provided for in this Section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars (\$100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said

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money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish, generally known as edible or food fish, that has been caught and taken from the waters of the Delaware Bay or River, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless

otherwise herein specifically provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors.

Section 24. That each of the said States of Delaware and New Jersey shall have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for

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any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this state may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person

shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

Section 26. That the dividing line between the Delaware River and the Delaware Bay is and shall be a straight line drawn through and from the centre of the monument erected by the Commissioners on the part of the State of Delaware, aforesaid, at a point at

or near what is called Listen's Point on the Delaware shore of said river, to and through the centre of the like monument erected by the Commissioners on the part of the State of New Jersey, aforesaid, at or near the mouth of what is called Hope Creek on the New Jersey shore of said river. The said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of the said Compact between the State of New Jersey and the State of Delaware and of the concurrent and uniform legislation provided for therein.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

*Walter H. Hayes*  
Secretary

1516 Walnut Street, Philadelphia, Pa.,

October 5, 1906.

2.30 P. M.

Present: Honorable William J. Bradley, Honorable J. Boyd Avis, Commissioners of the State of New Jersey, Honorable A. B. Cooper, William S. Hilles and Walter H. Hayes Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order. The minutes of May 8th, 1906 and June 22nd, 1906, were read after correction approved.

On motion of Senator Bradley, duly seconded, it was decided to consider, first, the question of the two monuments to be erected. Mr. Hayes, Secretary of the Delaware Commission reported that on September 14th 1906, he had sent proposals to several monument makers which proposals were as follows, viz:

Dear Sir:-

The above Commission is charged with the duty among other things of erecting on the Delaware shore at a point to be selected by them, near Liston's Point, a monument marking the boundary between the Delaware Bay and the Delaware River. A similar Commission of the State of New Jersey is charged with a like duty of erecting a similar monument on the New Jersey shore near the mouth of Hopes Creek. This Commission has determined that its monument will be of the following



dimensions; a shaft of Brandywine granite 8 feet 4 inches high, 1 ft. and 6 inches square at the base tapering to 1 ft. square near the top and thence bevelled to a point. One side of it is to be polished and it will have about 450 letters cut in the stone. The monument is to be built on a concrete foundation about 3 ft. deep, laid on good timber or stone slab bottom.

The Commission request you to submit to it in writing a bid for erecting the Delaware monument and also a bid for erecting the New Jersey monument.

Please send your bid as speedily as possible to the undersigned, 1025 Market Street, Wilmington, Delaware.

Yours respectfully,

Walter H. Hayes

Secretary.

That in reply thereto he had received five bids, one bidder proposing to build and set up said two monuments for the sum of \$370.00, another bidder proposed to do the same work for One thousand dollars (\$1000.00), another bidder proposed to do the same work for \$975.00, another bidder proposed to do the same work for the sum of \$1100.00 and the other bidder proposed to do the same work for \$943.60.

Each of the bids were presented and read to the Commission. After discussion, Mr. Hilles moved that the bid

of William J. Davidson to furnish and set up said two monuments for the sum of \$370.00, be accepted and that the contract be awarded him for the same by the Joint Commission which motion being duly seconded by Senator Bradley, was unanimously adopted.

President Cooper presented to the Commission the following inscription to be put upon the monument upon the Delaware shore:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Erected September      A. D. 1906, in pursuance  
of uniform acts of the Legislatures of the State of Delaware  
and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware  
William J. Bradley,  
J. Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.

Mr. Hayes moved that the inscription be adopted and that the inscription on the monument on the New Jersey shore be the same in substance having only the names of the State transposed and the names of the Commissioners transposed, which motion being duly seconded was unanimously adopted. It being the understanding of the Commission that the date in the inscription of the erection of the monument was subject to change.

Mr. Hilles moved that Senator Avis be a committee of one to procure for the Joint Commission, a competent inspector who should inspect the work of erecting said monument which motion being duly seconded was unanimously adopted.

The drafts of uniform laws submitted by the Delaware and the New Jersey Commissioners were taken up and discussed. After consideration of the same for some time the Commission adjourned to meet Wednesday, October 10th, 1906, at 2.30 P. M.

  
Secretary.

Philadelphia, Broad Street Station,

October 10th, 1906.

2.30 P. M.

PRESIDENT: Honorable William J. Bradley, Honorable J. Boyd Avis Commissioners of the State of New Jersey, Honorable A. B. Cooper, Walter H. Hayes Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order.

Mr. Hayes submitted that a form of contract to be executed by the Commissioners and William J. Davidson for the furnishing and erecting of two monuments. After discussion it was decided that the contract as submitted, should be altered by providing that the date to be inserted in the inscription on the monuments should be June 22nd, 1906; that the concrete foundation should be four feet square at the bottom and continuing that size for six inches and it should taper from thence to the top, so as to leave the top two feet and six inches square.

Mr. Hayes was directed to draw contracts in accordance with the correction.

A draft of uniform fishing laws submitted by the Delaware Commissioners was then taken up and after discussion the following changes were made viz:

That there should be no fishing for perch with nets, that shad nets should not be less than five and one quarter inches stretched measure, that the close season for shad should begin June 6th each year, that the close season for carp should be from May 10th to August 31st inclusive of both dates, that the size of the mesh of carp nets should not be less than two and one half inches.

Section 11 of said act was amended by inserting in the third line thereof after the word wilfully and before the word interfere, the words "and without reasonable cause".

Provisions in reference to fishing for eels and catfish were agreed upon. The provision in reference to sturgeon were practically agreed upon, the New Jersey Commissioner however, desiring to consult Mr. Strimple on the matter as he was engaged in the sturgeon fishing business.

It was decided that a new section should be added to the law providing that the same should not take effect until both States had passed the law.

It was agreed that the Commissioners of New Jersey should draw the act to be presented to their Legislature and send a copy of the same as soon as possible to the Delaware Commission.

That <sup>with</sup> ~~in~~ the above changes in the law there is practical agreement between the Commissioners on the subject, the only point remaining open is in reference to the sturgeon fishing.

On motion the Commission adjourned.

*Nathan H. H. H.*  
Secretary.

907 Market St., Wilmington, Del.  
October 25, 1906.  
10 o'clock A.M.

The Commissioners met pursuant to the following notice in writing, of the President, viz:

907 Market Street,  
City.

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Thursday) at 10 o'clock A. M. is hereby requested.

Yours truly,

Alex. B. Cooper,  
Pres.

Oct 24, 1906.

PRESENT: Messrs. Cooper, Hilles and Hayes.

President Cooper called the meeting to order. The minutes of the meetings of September 4th, 11th, 12th and 15th were read and approved.

The Secretary stated that he had mailed copies of the draft of the Uniform Fishing Laws to each member of the New Jersey Commission and Attorney General Richards on September 19th last stated that he had requested from the Attorney General his opinion in writing as to the validity of said draft.

The President reported that there had been two meetings of the Joint Commission held in Philadelphia on October 5th and October 10th. The Secretary reported that he had received the following bids for the monuments, viz:

New Castle, Sept., 18, 1906.

Delaware Commissioners,

Wilmington, Del.

Dear Sirs:-

Your letter of the 14th received. I estimate the monument of Brandywine granite to be erected near Liston's Point, Del., at five Hundred and fifty dollars \$550.00

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Dimensions 8 ft. 4 in. high 1 ft. 6 in. at base tapering to 1 ft. at top one side polished balance rock pitched, about 450 letters cut in stone placed in position on concrete foundation about 3 ft deep with stone slab bottom.

I estimate a similar monument and foundation at five hundred and fifth dollars \$550.00 placed in position near Hopes Creek N. J.

Yours respectfully,

Wm. J. Hunter.

Laurel, Del. , Sept., 18, 1906.

Mr. Walter H. Hayes,  
Secretary of Delaware Commissioners,  
Wilmington, Del.

Dear Sir:-

In reply to your letter of 14th, we submit the following estimate for monument marking the boundary line between Delaware Bay and Delaware River at or near Liston's Point of Brandywine Granite the shaft to be 8 ft. 4 inches high 1 foot 6 inches square at base tapering to 1 foot square at top, erected on concrete foundation 3 feet deep laid on a stone slab. One side to be polished with 450 letters cut on it for the sum of \$495.00 and will make the one for the New

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Jersey Shore at or near Hopes Creek same as above for the sum of \$975.00 for the two (2) jobs.

Hoping to receivedthe contract.

Yours respectfully,

Davis & Bro.

Wilmington, Del., Sept. 19, 1906.

Walter H. Hayes, Esq.,  
1025 Market St.,  
City.

Dear Sir:

In regards to your letter of the 14th instant asking prices on two Brandywine Granite Monuments. I will give you the following prices:

I will agree to furnish and set complete on concrete foundation, about 3' deep, laid on good timber or stone slab bottom, one Monument to be of Brandywine Granite at Liston's point, or at a point to be selected near there for the sum of One Hundred Seventy-five, (\$175.00) Dollars.

I will agree to furnish and set as the one above on concrete foundation, about 3' deep, laid on good timber or stone slab bottom, one Monument to be of Brandywine Granite at Hopes Creek near the mouth, for the sum of One Hundred

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Ninety-five, (\$195.00) Dollars.

One monument to be set on the Delaware shore and the other to be set on the Jersey shore, each to be 8 ft. 4 In. high, 1 ft. 6 in. square at the base tapering to 1 ft. square near the top and thence beveled to a point. One side of each Monument to be polished, and will cut about 450 letters on each, to be cut in.

I am prepared to get out the above in a reasonable length of time and will assure you perfectly satisfactory work.

Trusting the above will meet your favor, also thank you in advance for your esteemed order, I remain,

Yours very truly,

WM. DAVIDSON.

Wilmington, Del., 9 - 21 - 06.

Mr. Walter H. Hayes,  
Secretary Delaware Commissioners,  
Wilmington, Del.

Dear Sir:-

In reply to your favor of Sept. 14th., asking our price on monument to be erected at designated point, we will quote you a price of \$1000.00 for the work on both sides of river or \$500.00 for one side.

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Dimensions as follows. 8-4x 1-6 x 1-6 tapering to 1-0 x 1-0 beveled to point. Monument to be erected on concrete foundation 3' deep, laid on timber or slab bottom.

The 450 letters to be cut in this stone as well as the work on same will be done with pneumatic tools so far as practical thus assuring the commission as good as job as can be obtained.

Any consideration shown at the hands of the commission, will be appreciated by,

Yours very respectfully,

R. M. Wks.,

Hunter & Ackley.

Wilmington, Del., Oct. 5, 1906.

Delaware Commissioners, Fisheries Compact.

Mr. Walter H. Hayes, Sect.

Gentlemen:-

I will furnish complete monument<sup>erected</sup> as per your specification at or near Liston's Point, Del., including 450 letters for the sum of four hundred and fifty two (\$452.00) dollars.

I will erect the same stone other conditions similar

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for the New Jersey Commission for the sum of four hundred and ninety (\$490.00) dollars.

Yours truly,

Abraham L. Tyre.

which had been laid before the Joint Commission at its meeting of October 5th and that the contract for making and erecting said monuments had been awarded to William J. Davidson in accordance with his proposal<sup>he</sup> being the lowest and best bidder.

He also reported that a contract had been drawn by him and mailed to the New Jersey Commissioners to be executed by them. Upon motion of Mr. Hilles it was resolved that checks be drawn in favor of Charles Warner Company for \$45.00 and A. L. Ainscow for \$28.85 to pay the expenses of the Commission on the trip down the Bay on June 22nd, last.

The Secretary reported he had received communications from Robert Penington, Counsel for the Fisheries Company, in reference to the menhaden fishing which were ordered filed, one being an invitation to visit the factory of the Company at Lewes which had been accepted for October 25th, 1906 and reported further that he had been notified by Mr. Penington, that the boat on which the trip was to be made had been

storm-staid at Sandy Hook, so that the trip was postponed.

Mr. Hilles moved that the Secretary be instructed to procure from the owners a deed for a piece of ground 10 ft. square near Liston's point on which the Delaware monument is to be erected and that the title of the same be taken to the State of Delaware, said land not to cost more than \$5.00.

The President presented a letter that he had received from James Strimple dated October 18th, 1906 which was ordered filed.

On motion the Commission adjourned.



Secretary.

907 Market Street,  
Wilmington, Delaware, Jan. 11, 1907.

2 o'clock P. M.

The Commissioners met pursuant to the following notice in writing of the President viz:

Dear Sir:-

Your prompt attendance, at a meeting of the Del. & N. J. Commissioners &c, to be held at my office to-morrow, (Friday) at 2 o'clk. P. M. is hereby requested.

Yours truly,

Alex. B. Cooper,

Jan. 10, 1907.

Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

President Cooper called the meeting to order.

The minutes of the meeting of October 25th, 1906, were read and approved.

The Secretary reported that the contract between the Commissioners and William J. Davidson for the erection of the monuments had been duly executed and that the same reads as follows:

This agreement made, in triplicate originals, this Thirty-first day of October, A. D. 1906, between Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners

Appointed by the State of New Jersey, parties of the first part, hereinafter called Commissioners and William J. Davidson of the City of Wilmington, New Castle County and State of Delaware, party of the second part, hereinafter called Contractor:

Witnesseth that said Contractor hereby covenants, promises and agrees to and with said Commissioners to manufacture, make and set up two monuments or shafts of Brandywine Granite, each of said monuments or shafts to be eight feet four inches high, one foot and six inches square at the base tapering to one foot square near the top and thence bevelled to a point at least four inches above the top square. One side of each of said monuments to be polished; to set up each of said monuments on a concrete foundation, three feet deep, said concrete to be laid on good timber or stone slab bottom, each of said concrete foundations to be at least four feet square at the bottom, to continue at that size for six inches in height then to taper on all sides to the top of the concrete which shall be at least two feet and six inches square; to erect and set up one of said monuments on the Delaware shore near Liston's Point at a place to be selected by said Commissioners; to erect the other of said monuments on the New Jersey shore near the mouth of Hope

Creek at a place to be selected by said Commissioners; to cut on the polished side of said monument to be erected on the Delaware shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware.  
William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.

To cut on the polished side of said monument to be erected on the New Jersey shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance  
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of uniform acts of the Legislature of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.  
Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware.

That the words "mouth of the Delaware River" in each of said inscriptions shall be made of letters two inches in length and all other words in each of said inscriptions shall be made with letters or figures one inch in length:

That said monuments shall be finished and erected in a good workmanlike manner under the supervision and direction of a competent inspector employed for that purpose by said Commissioners and subject to his approval.

Said Contractor further promises, covenants and agrees to and with said Commissioners, that both of said monuments shall be finished and erected as aforesaid, complete in all respects on or before the first day of March A. D. 1907.

The said Commissioners hereby covenant, promise and agree to and with said Contractor to pay him for the furnishing and erecting said two monuments as aforesaid, the sum of Three hundred and seventy dollars (\$370.00) upon the

furnishing and erecting of said two monuments and upon the certificate in writing of the inspector hereinbefore mentioned; that the same have been furnished, made and erected in a good workmanlike manner in accordance with the terms of this agreement.

In witness whereof the said parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of Alex. B. Cooper, Jr. as to Cooper, Hayes and Hilles.

Alex B. Cooper (SEAL)

Wm. S. Hilles (SEAL)

Walter H. Hayes (SEAL)

Commissioners of the State of Delaware.

Geo. W. Bradley as to Virginia Andrews as to Cyrus Jarman as to

Wm. J. Bradley (SEAL)

John Boyd Avis (SEAL)

James Strimple (SEAL)

Commissioners of the State of New Jersey.

George N. Davis

William Davidson (SEAL)

The Secretary also reported that he was still engaged in acquiring the title to the land upon which the Delaware monument is to be erected.

The Secretary also reported that on or about November 27th, 1906, he sent a postal card to Secretary Avis of the New Jersey Commission requesting a copy of their law and on December 6, 1906, he wrote Secretary Avis a letter as follows:

Wilmington, Del., December 6, 1906.

Honorable J. Boyd Avis,  
Woodbury, N. J.

Dear Sir:-

The Delaware Commissioners are waiting for a copy of the Act that the New Jersey Commissioners proposes to submit to your legislature in reference to the Uniform Fishing Laws.

You would greatly oblige us by furnishing the same as agreed, not later than next week. Our legislature meets on the first day of January.

Messrs. Hilles, Cooper and myself will be engaged in the trial of cases from the 15th of December up to the meeting of the Legislature. We wish to draw our report and submit the same to the Legislature when it meets.

Hoping you will be able to furnish us the copy, I remain

Yours respectfully,



Secretary.

Receiving no answer to these communications, on December 26th he telephoned Mr. Avis who said he had been engaged otherwise but expected the Jersey act completed the following week and would send a copy thereof to the Delaware Commissioners.

January 9, 1907, he received from Secretary Avis, a letter which reads as follows:

Woodbury, January 7, 1907.

Hon. Walter H. Hayes,  
907 Market Street,  
Wilmington, Del.

Dear Sir:-

I have prepared the bill to be introduced in the Legislature relative to the fishing laws between Delaware and New Jersey and have not yet had the opportunity to submit it to our Attorney General. I should like to do this before I send you a copy. I expect to see Mr. McCarter tomorrow and will let you hear from me as early as possible.

I am sorry that the matter has been delayed, but I could not attend to it sooner.

Yours very truly,

John Boyd Avis.

Before answering the same on January 11, 1907, he received from Secretary Avis, the following letter:

Woodbury, January 9, 1907.

Walter H. Hayes, Esq.,  
907 Market Street,  
Wilmington, Del.

My dear Mr. Hayes:-

I send enclosed, a draft of a bill to be submitted to our Legislature on the question of fishing in the Delaware River, between New Jersey and Delaware.

Senator Bradley and I have not yet had an opportunity to submit this matter to the Attorney-General and have made arrangements for a meeting with him on next Monday evening, so that this draft is subject to correction upon legal matters.

I think I have also neglected to attach to it a provision that the act shall become operative when a similar act is passed by the State of Delaware. Generally speaking, however, this expresses the agreements, as I understand it, made between our relative commissions.

As soon as we have had a meeting with the Attorney-General, I will forward to you a complete draft of the proposed law.

Yours truly,

John Boyd Avis.

with a copy of the proposed Jersey act enclosed which reads as follows:

An Act providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey, including the Ascertainment of the Dividing Line Between said River and Bay.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jer-

sey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the Legislature of the State of New Jersey, approved March 21, 1905, and by an Act of the General Assembly of the State of Delaware, approved March 20, 1905, The State of New Jersey by an Act of the Legislature thereof, approved May 11th, 1905, appointed William J. Bradley, James Strimple and John Boyd Avis, Commissioners on the part of the State of New Jersey to confer with like Commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the General Assembly of the State of Delaware, approved March 23rd, 1905, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like Commissioners, on the part of the State of Delaware, to confer with the said Commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed

upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the same, erected a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED By the Senate and General Assembly of the State of New Jersey:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states;

nor shall anything herein contained affect in any way, the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter, it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character; the meshes of which shall be less than five and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the Fifth day of June in each and every year and the First day of March then next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except, a drifting net, for the purpose of catching and taking shad within one half mile



of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any cary in any manner whatever, between the Tenth day of May and the Tenth day of August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt

to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon under five feet in length, and if any such sturgeon under five feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout with a net of any character, the meshes of which shall be less than two and

one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way in said waters, across the same, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy and drift net or gill seine being lawfully used for the taking of any fish herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculus indicus (otherwise

known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall, upon conviction, forfeit and pay a fine of Hundred Dollars together with costs, for each offence.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind, any fish basket, eel weir, fyke net, pound net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided: provided however that it shall be lawful to catch and take eels at any time by means of wicker eel baskets anchored on the bottom and by means of eel weirs from the Fifteenth day of September to

the last day of October, both dates inclusive, and provided further, that it shall be lawful to catch and take cat fish by means of pot or pots, basket or baskets, of whatever material the same may be constructed, without any wing or wings; the entrance to said pots or baskets shall not be more than six inches in diameter, and the outside diameter thereof shall not exceed fifteen inches; said pots or baskets when set shall be directly on the bottom and shall not be set nearer than fifty feet from each other.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. That hereafter it shall be unlawful for any person to take or attempt to take white or yellow perch from the waters aforesaid with a net of any character, or by means of any contrivance whatsoever, excepting in the manner commonly known as angling with hand line or with rod and line.

Section 17. Any person or persons violating any of the provisions of Sections four, six, nine, thirteen and fifteen of this act shall forfeit and pay a fine of Twenty

Dollars, together with costs of suit, for each offence; and any person or persons violating any of the provisions of Sections five, seven, eight, ten, eleven, twelve and fourteen of this act shall forfeit and pay a fine of One Hundred Dollars, together with costs of suit for each offence.

Section 18. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or skirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this Section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this Section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of One hundred Dollars (\$100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs, in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

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Section 19. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River, within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 20. That each of the said states of Delaware and New Jersey shall have concurrent jurisdiction over all offences and violations of this act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 21. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor

of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so con-



strued as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this Act.

Section 22. That the dividing line between the Delaware River and the Delaware Bay is and shall be a straight line drawn through and from the centre of the monument erected by the Commissioners on the part of the State of Delaware aforesaid, at a point at or near what is called Liston's Point on the Delaware Shore of said waters, to and through the centre of the like monument erected by the Commissioners on the part of the State of New Jersey, aforesaid, at or near the mouth of what is called Hope Creek on the New Jersey shore of said waters. The said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of the said Compact between the State of New Jersey and the State of Delaware and of the concurrent and uniform legislation provided for therein.

Section 23. The provisions of this Act shall be enforced in accordance with the provisions of an Act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved

March 29, 1897, and the supplements thereto and acts amendatory thereof.

Section 24. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

The President reported that soon after the meeting of the Joint Commission on October 10, 1906, when the uniform laws had been agreed upon, the Delaware Commissioners became anxious to have in due form, the law to present to the Legislature of Delaware which met on January First, 1907. To that end he had instructed the Secretary to correspond with the Jersey Commission and that the Secretary had done so.

The Delaware Commissioners failing to receive any reply to their communications became embarrassed as to what to do in the matter, that he, as President of the Joint Commission wrote Honorable William J. Bradley of the New Jersey Commission on January 5, 1907, as follows, viz:

January 5, 1907.

Hon. William J. Bradley,  
Pres. N. J. Com.&c.

Dear Senator:

The Del. Commission have been waiting, since our last joint meeting in Phila. Oct. 17 1906, for the N. J.

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amendments to the contemplated uniform fishing law, between Del. and N. J. but as yet have not received them. Our secretary Mr. Hayes informs me that under the direction of our commission he has written several times to your secretary Senator Avis, but was unable to hear from him, until last Saturday, when he reached him over the telephone. He then said he would submit them this week, but they have not yet been received. I respectfully call your attention to the necessity of speedy action in the matter. Our legislature is now in session, sixty days is the paid limit, and the bill and our report should be presented as soon as possible, to enable it to act promptly.

The monuments I understand are nearly completed and ready for erection.

Will you please give it your attention.

With regards to yourself and Senator Avis,

I am very truly yours,

Alex. B. Cooper

Pres. Joint Com.

That on January 10, 1907, he received in reply thereto from President Bradley, the following letter viz:

Camden, Jan. 9th, 1907.

Hon. Alex B. Cooper:

President, Del. Fisheries Commission.

My Dear Sir:-

Replying to your letter of Jan. 6, relative to the amendments to the uniform fishing laws I beg to say that Senator Avis has forwarded to day a copy to Mr. Hayes. We desire you to examine the same and see if they meet with the approval of your Commission. We hope to have a meeting with our Attorney General relative to the title no not later than next Monday evening and will immediately communicate with your commissioners.

I trust we may be able to adjust every thing in a few days.

With kind regards

I am

Truly yours,

Wm. F. Bradley

Pres. N. J. Commission.

Thereupon the Secretary presented a rough draft of the Jersey law as received from Secretary Avis which was taken up and compared with the provisions of the law as heretofore agreed upon by the joint commission, it being found that the New Jersey draft differed in several respects substantially. From the law as heretofore agreed upon it was decided to request the President of the Joint Commission to call a meeting thereof in Philadelphia on Wednesday the 16th

day of January 1907 at 2.30 P. M. at the University Club,  
1512 Walnut Street,

On motion of Mr. Hilles it was ordered that a rec-  
quisition be drawn on the Governor for the sum of \$52.00 to  
pay the bill of Charles C. Guyer, for stenographic servic-  
es and a patent backing, which motion being seconded was  
adopted.

On motion the commission adjourned.

*Walter H. Guyer*  
Secretary.

1516 Walnut Street, Philadelphia, Pa.

Jan. 16, 1907.

2.30 P. M.

Present; Honorable William J. Bradley, Honorable J. Boyd Avis and Honorable James Strimple Commissioners of the State of New Jersey, Honorable A. B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

President Cooper of the Joint Commission called the meeting to order. The minutes of October 5, 1906 and Oct. 10, 1906 were read and approved.

Mr. Strimple called attention to statements made to him about the position of the monument to be erected on the New Jersey shore.

After discussion it was decided that the matter should be left as provided in the contract for the erection of the same.

Mr. Avis reported the advice he had received from the Attorney General of the State of New Jersey as follows;

1. As to title.
2. As to appointment of special officers.
3. As to the concurrent jurisdiction over non residents of other states.

After discussion it was decided to strike all mention, out of the title of the proposed law, of the proposed boundary line between the bay and river. Also to omit that section of the Act concerning the said boundary.

The Commission then took up the draft of laws submitted by the New Jersey Commissioners and the one submitted by the Delaware Commissioners and after full discussion agreed upon the law which was ordered by the Commission to be drawn in due form for presentation to the several legislatures and submitted to the Joint Commission on Thursday the 24th day of January 1907, at 2.30 P. M.

Mr. Hayes offered the following resolution;

WHEREAS the Joint Commission (Delaware-New Jersey Fisheries Compact) did on the 15th day of December A. D. 1905 adopt the following Resolution;

"RESOLVED THAT the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and State of New Jersey until the commission shall make further request."

AND WHEREAS said Congress has deferred final action on the ratification of said compact.

NOW THEREFORE BE IT RESOLVED by the said Joint Commission this 16th day of January A. D. 1907, that the Governor of the State of Delaware and the Governor of the State of New Jersey are hereby notified that said Joint

Commission has this day agreed upon the uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the state of Delaware and New Jersey; which being duly seconded was, after full discussion unan- imously adopted and the Secretary's were instructed to for- ward said Governors a copy thereof duly certified by them.

Mr. Avis moved that the Commission adjourn to meet at 1516 Walnut Street, Philadelphia, Thursday January 24th, 1907 at 2.30 P. M. which motion prevailed.

Secretary.



1516 Walnut Street, Philadelphia, Pa.

January 24, 1907,

2.30 P. M.

The Commission met pursuant to adjournment.

PRESENT: Honorable William J. Bradley, Honorable J. Boyd Avis and Honorable James Strimple, Commissioners of the State of New Jersey, Honorable William S. Hilles and Walter H. Hayes, Commissioners of the State of Delaware.

The Delaware Commissioners announced that President Cooper was detained at home by sickness.

Mr. Hayes moved that the Honorable William J. Bradley act as President of the Joint Commission in the absence of President Cooper, which motion being duly seconded was unanimously adopted.

Mr. Bradley then presided during the meeting.

The Delaware Commissioners and the New Jersey Commissioners presented on behalf of each state, final drafts of the uniform Acts to be submitted to the Legislatures of the respective States to regulate the catching and taking of fish in the Delaware River and Bay &c.

The two acts were then read and approved and several amendments were made unanimously to each one.

The Delaware Act as thus finally approved is in the words, letters and figures as follows, viz:

An Act Providing Uniform Laws to Regulate the  
Catching and Taking of Fish in the Delaware River and Bay  
Between the State of Delaware and the State of New Jersey.

WHEREAS, by virtue of Article IV of the Compact  
or Agreement entitled a "Compact Between the State of New  
Jersey and the State of Delaware, Relating to the Boundary  
Controversy Between said States", which was ratified and  
confirmed by an Act of the General Assembly of the State of  
Delaware, approved March 20th, 1905, and by an Act of the  
Legislature of the State of New Jersey, approved March 21st,  
1905, the State of Delaware by an Act of the General As-  
sembly thereof, approved March 23rd, 1905, appointed Alex-  
ander B. Cooper, William S. Hilles and Walter H. Hayes,  
Commissioners on the part of the State of Delaware to confer  
with like Commissioners appointed, or to be appointed, by  
the Legislature of the State of New Jersey, to do and per-  
form all the duties, acts, matters and things required and  
stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the Legislature of  
the State of New Jersey, approved May 11th, 1905, William  
J. Bradley, John Boyd Avis and James Strimple were appointed  
like Commissioners, on the part of the State of New Jersey,

to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

BE IT ENACTED by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish

in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of

any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one-quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two

and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday *next* ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Section 7 . That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in

any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and

take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two and one-half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters, or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill sine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid



any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculusindious (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set

line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or work house, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the state. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith re-

turned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars (\$5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars (\$2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the

payment to him annually of the sum of one hundred dollars (\$100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions

of this Act without warrant or writ issued for such purpose.

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

Section 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by and person who is not an inhabitant of either of said states.

Section. 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of

the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey, revoke the said commissioners, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.



Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by and other officer or person having authority under the laws of the said state of Delaware to make arrests for the violation of the provisions of this Act.

Section 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act.

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

We, the undersigned, Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners on the part of the State of New Jersey, do this 16th day of January, A. D. 1907, hereby certify that the above and foregoing Act has been prepared by us as required by law, and that we hereby approve the same.

Alex. B. Cooper

Wm. S. Hilles

Walter H. Hayes

Commissioners of the State of  
Delaware.

Wm. J. Bradley

J. Strimple

John Boyd Avis

Commissioners of the State of  
New Jersey.

The New Jersey Act so approved, is in the words, letters and figures as follows, viz:

An Act providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.

WHEREAS, by virtue of Article IV of the Compact or Agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States", which was ratified and confirmed by an Act of the Legislature of the State of New Jersey, approved March 21, 1905, and by an Act of the General Assembly of the State of Delaware, approved March 20, 1905, the State of New Jersey by an Act of the Legislature thereof, approved May 11th, 1905, appointed William J. Bradley, James Strimple and John Boyd Avis, Commissioners on the part of the State of New Jersey to confer with like Commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, by a similar Act of the General Assembly of the State of Delaware, approved March 23rd, 1905, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like Commissioners, on the part of the State of

Delaware, to confer with the said Commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, the said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have, upon each of the shores of the said <sup>two</sup>~~two~~ states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

Section 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right

of fishery, throughout, in and over the waters of said river between low water marks on each side of said river between said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

Section 4. That hereafter, it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character, (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one half inches long stretched measure, and except as hereinafter provided.

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five

and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the Fifth day of June in each and every year and the First day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one half mile of the mouth of any river, creek or stream emptying into the said waters.

Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and

should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose

with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or manoose under six feet in length, and if any such sturgeon or manoose under six feet in length, should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take or attempt to catch and take, sturgeon or manoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and Twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, meshes of which shall be less than two and one half inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Section 10. That hereafter it shall be unlawful for



any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Section 11. That hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Section 12. That hereafter it shall be unlawful for any person wilfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculusindicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the pro-

visions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of

this Act.

Section 16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or workhouse for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the state or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county or any fish and game warden of the state to

at once seize the same wheresoever it may be found, who shall thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff or any constable of the county, or any fish and game warden of the state authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this Act. The said sheriff, constable, officer, or fish and game warden, may, if necessary, summon to his aid the posse

comitatus, and may acquire the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Section 19. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever, provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of the State, upon the payment to it annually of the sum of one hundred dollars (\$100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State for the use of said Commission

as provided by law.

Section 20. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

Section 21. That any Fish Commissioner, Fish and Game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Section 22. That each of the said states of Delaware and New Jersey shall also have concurrent jurisdiction over all offences and violations of this Act committed or attempted to be committed, by any person who is not an inhabitant of either of said states.

Section 23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either State of Delaware or the State of New Jersey

for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time, shall, when and as requested by the Governor of ~~this~~ state, revoke the said commission, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this state may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may

be directed shall be paid wholly by the State of Delaware.

Nothing contained in this Section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this Act.

Section . 24. The provisions of this Act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the Statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the provisions of an Act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March 29th, 1897, and the supplements thereto and acts amendatory thereof.

Section 25. This Act shall take effect immediately but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act.

Section 26. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.



We, the undersigned, William J. Bradley, J. Boyd  
Avis and James Strimple, Commissioners on the part of the  
State of New Jersey, Alexander B. Cooper, William S. Hilles  
and Walter H. Hayes, Commissioners on the part of the State  
of Delaware, do this 16th day of January, A. D. 1907, here-  
by certify that the above and foregoing Act has been pre-  
pared by us as required by law, and that we hereby approve  
the same.

Wm. J. Bradley

Jas. Strimple

John Boyd Avis

Commissioners of the State of  
New Jersey.

Alex B. Cooper

Wm. S. Hilles

Walter H. Hayes

Commissioners of the State of  
Delaware.

Each draft was then certified by the Commissioners present and taken by the New Jersey Commissioners for the certificate of President Cooper.

On motion the Commission adjourned.

  
Secretary.

907 Market Street,  
Wilmington, Delaware, Jan 26, 1907.  
10.30 A. M.

The Commission met pursuant to the following notice  
in writing of the President viz:

Dear Sir:-

Your prompt attendance, at a meeting of the Del. &  
N. J. Commissioners &c., to be held at my office to-morrow,  
(Saturday) January 26th, 1907 at 10.30 o'clock A. M., is  
hereby requested.

Yours truly,

Alexander B. Cooper,  
President.

Jan 25, 1907.

Present; Messrs. Cooper, Hilles and Hayes.

President Cooper called the meeting to order. The  
minutes of the meeting of January 11th were read and approved.

The Secretary reported that meetings of the Joint  
Commission had been held in Philadelphia on January 16th &  
24th, 1907 at which the draft of uniform acts in reference  
to fishing in the Delaware River and Bay, had been unani-  
mously agreed upon by the Joint Commission.

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That duly certified copies of said original grants of acts had been exchanged by the Delaware Commissioners and New Jersey Commissioners.

That he had in his possession, a duly certified copy of the New Jersey Act and also of the Delaware Act.

The Commission then ~~proposed~~<sup>ceded</sup> to draw up its report to the General Assembly which report being dictated in shorthand, was left with the stenographer to be written out on the typewriter as soon as possible.

On motion the Commission adjourned.

  
Secretary.

907 Market Street,  
Wilmington, Delaware, Feb. 2, 1907.  
10.30 A. M.

The Commission met pursuant to the following notice  
in writing of the President viz:

Dear Sir:

Your prompt attendance, at a meeting of the Del. &  
N. J. Commissioners &c. to be held at my office to-morrow,  
(Saturday) February 2, 1907, at 10.30 o'clock A. M. is  
hereby requested.

Yours truly,

Alexander B. Cooper,  
President.

Feb. 1, 1907.

Present: Messrs Cooper and Hayes.

The minutes of January 26th were read and approved.

The President submitted the report drawn to be sub-  
mitted to the General Assembly; the report was read, cor-  
rected approved and signed. It is in the words, letters  
and figures following, viz:

~~It was moved that the Secretary be instructed to sub-  
mit a copy of said report to each house of the General  
Assembly together with The Act agreed upon by the Commis-  
sioners for Delaware, which motion being seconded was adop-  
ted. -138-~~

~~The Commission then proceeded to make out a statement of its receipts and expenditures to date which statement is in the words, letters and figures following, viz:~~

To the General Assembly of the State of Delaware.

The Commissioners appointed on the part of the State of Delaware by an Act of the General Assembly, approved March 23d, 1905, to confer with like Commissioners appointed by the Legislature of the State of New Jersey, for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two states, and also to ascertain the dividing line between said River and Bay, and upon each of the shores of the said two States, where said dividing line extended shall intersect the same, and at the joint expense of said States, erect a suitable monument to mark the said dividing line, do respectfully report to the General Assembly as follows:

That, in accordance with the provisions of the said Act of Assembly, they did, on the first day of April, A. D. 1905, meet, and after being duly qualified, according to law, did organize by the election of Alexander B. Cooper, President, and Walter H. Hayes, Secretary, and at once entered upon the performance of their duties. A large number of

printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the Commission. A number of public meetings were called by the Commission by public advertisements and held at prominent points in the State, to-wit, at New Castle, Delaware City, Lewes, Dover and Wilmington. These meetings were all well attended by men engaged and interested in every branch of fishing in the Delaware Bay and River. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore in existence in this State, the Commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws, in accordance with the information and data thus obtained.

They also communicated with Commissioners on the part of the State of New Jersey, to wit, William J. Bradley, John Boyd Avis and James Strimple, and arranged for meetings of the Joint Commission in the City of Philadelphia.

On the fifteenth day of December, 1905, the first joint meeting was held in the City of Philadelphia, and organization of the Joint Commission was effected by electing Alexander B. Cooper, President, and John Boyd Avis, Secretary. The matters committed to the Joint Commission were taken up, thoroughly discussed, and a mode of pro-

ceeding agreed upon. Meetings of the Joint Commissioners and the respective State Commissioners were held from time to time until the sixteenth day of January, 1907, upon which last named date a bill providing for uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said two States was presented to the Joint Commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill is herewith submitted to the General Assembly of the State of Delaware, with a certificate of approval annexed, signed by all the Commissioners of behalf of both States, to take such action thereon, as is provided in, "An Act to ratify and confirm the compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," approved March 20th, 1905, and published in Volume 23, Laws of Delaware, page 12.

Owing to slight differences in procedure, in the two States, it was found necessary to make some changes in relation thereto, in the Act to be adopted by the State of New Jersey, and the Commissioners return herewith, a copy of the New Jersey bill as agreed upon by the Joint Commission as aforesaid, with a certificate of approval signed by all of the Commissioners on the part of both States.

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With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the system in force in each of the respective States, the said bills are alike, and provide uniform laws for the catching and taking of fish in the waters of the Delaware River and Bay between the said States.

The Commissioners on the part of this State, and the commissioners on the part of the State of New Jersey, have submitted the bills for uniform laws, as so drawn, to the Attorney General of the respective States, and have received opinions from them respectively, approving said laws.

The provisions of the bill in the judgment of the Commissioners are in accord with the prevailing opinions of the fishermen of this State and those interested in the preservation and taking of fish in said waters, as expressed and shown from the testimony taken by the Commissioners at the various meetings held, and from such other sources as have been available to the Commissioners.

The most serious difference of opinion presented to the Commissioners was as to the Menhaden Fisheries, and was between the catchers and takers of food fish in the Delaware Bay and River, and the Menhaden fishermen who have large and valuable plants at Lewes in this State, and elsewhere. A special hearing was given to the Menhaden

fishermen in the City of Wilmington. At which meeting it was strongly urged by those representing the Menhaden Fisheries that, notwithstanding a prevailing public opinion to the contrary, they were not catchers of food fish to any great extent, and that their operations were rather a benefit, than a detriment to the other fishing industries. Outside of those directly interested in the Menhaden Fisheries, the evidence was very strong that during the latter part of the month of August, and particularly in the month of September, many small food fish in passing from the waters of the Delaware River and Bay are captured and destroyed by the Menhaden fishermen. Therefore, after a full investigation and thorough consideration of all the information they have been able to get on the subject from both sides, the Commissioners are of the opinion that Menhaden fishing should not be allowed in the Delaware Bay after the thirty-first day of August in each year. In this connection, the Commissioners would also say that they have carefully examined and considered the reports of the United States Fish Commission, a special Commission appointed by the State of New Jersey, and much literature on the subject, as well as the testimony of persons having a practical knowledge of the conditions.

In view of the undoubted fact of the gradual disappearance of the shad from said waters, and the almost total disappearance of the valuable sturgeon industries, the

Commissioners have been especially solicitous to ascertain what measures of protection should be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the Menhaden fishing as heretofore carried on, and the pollution of the waters, and they have endeavored to guard against the total extinction of these valuable fish in the provisions of the bill herewith submitted.

Another duty imposed by the General Assembly upon the Commissioners was to ascertain and mark the dividing line between the Delaware River and Bay. They examined many persons, captains, pilots and others familiar with the waters, United States Government Charts, and on the twenty-second day of June, 1906, the Joint Commission boarded the tug "Taurus" and went down the Delaware River to ascertain the Dividing line between it and the Delaware Bay. They found no little difficulty in doing this, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monuments. After a thorough and careful inspection, however, of both sides of the said River, and in view of the information above mentioned, they determined "That a monument should be erected on the Delaware shore, at or near Liston's Point, and that a similar monument should be erected on the New Jersey shore near the mouth of Hope Creek, and that a straight line drawn through the center of said monuments, across the body of water intervening, should be the line divid-

ing Delaware River from the Delaware Bay", and thereupon they determined to acquire title in the State of Delaware to a sufficient quantity of land upon which said monument is to be erected on the Delaware shore, and instructed the Secretary to ascertain if such title could be obtained. They have arranged with the owners of said land to convey to the State of Delaware a sufficient quantity thereof, not exceeding ten feet square, upon which said monument is to be erected, at a cost not to exceed Five Dollars. The Commissioners feel that the State of Delaware is indebted for the public-spirited liberality of Albert W. Cummins and his sisters, the owners of this land, for practically donating it to the State for this purpose.

On the thirty-first day of October, 1906, the Joint Commission entered into a contract with William J. Davidson of the City of Wilmington, Delaware, a competent and trustworthy dealer in, and manufacturing of monuments, to erect two suitable monuments, one on the Delaware shore at the point above designated, and one on the New Jersey shore at the point above designated. The cost for the erection of, and inscription on both of these monuments amounts to Three Hundred and Seventy Dollars. The contract was awarded to said Davidson, as he was the lowest and best bidder for the same, in response to proposals therefor submitted by the Commission. In addition, the Joint Commission has provided that the said monuments shall be erected under the

supervision and direction of a competent inspector employed for that purpose by the Joint Commission, and subject to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet, four inches high, one foot and six inches square at the base, tapering to one foot square near the top, and then beveled to a point at least four inches above the top square. One side of each of said monuments is to be polished, and each of said monuments is to be set upon a concrete foundation three feet deep, said concrete to be laid on good timber or stone slab bottom. Each concrete foundation to be at least four feet square at the bottom, to continue at that size for six inches in height, thence to taper on all sides to the top of the concrete which shall be at least two feet and six inches square. Each of said monuments is to be of Brandywine granite, and on the polished side of the monument to be erected on the Delaware shore is to be the following inscription.

"MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the state of New Jersey, approved A. D. 1905.

Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware.  
William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey."

And on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription.

"MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.

Alexander B. Cooper,

William S. Hilles,

Walter H. Hayes,

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Under the term of the contract, these monuments are to be erected on or before the first day of March, A. D. 1907.

The Commissioners return herewith a statement of the necessary expenses incurred by them attendant upon the execution of their duties as said Commissioners, together with the receipted vouchers for all payments made. They also return the minutes of the Commissioners of this State, the minutes of the Joint Commission, the typewritten copy of the testimony taken before them, together with the contract for the erection of said monuments.

It will be necessary for the Commissioners to hereafter draw from the State Treasury, out of the funds appropriated, an amount sufficient to pay for one-half of the cost of the making, erection and inspection of said monuments and other expenses.

Respectfully submitted.

Alex. B. Cooper

Wm S. Hillis

Walter H. Hayes

Commissioners for the State of  
Delaware.

It was moved that the Secretary be instructed to submit a copy of said report to each House of the General Assembly together with the Act agreed upon by the Commissioners for Delaware, which motion being seconded was adopted.

The Commission then proceeded to make out a statement of its receipts and expenditures to date which statement is in the words, letters and figures following, viz:

Wilmington, Del., Feb. 2, 1907.

Statement of moneys received and expended by the Delaware Commissioners (Delaware-New Jersey Fisheries Compact).

RECEIPTS.

To cash received from the State Treasurer:

1905

Nov. 24, cash-----\$ 46.75

1906

April 11, to cash received-----\$200.00

Oct. 2, to cash-----\$ 73.85

1907

Jan. 7, to cash redeposited by Walter H. Hayes, Secretary, being the excess of the amount paid him by check No. 2, of April 13, 1906, over expenses | 6.51

Feb. 2, to cash of State Treasurer-----\$ 52.00

Total \$379.11

Total expenditures to date-----\$361.34

Balance in hands of Commissioners Feb. 2, 1907-----\$ 17.77



EXPENDITURES.

1903

Jan 20, check No. 1, C. M. Smith Printing and Station-  
 ery Company-----\$ 41.75

April 13, Check No. 2, Walter H. Hayes, Sec. expenses &c \$ 40.00

May 7, Check No. 3, Florence Preston, copying fish laws \$ 5.00

" Check No. 4, P. J. Mulligan, Hall rent-----\$ 5.00

" Check No. 5, Bennett F. Lancaster, Hall rent-----\$ 1.50

" Check No. 6, Bross Willard Printing Co. posters-- \$ 3.50

" Check No. 7, Mercantile Printing Co., posters-----\$ 4.60

" Check No. 8, Charles G. Guyer, papers, backings,  
 &c used in copying laws-----\$ 3.05

" Check No. 9, Charles G. Guyer, stenographic  
 services and reporting meetings-----\$123.50

Aug 7, Check No. 10, West. Union Tele. Co.----- .59

Sept 20, Check No. 11, Joseph L. Cahall, Sec. of State---\$ 4.00

Oct. 25, Check No. 12, Chas. Warner Co., tug Taurus-----\$ 45.00

" Check No. 13, A. L. Ainscow, lunch &c-----\$28.85

1907

Feb. 2, Check No. 14, Charles G. Guyer, Stenographic  
 services &c.-----\$ 52.00

Feb. 2, Check No. 15, William D. Hudson, Register of  
 Wills, Kent County, copy of will of Juliet P.  
 Cummins-----\$ 3.00

Total \$361.34

Mr. Hayes moved that a requisition for \$68.90 be drawn on the Governor to pay for expenses for stenography,

typewriting and clerical services incurred by the Commission as follows, viz:

Charles G. Guyer-----	\$28.90
Reba J. Coyle-----	\$15.00
Helen Thornton-----	\$25.00

and that said bills be paid when said money was received from the State Treasurer, which motion being duly seconded was adopted.

Mr. Hayes moved that a check be drawn in favor of W. D. Hudson, Register of Wills of Kent County, in payment for a certified copy of the Will of Juliet P. Cummins which motion being seconded was adopted.

On motion the Commission adjourned.

*Nathan H. Hayes*  
Secretary.

907 Market Street,  
Wilmington, Delaware, March 2, 1907.  
10.30 A. M.

The Commission met pursuant to the following notice in writing of the President viz:

Dear Sir:-

The Delaware and N. J. Boundary Commission will meet at my office (Saturday) March 2, at 10.30 o'clock A. M.

Yours respectfully,

Alexander B. Cooper,  
President.

Present, Messrs. Cooper, Hilles and Hayes.

The minutes of the last meeting were read and approved.


On motion of Mr. Hilles it was ordered that a requisition be drawn on the Governor for the sum of four hundred dollars to pay for the making and erecting of the monuments, and other expenses.

On motion the secretary was requested to write to the New Jersey commission, suggesting that as the work of the commission is nearly completed, that the accounts between the States, be settled by their forwarding to us one-half the expenses for erecting the monuments and expenses incidental there-

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to.

Upon motion the Commission adjourned.

  
Secretary.

907 Market Street,

12 o'clock A. M.

May 21, 1907.

The Commission met pursuant to the following notice:

May 20, 1907.

Dear Sir:-

The Del. and N. J. Boundary commission will meet at my office to-morrow, (Tuesday) at 12 o'clock M. Mr. Hilles cannot meet earlier.

Yours truly,

Alex. B. Cooper,  
Pres.

PRESENT: Messrs. Cooper, Hilles and Hayes.

The President presented the Act adopted by the Delaware Legislature and approved by the Governor which reads as follows:

Substitute to House Bill No. 135.

An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.

WHEREAS, By virtue of Article LV of the compact or agree-

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ment entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States," which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

WHEREAS, By a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

WHEREAS, Each of the said Commissions have been duly organized as provided and required by law; and

WHEREAS, The said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also

ascertained the dividing line between the said Delaware River and Delaware Bay, and have upon each of the shores of the said two States where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:

SECTION 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey.

SECTION 2. That the inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery.

SECTION 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the

subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall any thing herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states.

SECTION 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided; provided further, that nothing in this Section shall apply to nets used for catching eels.

SECTION 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters in any manner whatsoever between the hours of Twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence



next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

SECTION 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.

SECTION 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid with a seine or net of any kind,

the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds, and should any such fish weighing over twenty pounds be caught, it shall be immediately returned to the waters uninjured.

SECTION 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every

year and the first day of March thence next ensuing.

SECTION 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

SECTION 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the mouth of any river, creek or stream emptying into the waters aforesaid.

SECTION 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage, or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

SECTION 12. That hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any

explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tan bark, coculusindicus (otherwise known as fish berries), lime, refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

SECTION 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

SECTION 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided.

Provided, that nothing contained in this Section shall prevent the catching and taking of carp with shore nets, dip nets, or cast nets.

SECTION 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

SECTION 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided, each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

SECTION 17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any

constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at ~~once~~ seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the state. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

SECTION 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing,

trial, or other proceeding under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

SECTION 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:

To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars (\$5.00);

To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars (\$2.00);

To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.

That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.

SECTION 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises, and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars (\$100.00) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far North as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of October, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

SECTION 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally



known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

SECTION 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

SECTION 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

SECTION 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be

committed, by any person who is not an inhabitant of either of said states.

SECTION 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, how-

ever, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

SECTION 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

The provisions in this Act contained regulating the size of the meshes of fishing nets shall not become operative until October 1, 1908.

SECTION 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

STATE OF DELAWARE,  
DOVER, ss.  
KENT COUNTY,

And now to wit this fourteenth day of March A. D. 1907, I, Walter H. Hayes, Secretary of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) do hereby certify that the above and foregoing is a true and correct copy of an act of the Legislature of the State of Delaware, entitled "An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey" passed at Dover March 13th, A. D. 1907.

Walter H. Hayes,  
Secretary.

and also presented a certified copy of the Act of the State of New Jersey which reads as follows;

Chapter 131. Laws of 1907.

S T A T E O F N E W J E R S E Y .

An Act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of

Delaware and the State of New Jersey.

WHEREAS, By virtue of article four of the compact or agreement entitled "A compact between the State of New Jersey and the State of Delaware, relating to the boundary controversy between said States," which was ratified and confirmed by an act of the Legislature of the State of New Jersey, approved March twenty-first, one thousand nine hundred and five, and by an act of the General Assembly of the State of Delaware, approved March twentieth, one thousand nine hundred and five, the State of New Jersey, by an act of the Legislature thereof, approved May eleventh, one thousand nine hundred and five, appointed William J. Bradley, James Strimple and John Boyd Avis commissioners on the part of the State of New Jersey to confer with like commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement; and

WHEREAS, By a similar act of the General Assembly of the State of Delaware, approved March twenty-third, one thousand nine hundred and five, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like commissioners on the part of the State of Delaware, to confer with the said commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and

WHEREAS, Each of the said commissions have been duly orga-

nized as provided and required by law; and

WHEREAS, The said commissioners of the said respective States, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the said States, and have also ascertained the dividing line between the said Delaware river and Delaware bay, and have, upon each of the shores of the said two States, where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware river and bay lying between the States of Delaware and New Jersey.

2. The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river, between low-water marks on each side of said river between said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

3. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States, of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said compact

between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shell-fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either of said States.

4. Hereafter it shall be lawful for any person to catch and take from the waters aforesaid fish of any character (except shell-fish) with any net, hook and line, or other appliances; provided, the meshes of any net shall not be less than two and one-half inches long, stretched measure, and except as hereinafter provided; provided further, that nothing in this section shall apply to nets used for catching eels.

5. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character the meshes of which shall be less than five and one-quarter inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any

river, creek or stream emptying into the said waters.

6. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid any carp weighing less than one pound; and should any such fish be caught it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp, in any manner whatever, between the first day of May and the tenth day of August of each and every year.

7. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rockfish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rockfish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It



shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rockfish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish, weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters, uninjured.

8. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught, it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

9. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weakfish with a net of any character, the

meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weakfish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

10. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

11. Hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

12. Hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust, tan bark, coculus indicus (otherwise known as fish-berries), lime, refuse

from gashouses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

13. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath day, commonly called Sunday.

14. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except catfish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wingdams, or any other device, excepting in the manner and with the means in this act provided; provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

15. Hereafter it shall be unlawful for any person to sell,

expose for sale or have in possession, any fish caught and taken in violation of the provisions of this act.

16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or workhouse for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir or other property used by any person for the unlawful taking of, or attempting to take, any fish in the water as aforesaid, in violation of the provisions of this act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the State, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county, or any fish and game warden of the State, to at once seize the same

wheresoever it may be found, who shall thereupon advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days' notice by advertisements, posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

18. Any justice of the peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of this act, issue his warrant to the sheriff or any constable of the county or any fish and game warden of the State, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this act. The said sheriff, constable, officer or fish and game warden, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel or other means, by paying, or tendering, just

compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

19. It shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware river or Delaware bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of the State, upon the payment to it annually of the sum of one hundred dollars (\$100) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs, in the waters of the Delaware bay as far north as a straight line drawn from the center of the mouth of Mahon's river to the nearest point opposite on the New Jersey shore, from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State for the use of said commission as provided by law.

20. It shall be unlawful for any person to have in his possession or to bring into this State any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware bay of river within the bounds aforesaid,

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for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

21. Any fish commissioner, fish and game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

22. Each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this act committed or attempted to be committed by any person who is not an inhabitant of either of said States.

23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this act; provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time shall, when and as requested by the Governor of this State, revoke the said commissions, or any of them. The compensation of the person or persons to whom

such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act; provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said State of New Jersey to make arrests for the violation of the provisions of this act.

24. The provisions of this act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the



provisions of an act entitled "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof", approved March twenty-ninth, one thousand eight hundred and ninety-seven, and the supplements thereto and acts amendatory thereof.

25. This act shall take effect immediately, but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of this act. The provisions in this act contained regulating the size of the meshes of fishing nets shall not become operative until October first, one thousand nine hundred and eight.

26. All laws, or parts of laws, inconsistent with the provisions of this act, be and the same are hereby repealed.

APPROVED MAY 7th., 1907.

STATE OF NEW JERSEY

Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the Governor, the seventh day of May A. D. 1907., as taken from and compared with the original now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this thirteenth day of May one thousand nine hundred seven.

(SEAL)

S. D. Dickinson  
Secretary of State.

The President presented the brief and title and certificate of George N. Davis, concerning the land upon which the Delaware monument is to be erected. The brief and certificate read as follows:

TITLE

to

PLOT OF GROUND AT LISTON'S POINT,

DELAWARE.

Will of Juliet P. Cummins, dated the 16th day of June 1892.

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DE04859

"Item 2". I give and devise all and singular my lands and real estate wheresoever situated and whether owned by me or which I may hereafter acquire and of which I may die seised or entitled to unto my husband, David J. Cummins, for and during his natural life, and from and after his death, I give and devise the same as follows, viz: I give and devise all the said lands and premises except the farm called "The Crockett Farm", hereinafter mentioned in fee simple to, unto and among such of my six children, William P. Cummins, Margaret C. Lea, Susan F. Cummins, Juliet Agnes Cummins, Edith C. Davis and Albert W. Cummins, as may be living at the death of my said husband, but if any one or more of my said children shall die before the death of my said husband leaving nevertheless at the time of the death of my said husband, child or children then living or issue then living of any such child that may have died previously to the death of my said husband, then such child, children or issue of such shall be substituted in the place and stead of that one or more of my said children so dying and so respectively leaving child, children or issue of such then living, and shall take by representation the share or part of said lands which the parent or ancestor would have taken if living and for and in the same estate the issue of any such child or children taking per stirpes and not per capita.

Juliet P. Cummins died on or about the day of October, A. D. 1894, leaving the following children to survive her; Margaret C. Lea, Susan F. Urbin, Juliet Agnes Cummins, Edith C. Davis and Albert W. Cummins. The said William P.

Cummins mentioned in the will of Juliet P. Cummins, having previously died on or about the \_\_\_\_\_ day of  
A. D. \_\_\_\_\_ without issue.

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Will of William Polk, dated December 15, 1852, approved May, 9, 1853, provides inter alia as follows:...I give and devise to my daughter, Juliet Cummins her heirs and assigns, all that farm or tract of land situate in Appoquinimink Hundred which I bought of John Richardson, called "Rich Neck" and known by the name of High Roads Farm with the with the marsh thereto attached which I bought of Benjamin David and McKnight, which by referring to the deeds will more fully appear, with all and singular the improvements and appurtenances thereto belonging...to have and to hold etc.....to my daughter Juliet to her the said Juliet Cummins her heirs and assigns forever...(not subject to husband David J. Cummins' debts).....and in case my daughter Juliet shall die without any lawful child or issue living at the time of her decease or in case of the decease of any such child or children of my said daughter Juliet, without lawful issue, then I give and devise etc.....

John Richardson and wife  
to  
William Polk

-----  
|  
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**DEED**  
March 25, 1842.  
I - 5 - 418.

All those certain two tracts or parcels of land and marsh situate, lying and being in Appoquinimink Hundred in the County of New Castle aforesaid and severally described as follows, to wit:

No. 2. A tract of land or marsh, the boundaries whereof are as follows, to wit:BEGINNING at a stake on the West side of the River Delaware, being a corner marsh which Matthew Real formerly purchased from a certain Simon Gythen, thence with a line dividing the one from the other, South fifty-six degrees West to a branch or gut called Simons Branch which makes out of Blackbird Creek, thence down said branch by the several courses thereof to its confluence with Delaware River aforesaid, thence down said River to the first mentioned stake or place of BEGINNING containing about one hundred and fifty acres.

The plot of land to be conveyed in the deed to the State of Delaware on which the monument to mark the mouth of the Delaware River is to be erected is a part of the tract of land above described.

-----  
William Herdman, Sheriff

to

John Richardson

Deed Poll.

September 8, 1828,

G - 4 - 279.

No. 2. Here described same as that last above.

Sold as property of William Frazier.....

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DE04862

I do hereby certify that I have examined the title to the plot of land ten feet square, conveyed by Alfred W. Cummins et.al. to the State of Delaware, by indenture dated the Twenty-seventh day of April, A. D. 1907, now lodged in the Recorders Office at Wilmington for Record, and that in my opinion said deed conveys to the State of Delaware, a good fee simple title to the land therein described, clear of all liens of record.

George N. Davis.

May 21, 1907.

The Secretary reported that the Deed of Alfred W. Cummins et.al. to the State of Delaware for said land was lodged in the Recorders Office at Wilmington, for record.

It was moved that the bill of George N. Davis for services in acquiring said deed and searching the title to the land therein mentioned, and the purchase money for said land, amounting in the whole to Sixty seven Dollars and Fifty cents (\$67.50), be paid and that an order be drawn for said amount which motion being duly seconded was adopted.

The Secretary reported that on May 2nd, he had written to the Honorable J. Boyd Avis, Secretary of the New Jersey Commissioners, the following letter, viz:

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Wilmington, Del., May 2, 1907.

Hon. J. Boyd Avis,  
Woodbury, N. J.

My Dear Senator:-

Mr. Davidson, the contractor for the monuments, is ready to erect them at any time. The Delaware Commissioners have about secured the title to the land for their monument and will be ready to have it put up any time after the middle of next week. The contractor desires to take both monuments down the River at the same time and erect them while his men are down there.

Will you please let me know when it will suit your Commission to have your monument erected?

Of course we will need the inspector, provided for, as soon as the contractor starts the putting up of the monuments. I recall that you were the committee to employ such inspector.

Yours respectfully,

Walter H. Hayes,  
Secretary.

that on May 10th, he had received a letter in reply to the above from Secretary Avis which reads as follows:

Woodbury, N. J.

May 10, 1907.

Hon. Walter H. Hayes,  
Wilmington, Del.

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DE04864

My dear Mr. Hayes,

I have received your letter advising me of the fact that Mr. Davidson is ready to erect the monuments.

I will take this matter up with the other members of the Jersey Commission and make final arrangements for the erection of the monument on our shore, and advise you as early as possible.

Yours very truly,

John Boyd Avis.

and that he had informed contractor Davidson of the position of the New Jersey Commissioners.

Mr. Hayes moved that the actual expenses of the Commissioners, viz: A. B. Cooper \$8.70, William S. Hilles \$6.00, and Walter H. Hayes, \$12.10, be paid and that orders be drawn to the respective commissioners for said amounts which motion being duly seconded was adopted.

The Secretary reported that on the 27th of March he received from the State Treasurer, the State warrant for Four hundred dollars (\$400.00) and had deposited the same in the Equitable Guarantee and Trust Company.

On motion the commission adjourned.



Secretary.



967 Market Street,  
Wilmington, Del., June, 24, 1907.  
10.30 A. M.

The Commission met pursuant to the following notice in writing of the President, viz:

Wilmington, Del., June 22, 1907.

Dear Sir:-

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) will be held at the office of the Commissioners, 907 Market Street in this City, Monday June 24, 1907 at 11 o'clock A. M.

Yours respectfully,

Alexander B. Cooper.

President.

Present: Messrs. Cooper, Hilles and Hayes:

The minutes of the last meeting were read and approved. The Secretary notified the Commission that he had in his possession, the deed to the State of Delaware, for the land near Liston's Point upon which it was proposed to erect the Delaware monument which deed duly recorded is in the words, letters and figures following, to wit;

THIS INDENTURE, made the twenty-seventh day of April in the year of our LORD one thousand nine hundred and seven;  
BETWEEN, Albert W. Cummins of Wilmington, New Castle

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DE04866

County, State of Delaware, Margaret C. Lea (widow), of the  
Borough of Manhattan, County of New York and State of New  
York, Susan C. Erben (widow), of Philadelphia, County of Phila-  
delphia, State of Pennsylvania, Edith C. Davis and Eugene, her  
husband and Juliet Agnes Cummins of Smyrna, Kent County, State  
of Delaware, parties of the first part and The State of Delaware,  
party of the second part.

WITNESSETH, That the said parties of the first part, for  
and in consideration of the sum of Five Dollars, current lawful  
money of the United States of America, unto them well and truly  
paid by the said party of the second part, at and before the  
sealing and delivery of these presents, the receipt whereof is  
hereby acknowledged, have granted, bargained, sold, aliened, en-  
feoffed, released, conveyed and confirmed, and by these presents  
do grant, bargain, sell, alien, enfeoff, release, convey and con-  
firm unto the said party of the second part and its successors.

ALL, that certain lot or piece of land situate at or near  
a point on the Delaware River, known as Liston's Point, in  
Appoquinimink Hundred, New Castle County and State of Delaware,  
to wit; a certain plot of ground situate as aforesaid, ten feet  
square, in the centre of which is to be erected one of the monu-  
ments, to wit; the one on the Delaware shore which is to mark the  
dividing line between the Delaware River and Bay. Being a part  
of the same premises of which Juliet P. Cummins died seised, hav-  
ing previously on the sixteenth day of June, A. D. 1892, made her  
last will and testament, wherein she devised to the grantors

herein, certain premises including the above described lot.

TOGETHER with all and singular the improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand, whatsoever of the said parties of the first part in law, equity or otherwise, howsoever, of, in and to the same, and every part and parcel thereof reserving to the grantors herein, their heirs and assigns, the right and privilege to prohibit and enjoin the public at large from passing over other premises of these grantors in order to reach the plot of ground hereby conveyed.

TO HAVE AND TO HOLD the said lot, hereditaments and premises, hereby granted, or mentioned, or intended so to be, with the appurtenances unto the said party of the second part and its successors, to and for the only proper use and behoof of the said party of the second part and its successors forever. Provided however, that in case the premises herein granted, shall cease to be used by The State of Delaware for the purpose of erecting and maintaining a monument thereon to mark the dividing line between the Delaware River and Bay, then these premises shall revert to the grantors herein, their heirs and assigns forever.

AND the said parties of the first part, their executors and administrators, do by these presents, covenant, grant and agree to and with the said party of the second part and its successors that the said parties of the first part, their Heirs all and singular, the hereditaments and premises herein above described and granted or mentioned or intended so to be, with the appurtenances unto the said party of the second part and its successors against the said parties of the first part, their heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by, through from, or under him, her, them or any of them shall and will by these presents WARRANT and forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their Hands and Seals dated the day and year first above written.

SEALED AND DELIVERED I

IN THE PRESENCE OF

George N. Davis	as to		Albert W. Cummins	(SEAL)
A. W. Meads	as to		Margaret C. Lea	(SEAL)
Joseph R. Fahy	as to		Susan C. Erben	(SEAL)
Ida Lovegrove			Edith C. Davis	(SEAL)
Geo. W. Tilghman			Eugene Davis	(SEAL)
as to	Eugene Davis and		Juliet Agnes Cummins	(SEAL)
	Juliet Agnes Cummins			

STATE OF DELAWARE |  
:SS.  
NEW CASTLE COUNTY |

BE IT REMEMBERED, That on this Ninth day of May  
in the year of our LORD one thousand nine hundred and seven,  
personally came before me George N. Davis, a Notary Public for  
the State of Delaware, Albert W. Cummins, party to this indenture  
known to me personally to be such and acknowledged this indenture  
to b e his deed.

GIVEN under my Hand and Seal of office the day  
and year aforesaid.

George N. Davis  
Notary Public.

(SEAL)

STATE OF NEW YORK |  
:SS.  
COUNTY OF NEW YORK |

BE IT REMEMBERED, That on this 27th day of April  
in the year of our LORD, one thousand nine hundred and seven,  
personally came before me, A. W. Mead, a Notary Public within  
and for the County and State aforesaid, Margaret C. Lea (widow),  
party to this indenture known to me personally to be such and  
acknowledged this indenture to be her deed.

GIVEN under my hand and seal of office the day  
and year aforesaid.

A. W. Mead

(SEAL)

Notary Public.  
N. Y. Co. # 72.

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DE04870

STATE OF PENNSYLVANIA |  
: SS.  
COUNTY OF PHILADELPHIA |

BE IT REMEMBERED, That on this Seventh day of  
May in the year of our LORD one thousand nine hundred and seven,  
personally came before me a Notary Public for the Commonwealth of  
Pennsylvania, residing in the City of Philadelphia, Susan C.  
Erben, (widow), party to this indenture, known to me personally  
to be such, and acknowledged this indenture to be her deed.

GIVEN under my hand and seal of office the day  
and year aforesaid.

Joseph R. Fahy  
Notary Public  
14 So. Broad St. Phila., Pa.  
Commission Expires  
March 12, 1911.

(SEAL)

STATE OF DELAWARE | SS.  
KENT COUNTY |

BE IT REMEMBERED, That on this Eleventh day of May in the year of our LORD one thousand nine hundred and seven, personally came before me, George W. Tilghman a Notary Public for the State of Delaware, Juliet Agnes Cummins, Eugene Davis and Edith C. Davis his wife, parties to this indenture, known to me personally to be such and severally acknowledged this indenture to be their deed and the said Edith C. Davis being at the same time privately examined by me, apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure.

GIVEN under my hand and seal of office the day and year aforesaid.

George W. Tilghman

Notary Public.

(SEAL)

Endorsed on the back of the Deed is the following:  
Received for Record, May 25th A. D., 1907. H. H. Billand Recorder  
Fee for Recording &c. \$2.50. Paid.

STATE OF DELAWARE |  
NEW CASTLE COUNTY, |

Recorded in the Recorder's Office at Wilmington, in  
Deed Record, I. Vol. 21, Page 259 &c., the 15th day of May A. D.  
1907.

Witness my hand and official seal.

H. H. Billany

Recorder.

The Secretary offered the following preambles and  
resolution viz:

WHEREAS, the Delaware Commissioners, have secured  
title to the land upon which The Delaware monument is to be erect-  
ed on the shore of the Delaware Bay and have selected the loca-  
tion for the same and

WHEREAS, William J. Davidson, the contractor for the  
cutting and erecting of said monument, has notified this Commis-  
sion that he is prepared at any time to place The Delaware monu-  
ment and the New Jersey Monument in position and that he desires  
to do so as speedily as possible.

THEREFORE BE IT RESOLVED, That the Secretary is hereby  
directed to notify the New Jersey Commissioners of the foregoing  
facts and that the Delaware Commissioners urgently request that  
said monuments be placed in position on the shores of New Jersey  
and Delaware soon, as this Commission desires to close its work.



Mr. Hayes moved the adoption of the said resolution and preambles, which motion being duly seconded, was unanimously adopted and the Secretary was directed to send forthwith a copy of the same to the New Jersey Commissioners.

On motion the Commission adjourned.

*Walter H. Hayes*  
Secretary.

1516 Walnut St., Philadelphia, Pa.

May 12, 1908.

The Joint Commission met at 3 P. M. pursuant to the following notice:

Dear Sir:-

A meeting of the Joint Commission (Delaware-New Jersey Fisheries Compact), is hereby called to meet Tuesday the 12th day of May, 1908, at 3 P. M. at the University Club, 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,

Alexander B. Cooper,

President.

Per. H.

Present: Messrs Cooper, Hilles, Hayes, Avis and Strimple.


President Cooper stated the object of the meeting to be, to arrange for the speedy erection of both monuments and stated that the Delaware Commissioners were ready at any time.

Mr. Avis, one of the Commissioners from New Jersey, reported that their commission would be ready in two weeks to select a site for the New Jersey monument and that they would notify Mr. Davidson, the contractor, of the time of their making

such selection.

The Delaware Commissioners presented a bill of \$22.50, being one-half the charter price of tug Taurus and tender on June 22, 1906, and which had been paid by them to the New Jersey Commissioners who stated that they would pay the same at once.

On motion adjourned.

A handwritten signature in cursive script, appearing to read "Walter H. Hayes".

Secretary.

Wilmington, Del., July 15, 1908.

President Cooper and Secretary Hayes of the Commission, (Mr. Hilles being away), proceeded on the Tug Taurus, accompanied by Herbert H. Ward, Esq., Frank L. Speakman, Esq., Albert W. Cummings of the Evening Journal, William McVey of the Morning News, J. Clarence Dillon of the Every Evening, James P. Jones, Major William J. Black, John H. Rodney, Esq., Andred Bryson, Mr. Joseph <sup>Harry</sup> Rogers, Mr. J. Henry Staddleman, and Mr. Ayers, the foreman for the Contractor for the monuments, down the river to Hope's Creek, pointed out to Mr. Ayers about the location of the New Jersey monument and then proceeded to Liston's Point where Messrs Cooper, Hayes, Cummings and Ayers staked out the site for the Delaware monument.

It was decided on the trip to have both monuments photographed at the expense of the Joint Commission, subject to the approval of the New Jersey Commission. The contractor was instructed to proceed as soon as possible and erect the two monuments.

The Commission returned and reached Wilmington at 8.30 P. M.



Secretary.

907 Market Street, Wilmington, Del.,

August 31, 1908.

10 o'clock A. M.

The Commission met pursuant to the following notice in writing of the President;

Wilmington, Del., August 29, 1908.

Dear Sir:-

A meeting of the Delaware Commissioners (Delaware-New Jersey Fisheries Compact) will be held at the office of the Commissioners, 907 Market Street in this City, Monday, August 31, 1908, at 10 o'clock A. M.

Yours respectfully,

Alexander B. Cooper.

President.

Present: Messrs. Cooper, Hilles and Hayes.

The minutes of the last two meetings were read and approved.

The Secretary notified the Commission that the two monuments had been erected and that he had received the certificate of the Inspector, Mr. John H. Avis, which certificate is in the words, figures and letters following, viz:

Woodbury, New Jersey,

August, 1908.

To Alexander B. Cooper, William S. Hilles, Commissioners appointed by the State of Delaware, William J. Bradley,

-202-

DE04878

John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the Inspector employed and appointed by the above named commission, in accordance with a certain agreement with one William Davidson for the erection of monuments on the New Jersey and Delaware Shore, marking the dividing line between the Delaware Bay and Delaware River, do hereby certify that in the construction of said monuments, the said William Davidson built and constructed in the foundations thereof an additional stone and concrete work not required by the contract to the extent of about sixty cubic feet.

Respectfully submitted,

J. H. Avis

Inspector.

Woodbury, New Jersey,

1908.

To Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the inspector employed and appointed by the above named Commission in accordance with the provisions of a certain agreement made in triplicate originals

by the said Commissioners, with one William Davidson, dated October 31, Nineteen hundred and six, do hereby certify and report that I have personally supervised and inspected the erection of the monuments set out in said agreement, and certify that the monuments provided in said agreement to be erected on the Delaware shore near "Liston's Point" is of Brandywine granite eight feet four inches in height, and one foot six inches square at the base, tapering to one foot square near the top and bevelled to a point at least four inches above the top square. One side of said monument is polished and has cut thereon the inscription provided for in the said contract.

And I do further certify that said monument was erected by the said William Davidson on the Fourth day of August Nineteen hundred and eight.

I do further certify that the monument provided for to be erected on the Jersey shore near the mouth of Hope Creek is of a character similar to that erected at Liston's Point; that one side of said monument is polished and has cut thereon the inscription provided for in said agreement, and that the said monument was erected by the said William Davidson on the Jersey Shore on the Fifth day of August Nineteen hundred and eight.

I do further certify that each of said monuments was set on a concrete foundation at least three feet deep, said

concrete foundations is four feet square at the bottom and continues at that size for six inches in height, then tapers on all sides to the top of the concrete, which concrete at the top is two feet and six inches square; that said monuments have both been erected at the points provided for in the said agreement and selected by the said Commissioners.

I do further certify that said monuments are both finished and erected in a good, workmanlike manner, under my supervision and direction, and in all things in accordance with the terms of the agreement hereinbefore referred to.

All of which is respectfully submitted this Eleventh day of August A. D., nineteen hundred and eight.

This certificate is executed in duplicate originals, one of which is for each of the aforesaid Commissions.

J. H. Avis

Inspector.

The Secretary presented the following bills as being due from the Delaware Commissioners, John H. Avis, Inspector, \$30.00; Charles Warner Company for Tug Taurus and Tender on August 15, \$25.00; A. L. Ainscow, lunch &c., August 15, \$25.00; Secretary for stamps, \$1.00; which on motion of Mr. Hilles were



directed to be paid and checks drawn for their respective amounts to the proper parties.

The Secretary also presented the bill of Mr. William Davidson to the Delaware and New Jersey Commissioners for the two monuments and their erection, being a total of \$420.06, and on motion of Mr. Hilles, it was ordered that \$210.03, the share or portion of the Delaware Commissioners, be paid to Mr. Davidson and a check drawn for that amount. This bill includes an item of \$32.06 for interest from March 1st, 1907 to August 10, 1908, which was considered should be paid, as the Contractor was ready, under the terms of the contract, to erect the monuments by March 1st, 1907.

The Secretary also presented the bill of Harry E. Bucher for one dozen photographs of the Delaware monument amounting to \$8.00, which, on Mr. Hilles' further motion was directed to be paid and check drawn to that amount.

On motion of Mr. Hilles, seconded and adopted, the Secretary was directed to notify the New Jersey Commissioners that the Delaware Commissioners have paid for their share of the monuments and also their share of the charges of the Inspector, and that this practically wound up the affairs of the Delaware Commissioners. It was also directed that the Secretary notify the New Jersey Commissioners, that unless it appeared to them desirable, there would be no further meeting of the Joint

Commission, but if the New Jersey Commissioners wished it, the Delaware Commissioners were ready to meet with them at any time.

On motion of Mr. Hilles, duly seconded and passed, the Secretary was directed to file all the records and papers of the Commission with the Secretary of State as soon as possible after the winding up of the affairs of the Commission and also, that all money standing in the name of the Commissioners after the payment of all bills, to be paid over to the State Treasurer.

On motion adjourned.

  
Secretary.

(204)

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KG 0914.005  
Delaware Commissioners DE-NJ.  
Fisheries Compact  
Minute Books

Original Minute Book #1 1905-1908

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,  
SECRETARY.

DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)

907 MARKET STREET,  
WILMINGTON, DEL.

*Copy*

January 5, 1907

Hon. William J. Bradley,

Pres. N. J. Com. & Co.

Dear Senator:

The Del. Commission have been waiting, since our last joint meeting in Phila. Oct. 17th 1906, for the amendments to the contemplated uniform fishing law, between Del. and N. J. but as yet have not received them. Our secretary Mr. Hayes informs me that under the direction of our commission he has written several times to your secretary Senator Avis, but was unable to hear from him, until last Saturday, when he reached him over the telephone. He then said he would submit them this week, but they have not yet been received. I respectfully call your attention to the necessity of speedy action in the matter. Our Legislature is now in session, sixty days is the paid limit, and the bill and our report should be presented as soon as possible, to enable it to act promptly.

The amendments I understand are nearly completed and ready for action.

Will you please give it your attention.

With regards to yourself and Senator Avis,

I am very truly yours,

*Wm. S. Hilles*  
*Per [Signature]*

DE16148

DE Public Archives

0914.1

DE Commissioners

Fisheries Comptrol

1905-1907

Brian's

338 631

DE16149

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,  
SECRETARY.

**DELAWARE COMMISSIONERS,**  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

Wilmington, Del., October, 2, 1906.

Walter H. Hayes, Esq.,  
1025 Market St.,  
Wilmington, Del.

Dear Sir:-

A meeting of the Joint Commission (Delaware -New Jersey Fisheries Compact) is hereby called to meet at the University Club, 1516 Walnut Street, Philadelphia, Pa., on Friday the 5th day of October, 1906, at 2.30 o'clock P. M.

  
President.

DE16140

0914.1

Delaware Commissioners  
Fisheries Compact

General Files  
1905-1907

Brian's

338631

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM B. HILLES.

WALTER H. HAYES,  
SECRETARY.

DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

January 8, 1908

Walter H. Hayes, Esq.

Secretary &c.

Dear Sir:-

I have just seen Mr. Hilles, and we both think that a joint meeting of the commission, as above, should be called at once.

Friday of this week will suit him. If convenient to you, will you issue a call for a meeting at the University Club, (1514 Walnut Street, I think,) Philadelphia, on Friday morning of this week, at 11 O'clock, and urge the importance of the meeting, on the N. J. Commissioners.

I called to see you this A. M. but you had gone to Dover.

Yours very truly,



Pres. Joint Com.

DE16152



0914.1

DE Commissioner  
Fisheries Compact

Brinn's  
338631

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM B. HILLES.

WALTER H. HAYES,  
SECRETARY.

**DELAWARE COMMISSIONERS,**  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

Wilmington, Del., Jan., 14, 1907.

Hon. Walter H. Hayes,  
1025 Market St.,  
Wilmington, Del.

Dear Sir:-

A meeting of the joint commission (Delaware-New Jersey Fisheries Compact) is hereby called to meet Wednesday the 16th day of January, 1907, at 2.30 P. M. at the University Club 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,



President.

DE18308

STATE OF NEW JERSEY

ROBERT H. MFCARTER  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL

██████████ NELSON B. GASKILL,  
ASSISTANT ATTORNEY GENERAL

Trenton, N.J., Jan. 15, 1907.

Hon. R. Wayne Parker,  
House of Representatives,  
Washington, D.C.

My dear Mr. Parker:-

I beg to enclose herewith, for your information,  
copy of a letter to me dated Jan. 14, 1907, from the  
Attorney General of Delaware.

Very truly yours,



Attorney General.

**REPORT**  
**Of Delaware Commissioners**  
**On Delaware and New Jersey Fisheries Compact.**

---

Wilmington, Del., Feb. 2, 1907.

Statement of Moneys received and expended by the Delaware Commissioners (Delaware-New-Jersey Fisheries Compact).

**RECEIPTS.**

To cash received from the State Treasurer:

1905.	
Nov. 24, cash .....	\$ 46.75
1906.	
April 11, to cash received .....	\$200.00
Oct. 2, to cash .....	\$ 73.85
1907.	
Jan. 7, to cash redeposited by Walter H. Hayes, Sec, retary, being the excess of the amount paid him by check No. 2, of April 13, 1906, over expenses	\$ 6.51
Feb. 2, to cash of State Treasurer .....	\$ 52.00
	\$379.11
Total .....	
Total expenditures to date .....	\$361.34
Balance in hands of Commissioners Feb. 2, 1907.....	\$ 17.77

DE18413

EXPENDITURES.

1906.	Jan. 20, check No. 1, C. M. Smith Printing and Stationary Company .....	\$ 41.75
	April 13, Check No. 2, Walter Hayes, Sec., expenses, &c. ....	\$ 40.00
	May 7, Check No. 3, Florence Preston, copying fish laws .....	\$ 5.00
	May 7, Check No. 4, P. J. Mulligan, hall rent .....	\$ 5.00
	May 7, Check No. 5, Bennett F. Lancaster, hall rent .....	\$ 1.50
	May 7, Check No. 6, Bross Willard Printing Co., posters .....	\$ 3.50
	May 7, Check No. 7, Mercantile Printing Co., posters ..	\$ 4.60
	May 7, Check No. 8, Charles G. Guyer, papers, backings, &c., used in copying laws .....	\$ 3.05
	May 7, Check No. 9, Charles G. Guyer, stenographic services and reporting meetings .....	\$123.50
	Aug. 7, Check No. 10, West. Union Tele. Co. ....	\$ .59
	Sept. 20, Check No. 11, Joseph L. Cahall, Sec. of State, \$	4.00
	Oct. 25, Check No. 1, Chas. Warner Co., tug Taurus, \$	45.00
	Oct. 25, Check No. 13, A. L. Ainscow, lunch, &c. ....	\$ 28.85
1907.	Feb. 2, Check No. 14, Charles G. Guyer, stenographic services, &c. ....	\$ 52.00
	Feb. 2, Check No. 15, William D. Hudson, Register of Wills, Kent County, copy of will of Julia P. Cummins .....	\$ 3.00
	Total .....	\$361.34

To the General Assembly of the State of Delaware:

The Commissioners appointed on the part of the State of Delaware by an Act of the General Assembly, approved March 23d, 1905, to confer with like Commissioners appointed by the Legislature of the State of New Jersey, for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, and also to ascertain the dividing line between said River

and Bay, and upon each of the shores of the said two States, where said dividing line extended shall intersect the same, and at the joint expense of said States, erect a suitable monument to mark the said dividing line, do respectfully report to the General Assembly as follows:

That, in accordance with the provisions of the said Act of Assembly, they did, on the first day of April, A. D., 1905, meet and after being duly qualified, according to law, did organize by the election of Alexander B. Cooper, President, and Walter H. Hayes, Secretary, and at once entered upon the performance of their duties. A large number of printed notices were prepared and mailed to prominent fishermen and others throughout the State, soliciting information upon the subject-matter before the Commission. A number of public meetings were called by the Commission by public advertisements and held at prominent points in the State, to wit, at New Castle, Delaware City, Lewes, Dover and Wilmington. These meetings were all well attended by men engaged and interested in every branch of fishing in the Delaware Bay and River. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore in existence in this State, the Commissioners, after due and careful consideration, drafted an outline of a bill providing for uniform laws, in accordance with the information and data thus obtained.

They also communicated with the Commissioners on the part of the State of New Jersey, to wit, William J. Bradley, John Boyd Avis and James Strimple, and arranged for meetings of the Joint Commission in the City of Philadelphia.

On the fifteenth day of December, 1905, the first joint meeting was held in the City of Philadelphia, and organization of the Joint Commission was effected by electing Alexander B. Cooper, President, and John Boyd Avis, Secretary. The matters committed to the Joint Commission were taken up, thoroughly discussed, and a mode of proceeding agreed upon. Meetings of the Joint Commissioners and the respective State Commissioners were held from time to time until the sixteenth day or January, 1907, upon which last named date a bill provid-

ing for uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said two States was presented to the Joint Commission, and after full discussion, amendment and consideration, was agreed upon. A copy of the bill is herewith submitted to the General Assembly of the State of Delaware, with a certificate of approval annexed, signed by all of the Commissioners on behalf of both States, to take such action thereon, as is provided in, "An Act to ratify and confirm the compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay and to authorize the execution thereof," approved March 20th, 1905, and published in Volume 23, Laws of Delaware, page 12.

Owing to slight differences in procedure, in the two States, it was found necessary to make some changes in relation thereto, in the Act to be adopted by the State of New Jersey, and the Commissioners return herewith, a copy of the New Jersey bill as agreed upon by the Joint Commission as aforesaid, with a certificate of approval signed by all of the Commissioners on the part of both States.

With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the system in force in each of the respective States, the said bills are alike, and provide uniform laws for the catching and taking of fish in the waters of the Delaware River and Bay between the said States.

The Commissioners on the part of this State, and the Commissioners on the part of the State of New Jersey, have submitted the bills for uniform laws, as so drawn, to the Attorneys General of the respective States, and have received opinions from them respectively, approving said laws.

The provisions of the bill in the judgment of the Commissioners are in accord with the prevailing opinions of the fishermen of this State and those interested in the preservation and taking of fish in said waters, as expressed and shown from the testimony taken by the Commissioners at the various meetings held, and from such other sources as have been available to the Commissioners.

The most serious difference of opinion presented to the Commissioners was as to the Menhaden Fisheries,—and was between the catchers and takers of food fish in the Delaware Bay and River, and the Menhaden fishermen who have large and valuable plants at Lewes in this State, and elsewhere. A special hearing was given to the Menhaden fishermen in the City of Wilmington. At which meeting it was strongly urged by those representing the Menhaden Fisheries, that, notwithstanding a prevailing public opinion to the contrary, they were not catchers of food fish to any great extent, and that their operations were rather a benefit, than a detriment to the other fishing industries. Outside of those directly interested in the Menhaden Fisheries, the evidence was very strong that during the latter part of the month of August, and particularly in the month of September, many small food fish in passing from the waters of the Delaware River and Bay are captured and destroyed by the Menhaden fishermen. Therefore, after a full investigation and thorough consideration of all the information they have been able to get on the subject from both sides, the Commissioners are of the opinion that Menhaden fishing should not be allowed in the Delaware Bay after the thirty-first day of August in each year. In this connection, the Commissioners would also say that they have carefully examined and considered the reports of the United States Fish Commission, a special Commission appointed by the State of New Jersey, and much literature on the subject,—as well as the testimony of persons having a practical knowledge of the conditions.

In view of the undoubted fact of the gradual disappearance of the shad from said waters, and the almost total disappearance of the valuable sturgeon industries, the Commissioners have been especially solicitous to ascertain what measures of protection should be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the Menhaden fishing as heretofore carried on, and the pollution of the waters, and they have endeavored to guard against the total extinction of these valuable fish in the provisions of the bill herewith submitted.

these monuments amounts to Three Hundred and Seventy Dollars. The contract was awarded to said Davidson, as he was the lowest bidder for the same, in response to proposals therefor submitted by the Commission. In addition, the Joint Commission has provided that the said monuments shall be erected under the supervision and direction of a competent inspector employed for that purpose by the Joint Commission, and subject to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet, four inches high, one foot and six inches square at the base, tapering to one foot square near the top, and then beveled to a point at least four inches above the top square. One side of each of said monuments is to be polished, and each of said monuments is to be set up on a concrete foundation three feet deep, said concrete to be laid on good timber or stone slab bottom. Each concrete foundation to be at least four feet square at the bottom, to continue at that size for six inches in height, thence to taper on all sides to the top of the concrete which shall be at least two feet and six inches square. Each of said monuments is to be of Brandywine granite, and on the polished side of the monument to be erected on the Delaware shore is to be the following inscription:

**MOUTH OF THE DELAWARE RIVER.**

A straight line drawn from the center of this monument, to the center of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

ALEXANDER B. COOPER,  
WILLIAM S. HILLES,  
WALTER H. HAYES,  
Commissioners of Delaware.  
WILLIAM J. BRADLEY,  
JOHN BOYD AVIS,  
JAMES STRIMPLE,  
Commissioners of New Jersey.

Another duty imposed by the General Assembly upon the Commissioners was to ascertain and mark the dividing line between the Delaware River and Bay. They examined many persons,—captains, pilots and others—familiar with the waters, United States Government Charts, and on the twenty-second day of June, 1906, the Joint Commission boarded the tug "Taurus" and went down the Delaware River to ascertain the dividing line between it and the Delaware Bay. They found no little difficulty in doing this, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monuments. After a thorough and careful inspection, however, of both sides of the said River, and in view of the information above mentioned, they determined "That a monument should be erected on the Delaware shore, at or near J. I. Ston's Point, and that a similar monument should be erected on the New Jersey shore near the mouth of Hope Creek, and that a straight line drawn through the center of said monuments, across the body of water intervening, should be the line dividing Delaware River from the Delaware Bay," and thereupon they determined to acquire title in the State of Delaware to a sufficient quantity of land upon which said monument is to be erected on the Delaware shore, and instructed the Secretary to ascertain if such a title could be obtained. They have arranged with the owners of said land to convey to the State of Delaware a sufficient quantity thereof, not exceeding ten feet square, upon which said monument is to be erected, at a cost not to exceed Five Dollars. The Commissioners feel that the State of Delaware is indebted for the public-spirited liberality of Albert W. Cummins and his sisters, the owners of this land, for practically donating it to the State for this purpose.

On the thirty-first day of October, 1906, the Joint Commission entered into a contract with William Davidson of the City of Wilmington, Delaware, a competent and trustworthy dealer in, and manufacturer of monuments, to erect two suitable monuments, one on the Delaware shore at the point above designated, and one on New Jersey shore at the point above designated. The cost for the erection of, and inscription on both of

And on the polished side of the monument to be erected on the New Jersey shore is to be the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the center of this monument, to the center of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

WILLIAM J. BRADLEY,  
JOHN BOYD AVIS,  
JAMES STRIMPLE,  
Commissioners of New Jersey.  
ALEXANDER B. COOPER,  
WILLIAM S. HILLES,  
WALTER H. HAYES,  
Commissioners of Delaware.

Under the terms of the contract, these monuments are to be erected on or before the first day of March, A. D. 1907.

The Commissioners return herewith a statement of the necessary expenses incurred by them attendant upon the execution of their duties as said Commissioners, together with receipted vouchers for all payments made. They also return the minutes of the Commissioners of this State, the minutes of the Joint Commission, the typewritten copy of the testimony taken before them, together with the contract for the erection of said monuments.

It will be necessary for the Commissioners to hereafter draw from the State Treasury, out of the funds appropriated, an amount sufficient to pay for one-half of the cost of the making, erection and inspection of said monuments, and other expenses.

Respectfully submitted,  
ALEXANDER B. COOPER,  
WILLIAM S. HILLES,  
WALTER H. HAYES,  
Commissioners for the State of Delaware.



Preliminary Report

OF THE

Commission For The Investigation  
of Salt Water Fishing.

1906.

LETTER OF TRANSMITTAL.

To His Excellency, Edward C. Stokes, Governor, and  
to the Members of the Senate and General Assembly  
of the State of New Jersey :

In accordance with the provisions of the resolution providing  
for our appointment your commission present the following re-  
port.

GEORGE L. SHINN, Chairman,  
JOSEPH CRAWFORD,  
CHARLES A. SHRINER, Secretary.

March 12, 1906.

RESOLUTION PROVIDING FOR THE APPOINTMENT OF THE COMMISSION.

Whereas, There is a growing sentiment in this State in favor of the regulation of the taking and the better protection of our salt water fishes, and

Whereas, The Governor has called attention to the matter in his last message to the Legislature; therefore, be it

Resolved, That the Governor be requested, and he is hereby authorized, to appoint a commission of three persons conversant with the matter whose duty it shall be to make a report, if possible, to the present Legislature, setting forth such facts and conclusions as they may arrive at, together with such measures as they may deem advisable. Such commission shall give hearings in the State House in this city at such time or times as may be convenient for members of the Legislature, who may desire to attend, giving due notice thereof to the Senate and House of Assembly. Such commission shall serve without pay, but may be allowed such sum for expenses as the Legislature may determine.

DE18419

PRELIMINARY REPORT OF THE COMMISSION  
FOR THE  
INVESTIGATION OF SALT WATER FISHING.

---

The resolution, under the authority of which your commission was appointed, contemplates the making of a report during the present session of the legislature. The resolution also provides that hearings shall be had in the State House at such times as might be convenient for the members of the Senate and General Assembly. With due regard for the convenience of all persons interested, the first time at which such a hearing could be held was found to be the 21st of last month and on that day a hearing was had in the Senate chamber, the whole afternoon being devoted to listening to arguments on the subjects of menhaden and poundnet fishing, your commission having designated those two subjects as the most important within the purview of its duties. On the 28th day of the same month, at the same place, another afternoon was devoted to the same purpose. The two subjects were discussed from all points of view, able speakers representing the menhaden people, the poundnet men, the sportsmen of the state and the League of Seacoast Hotel Proprietors. Diverse were the views expressed, each speaker being confident that the particular view he held was the correct one, and in almost every instance an array of facts and alleged facts was adduced to substantiate the claims of the speaker. In this way your commission has gathered together a mass of data and statistics, the proper consideration of which will occupy some time. The menhaden and poundnet questions constitute only a fraction of the work outlined for your commission and it is consequently apparent, in view of the early date contemplated for the adjournment of the legislature, that it will be impossible to make a full report on the matters to be considered.

Your commission has, however, been placed in possession of a number of facts which, in our opinion, warrant us in

making a preliminary report and in suggesting the adoption of certain measures as a basis for the further elaboration of the matters entrusted to us. We have found a state of affairs to exist which we believe calls for more restrictive legislation than is to be found on our statute books at present, and if the remedies which we suggest for existing evils should find approval on your part, we believe the interests of the public could be better subserved by prompt action in some matters than by a postponement of all for another twelve months. Our report will accordingly be limited, in the first place, to the menhaden and poundnet industries, and, in the second place, to such features of these two industries as impressed themselves most forcibly on our attention, leaving all the details and likewise all matters not connected with these two industries for future investigation and consideration. The measures we shall recommend are not of so drastic a nature as to contemplate injury to any person in the state, nor can they be so lasting in their effects that any unforeseen results may not be corrected by legislation next year. We simply desire to report on what we believe to be undisputed facts, leaving all matters of a controversial nature for determination at some future time.

### The Menhaden Industry.

It would be a difficult matter to present even a summary of the arguments advanced in favor of a continuance of the menhaden industry. The economic value of the industry to the general public is two-fold; the oil expressed from the fish being used in tanning leather and in several sciences, no substitute therefor having been discovered; the industry produces a fertilizer of a very high grade and the only article brought into competition with the fertilizer produced by the abattoirs of Chicago and other places; removing fish scrap from the market would practically establish a monopoly in the business of supplying fertilizer in favor of the so called beef trust; the products of the menhaden plants are accordingly of great value to the farming and other industries. These statements, made by counsel in behalf of the menhaden industry, were not controverted; they were not even challenged; we accordingly have no reason to doubt the truth of these contentions.

The federal government and a number of the states along the Atlantic seaboard, have at different times conducted investigations into the operations of the menhaden steamers. After considering exhaustive reports made by the Commissioners of Fisheries in various years, Congress declined to interfere with the industry. Massachusetts passed a law prohibiting the operation of purse or shirred nets in Buzzard's Bay, and Virginia enacts a license fee and limits the taking of menhaden in Chesapeake Bay to residents of the state. In no state is there any restriction as to the operation of the nets in the ocean, either for menhaden or food fish with the exception of New Jersey. In this state the law prohibits, or intends to prohibit, the taking of food fish by the menhaden steamers. In addition to this, each steamer and sailing vessel is required to take out a license, the fee ranging from one hundred to two hundred dollars according to the tonnage of the steamer, and being fixed at twenty-five dollars each for sailing vessels. According to evidence adduced, before your commission twenty-six out of the forty steamers owned by New Jersey corporations pay this license fee, the remaining fourteen steamers

being used in other waters. Of the forty other steamers, coming to the New Jersey coast from the South, none pays a license, this being due to the fact that the license law is almost impossible of enforcement. Our statutes make it the duty of the State Fish and Game Commission and its officers to enforce the license law, but the legislature has not provided the commission with the means to carry out the provisions of the law. When the wide range of ocean water along the New Jersey coast and the very irregular indentations of the coast are considered, together with the fact that each menhaden steamer carries a crew of from fifteen to thirty men, we think the failure of the Fish and Game Commissioners to enforce the law is excusable, and we were not at all surprised at the testimony adduced before us of the flagrant violations of the law on the part of southern vessels; in fact, it is apparent that the reason why any licenses are paid is because of the ownership of some of the steamers by New Jersey corporations which could be prosecuted without the seizure of the vessel contemplated by the statute. It would require fast-sailing gunboats to enforce the present statute as against vessels from other states, and the same state of affairs would exist were a prohibitive measure enacted. It would be applicable practically only to vessels owned in New Jersey.

It is also claimed in behalf of the menhaden industry, and on the highest scientific authority, that no appliances of man can possibly affect the supply of the fish in the ocean; it is claimed that the numbers of menhaden at the present day are as great as they ever were, that the fluctuations in the numbers are due to causes which human skill and study have failed to ascertain; it is also asserted that less than five per cent. of the total number of menhaden are annually captured by the menhaden steamers and that, as the capture does not take place during the spawning season, there are always enough left for a supply for the following year, especially when the almost wonderful fecundity of the fish is taken into consideration. Although these statements are based on the reports of investigations conducted by the United States Fish Commission and other high authorities, yet there is reason to

doubt at least some of them. Most of them were challenged by numerous witnesses who appeared in the interest of hand-line fishermen and most of these contended that the supply of menhaden was growing less year by year and that the menhaden industry by destroying the food reduces the numbers of edible fish. But even on this subject there was a wide diversity of opinion among hand-line fishermen, who are certainly the most interested persons in this controversy, some insisting that edible fish have decreased in quantity and others, supported by a score of affidavits, contending that there are fully as many edible fish in the ocean at present as there were half a century ago. Some residents of Atlantic City, who have spent a good many years as hand-line fishermen and who still follow that occupation, declared that it would improve their fishing if more menhaden were taken; their argument is that menhaden constitute the principal food of the bluefish and sharks and that no other fish, excepting very large weakfish, ever eat menhaden; bluefish destroy many other kinds of fish, and together with the sharks, tend to drive fish from our shores, so that if these predaceous fish were deprived of their principal food, of little value otherwise, there would be more weakfish, striped bass and other kinds of highly prized game and food fish. It should also be stated in this connection that the industry affords employment to a thousand persons in the state. On account of the manifest benefits arising from the pursuit of this industry, your commission cannot recommend any interference with it, as far as the taking of menhaden only is concerned.

But there is another feature of the menhaden industry which presents an altogether different aspect. It is contended on the part of those who regard the industry with unfavorable eyes that the menhaden steamers take large quantities of food fish and that these food fish are ground up into fertilizing material. On the part of the menhaden people, supported by the strongest evidence from the United States Fish Commission, it is contended that not enough food fish are taken to supply the crews of the vessels employed in the industry. It is probably true that, in the pursuit of their ordinary

avocation, the menhaden steamers do not take food fish in sufficient quantities to interfere with the supply, but your commission is firmly convinced that the menhaden steamers have taken food fish, not for the purpose of rendering them into fertilizing material but for the purpose of placing them in cold storage and disposed of them when the market presented a favorable opportunity and your commission is just as firmly convinced of the contention that the menhaden steamers should not be permitted to pursue any such course. In the first place, it would be a difficult matter for fish to be taken from a steamer and placed in cold storage without causing deterioration in the flesh of the fish and in many instances rendering it unfit for food, on account both of the distance the dead fish would have to be carried without ice and on account of the fact that menhaden steamers always have at least traces of putrid fish from previous hauls and are consequently not kept as clean as proper regard for public health would indicate in a vessel used to contain food for human kind. A mass of statistics supplied to your commission shows that the average wholesale price of food fish for some years to persons engaged in taking them for the market has been \$2.12 a barrel, or one and one-twenty-seventh cent per pound. With fish obtainable at so low a figure there can certainly be no demand for an increase in the facilities for taking food fish, especially if such facilities would tend to aggravate the conditions so bitterly complained of by some of the handline fishermen.

Nevertheless it has been shown that one corporation engaged in taking menhaden during the past year experimented in the taking of food fish and that some two thousand tons were placed in cold storage in a refrigerator erected in this state. That the experiment was successful seems to be indicated by preparations now alleged to be under way for an extension of this taking of food fish and the very material increase in the number of vessels used by this corporation, the latter having purchased the whole outfit of a very much larger corporation. There is reason to apprehend that numerous cold storage places will be erected in New Jersey during the coming season and, unless some legislation is adopted prohib-

iting this extension, the owners of these cold storage places will with good reason argue before the next legislature that they have with the sanction of the state invested large sums of money in an industry which affords employment to many hands and tends to supply the market with cheap fish. A further corroboration of this projected extension of the capture of food fish may be found in the contention made at both hearings of your commission that the present laws of the state permit the taking of food fish by menhaden steamers. Although we may believe that the menhaden industry should not be interfered with as long as all that is sought is menhaden yet we would respectfully urge the passage of measures which will prohibit the taking of food fish by these steamers and it is obvious that such legislation cannot be too quickly enacted. It is on this account that we would respectfully urge the passage of the following measure:

An Act to restrict the taking of fish by the use of purse or shirred nets from steam and other vessels to the taking of menhadens and to regulate the taking of such menhaden and to require a license therefor.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. Hereafter it shall be unlawful for any person or persons, corporation or corporations, to take with purse or shirred nets operated from steam or other vessels in any of the waters within the jurisdiction of this state, including the waters of the Atlantic ocean within three nautical miles of the coast line of said state, any kind of fish whatsoever, either on his account or benefit or on account and benefit of his employer, under a penalty of two hundred dollars; provided, however, that this section shall not apply to the taking of menhaden on the part of crews of vessels licensed as provided for in this act.
2. Whenever any person or persons, corporation or corporations, may intend to take menhaden with such purse or shirred nets in the waters above specified, such person or persons, corporation or corporations, shall make an application therefor to the Board of Fish and Game Commissioners of this state.
3. Upon the receipt of such application the Board of Fish and Game Commissioners shall, upon the payment to the said board

of the sum of one hundred dollars for each steam vessel of not more than fifty tons net tonnage, one hundred and twenty-five dollars for each steam vessel of over fifty tons, and not more than one hundred tons net tonnage, and two hundred dollars for each steam vessel of over one hundred tons net tonnage, said net tonnage to be determined by custom house measurement, and twenty-five dollars for each sailing vessel with tenders to be so employed in the taking of menhaden by means of such shirred or purse nets, as a license fee, issue to such person or persons, corporation or corporations, a license, duly signed by the secretary of said Board of Fish and Game Commissioners, which said license shall be valid and in force for the term of one year from the date thereof and no license shall be issued for a space of time less than one year.

4. It shall be unlawful for any person or persons, corporation or corporations, to bring into this state any weakfish, bluefish, bonito, porgy, kingfish, herring, shad or other fish generally known as edible fish for the purpose of converting said fish into fertilizer under a penalty of two hundred dollars; and it shall be unlawful for any person to convert, or in any manner to assist in converting, such fish into fertilizer, under a penalty of two hundred dollars.

5. The provisions in the first section of this act shall not apply to any persons employed on any steamer or other vessel engaged in taking menhaden, taking sufficient food fish for their own consumption and those immediately dependent upon them.

6. An act entitled "An Act to regulate fishing by steam and other vessels with shirred or purse seines in the waters of the State of New Jersey, and to require a license for such fishing," approved March 26, 1896, is hereby repealed.

7. This act shall take effect immediately.

#### The Poundnet Industry.

A great deal of what has been said in regard to the menhaden industry applies with equal force to the operation of poundnets. Evidence has been adduced before your commission to the effect that the poundnets have deprived hundreds of handline fishermen of their occupation, that a great many pounds are constructed of netting with so fine a mesh as to prevent the escape of any and all fish and that the poundnets absolutely prevent the passing up and down along the shores of

New Jersey of any kind of fish. On the other hand, it is argued that the poundnets furnish a supply of cheap fish not only to the seaside resorts but also to people living inland; that handline fishermen have, on account of the ever increasing population of our seaside resorts, found more remunerative occupation than fishing, and that the meshes of the nets used are no smaller than the demands of the industry require. The evidence against and in favor of the poundnets is voluminous and contradictory, but your commission does not feel as if it is called upon at the present time to determine this question. There are numerous arguments in favor of a restriction of the poundnet industry irrespective of the economic questions involved in the supply of cheap food fish.

One of the greatest natural advantages possessed by New Jersey is its coast. The revenue derived from New Jersey in almost countless ways on account of the influx hither of summer visitors is enormous, and is well worthy of the sedulous care of the authorities. The wishes and the welfare of these people, who add so much to the wealth of the state, are well worthy of consideration. One of the main reasons why they come here is on account of the fishing afforded by the ocean, and anything that would materially interfere with this sport should not be tolerated, unless there were some compensating agency of more importance to counterbalance it. This also applies in a very large measure to permanent residents of the state who desire to indulge in the pleasure of angling.

Nor has your commission found any reason why the operation of poundnets should not be restricted. The shad fisherman who owns a few feet of water frontage on the Delaware is required to register the same, pay a registration fee and give a bond that he will comply with the laws passed for the governing of his actions. Men who desire to build piers along the water front anywhere in the state are compelled to pay a tribute to the state through the agency of the riparian commissioners. The poundnet owners are the only persons enjoying such privileges who are exempt from any restrictions. They occupy the land which is owned by the state and

which certainly possesses a great value to them, without hindrance or compensation; they seize upon the fish, also, under the best interpretations of the law, the property of the state, without even asking permission to do so. The question of compensation to the state for the privileges enjoyed is, however, a matter of minor consideration. The aim of your commission is to suggest such legislation as will, in a measure at least, satisfy the property owners along the seaside, the anglers of the state and such other interests as have presented themselves to our attention, without, however, suggesting any restrictions which will interfere with the supply of cheap fish for all.

Owners of poundnets who appeared before your commission admitted that the mesh of the leader need not be less than seven inches for the successful operation of a poundnet; in fact, many poundnet owners use even a larger mesh, thus permitting small fish to pass by. Others, however, still insist on using a small mesh, although they admitted that they could get along very well with one of larger mesh. It is on this account that your commission would suggest the passage of an act limiting the size of mesh for the leader to six inches. A suggestion to this effect met with opposition on the part of some of the poundnet owners who had already purchased netting of smaller mesh for the coming season's fishing. In order to avoid any fault-finding on this account your commission would suggest that such poundnet owners may be permitted to use up such netting as they own at present, the limitation as to the six-inch mesh applying only when the netting at present on hand shall be used up. It was practically admitted on the part of every poundnet owner who appeared before us that a mesh of two and three-fourths inches for the heart and of two and one-fourth inches for the pocket would be amply sufficient for the demands of the industry; a number of poundnet owners use smaller mesh. Your commission would suggest restricting the mesh to the size indicated above.

One of the principal objections raised to the operation of poundnets is that they establish a screen extending over a mile

into the ocean, preventing the passage of fish in their migrations. Poundnets as at present operated are a succession of leaders, hearts and pockets, four or five of these frequently being strung together with no intervening space. In order to afford some opportunity for the fish to pass up and down the coast your commission would suggest the passage of an act requiring a space of at least two hundred feet to be left between each pocket and the next following leader. This would also do away with the objections raised by owners of sailing and motor boats that the poundnets compel them to make long detours in order to get around the nets, the two hundred feet of space intervening between pocket and leader being sufficient to permit of the passage of any kind of vessel.

According to the regulations of the Department of War no leader can begin at a point less than fifteen hundred and twenty feet from the shore. This regulation was adopted for the purpose of affording a passageway for vessels to ply in close proximity to the shore, and not with any intention of protecting the fish. That it incidentally answers the latter purpose will be admitted. But it is claimed that this regulation is not complied with by the poundnet owners, and that there have been many flagrant violations of it, of which the War Department was not aware or to which it paid no attention. The poundnet owners deny this allegation. Be this as it may, the poundnets are at present being operated under permits from the War Department, and the conditions of these permits should be observed in the interest of public welfare or they would not have been determined upon by the War Department. Now, the State of New Jersey has far better opportunities of enforcing such regulations, and your commission accordingly would suggest the enactment of a statute making the regulations of the War Department the laws of New Jersey.

For the purpose of affording proper facilities to the authorities for the enforcements of the restrictions above indicated your commission would suggest that poundnet owners be required to register their nets in the office of the county clerk of the county where they operate poundnets.



## Sandy Hook and Raritan Bay.

There is pending at present in the House of Assembly a bill providing for the prohibition of net fishing in Sandy Hook and Raritan bays and Staten Island Sound and the tributaries thereof. If an enactment of this nature had been placed upon our statute books a score of years ago it would undoubtedly have operated for the benefit of the state of New Jersey. Unfortunately, at that time the extent of poundnet fishing was not foreseen. One poundnet was erected after the other and what one person had the right to do others assumed the right to do, until there is an accumulation at the present day of some forty-four poundnets in the limited area of water indicated in the proposed law. This number is being added to every year and there can be no doubt that the existence of these nets has kept away and driven away considerable numbers of summer residents. They have precluded the possibility of indulgence in the sport of angling and have made extremely hazardous the use of motor and other boats, especially in the evening. But to pass the measure at present pending in the House of Assembly would mean the sacrificing of considerable property, of large sums of money which the state by failure to legislate to the contrary has invited the investment of. Other states, although they do not interfere with the operation of poundnets in the ocean, have restricted or prohibited them in bays and estuaries of the ocean, a policy which New Jersey would do well to follow, especially as the development and value of large tracts of land along and near the ocean depend on the use of such property for summer residences.

New York state does not tolerate netting in Jamaica Bay and other inland salt waters and the result is that large numbers of pleasure parties, many of these from New Jersey, every day during the fishing season go to New York waters, thus diverting from New Jersey a source of revenue and pleasure which should have been encouraged instead of driven away.

In Sandy Hook bay poundnets are increasing in number; they are threatening the practical closing up of the Shrews-

bury river. Fortunately so far a few, a very few, poundnets, are to be found along the bay coast of Sandy Hook, and while the prohibition of maintaining them would entail a loss on a few individuals, this loss would be trifling compared to the enormous advantages to be derived therefrom.

It is, in fact, a question whether any individual would sustain any loss. The few who, in past years, operated poundnets in the territory sought to be proscribed, have no stakes driven and the netting they may have purchased may be used in the vast expanse of water open to owners of poundnets, both in Sandy Hook and Raritan Bays and the Atlantic ocean.

Your commission would accordingly suggest the passage of the act referred to when it shall have been amended so as to apply only to the Shrewsbury river and that area of water lying between the bay shore of Sandy Hook and a line drawn from the extreme end of Sandy Hook to the steamboat dock at Atlantic Highlands.

For the reasons above stated your commission would suggest the enactment of the following :

An Act to regulate the taking of fish by means of poundnets, the construction and maintenance of such poundnets and to require their registration.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. The owner or possessor of every poundnet in any of the waters within the jurisdiction of this state, including the waters of the Atlantic ocean within three nautical miles of the coast line of said state, shall before he begins the operation of such poundnet or begins to take fish therefrom, give to the clerk of the Court of Common Pleas of the county wherein such poundnet or the greater part thereof may be, a description in writing, of said poundnet, giving the dimensions of the leader, heart and pocket and the size of the mesh ; which said description it shall be the duty of the county clerk to file in his office and to give a certificate therefor upon the payment to him of a registration fee of two dollars.

2. It shall be unlawful to erect or maintain any poundnet, the

mesh of the leader of which shall be less than six inches, stretch measurement; it shall be unlawful to erect or maintain any poundnet the mesh of the heart of which shall be less than two and three-fourths inches, stretch measurement; it shall be unlawful to erect or maintain any poundnet the mesh of the pocket of which shall be less than two and one-fourth inches, stretch measurement.

3. It shall be unlawful to erect or maintain any poundnet unless there shall be a clear and open space of at least two hundred feet between the extreme end of the pocket and the beginning of the leader of the next poundnet, and such intervening space shall be kept free and clear of any and all kinds of nets or netting.

4. It shall be unlawful to erect or maintain any poundnet the shore-end of the leader of which shall be less than fifteen hundred and twenty feet from the low water mark on the shore and it shall be unlawful to erect or maintain any poundnet the extreme pocket of which shall be more than forty-five hundred and sixty feet from low water mark at the shore.

5. Any person or persons guilty of the violation of any of the provisions of this act shall be punished by a fine of two hundred dollars.

6. The provisions of this act as far as they apply to the restriction of the sizes of mesh in the leader, heart or pocket of any poundnet shall not be held to apply to any netting in use at the time of the passage of this act or the owner of said netting, but when such netting in use at the time of the passage of this act shall have become worn out or destroyed by storm or accident then the aforesaid provisions of this act shall be held to apply to all renewals of such netting.

7. The provisions of this act shall not apply to any of the fresh waters of this state and nothing in this act shall be held to repeal or to modify any of the provisions of an act entitled "An Act for the protection of certain kinds of birds, game and fish, to regulate their method of capture and to provide open and close seasons for such capture and possession," approved April 14, 1906, and the amendments of and supplements thereto.

8. The provisions of this act shall be enforced in accordance with the provisions of an act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March 29, 1897, and the amendments of and supplements thereto.

9. This act shall take effect immediately.

An Act to restrict fishing with nets in the Shrewsbury river and that portion of Sandy Hook Bay lying between the bay shore of Sandy Hook and a line drawn from the extreme end of Sandy Hook Point to the steamboat dock at Atlantic Highlands.

Be it enacted by the Senate and General Assembly of the State of New Jersey :

1. It shall be unlawful for any person or persons, corporation or corporations, to erect or maintain, or to use, in the waters of the Shrewsbury river and of that portion of Sandy Hook Bay lying between the bay shore of Sandy Hook and a line drawn from the extreme end of Sandy Hook Point to the steamboat dock at Atlantic Highlands, any poundnet, gill net, fyke net or any kind of fixed net whatsoever for the taking of fish, or to use in said waters any sweeping seine for the taking of fish under a penalty of two hundred dollars.

2. The provisions of this act shall be enforced in accordance with the provisions of an act entitled "An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations thereof," approved March 29, 1897, and the amendments of and supplements thereto.

3. This act shall take effect immediately.

4/26/06

FACTS

CONCERNING

The Menhaden Industry

ALONG THE ATLANTIC COAST.

DE18428

## Facts Concerning the Menhaden Industry Along the Atlantic Coast.

### HISTORICAL.

The history of the menhaden industry along the Atlantic coast begins with the earliest settlement of the colonists. We find that Thomas Morton wrote in 1632 concerning Virginia :

“There is a fish (by some called shadds, by some allizes) that at the spring of the year pass up the rivers to spawn in the ponds, and are taken in such multitudes in every river that hath a pond at the end that the inhabitants doung their ground with them. You may in one township see a hundred acres together, set with these fish, every acre taking 1,000 of them, and an acre thus dressed will produce and yield so much corn as three acres without fish.”

This passage is very interesting showing the use of fish as fertilizers in Virginia over two hundred and fifty years ago.

In Governor Bradford's "History of Plimoth Plantation" an account is given of the early agricultural experiences of the Plymouth colonists. In April, 1621, at the close of the first long dreary winter, "they (as many as were able) began to plant their corn, in which service Squanto (an Indian) stood them in great stead, showing them both the manner how to set it and after how to dress and tend it. Also he told them, except they got fish and set it (in these old grounds) it would come to nothing; and he showed them that in the middle of April, they should have store enough come up the brook by which they began to build, and taught them how to take it."

It will therefore be noted that the existence of

menhaden in the waters adjacent to the Atlantic coast doubtless had considerable effect upon the maintenance of the colonists and greatly assisted in their agricultural pursuits.

Among scientists the menhaden is known as *Brevoortia tyrannus*; but it has, however, about thirty common names, among which are porgy, moss-bunkers and fat backs.

In Washington Irving's Knickerbocker's History of New York, will be found the following references:

"An old Dutch burgher, famed for his veracity, and who had been a witness of the fact, related to them that he saw the Duyvel in the shape of a huge moss-bunker, seize the sturdy Antony by the legs and drag him beneath the waves. Nobody ever attempts to swim across the creek after dark, and as to the moss-bunkers, they are held in such abhorrence that no good Dutchman will admit them to his table who loves good fish and hates the devil."

Although the use of menhaden as fertilizer dates back to the earliest history of this country, the manufacture of menhaden oil has been prosecuted for a few years only.

"Several individuals claim the honor of having been the first to discover its value. About the year 1850 Mrs. John Bartlett, of Blue Hill, near Mount Desert, Me., while boiling some fish for her chickens noticed a thin scum of oil upon the surface of the water. Some of this she bottled, and when on a visit to Boston soon after carried samples to Mr. E. B. Phillips, one of the leading oil merchants of that city, who encouraged her to bring more. The following year the Bartlett family industriously plied their gill-nets and sent to market thirteen barrels of oil, for

which they were paid at the rate of \$11 per barrel, in all \$143.

"Mr. Phillips gave them further encouragement, furnishing nets and large kettles, which they set up out of doors in brick frames, for trying out the fish. It was thought that much oil was thrown away with the refuse fish and scrap, and the idea of pressing this scrap was suggested. This was at first accomplished by pressing it in a common iron kettle with a heavy cover and a long beam for a lever; afterward by placing it under weight of heavy rocks, in barrels and tubs perforated with auger holes. Mr. Phillips subsequently fitted out some fifty parties on the coast of Maine with presses of the model known as the screw and lever press."—History of American Menhaden by G. Brown Goode. See United States Fish Commission's Report, 1877.

#### PRESENT CONDITION OF THE INDUSTRY.

At the present time there are about thirty factories along the Atlantic coast engaged in the manufacture of fish oil and fertilizer. The average amount of cash invested in each of these factories is approximately \$100,000, making a total investment, as represented by factories, of \$3,000,000. In connection with these factories about seventy-five steamers are operated, the average tonnage of which is about 150 net tons, while their value will probably average \$25,000 each; making a total investment as represented by steamers of \$1,875,000. In the operation of the factories and steamers more than five thousand men are employed including the best known and highest class fishermen along the Atlantic coast.

## ADVERSE LEGISLATION AND CRITICISM.

From time to time bills have been introduced in the legislatures of the states bordering on the Atlantic coast for the purpose of regulating the menhaden fisheries, with the idea in view of preventing the destruction of this valuable fish. As to the necessity of such legislation, we find Mr. L. E. Mattox, possibly the best informed man in this country on this subject, writes as follows:

"In fact where all the data point to the conclusion that the menhaden while on our coast are being destroyed by predaceous enemies in greater numbers every day than by man with all his appliances in a whole season, it would seem sheer unreason to establish a petty restriction of the catch lest the stock should be ultimately exhausted.

"No other state will be guilty of such folly, even if we should allow our own to be. The effect of restricting the fishery, as referred to, would be to drive the oil and guano manufacture and those engaged in it out of the state, with all their capital and equipment, and to extinguish the industrial activities set in operation by their business. The time for restriction will be when restriction has been shown to be needed. Other states have made a trial of the interference policy in the same matter and have abandoned it as uncalled for and unwise.

"The complaint that the seines 'scare' the edible fish from the interior waters may be dismissed as too trivial for notice. If the limited operations of seining scare the fish out, much more should the far more extended operations outside scare them in. The same weight is to be attached to the charge that the seines injure the shad fishery by capturing the fish."

Goode, in the history of this industry above referred to, on the point of the probable destruction of the fish, states as follows:

"Of the abundance of menhaden in times gone by we can know very little, for they have never been considered an important species, and might easily escape the observation of writers. We infer that they were abundant at the time of the Dutch colony on New York Island, two hundred years ago, from the name given to it by the New Netherlanders; in fact we have the statement, already quoted, of Dankers and Sluyter, who before 1679 saw in the bay of New York schools of innumerable fish and a sort like herring, called there mossbonkers. L'Hommedieu speaks of their abundance at the close of the last century.

"There is no evidence of a decrease in the abundance of menhaden during a period of fifteen or more years of fisheries conducted on an immense scale. It seems, therefore, that no one can reasonably predict a decrease in the future. The movements of marine fishes are capricious in the extreme. The only cases in which the fisheries have been clearly shown to exercise a pernicious effect is where the spawning fish are taken in great quantities. It has been clearly determined that the menhaden are never captured upon their spawning beds,

"The bluefish with the boulo are, however, their most destructive enemies, not even excepting man. Mr. Simpson, examining a great many of the bluefish caught on the North Carolina coast in the summer of 1874, found from one to three 'fatbacks' in the stomach of each. These corsairs of the sea, not content with what they eat, which is of itself an enormous quantity, rush ravenously through the closely crowded schools, cutting and tearing the living fish as

they go, and leaving in their wake the mangled fragments. Traces of the carnage remain for weeks in the great 'slicks' of oil so commonly seen on smooth water during the summer season.

"Is it too much, then, to multiply the three hundred millions of millions of menhaden probably consumed by the full-grown bluefish alone on the coast of New England in the summer months by ten? This would allow three thousand millions of millions of menhaden, old and young, annually destroyed in the waters of the United States, in comparison with which the number annually taken by men is perfectly insignificant. This estimate will seem extravagant at first sight, but I believe that it will be found a very moderate one by any who may take the pains to investigate the question for themselves."

In the year 1892 a committee of the United States Senate propounded to Mr. M. McDonald, at that time United States Fish Commissioner, certain questions, which are quoted herewith, together with Mr. McDonald's answers.

This report in full can be found in Miscellaneous Document No. 156, United States Senate, 52nd Congress, First Session.

"Q. Has there been a marked decrease in the abundance of the menhaden in recent years?

"A. There has been no falling off in the supply of menhaden except locally, and apparently in consequence of the low temperature of the water. As, for example, in the inshore waters north of Cape Cod, from which they have been known to absent themselves for a period of ten years.

"Q. As compared with the fish taken by man, what influence is exerted on the abundance of menhaden by predaceous fishes, birds, etc.?

"A. It has been estimated that the number of menhaden taken in seines and other forms of nets during the last season was about 700,000,000. There is no means of determining exactly how many are destroyed by birds, whales, porpoises, and other predaceous animals, but the number is believed to be far in excess of that taken by the fishery. From the stomach of a shark 100 whole menhaden have been taken and bone whales have been known to consume several barrels at a mouthful. Shoals several miles in length of porpoises have been seen in the act of destroying schools of menhaden, and it is scarcely to be doubted that they alone consume more than the entire fishing fleet. Competent observers have seen sharks covering acres of water in the midst of menhaden schools in which the fish were huddled together like flocks of frightened sheep, and the destruction caused by these voracious animals probably exceeds that brought about by porpoises. Among the sharks the spined dogfish is the most abundant and most destructive on the menhaden schooling grounds. The tunny, which reaches a weight of 1,000 pounds, is among the fishes which destroy large numbers of menhaden. The swordfish and the sailfish are also active and powerful enemies. The pollock, the cod, the squeteague, the striped bass, the bluefish, and the bonito are very destructive to the menhaden. Prof. Baird estimated that the bluefish alone probably destroyed twelve hundred million millions of fish during the season of four months in the summer and fall on the New England coast alone. Of these Goode thinks at least one quarter are 'probably menhaden'."

It would therefore seem that man as a probable factor in the extermination of menhaden

may be eliminated in the consideration of the question.

Another objection which has been urged against the menhaden fisheries is the fact that large quantities of food fish are caught by the menhaden steamers in purse nets employed in catching menhaden.

In 1892 in the report to the United States Senate above referred to, the United States Fish Commissioner on this point stated as follows:

"The investigations of the Fish Commissioner have shown that the capture of food fish by menhaden fishermen is, as a rule, very limited or rare. There is much evidence to show that generally not enough fish suitable for food have been taken to supply the tables on board the vessels. On rare occasions schools of food fish have been captured and carried to market, where they have been sold for food. In a very few instances, where they could not be sold for market purposes, they have probably been utilized in the factories. This is, however, less objectionable than cases that have often happened in the market food-fish fishery, where quantities of fish have been taken to sea from New York or other ports and thrown overboard by the crews of fishing vessels, because there was no demand for the fish and no facilities for keeping them. It is a common feature of the market fishery in almost all large market ports for lots of fish to be thrown away on frequent occasions, and in some places this is almost a daily occurrence. The captures of food-fish, however, by menhaden vessels have been so exceptional, and the total quantity so small, that the influence upon the general abundance of these species can not be appreciable. When it is understood that the annual yield of the

fisheries in the region where the menhaden industry is prosecuted amounts to more than a billion pounds in round numbers, it will be seen that the catching of a food-fish now and then, or the capture of a few barrels each season, would not materially affect the general supply of such species.

"It is fair to say, in consideration of this particular matter, that practically no fishery is entirely exempt from waste, and can not be from the very nature of the circumstances under which fishing is ordinarily prosecuted. Thus, the hook-and-line fisherman may wound many fish that he does not catch; he may take many that are not suitable for market, and consequently have to be thrown away. The gill-net fisherman will lose many fish in hauling his net that have been killed and sunk to the bottom and the condition of the market is often such that not all the fish arriving can be sold. There is probably no fishery prosecuted but what instances could be cited where fish in greater or less quantities have been thrown away, often through no fault of the fisherman, but rather because he has been powerless to control circumstances."

In 1894 Hugh M. Smith, M. D., now Deputy Fish Commissioner at Washington, made a report on this subject and if any one is in doubt as to the statement of facts made therein on the subject, he has but to write to Dr. Smith, who is possibly the best informed man on this subject in this country.

In order to arrive at reliable figures as to the amount of food fish taken, one man was placed on the Fisheries' Steamer Arizona during the summer of 1894. This steamer fished from Long Island Sound to the Capes of the Dela-



ware. Another man was placed upon the Steamer J. W. Hawkins and this steamer fished from Maine to North Carolina.

The Arizona made 619 seine hauls and captured 18,709,900 fish of which 18,706,800 were menhaden and 3,100 were what might be classed as food fish, although many of the varieties of fish included as food fish are rarely used for such purpose.

The J. W. Hawkins made 459 seine hauls and captured 9,350,665 fish, of which 9,258,955 were menhaden and 91,710 were what might be classed as food fish, but it should be stated that among this number of food-fish were included 86,877 alewives.

By reference to the report made by Dr. Smith, Bulletin of the United States Fish Commission, 1895, a copy of which is readily obtainable, the number of fish of each variety caught may be ascertained.

The average annual catch of menhaden has not increased since the year 1894, when these observations were made, hence the figures given above are applicable to the conditions of the present day.

A comparison of the amount of net fish taken by the menhaden steamers with the amount of food fish taken by the pound net fishermen is very interesting and the results are startling.

For an example, in the year 1892 (last authentic figures obtainable) the pound net fishermen on the northern coast of New Jersey alone took from the waters 6,866,149 pounds of net fish.

Dr. Smith in his report on this subject which

is readily obtainable from the Fish Commission at Washington, writes as follows:

‘Probably the time is not far distant when it will become an obvious necessity in some states to place more stringent regulations on the use of pound and other nets in certain situations, as, for instance, in the mouths of rivers, where the decrease in the catch of shad, sturgeon, salmon, etc., may often be clearly traced to the taking of fish on their way to the spawning grounds in such numbers that the reproductive process is practically inhibited; but it is a well-recognized fact that the pound and other nets which are set in the open waters of the ocean and take chiefly free-swimming marine fishes are the least likely to do serious damage and afford the least ground for apprehension.

‘Probably the most valid and forceful objection that has been made against the pound nets on this coast is that there is a large destruction of immature and small fish that are unmarketable. This criticism is applicable to most of the pound fishing in this country. It is not generally denied by the pound fishermen that many fish too large to go through the meshes of the nets and too small to be marketed are caught and, by the nature of the fishery, necessarily sacrificed. The same objection is justly advanced against much of the seine fishing on our coast. No entirely satisfactory remedy has as yet been suggested for this condition. The enlargement of the mesh in the bowl of the pound nets will not completely overcome present objections and will introduce elements of expense and trouble which the fishermen wish to avoid. The fishermen say that, unless the size of the mesh is made so large that many marketable fish will escape, the fish sought to be preserved will be gilled, and thus as effectually destroyed

as with a small mesh, while the time and labor required to clear the net of the gilled fish would make the prosecution of the business almost impracticable. The remedy which seems to afford the most relief is to require the pound operators to lift the nets more frequently than is usually done, to liberate all small fish, and bring to the shore only such fish as are marketable."

There have been suggestions made from time to time by ill-advised persons interested in this subject, that the menhaden fisheries should not be allowed to fish within the three mile limit. This in the first place would deprive the state of the revenue from the annual licenses of the menhaden steamers and in the second place such a movement would probably drive menhaden fishermen into the food-fish business.

Beyond the three mile limit there are very few menhaden, but the food-fish are accustomed to swim in large schools at this distance from the shore. There would be then nothing to prevent the menhaden fishermen from catching large bodies of food-fish and supplying the markets with the same. And in this connection it might be said that the steamers of the menhaden fisheries need but cold storage apparatus to completely adapt them to the food-fish business.

And indeed such would be the inevitable result of an attempt to destroy by state legislation the menhaden fisheries. The companies now engaged in this industry have invested in fishing steamers, plants and apparatus, a sum of money very considerable in the aggregate. If they are prohibited from pursuing the menhaden industry, they must of necessity go into the food

fish business for which they are already well equipped as to vessels and plants. In this event they would undoubtedly conduct their operations just without the three mile limit and take every fish possible without regard to size, species or amount.

Menhaden fishermen have some \$5,000,000 invested in the industry; and it is more to their interest than to that of any one else to see that the menhaden do not diminish in numbers. It is vitally necessary for them that every precaution be taken to prevent the extermination of the fish.

#### IMPORTANCE OF THE FERTILIZER FURNISHED BY THE MENHADEN INDUSTRY TO AGRICULTURISTS.

In considering this question, it must be borne in mind that there are but two sources from which the organic ammonia used in fertilizers is derived: First, from the bone and tankage furnished by the meat packers of Chicago and elsewhere controlled by the so-called Beef Trust and, second, from the fish scrap furnished by the menhaden industry. Suppose the fish scrap furnished by the menhaden industry was eliminated from the situation. Is it not very clear that this would operate directly to the disadvantage of the farmers? If the meat packers were thus left in control of the entire situation the price of fertilizer would undoubtedly be much higher. Much consideration has been given in this country to the question of the value of fish and fish scrap as a fertilizer.

President Dwight, of Yale College, visiting Eastern Long Island in 1804, speaks with much

approval of the menhaden as a fertilizer, and thus describes the introduction of its use :

"Their agriculture has, within a few years, been greatly improved. For a considerable period before the date of this journey the land had become generally impoverished by a careless husbandry, in which the soil was exhausted, and no attempts were made to renew its strength. Within this period its inhabitants, with a laudable spirit of enterprise, have set themselves to collect manure wherever it could be found. Not content with what they could make and find upon their own farms and shores, they have sent their vessels up the Hudson and loaded them with the residuum of potash manufactories, gleaned the streets of New York, and have imported various kinds of manure from New Haven, New London, and even from Hartford. In addition to all this, they have swept the Sound and covered their fields with the immense shoals of white-fish with which, in the beginning of the summer, its waters are replenished. No manure is so cheap as this, where the fish abound; none is so rich and few are so lasting. Its effect on vegetation is prodigious. Lands which heretofore have scarcely yielded ten bushels of wheat by the acre are said, when dressed with white-fish, to have yielded forty. The number caught is almost incredible. It is here said, and that by persons of very fair reputation, that 150,000 have been taken at a single draught. Such, upon the whole, have been their numbers, and such the case with which they have been obtained, that lands in the neighborhood of productive fisheries are declared to have risen, within a few years, to three, four, and in some cases, to six times their former value."

In the year 1877 Mr. A. O. Atwater made an

investigation of this subject and his report may be found in the report of the United States Fish Commission for the year 1877.

The following extract from Mr. Atwater's report will be, and should be, interesting to the residents of the State of New Jersey, owing to the fact that reference is made to the opinion of Prof. G. H. Cook, at that time secretary of the State Board of Agriculture :

"As a result of the profitable utilization for the manufacture of oil, the use of the whole fish as a fertilizer has gradually and almost entirely ceased, and given place to the refuse from which oil has been expressed or otherwise extracted. This is known in its crude state as 'fish scrap,' 'fish pomace,' or 'chum,' and when more carefully prepared, as 'dry fish,' 'dry ground fish,' and 'fish guano.' Still farmers have been slow to avail themselves of this more concentrated material."

Professor G. H. Cook, of New Jersey, in his report as the secretary of the State Board of Agriculture, writes :

"The supply for fish guano is almost unlimited in this state, and it only needs capital and skill to build up a business of great importance to the state and profit to the manufacturer. On the coasts of Long Island and of Maine, where the business has been carried on for the oil which could be got from the fish, the residuum has been sold at various prices from \$15 to \$30 a ton, and has been a very popular fertilizer with those who have used it. It is sought for by the manufacturers of superphosphate of lime, to mix with their product, and there can be no doubt that it is very beneficial in such a mixture, giving quickness to its action, while the superphosphate would add to the duration of efficiency."

When this source of manure is properly worked it can be made to supply all the guano needed in the state.

"While the most common mode of using these fish is in the hill or furrow for corn, they are often employed in a compost with barnyard manure and a little lime. Those who have tried such a mixture say that it is superior to any guano in the market. When applied on corn the crop is considered as certain. Some farmers mix them with muck and apply the compost upon wheat. This fertilizer is wonderfully rapid in its effects, showing changes in the growth of a crop in a few days after it has been applied. But it is not lasting manure. In a year or two this stimulating effect is gone, and a second application is necessary. For producing quick results it is so efficient that all farmers who have tried it unite in testifying to its value.

"The cardinal principle to be observed by the farmer in the purchase of fertilizer is to select those which furnish, in the best form and at the lowest cost, the ingredients of plant-food that his crops need and his soil fails to supply.

"The principle that should guide the manufacturer should be to economize all available materials in his manufacture so as to furnish the valuable ingredients in the best forms, in products of high grade and uniform composition, and at the fairest practicable rates.

"The most important ingredients of our fertilizers, because the most rare and costly, are nitrogen, phosphoric acid and potash. The first two are most important. These are supplied in large proportions by fish."

As to the value of fish scrap as a fertilizer, the attention of those interested in the subject is directed to a report of the United States Fish

Commission in the year 1903, by Charles H. Stevenson, from which the following is a quotation:

"Although the agricultural value of dried fish scrap is nearly equal to that of Peruvian guano, the market price is much below that article. In explanation of this fact it may be stated that fish scrap is not in such compact and good mechanical condition for shipment and general use. Its value as a fertilizing agent has not been so widely known as that of Peruvian guano, and thus its principal use is largely limited to the manufacturers of superphosphates, who are forced by competition to exercise great caution in the cost of manufacture."

#### CONCLUSION.

A great many investigations have been made on this subject for the purpose of ascertaining whether or not the menhaden industry, as now conducted, would eventually drive these fish from our waters and whether or not the menhaden industry, as now conducted, destroys large quantities of food fish, which would otherwise be valuable for the markets.

The result of these various investigations has been a complete vindication of the menhaden industry. Many of these investigations have been, of course, for honest purposes of ascertaining facts, while other investigations were by competitors of the menhaden fisheries for the purpose of driving them out of the business.

The best informed people on this subject are naturally those connected with the United States Fish Commission at Washington and any one desiring to obtain the exact facts relative to the menhaden industry has but to make inquiry

of that department at Washington, the purpose of which is to protect our American fisheries.

Probably the most sane conclusion reached by any one who has investigated this matter, is contained in the following quotation from the report of Mr. Goode, above referred to:

"It is not hard to surmise the menhaden's place in nature; swarming in our waters in countless myriads, swimming in closely-packed, unwieldy masses, helpless as flocks of sheep, close to the surface and at the mercy of the enemy, destitute of means of defense or offense, their mission is unmistakably to be eaten. In the economy of nature certain orders of terrestrial animals, feeding entirely upon vegetable substances, seem intended for one purpose, to elaborate simpler materials into the nitrogenous substances necessary for the food of other animals which are wholly or in part carnivorous in their diet. So the menhaden, deriving its own substance from otherwise unutilized organic matter, is pre-eminently a meat producing machine. Man takes from the water annually six or seven hundred millions of these fish, weighing from two hundred and fifty to three hundred thousand tons, but his indebtedness to the menhaden does not end here. When he brings upon his table bluefish, bonitos, weakfish, swordfish, bass, codfish, what is he eating? Usually nothing but menhaden!

"Whether there is any likelihood that the myriads which now swarm our waters will ever be perceptibly diminished by the loss of six or seven hundred millions of their numbers annually, I will not presume to say. I simply call attention to the fact that spawning fish are apparently never taken in the nets. It is the opinion of many authorities that if fish are not interfered with at the time when they are repro-

ducing their kind there is no great probability of decreasing their number.

"It is the commonly received opinion that purse-net fishing is destined eventually to destroy all the menhaden in our waters. Many decided views to this effect have been advanced by correspondents. All that can be said at present is that the commonly received opinion has not yet been proved to be true."

Up to the present time the menhaden fisheries along the coasts of the United States have been regulated and controlled within their respective limits by the several states. Though this is a subject, the right to regulate which is indubitably in the Federal government, thus far Congress has not seen fit to assume its control. That it is a matter of which the Federal government should take control, and which it alone should regulate is evident when we consider the menhaden's migratory proclivities and how its whereabouts are determined by the season.

Starting in early spring in the waters of the Carolina, as the weather grows warmer this fish goes northward along the coast, passing through the waters of nearly every seaboard state until Fall finds it along the coast of Maine. Their protection by any particular state is, therefore, of but short duration, and at most uncertain. Further than this, the interest of the respective states is inclined to be spasmodic, only being aroused when some bill relating to the industry is presented to its legislature, and not infrequently resulting in ill advised action because based upon incorrect and insufficient information. Most of the seaboard states have

fish commissioners who are supposed to look into the subject of the proper protection of the fish, but in most instances these commissioners do little good, if any. Their observations are usually limited to the waters of their own state, so they at best have a chance to observe the fish during but one season of the year. How much better it would be were Congress to turn over the regulation of the fishing industry to the National Fish Commission, which has at its command men who are expert on the subject, who make it their special study and who are qualified in every way to deal with the subject scientifically. This commission studies the subject through all seasons of the year and in all waters, and is competent to properly regulate the menhaden fisheries (if they need regulation) in such a manner as is best calculated to preserve the fish, yet at the same time protect a useful industry, which gives employment to thousands of men and whose products are of the greatest commercial value and usefulness.

To make the proper regulation of this industry effective, the National Government must take it in hand. If any legislative action be necessary or proper, it should be such as will apply to the whole seaboard. If the states individually attempt it, the result will be conflicting laws applying only to operations within the three mile limit, and in all probability the adoption of such severe measures as will drive from them a useful industry. Another probable result of the lack of uniformity of laws would be that

the menhaden fishermen would concentrate their fleets in the waters of the states wherein they are allowed to fish, and as the fish continue on their migration, follow them up or down the coast, coming within the three mile limit whenever permitted and keeping just outside where not.

Inasmuch as the menhaden fishermen have some \$5,000,000 invested in their vessels and plants, it is hardly likely they will permit hostile state legislation to drive them entirely out of the fishing business, and if they are forbidden to take menhaden along the coast within the three mile limit, they will in all probability fish for any and all kinds just without the three mile limit where the state laws could not affect them. The effect of such tactics upon the food-fish can be readily seen and has been already commented upon.

Should, for instance, the state of New Jersey forbid the use of purse nets on its coast within the three mile limit is it not reasonable to suppose that the menhaden fleet starting from the Carolinas in the spring would follow the fish as they migrated northward until they reached the coast of New Jersey? During the stay of the fish in the waters of New Jersey the fleet would doubtless hover about just without the three mile limit. If at that time the menhaden started schooling close to the beach, would not the fleet then in all probability in order to keep its men and boats employed direct their efforts to catching fish of every kind available beyond the three mile limit without respect to whether

they were menhaden or food fish? The result of such an operation upon the supply of food fish on the Jersey coast can be readily seen. If the fishermen on those shores now complain of the scarcity of food fish what would they not say if their ill advised efforts to stir up legislation against the menhaden industry proved to be a boomerang indeed and had fallen the most heavily upon themselves?

For additional information concerning the menhaden industry the reader is referred to the following reports and documents:

"The Fisheries and Fishery Industries of the United States," by G. Brown Goode, Assistant Secretary of the Smithsonian Institution, published in 1877. Miscellaneous Senate Document 124, 47th Congress, First Session.

"History of the American Menhaden," by G. Brown Goode, being an extract from the Report of the United States Fish Commission for 1877.

"Menhaden and Other Fish and their products as relating to Agriculture," by W. O. Atwater, being an extract from the report of the United States Fish Commission for 1877.

"Aquatic Products in Art and Industry," by Charles H. Stevenson, being an extract from the report of the United States Fish Commission in 1902, pages 177 to 279.

"The Natural History of the Menhaden and Mackerel, with notes on the Fisheries," by M. McDonald, being Miscellaneous Document No. 156 of the United States Senate, Fifty-second Congress, First Session.

"Statistics of the Fisheries of the Middle

Atlantic States," by Barton W. Everman, being an extract from the report of the United States Fish Commission for 1902, pages 433 to 540.

"The Coast Report of the Coast Fishery Conference," by E. P. Doyle, Secretary, held December 13 and 14, 1893.

"Statistics of the Fisheries of the New England States, 1902," by A. B. Alexander, Appendix to the report of Fish Commissioner to the Secretary of Commerce and Labor for the year ending June 30th, 1904, pages 245 to 325.

"List of Fishes collected at Sea Isle City, New Jersey, during the summer of 1892," by H. F. Moore, being an extract from the Bulletin of the United States Fish Commission for 1892, pages 357-364.

"Notes on an Investigation of the Menhaden Fish in 1894, with special reference to the food fish taken," by Hugh M. Smith, M. D., being an extract from the Bulletin of the United States Fish Commission for 1895. Pages 285 to 302.

"Economic and Natural History Notes on Fisheries of the Northern Coast of New Jersey," by Hugh M. Smith, M. D., being an extract from the Bulletin of the United States Fish Commission for 1892, pages 365 to 380.

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Delaware Commissioners DE-NY  
Fisheries Compact

General Files

1905 - 1907

Reports

DE18441



ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM S. HILLES.

WALTER H. HAYES,  
SECRETARY.

DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

Sept. 26. 1907.

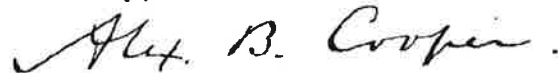
Walter H. Hayes, Esq.

Dear Sir:-

Will you please attend a meeting of the Delaware  
Commissioners as above, at my office, to-morrow ( Friday ) morning  
at 11 o'clock,

And oblige,

Yours truly,



President &c.

I have notified Mr. Hilles.

DE16192

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DE Commissioners  
Fisheries Compact  
338631

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM B. HILLES.

WALTER H. HAYES,  
SECRETARY.

**DELAWARE COMMISSIONERS,**  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

Wilmington, Del., May, 4, 1908.

Walter H. Hayes, Esq.,  
1025 Market St.,  
CITY.

Dear Sir:-

A meeting of the Joint Commission (Delaware-New Jersey Fisheries Compact), is hereby called to meet Tuesday the 12th day of May, 1908, at 3 P. M. at the University Club, 1516 Walnut Street, Philadelphia, Pa.

You are most earnestly requested to be present as business of importance will be brought before the meeting.

Yours respectfully,

Alexander B. Cooper,  
President.

Per. *W*

DE Public Archives

0914.1  
DE Commission  
Fisheries Compact  
338031

In the matter of the  
erection of monuments under  
agreement between Alexander  
B. Cooper, William S. Hille,  
Walter H. Hayes, Commission-  
ers of Delaware, William J.  
Bradley, John Boyd Avis and  
James Strimple, Commission-  
ers of New Jersey,  
of the one part,  
AND  
WILLIAM DAVIDSON,  
Contractor.

REPORT OF INSPECTOR.

Dated *Aug. 11,* 1908.

Signed in duplicate.

JOHN BOYD AVIS

COUNSELLOR AT LAW

WOODBURY

NEW JERSEY



Woodbury, New Jersey,

August, 1908.

To Alexander B. Cooper, William S. Hilles,  
Commissioners appointed by the State of Delaware, William J.  
Bradley, John Boyd Avis and James Strimple, Commissioners  
appointed by the State of New Jersey:

I, the undersigned, the Inspector employed and  
appointed by the above named commission, in accordance with  
a certain agreement with one William Davidson for the erect-  
ion of monuments on the New Jersey and Delaware Shore,  
marking the dividing line between the Delaware Bay and Delaware  
River, do hereby certify that in the construction of said monu-  
ments, the said William Davidson built and constructed in the  
foundations thereof an additional stone and concrete work  
not required by the contract to the extent of about sixty  
cubic feet.

Respectfully submitted,

J. H. Avis  
Inspector.

DE18443

Woodbury, New Jersey,

1908.

To Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, John Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey:

I, the undersigned, the inspector employed and appointed by the above named Commission in accordance with the provisions of a certain agreement made in triplicate originals by the said Commissioners, with one William Davidson, dated October 31, Nineteen hundred and six, do hereby certify and report that I have personally supervised and inspected the erection of the monuments set out in said agreement, and certify that the monument provided in said agreement to be erected on the Delaware shore near Liston's Point is of Brandywine granite eight feet four inches in height, and one foot six inches square at the base, tapering to one foot square near the top and bevelled to a point at least four inches above the top square. One side of said monument is polished and has cut thereon the inscription provided for in the said contract.

And I do further certify that said monument was erected by the said William Davidson on the *Fourth* day of *August* Nineteen hundred and eight.

I do further certify that the monument provided for to be erected on the Jersey shore near the mouth of Hope Creek is of a character similar to that erected at Liston's Point; that one side of said monument is polished and has cut thereon the inscription provided for in the said contract and that the said monument

DE18444

Davidson on the Jersey Shore on the *Fifth* day of  
*August* Nineteen hundred and eight.

I do further certify that each of said monuments was set on a concrete foundation at least three feet deep, said concrete foundations is four feet square at the bottom and continues at that size for six inches in height, then tapers on all sides to the top of the concrete, which concrete at the top is two feet and six inches square; that said monuments have both been erected at the points provided for in the said agreement and selected by the said Commissioners.

I do further certify that said monuments are both finished and erected in a good, workmanlike manner, under my supervision and direction, and in all things in accordance with the terms of the agreement hereinbefore referred to.

All of which is respectfully submitted this  
*Eleventh* day of *August* A. D., Nineteen  
hundred and eight.

This certificate is executed in duplicate originals,  
one of which is for each of the aforesaid Commissions.

*J H Curtis*  
Inspector.



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Delaware Commissioners

DE-NJ

Fisheries Compact

Minute Books

1905-1908

w/0914.2 Letter Books

0914.2

Letter Book of the Commissioners

4/7/1905 - 10/12/1908

JOHN BOYD AVIS  
COUNSELLOR AT LAW  
WOODBURY, N. J.

July 3, 1907.

Walter H. Hayes, Sec'y,  
Wilmington, Del.

Dear Sir:-

I have received your letter enclosing the resolution and desire to say that just as soon as we can complete arrangements for placing a monument on the Jersey shore the same will be done. As you know our Legislature is still in session, and this, together with other business matters, has delayed the completion of the work so far as we are concerned. I shall endeavor to do what I can to hurry the matter along.

Yours truly,

February 20, 1935.

Senator S. Rusling Leap,  
Salem County,  
Woodstown, New Jersey.

Dear Senator Leap:

Herewith you will find a copy of a Bill relative to the appointment of a commission of the State of Delaware to meet a similar commission appointed by the State of New Jersey in connection with the boundary line between the two States.

You will note that it is almost identical with the Bill introduced in the New Jersey Legislature, a copy of which you recently sent me.

I feel sure there will be no doubt about the passage of this Bill, and I will ask you to inform me when the Bill introduced by you becomes a law, in order that I may so notify the Governor, looking towards the appointment of a commission by him.

Yours very truly,

Attorney General.

PWG\*B  
ENCL.

**AN ACT providing for the Appointment of Commissioners to meet Commissioners of the State of New Jersey in relation to the Boundary and Jurisdiction in the Delaware River between The State of Delaware and the State of New Jersey.**

**Be it enacted by the Senate and House of Representatives of The State of Delaware in General Assembly met:**

**Section 1. The Governor be, and he hereby is, authorized, empowered and directed to appoint three Commissioners on the part of this State (and to fill vacancies that may occur), to meet Commissioners if and when appointed by the competent authority of the State of New Jersey; and the Commissioners so appointed on behalf of this State, or a majority of them, shall have full power and authority to make and conclude an agreement between the said States of New Jersey and Delaware, respecting taxation, civil and criminal jurisdiction, and any other questions relating to the boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report at the present, or some subsequent, session of the General Assembly, and at the same time submit a draft of such legislation, if any, as they shall deem proper.**

**Section 2. Any agreement so made by the Commissioners shall not be binding on The State of Delaware, until ratified and confirmed by the legislatures of the States of Delaware and New Jersey respectively, and consented to by the U. S. Congress.**

Section 3. Said Commissioners shall serve without compensation but shall be paid the necessary expenses while engaged in this mission, and the sum of Five Hundred Dollars (\$500.00) is hereby appropriated from the General Fund of the State therefore, which shall be paid only on vouchers signed by at least two Commissioners and approved by the Governor.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey, a copy of this Act, and request him to communicate it to the Legislature of that State.

Section 5. This Act shall take effect immediately.

CLARENCE A. SOUTHERLAND  
JAMES H. HUGHES, JR.  
E. ENNALLS BERL  
HERBERT H. WARD, JR.  
WILLIAM S. POTTER  
PAUL LEAHY  
SYBIL U. WARD  
DAVID F. ANDERSON  
GEO. GRAY THOURON

LAW OFFICES  
**WARD & GRAY**  
DELAWARE TRUST BUILDING  
WILMINGTON, DELAWARE  
TELEPHONE WILMINGTON 5277

GEORGE GRAY  
1883-1899, 1914-1925  
HERBERT H. WARD  
1882-1927  
ANDREW C. GRAY  
1890-1929

May 1st, 1935.

Honorable C. Douglass Buck,  
Dover,  
Delaware.

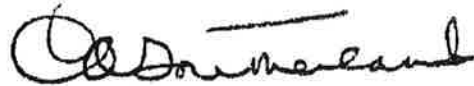
My dear Governor Buck:

I regret the delay in replying to your letter of April 24th, transmitting to me a copy of the Act approved by you on April 12th, 1935, relating to the matter of the Delaware-New Jersey boundary. My delay in replying has been due to the fact that I was away from my office all last week, and have just been able to get around to answering my correspondence.

I shall be very glad to serve on the commission with the Attorney General and Mr. Richards.

Very truly yours,

CAS:D



**The State of Delaware**

Office of the Attorney General

October 8, 1937.

Dr. George H. Ryden,  
Archives Commission,  
Dover, Delaware.

Dear Doctor Ryden:

Under separate cover I am sending to you two sets of photographs, three copies to each set, of a document which is at least very interesting, which has recently come to light in connection with the easterly boundary of the State of Delaware. These photographs are of a purported Deed of Surrender which at present is in the possession of Thomas F. Cadwalader, an attorney at law with offices at 1000 Maryland Trust Building, Baltimore, Maryland. It so happens that Mr. Cadwalader is associated with William L. Rawls, who was appointed Special Master by the U.S. Supreme Court to hear the recent Delaware-New Jersey boundary case, and upon Mr. Cadwalader finding this paper among other old papers in his Father's office in Philadelphia, the existence of this paper became known.

The original of this Deed is in the possession of Mr. Cadwalader and he is perfectly willing to exhibit it to any officer of this State either at his office in Philadelphia or in Baltimore.

The State of New Jersey contends that this paper is a very important one and that it tends to upset the recent decision of the Supreme Court, contending that while heretofore they had found mention of Writs of the Signet and Private Seal reciting such surrender, that they could never find the Deed of Surrender itself. This paper was found by Mr. Cadwalader in other Penn papers, and as mentioned by Duane E. Minard, who represents the State of New Jersey in the boundary dispute, that it is one of the unexplained mysteries how Penn and his agent came into possession of many original documents (including the original grant at Dover) which rightfully belong to the keepers of such documents in the different Royal Offices of the Crown.

A set of these photographs were submitted to Clarence A. Southerland, former Attorney General, and who represented the State of Delaware in the boundary dispute, and concerning this purported Deed of Surrender Mr. Southerland, under date of August 28, 1937 writes me as follows:

# The State of Delaware

2. Office of the Attorney General

"It seems to me reasonably clear that this paper is merely one of a series of papers looking toward the consummation of an actual surrender and the issuance of the new grant to the Duke of York. The finding of it in America in the possession of the Cadwalader family would bear this out. Had the instrument ever become effective, it would naturally have been recorded in the Rolls Office in England. In any event, the exhibits we have already introduced I am sure will show clearly that the Surrender was never intended to be effective until the new grant passed the Great Seal."

I am giving you this information, which I feel should be kept attached to these papers, in order that it will never appear that the State of Delaware in any manner recognizes the authenticity of this purported Deed, but that the photographs of the Deed are filed in your office solely as a matter of information.

Yours very truly,

Attorney General.

PWG/b



DESCRIPTION OF BOUNDARY LINE IN DELAWARE BAY  
BETWEEN DELAWARE AND NEW JERSEY

PROPOSAL B.

- - - - to a point in the center of the dredged channel and on a straight line between the monuments on the Delaware and New Jersey shore which mark the line of division between Delaware River and Delaware Bay;

Thence  $137^{\circ} 57'$ , 25,645 yards to Turning Point No. 1, passing Ship John Shoal Lighthouse 681 yards,  $227^{\circ} 57'$  from the Lighthouse:

Turning Point No. 1 is located on a line between Ship John Shoal Lighthouse and Elbow of Cross Ledge Lighthouse, 5,225 yards  $145^{\circ} 37'$  from Ship John Shoal Lighthouse:

From Turning Point No. 1; thence  $145^{\circ} 37'$ , 12,876 yards to Elbow of Cross Ledge Lighthouse, (Turning Point No. 2).

Thence on a line between Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse,  $148^{\circ} 16'$ , 18,124 yards to Turning Point No. 3, located 1,612 yards,  $58^{\circ} 16'$  from Fourteen Foot Bank Lighthouse;

Thence in the direction  $155^{\circ} 54'$  in a straight line to seaward beyond the limits of Delaware Bay, passing through a point 1,303 yards,  $245^{\circ} 54'$  from Brandywine Shoal Lighthouse.

DESCRIPTION OF BOUNDARY LINE IN DELAWARE BAY  
BETWEEN DELAWARE AND NEW JERSEY.

PROPOSAL A.

- - - - - to a point in the center of the dredged channel and on a straight line between the monuments on the Delaware and New Jersey shore which mark the line of division between Delaware River and Delaware Bay;

Thence  $137^{\circ} 57'$ , 25,645 yards to Turning Point No. 1, passing Ship John Shoal Lighthouse 681 yards,  $227^{\circ} 57'$  from the Lighthouse;

Turning Point No. 1 is located on a line between Ship John Shoal Lighthouse and Elbow of Cross Ledge Lighthouse, 5,225 yards  $145^{\circ} 37'$  from Ship John Shoal Lighthouse;

From Turning Point No. 1,  $140^{\circ} 55'$ , 9,330 yards to Turning Point No. 2, which is located 3,860 yards,  $337^{\circ} 24'$  from Elbow of Cross Ledge Lighthouse;

Thence  $163^{\circ} 36'$ , 4,050 yards to Turning Point No. 3, which is located 470 yards,  $223^{\circ} 55'$  from Elbow of Cross Ledge Lighthouse;

Thence  $138^{\circ} 13'$ , 4,240 yards to Turning Point No. 4, which is located 4,290 yards,  $144^{\circ} 35'$  from Elbow of Cross Ledge Lighthouse;

Thence  $146^{\circ} 50'$ , 12,870 yards to Turning Point No. 5, located 2,440 yards,  $35^{\circ} 30'$  from Fourteen Foot Bank Lighthouse;

Thence  $175^{\circ} 7'$ , 4,930 yards to Turning Point No. 6, which is located 3,450 yards,  $148^{\circ} 0'$ , from Fourteen Foot Bank Lighthouse;

Thence  $150^{\circ} 06'$ , 12,770 yards to Turning Point No. 7, which is located 6,610 yards,  $166^{\circ} 10'$ , from Brandywine Shoal Lighthouse;

Thence  $164^{\circ} 48'$ , 15,340 yards to Turning Point No. 8, which is located 4,690 yards,  $69^{\circ} 40'$ , from Delaware Breakwater Lighthouse;

Thence  $120^{\circ} 0'$  to seaward beyond the limits of Delaware Bay.

DISCUSSION OF THE BOUNDARY LINE IN DELAWARE BAY BETWEEN DELAWARE  
AND NEW JERSEY

Selection of limits of main ship channel. The true boundary in Delaware Bay between Delaware and New Jersey was adjudged to be the middle of the main ship channel. As the side limits of the main ship channel are indefinite, it is first necessary to decide upon a limiting depth for the channel. Where there is a dredged channel in the Bay, the depth maintained is 36 feet. From the chart it is noted that the 30-foot depth curve is distinctive for the upper part of the Bay. For this reason that depth curve was used as an arbitrary side limit for the main ship channel.

First Direction or Course a common one for both proposals. In both proposals the boundary line for the Bay starts at the intersection of the center line of the dredged channel with the accepted line of division between Delaware River and Delaware Bay. The first direction given is the course down the center of the dredged channel and extending beyond the southern end of the dredged channel to the first turning point. This point has been selected as the intersection between the line of this course and the line connecting Ship John Shoal Lighthouse with Elbow of Cross Ledge Lighthouse. For convenience the various straight lines laid down in describing the boundary line will be referred to between the turning points as the first, second, third, etc. courses.

Proposal (A). To follow strictly the middle of the channel or the thalweg would require a sinuous line difficult to describe with accuracy. Proposal (A) is the delineation of a boundary line following the middle of the main ship channel as closely as practicable. This line is broken up into nine courses with eight turning points. The precise location of the turning points and of the boundary itself cannot be readily identified in the water.

Proposal B. Proposal (B) is presented as an alternative line which would follow the main ship channel with the least number of changes in direction. The written description of a boundary line established under this proposal will be in the simplest language. The first course and distance is the same as for proposal (A). The second course on this boundary line is that which will lie along a line joining Ship John Shoal Lighthouse with Elbow of Cross Ledge Lighthouse. Elbow of Cross Ledge Lighthouse has been selected as a marker for the reason that it is an existing structure near the middle of the main ship channel. Between turning point No. 1 and Elbow of Cross Ledge Lighthouse the objects marking the direction of the boundary line are intervisible so that a location of the boundary line can be obtained by observing the bearing on the two lights.

The third course of this boundary line lies on the line joining Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse. Along this course the actual location of the boundary line is discernable by the fact that the lighthouses on Elbow of Cross Ledge and Brandywine Shoal are intervisible.

The fourth course was laid down as a stright line which could be extended to seaward from turning point No. 3 opposite Fourteen Foot Bank and pass about an equal distance away from the extremity of the 30-foot curve on the channel side of Brandywine Shoal and the 30-foot curve on the channel side of Brown Shoal. This line is on the same bearing from Miah Maull Shoal Lighthouse throughout its length so that the lighthouse may be used on the reverse bearing as a visible object fixing the direction of the boundary line for this course. It is noted that this line passes close to the location of Overfalls Lightship, but that lightship was not used as a marker for the boundary line for the reason that it is an aid to navigation subject to slight changes of location from time to time. It has not the same permanence of fixture as do the positions of the lighthouses mentioned in the description.

Geodetic Position of Turning Points Fixed. The geodetic positions of all the lighthouses mentioned in this description have been determined so that their actual locations on the North American datum are fixed and the points so determined can be recovered at any time in the future, even though the lighthouses were totally destroyed. From these geodetic positions the turning points can be recovered in a similar manner.

Distances of Courses off Lights. The given distance by which the first course passes Ship John Shoal Lighthouse is that measured at right angles to the direction of the boundary line at this point. The distance from turning point No. 3 to Fourteen Foot Bank Lighthouse is measured along a straight line at right angles to the course on the bearing connecting Elbow of Cross Ledge Lighthouse and Brandywine Shoal Lighthouse. The distance given from the fourth course to Brandywine Shoal Lighthouse is measured normal to this course.

Divergence of main Ship Channel from Proposal B. In the second course from turning point No. 1 to Elbow of Cross Ledge Lighthouse, the main ship channel as measured between the 30-foot curves crosses to the eastward or toward the New Jersey side of the line for a distance of 2 miles.

Opposite Elbow of Cross Ledge Lighthouse there is located the narrowest width of the main ship channel as used at the present time. In this vicinity the channel usually followed is on the west or Delaware side of the boundary line, although there is a navigable channel of less depth on the other side of the light.

In the third course the center of the main ship channel again crosses to the eastward or toward the New Jersey side, although there is room to navigate a ship on the west side of the boundary line in water deeper than the 30-foot depth.

Below Fourteen Foot Bank the 30-foot curve ceases to be the distinctive depth limit of the main channel, which it is above that shoal. This curve approaches close to the usually travelled route of navigation on the west side of Brandywine Shoal and on the south-east side of Brown Shoal. For that reason the course selected was one which would pass the channel extremity of the 30-foot depth curve about each shoal at an equal distance.

It may be noted that the fourth course approaches closer to the shoals on the eastward side of the entrance to the bay than it does to Cape Henlopen, but it passes over one-half mile from the extremity of these shoals and a vessel may enter the Bay on the east or Cape May side of the boundary. The last described course passes to sea almost three miles distant from the shore of Cape Henlopen and considerably in excess of three miles from the Cape May shore.

Main Ship Track. The main ship track as laid down in the Coast Pilot (Atlantic Coast, Section C, pages 51 and 52) follows closely the boundary line under proposal B. The principal departure from this is in the vicinity of Elbow of Cross Ledge where two pronounced changes in the ship courses are made in order to pass to the westward side of the Lighthouse.

Proposal B. is recommended by the Coast and Geodetic Survey as the most practical line of demarcation between the States of Delaware and New Jersey in Delaware Bay.

## BOUNDARY COMMISSIONS

There have been numerous Boundary Commissions required to delineate and survey the boundaries of Delaware. The Royal Grant from King Charles II to his brother, James, Duke of York, dated March 22, 1682, gave to the Duke of York the Town of New Castle and all the land within 12 miles as well as the territory south of the southern most boundary of the twelve-mile circle to the present Fenwick Island. With this document the twelve-mile circle at the north of Delaware came into being<sup>1</sup>.

In 1701 commissioners and surveyors were appointed from each of the two counties of Chester and New Castle. They had to survey and mark the twelve-mile circle under a warrant issued by William Penn in pursuance of the feoffment from the Duke of York.

In 1732 a Boundary Commission was formed and an agreement signed between William Penn and Lord Baltimore (the two proprietors) to end the boundary dispute between Pennsylvania and Maryland and to divide the territory between the Delaware Bay on the east and the Chesapeake Bay on the west of the Peninsula, thus separating Pennsylvania from Maryland.

By Chancellor's Decree in 1750, Lord Hardwicke, the High Chancellor, approved the agreement which had been signed between the proprietors in 1732. The decision was made in favor of the Penn proprietors. Commissioners were appointed to lay out the East-West Boundary as laid forth in the 1732 agreement. In 1751 the surveyors marked the half-way point of the Transpeninsular Line with a stone called Middle Point which became Delaware's southwest corner.

On November 16, 1760, the Board of Commissioners signed a final agreement into which Lord Frederick (successor of Lord Baltimore), the Maryland proprietor, and the Pennsylvania proprietors entered. It was an agreement on the basis of the articles already written up in 1732 and incorporated into the Chancellor's Decree of 1750. This agreement established the major boundaries of Delaware as we know them today.

On December 6, 1763, Charles Mason and Jeremiah Dixon were sworn in by Commissioners to begin their survey work on the Maryland-Pennsylvania boundaries. Mason and Dixon surveyed the North-South line between Maryland and Pennsylvania (Delaware) from 1763 to 1767. This was to delineate the long disputed boundary between Calvert and Penn Lands. Maryland and Delaware presented the final report of this survey to the Commissioners from Maryland and Pennsylvania.

On November 9, 1768 a Final Report of boundaries between the provinces of Pennsylvania and Maryland was submitted to the commission. The boundary between Maryland and Delaware was marked and approved by commissioners on January 11, 1769.

In 1775<sup>2</sup> there was an agreement to ascertain and fix the divisional lines of the several counties within Delaware and to solve inconveniences that may have arisen by the establishment of the boundaries between Delaware and Maryland. The agreement was signed by the Governor of Pennsylvania and the General Assembly of the Three Lower Counties who also designated the boundaries of the present counties of New Castle, Kent and Sussex. The lines between the colonies and counties would forever remain the boundaries. The lines had been run by Commissioners who marked out the lines with stones, pillars and other landmarks. These lines were described by the Commissioners in the return of their proceedings and in an exact map.

In 1849-1850 Delaware, Maryland and Pennsylvania joined in a survey, known as the Graham Resurvey to relocate the stone which marked the junction of the Mason and Dixon Line with the due North or meridian line. In course of time, this stone had disappeared. Due to an error of the commissioners a controversy arose over a small area of land known as "The Wedge". This controversy between Delaware and Pennsylvania was not settled until 1921.

## BOUNDARY COMMISSIONS

In 1869 there was great doubt and uncertainty about the true dividing line between the State of Delaware and the Commonwealth of Pennsylvania, the eastern line of the State of Maryland and the circular line of the State of Delaware. The circular boundary line between the State of Delaware and the Commonwealth of Pennsylvania had never been surveyed and marked since the separation of the three counties. All knowledge of its location was based upon vague and conflicting traditions. The Governor was authorized to appoint two commissioners to cooperate with commissioners from Pennsylvania to settle, determine and locate the line between Delaware and Pennsylvania. The Commissioners were authorized to place and erect a stone or monument on the point where the southern line of Pennsylvania intersects the circular line of Delaware. The commissioners were given power to survey and determine the circular boundary line separating the two States. They had the power to fix suitable marks or monuments of stone or other material one quarter of a mile apart upon the circular boundary<sup>3</sup>.

The boundary line between Delaware and Pennsylvania had become uncertain due to destruction, removal, or mutilation of the monuments erected upon this line. In 1889 three commissioners were appointed and authorized to cooperate with commissioners from Pennsylvania to examine, survey and re-establish the boundary line between Delaware and Pennsylvania. The commissioners had to mark the boundary line by the erection of enduring monuments and make a detailed report in duplicate of their operations. The report together with the field notes of surveys, descriptions of monuments, maps and other items had to be signed in duplicate by each of the commissioners and by the civil engineers<sup>4</sup>.

In 1909 an act<sup>5</sup> stated that the Governor of Delaware was authorized and requested to communicate with the Governor of Maryland about the replacing and resetting of the stones marking the boundary line between Delaware and Maryland. If necessary the Governor was authorized to take steps to replace or remove the boundary stones.

In 1921 an act<sup>6</sup> provided for the acceptance, approval and confirmation of the report of the Commission that was appointed in pursuance of the Act of the General Assembly of the State of Delaware, approved the twenty-fifth day of April, 1889. This act authorized the commission to examine, survey and re-establish the circle of New Castle, as the boundary line between Pennsylvania and Delaware.

In 1927 commissioners<sup>7</sup> were appointed and constituted to cooperate with commissioners of New Jersey for the purpose of forming an agreement between the States of Delaware and New Jersey. They had to look to the final adjustment of all controversies relating to the boundary line between the two states and to their respective rights in the Delaware River and Bay.

In 1929 a resolution<sup>8</sup> authorized the Attorney General to take such action as is necessary to protect the rights of the State of Delaware in the disputed area of the Delaware River and Bay. Due to death of members on the Commissions and other numerous reasons, no satisfactory results had been obtained during the past two years.

In 1951 an act<sup>9</sup> stated that monuments marking the common boundaries between the State of Delaware and any neighboring state are the joint property of the State of Delaware and the neighboring states. The State Archivist and Chief Engineer of the State Highway Department had the authorization to examine at least every 5 years the monuments marking the boundaries of this State. They also cooperated with state officials of any neighboring state in case any of the monuments marking the boundary were lost, moved or defaced. They replaced, restored or repaired the monuments and the common boundary line. Further they had authorization to make joint agreements and to enter into joint contracts with appropriate officials or agencies of any neighboring state and with the U.S. Coast and Geodetic Survey or any similar neutral party or agency to resurvey, remark or otherwise delineate more thoroughly any part of any common state boundary. They also had the authorization to enter upon any property to examine any boundary monument. But they had no authorization to do this in the growing season which might damage crops.

### BOUNDARY COMMISSIONS

In 1971 an act<sup>10</sup> instructed the Director of the Division of Archives and Cultural Affairs to publish a description of the boundaries of Delaware in a small pamphlet. In that year the responsibility for the state's boundaries was transferred from the Director of Operations of the Highway Department to the Secretary of Natural Resources and Environmental Control in conjunction with the Director of the Division of Archives and Cultural Affairs<sup>11</sup>. If a question arose as to the common boundary between the State and any neighboring state, the Secretary of the Department of Natural Resources and Environmental Control and the Director of the Division of Historical and Cultural Affairs plus a three member commission to be appointed by the Governor are empowered to negotiate and settle boundary disputes with neighboring states. A copy of the Commission's report will be forwarded to the Office of the Governor and to the office of the Legislative Council, whereupon the new delineation of the boundaries will be inserted in the Delaware Code<sup>12</sup>.

On January 7, 1972, the Delaware Boundary State Commission had its first organizational meeting. Governor Russell W. Peterson appointed Robert Jordan, John A. Munroe, and Fletcher E. Campbell to the Delaware State Boundary Commission. In the following years the DSBC had meetings on boundary extensions, made agreements on procedures for marking and preserving boundary monuments, made agreements of resurveys of boundaries, made an acceptance on an offshore boundary proposal and lateral seaward boundary, made an acceptance to share Coastal Energy Impact Program (CEIP) funds with New Jersey, recognized and formalized boundary stones, and signed agreements accepting true locations of boundaries<sup>1</sup>.



**BOUNDARY COMMISSIONS**

- <sup>1</sup> Boundary Commission Files, chronological list, RG 1705
- <sup>2</sup> 1 Del. Laws Ch. 229
- <sup>3</sup> 13 Del. Laws Ch. 382
- <sup>4</sup> 18 Del. Laws Ch. 448
- <sup>5</sup> 25 Del. Laws Ch. 1
- <sup>6</sup> 32 Del. Laws Ch. 4
- <sup>7</sup> 35 Del. Laws Ch. 243
- <sup>8</sup> 36 Del. Laws Ch. 277
- <sup>9</sup> 48 Del. Laws Ch. 256
- <sup>10</sup> 58 Del. Laws Ch. 86
- <sup>11</sup> 58 Del. Laws Ch. 102
- <sup>12</sup> 58 Del. Laws Ch. 622

This agreement made, in triplicate originals, this *thirty first* day of October, A. D. 1906, between Alexander B. Cooper, William S. Hilles, Walter H. Hayes, Commissioners appointed by the State of Delaware, William J. Bradley, J. Boyd Avis and James Strimple, Commissioners appointed by the State of New Jersey, parties of the first part, hereinafter called Commissioners and William N. Davidson of the City of Wilmington, New Castle County and State of Delaware, party of the second part, hereinafter called Contractor:

Witnesseth that said Contractor hereby covenants, promises and agrees to and with said Commissioners to manufacture, make and set up two monuments or shafts of Brandywine Granite, each of said monuments or shafts to be eight feet four inches high, one foot and six inches square at the base tapering to one foot square near the top and thence bevelled to a point at least four inches above the top square. One side of each of said monuments to be polished; to set up each of said monuments on a concrete foundation, three feet deep, said concrete to be laid on good timber or stone slab bottom, each of said concrete foundations to be at least four feet square at the bottom, to continue at that size for six inches in height then to taper on all sides to the top of the concrete which shall be at least two feet and six inches square; to erect and set up one of said monuments on the Delaware shore near Liston's Point at a place to be selected by said Commissioners; to erect the other of said monuments on the New Jersey shore near the mouth of Hope Creek at a place to be selected by said Commissioners; to cut on the polished side of said monument to be erected on the Delaware shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near the mouth of Hope Creek, on the New Jersey shore, is the dividing line.

tween the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware,  
William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.

To cut on the polished side of said monument to be erected on the New Jersey shore the following inscription:

MOUTH OF THE DELAWARE RIVER.

A straight line drawn from the centre of this monument, to the centre of a similar monument, erected near Liston's Point, on the Delaware shore, is the dividing line between the Delaware River and Bay.

Ascertained June 22nd, A. D. 1906, in pursuance of uniform acts of the Legislatures of the State of Delaware and the State of New Jersey, approved A. D. 1905.

William J. Bradley,  
John Boyd Avis,  
James Strimple,  
Commissioners of New Jersey.  
Alexander B. Cooper,  
William S. Hilles,  
Walter H. Hayes,  
Commissioners of Delaware

That the words "mouth of the Delaware river" in each of said inscriptions shall be made of letters two inches in length and all other words in each of said inscriptions shall be made with letters or figures one inch in length.

That said monuments shall be finished and erected in a good workmanlike manner under the supervision and direction of a competent inspector employed for that purpose by said Commissioners and subject to his approval.

Said Contractor further promises, covenants and agrees to and with said Commissioners, that both of said monuments shall be finished and erected as aforesaid, complete in all respects on or before the first day of March A. D. 1907.

The said Commissioners hereby covenant, promise and agree to and with said Contractor to pay him for the furnishing and erecting said two monuments as aforesaid the sum of three hundred and seventy dollars (\$370.00) upon the furnishing and erecting of said two monuments and upon the certificate in writing of the inspector hereinbefore mentioned; that the same have been furnished, made and erected in a good workmanlike manner in accordance with the terms of this agreement.

In witness whereof the said parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

Alex. B. Cooper Jr  
as to Cooper, Hayes and Hiller

Alex. B. Cooper (SEAL)  
M. Hiller (SEAL)  
Nathaniel Hayes (SEAL)

Commissioners of the State of Delaware.

Geo W Bradley as to

Virginia Andrews  
Cyrus Jarman

Geo W Bradley (SEAL)  
John Boyd Davis (SEAL)  
James Strimple (SEAL)

Commissioners of the State of New Jersey.

George N. Downer

William Sanderson (SEAL)

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History Society, Delaware, Delaware  
1997. For more information contact  
the Society at  
Volume Page

RG 0914.1  
Delaware Commissioners  
DE-NJ Fisheries Compact  
General Files 1905-1907  
Folder #4 Monuments

# Laws of the State of Delaware

Relating to

## Fishing in the Delaware River and Bay,

Chapter 72, Vol. 14, Laws of Delaware.

### An Act for the Protection of Fishermen.

1 SECTION 1. (It shall be unlawful for any per-  
2 son not being a citizen of this State to catch or take  
3 fish of any kind in the Delaware bay or river, or any  
4 of the creeks emptying into the same, within the  
5 limits of this State, nor shall any person, being a citi-  
6 zen of this State, have transferred to him, or in any  
7 way have control over or possession of any boat, ves-  
8 sel, or net, which shall be owned, in whole or in part,  
9 by any person who is not a citizen of this State, and  
10 which is used for the purpose of fishing in the Dela-  
11 ware bay or river, or any of the tributaries thereof,  
12 within the limits of the State.) Provided that tran-  
13 sient vessels may catch fish for their own immediate

14 use. If any master of a boat or vessel, or other per-  
 15 son, shall violate this section, he shall be deemed  
 16 guilty of a misdemeanor, and shall pay to the State a  
 17 fine of fifty dollars, and the boat or vessel used in  
 18 such violation of the law, with all her tackle, apparel  
 19 and furniture, and all her implements for fishing,  
 20 gill-net or seine, or any contrivance for taking fish,  
 21 and anything so taken, shall be forfeited and may be  
 22 seized and detained for trial by any officer or person.  
 23 Such trial may be had before any justice of the peace,  
 24 and if condemned, the property seized shall be sold  
 25 by his order, and the proceeds, deducting costs and  
 26 charges, be equally divided among the captors: Pro-  
 27 vided that an appeal shall be allowed from the judg-  
 28 ment of the justice, if applied for within ten days, to  
 29 the Court of General Sessions of the Peace and Jail  
 30 Delivery, on security being by bond and sufficient  
 31 surety, in the full value of the property condemned,  
 32 conditioned to be void if such judgment be reversed  
 33 by said court. Upon such appeal a jury trial shall be  
 34 had on the issue whether the boat or vessel seized has  
 35 been used in violation of this chapter, and if it be  
 36 found in the affirmative, the court shall affirm the

37 judgment of the justice; otherwise such judgment  
 38 shall be reversed and the property seized shall there-  
 39 upon be sold or released accordingly. The Attorney-  
 40 General shall appear for the captors and defend the  
 41 appeal. Any justice of the peace shall, upon affidavit  
 42 made that a boat or vessel is violating this chapter,  
 43 issue his warrant to the sheriff or constable com-  
 44 manding them, or either of them, to seize and detain  
 45 such boat or vessel, and any sheriff or constable shall  
 46 also have power under this act to make said seizure  
 47 and detention without warrant, and in the perform-  
 48 ance of his said duty may, if necessary, summon a  
 49 *posse comitatus*, armed with fire-arms and ammuni-  
 50 tion, and use the same, if forced to do so, in execution  
 51 of the law, and if maiming or death follows such use  
 52 of arms, it shall be considered justifiable, and the of-  
 53 ficer and his posse be free from legal responsibility.  
 54 He may also require the assistance and use of any  
 55 other boat or vessel, they receiving compensation as  
 56 hereafter provided. It shall not be necessary that the  
 57 affidavit shall state the name of the vessel, or of her  
 58 master; such names may be inserted in the proceed-  
 59 ings after the seizure. The sheriff or constable shall

60 be entitled to five dollars per day, and each person  
 61 summoned by him, and rendering him aid, two dol-  
 62 lars per day, and for each boat he may require for his  
 63 assistance a just compensation, to be paid out of any  
 64 property seized and condemned, the officer or officers  
 65 will be paid by the State. If any owner, master, or  
 66 person belonging to, or on board of any boat or vessel,  
 67 shall oppose or resist the sheriff or other person in  
 68 the execution of such warrant, or shall resist any  
 69 lawful seizure of such boat, vessel, or other property,  
 70 such person shall be deemed guilty of a misdemeanor,  
 71 and shall pay to the State a fine of one hundred dol-  
 72 lars. It shall be the duty of the Attorney-General to  
 73 cause any person indicted under this chapter, and  
 74 who is out of the State, to be demanded and brought  
 75 to trial.

SEC. 3. Repealed. Vol. 14, Chap. 419, Sec. 4.  
 (SEC. 3. It shall be unlawful for any person to  
 lay out, float or set any gill-seine or net, or use any  
 contrivance to catch shad or herring nearer than one  
 mile from the mouth of any river or creek within the  
 limits of this State. Any person so offending shall  
 forfeit and pay a fine of fifty dollars, one-half for the

use of the informer, the other half for the use of the  
 State. And in addition thereof, shall forfeit any  
 float, seine, gill-seine or net or any contrivance, and  
 all boats, vessels, tackle and furniture, and all im-  
 plements belonging to any boat or vessel used in con-  
 nection with any such fishing. The seizure, trial,  
 condemnation and sale under this section, shall be  
 the same as the seizure, trial, condemnation and sale  
 under Section 1 of Chapter 72, Volume 14, Laws of  
 Delaware, to which act this act is an amendment.  
 Any person destroying any such float, seine, gill-  
 seines or nets, or contrivances used in violation of  
 this act, shall not be liable to the owner or owners or  
 possessor, in any damage for the destruction there-  
 of.)

SEC. 4. If any sheriff or constable refuses or  
 neglects to serve the warrant issued by the magis-  
 trate for the execution of this law, or if any or all the  
 posse he may summon to his assistance refuse to aid  
 him, it shall be considered a misdemeanor, and he or  
 they shall forfeit and pay to and for the use of the  
 State the sum of ten dollars, to be collected as other  
 fines and penalties are collected, and if any boats



9 shall refuse to render the assistance the sheriff or  
 10 constable or other person may demand, they, or each  
 11 of them shall forfeit and pay the sum of five dollars,  
 12 and forfeit the protection of this law.

SEC. 5. Repealed. Vol. 14, Chap. 419, Section 4.

1 SEC. 6. (Every person being a citizen of this  
 2 State, who may desire to fish in the Delaware bay or  
 3 river, for market, with nets, shall make an affidavit  
 4 before a justice of the peace of this State, stating  
 5 that he is a bona fide citizen of the State of Dela-  
 6 ware, giving his place of residence and the length of  
 7 time he has resided at the said place, and that he is  
 8 the true and legal owner of the boat and net to be  
 9 used in fishing; that he will not use such boat and  
 10 net, or either of them, in the interest of any person  
 11 not a citizen of this State. Said affidavit shall be filed  
 12 in the office of the justice of the peace before whom it  
 13 is made, and the party making the said affidavit shall  
 14 procure from the justice of the peace a certificate,  
 15 stating that such an affidavit has been made, and ex-  
 16 hibit and show the same to any person demanding an  
 17 inspection of the same. The affidavit required to be  
 18 made and certificate obtained under this section shall

19 be made and obtained before the first day of April in  
 20 each and every year such person proposes to fish.  
 21 Any person who shall violate any of the provisions of  
 22 this section shall be guilty of a misdemeanor, and  
 23 upon conviction thereof shall be fined not less than  
 24 fifty dollars, and shall also forfeit the boat, or net, or  
 25 both as the case may be, used in fishing.) (Provid-  
 26 ed, that the provisions of this section shall apply to  
 27 those citizens of this State only who may desire to  
 28 fish for sturgeon or with nets exceeding seventy-five  
 29 (75) fathoms in length.)

1 SEC. 7. It shall be unlawful for any person to  
 2 have in his or her possession, or expose for sale, any  
 3 shad caught in the river Delaware or its tributaries,  
 4 within the jurisdiction of this State, above the south-  
 5 ern point of Reedy Island, between the eleventh day  
 6 of June and the tenth day of August in any year, un-  
 7 der a penalty of five dollars for each and every shad  
 8 so had in possession or exposed for sale, to be recov-  
 9 ered in an action of debt, with costs of suit, by any  
 10 person or persons in his or their name, before any  
 11 justice of the peace of the county, or where the de-  
 12 fendant resides or lives; and in all prosecutions or

13 proceedings under this act it shall not be necessary  
14 to file any statement of demand or to comply with the  
15 formalities required in penal actions, and in all such  
16 actions, both parties may be sworn. One-half of the  
17 said penalty shall be paid to the informer.

1       SEC. 8. It shall be unlawful for any person to  
2 make use of any gill-seine of a less mesh than ten  
3 inches for the purpose of catching fish in the river of  
4 Delaware, within the jurisdiction of this State, above  
5 the southern point of Reedy Island, between the tenth  
6 day of June and the tenth day of August in any year,  
7 and he, she, or they so offending shall forfeit or pay  
8 the sum of one hundred dollars, together with costs  
9 of suit, for each and every offence, and one-half of  
10 said penalty shall be paid to the informer.

1       SEC. 9. It shall be unlawful for any person to  
2 cast, draw, fasten, or otherwise make use of any net,  
3 trap, device, or contrivance for the purpose of catch-  
4 ing (shad) in the river of Delaware, or the bay there-  
5 of, within the jurisdiction of this State, between the  
6 hours of (eight) on Saturday and midnight of Sun-  
7 day, throughout the year, and he, she, or they, so of-  
8 fending, shall forfeit and pay the sum of fifty dollars,

9 together with costs of suit, for each and every of-  
10 fence, and one-half of said penalty shall be paid to the  
11 informer.

1       (SEC. 10. That it shall be unlawful for any per-  
2 son to fish for shad or herring in any of the rivers or  
3 creeks in Kent and Sussex counties after the first day  
4 of June, and in any rivers or creeks of New Castle  
5 county after the fifteenth day of June, in any year,  
6 under the same penalties and forfeitures of Section  
7 3, Chapter 72, Volume 14, Laws of Delaware, as  
8 amended by this act.)

1       (SEC. 11. That nothing in Section 1 of this act  
2 shall apply to any rivers, creeks, or waters of the  
3 Delaware river or bay, north of what is known as  
4 Smyrna creek or Duck creek, nor shall any of its pro-  
5 visions apply to the waters tributary to the Chesa-  
6 peake bay.)

1       SEC. 12. All fines and penalties collected under  
2 this act, after deducting the amounts due to the in-  
3 former and the costs of the suit, shall be paid to the  
4 State Treasurer for the use of the State.

*Passed at Dover, March 28, 1871.*

Volume 21, Page 417.

*An Act to amend Chapter 72, Volume 14, Laws of Delaware, and to provide for the apprehension of persons fishing for shad contrary to law.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1 SECTION 1. That the act entitled "An act for the  
2 protection of fishermen," being Chapter 72, Volume  
3 14, Laws of Delaware, be and the same is hereby  
4 amended by adding thereto after Section 12 a new  
5 section to read as follows: Section 13. That it shall  
6 be the duty of the Fish Commissioner of this State to  
7 provide, arm and equip a boat to patrol the waters of  
8 the Delaware river within the jurisdiction of this  
9 State on Sundays during shad fishing season; and it  
10 shall be the duty of those in charge of said boat, to  
11 patrol said waters on said days and enforce in the  
12 manner now provided by law, the provisions of law  
13 against all persons who shall violate the same.

14 That all expenses incurred in carrying out the  
15 provisions hereof shall be paid by the Levy Court of  
16 New Castle county on warrants drawn by the said  
17 Fish Commissioner. Provided, however, that said

18 expenses shall not exceed the sum of two hundred  
19 dollars in any one year.

*Approved March 23, A. D. 1899.*

Volume 21, Page 418.

*An Act providing that it shall be illegal to fish in the waters of the Delaware bay or Delaware river within the jurisdiction of this State with a net or seine with meshes which, when stretched, shall be less than two and five-eighth inches.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1 SECTION 1. That from and after this act shall  
2 become a law no person shall use for the purpose of  
3 catching fish in the waters of the Delaware bay or  
4 Delaware river within the jurisdiction of this State  
5 any net or seine the meshes of which, when stretched,  
6 shall be less than two and five-eighth inches.

1 SEC. 2. That any person who shall violate any  
2 of the provisions of this act shall be guilty of a mis-  
3 demeanor, and, upon conviction thereof, shall be  
4 fined not exceeding two hundred dollars or imprison-

5 ed not exceeding three months, or both in the discre-  
6 tion of the Court.

1 SEC. 3. All laws or parts of laws inconsistent  
2 with the provisions of this Act be and the same are  
3 hereby repealed.

*Approved March 23, A. D. 1899.*

Chapter 146, Page 289, Vol. 22.

*An Act to Amend Chapter 72, Volume, 14, Laws of  
Delaware, and to provide for the apprehension of persons  
fishing for shad contrary to law.*

*Be it enacted by the Senate and House of Representa-  
tives of the State of Delaware in General Assembly  
met:*

1 SECTION 1. That the Act entitled "An Act for  
2 the protection of fishermen," being Chapter 72, Vol-  
3 ume 14, Laws of Delaware, be and the same is hereby  
4 amended by adding thereto after Section 12, a new  
5 section to read as follows:

1 SEC. 13. That it shall be the duty of the Govern-  
2 nor of this State to appoint a suitable person for the  
3 term of four years, and quadrennially thereafter,

4 whose duty it shall be to provide, equip and take  
5 charge of a boat to patrol the water of the Delaware  
6 river within the jurisdiction of this State on Sun-  
7 days during shad fishing; and it shall be the duty of  
8 said person and those in charge of said boat to pa-  
9 trol said waters on said days and enforce in the man-  
10 ner now provided by law, the provisions of law  
11 against all persons who shall violate the same.

12 That all expenses incurred in carrying out the  
13 provisions hereof, shall be paid by the Levy Court of  
14 New Castle County; provided, however, that said ex-  
15 penses shall not exceed the sum of two hundred dol-  
16 lars in any one year.

1 SEC. 2. That all Acts or parts of Acts inconsis-  
2 tent herewith be and the same are hereby repealed.

*Approved February 19, A. D. 1901.*

Volume 22, Page 328.

*An Act to prevent carp fishing in the Delaware bay  
and its tributaries during the months of June, July and  
August of each year.*

*Be it enacted by the Senate and House of Representa-*

*tives of the State of Delaware in General Assembly met:*

1 SECTION 1. That from and after the passage of  
2 this Act, it shall be unlawful for any person or per-  
3 sons to catch or in any wise take or capture carp fish  
4 in the Delaware bay or river or any of its tributaries  
5 within the limits of this State during the months of  
6 June, July and August in each and every year.

1 SEC. 2. That any person violating the provisions  
2 of this Act shall be guilty of a misdemeanor and upon  
3 conviction thereof shall be fined not exceeding fifty  
4 dollars or be imprisoned not less than thirty days or  
5 both at the discretion of the Court.

*Approved March 2, A. D. 1901.*

Volume 22, Page 724.

*An Act to amend Chapter 145, Volume 22, Laws of  
Delaware, entitled "An Act to prevent carp fishing in the  
Delaware bay and its tributaries during the months of  
June, July and August of each year," by extending the  
time of the close season.*

*Be it enacted by the Senate and House of Representa-  
tives of the State of Delaware in General Assembly met:*

1 SECTION 1. That Section 1 of Chapter 145, Vol-  
2 ume 22, Laws of Delaware, be and the same is here-  
3 by amended by inserting in the fifth line of said Sec-  
4 tion 1 of said chapter and volume between the word  
5 "of" and the word "June," the word "May."

*Approved April 16, A. D. 1903.*

Volume 22, Page 725.

*An Act appropriating certain funds of the State to be  
expended in the propagation of sturgeon.*

*Be it enacted by the Senate and House of Representa-  
tives of the State of Delaware in General Assembly met:*

1 SECTION 1. That the Commissioner of Fish and  
2 Fisheries be and he is hereby authorized, and it  
3 shall be the duty of said Commissioner, to procure a  
4 suitable building to be used as a hatchery, and all  
5 necessary articles and things whatsoever for the pro-  
6 pagation and increase of sturgeon to be distributed in  
7 the waters of this State.

1 SEC. 2. That for the purpose of carrying into ef-  
2 fect the provisions of this Act the sum of twelve hun-  
3 dred dollars is hereby appropriated for the year end-

4 ing December 31, A. D. 1903, and the further sum of  
 5 eight hundred dollars is hereby appropriated for the  
 6 year ending December 31, A. D. 1904; and the State  
 7 Treasurer is hereby directed to pay the same from  
 8 the general fund, from time to time, on the requisi-  
 9 tion of the Commissioner of Fish and Fisheries, who  
 10 shall certify that the sum is actually necessary for  
 11 the purposes as set forth in this Act. The said Com-  
 12 missioner of Fish and Fisheries shall annually in the  
 13 month of December, make to the Governor, a report  
 14 of all moneys coming to said Commissioner's hands  
 15 under the provisions of this Act, which said report  
 16 shall also include a list of the disbursements of said  
 17 moneys with complete vouchers therefore attached.  
*Approved March 31, A. D. 1903.*

Rev. Code, Page 469, Chapter 419, Volume 14.

*A supplement to the Act entitled "An Act for the protection of fishermen."*

1 SECTION 1. That it shall be unlawful for any  
 2 person not being a citizen of this State, under this  
 3 Act, to use more than three hundred fathoms of gill-

4 net or seine, and any person who may violate this  
 5 section shall be deemed guilty of a misdemeanor and  
 6 shall pay to the State a fine of twenty-five dollars for  
 7 every such violation.

1 SEC. 2. That the Governor be and he is hereby  
 2 authorized to appoint five commissioners who shall  
 3 be appointed in and for, and shall reside in the  
 4 County of New Castle, in the towns of Port Penn,  
 5 Delaware City, New Castle, Wilmington, and Clay-  
 6 mont, one in each place; and the appointment shall  
 7 be made and vacancies filled by the Governor for and  
 8 during the period of two years. The said commis-  
 9 sioners are hereby authorized and required to take  
 10 cognizance of all violations of the act to which this  
 11 is a supplement, to arrest any and every offender  
 12 against the aforesaid law, to seize and detain the boat  
 13 or boats of said offender, and are hereby invested  
 14 with all the powers, privileges and remunerations of  
 15 the sheriff and constables enumerated in the act  
 16 aforesaid.

1 SEC. 3. Inserted as an amendment.....  
 1 SEC. 4. ....

*Passed at Dover, February 19, 1873.*

Rev. Code, Page 470, Chapter 99, Volume 18.

*An Act for the protection of fisheries in this State.*

1 SECTION 1. That it shall not be lawful for any  
 2 person or persons to place in any of the ponds, lakes,  
 3 rivers or streams of this State, or in any of the  
 4 waters belonging to the State, any lime, gas tar, co-  
 5 culus-indicus (otherwise known as fish berries), or  
 6 any other deleterious substance, or take or catch fish  
 7 with any deleterious substance or medicated bait, or  
 8 shall any person or persons make use of giant or  
 9 electric powder, or any explosive substance whatever  
 10 for the purpose of taking fish, and any person or per-  
 11 sons offending against the provisions of this section  
 12 of this Act shall be guilty of a misdemeanor, and  
 13 upon conviction shall be punished by imprisonment  
 14 for a period not exceeding six months or by a fine not  
 15 exceeding fifty dollars, or by both, such fine and im-  
 16 prisonment at the discretion of the Court before  
 17 which such conviction shall be had.

1 SEC. 2. Of all the penalties recovered under this  
 2 Act one-half shall go to the informer and the other  
 3 half shall be paid to the State Treasurer to be paid  
 4 by him upon demand to the Fish Commissioner of

5 this State to be used by him in the performance of  
 6 his duties, and accounted for by him in his report.

1 SEC. 3. That this Act shall take effect imme-  
 2 diately.

*Passed at Dover, April 5, 1887.*

Rev. Code, Page 472, Chapter 650, Volume 19.

*An Act for the protection and increase of food fish in  
 Delaware waters.*

1 SECTION 1. That from and after the passage of  
 2 this Act it shall be unlawful during the shad season  
 3 for any person or persons to fish with float seines or  
 4 other devices for catching shad anywhere along the  
 5 shore of Delaware bay within a half mile of the  
 6 mouth of any creek or river within the following  
 7 named limits, viz: Commencing one mile north of  
 8 Blackbird creek on the north, and extending one mile  
 9 south of Mispillion river on the south, excepting  
 10 thereout a space of three hundred feet along the  
 11 shore of the said bay about midway between St. Jones  
 12 creek and Murderkill creek, where it shall be unlaw-  
 13 ful for Joseph Wood and his successors to the title of

14 the property now owned by him opposite the point  
15 above mentioned to fish with stake nets.

1     SEC. 2. That it shall not be lawful for any per-  
2 son or persons to fish for shad either in the said bay  
3 or any of the creeks or rivers emptying into the same,  
4 within the limits described in Section 1 hereof, from  
5 Saturday, 12 o'clock meridian, until midnight of Sun-  
6 day. It shall also be unlawful to place or maintain  
7 any obstruction in any of the said creeks or rivers to  
8 prevent the fish ascending the same.

1     SEC. 3. The season for fishing for shad shall  
2 close within the limits named in Section 1 hereof on  
3 the tenth day of June of each year.

1     SEC. 4. The Governor may appoint a policeman,  
2 residing in the vicinity of Bowers' Beach, whose duty  
3 it shall be to diligently inquire for violations of the  
4 provisions of this Act, and all other laws relating to  
5 fish or oysters, whether within bay, creeks or rivers,  
6 and when such are brought to his notice it shall be his  
7 duty to immediately prosecute the same, and failing  
8 to do so may himself be fined for neglect of duty. His  
9 duty for this service shall commence on March twen-  
10 tieth and close on June tenth. He shall receive for

11 his services two dollars per day while employed. The  
12 fines, if any are collected, may be applied to the sal-  
13 ary of the policeman as far as they will go, the bal-  
14 ance to be paid from the revenue from oysters. It  
15 shall also be the duty of the oyster revenue collector  
16 to see that all oyster and fish laws are faithfully and  
17 promptly executed, and every violation thereof im-  
18 mediately prosecuted to conviction. The Governor  
19 shall also, on the first day of May, A. D. 1898, and an-  
20 nually thereafter, appoint some suitable person, a  
21 resident of Bowers' whose duty it shall be to prevent  
22 violations of the oyster laws, and to vigilantly,  
23 promptly and vigorously prosecute and bring to pun-  
24 ishment all persons guilty of any such violations. He  
25 shall receive a yearly salary of one hundred dollars  
26 to be paid quarterly out of the oyster fund by the col-  
27 lector of oyster revenue.

1     SEC. 5. Any one violating any provisions of this  
2 act shall be guilty of a misdemeanor, and upon con-  
3 viction thereof shall forfeit and pay a fine of not less  
4 than ten dollars, nor more than fifty dollars, or be im-  
5 prisoned not less than one nor more than three  
6 months.



7 Any officer neglecting to discharge the duties  
8 herein imposed shall be alike guilty and punished in  
9 like manner.

1 SEC. 6. Chapter 131, Volume 19, Laws of Dela-  
2 ware, is hereby repealed and this Act substituted  
3 therefor.

*Passed at Dover, March 21, 1893.*

Rev. Code, Page 473, Chapter 134, Volume 19.

*An Act for the protection of mamnose, or young  
sturgeon in the Delaware bay, river, and their tributaries.*

1 SECTION 1. That it shall not be lawful for any  
2 person or persons to cast, draw, set, anchor, drift, or  
3 stake, any gilling net, seine or shore-net, or any other  
4 device or appliances of any kind whatsoever, for the  
5 the purpose of catching fish commonly called or  
6 known as mamnose (which are young sturgeon un-  
7 der three feet in length), in the waters of the Dela-  
8 ware bay, river and their tributaries, with the juris-  
9 diction of the State of Delaware. And any person or  
10 persons fishing with gilling nets, drift nets, shore  
11 seine nets, or any kinds of nets, devices or appliances,

12 who shall find young sturgeon, or mamnose, under  
13 three feet in length entangled or caught therein, shall  
14 immediately, with care and with the least possible  
15 injury to the fish, disentangle and let loose the same  
16 and transmit the fish to the water without violence.  
17 Any person or persons violating any provisions of  
18 this section, or having in their possession young  
19 sturgeon, or mamnose, under three feet in length,  
20 either for consumption or for sale, or who is known  
21 willfully to destroy the same, for so offending shall,  
22 on conviction thereof, be punished with a fine of ten  
23 dollars for each and every fish so caught, sold, or de-  
24 stroyed, and in default of paying such fine, on being  
25 convicted thereof, to be imprisoned in the county jail  
26 for thirty days.

1 SEC. 2. That any fish commissioners, fish war-  
2 den, deputy fish warden, sheriff, deputy sheriff, con-  
3 stable, policeman or special officer of this State, is  
4 hereby authorized to apprehend, arrest and imme-  
5 diately take any person who may be guilty of the vio-  
6 lation of any of the provisions or sections of this act  
7 before any justice of the peace, magistrate or any  
8 other authority, and thereupon make charge of such

9 violation of the law or any of the provisions thereof,  
 10 and the magistrate shall forthwith hear and deter-  
 11 mine the charge and render judgment accordingly,  
 12 with the right of certiorari or appeal, as in all simi-  
 13 lar cases of arrest and conviction, and in case of any  
 14 failure of any fish commissioners, wardens, or any  
 15 other officer named above, to prove his case, the State  
 16 shall pay the costs.

1 SEC. 3. That one-half of the fines imposed un-  
 2 der any section of this act shall be for the benefit of  
 3 the prosecutor, and the other half shall be paid to the  
 4 treasurer of the county in which the prosecution  
 5 shall be made. And the said treasurers of the several  
 6 counties of the State of Delaware shall pay over to  
 7 the respective commissioner of Delaware all moneys  
 8 forfeited and received by them by virtue of this act,  
 9 and said commissioner shall pay over the same to the  
 10 Treasurer of the State.

1 SEC. 4. That this act shall immediately go into  
 2 force and effect, and shall be deemed and taken to be  
 3 a public act.

*Passed at Dover, April 23, 1891.*

Rev. Code Page 473, Chapter 863, Volume 19.

1 Joint Resolution in relation to fishing for men-  
 2 haden. That from and after the adoption of this  
 3 resolution the collector of oyster revenue shall, upon  
 4 payment to him of the sum of one hundred dollars,  
 5 annually issue a license to any vessel or fishing boat  
 6 to fish for and take menhaden, sharks, porpoises and  
 7 herring hogs in the waters of the Delaware bay as  
 8 far north as Mahon's river, from the 20th day of May  
 9 to the 20th day of November in each year; said li-  
 10 cense fee to be for the use of the State. Any master  
 11 of a vessel or owner thereof who shall fish in said  
 12 waters without first having procured said license  
 13 shall be deemed guilty of a misdemeanor and upon  
 14 conviction thereof shall be fined the sum of five hun-  
 15 dred dollars and costs of prosecution, for the use of  
 16 the State.

1 *Resolved, further,* That the Commissioner of  
 2 Fish and Fisheries shall have power and is hereby  
 3 given authority to make arrests of persons violating  
 4 the laws of this State, and the provisions of this reso-  
 5 lution, and, if necessary may call in and deputize any  
 6 person or persons, boat or boats, vessel or vessels,

7 with their crews, as a posse comitatus in the enforce-  
8 ment of this resolution and the laws of this State.

1 All Acts or parts of Acts inconsistent herewith  
2 are hereby repealed.

*Adopted at Dover, May 2, 1893.*

Rev. Code, Page 474, Chapter 652, Volume 19.

1 SECTION 1. Any person who takes or catches  
2 any black bass or trout from any of the waters of  
3 New Castle county with a haul seine shall pay a fine  
4 of five dollars for each fish so caught, taken or pos-  
5 sessed, with costs of prosecution; provided, however,  
6 that the catching or taking of black bass or trout with  
7 nets other than haul seines shall not be prohibited by  
8 this act between the first day of June and the first  
9 day of November in each year, nor shall it prohibit  
10 the taking or catching of black bass or trout at any  
11 time during any year by hook and line.

1 SEC. 2. Any person engaging in the artificial  
2 culture or maintenance of fish may take fish at any  
3 time for stocking ponds and creeks, and for other

4 purposes, and may grant permits in writing for other  
5 persons to capture fish for artificial propagation.

1 SEC. 3. A person who takes or catches from any  
2 of the waters of New Castle county, other than by  
3 hook and line, any black bass or trout less than six  
4 inches in length and does not immediately return the  
5 same with the least possible injury to the waters from  
6 which they were taken or caught, or has in his pos-  
7 session any black bass or trout, less than six inches  
8 in length, caught or taken from any of the waters of  
9 New Castle county, shall be fined not more than ten  
10 dollars for each fish so caught or taken, caught or  
11 possessed; and the possession of any such fish shall  
12 be *prima facie* evidence that the same was caught or  
13 taken from the waters of New Castle county.

1 SEC. 4. The penalties provided for in the preced-  
2 ing sections, and the costs of suits, of every such of-  
3 fense, shall be recoverable before a justice of the  
4 peace by an action of debt in the name of the State of  
5 Delaware, as debts are now recoverable by law, one-  
6 half to be paid to the Delaware Road and Reed Asso-  
7 ciation and the other half to the informer; if such fine  
8 or costs are not paid as herein provided, then such

9 person or persons shall undergo an imprisonment in  
10 the county jail for not more than ten days.

1 SEC. 5. That Chapter 561, Volume 18, Laws of  
2 Delaware, is hereby repealed.

*Passed at Dover, May 2, 1893.*

Volume 23, Chapter 127, Page 220.

*An Act to amend Chapter 250, Volume 21, Laws of Delaware, being an Act entitled "An Act providing that it shall be illegal to fish in the waters of the Delaware bay or Delaware river within the jurisdiction of this State with a net or seine with meshes which, when stretched, shall be less than two and five-eighths inches" by providing that nets or seines with smaller meshes may be used for fishing in Delaware bay.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1 SECTION 1. That Chapter 250, Volume 21, Laws  
2 of Delaware, be and the same is hereby amended by  
3 striking out of Section 1 of said Chapter 250, the  
4 words "Delaware bay or" in line three of said chap-

5 ter, and adding at the end of said Section 1, the fol-  
6 lowing: "and no person or persons shall use for the  
7 purpose of catching fish in the waters of Delaware  
8 bay within the jurisdiction of this State, any net or  
9 seine, the meshes of which, when stretched, shall be  
10 less than two inches."

*Approved March 30, A. D. 1905.*

Volume 23, Chapter 128, Page 221.

*An Act to prevent carp fishing in the Delaware bay and its tributaries, south of the north bank or shore of Appoquinimink creek, during the months of July and August of each year.*

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1 SECTION 1. That from and after the passage of  
2 this Act it shall be unlawful for any person or per-  
3 sons to catch or in any wise to take or capture carp  
4 fish in the Delaware bay or river or any of its tribu-  
5 taries south of the north bank or shore of Appo-  
6 quinimink creek, within the limits of this State dur-

7 ing the months of July and August in each and every  
8 year.

1     SEC. 2. That any person violating the provisions  
2 of this Act shall be guilty of a misdemeanor and upon  
3 conviction thereof shall be fined not exceeding fifty  
4 dollars, or be imprisoned not less than thirty days or  
5 both at the discretion of the Court.

1     SEC. 3. That this Act shall not be construed to  
2 repeal any former Acts in relation to carp fishing un-  
3 less the same are manifestly inconsistent with this  
4 Act.

*Approved, March 16, A. D. 1905.*

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Volume \_\_\_\_\_ Page \_\_\_\_\_

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Delaware Commissioners

DE-NJ. Fisheries Compact

General Files 1905-1907

Folder #3 - Legislation

June 4, 1903.

JOHN BOYD AVIS  
COUNSELLOR AT LAW  
WOODBURY, N. J.

Hon. Walter H. Hayes,  
Wilmington, Del.

Dear Mr. Hayes,

I desire to advise you that arrangements had been made to go down the River and select a place for setting the monument today, but owing to the fact that Mr. Acton, the surveyor, who is also an attorney at-law, is engaged in a case in the Supreme Court, it was impossible for us to take the trip. Arrangements will be made to go down the Bay sometime next week, and I will let you know the result as soon as we are able to do so.

I am writing this to you so that you will understand the cause of the delay.

Yours truly,

*John Boyd Avis*

DE Public Archives

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DE Commissioners

Fisheries Compact

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DE16199



THE SENATE OF NEW JERSEY

Woodbury, N. J.,

June 27, 1908.

Hon. Walter H. Hayes,  
Wilmington, Del.

My dear Mr. Hayes,

I desire to advise you that Senator Bradley and I, as members of the New Jersey Commission, located the site for the monument to be erected on the Jersey shore, yesterday, and have made arrangements with the owner to secure a deed for the ground that we will need.

I expect to have this matter all completed by the middle of next week and we will then be ready to go ahead and have the monument set.

I will advise you immediately upon the completion of the arrangements.

Yours very truly,



DE Public Archives

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DE COMMISSIONERS

FISHERIES COMP.

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THE SENATE OF NEW JERSEY

Woodbury, N. J. 7/8/08.

Walter H. Hayes Esq.

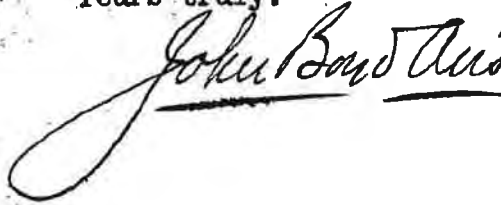
Wilmington, Delaware.

Dear Mr. Hayes :-

Your letter has been received. We appreciate your kind invitation to accompany you on your trip down the bay, but will not be able to accept at this time. Expect to have our deed some time this week and will send you word at once when completed.

I send to you enclosed check of Senator Bradley as President of the Commission for \$22.50, the amount due to your Commission. This should have been sent to you sooner, but was apparently overlooked.

Yours truly,

A handwritten signature in cursive script, reading "John B. Bradley". The signature is written in dark ink and is positioned below the typed name "John B. Bradley".

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Fisheries Compact

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THE SENATE OF NEW JERSEY

Woodbury, New Jersey

July 17, 1908.

Hon. Walter H. Hayes,  
Wilmington, Delaware,

My dear Mr. Hayes:-

I have received your letter, and in reply desire to advise you that we have made all arrangements for our plot of land and expect the deed in a few days. We are satisfied, however, to go ahead at once and set the monuments. We have chosen John H. Avis, Woodbury, New Jersey as the inspector, who will be on the ground at any time that may suit MR. Davidson. He knows the spot selected by our Commission for the monument. We approve of your action in employing a photographer, and will want at least a half dozen photos of each monument. I will write to Mr. Davidson that he may fix a day as soon as convenient to him.

Yours very truly.

*John Bryn Aros*

DE Public Archives

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JOHN BOYD AVIS  
COUNSELLOR AT LAW  
WOODBURY, N. J.

July 21, 1908.

Hon. Walter H. Hayes,  
Wilmington, Del.

Dear Sir:

I have received your letter of the 20th inst., and note contents.

If you are going to have the monuments photographed together, I think it would be well to reserve a dozen for us.

Yours truly,





DE Public Archives

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DE16208

JOHN BOYD AVIS  
COUNSELLOR AT LAW  
WOODBURY, N. J.

August 14, 1868.

Hon. Walter H. Hayes,

Wilmington, Del.

Dear Sirs:

I have received your letter and send to you enclosed the report of the Inspector with relation to the setting of the two monuments. I will obtain the bill from the Inspector and forward to you later.

I think, as you do, that we should have a meeting the early part of September to wind up the business of the Commissions and will confer with Senator Bradley and let you know what date will suit us.

Yours truly,

*John Boyd Avis*

DE Public Archives

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DE16210

Aug. 28, 1908.

Dear Walter:-

Will you see Hilles and let us have a meeting ~~at~~  
early next week at my office, so that we can determine  
what else is to be done and arrange to do it, and get  
the confounded thing off of our hands.

Yours truly,

To Walter H. Hayes, Esq.  
Wilmington, Del.

A handwritten signature in cursive script, appearing to read "Alex. B. Cooper". The signature is written in dark ink and is positioned to the right of the typed name.

20

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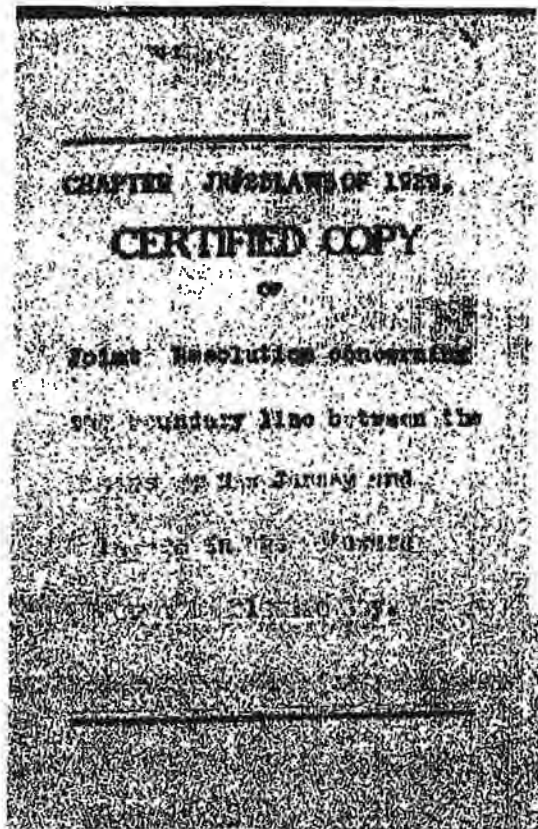
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Delaware Commissioners DE-NJ

Fisheries Compact

General Files

1905 - 1907



DE02836

~~SENATE JOINT RESOLUTION NO. 10~~

# STATE OF NEW JERSEY

1878

Joint Resolution concerning the boundary line between the States of New Jersey and Delaware in the Delaware Bay and Delaware River.

1 WHEREAS, The Commissioners of the State of New Jersey appointed under Joint  
 2 Resolution No. 4, approved March first, eighteen hundred and ninety seven,  
 3 and twenty seven, to confer with the Commissioners representing the State of  
 4 Delaware for the purpose of reaching a treaty or agreement between said  
 5 States and legislation consequent thereon, to be submitted to the Legislatures of  
 6 said States for action thereon, relative to the final adjustment of all controversies  
 7 relating to the boundary line between said States and their respective rights in the  
 8 Delaware River and Bay, have reported to the Legislature that they have been  
 9 unable to reach an agreement with the commissioners of the State of Delaware,  
 10 and have recommended that the said controversy be referred to the Arbitration  
 11 General to the end that appropriate action may be taken on the matter, and  
 12 determine said boundary line, therefore,

1 Be it enacted by the Senate and General Assembly of the State of New Jersey  
 2 that the Attorney General is hereby authorized, he is required and he shall, in  
 3 behalf of the Governor, take such steps as he shall deem necessary and to institute  
 4 such action or proceeding in the Supreme Court of the United States as may be neces-  
 5 sary to secure a judicial determination of said controversies between the State of  
 6 New Jersey and the State of Delaware over the boundary line between said States  
 7 with the Pennsylvania State line through the Delaware River and Bay to the Atlantic  
 8 Ocean.

1 2. This joint resolution shall take effect immediately.

Approved May 11, 1878

152

# State of New Jersey



## Department of State

I Joseph M. S. Fitzgerald, Secretary of State of the State of New Jersey do hereby certify that the foregoing is a true copy of an Act passed by the Legislature of the State and approved by the Governor, this \_\_\_\_\_ day of

May 1833

at Trenton this \_\_\_\_\_ day of \_\_\_\_\_ 1833

In Testimony Whereof I have hereunto set my hand and official seal at Trenton, New Jersey, this \_\_\_\_\_ day of \_\_\_\_\_ 1833

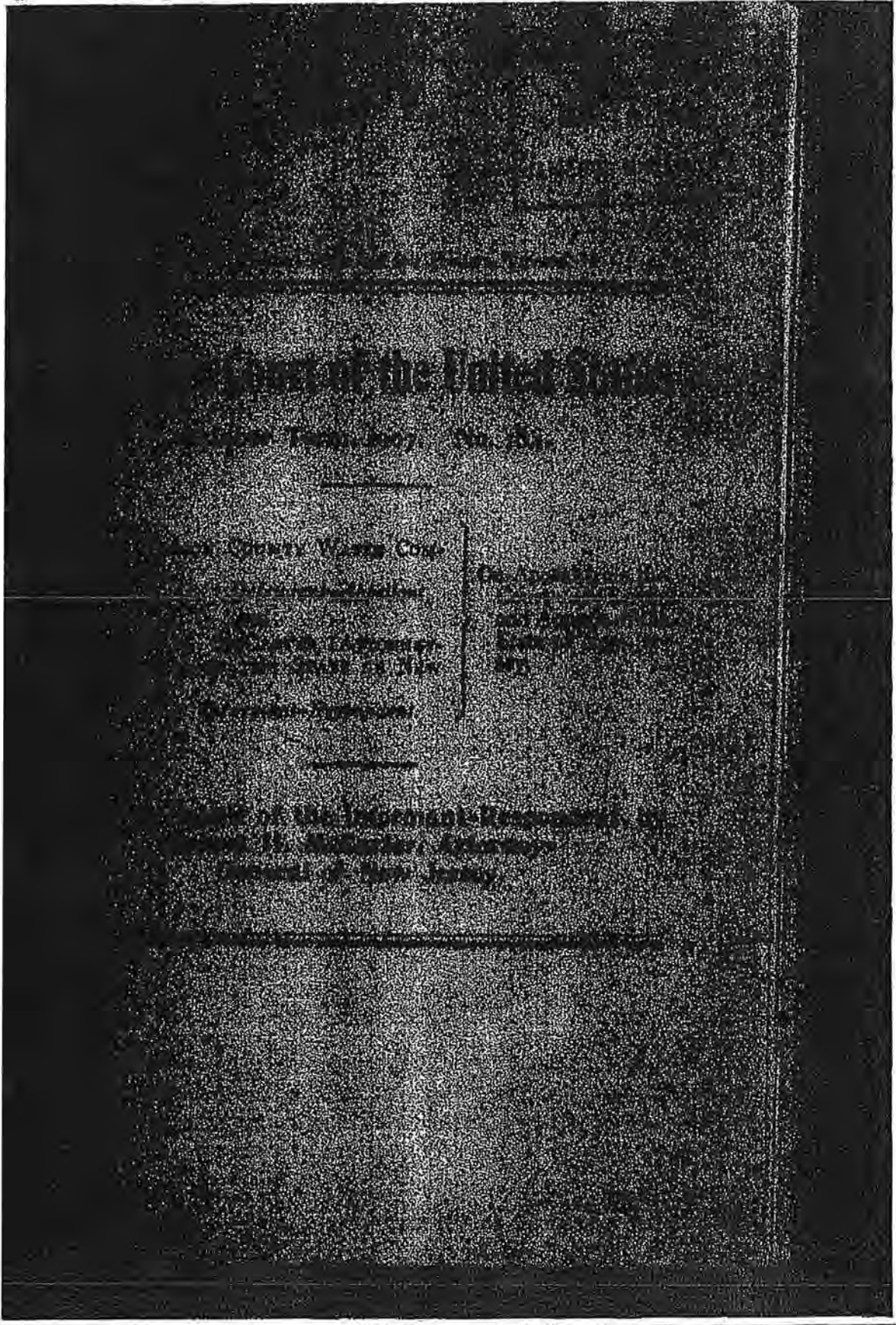


Joseph M. S. Fitzgerald  
Secretary of State





DE02839



# Supreme Court of the United States

October Term, 1907. No. 184.

THE HUDSON COUNTY WATER COMPANY,

*Defendant-Appellant,*  
and

ROBERT E. McCARTER, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY,

*Informant-Respondent.*

On Appeal from the Court of Errors and Appeals of the State of New Jersey.

## STATEMENT OF FACTS.

This is an appeal from a decree of the New Jersey Court of Errors and Appeals, the court of last resort in that State, affirming a decree of the Chancellor, awarding to the informant the relief prayed for in the information, and perpetually enjoining the Hudson County Water Company from carrying or transporting into Staten Island or the State of New York, or elsewhere out of the State of New Jersey, any of the waters of the Passaic river.

The suit was instituted by the Attorney-General and an amended information filed in the Court of Chancery of New Jersey on or about the nineteenth of September, nineteen hundred and five, alleging that a corporation of the State of New Jersey, known as the East Jersey Water Company, was engaged in the sale of water to municipal corporations and water companies, and to other consumers, taken from the Passaic river, for that purpose had established extensive works at Little Falls, on said river and in said State, and was daily diverting from said river a quantity of water estimated at thirty million gallons, and that the demands of their customers in the State of New Jersey were increasing from year to year; that a corporation of the State of New Jersey, known as the Hudson County Water Company, the appellant herein, had entered into a contract with certain corporations located in Staten Island, in the State of New

York, to supply them with water, which, in turn, it had arranged to secure from the East Jersey Water Company by means of intermediate corporations; and had likewise entered into a contract with the city of New York for a supply of water from the same source into Staten Island, to be distributed by the municipal authorities of the said city of New York to consumers in the borough of Richmond, in Staten Island, and within the corporate limits of the city of New York, whereby it was proposed to supply to said city not less than three million gallons of water per day. That said last-mentioned contract had been made with full knowledge of the provisions of the act of the Legislature of the State of New Jersey approved May eleventh, nineteen hundred and five, entitled "An act to preserve and maintain the lakes, ponds, brooks, creeks, rivers and streams of this State, and to prevent the water thereof from being carried, by pipes, conduits, ditches or canals, into other States for use therein, and to authorize the Court of Chancery to assist in the observance of this act," and being Chapter 238 of the Pamphlet Laws of that year, whereby the Legislature, after reciting that the available waters of the fresh-water lakes, ponds, brooks, creeks, rivers and streams of the State of New Jersey do not increase with the growth of the population, and unless the same are carefully preserved, will become inadequate to perform their natural functions, which functions are essential to the health and prosperity of all the citizens of the State, enacted that it should be unlawful for any person or corporation to transport or carry, through pipes, conduits, ditches or canals, the waters of any fresh-water lake, pond, brook, creek, river or stream of the State of New Jersey into any other State for use therein, and making it the duty of the State Geologist to keep a general oversight over such sources of water supply, and see that the same are preserved for the use and benefit of the citizens and inhabitants of the State, and to prevent the waters thereof from being transported, in manner aforesaid, into other States for use therein; and requiring him, upon being informed that it is the intention of any person or corporation to so carry or transport into any other State for use therein, any such waters, through the Attorney General, to apply to the Court of Chancery for an injunction to restrain the same, which Court was thereby empowered and authorized to entertain jurisdiction of such a suit in order to preserve the waters aforesaid for the use and benefit of the citizens and inhabitants of the State; and to that end the said Court was authorized to issue such restraining order and injunction, both preliminary and final, as may be necessary.

A full copy of this act is attached to this brief in the appendix.

and may likewise be found on page 461 of the Pamphlet Laws of the State of New Jersey for the year 1905.

The information further showed that the Passaic river is the principal and most important of all the available sources of supply of water to the cities and towns of New Jersey, and that the demand for water for use in the State of New Jersey is growing more rapidly than the population of the State, and that within a short time the entire supply of the Passaic river and its tributaries will be required for the uses of the people of the State; that the said Passaic river is also a natural outlet for the drainage that exists within its valley, and receives such drainage, including much fetid and unhealthy matter, and carries it to the sea; and that the maintenance of the normal quantity of water within its banks is necessary to prevent its further pollution. That several municipalities bordering near or upon the said river, by legislative authority or otherwise, are, and for a number of years past have been, emptying their sewage into the said river, and already the waters thereof have become greatly contaminated, and the health, comfort and prosperity of the good citizens living near or along its banks have become affected thereby, and are in danger of becoming more so, and that any further diversion of the waters of the Passaic river at Little Falls or elsewhere, for the purpose of transmission to the State of New York, will render the stream inadequate to carry such sewage, fetid matter or drainage into the sea, and will cause discomfort and disease to the inhabitants of the State who live or work near to or adjoining the said stream below the point of diversion; and that the proposed diversion will deprive the State and its citizens of large quantities of water which belong to the State by virtue of its sovereignty, as successor to the English crown, in the ownership of common law of all the waters of fresh-water streams, subject to the rights only of the riparian owners along said streams, and which, if undiverted in the manner proposed, would ultimately flow on to lands of and become the property of the State.

The information further pleaded the act of the Legislature above referred to, and prayed for the relief therein authorized and for an injunction.

An answer was filed by the Hudson County Water Company, practically admitting the facts averred in the information, but claiming the benefit of the contracts set out in the information, and denying that the act of the Legislature of the State of New Jersey, approved May eleventh, nineteen hundred and five, was applicable to it, and insisting that it was void because it impaired the obligation of said contracts, because it took property without

due compensation and without process of law, and provided for the interference of commerce between the States of New Jersey and New York, and denied to the citizens of other States the privileges of citizens of New Jersey, as well as the equal protection of the laws, and was, therefore, violative of the Federal Constitution.

After full hearing, as before stated, a final decree was entered, according to the Informant all the relief desired, on the advice of VICE-CHANCELLOR BERGEN, in accordance with the opinion found in page 36 of the record. From this decree an appeal was taken to the Court of Errors and Appeals, resulting in a unanimous affirmance of that decree, the opinion of that Court being delivered by Mr. Justice PITNEY. This opinion is found on page 44 of the record.

The opinions of the Court of Chancery and of the Court of Errors and Appeals of the State Court are so luminous and convincing that the respondent could well rest his case upon their reasoning, and the Court is respectfully referred to those opinions as printed in the record, and no effort will be made in this argument to repeat what is therein included.

The appellant in its assignment of errors (record, page 65) places its right to review the decision of the court of last resort of the State of New Jersey in this Court, upon the fact that that decision sustained the act of the Legislature before referred to, the effect of which was to validate an act that should have been held to be void as an attempt to regulate, control or forbid commerce between the State of New Jersey and other states, and because of the other constitutional provisions referred to in the answer and hereinabove noted, including the claim that by virtue of the said decree, the Hudson County Water Company was denied the right and privilege to sell water taken from a running stream in New Jersey to citizens of New York, as fully and freely as to citizens of New Jersey, in violation of the provisions of the Federal Constitution, providing for the regulation, by the Congress exclusively, of commerce between the states, and also in violation of the provisions of the Constitution whereby the citizens of New York are entitled to the privileges and immunities of the citizens of New Jersey and the equal protection of the laws of New Jersey.

The Court will take judicial notice that the Passaic river is a fresh-water stream, flowing into the ocean through New York bay; and that at the point of diversion (Little Falls) it is not

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 Newark.

*Brown v. Scofield*, 8 Barb. 239.

*Peacock v. Howard*, 7 Pet. 324.

*The Montello*, 11 Wall. 411.

*U. S. v. Rio Grande Co.*, 174 U. S. 690.

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It nowhere appears in this case how, if at all, either the East Jersey Water Company or the Hudson County Water Company acquired their alleged right to divert water at Little Falls, and it must be assumed that, so far as lower riparian owners are concerned, including, of course, the State itself, these companies are mere interlopers or squatters. It is not even claimed that either of them is a riparian owner, so that the defendants, thus claiming to exercise the valuable right to divert large quantities of water of a running stream, bases its right so to do entirely upon squatter sovereignty, notwithstanding the fact that such conduct amounts, in law, to a nuisance, which any lower riparian proprietor can either enjoin, or sue to recover his damages.

*East Jersey Water Co. v. Bigelow*, 31 Vr. (60 N. J. L.) 207.

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Even if the East Jersey Water Company were shown to be a riparian proprietor at Little Falls, its rights in the water of the river flowing thereby are perfectly well settled by rules too familiar to require any citation of authorities. Such an owner has a mere usufruct in the water as it flows by his property; he may gain the benefit of any power arising therefrom; he may divert it through his premises, provided he restore it again to the natural channel before it reaches the boundary of a lower proprietor. He may use it reasonably for domestic purposes, but he has no right to divert any substantial quantity and apply it to his own or other people's uses. The lower owner is entitled to have substantially the full amount of water flow by his land without dilution or diminution by or on the part of an upper proprietor. It is believed that no authority can be found which sustains the right of the East Jersey Water Company to divert such millions of gallons of water from the Passaic river at this or any other point without the consent of the lower owners, and to apply the same to municipal or other purposes.

*U. S. v. Rio Grande Co.*, 174 U. S. 690, 702.

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This familiar principle would be applicable if the East Jersey Water Company, on whose rights the defendant must of course have been a riparian proprietor. When it cannot even claim that right, it becomes all the more significant.

But the appellant, without seriously questioning the correctness of this axiomatic rule, denies that it here concerns the State in any way, and insists that this suit has no properly interested party to support it. In a word, it denies that the State has any interest in the premises, either at common law or by virtue of the statute above referred to, and claims that any rights sought to be given by that statute are unavailable against the defendant, by reason of the fact that it had, previous to the enactment, entered into contracts looking to the proposed diversion of the waters into the State of New York.

It thus appears that the fundamental question to be determined is whether or not the State is interested and can assert such interest in this manner.

What, then, is the interest of the State and what rights has it in the premises?

The correct answer to this inquiry is two-fold: the State, as successor to the Crown in England, is—

(a) The absolute owner of the bed of the stream and of the banks thereof up to high-water mark, so far as it is navigable.

*Stevens v. Paterson and Newark R. R. Co.*, 5 Vr. (39 N. J. L.) 532; *Cobb v. Davenport*, 7 Vr. (36 N. J. L.) 369; and

(b) The rights of the private proprietors in the running stream above the point of navigability, whose title goes to the thread, being limited and usufructuary only, the residue of interest or property in the great mass of running water resides in the State as trustee for the public, and the State has not only the right to preserve, but it is charged with the duty, as such trustee, of preserving the same for the common benefit of all its citizens.

#### I.

THE STATE, AS A LOWER OWNER, IS ENTITLED TO PRESERVE THE INTEGRITY OF THE STREAM SO THAT IT WILL COME TO IT UNIMPAIRED IN QUANTITY.

This is but an example of the principles applied in *Attorney-General v. Delaware & Bound Brook R. R. Co.*, 12 C. E. G. (27 N. J. Eq.) 631, where the court, through Mr. Justice Dixon, said:

"In equity as in the law court, the Attorney-General has the right, in cases where the property of the sovereign or the interests of the public are directly concerned, to institute suit by what may be called civil information for their protection. The State is not left without re-

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dress in its own courts, because no private citizen chooses to encounter the difficulty of defending it, but has appointed this high public officer, on whom it has cast the responsibility, and to whom, therefore, it has given the right of appearing on its behalf and invoking the judgment of the courts on such questions of public moment.

A leading case is *Attorney-General v. Jamaica Pond Aqueduct Corporation*, 133 Mass. 367.

n to be determined  
can assert such

Here an information was filed by the Attorney-General against a corporation claiming that Jamaica Pond was one of the great ponds of the commonwealth, and that the defendant by its charter and other statutes was authorized to draw water therefrom, provided it did not reduce the level below a certain limit, and that the defendant, claiming legislative authority, was about to erect water-works for the purpose of supplying a municipality with water, the effect of which would be, as the information claimed, to lower the level of Jamaica Pond below the limit fixed as aforesaid, thereby impairing the rights of the public in the use of the pond for fishing, boating and other lawful purposes.

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The opinion, after determining that the Attorney-General had the power to restrain any corporation exercising *ultra vires* powers, continues:

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*R. Co.*, 5 Fr. 1  
*Fr.* (36 N. J. 1)

"There is another ground upon which, in our opinion, this information can be maintained, though perhaps it belongs to the same general head of equity jurisdiction, of restraining and preventing nuisances. The great ponds of the commonwealth belong to the public, and, like the tide waters and navigable streams, are under the control and care of the commonwealth. The rights of fishing, boating, bathing and other like rights which pertain to the public, are regarded as valuable rights, entitled to the protection of the government. *West Korbury v. Stoddard*, 7 Allen 158. *Attorney-General v. Woods*, 108 Mass. 436. *Commonwealth v. Vincent*, 108 Mass. 441. If a corporation or an individual is found to be doing acts without right, the necessary effect of which is to destroy or impair these rights and privileges, it furnishes a proper case for an information by the Attorney-General to restrain and prevent the mischief.

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"Suppose a city or an aqueduct corporation commences a canal or an aqueduct, without authority from the Legislature, designed to draw off great quantities of the water, so as to injure or endanger the rights of the public therein, an information in equity would fur-

plied in *Attorney-General v. Wood*  
*Co.*, 12 C. E. 1  
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nish the only adequate means of ascertaining and protecting the rights of the government and of the public. The Legislature has the right to determine to what extent the defendant corporation may draw down the waters of Jamaica Pond for the purposes for which it was incorporated."

Another important case is *Coosaw Mining Co. v. South Carolina*, 144 U. S. 550, where an information on behalf of the State of South Carolina, filed to prevent the defendant corporation from improperly digging, mining and removing phosphate deposits in the navigable waters of the State, was sustained. Mr. Justice Harlan, after construing the legislation under which the defendant corporation was claiming the right, adversely to the company and in favor of the State, confirms the right of the State to equitable relief by injunction in the premises, and concludes:

"The grounds of equity jurisdiction in such cases as the one before us are substantially those upon which courts of equity interfere in cases of waste, public nuisance and purpresture."

He then refers with approval to *United States v. Gear*, 3 How. 120, where a bill for injunction by the United States was sustained to prevent the digging of ore from lead mines upon the public lands; to *Attorney-General v. Forbes*, 2 My. & Cr. 123, where it was said by the Lord Chancellor:

"Many cases might have been produced in which the court has interfered to prevent nuisances to public rivers and to public harbors; and the Court of Exchequer, as well as this court, acting as a court of equity, has a well-established jurisdiction upon a proceeding, by way of information, to prevent nuisances to public harbors and public roads; and, in short, generally to prevent public nuisances."

Reference in the opinion is also made to *Gibson v. Smith*, 2 Atk. 182, and to *Attorney-General v. Jamaica Pond Aqueduct* (*supra*), at length, and it concludes as follows:

"These principles are applicable to the present case. The remedy at law for the protection of the State, in respect to the phosphate rocks and phosphatic deposits in the beds of its navigable waters, is not so efficacious or complete as a perpetual injunction against interference with its rights by digging, mining and removing such rocks and deposits without its consent. The Coosaw Mining Company, unless restrained, will not only appropriate to its use property held in trust for the public, but will prevent the proper administration of that trust for an indefinite period, by obstructing

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others, acting under lawful authority, from enjoying rights in respect to that property derived from the State. These conflicting claims cannot be so effectively or conclusively settled by proceedings at law, as by a comprehensive decree covering all the matters in controversy. Proceedings at law or by indictment can only reach past or present wrongs done by the appellant, and will not adequately protect the public interests in the future. What the public are entitled to have is the security, for all time, against illegal interference with the control, by the State, of the digging, mining and removing of phosphate rock and phosphatic deposits in the bed of the Coosaw river. Such security was properly given by the decree below."

See also *Story's Eq. Jur.*, secs., 922, 923, where it is stated that an information in equity at the suit of the Attorney-General is readily sustained by courts of equity, because of "their ability to give a more complete and perfect remedy than is attainable at law, in order to prevent irreparable mischief and also to suppress oppressive and vexatious litigation."

See also *Kerr on Injunctions*, 262; *1 Joyce on Injunctions*, 150.

This whole subject was luminously discussed by this Court in the recent case of *Missouri v. Illinois and the Sanitary District of Chicago*, 180 U. S. 208, 243, in which the right of a state, through its Attorney-General or otherwise, to preserve the integrity or purity of its streams by bill for injunction, was maintained, and reliance had upon *Attorney-General v. Jamaica Pond Aqueduct Corporation* (*supra*); *Coosaw Mining Company v. South Carolina*, 144 U. S. 550 (*supra*), and other cases.

The damage or injury to a lower private riparian owner seeking an injunction in cases of this character need not be great. See *High on Injunctions*, 795, where the fact that such lower proprietor will suffer but small damage from the proposed diversion is said not to be any defense to an injunction.

To the same effect are—

*Hylme v. Schreve*, 4 N. J. Eq. 116;

*Shields v. Arndt*, Id. 234;

*Higgins v. Flemington Water Co.*, 9 *Stew.* 538;

*Corning v. The Troy Iron and Nail Factory*, 40 N. J. 201.

Mr. Angell, in his treatise on *Water Courses*, sec. 135, says: "That a diversion of a water-course without actual injury to a riparian owner down the stream legally imports damages (because it is an infringement of a right), is a doctrine powerfully sustained by the American authorities."

See, also, *Mudge v. Salisbury*, 110 N. Y. 413, where, in a similar case by a private proprietor, the Court says:

"Resort to equity by the plaintiffs was proper in this case. The jurisdiction of courts of equity and their power to grant relief cannot be doubted. The avoidance of a multiplicity of actions and the inadequacy of legal remedies to prevent the defendants from taking away the water, to the detriment of plaintiffs' prior rights thereto, and to secure to plaintiffs the continuous enjoyment, by them, of those superior rights, are deemed sufficient grounds for the interposition of a court of equity. (*Olmsted v. Loomis*, 9 N. Y. 423; *Corning v. Troy Iron Factory*, 40 Id. 191.)"

See, also, *Garwood v. N. Y. C. & H. R. R. Co.*, 83 N. Y. 400; *Weiss v. Oregon Iron and Steel Co.*, 11 Pac. Rep. 255.

If this minimum of damage suffice to support a private suit for an injunction by a private owner, *a fortiori* will it suffice in this case, where the information is by the Attorney-General. The allegations of the information, to the effect that the proposed diversion will not only deprive the State and its citizens of large quantities of water, but will cause discomfort and disease to the inhabitants of the State, and interfere with the functions of the stream which are essential to the health and prosperity of its citizens, are either undenied or admitted in the answer, as shown by the opinions. If the proposed diversion is permitted, then more discomfort and disease will follow. The defendant or other corporations, encouraged by a refusal of the court to act at this time, would erect expensive plants and rely upon the cost thereof as a reason to prevent future interference by the State. The principle that the State can prevent waste or destruction of its property does not require it to wait until they have assumed large proportions. The court should encourage alertness on the part of the public in these matters, and its Attorney-General, while ever on the alert to protect the property of the State, should not be required to wait until he is met by the claim of laches, or of large expenditure, but should act promptly, and the fact that little or no present damage to the State is shown should not, by the courts, be permitted to be interposed as a defense.

It must not be overlooked that individuals may acquire, by prescription against the Crown or the State, the right to the soil of public waters and hence prescriptive rights might be set up as against the State.

As shown by this court in *Missouri v. Illinois*, 200 U. S. 496, 520, time in the acquisition of rights may sometimes run against a state; and it is hence of importance to a state to prevent the acquisition of title by prescription.

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See *Waters*, sec. 37, and the cases cited in support  
of this doctrine, including *Hale, De jure maris*, chapter 5.

*Oppenheim, International Law*, sec. 243;  
*Hargrave's Law Tracts*, 18;  
*Nichols v. Boston*, 98 Mass. 30;  
*Boston v. Richardson*, 105 Mass. 41;  
*George v. Meeher*, 34 Conn. 31;  
*Palmer v. Hicks*, 6 Johns. 133;  
*2 Kents Com.* 427.

## II.

THE STATE, WITHOUT REGARD TO ITS LOWER PROPRIETOR-  
SHIP, IS ENTITLED TO AN INJUNCTION AS SUCCESSOR TO THE  
CROWN AND AS REPRESENTATIVE OF THE PUBLIC; AND THIS TOO  
NOTWITHSTANDING THE PROVISIONS OF THE FEDERAL CONSTI-  
TUTION RELIED UPON BY THE APPELLANT.

It is believed that the State has a supervisory interest and  
property in the waters that lie or flow in it, entitling and re-  
quiring it, as the representative of the public, to preserve the  
same, and that this right and duty have been inherited from the  
King of England.

In *Hargrave's Law Tracts*, chap. 2, is a consideration of the  
right or prerogative of the King in private or fresh rivers, and  
it is there stated that the King, by an ancient right of prerog-  
ative, hath had a certain interest in many fresh rivers, even when  
the sea doth not flow and reflow, among which are an interest  
of jurisdiction, namely, in reference to common law nuisances  
in and by rivers, as when the sewers were not kept. That this  
gave rise to the commission of sewers, as well for fresh rivers as  
for salt, *vid. 23 H. 8 chap. 5*, where in the act of parliament  
appointing a commission to look after the sewers that flowed  
into and through the public fresh water streams of the kingdom,  
it was recited for that "by reason of our royal dignity and pre-  
rogative royal, we are bound to provide for the safety and preser-  
vation of our realm."

Another part of the King's jurisdiction in reference to nui-  
sances is there stated to be to reform and punish nuisances in all  
rivers, whether fresh or salt, that are a common passage, and  
among the nuisances mentioned, page 9, are "the polluting of the  
rivers by cuts or trenches." In Chapter V, there is a consider-  
ation of the rights which a subject may have in the creeks or  
arms of the sea, and on page 23, reference is made to *1 H. 4.*  
*cap. 12*, whereby it was enacted "that there shall be commissions

granted to survey and keep the waters and great rivers, and to correct and amend the default."

In *Smith v. Rochester*, 92 N. Y. 463-477, is found a philosophical statement of the true rule. I quote as follows:

"Among other rights which pertain to sovereignty is that of using, regulating and controlling for special purposes the waters of all navigable lakes or streams, whether fresh or salt, and without regard to the ownership of the soil beneath the water. The right is known as the *jus publici* and is deemed to be inalienable.

"Judge Edmonds, in his learned opinion in *Gould v. Hudson River Railroad Co.*, 6 N. Y. 546, says: 'When regarding the rights of the State in respect to lands, we must not be unmindful that it has two interests, one governmental and the other proprietary. Or as it is divided by M. Prudhon in his *Traite du Domain Public*, the public domain, which is that kind of property which the government holds as mere trustee for the use of the public, such as public highways, navigable rivers, salt springs, etc., and which are not, of course, alienable; and the domain of the State, which applies only to things in which the State has the same absolute property as an individual would have in like cases. Although this quotation is from a dissenting opinion, yet, so far as the principle announced is concerned, it met with no dissent and is supported by universal authority. 6 N. Y. 555; U. S. *B'k v. B'k of Metropolis*, 15 Pet. 387; *Doe dem Knight v. Nepean*, 5 B. & A. 91; *Hoyt v. Sprague*, 12 Pick. 407; 3 Kent's Com. 537; *Pollard's Lessee v. Hagan*, 3 How. U. S. 222.

"In the examination of any of the numerous questions relating to water-courses that may arise, no discussion would be complete which failed to refer to the ancient and learned treatise *De jure Maris*, by Sir Matthew Hale, and which, after the lapse of two centuries, remains the most concise, comprehensive and reliable work on the subject of which it treats. As appears from the learned note of Judge Cowen to *ex parte Jennings* (6 Cow. 537), under the following title: 'Of the right of prerogative in private or fresh rivers,' it reads: 'The king, by an ancient right of prerogative hath had a certain interest in many fresh rivers, even where the sea does not flow or reflow, as well as salt or arms of the sea, and those are these which follow:

"1st. A right of franchise or privilege that no man may set up a common ferry for all passengers without

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2d. An interest, as I may call it, of pleasure or recreation.

3d. An interest of jurisdiction.

4d. And another part of the king's jurisdiction in reformation of nuisances is to reform and punish nuisances in all rivers, whether fresh or salt, that are a common passage not only for ships and greater vessels, but also of smaller, as barges and boats, to reform the obstructions or annoyances that are therein to such common passage, for as the common highways on the land are for the common-land passage, so these kind of rivers, whether fresh or salt, that bear boats or barges, are highways by water, and as the highways by land are called *alta via regia*, so these public rivers for public passage are called *fluvie regales* and *streames le Roy*; not in reference to the propriety of the river, but to the public use."

An intelligent consideration of the subject will also be found in sections 133, 138, 138d, 140a and 141 of *Farnham on Waters*. In *Connecticut River Lumber Co. v. Alcott Falls Co.*, 65 N. H. 200, 21 *All. Rep.* 1090, an application by the Attorney-General to prevent the erection of a dam in the Connecticut river which would interfere with the easy flotation of logs thereon, was upon this ground, sustained by the Supreme Court of New Hampshire.

Upon the same theory the Supreme Court of Indiana, in the case of *State v. Ohio Oil Co.*, 150 *Ind.* 21, 49 *N. E. Rep.*, p. 809, sustained an application by its Attorney-General for an injunction to prevent the waste of natural gas by the defendant, which was drilling for oil.

Here the whole subject of the right of the State, as the representative of the public, to protect the public interest in the common property, like gas or water, is considered in a very elaborate opinion, and the right to an injunction expressly sustained upon the ground that it is the duty of the State, where the common property of the people at large is being wasted, destroyed, unapplied, or injured, to interfere, likening the principle to legislation concerning fish, or to prevent a nuisance in public streams. The language of the Supreme Court of Kansas, in *State v. Garfield*, 23 *Kan.* 726, is adopted, to the effect that:

"Anything which is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community

or neighborhood, or any considerable number of persons, is a public nuisance. The fish within our waters constitute the most important constituent of that species of property commonly designated as wild game, the general right to ownership of which is in the people of the State, as in England it was in the king, and the right and power to protect and preserve such property for the common use and benefit is one of the recognized prerogatives of the sovereign coming to us from the common law, and preserved and expressly provided for by the statutes of this and every other State in the Union."

Elaborate quotations are then made from several other cases, including that of *Attorney-General v. Aqueduct Corporation*, 133 Mass. 361 (*supra*), and *Coosaw Mining Co. v. South Carolina*, 144 U. S. 566 (*supra*).

Practically the same subject was considered by this Court in the case of *Ohio Oil Co. v. Indiana*, 177 U. S. 190, where it sustained legislation of the State of Indiana making it unlawful for any person, being in possession of a natural gas or oil well, to permit the flow of gas or oil from any such well to escape into the open air, without being confined for a longer period than two days next after such oil or gas shall have been struck, and held that legislation of that character in no way interfered with private property, nor did it amount to a denial of due process of law.

The opinion is a philosophical one by Mr. Justice White, and can only be fully appreciated by being read *in extenso*.

It determines that oil and gas embodied in the bowels of the earth occupy in law a position somewhat the same as water, and concludes that the three may be characterized as minerals *ferre nature*.

It says:

"Water and oil, and, still more strongly, gas, may be classed by themselves, if the analogy be not too fanciful, as minerals *ferre nature*. In common with animals, and unlike other minerals, they have the power and the tendency to escape without the volition of the owner. Their 'fugitive and wandering existence within the limits of a particular tract was uncertain,' as said by Chief Justice Agnew in *Brown v. Vandergrift*, 80 Penn. State 147, 148. They belong to the owner of the land, and are a part of it, so long as they are on or in it, and are subject to his control; but when they escape and go into other land, or come under another's control, the title of the former owner is gone. Possession of the land, therefore, is not necessarily possession of the gas.

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After adverting to the right of the State to protect animals  
from waste, the opinion continues:

"Viewed, then, as a statute to protect or to prevent  
the waste of the common property of the surface  
owners, the law of the State of Indiana, which is here  
attacked, because it is asserted that it divested private  
property without due compensation, in substance, is a  
statute protecting private property and preventing it  
from being taken by one of the common owners without  
regard to the enjoyment of the others. Indeed, the  
entire argument, upon which the attack on the statute  
must depend, involves a dilemma, which is this: If the  
right of the collective owners of the surface to take  
from the common fund, and thus reduce a portion of  
it to possession, does not create a property interest in  
the common fund, then the statute does not provide  
for the taking of private property without compensa-  
tion. If, on the other hand, there be, as a consequence  
of the right of the surface owners to reduce to posses-  
sion a right of property in them, in and to the sub-  
stances contained in the common reservoir of supply,  
then, as a necessary result of the right of property, its  
indivisible quality and the peculiar position of the  
things to which it relates, there must arise the legisla-  
tive power to protect the right of property from de-  
struction."

The decree of the highest court of the State of Indiana sus-  
taining the right of that State through its Attorney-General to  
prevent the waste of natural gas was therefore sustained by this  
Court, and that alone upon the theory that the State has a duty  
and right to protect property of this kind within it, which belongs  
to no one particular person, but is given to all. Surely the interest  
which the owner of the soil has, by virtue of his title *usque ad*  
*interos* to the gas or oil that is in it, is as great as the right of the  
private owner of riparian land to the water flowing through it,  
and if the State, as settled by this high authority, can legitimately  
protect the common interest which the people at large have in the  
gas or oil thus located, and before it is specifically appropriated,  
a similar right must reside in the sovereign to protect the com-  
mon right in the waters of the State.

This court, in *Kansas v. Colorado*, 185 U. S. 125, had occasion  
to consider its jurisdiction and right to maintain a suit by or  
on behalf of a state to prevent the pollution or disturbance of  
fresh water streams running through its boundaries, and in the  
course of its opinion said:

"The mere fact that a state has no pecuniary interest  
in the controversy would not defeat the original juris-

diction of the Court which might be invoked by the state as *parens patriae*, trustee, guardian or representative of all or in considerable portion of its citizens; and that the threatened pollution of the waters of a river flowing between states, under the authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justifiable under the constitution.

In the case before us, the State of Kansas files her bill as representing and on behalf of her citizens, as well as in vindication of her alleged rights as an individual owner, and seeks relief in respect of being deprived of the waters of the river accustomed to flow through and across the state, and the consequent destruction of the property of herself and of her citizens, and injury to their health and comfort."

See also *Missouri v. Illinois and the Sanitary District of Chicago*, 180 U. S., 208.

It is exactly this theory that promoted the suit at bar.

Precisely the same view was announced by this court in the very recent case of *Kansas v. Colorado*, 206 U. S. 46, 99, in which, after quoting from *Missouri v. Illinois* (*supra*), Mr. Justice BREWER referred to the action there pending, in which the State of Kansas undertook to enjoin the State of Colorado from diverting the waters of the Arkansas river, and sanctioned the right of the State, as complainant, to invoke injunctive relief, saying:

"It (Kansas) is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a state in this large tract of land bordering on the Arkansas river. Its prosperity affects the general welfare of the State. The controversy rises, therefore, above a mere question of local private right and involves a matter of state interest, and must be considered from that standpoint \* \* \*"

and Mr. Justice HOLMES, in the important case of *Georgia v. Tennessee Copper Co.*, 206 U. S. 226, 237, thus expresses the same idea.

"The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This

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is a suit by a State for an injury to it in its capacity  
of quasi-sovereign. In that capacity the State has an  
interest independent of and behind the titles of its cit-  
izens, in all the earth and air within its domain. It  
has the last word as to whether its mountains shall be  
stripped of their forests and its inhabitants shall breathe  
pure air. It might have to pay individuals before it  
could utter that word, but with it remains the final  
power. The alleged damage to the State as a private  
owner is merely a makeweight, and we may lay on one  
side the dispute as to whether the destruction of forests  
has led to the gullying of its roads."

Now, it is upon this theory that from time immemorial game  
and fish laws have been sanctioned.

In *Allen v. Wreckall*, 19 Vr. (48 N. J. L.) 90, Justice Dixon  
says:

"As a game law the statute falls into the line of a  
long series of enactments, beginning in the very early  
history of the mother country and continuing uninter-  
ruptedly down to the present time."

And if the decisions of the Court in regard to those statutes  
be examined, it will be found that the Supreme Court of Illinois,  
in the case of *Magner v. The People*, 97 Ill. 333, correctly says:

"The ownership (of the game) being in the people  
of the State—the repository of the sovereign author-  
ity—and no individual having any property rights to  
be affected, it necessarily results that the Legislature,  
as the representative of the people, may withhold or  
grant to individuals the right to hunt and kill game,  
or qualify and restrict it, as in the opinion of its mem-  
bers will best subserve the public welfare."

See also *American Express Co. v. The People* (Sup. Ct. of  
Ill.) 114 N. E. Rep. 738.

I can see no distinction whatever in principle between the re-  
served right of the State to protect the common interest in that  
mineral that is *fera natura*, and animals like game that are  
*fero natura*; and continuing the analogy, inasmuch as statutes  
have been enacted in almost every State regulating the times  
when game shall be shot or fish caught, and applying a different  
rule to non-residents from that which is permitted to residents,  
which statutes have been constantly sustained as being a proper  
exercise of the police power and in no way amenable to the  
criticism that they contravene the Federal Constitution as inter-  
fering with commerce, it would seem that chapter 238 of the  
laws of 1905 (*supra*) is entirely valid legislation.

A leading case is that of *State v. Geer*, decided by the Court of Errors of Connecticut and reported in *61 Conn. 144*.

There the validity of an act of the Connecticut Legislature, the first section of which forbade the killing of woodcock, etc., for the purpose of conveying the same beyond the limits of the State, and the second section of which forbade any person or corporation to transfer or convey beyond the limits of the State any such woodcock, etc., killed within the State, was questioned. The defendant had been convicted of violating this act and appealed from such conviction upon the ground that it was an invalid piece of legislation. The following quotation from the opinion may well be studied:

"The defendant further demurred to the complaint (3) because section 2546 of the General Statutes is unconstitutional and void so far as it may be construed to forbid the transporting from the State, or having possession of such birds with intent to procure such transportation to another State, birds described therein, which birds have been sold to parties in such other State, and have begun to move as an article of inter-state commerce; and (4) because it is made to appear in said complaint that the defendant is guilty under said section, if such birds were bought by the defendant in the markets of this State as merchandise and commerce, and had begun to move as an article of commerce." In short, the defendant insists that the statute, as construed by us, is unconstitutional, as restricting inter-state commerce, and refers to *Robbins v. Taxing Dist.*, 120 U. S. 469, 7 Sup. Ct. Rep. 592; *The Daniel Ball v. U. S.*, 10 Wall. 566; *Railroad Co. v. Husen*, 95 U. S. 465; *State v. Saunders*, 19 Kan. 127; *Territory v. Evans (Idaho)*, 23 Pac. Rep. 115; *Territory v. Nelson, Id.* 116; *State v. Mining Co. (Indiana Sup.)*, 22 N. E. Rep. 778; and *Express Co. v. People (Illinois Sup.)*, 24 N. E. Rep. 759. In *State v. Saunders*, 19 Kan. 127, the Court says it seems to be finally settled, among other things, that no State can pass a law which will directly interfere with the free transportation from one State to another, or through a State, of anything which is or may be subject to inter-state commerce; that a law which prohibits the catching and killing of prairie chicken may be valid, although it may indirectly prevent the transportation of such chickens from the State to any other State; but a law which allows prairie chickens to be caught and killed, and thereby to become the subject of traffic

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and commerce, and at the same time directly prohibits  
that transportation from the State, is unconstitutional  
and void. Without stopping to consider the construc-  
tion which was given to the constitutional provision  
under discussion by the earlier commentators, except  
to suggest, in the language of Judge Story (*2 Story*,  
*Comm. 511*); that a very material object of its adop-  
tion was the relief of the States which export and im-  
port through other States from the levy of improper  
contributions on them by the latter—an object which  
was shown to be important by the experience of the  
States during the confederation period—we feel con-  
strained to hold the provision of the statute to be con-  
stitutional. It being conceded that the State, under its  
general police power, may lawfully prohibit the killing  
of the game birds in question, it may, of course, con-  
trol such killing, and the times and purposes thereof.  
It may lawfully enact that they may be killed and sold  
and held for sale only for domestic consumption. The  
State, in the exercise of its power, instead of prohib-  
iting the killing altogether, permits the person killing  
them to acquire only a qualified right in them, namely,  
the right to appropriate them to his own use, and the  
right to sell or transport them for domestic use. *The*  
*birds in question never become articles of commerce*  
*within the meaning of the term contended for by the*  
*defendant. They became private property of a qualified*  
*character. The law limited the purposes for which*  
*they might be killed and become private property. The*  
*difference between property of this sort and the ordi-*  
*nary private property of commerce is obvious. The*  
*apparent assumption of the Kansas court, above re-*  
*ferred to, that game which the law allows to be caught*  
*and killed, thereby necessarily becomes the subject of*  
*traffic and commerce, meaning inter-state commerce,*  
*appears to us unsound. If the proposition were true,*  
*then the conclusion that a State law interfering with*  
*such commerce would be unconstitutional might pass*  
*unquestioned. But we cannot acquiesce in a decision*  
*which would deny the power of the State to limit the*  
*right to kill, sell and hold its own game by any provi-*  
*sion short of an absolute prohibition, without thereby*  
*transforming it into that species of property the trans-*  
*portation of which from the State it is unconstitutional*  
*to prohibit.*

The case was then appealed to this Court, and affirmed in an  
opinion written by Mr. Justice WHITE and reported in *161 U. S.*

579, who states that the charge against the defendant was "the possession of game birds for the purpose of transporting them beyond the State, which birds had been lawfully killed within the State."

He passes to a consideration of the constitutionality of the statute creating the liability, and says: "The solution of the question involves a consideration of the nature of the property in game and the authority which the State had a right lawfully to exercise in relation thereto."

He then continues:

"Among other sub-divisions, things were classified by the Roman law into public and common. The latter embraced animals *feræ naturæ* which, having no owner, were considered as belonging in common to all the citizens of the State. After pointing out the foregoing sub-division, the Digest says:

"There are things which we acquire the dominion of, as by the law of nature, which the light of natural reason causes every man to see, and others we acquire by the civil law; that is to say, by methods which belong to the government. As the law of nature is more ancient, because it took birth with the human race, it is proper to speak first of the latter. 1. Thus all the animals which can be taken upon the earth, in the sea or in the air, that is to say, wild animals, belong to those who take them. \* \* \* Because that which belongs to nobody is acquired by the natural law by the person who first possesses it. We do not distinguish the acquisition of these wild beasts and birds by whether one has captured them on his own property or on the property of another; but he who wishes to enter into the property of another to hunt can be readily prevented if the owner knows his purposes to do so.' *Digest, Book 41, Tit. 1, De Acquir. Rer. Dom.*

"No restriction, it would hence seem, was placed by the Roman law upon the power of the individual to reduce game, of which he was the owner in common with other citizens, to possession, although the Institutes of Justinian recognized the right of an owner of land to forbid another from killing game on his property, as indeed this right was impliedly admitted by the Digest in the passage just cited. *Institutes, Book 2, Tit. 1, s. 12.*

"This inhibition was, however, rather a recognition of the right of ownership in land than an exercise by the State of its undoubted authority to control the taking and use of that which belonged to no one in

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particular, but was common to all. In the feudal as well as the ancient law of the continent of Europe, in all countries, the right to acquire animals *feræ nature* by possession was recognized as being subject to the governmental authority and under its power, not only as a matter of regulation, but also of absolute control. *Merlin, ubi sup.*, mentions the fact that, although tradition indicates that from the earliest day in France every citizen had a right to reduce a part of the common property in game to ownership by possession, yet it was also true that as early as the Salic law that right was regulated in certain particulars. Pothier, in his treatise on property, speaks as follows:

"In France, as well as in all other civilized countries of Europe, the civil law has restrained the liberty which the pure law of nature gave to every one to capture animals who, being in *naturali libertate*, belong to no person in particular. The sovereigns have reserved to themselves, and to those to whom they judge proper to transmit it, the right to hunt all game, and have forbidden hunting to other persons. Some ancient doctors have doubted if sovereigns had the right to reserve hunting to themselves and to forbid it to their subjects. They contend that, as God has given to man dominion over the beasts, the prince had no authority to deprive all his subjects of a right which God had given them. The natural law, say they, permitted hunting to each individual. The civil law which forbids it is contrary to the natural law and exceeds, consequently, the power of the legislator, who, being himself submitted to the natural law, can ordain nothing contrary to that law. It is easy to reply to these objections. From the fact that God has given to human kind dominion over wild beasts, it does not follow that each individual of the human race should be permitted to exercise this dominion. The civil law, it is said, cannot be contrary to the natural law. This is true as regards those things which the natural law commands or which it forbids; but the civil law can restrict that which the natural law only permits. The greater part of all civil laws are nothing but restrictions on those things which the natural law would otherwise permit. It is for this reason, although by the pure law of nature hunting was permitted to each individual, the prince had the right to reserve it in favor of certain persons and forbid it to others. *Pothier, Traite du Droit de Propriete, Nos. 27-28.*

"The right belongs to the king to hunt in his dominion; his quality of sovereign gives him the authority to take possession above all others of the things which belong to no one, such as wild animals; the lords and those who have a right to hunt hold such right but from his permission, and he can affix to this permission such restrictions and modifications as may seem to him good." *No. 32.*

"In tracing the origin of the classification of animals *feræ naturæ*, as things common, Pothier moreover says:

"The first of mankind had in common all those things which God had given to the human race. This community was not a positive community of interest, like that which exists between several persons who have the ownership of a thing in which each has his particular portion. It was a community, which those who have written on this subject have called a negative community, which resulted from the fact that those things which were common to all belonged no more to one than to the other, and hence no one could prevent another from taking of these common things that portion which he judged necessary in order to subserve his wants. Whilst he was using them others could not disturb him, but when he had ceased to use them, if they were not things which were consumed by the fact of use, the things immediately re-entered into the negative community, and another could use them. The human race having multiplied, men partitioned among themselves the earth and the greater part of those things which were on its surface. That which fell to each one among them commenced to belong to him in private ownership, and this process is the origin of the right of property. Some things, however, did not enter into this division, and remain therefore to this day in the condition of the ancient and negative community." *No. 21.*

"Referring to those things which remain common, or in what he qualified as the negative community, this great writer says:

"These things are those which the juris consults called *res communes*. Marcien refers to several kinds—the air, the water which runs in the rivers, the sea and its shores. \* \* \* As regards wild animals, *feræ naturæ*, they have remained in the ancient state of negative community."

"In both the works of Merlin and Pothier, *ubi sup.*, will be found a full reference to the history of the varying control exercised by the law-giving power over the



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right of a citizen to acquire a qualified ownership in animals, *feræ naturæ*, evidenced by the regulation thereof by the Salic law, already referred to, exemplified by the legislation of Charlemagne, and continuing through all vicissitude of governmental authority. This unbroken line of law and precedent is summed up by the provisions of the Napoleon Code, which declare (*Arts. 714, 715*): 'There are things which belong to no one, and the use of which is common to all. Police regulations direct the manner in which they may be enjoyed. The faculty of hunting and fishing is also regulated by special laws.' Like recognition of the fundamental principle upon which the property in game rests has led to similar history and identical results in the common law of Germany, in the law of Austria, Italy, and, indeed, it may be safely said in the law of all the countries of Europe. Saint Joseph Concordance, vol. 1, p. 68.

'The common law of England also based property in game upon the principle of common ownership, and therefore treated it as subject to governmental authority.

Blackstone, whilst pointing out the distinction between things private and those which are common, rests the right of an individual to reduce a part of this common property to possession, and thus acquire a qualified ownership in it, on no other or different principle from that upon which the civilians based such right. 2 *Bl. Com. 1 and 12.*

'Referring especially to the common ownership of game, he says:

'But, after all, there are some few things which, notwithstanding the general introduction and continuance of property, must still unavoidably remain in common; being such wherein nothing but an usufructuary property is capable of being had; and therefore they still belong to the first occupant during the time he holds possession of them and no longer. Such (among others) are the elements of light, air and water, which a man may occupy by means of his windows, his gardens, his mills and other conveniences; such also are the generality of those animals which are said to *feræ naturæ*, or of a wild and untamable disposition, which any man may seize upon and keep for his own use or pleasure.' 2 *Bl. Com. 11.*

'A man may lastly have a qualified property in animals *feræ naturæ, propter privilegium*; that is, he may have the privilege of hunting, taking and killing them in

exclusion of other persons. Here he has a transient property in these animals usually called game so long as they continue within his liberty, and may restrain any stranger from taking them therein; but the instant they depart into another liberty this qualified property ceases. \* \* \* A man can have no absolute permanent property in these, as he may in the earth and land; since these are of a vague and fugitive nature, and therefore can admit only of a precarious and qualified ownership, which last so long as they are in actual use and occupation, but no longer.' 2 Bl. Com. 394.

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"Undoubtedly this attribute of government to control the taking of animals *feræ naturæ*, which was thus recognized and enforced by the common law of England, was vested in the colonial governments, where not denied by their charters or in conflict with grants of the royal prerogative. It is also certain that the power which the colonies thus possessed passed to the States with the separation from the mother country, and remains in them at the present day, in so far as its exercise may be not incompatible with or restrained by the rights conveyed to the Federal government by the Constitution. Kent, in his Commentaries, states the ownership of animals *feræ naturæ* to be only that of a qualified property. 2 Kent Com. 347. In most of the States laws have been passed for the protection and preservation of game. We have been referred to no case where the power to so legislate has been questioned, although the books contain cases involving controversies as to the meaning of some of the statutes. *Commonwealth v. Hall*, 128 Mass. 410; *Commonwealth v. Wilkinson*, 139 Penn. St. 304; *People v. O'Neil*, 71 Michigan 325. There are also cases where the validity of some particular method of enforcement provided in some of the statutes has been drawn in question. *Kansas v. Saunders*, 19 Kansas 127; *Territory v. Evans*, 2 Idaho 634."

After quoting with approval several cases, including *Allen v. Wyckoff* (*supra*), the opinion continues:

"Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not

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 individuals, as distinguished from the public good.  
 Therefore, for the purpose of exercising this power,  
 the State, as held by this Court in *Martin v. Waddell*,  
 16 Pet. 410, represents its people, and the ownership is  
 that of the people in their united sovereignty. The  
 common ownership, and its resulting responsibility in  
 the State, is thus stated in a well considered opinion of  
 the Supreme Court of California:

"The wild game within a State belongs to the people  
 in their collective sovereign capacity. It is not the sub-  
 ject of private ownership except in so far as the people  
 may elect to make it so; and they may, if they see fit,  
 absolutely prohibit the taking of it, or traffic and com-  
 merce in it, if it is deemed necessary for the protection  
 or preservation of the public good." *Ex parte Maier*,  
 101 Cal. 517.

"The same view has been expressed by the Supreme  
 Court of Minnesota, as follows:

"We take it to be the correct doctrine in this  
 country, that the ownership of wild animals, so far as  
 they are capable of ownership, is in the State, not as a  
 proprietor, but in its sovereign capacity as the repre-  
 sentative and for the benefit of all its people in com-  
 mon." *State v. Rodman*, *ubi sup.*

"The foregoing analysis of the principles upon which  
 alone rests the right of an individual to acquire a qual-  
 ified ownership in game, and the power of the State,  
 deduced therefrom, to control such ownership for the  
 common benefit, clearly demonstrates the validity of the  
 statute of the State of Connecticut here in controversy.  
 The sole consequence of the provision forbidding the  
 transportation of game, killed within the State, beyond  
 the State, is to confine the use of such game to those  
 who own it, the people of that State. The proposition  
 that the State may not forbid carrying it beyond her  
 limits involves, therefore, the contention that a State  
 cannot allow its own people the enjoyment of the bene-  
 fits of the property belonging to them in common, with-  
 out at the same time permitting the citizens of other  
 States to participate in that which they do not own. It  
 was said in the discussion at bar, although it be con-  
 ceded that the State has an absolute right to control and  
 regulate the killing of game as its judgment deems  
 best in the interest of its people, inasmuch as the State  
 has here chosen to allow the people within her borders

to take game, to dispose of it, and thus cause it to become an object of State commerce; as a resulting necessity such property has become the subject of inter-state commerce, and is hence controlled by the provisions of article 1, section 8, of the Constitution of the United States. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State is allowed, that it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to affix conditions to the killing and sale of game, predicated as is this power on the peculiar nature of such property and its common ownership by all the citizens of the State, it may well be doubted whether commerce is created by an authority given by a State to reduce game within its borders to possession, provided such game be not taken, when killed, without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the State necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership, which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State, under the provision in question, created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of inter-state commerce, and therefore under the control of the Constitution of the United States. The distinction between internal and external commerce and inter-state commerce is marked, and has always been recognized by this Court."

The opinion of CHIEF JUSTICE MARSHALL, in *Gibbons v. Ogden, 9 Wheat.*, to the effect that there is a great distinction between internal commerce and the commerce among the States, is referred to at length, and the Judge continues:

"The fact that internal commerce may be distinct from inter-state commerce destroys the whole theory upon which the argument of the plaintiff in error proceeds. The power of the State to control the killing of and ownership in game being admitted, the commerce in game, which the State law permitted, was necessarily only internal commerce, since the restriction that it should not become the subject of external com-

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merce went along with the grant and was a part of it. All ownership in game killed within the State came under this condition, which the State had the lawful authority to impose, and no contracts made in relation to such property were exempt from the law of the State consenting that such contracts be made, provided only they were confined to internal and did not extend to external commerce."

He quotes with approval a large excerpt from the opinion of the Supreme Court of Illinois, in *Magner v. The People (supra)*, as follows:

"It is, perhaps, accurate to say that the ownership of the sovereign authority is in trust for all the people of the State, and hence by implication it is the duty of the Legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use in the future to the people of the State. But, in any view, the question of individual enjoyment is one of public policy and not of private right."

And after disapproving of the only two cases known to exist in this country holding to the contrary, viz., *State v. Saunders, 10 Kan. 727*, and *Territory v. Evans, 2 Idaho, 634, 23 Pac. Rep. 473*, he concludes:

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people, which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so inter-state commerce may be remotely and indirectly affected. *Kidd v. Pearson, 128 U. S. 1*; *Hall v. De Cuir, 95 U. S. 485*; *Sherlock v. Alling, 93 U. S. 99, 103*; *Gibbons v. Ogden, 9 Wheat. 1*. Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the State to preserve for its people a valuable food supply. *Phelps v. Racey, 60 N. Y. 70*; *Ex parte Maier, ubi sup*; *Magner v. The People, ubi sup.*, and cases there cited. The exercise by the State of such power therefore comes directly within the principle of *Plumley v. Massachusetts, 155 U. S. 461, 473*. The power of a State to protect by adequate police regulation its people against the adulteration of articles of food (which was in that case maintained), although in doing so commerce might be remotely

affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the State, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the State and subject to the conditions which it may deem best to impose for the public good."

A careful consideration of the foregoing opinion seems to me to make plain the identity of the right and interest of the State in animals *feræ naturæ*, and in water or other elements belonging to the community at large.

Every argument that is adduced in favor of legislation applying to game laws will support the legislation here under review.

If any additional cases are needed to support the foregoing authoritative decision of this Court, it will be found in the following:

*State v. Northern Pacific Express Co.*, 58 Minn. 403; *Ex parte Maier*, 103 Cal. 476, 37 Pac. Rep. 402; *People v. O'Neil*, 110 Mich. 324, 68 N. W. Rep. 227; *Roth v. The State*, 51 Ohio St. 209, 37 N. E. Rep. 259; *State v. Medbury*, 3 R. I. 138.

See also an important series of cases supporting legislation in the State of Massachusetts, regulating the time and manner of taking fish in the sea within the territorial limits of the State, and holding that the same is equally binding upon residents and non-residents thereof. *Dunham v. Lamphere*, 3 Gray 268, expressly affirmed in *Commonwealth v. Manchester*, 152 Mass. 230, 25 N. E. Rep. 113, which in turn is affirmed by this Court in *sub nom. Manchester v. Massachusetts*, 139 U. S. 240.

The opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. C. C. Rep., at page 371, is the basis of all the law upon this subject. Speaking of the grant in the Federal Constitution of the right of Congress to regulate commerce, this opinion says:

"But this grant contains no cession, either express or implied, of territory, or of public or private property. The *jus privatum* which a State has in the soil covered by its waters is totally distinct from the *jus publicum* with which it is clothed. The former, such as fisheries of all descriptions, remain common to all the citizens of the State to which it belongs, to be used by them according to their necessities, or according to the laws which regulate their use. 'Over these,' says Vattel, b. I, c. 20, sec. 235, 246, 'sovereignty gives a right to the nation to make laws regulating the manner in which the common goods are to be used.' 'He may make such regulations respecting hunting and fishing, as to

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seasons, as he may think proper, prohibiting the use of certain nets and other destructive methods." Vattel, b. 1, c. 29, sec. 248. The *jus publicum* consists in the right of all persons to use the navigable waters of the State for commerce, trade and intercourse, subject, by the Constitution of the United States, to the exclusive regulation of Congress.

"If, then, the fisheries and oyster beds within the territorial limits of a State are the common property of the citizens of that State, and were not ceded to the United States by the power granted to Congress to regulate commerce, it is difficult to perceive how a law of the State regulating the use of this common property, under such penalties and forfeitures as the State Legislature may think proper to prescribe, can be said to interfere with the power so granted. The act under consideration forbids the taking of oysters by any persons, whether citizens or not, at unseasonable times and with destructive instruments, and for breaches of the law prescribes penalties in some cases and forfeitures in others. But the free use of the waters of the State for purposes of navigation and commercial intercourse is interdicted to no person, nor is the slightest restraint imposed upon any to buy and sell, or in any manner to trade within the limits of the State."

The learned Judge then passes to a consideration whether the legislation there under review which prohibited any person who was not at the time an actual inhabitant and resident in the State, to rake or gather clams, oysters or shells in any of the rivers, bays or waters of this State, under a penalty, could be deemed to militate against the provision of the Federal Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, upon which point the learned Judge says:

"A several fishery, either as the right to it respects running fish, or such as are stationary, such as oysters, clams and the like, is as much the property of the individual to whom it belongs as dry land, or land covered by water, and is equally protected by the laws of the State against the aggressions of others, whether citizens or strangers. Where those private rights do not exist to the exclusion of the common right, that of fishing belongs to all the citizens or subjects of the State. It is the property of all, to be enjoyed by them in subordination to the laws which regulate its use. They may be considered as tenants in common of this property, and they are so exclusively entitled to the

use of it that it cannot be enjoyed by others without the tacit consent or the express permission of the sovereign who has the power to regulate its use.

"This power in the legislature of New Jersey to exclude the citizens of other States from a participation in the right of taking oysters within the waters of that State was denied by the plaintiff's counsel upon principles of public law, independent of the provision of the constitution which we are considering, upon the ground that they are incapable of being appropriated until they are caught. This argument is unsupported, we think, by authority. Rutherford, b. 1. ch. 5, secs. 4 and 5, who quotes Grotius as his authority, lays it down that, although wild beasts, birds and fishes, which have not been caught, have never in fact been appropriated, so as to separate them from the common stock to which all men are equally entitled, yet where the exclusive right in the water and soil which a person has occasion to use in taking them is vested in others, no other person can claim the liberty of hunting, fishing or fowling on lands or waters which are so appropriated. 'The sovereign,' says Grotius, b. 2, ch. 2, sec. 5, 'who has dominion over the land, or waters, in which the fish are, may prohibit foreigners (by which expression we understand him to mean other than subjects or citizens of the State from taking them).'

That this exclusive right of taking oysters in the waters of New Jersey has never been ceded by that State, in express terms, to the United States, is admitted by the counsel for the plaintiff, and having shown, as we think we have, that this right is a right of property, vested either in certain individuals, or in the State, for the use of the citizens thereof, it would, in our opinion, be going quite too far to construe the grant of privileges and immunities of citizens, as amounting to a grant of co-tenancy in the common property of the State to the citizens of all the other States. Such a construction would, in many instances, be productive of the most serious public inconvenience and injury, particularly in regard to those kinds of fish, which, by being exposed to too general use, may be exhausted. The oyster beds belonging to the State may be abundantly sufficient for the use of the citizens of that State, but might be totally exhausted and destroyed if the legislature could not so regulate the use of them as to exclude the citizens of the other States

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from taking them, except under such limitations and restrictions as the laws may prescribe."

Following this doctrine, this Court, in *McCready v. Virginia*, 24 U. S. 307, applied a similar principle to legislation of the State of Virginia, confining to its citizens the right to plant, cultivate and dig oysters upon the public waters of that State, and held that the federal right to regulate commerce was in no way interfered thereby; upon the ground that the property belonged to the people at large, and that the commerce clause in the Federal Constitution was never meant to apply to the common property of the citizens of any State.

The State may confine to its own citizens the right to share in or enjoy the common property belonging to all of its citizens, just as it may so confine the delegation of its sovereign power to exercise the right of Eminent Domain; and no provision of the Federal Constitution prevents it. *Consumers' Gas Trust Co. v. Harless*, (Sup. Ct. of Ind.), 29 N. E. Rep. 1062.

The New Jersey courts, in *State v. Corson*, 38 Vr. (67 N. J. L.) 178, and *State v. Lee*, 57 Atl. Rep. 142, affirmed 59 Id. 178, also affirmed in this Court, October Term, 1907, have announced the same doctrine; and in *Haney v. Compton*, 7 Vr. (15 N. J. L.) 507, after elaborate argument by distinguished counsel sustained the seventh section of an act of the New Jersey Legislature for the preservation of clams and oysters, which prohibited the raking or gathering of oysters in any of the waters of this State by any person who is not at the time and has not been for six months then next preceding an actual inhabitant and resident of this State, holding that it was not either an interference with commerce or a deprivation of citizens of other States of all the privileges and immunities of citizens of this State.

The theory underlying all these cases is that the commerce clause of the Constitution only applies to such commodities as are property the subject of commerce, and that the fish, game or other animals *ferie nature* of the State belonging to the community at large, are not articles of commerce.

In *State v. Northern Pacific Express Co.* 58 Minn. 403, 59 N. W. Rep. 1100, the Supreme Court of Minnesota said:

"On the second question the defendant's contention is that the provisions of the act prohibiting the shipment out of the State of fish caught within the State, unlawfully interferes with interstate commerce. The complete answer to this is that the fish had never become articles of commerce."

See also, a very instructive opinion of the Supreme Court of Alabama, in *State v. Harub*, 95 Ala. 176, 10 S. Rep. 752, where the congressional right over interstate commerce is shown to

be confined entirely to such articles as have become the subject of trade, and do not belong to the people in their common right, and which are therefore altogether subject to such legislation as the State may desire in reference thereto.

That legislation of this character has been thus constantly sustained, not solely upon the theory that oysters are planted upon the soil of the State, appears both from the universal character of some of the laws, applying as they do to all the waters of the State, as well as from the fact that many of the cases apply to fish found in the private streams and lakes of the State, and to game flying through the air.

The fact is that the fallacy in the contention of the defendant that this act interferes with commerce, lies in the assumption that the water of the State of New Jersey, which it appears without right to have appropriated, is in no way a commodity or article of commerce. It is like the fish that swim in the waters or the fowls that fly above them. If the State, by reason of its ownership as representative of the public, can preserve the fowls of the air and the fish of the sea, *a fortiori*, must it be able to preserve the waters in which the fish swim, and in which no one has a private interest beyond a mere usufruct.

If the State has enough interest in its waters to protect them from contamination or pollution [*State Board of Health v. The Diamond Mills Paper Co.*, 18 Dick. (63 N. J. Eq.) 111, affirmed 19 Id. (64 N. J. Eq.) 793], it would seem that it could also preserve its quantity as well.

To permit of the abstraction of large quantities of water results in a pollution of the residue quite as effectively as does the pouring into the unproduced quantity of obnoxious matter.

In this connection the case of *Commonwealth v. Russell*, 172 Pa. St. 506, 33 Atl. Rep. 709, is significant, where it was held that the public was so interested in the maintenance of a pure water supply that the State could properly unite in a suit with a water company to prevent the pollution of a stream.

It is because of the failure to properly apprehend the exact status of running water in a stream of the State that the case of *State (ex rel. Corwin, &c.) v. Indiana, &c., Oil Co.*, 120 Ind. 575, 22 N. E. Rep. 778, relied on by the appellant, is really inapplicable. For, as is distinctly shown in that case, natural gas, after it is collected from the bowels of the earth, is a well-recognized commodity and article of commerce, and no one can prevent its being gathered and sold; and that decision was put expressly upon that ground, and also contains the following important statement:

"The act does not assume to provide for the safety, health or comfort of the citizens, but its object is to pre-

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apprehend the extent; State that the case; c., *Oil Co.*, 126; ppellant, is really; hat case, natural; arth, is a well-regulated; id no one can prevent; on was put express; following important

provide for the safety; ut its object is to

vent the sinking of gas wells and the laying of pipe lines by persons who desire to convey gas out of the State. It is not a regulation of the mode of procuring, transporting or using natural gas designed to secure the health, safety or comfort of the citizens of Indiana. \* \* \* The act cannot be taken out of the operation of the Federal decisions upon the theory that it is a valid exercise of the police power resident in every sovereign State, for the theory is without foundation."

A moment's reflection upon the law under consideration convinces that it is passed as a part of the police power of the State, and as such is consequently free from any of the constitutional objections that are here sought to be raised against it.

- Jones v. Brim*, 165 U. S. 180.
- F. R. R. v. Hughes*, 191 U. S. 477.
- Field v. Barber Asphalt Co.*, 194 U. S. 623.
- Cleveland, &c., Co. v. Illinois*, 177 U. S. 514.

As was well said by this court in the very recent case of *Cook v. Marshall County*, 196 U. S. 261, 272, speaking of the power reserved to Congress by virtue of the commerce clause in the U. S. Constitution:

"But the same policy which authorizes the use of this power as a shield to protect commerce from the vexatious interferences of the States, forbids its employment as a sword to assail measures designed for the preservation of the public health, morals and comfort."

And while it is conceded that it is the ultimate province of the court, and not of the legislature, to determine whether any piece of legislation is or is not a valid exercise of the police power, yet the court will never interfere with legislation of this character designed to preserve the health, prosperity, comfort and safety of its citizens, without the greatest hesitation, and then only when it is very plainly not an exercise of that power.

*Dobbins v. Los Angeles*, 195 U. S. 233

In this connection the recent case of *Jamieson v. Indiana Natural Gas and Oil Co.*, 128 Ind. 555, 28 N. E. Rep. 76, is significant, and should be compared with the earlier case of *State (ex rel Cortwin) v. Indiana, &c., Oil Co.* (*supra*), so strongly relied on by the defendant.

Obviously, therefore, the respondent can claim no benefit from the fact that previous to the enactment of this law it had made some very minor contracts (not the most important one with the City of New York), for the transmission of a portion of this water to some railroads for consumption in the State of New

York. The State had no knowledge of any such contracts. They are based upon no right, residing either in the East Jersey Water Company or the Hudson Water Company, and amount to nothing more than an assertion by a mere squatter, that the government cannot protect its own, because such squatter has contracted with third persons in regard to the land squatted upon. Such contracts, if good until attacked by the State, were made expressly subject to the reserved police power of the State, and defendant's position is in no way improved thereby. The other, and only important contract—that made with the city of New York—was admittedly entered into after the enactment of the statute in question.

Nature's first law of self-preservation justifies the resort of the State at this time to the courts for protection.

The growth of our cities, which is ever increasing, makes the steadily-decreasing quantity of water in the streams which permeate our State, a menace.

We in New Jersey know of no rule which justifies the tapping of our streams by private money-making enterprises and the carrying the waters thereof in quantities to suit themselves, utterly regardless of our rights or interests, into other States, there to satisfy the thirst or demands of other consumers.

It is respectfully insisted that the decree below was in all respects correct and should be affirmed.

Trenton, N. J., February 25, 1907.

ROBERT H. McCARTER,

*Attorney-General of New Jersey, for Informant.*

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## APPENDIX.

(COPY OF CHAPTER 238 OF THE LAWS OF 1905.)

AN ACT TO PRESERVE AND MAINTAIN THE LAKES, PONDS, BROOKS, CREEKS, RIVERS AND STREAMS OF THIS STATE, AND TO PREVENT THE WATERS THEREOF FROM BEING CARRIED BY PIPES, CONDUITS, DITCHES OR CANALS INTO OTHER STATES, FOR USE THEREIN, AND TO AUTHORIZE THE COURT OF CHANCERY TO ASSIST IN THE OBSERVANCE OF THIS ACT.

WHEREAS, The available waters of the fresh water lakes, ponds, brooks, creeks, rivers and streams of this State do not increase with the growth of population, and unless the same are carefully preserved, will become inadequate to perform the functions they were by nature designed to do, which functions are essential to the health and prosperity of all the citizens of this State; therefore,

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. It shall be unlawful for any person or corporation to transport or carry, through pipes, conduits, ditches or canals, the waters of any fresh water lake, pond, brook, creek, river or stream of this State into any other State, for use therein.

2. It shall be the duty of the State Geologist to keep a general oversight over the fresh water lakes, ponds, brooks, creeks, rivers and streams of this State, and to see that the same are preserved for the use and benefit of the citizens and inhabitants of this State, and to prevent the waters thereof from being carried or transported by pipes, conduits, ditches or canals into other States for use therein; upon its being brought to his knowledge that it is the intention of any person or corporation to so carry or transport into any other State for use therein, the waters of any such fresh water pond, lake, brook, creek, river or stream of this State, it shall be his duty, through the Attorney-General, to apply to the Court of Chancery for injunction to restrain the same, and the Court of Chancery is hereby authorized and empowered to entertain jurisdiction of a suit in equity to preserve the waters aforesaid for the use and benefit of the citizens and inhabitants of this State, and to prevent their being, by pipes, conduits, ditches or canals, carried or transported to other States for use therein; and to that end to issue such restraining order or injunction, both preliminary and final, as may be necessary, and to enforce the same in the same manner it is empowered to enforce other injunctions or orders.

3. This act shall take effect immediately.

DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

February 28. 1907

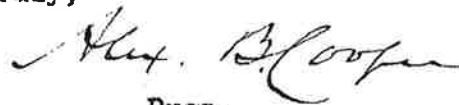
Walter H. Hayes, Esq.

Member of Commission &c.

Dear Sir:-

In view of the fact that the end of our term of office is rapidly approaching, I have thought it advisable, and do call, a meeting of the Delaware Commissioners, to be held at their office as above located, on ( to-morrow ) Saturday morning at 11 o'clock, to take into consideration certain matters of detail, which it will be necessary to arrange in the final performance of our duties.

Yours truly,

  
Pres.

DE Public Archives

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DE Commissioners

Fisheries Compact

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DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

March 2, 1907

Walter H. Hayes, Esq.

Dear Sir:-

I enclose copy of the minutes of this morning's meeting  
Hilles and I thought it best to take this action now, so  
that we would have every thing in hand before the expiration  
of the two years.

Will you please attend to it? If the bill should be  
amended and then passed, which seems to be likely, I think  
it would be well for you to see that our certificate of  
approval is not made a part of it or published with the law.

Hilles says that you told him that you would attend  
to our claim, and have it put in the appropriation bill.

If anything else suggests itself to you in connection  
with our duties I wish you would advise me.

Is there any necessity of calling any more joint meetings  
or taking any further action?

Yours truly,

*Alex. B. Cooper*



DELAWARE COMMISSIONERS,  
(DELAWARE-NEW JERSEY FISHERIES COMPACT)  
907 MARKET STREET,  
WILMINGTON, DEL.

March 3. 1907

11 o'clock A. M.

The Commission met at the call of the President.

Present, Messrs. Cooper, Hilles and Hayes.

The minutes of the last meeting were read and approved.

On motion of Mr. Hilles it was ordered that a requisition be drawn on the Governor for the sum of four hundred dollars, to pay for the making and erecting of the monuments, and other expenses.

On motion the secretary was requested to write to the New Jersey commission, suggesting that as the work of the commission is nearly completed, that the accounts between the States, be settled by their forwarding to us one-half the expense for erecting the monuments and expenses incidental thereto.

Upon motion the Commission adjourned.

Secretary.

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THE SENATE OF NEW JERSEY

Woodbury, N. J.


March 7, 1907.

Hon. Walter H. Hayes,  
Wilmington, Delaware.

My dear Mr. Hayes :-

We are getting some reports about the Delaware River bill in the Delaware Legislature that are rather disquieting, and do not speak well for its passage in its original form. I wish you would advise me what the present prospects are for its passage, and what amendments are likely to go in it.

Yours very truly.



THE SENATE OF NEW JERSEY

Gov Walter H. Hayes

Merrington

Delaware

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Fisheries Compact

1905-1907

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LAWS OF  
DELAWARE

VOL. 24  
1906-07

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## OF FISH, OYSTERS AND GAME.

## CHAPTER 146.

## OF FISH, OYSTERS AND GAME.

**AN ACT** Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey.

Preamble

Whereas, By virtue of Article IV of the compact or agreement entitled a "Compact Between the State of New Jersey and the State of Delaware, Relating to the Boundary Controversy Between said States," which was ratified and confirmed by an Act of the General Assembly of the State of Delaware, approved March 20th, 1905, and by an Act of the Legislature of the State of New Jersey, approved March 21st, 1905, the State of Delaware by an Act of the General Assembly thereof, approved March 23rd, 1905, appointed Alexander B. Cooper, William S. Hilles and Walter H. Hayes, Commissioners on the part of the State of Delaware to confer with like Commissioners appointed, or to be appointed, by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement; and

Preamble

Whereas, By a similar Act of the Legislature of the State of New Jersey, approved May 11th, 1905, William J. Bradley, John Boyd Avis and James Strimple were appointed like Commissioners, on the part of the State of New Jersey, to confer with the said Commissioners on the part of the State of Delaware, and to do and perform the duties aforesaid; and

Preamble

Whereas, Each of the said Commissions have been duly organized as provided and required by law; and

Preamble

Whereas, The said Commissioners of the said respective states, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said states, and have also ascertained the dividing line between the said Delaware River and Delaware Bay, and have upon each of

## OF FISH, OYSTERS AND GAME.

the shores of the said two states where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. That the provisions of this Act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey. Limitation of act

Section 2. That the inhabitants of the State of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low water marks on each side of said river between the said states, except so far as either state may have heretofore granted valid and subsisting private rights of fishery. Common right of fishery granted to inhabitants of New Jersey and Delaware in Delaware River Exception

Section 3. That nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said states of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said Compact between the said states; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said states. Territorial limits, &c. or jurisdiction unaffected Oyster and other shell fish plantation unaffected

Section 4. That hereafter it shall be lawful for any person to catch and take, from the waters aforesaid, fish of any character (except shell fish) with any net, hook and line, or other appliances; provided the meshes of any net shall not be less than two and one-half inches long stretched measure, and except as hereinafter provided; provided further, that nothing in this Section shall apply to nets used for catching eels. Any person may catch fish by net, hook and line Proviso: nets not less than certain size meshes Eels excepted

Section 5. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than five and one-quarter inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to Shad fishing Sizes of meshes



## OF FISH, OYSTERS AND GAME.

Time when shad fishing prohibited	catch and take, any shad from the said waters in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.
Kind of nets prohibited	
Carp fishing	Section 6. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp in any manner whatsoever, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any carp weighing less than one pound, and should any such fish be caught, it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp in any manner whatever between the first day of May and the tenth day of August of each and every year.
Size of meshes	
Time when carp fishing prohibited	
Rock fishing	Section 7. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock fish from the waters aforesaid, with a seine or net of any kind, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rock fish in any manner whatsoever between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rock fish weighing more than twenty pounds, and should any
Size of meshes	
Time when rock fishing prohibited	
Rock weighing more than 20 pounds to be returned to waters	

OF FISH, OYSTERS AND GAME.

such fish weighing over twenty pounds be caught, it shall be immediately returned to the waters uninjured.

Section 8. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught it shall be immediately returned to the waters uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Sturgeon

Size of meshes

Sturgeon or mamoose under 6 feet to be returned to waters

Time when sturgeon fishing prohibited

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weak fish with a net of any character, the meshes of which shall be less than two inches stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weak fish from the waters aforesaid, with a net of any character, between the hours of twelve o'clock midnight of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Trout

Size of meshes

Time when such fishing prohibited

Section 10. That hereafter it shall be unlawful for any person to catch and take or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the mouth of any river, creek or stream emptying into the waters aforesaid.

Anchored nets before mouth of streams prohibited

Section 11. That hereafter it shall be unlawful for any person by boat, anchor, dredge, or otherwise, in the waters aforesaid, to wilfully and without reasonable cause, interfere with, break, damage, or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Unlawful to interfere with drift or gill nets

OF FISH, OYSTERS AND GAME.

**Unlawful to use explosives, or drugs, &c. for purposes of killing or catching fish**  
**Or allow certain substances to flow into waters**  
**Penalty**

Section 12. That hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil saw-dust, tan bark, coculusindicus (otherwise known as fish berries), lime refuse from gas houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

**Sunday fishing prohibited**

Section 13. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath Day, commonly called Sunday.

**Certain kinds of fishing declared unlawful**

Section 14. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except cat fish, eels and suckers), any fish basket, eel, weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wing-dams, or any other device, excepting in the manner and with the means in this Act provided. Provided, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

**Unlawful to have certain fish in possession**

Section 15. That hereafter it shall be unlawful for any person to sell, expose for sale, or have in possession, any fish caught and taken in violation of the provisions of this Act.

**Violation of act misdemeanor**

Section 16. Every violation of any of the provisions of this Act shall be deemed a misdemeanor, and upon conviction thereof, where no other specific penalty is herein provided,

OF FISH, OYSTERS AND GAME.

each offender shall forfeit and pay to the State of Delaware a fine of not less than twenty dollars nor more than two hundred dollars, and costs of prosecution, and in default of payment thereof shall be committed to the county jail, or workhouse, for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Section 17. Any and every boat, vessel, net, trap, pot, pound, set line, tyke, weir, or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this Act, shall be forfeited to the State of Delaware, together with the tackle, apparel and furniture of said boat or vessel, and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, or any county constable, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person, as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the county to at once seize the same wheresoever it may be found, who shall, thereupon, advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days notice by advertisements posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff to the State Treasurer for the use of the State. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Section 18. Any Justice of the Peace, or other committing officer, shall, upon affidavit made that any person, boat, vessel, or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of, this Act, issue his warrant to the sheriff, county constable, or officer, of the county, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial, or other proceeding

Penalties

Forfeiture of boats, &c. traps, pounds, &c. under certain conditions

Custody of said property

Upon conviction courts shall also enter judgment of forfeiture

Sale of said property

Proceeds of sale paid to State Treasurer

Property returned in case of acquittal

Jurisdiction of Justice of Peace

Process, to whom issued

## OF FISH, OYSTERS AND GAME.

Posse comitatus	under this Act. The said sheriff, constable or officer, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel, or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.
Affidavit, what to contain	
Fees	<p>Section 19. That the costs, charges and expenses of any proceeding for the violation of the provisions of this Act, shall be taxed and allowed as follows:</p> <p>To any sheriff, constable, or officer, for each day actually engaged in seizing the said property, five dollars (\$5.00);</p> <p>To every person summoned by and rendering aid to such sheriff or constable, for each day actually engaged in assisting in seizing said property, two dollars (\$2.00);</p> <p>To every Justice of the Peace, sheriff, constable, officer, witness, or other person performing service under this Act and not herein specifically mentioned, the same fees as are now provided by law for similar services. Said costs, charges and expenses shall be paid by the officer making the sale out of the proceeds thereof; or if the property be not so sold, then by the State Treasurer upon the certificate of the court or Justice of the Peace, or committing officer, before whom the proceedings were had.</p>
Appropriation by General Assembly	That the General Assembly shall appropriate at least the sum of two hundred dollars per annum for the purpose of paying the costs and charges incurred under the provisions of this Act.
Unlawful to use steam power or shirred nets	Section 20. That it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware River or Delaware Bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; provided, however, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises, and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Collector of Oyster Revenue, upon the payment to him annually of the sum of one hundred dollars (\$100.00) for each
Except for certain fish	
License for boats used in menhaden fishing	

## OF FISH, OYSTERS AND GAME.

and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware Bay as far north as a straight line drawn from the centre of the mouth of Mahon's River to the nearest point opposite on the New Jersey shore from the first day of June until the thirty-first day of October, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the State Treasurer for the use of the state.

Section 21. It shall be unlawful for any person to have in his possession or to bring into this state any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware Bay or River within the bounds aforesaid, for the purpose of extracting oil therefrom, or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil or to convert, or in any manner assist in extracting oil from, or in converting such fish into fertilizer.

Unlawful to have in possession to be used for extracting oil any edible fish

Section 22. That any Fish Commissioner, Collector of Oyster Revenue, Sheriff, Constable, or any officer may, upon view, arrest any person violating any of the provisions of this Act without warrant or writ issued for such purpose.

Arrest may be made without warrant

Section 23. That all prosecutions for the violation of any of the provisions of this Act, unless otherwise herein specially provided, shall be had in like manner, under similar process and proceeding, under the same restrictions and with the same privileges and rights and before the same court or officer as is now, or shall hereafter be, provided by the laws of the State of Delaware for other misdemeanors, or violations of this law.

Prosecutions under this Act under same procedure &c. as for other misdemeanors

Section 24. That each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this Act committed, or attempted to be committed, by any person who is not an inhabitant of either of said states.

Concurrent jurisdiction as to offences committed by non-residents

Section 25. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State

Governor of Delaware to issue Commission to certain persons in New Jersey

## OF FISH, OYSTERS AND GAME.

**Powers of such officers** of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of New Jersey revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

**Proviso**

**Such Commissions may be revoked**

**Governor of New Jersey to issue commissions to certain persons in Delaware** The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this Act, provided, however, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of the State of New Jersey may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

**Powers of such officers**

**Proviso**

**Such commissions may be revoked**

**Not to affect powers of police officers** Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of Delaware by any other officer or person having authority under the laws of the said State of Delaware to make arrests for the violation of the provisions of this Act.

**Act operative only when the State of New Jersey shall have in operation similar law** Section 26. This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

OF FISH, OYSTERS AND GAME.

The provisions in this Act contained regulating the size of the meshes of fishing nets shall not become operative until October 1, 1908. Size of meshes not to be changed until Oct. 1908

Section 27. That all laws, or parts of laws, inconsistent with the provisions of this Act, be and the same are hereby repealed.

Approved April 23, A. D. 1907.

CHAPTER 147.

OF FISH, OYSTERS AND GAME.

AN ACT authorizing the compiling and printing of the provisions of the Fish, Oysters and Game Laws.

*Be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met :*

Section 1. That the Governor of the State is hereby authorized and empowered to have the provisions of the Fish, Oysters and Game Laws of the State compiled for publication in such form as he deems best; and he is hereby authorized and empowered to draw upon the State Treasurer for the sum of fifty dollars (\$50.00), out of any moneys in the State Treasury not otherwise appropriated, for the purpose of defraying the expenses of compiling the same. Governor authorized to have compiled the Fish, Oyster and Game laws Compensation

Section 2. That the State Board of Supplies shall have five thousand copies of the provisions of the laws so compiled, printed in flexible cloth-bound books of a pocket size; and deliver to each member of the General Assembly fifty copies of said laws, and distribute the remaining copies in such manner as it deems best. Number of volumes to be printed How distributed

Approved March 5, A. D. 1907.





Trenton, N. J., July 3, 1914.

To the Hon. Herbert H. Ward,  
466 Du Pont Building,  
Wilmington, Del.

My dear Mr. Ward:

I have your communication of the 24th inst., in reference to the old boundary dispute between the States of New Jersey and Delaware. I know nothing personally about the matter to which you refer, but Mr. Backes, the Second Assistant Attorney General, was here when the case was revived sometime about 1904 or 1905, and depositions taken under a stipulation entered into in the latter part of the 70's, by which either side could revive the case, which was in the Supreme Court of the United States, as I am advised, upon notice.

I observe that Chapter 42 of the Laws of 1905, being "An act to ratify and confirm a compact of agreement between the States of New Jersey and Delaware respecting the Delaware River and bay, and to authorize the execution thereof," approved March 21, 1905, by Article IV, it is provided as follows:

"Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three commissioners to confer with three

commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws to be framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States," &c.

My understanding is that the State of New Jersey, in pursuance of the Article to which I have just referred, did enact legislation upon the subject, copies of which I enclose, but that Delaware declined to pass an act which would conform in all respects to the laws then already enacted by the State of New Jersey, and there the situation, as I understand, ended. It is now proposed, as I am informed, to take the matter up anew, and I am enclosing you herewith, as I have before stated, the original legislation drafted by the State of New Jersey, but which was not concurred in by the State of Delaware, and also the present legislation by the State of New Jersey now in force.

Of course, you know the time limited within which the commissioners were to report their recommendations, which was two years from the date of their appointment, has expired, but, as I read our act, there is nothing in our law which would prohibit the Legislature of this State from enacting the laws so recommended, even though the two-year period had expired. In other words, as I read

Op. Bk. 8 p- 750  
H. H. Ward #3

the statute, the duty of the commissioners was to recommend the laws, and thereafter the two states were to adopt the laws so recommended, and the same should constitute the sole laws for the taking and catching of fish in the river and bay.

Mr. Backes advises me that in conference with Mr. Stratton, Chief Warden of this State, it is unlikely that the State of New Jersey would want to go back to the old laws which they adopted in conformity with the act of 1905, but would far rather have the existing laws remain in force, a copy of which I am likewise enclosing for your perusal. It may be that the last-named laws will cover all the subject-matter which you desire, and if this be so, I think the solution of the problem will be easy if the State of Delaware will adopt the latter laws, whereupon the State of New Jersey can, by an enabling act passed at the next session of the Legislature, provide that the laws now in force in the State of New Jersey should be taken and deemed to be the laws of this State within the meaning of Article IV of the act of 1905, and should remain in full force and effect according to the tenor and meaning of said Article until the same should be altered, amended or repealed by concurrent legislation of the States of New Jersey and Delaware.

If I am mistaken in any of the premises, I shall be glad to hear from you.

DE16225

Bk. 8 p- 750  
H. Ward #4

I am writing this letter upon the information given to me by Mr. Backes, who participated somewhat in the case, but who was not one of the counsel therein. The counsel representing the State of New Jersey were former Attorney General Robert H. McCarter and Chauncey G. Parker.

I am also enclosing herewith copy of a letter from Mr. Stratton, addressed to Mr. Backes, which is self-explanatory.

Yours very truly,

John W. Wescott  
Attorney General.

DE16226

L. 1905, Ch. 42, "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof," was not concurred in by the State of Delaware. Therefore, the boundary dispute between the two States concerning the catching of fish, etc. in the Delaware River and Bay was not settled. It can be brought up again at any time.

Hon. Herbert H. Ward  
Wilmington, Del.  
July 3, 1914  
Op. Bk. 8, p. 750

BOUNDARIES:DELAWARE & N. J.:LAW 1905, CHAPTER 42

## RESOLUTIONS.

## CHAPTER 255.

HOUSE JOINT RESOLUTION authorizing the Governor of the State of Delaware to appoint a Commission to meet with a like Commission from the State of New Jersey and draft modifications of the laws regulating the taking of fish in the Delaware River and Bay and report same to the General Assembly of the State of Delaware.

Preamble WHEREAS, it is desirable to modify the laws regulating the taking of fish in the waters of the Delaware River and Bay between the States of New Jersey and Delaware, and

Preamble WHEREAS, under the terms of the compact now existing between the State of New Jersey and the State of Delaware such modifications can be made only by concurrent legislation of the said two States, therefore

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

A commis-  
sion to be  
appointed by  
the Governor  
to confer  
with a like  
commission  
of the State  
of New  
Jersey regu-  
lating the  
taking of  
fish from the  
Delaware  
Bay and  
River

Section 1. That the Governor of the State of Delaware is hereby authorized to appoint a Commission consisting of three members to confer with a like Commission of the State of New Jersey and draft modifications of the laws regulating the taking of fish in the aforesaid waters and to report the same to the General Assembly of the State of Delaware, now in session.

Approved February 3, A. D. 1915.

The following is the substance of a statement contained on pages 669 &c. (Chap. 74, Article 7) of the Revised Code of Delaware, 19135.

In accordance with the provisions of Article IV of the compact of 1905 between the States with respect to the Delaware River, Commissioners for the said respective states agreed upon and drafted a uniform law to regulate the catching and taking of fish in the Delaware River and the Delaware Bay between the said two states.

That the said draft of said uniform law appears as Chapter 146 of the Laws of Delaware for 1907.

That said uniform law was enacted by the Legislature of New Jersey, (Chap. 131, P. L. 1907. )

That said uniform law, with a few changes and additions also appears in Secs. 143 to 168 inclusive of Chap. 74 of the Revised Code of Delaware 1915.

By 28 Del. Laws. Ch. 203, approved March 15, 1915, said sections 154 to 168 inclusive, of Chap. 74 of the Delaware Revised Code of 1915 were repealed and new sections 143 to 168 incl. substituted in lieu thereof and by 28 Del. Laws, Chs. 204 and 205; 30 Del. Laws, Ch. 80; 32 Del. Laws, Ch. 175; 33 Del. Laws, Ch. 194; 35 Del. Laws Chs. 175 and 176 and 36 Del. Laws, Ch. 238, several changes were made in the said new Sections and several additions were made thereto.

By Ch. 248, Del. Laws of 1921, a commission was appointed to confer with a New Jersey commission to draft modifications of the regulations for fishing in Delaware River and Bay; an agreement upon a modification was made by said commissioners which modified law Del. approved by 33 Del. Laws, Ch. 193, approved March 14, 1923, not to be effective until New Jersey enacted similar law which New Jersey did not do.

By 35 Del. Laws, Ch. 243, approved March 2, 1927 other commissioners were appointed by Delaware for the object of settling the boundary dispute, ~~intermaxillatitaxant~~ like commissioners were appointed by New Jersey, but the new or modified law suggested by the joint commission was not adopted by New Jersey but was conditionally adopted by Delaware.

*Sherman & Skaper*

*Compact is Chapter 42 Laws 1905  
N.J.*

*Our 1907 act was chapter 131*

*Ct U S Supreme Court  
N.J. Delaware Boundary*



The Revised Code of Delaware then contains the following statement:

"Disregarding the proposed uniform law found in 33 Del. Las. Ch. 193, and also the proposed uniform law found in 35 Del. Laws, Ch. 178, both of which never became effect<sup>ive</sup> by reason of the failure of the State of New Jersey to enact similar laws on the subject, as above stated, the law now in force in the State of Delaware, regulating the catching and taking of fish in the Delaware River and the Delaware Bay consists of the law as found in 28 Del. Laws, Ch. 203<sup>A</sup> *approved March 15, 1915* and the various amendments and additions subsequently made thereto by later acts, as hereinabove stated, and is contained in the following Sections 181 to 211, inclusive, of this Chapter.

The following is a list of the names of the persons who have been appointed to the various positions in the State of New York, and who have taken the oath of office and qualification for the same.

The following is a list of the names of the persons who have been appointed to the various positions in the State of New York, and who have taken the oath of office and qualification for the same.

The following is a list of the names of the persons who have been appointed to the various positions in the State of New York, and who have taken the oath of office and qualification for the same.

*Wm. L. ...*  
*Wm. L. ...*  
*Wm. L. ...*

**New Jersey State Archives**  
**Department of Law and Safety**  
**Attorney General's Office**  
**Closed Case Files, 1920's - 1950's**  
**Box 8**

DE21498

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**LAWS OF  
DELAWARE**

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**33**

**1923**

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DE14668

## CHAPTER 193

## FISH, OYSTERS AND GAME

**AN ACT to Amend Chapter 74 of the Revised Code of the State of Delaware providing uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the States of Delaware and New Jersey and providing penalties for violations thereof.**

WHEREAS, By virtue of a joint resolution passed by the Legislature of the State of Delaware, approved the fourth day of February, A. D. one thousand nine hundred and twenty-one, entitled "House Joint Resolution authorizing the Governor of the State of Delaware to appoint a commission to meet with a like commission from the State of New Jersey and draft modification of the laws regulating the taking of fish in the Delaware River and Bay and report same to the General Assembly of the State of Delaware," the following were appointed commissioners on the part of the State of Delaware, Frederick D. Bendler, Harris Samonisky and J. Hall Anderson, and

WHEREAS, By a concurrent resolution passed by the Legislature of the State of New Jersey on the twenty-eighth day of February, A. D., one thousand nine hundred and twenty-one, providing for the appointment of a commission by the Governor of New Jersey to confer with a like commission from the State of Delaware for the purpose of preparing concurrent laws regulating fishing in the Delaware River and Bay between the States of New Jersey and Delaware, the following were appointed commissioners to represent the State of New Jersey, William A. Logue, Jeremiah E. Chambers and James M. Stratton; and

WHEREAS, the said commissions of the said respective States have been duly organized as provided and required by law; and

## FISH, OYSTERS AND GAME

WHEREAS, the said commissioners of the said respective States in joint meetings held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the said States; now therefore;

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

That 2500. Sec. 143 to 2525. Sec. 168 inclusive and all intervening sections of Chapter 74 of the Revised Code of the State of Delaware, except 2518. Sec. 161, 2519. Sec. 162 and 2520. Sec. 163, be and the same are hereby repealed and the following sections substituted in said chapter 74 in lieu thereof.

2500. Sec. 143. LIMITATION OF APPLICATION:—The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey and between low water marks on each side of said River and Bay.

2501. Sec. 144. COMMON RIGHT OF FISHERY:—The inhabitants of the States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said Delaware River between the low water marks on each side of said River between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery; nothing herein contained however shall be so construed as to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay.

2502. Sec. 145. TERRITORIAL LIMITS, JURISDICTION, ETC.:—Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between

## FISH, OYSTERS AND GAME

the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States. Each of said States may on its own side of said River, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of said respective States. Each of said States shall have and exercise exclusive jurisdiction within said River to arrest, try and punish its own inhabitants for violation of the concurrent and uniform legislation relating to fishery provided by this act.

Designation of fish	2503. Sec. 146. DESIGNATION OF FISH:—For the purposes of this act the following fish shall be designated as game fish, to wit: Black bass or small mouth bass, large mouth bass, otherwise called Oswego or yellow bass; strawberry or calico bass; rock bass, otherwise known as red eye or goggle eye; white bass, crappie, pike-perch, otherwise called wall eye pike or Susquehanna salmon; pike, pickerel, charr, commonly called brook or speckled trout; and all other forms of trout except what are commonly called "weak fish." The following shall be designated as bait fish, to wit: All species of minnows, killifishes and stone catfish. All other species or varieties of fish whatsoever shall be designated as food fish, except menhaden, sharks, porpoises and herring hogs.
Game fish	
Bait fish	
Food fish	
Devices permitted in catching game fish	2504. Sec. 147. DEVICES PERMITTED IN CATCHING GAME FISH:—It shall be unlawful to catch or fish for any game fish in said waters with any device or by any means or methods whatsoever excepting with rods and lines or hand lines commonly called dipsey or throw lines, each having not more than three hooks, or with trolling lines with spoon or artificial bait having not more than one burr of three single hooks attached. The number of rods and lines or the number of trolling lines shall not exceed two of one or the other device named and said lines must be under the direct and immediate supervision of the person fishing therewith. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of twenty dollars.
Violation Penalty	

FISH, OYSTERS AND GAME

2505. Sec. 148. DEVICES PERMITTED IN CATCHING BAIT FISH:—It shall be unlawful to fish for bait fish in said waters except with the following devices: Rods and lines and hand lines with not more than three hooks attached, a minnow seine not more than 100 feet in length, a dip net not more than five feet square, a minnow trap the opening of which shall not be more than 1¼ inches in diameter, a scoop net with a single handle and with a diameter of not more than two feet. Any person who uses any other device, method or means for catching bait fish, other than those specified in this section, shall on conviction thereof, be subject to a fine of twenty dollars.

Devices permitted in catching bait fish

Violation

Penalty

2506. Sec. 149. DEVICES PERMITTED IN CATCHING FOOD FISH:—It shall be unlawful to fish for food fish in said waters with any device, method or means excepting by the following devices and under regulations and restrictions hereinafter in this Act prescribed, to wit: A seine, a gill net, an eel pot or fyke net, each without wings, pound nets, a parallel net or stake net at the edge of low water and rods and lines or hand lines, otherwise known as dipsey or throw lines each having not more than three hooks. Any person who shall use or employ any method or device for catching food fish other than those named in this section, or shall use or employ any device named in this section contrary to the regulations and restrictions hereinafter prescribed, shall be subject to a fine of twenty dollars.

Devices permitted in catching food fish

Violation

Penalty

2507. Sec. 150. STURGEON:—It shall be unlawful to catch or take or attempt to catch or take any sturgeon from said waters with any device excepting a seine or gill net the meshes of which shall measure not less than 13 inches stretched measure while being fished or to catch or take or attempt to catch or take any sturgeon or mamnose from said waters under 5 feet in length but should any sturgeon under said length be caught it shall be carefully and immediately returned to said waters with wet hands and with the least possible injury. Sturgeon measuring 5 feet long and over becoming accidentally entangled in shad or other nets while being lawfully used, may be retained. It shall be lawful to catch and take

Nets used for Sturgeon fishing



## FISH, OYSTERS AND GAME

Closed season sturgeon from said waters at all times of the year except during the months of July, August and September. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$100, together with a forfeiture of all nets, boats and other appliances used.

Violation Penalty

Nets used for Herring fishing 2508. Sec. 151. HERRING:—It shall be unlawful for any person to catch or take or attempt to catch or take from said waters any herring with a net of any character the meshes of which shall be less than three inches stretched measure while being fished or take or catch or attempt to take or catch any herring from said waters between the tenth day of June in each year and the first day of March next ensuing. Any person who shall violate any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$100, together with a forfeiture of all boats, nets and appliances used.

Closed season

Violation Penalty

Closed season for Carp 2509. Sec. 152. CARP:—It shall be unlawful to catch or take or attempt to catch or take any carp from the waters aforesaid during the months of June, July and August of each year or to catch or attempt to catch any carp weighing less than one pound but should any such fish be caught it shall be immediately returned to said waters uninjured. It shall be unlawful to catch or take or attempt to catch or take any carp from said waters with a parallel net, being a net set approximately parallel with the shore, the meshes of which measure less than 2½ inches stretched measure while being fished or with a hauling seine the meshes of which shall be less than 2½ inches stretched measure while being fished, provided however that old seines now in lawful use for the taking of carp may be used until May 31st 1924 and provided further that no nets or seines shall be set in such a manner as to impede navigation and provided further that all fish other than carp, catfish and suckers caught in said seine must be returned unharmed to said water, beyond low water mark.

Size

Nets used

Violation Penalty

Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$100 together with a forfeiture of all nets and other appliances used.

## FISH, OYSTERS AND GAME

2510. Sec. 153. SHAD:—It shall be unlawful for any <sup>Nets used in catching Shad</sup> person to catch or take or attempt to catch or take any shad from said waters with a gill net the meshes of which shall be less than  $5\frac{1}{4}$  inches stretched measure while being fished or to catch or take or to attempt to catch or take shad by any means or device between June 10th and March 1st next <sup>Closed season</sup> ensuing. It shall also be unlawful at any time to set, place or use a net for catching shad, except a drifting gill net, within one-half mile of the mouth of any river, creek or stream emptying into the Delaware Bay. It shall be unlawful to catch or take or attempt to catch or take any shad from said waters with a stake net provided however that stake nets of  $5\frac{1}{4}$  inch mesh or over while being fished, may be used for the taking of shad in that portion of the Bay south of a straight line running from the mouth of Stow Creek on the Jersey shore to the mouth of Smyrna Creek on the Delaware Shore, where by reason of the oyster stakes the use of drift nets is impossible, and also provided that said stake nets shall not be set within 200 feet of any other net, and provided further that it shall be unlawful to permit the stakes of such nets to remain in said waters after June 15th of each year. Any <sup>Violation</sup> person violating any of the provisions of this section shall, <sup>Penalty</sup> upon conviction thereof, be subject to a fine of \$100, together with a forfeiture of all nets, boats and other appliances used.

2511. Sec. 154. ROCK:—It shall be unlawful for any <sup>Nets of certain mesh prohibited in Rock fishing</sup> person to catch or take or attempt to catch or take from said waters any striped bass commonly called rock fish with a shore hauling seine the meshes of which shall be less than  $2\frac{1}{2}$  inches stretched measure while being fished or with a drifting gill net the meshes of which shall be less than 3 inches stretched measure and it shall also be unlawful to catch or take any rock fish from said waters weighing more than 20 pounds or measuring less than 10 inches in length and if any such be caught they shall be immediately returned to said waters uninjured. It shall be unlawful to catch or take from said waters any rock fish between May 1st and November 15th <sup>Closed season</sup> next ensuing. Any rock fish of legal size which becomes entangled in drifting shad nets while being lawfully fished be-

## FISH, OYSTERS AND GAME

Violation      tween March 1st and June 10th, may be retained. Any person violating any of the provisions of this section shall upon conviction thereof be subject to a fine of \$100 together with a forfeiture of all nets, boats and other appliances used.

Penalty

Nets used in catching Weak Fish, White and Yellow Perch

2512. Sec. 155. WEAK FISH, WHITE AND YELLOW PERCH:—It shall be unlawful to catch or take or attempt to catch or take from said waters any weak fish or white or yellow perch with a net of any character except a shore haul seine the meshes of which shall not be less than 2½ inches stretched measure while being fished and the length of which shall not exceed 400 yards or with a drifting gill net the meshes of which shall not be less than 3 inches stretched measure while being fished and shall not exceed 400 yards in length and it shall also be unlawful to use more than one net from any one boat. It shall be lawful to catch or take weak fish, white or yellow perch, as aforesaid, at all times of the year. Old seines now in lawful use may be lawfully used for the taking of weak fish, white or yellow perch until July 31st 1924. Any person violating any of the provisions of this section shall upon conviction thereof be subject to a fine of \$100 together with a forfeiture of all nets, boats and other appliances used.

Open season

Violation

Penalty

Closed season for Eels without certain devices

2513. Sec. 156. EELS:—It shall be unlawful to use eel pots and fyke nets each without wings from June first to July first in each year both dates inclusive, provided, that the entrance of said eel pot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches, provided however that eel pots and fyke nets, with wings not exceeding 5 fathoms in length, for the purpose of taking eels only, the entrance of which shall not be more than 12 inches and the diameter not more than 72 inches, may be used in the Delaware Bay south of a line drawn from West Creek on the Jersey shore to Jones' Creek on the Delaware shore, from the 15th day of October to the 31st day of December in each year, both dates inclusive, any person violating any of the provisions of this section shall on conviction thereof be subject to a fine of \$20 together with a forfeiture of all nets, boats and other appliances used.

Open season

Violation

Penalty

## FISH, OYSTERS AND GAME

2514. Sec. 157. SIZE OF FISH:—It shall be unlawful for any person to catch or take or attempt to catch or take any black bass or any small mouth bass, large mouth bass, otherwise known as Oswego or yellow bass, less than 9 inches in length, or any pike or pickerel or any pike-perch, otherwise known as wall eyed pike or Susquehanna salmon, less than 12 inches in length or any calico or strawberry bass, crappie, white bass, rock bass, otherwise known as red eye or goggle eye, or trout or charr, less than six inches in length, any fish of a less length than those described which may be caught must be returned immediately to the water; provided that nothing in this section shall be construed to prevent the fishery authorities of the State of Delaware or of the State of New Jersey from capturing fish of any size from said waters, at any time of the year or in any manner, for propagating purposes and for stocking other waters in said States through their authorized representatives respectively. Any person who shall violate any of the provisions of this section shall, on conviction thereof be subject to a fine of \$10 for each and every fish so caught and had in possession.

Size of Bass  
and other fish  
prescribedOpen season  
for propaga-  
ting purposesViolation  
Penalty

2515. Sec. 158. CLOSED SEASON FOR GAME FISH:—It shall be lawful to catch food fish with rods and lines and hand lines, and trolling lines as described in section 2506. Sec. 149. of this act, at any time of the year but it shall be unlawful to fish for or take any game fish excepting from the 15th day of June to the first day of December inclusive in each year. Any person violating any of the provisions of this Section shall on conviction thereof, be subject to a fine of \$10 for each and every fish so taken.

Closed season  
for game fish

Violation

Penalty

2516. Sec. 159. UNLAWFUL TO DAMAGE NETS:—It shall be unlawful for any person by boat, anchor, dredge or otherwise to wilfully and without reasonable cause, interfere with, break, damage or destroy any drifting gill net or hauling seine or net of any description, being lawfully used. Any person violating any of the provisions of this section shall on conviction thereof, be subject to a fine of \$20.

Damaging of  
nets prohibited

Violation

Penalty

## FISH, OYSTERS AND GAME

- Pollution of waters unlawful** 2517. Sec. 160. POLLUTION:—It shall be unlawful for any person to put or place any explosive or poisonous substances whatsoever, or any drug, or any poisonous bait for the purpose of catching, taking, killing or injuring fish of any kind in said waters, or to allow any dye stuff, coal or gas tar, coal oil, saw dust, tank bark, cocculus indicus (otherwise known as fish berries), lime, vitriol, or any of the compounds thereof, refuse from gas houses, oil tanks or vessels, or any deleterious, destructive or poisonous substances of any kind to run, flow, wash or be emptied into any of the waters aforesaid, unless it is shown that every practicable means has been used to prevent the pollution of said waters by the escape of deleterious substances. In case of the pollution of said waters by substances known to be injurious to fishes or to fish food it shall not be necessary to prove that such substances have actually caused the death of any particular fish. Any person violating any of the provisions of this section shall, on conviction thereof, be subject to a fine of \$200.
- In case of pollution must be proved**
- Violation**
- Penalty**
- Fish unlawfully caught can not be bought or sold** 2518A. Sec. 161A. UNLAWFUL TO BUY OR SELL FISH UNLAWFULLY CAUGHT:—It shall be unlawful for any person to purchase, sell, expose for sale, or have in possession any fish caught or taken in violation of any of the provisions of this act under a penalty of \$10 for each fish so sold, exposed for sale or had in possession.
- Violation**
- Penalty**
- Interference with officers prohibited** 2519A. Sec. 162A. INTERFERENCE WITH OFFICERS:—Any person or persons who shall, by threat, menace or force, or in any manner attempt to deter or prevent any fish and game warden or other person authorized to make arrests for violation of any of the provisions of this act, from enforcing or carrying into effect any provisions of this act, or who shall resist arrest or the seizure of boats or nets illegally used, shall, on conviction thereof, be subject to a fine of \$100.
- Penalty**
- Sunday fishing prohibited** 2520A. Sec. 163A. SUNDAY FISHING:—It shall be unlawful for any person to catch or take or attempt to catch or take, any fish of any kind or description by means of a net

## FISH, OYSTERS AND GAME

or to use a net of any character in the waters aforesaid from Saturday at 2 P. M. until Sunday at 12 o'clock midnight next ensuing in each week; provided that shad nets lawfully staked may remain in the water during said hours but no fish shall be taken therefrom. Any person violating any of the provisions of this section shall, upon conviction thereof, be subject to a fine of \$100 together with a forfeiture of all nets, boats and other appliances used.

2521. Sec. 164. POUND NETS, STAKED NETS, ETC.:—It shall be unlawful for any person to catch or take or attempt to catch or take from said waters fish of any kind with a pound net or net of any character which is anchored or staked or fastened down in any manner permanently or otherwise or to use any net so fastened down or anchored in any manner (except staked nets for the taking of shad as provided in Sec. 153. of this act), nor shall any net of any kind or character, excepting a drifting gill net and eel pot or a fyke net each without wings, or a parallel net for the capture of carp only as herein before in this act provided, be used for the purpose of catching and taking fish in said waters within one-half mile above or below the mouth of any river, creek or stream emptying into said waters, provided, that gill nets, with meshes not smaller than 3 inches stretched measure while being fished and not exceeding 25 fathoms in length, may be staked on the Jersey shore only, within one-half mile of the shore in the Delaware Bay below Ben Davis Point; and provided further than pound nets for the taking of food fish, which do not extend into the Delaware Bay more than 300 feet from mean low water mark or 300 feet from the outside of the flats which fall bare at low water, may be set and used in the Delaware Bay south of a line drawn from West Creek on the Jersey shore to Jones' Creek on the Delaware shore from the first day of March to the 31st day of December in each year, both dates inclusive, provided however, written permission shall be first obtained for setting said pound nets from the Board of Game and Fish Commissioners of Delaware if said nets are to be set on the Delaware shore and from the Board of Game and Fish Commissioners of New

Proviso

Violation

Penalty

Pound nets, staked nets or other devices unlawful

Exceptions

Proviso

Proviso

Written permission obtained from Board of Game and Fish Commissioner

## FISH, OYSTERS AND GAME

Jersey if said nets are to be set on the Jersey shore. It shall also be unlawful, except in the catching and taking of menhaden, sharks, porpoises and herring-hogs as hereinafter provided for any person to catch and take or to attempt to catch and take from said waters any fish with purse or shirred nets operated by or from steam or other vessels or to use any vessels or boats propelled by steam or gasoline power or by sail, to scare, frighten or drive any edible fish into any nets of any character or to surround any edible fish with any kind of power boats or vessels or nets or to lay out any gill nets of any character, from any power boats or vessels, longer than 200 fathoms in length except shad nets and sturgeon nets nor shall any one boat or vessel lay out more than one net or have more than one net on board. Any person who shall violate any of the provisions of this section shall on conviction thereof, be subject to a fine of \$20 together with a forfeiture of all boats, nets and other appliances used.

Violation

Penalty

License must  
be had before  
catching Men-  
haden, &c.

2522. Sec. 165. MENHADEN:—It shall be unlawful for any person, firm or corporation to catch or take or attempt to catch or take from any part of the Delaware Bay within the jurisdiction of the State of Delaware with purse or shirred nets or with any other nets or devices any menhaden, sharks, porpoises or herring-hogs without having first obtained a license therefor from the proper authorities of the State of Delaware and paying therefor whatever license fees shall at the time be required by the laws of the State of Delaware; and it shall likewise be unlawful for any person, firm or corporation to catch or take or attempt to catch or take from any part of the Delaware Bay within the jurisdiction of the State of New Jersey with purse or shirred nets or with any other nets or device any menhaden, sharks, porpoises or herring-hogs without having first obtained a license therefor from the proper authorities of the State of New Jersey and paying therefor whatever license fees shall at the time be required by the laws of the State of New Jersey. Any person violating the provisions of this Sec. shall be subject to whatever penalties are now prescribed or may hereafter be prescribed by the said States respectively. Sharks and porpoises acciden-

Violation

Penalty

FISH, OYSTERS AND GAME

tally caught by hook and line or by any nets being lawfully <sup>Exceptions</sup> fished may be retained.

2523. Sec. 166. EXTRACTING OIL FROM FOOD FISH PRO- <sup>Extracting oil</sup>  
 HIBITED:—It shall be unlawful for any person to have it\* <sup>from food fish</sup>  
 his possession or to bring into this State any edible fish caught <sup>prohibited</sup>  
 from said waters for the purpose of extracting oil therefrom  
 or of converting said fish into fertilizer; and it shall also be  
 unlawful for any person to extract oil or to convert or in  
 any manner assist in extracting oil from or in converting such  
 fish into fertilizer. Any violation of the provisions of this <sup>Violation</sup>  
 section shall be a misdemeanor and upon conviction thereof <sup>Penalty</sup>  
 a fine of \$500 shall be imposed by the Court, and within the  
 State of Delaware the same proceedings shall be had and  
 before the same courts as may now or hereafter be provided  
 by the laws of the said State in the trial of misdemeanor.

2524. Sec. 167. PROCEDURE:—All prosecutions for vio- <sup>Prosecutions</sup>  
 lation of any of the provisions of this act committed upon <sup>for violation</sup>  
 the soil of the State of Delaware or upon said waters within <sup>in Delaware</sup>  
 the jurisdiction of the State of Delaware shall be conducted <sup>waters con-</sup>  
 by Delaware authorities and by and before the Justices and <sup>ducted by</sup>  
 Courts of Delaware and in accordance with the provisions of <sup>Delaware</sup>  
 2410. Sec. 53 of Chapter 74 of the Revised Code of the State <sup>authorities</sup>  
 of Delaware, and all prosecutions for violations of any of the  
 provisions of this act committed upon the soil of the State of  
 New Jersey or upon said waters within the jurisdiction of <sup>New Jersey by</sup>  
 the State of New Jersey shall be conducted by New Jersey <sup>authorities of</sup>  
 authorities and by and before Justices and Courts of New <sup>said State</sup>  
 Jersey and in accordance with the provisions of an act of the  
 legislature of the State of New Jersey entitled "An Act to  
 provide a uniform procedure for the enforcement of all laws  
 relating to fish, game and birds, and for the recovery of pen-  
 alties for violations thereof, approved March 29, 1897, and  
 the acts amendatory thereof and supplementary thereto."

Every boat, vessel, net, line, fyke or any other prop- <sup>Forfeiture of</sup>  
 erty or appliances unlawfully used in said waters which are <sup>property</sup>  
 within the jurisdiction of the State of Delaware in violation <sup>seized</sup>

\*So enrolled.



## FISH, OYSTERS AND GAME

of any provision of this act shall be forfeited to the State of Delaware and any of said property or appliances unlawfully used in said waters which are within the jurisdiction of the State of New Jersey in violation of any provision of this act shall be forfeited to the State of New Jersey; the procedure regarding the forfeiture of such property in the State of Delaware shall be according to 2518. Sec. 161 of Chap. 74 of the Revised Code of the State of Delaware and any acts which may be passed amendatory thereof or supplementary thereto and the costs and charges of proceedings in the State of Delaware shall be according to 2519. Sec. 162 of Chap. 74 of the Revised Code of the State of Delaware and of any acts which may be passed amendatory thereof or supplementary thereto; and the procedure regarding said forfeiture of such property and regarding said costs and charges in the State of New Jersey shall be according to the present procedure laws of the State of New Jersey and of any acts which may be passed amendatory thereof or supplementary thereto. Nothing in this act shall be so construed as to give the inhabitants of the State of New Jersey or any non residents of Delaware the right to fish in that part of the Delaware Bay which is under the jurisdiction of the State of Delaware, should the State of Delaware by appropriate legislation see proper to deny to the inhabitants of the State of New Jersey or other non residents of Delaware such right or should see proper to impose upon the inhabitants of New Jersey or other non residents of Delaware any license charge for such privilege; and nothing in this act shall be so construed as to give the inhabitants of the State of Delaware or any non residents of New Jersey the right to fish in that part of the Delaware Bay which is under the jurisdiction of the State of New Jersey, should the State of New Jersey by appropriate legislation see proper to deny to the inhabitants of the State of Delaware or other non residents of New Jersey such right or should see proper to impose upon the inhabitants of Delaware or other non residents of New Jersey any license charge for such privilege.

Reciprocity as  
to non-resi-  
dents

In order that the properly appointed officers of Delaware

## FISH, OYSTERS AND GAME

and New Jersey may have the right to make arrests and seize property anywhere in said waters the Governor of Delaware, when requested by the Governor of New Jersey shall issue commissions to such persons as may be named to him by the Governor of New Jersey which shall authorize them to arrest and seize the property of the inhabitants of either State or non residents of either State anywhere in said waters for any violation of any of the provisions of this Act, which Commissions shall at any time be subject to revocation upon the request of the Governor of New Jersey and the compensation of such commissioned officers shall be paid wholly by the State of New Jersey; and the Governor of the State of New Jersey when requested by the Governor of the State of Delaware shall issue Commissions to such persons as may be named to him by the Governor of Delaware which shall authorize them to arrest and seize the property of the inhabitants of either State or non residents of either State anywhere in said waters for any violation of any of the provisions of this Act, which Commissions shall at any time be subject to revocation upon the request of the Governor of Delaware and the compensation of such commissioned officers shall be paid wholly by the State of Delaware, but nothing in this section shall be so construed to prevent any other officers of either State from making arrests within the jurisdiction of their respective States for the violation of any of the provisions of this act; whenever an arrest is made or property seized for any violation of this act committed in said waters within the jurisdiction of the State of Delaware the accused and such property seized shall be at once delivered by the officer making the arrest to the proper Delaware authorities for trial, and whenever an arrest is made or property seized for any violation of this act committed in said waters within the jurisdiction of the State of New Jersey the accused and such property seized shall be at once delivered by the officer making the arrest to the proper New Jersey authorities for trial. If any person or persons shall fail to pay any fine and costs imposed under this act the Justices, Court or Magistrate imposing same shall commit such person to the jail of the County where such conviction is had for a

Governor of Delaware to commission certain officers upon request from Governor of New Jersey

Compensation  
Reciprocity

## FISH, OYSTERS AND GAME

period not exceeding 90 days or until said fine and costs are paid. Any member of the Board of Game and Fish Commissioners, Game Warden, Deputy Game Warden, Collector of Oyster Revenue, Sheriff, Constable or any public officer, may upon view arrest any person violating any of the provisions of this act without any warrant or writ issued for such purpose. This section is expressly subject to the specific provision of the treaty between the said two States, giving each State exclusive jurisdiction within said River to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to fishery herein by this Act provided for.

Duties of certain officials

2525. Sec. 168. All acts or parts of acts inconsistent with this act are hereby repealed but neither this act nor any section, proviso or part thereof shall be valid or become operative until a similar act has been enacted by the State of New Jersey.

Approved March 14, A. D. 1923.

July 1, 1922 - June 30, 1923

A commission, consisting of former Commissioner William A. Logue, of Bridgeton; Jeremiah Chambers of Cape May, and Protector James M. Stratton, had conferences during the year with a committee appointed by the Governor of Delaware, consisting of J. Hall Anderson, Dover; Harris Samonisky, Wilmington; and Frederick D. Bandler, Delaware City, for the purpose of agreeing on a concurrent law for the Delaware river and bay between New Jersey and Delaware.

Our Board instructed the Protector that we were opposed to making the proposed concurrent law any more liberal than the present concurrent law with Pennsylvania affecting the Delaware river, it being desirable to have practically the same restrictions for Delaware river and bay between New Jersey and Delaware as are provided for in the upper portion of the Delaware river.

In March, much to our surprise, Protector Stratton received word from J. Hall Anderson that the Delaware Legislature, despite the fact that the Joint Commission had not come to final terms, passed, and their Governor approved, two acts, one act containing some provisions agreed upon and some provisions not considered by the Joint Commission, one of which was a provision forbidding New Jersey residents fishing in their waters, which law was not to become operative until concurred in by New Jersey; the other act simply prohibited New Jersey residents fishing in their waters and took effect immediately. The Commissioners representing New Jersey informed Mr. Anderson that in view of his law prohibiting residents of New Jersey from fishing in their waters that our Legislature would undoubtedly at its next session pass an act prohibiting the residents of Delaware from fishing in our waters, and further, that the action of the Delaware Legislature would certainly have a deterrent effect on the effort of the two states to obtain uniform legislation.

July 1, 1923 - June 30, 1924

Through an inquiry made by Governor William D. Denny, of Delaware, Governor Silzer of this State, took up with our Board the cause which brought about retaliatory legislation by the New Jersey Legislature of 1924. It appeared that the Legislature of Delaware had passed an act prohibiting non-residents using nets within the jurisdiction of Delaware in the Delaware river and bay, and this act was passed by the State of Delaware while at the same time there was a joint commission of representatives of Delaware and New Jersey looking toward a uniform concurrent law regulating net fishing.

Later Governor Silzer wrote to our Board requesting us to make arrangements for a further meeting of the Joint Commission, if the same were agreeable to Governor Denny. Protector James M. Stratton who was a member of the New Jersey Commission, together with the other Commissioners, Honorable William A. Logue and Jeremiah Chambers, again took up the matter with Governor Denny.

DE21585

July 1, 1926 - June 30, 1927

In April, four fishermen from Delaware were arrested by our wardens for fishing with a net in the Delaware Bay within the jurisdiction of New Jersey in violation of the act prohibiting nonresidents fishing in the Delaware Bay with nets, which act was passed in 1924 and was a retaliatory measure by this State to meet an act previously passed by the State of Delaware, prohibiting nonresidents from fishing in the Delaware Bay within the jurisdiction of the State of Delaware. The men were convicted, and a few days later the Delaware authorities arrested two residents of New Jersey for violation of the Delaware nonresident act. These defendants being unable to pay the penalty were committed to a Delaware jail. Both cases were finally withdrawn and the defendants released.

The whole matter was taken up with the Attorney General's Department. It appears that inasmuch as there was no legislation or compact fixing a dividing line in the Delaware Bay between the States of New Jersey and Delaware, and under the terms of Joint Resolution No. 4, passed at the 1927 session of the Legislature, for the appointment of a Commission to confer with a similar Commission from the State of Delaware, to fix the boundary line between the two States and settle other disputes, and said Commission having met and organized a few days previously, that it was advisable not to continue with the prosecutions. This was agreeable to Attorney General Sutherland of Delaware, who ordered the release of the New Jersey residents and the return of their boats and nets.

For many years New Jersey has endeavored to obtain concurrent legislation with Delaware, but each time the Delaware legislature has failed to concur in laws passed by the New Jersey legislature.

In justification of the arrest by our wardens a report made by Commissioner Harry T. Hagaman, who personally inspected the waters, showed that the Delaware fishermen were eastward of the channel in an area long regarded as belonging to New Jersey, and that the New Jersey fishermen were eastward of this channel. He added that in the inspection, he was accompanied by J. R. Hensler, of Ocean county, who had been appointed by the Governor to succeed him as Commissioner at the expiration of his term, and that Mr. Hensler was familiar with the situation.

July 1, 1930 - June 30, 1931

The Attorney General has brought suit in the United States Supreme Court to ascertain the true boundary line between the State of New Jersey and the State of Delaware.

Our Board is very much interested in this case, inasmuch as for many years past there have been fierce disputes between the fishermen and oystermen of Delaware and New Jersey as to the respective territories of the States. There have been efforts made to settle the question for many years, but with no success.

New Jersey claims its title by virtue of the sovereignty of the Crown of England existing prior, and to which it succeeded as a result of the American Revolution and the Treaty of Paris, and by virtue of the common law of England existing at that time, which was adopted by New Jersey and Delaware upon attaining their independence.

P  
6-13-38

DE21587

**New Jersey State Archives**  
Department of Law and Safety  
Attorney General's Office  
Closed Case Files, 1920's - 1950's  
**Box 8**

DE21588

April 4,  
1924.

My dear Governor Denny:

I am again writing you about the conditions concerning fishing on the Delaware River.

In 1921 a committee of three from New Jersey and three from Delaware was appointed for the purpose of agreeing on a concurrent law for the two States. Owing to the lateness of the season, nothing could be done by the joint commission in that year.

In 1922 several meetings were held.

In March, 1923, much to the surprise of our Commissioners, it was found that the Delaware Legislature, despite the fact that the Joint Commission had not come to final terms, passed, and their Governor approved two acts one containing some provisions agreed upon, and some provisions not considered by the joint commission, one of which was a provision forbidding New Jersey residents fishing in their waters.

As a result of this action, the Legislature of New Jersey, in the present session, passed a law prohibiting residents of Delaware fishing in New Jersey waters.

As I said to you in a former letter, this is a most unwholesome condition, and one that should not exist, for retaliation always brings trouble in its wake.

There ought to be no difficulty in having the States of New Jersey and Delaware agree upon a uniform and concrete law regarding fishing in Delaware Bay. Such a law, agreeable to both States, should prevent any friction in the future.

Having this in mind I would suggest that arrangements might be made to have your commission again meet with ours, in order to see what can be accomplished.



W.D.D.-28

If this is agreeable, will you please have your commission communicate with Mr. J. M. Stratton, State House, Trenton, who will make all arrangements for our commission?

With assurances of my highest regard, I am,

Sincerely yours,

Governor

Hon. William D. Denney, Governor,  
Dover,  
Delaware.

8

New Jersey State Archives  
Governor Silzer Papers  
Box 18 Folder 86

DE21420

1923

State of Delaware



Executive Department

DOVER

March  
Twelfth  
Nineteen Twenty-one.

Hon. Edward I. Edward,  
Governor of New Jersey,  
Trenton, N. J.

*Fish Commission*

My dear Governor:

I acknowledge receipt of your letter of the 10th inst., advising that the Hon. William A. Logue, James M. Stratton and Jeremiah Chambers have been appointed a commission to meet with a like commission from the State of Delaware for the purpose of preparing concurrent fishing laws in the Delaware River and Bay.

Assuring you of my appreciation for your action in the matter, I am

Sincerely yours,

*H. B. ...*  
Governor.

WDD/H

New Jersey State Archives  
Governor Edwards Papers  
Box 4 File 60

*Fish + Game*

State of Delaware



Executive Department  
DOVER

February 26, 1924

Honorable George S. Silzer,  
Governor of New Jersey,  
Trenton, N. J.

My dear Governor Silzer:

I thank you for your courteous telegram of February 24th.  
I am enclosing copy of the Game and Fish Laws of Delaware and wired  
you today as follows:

"The Delaware Law prohibits non-residents from fishing  
only for food fish with nets in waters of Delaware Bay  
under Delaware jurisdiction. There is no prohibition  
against hook and line fishing. I am forwarding copy of  
Delaware Laws."

Sincerely yours,

Governor.

WDD.BAS

New Jersey State Archives  
Governor Silzer Papers  
Box 18 Folder 86

CLASS OF SERVICE	SYMBOL
Telegram	T
Letter	Blr
Night Message	NM
Night Letter	N.L.

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

# WESTERN UNION TELEGRAM



NEWCOMB CARLTON, PRESIDENT      GEORGE W. E. ATKINS, FIRST VICE-PRESIDENT

CLASS OF SERVICE	SYMBOL
Telegram	T
Day Letter	Blr
Night Message	NM
Night Letter	N.L.

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

RECEIVED AT 14 EAST STATE ST., TRENTON, N. J. ALWAYS OPEN  
6 P DS 40 3 EX

DOVER DEL. 1250P FEB 26 1924

*Handwritten signature*

HON GEO S SILZER

TRENTON NJ

THE DELAWARE LAW PROHIBITS NON-RESIDENTS FROM FISHING ONLY FOR FOOD FISH WITH NETS IN WATERS OF DELAWARE BAY UNDER DELAWARE JURISIDICITION THERE IS NO PROHIBITION AGAINST HOOK AND LINE FISHING I AM FORWARDING COPY OF DEL-AWARE LAWS

WILLIAM D DENNEY  
GOVERNOR OF DELAWARE

155P

own class will only breed ill-feeling and endanger our then friendly relations.

I await your suggestion in the matter.

Yours very truly,

Governor.

His Excellency, William D. Denney,  
Governor of Delaware,  
Dover, Delaware.

D

New Jersey State Archives  
Governor Silzer Paper  
Box 18 Folder 86



*W. H. G. J. J.*

February 28,  
1934.

Dear Governor:-

After receiving your telegram with reference to the law existing in your State prohibiting non residents from fishing for food fish with nets in the waters of Delaware Bay under the jurisdiction of your State, I felt compelled to sign a like measure passed by the Legislature of New Jersey, which prohibits the same kind of fishing on our side of the Bay.

It would seem that this unfortunate situation should not be allowed to continue, as it is apt to engender unfriendly feelings between the people of the two States engaged in fishing, and retaliatory measures and discriminating legislation are never to be commended.

Would it not, therefore, be wise to have this matter taken up by the two States, in an effort to arrive at an amicable arrangement, which might later be embodied in the laws of our States?

I submit this to you as a good neighbor, feeling as you must feel that it is highly important that the friendly relations heretofore existing between the two States should be continued. Retaliatory legislation on both sides will only breed ill-feeling and endanger our then friendly relations.

I await your suggestion in the matter.

Yours very truly,

Governor.

His Excellency, William D. Denney,  
Governor of Delaware,  
Dover, Delaware.

D

New Jersey State Archives

Governor Silzer Papers

Box 18 Folder 86

State of Delaware



Executive Department

DOVER

March 13, 1924

Honorable George S. Silzer,  
Governor of New Jersey,  
Trenton, N.J.

*Just Name*

My dear Governor Silzer:

I acknowledge receipt of your letter of February 28th in reference to the laws regulating the taking of fish in the Delaware Bay.

I agree with you that no situation which might engender unfriendly feelings between the fishermen of the two States should be permitted to continue.

As the two States created like Commissions in February 1921, for the purpose of modifying the Laws regulating the taking of fish in the Delaware River and Bay, and said Commissions are still in existence, it seems to me that the matter might well be referred to them for action.

The New Jersey Commission, which was created by concurrent resolution on February 28, 1921, consists of Messrs. William A. Logus, J. E. Chambers, and James M. Stratton. They met a number of times with the Delaware Commission and the result of their labors was presented to the Delaware Legislature and duly enacted with a proviso that the Act would not become operative until a similar Act has been enacted by the State of New Jersey. This Act was approved by me on March 14, 1923, and I presume the same will be considered by the Legislature of New Jersey now in session.

If you agree with me that it would be well to refer this matter to these Commissioners, I will be pleased to refer it to the Delaware Commission for its attention.

DE21406



New Jersey State Archives  
Governor Sizer Papers  
Box 18 Folder 86

DE21408

March 25,  
1924.

My dear Mr. Logue:

I am enclosing you copy  
of a letter from the Governor of Delaware,  
in answer to one from me.

I wish you would please let  
us know the present situation, and what you  
think can be done to bring about a better  
understanding.

He speaks of an Act of the  
State of Delaware having been approved of  
March 14, 1923. Is this the act which  
brought about the legislation by our  
legislature this year in retaliation?

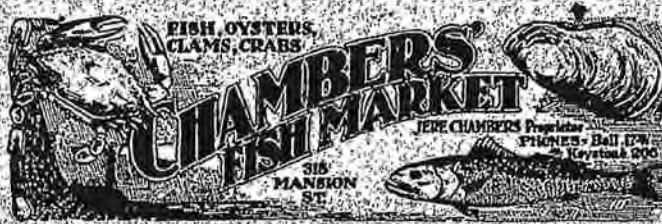
Yours very truly,

Governor.

Hon. William A. Logue,  
Bridgeton,  
N.J.

S

New Jersey State Archives  
Governor Silzer Papers  
Box 18 Folder 80



Cape May N. J. March 31 1924

Honorable George S. Silzer,  
Trenton, N.J.

Dear Governor:

I am in receipt of your letter of March 25 enclosing a copy of a letter to you from Governor Denney, of Delaware, respecting fishing in the Delaware Bay.

The Delaware Act of March 14 1923 prohibited non-residents from fishing in Delaware waters and the New Jersey Act, which passed the Legislature this session, was in retaliation.

The New Jersey Commission, as Governor Denney states, met, a number of times, with that appointed by him, and discussed matters in much detail, but failed to come to a common understanding, and for that reason no legislation was recommended by the New Jersey Commission. It may be that the Delaware Commission did, but it was without our knowledge or concurrence.

Inasmuch as both States now prohibit non-residents from fishing in the waters of the Delaware Bay within their respective jurisdictions, and as it seems to be the actual intent of both that the prohibition be removed it would appear to be the proper procedure to do as suggested by Governor Denney and refer the matters to the Commissioners in order that some plan, mutually agreeable, might be arrived at.

Very truly yours,

*Jere E. Chambers*



New Jersey State Archives  
Governor Silzer Papers  
Box 18 Folder 80

# STATE OF NEW JERSEY

BOARD OF  
FISH AND GAME COMMISSIONERS  
TRENTON

March 31, 1924.

Hon. George S. Silzer,  
Governor of New Jersey,  
State House,  
Trenton, N. J.

My dear Governor:

I have your letter of March 25th, enclosing a copy of a letter from Hon. W. D. Denny, Governor of Delaware, and note that you ask me if the Delaware act approved March 14, 1923, was the act which brought about the New Jersey legislation of 1924 prohibiting non-residents fishing with nets in Delaware bay; and also that you would like to know what can be done to bring about a better understanding with Delaware.

In direct reply to your inquiry, I beg to say that the Delaware act referred to by the Governor of Delaware is not the act which brought about the New Jersey act of 1924. The Delaware act which brought about the legislative action this year was another act, passed about the time of the Delaware act of March 14, 1923.

## HISTORY OF JOINT COMMISSION

In 1921 a committee consisting of former Commissioner William A. Eogue, of Bridgeton, Jeremiah Chambers, of Cape May, and myself, was appointed to confer with a committee appointed by Governor Denny, of Delaware, consisting of J. Hall Anderson, Dover, Harry Semonsky, Wilmington, and Frederick D. Bendler, Delaware City, for the purpose of agreeing on a concurrent law for the Delaware river and bay between New Jersey and Delaware.

Owing to the adjournment of the legislature early in 1921, nothing could be done by the joint commission in 1921.

Several meetings were held by the joint commission in 1922.

In March 1923, much to my surprise, I received word from Mr. Anderson that the Delaware legislature, despite the fact that the joint commission had not come to final terms, passed and their Governor approved, two acts, one act containing some provisions agreed upon and some provisions not considered by

## STATE OF NEW JERSEY

BOARD OF

FISH AND GAME COMMISSIONERS

TRENTON

#2 G. S. S.

the joint commission, one of which was a provision forbidding New Jersey residents fishing in their waters, which law was not to become operative until concurred in by New Jersey; the other act simply prohibited New Jersey residents fishing in their waters and took effect immediately. The commissioners representing New Jersey informed Mr. Anderson that in view of his law prohibiting residents of New Jersey from fishing in their waters that our legislature would undoubtedly at its next session pass an act prohibiting the residents of Delaware from fishing in our waters, and further, that the action of the Delaware legislature would certainly have a deterrent effect on the effort of the two states to obtain uniform legislation.

CORRESPONDENCE AND COMMENT REFERRING TO DELAWARE  
NON-RESIDENT LAW.

Mr. J. Hall Anderson of Dover, Chairman of the Delaware Joint Commission, in transmitting the second Delaware act to me by letter dated May 1, 1923, stated that the Delaware members of the joint commission did not sponsor that act, nor did they have anything to do with it.

On March 8, 1923, Mr. Anderson called my attention to an act passed by New Jersey in 1826, which act prohibited non-residents from fishing with nets in our waters, which act fixes a penalty of \$30. for violation, and makes certain exceptions as follows: provided that nothing in this act shall be so construed as to affect the right or privilege of any owner or owners, tenant or tenants, not resident in this State from fishing upon or opposite to his, her or their shore in this State, or to prevent any resident, owner or tenant from employing what hands he may think necessary to carry on the business of his or their fisheries; provided also, that nothing in this act contained shall relate to or in any wise affect the fisheries on the waters of the river Delaware.

No prosecutions have ever been brought against residents of Delaware as non-residents for fishing in our waters under the above mentioned act. Delaware fishermen have been arrested in our waters, but for fishing illegal nets and for fishing out of season.

Responsive to Mr. Anderson's letter of March 8, 1923, representing the New Jersey members of the commission, I wrote as follows:

# STATE OF NEW JERSEY

BOARD OF  
FISH AND GAME COMMISSIONERS  
TRENTON

#3 G. S. S.

March 13, 1928.

"I have your letter of the 8th concerning the bill introduced in the legislature of your State prohibiting non-residents using nets in Delaware bay within the jurisdiction of the State of Delaware, and asking if there is a law in this State prohibiting non-residents from using nets.

"Under separate cover, I am sending you a copy of the fish and game laws, and refer to "An act concerning fisheries" passed December 27, 1826, and to be found on page 65.

"This act has never been enforced in the Delaware bay, but if the legislature of your State passes the act referred to, I have no doubt but that our law will be enforced, and further if your law is passed, our legislature will no doubt at its next session pass an act that will have a penalty that will conform with yours.

"Inasmuch as our State has not enforced our law respecting non-residents against Delaware parties, who fish in our waters, it would seem inadvisable for your legislature to pass the act now proposed, as it would certainly have a deterrent effect on the effort to get a concurrent uniform law between the two States."

### SUGGESTION AS TO WHAT CAN BE DONE.

As to your inquiry as to what can be done to bring about a better understanding, I beg to say, without having consulted at this time any of the New Jersey members of the joint commission, that the first step should be for the Delaware legislature to repeal their act prohibiting non-residents from fishing in our waters, whereupon the joint commission could make an effort to agree upon a concurrent law. It is plain that we cannot have concurrent and uniform legislation for Delaware bay, if each state is to forbid residents of the other state fishing in its waters.

### FAST EFFORT TO AGREE.

You might be interested to know that several efforts have been made to have concurrent and uniform laws with the State of Delaware. A few years ago a joint commission of the two states agreed upon a uniform concurrent law, which law was passed by the New Jersey legislature and approved, but the Delaware legislature refused to concur.

Moreover, during Governor Townsend's term as governor, he took up with Governor Sproul of Pennsylvania, and Governor Edge of New Jersey, the matter of fixing a closed season for five years on sturgeon in the waters of the Delaware river and bay, and

STATE OF NEW JERSEY  
BOARD OF  
FISH AND GAME COMMISSIONERS  
TRENTON

#4 G. S. S.

the legislatures of New Jersey and Pennsylvania passed such an act, but the legislature of Delaware refused to concur, and at the session of 1922, the New Jersey legislature repealed the act.

The act of Delaware prohibiting non-residents from fishing in their waters as furnished by Mr. Anderson, is enclosed.

Yours very truly,

*J. M. Stratton*  
Protector.

New Jersey State Archives

Governor Silzer Papers

Box 18 Folder 86

AN ACT TO AMEND CHAPTER 74 OF THE REVISED CODE OF THE STATE OF DELAWARE BY PROHIBITING NON-RESIDENTS OR ALIENS FROM TAKING FISH IN NETS FROM THE WATERS OF THE DELAWARE BAY WITHIN THE JURISDICTION OF THE STATE OF DELAWARE AND PROVIDING A BOAT FOR USE IN ENFORCING THE PROVISIONS OF THIS ACT.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF DELAWARE IN GENERAL ASSEMBLY MET;

Section 1. That chapter 74 of the Revised Code of the State of Delaware be and the same is hereby amended by inserting immediately after 2525 Sec., 168 thereof the following new Section:

2525A. Sec. 168A. It shall be unlawful for any non-resident of the State of Delaware, or any alien, at any time to take or attempt to take edible or food fish of any kind by means of any net of any character or any device or contrivance whatsoever, except with rod, hook and line or hand line, from the waters of the Delaware Bay within the jurisdiction of the State of Delaware. For the purpose of this act all unnaturalized foreign-born residents of this State shall be classed as non-residents of this State, and any person, not an alien who has resided not less than twelve months within this State, shall be deemed to be a resident of this State. Any person violating any of the provisions of this Section shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, and costs, together with a forfeiture of all nets, boats and other appliances used. If any person shall fail to pay any fine and costs imposed under the provisions of this act such person shall be committed to the jail of the County where such conviction is had for a period not

exceeding ninety days or until such fine and costs are paid.

For the purpose of enforcing the provisions of this act the Board of Game and Fish Commissioners is hereby authorized, empowered and directed to secure by gift, purchase or otherwise a suitable power-boat to be used exclusively in enforcing the laws of the State of Delaware. The amount which the said Board is authorized to expend for the purpose aforesaid is hereby limited to the sum of Twelve Hundred Dollars, and the said sum of Twelve Hundred Dollars, or so much thereof as may be necessary, is hereby appropriated for the purpose aforesaid from any money in the Treasury of the State of Delaware not otherwise appropriated. The State Treasurer shall pay said sum not exceeding Twelve Hundred Dollars on warrant of the said Board, approved by the Auditor of Accounts.



New Jersey State Archives  
Governor Silzer Papers  
Box 18 Folder 86

# Every Evening

WILMINGTON DAILY COMMERCIAL  
ESTABLISHED 1871

DELAWARE GAZETTE  
ESTABLISHED 1784

DELAWARE STATE JOURNAL  
ESTABLISHED 1822

WILMINGTON DAILY COMMERCIAL  
ESTABLISHED 1866

WM. F. METTEN, PUBLISHER

WILMINGTON, DEL.

April 4, 1927.

To His Excellency,  
Hon. Robert P. Robinson,  
Governor of Delaware.

Dear Sir:

Herewith you will please find enclosed a letter to you regarding the activities of our Fish Commission. In addition thereto we are sending enclosed, two copies of this letter to you. We would appreciate it very much if these copies were forwarded to the speaker of the House and the president pro tem of the Senate in order that they may have some idea of the work in which we have been engaged. With best wishes, I am

Yours very truly,

*Harris Samonisky*  
Harris Samonisky

DE Public Archives

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Gov. Papers

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To His Excellency

Hon. Robert P. Robinson, Governor of Delaware.

Dear Sir:

Since our last written report to you in March 1925, we have, as members of a commission, the same being authorized by House Joint Resolution, Chapter 248, Volume 321, Laws of Delaware, given considerable time, thought and effort, to endeavor to draft a bill relating to the catching or taking or attempting to catch or take fish from the waters of the Delaware river, lying between low water marks of the state of Delaware and state of New Jersey, which would be agreeable to the inhabitants of said states as under compact agreement passed by the congress of the United States in 1905, we must have a common right of fishery on the waters of the Delaware river in order to have any law at all, except the laws as were in existence previous to 1905, and only such parts of them as did not interfere with a common right of fishery.

As our compact agreement states, we must have a common right of fishery in the waters of the Delaware river and may have uniform laws relating to fishing on the bay, we have deemed it advisable, as the fishing in the bay appeared as most of our difference, to draw a bill relating to catching or taking or attempting to catch or take fish from the waters of the Delaware river only.

This bill which has been introduced in the senate of the present session of the General Assembly was drawn after considerable communication between the commissions appointed of the state of New Jersey and state of Delaware. On the advice of the attorney general of the state of Delaware, Clarence A. Southerland, Esq., who conferred with

of the state of New Jersey, we are now presenting, with a few changes, the law passed by the state of New Jersey in 1907, and which law we find after frequent consultations with the people of the state of Delaware, who are interested in the fishing industry as a means of livelihood and conservation of food fish, to be as near perfect as a law can be applying to fishing on the waters of the Delaware river.

We believe that the people of the state of Delaware would not be satisfied with any material change in the law as presented and that the state of New Jersey will pass it at its next session of their General Assembly which will be not later than 1928 and possibly sooner. We understand they do not expect to adjourn sine die and may meet again this year.

We wish to assure you that the task of securing uniform legislation is both complicated and arduous, and the present commission believes that the only way we can secure a common right of fishery on the river and uniform laws relating to catching or taking or attempting to catch or take fish from the waters of the bay is by the enactment of two separate acts and the present act of applying to the river will be of great help in future considerations of the bay question.

The Delaware commissioners also desire to state that they entertain sentiments of the best personal regard and respect for all members of the New Jersey commission who are men of unquestionable integrity, ability and high standing in their state; the personal relations of the two commissions have been most pleasant.

In submitting our report to you, the commission is of the opinion that the fishing industry in New Jersey and Delaware is hampered because of the lack of uniform legislation and the confusion which has arisen

since the compact of 1905.

The Delaware commission desires to state that in considering uniform fishing laws it has always had in mind the conservation of food fish and it is only fair to say that the New Jersey commissioners have heartily cooperated in this matter.

This commission deems it proper to call your attention to the fact that for some years and since the passage of the Federal migratory bird law there has been considerable agitation in favor of a migratory fish law which would place the catching and taking of migratory fish under Federal regulation.

Other states beside Delaware and New Jersey, between which navigable waters run, have had great difficulty in agreeing through their State Legislatures upon uniform fish laws and this condition which exists all through the United States has been the cause of the present agitation for Federal control of fishing. Such a Federal law may prove to be the only solution of the difficulty but it may be many years before such Federal control may be made effective.

We wish to take this opportunity to express our thanks to the attorney general of the state of Delaware, Honorable Clarence A. Southerland, for the great amount of interest he has taken in the work of our commission. He has made trips to Trenton to confer with the attorney general of the state of New Jersey and our commission has had numerous conferences with him in working out our problem.

*Harris Janowitsky*  
Secretary

April 4, 1927

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May 6, 1938

MEMORANDUM RELATIVE TO CONTROVERSY RESPECTING FISHING IN THE DELAWARE RIVER

A day or two prior to May 5, 1938, Senator Craven of Salem County informed Governor Moore that a number of shad fishermen residing in Salem County had complained that an employee of the Delaware Fish and Game Commission had suggested to one of their number that it was proposed to stop New Jersey residents from fishing for shad in the Delaware River as a result of the failure of the latter to comply with the Delaware law providing for the licensing of fishing boats. (Revised Code of Delaware, 1935, Chapter 74, Sections 80 to 83 inclusive) In part this Act provided:

"It shall be unlawful for any person, firm or corporation to engage in the business of carrying fishing parties, for hire, in any boat or boats for the purpose of fishing in the waters of the Delaware River, Delaware Bay and that part of the Atlantic Ocean under the jurisdiction of the State of Delaware, without first obtaining an annual license for each boat from the Board of Game and Fish Commissioners of the State of Delaware; provided however, nothing in this section shall apply to boats propelled exclusively by cars."

A license fee of \$10.00 for each year was fixed for each boat license issued to a resident of Delaware and a license fee of \$50.00 for each year was fixed for each boat licensed to a non-resident of that State. Upon conviction of a violation of the Act by a non-resident of Delaware, a minimum fine of \$100.00 was fixed. The regular penalty for violation was a fine of not less than \$50.00 nor more than \$500.00 together with cost of prosecution and a provision that the offender should suffer the forfeiture of each and every boat or boats used.

Under instructions from Governor Moore, Mr. Burlington (Secretary of the New Jersey Fish and Game Commission), and myself met Attorney General Green of Delaware and the president of the Delaware Fish and Game Commission, Leonard E. Yerker, at Mr. Green's office in Wilmington on May 5, 1938 to discuss the complaint made to Senator Craven above referred to. At this conference, Mr. Yerker stated that his board had in no official way taken any steps to interfere with shad fishing by New Jersey residents in the Delaware River under the above stated law or under any other statute of Delaware. Attorney General Green stated that to his knowledge the State of Delaware did not contemplate interfering under the aforesaid statute with New Jersey residents fishing for shad in the Delaware River and he



informed Mr. Burlington and myself that we were authorized to so inform Governor Moore.

Inquiries made by Mr. Burlington developed that the State of Delaware was at the time engaged in enforcing in certain parts of Delaware Bay the provisions of the so-called "Fishing Party Boat Law" hereinbefore referred to and the New Jersey shad fishermen having learned of the enforcement in the Bay were apprehensive that the Delaware Fish and Game officials might undertake to also interfere with the shad fishing in the River.

No attempt was thereafter made to in any way interfere with inhabitants of New Jersey fishing in the Delaware River but the Fish and Game officials of Delaware continued thereafter to engage, with the use of a power boat, in actively attempting to enforce the so-called "Fishing Party Boat Law" of Delaware in the Delaware Bay, on the Delaware side thereof and in the course of this activity several inhabitants of New Jersey were apprehended and charged with the violation of this statute. As a result of this apprehension and charge, the New Jersey inhabitants made complaint to the Governor and at his request Mr. George Warren, President of the New Jersey Fish and Game Commission, and Mr. Stockton of this department, conferred at Wilmington with Attorney General Green. As a result of this conference it was agreed that there would temporarily be no attempt to enforce the so-called "Fishing Party Boat Law" against inhabitants of New Jersey and that the Governors of the two states should designate commissions to agree upon and recommend to the Legislatures of the two states proposed legislation in the way of amending the legislation dealing with fishing in the Delaware River and Bay which had been enacted in 1907 pursuant to a Compact of 1905.

**New Jersey State Archives**  
Department of Law and Safety  
Attorney General's Office  
Closed Case Files, 1920's - 1950's  
**Box 8**

208

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May 24, 1938

Honorable David T. Wilentz  
Attorney General  
State House

Attention: Mr. Solan

Dear Mr. Solan:

We had three complaints come into the office today from owners of party boats living in New Jersey who were arrested by officers of the State of Delaware in the Delaware Bay on the Delaware side of the channel. These officers boarded the boats with firearms exposed and forced the captain of the party boats to the Delaware shore where they were tried and fined from \$50.00 to \$100.00 each.

We have no reciprocal law in New Jersey, as we do not charge a license fee to party boats.

This is the first time that there has been a conflict in our laws that we know about, and we are wondering whether under the old compact and concurrent laws they would have a clear right to arrest our New Jersey residents in that we have no reciprocal law giving us rights to arrest people from Delaware.

Yours very truly,

H. J. Burlington  
Executive Secretary

HB.HP

P.S. Just had a telephone message from Mr. Yerger stating that there are 200 Delaware boat captains in the State House at Delaware protesting the action of the officials in arresting New Jerseyites in their waters because of the fact that New Jersey does not require a permit from citizens of Delaware in our waters. He stated that he will suggest that all activity in arrests be stopped until both New Jersey and Delaware can get together on some agreement.

504


Honorable A. Harry Moore, Governor

pp. 2

We are enclosing copy of letter regarding this matter to our Attorney General, for your further information.

It would appear that the only way to get this Delaware Bay matter cleared up would be through a consultation between the Attorneys General of both States.

Very respectfully yours,

  
H. J. Burlington  
Executive Secretary

P.  
Enc.

P.S. George Warren has just come in from the Attorney General's office and they assure him that they will take the matter up immediately with the Attorney General of Delaware and will do everything possible to work out a satisfactory solution of the matter.



New Jersey State Archives

# FORTESCUE CAPTAINS' ASSOCIATION, Inc.

FORTESCUE, N. J.

May 27, 1938

Honorable Governor Harry A. Moore,  
Trenton, N.J.

Your Honor:

On Sunday May 22nd, 1938, while fishing with hook and line on the western side of the channel of the Delaware Bay, two of our Jersey Party Boat fishermen were illegally boarded by the Delaware State Game Wardens and forced under protest to proceed to Bower's beach with their parties aboard numbering twenty-two persons. The Captains then taken to Camden, Del. where they were convicted before Justice of the Peace and fined \$100.00 and costs each. One Captain being sent to jail.

These Wardens all being armed but on a private boat and during the trip from fishing grounds to Delaware, ran into and damaged one of the Jersey Boats belonging to Capt. Paul Hickman, Fortescue, N.J., that he will have to lose time from fishing to make repairs, and yet have in no way compensated Captain Hickman for damaged done to his boat.

These Captains had no idea that they were violating any law what so ever, they are licensed by the United States Government to ply their trade in any of the waters of the United States; therefore we appeal to you to contact our neighboring Governor so that we may get relief from this present situation.

In Jersey we have no law that would stop a handline fisherman from Delaware, fishing in Jersey waters and would not want a law that would prohibit our neighbors from fishing with us Jerseyman.

In Delaware the fisherman do not want the law they have and they want it changed as soon as possible; attached, you will find a clipping which is self explanatory. This clipping was taken from the Bridgeton Evening News, May 26th, 1938.

Therefore, in behalf of Jersey and Delaware Sport Fishermen beseech you to take immediate action in our behalf as you did with the Net Fisherman in the Delaware River so that we Jerseyman may fish Delaware Waters and Delaware Fisherman in Jersey Waters without being molested.

Respectfully,  
FORTESCUE CAPTAINS ASSN. INC.

*S. Quadling* President.  
*C. J. Gehring*

Secretary:





205

June 1st, 1938.

Hon. A. Harry Moore, Governor,  
State House,  
New Jersey.

Your Honor:

You will find enclosed a communication from the Fortesque Captains' Association, Incorporated.

They brought this matter to my attention Monday and wished me to communicate with you immediately, but as I had hearings in Jersey City, it was impossible for me to bring it to your attention personally. However, I would appreciate having it given as careful and prompt attention as possible.

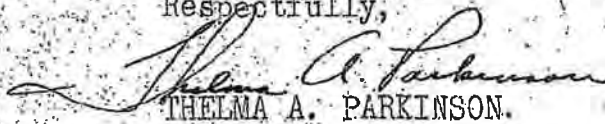
It seems that at one time, depending upon the wind and tides, all the fish are along the New Jersey shore and maybe within a few hours time they are on the Delaware shore. New Jersey has always allowed the small party boat captains and fishermen to fish along the Jersey shore and this is the first time that Delaware has interfered with the New Jersey fishermen.

I advised them to enter a complaint with the Fish and Game Commission here in New Jersey. They have done that but felt that your intercession with the Fish and Game Commission would be the thing that would really count.

It effects so many it is really important that some stand be taken so that these fishermen really know what they can and cannot do.

I will greatly appreciate hearing from you as soon as this matter can be settled.

Respectfully,

  
THELMA A. PARKINSON.

TP:FW  
Encl. (1)

          
t.w.



New Jersey State Archives

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1962



New Jersey State Archives

DE16772

1964

June 15, 1938.

Hon. David T. Wilentz,  
266 Madison Ave.,  
Perth Amboy, N. J.

My dear Attorney General:

Mr. George Warren, Captain Burlington and I met with the Attorney General of Delaware and members of the Fish and Game Commission of that State today, and after some argument over the legal aspect of the situation, we obtained an agreement from them to the effect that they would not interfere with Jersey boat parties fishing in Delaware waters, pending the appointment by the Governor of a Commission to formulate concurrent legislation applicable to both States reviewing the whole subject.

As it appears that it is unlikely that we could get a resolution through the Legislature tomorrow, authorizing the appointment of such a commission, particularly with an appropriation, it was agreed that the Governor should appoint as soon as possible this Commission, and the Fish and Game Commission would stand to advance the necessary expenses until legislation can be enacted.

From the attitude of the Attorney General and the members of the Delaware Commission, this was really a very good solution of the whole affair. Upon our arrival they were satisfied that their laws on this subject were binding and when we left they were apparently convinced that our contention that the laws subsequent to the compact were not binding in either State - it was then simply a question to provide for some agreement that would satisfy both Fish and Game Commissions.

They have reserved a certain portion of the waters where Jersey boats will be notified that they cannot fish, and also that Jersey party boats cannot land on the Delaware shores to take out Delaware parties. However, the waters that they did reserve were not used by Jersey boats to any extent and the main source of supply of fish is now accessible to the Jersey party boats.

DE21621

Hon. David T. Wilentz.

#2.

June 15, 1938.

In other words, they are not going to enforce the statute under which the Jersey men were arrested until the new commission files its report.

Mr. Warren is going to get in touch with the Governor about the personnel of the commission as soon as possible. I tried to report to him this afternoon but find he could not be reached.

With kindest regards,

Very truly yours,

MS:K

DE21622

**New Jersey State Archives**  
Department of Law and Safety  
Attorney General's Office  
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**Box 8**

DE21623

1967

# The State of Delaware

To P. Warren Green

Of New Castle County, Greeting:

**Know You,** That reposing special trust and confidence in your knowledge, integrity, prudence and ability, we have constituted and appointed, and by these presents do constitute and appoint you, the said

P. Warren Green

To be a member of the Commission to Study Uniform Laws Relative to Fishing  
in the Delaware Bay, to serve during the pleasure of the Governor

resident at Wilmington, New Castle County, Delaware

giving hereby and granting unto you the said

P. Warren Green full power and authority to execute and discharge the said office  
of member of the Commission, aforesaid

in all the several parts and branches thereof and keeping of all records, books, papers and writing whatsoever to the said office belonging:

## To Hold, Exercise and Enjoy the Said Office

With all fees, perquisites, emoluments and advantages thence lawfully arising, or thereunto of right in anywise appertaining, until your term therein, according to law, shall of course expire; you behaving yourself well so long in the said office.



In Witness Whereof, The Great Seal of the State of Delaware is hereunto affixed.

Witness Richard C. McMullen Esquire

Governor of the said State, at Dover, the

twenty-third day of June

in the year of our Lord one thousand nine hundred and

thirty-eight and in the year of the

Independence of the United States of America, the one hundred and sixty-second

Richard C. McMullen  
Charles S. P.

Secretary of State

BY THE GOVERNOR:





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Volume

Page

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BC #455-11



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT

DOVER

June 17, 1938

RICHARD C. McMULLEN  
GOVERNOR

Hon. P. Warren Green,  
Attorney-General,  
Wilmington, Delaware.

My dear Mr. Green:

I wish to express my thanks for your opinion relative to the questions arising through the action of our Game and Fish Commission and the fishermen of New Jersey.

In naming the Commission to handle this matter, it would please me very much if you could serve as one of the members.

Yours very truly,

A handwritten signature in cursive script that reads "Richard C. McMullen".

Governor.

ejn.

DE Public Archives

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Attorney General

Gen. admin. Files 1930-48

455111

The State of Delaware

Office of the Attorney General

June 28, 1938

Hon. Charles L. Terry, Jr.  
Secretary of State  
Dover, Delaware

Dear Charles:

Governor McMullen writes that he has appointed you, Wilbert Rawley and myself as a Commission to study the fishing laws applying to the Delaware River and Bay.

It is my understanding that Governor Moore of New Jersey will appoint a like Commission and thereafter we should meet as soon as possible.

The other day representatives of New Jersey conferred at my office and they raised the question whether the State of Delaware could make effective the Fishing Party Boat Law unless the State of New Jersey passed an identical law.

It occurs to me that at the very beginning it will be necessary for the Jersey Commission and for us to determine the force and effect of Article IV of the Compact of 1905. You will find the Compact fully set forth in the 1915 Revised Code at pages 1214 - 1218.

You will note that Article IV of the Compact provides for the appointment of Commissioners by both States to draft uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. It is then provided:

"Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said River and Bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States."

# The State of Delaware

2

Office of the Attorney General

6/28/38

In the 1935 Revised Code at page 669, you will find a historical treatment by the Code Commissioners, and therein it is stated that the first uniform law was Chapter 146 of 23 Del. Laws, approved April 23, 1907. The next paragraph states that in 1915 the existing laws were repealed and new sections substituted in lieu thereof, and I especially direct your attention to the concluding paragraph immediately before Code paragraph 2982 to the following effect:

"The law now in force in the State of Delaware, regulating the catching and taking of fish in the Delaware River and the Delaware Bay, consists of the law as found in 28 Del. Laws Ch.203, and the various amendments and additions subsequently made thereto by later acts, as hereinabove stated, and is contained in the following Sections 181 to 211, inclusive, on this Chapter."

If you will examine Chapter 203 of 28 Delaware Laws you will note that the last paragraph thereof is as follows:

"The provisions of Sections 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware."

Further, that while the provisions of most of the sections are identical with the law of 1907, there was an important addition to Par. 2502 Section 145, which enters greatly into the present question; said addition being:

"And nothing herein contained shall be construed to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay."

It is my understanding that on numerous occasions both the State of Delaware and the State of New Jersey have amended the original uniform law by adding thereto new sections which have been done without the concurrence of the other State.

It, therefore, seems to me that we first must determine whether under the hereinbefore quoted provisions of Article IV of the Compact, the original law concurred in

# The State of Delaware

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Office of the Attorney General

6/28/38

by both of the States is the sole law regulating the taking and catching of fish in the River and Bay and remains the sole law until it is altered, amended or repealed by concurrent legislation of the two States. Also how far it was intended that the words "taking and catching of fish" should apply, and especially whether either State has the power to enact legislation that does not directly, but only indirectly, appertain to the taking and catching of fish.

I believe you can see the necessity of reaching such a determination, for if only those laws that have been concurred in by both States are valid, then the provision of law hereinbefore quoted as part of Section 145 passed in 1915, denying to the State of New Jersey a common right of fishery with the inhabitants of this State in the waters of the Delaware Bay, has no force and we are required to permit New Jersey fishermen to fish in the Delaware Bay upon equal terms with the inhabitants of this State, although under the Compact the common right of fishery only was granted in the Delaware River.

As soon as convenient to you, will you kindly write me, or let me know, when we can sit down and confer over this subject? In the meantime, I propose seeing Mr. Robert H. Richards, who, I believe, is the only living member of the original Commission, in order that I may ascertain from him his views on the subject matter of this letter.

Very truly yours,

Attorney General

PWG:w

DE Public Archives

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Gen. Admin. Files  
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STATE OF NEW JERSEY



BOARD OF FISH AND GAME COMMISSIONERS

TRENTON

June 6, 1938

Honorable A. Harry Moore, Governor  
State House  
Trenton, New Jersey

My dear Governor:

In reply to your esteemed letter of June 2 with enclosures from Miss Thelma Parkinson and the Fortescue Captains' Association, Inc. which we are returning herewith, beg to say that on May 24 we took up the matter of arrests of New Jersey boat captains with the Board of Game and Fish Commissioners at Dover, Delaware.

At that time a number of Delaware boat captains appeared at the State House at Delaware protesting the arrest of New Jersey residents for fishing with party boats in the waters of the Delaware Bay under the jurisdiction of the State of Delaware, they, no doubt feeling that New Jersey would retaliate.

These arrests were made under the provisions of the Delaware law requiring a party boat license from both residents and non-residents.

As a matter of fact, New Jersey has no law requiring a license from either residents or non-residents for fishing party boats in the Delaware Bay, and therefore, there could not have been any retaliation.

The President of the Delaware Commission, Mr. Yerger, called us on the same day to find out what might be done regarding this protest. We advised Mr. Yerger that under the circumstances we thought they should not continue to enforce this law.

On May 31, we received a letter from the Secretary of the Delaware Board of Game and Fish Commissioners stating that the Attorney General of Delaware was consulted relative to enforcing this law in the Delaware Bay and that it was his opinion that their Board can do nothing but enforce this law.



New Jersey State Archives



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT

DOVER

June 24, 1938

RICHARD C. Mc MULLEN  
GOVERNOR

Hon. P. Warren Green,  
Attorney-General,  
Wilmington, Delaware.

Dear Mr. Green:

I have today appointed the Hon. Charles L. Terry, Jr., of Dover, and Wilbert Rawley, Leipsic, Delaware, to serve with you as a three member Commission to Study uniform laws relative to fishing in the Delaware Bay, and have advised Governor Moore as per your advice.

As you also advise an early meeting date for this Commission, will you please call a meeting at your convenience?

Yours very truly,

A handwritten signature in cursive script that reads "Richard C. Mullen".

Governor.

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DE Public Archives

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Attorney General

Gen. Admin. Files

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June 29th,  
1938

My dear Governor McMullen:

I have today appointed a commission of three to determine all matters relative to the fishing rights in the Delaware Bay, and also to determine the disputed rights regarding the Delaware boundary line as it applies to the Delaware River, and to make recommendations regarding any necessary legislation.

The members of the commission are:

Mr. George C. Warren, Jr., President  
Board of Fish and Game Commissioners, Trenton

Mr. John Solan, Assistant Attorney General,  
Attorney General's Office, Trenton

Miss Inelma Parkinson, Vineland, N. J.

Sincerely yours,

(A. Harry Moore)

Governor

Honorable Richard C. McMullen  
Governor of Delaware  
Dover, Delaware

AHN:FHR

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Admin.      General  
Files      1930-1948  
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STATE OF DELAWARE  
DEPARTMENT OF STATE  
DOVER

CHARLES L. TERRY, JR.  
SECRETARY OF STATE

August 5, 1938

Hon. P. W. Green,  
Attorney General,  
Wilmington, Delaware.

Dear Perc:

Tuesday, August 16, at 2: P. M. at the Traymore Hotel, Atlantic City, has been the time and place designated for the meeting of our commission with the Jersey Commission. Will you please arrange to be present at that time?

With kindest personal regards,

Sincerely yours,

*Charles L. Terry Jr.*

Secretary of State.

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Attorney General

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455 III

Admin. Files 1930-1948

The State of Delaware  
Office of the Attorney General

August 9, 1938.

Hon. Charles L. Terry, Jr.,  
Secretary of State,  
Dover, Delaware.

Dear Charles:

I have your note that there will be a meeting of the Delaware Commissioners with the Jersey Commissioners on Tuesday, August 16th. at 2 P.M. at the Traymore Hotel, Atlantic City, relative to the fishing laws applicable to the Delaware River and Bay, and I shall arrange to be present.

I shall assume that you are in touch with Mr. Rawley, the other Commissioner, and you will make arrangements especially for transportation. If you have no other means I would suggest that we have either the State Detective of Kent County or the State Detective of New Castle County to drive us, and if you conclude to do so, will you kindly notify Col. Storey or me of these arrangements.

Most sincerely yours,

Attorney General.

PWG:b



DE Public Archives

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Attorney General  
Gen. Admin. Files 1930-1948  
455 III

The State of Delaware  
Office of the Attorney General

August 18, 1938.

Game and Fish Commission,  
Dover, Delaware.

Dear Sirs:

Although you may have been informed by Mr. Wilbur Rawley, a member of your Commission, that the three Commissioners appointed by the Governor of this State, relative to the fishing laws passed pursuant to the Compact of 1905, met with the Commissioners of the State of New Jersey appointed by Governor Moore for a like purpose, which meeting was held in Atlantic City on Tuesday, August 16th.

It is the opinion of the representative of the Attorney General's office of New Jersey and my opinion that only those laws are valid which have been concurred in both by the State of New Jersey and the State of Delaware relating to the taking and catching of fish in the Delaware River and Bay.

Article 4 of the Compact of 1905 provided for the appointment of Commissioners representing both States for the purpose of drafting uniform laws, said article further provided:

"Upon the adoption and passage of said laws so recommended by the respective Legislature of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States."

I find that what purports to be the uniform laws as published in your pamphlet of the Game and Fish Laws are not the uniform laws passed by this State and concurred in by New Jersey, but a purported amendment thereto passed in 1915, being Chapter 203 of 28 Delaware Laws, p. 598. The last section thereof being as follows:

# The State of Delaware

2.

Office of the Attorney General

"The provisions of Section 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware".

As before stated, it is our opinion that the Compact requires reciprocal enactment by Delaware and New Jersey, and as indicated, the amendment of 1915, purporting to make the laws effective upon the approval of the Governor of the State of Delaware without the concurrence therein by the State of New Jersey, violated the terms of Article 4 of the Compact of 1905 and are not valid.

The substance of the meeting of last Tuesday was that the Commissioners will confer with the Game and Fish Commissions of their respective States in order to review the existing laws and to determine what provisions should be repealed, amended or supplemented.

May I therefore ask your Commission to secure a copy of the uniform laws which were approved by Delaware and New Jersey and make a study thereof, in order to determine in what manner said laws should be changed. You will find these uniform laws concurred in by Delaware and New Jersey in Chapter 146 of 24 Delaware Laws, p. 272. In making this study I would submit to you the advisability of considering the attempt to amend these laws by the herebefore mentioned Chapter 203 of 28 Delaware Laws, p. 598.

In this connection I would also suggest a consideration of Chapter 193, 22 Delaware Laws, approved March 14, 1923, by which the General Assembly of Delaware gave approval to suggested new uniform laws, which while being enacted by the General Assembly of this State were never enacted by the State of New Jersey and therefore did not become effective. Similar action was taken in 1927 and a proposed uniform law, being Chapter 178 of 35 Delaware Laws, was approved by the General Assembly of this State, but as New Jersey did not enact it it likewise became ineffective.

Further, for your information, I notice that what purports to be Section 189 was purportedly amended by Chapter 201 of 40 Delaware Laws; Section 193 purportedly amended by Chapter 175 of 35 Delaware Laws; Section 195 purportedly amended by Chapter 180 of 30 Delaware Laws; Section 200 purportedly amended by Chapter 238 of 36 Delaware Laws; Section 205 purportedly amended by Chapter 26 of 32 Delaware Laws, Sec. 16; and Section 206 purportedly amended by Chapter 176 of 35 Delaware Laws.

In addition the Compact of 1905 provides for uniform laws regulating the taking and catching of fish in the Delaware River and Bay. Therefore, if there is any general law, although not purporting to be an amendment to the uniform laws but contains

**The State of Delaware**

**3. Office of the Attorney General**

provisions which would regulate the taking and catching of fish in the Delaware River and Bay, such should be considered in connection with the present study.

This study should be made immediately and when it has been done I would suggest an immediate conference with the Commissioners of this State appointed to consider the uniform laws and it may be that at that conference it would be advisable to have the New Jersey Commissioners and the Game and Fish Commission of that State present in order that we could determine the probability of agreement on changes for new uniform laws.

Yours very truly,

Attorney General.

PWG\*b

1935 Code Par. 2984, Section 183.

"2984. Sec. 183. Territorial Limits, Rights and Jurisdiction Unaffected; Oyster and Shell Fish Industry Unaffected: - Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States. And nothing herein contained shall be construed to give to the inhabitants of the State of New Jersey a common right of fishery with the inhabitants of the State of Delaware in the waters of the Delaware Bay."

The first sentence ending with the words "either of said States" is Section 3 of the Uniform Laws approved April 23, 1907, being Chapter 146 of 24 Delaware Laws, p. 272.

The last sentence, underscored as above, was added by an Act approved March 16, 1915, being Chapter 203 of 28 Delaware Laws, p. 598, entitled "An Act to amend Sections 2500 to 2525 of the Revised Statutes of the State of Delaware in relation to the catching and taking of fish in the waters of the Delaware River and Bay lying between the States of Delaware and New Jersey." The concluding paragraph of this Act of 1915 being as follows:

"The provisions of Sections 143 to 168, inclusive, as hereby enacted and amended, shall go into effect upon the approval hereof by the Governor of the State of Delaware."

The concluding paragraph of the Act to provide Uniform Laws approved in 1907 was as follows:

"This Act shall not become operative until the Legislature of the State of New Jersey shall have passed and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in the preamble of this Act."

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1930-1948  
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*Handwritten signature/initials*

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STATE OF NEW JERSEY  
BOARD OF FISH AND GAME COMMISSIONERS  
GEORGE C. WARREN, JR.  
PRESIDENT

February 14, 1939

*File*

Honorable A. Harry Moore  
Governor of New Jersey  
Trenton, New Jersey

Dear Governor Moore:

In July of last year, you communicated with us, stating that you were anxious to adjust a way satisfactory to inhabitants of this State who engage in fishing in the Delaware river and bay, a controversy which had its inception in attempts by the Board of Game and Fish Commissioners of the State of Delaware to enforce the laws of that State regulating fishing in these waters, and you asked us to join with a Commission appointed by the Governor of Delaware, to the end that we might investigate the subject matter of the controversy and, without loss of time, suggest, if possible, peaceful ways and means of terminating the dispute.

As tending to promote a fruitful discussion of the issues with the representatives of the State of Delaware, at the outset we made an examination of the legislation of the two States dealing with the regulation of fishing in the river and the bay and following is a brief summary of our findings in this direction: We found that almost from the beginning of statehood, Delaware and New Jersey had engaged in disputes concerning the fishing rights of their respective inhabitants in the river and bay; that during the final quarter of the last century this dispute was presented to the United States Supreme Court; that in order to terminate this litigation the legislatures of the two States in 1905 ratified a Compact (known as the Compact of 1905) which Compact was approved by Congress on March 21, 1905; that this Compact contained provisions for a joint commission to draft uniform laws to regulate the catching and taking of fish in the river and in the bay; that in 1907 such legislation was drafted by the Joint Commission and was enacted into law by the legislatures of the two States (Chapter 131, P.L. 1907 is the New Jersey Uniform Law).

STATE OF NEW JERSEY  
BOARD OF FISH AND GAME COMMISSIONERS  
GEORGE C. WARREN, JR.  
PRESIDENT

-2-

We ascertained further that due to the inability of the legislatures of the two contracting States to agree as to amendments and changes in this uniform legislation of 1907 during the years intervening since its enactment, and due to the legislation therein not meeting present day requirements, the said Uniform Acts of 1907 have fallen into disuse and that, in fact, during the intervening years, each State has adopted new legislation on the subject, which legislation has not been concurred in by the other State. In addition to this unfortunate situation, in our interchange of views with the members of the Delaware Commission we found that there existed differences of opinion between us respecting the relative rights under existing statutes, of the inhabitants of the two States in the matter of fishing in the river and bay.

Our examination and consideration of the subject leads us to the conclusion that in the enactment of this independent legislation there lurks the seed of inevitable controversy between the enforcing officials of the two jurisdictions and of eventual disruption of good relations between the States. As a matter of fact we found that the trouble experienced by the New Jersey fishermen during the past summer grew out of the enforcement of a law of Delaware prohibiting fishing in unlicensed party boats in the river and bay, there being no similar law enacted in New Jersey.

It is our decided opinion that the way out of pending and future controversies between the States is a renewal of the policy of common action initiated by the States when they enacted the Uniform Statutes of 1907. As we view it, in the regulation of fishing rights on boundary waters no good reason exists for diversity of legislative treatment, and therefore that the challenge of the situation is to endeavor to bring said Uniform Laws of 1907 up to date by means of amendments in line with current policy respecting the regulation of fishing.

We found that the members of the Delaware Commission were likewise of the belief that this was the proper line of approach to be taken to remove the subject from the arena of controversy.





STATE OF NEW JERSEY  
BOARD OF FISH AND GAME COMMISSIONERS  
GEORGE C. WARREN, JR.  
PRESIDENT

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Accordingly, our discussions with the representatives of Delaware have centered about the ways in which the Uniform Laws of 1907 may be altered and amended so as to satisfy the requirements of public policy now existing in the two States on this subject of regulating fishing in these waters.

In performing this part of our work we availed ourselves of the experience and technical skill of the personnel of the agencies of the two States engaged in the administration of the laws respecting fishing.

Our joint efforts have resulted in the drafting of an amendment to the said Uniform Act of 1907 in a form suitable for enactment in New Jersey and a copy of this draft is attached. This draft has been prepared in collaboration with the members of the Delaware Commission who have assured us that they will recommend, for enactment by the legislature of that State, a bill containing similar regulatory provisions to the provisions embodied in this draft. Referring to the draft attached, attention is directed to a provision providing for the licensing of boats used by fishing parties in these waters. There is no law of this character in New Jersey at present although Delaware has had such a law for a number of years. In including this provision in the attached draft we were influenced by the fact that it seems a proper subject of regulation and also by reason of the fact that the representatives of Delaware were of the opinion that the Legislature of that State would be unwilling to eliminate the provision from the body of its statute law. Under this draft the fee charged inhabitants of New Jersey is \$10.00 per boat. Under the existing Delaware law this charge is fixed at \$50.00 per boat.

In conclusion we strongly urge that the suggested bill be enacted into law in that thereunder the inhabitants of this

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STATE OF NEW JERSEY  
BOARD OF FISH AND GAME COMMISSIONERS  
GEORGE C. WARREN, JR.  
PRESIDENT

-4-

State will retain the decided advantages respecting fishing in these waters which inured to them under this Compact of 1905.

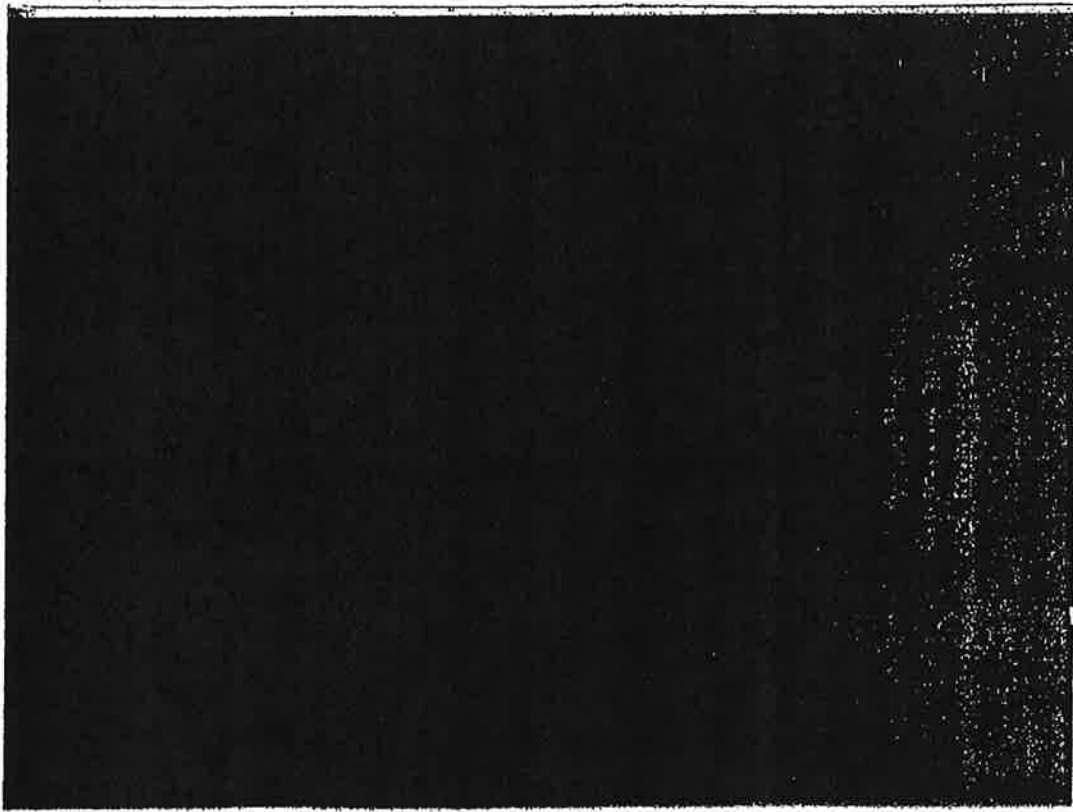
Sincerely yours,

*John S. Solan*  
*Helina Parkerson*

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New Jersey State Archives  
Special Correspondence Governor Moore  
Fishing Regulations Delaware River  
1938-1939

DE02758



DE02816

**FOUND FISHERIES SUMMARY**

The following is a summary of the pound fisheries' report for the calendar year ending December, 1888:

Approximate value of all pounds ..... \$812,200.00  
 Proceeds derived from sale of fish ..... \$731,414.14  
 Number of pounds of fish caught and disposed of ..... 84,683,969

Licenses issued:

Atlantic Ocean ..... 142  
 Sandy Hook and Haritan Bay ..... 32  
 Number of pounds operated ..... 174  
 Number of men employed ..... 480

**MENHADEN AND FOOD FISH LICENSES**

In accordance with the law regulating the licensing of vessels to take menhaden and food fish, there were 54 vessels licensed to take menhaden with purse or stirred nets within the three mile limit, and 58 vessels licensed to take food fish with purse or stirred nets and beam trawls beyond the two mile limit, during the calendar year of 1888.

**STRIPED BASS**

Under the law passed last year requiring licenses for the netting of striped bass, there were 1,706 licenses issued by the Board to 268 persons, 1,487 being for gill nets, 53 for fyke nets, and 66 for hauling seines.

**EELS**

Under permits issued by the Department for eel pots and fish baskets, 4,935 pounds of eels were taken during the year 1887.

**DELAWARE BAY CONTROVERSY**

The special commission appointed by Governor A. Harry Moore last year to act in conjunction with a similar commission appointed by the Governor of Delaware in making a study of the laws of the two States with a view to having concurrent laws, met several times during the year, and the following is the final report of the New Jersey commission as submitted to the Governor:

February 14, 1888.

Honorable A. Harry Moore,  
 Governor of New Jersey,  
 Trenton, New Jersey.

Dear Governor Moore:

In July of last year, you communicated with us, stating that you were anxious to adjust a way satisfactory to inhabitants of this State who engage in fishing in the Delaware river and bay, a controversy

which had its inception in attempts by the Board of Game and Fish Commissioners of the State of Delaware to enforce the laws of that State regulating fishing in these waters, and you asked us to join with a Commission appointed by the Governor of Delaware, to the end that we might investigate the subject matter of the controversy and, without loss of time, suggest, if possible, peaceful ways and means of terminating the dispute.

As tending to promote a fruitful discussion of the issues with the representatives of the State of Delaware, at the onset we made an examination of the legislation of the two States dealing with the regulation of fishing in the river and the bay and following is a brief summary of our findings in this direction: We found that almost from the beginning of statehood, Delaware and New Jersey had engaged in disputes concerning the fishing rights of their respective inhabitants in the river and bay; that during the final quarter of the last century this dispute was presented to the United States Supreme Court; that in order to terminate this litigation the legislatures of the two States in 1806 ratified a Compact (known as the Compact of 1805) which Compact was approved by Congress on March 21, 1805; that this Compact contained provisions for a joint commission to draft uniform laws to regulate the catching and taking of fish in the river and in the bay; that in 1807 such legislation was drafted by the joint Commission and was enacted into law by the legislatures of the two States (Chapter 181, P. L. 1807 is the New Jersey Uniform Law).

We ascertained further that due to the inability of the legislatures of the two contracting States to agree as to amendments and changes in this uniform legislation of 1807 during the years intervening since its enactment, and due to the legislation therein not meeting present-day requirements, the said Uniform Acts of 1807 have fallen into disuse and that in fact, during the intervening years, each State has adopted new legislation on the subject, which legislation has not been concurred in by the other State. In addition to this unfortunate situation, in our interchange of views with the members of the Delaware Commission we found that there existed differences of opinion between us respecting the relative rights under existing statutes, of the inhabitants of the two States in the matter of fishing in the river and bay.

Our examination and consideration of the subject leads us to the conclusion that in the enactment of this independent legislation there exists the seed of inevitable controversy between the enforcing officials of the two jurisdictions and of eventual disruption of good relations between the States. As a matter of fact we found that the trouble experienced by the New Jersey fishermen during the past summer grew out of the enforcement of a law of Delaware prohibiting fishing in unlicensed party boats in the river and bay, there being no similar law enacted in New Jersey.

It is our decided opinion that the way out of pending and future controversies between the States is a renewal of the policy of common action initiated by the States when they enacted the Uniform Statutes of 1807. As we view it, in the regulation of fishing rights on boundary waters no good reason exists for diversity of legislative treatment, and therefore that the challenge of the situation is to endeavor to bring said Uniform Laws of 1807 up to date by means of amendments in line with current policy respecting the regulation of fishing.

We found that the members of the Delaware Commission were likewise of the belief that this was the proper line of approach to be taken to remove the subject from the arena of controversy. Accordingly, our discussions with the representatives of Delaware have centered about the ways in which the Uniform Laws of 1807 may be altered and expanded so as to satisfy the requirements of public

policy now existing in the two States on this subject of regulating fishing in these waters.

In performing this part of our work we availed ourselves of the experience and technical skill of the personnel of the agencies of the two States engaged in the administration of the laws respecting fishing.

Our joint efforts have resulted in the drafting of an amendment to the said Uniform Act of 1907 in a form suitable for enactment in New Jersey and a copy of this draft is attached. This draft has been prepared in collaboration with the members of the Delaware Commission who have assured us that they will recommend, for enactment by the legislature of that State, a bill containing similar regulatory provisions to the provisions embodied in this draft. Referring to the draft attached, attention is directed to a provision providing for the licensing of boats used by fishing parties in these waters. There is no law of this character in New Jersey at present although Delaware has had such a law for a number of years. In including this provision in the attached draft we were influenced by the fact that it seems a proper subject of regulation and also by the opinion that the Legislature of that State would be unwilling to eliminate the provision from the body of its statute law. Under this draft the fee charged inhabitants of New Jersey is \$10.00 per boat. Under the existing Delaware law this charge is fixed at \$50.00 per boat.

In conclusion we strongly urge that the suggested bill be enacted into law in that thereunder the inhabitants of this State will obtain the decided advantages respecting fishing in these waters which inured to them under the Compact of 1905.

Sincerely yours,

(Signed) GEORGE O. WARREN, Jr.,  
 TERESA PARKINSON,  
 JOHN SOLAN.

Accordingly, the amendment drafted by the Joint Commission was presented to the New Jersey Legislature and was introduced as Senate Bill No. 201 on February 27, 1938. However, up to the present time it has failed to become a law, as has the bill introduced in the Delaware Legislature.

**POLLUTION**

There was a noticeable decrease in the pollution of our streams during this fiscal year as is evidenced by the fact that only seven abatement notices were sent to those who polluted our waters. There were five prosecutions against the persons who failed to heed the notice to stop polluting the streams of this State.

**SHAD**

There was an increase of 2,198 in the number of shad caught in the Delaware during the 1938 season. A total of 96,002 of these fish was taken, the value being \$2,161.04 above last year. It is noted that there was a great decrease in the number of men and boats engaged in the shad fishing industry in the Delaware River during the year, and also in the Hudson River.

In the Hudson River there was an increase of 67,686 shad taken, a total of 253,177 pounds, although the value of the fish decreased \$10,353.12.

County	Men Engaged		Boats		Value of Nets		Value of Shad Caught		Increase	Decrease
	1938	1939	1938	1939	1938	1939	1938	1939		
Cumberland	150	160	179	176	21	49,060	\$9,286	\$17,658.00	\$14,955	\$14,955
Salem	26	31	26	20	62	29,367	44,690	19,384.20	21,845.00	12,950
Gloucester	6	8	0	3	12	2,200	1,160	1,220.00	680.00	1,180
Camden	10	14	14	20	28	6,800	2,450	4,080.00	1,225.00	1,650
Burlington	10	8	10	30	17	442	864	331.50	481.00	610
Mercer	11	8	7	26	31	3,879	2,170	3,150.00	960.00	1,170
Huntdon	11	6	6	27	30	9,126	5,333	4,398.31	2,740.00	1,025
	224	215	248	245	97	98,804	96,002	\$44,221.91	\$46,386.96	\$32,460
										\$2,165.04
										\$32,060

DELAWARE RIVER SHAD INDUSTRY

HUDSON RIVER SHAD INDUSTRY

Boats	Nets	Men Engaged	Pounds Caught	Number Shad Caught	Value Shad Caught	Value Boats & Nets
1938	1938	1938	1938	1938	1938	1938
154	164	250	1,498,124	420,966	\$18,295.61	\$97,282
125	125	200	1,754,301	518,831	\$98,942.49	\$76,067

New Jersey State Archives  
Commissioners of Fisheries Annual Reports 1871-1885

Mr. Chas Besore:

Inclosed is copy of Report to Gov. Moore in 1929  
respecting Fishing Rights in the Delaware and also  
a copy of the bill introduced at the time.

Mr. Warren and Capt. Burlington and Miss Sullivan  
of the Fish & Game Department were the active  
persons in the matter from the New Jersey end.

Kindly let me have the inclosed when they have  
served your purpose.

*John Solan*



**New Jersey State Archives**  
Department of Law and Safety  
Attorney General's Office  
Closed Case Files, 1920's - 1950's  
**Box 8**

SENATE, No. 201

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1939

By Mr. FORAN

Referred to Committee on Game and Fisheries

AN ACT to alter, amend and revise an act entitled "An act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of Delaware and the State of New Jersey," approved May seventh, one thousand nine hundred and seven; regulating the carrying of fishing parties for hire in any boat used in fishing in said river and bay; and repealing section six of said act and sections 23:9-39 to 23:9-58, both inclusive, of the Revised Statutes.

1 WHEREAS, Pursuant to a compact between the States of New Jersey and Delaware  
2 ware respecting the Delaware river and the Delaware bay (which compact  
3 pact now appears as article three of chapter twenty-eight of Title 52 of  
4 the Revised Statutes) this State, by an act of the Legislature thereof,  
5 approved May seventh, one thousand nine hundred and seven, and known  
6 as chapter one hundred thirty-one of the laws of one thousand nine hundred  
7 and seven, enacted a law dealing with and regulating the catching  
8 and taking of fish in the Delaware river and bay between said two States;  
9 and the State of Delaware, by an act of the Legislature of that State,  
10 approved April twenty-third, one thousand nine hundred and seven, enacted  
11 a law, uniform in substance and effect with the aforesaid law of  
12 the State of New Jersey, dealing with and regulating the catching and  
13 taking of fish in the Delaware river and bay between said two States; and

14 WHEREAS, Alterations and amendments to said uniform laws, as authorized  
15 by article four of the aforesaid compact between said States, are now

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16 deemed advisable, and accordingly a commission, selected in part by the  
 17 Governor of Delaware and in part by the Governor of New Jersey, has  
 18 prepared a bill containing the suggested alterations and amendments to  
 19 said uniform acts of one thousand nine hundred and seven, a true copy  
 20 of which bill, as prepared by said commission, in form suitable for adop-  
 21 tion by the Legislature of New Jersey, is set forth under the enacting  
 22 clause hereof; therefore,

1 *BE IT ENACTED by the Senate and General Assembly of the State of New*  
 2 *Jersey:*

1 The following sections of the act of which this act is an alteration,  
 2 amendment and revision, are hereby altered, amended and revised to read  
 3 as follows:

1 1. The provisions of this act shall affect and apply only to the catching  
 2 and taking of fish in the waters of the Delaware river and bay lying be-  
 3 tween the States of Delaware and New Jersey.

1 2. The inhabitants of the States of Delaware and New Jersey shall  
 2 have and enjoy a common right of fishery throughout, in and over the waters  
 3 of said river, between low-water marks on each side of said river between  
 4 said States, except so far as either State may have heretofore granted  
 5 valid and subsisting private rights of fishery.

1 3. Nothing herein contained shall affect the territorial limits, rights or  
 2 jurisdiction of either of said States of, in or over the Delaware river, or  
 3 the ownership of the subaqueous soil thereof, except as is expressly set  
 4 forth in said compact between the said States; nor shall anything herein  
 5 contained affect in any way the planting, catching or taking of oysters,  
 6 clams or other shellfish, or interfere with the oyster industry as now or  
 7 hereafter carried on under the laws of either of said States.

1 4. For the purpose of this act, fish shall be designated as follows:

2 "Game fish" means black bass or small-mouth bass; large-mouth bass,  
 3 otherwise called Oswego or yellow bass; strawberry or calico bass; rock

4 bass, otherwise known as redeye or goggle-eye; white bass; crappie; pike  
 5 perch, otherwise called wall-eyed pike or Susquehanna salmon; pike; pick-  
 6 erel; char, commonly called brook or speckled trout, or any form of trout.

7 "Bait fish" means all species of minnows, killifishes and stone catfish.

8 "Food fish" means all other species or varieties of fish whatsoever.

1 [4.] 5. Hereafter it shall be lawful for any person to catch and take  
 2 from the waters aforesaid fish of any character (except shell-fish) [with any  
 3 net, hook and line, or other appliances; provided, the meshes of any net  
 4 shall not be less than two and one-half inches long, stretched measure, and  
 5 except as hereinafter provided; provided, further, that nothing in this sec-  
 6 tion shall apply to nets used for catching eels.] , only with and by the use  
 7 of the following devices and under regulations and restrictions hereinafter  
 8 described;

9 A. A seine, gill net, eel pot, or fyke net, each without wings, a parallel  
 10 net or stake net, at the edge of low water, and rods and lines, or hand  
 11 lines, otherwise known as dipsey or throw lines, each having not more  
 12 than three hooks; provided, that the mesh of any net shall not be less  
 13 than three inches stretched measure while being fished.

14 B. No person shall fish for bait fish in the waters aforesaid except with  
 15 the following devices, to wit: Rods and lines and hand lines with not  
 16 more than three hooks attached; a minnow seine not more than one hun-  
 17 dred feet in length; a dip net not more than five feet square; a minnow  
 18 trap, the opening of which shall not be more than one and one-quarter  
 19 inches in diameter; a scoop net with a single handle and with a diameter  
 20 of not more than two feet.

21 C. It shall be lawful to use trawl lines or set lines with three or  
 22 more hooks attached from November fifteenth to March first, for the  
 23 purpose of taking codfish only.

1 [5.] 6. Hereafter it shall be unlawful for any person to catch and take,  
 2 or to attempt to catch and take, shad from the waters aforesaid with a seine  
 3 or net of any character the meshes of which shall be less than five and one-

4 quarter inches, stretched measure while being fished, [It shall also be un-  
 5 lawful for any person to catch and take, or to attempt to catch and take,  
 6 any shad from the said waters, in any manner whatsoever, between the  
 7 hours of twelve o'clock noon of every Saturday and twelve o'clock mid-  
 8 night of the Sunday next ensuing,] and also between the [~~fifth~~] tenth day  
 9 of June in each [and every] year and the first day of March thence next  
 10 ensuing. [It shall also be unlawful for any person at any time to set, place  
 11 or use a net of any kind, except a drifting net, for the purpose of catching  
 12 and taking shad within one-half mile of the mouth of any river, creek or  
 13 stream emptying into the said waters.]

1 7. Hereafter it shall be unlawful for any person to catch and take, or  
 2 to attempt to catch and take, striped bass, commonly called rockfish from  
 3 the waters aforesaid [with a seine or net of any kind, the meshes of which  
 4 shall be less than two and one-half inches, stretched measure. It shall also  
 5 be unlawful for any person to catch and take, or to attempt to catch and  
 6 take, any rockfish in any manner whatsoever between the hours of twelve  
 7 o'clock noon of every Saturday and twelve o'clock midnight of the Sunday  
 8 next ensuing.] in any manner whatsoever between the first day of March  
 9 and the thirty-first day of May next ensuing. It shall also be unlawful for  
 10 any person to catch and take, or to attempt to catch and take, from the  
 11 waters aforesaid, in any manner whatever, any rockfish weighing more than  
 12 twenty pounds or measuring less than [~~ten~~] eighteen inches in length; and  
 13 should any such fish, weighing over twenty pounds or measuring less than  
 14 [~~ten~~] eighteen inches in length, be caught, it shall be immediately returned  
 15 to the waters, uninjured.

1 8. Hereafter it shall be unlawful for any person to catch and take, or  
 2 to attempt to catch and take, from the waters aforesaid, any sturgeon [or  
 3 mamoose] with a net of any character, the meshes of which shall be less  
 4 than thirteen inches, stretched measure while being fished. [It shall also  
 5 be unlawful for any person to catch and take, or to attempt to catch or  
 6 take, any sturgeon or mamoose under six feet in length, and if any such

7 sturgeon or mamoose under six feet in length should be caught, it shall be  
 8 immediately returned to the waters, uninjured. It shall also be unlawful  
 9 for any person to catch and take, or attempt to catch and take, sturgeon or  
 10 mamoose from the waters aforesaid, in any manner whatever, between the  
 11 hours of twelve o'clock noon of every Saturday and twelve o'clock midnight  
 12 of the Sunday next ensuing] and [also] it shall also be unlawful to take  
 13 sturgeon between the first day of July in each and every year and the first  
 14 day of March thence next ensuing.

1 9. [Hereafter it shall be unlawful for any person to catch and take, or  
 2 to attempt to catch and take, from the waters aforesaid, any trout or weak-  
 3 fish with a net of any character, the meshes of which shall be less than two  
 4 and one-half inches, stretched measure. It shall also be unlawful for any  
 5 person to catch and take, or to attempt to catch and take, any trout or  
 6 weakfish from the waters aforesaid, with a net of any character, between the  
 7 hours of twelve o'clock noon of every Saturday and twelve o'clock mid-  
 8 night of the Sunday next ensuing.] No person shall catch, take, or have in  
 9 possession, any codfish measuring less than fifteen inches in length, bluefish  
 10 measuring less than nine inches in length, weakfish or sea trout measuring  
 11 less than ten inches in length, sea bass or kingfish measuring less than  
 12 eight inches in length, blackfish or tautog, mackerel, or porgie measuring  
 13 less than seven inches in length, flounder measuring less than ten inches  
 14 in length, butterfish measuring less than six inches in length, striped bass,  
 15 commonly called rockfish, weighing more than twenty pounds or measuring  
 16 less than eighteen inches in length, sturgeon less than five feet in length,  
 17 black bass, small-mouth bass, large-mouth bass, otherwise known as Oswego  
 18 or yellow bass, measuring less than nine inches in length, pike, pickerel,  
 19 or pike-perch, otherwise known as wall-eyed pike or Susquchanna salmon,  
 20 measuring less than twelve inches in length, calico or strawberry bass,  
 21 crappie, white bass, rock bass, otherwise known as redeye or goggle-eye,  
 22 less than six inches in length, brook trout or char, rainbow and brown  
 23 trout, measuring less than seven inches in length, or eels measuring less  
 24 than fourteen inches in length.

1 10. Hereafter it shall be unlawful for any person to catch and take, or  
2 to attempt to catch and take, fish of any kind with a net of any character  
3 which is anchored, staked or fastened down in any way across the said  
4 waters or any part thereof, or at right angles with the shore line thereof,  
5 across the mouth of any river, creek or stream emptying into the waters  
6 aforesaid.

1 11. Hereafter it shall be unlawful for any persons by boat, anchor,  
2 dredge, or otherwise, in the waters aforesaid, to willfully and without reason-  
3 able cause, interfere with, break, damage or destroy any drift net or gill  
4 seine being lawfully used for the taking of any fish, as herein provided.

1 12. Hereafter it shall be unlawful for any person willfully to put or  
2 place in the waters aforesaid any explosive substance whatever, or any  
3 drug or poisoned bait for the purpose of catching and taking, killing or in-  
4 juring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust,  
5 tan bark, coculus indicus (otherwise known as fish-berries), lime, refuse  
6 from gas-houses, oil tanks or vessels, or any other deleterious, destructive  
7 or poisonous substance to be turned into or allowed to run into any of the  
8 waters aforesaid, in quantities sufficient to destroy or impair fish life or  
9 disturb the habits of fish inhabiting the same. Any person violating any of  
10 the provisions of this section shall be deemed guilty of a misdemeanor, and  
11 upon conviction thereof shall forfeit and pay a fine of not more than [five]  
12 one thousand dollars, or shall be imprisoned not more than one year, or  
13 both, in the discretion of the court.

1 13. Hereafter it shall be unlawful for any person to catch and take or  
2 to attempt to catch and take, fish of any kind or description from the waters  
3 aforesaid by a net of any character [on the Sabbath day, commonly called  
4 Sunday] or use a net of any kind other than a hand landing net between Sat-  
5 urday noon and Sunday at twelve o'clock midnight next ensuing in each week.

1 14. [Hereafter it shall be unlawful for any person to catch and take,  
2 or to attempt to catch and take, fish of any kind from the waters afore-  
3 said with a set line, or to have, use, erect or maintain in the waters aforesaid,

4 for the purpose of catching and taking fish of any kind (except catfish, eels  
 5 and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip  
 6 net, cast net, wing-wall, wingdams, or any other device, excepting in the man-  
 7 ner and with the means in this act provided; provided, that nothing con-  
 8 tained in this section shall prevent the catching and taking of carp with  
 9 shore nets, dip nets or cast nets.] No nonresident of either State nor an  
 10 alien shall take or attempt to take any fish by means of a net of any char-  
 11 acter or by any device or contrivance, except with rod, hook and line, or  
 12 hand line, in the waters aforesaid under a penalty of five hundred dollars  
 13 for each offense, together with the forfeiture of all nets, boats and other ap-  
 14 pliances used.

1 15. Hereafter it shall be unlawful for any person to sell, barter, or ex-  
 2 change, expose for sale, barter, or exchange, or have in possession, any fish  
 3 caught and taken in violation of the provisions of this act.

1 [17.] 16. Any and every boat, vessel, net, trap, pot, pound, set line,  
 2 fyke, weir or other property used by any person for the unlawful taking of,  
 3 or attempting to take, any fish in the waters aforesaid, in violation of the  
 4 provisions of this act, shall be forfeited to the State of New Jersey, together  
 5 with the tackle, apparel and furniture of said boat or vessel and all other  
 6 apparatus and implements so unlawfully used; and the same shall be seized  
 7 and detained by the sheriff, officer, any constable or any fish and game war-  
 8 den of the State, or authorized deputy or deputies, until sold or discharged,  
 9 as hereinafter provided. Upon the conviction of any such person as afore-  
 10 said, the court shall, in addition to the sentence pronounced against such per-  
 11 son, enter an order and judgment of forfeiture against said property so  
 12 unlawfully used and shall order the sheriff of the county, officer, constable,  
 13 or any fish and game warden of the State, to at once seize the same where-  
 14 soever it may be found, who shall thereupon advertise and sell the same at  
 15 public auction, for cash, to the highest and best bidder for the same, after  
 16 giving at least ten days' notice by advertisements, posted in at least ten pub-  
 17 lic places of the county, of the time and place of said sale; the proceeds of



18 said sale, after deducting all costs, charges and expenses, shall be paid by the  
 19 said sheriff, officer, constable, or fish and game warden to the Board of Fish  
 20 and Game Commissioners for the use of said commission according to law.  
 21 In the event that the said person, so charged as aforesaid, shall be acquit-  
 22 ted, the said property shall be forthwith returned to the person in whose  
 23 custody it was at the time it was so seized and taken as aforesaid.

1 [18.] 17. Any justice of the peace, or other officer legally qualified by  
 2 law, shall, upon affidavit made by any person that any person, boat, vessel  
 3 or other appliance or apparatus hereinbefore enumerated, is, are or have  
 4 been violating, or used in violation of this act, issue his warrant to the sher-  
 5 iff, officer, or any constable of the county or any fish and game warden of  
 6 the State, authorized to make such arrest, commanding him to arrest such  
 7 person and to seize and detain such property for hearing, trial or other pro-  
 8 ceeding under this act. The said sheriff, constable, officer or fish and game  
 ✓ 9 warden, may, if necessary, summon to his aid [the] a posse comitatus, and  
 10 may require the assistance and use of any other boat, vessel or other means,  
 11 by paying, or tendering, just compensation. It shall not be necessary that  
 12 the affidavit shall state the name of the boat or vessel, or describe with par-  
 13 ticularity the property to be seized.

1 [19.] 18. It shall be unlawful for any person to catch and take, or to at-  
 2 tempt to catch and take, from the said Delaware river or Delaware bay,  
 3 with purse or shirred nets operated by or from steam or other vessels, or  
 4 with vessels operating beam or otter trawls, otherwise commonly called  
 5 drag nets, fish of any kind whatsoever, under a penalty of one thousand dol-  
 6 lars for each offense; provided, however, that this section shall not apply to  
 7 the catching and taking of menhaden [ , sharks, porpoises and herring-  
 8 hogs,] by the crews of the vessels licensed as provided for in this section.  
 9 [It shall be the duty of] The fish and game commission of the State, may in  
 10 its discretion, upon the payment to it annually of the [sum of one hundred  
 11 dollars (\$100.00) for each and every vessel or boat,] following fees:

12	<u>Any vessel of not more than fifty tons net tonnage .....</u>	<u>\$100.00</u>
13	<u>Any vessel of over fifty tons and not more than one hundred</u>	
14	<u>tons net tonnage .....</u>	<u>\$500.00</u>
15	<u>Any vessel of over one hundred tons net tonnage .....</u>	<u>\$750.00</u>

16 [to] issue a license to such vessel or boat to catch and take menhaden [,  
 17 sharks, porpoises and herring-hogs] in the waters of the Delaware bay [as  
 18 far north as a straight line drawn from the center of the mouth of Mahon's  
 19 river to the nearest point opposite on the New Jersey shore, from the first  
 20 day of June until the thirty-first day of August, inclusive, of each year, and  
 21 at no other time or times] east of the main ships' channel to the New Jer-  
 22 sey shore, said license to be valid until December thirty-first of the calendar  
 23 year in which the license is issued. The said money so received for said li-  
 24 cense shall be paid over to the fish and game commission of the State for  
 25 the use of said commission as provided by law.

1 [20.] 19. It shall be unlawful for any person to have in his possession  
 2 or to bring into this State any game, bait or food fish [generally known as  
 3 edible or food fish that] as hereinbefore defined which has been caught and  
 4 taken from the waters of the Delaware bay or river within the bounds afore-  
 5 said, for the purpose of extracting oil therefrom or of converting said fish  
 6 into fertilizer; and it shall also be unlawful for any person to extract oil, or  
 7 to convert, or in any manner assist in extracting oil from or in converting  
 8 such fish into fertilizer.

1 20. Excepting when licensed as hereinafter provided and excepting with  
 2 respect to a boat propelled exclusively by oars, it shall be unlawful for any  
 3 person, firm, or corporation to carry fishing parties for hire in any boat  
 4 used in fishing in the waters of the Delaware river and bay lying between

10 the State of which the applicant is an inhabitant of a fee of ten dollars for  
 11 each boat licensed in the event the licensee be an inhabitant of the State of  
 12 Delaware or of the State of New Jersey, and upon the payment of a fee of  
 13 fifty dollars for each boat licensed in the event the licensee is not an inhab-  
 14 itant of either the State of Delaware or the State of New Jersey. Any license  
 15 issued under this section shall only authorize the licensee to hire and board  
 16 such licensed boat from the shore of the State under which he is licensed.  
 17 Any person, firm or corporation violating any of the provisions of this sec-  
 18 tion shall be fined upon conviction thereof, a sum not less than fifty dollars  
 19 nor more than five hundred dollars, in the discretion of the court, and shall  
 20 pay the suit costs and, in addition, shall suffer the forfeiture of each and  
 21 every boat used. When a violator of the provisions of this section is not an  
 22 inhabitant of either the State of Delaware or the State of New Jersey, he  
 23 shall be fined not less than one hundred dollars, and shall suffer the for-  
 24 feiture of each and every boat used. The provisions of this section shall be  
 25 enforced and all penalties for the violation thereof shall be recovered in ac-  
 26 cordance with the provisions of chapter ten of Title 23 of the Revised Stat-  
 27 utes of New Jersey. Upon failure to pay any fine imposed for the violation  
 28 of any provisions of this section, the person upon whom the fine is imposed  
 29 may be committed by the court to the common jail of the county in which  
 30 the conviction is had for a period not exceeding ninety days, unless the fine  
 31 imposed on him and the suit costs are sooner paid. All monies obtained by  
 32 the Board of Fish and Game Commissioners of the State of New Jersey as  
 33 license fees, and as fines, court costs and from sales of forfeited property, in  
 34 actions instituted by or on behalf of the State of New Jersey, shall be turned  
 35 over to the Board of Fish and Game Commissioners of the State of New Jersey  
 36 sey for its uses and purposes.

1 21. Any fish commissioner, fish and game warden, sheriff, constable  
 2 any officer may, upon view, arrest any person violating any of the provisions  
 3 of this act without warrant or writ issued for such purpose.

1     22. Each State shall have and exercise exclusive jurisdiction within said  
2 river to arrest, try and punish its own inhabitants for any violation of this  
3 act, and each State shall have concurrent authority within the Delaware bay  
4 to arrest the inhabitants of either State for any violation of this act;  
5 provided, if any inhabitant of the State of Delaware shall be arrested in the  
6 Delaware river or bay by any officer for any violation of this act, he shall be  
7 forthwith taken to the State of Delaware for trial and punishment, and if  
8 any inhabitant of the State of New Jersey shall be arrested in the Delaware  
9 river or bay by any officer for any violation of this act, he shall be forthwith  
10 taken to the State of New Jersey for trial and punishment.

11     The police authority of any officer of either the State of Delaware or the  
12 State of New Jersey empowered to make an arrest under the provisions of  
13 this act shall include the right and power to take an arrested inhabitant of the  
14 State of New Jersey to the proper tribunal in the State of New Jersey for  
15 trial and to take an arrested inhabitant of the State of Delaware to the  
16 proper tribunal in the State of Delaware for trial. Each of the said States  
17 of Delaware and New Jersey shall [also] have concurrent jurisdiction over  
18 all offenses and violations of this act committed, or attempted to be com-  
19 mitted, by any person who is not an inhabitant of either of said States.

1     23. The Governor of the State of Delaware shall, when and as requested  
2 by the Governor of the State of New Jersey, issue a commission or com-  
3 missions to such person or persons as may be named to him by the Governor  
4 of the State of New Jersey, which shall authorize the person or persons to  
5 whom the same are directed to arrest the inhabitants of either the State of  
6 Delaware or the State of New Jersey or any other person for any violation  
7 of this act; *provided, however,* that if the person so arrested shall be an  
8 inhabitant of the State of Delaware, such person shall be forthwith taken to  
9 the State of Delaware for trial and punishment. The Governor of the State  
10 of Delaware at any time shall, when and as requested by the Governor of  
11 this State, revoke the said commissions, or any of them. The compensation

12 of the person or persons to whom such commission or commissions may be  
13 directed shall be paid wholly by the State of New Jersey.

14 The Governor of the State of New Jersey shall, when and as requested  
15 by the Governor of the State of Delaware, issue a commission or commis-  
16 sions to such person or persons as may be named to him by the Governor of  
17 the State of Delaware, which shall authorize the person or persons to whom  
18 the same are directed to arrest the inhabitants of either the State of Delaware  
19 or the State of New Jersey, or any other person, for any violation of this act;  
20 *provided, however,* that if the person so arrested shall be an inhabitant of  
21 the State of New Jersey, such person shall be forthwith taken to the State of  
22 New Jersey for trial and punishment. The Governor of this State may, at  
23 any time, and shall, when and as requested by the Governor of the State of  
24 Delaware, revoke the said commissions, or any of them. The compensation  
25 of the person or persons to whom such commission or commissions may be  
26 directed shall be paid wholly by the State of Delaware.

27 Nothing contained in this section shall be so construed as to prevent the  
28 arrest of any inhabitant of the State of New Jersey by any other officer or  
29 person having authority under the laws of the said State of New Jersey to  
30 make arrests for the violation of the provisions of this act.

1 [16] 24. Any person or persons violating any of the provisions of this  
2 act in all cases where no other specific penalty is herein provided shall  
3 forfeit and pay a fine of not less than twenty dollars nor more than two  
4 hundred dollars and costs of prosecution, and in default of payment thereof  
5 shall be committed to the county jail or workhouse for a period of not less  
6 than ten days, nor more than ninety days, [or until] unless such fine and  
7 costs are sooner paid.

1 [24] 25. The provisions of this act where the offense is designated as  
2 a misdemeanor shall be enforced in accordance with the provisions of the  
3 statutes of the State relating to misdemeanors and in all other cases shall  
4 be enforced in accordance with the provisions of [an act entitled "An act  
5 to provide a uniform procedure for the enforcement of all laws relating

6 to fish, game and birds, and for the recovery of penalties for violation  
7 thereof," approved March twenty-ninth, one thousand eight hundred and  
8 ninety-seven, and the supplements thereto and acts amendatory thereof]  
9 chapter ten of Title 23 of the Revised Statutes (1937).

1 26. Each of the said States of Delaware and New Jersey reserves to  
2 itself the full and complete authority to legislate solely, relative to the  
3 seaworthiness of, and proper equipment for, all boats owned by its inhabit-  
4 ants, or noninhabitants of either State, and all boats which make their  
5 home port its shores, or take fishing parties for hire from its shores re-  
6 spectively.

1 [25] 27. This act shall take effect immediately, but shall [not] become  
2 operative [until the Legislature of the State of Delaware shall have passed,  
3 and the Governor of that State shall have approved a similar] upon the  
4 State of Delaware enacting a law uniform in substance and effect to the  
5 foregoing. [agreed upon by the commission as recited in the preamble of  
6 this act. The provisions in this act contained regulating the size of the  
7 meshes of fishing nets shall not become operative until October first, one  
8 thousand nine hundred and eight.] Upon this act becoming a law it shall  
9 be the duty of the Secretary of State to so certify to the Governor of  
10 the State of Delaware transmitting therewith a certified copy of this act,  
11 and likewise upon the State of Delaware enacting a law uniform in sub-  
12 stance and effect hereto the Secretary of State of the State of Delaware  
13 shall so certify to the Governor of the State of New Jersey, transmitting  
14 therewith a certified copy of the law of the State of Delaware.

1 [26] 28. [All laws, or parts of laws, inconsistent with the provisions  
2 of this act, be and the same are hereby repealed.] Section six of the act  
3 hereby altered, amended and revised and sections 23:9-39 to 23:9-58, both  
4 inclusive, of the Revised Statutes are hereby repealed.

1 29. If any provision of this act, or the applicability thereof to any  
2 person or circumstances, is held invalid, the remainder of this act and the  
3 applicability thereof and of such provisions to other persons or circum-  
4 stances shall not be affected thereby.

**New Jersey State Archives**  
Department of Law and Safety  
Attorney General's Office  
Closed Case Files, 1920's - 1950's  
**Box 8**

DE21512

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Wilmington 33, Delaware  
Sept. 11, 1946

Board of Game and Fish Commissioners  
Dover  
Delaware

Attention of Mr. Frank A. Lawson, Chief Warden

Gentlemen:

This letter is written in reply to your request of August 12, 1946 concerning the laws which now govern fishing and fishing rights in the Delaware River and Bay. On examination, we found that the answer to the question required a great deal of research, which accounts for the delay in answering your letter.

In order to understand the status of the present law, it is necessary to examine the entire legislative history of the Fishery Laws of this State and of New Jersey.

As you have indicated in your letter, the starting point is found in the Compact between the States which is framed by a joint commission, the members of which were appointed by the Governors of the two States, which Compact was executed on behalf of the States on March 21, 1905 (Appendix, 23 Laws of Delaware). This Compact provided in part that upon ratification by the Congress it would become binding in perpetuity upon both of the States. It was subsequently ratified and approved by the Congress (34 U. S. Stat., p. 394), and the terms thereof became a part of the law of both States in perpetuity.



A further examination of the Compact shows that provisions were adopted (Articles 1 and 2) which give mutual rights for the service of criminal and civil process for offenses committed on the soil of the other State or upon the water of the Delaware River or aboard vessels within the exclusive jurisdiction of either State. The Compact next provided that the inhabitants of both States should have and enjoy a common right of fishery throughout, in and over the waters of the Delaware River between the low water marks except so far as either State may have theretofore granted valid and subsisting private rights of fishery (Article 3).

In Article 4, the States pledged themselves to appoint commissioners to confer for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the two States and provided further that within two years from the date of their appointment the commissioners should report to the Legislature of each State the proposed laws framed and recommended by the joint commission, and that upon the adoption and passage of the laws so recommended, they should constitute the sole laws for the regulation and taking and catching of fish in the River and Bay. These laws, if and when enacted, were to remain in force until altered, amended or repealed by concurrent legislation of the two States.

Article 5 provided that all of the laws of each State relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery mentioned in the Compact should continue in force in the respective States until the enactment of the concurrent legislation therein provided.

This analysis of the Compact shows that it was solemnly agreed that both States would enact uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. It is equally clear that the joint commission in drawing the Compact recognized the necessity for uniform fishery laws and that if such uniform laws were not adopted by both States, the purpose for which the Compact was framed would be defeated. It is equally apparent that until the States adopted uniform acts, all of the laws of each State relating to the regulation of fisheries should continue in force.

These conclusions raise the question as to whether the States in fact adopted such uniform laws.

Shortly after the execution of the Compact, it was ratified and confirmed by an act of the General Assembly of the State of Delaware on March 20, 1905, and by an act of the Legislature of the State of New Jersey dated March 21, 1905. Subsequently commissioners were appointed by both States, and as appears from the preamble of Ch. 146, 24 Delaware Laws, and from the preamble of the New Jersey Act (P.L. 1907, p. 302) the commissions organized and agreed in a joint meeting held for that purpose upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. On April 23, 1907, the Delaware Legislature adopted that purported to be the Uniform Act as framed by the joint commission. Sec. 26 of that Act expressly provided that the Act should not become operative until the Legislature of New Jersey shall have passed and the Governor of that State shall have approved of a similar law agreed upon by the commission as recited in the preamble of the Delaware Act. On May 7, 1907, the Legislature of the State of New Jersey having enacted a so-called Uniform Law, the Governor of that State approved the New Jersey Act (P.L. 1907, Ch. 131, p. 302). That Act also specifically provided that it should not take effect immediately but would not become operative until the Legislature of Delaware shall have passed and the Governor of Delaware shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of that Act.

We have examined carefully the provisions of both of the so-called Uniform Acts and find there are many inconsistencies in them. For example, Sec. 5 of the Delaware Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock midnight on Saturday and twelve o'clock midnight on Sunday. Sec. 6 of the New Jersey Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock noon of Saturday and twelve o'clock midnight of Sunday. Sec. 6 of the Delaware Act provides that the meshes of a net used to catch carp shall not be less than two inches stretched measure, while the New Jersey Act provides for meshes of not less than two and one-half inches stretched measure. There is also a discrepancy in the time during which it shall be unlawful to catch carp. Sections 7 and 9 of both Acts differ in the same respect as Sec. 6. Sec. 10 of the Delaware Act provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across the mouth of any river, creek or stream emptying into the waters, while Sec. 10 of the New Jersey Act also provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across "the said waters or any part thereof, or at right angles with the shore line thereof," in addition to the mouth of any river, creek or stream emptying into the waters.

4

Sec. 18 of the Delaware Act provides that a warrant may be issued to a sheriff, county constable or officer of the county authorized to make an arrest, while the New Jersey Act provides in addition that a warrant may be issued to any fish and game warden of the State. Sec. 19 of the Delaware Act providing for the costs, charges and expenses of any proceeding for violation of the provisions of the Delaware Act is not found in the New Jersey Act. Following that Section, in the Delaware Act the sections bear different numbers. Sec. 22 of the Delaware Act provides that certain officers may arrest without a warrant where the provisions of the Delaware Act are violated. The corresponding section in the New Jersey Act (Sec. 21) does not permit the Collector of Oyster Revenue to arrest under such circumstances and substitutes the Fish and Game Warden. Sec. 23 of the Delaware Act relating to prosecutions and procedure differs substantially from the provisions of Sec. 22 of the New Jersey Act which incorporates the New Jersey provisions for prosecution and procedure.

It is apparent from the above that the acts adopted by the two States were not uniform and that, therefore, they could not have been the law which was agreed upon by the joint commission nor the Uniform Law contemplated by the Compact between the States.

We have not been able to determine which of the two States was at fault in not adopting the Uniform Law agreed to by the joint commission although the fault appears to lie with the Delaware Legislature inasmuch as the Delaware Senate Journal of the Special Session of 1934 reports on p. 79 that Delaware had not adopted the Uniform Act as it was framed.

We are not unaware of the consequences of any opinion of this office which would hold that the Uniform Act as contemplated by the Compact between the States is not effective but under the circumstances it is our opinion that the Uniform Law contemplated by the preambles of both the Compact and the subsequent legislative enactments of the States contemplated a uniformity in legislation that is not found in a comparison of the two acts. As both New Jersey and Delaware specifically provided that the legislation which they enacted would not be effective unless and until the other State adopted a Uniform Act, the conclusion is inescapable that a Uniform Law does not exist today.

While it might conceivably have been possible for the New Jersey and Delaware Legislatures to adopt uniform provisions beyond the two year period mentioned in the Compact, it appears from our further examination of the laws of both States that such has not been the case.

For example, the New Jersey Legislature in 1911 adopted an act which regulated fishing in the waters of the Delaware River and Bay lying between the two States and all the tributaries of the River and Bay within said limits wherein the tide ebbs and flows. That Act (P.L. Ch. 263, p. 550) regulates fishing for game fish enumerated in the statute, fish that were not within the contemplation of the Uniform Act and, in one instance, that of fishing for sturgeon, and lays down new restrictions. Clearly this Act does not make for uniformity.

The Delaware Legislature on the other hand carried the provisions of the Delaware Act of 1907 into the 1915 Code (Ch. 74, Sections 143 to 168 inclusive). It nevertheless revealed the provisions of Ch. 74 of the Revised Code of 1915, and by the provisions of Ch. 203 of 28 Delaware Laws, approved March 16, 1915, substituted a new act which related to fishing in the waters of the Delaware River and Bay. This Act did not purport to be a uniform act. Other changes and additions to the new sections so adopted were made by Ch. 204 and 205 of 28 Delaware Laws; Ch. 176 of 30 Delaware Laws; Ch. 175 of 32 Delaware Laws; Ch. 194 of 33 Delaware Laws; Ch. 175 and 176 of 35 Delaware Laws; and Ch. 238 of 36 Delaware Laws.

By the provisions of Ch. 248 of 32 Delaware Laws, approved Feb. 4, 1921, the Governor of the State of Delaware was authorized to appoint a commission to confer with a like commission appointed by the Governor of the State of New Jersey to draft modifications of the supposed law between the two States regulating the catching of fish in the River and Bay. By the provisions of Ch. 193 of 33 Delaware Laws, approved March 14, 1923, it was again recited that the commissions had been appointed, had met, and had agreed upon uniform laws. By Sec. 106 of that Act, it was again provided that neither the Act nor any section or part thereof would be valid or become operative until a similar act was enacted by the State of New Jersey. So far as we can determine, there is no record that the Delaware Legislature ever enacted similar legislation, and the provisions of Ch. 193 of 33 Delaware Laws never became effective. *New Jersey*

Once again (Ch. 243, 35 Delaware Laws), a commission was appointed by the State of Delaware to confer with a like commission representing the State of New Jersey for the purpose of framing a Compact or agreement with the State of New Jersey concerning the respective rights of the States in the Delaware River and Bay. Ch. 278, 35 Delaware Laws contains Uniform Fishing Laws which were not to take effect unless similar legislation were adopted by New Jersey. As before, no action has been taken by New Jersey.

From this examination of the various acts, it becomes apparent that Delaware and New Jersey have not enacted uniform legislation which is binding upon both states and their citizens. The provisions of the original Compact of 1905 in so far as they relate to the rights of the States in the issuance of process and with respect to the common right of fishery not having been amended by joint action of the States remain in full force and effect. In the absence of any further uniform laws, each State has retained the right to enact legislation which will be effective within its territorial jurisdiction which includes, of course, the waters of the Delaware River and Bay which belong to each.

Ch. 146, 24 Laws of Delaware is not effective since it was not a uniform provision. Likewise the provisions of Ch. 74 of the Revised Code of Delaware, 1915, do not represent the Uniform Law adopted by New Jersey or which was in effect in New Jersey in 1915. The first provisions which purport to enact legislation covering the rights of Delaware and its citizens are found in Ch. 203, 28 Delaware Laws. That Chapter expressly provides that it should become effective "upon the approval hereof by the Governor of the State of Delaware." The Act was approved by the Governor on March 16, 1915. At the time of its approval, it became the only specific legislation covering fishing rights in the Delaware River and Bay. The subsequent enactments of the Delaware Legislature do not purport to repeal that entire Chapter although there were, as set forth above, numerous amendments to the law in Volumes 30, 32, 33, 35 and 36 Delaware Laws. These amendments are set forth and incorporated in the law as it appears in Ch. 74 of the Revised Code of Delaware, Sections 181 to 211 inclusive. These provisions represent the law of the State of Delaware with respect to fishing rights in the Delaware River and Bay. In the absence of any uniform law which would, under the Compact between the States, be superior, the provisions of Ch. 74 must be considered by your Board as the laws which you are to enforce.

In reading the last paragraph appearing on page 2 of your letter, it appears that you have misconstrued the effect to be given to Ch. 74, Art. 7 of the Revised Code of 1915. Under our law, the codifiers of our statutes do not enact legislation by incorporating acts into a single volume. When they spoke as appears on p. 1219 of that Code of the Uniform Law (appearing as Sections 143 to 168 inclusive), they did not give that legislation any effect beyond that which it had prior to its codification. The sections did not represent a uniform law between the States before their insertion in the 1915 Code and did not acquire uniformity by any reference which might have been made thereto by the codifiers. Sections 143 to 168 were not uniform provisions at any time and were, therefore, not effective as provided by Sec. 168.

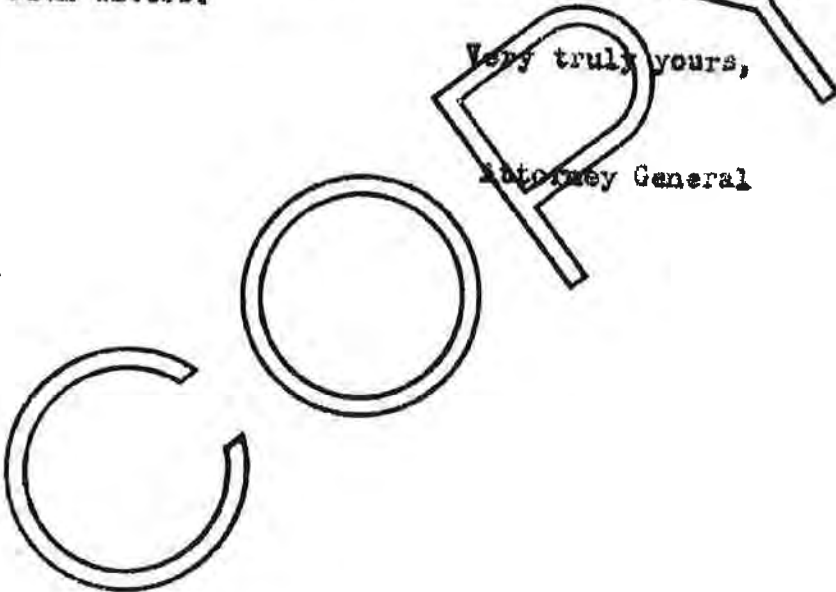
The fact that after the enactment of Ch. 203, 28 Delaware Laws, uniform commissions were appointed by the Governor of this State does not mean that Delaware did not have laws regulating fishing in the waters over which it has jurisdiction. This action should be interpreted to mean that we did not have Uniform Laws enforceable by both Delaware and New Jersey.

To sum up this lengthy letter, it is our opinion that the statement appearing in the Revised Code of Delaware, 1935, is correct, that at the present time there is no Uniform Law, and that Ch. 203, 28 Delaware Laws as amended governs the regulation of fishing in the Delaware River and Bay within the jurisdiction of the State of Delaware over such waters.

Very truly yours,

Attorney General

VAT:V



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Farris - Hewitt Test.

WALTER H. BACON  
COUNSELLOR AT LAW  
BRIDGETON, N. J.

December 7, 1925.

IN RE: NEW JERSEY-DELAWARE BOUNDARY.

Hon. George S. Silzer,  
Trenton,  
N. J.

Dear Sir:

Enclosed you will find my report in the matter of  
the New Jersey-Delaware Boundary Question.

Duplicate will be forwarded to the Board of Shell  
Fisheries.

At the convenience of yourself and the members of  
the Board, I will be glad to appear and make some further  
practical suggestions as to the course which should be  
pursued in order to protect the New Jersey oyster  
interests.

Respectfully,





REPORT

NEW JERSEY-DELAWARE  
BOUNDARY LINE

DATED DECEMBER 7, 1925

WALTER H. BACON  
COUNSELLOR AT LAW  
BRIDGETON, NEW JERSEY

TO THE HONORABLE GEORGE S. SILVERMAN, GOVERNOR OF NEW JERSEY,  
AND TO THE BOARD OF SHELL FISHERIES OF THE STATE OF NEW JERSEY:-

The question submitted for determination is the location of the dividing line between New Jersey and Delaware.

While the boundary line between New Jersey and Pennsylvania and New York have been established by conventions between said States, respectively, all attempts to establish the boundary between New Jersey and Delaware have been unsuccessful.

(C.S. of N.J., pg. 5357 et seq.)

Delaware claims that its boundaries are as follows:-

"STATE BOUNDARIES:- The limits of the State are declared to be, on the south, the divisional line between Delaware and Maryland; on the west, the divisional line between Delaware and Maryland extended northerly to its intersection with the southerly boundary line of Pennsylvania; on the north, the boundary line between Maryland and Pennsylvania extended easterly to its intersection with the twelve mile circle described from New Castle and said twelve mile circle extended to low water mark on the eastern side of the Delaware River; and on the east, low water mark on the eastern side of the Delaware River within said twelve mile circle, the southerly perimeter of said twelve mile circle from its intersection with said low water mark westerly to the middle line of Delaware River, the middle lines of Delaware River and Bay below said twelve mile circle to the mouth of said Bay, and the Atlantic Ocean."

(Revised Code of Delaware 1915, pg.7, Sec.6.)

There is no separate act of establishing the boundary lines of New Jersey.

The boundary lines of Salem and Cape May Counties as established by the act of January 21, 1709-10, extended only to the River and Bay (Nixon's Digest, pg. 161). By act of November 28, 1822, the boundaries of Salem, Cumberland and Cape May Counties were extended to the Main Ship Channel in the River and Bay (Nixon's Digest, pg. 161), and by act of April 10, 1846, the boundary lines of the Counties of Salem, Cumberland and Cape May are "declared to be the main ship channel in the River and bay of Delaware adjoining said Counties respectively" (Nixon's Digest, pg. 164). By the Revision of 1877, the county lines are given in some sections as "to and up the bay" and in others to the main ship channel. The lines of the Townships in Cumberland County are given as "to" and "up" the Bay/. (C.S. of N.J., Title "Counties").

Proprietary title to New Jersey is based upon the letters patent from King Charles II to James, Duke of York, dated March 12, 1664, for

"All that part of the main land of New England\*\*\*\*\* together also with the said river called Hudsons River and all the lands from the west side of Connecticut, to the east side of Delaware Bay."

Leaming & Spicer's Grants and Concessions, pg. 3.

Martin vs. Waddell, 16 Peters (U.S.) 367.

By deed of lease, dated June 23, 1664, and of release dated June 24, 1664, James, Duke of York, granted New Jersey to Berkley and Cartaret, describing it as,

"All that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manitas Island, and bounded on the east part by the main sea, and part by Hudson's River, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay; and to the northward as far as the norther-

most branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's river in forty-one degrees of latitude." (Leaming & Spicer, pg.8.) (Central R.R. Co. of N.J. vs. Jersey City, 70 N.J.L. 81).

In 1674 and 1680, after the restoration following the Dutch conquest of New Jersey, the Duke of York re-granted the same territory, describing its western boundary in one deed as extending "along" and in the other as running "up" the Delaware. (Leaming & Spicer, pp. 47 and 414.)

Proprietary title to Delaware is based upon two grants made by James, Duke of York, to William Penn. Each bears date August 24, 1682. One is for "All that the Town of Newcastle otherwise called Delaware and all that tract of land lying within the compass or Circle of Twelve Miles about the same, scituate lying and being upon the River Delaware in America. And all islands in the said River Delaware and the said River and Soil thereof lying north of the Southermost part of the said Circle of Twelve Miles about the said Town." (Pennsylvania Archives, 2nd Series, Vol. V, pg. 739.)

The other is for, "All that tract of land upon Delaware River and Bay beginning Twelve Miles South from the Town of Newcastle otherwise called Delaware, and extending South to the Whore-Kill otherwise called Capin Lopin together with free and undisturbed Use and Passage into and out of all Harbours, Bays, Waters, Rivers, Isles and Inletts belonging to or leading to the same together with the Soil, Fields, Woods, Underwoods, Mountain, Hills, Fenns , Isles, Lakes, Rivers, Rivoletts, Bays and Inletts situate in or belonging unto the Limits and Bounds aforesaid." (Pennsylvania Archives, 2nd Series, Vol. V. pg.741)

While by the first of these grants, the River and the soil thereof within the Twelve Mile Circle is attempted to be conveyed, there is no such attempt in the second deed and none in the grant for New Jersey.

There have been many cases in various courts in which the question has been debated and decided as to the rights of the Proprietors to lands under water by virtue of the various grants.

Without setting forth the details, the statement may be safely made that the title to lands under tidal waters is in the public and not in the Proprietors or their grantees, and that the original boundary line between New Jersey and Delaware, at least below the Twelve Mile Circle, is the River and Bay and not the shore on either side.

Martin vs. Waddell, 16 Peters 367.

Arnold vs. Mundy, 6 N.J.L. 1.

Attorney General vs. Bound Brook Railroad Co., 27 N.J.E. 1, affirmed 27 N.J.E. 631.

In Handley's Lessee vs. Anthony, 5 Wheaton 375 (1820), Mr. Chief Justice Marshall, speaking for the United States Supreme Court, said,

"When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream."

There is a difference between "territory" and "jurisdiction". This is clearly defined in Central Railroad Company of New Jersey vs. Jersey City, 209 U.S. 475, where it was held that the compact between New Jersey and New York gives New York exclusive jurisdiction over New York Bay and to low water mark on the Jersey shore, but confirms the title of New Jersey in the land under water to the middle of the Bay.

In Louisiana vs. Mississippi, 202 U.S. 1, there was a conflict

channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term "middle of the stream", as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1763. By the language, "a line drawn along the middle of the River Mississippi from its source to the River Iberville", as there used, is meant along the middle of the channel of the River Mississippi."

And then he adds,

"This judgment related to navigable rivers. But we are of opinion that, on occasion, the principle of the thalweg is applicable, in respect of water boundaries, to sounds, bays, straits, gulfs, estuaries, and other arms of the sea."

In my opinion, therefore, the boundary line between New Jersey and Delaware, below the southerly perimeter of the Twelve Mile Circle from New Castle, is the middle of the main channel of the Delaware River and Bay.

This line can be located by reference to the United States Coast and Geodetic Survey Map No. 1413, Delaware Bay, as far up as Liston's Point on the Delaware Shore and Mad Horse Creek on the Jersey shore, which is said to be approximately the mouth of the River.

This conclusion finds some support in the maps or charts of Pennsylvania, Delaware and New Jersey issued by the United States Geological Survey, which Congressman Bacharach obtained for me from Washington. These maps show the boundary line between New Jersey and Pennsylvania as being in the middle of the River until the line strikes the northern boundary of the Delaware Twelve

between the authorities of the two States arising out of the enforcement of the oyster laws of those States, which involved a dispute respecting the true boundary line. This was held to be a controversy between the States in their sovereign capacity, which is within the original jurisdiction of the Supreme Court of the United States.

In delivering the opinion of the Court, Mr. Chief Justice Fuller said:

"The term 'thalweg' is commonly used by writers on international law in definition of water boundaries between states, meaning, the middle, or deepest, or most navigable channel. And while often styled 'fairway' or 'midway' or 'main channel', the word itself has been taken over into various languages. Thus, in the treaty of Luneville, February 9, 1801, we find 'le thalweg de l'Adige', 'le thalweg du Rhin', and it is similarly used in English treaties and decisions, and the books of publicists in every tongue."

Referring to the opinion in *Iowa vs. Illinois*, 147 U.S. 1, he quoted as follows:-

"Mr. Justice Field, delivering the opinion of the court, said:

"When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises in

Mile Circle is then carried across the River to the New Jersey shore and the boundary line between Delaware and New Jersey is then carried along low water mark on the New Jersey shore to a point above Hope Creek on the Jersey shore and nearly opposite St. Augustine Light on the Delaware shore, and is then carried back to the middle of the River and extended down the River and Bay below Ship John Light and to a point nearly opposite Goose Point on the Delaware shore and the mouth of Nantuxent Creek on the Jersey shore, where the line ends. These maps also indicate the main channel in a portion of the Bay but not in the River.

As to the land under water within the Twelve Mile Circle, a very different problem is presented, and it is this question which has given rise to most of the litigation and legislation respecting the New Jersey-Delaware boundary.

Delaware's earlier claims to the River and Bay are set forth in a charge delivered by Chief Justice Herrington to a jury in a homicide case some time prior to 1835, which is reported in a note to Emory vs. Collings, 1 Harr. (Del.) 325, Photo-stat copy of which is herewith, as it contains much of historical interest.

There are two other cases in which the question was litigated but not definitely settled.

#### PEA PATCH ISLAND CASE.

About 1780, there appeared at low tide in the Delaware River, about five miles below New Castle, a small, muddy exposure of soil, "about the size of a man's hat". By accretion, an island of about eighty-seven acres soon formed, which in consequence of a tradition that a vessel laden with peas had once sunk on the spot where the island afterwards rose, acquired the name of Pea Patch Island (later Fort Delaware).

In 1784, the New Jersey Proprietors granted this island, describing it as situate in Salem County, New Jersey, to persons whose



title afterward is vested in Dr. Henry Gale of New Jersey, and in 1831, the Legislature of New Jersey relinquished to Dr. Gale whatever interest it might have in the island. This was after the passage of the Act of 1822, in which New Jersey claimed to the main Ship Channel, and the Island was on the Jersey side of the channel.

In 1812, the State of Delaware, by an act of its Legislature, conveyed the Island to the United States. The Government took possession under this grant and commenced the erection of a fort upon it, and in consequence of these two grants a controversy began between Dr. Gale, claiming under the title of New Jersey, and the United States, claiming under that of Delaware.

Two suits were brought in the Federal Courts to try the title; one in 1836 in the New Jersey Circuit (Gale's Lessee vs. Bealing), in which judgment was rendered in favor of the New Jersey title, and the other in 1838, in the Delaware Circuit (United States vs. Cochran), in which judgment was in favor of the Delaware title, and the Delaware United States Marshal turned out of possession the person who had been placed in possession by the New Jersey United States Marshal.

The matter was the subject of litigation and claim for thirty-three years, during which time numerous opinions were rendered on both sides by lawyers of national prominence and great ability.

On August 3, 1846, Congress passed an act authorizing the President "to take such steps as he might deem advisable for adjusting the title to the Pea Patch Island", and in pursuance of this authority an agreement was finally reached "to submit the question of the title to the arbitration of some professional gentleman, in whose ability, learning and honor both parties should have such implicit confidence, as to be willing to accept, as final and conclusive, whatever award he might make upon the question."

President Polk appointed Hon. John Sergeant, of Philadelphia,

concluded between the Secretary of War and Dr. Gale's grantees, for the submission. The award was in favor of the United States.

The report of this case is in the appendix to Wallace, Cases in the Circuit Court of the United States for the Third Circuit, contains a full statement of the testimony, arguments of counsel and Mr. Sergeant's conclusion, and is of great historical value. In the Attorney General's office in Trenton will be also found copy of the brief of Garret D. Wall, United States District Attorney for New Jersey, and the charge of Mr. Justice Baldwin to the jury, in the case of Gale vs. Bealing.

Herewith is a photostat copy of the Twelve Mile Circle taken from the Wallace report by courtesy of the State Librarian.

Mr. Justice Baldwin and Mr. Sergeant reached opposite conclusions upon substantially the same state of facts, except that in his charge to the jury, Justice Baldwin laid some stress on the validity of the proprietary grant and also stated, what has been repeatedly claimed in other litigation, that William Penn took nothing by either of his grants from the Duke of York because the latter did not have title from King Charles II.

It is to be noted that this charge was delivered in 1836 and that Martin vs. Waddell, tried in the New Jersey Circuit in 1835, was not decided in the United States Supreme Court until 1842. The majority opinion in that case (Mr. Justice Baldwin dissenting) was to the effect that from 1702, the date of the surrender by the Proprietors to Queen Anne, they never had any right in the navigable waters of the State. It would seem, however, that the grant by the State to Dr. Gale in 1851 cured this defect.

As to the defect in the Penn title, the records show that the statement by Mr. Justice Baldwin was based upon the evidence produced before him, but at the hearing before Mr. Sergeant, records were produced showing a grant by letters patent from Charles II to

had been granted by the Duke to Peru several months before. Mr. Sergeant lays great stress on the production of this patent, but from all the information available, its authenticity is open to serious question.

By this arbitration, the Federal Government maintained its possession of the Island, but the award does not bind New Jersey as a sovereign state and does not settle the boundary line dispute. So far as court records go, the verdict and judgment in the case of Gale vs. Bealing settles New Jersey's claim to the middle of the river even within the Twelve Mile Circle, but, of course, has no binding effect on Delaware because of an opposite decision by a court of equal authority.

It seems highly probable that when Chief Justice Harrington delivered his charge in State vs. Morris he was not unmindful of the pending litigation in the Pea Patch Island case.

#### NEW JERSEY VS. DELAWARE.

In April, 1872, Delaware officers arrested twenty or more citizens and residents of New Jersey charged with violating a Delaware fishing law, and such violations were alleged to have been committed east of the middle line of the Delaware River, within the Twelve Mile Circle.

After a series of proclamations, joint resolutions, appointment of commissions and other vain effort to establish a boundary line, a bill was filed by New Jersey against Delaware in the United States Supreme Court about March 13, 1877, by Jacob Vanatta, then Attorney General of New Jersey.

The claim made by the bill of complaint is that New Jersey  
"Is the owner in fee-simple of a portion of the bed of  
the Delaware River, that is to say, from the southeasterly  
corner of the State of Pennsylvania, on said river,  
down said River to and into Delaware Bay. That within

the ] its aforesaid your orator part of the bed of said River extends from the New Jersey shore thereof to the middle of said River. That within and beyond the limits aforesaid the tides of the ocean ebb and flow, and that, within the limits aforesaid, your orator has and is entitled to, in and on every part of the waters of said river, an equal interest and concurrent jurisdiction with the State of Delaware."

New Jersey's claim of title is then set out, beginning with the grant from King Charles 11 to the Duke of York including the surrender by the Proprietors to Queen Anne in 1702, and ending with the Declaration of Independence July 4, 1776, and again claims equal rights and concurrent jurisdiction with Delaware over the waters of the river between the two states and the fee simple title to the bed of the River to the middle thereof.

The prayer of the bill was, among other things, that the true boundary line between the two States be ascertained, declared, defined and perpetually established, and that an injunction issue to prevent further interference with Jerseymen who fished on the Jersey side.

On March 31, 1877, an injunction issued against Delaware prohibiting interference with citizens of New Jersey in exercising their right to fish in the river Delaware.

On May 2, 1892, a stipulation was signed indefinitely extending the defendant's time to plead.

On May 24, 1897, the Court ordered the Clerk to notify counsel that "the Court expects this cause to be disposed of at the next term".

Afterwards Delaware filed its answer.

By this answer, Delaware claims title in fee simple to the whole of the bed of the Delaware River, "lying within the compass

that New Jersey has any title to any portion of the River within the circle but does not set up any claim or title to any other portion of the river or bay east of the main channel.

After answering the New Jersey claim of title as made by the bill, Delaware sets up its claim of title beginning with the discovery of the Atlantic Coast of North America by Sebastian Cabot in 1497, including the grants from the Duke of York to Penn in 1682, and the grant by Charles II to the Duke of York in 1685, which grant it is claimed was obtained by the Duke in performance of his covenants of further assurance contained in the deeds to Penn. Delaware also claims the benefit of the decision of the arbitrator in the Pea Patch case.

Testimony was taken before a commissioner in Philadelphia and a copy of same and of the exhibits is contained in several large volumes on file in the State Library at Trenton.

Pursuant to Article IX of the Compact of 1905 (C.S. of N.J., pg. 5377), an order was made April 15, 1907, dismissing the bill of complaint without costs and without prejudice, on motion of Mr. Robert H. McCarter, for the complainant. (205 U.S. 550).

#### LEGISLATION.

New Jersey has made many other abortive efforts to establish the boundary line. On November 7, 1820, an act was passed to appoint commissioners to meet similar commissioners from Delaware for that purpose.

No commissioners were appointed by Delaware.

Similar efforts were made in 1873 before filing the bill in the United States Supreme Court, and commissioners were appointed by each State (C.S. of N.J., pg. 5372). Those for New Jersey were Abraham Browning, Courtlandt Parker and Albert H. Slape. Delaware paid off and discharged its commissioners before the work was completed.

and Chauncey G. Parker were appointed commissioners to confer with like commissioners from Delaware,

"For the purpose of framing a compact or agreement between the said States and legislation consequent thereon to be submitted to the legislatures of said two States for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware river and bay." (C.S. of N.J., pg. 5374).

This compact will be found in C.S. of N.J., pp. 5374 to 5377, and while it purports to be a compact "relating to the boundary controversy between said States", examination of its provisions discloses that it relates to jurisdiction, not territory. And as to territory, Article VIII expressly provides that,

"Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth."

The compact, in terms, relates only to the Delaware River, and makes no attempt to settle the boundary lines in compliance with the act under which the New Jersey commissioners were appointed.

The compact was ratified by Delaware (Revised Code 1915, pg. 1214), and thereafter by Congress (34 U.S. Stat. at Large, Chap. 394).

Pursuant to the provisions of Article IV of the compact, each State appointed commissioners to draft a uniform fishing law applicable to the waters of the Delaware River and Bay lying between the two States, and to ascertain and mark the dividing line

between the river and bay. (C.S. of N.J., pp. 5373) (Delaware Code, pg. 1213).

The Legislatures of each State passed the Uniform Act in 1907.

Each act contains the following provisions:-

"Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as is expressly set forth in the compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams, or other shell fish, or interfere with the oyster industry, as now or hereafter carried on under the laws of either of said States."

(C.S. of N.J., pg. 2536) (Delaware Code 1219).

Nothing contained in the compact nor in the uniform fishing laws can be construed as a waiver by Delaware to its claim of title to the subaqueous soil of the River, below low water mark, within the Twelve Mile Circle, and, as already shown, Delaware does not now claim title to the subaqueous soil of any part of the Bay, east of the middle thereof, nor of any part of the River, east of the middle thereof, outside of the limits of the Twelve Mile Circle.

There appears to be a very general misapprehension as to the extent of Delaware's claims.

#### LINE BETWEEN RIVER AND BAY.

The precise point where the River ends and the Bay begins has long been a matter of dispute.

Delaware's boundaries as claimed by its Legislature in laws of Delaware, 1874, Chap. 1, pg. 2, Sec. 2, are as follows:-

"The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by Commissioners, and approved January 11,

1769, the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the agreement from the Duke of York dated August 24, 1682, as the same has been held, occupied and recognized by the said States, respectively, ever since that time, low water mark on the eastern side of the River Delaware, within the twelve mile circle from Newcastle; and the middle of the Bay below said circle."

By the last clause of this description, the mouth of the River would appear to be above the southern boundary of the Twelve Mile Circle. By the description in the 1915 Code, heretofore quoted, the mouth of the River would appear to be below said boundary.

August 12, 1885, Attorney General John P. Stockton made a report to Governor Abbett as to the location of this dividing line. (See records in Attorney General's office at Trenton.)

This report includes copy of correspondence between the Attorney General of New Jersey and the Attorney General of Delaware on the subject, and grew out of a dispute as to the territory covered by the injunction issued by the United States Supreme Court in New Jersey vs. Delaware, to which reference has been already made.

For the purposes of this injunction, the dividing line was fixed as being "a line drawn from Coharsey Light to Bombay Hook Point."

As already stated, one of the duties of the commissioners appointed under the Compact of 1905 was "to ascertain and mark the dividing line between the river and bay".

In a note to the compact in the Delaware Code, pg. 1213, the statement is made that,

"The said commissioners of the said respective States, in joint meetings held for that purpose, agreed upon and drafted a uniform law to regulate the catching and taking



of fish in the Delaware River and Bay between the said States, ascertained the dividing line between the Delaware River and Delaware Bay, and, upon each of the shores of the said two States where said dividing line extended intersects the same, provided for and erected suitable monuments to mark said dividing line. One of said monuments is erected on the Delaware Shore at or near Liston's Point and the other opposite on the New Jersey Shore at or near the mouth of Hope Creek; a straight line drawn through the center of these two monuments is the dividing line between the Delaware River and Delaware Bay. Journal House of Representatives 1907, p. 252 &c. Senate Journal 1907, pp. 249 to 256. Said draft of said uniform law was submitted to the General Assembly of Delaware and to the Legislature of New Jersey, and by the Legislature of New Jersey duly enacted as drawn. Said uniform law appears in Sections 143 to 168, inclusive, of this Chapter."

No reference to this dividing line can be found in the New Jersey Compiled Statutes.

Senator Avis, one of the New Jersey commissioners, writes concerning it,

"We fixed the dividing line between the bay and the river, and erected a monument at the mouth of Hope Creek on the Jersey shore and at a point opposite on the Delaware shore."

Reference to the Government Charts will show that these various lines are many miles apart but the line established by the commissioners and apparently recognized by Delaware, being the line from Hope Creek to Liston's Point, would seem to be the official line and has much greater foundation in fact than the line from Coburn Light to Bombay Hook, or the southern boundary of the Twelve Mile Circle.

#### CONCLUSIONS.

1. Within the Twelve Mile Circle, the boundary line between New Jersey and Delaware is still an open question which can be settled only by Convention between the States or by decree of the United States Supreme Court. From a practical standpoint, the Board of Shell Fisheries is not interested in this question because the up-stream water pollution has destroyed the oyster beds which formerly existed within the Circle.

2. Below the Twelve Mile Circle, the boundary line, according to the decisions of the United States Supreme Court, is the thalweg or middle of the main channel of the Delaware River and Bay, from the southerly perimeter of the Twelve Mile Circle to the Atlantic Ocean.

3. Substantially all the natural oyster beds on the New Jersey side of the main channel are between the mouth of the River, indicated by the line drawn from Hope Creek to Liston's Point, and the "southwest line", being an imaginary line drawn from the mouth of Straight Creek to Cross Ledge Lighthouse. It is these beds which the Board of Shell Fisheries of New Jersey desire to protect.

4. By Article VI of the New Jersey-Delaware Compact of 1905 and Sec. 3 of the Uniform Fishing Law of 1907, it is provided that,

"Nothing herein contained shall affect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State."

This provision should be construed as a recognition of the right of each State to regulate, by legislation, the oyster industry in its own waters.

5. In the Spring of 1925, Delaware Oyster boats dredged for and caught oysters from beds on the New Jersey side of the main channel of the Bay, in violation of the New Jersey statutes regulating its oyster industry. The oystermen so violating the Law were

not arrested because of doubt as to the boundary line.

6. If those in authority concur in the conclusions herein expressed concerning the location of said boundary, it is respectfully suggested that the Governor or Attorney General of Delaware be advised that a continuation of such violations will result in prompt prosecutions.

7. Incident to the preparation of this report, a large amount of information has been obtained relative to the subject matter thereof, and if any point has not been comprehensively covered in the foregoing summary, which has been made as brief as possible, under the circumstances, information relative thereto can be readily furnished.

Dated December 7, 1925.

Respectfully submitted,

(sgd) WALTER H. BACON

Counsellor at Law.

*Handwritten signature/initials*

December 30,  
1925.

My dear Attorney General:

As you know, I had Mr. Walter Bacon look up the question of the boundaries between Delaware and New Jersey, and he has furnished me a very interesting report.

As these conclusions usually drift into some channel where they cannot be found at a later date, when needed, I am suggesting that his report and the accompanying maps be filed in the Library. What do you think of the idea of filing whatever you have in your office relating to this controversy in the Library, so that they may be put together for future reference?

Yours very truly,

Governor.

Hon. Edward L. Eatsenbach,  
Attorney General.

3



EDWARD L. KATZENBACH  
ATTORNEY GENERAL

Trenton, N.J., Jan. 4, 1926.

Your Excellency:

Your communication of December 31st last, re the interstate boundary line in the Delaware River, has been received. The interest which you have taken in the matter is gratifying, and it is also gratifying to know that the results of Mr. Bacon's labors will be filed in the Library, where they can be obtained upon application.

We will follow your suggestion with respect to the records of this office to be put in the Library for future reference.

Very respectfully yours,

A handwritten signature in cursive script, reading "Edward L. Katzenbach".

Attorney General.

Hon. George S. Silzer,  
Governor of New Jersey,  
State House.

ELK/S

December 29,  
1925.

My dear Governor:

Last Spring some Delaware oyster boats dredged for and caught oysters from beds in the New Jersey side of the main channel of Delaware Bay in violation of New Jersey statutes regulating the oyster industry. This action, of course, created considerable friction, and I am very much afraid that if the practice be continued it may lead to physical violence.

Such action, of course, should be deplored, and prevented, if possible. It is our duty to see that nothing of that kind happens if we can prevent it. The oyster industries of Delaware and New Jersey are well defined, and have been for many years. You grant licenses for those who desire to enter this business on your side of the river, and we do the same on ours.

We have been replenishing the natural oyster beds on our side of the river, and are planning to continue an extension of this work. It is quite natural that we do not want trespassers, who have not even a license from your State or ours, to come on these beds and get the benefit of our money and work.

The differences between the States have gradually been disappearing, and I am hoping that we can settle the whole matter once and for all by amicable agreement, as we did with the State of Pennsylvania.

You will recall that by article 6 of the New Jersey-Delaware Compact of 1905, and Section 3 of the Uniform Fishing Law of 1907, it is provided that:

"Nothing herein contained shall affect the planting, catching or digging of oysters, clams, or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State."

This is a distinct recognition of the  
oyster industry as carried on under the laws of both States

I would appreciate it very much if you would  
let me know what you think of the best way to approach the  
matter.

Yours very sincerely,

Governor.

Hon. Robert F. Robinson, Governor,  
Dover,  
Delaware.

New Jersey State Archives

Governor Moore's Papers

Box 22, Folder 103



Rutgers University Library

THIRD ANNUAL MESSAGE

HON. GEORGE S. SILZER

Governor of New Jersey

TO THE LEGISLATURE OF NEW JERSEY

January 12, 1926



MacGraw-Hill & Co. Inc.  
Trenton, New Jersey

New Jersey State Archives  
Governor: Silzer Annual Message

DE16742

## OYSTERS.

Little attention has been paid to the important oyster industry in this State, the output of which annually amounts to approximately \$10,000,000. This industry is located principally on the Delaware River, in the vicinity of Bivalve, at the mouth of the Maurice River. With the opening of the Manasquan Canal the oyster industry in Barnegat Bay may be largely developed. This can only be ascertained after the canal has been opened and conditions studied. There is, however, a healthy growth there, and a prospect of substantial development.

Contrary to the general tendency to disintegrate, evidenced in other parts of the country, the industry in New Jersey has prospered and grown, and is now one of the healthiest survivors in the country.

This growth and prosperity has been due, in large measure, to the good judgment of the Board of Shell Fisheries and the sensible co-operation and team work of the men engaged in conducting the industry.

Last year an appropriation was made for re-shelling some of the natural oyster beds in the Delaware River, and so extending the area. This work should be further extended and encouraged, and in addition thereto, in order to preserve the entire industry, pollution should be carefully watched and prevented.

Due to an ancient dispute with the State of Delaware over the boundary line, residents of Delaware occasionally come to our oyster beds and appropriate to themselves our oysters and seedlings. This is discouraging to our oyster planters, and if allowed to continue will soon result in the refusal on the part of the State to make further appropriations.

It is necessary, therefore, that some action be taken.

During the last year I had an investigation made as to the respective rights of the two States, and upon the receipt of the report communicated with the Governor of Delaware, looking toward an amicable settlement of this question. I believe that such settlement would avoid the possibility of bloodshed, and would be of mutual advantage to the States, and preserve the

friendly relations that have always existed between New Jersey and Delaware. If no friendly adjustment can be made, there may be necessity for court action to settle our rights.

At the time of the writing of this message no reply has been received from the Governor of Delaware.

I cannot permit this opportunity to pass without congratulating this industry on the careful way in which it is managed. During all of the agitation throughout the country last year against oysters that were infected, and in all of the investigations made by other States following that condition, no one was able to point either to any infection of our oysters or to any other unfavorable condition. This was due to the watchfulness against pollution and infection, and the constant supervision of the Board of Shell Fisheries and the Department of Health. No one need to be afraid to eat oysters from this State.

#### OCEAN PIERS.

The ocean front of New Jersey is one of its most valuable assets, particularly in furnishing a place for recreation, health and pleasure. Anything that tends to impair the usefulness of this shore front is detrimental to the interests of the State. A large industry has been built up, and thousands from our own State and other States are attracted to our shores every summer.

No obstructions can be placed upon our ocean front without the consent of the State, because in every case application must first be made to the State for the grant of riparian rights.

Our past experience has been that when applications for riparian rights were made, they were granted on general terms, permitting the purchaser to construct what he wished. The result has been that, in many cases, piers have been extended into the ocean, many times unsightly in appearance, and, at other times, permitted to fall into decay or used in such a way as to become a nuisance and a menace.

In some of our shore resorts the further building of piers has been stopped or attempted to be stopped by municipal action. It would seem that the time has arrived when we should give thought to the future of this playground and this industry. If

January 18,  
1926.

My dear Governor:

I have your letter of January 14th, and from my examination of the matter I find that the matter of fishing rights was settled by the commission to which you referred, but the oyster rights were not settled.

I had Walter Bacon go thoroughly into the matter this summer, and he has made a very exhaustive report, outlining the exact situation. From this, and my own investigation, I am sorry to say that the matter still seems to be open. Last Spring there was some difficulty down there from Delaware, because they knew that the matter had not been settled.

Very truly yours,

Governor.

Hon. D. C. Stokes,  
Mechanics National Bank,  
Trenton, N.J.

5

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LAWS OF  
DELAWARE

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35

1927

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DE14684

## RESOLUTIONS

## CHAPTER 243

## HOUSE JOINT RESOLUTION

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Sec. 1. That Robert H. Richards, William S. Hilles, Charles W. Cullen, William M. Short and William F. Cummins be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like Commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay. The said Commissioners shall report at the present or some subsequent Session of the Legislature.

Sec. 2. That there is hereby appropriated out of any moneys in the Treasury of the State not otherwise appropriated, the sum of Two Thousand Dollars (\$2,000.00), to defray the traveling and necessary expenses of the Commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this Joint Resolution, and shall continue in force as long as the said Commissioners are engaged on said matter, and shall be paid by the State Treasurer from time to time on vouchers submitted by the Commissioners and signed by at least three Commissioners.

Approved March 2, A. D. 1927.

JOURNAL  
OF THE  
Eighty-third Senate  
OF THE  
STATE OF NEW JERSEY

BEING THE  
One Hundred and Fifty-first Session of the Legislature



TRENTON, N. J.  
MA. COLLIER & QUIGLEY CO., STATE PRINTERS

1927

DE13986



Mr. Stevens offered the following resolution, which was read and adopted:

*Resolved*, That when the Senate adjourns it be to meet Thursday, March 17th, at 12 o'clock noon.

On motion of Mr. Stevens, the Senate then adjourned.

THURSDAY, March 17th, 1927.

At 12 o'clock noon the Senate met.

The session was opened with prayer by the Hon. David H. Agans.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered to their names:

Messrs. Abell, Agans, Bright, Case, Cole, Davis (President), Forsyth, Larson, Mackay, Mathis, Pierson, Reeves A. C., Reeves F. M., Richards, Roberts, Simpson, Stevens, Stiles, Williams, Wolber—20.

One communication endorsed "Nominations" was received from the Governor at the hands of his secretary, Mr. Fred Bloodgood.

Mr. Stevens moved that the communication from Mr. Edward F. Katzenbach, the Attorney-General, concerning the appointment of commissioners and the joint resolution be spread in full on the Journal.

Which motion was adopted.

STATE OF NEW JERSEY,  
EDWARD L. KATZENBACH,  
ATTORNEY GENERAL.

TRENTON, N. J., March 10th, 1927.

Hon. Francis B. Davis, President, New Jersey State Senate,  
Senate Chamber, State House:

MY DEAR MR. PRESIDENT—The Attorney-General of Delaware has delivered to me in person the certified copy of joint resolution appointing commissioners from the State of Delaware, herewith enclosed.

The personnel of the Delaware Commission is as follows: Robert H. Richards, who was formerly Attorney-General of Del-

aware, and was such during the period of the last compact between the States; William S. Hilles, who is a leading citizen, and also a leading lawyer of Wilmington; Charles W. Cullen, who is a member of the Delaware Bar practicing in Georgetown, Sussex county, Delaware; William M. Short, who is an oysterman of Kent county, Delaware; William F. Cummins, who is also an oysterman of Kent county.

I took up with you the question of the personnel of the New Jersey Commission. You were to consult with the Governor and others concerning it, as I recall. Since Delaware has passed the resolution and notified us to that effect, perhaps you may desire to call the matter to the Legislature's attention during the session of the week of the 14th.

Believe me,

Very sincerely yours,

(Signed) EDWARD L. KATZENBACH,  
*Attorney-General.*

JOINT RESOLUTION RELATING TO THE BOUNDARY  
CONTROVERSY BETWEEN THE STATES OF NEW  
JERSEY AND DELAWARE.

BE IT RESOLVED by the Senate and House of Representatives of the State of Delaware in General Assembly Met:

1. That Robert H. Richards, William S. Hilles, Charles W. Cullen, William M. Short and William F. Cummins be and they hereby are appointed and constituted commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said State and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware river and bay. The said commissioners shall report at the present or some subsequent session of the Legislature.

2. That there is hereby appropriated out of any moneys in the treasury of the State not otherwise appropriated, the sum of two thousand dollars (\$2,000.00), to defray the traveling and necessary expenses of the commissioners while engaged on the matters herein referred to. Said appropriation shall be immediately available upon the approval of this joint resolution, and shall continue in force as long as the said commissioners are engaged on said matter, and shall be paid by the State Treas-

urer from time to time on vouchers submitted by the commissioners and signed by at least three commissioners.

WILLIAM WINTRUP,  
*Speaker of the House.*

WILLIAM F. ALLEN,  
*President Pro Tem of the Senate.*

Approved March 2d, 1927.

ROBT. P. ROBINSON,  
*Governor.*

STATE OF DELAWARE,  
OFFICE OF SECRETARY OF STATE.

I, Charles H. Grantland, Assistant Secretary of State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Joint Resolution Relating to the Boundary Controversy Between the States of New Jersey and Delaware, approved March 2d, A. D. 1927, as the same appears on file in this office.

In Testimony Whereof, I have hereunto set my hand and official seal, at Dover, this seventh day of March, in the year of our Lord, one thousand nine hundred and twenty-seven.

(Signed) CHARLES H. GRANTLAND,  
*Assistant Secretary of State.*

[SEAL]

The following message was received from the House of Assembly by the hands of its clerk:

STATE OF NEW JERSEY,  
ASSEMBLY CHAMBER.

Mr. President:

March 16th, 1927.

I am directed by the House of Assembly to inform the Senate that the House of Assembly has passed the following bills:

Senate Bill No. 76, entitled "A supplement to an act entitled 'An act relative to sales of lands under a public statute or by virtue of any judicial proceedings' (Revision of 1874)."

Senate Bill No. 96, entitled "A supplement to an act entitled 'An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April twenty-first, one thousand nine hundred and eleven."

Senate Bill No. 107, entitled "A supplement to an act entitled 'An act relating to courts having criminal jurisdiction and regu-

State of Delaware,



Office of the Attorney General

CLARENCE A. SOUTHERLAND,  
ATTORNEY GENERAL  
JAMES R. MORFORD,  
LEONARD G. HAGNER,  
EARLE D. WILLEY,  
HOWARD J. COOKE,  
DEPUTY ATTORNEYS GENERAL  
ALVY R. EVANS,  
CLERK

WILMINGTON, DEL. December 26, 1928.

Hon. Robert P. Robinson,  
Wilmington, Delaware.

My dear Governor Robinson:

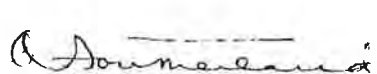
I have your letter of December 20th enclosing a petition from the oystermen of Delaware concerning the New Jersey boundary question.

As you know, a Boundary Commission was appointed, of which Mr. Richards is now chairman. My suggestion is that you request Mr. Richards to give you a report as to the present status of the matter so that you may advise the oystermen.

I am today writing Mr. Richards a letter advising him of the receipt by you of this petition and suggesting that he write you concerning the status of the matter.

Very truly yours,

CAS:O.

  
Attorney General.

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Volume

Page

1302 - 007

Governor's Papers

1928

A - B

*Delaware - N.S.  
Boundary  
Comm*

Dover, Delaware,  
April 29, 1929.

Hon. C. Douglass Buck, Governor,  
Dover, Delaware.

Dear Sir:

The Commissioners of the State of Delaware, appointed under the provisions of House Joint Resolution approved March 2, 1927 (35 Del.Laws, Chap. 243), and the act of January 30, 1929, amendatory thereto, to confer with Commissioners of the State of New Jersey for the purpose of framing a compact between the States looking to the final adjustment of all controversies relating to the boundary line between the said States, desire to invite your attention to the facts hereinafter set forth.

Following the approval of the House Joint Resolution of 1927, above referred to, the Commissioners named thereunder met and organized. Robert H. Richards, Esq., was elected Chairman of the Commission and Charles W. Cullen was elected Secretary. The Commissioners met several times during the year 1927 with the New Jersey Commissioners, who likewise were five in number, and had been duly appointed by authority of the New Jersey Legislature. No agreement upon the matter before the Commissioners was reached in those meetings.

Subsequently, two of the Commissioners named, William S. Hilles and William M. Short, died, and Robert H. Richards and William F. Cummins resigned as members of the Commission.

Pursuant to the amendatory act of 1929, the Governor of the State of Delaware filled the vacancies on the Commission by the appointment of David J. Reinhardt, Esq., Howard M. Buckson,

James B. Robinson and Clarence A. Southerland.

The Commission as thus constituted met and elected Charles W. Cullen, Esq., as President, and Howard M. Buckson as Secretary. This Commission has had two meetings with the New Jersey Commission during the present year. Several suggestions were made by each Commission as to the possible settlement of the disputed boundary line, but no agreement was reached.

In order that you may be apprized of the exact nature of the dispute, we state below the claims of each of the States with respect to the boundary line and the present status of the matter.

By Section 7 of the Revised Code of the State of Delaware, the boundaries of the State are fixed as follows:

"The limits of the State are declared to be, on the South, the divisional line between Delaware and Maryland; on the West, the divisional line between Delaware and Maryland extended Northerly to its intersection with the Southerly boundary line of Pennsylvania; on the North, the boundary line between Maryland and Pennsylvania extended Easterly to its intersection with the twelve mile circle described from New Castle and said twelve mile circle extended to low water mark on the Eastern side of the Delaware River; and on the East, low water mark on the Eastern side of the Delaware River within said twelve mile circle, the Southerly perimeter of said twelve mile circle from its intersection with said low water mark Westerly to the middle line of Delaware River, the middle lines of Delaware River and Bay below said twelve mile circle to the mouth of said Bay, and the Atlantic Ocean."

It will be observed that the State of Delaware claims jurisdiction over the sub-aqueous soil of the Delaware River within the twelve mile circle to low water mark on the New Jersey shore. Below the twelve mile circle the State of Delaware claims to the middle of the River and Bay. According to the contention of numerous persons and firms engaged in the oyster industry in this State, the middle line of the River and Bay is intended to mean the geographical center of the River and Bay, and not the middle of the main ship channel. The State of New Jersey claims that

the boundary line between the States is the middle of the main ship channel from the Pennsylvania line to the Capes.

There are thus two points of dispute between the States. The first relates to the area within the twelve mile circle. The claim of the State of Delaware to hold to low water mark on the New Jersey shore rests upon the deed of feoffment from the Duke of York to William Penn, dated August 24, 1682 (Appendix to Vol. 1, Del. Laws, p.1). The claim of the State of Delaware to the middle line of the River and Bay below the twelve mile circle rests upon the assumption that the dividing line of the River and Bay between two states is the geographical center thereof, and further, upon the assumption that the State has at all times exercised jurisdiction to such a line.

The claim of the State of New Jersey to the middle of the main ship channel rests upon its refusal to recognize the validity of the deed of the Duke of York to William Penn for the twelve mile circle, and also upon the claim that the line is governed by the decisions of the Supreme Court of the United States fixing boundary lines between states divided by a navigable stream or bay as the middle of the main ship channel.

While<sup>as</sup> above stated, several propositions fixing a compromise line were suggested by both sides, none of the lines so suggested was agreeable to both Commissions. This Commission is of the opinion that it will be impossible to fix the line by agreement and that it will be necessary, in order that the line may be finally determined, for a suit to be instituted in the Supreme Court of the United States and carried to completion.

The appointment of the two State Commissions two years ago was brought about by a dispute in the Delaware Bay concerning



the ownership of the natural oyster beds which lie adjacent to Ship John Shoal. By an informal agreement between the Attorneys General of the respective states at that time, coupled with action to that effect by the New Jersey Shellfish Commission, the disputed area around Ship John Shoal was buoyed off and declared closed ground to oystermen of both states. This agreement was carried out during the two years of negotiation between the two Commissions.

Following the recent termination of the unsuccessful negotiations between the two Commissions, it was again agreed by the Commissions that a similar arrangement would be recommended to the oyster industries of both states and to the New Jersey Shellfish Commission. This Commission is advised that such arrangement has been approved by the parties in interest and that it will be carried out pending the determination of the boundary line by the Supreme Court of the United States.

The natural oyster beds surrounding Ship John Shoal are valuable beds and the oystermen of both states are naturally anxious to dredge for oysters at that point as soon as possible. This Commission is further advised that the continued closing of the so-called disputed area to dredging will eventually result in great harm to the natural beds, due to the fact that the oysters will die. It is of great importance, therefore, that the question involved be adjudicated as promptly as possible.

This Commission also believes that any suit filed in the Supreme Court of the United States should also finally determine the title to the sub-aqueous soil of the Delaware River within the twelve mile circle. While there is at present no controversy in this area (fishing rights having been settled by the compact

between the states in 1903), yet it would be highly desirable to settle the entire dispute in one suit.

The House Joint Resolution of 1927, creating this Commission, provided:

"The said Commission shall report at the present or some subsequent session of the Legislature."

The session of the Legislature of 1929 having adjourned sine die, and the situation above set forth requiring prompt action, this Commission desires to lay before you the foregoing facts and to recommend that you request the Attorney General of this State to take prompt action, in cooperation with the Attorney General of New Jersey, to institute suit in the Supreme Court of the United States, with a view to the final adjudication of the disputed boundary line.

In this connection your attention is also invited to Senate Joint Resolution No. 2, approved by you February 11, 1929, authorizing and directing the Attorney General to take such steps as he may deem necessary to determine finally the boundary line between the two States, in the event of a necessity arising therefor, because of the failure of the two Commissions to arrive at a satisfactory agreement.

It is believed that the action here recommended is in conformity with this resolution.

Respectfully submitted,

*Chas. W. Calfee*  
*James B. Robinson*  
*Howard M. Dickson*  
*David J. Reinhardt*  
*Clarence A. Southland*

Commissioners of the State of Delaware appointed in the matter of the Delaware-New Jersey boundary line.

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Volume \_\_\_\_\_ Page

1302-000-007

Governor's Papers

DE - NJ Boundary Commission

1929

December 27, 1928

Hon. Walter H. Bacon,  
Bridgeton, New Jersey.

My dear Mr. Bacon:

Since your telephone communication with me, some days ago, with respect to another meeting of the Delaware-New Jersey Boundary Commission, I have learned that Mr. V. M. Short, one of the members of the Delaware Commission, has died. This makes two members of the Commission that have died since the Commission was originally created, Messrs. Hilles and Short. The Commission is consequently reduced to three members, Mr. Cullen, Mr. Cummins and myself.

Unfortunately the Act which authorized the appointment of the Delaware Commission does not provide for the filling of vacancies in the Commission.

Personally I do not feel that the State of Delaware would be properly represented by a commission of three, inasmuch as the Legislature evidently intended and desired that the State should be represented by a commission of five. I think it would be much better to have the matter presented to the General Assembly of Delaware which meets in a few days and ask them to either amend the existing Act or pass a new act providing for a Commission of five, so that the State, in any further meetings, will be represented as it was originally intended and designed that it should be, by a commission of five members. If the State should be represented by a commission of three members, two would constitute a majority, but if I were one of two constituting such a majority, I would not be willing to agree to anything tentatively or to make a recommendation to the State because the State evidently expected to have a recommendation that would be expressive of the judgment of at least three representatives of the State. Consequently I think it would be wiser to defer any further meeting of the commissions representing the two States until the State of Delaware can be represented by a commission of five members.

I am writing to the Governor today and sending him a copy of this letter and suggesting that he take steps to have the Legislature take immediate action with respect to the matter as soon as they convene. There is no reason why the Legislature cannot act at once.

With personal regards and best wishes for the New

Year, I am

Yours sincerely,

RHR/W

State of California Department of Education  
Office of the State Superintendent of Education  
1515 Capitol Mall, Sacramento, CA 95833  
Phone: (916) 227-3300  
Website: www.sde.ca.gov

1302-007

Governors Papers

1928

A-B

LAW OFFICES

ROBT. H. RICHARDS  
AARON FINGER  
CHARLES F. RICHARDS

4080 DUPONT BUILDING  
WILMINGTON, DELAWARE  
BELL TELEPHONE 411

December 27, 1928

Hon. Robert P. Robinson,  
Governor of Delaware,  
Dover, Delaware.

My dear Governor:

Confidential.

Supplementing my letter written to you of even date, I would suggest that it probably would be better to have the Legislature pass a new Act providing for a new Commission and repealing the old Act, so that the Governor would feel perfectly free to appoint entirely new men, if you should see fit to do so. Personally, I do not care to serve longer on the Commission or on any new Commission, because I do not believe I can do any good.

Yours sincerely,



RHR/W

1302 - 007

Governor's Papers

1928

A-13

LAW OFFICES

ROBT. H. RICHARDS  
AARON FINGER  
CHARLES F. RICHARDS

4080 DUPONT BUILDING  
WILMINGTON, DELAWARE  
BELL TELEPHONE 411

December 27, 1928

Hon. Robert P. Robinson,  
Governor of Delaware,  
Dover, Delaware.

My dear Governor:

I am enclosing herewith a copy of a letter I wrote to Honorable Walter Bacon, Chairman of the New Jersey Boundary Commission appointed to confer with a similar Commission representing the State of Delaware for the purpose of attempting to settle the question of the boundary between the two States.

It is needless for me to repeat in my letter to you what is said in my letter to Mr. Bacon. I beg leave, however, to respectfully suggest that you immediately take the matter up upon the convening of the Legislature and endeavor to get them at once to pass an act authorizing the appointment of a new Commission. Such an act should contain a proper provision authorizing the Governor to fill any vacancy in the Commission. The old Act did not contain such a provision and this omission has proved unfortunate.

The Commission that was appointed had two meetings with the New Jersey Commission, one in Wilmington and one at Bridgeton, New Jersey. I thought at and after the first meeting in Wilmington that we might be able to agree, but after the second meeting, held in New Jersey, I rather came to the conclusion that we would not be able to agree. However, no effort should be spared to effectuate an amicable agreement of this dispute. It is, in my judgment, susceptible of amicable adjustment. I think it is somewhat unfortunate that the more or less abstract question of the boundary between the two States should be influenced by the specific question, to wit, the ownership of certain natural oyster rocks, that was the immediate cause of the creation of the existing Commission to settle the boundary question, but such questions are usually made prominent by some specific issue that brings them forward.

I beg to remain

Yours sincerely,

*Robert H. Richards*  
Chairman of Commission appointed by State  
of Delaware to confer with like Commission  
from State of New Jersey with respect to  
the boundary between the two States.

RHR/W



1302-007  
Governor's Papers  
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1302-007  
Governor's Papers  
1928  
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*Boundary  
Commission*

December 28, 1928

Capt. Jas. W. Wilcutts,  
Bowers, Delaware.

My dear Capt. Wilcutts:

In accordance with your verbal request and the desire as expressed by a number of the persons engaged in the oyster industry who recently sent to the Governor's office a petition for some action by the Boundary Commission of the two States, I beg to say that I have taken this matter up with Mr. Southerland and Mr. Richards.

Mr. Richards writes me that two meetings of the Commissions representing New Jersey and Delaware were held, but nothing was accomplished. About the time they were ready to hold another meeting, one of our commissioners died and recently, as you know, Mr. Short died. This leaves our commission with only three members instead of five and the law does not permit the Governor to fill these vacancies. Mr. Richards is therefore unwilling to call another meeting of the Commission so long as Delaware has only three members on its commission. He suggests that some action should be taken by the incoming Legislature, looking toward the appointment of a new commission and giving the Governor power to appoint said commission and to fill vacancies. If you will communicate the contents of this letter to the oystermen, I presume they will immediately take some action to have such laws passed by the incoming Legislature as will remedy the matter. I am sorry I am not able to accomplish anything more for you and for them.

Very truly yours,

Governor.

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STATE OF DELAWARE  
DEPARTMENT OF STATE  
RECORDS SECTION  
1928

1302-007  
Governor's Papers  
1928  
A-B

December 28, 1928

Hon. Robert H. Richards,  
du Pont Building,  
Wilmington, Del.

My dear Mr. Richards:

Please accept my thanks for yours of the 27th instant containing copy of letter written to Hon. Walter H. Bacon of Bridgeton, N.J. regarding the meeting of the Boundary Commissions of Delaware and New Jersey.

I thank you for this full explanation of the case and quite agree with you that some Legislative action should be taken toward the formation of a commission permitting the Governor to appoint the commission and fill vacancies when such occur.

Very truly yours,

Governor.

has

State of Delaware  
Department of Archives and Records  
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Governor's Papers  
1928  
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Governor's Papers  
1928  
A-B



STATE OF NEW JERSEY  
WILLIAM A. STEVENS  
ATTORNEY GENERAL

Trenton, N.J., June 21, 1929

*Atty Gen*

My dear Governor:

Agreeable with the request which you made a short time ago on the occasion of a conference regarding the three suits; that is, Delaware River Diversion, Beach Pollution and Delaware Boundary, I have caused to be prepared a statement somewhat in detail of the facts and questions in each case for such use or publicity as you may deem appropriate.

In preparing these statements an effort has been made to bring the subjects out of the purely legal vernacular of the bills of complaint and present them in the language of the man in the street. You will observe that some of the stories in narrative form have a number of interesting phases in which the public might be interested, either in published articles or in addresses which you have occasion to make from time to time.

Respectfully,

*W. A. Stevens*

Attorney General.

Hon. Morgan F. Larson,  
Governor of New Jersey,  
State House, Trenton, N.J.

DE16745

New Jersey State Archives  
Governor Larson's Papers  
Box 2 Folder 15

DE16746

**REPORT TO**  
**HONORABLE MORGAN F. LARSON**  
GOVERNOR OF NEW JERSEY

BY  
**WILLIAM A. STEVENS**  
ATTORNEY GENERAL

CONCERNING  
**DELAWARE RIVER DIVERSION CASE**  
**BEACH POLLUTION CASE**  
**NEW JERSEY-DELAWARE BOUNDARY CASE**

---

**DATED JUNE 21, 1929**



Trenton, N. J., June 21, 1929.

My Dear Governor:

Agreeable with the request which you made a short time ago on the occasion of a conference regarding the three suits; that is, Delaware River Diversion, Beach Pollution and Delaware Boundary, I have caused to be prepared a statement somewhat in detail of the facts and questions in each case for such use or publicity as you may deem appropriate.

In preparing these statements an effort has been made to bring the subjects out of the purely legal vernacular of the bills of complaint and present them in the language of the man in the street. You will observe that some of the stories in narrative form have a number of interesting phases in which the public might be interested, either in published articles or in addresses which you have occasion to make from time to time.

Respectfully,

WILLIAM A. STEVENS,  
Attorney-General.

Hon. Morgan F. Larson,  
Governor of New Jersey,  
State House, Trenton, N. J.

## New Jersey-Delaware Boundry Case

### MEMORANDUM OF FACTS.

#### History of the Controversy.

The history of the controversy over the title to the Delaware river and bay, and adjacent territory begins with the history of the American continent. The controversy, originally involved the Swedes and the Dutch. Later the controversy arose between the English and the Dutch out of conflicting claims of discovery by Sebastian Cabot in 1497 and by Henry Hudson in 1609. Both of these navigators, the first under the English flag and the second under the Dutch flag, entered the Delaware bay and claimed all the adjacent territory for their respective sovereigns, but actual possession or occupancy was undertaken by neither nation until 1614 when the Dutch took possession and began to colonize in the territory adjacent to the Hudson River, which they called the North River and the Delaware River, which they called the South River. From that time forward the conflict waged from time to time between the English and the Dutch, forts were established and taken back and forth until a war between the two countries over the American territory was finally and permanently settled by the treaty of Breda on July 31, 1667.

#### The Title to New Jersey.

During this prolonged period of conflict grants or letters-patent were issued by both sovereigns for lands in the disputed territory, but the treaty of Breda ceded all the lands along the Delaware river and bay and the Hudson river and bay to Charles II, King of England, and thereafter the title of the English crown continued with only slight interruption until the Declaration of American Independence on July 4, 1776.

### The Delaware Boundary Dispute.

The controversy over the boundary between what are now the States of Delaware and New Jersey arose, and has continued from the year 1682 down to the present day, and at intervals during that time, has given rise to intestine warfare over the conflicting claims of the colonies, states and citizens on the two sides of the river and bay. The dispute between the two states has existed since 1799, and although commissions have been appointed, from time to time, under authority of the legislatures of the two states, no agreement has ever been reached between them except upon the right of citizens of both states to fish in the river and bay.

### The Pea Patch Island Case.

The most celebrated case in the history of this boundary dispute arose in 1913, during the war of 1912, when the State of Delaware ceded to the United States Government for the construction of a fort, an island known as Pea Patch Island. Legend has it that sometime in the eighteenth century, a vessel loaded with dried peas sank in the Delaware Bay. The eddying currents of the tide soon began to collect sediment around this wreck until, one day some navigator of the bay discovered above the surface at low tide, a patch of ground "about the size of a man's hat." The island grew in size and height until, in 1784, it contained 178 acres and was conveyed by John Lawrence to Edward and Clement Hall. Lawrence's title came from a grant of the Proprietors of West Jersey, and on November 24, 1831 the title of Henry Gale, then owner, was confirmed by an act of the New Jersey Legislature. On account of the ship load of peas, this island has always been known as "Pea Patch Island" or "the Pea Patch."

In 1814, the war of 1812 then being still in progress, the War Department sought to obtain the Pea Patch Island for the erection of a fort to protect the City of Philadelphia and the territory adjacent to the Delaware Bay. Inquiries

were made by Army officers of the New Jersey owner but the negotiations were not pursued. The national treasury being much depleted by the war, James Monroe, then Secretary of War, made overtures to the City of Wilmington, Delaware, for the advancement by it of funds to build the fort, on the promise that when the war was over, the government would pay back the money with interest. This offer was accepted and in 1814 the fort was begun and soon completed. In the meantime, instead of pursuing the negotiations with the New Jersey owner, the federal government took the grant for the island from the State of Delaware.

The New Jersey owner brought suit in 1819 in the United States District Court in New Jersey for a writ of ejectment to put the government officials off the island, but that suit was discontinued in 1822. Another suit was brought later in the same court by the successor owner, by which he obtained a favorable decision in 1836.

In May, 1839 the government then brought a suit against the New Jersey owner in the United States Court in Delaware, and judgment was entered in favor of the government. With the title of the island decided in favor of the New Jersey title by the court in New Jersey, and in favor of the Delaware title by the court in Delaware, the controversy between the parties remained undecided, but the threat of the Secretary of War to send soldiers to put the New Jersey claimant off and to hold possession of the island by force, caused the latter to withdraw and leave the government in possession.

The controversy dragged along until, pursuant to an agreement dated February 27, 1847 between the Secretary of War and James Humphrey, the then New Jersey claimant of the island, it was, in 1849, submitted to arbitration by John Sargent, of Philadelphia, who decided in favor of the government.

Hence the conflicting claims of New Jersey and Delaware to the title to the Pea Patch Island have never been judicially determined.

### Intervening Conflicts.

In 1872, under a law of the State of Delaware, New Jersey fishermen in the bay were arrested and put in jail in Delaware for failure to obtain a fishing license from that state. Several very vigorous proclamations and official protests from Governor Parker of New Jersey resulted in the appointment, in 1873, of commissioners of each state for the purpose of agreeing upon the boundary line, but no agreement was reached. In 1876, the New Jersey Legislature authorized the Attorney-General to institute a suit in the United States Supreme Court to settle the question. Such a suit was instituted the following year and an injunction against the interference of the State of Delaware was obtained. A large number of exhibits and considerable testimony were offered in evidence but the case was allowed to drag along until a new conflict arose in 1904. In the following year (1905) the legislatures of the two states again appointed commissioners to agree upon the boundary. Their negotiations resulted in a compact of that year, wherein they agreed upon common fishing rights and disagreed on boundary. They did agree, however, to dismiss the suit then pending, and it was dismissed.

The suit was dismissed because, during the progress of the hearings, it was discovered that the bill of complaint, as drawn by the Attorney-General at that time, covered only a section of about twenty-four miles in the river and no part of the bay, and if the suit should be decided in favor of New Jersey, only a very small section of the boundary line would be affected. It would benefit the fishing rights in that section of the river, which were later protected by the compact, but would not cover any of the oyster rights in the bay, which later caused a renewal of the controversy.

In May, 1925, the conflict was renewed when Delaware oystermen dredged and took away from territory claimed by New Jersey, some 25 thousand bushels of oysters.

They were indicted in Salem County, but owing to the important title question involved, which was deemed too serious to be tried in a county court in a criminal proceeding, the case was not pressed. But in 1927, the legislature of New Jersey deemed it advisable to make another attempt to settle the boundary by agreement. Delaware joined in the attempt, but after two years of fruitless negotiations, the New Jersey Commissioners, in April of this year, reported to the legislature that they had been unable to reach a satisfactory agreement and recommended that a suit be instituted to finally determine the dispute. Accordingly, on April 17, 1929, the legislature adopted a joint resolution instructing the Attorney-General to bring such a suit.

#### **The Substance of the Conflicting Claims.**

Briefly stated, the substance of the claims of the two states is that New Jersey claims title in fee simple to the soil under the river and bay to the centre of the main or deepest navigable channel, between the northerly boundary line of Delaware (a little below Chester, Pennsylvania, and Gibbstown, New Jersey) and the ocean at Cape May, while Delaware claims all of the river to low water mark on the New Jersey shore within the 12 mile circle drawn about the New Castle, Delaware, Court House as a centre, and to the geographical centre of the river and bay from the southerly rim of that circle to the ocean at Cape May. Within that disputed area, citizens and corporations of New Jersey, under riparian grants issued by this State, have constructed and are using wharves, buildings and other improvements costing more than 100 million dollars, on land claimed by Delaware, and the disputed area in the Delaware Bay includes a considerable portion of the only seed oyster beds in the bay, containing several million bushels of perfectly good oysters, which New Jersey has cultivated and protected since 1799, and brought into a high state of perfection. The citizens of Delaware now claim the right to take these oysters on the ground that that state owns the land where they are located.

### Details of the New Jersey Claim.

While the conflicting claims of England and the Netherlands to the lands adjacent to the Delaware and Hudson Rivers and bays were involved in warfare between the two countries and still undetermined, Charles II, King of England, on March 12, 1664, granted to his brother, James, Duke of York, all the lands between Nova Scotia and Cape May, including all lands from the west side of Connecticut to Delaware Bay, lying between the Hudson River and Bay and the Delaware River and Bay, together with all lands, islands, soils, rivers, harbors, etc., and the absolute power of government thereof. By lease dated June 23, 1664, and by release dated the following day, James, Duke of York, conveyed to Lord John Berkeley and Sir George Carteret, all of what is now the State of New Jersey, from substantially the present northerly boundary thereof to Cape May, between the Hudson River and Bay on the east and the Delaware River and Bay on the west, and including, like the grant from the King to James, the absolute power of government thereof. The grant specified that this territory should be called by the name of New Caesarea or New Jersey, in honor and commemoration of Carteret's successful defense of the Island of Jersey against the Parliamentarians during the English Revolution in the time of Charles II.

When the wars between England and the Netherlands ended and the Dutch claims were surrendered to the English crown by the treaty of Breda in 1667, the question arose whether the title of the Duke of York and Berkeley and Carteret under the previous grants was not thereby revested in the King. In order to settle that question King Charles, by deed of June 29, 1674, reconveyed to the Duke of York the same lands and governmental powers as those contained in the grant of March 12, 1664.

Meanwhile, in 1673, Lord Berkeley became "hardup" and sold his undivided half interest in New Jersey to one Edward Byllynge, who, for reasons of his own, desiring

not to take title in his own name, caused a deed dated February 10, 1673 to be given by Lord Berkeley to one John Fenwick, who took title as Byllynge's trustee.

A few years later Edward Byllynge came into financial difficulties, and having nothing else left, he made an assignment of his half interest in New Jersey, to William Penn, Gawen Lawrie, and Nicholas Lucas, as trustees, for the benefit of his creditors.

By deed dated July 1, 1676, Sir George Carteret, the owner of one of the undivided halves of New Jersey, and Penn and his associate trustees and Byllynge and Fenwick, as the holders of the title to the other undivided half interest, agreed upon the partition of the territory into the divisions thereof since known as East Jersey, which was conveyed to Carteret, and West Jersey, which was conveyed to Penn and his associates.

The Duke of York, theretofore on July 29, 1674, had given Sir George Carteret a confirmatory deed for an area which corresponded, not exactly but substantially, to the area, which, by the partition, became East Jersey, and by deed dated August 6, 1680, the Duke of York gave to Penn and his associates a confirmatory deed for that portion which by the partition became West Jersey. These two deeds were intended merely to pass on to the then owners of the portions, respectively, the benefits of the confirmatory grant of June 29, 1674, from the King to the Duke of York.

Up to this time the proprietors of East and West Jersey, respectively, possessed through the original and intermediate grants, not only the title to the land, but also the absolute power of government, which amounted practically to sovereignty. Meanwhile, Queen Anne had succeeded to the throne of England and this state of affairs in the colonies suited her not a little. Consequently, by deed dated April 15, 1702, accepted April 17, 1702, the proprietors of the two divisions of New Jersey were compelled to surrender to Queen Anne all sovereignty and powers of



government, which thereafter remained in the English crown until the war of the American Revolution.

Under the Common Law of England at that time, the King owned in fee simple title to all lands under water where the tide ebbed and flowed, which New Jersey claims included the Delaware River and Bay (after the surrender of sovereignty in 1702) between high water marks on the opposite shores. New Jersey has always claimed, and now claims, that by reason of the Declaration of Independence on July 4, 1776, the result of the Revolutionary War, the Treaty of Paris signed September 3, 1783, and the Constitution of the United States, adopted by New Jersey on December 18, 1788, it acquired in fee simple the title immediately theretofore held by the Crown of England to that portion of the Delaware River and Bay lying easterly of the centre of the main or deepest navigable channel thereof, and that Delaware has the same title on the westerly side thereof.

#### Details of the Delaware Claim.

Delaware's claim to title arose after the treaty of Breda, and involves no questions of re-investiture in the King of England resulting from that treaty, but it does involve another question which will be discussed later.

By deed dated August 24, 1682, the Duke of York conveyed to William Penn all the Town of New Castle (Delaware) and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the river Delaware; and all the islands in the said river Delaware, *and the said river and soil thereof*, lying north of the southernmost part of the said circle of twelve miles about said town, together with the powers of government thereof.

By another deed dated the same day, the Duke of York conveyed to William Penn all that tract of land upon the Delaware River and Bay from the southerly rim of the 12-mile circle to "Capin Lopin" (Cape Henlopen), together

with the free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles and inlets belonging to or leading to the same; together with the soils, fields, woods, underwoods, mountains, hills, fennes, isles, lakes, rivers, rivulets, bays and inlets, situate in or belonging unto the limits and bounds aforesaid, &c., "reserving a right of way." This deed includes the powers of government then possessed by the Duke of York.

The lands conveyed by these two deeds formed no part of Pennsylvania, which was conveyed to Penn by the King himself, but they formed what was known as the "Three Southern Counties" which, in 1701, became the province, (and in 1776, the state) of Delaware.

It appears, however, that the Duke of York, when he gave the two deeds of August 24, 1682, had no title to the lands therein described. In order to cure this defect, the Duke of York, on March 20, 1683 (seven months later) obtained from his brother, Charles II, a deed for precisely the same lands; by descriptions identical, as those described in the two deeds of August 24, 1682 from the Duke to Penn.

According to the old maps, the 12-mile circle above mentioned, if completed on the east side, would include a large part of Salem and a small part of Gloucester Counties in the State of New Jersey, but the State of Delaware seems never to have claimed title, or attempted to exercise jurisdiction, beyond the low water mark on the New Jersey shore.

Delaware claims that the grants to Penn, from which her title comes, included the river within the 12-mile circle and that the grants to Berkeley and Carteret extended only to the east shore of the river and bay. It does not appear upon what authority Delaware claims to own the bed of the river and bay to the geographical centre thereof, below the 12-mile circle.

### The Institution of the Suit.

Immediately upon the adoption of the joint resolution of April 17, 1929, the Attorney-General began the collection of data and information necessary to prepare the bill of complaint. A vast amount of research was necessary, and a great many ancient records, documents, decisions, histories and maps have been examined, for that purpose, but by May 27th, a little over a month from the beginning of the task, the complaint had been completed and printed, embracing all of the essential facts above stated, and on that day an application was made to the United States Supreme Court for leave to file the complaint. That application was granted and the State of Delaware was directed, by order dated a week later, to file its answer by July 1, 1929.

### The Questions Involved.

Very important and difficult questions are involved. First in importance is the meaning and extent of the ancient grants, in the light of the laws and decisions of England in force at the time they were made, 250 years or more ago. The important and difficult question of fact involved is to determine the location of the main ship channel in the river and bay two and a half centuries ago, and what changes therein have occurred in the meantime. Intensive research and study are being made to determine all these questions, with a view to having everything in readiness for hearings, which are likely to begin sometime in the fall of this year.

Instead of this case dragging along for 27 years, and then being dismissed without determination, as the previous one, this case will be pressed to an early conclusion, which the Attorney-General expects to accomplish within a year from the institution thereof.

June 20, 1929.

New Jersey State Archives  
Governor Larson's Papers  
Box 7 Folder 55



# Delaware Boundaries

## New Jersey - Delaware

OFFICE FILE

### LOSS OF OYSTER BEDS IN BAY OFFSET BY GAINS WITHIN 13 MILE CIRCLE STATE BOUNDARY FINALLY FIXED

Delaware may yet be more than thankful for the shrewdness of William Penn and the generosity of Charles II.

Two hundred and fifty years ago William Penn received a royal grant of land and river within a twelve-mile circle drawn about New Castle and land was so cheap in those days that Charles II thought nothing at all of casually giving away thousands of acres of land, just to satisfy an old debt to Penn's father.

It develops today that Delaware will eventually find out that she was the larger winner in the boundary dispute between this State and New Jersey.

In an opinion handed down by the U. S. Supreme Court yesterday, Delaware loses jurisdiction of the State John oyster beds in the vicinity of Ship John Light, towards the head of the Delaware Bay. In 1929, the oyster area, according to New Jersey, produced 2,000,000 bushels of oysters worth then about \$7,000,000.

But, while Delaware loses the water-logged, boggy had her 13-mile circle, birthright upheld for all time and more she gains jurisdiction of the valuable wharves along the Jersey shore abutting into the Delaware River.

The Supreme Court decided that Delaware's territory included all of the Delaware River within a twelve-mile circle drawn about New Castle as the center, up to the low water mark on the Jersey shore.

Delaware lawyers, who are familiar with the dispute, are of the attitude that while Jersey may take the

loss of the Delaware oyster beds, jurisdiction of the wharves on Jersey shore and tax the wharves.

These lawyers also are of the opinion that revenue from the wharves will be greater than revenue from oysters.

Clarence A. Southerland, of Wilmington, who led Delaware's fight in the dispute, said today he did not know how much revenue Delaware could obtain from taxing the wharves, but he did admit the revenue would be considerable.

The next step in the litigation will be for the Supreme Court to hand down a decree and then Mr. Southerland will recommend to the Attorney General's office what further procedure should be taken. It is understood among these recommendations will be that the wharves on the Jersey shore be taxed by Delaware.

And this may precipitate another litigation, surrounding what is known as the Compact of 1905. The Supreme Court held that the boundaries of the two States shall be subject to the Compact of 1905.

In 1877, an argument started between Delaware and New Jersey regarding fishing rights of the citizens of the two States. The argument dragged along until an agreement was drawn up and ratified by both States, known as the Compact of 1905.

Article 7 of the compact states: "Each State may on its own side of the River continue to exercise riparian jurisdiction of every kind and nature and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States."

Mr. Southerland has said that neither Delaware nor New Jersey is in agreement on the meaning and effect of this article.

Incidentally—Mr. Southerland pays tribute to the late Herbert H. Ward and the late George H. Bates, who represented Wilmington in the litigation that led to the Compact of 1905.

"Had it not been for the able, thorough and scholarly work of these men," Mr. Southerland states, "the present case would have taken longer to prepare."

The boundary fixed by the Supreme Court is, along the low-water mark on the east bank of the Delaware River from a point opposite Marcus Hook southward to a point below Salem.

Then, down the middle of the main ship channel through the lower part and the Delaware Bay.

New Jersey had asked the Supreme Court to change the existing bound-

E. J. 2-6-1934:1

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diary within the circle and to fix the entire length of the boundary as the main channel line.

New Jersey holds title to virtually all of its oyster beds which lie on the Jersey side below the circle.

Delaware had asked that the line be located in the geographical center of the river, a line that would give Delaware part of the beds. New Jersey asked that it be fixed in the center of the ship channel.

The Court pointed out that a line following the middle of the stream would create "a crooked line conforming to the indentation and windings of the coast, but without relation to the needs of shipping."



The dotted line shows how the U. S. Supreme Court designates the New Jersey shore of the Delaware River as boundary between New Jersey and Delaware. Below circle, boundary is to be the middle of main ship channel. Heavily dotted part of circle is the boundary between Delaware and Pennsylvania. The circle was completed in the process of determining the boundary between Delaware and New Jersey.

(over)

DE04454

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Evening Journal - Every Evening

2/6/1934

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DE04455



Delaware Boundary Case.

May 2, 1934

Hon. S. Rusling Leap  
Woodstown, New Jersey

Dear Senator Leap,

A letter dated April 30th, has been received from the Attorney General (of which the enclosed is a copy) requesting me to communicate direct with you.

The decision of the court, rendered February 5, 1934, followed the report of the Special Master, in the following conclusion:-

"Within the 12 mile circle (that is within a radius of 12 miles of the Court House at Newcastle, Delaware), the river and the subaqueous soil thereof up to low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."

Realizing that this conclusion of the Special Master was somewhat obscure we argued that the compact before the Supreme Court (see pages 124-131 of our brief, of which a copy is sent you under separate cover). The court did not undertake to construe the compact but contented itself of deciding the boundary subject to that compact. Our view is that the compact was not affected; and could not be affected by the decision, since that compact was ratified by the legislatures of both states and by Congress and is therefore beyond the reach of the courts, except on questions of construction.

In some of our conferences with counsel for Delaware it was intimated that the state would attempt to assess taxes upon structures west of the low water line regardless of the compact and I was not surprised a short time ago to learn that such an attempt was being made. Certainly it should be resisted by property owners subjected to such attacks. In my opinion the compact protects New Jersey in the continued exercise of riparian jurisdiction of every kind and nature and to make grants, leases and conveyances of riparian lands and rights under the laws of New Jersey. The court having refrained from passing on that question it was left open (against our wishes) for a future adjudication. Our view is that the compact was not affected by the decision and that Delaware has no right to impose the proposed taxes.

DE27347

May 2, 1934

Delaware counsel suggested on one occasion, prior to the court's decision, that if the court should refrain from interpreting this feature of the compact, the states might negotiate a supplemental compact adopting the middle of the ship channel, within the 12 mile circle, as the boundary between them, or at least covering the area between low water mark and the bulkhead and pierhead lines established by the New Jersey Board of Commerce and Navigation August 21, 1916 (Exhibit 13B), with relation to which most of the New Jersey riparian grants were made.

I did not take the matter up at that time because we did not know what action the court might take on the subject. Since the court took no action that subject might be considered, but I still think the compact protects that area and that the riparian grantees should rely upon the title acquired under those grants. It may be that the state should aid them in sustaining that title.

Within the extent of the low water boundary line, several streams empty into the Delaware which are tidal for long distances inland. We have an understanding with Delaware that in such cases low water line will not enter those streams but will be indicated as a straight line between markers located at the point of land on either side of the mouths of such streams.

We are working on the decree and a map of the boundary line which we expect to have ready before long.

Very truly yours,

(signed) DUANE E. MINARD

DE27348

**New Jersey State Archives  
Department of Law and Safety  
Attorney General's Office  
Closed Case Files, 1920's - 1950's  
Box 8**

DE27349

July 20, 1934

Delaware Boundary Case.

Hon. S. Rusling Leap  
710 Federal Street  
Camden, N. J.

Dear Senator

The questions raised in your letter of the 19th inst., received this morning, are serious and susceptible of possible confusion in the future relations between the States.

Jurisdiction, both as to taxes and police, follows territory and with the boundary fixed by the court's decision, jurisdiction extends to that boundary by operation of law, unless otherwise agreed between the parties by compact ratified by the legislatures of both states and approved by Congress.

#### Criminal Jurisdiction

Articles I and II of the compact of 1905 (4 Comp. Stat. 5375-6) give to each state power to serve criminal process upon any portion of the river between low water marks on each side (except on Reedy and Pea Patch Islands, and except on vessels aground or tied to docks, on the opposite shore of the mainland, or on the shore of said islands) against persons accused of an offense committed upon the soil of said state "or upon the eastern half of said Delaware river" (for New Jersey, and western half for Delaware), or committed on any vessel under the exclusive jurisdiction of that state, and also to serve civil process in the same places and conditions in certain cases described.

Article III gives the citizens of both states common fishing rights in all parts of the river (Ibid, p. 5376). The last paragraph of Article IV provides:-

"Each state shall have and exercise exclusive jurisdiction within said river to arrest, try and punish its own inhabitants for violations of the concurrent legislation relating to fishery herein provided for". (Ibid).

Article VIII provides:

"Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either state of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." (Ibid p. 5377).

DE14756

July 20, 1934

While the compact does not expressly confer criminal jurisdiction on New Jersey, the words of Article I, giving it the right to issue criminal process for any offense committed upon the eastern half of Delaware river seem to fairly imply the right to try and punish such offenses. However, the language is not as clear as it might be, and, admittedly, there is room for controversy.

#### Taxation

In two previous letters; one dated May 2, 1934, addressed to you, and the other, dated July 18, 1934, addressed to the Attorney General, of which he sent you a copy, I have discussed this subject fully. I can add nothing now to what I said in those letters.

Attorney General Green of Delaware informed our Attorney General, at a conference on the 21st ultimo, that the state of Delaware had taken no action looking toward taxing lands under water, or improvements thereon, west of low water mark on the New Jersey side of the river, and I do not believe he has any present intention of stirring up trouble over that question. However, no manifestation of such an intention on the part of Delaware state authorities would be likely until after the decree is settled. There is, at present, no riparian board or body in Delaware having jurisdiction over tidal or subaqueous lands, or the structures thereon. It is possible that the counties or the municipalities, without state action, might attempt to assess the property and levy a tax. The exhibits in the case show that while the limit of municipal territory and jurisdiction is the channel of the river, the statutory boundaries of the counties in Delaware extend to low water mark on our side.

#### The Remedy

It is impracticable to include in the decree provisions, such as you suggest, covering taxes and criminal jurisdiction:

1. They were not adjudicated in the decision of the court and the court could not do so unless they were contained in a consent decree.
2. I would not expect the Attorney General of Delaware to assume unwarranted authority to consent to such provisions, since they are matters of sovereign jurisdiction/residing only in the legislature, and without legislative authority he would be powerless to do so.

I can conceive of no legitimate means of accomplishing these purposes except through a supplemental compact, negotiated by commissioners of both states under legislative authority, and ratified by the legislatures, and approved by Congress, as the Constitution of the United States provides. I see no reason why an attempt should not be made, and I believe something could be accomplished, in that direction.

DE14757

July 20, 1934

The controversies over boundary, territory and jurisdiction which have arisen between the two states since the compact of 1905, and which gave rise to the present suit, all related to oyster grounds. That is now definitely settled in our favor, by the court's decision which places the boundary, through the disputed territory, in the middle of the ship channel.

In my letter of May 2, 1934, I mentioned the fact that at a conference with the then Attorney General of Delaware, and Mr. Southerland, held some time ago in Wilmington, they mentioned the possibility of a compact between the two states in which Delaware might cede its territory and jurisdiction, east of the main ship channel, within the 12 mile circle. Of course, they were speaking without authority from their legislature, and were merely mentioning possibilities for the removal of the controversy over riparian lands, docks, wharves, etc. on the east side of the river.

If the legislatures are disposed to do so I think it possible that a commission appointed by each state might negotiate such a compact; the acrimonious controversy over fishing having been settled by the compact of 1905 and the like controversy over oysters having been settled by the court's decision.

If it should develop that such a compact cannot be obtained, there still remains possible an arrangement such as we have respecting our water boundary line between New Jersey and New York, with respect to which a compact was made in 1834 (4 Comp. Stat. 5358-60). It establishes the territorial boundary in the middle of Hudson River, New York Bay, Kill von Kull, Staten Island Sound and Raritan Bay, with a reservation of jurisdiction in New York over Bedloes and Ellis Islands (and some others) on the west side of that boundary and also with a reservation of jurisdiction in New York over (all) of those waters to the New Jersey shore in respect to quarantine and immigrants, and vessels bound to any part in New York.

If we could not agree with Delaware on a boundary in the main ship channel of the river we might agree in a hybrid arrangement, as we did with New York, on some features of jurisdiction, respecting the questions of policing and taxation of subaqueous lands and structures, on the east side of the river below low water mark.

Very truly yours,

(Signed)

DUANE E. MINARD.

Copy to --  
Hon. David T. Wilentz,  
Attorney General  
State House, Trenton, N.J.

for his information.

DE14758

**New Jersey State Archives**  
**Department of Law and Safety**  
**Attorney General's Office**  
**Closed Case Files, 1920's - 1950's**  
**Box 8**

DE14759

CLARENCE A. BOUTHERLAND  
JAMES H. HUGHES, JR.  
E. SNALLS BERL  
HERBERT H. WARD, JR.  
WILLIAM S. POTTER  
PAUL LEAHY  
SYBIL U. WARD  
DAVID F. ANDERSON

LAW OFFICES  
WARD & GRAY  
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TELEPHONE-WILMINGTON 5277

GEORGE GRAY,  
1865-1899, 1914-1926  
HERBERT H. WARD  
1892-1927  
ANDREW C. GRAY  
1895-1929

February 12, 1935.

Re: New Jersey v. Delaware.

Hon. P. Warren Green, Attorney General,  
Wilmington, Delaware.

My dear Mr. Attorney General:

I have your letter of February 8th.

I do not know, of course, what prompts the organization of the New Jersey commission, but I think that Delaware should also have a commission for the purpose. It is quite obvious that the serious question involved within the twelve mile circle is that of taxing of the wharves and other improvements on the New Jersey shore.

I have always felt that sooner or later the State of New Jersey would be compelled to propose the purchase by it from Delaware of the eastern half of the river. The present situation is a most awkward one. From my talks with Mr. Minard, I am inclined to think that he agrees with me, although I cannot, of course, quote him officially to that effect.

Certainly I can see no harm that would come from the appointment of such a commission, and I think much good

DE16261



P.W.G. . .2.

might come from it. It would obviously present an opportunity to do away with any more litigation over the matter. Of course, the Delaware Legislature would not appropriate any such sum as \$10,000.00 to pay the expenses of the commission. However, \$500.00 might be appropriated to cover necessary traveling expenses.

Very truly yours,

*C. A. Southland*

CAS:O.

DE16262

DE Public Archives

1560-000-023-001

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DE16263

# Delaware Boundaries

New Jersey - Delaware

## U. S. Supreme Court Finally

### Fixes Del.-Jersey Boundary

J. E. E. 6-4-1935 P. 25 Del. MERT. FILE

The last of the romantic boundary disputes between states was settled yesterday when the Supreme Court approved a decree settling the boundaries of Delaware and New Jersey.

Since the days of gay, blithesome Charles II, Lord Baltimore and William Penn, the Delaware River valley and the Delmarva Peninsula has been the center of litigation, in the wake of which runs litigation in the highest courts of England, stories of bloodshed, sabre rattling, threats and efforts at pacific negotiations.

#### Decree Is Made

The Supreme Court yesterday decreed the boundaries of the two States shall be:

"Within the twelve-mile circle (that is, within the circle the radius of which is twelve miles, and the center of which is the building used prior to 1891 as the courthouse of New Castle, Delaware, certain areas of which are hereafter described and determined), the Delaware River and the subaqueous soil thereof up to mean low water line on the easterly or New Jersey side is adjudged to belong to the State of Delaware, and the true boundary line between the States within said twelve-mile circle is adjudged to be mean low water mark on the easterly or New Jersey side of the Delaware River.

"Below said twelve mile circle, the true boundary line between the States of New Jersey and Delaware is adjudged to be the middle of the main ship channel in Delaware River and Bay.

The boundary line separating the States of New Jersey and Delaware, in Delaware River and Bay thus determined is shown upon a composite map, annexed to copies of the decree. The map was made up of parts of charts of the United States Coast and Geodetic Survey, embracing the particular locality.

#### Enjoined Against Disputes

The Supreme Court also decreed "the State of Delaware, its officers, agents and representatives, its citizens and all other persons, are perpetually enjoined from disputing the sovereignty, jurisdiction, and dominion of the State of New Jersey over the territory adjudged to the State of New Jersey by this

decree." **INDEXED**

The same holds for New Jersey. The decree, however, is made without prejudice to the rights "of either State, or the rights of those claiming under either of the said States, by virtue of the compact of 1905," which deals with certain fishing rights of the citizens of each State.

The decree was prepared jointly by Attorney General Green and former Attorney General Clarence A. Southerland for Delaware, and Attorney General David T. Wilentz and Duane E. Minard, special counsel for New Jersey.

#### 50-50 Victory

What actually happens is that Delaware loses oyster beds in the Delaware Bay, the beds now going within the jurisdiction of New Jersey. On the other hand, Delaware now has apparently indisputable title to the wharfage on the low water line on the Jersey shore within the twelve-mile circle.

Questions of taxation and other issues of the boundary line are to be taken up by joint commissions of Delaware, and New Jersey but these commissions cannot make a binding agreement unless ratified by Congress.

The Delaware River boundary dispute had its beginning in 1630 when Lord Baltimore received a grant of land for what is now Maryland and part of the Delmarva peninsula. Later, Penn received from the Duke of York a grant for what is now Delaware.

Baltimore claimed the entire peninsula. The matter was taken to the Court of Chancery in England and the outcome was the division of the peninsula in half, from a line drawn westerly from Cape Henlopen.

Into this story comes the surveyors Mason and Dixon, comes the hot tempered Col. Talbot who "invaded" Delaware near Christiana where he built a fort to protect his interest of Baltimore. There is also the story of oystermen's warfare and fishermen's warfare.

#### Ancient Charters Figure

One of the sidelights of this last phase of the ancient dispute is that New Jersey charged that Delaware's "birth certificate," a charter from Charles II to Duke of York for the

J. E. E. 6-4-1935:25

(over)

western shore of the Delaware River and a grant from Duke of York to Penn were not valid.

In substance, Delaware in the recent case, claimed her boundary was all of the Delaware River within the twelve mile circle, drawn about New Castle; that below the twelve mile circle, the boundary line was the geographical center of the river and bay.

New Jersey held that the boundary line was the center of the ship channel in the river and bay.

The opinion of the Supreme Court gave each State a 50-50 victory. William Penn's twelve-mile circle grant was held valid and it was decided that when there is no such specific grant, the water boundary of States shall be the center of the channel.

(over)

DE04458

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GEORGE GRAY  
1863-1888, 1914-1928  
HERBERT H. WARD  
1862-1927  
ANDREW C. GRAY  
1898-1948

April 18, 1935.

Re: New Jersey v. Delaware

Honorable Percy Warren Green,  
Attorney General,  
Public Building,  
Wilmington, Del.

My dear Mr. Attorney General:

I have a letter from Mr. Minard suggesting a revision of the language of the proposed paragraph 7 of the decree in the boundary case. I inclose a copy of that letter for your consideration.

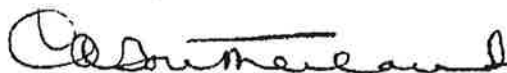
I think that his suggestion is sound and that, for the protection of many Delaware corporations who have acquired wharfage rights in New Jersey, it should be accepted, and I recommend that you approve it.

Please advise me your views upon it and I will communicate further with Mr. Minard.

Very truly yours,

CAS:A

Inc.



DE16269

HOBART & MINARD

Newark, New Jersey.

April 17, 1935.

Hon. Clarence A. Southerland,  
Delaware Trust Building,  
Wilmington, Delaware.

Dear Mr. Southerland:

Reflecting upon our paragraph 7, as discussed yesterday, it occurred to me on the way home that the several Delaware companies, like duPont and the Ferry Company, and perhaps others, are neither "citizens" nor "inhabitants" of the state in the sense that those words were used in our draft, and since it is the intention not to interfere with them or others similarly situated, I suggest the following for the consideration of Mr. Green and yourself.

"7. This decree is made without prejudice to the rights of either state, or the rights of those claiming under either of said states, by virtue of the compact of 1905 between said states (35 Stat. L. Pt. 1, Ch. 394, p. 858)."

The words "by virtue of" are not intended to change the thought about the compact or the right, but merely to avoid a repetition of the word "under". However, I have no objection to repeating that word if you prefer.

Very truly yours,

DUANE E. MINARD

DE16270

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NJ vs DE BOUNDARY CASE  
1933 - 1935 & 1937 - 1938

BC455181

DE16271



April 29, 1935.

Clarence A. Southerland, Esq.,  
Delaware Trust Building  
Wilmington, Delaware

Re: New Jersey v. Delaware Boundary.

My dear Mr. Southerland:

I herewith return the enclosed draft relative to the boundary line between the States of New Jersey and Delaware.

The proposed draft meets with my approval.

I note that Par. 7 is in the redrafted form suggested by Mr. Minard, which meets with my approval, as I feel his reason for the correction to the present form is proper.

Very truly yours,

Attorney General.

FWG\*B  
ENCL.

DE16280

DE Public Archives

1560-000-023-001  
Atty Genl  
487800

Wilmington, Delaware,  
July 3, 1935.

Hon. Percy Warren Green, Attorney General,  
Wilmington, Delaware.

My dear Mr. Attorney General:

As Special Counsel for the State of Delaware in the suit of State of New Jersey v. State of Delaware, to determine the true boundary line between the States, which has just been terminated by decree of the Supreme Court of the United States, I submit the following report:

I. FILING OF THE SUIT AND  
REFERENCE TO SPECIAL MASTER.

On June 3, 1929, the State of New Jersey filed in the Supreme Court of the United States a bill of complaint against the State of Delaware (No. 19 Original, October Term, 1929). The bill of complaint alleged that the State of New Jersey claimed title to the subaqueous soil of the Delaware River and Bay lying between the States, to the center line of the main ship channel or thalweg of the Delaware River and Bay; and that a dispute had existed between the two States over the boundary line and the territorial ownership of the bed of the river and bay for many years but had never been settled. The bill prayed, inter alia, that the State of Delaware answer the bill and that the true boundary between the States be determined by the court.

The bill of complaint thus presented a controversy between two of the States, of which the Supreme Court, by Article III, Section 2, of the Constitution of the United States, has original jurisdiction.

Upon the filing of the bill the Supreme Court ordered

DE27354

process to issue, returnable July 1, 1929 (279 U.S.825).

On October 7, 1929, the then Attorney General of the State of Delaware, Hon. Reuben Satterthwaite, Jr., filed the answer of the State of Delaware, which answer averred that the State of Delaware had title to all of the subaqueous soil of the Delaware River within a circle of twelve miles from the Town of New Castle, and also had title to that portion of the subaqueous soil of the Delaware River and Bay lying south of the circle to the geographical or center line of the river and bay.

On December 9, 1929, the State of New Jersey, by its then Attorney General, Hon. William H. Stevens, and its then Assistant Attorney General, Hon. Duane E. Minard, together with Walter C. Bacon, Esq., counsel, filed in the Supreme Court a motion for the appointment of a Special Master to take testimony and file findings in the cause.

On January 6, 1930, the court appointed William L. Rawls, Esq., of the City of Baltimore, State of Maryland, Special Master in the cause, with power to summon witnesses, issue subpoenas and take testimony. The Special Master was directed to make findings of fact and conclusions of law and submit the same to the court, together with recommendations for a decree.

On March 25, 1930, the undersigned was retained by Attorney General Satterthwaite as Special Counsel in the case. By the Act of the General Assembly, approved February 11, 1929 (Vol. 36 Laws of Del., Chap. 277), the Attorney General had been authorized and directed to take such steps as he deemed necessary to bring the matter of the boundary dispute before the proper court for the purpose of protecting the rights of the State of Delaware in the disputed area of the Delaware River and Bay.

## II. PREPARATION AND TRIAL OF CASE.

Following the retaining of the undersigned as special counsel in the case, work was begun toward preparing the case for trial.

The Attorney General and special counsel were aided in this work by the record of the testimony and exhibits in the prior suit between the States, which was filed in the Supreme Court of the United States by the State of New Jersey in 1877. The suit filed in 1877 was allowed to rest, without any action, for many years, but finally an answer was filed by the State of Delaware and the issues referred to a Master. Much documentary evidence was collected at that time and was presented to the Special Master during the years 1903 to 1905. A record of the testimony and exhibits was preserved and was available to counsel in the present case.

On June 8, 1931, the first hearing of the case took place at the Post Office Building in Philadelphia, Pa., before the Special Master. Following the conclusion of the hearing on June 8th, the Special Master, counsel representing the States, and others, made an inspection tour of the Delaware River and Bay in one of the New Jersey police boats.

The hearing was continued on June 11, June 15 and June 16. At the conclusion of the hearing on June 16, counsel for New Jersey indicated that they had practically completed the introduction of their prima facie case. Thereupon the hearing was adjourned, to meet at Wilmington, Delaware, on August 24, 1931.

The hearing was resumed on the date last mentioned and continued on August 25, August 26, and August 27. At the end of

the hearing on August 27, the defendant's counsel had concluded presentation of their prima facie case and the hearings were suspended to meet in Baltimore, Maryland, October 28 following. During the sessions in Delaware, on the afternoon of August 26, the Special Master, in company with counsel on both sides, visited the State Archives at Dover, where there was exhibited to the Master the document claimed by the State of Delaware to be the original patent from King Charles II. to the Duke of York for what is now the State of Delaware.

The hearing was not resumed in Baltimore, but by agreement of counsel was adjourned to take further testimony at Trenton, New Jersey, on December 21, 1931, at which time the State of New Jersey began the introduction of its rebuttal evidence. Hearings were continued on December 22 and December 23. At the conclusion of the hearing on December 23, the hearing was adjourned to meet at the Library of Congress at Washington on February 3 following, to facilitate the introduction into evidence by the State of New Jersey of copies of certain maps.

On February 3, 1932, a hearing was held before the Master in the Library of Congress, Washington, D.C., to take the testimony of Col. Lawrence Martin, the Chief of the Division of Maps of the Library of Congress.

The final hearing in the cause for the taking of testimony was held at Wilmington, Delaware, June 6, 1932, at which time the State of Delaware introduced its evidence in surrebuttal, and both sides closed their testimony.

By agreement the hearing was adjourned, to meet in Baltimore September 13, 1932, for presentation of briefs to the Master and argument of the case.

III. ARGUMENT AND SUBMISSION OF  
THE CASE AND DECISION

On September 12, 1933, the case was orally argued before the Special Master by Hon. Duane E. Minard for the State of New Jersey, and by the undersigned for the State of Delaware. At this hearing both sides submitted to the Master briefs and reply briefs, having exchanged their main briefs some time prior to the argument.

On October 9, 1933, the Special Master filed his report in the Supreme Court of the United States. His report sustained the claim of the State of Delaware to the subaqueous soil of the river within the so-called twelve mile circle, and sustained the claim of the State of New Jersey to the subaqueous soil of the lower river and bay to the center of the main ship channel.

Each State filed exceptions to the report of the Special Master in respect of those findings which were adverse to it.

Briefs were duly filed and the matter came on for argument before the Supreme Court of the United States on January 9, 1934, the case being then No. 13 Original, October Term, 1933.

On February 5, 1934, the opinion of the Supreme Court, written by Mr. Justice Cardozo, was filed. The opinion sustained the Master's findings in all respects.

IV. SETTLEMENT OF THE DECREE.

Following the entry of the Court's opinion, conferences were had between Mr. Minard, representing the State of New Jersey, and the undersigned, with a view to agreeing upon some proper method of surveying the boundary line as determined by the Court.

An agreement was reached that the line should be surveyed, marked and described by the United States Coast and Geodetic Survey, if the services of the Survey could be had for that purpose. Mr. Minard and the undersigned visited Washington, D.C., pursuant to an appointment with the Director of the Survey, and were able to arrange for the services of engineers of the Coast and Geodetic Survey for the purpose of surveying and marking the boundary line. The work was undertaken and was completed during the summer and early fall of 1934. In October of 1934 the Survey submitted to the representatives of both States a report of the marking of the boundary line, together with a description thereof.

Following the receipt of this report, counsel for the States had several interviews and considerable correspondence concerning the drafting of the decree. The Attorneys General of both States, with special counsel of both States, met twice in Trenton with a view to agreeing upon the terms of a decree. Although the decree presented some matters upon which it was difficult to reconcile the views of counsel, nevertheless an agreement was finally secured and on May 17, 1935, a stipulation was signed by the Attorneys General and special counsel of both States agreeing to the form of the decree. The decree was thereupon submitted to the Supreme Court of the United States and was entered on June 3, 1935.

With the entry of the decree the case is now finally terminated.



V. QUESTIONS PRESENTED AND SETTLED BY THE CASE.

The boundary dispute with the State of New Jersey presented two separate points of controversy, quite distinct in respect of facts and law. The first point of controversy concerned the title of the subaqueous soil of the Delaware River within the twelve mile circle from New Castle. This dispute had existed practically since statehood.

The second point of controversy concerned the title to the subaqueous soil of the lower river and bay, that is, that portion of the river and bay lying to the south of the southerly arc of the twelve mile circle. This dispute was of recent origin, having been provoked by conflicting claims of the licensed oystermen of the States to the natural oyster beds lying around Ship John Light in the Delaware Bay. This phase of the controversy broke out in 1927 and was the immediate cause of the present suit which has just been terminated.

The opinion and decree of the Supreme Court of the United States has settled the first question in favor of the State of Delaware, and the second in favor of the State of New Jersey. The effect of the decree is to adjudge to the State of Delaware title to all of the subaqueous soil of the river within a circle of twelve miles from New Castle up to mean low water mark on the New Jersey shore. The effect of the decree upon the other dispute is to adjudge to the State of New Jersey title to the subaqueous soil of the lower river and bay, up to the middle of the main ship channel, or rather to the line which has been agreed to by both States, constituting substantially the

center line of the channel. The entire boundary is delineated on the map annexed to the decree.

Attention should be invited to the fact that although the map annexed to the decree purports to show a definite boundary line, yet the decree is subject to review or alteration if it should later appear that by natural changes the boundary line shall have shifted. The terms of the decree thus recognize the applicability of the common law principle that if a water boundary changes through gradual erosion or gradual shifting of a channel, the boundary follows the shift; whereas if the change be sudden, as by avulsion, the boundary line remains unchanged.

Attention is also invited to the fact that one of the questions settled by the decree is the authenticity of the document in the State Archives at Dover, purporting to be the original patent of Charles II. to the Duke of York for the tract of land now constituting the State of Delaware. The authenticity of this document was challenged by the State of New Jersey during the trial of the case. Investigation made and evidence collected in England establish beyond doubt the genuineness of this document.

By the decree of the Supreme Court of the United States in this case, the State of Delaware has acquired title to all subaqueous land in the Delaware River, up to mean low water line on the New Jersey shore, including title to the subaqueous soil on which have been erected numerous valuable wharves on the New Jersey side of the river. A list of such structures, their extent, valuation, etc., is found in the record of the case. (See particularly Exhibits 58-93, 94-97, 130.) The title so acquired is presumably subject to the provisions of the Compact of 1905 between the States, hereinafter discussed.

Your attention is further invited to the fact that these

wharves, although (presumably) always subject to taxation as real estate within the State of Delaware, have never actually been so taxed. By a statute passed at the last session of the General Assembly and approved by the Governor, the boundaries of the several hundreds in New Castle County affected by the decision are enlarged to include the subaqueous soil of the Delaware River to low water mark on the New Jersey shore. My understanding is that the amendment carries with it some qualification of the right of New Castle County to levy taxes on the structures involved, but I have not been furnished with a copy of the Act and am merely calling this to your attention in connection with any action to be taken by the State or County looking to the taxation of these structures.

VI. QUESTIONS NOT SETTLED BY THE DECREE.

Reference has been made above to the first suit between the States filed by the State of New Jersey in 1877. After hearings had been had in this case and much testimony and many exhibits introduced, the States entered into a compact which had the effect of settling certain questions theretofore in dispute. This compact was approved by the State of Delaware on March 20, 1905, and formally entered into by the Delaware commissioners on March 21, 1905. (See Vol. 23 Laws of Del., Chap.5 and Appendix). The compact was also duly ratified by the State of New Jersey and was approved by Congress. (34 Stat. L. Pt. 1, Ch.394, p.858.)

The compact, to which your particular attention is invited, gave to New Jersey the right to serve criminal and civil process on the Delaware River to low water mark on the Delaware shore; and granted to the inhabitants of both States the common right of fishery in the waters of the river.

Article VII. of the compact provides as follows:

"Article VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States."

The meaning of this clause of the compact is far from clear. It is contended by the State of New Jersey that by this compact the State of Delaware recognized the right of the State of New Jersey to make actual grants or cessions of subaqueous soil in the river. This indeed has been the practice of the State of New Jersey for some years. Thus, for example, on October 17, 1921, the Board of Commerce and Navigation conveyed to French's Hotel Company, a New Jersey corporation, a certain tract of land "now or formerly flowed by tidewater, beginning at a point in high water line on the easterly shore of the Delaware River and in running about 1200 feet into the river to the pier head or bulkhead line established in 1916 by the Board of Commerce and Navigation". Many other such grants appear in the record.

I am not familiar with the exact nature of the contentions that will be made by the State of New Jersey with respect to the proper construction of the compact of 1905, but I would point out to you that there will obviously be a difference of opinion between the States on the proper construction of this compact. It will undoubtedly be contended by the State of New Jersey that the compact in some way recognized the exclusive

control of the State of New Jersey (presumably including the right to tax structures erected thereon) over the subaqueous soil covered by the grants so made. In any event, it will certainly be contended by the State of New Jersey that the compact amounts at least to a cession of jurisdiction over riparian matters, including the right to determine under what conditions wharves shall be erected or other riparian rights exercised by the owner of the upland or by others.

Presumably the State of Delaware will be justified in contending that the compact does nothing more than recognize what had already been recognized by the State of Delaware, namely, the right of owners of the upland on the New Jersey shore to wharf out to deep water, and that, in any event, the compact cannot be construed as doing more than ceding to New Jersey a certain limited amount of jurisdiction over riparian matters, and that the right to tax was not so ceded.

In this connection attention is invited to the following finding of fact of the Special Master (printed report p.77, finding No. 23):

"23. By the Compact of 1905 between the States of New Jersey and Delaware the State of Delaware recognized the rights of riparian owners to wharf out on the easterly side of the Delaware River within the twelve-mile circle. By said Compact the State of Delaware did not convey to the State of New Jersey title to any part of the Delaware River or to any part of the subaqueous soil thereof, and said Compact did not in anywise alter or affect the boundaries of the respective states."

Since all exceptions to the Master's findings were overruled, and his report was duly confirmed (Par. No. 1 of the decree of the Supreme Court), the State of Delaware may justifiably take the position that to a limited extent, at least, the construction of the Compact contended for by it has been recognized by the Master and approved by the Supreme Court.

In the argument submitted to the Supreme Court the State of New Jersey contended that the Compact of 1905 had in some way transferred title to New Jersey to certain of the subaqueous soil within the twelve-mile circle adjacent to the New Jersey shore. This contention was overruled by the Supreme Court in the following language:

"The complainant builds another argument upon a compact with the defendant which was ratified by the parties in March, 1905, and approved by Congress in January of that year. 34 Stat. c. 394, p. 858. We are told that by this compact the controversy was set at rest and the claim of Delaware abandoned. It is an argument wholly without force. The compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect of civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go. 'Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.'"

It is to be noted that the opinion of the Supreme Court uses the phrase "enjoyment of riparian rights", which is very far from recognizing any claim of the State of New Jersey to tax the wharf structures erected on subaqueous soil below low water mark.

Attention is also invited to the fact that if the right of the State of Delaware to tax these wharves is finally recognized, it may and probably will carry with it the obligation to police the wharves and generally protect the wharf property on Delaware soil.

VII. DISPOSITION OF DOCUMENTS  
ASSEMBLED IN CONNECTION WITH  
THE CASE.

During the progress of the suit a large quantity of documents, copies of documents, maps, etc., came into the custody of counsel for the State of Delaware in connection with the preparation of the case for trial. The issues presented by the second point in controversy, namely, the title to the subaqueous soil in the lower river and bay, were very simple. They depended chiefly on the physical conditions of the river and bay and little evidence could be adduced except maps showing such conditions.

The first issue in the case, however, namely, the title to the river within the twelve mile circle, involved historical research and investigation extending back to the Dutch period, i. e., at least as early as 1631. After the challenge made by New Jersey to the authenticity of the patent of Charles II. to the Duke of York, above referred to, Messrs. Taylor & Humbert, solicitors, of Gray's Inn, London, were employed on behalf of the State of Delaware, and authorized to retain such counsel and employ such clerical assistance as might be necessary to prosecute the investigation in London. Messrs. George N. Davis and Dudley C. Lunt, of the Delaware bar, were also retained and spent some time in London prosecuting these researches. As result of this work a great deal of material was collected. The greater part of it was actually introduced into evidence in the case.

There is submitted herewith, as Exhibit 1 to this report, a calendar of the papers procured in England in connec-

tion with the case, the calendar having been prepared, under the direction of the undersigned, by Mr. Dudley C. Lunt.

There is also submitted, as Exhibit 2, a list of the other documents, books, papers, maps, etc., which were assembled in the preparation of the case and are now in the custody of the undersigned as special counsel.

Particular attention is invited to the fact that there are available for distribution two complete sets of the entire record, including the pleadings, the testimony, all of the exhibits in the case, all of the briefs, the oral argument before the Master, requests for findings of fact and conclusions of law, exceptions to the Master's report, briefs in the Supreme Court of the United States, the opinion of the Court and the final decree. This record has undoubtedly some historical value and the two remaining complete copies, it is suggested, should be lodged with some representative public institutions in the State. Your instructions are requested as to the disposition of these two copies of the record.

Instructions are also requested as to the disposition of all the rest of the papers, documents, etc., enumerated in the calendar and the list above referred to.

In conclusion, I submit herewith a statement for services rendered the State of Delaware as special counsel in this case. An appropriation of \$25,000. for the payment of the costs and expenses of the boundary suit was made by Act of the General Assembly approved April 19, 1934 (Vol. 39, Del.L., Ch.3), as amended by the Act approved April 12, 1935.

In connection with this statement I desire to point out the following:

The period of time covered by my employment in the case is somewhat over five years. My work on the case started as

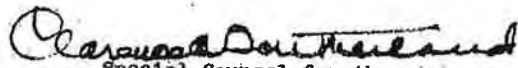


soon as I was retained (March 25, 1930), and has been continued from time to time down to the present. During the first three years of the pendency of the suit, a substantial proportion of my time was devoted to this case. The work was arduous and exacting. Every exhibit introduced into evidence by the defendant was prepared under my direction and was actually read, classified and digested, and its relationship to the case determined. In all there were introduced on behalf of the State of Delaware 264 exhibits, most of which were printed documents.

In addition to the Delaware exhibits, all of the New Jersey exhibits, 682 in all, had to be carefully read, examined, classified and digested, and their relationship to the main features of the case determined. In this connection your attention is invited to the "Outline of Exhibits and Testimony" annexed to the briefs of the State of Delaware before the Master and the Supreme Court, and to the briefs filed by both parties before the Special Master and the Supreme Court, which will give some idea of the amount and extent of the work performed in the preparation and trial of this case.

By agreement with Hon. Reuben Satterthwaite, Jr., Attorney General of the State prior to 1933, in association with whom most of the work was performed, the fee of special counsel in this case was fixed at \$25,000. Mr. Satterthwaite was at all times familiar with the nature and extent of the work done and the services performed in this case, and I feel that his approval of the fee is a circumstance which is entitled to much weight. I accordingly trust that the bill submitted will receive your approval.

Respectfully submitted,

  
Special Counsel for the  
State of Delaware.

DE27368

Exhibit 1

CALENDAR OF PAPERS

Procured in England

IN RE

NEW JERSEY & DELAWARE

(Boundary Suit)

DE27369

# The State of Delaware

Office of the Attorney General

December 27, 1938.

Hon. Richard C. McMullen,  
Governor of the State of Delaware,  
Dover, Delaware.

My dear Governor:

The Clerk of the U. S. Supreme Court has informed me that the U. S. Supreme Court on December 19th. denied the second petition of the State of New Jersey to reopen its decree made in the Delaware-New Jersey boundary case and therefore the easterly boundary of the State of Delaware is that as passed upon by the U. S. Supreme Court in its final decree, viz, mean low water mark of the Delaware River within the twelve mile circle and the center of the main ship channel to the south thereof. You will note that after the final decree entered in this boundary case by the Supreme Court that two petitions have been filed by the State of New Jersey in the hope to have the main ship channel within the twelve mile circle declared as the easterly boundary of the State of Delaware, but the State of Delaware has been successful in persuading the Supreme Court that both of these petitions do not present any new matter that would justify the Court in reopening its final decree. As New Jersey has been unsuccessful in its attempt on these two occasions, I feel that it can be reasonably assumed that New Jersey has exhausted every effort it can put forth and therefore the easterly boundary line is as decreed.

It is my understanding that the reason for the determined effort by the State of New Jersey to have the main ship channel within the twelve mile circle established as the easterly boundary of the State of Delaware is because valuable property rights extend into the Delaware River from the New Jersey shore, especially in the nature of piers, which in New Jersey are assessed and taxed for school purposes.

Up to the present time these properties have not been taxed by the State of Delaware, New Castle County or the City of Wilmington, and I am calling these facts to your attention for whatever action you deem proper, for as you know, I am now leaving the office of the Attorney General.

DE04483

# The State of Delaware

Office of the Attorney General

By Chapter 179 of 40 Delaware laws, p. 664, the boundaries of the City of Wilmington were redefined and inter alia, were projected over to the low water mark upon the e-westerly side of the Delaware River. The Act provides that all real estate included therein "shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City". There was however added to this provision the following exception:

" \* \* \* except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled 'New Jersey v. Delaware', reported in 291 U.S. 361. The word 'determination' as herein used may refer either to agreement between the said States or to a final Court adjudication."

Chapter 16 of the same volume 40 at page 13 similarly defines the boundaries of Brandywine, New Castle, Red Lion and St. George's Hundreds with a similar exception against taxation as to the property held to belong to the State of Delaware under the said decision of the U. S. Supreme Court.

At the same session of the Legislature by Chapter 119 of Vol. 40, page 412, a Delaware-New Jersey Boundary Commission was provided for, by which the Governor was authorized to appoint, as Commissioners on the part of this State, the Attorney General of the State and the Special Counsel authorized by Chapter 277 of 36 Delaware Laws, with the power and authority of the Commissioners "to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River." Pursuant to this provision you appointed former Attorney General Clarence A. Southerland and myself as Commissioners for Delaware, and although much work was done it was impossible to come to any final determination, and as provided by the Act we made a report before the convening of the General Assembly in 1927 and suggested that this Commission be recreated but such was not done. However Mr. Southerland and I continued to act as Commissioners, although we had some doubts as to our authority so to do, but were unable to make any headway because of the pending petitions of the State of New Jersey to reopen the U. S. Supreme Court decree.

DE04484

**The State of Delaware**  
**Office of the Attorney General**

2.

In view of these facts I feel that your attention and the attention of the City of Wilmington and New Castle County should be called to these matters for whatever action the respective authorities feel should be taken relative to the asserting of our determined ownership over to the New Jersey shore. You and the other authorities may feel sure of the cooperation of Mr. Southerland and myself at any time if you feel we can be of any assistance to you in the premises.

I am sending a copy of this letter to the Mayor of the City of Wilmington and the Levy Court of New Castle County because of their interest in this matter.

Most respectfully yours,

Attorney General.

PWG:b  
c.c. to Mayor of the City of Wilmington.  
c.c. to Levy Court of New Castle County.

DE04485

DE Public Archives

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Attorney General Gen. Admin. Files  
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CHAPTER 119

DELAWARE-NEW JERSEY BOUNDARY COMMISSION

AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO MEET COMMISSIONERS OF THE STATE OF NEW JERSEY IN RELATION TO THE BOUNDARY AND JOINT DUTIES IN THE DELAWARE RIVER BETWEEN THE STATE OF DELAWARE AND THE STATE OF NEW JERSEY.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. That the Governor be and he is hereby authorized and empowered, if in his judgment deemed advisable, to appoint as Commissioners on the part of this State (and to fill any vacancies that may occur) to meet with the Commissioners, if and when appointed by competent authority of the State of New Jersey, the Attorney General of this State and the Counsel of the State of Delaware acting under the provisions of Chapter 277, Volume 36, Laws of Delaware.

The Commissioners so appointed on behalf of this State shall have full power and authority to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report to the next General Assembly as to their deliberations, and at the same time submit a draft of such legislation, if any, as may be necessary to carry such report into effect.

Section 2. That any agreement so made by the Commissioners shall not be binding on the State of Delaware until ratified and confirmed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, respectively, and consented to by the Congress of the United States.

Section 3. That so much of the money appropriated by the provisions of Chapter 3, Volume 39, Laws of Delaware, to pay the



## DELAWARE-NEW JERSEY BOUNDARY COMMISSION

costs and expenses incident to the suit of the State of New Jersey against the State of Delaware to determine the boundary between the States as shall not be required for the payment of such costs and expenses is hereby appropriated for the purpose of defraying the necessary expenses of said Commissioners incurred in the performance of their duties, and the said appropriation so made in said Chapter 3, Volume 39, Laws of Delaware, shall continue in force, both for the purpose of paying the costs and expenses incident to said boundary suit and for the purpose of defraying the necessary expenses of said Commissioners, until January 1, 1937.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey a copy of this Act, and request him to communicate to the Legislature of that State.

Approved April 12, 1935.

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Volume  
Page

40 De. Laws  
1935

DE00007



*Handwritten note:*  
4/16/35  
State Dept.



STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

April 16,  
1935.

My dear Governor Buck:

I am enclosing herewith  
three certified copies of Chapter 60, P.L.1935,  
(Senate Bill No. 153.)

As you will note, this is  
"An act concerning boundary and jurisdiction in  
Delaware river between this State and the State of  
Delaware," and provides for the appointment of  
three commissioners for the State of New Jersey  
to meet commissioners if and when appointed by  
the competent authority of the State of Delaware;  
the commissioners to have power and authority to  
conclude an agreement between the States of New Jersey  
and Delaware respecting taxation, civil and criminal  
jurisdiction, and any other questions relating to  
boundary and jurisdiction of this State and of the  
State of Delaware in the Delaware river.

By the terms of this act I am  
directed to transmit to the Governor of Delaware a copy  
of this act, and request that the Governor communicate  
it to the Legislature of that State.

May I ask that you be good enough  
to so transmit this act to your Legislature.

With best wishes, I am,

Sincerely yours,  
*Handwritten signature of Harold G. Queen*  
Governor.

Hon. C. Douglas Buck,  
Governor of Delaware,  
Dover, Delaware.

HGH:S

CHAPTER 160 LAWS OF 1985.  
CERTIFIED COPY

OF

An Act concerning boundary  
and jurisdiction in Delaware  
river between this State and  
the State of Delaware.



Chapter 160, Laws of 1935.

~~[SECOND OFFICIAL COPY REPRINT]~~

~~SENATE, No. 153~~

# STATE OF NEW JERSEY

~~INTRODUCED JANUARY 23, 1935~~

~~By Mr. LEAP~~

~~Referred to Committee on Federal and Interstate Relations~~

AN Act concerning boundary and jurisdiction in Delaware river between this State and the State of Delaware.

1 BE IT ENACTED by the Senate and General Assembly of the State of New  
2 Jersey:

1 1. The Governor be and he hereby is authorized, empowered and directed  
2 to appoint three commissioners on the part of this State (and to fill  
3 vacancies that may occur), to meet commissioners if and when appointed by  
4 the competent authority of the State of Delaware; and the commissioners  
5 so appointed on behalf of this State, or a majority of them, shall have full  
6 power and authority to make and conclude an agreement between the said  
7 States of New Jersey and Delaware, respecting taxation, civil and criminal  
8 jurisdiction, and any other questions relating to boundary and jurisdiction  
9 of this State and of the State of Delaware in Delaware river. Said com-  
10 missioners shall report at the present or some subsequent session of the  
11 Legislature, and at the same time submit a draft of such legislation, if any,  
12 as may be necessary to carry such report into effect.

1 2. Any agreement so made by the commissioners shall not be binding  
2 on the State of New Jersey until ratified and confirmed by the Legislatures  
3 of the States of New Jersey and Delaware, respectively, and consented to  
4 by Congress.

1 3. There is hereby appropriated out of any moneys in the treasury of  
2 the State not otherwise appropriated, the sum of one thousand dollars

3 (\$1,000.00) to defray the necessary expenses of the commissioners while  
4 engaged in this mission, and to make such reasonable compensation to the  
5 commissioners for their services as shall be ascertained and allowed by the  
6 Governor. Said appropriation shall be immediately available upon the  
7 approval of this act, and shall continue in force until said commissioners  
8 have been discharged by the Legislature. Said expenses shall be paid by the  
9 State Treasurer from time to time on vouchers signed and submitted by the  
10 commissioners, and said compensation for the services of the commissioners  
11 shall be paid by the State Treasurer on vouchers signed and submitted by  
12 the Governor.

1 4. That the Governor of this State shall transmit to the Governor of  
2 the State of Delaware a copy of this act, and request him to communicate  
3 it to the Legislature of that State.

1 5. This act shall take effect immediately.

Approved April 15, 1935.

# State of New Jersey



## Department of State

I, Thomas A. Mathis, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the Governor, the fifteenth day of April A.D. 1935.

as taken from and compared with the original now on file in my office

In Testimony Whereof, I have herewith set my hand, and affixed my Official Seal at Trenton, this seventeenth day of April one thousand nine hundred thirty-five.

*Thomas A. Mathis*  
Secretary of State.





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Volume Page

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Governors Office  
Governors Papers

1935

C-E

Delaware - New Jersey Boundary Comm.



NEW JERSEY SENATE

S. RUSLING LEAP  
SENATOR, SALEM COUNTY  
WOODSTOWN, N.J.

710 Federal Street,  
Camden, New Jersey,  
February 7th, 1935.

Hon. P. Warren Green,  
Attorney General of  
the State of Delaware,  
Wilmington, Delaware.

Dear Attorney General:-

I am enclosing herewith a copy of a bill which I have recently introduced in the New Jersey Legislature for the purpose outlined in the Bill.

This Bill was prepared by Duane Minard, Assistant Attorney General, and it is our thought that it would be well to have a similar bill passed by the State of Delaware and appoint the Commissioners and see if we cannot iron out the difficulties that are now existing.

Yours very truly,

*S. R. Leap*  
S.

L/FH

DE Public Archives

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February 8, 1935.

Clarence A. Southerland, Esq.,  
Delaware Trust Building,  
Wilmington, Delaware.

Re: Boundary between New Jersey  
and Delaware.

Dear Clarence:

I am in receipt this day of a letter from Senator S. Rusling Leap, which is accompanied by a copy of a Bill which he introduced in the New Jersey Legislature, the substance of which is providing for a joint Commission to make and include an agreement between the two States respecting taxation, civil and criminal jurisdiction, and any other question relating to the boundary and jurisdiction between New Jersey and Delaware.

You will note that the Bill provides for three Commissioners and an appropriation of \$10,000.00.

In the letter Senator Leap states that the Bill was prepared by Duane Minard, Assistant Attorney General, and that it is their thought to have a similar Bill passed by the State of Delaware and to appoint Commissioners "and see if we cannot iron out the difficulties that are now existing".

I have acknowledged receipt of the letter from Senator Leap and stated that I would communicate with him later.

Will you kindly advise me whether you think it is advisable that a Commission should be appointed by the State of Delaware for the purpose of conferring with a similar Commission acting on behalf of New Jersey.

In my letter to Senator Leap I informed him that if it is decided that a Commission should be appointed, that I am most sure that the State of Delaware would not authorize any such sum of money as it is proposed in the New Jersey Bill to defray expenses of the New Jersey Commission.

DE16256

Page 2.

I am sending the copy of the Bill for your  
consideration.

Yours very truly,

Attorney General.

FGG\*B  
ENCL.

DE16257

DE Public Archives

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ANY Gen

487800



NEW JERSEY SENATE

S. RUSLING LEAP  
SENATOR, SALEM COUNTY  
WOODSTOWN, N. J.

710 Federal Street,  
Camden, New Jersey,  
February 11th, 1935.

Hon. P. Warren Green,  
Attorney General,  
Wilmington, Del.

Dear Attorney General:-

First as to the question of expense, I do not see where there will be any real necessity for any expense other than possibly traveling expenses. I can amend the Bill that I have introduced appropriating \$2,000.00 and possibly Delaware would be willing to do the same. It does not mean that very much of that money, even at that, would be used.

I was reading in the paper about the two Bills providing that the jurisdiction of the City of Wilmington should extend to low water mark and also providing for a conveyance to the City of Wilmington. From the standpoint of riparian rights I am rather inclined to believe that these Bills may be necessary by reason of the fact that the City of Wilmington has charge of all riparian rights within their limits and from what I can learn of your laws in Delaware the riparian rights in State property, other than that heretofore vested in the City of Wilmington, can only be transferred or conveyed by an Act of the Legislature.

There has been another Bill introduced in the Legislature providing for an authority to be constituted by Delaware and New Jersey with the idea of constructing a tunnel from Deep Water Point to Wilmington and this may also enter into the discussion between the Commissioners.

Yours very truly,

*S. R. Leap*  
S.

L/FH

DE Public Archives

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Atty Genl

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S. RUSLING LEAP  
SENATOR, SALEM COUNTY  
WOODSTOWN, N.J.

NEW JERSEY SENATE

710 Federal Street,  
Camden, New Jersey,  
March 1st, 1935.

Hon. P. Warren Green,  
Attorney General,  
Wilmington, Del.

Dear Attorney General:-

I acknowledge your letter of the 20th instant and am very much pleased with the form of the Bill that you have introduced.

Our Bill has already passed the Senate and we are arranging to cut our appropriation down to \$2500 when the Bill comes up in the House. I will advise you just as soon as it is passed and will appreciate it if you will do everything within your power to secure the passage of your Bill in Delaware.

Yours very truly,

*S. R. Leap*  
J.

L/FH



S. RUSLING LEAP  
SENATOR, SALEM COUNTY  
WOODSTOWN, N. J.

NEW JERSEY SENATE

710 Federal Street,  
Camden, New Jersey,  
April 5th, 1935.

Hon. P. Warren Green,  
Attorney General,  
Wilmington, Del.

Dear Attorney General:-

Be glad to advise that the New Jersey Legislature has passed the Bill providing for the appointment of the Commission to adjust the tax and boundary matters between New Jersey and Delaware. The only change in the Bill as passed was a reduction in the amount of the Bill from \$10,000 to \$1,000. The Governor will sign this Bill within the course of a few days.

I will appreciate if you will advise as to the progress being made with the Bill in Delaware and as soon as it has become a law in Delaware I will arrange for the Governor in New Jersey to make his appointments to the Commission.

Yours very truly,

*S. R. Leap*

L:FH

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Volume

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Boundary...  
folder 5

A. J. [unclear]

April 6, 1935.

Hon. S. Kusling Leap  
710 Federal Street  
Camden, New Jersey

Dear Senator Leap:

On the closing day of our Legislature the Bill providing for the appointment of a Commission to meet with a like Commission of your State, to consider matters growing out of the boundary decision, was passed, and there is no question that it will be duly approved by the Governor.

As soon as I receive a copy thereof I will have a copy sent to the Governor of your State and also to you.

The Bill as passed was changed in minor details from the Bill I introduced, which was the one you sent me, the change was that the persons heretofore engaged in the boundary question should be members of the Commission along with the Attorney General, and that the balance of the money appropriated to the old boundary Commission was made available for this new use.

Yours very truly,

Attorney General.

PWG\*B

1520 - 000 - 023 - 001  
ATY Gen'l  
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## CHAPTER 179

## WILMINGTON

AN ACT RELATING TO THE BOUNDARIES OF THE MAYOR  
AND COUNCIL OF WILMINGTON.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of each Branch thereof concurring therein):*

Section 1. That Section 1 of Chapter 207, Volume 17, Laws of Delaware, approved April 13, A. D. 1883, and all Acts amendatory thereof or supplemental thereto, be and the same are hereby further amended by striking out said Section and inserting in lieu thereof the following:

Section 1. The City of Wilmington shall be bounded as follows:

BEGINNING at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a distance of 3200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between Thirtieth and Thirty-sixth Streets) through a point 77 feet northeasterly from the center line of Thirty-sixth Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly

## WILMINGTON

from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Talley Road, thence northwesterly along the center line of said Talley Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the City of Wilmington; thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast

## WILMINGTON

of Broom Street; thence westerly at right angles to Concord Avenue and along the present City boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of duPont Road; thence southerly along the center line of duPont Road 2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present City boundary line; thence southerly along the present City boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly continuing along the present City boundary line 2200 feet more or less to the center line of the right of way of the main



## WILMINGTON

line of the Pennsylvania Railroad; thence northeasterly along said right of way center line and along the present City boundary line about 2900 feet to the westerly side of Beech Street extended, as the latter is laid out southerly from and at right angles to Maryland Avenue; thence southerly along the said side of Beech Street extended and along the present City boundary line 2800 feet more or less to a point distant 450 feet southwesterly from the southwesterly side of "F" Street measured at right angles thereto; thence southeasterly parallel to "F" Street 7800 feet more or less to the southeasterly side of the right of way of the New Castle Branch of the P. B. & W. Railroad; thence in a southeasterly direction along the said right of way of the New Castle Branch of the P. B. & W. Railroad to its intersection with the northerly side of the right of way of the P. & R. Railroad; thence south 37 degrees 28 minutes east along the said northerly side of the right of way of the P. & R. Railroad (as the latter is established upon its plans between Stations 155 and 160) and continuing thence south 37 degrees 28 minutes east across the Delaware River to low water mark upon the easterly side of the Delaware River; thence northeasterly along the said low water line of the easterly side of the Delaware River to a point due east of the monument first mentioned upon the westerly bank of the said river; thence due westerly and re-crossing the Delaware River to the monument at the place of BEGINNING.

Within the limits of the territory by this Act included within and made part of the City of Wilmington, The Mayor and Council of Wilmington shall be and is hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the City of Wilmington, as heretofore existing, and not locally inapplicable, shall be extended and applied to the territory comprised within the boundaries as set forth herein.

The real estate by this Act added to and included within the boundaries of the City of Wilmington, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to

## WILMINGTON

the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware", reported in 291 U. S. 361. The word "determination" as herein used may refer either to agreement between the said States or to a final Court adjudication.

Approved April 11, 1935.

HOUSE SUBSTITUTE FOR HOUSE BILL NO. 164.

AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO MEET COMMISSIONERS OF THE STATE OF NEW JERSEY IN RELATION TO THE BOUNDARY AND JOINT DUTIES IN THE DELAWARE RIVER BETWEEN THE STATE OF DELAWARE AND THE STATE OF NEW JERSEY.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF DELAWARE IN GENERAL ASSEMBLY MET:

Section 1. That the Governor be and he is hereby authorized and empowered, if in his judgment deemed advisable, to appoint as Commissioners on the part of this State (and to fill any vacancies that may occur) to meet with the Commissioners, if and when appointed by competent authority of the State of New Jersey, the Attorney General of this State and the Counsel of the State of Delaware acting under the provisions of Chapter 277, Volume 36, Laws of Delaware.

The Commissioners so appointed on behalf of this State shall have full power and authority to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River. Said Commissioners shall report to the next General Assembly as to their deliberations, and at the same time submit a draft of such legislation, if any, as may be necessary to carry such report into effect.

Section 2. That any agreement so made by the Commissioners shall not be binding on the State of Delaware until ratified and confirmed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, respectively, and consented to by the Congress of the United States.

Section 3. That so much of the money appropriated by the provisions of Chapter 3, Volume 29, Laws of Delaware, to pay the costs and expenses incident to the suit of the State of New Jersey against the State of Delaware to determine the boundary between the States as shall not be required for the payment of such costs and expenses is hereby appropriated for the purpose of defraying the necessary expenses of said Commissioners incurred in the performance of their duties, and the said appropriation so made in said Chapter 3, Volume 29, Laws of Delaware, shall continue in force, both for the purpose of paying the costs and expenses incident to said boundary suit and for the purpose of defraying the necessary expenses of said Commissioners, until January 1, 1887.

Section 4. That the Governor of this State shall transmit to the Governor of the State of New Jersey a copy of this Act, and request him to communicate to the Legislature of that State.

Harry W. Lyons, Speaker of the House

Roy F. Corley, President of the Senate

Approved April 12, 1885 +

C. D. Buck - Governor.

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Volume	Page
1560-000-023-001	
NJ vs DE	
Boundary Case	
Folder #2	

DE21272

April 24, 1935

Mr. Robert H. Richards,  
Du Pont Building,  
Wilmington, Del.

My dear Mr. Richards:

I enclose a copy of "An Act Providing for the Appointment of Commissioners to meet Commissioners of the State of New Jersey in Relation to the Boundary and Joint Duties in the Delaware River between the State of Delaware and the State of New Jersey". It would appear to me that this legislation, when it was prepared was somewhat carelessly drawn. However, in the event a commission can be named under Section 1, I wish to ask if you would serve with Clarence Southerland and the Attorney General as a commission of three.

Very truly yours,

Governor.

bas

DE Public Archives

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Gov. Papers  
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S. RUSLING LEAP  
SENATOR, SALEM COUNTY  
WOODSTOWN, N. J.

NEW JERSEY SENATE

710 Federal Street,  
Camden, New Jersey,  
May 17th, 1935.

Hon. P. Warren Green,  
Attorney General,  
Wilmington, Del.

Dear Attorney General:-

I would appreciate it if you would advise me as to the names of the persons appointed on the Commission by the Governor of the State of Delaware in reference to the New Jersey boundary situation. I would also like to have their addresses in order that the members of our Commission may make their contacts.

The Governor of New Jersey has appointed the Honorable William Chew of Salem, Thomas G. Hilliard, Esquire, of Salem and John M. Summerill, Jr., Esquire of Penns Grove.

Yours very truly,

*S. R. Leap*

L:FH



1560-000-023-001  
AM Gen 1  
487800

May 18, 1935.

Hon. S. Rusling Leap,  
Woodstown, New Jersey.

Dear Senator Leap:

I have not been advised that the Governor has yet appointed members of the Delaware - New Jersey Boundary Commission, and the first opportunity I have I will call the Governor's attention to this matter.

Yours very truly,

Attorney General.

PHQ\*B

DE Public Archives

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The State of Delaware  
Office of the Attorney General

June 10, 1935.

Hon. C. Douglass Buck,  
Governor of the State of Delaware,  
Dover, Delaware.

My dear Governor:

May I call your attention to the provisions of House Substitute for House Bill No. 184, being an Act for the appointment of Commissioners on behalf of this State, to meet Commissioners of the State of New Jersey in relation to the boundary and joint duties in the Delaware river.

This Act was approved by you on ~~April 22, 1935~~, and provides that you are authorized, if you deem it advisable, to appoint as Commissioners on behalf of the State of Delaware to meet Commissioners appointed by the State of New Jersey, the Attorney General of this State and counsel for the State of Delaware acting under the provisions of Chapter 277, Vol. 36, Laws of Delaware. This latter law provided for special counsel relative to the boundary dispute, and the former Attorney General, Clarence A. Southerland, has acted as such special counsel.

On May 17th. Senator S. Rusling Leap, who is particularly interested in this matter, informed me that the Governor of New Jersey has appointed William Chew of Salem, Thomas G. Hilliard of Salem and John M. Summerill, Jr. of Pennsgrove, as the Commission for the State of New Jersey.

I have had several letters from Senator Leap and also from John W. Woelfle, Secretary of the Commission on Inter-State Cooperation, relative to this Commission, and may I therefore suggest to you that if you deem it advisable that you should appoint this Commission, in order that we may begin our work with the State of New Jersey.

As provided by the Act, former Attorney General Clarence A. Southerland and myself are the persons set forth in the Act that you should appoint, if you deem such a Commission desirable.

Yours very truly,

*Clarence A. Southerland*  
Attorney General.

PwG\*B  
C.C. to Equit. Tr. Co.

DE Public Archives

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AM Gen'l  
487800

CLARENCE A. SOUTHERLAND  
JAMES H. HUGHES, JR.  
E. SNALLS BERL  
HERBERT H. WARD, JR.  
WILLIAM S. POTTER  
PAUL LEAHY  
SYBIL U. WARD  
DAVID F. ANDERSON  
GEO. GRAY THOURON

LAW OFFICES  
**WARD & GRAY**  
DELAWARE TRUST BUILDING  
WILMINGTON, DELAWARE  
TELEPHONE-WILMINGTON 5277

GEORGE GRAY  
1883-1899, 1914-1925  
HERBERT H. WARD  
1888-1927  
ANDREW C. GRAY  
1895-1929

July 8, 1935.

Hon. C. Douglass Buck,  
Dover, Delaware.

My dear Governor:

I have your letter of July 6th and shall be  
glad to serve on the commission to consider the matter  
of the Delaware-New Jersey boundary.

Very truly yours,

CAS:O.



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Gov Papers  
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July 11, 1935.

Honorable P. W. Green,  
Attorney General,  
Wilmington, Delaware.

Dear Mr. Green:

In accordance with the directions  
of Governor Buck, I enclose herewith your  
certificate of appointment as a member of  
the Delaware-New Jersey Boundary Commission.

Very truly yours,

to

Secretary to the Governor.



DE Public Archives

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CLARENCE A. SOUTHERLAND  
JAMES H. HUGHES, JR.  
E. ENNALLS BERL  
HERBERT H. WARD, JR.  
WILLIAM B. POTTER  
PAUL LEAHY  
SYBIL U. WARD  
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GEORGE GRAY  
1883-1888, 1914-1925  
HERBERT H. WARD  
1888-1927  
ANDREW C. GRAY  
1898-1929

July 15, 1935.

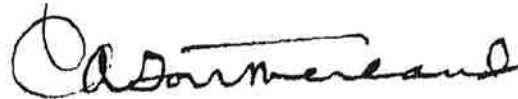
Mrs. Bella A. Stroud, Secretary to the Governor,  
Dover, Delaware.

Dear Madam:

I thank you for your letter of July 11th, enclosing commission as a member of the Delaware-New Jersey Boundary Commission, authorized by the Act of 1935.

Very truly yours,

CAS:O.



DE Public Archives

1302.7

Gov. Papers

087793

CLARENCE A. SOUTHERLAND  
JAMES H. HUGHES, JR.  
E. ENNALLS BERL  
HERBERT H. WARD, JR.  
WILLIAM S. POTTER  
PAUL LEAHY  
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LAW OFFICES  
**WARD & GRAY**  
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WILMINGTON, DELAWARE  
TELEPHONE-WILMINGTON 5277

GEORGE GRAY  
1883-1899, 1914-1925  
HERBERT H. WARD  
1882-1927  
ANDREW C. GRAY  
1885-1929

September 23, 1935.

Hon. Percy Warren Green, Attorney General,  
Public Buildings,  
Wilmington, Delaware.

My dear Mr. Attorney General:

It occurred to me that the State of Delaware might be interested in the hearing to be held by the Chief of Engineers of the War Department on October 3rd, in Philadelphia, upon the matter of granting to the Wilmington-Deep Water Tunnel Company a permit for the construction of a tunnel under the Delaware River.

Such a tunnel, of course, could not be constructed without the consent of the State of Delaware and, as I understand it, it would be necessary to have an Act of the Legislature for the purpose. The issuance of a permit by the Chief of Engineers for the construction of such a tunnel might, it seems to me, create some possible embarrassment in the future. The proper way to proceed, I should think, would be for an applicant to obtain the necessary consent of the State before applying for a permit from the War Department.


I do not know what view you take of the matter but I thought it would be in order merely for me to call

P.W.G. ...2.

your attention to the facts.

A copy of the notice of the hearing is enclosed  
for your information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. J. ...".

CAS:0.

WAR DEPARTMENT  
United States Engineer Office  
900 Custom House, 2nd and Chestnut Streets  
Philadelphia, Pa.

September 3, 1935.

NOTICE OF PUBLIC HEARING

The application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the DELAWARE RIVER between a point immediately below the SALEM CANAL on the New Jersey side and a point about one mile below the southerly limit of the City of Wilmington on the Delaware side, will be considered at a public hearing on the subject to be held by the undersigned in the United States Customs Court, Room 300, Third Floor, Customhouse, SECOND AND CHESTNUT STREETS, PHILADELPHIA, PA., on Thursday, October 3, 1935, at 11:00 A.M.

All interested parties are invited to be present or to be represented at the above time and place, particularly navigation interests and the officials of any county, city, town or local association whose interests may be affected by the construction of the proposed work. They will be given an opportunity to express their views upon the suitability of the location and adequacy of the plans in reference to navigation, and to suggest changes considered desirable in the interest of navigation.

Oral statements will be heard, but for accuracy of record all important facts and arguments should be submitted in writing, as the records of the hearing will be forwarded for consideration by the War Department. Written statements may be handed to the undersigned at the hearing or mailed to him beforehand.

The plans submitted by the applicants show a two-lane tunnel with the top 55 feet below the plane of mean low water across the channel for a length of 2774 feet, thence on a grade of 3.266% to portals on each shore. A wharf carrying a ventilating house is provided directly over the tunnel at each side of the river. The outshore end of the wharf on the New Jersey side is shown 1800 feet from the center line of the ship channel and the outshore end of the wharf on the Delaware side is shown 2200 feet from the center line of the channel. The elevation of the top of the tunnel at each of those points is proposed by the applicant to be 35 feet below mean low water.

JOHN C. H. LEE  
Lieut. Col., Corps of Engineers,  
District Engineer.

B&P 1645

WAR DEPARTMENT  
United States Engineer Office  
900 Custom House, 2nd and Chestnut Streets  
Philadelphia, Pa.

September 3, 1935.

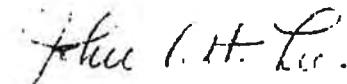
NOTICE OF PUBLIC HEARING

The application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the DELAWARE RIVER between a point immediately below the SALEM CANAL on the New Jersey side and a point about one mile below the southerly limit of the City of WILMINGTON on the Delaware side, will be considered at a public hearing on the subject to be held by the undersigned in the United States Customs Court, Room 300, Third Floor, Customhouse, SECOND AND CHESTNUT STREETS, PHILADELPHIA, PA., on Thursday, October 3, 1935, at 11:00 A.M.

All interested parties are invited to be present or to be represented at the above time and place, particularly navigation interests and the officials of any county, city, town or local association whose interests may be affected by the construction of the proposed work. They will be given an opportunity to express their views upon the suitability of the location and adequacy of the plans in reference to navigation, and to suggest changes considered desirable in the interest of navigation.

Oral statements will be heard, but for accuracy of record all important facts and arguments should be submitted in writing, as the records of the hearing will be forwarded for consideration by the War Department. Written statements may be handed to the undersigned at the hearing or mailed to him beforehand.

The plans submitted by the applicants show a two-lane tunnel with the top 55 feet below the plane of mean low water across the channel for a length of 2774 feet, thence on a grade of 3.266% to portals on each shore. A wharf carrying a ventilating house is provided directly over the tunnel at each side of the river. The outshore end of the wharf on the New Jersey side is shown 1800 feet from the center line of the ship channel and the outshore end of the wharf on the Delaware side is shown 2200 feet from the center line of the channel. The elevation of the top of the tunnel at each of those points is proposed by the applicant to be 35 feet below mean low water.



JOHN C. H. LEE  
Lieut. Col., Corps of Engineers,  
District Engineer.

The State of Delaware

Office of the Attorney General

September 24, 1935.

Lieut. Col. John G. H. Lee,  
U. S. Engineer's Office,  
900 Custom House,  
2nd. and Chestnut Streets,  
Philadelphia, Pennsylvania.

Re: Application - Wilmington-Deepwater Tunnel Company.

Dear Sir:

The notice of a public hearing, dated September 3rd, 1935, over your signature, concerning the application of the Wilmington-Deepwater Tunnel Company for a War Department permit to construct a vehicle tunnel under the Delaware River between a point immediately below the Salem Canal on the New Jersey side and a point about one mile below the southerly limit of the City of Wilmington on the Delaware side, has come to my attention, and I note that a public hearing on this subject will be held by you on Thursday, October 3rd, 1935.

Representing the State of Delaware, I feel that you should be informed that the State of Delaware, which under the recent opinion of the U. S. Supreme Court, is the owner of the subaqueous soil within the twelve mile circle from New Castle to the New Jersey shore, has at no time been officially approached by the Wilmington-Deepwater Tunnel Company for authority to construct a tunnel across, on or through its land, and that the State of Delaware has at no time given any authority to construct a vehicle tunnel to said Tunnel Company.

It is my understanding that the permission of both States must first be secured by the applicant, when a proposed tunnel or bridge crosses from one State into another.

This letter is written to you in order that you may be informed of this fact, and to fully protect the interest of the State of Delaware.

Yours very truly,

Attorney General.

DNCHB



FILE NUMBER  
B&P 1645

WAR DEPARTMENT  
UNITED STATES ENGINEER OFFICE  
CUSTOMHOUSE, 2D AND CHESTNUT STREETS  
PHILADELPHIA, PA.

September 26, 1935.

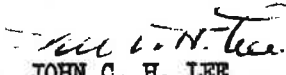
Hon. P. Warren Green, Attorney General,  
State of Delaware,  
Wilmington, Delaware.

Dear Sir:

I am in receipt of your letter of September 24th, calling attention to the fact that no application has been officially made to the State of Delaware by the Wilmington-Deepwater Tunnel Company for authority to construct a vehicle tunnel under the Delaware River, between points in Delaware and New Jersey, respectively. Application for a War Department permit to construct such a tunnel is before this office and will be considered at a public hearing to be held on Thursday, October 3, 1935.

Permit me to assure you that no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware.

Very truly yours,

  
JOHN C. H. LEE  
Lieut. Col., Corps of Engineers,  
District Engineer.

Inclosure:  
Notice of public hearing.

The State of Delaware  
Office of the Attorney General

October 1, 1935.

Col. John C. H. Lee,  
U. S. Engineer's office,  
Custom House,  
2nd & Chestnut Streets,  
Philadelphia, Pennsylvania.

Your File B and P 1645.

Dear Sir:

May I thank you for your letter of September 26th. relative to the application of the Wilmington-Deepwater Tunnel Company for authority to construct a vehicle tunnel under the Delaware River between points in Delaware and New Jersey.

I notice that you state that "no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware."

The General Assembly of this State is the proper authority of this State to grant such a permit, and the General Assembly will not be in session until January 1936.

Very truly yours,

Attorney General.

PWG\*B

The State of Delaware  
Office of the Attorney General

October 3rd. 1935.

Governor C. Douglass Buck,  
Equitable Trust Company,  
Wilmington, Delaware.

Re: Delaware River Tunnel.

My dear Governor:

Immediately after our conversation some days ago I wrote to Col. John C. H. Lee, District Engineer for the U. S. War Department, informing him that no company, especially Wilmington - Deepwater Tunnel Company, had ever applied to the proper authorities of the State of Delaware for a permit to construct a tunnel over or through the lands of the State of Delaware, and called his attention to the fact that under the recent decision of the U. S. Supreme Court that the State of Delaware owned the land to the low water mark on the Jersey shore.

My letter stated that it was written in order that his office might know of the fact that no authority had ever been granted and to protect the interest of the State of Delaware.

Under date of September 26th. Col. Lee acknowledges my letter of September 24th., and his letter contains the following pertinent statement: "Permit me to assure you that no permit for the proposed work will be issued by the War Department until franchises have been granted by the competent authorities of the States of New Jersey and Delaware."

This letter I acknowledged and stated that the General Assembly of this State is the only proper authority to grant such a permit, and that the General Assembly will not be in session until January 1937.

Yours very truly,

PWG\*B

Attorney General.

The State of Delaware

Office of the Attorney General

October 17, 1935.

Hon. Clarence A. Southerland,  
Delaware Trust Building,  
Wilmington, Delaware.

Re: DELAWARE - NEW JERSEY.

Dear Clarence:

The other day Senator S. Rusling Leap informed me that the Commissioners of New Jersey desired to meet the Commissioners of the State of Delaware, as soon as possible, in connection with questions arising out of the boundary between this State and New Jersey.

You will find enclosed a copy of a letter which this day I am sending to Hon. T. G. Hilliard, who was Chairman of the New Jersey Commissioners.

In connection with this matter, may I call your attention to the last paragraph of Chapter 179 of Vol. 40 Laws of Delaware, Pp. 667-8. This Act, after extending the limits of the City of Wilmington, contains the following paragraphs:

"The real estate by this Act added to and included within the boundaries of the City of Wilmington, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled 'New Jersey v. Delaware', reported in 291 U.S. 361. The w35d

The State of Delaware

2. Office of the Attorney General

herein used may refer either to agreement between the said States or to a final Court adjudication."

A similar provision is found in Chapter 6 of 40 Delaware Laws at page 15, which Act fixes the boundaries of Brandywine, Wilmington, New Castle, Fed Lion and St. Georges Hundreds.

Yours very truly,

Attorney General.

PVG\*B  
Encl.

COOPER

T. G. HILLIARD  
COUNSELOR-AT-LAW  
97 MARKET STREET  
SALEM, N. J.

October 28, 1935.

Office of the Attorney General,  
Wilmington, Delaware.

For Mr. Green.

Dear Mr. Green:

If the date meets with your approval, the New Jersey Commissioners will be very glad indeed to have you and Mr. Southerland take lunch with them at the Union League at 1.30 P.M. Friday, November 8th, that some discussion of the items open between the States of Delaware and New Jersey may be had.

If for any reason this date and time does not fit in with your engagements and those of Mr. Southerland, please so advise me that some other may be fixed.

H/R

Yours very truly,



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The State of Delaware

Office of the Attorney General

November 9, 1935.

Hon. T. G. Hilliard,  
Salem, New Jersey.

Dear Mr. Hilliard:

After your 'phone call postponing the conference of the representatives of your State with Mr. Clarence A. Southerland and myself representing Delaware, and also your suggestion that we meet on November 15th., may I inform you that thereafter I 'phoned to Mr. Southerland and find that on that day he is engaged in the Court of Chancery, and as I am engaged beginning November 18th. in the trial of three homicide cases, and Mr. Southerland again in the Court of Chancery on November 22nd., we find that we cannot make any definite arrangements to meet you before Monday, November 25th.

Will you kindly inform me whether it is satisfactory that we meet the Commissioners of New Jersey on November 25th. at 1.30 P.M. at the Union League.

Yours very truly,

Attorney General.

PWG\*B



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T. G. HILLIARD  
COUNSELLOR-AT-LAW  
97 MARKET STREET  
SALEM, N.J.

September 24, 1936.

Hon. P. Warren Green,  
Attorney General,  
Wilmington, Del.

Dear Mr. Green:

I have yours of September 22, matter of meeting of Commissioners, New Jersey-Delaware Boundary, and the date you suggest, October 8, at 1 P. M., at the Union League, in the City of Philadelphia will suit for our first meeting.

Mr. Chew of the New Jersey Commissioners, has asked me to extend an invitation in his behalf to you for lunch with the New Jersey Commissioners at the time and place just mentioned.

Yours very truly,

*T. G. Hilliard*  
H.

H.H

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T. G. HILLIARD  
COUNSELOR-AT-LAW  
87 MARKET STREET  
SALEM, N.J.

October 7, 1936.

Hon. P. Warren Green,  
Attorney-General,  
Wilmington, Del.

My dear Mr. Green:

Your wire advising me that it is impractical, by reason of your engagements, to meet with the New Jersey Commissioners, as proposed, on Thursday of this week, has reached me and I have given this information to my fellow commissioners, Messrs. Chew and Summerill.

By reason of the fact that I have been notified by the clerk of our Court of Errors and Appeals of the re-argument of a matter in which I am one of the counsel, I feel that it would be unwise for me to attempt to set down this conference for any time prior to the completion of this re-argument that is likely to be had October 20 or shortly thereafter.

Mr. Chew's engagements are such that until after election it is impractical for him to arrange to be away from his office or place of business and I am therefore forced to suggest that in fixing a time for our conference the date selected be not prior to the week beginning November 9, 1936.

Yours very truly,

*T. G. Hilliard*

H.H

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The State of Delaware  
Office of the Attorney General

February 11, 1937.

C. R. Mudge, Esq.,  
Legal Department,  
E.I. duPont de Nemours & Co.,  
Wilmington, Delaware.

Dear Mr. Mudge:

In behalf of the Commissioners of the State of New Jersey and the Commissioners of the State of Delaware, former Attorney General Clarence A. Southerland and myself being the Delaware Commissioners, at a conference held pursuant to our duties arising under Chapter 119 of 40 Delaware Laws, page 412, relative to affecting an agreement between the two States respecting taxation, civil and criminal jurisdiction relating to the boundary and jurisdiction of the State of Delaware and of New Jersey in the Delaware River, decided to ask those persons who have piers or projections into the Delaware River beyond the mean low water mark, to furnish to the Commission full information as to such property and the value thereof, and in this connection you will receive a communication from T. G. Hilliard, Esq., one of the Commissioners of the State of New Jersey, and on behalf of the State of Delaware may I most respectfully request that this information be furnished to him, as we desire to have all of this information available for our next conference which will be held on Friday, February 19th.

Very truly yours,

Attorney General.

PWG\*b

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EDWARD W. COOCH  
LIEUTENANT GOVERNOR

OFFICE OF LIEUTENANT GOVERNOR  
DOVER, DELAWARE

March 9, 1937

Hon. P. Warren Green  
Attorney General of Delaware  
Equitable Building  
Wilmington, Delaware

Dear Sir:

Your letter of the 4th inst. enclosing Report of the Commissioners, in the matter of the Boundary and Jurisdiction in Delaware River, between the States of Delaware and New Jersey, was duly received. Your letter and the report were presented to the Senate on March 5, and the same appear in the printed Journal for that day. Enclosed find copy of the Journal.

Respectfully yours,

A handwritten signature in cursive script that reads "Edward W. Cooch".

Lieutenant-Governor

EWC:CB  
Enclosure

DE27493



STATE OF DELAWARE  
OFFICE OF THE ATTORNEY GENERAL

Wilmington, Delaware, March 4, 1937

Hon. Edward W. Cooch,  
President of the State Senate,  
Dover, Delaware.

Honorable Sir:

As directed by the provisions of Chapter 119 of 40 Delaware Laws, page 412, Honorable Clarence A. Southerland and the writer most respectfully herewith make their report to the House of Representatives of the General Assembly of the State of Delaware relative to their actions as Commissioners on behalf of the State of Delaware, in their meetings with Commissioners of the State of New Jersey relative to matters arising from the established boundary line between said two States.

Most respectfully yours,

P. WARREN GREEN

: *Attorney General*

In Matter of Boundary and  
Jurisdiction in Delaware  
River between the States  
of Delaware and New Jersey.

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||

REPORT OF  
COMMISSIONERS

To the Senate and General Assembly  
Of the State of Delaware:

Honorable Sirs:

The Commissioners appointed by Honorable C. Douglass Buck, then Governor of the State, in pursuance of the provisions of Chapter 119 of 40 Delaware Laws, page 412, said Act dealing with the matter above entitled, respectfully report, as required by said Act, that:

1. They have accepted the commissions to them issued under and in pursuance of the terms and provisions of the said Act of the Legislature of the State of Delaware and are in the discharge of the duties cast upon them by the said commissions.

2. Your Commissioners have met with T. G. Hilliard, William H. Chew and John M. Summerill, the Commissioners appointed and representing, in the above entitled matter, the State

of New Jersey, who were appointed by Honorable Harold G. Hoffman, Governor of the State of New Jersey, in pursuance of the provisions of Chapter 160, Laws of New Jersey 1935.

3. The matters entrusted by both States to their said Commissioners have been discussed fully and your Commissioners are in agreement with the Commissioners of the State of New Jersey in ascertaining the fact to be that pending definite disposition by the Legislature of the State of Delaware of the questions involved in the granting of permission to build a proposed tunnel to be constructed beneath the surface of the Delaware River within the limits of what is known as the "Twelve Mile Circle," it is impractical for the Commissioners of either State to recommend to their respective Legislatures any legislation at this time.

4. The Commissioners of both States are further in agreement that final action on the matters entrusted to the Commissioners should be deferred until such time as action shall have been taken by the Delaware Legislature on proposed or pending legislation affecting the construction of the said proposed tunnel.

5. By the second paragraph of said Act of this State your Commissioners are charged to report to this General Assembly as to their deliberations, and it is our opinion that upon the adjournment of the Legislature our duties and commissions will terminate. The General Assembly should give consideration to whether it desires this commission or another commission to carry on the proposed deliberations, and if so, proper legislation should be enacted.

Respectfully submitted,

P. WARREN GREEN  
CLARENCE A. SOUTHERLAND  
*Commissioners*

Mr. Matthews, on motion for leave, introduced Senate Bill No. 100, entitled:

An Act to amend Chapter 43 of the Revised Code of Delaware, 1935, relating to the Levy Court of Kent County by further defining the Powers and Authority of said Court.

Which was given first and second reading, the second by title only, and referred to the Committee on Miscellaneous.

Mr. Marshall, on motion for leave, introduced Senate Bill No. 101, entitled:

An Act to regulate the taking of Sand from the Beaches along the Delaware River and Delaware Bay and the Atlantic Ocean.

Which was given first and second reading, the second by title only, and referred to the Committee on Miscellaneous.

Mr. Davis, on motion for leave, introduced Senate Bill No. 102, entitled:

An Act directing the State Highway Department to drain certain lands along Highways under the control and supervision of the State Highway Department.

Which was given first and second reading, the second by title only, and referred to the Committee on Buildings and Highways.

Mr. Steele, on behalf of the Committee on Municipal Corporation, to whom had been referred, Senate Bill No. 59, entitled:

An Act to amend Chapter 162, Volume 37, Laws of Delaware, entitled "An Act changing the name of 'The Town of Milford' to 'The City of Milford' and establishing a Charter therefor," in relation to the transmission of electric current and/or water beyond the City Limits.

Reported the same back to the Senate favorably.

DAVID W. STEELE  
S. M. D. MARSHALL  
D. P. ROSS

Mr. Ross moved that the Senate adjourn until 11 o'clock, A. M., Monday, March 8, 1937.

Motion prevailed.

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IN THE  
Supreme Court of the United States.

No. 13 ORIGINAL. October Term, 1933.  
(No. 19 ORIGINAL. October Term, 1939.)

STATE OF NEW JERSEY,  
*Plaintiff,*  
v.  
STATE OF DELAWARE,  
*Defendant.*

ON EXCEPTIONS TO REPORT  
OF SPECIAL MASTER.

**REPLY BRIEF OF DEFENDANT.**

This reply brief will be devoted to answering certain arguments advanced in Plaintiff's first brief and will follow the subject headings in Plaintiff's brief.

Plaintiff's brief, like Defendant's, treats the questions under the two separate headings of "The Boundary Within the Twelve-Mile Circle" and "The Boundary Below the Circle".

**BOUNDARY IN TWELVE-MILE CIRCLE.**

Before considering in detail the specific points advanced in this portion of Plaintiff's brief we desire to invite the Court's attention to the general nature of Plaintiff's claims.

Plaintiff's brief on this branch of the case is devoted, first, to an attempt to establish title by prescription in the State of New Jersey to the subaqueous soil of the Delaware River; and second, to an attack on the Delaware title.

Under part II of the brief under the heading "The Title of the State of New Jersey", Plaintiff apparently con-

cedes that, as found by the Master (Report, p. 8, p. 75, Finding 14), the Province of New Jersey had at no time, prior to statehood, any record title to the subaqueous soil of the Delaware River. No attempt is made to set up a record title from the Crown or from the Duke of York.

Plaintiff, however, claims that in colonial times certain riparian rights came into existence which, it argues, are inconsistent with the claim of title by the State of Delaware. Plaintiff further argues that the Master's finding that the State of Delaware at all times exercised exclusive jurisdiction and dominion over the Delaware River within the twelve-mile circle is not supported by the evidence. Plaintiff further claims that the State of New Jersey, after statehood, as well as the Province of New Jersey before statehood, exercised jurisdiction over the Delaware River and thus acquired title by prescription.

Plaintiff's claim of title to the eastern half of the river within the twelve-mile circle thus rests, according to its brief, solely on prescriptive rights. No suggestion of a record title is made.

We shall now consider the nature of the evidence on which Plaintiff relies to establish prescription.

#### II. (c) (1). Pages 14-36. Practical Construction of Boundary. Action of Penn and the Proprietors: *Eslopp*.

Under this heading Plaintiff sets forth quotations from various Exhibits the purport of which is that the inhabitants of West New Jersey were entitled to the use of the Delaware River for navigation. This may be conceded at once. Plaintiff argues that such rights to navigation were entirely inconsistent with the ownership of the subaqueous soil by William Penn as proprietary of Delaware. Plain-

tiff says, in effect, that the acquisition of title to the subaqueous soil of the river by Penn would "thereby exclude the inhabitants of West Jersey (and later of New Jersey)" from the use of the Delaware River. Therefore, Plaintiff argues, it is contrary to equity that William Penn, who was a trustee for certain land owners in New Jersey, should claim any advantage, under his grants from the Duke of York to the prejudice of the interests of his associates or his *cestuis que trustent*. Plaintiff concludes (Brief, pp. 23-35) that Penn is thereby estopped to claim title to the subaqueous soil of the Delaware River under his grant from the Duke of York and the Royal Patent to the Duke of York which inured to Penn's benefit.

The entire argument is founded upon a misconception of the nature of the rights acquired by the inhabitants of New Jersey. The right to use the river for navigation is in no way inconsistent with the ownership of the bed thereof by an adjoining State. Instances are common in the United States of the ownership of the entire bed of a river by one State to the entire exclusion of the other State from title to the soil of the river. For instance, Maryland owns the bed of the River Potomac. Such ownership, of course, in no way affects the rights of the inhabitants of the other State to use the river for purposes of navigation. The claim that ownership of the soil of the Delaware River by the State of Delaware would exclude the inhabitants of the State of New Jersey from the use of the river needs only to be stated to show its unsoundness. No such claim has ever been made by the State of Delaware. It could not be sustained for a moment.

Yet precisely the entire argument in Plaintiff's brief from pages 14 to 36 is devoted to showing that the inhabitants of New Jersey had the use of the Delaware River.

This is entirely correct but such use in no sense establishes a prescriptive title to the soil of the river.

Certain assertions in this portion of the brief which are not supported by the evidence should be briefly noticed. At page 29 it is stated that William Penn never claimed title to any land within a radius of twelve miles east of the river. If by this is meant the New Jersey upland, it is entirely correct. The statement is then made that William Penn "never claimed any part of the river itself".

In our first brief we have pointed out that as early as April, 1683 William Penn instructed his Commissioners to insist on his title to the river, stating that the inhabitants of New Jersey had the *liberty of the river but not the property*. (Exhibit 52, p. 3.)

As stated in our original brief, William Penn in 1701 made a general grant to owners of riparian lands in the town of New Castle of a tract of subaqueous soil extending 600 feet into the Delaware River for the purpose of the erection of wharves, and thereafter nineteen "bank lots" or "water lots" were actually granted to riparian owners. (Exhibits 571-590, 594-610.) If William Penn had title to the western half of the bed of the Delaware River, he likewise had title to the eastern half. The assertion, therefore, that he "never claimed any part of the river itself" is entirely erroneous.

Reference is made to certain instructions of the Crown of March 15, 1683-4 to the Governor of West Jersey respecting the restraint and punishment of pirates. Of course, the enforcement of the Crown laws against piracy in the Delaware Bay or on the high seas has not the slightest relation to the ownership of the subaqueous soil of the Delaware River.

II. (c) (2). Riparian Rights and Grants. Brief, pp. 35-69. (3). Several and Common Fisheries. Brief, pp. 69-70.

Under these headings of the brief Plaintiff discusses common law rights in tidal waters and certain modifications of the common law that arose in New Jersey and other American colonies.

The argument appears to be made that the acquisition of such rights was in some way inconsistent with the ownership of the soil by William Penn and operated to defeat his title to the bed of the Delaware River east of the main ship channel within the twelve-mile circle.

It is further argued that the use of the subaqueous soil of the river by citizens of New Jersey for the purpose of erecting wharves giving them access to the river is a use of the soil inconsistent with the title of the State of Delaware. From this Plaintiff argues in some way that we cannot understand that thereby title to the entire bed of the river east of the ship channel passed to the State of New Jersey by prescription.

The answer to this entire argument is that the use of subaqueous soil by riparian owners in New Jersey for the purpose of erecting wharves to provide access to navigable waters is in no way inconsistent with the ownership of the soil by William Penn or the State of Delaware.

Plaintiff's argument seems to be as follows:

The sovereign owns the foreshore, i. e., the strip of land between high water mark and low water mark. No structure can be erected on the foreshore or indeed on the subaqueous soil beneath tidal waters without the consent of the sovereign.

This was the law of England but, as Plaintiff has shown, it was never the law of the American Colonies and

was never the law of the Colony or State of Delaware. In New Jersey the common law rule that the State owns the foreshore has always been followed, i. e., the riparian owner owns only to high water mark. In Delaware, however, the riparian owner holds to low water mark.

*Earlen & Hollingsworth v. Paschel*, 5 Del. Ch. 435;

*State v. Reybold*, 5 Harr. 484, 486.

As Plaintiff correctly says, this modification of the English Law is undoubtedly due to custom and usage. Likewise to custom and usage comes the right of the riparian owner to wharf out to navigable water. This custom and usage became very firmly fixed in American Colonial Law and the law in most of the States of the Union recognizes the right of a riparian owner, in the absence of legislative restriction, to wharf out for the purpose of obtaining access to the navigable portion of the river.

See the discussion in Volume 1, Farmham on "Waters and Water Rights," sections 62-66; and the review of the State decisions by Mr. Justice Gray in *Shively v. Bouby*, 152 U. S. 1.

The courts of the State of New Jersey, however, not recognizing the *titles* of the riparian proprietor below high water mark, have of necessity somewhat limited these rights. In the State of New Jersey the riparian owner has no title below high water mark. This was the common law of England. The right of the riparian owner in New Jersey to wharf out is not based on any theory of title to the foreshore or to the subaqueous soil of the river. It is a right which is in the nature of a burden upon the ownership of the foreshore and subaqueous soil. It is a right which is recognized at least as fully, if not more fully, by the laws

of the State of Delaware. The holder of such a right does not hold it adversely to the State as the owner of the subaqueous soil but in effect derives it from the State.

It follows, therefore, that the existence of this right and its use by the erection of a wharf is not an act which is hostile to the State as owner and can not be made the foundation for a claim of adverse possession.

The New Jersey doctrine of riparian rights is stated in *State v. Jersey City*, 35 N. J. Law 525, by Judge Elmer of the New Jersey Supreme Court, as follows:

"It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river extends only to the actual high water mark, and that all below that mark belongs to the state. The inchoate right, if such it may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land while it remains under the water. It may be granted by the state to a stranger, at any time before it is actually reclaimed and annexed to the upland. Such is unquestionably the common law, and I am aware of no alteration of it in this respect in New Jersey. Some of the judges seem to have expressed a different opinion in the case of *Bell v. Gough*, before the Court of Errors, but no case has been decided which establishes a different doctrine. In that matter, I concur myself with the opinion expressed by Judge Randolph, 2 Zab. 481. If the blocks and lots covered with water had been in this case valued and assessed entirely distinct from the upland, I should have felt constrained to hold that the assessment could not be supported."

It is clear that before the New Jersey legislature undertook by various riparian acts to protect the riparian

rights of the owners of the upland the common law prevailed and was modified only in so far as the riparian owner actually reclaimed the shore or exercised his riparian right by the actual erection of a wharf.

It follows from the foregoing that the recognition of such riparian rights in colonial times never had the effect of passing title to the soil to the riparian owner. *Much less did it have the effect of vesting title in the province of New Jersey to the bed of the river east of the main ship channel.*

We agree with the statement that under colonial usage and custom in both the Province of New Jersey and the Colony of Delaware riparian rights sprang up, unknown to the English common law. What of it? Such rights are in no wise inconsistent with the fact that the ownership of the subaqueous soil was vested in William Penn, and the recognition of such rights could not avail to change the boundaries of the colonies.

We are here concerned with a question of title and boundaries. If the riparian owner's right to wharf out vested in him no title to the foreshore or the subaqueous soil of the river then the title thereto remained unaffected by the existence of the right. Moreover, that right flowed from custom and usage sanctioned by the proprietaries of both colonies. It is elementary that one who claims a right derived as grantee of another does not hold adversely to the other and can not by the exercise of that right acquire title by adverse possession.

The conclusion, therefore, is that the exercise of riparian rights by the inhabitants of the Province of New Jersey was not in any sense hostile or adverse to the ownership of the soil by William Penn. It was a right which

he and all other proprietaries of American colonies accorded to the inhabitants of those colonies.

Plaintiff is here seeking to establish title to the subaqueous soil of the Delaware River east of the main ship channel. Such title can not be established by pointing to the exercise of riparian rights by the inhabitants of the Province of New Jersey. Even if it could be argued that the riparian owner acquired title by adverse possession to the subaqueous soil underneath the wharf erected by him, such adverse possession would not inure to the benefit of New Jersey and would not shift the boundary line between the States.

To put the matter in another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out.

Let us suppose that after a lapse of time a riparian owner who has erected a wharf upon subaqueous soil in front of his property tears down that wharf and does not rebuild it. Surely it can not be said that he holds title to the subaqueous soil which is no longer covered by a wharf. He still has the right to build another wharf, but the ownership of the soil is not thereby changed.

Let us suppose again that a valuable mineral deposit is found in the subaqueous soil of the river within the area circumscribed by the piling of the wharf erected by the owner of the upland. Could it be contended for a moment that the owner of the upland, by virtue of his having erected a wharf, would have any title to such deposit? Clearly not. Nor could the riparian owner contend that by virtue

of his long possession of the wharf he had acquired a title by prescription to the subaqueous soil.

Moreover, as pointed out in our original brief, nearly all the New Jersey grants of riparian rights within the twelve-mile circle, and practically all the improvements on the New Jersey shore within the twelve-mile circle, were made or built after the institution of the prior suit in 1877. The failure of the State of Delaware to attempt to tax these improvements during the pendency of this suit can not be ascribed to laches nor can any acquiescence be imputed to the State during that time.

It should be further noted that the State of Delaware has never questioned the right of citizens of New Jersey to wharf out to navigable water nor can such a right be questioned now because it is clearly protected by the Compact of 1905 between the States.

The point of the matter lies in this: That the exercise of riparian rights by the inhabitants of the Province of New Jersey, and by the citizens of the State of New Jersey is in no way adverse to the title of the State of Delaware. The Special Master so held. We quote from his report as follows:

"The claim of defendant in the case is, to low water mark on the New Jersey shore within the twelve-mile circle and defendant claims that there is nothing inconsistent between the ownership of the subaqueous soil and the exercise of riparian rights along the river front. There is no evidence in the case of any such adverse exercise of rights by riparian owners as could give rise to prescriptive rights on the part of the plaintiff. The number of grants and improvements thereunder made upon the plaintiff's shore were few, as above pointed out, and in no view of the matter could

the exercise of riparian rights change the title to the river or affect the boundary between the plaintiff and the defendant." (Report, pp. 53-54.)

In concluding our discussion of this point we should notice an assertion in Plaintiff's brief to the effect that the State of Delaware "never asserted or claimed title to the bed of the river east of the ship channel until 1872." (Brief, p. 63.)

The Master found on the evidence that from 1683 until the American Revolution William Penn and the Pennsylvania and Delaware Legislative Assemblies exercised exclusive control over the lands and waters within the boundaries of the colonies of Delaware. (Report, p. 74, finding 9.)

The Master further found that since 1783 the State of Delaware has claimed, asserted, and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the title deeds as modified by the Compact of 1905 between the States, and that at no time has it ever abandoned its dominion or jurisdiction or acquiesced in the claim of the State of New Jersey except as modified by the Compact. (Report, pp. 76-77, findings 20-21.)

It would be a tedious process to review all the evidence which disproves the above assertion in Plaintiff's brief and sustains the Master's finding. See Defendant's first brief, pp. 90-105. It will be sufficient here to quote from Plaintiff's own brief statements wholly inconsistent with this contention. On page 131 of Plaintiff's brief Plaintiff argues in effect that there was a subsisting dispute, between New Jersey and Delaware over the boundary line prior to the suit of 1877 and in support thereof cites the Delaware

case of *State v. Morris*, 1 Harr. (Del.) 326. The opinion of Chief Justice Harrington in this case shows conclusively the existence of the long pending dispute between the States over the boundary line. We quote the following:

"The state of Delaware has uniformly claimed the sole and exclusive jurisdiction over the whole of the Delaware bay to low water mark on the Jersey shore, and it has to a certain extent used and exercised jurisdiction over the bay and river by grants of territory, acts of restrictive legislation, and service of process. On the part of the United States there has been no resistance of this claim; but, on the contrary, such acknowledgment of the state's jurisdiction as can be inferred from the acceptance on several occasions of cessations by this state of certain parts of the bay and river for the purpose of erecting forts, piers and breakwaters, for defence against the enemy, or for the protection of commerce. On the part, also, of the state of New Jersey, this claim, though resisted in its full extent, has been partially acceded to and acknowledged, that state having limited her claim of jurisdiction to the main ship channel of the bay. There have been several efforts made by New Jersey to settle this question of boundary between us, and it is to be regretted that our legislature has not acceded to the proposition for a conventional arrangement, or adopted some other course to establish the validity of our claim. So long back as 1783, John Dickinson, in a message to the general assembly of this state, informed that body that a resolution had been adopted by the legislature of New Jersey appointing commissioners 'for settling and establishing the line of jurisdiction between that state, Pennsylvania and this state;' that commissioners had also been appointed by the state of Pennsylvania; and he gave it as his opinion that such a measure was 'proper to be taken on our part for settling the line of

jurisdiction in the bay and river Delaware.' The recommendation was not acted upon by the assembly, and though similar propositions have since been made by New Jersey, they have never been acceded to. The convention went on between New Jersey and Pennsylvania, and resulted in an amicable division of the islands, &c. within the river, and an agreement that each state should enjoy and exercise, under certain restrictions, a concurrent jurisdiction upon the waters of the river; but that all capital and other offences committed on the river, the juridical investigation and determination thereof should be exclusively vested in the state whersim the offender should be first apprehended, arrested or prosecuted.

"In November, 1820, the legislature of New Jersey passed a law authorizing the governor to appoint commissioners to meet commissioners to be appointed by this state for the purpose of settling the boundary line between the states and defining the jurisdiction of each. The subject was laid before our legislature and referred to a committee, who reported that it was inexpedient at that time to appoint commissioners for this purpose."

In Plaintiff's brief at page 582 it is said:

"Prior to 1835 Chief Justice Harrington of the Delaware Supreme Court discussed this boundary dispute in his decision in *State v. Morris* (reported as a note to *Emory v. Collins*, 1 Harr. Del. 326), in which he reviewed the controversy between the two states over this boundary line from 1782 to the date of that decision, referring to official action taken by each state during that period."

Finally, on page 343, Plaintiff admits very frankly that:

"The record in this case shows that the river boundary between the two colonies was in dispute as early as 1782. . . ."

The evidence which conclusively shows the continued exercise of dominion over the river by the State of Delaware from the Revolution onward is set forth in detail in our first brief, pages 90 to 105. The bare assertion on page 63 of Plaintiff's brief that the Defendant never asserted or claimed title to the bed of the river east of the ship channel until 1872 is simply contrary to all the facts of the case and contrary to assertions made elsewhere in the same brief.

One further assertion in this portion of Plaintiff's brief should be noticed. On page 65 it is said:

"Plaintiff's title and jurisdiction, by prescription, in Delaware river and bay were adjudicated as part of the *res gestae* by Justice Washington, in 1825, in *Corfield v. Coryell* (6 Fed. Cas. 546); by Chief Justice Tilghman in *Keen v. Rice*, in 1824, (11 Sargeant & Rawl's Rep. 208); and by Justice Baldwin, in 1830, in *Bennett v. Fogg* (1 Bald. 60) and in 1836 in (*Gate v. Bealing*) (Ex. 219)."

The case of *Corfield v. Coryell*, 4 Wash. C. C. 371, 6 Fed. Cas. 546, so far from sustaining the New Jersey title to the subaqueous soil of the river, expressly holds that no such title existed. We quote the following from that case:

"The next general question to be considered is, whether the boundaries of the state of New Jersey include the place where the Hiram was seized whilst engaged in dredging for oysters? The grant from Charles II. to his brother, the Duke of York, of the territory of which the present state of New Jersey was a part, dated the 12th of March 1663-4, was of all that

territory lying between the rivers St. Croix adjoining Nova Scotia, and extending along the sea coast south-ly to the east side of Delaware bay, together with all islands, soils, rivers, harbours, marshes, waters, lakes, fishings, huntings and fowlings, and all other royalties, profits, commodities, hereditaments and appurtenances to the same belonging and appertaining, with full power to govern the same. The grant of the Duke of York dated the 24th of June 1684, to Lord Berkeley, and Sir George Carteret, after reciting the above grant, conveys to them all that tract of land lying to the westward of Long Island and Manhattan's Island, bounded on the east, part by the main sea, and part by Hudson's river, and hath upon the west Delaware bay or river, and extendeth southward, &c. with all rivers, fishings, and all other royalties to the said premises belonging, &c. There is no material difference between these grants as to the boundaries of New Jersey on the westward; and we are of opinion that, although the rule of the law of nations is, that where a nation takes possession of a country separated by a river from another nation, and it does not appear which had the prior possession of the river, they shall each extend to the middle of it; yet, that when the claim to the country is founded, not on discovery and occupancy, but on grant, the boundary on the river must depend upon the just construction of the grant, and the intention of the parties to be discovered from its face. Taking this as the rule, we think the claim of New Jersey under these grants to any part of the bay or river Delaware below low water mark cannot be maintained. The principle here suggested is, we conceive, fully recognized and adopted by the supreme court in the case of *Handly's Lessee v. Anthony*, 5 Wheat. (18 U. S.) 374. Neither do we conceive that the limits of the state can, by construction, be enlarged in virtue of the grant of all rivers, fishings, and other royalties;



which expressions ought, we think, to be confined to rivers, fishings and royalties within the boundaries of the granted premises."

The case also holds that the inhabitants of West New Jersey made use of the Bay and River Delaware for the purposes of navigation and fishery. As above pointed out, this right is unquestioned and in no way affects the title of the State of Delaware.

The case of *Keas v. Rice*, 13 Serg. & R. (Pa.) 203, deals with oyster rights in Maurice River Cove, in the Delaware Bay, far outside of the twelve-mile circle. It has nothing to do with the present dispute. The case of *Bennett v. Hogg*, 1 Bald. 60, 3 Fed. Cas. 221, deals with fishing rights in the Delaware River between Pennsylvania and New Jersey, north of the twelve-mile circle, and is likewise not on the point.

The case of *Gale v. Beving*, unreported, will be hereafter discussed. It is sufficient to point out here that the record title of the State of Delaware, based on the Letters Patent of March 22, 1682/3, was not shown to the court, and the charge on the law was therefore founded on an error of fact.

In conclusion we would point out that even if it were true that the possession of subaqueous soil by riparian owners for the purpose of erecting wharves were hostile or adverse to the State of Delaware the only result would be that such wharf owners would acquire good title against the State of Delaware by adverse possession. But such adverse possession could not avail to transfer title to such wharf lands to the State of New Jersey. The land would be owned in private ownership by the riparian owners but

would still be within the boundaries of the State of Delaware. Much is said by the Plaintiff, in this portion of the brief, of the great value of these wharf rights on the New Jersey side. The implication in the brief is that if the boundary line between the States is determined to be low-water mark on the New Jersey shore the interests of the riparian owners will be either destroyed or seriously prejudiced. This, of course, is simply not the fact. The Compact of 1905 above referred to recognized the rights of riparian owners in the river to wharf out, and the Master so found. We quote the following from his report:

"By the Compact of 1905 (Exhibit 53) the two States agreed, among other things, each with the other as follows:

'Art. VII. Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases, and conveyances of riparian lands and rights under the laws of the respective States.

'Art. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.'

"Under this Compact clearly all improvements made by riparian owners upon the shore of either State are protected, and any decree fixing the boundary between the plaintiff and the defendant must so provide." (Report, p. 54.)

## II. (c) (4). The Circular Boundary. Brief, pp. 70-88.

Plaintiff's brief discusses the origin and development of the twelve-mile circle, and the point is made that the circle originated in an arc starting on the Delaware River

and running to the intersection of the arc with the fortieth degree of northern latitude. This is undoubtedly correct. Plaintiff then proceeds to argue that when the deeds of feoffment were executed it was the intention merely to preserve the arc as a boundary between Delaware and Pennsylvania and that the word "circle" did not mean "circle" but was merely descriptive of the boundary between Delaware and Pennsylvania.

This argument is defeated by the wording of the deed of feoffment. In conveying the bed of the river the language used is: "the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles to be only an arc between New Castle County, Delaware, and Delaware County, Pennsylvania, the above quoted language would be meaningless. To give it any meaning at all it is necessary to extend the circle to the New Jersey shore.

In this portion of the brief Plaintiff also discusses various surveys of the circular line. It is quite natural that any survey should refer to the circle as beginning on the westerly side of the Delaware for the obvious reason that a survey of a boundary line in a navigable river would be a useless proceeding as the boundary could not be marked in the river.

Considerable stress is laid on the fact that in referring to Delaware various documents speak of the Colony of Delaware as lying "on the west side of said river and bay". Numerous instances of this sort are quoted at great length.

We are unable to see how a reference to the Colony of Delaware as lying on the western side of the Delaware River and Bay raises any inference that the charter to the Colony

of Delaware did not include the bed of the river. Yet this seems to be the inference that Plaintiff seeks to draw.

All of the argument under this heading, however, is beside the point. If the river was included in the deed what difference does it make whether the northern arc of the circle was regarded as extending to the New Jersey shore? The point of the matter is that the deed clearly conveyed the bed of the Delaware River north of the southern arc of the circle.

## II. (c) (5). Boundary Laws and Maps. Brief, pp. 88-107.

Plaintiff's brief discusses in detail the various maps in evidence, which are styled "boundary maps." We repeat, as stated in our original brief, that none of the old maps of Delaware and New Jersey undertook to fix the boundary at all, and the inference that Plaintiff seeks to draw (Brief, p. 846), that a map maker would have indicated any boundary fixed by grant, presupposes a knowledge of the various colonial grants which no map maker would be likely to have. In fact some of the maps in evidence upon which Plaintiff lays great stress show an incorrect boundary between Maryland and Virginia.

The maps in evidence in the preparation of which great care was taken accurately to ascertain boundaries are the United States Geological Survey maps (Exhibits 720, 724, 726), which show the eastern boundary of Delaware on the New Jersey shore within the twelve-mile circle. These maps have been followed generally by map makers in this section. (Exhibits 721, 722, 723.)

In *Louisiana v. Mississippi*, 202 U. S. 1, 55-56 this Court recognized as of evidential value a bulletin of the United States Geological Survey discussing State boundaries.

## II. (c) (6). Exercise of Jurisdiction. Brief, pp. 108-122.

Under this heading Plaintiff's brief discusses the exercise of jurisdiction over the Delaware River by the provincial and state governments of New Jersey and Delaware. There is considerable discussion of the enforcement of the Admiralty laws by the Crown authorities in the Delaware River and Bay. This is beside the point. Admiralty powers were exercised by the Crown authorities and the Admiralty Courts were Royal Courts. Such powers were exercised alike over proprietary governments and Crown colonies. The exercise of such powers was in no sense inconsistent with the ownership of the soil of the river by one of the colonial proprietaries.

Plaintiff details certain instances of the exercise of jurisdiction by the State of New Jersey. The principal instances cited are cessions of lands to the United States in the Delaware River and certain arrests for violation of the New Jersey fishing laws. The record shows an equal number of cessions by the State of Delaware to the Federal Government within the twelve-mile circle. See our first brief, pp. 98-100. In view of the well-known boundary dispute between New Jersey and Delaware it is not surprising that the United States Government should have sought to obtain cessions from both States. This fact is merely a proof of the continued existence of the dispute.

One of the instances of the arrest of fishermen in the Delaware River is subsequent to the Compact of 1905 and the other one occurred during the pendency of the prior suit between the States.

These are all of the instances which the Plaintiff is able to cite of the exercise of jurisdiction by the State of

New Jersey within the twelve-mile circle on the Delaware River.

On the other hand the record on behalf of the State of Delaware is replete with instances where process issued by Delaware courts has been served on vessels in the eastern half of the Delaware River within the twelve-mile circle. See the extract from Mr. Sergeant's opinion in the case of Pea Patch Island quoted in our first brief, pages 96 to 98, and numerous instances of the service of process on boats on the New Jersey side of the main ship channel within the twelve-mile circle testified to by the witnesses in the prior suit between the States. (First brief, pp. 98-99; Exhibits 691, 692, 702, 703, 704, 706, 710, 714, 718.)

Commenting on this testimony, which is conclusive as to the actual exercise of jurisdiction by the Delaware courts, Plaintiff's brief says:

"The testimony of witnesses in that case in 1905, even though they are all dead, is not admissible in this case on another issue a quarter of a century later. I *Greenleaf on Evidence*, 211. It should be disregarded by the court."

Plaintiff apparently concedes the rule that the testimony of a deceased witness in a former trial between the same parties dealing with the same issue is admissible if the right of cross-examination has been accorded. It is contended, however, that the present case does not present the same issue as the prior suit.

It therefore becomes necessary to examine the pleadings filed in the former suit to determine what were the issues there presented to the court. The bill of complaint filed by the State of New Jersey and the answer of the State of Delaware are found in Exhibit 693. The second paragraph of the bill of complaint reads, in part, as follows:

"That your orator is the owner in fee simple of a portion of the bed of the Delaware river, that is to say, from the southeasterly corner of the State of Pennsylvania, on said river, down said river to and into Delaware bay. That within the limits aforesaid, your orator's part of the bed of said river extends from the New Jersey shore thereof to the middle of said river." (Exhibit 693, p. 1.)

This bill of complaint derives the title of the State of New Jersey to the eastern half of the river from the Crown of England at the time of the Treaty of Paris of 1763. In paragraph J of the bill the following appears:

"J. By the American Revolution which took place by the declaration of Independence bearing date the 4th day of July 1776, the State of New Jersey became, and was, and from thence forth has been a free and independent state, and as such became entitled to have and to hold such rights as free and independent states may have or hold, to do all acts and things which independent states may of right do, and by force of the said revolution and said independence the said State of New Jersey became invested not only with all and every power of government in and over the territory of said state and the tide-waters adjacent thereto, but also became invested with all the property, and rights of property, within and appertaining to said state, which immediately before said revolution were vested in the crown of England; that at the time the said revolution took place the bed of the River Delaware in its whole width and length, from the falls in said river at or near Trenton, to the mouth of said river at or near the whole extent to which the tide ebbed and flowed in said river—belonged to and was vested in the crown of England in trust for the uses and purposes of the subjects of the King of Great Britain; that by means of the said revolution, the said independence of the State

of New Jersey, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris, Sept. 3rd, 1783, that portion of the bed of the Delaware River, east therein before mentioned, situate between the States of New Jersey and Delaware, to the middle of said River, became vested in fee simple in the State of New Jersey; the remaining portion thereof, by the same means and at the time being vested in the State of Delaware; and so the title to the bed of said river, your orator respectfully submits, hath ever since continued and now is." (Exhibit 693, p. 17.)

In paragraph K of the bill (Exhibit 693, p. 19) it is alleged that the State of New Jersey has title to the bed of the Delaware River as claimed by a long, peaceable and undisputed possession, use, and enjoyment.

The prayers of the bill included a prayer that the true boundary line between the States may be ascertained and established; and also that the jurisdiction of the State of New Jersey over the Delaware River be ascertained and established. (Exhibit 693, p. 40.)

It is quite true that the particular dispute which precipitated the suit of 1877 was a dispute over fishing rights, just as the present suit was precipitated by a dispute over oyster beds; but the bill of complaint filed by the State of New Jersey did not limit the Supreme Court of the United States to the adjudication of fishing rights, any more than the present bill of complaint limits the question to the ascertainment of the right to dredge oysters in certain disputed territory. As above pointed out, the bill filed in 1877 specifically put in issue the title and jurisdiction of the States over the bed of the river and prayed that the boundary line be ascertained.

*Reply Brief of Defendant*

This bill of complaint in the present suit presents the same issues within the twelve-mile circle. It is alleged in paragraph five that the State of New Jersey claims the ownership in fee simple of that portion of the subaqueous soil lying east of the thalweg, and the State of Delaware claims the entire bed of the river to low-water mark on the New Jersey shore within the twelve-mile circle.

The title of the State of New Jersey to the upland is traced to the grant to the Duke of York in 1664, as in the former suit, and the title to the eastern half of the river is derived from the Treaty of Peace with England as alleged in the former bill. (Rec., pp. 8-12.)

The prayers of the present bill are, *inter alia*, that the true boundary line between the States may be ascertained, declared, and perpetually established. (Rec., p. 17.)

In each case the defendant filed an answer denying the ownership of the State of New Jersey to the eastern half of the river within the twelve-mile circle, each case basing its title on the deeds of feoffment from the Duke of York and the letters patent to the Duke of York of March 22, 1682/3.

Paragraph 24 of the bill of complaint in the present suit reads as follows:

"24. The dispute between the plaintiff and the defendant, and their officers and citizens, respectively, concerning the boundary line between the two States in the Delaware River and Bay and concerning the territorial ownership of the bed of said river and bay as between said States, has existed for many years and the question has arisen from time to time and negotiations have been conducted between the plaintiff and the defendant, and between commissions appointed by the Legislatures thereof, respectively, for the purpose of settling the dispute, and the plaintiff, by leave of this court, filed its bill of complaint against the defendant

on March 13, 1877, praying that the true boundary line between the plaintiff and the (14) defendant might be ascertained, declared, defined, and perpetually established, and that the rights of the parties in the bed of said river and the territorial extent thereof might be ascertained, declared and established. An answer was filed therein on October 14, 1902, and a replication thereto was filed November 26, 1901, but said suit was discontinued by consent of the parties, under the provisions of an agreement or compact between the parties in 1905 and the question of boundary and territorial ownership were left undetermined." (Rec., p. 13.)

It should be noted that this paragraph asserts that the suit of 1877 was a suit to settle the boundary line between the States. The Plaintiff's bill herein filed has therefore adopted our view of the matter.

The foregoing analysis of the pleadings would seem to make it quite clear that the issue involved in the first suit in 1877 is one of the issues involved in the present suit, viz.: the title of the two States to the easterly half of the Delaware River within the twelve-mile circle from New Castle.

This having been shown, it follows that the testimony to which objection has been made is admissible, it having been given in a judicial proceeding, the right to cross-examine having been accorded, and the witnesses being deceased.

Plaintiff seeks to treat this evidence as not entitled to any consideration because it represents merely the recollection of the witnesses and is not substantiated by court records.

The witnesses were cross-examined and no contention was made that the instances of actual exercise of jurisdiction testified to by them did not take place. Their testimony is not limited to mere expressions of opinion but is positive

## II. (c) (7). The Compact of 1905.

Under this heading Plaintiff's counsel claim that by the Compact of 1905 between the States the State of Delaware ceded to the State of New Jersey "title to the subaqueous soil of the river, within a radius of twelve miles of New Castle, to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used or may develop and use, the subaqueous soil on that side."

We may ask at once: Why, if the Compact intended any such result, did it not expressly so state? The fact is that the Compact of 1905 reserves the question of the boundary line between the States. By the Compact (Exhibit 53) the State of Delaware in Article I ceded to the State of New Jersey authority to serve criminal and civil process over the entire Delaware River, except upon Heedy and Pea Patch Islands, not including, however, vessels moored at wharves on the Delaware side of the river.

By Article III a common right of fishery in the inhabitants of both States was recognized to exist in the Delaware River.

The effect of Article VII of the Compact, quoted in Plaintiff's brief (p. 127) was that the State of Delaware recognized the rights of the inhabitants on the east side of the river to wharf out to navigable water. This right had never been questioned and was undoubtedly inserted to put beyond question the riparian rights (as distinguished from title) of land owners in New Jersey.

Article VIII then provides as follows:

"Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth."

and clear as to the actual serving of civil process on vessels in the eastern half of the Delaware River within the circle. The original writ of attachment or summons would not itself disclose where the writ was served. The only possible way to prove where the writ was served was to call the various marshals and deputy marshals who served such writs and the lawyers who knew of the service of the writs in the eastern half of the Delaware River. This was done and their testimony was not impeached or shaken in any respect whatsoever. It is direct and positive evidence in this case of the exercise of civil jurisdiction over the eastern half of the river by the Delaware courts.

Similar testimony was produced in the case of Pea Patch Island before Mr. Sergeant the arbitrator and is summarized by him in the extract from his opinion in our first brief, pages 96 to 98 above referred to.

*Not one single instance of the service of a writ of summons or attachment on a vessel in the eastern half of the circle from the United States court for the district of New Jersey is offered by the Plaintiff.* In view of this fact and of the evidence above referred to it is not surprising that the Master's finding on this point was as follows:

"20. The State of Delaware at all times since 1783 has claimed, asserted and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the said title deeds, as modified by the compact of 1905 between the States of Delaware and New Jersey. These boundaries include within their limits all that part of the Delaware River lying north of the southernmost part of a circle of twelve-mile radius from the Town of New Castle, Delaware." (Report, p. 76.)

The Master's finding that this Compact in no way affected the boundary line between the States but merely protected the rights of the riparian owners on the Jersey shore is obviously sound. If the Compact intended to cede to New Jersey title to the subaqueous soil it undoubtedly would have so provided.

Plaintiff is here met with an insuperable difficulty. If the Compact of 1905 was a cession of land, the question arises, How much land was ceded? Apparently Plaintiff's counsel contend that there was ceded to New Jersey a vague and uncertain quantity of land "to the extent necessary to accommodate navigation and commerce to the industries which have developed, and need, or may develop and use, the sub-aqueous soil on that side". This is a wholly untenable position. If sound, the boundary line would be forever uncertain. It would depend on the extent to which it may hereafter become necessary to develop and use the lands below low-water mark on the New Jersey shore.

Plaintiff does not specify any line which could be fixed if its contention should be adopted by this Court. What would be the line? Is this Court to investigate to what extent it may hereafter become necessary for riparian owners on the east bank of the Delaware River to use the subaqueous soil of the river Delaware and fix a line which represents such probable future use? Such a suggestion is without any basis whatever to support it. Moreover, no such suggestion was made by Plaintiff when the case was before the Special Master.

Plaintiff argues that the qualifying phrase in Article VIII "except as herein expressly set forth" refers to a cession of land. The phrase obviously refers to the "jurisdiction" over the river which was ceded to New Jersey by

Article I of the Compact. Plaintiff argues that the Compact expressly legalized the grants of subaqueous soil by the State of New Jersey. This again is a strained construction of Article VII. The phrase "riparian lands" refers to the upland and perhaps to the foreshore, but not to the subaqueous soil. Compare the following cases:

*Hart v. Board of Levee Commissioners*, 54 Fed. 569;

*Balkgate v. Irvine*, 58 Pac. 442, 126 Cal. 135;

*Rome Railway & Light Co. v. Loeb*, 141 Ga. 202, 80 S. E. 785, Ann. Cas. 1915 C. 1023.

"Riparian" lands are "bank" lands; not lands under water.

Even if the Compact of 1905 be construed as ceding to the State of New Jersey the right to determine to whom riparian rights (i. e., wharf rights appurtenant to riparian lands) shall be granted, it would still not affect the boundary between the States in any conceivable way. The boundary line would continue to be low water mark.

It is safe to say that the construction of the Compact of 1905 now contended for by New Jersey did not occur to its counsel until long after the present suit was instituted.

The Bill of Complaint in this case (Rec., pp. 4-18) sets forth with great particularity the source of Plaintiff's claim of title to the eastern half of the Delaware River and nowhere mentions the Compact of 1905 as the source of that claim. It is inconceivable that the contention now made could have been overlooked when the bill was filed if there were any basis to support it.

Moreover, the construction placed upon the Compact at all times since its execution and approval by Congress has

been the reverse of that now contended for by Plaintiff. Since 1907 the United States has accepted several sections of subaqueous soil from the State of Delaware east of the ship channel within the circle. It is safe to say that the contention made in Plaintiff's brief in this case is the first time that the idea has ever been advanced that the Compact of 1905 settled the boundary dispute within the twelve-mile circle. Certainly if it had settled the dispute by ceding to New Jersey the eastern half of the river or any part thereof there would have been no occasion whatever for the language of Article VIII of the Covenant which expressly reserves the boundary question from the settlement.

#### Summary of Point II.

An analysis of Plaintiff's points in support of a prescriptive title to the eastern half of the Delaware River within the twelve-mile circle thus discloses that there is no evidence of any weight which supports such a conclusion. The Plaintiff's evidence in support of this contention falls into two classes.

1. Exercise by the Crown in colonial times of Admiralty jurisdiction. This argument confuses the control of the Crown over navigation and Admiralty with the ownership of the soil of the river. The two have no connection. Control by the Crown over navigation and admiralty was paramount no matter whether the Crown or the colony owned the bed of the river. At the present day Congress has paramount authority over navigation in the Delaware Bay, although admittedly its soil is owned by the States of Delaware and New Jersey.

2. The acquisition by citizens and inhabitants of New Jersey of rights of navigation, wharf rights, and fishing

rights in the Delaware River. This argument again confuses title with the right to use the river. The distinction was made by William Penn himself in 1683 in a letter to his commissioners concerning boundary negotiations with the Province of New Jersey, quoted in our first brief, page 22. He distinguished between the "liberty" of the river, i. e., its use, and the "Propriety", i. e., the title or estate in the subaqueous soil. This distinction is perfectly sound and illustrates the fallacy of the conclusion which Plaintiff's counsel seek to draw from the right of citizens of New Jersey to fish in the river and to use the river as a highway of commerce.

We therefore submit that the conclusion of the Master that the State of Delaware has never abandoned its jurisdiction or acquiesced in the claim of the State of New Jersey to the ownership of the subaqueous soil of the eastern half of the river within the twelve-mile circle is fully supported by the evidence and should be sustained, and the Plaintiff's exceptions to this finding should be overruled.

#### III The Title of the State of Delaware. Brief, pp. 133-388.

In this section of Plaintiff's brief an attempt is made to overthrow or impeach the record title of the State of Delaware to the subaqueous soil of the Delaware River within the twelve-mile circle. The various points urged by the Plaintiff will now be considered. Preliminarily, however, we desire to invite the Court's attention to the state of the Delaware title. Admittedly, on March 22, 1682/3, Charles II of England, by Letters Patent under the Great Seal of England, granted to the Duke of York the territory which is now the State of Delaware. This Patent formally legalized the existence of Delaware as an English Colony



*Reply Brief of Defendant*

and defined its boundaries. Those boundaries admittedly include the subaqueous soil of the Delaware River within the twelve-mile circle. Therefore, whether during colonial times such soil was owned by William Penn and his descendants or whether it was in the Crown of England, the fact remains that *the boundaries of the Colony of Delaware were fixed by this patent*. When the State of Delaware attained independence by the Treaty of Paris in 1783, it succeeded to the title of the Crown with its boundaries fixed and determined by the charter and title deeds which formally constituted it an English Colony.

Much of the evidence in this case concerns the Penn title to Delaware, which we believe is the correct title and which the Special Master found to be the correct title. It is important to note at the outset, however, that unless the Plaintiff in this case can overthrow the Letters Patent of March 22, 1682/3, the boundaries of Delaware must be held to be fixed by this patent.

**III. (c). Government of Delaware Counties. (1). From 1684-1682. Brief, pp. 156-165.**

In this portion of Plaintiff's brief it is argued that prior to August 24, 1682, the date of the grant of Delaware by the Duke of York to William Penn, the Duke of York had no possession or control over Delaware. Defendant contends that from 1664 to 1682 Delaware was governed in all respects as a dependency of the Government of New York, and that therefore the Duke of York, though without record title from the Crown, had a *de facto* title and *de facto* powers of government over Delaware good against all the world but the English Crown.

The Master so held. See findings of fact 2 and 3. Report, page 72, quoted in our first brief, page 12.

*on Exceptions to Report of Special Master*

Plaintiff examines various exhibits adduced by the Defendant upon this point and attempts to argue that the authority so exercised in Delaware in this period was that of the Crown. Plaintiff's brief says (page 155):

"We accordingly submit that whatever powers of government of the Delaware Colony were administered during this period by the British Governors at New York, they were exercised by virtue of the prerogatives of the Crown and not because the Delaware Colony was regarded as appertaining to the New York Colony, or because the Duke or his governors had any legal right to exercise such powers."

Not only does the record fail to support this assertion but completely disproves it. The exhibits in evidence show that while the Duke of York was without good record title the government of the Delaware Colony was administered at New York by Governors under the Duke of York. The Governors under the Duke of York derived their authority from him solely. For example the Duke of York's commission to Governor Andros of July 1, 1674 (Exhibit 513, pp. 31-32), is the sole source of the authority exercised by Governor Andros. He had no separate commission from the Crown and exercised his authority solely by virtue of the Duke of York's commission.

The various acts of these New York Governors recite the Duke of York's commission as the source of the authority exercised by them. Thus the patent to Captain Carr (Exhibit 513, pp. 25-26) refers to Colonel Nicolls as "Governor-General under his Royal Highness James Duke of York and Albany, etc., of all his territories in America." Similar language appears in the patent to William Tom (Exhibit 513, p. 26). Similar language appears in the con-

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firmatory patent of 1668 to Captain Carr (Exhibit 513, p. 131), and in the patent to Anthony Inlos (Exhibit 511).

It conclusively appears from the Duke of York's "Book of Laws" (Exhibit 510) that the authority established in the Colony of Delaware was exercised not by the Crown, and not by Royal Governors appointed by the Crown, but by the Governors appointed by and responsible to the Duke of York. The laws are described as follows:

## \* LAWS

"Establish by the Authority of his Majesties Letters patents, granted to his Royall Highness James Duke of Yorke and Albany; Bearing Date the 12th Day of March in the Sixteenth year of the Reigne of our Sovereigne Lord Kinge Charles the Second.

"Digested into one Volume for the publique use of the Territories in America under the Government of his Royall Highness.

"Collected out of the Severall Laws now in force in his Majesties American Colonyes and Plantations.

"Published March the 1st Anno Domini 1664 at a General meeting at Hemsted upon Longe Island by virtue of a Commission from his Royall Highness James Duke of Yorke and Albany given to

"Colonell Richard Nicolls Deputy Governour, bearing date the Second day of April 1664." (Exhibit 510, p. 2.)

It is stated in the appendix to this Book of Laws that after the country was brought under subjection to the English Col. Richard Nicolls "assumed control of the government by virtue of the Duke's commission to him as Deputy." (Exhibit 510, p. 4.)

By an order of 1668 newly appointed councillors were required to take an oath "to his Royal Highness." (Exhibit 510, p. 5.)

One of the Ordinances of 1671 provided that the tenure of land at Delaware was to be held in free and common socage "as his Royal Highness by his Majesty's patent holds all his territories in America," and it was further provided that the quit-rents should be paid as "reserved in their severall patents as an acknowledgment to His Royal Highness." (Exhibit 510, p. 9.)

The records show that an appeal lay from the courts at New Castle to the courts at New York. The record of a case tried in the New Castle County courts on November 2, 1680, shows that the plaintiff in the suit had appealed from a decision of the court of New Salem, New Jersey, to the courts at New Castle. The case was tried at the New Castle Court and the jury returned a verdict for the plaintiff. Whereupon the defendant gave notice of an appeal to the New York Courts. This case is part of the New Castle County court records. (Exhibit 515, pp. 2-4.)

The order of Commander Broekholls and Council, acknowledging the grant of Delaware to William Penn and directing the inhabitants to yield obedience to Penn states that the Commander and Council, being fully satisfied of Mr. Penn's right to the possession and enjoyment of the premises, have thought it necessary to signify and declare the same and to give thanks "for your good service done in your severall offices and stations during the time you remained under His Royal Highness' government." (Exhibit 516, pp. 74-75.)

The deeds of feoffment for Delaware were recorded in New York. (Exhibit 522.) Conclusive proof that the authority exercised in the Delaware Colony prior to 1682 was that of the Duke of York and not that of Royal Governors is found in the proceedings before the Privy Council upon

William Penn's petition for a grant of Pennsylvania. The Committee of the Privy Council, upon receipt of William Penn's petition, wrote to Sir John Warden, the Duke's Attorney, on June 14, 1680, inquiring "in relation to the propriety of His Royal Highness in those parts." (Exhibit 518, p. 2.) Sir John Warden replied to the effect that the proposed boundaries to William Penn agree well enough "with that colony or plantation which hath been hitherto held as an Appendix, and Part of the Government of New York by the Name of Delaware Colony." The subsequent proceedings show that the Duke of York's interests were consulted and he was treated as the Proprietary of the Delaware territory. The letter of the Attorney General, received by the Committee on November 11, 1680, refers specifically to the Dutch and Swedish plantations on the westward of the Delaware River and states that they have for a long time "either enjoyed the protection of His Royal Highness . . . or of the Lord Baltimore."

The twelve-mile circle itself has its origin in an agreement that William Penn's boundaries for Pennsylvania should be twelve miles distant from the settlements at New Castle. On November 23, 1680, Sir John Warden wrote to the secretary of the Committee for Trade and Plantations a résumé of the discussion between himself and William Penn as to the proposed boundary for Pennsylvania and referred to the Duke's intention "to keep some convenient distance from New Castle northward for boundary to that colony." (Exhibit 518, pp. 15-16.) The result of the matter was the circular boundary devised by Lord Chief Justice North. Lord Chief Justice North's draft of this boundary concludes:

"Excepting all Lands within twelve Miles of the Town of Newcastle, that shall happen to lie within the said Bounds, now in the Possession of his Royal Highness, or his Tenants or Assigns." (Exhibit 518, pp. 16-20.)

The foregoing brief review of some of the evidence touching this point leaves no room for doubt, first, that the Duke of York was the actual possessor and proprietor of the Delaware Colony and, second, that this possession and government were fully known to, recognized, and acquiesced in by the King in Council.

This control extended to the settlement at Upland (now Chester, Pennsylvania) to the same extent as the New Castle settlement.

As is well known, the Swedes had settled at Upland and Manayunk (Scharf, History of Philadelphia, Vol. I, p. 74; Scharf, History of Delaware, Vol. I, p. 48). The Duke of York succeeded, to the government of all territory on the west side of the Delaware River and Bay, and exercised full jurisdiction thereover. By the ordinance of September 25, 1676, the Book of Laws established by the Duke of York in New York, Long Island and dependencies was made applicable "in this River and precincts." (Exhibit 510, p. 22.) Paragraph 2 of the ordinance provides:

"2. That there bee three Courts held in ye several parts of the River & bay as formerly, To wit one in New Castle, one above att Uplands another below at the Whortkil." (Exhibit 510, p. 23.)

Paragraph 5 of the ordinance also refers to "the Court for Uplands."

The Duke's possession and control of the early Delaware and Pennsylvania settlements is thus established by the record.

III. (a). Government of Delaware Counties. (3). 1882-1876. Brief, pp. 156-161.

Plaintiff here argues that the Master's finding that William Penn and his successors governed the Colony of Delaware and exercised undisturbed possession and control thereafter from 1682 until the American Revolution is not justified. Plaintiff, however, fails to cite any evidence which is inconsistent with this finding. Plaintiff argues that the Act of Union of 1682, which annexed the three counties of Delaware to Pennsylvania was unauthorized. If we assume that it was unauthorized, yet it is a fact that it was acted on for nearly twenty years until the Delaware colonies broke away from Pennsylvania and had their own legislative assembly. Thereafter they continued to acknowledge the Penns as proprietaries and governors until the Revolution. But even if the Act of Union were illegal, what has this to do with the boundaries of the colony or Penn's rights as proprietary and governor?

The overwhelming evidence in support of the well-known historical fact that William Penn and his successors were the governors and proprietors of Delaware from 1682 until the American Revolution is discussed by the Special Master in various portions of his report. In particular we refer to his discussion of this matter on pages 29 to 41 of his report. Some of the evidence is detailed on pages 22 to 29 of our first brief.

It is sufficient at this point to refer again to the language of Lord Hardwicke in *Penn v. Lord Baltimore*, quoted in our original brief on pages 82-89. Referring to the rights of the Penns based upon actual possession and dominion over Delaware for seventy years he states that the proof of such possession "is very clear." (Exhibit 642, p. 23; 27 Eng. Rep. 1133.)

Under this heading reference is also made to the Order of the Privy Council of November 13, 1686, which it is claimed was an adjudication of the title to Delaware in the Crown as against William Penn.

This point is further discussed in Plaintiff's brief under the heading of "Penn v. Baltimore" and will be fully answered hereafter. It is sufficient for the moment to point out that the dispute was between Lord Baltimore on the one hand and William Penn on the other, and that the decision not only did not foreclose William Penn's title but in effect sustained it.

III. (b). Power of Crown to Grant Bed of River. Brief, pp. 162-170.

The point is next made that the English Crown could not alien the bed of a navigable river. It is not clear from Plaintiff's discussion of the subject whether Plaintiff claims that the bed of a navigable river could not be conveyed at all or whether the contention is made that it could not be conveyed in private ownership. It should be noted at once that the present case does not present the question, which has been raised in several cases before this Court but not directly decided, of the right to grant subaqueous soil in private ownership. The question raised here is whether title to subaqueous soil could be granted as a part of a grant creating a new colony the proprietor of which held such subaqueous soil not in private ownership but for the public use.

On this point we can not do better than quote the Master's discussion of this contention.

III. (a). Government of Delaware Counties. (2). 1682-1776. Brief, pp. 158-161.

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On this point we can not do better than quote the Master's discussion of this contention.

**"The Power of the Crown to Make the Grant.**

"Much discussion has been had concerning the right of the English Crown to grant subaqueous soil in private ownership. This discussion, however, is not applicable to the instant case because the record shows that in fact governmental powers were granted to William Penn by the deeds of feoffment for Delaware. The Duke of York, who had theretofore been exercising such governmental powers, transferred them to William Penn by the deeds and by his act of relinquishing control over the territory and thereafter exercising no control whatever over Delaware. Penn and his successors, including the Assembly of the Delaware Colonies, proceeded to exercise powers of government for one hundred years prior to the Treaty of Peace with Great Britain. No technical objections to the form of the grants for Delaware can avail to destroy the validity and the efficacy of the instruments which in effect made William Penn proprietor of Delaware and established an English colony in America. The deed of feoffment for the twelve-mile circle contained the following language:

"Together with all Rents Services Royalties franchises Duties Jurisdictions liberties and privileges therunto belonging And all the Estate Eight Tiths Interest powers property claims and demand whatsoever of his said Royall Highnesse of in or to the same or to any part or parcel thereof . . ." (Exhibit 521, p. 2.)

"The case of *Martin v. Waddell*, 16 Fed. 367, is urged by plaintiff as establishing that the ownership of the subaqueous soil could not have been legally granted by the Crown. The case referred to involved the construction of the terms of the surrender by the proprietors of the province of East Jersey and did not involve the question of the power of the Crown to grant

subaqueous soil. The facts before this Court in that case were as follows:

"The case below was an action of ejectment instituted by the lessee of Waddell in the Circuit Court of the United States for the District of New Jersey, against Martin, et al., for the recovery of certain subaqueous soil in Raritan Bay, New Jersey. Waddell's lessee, the defendant in error before the Supreme Court, claimed by virtue of a survey of the lands made in 1834 under authority of the proprietors of East Jersey. Martin, the defendant in the ejectment, claimed under an act of the State of New Jersey of November 25, 1824, under the terms of which set the State authorized commissioners to permit the owners of the upland to survey the adjacent subaqueous soil for the purpose of planting and growing oysters.

"The question before the court therefore was the right of Martin, the plaintiff in error, and the defendant in the ejectment proceeding, to take oysters upon a tract of subaqueous soil to which Waddell, as the grantee of the proprietors, claimed title.

"The patent of Charles II to the Duke of York of March 12, 1663/4, for New York, New England and New Jersey (Exhibit 6), the indenture of June 23, 1664, from the Duke of York to Berkeley and Carteret (Exhibit 7), the confirmatory patent from Charles II to the Duke of York of June 29, 1674 (Exhibit 17), the deed of confirmation from the Duke of York to the then proprietors of East Jersey of March 14, 1682/3 (Exhibit 35), and the surrender of the powers of government by the proprietors of East Jersey to the Crown on April 15, 1702 (Exhibit 26), were all in evidence in the Martin case and were considered by this Court.

"This Court held that after the surrender of the powers of government and other *jura regalia* by the proprietors of East Jersey in 1702 they no longer held

title to the subsequent soil of Haritan Bay, and reversed a judgment in favor of Waddell who claimed under the proprietary title.

"This decision was confined strictly to the construction to be given to the language of the grants to the Duke of York and the language of the surrender of the East Jersey proprietors. The East Jersey proprietors had surrendered in 1702 all powers of government, and the question presented was whether they still retained title to the subsequent soil of Haritan Bay. Chief Justice Taney, speaking for the Court, said:

"No words are used for the purpose of withholding from the crown any of its ordinary and well-known prerogatives. The surrender, according to its evident object and meaning, restored them in the same plight and condition in which they originally came to the hands of the Duke of York. Whatever he held as a royal or prerogative right, was restored, with the political power to which it was incident. And if the great right of dominion and ownership in the rivers, bays, and arms of the sea, and the soils under them, were to have been severed from the sovereignty, and withheld from the crown; if the right of common fishery for the common people, stated by Hals in the passage before quoted, was intended to be withdrawn, the design to make this important change in this particular territory would have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language." (p. 416.)

"There is a vast difference between the question of whether or not title to subsequent soil may be retained in private ownership and the question as to whether or not the title to that soil has been vested by valid grant to a government. The history of the American Colonies shows that the Crown repeatedly granted the sub-

aqueous soil in the rivers and bays in America to its colonies. *Virginia v. West Virginia*, 246 U. S. 265, is an instance where the charter of Maryland granted the title to low water mark on the farther shore of the Potomac River to Lord Baltimore." (Report, pp. 54-57.)

The Master's finding on this point is so clearly sound that further discussion would seem superfluous. However, it is worth while to point out that this Court has held that the decision in *Martin v. Waddell* was based upon an interpretation of the grants then before the Court. In referring to *Martin v. Waddell* this Court, in the case of *Massachusetts v. New York*, 271 U. S. 65, speaking through Mr. Justice Stone, said (p. 90):

"It was held, in an opinion by Chief Justice Taney, that the relinquishment by the Proprietors to the Crown, of the rights and powers of government vested in them, carried with it as an incident the title to land under tidal waters; that that title and ownership had passed to the State of New Jersey as an incident to its sovereignty over the territory embraced in the royal grants, and excluded all claims of title to lands under navigable waters by those claiming under grants by the Proprietors. The reasoning of the opinion was addressed wholly to the proper interpretation to be placed upon grants or reservations of rights of sovereignty with respect to their operation to transfer title of lands under navigable waters; and it is decisive of this case."

Since it is an admitted fact that the soil of the Delaware River was granted to William Penn not in private ownership but as proprietary, and since the patent from the Crown to the Duke of York likewise granted the subsequent soil of the river along with full governmental powers, the

rule applied in *Martin v. Waddell* and in *Massachusetts v. New York* is directly applicable here.

At the time that the Duke of York received from the Crown his patent for Delaware with all the jura regalia and powers of government therein granted, and at the time when he physically delivered this patent to William Penn in pursuance of his covenant for further assurance, William Penn was in fact exercising actual powers of government over the Delaware Counties, and was in all respects the proprietary thereof, lacking only a formal transfer from the Duke to make him the legal as well as the de facto proprietary.

That a Proprietary or Seignior may be held by prescription is settled English law.

"All franchises or privileges, which a man may have without a title appearing upon record, he may claim by prescription," 6 Com. Dig. 79C.

"But franchises or liberties, which cannot be seized as forfeited, before the cause of forfeiture appears upon record, cannot be claimed by prescription; . . . yet a man may claim a county palatine by prescription, and in respect thereof, to have a 'bona et catalla feilon' etc. Co. L. 114b. Vidi Franchises (D. 1.)" 6 Com. Dig. 79D.

"The highest franchise is a county palatine.

"A county palatine is so called a palatio regis, because the count has jura regalia within his county as fully as the king himself, from whom all justice, honour, dignity, franchises, and privileges were at first derived. 4 Inst. 304. Dav. 60. . . ."

"It may be by prescription, or by parliament.

"So the King may create a county palatine. Dav. 61." 4 Com. Dig. 246 D. 1.

County Palatine of Chester: "This is a county palatine by prescription and according to my Lord Coke, is the most ancient and honourable remaining at this day." 2 Bac. Ab. 758.

County Palatine of Durham: "This is also a county palatine by prescription, and said to have been erected soon after the Conquest, and is parcel of the bishopric of Durham." 2 Bac. Ab. 759.

"Even before the Norman Conquest the bishops of Durham appear to have claimed palatinate or quasi-palatinate rights and jurisdiction. This prescriptive franchise was confirmed by charters of William the Conqueror, William Rufus, Henry I, and Henry II. In the reign of Edward I, Anthony Bek, the then Bishop, was summoned to appear before the King's Justices under the statute of 'Quo Warranto' to show how he held his franchise, and on his refusal to appear his franchise was seized into the King's hands in the name of distress. The Bishop appealed to the King and his council in Parliament, who held that he was entitled to jura regalia between Tyne and Tees, and in Northamshire and Bedlington." 9 Laws of Eng. 124.

"Three of these counties, Chester, Durham, and Lancaster, are called counties palatinate. The two former are such by prescription or immemorial custom, or at least as old as the Norman Conquest:—these palatine privileges (so similar to the regal independent jurisdictions usurped by the great barons on the continent during the weak and infant state of the first feudal kingdoms of Europe), were, in all probability, originally granted to the Counts of Chester and Durham, because they bordered upon inimical countries, Wales and Scotland, in order that the inhabitants, having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemy's incursions; and that the owners, being encouraged by so large an authority, might be the more watchful in its defence." 1 Blackstone 116.



"A prescription cannot be for a thing which cannot be raised by grant. For the law allows prescription only in supply of the loss of a grant, and therefore every prescription presupposes a grant to have existed." 2 Blackstones 255.

According to the decisions of *Martin v. Waddell* and *Massachusetts v. New York*, the question underlying the construction to be given deeds and grants relating to soil under navigable waters is one of intention. Was it the intention to sever the ownership of the subaqueous soil from the powers of government and other prerogative rights? (P. 411.) Let us apply to the case at bar the rules laid down by Chief Justice Taney in *Martin v. Waddell* for the construction of grants of this character.

We must not, he says, look merely to the construction and technical meaning of the words. The laws and institutions of England, the history of the times, the object of the charter, the contemporaneous construction given to it, and the usages under it are entitled to consideration (p. 411).

The object of the patent and deeds for Delaware was to enable William Penn "to establish a colony upon the newly discovered continent." Penn desired the title to the bed of the Delaware River for no private or petty purpose but for a public purpose of great moment. He was actuated by high motives. He desired to protect and foster navigation and the commerce of his colony. As we have shown, the ownership of the foreshore and of the river bed was a valuable right in the development of navigation. The "history of the times" makes it clear that the right he thus acquired was intended to be used for the benefit of the new community which he was seeking to create.

The contemporaneous construction by all parties, including the Crown of England, of the patent and deeds for Delaware was that William Penn was thereby constituted the proprietor of the colony of Delaware, as fully and amply as though the deeds of feoffment had conferred upon him express powers of government.

The usages under the grants have been dwelt upon, at length, William Penn and his successors, with no other title but these grants, exercised full powers of government over Delaware for one hundred years prior to statehood.

If therefore technicalities of language are to be laid aside, and the question decided on a broad and liberal view, based on the tests laid down in *Martin v. Waddell*, William Penn's title to the Delaware River is unassailable. The deeds of feoffment did convey "powers", "jurisdiction", and "royalties", and the lack of more ample language is in this view a trivial technicality. In fact, "the history of the times, the object of the charter, the contemporaneous construction given to it, and the usages under it," for the century which followed it outweigh all the highly technical arguments that can be made against the technical sufficiency of the language of the deed.

If the test to be applied to the title is whether the ownership of the subaqueous soil was intended to be severed from the powers of government, then the answer is necessarily that the title to such soil passed to William Penn, for he in fact was exercising the powers of government. Certainly the Crown was not exercising such powers, nor was the Duke of York. The only governing authority was that of William Penn. Therefore, if the rule above referred to be applied, the title must be held to be good.

The grant to William Penn of the Delaware River was to him as a proprietary—as the founder of a new colony,

and the rights and powers granted him were intended to be used, as was said in *Martin v. Waddell*, "for the same purposes, and to the same extent, that they had been used and enjoyed for centuries in England."

We submit that the Master's findings are sustained by the applicable decisions of this Court, and that the exceptions thereto should be overruled.

### III. (c). Feoffment of August 24, 1682. Brief, pp. 170-181.

Under this section of the brief it is argued, first, that the deed of feoffment from the Duke to William Penn of August 24, 1682 conveyed no powers of government; and second, that a feoffment could convey only a corporeal hereditament.

With regard to the first point it is to be noted that while the Duke of York had never been granted expressed powers of government over the Colony of Delaware by letters patent from the Crown he had, as we have shown, actually exercised such powers for eighteen years and was at the time he gave the deed in full possession and enjoyment of such powers. He could convey to Penn what he had.

The language of the deed of feoffment did not expressly convey powers to Penn to pardon offenses, to raise assemblies, etc., such as are often found in letters patent creating a proprietary. The deed of feoffment for the twelve-mile circle, however, contained the following language:

"Together with all Rents Services Royalties Franchises Duties Jurisdiccions liberties and privileges therunto belonging and all the Estate Right Title Interest powers property claims and demand

whosoever of his said Royall Highnesse of in or to the same or to any part or parcell thereof . . ." (Exhibit 521, p. 2.)

This language is not as detailed as that ordinarily used in letters patent creating a proprietary government, but it is ample to pass all the "royalties", all the "jurisdiccions" and all the "powers" which the Duke of York actually possessed at the time. As we have before shown, he was the *de facto* owner and proprietary of the colony, and the deed of August 24, 1682, was sufficient to pass all his title and powers of government. The letters patent of March 22, 1682/3, formally granted to him not only the title to the soil but full powers of government as well. These powers of government, after August 24, 1682, were actually exercised by William Penn as proprietary.

It is also urged that the draft of the patent of 1688 intended by James II for William Penn (Exhibit 550) contains language raising the inference that King James regarded the deeds of feoffment as insufficient to convey powers of government and that William Penn acknowledged such insufficiency (Brief, pp. 175-176). It is stated that the purpose of the new patent was to release William Penn from penalties which might result from the exercise of governmental powers under the deeds of feoffment.

An examination of the draft of the patent of 1688 will show that the interpretation sought to be placed thereon by Plaintiff is erroneous. Plaintiff quotes from page 4 of the exhibit the language purporting to be an acknowledgment by William Penn of the use and exercise of prerogatives and powers "which as he is now advised he could not nor can maintain or justify by virtue of the said indenture from us or otherwise howsoever." (Brief, p. 176.) The

sentence immediately following the quoted portion is as follows (Exhibit 550, p. 5):

"Wherein he hath amongst other things according to his judgment for the better improvement of the said tract of land and premises and also of his own province of Pennsylvania adjoining therunto promoted a general liberty of conscience to all the inhabitants therein, least therefore the said William Penn may hereafter be called in question or may have fallen within the reach of some of our laws or statutes and be liable to prosecution in our courts Ecclesiastical or Temporal for such his crimes or offenses," (Italics ours.)

The foregoing language makes it clear that the purpose of the pardon included in the draft of the patent was to relieve William Penn from the consequences of the crime of having "promoted a general liberty of conscience" to all inhabitants, not only in Delaware, but in Pennsylvania--to the mind of a Stuart King a very serious offense.

The point of Exhibit 550 lies in its reaffirmation that the Delaware Colony was intended for William Penn (Exhibit 550, p. 4).

Plaintiff refers to the opinion of Justice Baldwin in the case of *Gale v. Belling* (Exhibit 219). We have discussed this case in our first brief. It is sufficient to repeat that the force of the Court's opinion is destroyed by the fact that the letters patent from the Crown for Delaware were not before the Court in that case and the charge was therefore founded on an error of fact.

The statement is made that a grant by feoffment was limited to the conveyance of corporeal hereditaments. This is not correct. In fact from earliest times the feoffment was used to convey not merely corporeal hereditaments but

the appurtenances thereto "such as hamlets appurtenant to chief manors, and common of pasture, turbarry, fishery, or the like; and things incorporeal, as franchises, and servitudes of tenements". (Britton, Chap. 8, Sec. 4; English Translation by Nichols; Baldwin's Edition, Washington, D. C., 1901.)

This argument is beside the point, however, because a grant of land covered by water is considered in the English law as a grant of land and is a corporeal hereditament.

In Book II, Blackstone's Commentaries, p. 17, it is said:

"Hereditaments then, to use the largest expression, are of two kinds, corporeal and incorporeal. Corporeal consist of such as effect the senses; such as may be seen and handled by the body: incorporeal then are not the object of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.

"Corporeal hereditaments consist wholly of substantial and permanent objects; all of which may be comprehended under the general denomination of land only. . . . It is observable that water is here (1 Co. Inst. 6) mentioned as a species of land, which may seem a kind of solecism; but such is the language of the law; and therefore I cannot bring an action to recover possession of a pool or other piece of water by the name of water only; . . . but I must bring my action for the land that lies at the bottom, . . . But the land, which the water covers, is permanent, fixed, and immovable; and therefore in this I may have a certain substantial property; of which the law will take notice, and not of the other."

The attempt, two hundred and fifty years after its date, to question an ancient monument of title to one of the

States of the Union on technical grounds ought not, we submit, to be favored by the Court.

VII (c). Letters Patent of March 22, 1682/3. Brief, pp. 182-191. (1). Surrender of Said Letters Patent. Brief, pp. 191-228.

Under this heading of the brief, Plaintiff discusses the letters patent for Delaware which formally legalized the existence of the Colony of Delaware and defined its boundaries. Plaintiff describes the mechanics of the issuance of letters patent and apparently admits that these letters patent were taken out at the expense of William Penn and for his benefit, and in fulfillment of the covenant for further assurance given by the Duke of York in the deeds of feoffment of August 24, 1682.

Plaintiff then proceeds to argue that these letters patent were shortly thereafter surrendered to the Crown in connection with the application of the Duke of York for a new grant of the Delaware territory. (Exhibits 368, 369.)

This contention of Plaintiff is the crucial point of this branch of the case. Unless Plaintiff can escape from the plain effect of the letters patent of March 22, 1682/3, the title of the State of Delaware to the bed of the river within the circle must be held to be good.

Several points are made in support of this argument.

First, it is argued that the proposed bill of April 11, 1683, recites a surrender of the letters patent of March 22, 1682/3, and therefore there must have been such a surrender. We have pointed out in our first brief the weakness of the claim that the recital of a surrender in a bill for a proposed patent is entitled to any legal effect. Obviously it is no more evidence of surrender than a recital of the payment of the consideration in a draft of a proposed deed

is evidence that the consideration was paid before the deed was executed. Plaintiff argues that the proposed grant of April 11, 1683, was never consummated, yet in the same breath the argument is made that the surrender recited in the proposed grant was consummated.

It is also argued that because the attorney for the Penns obtained a certified copy of the patent roll at the time of the suit of *Penn v. Lord Baltimore*, the inference is that he did not have the original. This, of course, is a *non sequitur*. In the case at bar and in the *Case of Pea Patch Island* not only was the original produced but also copies thereof. This would be the natural course of any attorney.

We invite attention to the fact that Plaintiff has failed to produce any record of the Public Record Office in England to substantiate its argument on surrender. Plaintiff ignores the fact that the letters patent of March 22, 1682/3, were before the Court of Chancery in *Penn v. Lord Baltimore* and their validity and existence sustained by the opinion of Lord Hardwicke. We submit that after the lapse of nearly two hundred years since this decision, they are not open to question.

Plaintiff argues (Brief, p. 185) that the phrase "river and soil thereof" in the deeds of feoffment is to be interpreted according to the language of the draft of the bill of April 11, 1683 (Exhibit 368), and that the bill of April 11, 1683, did not intend to convey the bed of the river.

The language of the bill of April 11, 1683, is:

"All that river called Delaware and the soil thereof and all islands in the said river."

This language is substantially the same as that in the letters patent of March 22, 1682/3, and is substantially the same as the language of the deed of feoffment.

We are unable to follow the argument that the word "soil" does not mean the soil of the river. The word "thereof" means "of the river," and the phrase "soil thereof" means the soil of the river. The words "soil of the river" mean the bed of the river.

Next, that William Penn failed to mention these letters patent. The exhibits show conclusively that William Penn based his title on the deeds of feoffment and that he was correct in so doing. His immediate grantor was not the Crown but the Duke of York. That William Penn referred to his immediate source of title is certainly no evidence that the Duke of York had surrendered the letters patent of March 22, 1682/3. All the available evidence indicates the contrary.

Plaintiff devotes considerable argument to the effect that the document in the State Archives at Dover is not the original letters patent for Delaware. (Brief, pp. 201-225.) The importance of this point lies in the fact that if the document is the original it constitutes the strongest possible evidence that it was not surrendered.

We have dealt at some length with this point in our original brief and in this brief shall merely answer some of the arguments advanced by Plaintiff.

It is said that the original document was not offered in evidence in *Penn v. Lord Baltimore*. (Brief, p. 202.) Exhibit 735 is a copy of the original record in the Chancery Office in London. We do not understand the assertion that the Public Record Office entry book is not "an original record." (Brief, p. 203.) Obviously it is a record of much higher authenticity than the *breviate* upon which Plaintiff relies to overthrow the Public Record Office records. The assertion that Exhibit 735 does not show that the document

was offered in evidence, and that the exhibit is only a list of documents mentioned in the bill of complaint, is without any foundation whatever. An inspection of the exhibit will show that it is an extract from the official record of the decree. The decree begins by reciting the hearings in the matter, and proceeds to enumerate the various documents which were considered by the Court, including the exhibits. The distinction between originals and copies in this list of exhibits is obvious and shows beyond any doubt that the original letters patent of March 22, 1682/3, were before the Lord Chancellor. The attempt of Plaintiff to make it appear that the matter quoted from this decree is merely "the substance of the original bill" is without any foundation for the reason that this is simply not the fact. The stars in the exhibit indicate the omission of the substance of the original bill.

Reference to the various documents recited as being before the Court will show that there are included a number of books, e. g., "A Book of the Laws of Maryland", a book entitled "Nieuwe Weald", etc. Note also the exhibit described as "A map marked D. U. T." Obviously these exhibits could not have formed part of the original bill of complaint. They are exhibits that were introduced in evidence before the Lord Chancellor.

The assertion is made (Brief, pp. 203-204) that Exhibit 365, which was the copy of the letters patent of March 22, 1682/3, shown to Mr. Paris at the time of his examination in Chancery, was an exhibit in the case. The endorsement shows that it was not.

Plaintiff next argues that certain discrepancies between the *breviate* and the official Chancery decree roll should be resolved in favor of the *breviate*. This argument

is difficult to understand since the Chancery decree roll is the official record and the breviate merely a brief or compilation of the papers in the case made for the Penns and in no sense an official English record.

The length to which Plaintiff is forced to go in an endeavor to impeach the authenticity of the Dover document is illustrated by the argument on page 207 of the brief that it was impossible that the grant of March 22, 1682/3, was "immediately" delivered to Penn for the reason that Penn did not return to England until July 12, 1684. It does not seem unreasonable to assume that William Penn had an agent or attorney in England; in fact any other assumption would be highly unreasonable. That the patent could have been delivered to such agent or attorney seems not to have been considered by Plaintiff.

Plaintiff next argues (Brief, p. 209) that the document at Dover is "not even a correct copy of the original." We are unable to understand the Plaintiff's theory as to what the Dover document is. It is argued that it is not the original and that it is not a duplicate. Obviously it is not an exemplification. What, then, can it be? Plaintiff asserts (Brief, p. 219) that it is "an incorrect copy." It has attached to it a seal the remnants of which are entirely consistent with the theory that the original was the Great Seal of England. Plaintiff makes no contention that it is a forgery. If genuine the seal must be genuine, and the only seal that could have been attached is the Great Seal of England.

The various attempts to impeach the authenticity of this document collapse by their own weakness and by the impossibility of explaining the nature of the document upon any reasonable theory other than the obvious and reasonable conclusion that it is the original document.

Attention is invited to the statement on page 215 of Plaintiff's Brief that the endorsement "perpetuity" on the back of the document "is characteristic of every original grant." This is substantially correct. See Sir Henry Maxwell-Lyte's testimony. (Exhibit 731, p. 44.) The Dover document has such an endorsement.

It is argued that the explanation of the absence of an intact seal from the document, i. e., that it has crumbled away because of handling in two hundred and fifty years, is "unconvincing." (Brief, p. 216.) We cannot understand how there is anything unconvincing in the crumbling of a pendant wax seal during a period of two hundred and fifty years. The argument that no document purporting to be an original can be accepted as such which does not carry convincing evidence of the presence of the Great Seal entirely overlooks the fact that an original patent might have completely lost the seal and yet be otherwise perfectly regular on its face. The destruction of the seal would in no wise impair the validity of the document.

The attention of the Court is invited to the actual size of the Great Seal of England and the length of the cord to which it was attached, as shown by Plaintiff's Exhibits 190, 191, 192, and 193. Particular attention is invited to the broken seal on Exhibit 191. It will be noted that not only is a large section of the seal broken off but the seal has cracked and worn away at the two places where the cord enters the wax. The length of the cord on Exhibit 191 would appear to be about ten inches and the length of the cord on the Dover document (Exhibits 761 and 762) would appear to be the same. It is entirely reasonable to believe that the seal gradually broke and crumbled away, leaving only two fragments of the middle of the seal adhering to the cord.

The original seal upon the Dover document must have been a large one. What other seal could there have been affixed to the document except the Great Seal of England! It was not the Privy Seal because the writ of Privy Seal is still in the records of the Public Record Office at London. Therefore, it must have been the Great Seal of England and the document is the original document.

Considerable discussion is devoted by Plaintiff to the opinions of Sir Henry Maxwell-Lyte. (Brief, pp. 217-225.) The objections and criticisms upon the various opinions expressed by Sir Henry Maxwell-Lyte appear to be of an insubstantial character and we do not understand that any serious attempt is made to question his qualifications or the soundness of his conclusions.

### III. (d) (2). *Claim of Title by Estoppel. Brief, pp. 228-230.*

Plaintiff here undertakes to assail the Master's finding that by virtue of the issuance of the letters patent of March 22, 1682/3 a good title by estoppel in law and in equity passed to William Penn for the Delaware territory including the subaqueous soil of the river within the twelve-mile circle.

It is first argued that the deeds of feoffment conveyed no powers of government and hence the covenant "for further assurance" did not relate to powers of government.

We have previously shown that the language of the deed of feoffment was sufficiently broad to convey to William Penn the powers of government which the Duke of York actually had, and the Master so held. See the quotation on pages 54 to 57 of his report, heretofore set forth.

The assertion is made that the doctrine of equitable estoppel could not apply to powers of government, or to

"royalties", by which is evidently meant the bed of the river. No authority is cited in support of this assertion and we think none can be cited.

Plaintiff discusses the right of the Duke of York to alien his powers of government. The fact remains that he did alien them and that William Penn and his successors exercised them without hindrance from the English Crown from 1682 to the time of the American Revolution. We submit that an attempt at this late date to argue that the Duke of York had no right to alien powers of government is purely an academic question.

On page 229 of the brief it is again asserted that the Crown could not convey the title to the bed of the river. This argument has been fully discussed and answered.

It is said that Penn "waived his rights" under the conveyance of further assurance because he knew at the time that the feoffment was given to him that the Duke had no title. No authority is cited in support of this argument. Moreover, the argument is completely answered by the decision in *Penn v. Lord Baltimore*. The Lord Chancellor held:

"In 1683 the Duke of York takes a new grant from the crown; and having granted before, was bound to make further assurance, for the improvements made by Penn were a foundation to support a bill in equity for further assurance." (Exhibit 642, p. 22; 27 Eng. Rep. 1138.)

It is further argued that whatever rights the Duke of York may have had prior to 1682 in the Delaware Colony had been granted by him to the New Jersey proprietors prior to the date of the feoffment.

Since it is an admitted fact in the case that the grant to Berkeley & Carteret stopped at the easterly side of the

Delaware River there is no basis whatever for this contention. In so far as the argument is based on the right of the inhabitants of New Jersey to use the river for purposes of navigation the answer is, as we have already said, that that right is in no wise inconsistent with the ownership of the subaqueous soil.

### III. (e). The Crown's Claim of Title. Brief, pp. 231-273.

In this portion of the brief Plaintiff argues that there is error in the Special Master's findings (Report, p. 76, findings 18 and 19) to the effect that the Crown of England recognized and confirmed the title and possession of William Penn to Delaware and his powers of government thereover, and that at no time did the Crown take any action looking to the dispossession of William Penn from such title and possession. The Plaintiff urges five reasons in opposition to these findings.

1. It is first urged that the Act of Union and other statutes relating to Delaware were ineffective because not submitted to the Crown for approval. This is a repetition of the argument made under Point III-(a)-3 of the brief, pages 156-161, and has already been answered. No action was ever taken by the Crown to set aside the Act of Union, but if the Act of Union were entirely void, it would not affect boundaries of Delaware.

2. Plaintiff states that the record shows that from 1682 until the death of Penn in 1718 his "claim of title" was frequently questioned and "rejected" by the Crown. This is incorrect. We have discussed the evidence on this point on pages 79 to 82 of our original brief. No question

was raised concerning the validity of the Penn title until 1701 when the report of the Surveyor General, containing charges against William Penn's government, came before the Board of Trade. (Exhibit 417.) During the period from 1682 to 1701 the title was not questioned and on the contrary was expressly confirmed by letters patent under the Great Seal of England in 1694 restoring Penn, to the government of the Province of Pennsylvania " & territories." (Exhibit 557, p. 4.) The Special Master so found. (Report, p. 76, finding 17.)

Moreover, it is not correct to say that the title was "rejected" by the Crown. None of the proceedings before the Board of Trade or the Privy Council ever resulted in any adjudication against the Penn title. There was a report from the Privy Council of January 16, 1734/5 (Exhibit 638), favorable to Lord Baltimore's claim to Delaware; but this was followed by the case of *Penn, v. Lord Baltimore* in the Court of Chancery, the decision in which sustained the Penn title.

Plaintiff argues that the Order of the Privy Council of November 13, 1685 (Exhibit 264), was an adjudication of the title against William Penn. This contention is more fully set forth under point IV-(a) of the brief and will be there answered. It will be shown that there was no adjudication against Penn. The adjudication was against Lord Baltimore.

3. It is next argued that during the negotiations relating to Penn's proposal to surrender his powers of government to the Crown, Penn himself abandoned his claim to powers of government over Delaware. The negotiations for the surrender of Penn's powers of government are discussed in some detail and the assertion is made (Brief, pp.



231, 235, 243) that Penn admitted that he had no grant for Delaware. This assertion is not borne out by the evidence. Penn never admitted that he had no grant for Delaware; he repeatedly asserted title under the deeds of feoffment. The quotations from the proceedings found in Plaintiff's brief on pages 235-239 are replete with references by Penn to the "territories" belonging to Pennsylvania. The phrase "territories belonging to Pennsylvania" meant the Delaware Counties. The phrase was subsequently judicially construed by the Royal Court of Admiralty at New Castle in 1727 to mean the Delaware Counties. (Exhibit 569.)

It should be added that all of the negotiations for the surrender by Penn of his powers of government came to nothing. The surrender was never carried out. Before the purchase price was paid Penn died and after his death litigation ensued in the Court of Exchequer concerning the consummation of the surrender. These points are discussed in our first brief, pages 81 to 83.

Reference is made to the opinion of the Attorney General of October 21, 1717 (Exhibits 471, 624.) Although the officer who gave that opinion did not have before him the letters patent of March 22, 1692/3, he nevertheless recommended that the Crown establish its title in the Court of Chancery before making any grant of Delaware. This course was never followed.

4. It is next argued that the declarations which Penn was required to sign, to the effect that the approval of his appointment of Deputy Governors should not be construed to diminish the Crown's "claim or right" to the Lower Counties, constitute in effect an admission by Penn of the fact that he had no title. The fact is that Penn's refusal to sign the first form submitted to him (Exhibit 1044,

quoted in Plaintiff's brief, p. 251), which referred to the Crown's "right and title" instead of the Crown's "claim of title," is direct and positive proof that Penn refused to admit the Crown's title. What he did was to admit the Crown's "claim of title," a very different thing.

No action was ever taken by the Crown to establish its supposed claim of title. The statement in Plaintiff's brief therefore on page 256 that Penn's declarations reserved the "right" of the Crown is incorrect.

Plaintiff pushes the argument to the length of saying that this reservation of the Crown's claim, though never acted on and though manifestly unavailing, "destroys the argument of Lord Hardwicke and Mr. Sergeant that the Penns remained in undisputed possession of the three Lower Counties." (Brief, p. 267.) Plaintiff no doubt refers to the decisions (not the "arguments") of the Lord Chancellor of England in *Penn v. Lord Baltimore*, and of John Sergeant, Esq., the arbitrator in the *Case of Pea Patch Island*, which have been fully discussed in our first brief. Whatever may have been the "attitude" of certain ministers of the Crown, it could not destroy the effect of an adjudication by the Court of Chancery.

5. It is argued that Penn's possession did not extend to the subaqueous soil of the river east of the ship channel. There is nothing in the record which supports any such distinction. As we have pointed out, Penn asserted dominion over the subaqueous soil of the Delaware River as early as 1683 in his letter to his commissioners. (Exhibit 52, p. 3.) Dominion over the subaqueous soil was exercised by the Penns by the grant of "bank lots" in the town of New Castle (Exhibit 570) and by surveys of Reedy Island in 1749 and 1762. (Exhibits 591-593.) There is no

possible way that the Plaintiff can distinguish between Penn's assertion of dominion over the subaqueous soil of the river on the east side of the channel and the soil on the west side of the channel, for the reason that the description in the deeds of fecmment and the letters patent includes the entire river within the circle.

Lastly it is argued that Admiralty jurisdiction was exercised by the Crown in the Delaware River and Bay. We have previously commented on this argument. It clearly confuses the question of title with the control of the Crown over navigation and Admiralty matters. The two are entirely separate. Defendant's Exhibit 569 was not introduced to show Admiralty jurisdiction by William Penn, but to show a judicial construction of the phrase "territories thereupon depending" which we have above referred to. The Admiralty Court was, as Plaintiff correctly says, a Royal Court and the construction of the phrase was thus an official recognition of the existence of Delaware under the proprietary government of the Penns.

### III. (f). Repudiation of Penn's Title by the State of Delaware. Brief, pp. 274-283.

Plaintiff's brief discusses the Delaware Act of 1794 (Exhibit 685) as a "repudiation" of the Penn title. The argument is made that if the statute confiscated the Penn lands it was unconstitutional; but as an unconstitutional construction is to be avoided the Act should be construed as constitutional, and the recitals in it that the Penn's claims to the lands within the State of Delaware were unfounded should be taken to be true. All this argument is beside the point. If the State of Delaware acquired the title to the bed of the Delaware River as successor to the Penns at the time of the Revolution it is not estopped to assert that title

against the State of New Jersey, because of the Act of 1794 or because of any other Act to which the State of New Jersey is not a party.

It is an elementary principle of the law of estoppel that the person who seeks to enforce an estoppel in pais must have believed the representation by his opponent and acted upon it to his injury. In other words he must have been misled and have changed his position upon the faith of the representation so that it would be inequitable to permit his opponent to deny the truth of the representation.

In Chapter 18, Section 2, of Bigelow on Estoppel (6th Ed.), it is said:

"Estoppel by representation consists in holding for truth a representation acted upon when the person who made it, or his privies, seek to deny its truth and to deprive the party who has acted upon it of the benefit obtained. The origin of the estoppel is probably to be found in the doctrine of equity that if a representation be made to another who deals upon the faith of it, the former must make the representation good if he knew or was bound to know it to be false. Lord Eldon in the case just cited speaks of this as 'a very old head of equity.' But the principle had been fully adopted at law as ground for an action of deceit several years before this remark was made, and though still called 'equitable estoppel' the estoppel is as fully available at law as in equity.

"In order to justify the interposition of equity in the case mentioned it is necessary to establish, not only the fact of misrepresentation or concealment, but also that it has been in a matter of substance or of importance to the interests of the other party, and that it has actually misled him. If the misrepresentation was of a trifling or immaterial thing, or if the party alleging it did not in fact trust in it or was not misled by it, or if

it was vague or inconclusive in its nature, or if it was upon a matter of opinion or fact equally open to the knowledge of both parties, in regard to which neither could be presumed to trust the other; in these and the like cases equity will not grant relief."

This Court has so held.

In *Ketchum v. Duncan*, 98 U. S. 659, it was contended, on behalf of certain bondholders, that the purchasers of some coupons were estopped to claim that the coupons were still valid obligations of the issuing company.

This Court, speaking through Mr. Justice Strong, stated the doctrine of estoppel as follows (p. 666):

"Moreover, it is necessary to notice who sets up this plea of estoppel. An estoppel in pais does not operate in favor of everybody. It operates only in favor of a person who has been misled to his injury, and he only can set it up. If, therefore, there be any estoppel in this case, it must be in favor of some bondholder (if any there was) who was led to believe, by the action of William B. Duncan, that the railroad company was, in May and November, 1874, paying the coupons of the first mortgage, then falling due, and paying them in order to extinguishment; but no such bondholder asserts such an estoppel. So far as it appears, no one of the appellants was so misled. No one of them can claim an estoppel which is personal, and of which only the person misled to his hurt can avail himself. Indeed, it does not appear that any one of the witnesses (very few in number) who supposed the coupons were being paid when they received the coupons were Bank of Mobile, was at the time, or is now, the holder of a single first-mortgage bond. Nor is there a single coupon-holder who now claims that he was misled or deceived by any of Duncan, Sherman, & Co.'s agents, by the Bank of Mobile, or the Union Bank of London,

or by the Credit Foncier. It is impossible, therefore, to see how there can be any estoppel, or wherein can be found any fraud in purchasing the coupons."

In *Tyler v. Odd Fellows Association*, 145 Mass. 134, the Supreme Court of Massachusetts thus stated the rule:

"An estoppel results from conduct which was intended to induce, and has induced, another to act to his disadvantage. It can only come from a successful effort to get one to change his situation."

Many more cases might be cited but the principles above referred to are unquestioned.

In the case at bar there is no suggestion by Plaintiff that the recitals in the Delaware Act of 1794 constituted anything more than an expression of opinion by the Delaware Legislature as to the source of the Delaware title. The facts surrounding the title were matters of public record. They were as open to the examination of the State of New Jersey as to the State of Delaware. In no sense could they have deceived the State of New Jersey. In no sense did the State of New Jersey rely upon them or was misled by them to its injury.

Suppose that the Legislature, in the recitals to the Act of 1794, had undertaken to aver that the title of the State of Delaware was derived from still a third source, i. e., some source other than the Penns or the Crown of England. Could it be claimed that in a boundary dispute with one of her sister States of the Union the State of Delaware would be estopped from showing the error in the recitals of the act? We say that there is no doctrine of the law either by the rule of estoppel or otherwise which would prevent the State from showing the true title whenever it should be called in question.

*Reply Brief of Defendant*

If a state of the Union does in fact possess good record title to certain lands within its borders, how is it possible for it to be divested of that title by means of a legislative Act which recites an erroneous source of that title?

No authority on this point is cited to support Plaintiff's contention that the Act of 1794 vested title in the State of New Jersey by estoppel, and we submit none can be found.

The Master discusses this question on pages 57 to 60 of his report. After quoting the recital of the Delaware Act of 1794 he says:

"It is contended that as it would have been unconstitutional for Delaware to have confiscated the ungranted Penn. lands within the state, that it must be assumed that it intended by this enactment to repudiate the validity of the grants to Penn, but the question of the validity of the action of Delaware, with respect to the Penn ungranted lands, is one matter, and the question of its boundaries, which had been fixed and determined at the time of the Revolution, is another. It is apparent from the Act the Delaware Legislature quoted, that it was denying the ownership of the ungranted lands in the Penns and not referring to its boundaries which had become fixed and determined on July 4, 1776. Hard as the treatment of the Penn heirs may have been, it cannot serve to unsettle the boundaries of the state which had theretofore been fixed and determined. (Report, p. 58.)

We submit that the Master's conclusion is undoubtedly correct and should be sustained. The constitutionality of the Delaware Act of 1794 is not now before this Court and this Court is not required to pass upon it nor, we submit, is it proper to do so in this proceeding.

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Plaintiff quotes from the unreported case of *Gale v. Belling* discussed in our first brief on pages 112 to 122. It appears that Mr. Justice Baldwin expressed the view, commented on in our first brief, that upon the acquisition of statehood the State of Delaware had "an election" to divest its title either from William Penn or from the Crown. In commenting on this case the Master said:

"With all respect to the learned Justices it would seem that he overlooked the fact, as above pointed out, that the true boundaries of Delaware had become fixed and determined by the Declaration of Independence on July 4, 1776." (Report, p. 60.)

If the Delaware Act of 1794 had any effect upon the title of the State of Delaware it must be because it worked a cession of land to the State of New Jersey by estoppel or otherwise. Plaintiff does not make any such argument. But if the Act of 1794 did not work a cession to the State of New Jersey then the boundary line between the States remained unchanged. This is exactly what the Master held and we submit that his conclusion is sound and should be sustained by this Court.

**IV. Litigation Relating to Title. (s). Penn v. Baltimore. Brief, pp. 284-314.**

In our first brief we have fully discussed the decision of the Court of Chancery in the case of *Penn v. Lord Baltimore*, Ridg. temp. Hardwicke, 338, 27 Eng. Rep. 847; 1 Ves. 444, 27 Eng. Rep. 1132.

We have shown that it is a direct holding that the Penns had a valid and equitable title to Delaware under the deeds of feoffment and the letters patent of March 22, 1682/3.

We shall comment briefly on Plaintiff's effort to evade the effect of this decision.

Plaintiff states that the Privy Council was the court of last resort of the British Empire. So far as colonial questions are concerned this is correct, subject, however, to the jurisdiction of the courts in cases where it was proper for them to take jurisdiction. Plaintiff then argues that the proceedings before the Privy Council in 1683-1685 culminating in the Order in Council of November 13, 1685 (Exhibit 264), constituted an adjudication of the title of Delaware in the Crown as against William Penn.

This argument is based upon a misconception of the proceedings. The controversy started on Lord Baltimore's objection to the Duke of York obtaining a further grant of the Lower Counties (Exhibit 372). Lord Baltimore's objection was based upon the claim that he held the title to the Delaware territory under the patent of 1682 for Maryland. The order adjudicated this claim and denied it except as to half of the peninsula. It adjudicated nothing more. The rights between Penn and the Crown—Penn's equitable title to the Lower Counties—were not formally before the Privy Council. In point of fact, however, the proceedings did recognize William Penn as the real party in interest. The order of the Committee of the Privy Council of April 17, 1683, concludes with a direction that application be made to the Duke of York *not to pass any conveyance to Mr. Penn for the Delaware territory* until the dispute with Lord Baltimore should be settled (Exhibit 546, p. 2). This was a recognition of Penn's equitable ownership. In the proceedings of May 30, 1683, Mr. Penn's agent was heard in support of the claim that Delaware was possessed by the Dutch and Swedes before the date of Lord Baltimore's patent.

(Exhibit 546, p. 3.) The proceedings of March 17, 1684, refer to "the difference between Mr. Penn and the Lord Baltimore."

The proceedings of August 26, 1685, refer to the differences between Lord Baltimore and Mr. Penn "touching boundaries and title of soil in America." (Exhibit 546, p. 12.) Similar reference is found in the proceedings of September 2, 1685. (Exhibit 546, p. 13.) The proceedings of October 8, October 17, October 31, and November 7, 1685 (Exhibit 546, pp. 14-15), show that the real parties to the controversy were Lord Baltimore and William Penn.

The Order in Council of November 13 (Exhibit 264) included an order that "the said Lord Baltimore and William Penn together with their respective officers and all others whom it may concern" were to take notice thereof and give due and ready obedience thereunto.

The contention, therefore, that the Order in Council of November 13, 1685, was an adjudication of title between the Crown and William Penn is clearly without any foundation in the record. The record shows that Penn was recognized as the real party in interest. The form of the Order, viz: that the lands were adjudged "to His Majesty" was correct, since the record title was in the Crown, by reason of the accession of the Duke of York to the throne.

The construction placed upon the Order in Council of November 13, 1685, by the Plaintiff is contradicted by the opinion of the Crown law officers in 1717 (Exhibit 635). The Attorney General and Solicitor General considered the title claimed by Lord Baltimore to the Lower Counties and the Order in Council of November 13, 1685, the substance of which Order was quoted in their opinion (Exhibit 635, pp. 14-15). If they had regarded the Order as an adjudication

of the title in the Crown as against William Penn they would not have recommended that the Crown title "should be established by the Court of Chancery before any grant should be made of the premises." Moreover, in the case of *Penn v. Lord Baltimore* the Order in Council of November 13, 1685, was well known to Lord Baltimore's counsel and was included in the pleadings in the case (Breviate, 16 Pa. Arch., 2d Ser., p. 19, 109), yet no contention appears to have been made by Lord Baltimore's counsel that the Privy Council Order of November 13, 1685, was an adjudication which extinguished William Penn's title to Delaware. Certainly had there been anything in such a contention it would not have escaped the attention of Lord Baltimore's counsel and it would not have escaped the attention of the Lord Chancellor.

We have, then, a situation where the Order in Council of November 13, 1685, was before the Crown law officers in 1717 and before the Court of Chancery in England in 1750, and the construction placed upon that Order by all the parties is entirely inconsistent with the construction which Plaintiff now attempts to place upon it.

Moreover it should be noted that in 1709 the matter was again before the Privy Council. The parties were Lord Baltimore on the one hand and William Penn on the other. The proceedings terminated in the order of June 29, 1709, ratifying and confirming the prior order in all points. (Exhibits 264, 631.)

In discussing the proceedings before the Court of Chancery in the case of *Penn v. Lord Baltimore* Plaintiff argues first that the decision did not decide the Penn title to Delaware. The point is made that the court's jurisdiction was invoked on the ground of specific performance. This is entirely correct, but it is in no way inconsistent with the fact

that Lord Baltimore in his defense set up the objection that the agreement contained a covenant for mutual conveyances and that since the Penns had no sufficient title to the Lower Counties to make an effectual conveyance they could not perform the covenant, and since the agreement was to be performed in toto or not at all the action must fail; (Exhibit 642, p. 9.) The Lord Chancellor overruled this objection in the language quoted in our first brief on page 86.

Notwithstanding the fact that primary jurisdiction to determine colonial boundaries was in the Privy Council it is obvious that an equitable right must be adjudicated by the Court of Chancery. This is exactly what was held by Attorney General Northey in 1717 when he recommended that the Crown's claims be litigated in the Court of Chancery before any grant was made to Delaware. (Exhibit 655, pp. 15-16.)

Plaintiff states that the opinion in *Penn v. Baltimore* does not mention "the surrender" of the grant of March 22, 1682/3. Plaintiff is here arguing in a circle. The failure of Lord Baltimore's counsel to make any contention that the grant had ever been surrendered is strong evidence that no such surrender ever occurred.

It is said that the opinion does not refer to "royalties, government or any title to the rivers." There is no specific reference to the ownership of subaqueous soil, for the reason that there was no occasion for the court to distinguish between the ownership of the upland and the ownership of the subaqueous soil. Obviously if the title was sustained it was sustained *in toto*.

However, the opinions do refer to Penn's powers of government. Lord Hardwicke says in the second opinion:

"Then consider this in point of possession of the Penns; the proof of which is very clear: they have been

permitted to appoint governors of these lower counties; which have been approved by the Crown according to the statute of King William."

The first opinion of Lord Hardwicke (Exhibit 642, pp. 1-6) expressly recognizes that the dispute was between two proprietaries holding powers of government. Lord Hardwicke said:

"This is a question between feopatory Lords, proprietors of provinces: And concerning not only their private interest, but the rights of government and the right of private persons, and has been well compared to the case of the Lords marchers." (Exhibit 642, p. 8.)

Later in the opinion he says:

"For here are powers of government, jurisdiction, legislation, raising subsidies, together with all kinds of military powers granted by these deeds." (Exhibit 642, p. 4.)

Plaintiff is therefore incorrect in arguing that the court did not have before it the question of powers of government of the two proprietaries who were parties to the suit.

Plaintiff's discussion of the case of *Penn v. Lord Baltimore* concludes with the statement that Penn's title was a "condemned title." By whom the title was condemned Plaintiff does not show. As we have demonstrated, and as the Special Master held, the title was sustained on every occasion when it was attacked, and was both expressly and impliedly recognized by the Crown of England.

#### IV. (b). *Pes Patch Island Case*. Brief, pp. 314-361.

In commenting on the *Pes Patch Island* case, which we submit is an important precedent for the decision of the instant case, entitled to weight because of its thorough con-

sideration of the evidence and the reasoning of the opinion, Plaintiff offers a series of insubstantial objections.

Plaintiff first remarks that the decision is not *res judicata* between the parties. This is admitted. The decision is, however, persuasive. Unlike the unreported case of *Gale v. Bering*, so heavily relied on by Plaintiff, it was thoroughly argued and briefed and practically all the pertinent evidence was before the arbitrator. It is true that a great mass of documentary evidence not before the arbitrator in the *Pes Patch* case has been adduced in this case, but such additional documentary evidence is either cumulative or immaterial.

Plaintiff appears to attach great importance to the opinion of the United States District Attorney for the District of New Jersey of June 9, 1884. (Exhibit 215.)

To dispose of the conclusions in this opinion it is sufficient to point out the repeated statement in Mr. Wall's opinion that "Delaware was never granted by the King" and "there is no valid grant from the King to any person for the River Delaware." Mr. Wall was not familiar with the letters patent of March 22, 1682/3, and hence fell into a serious error of fact. This is the same error of fact which appears in Mr. Justice Baldwin's charge to the jury in *Gale v. Bering*. This error seems to be traceable to the opinion of the United States District Attorney for the District of New Jersey to the Secretary of War dated April 20, 1822 (Exhibit 216), an excerpt from which is quoted on pages 329-330 of Plaintiff's brief. This opinion also asserts that no grant of Delaware from the King to the Duke of York can be found.

We shall not attempt to answer all the various criticisms of the arbitrator's opinion which appear to us to be quite insubstantial.

On page 335 Plaintiff states that the deeds of feoffment conveyed no powers of government and that the arbitrator is in error in stating that they did. We have heretofore pointed out that the deeds did convey the "powers" of the Duke of York, and that the deed was set on and the powers of government were thereafter exercised by William Penn. This is an historical fact which Plaintiff can not argue away. The Master so found. (Report, p. 74, Finding 9.)

Plaintiff says that the arbitrator was unaware of the "surrender of the grant" of March 22, 1682/3. (Brief, p. 335.) This assertion that the grant was surrendered is reiterated again and again in the Plaintiff's brief. It is cited as a reason why this Court should overturn the decision in *Penn v. Lord Baltimore* (Brief, p. 308), and it is relied on to escape the persuasiveness of the opinion of Mr. Sergeant.

The fact is that never until after the filing of the Bill of Complaint in the present suit was any contention ever made that the grant of March 22, 1682/3, had been surrendered. No such contention appears to have been made in the prior suit, in which a great amount of testimony was taken over a period of several years. The reason for the insistence upon this claim is that if it is unsound it follows that no matter what was the state of the Penn title, the boundaries of Delaware were fixed by the letters patent of March 22, 1682/3, and included the Delaware River.

Plaintiff attempts to cast doubt on the fact that the original Patent of March 22, 1682/3 (referred to as "the Dover document"), was before the arbitrator. We have heretofore shown that there is no question whatever as to the authenticity of this document. The suggestion that

the Delaware counsel who introduced the original Patent in evidence in the case of Pea Patch Island lacked confidence in its authenticity (Brief, p. 336) is entirely baseless. The introduction in evidence of a rolls copy as well as of a copy certified under the seal of the Mayor of London indicated no lack of faith in the original. Mr. Sergeant's statement that the original Patent probably was produced in *Penn v. Lord Baltimore* we have shown to be correct. (Defendant's first brief, pp. 44-46.)

The statement on page 340 of Plaintiff's brief that the application of the Earl of Sutherland for a grant of Delaware was withdrawn, "which accounts for the fact that the proceedings in Chancery ensued", is not understood. The arbitrator's statement that the application "was not further pursued" is correct. (Exhibits 471, 472, 483.)

Plaintiff argues that the arbitrator did not have before him the documentary evidence showing Penn's "repeated admissions of lack of title". (Brief, p. 340.) We have herein shown that there were no such admissions.

The assertion is made that there could be no equitable estate in the title to the subsequent soil of the Delaware River. (Brief, p. 341.) No authority is cited for this statement and we submit that none can be. Title to the subaqueous soil, while prima facie in the Crown, as part of the *jura regalia*, is granted in the same manner as upland.

The arbitrator's reference to the trial in the case of *Gale v. Beving* as "essentially ex-parte with a very imperfect exhibition of evidence" (quoted in Plaintiff's brief on page 347), we have shown to be warranted. The most important single document, namely, the letters patent of March 22, 1682/3, was not before the court. Moreover, the other serious error of fact made by the learned Justice in suggesting that a straight line drawn from the two inter-



sections of the twelve-mile circle with the west bank of the Delaware River would pass to the west of Pea Patch Island is certainly a strong indication that his views were rendered without adequate assistance from counsel in the case.

Plaintiff's brief is, we think, unjustifiably severe in its criticism of Mr. Sergeant's opinion. The opinion on its face shows that the writer was an able lawyer of judicial temperament who had fully grasped the issues before him. The suggestion that the arbitrator "strayed from judicial paths to reach his decision" is a wholly unwarranted reflection on the character and ability of Mr. Sergeant, who was one of the leading members of the Pennsylvania Bar at the time when he was selected as arbitrator in the case.

In this case Mr. Sergeant's findings were reviewed and approved by the Special Master. (Report, pp. 41-46, and conclusion of law No. 5.)

We submit that the decision in the *Case of Pea Patch Island* is worthy of consideration by this Court, is persuasive, and should be approved.

#### Conclusion.

We have heretofore pointed out to the Court that it was not until after the filing of the Bill of Complaint in the present case that any suggestion was ever made that the letters patent of March 22, 1682/3 were surrendered. This suggestion recurs in Plaintiff's brief again and again. There is not the slightest evidence in the record to support it. The evidence is overwhelming that the document in the State Archives at Dover is the original letters patent of March 22, 1682/3, and the Master so found. (Report, p. 75, finding 15.) That the recital of a proposed surrender of a proposed new patent which never became effective

constituted in law a surrender of the original grant is so clearly without merit as to require no real discussion.

What, then, is the reason for the Plaintiff's insistence on this argument? *It lies in the fact that if the grant was not surrendered its existence is decisive of this branch of the case.*

The fundamental question here presented is the question of the boundaries of two of the original colonies of the Union. Each colony owes its origin to a Royal charter. The boundaries of each colony were fixed by such charter. If the charter for Delaware was not surrendered we may concede, for the sake of argument, the soundness of all of the Plaintiff's objections to the Penn title. If we assume that William Penn did not receive the benefit of the letters patent of March 22, 1682/3; if we even assume that the Delaware Act of 1794 constituted a binding election by the State of Delaware to derive its title from the Crown of England; in short, if we assume that the Penns had no title, yet the fact remains that the boundaries of the Colony of Delaware at the time of its origin were fixed by its title deeds and that these boundaries included the bed of the Delaware River within the twelve-mile circle. If we assume that the Duke of York had title to the lands and waters of the Colony of Delaware at the time he ascended the throne, then it follows that that colony existed as a separated colony with those boundaries so fixed by his letters patent until the American Revolution, and that upon the recognition of statehood by the Crown of Great Britain the State of Delaware succeeded to the rights of the Crown until the boundaries fixed in the letters patent to the Duke of York.

Plaintiff's brief seems to recognize the soundness of this argument, and this is probably the reason for the vig-

*Reply Brief of Defendant*

orous attempt, never before made, to prove that the letters patent of March 22, 1682/3, were surrendered. That attempt has failed as there is no evidence whatever to support it. It of necessity follows that the letters patent of March 22, 1682/3, which gave the Royal assent to the creation of a new colony, fixed the boundaries of that colony and included within it as an integral part thereof the bed of the Delaware River within the twelve-mile circle.

Respectfully submitted,

PERRY WARREN GANN,  
Attorney General of the State of  
Delaware.

REUBEN SATTERTHWAITE, JR.,  
CLARENCE A. SOUTHERLAND,

*Special Counsel.*

WARD & GRAY,  
Of Counsel.

## SUPREME COURT OF THE UNITED STATES.

No. 13 Original.—OCTOBER TERM, 1933.

State of New Jersey, }  
vs. } Upon exceptions to the Re-  
State of Delaware. } port of the Special Mas-  
ter. } /

[February 5, 1934.]

Mr. Justice CAROZO delivered the opinion of the Court.

Invoking our original jurisdiction, New Jersey brings Delaware into this court and prays for a determination of the boundary in Delaware Bay and River.

The controversy divides itself into two branches, distinct from each other in respect of facts and law. The first branch has to do with the title to the bed or subaqueous soil of the Delaware River within a circle of twelve miles about the town of New Castle. Delaware claims to be the owner of the entire bed of the river within the limits of this circle up to low water mark on the east or New Jersey side. New Jersey claims to be the owner up to the middle of the channel. The second branch of the controversy has to do with the boundary line between the two states in the river below the circle and in the bay below the river. In that territory as in the river above, New Jersey bounds her title by the *Thalweg*. Delaware makes the division at the geographical centre, an irregular line midway between the banks or shores.

The Special Master appointed by this court in January, 1930 (280 U. S. 529) has now filed his report. As to the boundary within the circle, his report is in favor of Delaware. To that part of the report exceptions have been filed by New Jersey. As to the boundary in the bay and in the river below the circle, his report is in favor of New Jersey. To that part exceptions have been filed by Delaware. The two branches of the controversy will be separately considered here.

*First. The boundary within the circle.*

Delaware traces her title to the river bed within the circle through deeds going back two and a half centuries and more.



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IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1930.  
No. 18 Original.

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STATE OF NEW JERSEY,

*Plaintiff,*

vs.

STATE OF DELAWARE,

*Defendant.*

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STIPULATED RECORD  
TESTIMONY  
VOLUME I

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Arthur W. Case, Law Station, 12-14 Exchange Street, Newark, N. J.

DE14945

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Notice.

[1] IN THE  
**Supreme Court of the United States**  
 OCTOBER TERM, 1929.

No. 19 Original.

STATE OF NEW JERSEY, 10  
*Plaintiff,*  
 vs.  
 STATE OF DELAWARE, *Defendant.*

**NOTICE.**

TO:  
 Hon. C. Douglas Bask, Governor, and 20  
 Hon. Benben Satterthwaite, Jr., Attorney-General of the  
 State of Delaware.

SIRS:  
 Please be advised that on Monday, June 3, 1929, the  
 plaintiff will apply to the Court for leave to file its bill of  
 complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,  
 Attorney-General. 20  
 DUANE E. MINARD,  
 Assistant Attorney-General,  
*Solicitors for Plaintiff.*

Dated May 25, 1929.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

[70] HENRY J. SHERMAN, a witness heretofore produced and sworn, recalled on behalf of Plaintiff, testified further on direct examination as follows:

Mr. Minard: When you withdrew from the stand, we were offering Plaintiff's Exhibit No. 58, the Grant to Denny, which has been described.  
30 (Grant referred to was then filed marked Plaintiff's Exhibit No. 58.)

Q. Now, with regard to Exhibit 58, Grant A, have you prepared any data that can accompany it giving information?

A. Yes, sir.

Q. Have you made an examination of the location to ascertain the nature and extent of the improvements made under that grant?

A. I have.

Q. Now, will you tell us what the result of your investigation was?

Witness: Speaking now of the Denny Wharf under Grant A:

Mr. Minard: Yes, Exhibit 58.

A. The location I have marked as foot of West Five  
30 side [80] Walk, about 200 feet southwest of the northeast line of the Borough of Pennegrove.

Q. Now, what does that paper show—I don't mean for you to read it—I mean, what information does it give?

A. It gives a general description of the structure and a diagram of it.

Q. Does it show the high water line?

A. It does.

Q. Does it show the low water line?

A. It does.

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. And relates to Grant A on Exhibit 58?

A. Yes, sir.

Mr. Minard: I offer as Exhibit 59 a sketch and description of the improvements made under the Grant on Exhibit 58.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 59.) 10

Q. Now, can you describe generally what the nature of that structure is on Exhibit 59?

A. It consists of a solid fill wharf for a distance of about 150 feet beyond the high water line and 100 feet [80] beyond low water line, in which, for a distance of 60 feet, the wharf consists of barges resting on piles.

Q. Do you know what it is used for?

A. It is not in use at the present time.

Q. Do you know how long it has been there?

A. Well, I visited that territory during the War, and I remember seeing it there, and I would say it has been there more than 10 years.

Q. Now, Grants B and C on Exhibit 57. I show you a document which purports to be a deed from the Board of Commerce and Navigation to the Pennegrove Pier Company for land below high water mark in the Borough of Pennegrove, dated March 21, 1916, certified by the Director and Secretary of the Board of Commerce and Navigation, with map attached, and ask you what that document is.

A. That is a grant from the Board of Commerce and Navigation to the Pennegrove Pier Company for property situated on the Delaware river in the Borough of Pennegrove.

Q. The map shows the extent of the property?

A. Yes, sir.



Henry J. Sherman—for Plaintiff—recalled, Direct.  
(Paper referred to was then filed marked Plaintiff's Exhibit No. 83.)

Q. Grant N purports to be a certified copy of grant from the Board of Riparian Commissioners of New Jersey to [100] Anna K. Brown, dated August 28, 1884, is that correct?

- 10 A. Yes, sir.
- Q. For how many tracts?
- A. One tract.
- Q. Extending how far from high water line?
- A. 850 feet.

Mr. Minard: I offer it as Exhibit 84.  
(Paper referred to was then filed marked Plaintiff's Exhibit No. 84.)

30 Q. Grant K, Exhibit 82, Grant M Exhibit 85 and Grant N Exhibit 84, have you a combined description of the structures constructed on the land covered by these grants?

- A. I have.
- Q. What is it?
- A. Pile bulkhead near high water line.
- Q. None of it extends below low water line?
- A. None of it below low water line.
- 20 Q. Is it described here on this paper?
- A. It is.

Mr. Minard: I offer that as Exhibit 85.  
(Paper referred to was then filed marked Plaintiff's Exhibit No. 85.)

[100] Q. Grant L purports to be a certified copy of grant from Board of Commerce and Navigation to William D. Astor of lands in township of Lower Penns Neck, dated November 17, 1828, is that correct?

- 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

- A. It is.
- Q. How many tracts?
- A. One tract.
- Q. Extending how far from high water line?
- A. 864 feet on the north side and 870 feet on the south side.

Mr. Minard: I offer it as Exhibit No. 86.  
(Paper referred to was then filed marked Plaintiff's Exhibit No. 86.)

Q. Have you a description of the structure upon that tract?

- A. I have a sketch.
- Q. A sketch of the structure?
- A. Yes, sir.
- Q. Describe, generally, what it is.
- 20 A. It is a pier for landing boats to carry people to and from a park adjoining the pier.
- Q. How far does it extend below low water mark?
- [100] A. 494 feet.
- Q. Below low water mark?
- A. Yes.

Mr. Minard: I offer the two sheets of description and the tracing or sketch as Exhibit 87.  
(Papers referred to were then filed marked Plaintiff's Exhibit No. 87.)

Q. Grant O appears to be a grant from the Board of Commerce and Navigation to William D. Astor of lands in Lower Penns Neck township, dated October 19, 1825, is that correct?

- A. It is.
- Q. How many tracts?
- A. One tract.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

- A. Yes, sir.
- Q. Where is that on the sketch?
- A. It is shown on the left-hand side of the sketch and the portion marked, Plan.
- Q. In the diagram in the upper left-hand corner?
- A. Yes, sir, and the lower left-hand corner.
- 10 [284] Q. Now, bulkhead, what does that represent?
- A. That represents a construction between high and low water.
- Q. Which they have erected themselves?
- A. Yes, sir.
- Q. Where is the limit of that grant shown on this?
- A. It is not on there; we were not asked to show it.
- Q. In the limit of the grant below low water line?
- A. Yes, sir.
- 25 Q. How far out?
- A. A substantial distance, several hundred feet.
- Q. I notice from this sketch they have a canal out there.
- A. Yes, sir.
- Q. Is that where they receive their supplies of coal?
- A. Yes, sir.
- Q. For the plant?
- A. Yes, sir.
- 30 Q. Exhibit 81 contains a description and diagram of the structure on Grant J. Do you know where that improvement is situated?
- A. It is in Pennsville or Lower Penn Neck Township.
- [285] Q. The low water line is shown on that?
- A. Yes, sir.
- Q. The bulkhead is at the bottom of the diagram, is it not?
- A. Yes, sir.
- Q. So that the wings of the Y are towards the shore?
- 40 A. Towards the river, towards the center of the shore.

Henry J. Sherman—for Plaintiff—recalled, Direct.

- Q. Then, the bulkhead line is near the shore?
- A. Yes.
- Q. And this extends below low water line and branches out?
- A. Yes, sir.
- Q. Now, what is this?
- 10 A. It is a jetty to protect the shore line.
- Q. Is that a permanent structure?
- A. Yes, sir.
- Q. What relation does that bear to the upland?
- A. It protects the upland from erosion.
- Q. Is it necessary for that purpose?
- A. Yes, sir.
- Q. Is there any industry on the upland there?
- A. No, it is an amusement park.
- 20 [286] Q. So this is in connection with the amusement park?
- A. Yes, sir.
- Q. At Pennsville?
- A. Pennsville.
- Q. Known as Riverview Beach Park?
- A. Yes, sir.
- Q. That is used in connection with the docking of the steamship line?
- A. Yes, sir.
- 30 Q. Is the waterfront along the river there used in connection with the park?
- A. Yes, sir.
- Q. For what purpose?
- A. Merely for bathing purposes and boating.
- Q. And that jetty was built to protect that beach?
- A. Yes, sir.
- Q. Now, Exhibit 85, that is a description and diagram?
- A. Yes, sir.
- 40 Q. Do you know where that is situated?

Henry J. Sherman—for Plaintiff—recalled, Direct.

Mr. Minard: I now offer that for what it is worth.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 134.)

10 Q. (Mr. Southerland.) I don't suppose they have any recollection how far that old pier went in the river?

A. I did not inquire about that.

Q. And you did not look for any of the piers?

A. No.  
Q. (Mr. Minard.) Now, Exhibit 42 is an Act of the Legislature of New Jersey, March 22, 1871, authorizing Barber to build a wharf—did you make an investigation of that?

A. Yes, sir.  
Q. What did you find?  
20 A. I found there an old wharf located at the foot of (229) West Harmony street, Penns Grove, originally used for a freight line, but now in a very decadent condition.

Q. Do you know who it was built by?  
A. Henry Barber.  
Q. Is he the grantee in the act?

A. He is.  
Q. Do you know how far that pier was built below the low water line?

30 A. About 400 feet.  
Q. Below low water mark?  
A. Yes, sir.  
Q. Do you know when that was built?  
A. No, I do not.  
Q. Is that included in any grant from the Board?  
A. No, sir.

40 Mr. Minard: I now offer this paper in evidence

Henry J. Sherman—for Plaintiff—recalled, Direct.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 135.)

Mr. Southerland: You have no information at all of the date of the erection of the pier?

(211) A. No, I have not.

Q. (Mr. Minard.) Exhibit 44 was an Act of March 17, 1870, authorizing Grant to construct a wharf at Penns Grove. Did you make an investigation of that?

A. Yes, sir.  
Q. What did you find?  
A. I found there only the remains of an old structure the outline of which I could trace on low water.

Q. And you have shown that on this proposed Exhibit 221?

A. Yes, sir.  
Q. Now, where is low water line on that one?  
Q. Low water is outside of that pier.

Q. What do you mean that you could trace it to low water?  
A. I walked around there, and I could see the stumps of the old pier.

Q. So far as you know, it did not extend beyond low water?  
A. No, sir.

Q. Do you know when it was built?  
A. No.  
Q. Or by whom?  
A. No, but the lines of it are shown.

(212) Mr. Minard: I offer that in evidence as Plaintiff's Exhibit 134.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 134.)

Q. Now, did you make an investigation of the Walker Act, Exhibit 45, March 21, 1870?  
40

REPORT'S DRAWING - 4

PHOTOGRAPH

Sheet 2. James H. & Harold M. Terry - Pennsylvania, P. O.  
[Name of Nancy's Wharf (now abandoned)]

Location: Post of West Riverside Salin.

Pennsylvania, P. O. about 300' southward of the  
S. E. Barn Line and 150' Northwest of Delaware  
Avenue.

Construction: Mass, consisting of solid  
fill section between abutment retaining  
walls and barge section on pile under  
structure. Solid fill section extends  
150' into river for 30' width and is  
in good condition. Barge section  
extends 100' beyond solid fill section  
with a 100' leg extending north-  
westwardly. Barge structure  
abandoned.

SKETCH OF  
WHARF



Prepared by - [Name] - [Date]

Sheet 2  
Pennsylvania  
[Name]



RIPPLED GRANTS B & C

PENNSGROVE

part B - Pennsgrove Pier Co.

part C - French's Hotel Co.

is owned and operated by Wilson Line.

Location: Foot of Main St., Pennsgrove, N. J.

Description: Construction consists of a main wharf on the extension of Main St. with landing facilities for Wilson Line boats with a spur to the southwest for the Pennsgrove-Wilmington Ferry. The main wharf consists of solid fill 35' wide between masonry walls extending to low water line; then a 2' wide section composed of 3 successive sets of steel trusses each 50' long supported by 1/2 concrete piers on a pile and timber footing; then a timber deck structure on piling 12' wide by 120' long; then solid fill 50' wide by 20' long and one 150' wide by 190' long, all retained by lag steel sheet piling. The head of the wharf has an corner cut off at 45° angle with concrete transfer bridge or gangway openings, with a bridge installed in the westerly opening, the remaining part being under construction.

A one story frame waiting room 25' x 31' is located at the southeasterly corner of the inshore end of solid fill, and one story frame storage building 30' x 60' is located at the southeasterly portion of the offshore end of solid fill section at the head of the wharf.

The Ferry wharf extends at about 45° to the southeast from the third or timber deck piling section of the main wharf. The spur is a timber section piling 12' wide by 90' long extending to 45° by 32' long to the bridge transfer structure. The bridge consists of two 75' steel trusses spaced for 11' roadway with a 9' walkway on either side. On both sides of the bridge there are separate 6' wide catwalks giving access to the steel gallow frame and operating south for the bridge elevating equipment. The gallow frame consists of two plate girders, supporting rollers, counterweights, etc. which are in turn supported by 2' solid channel columns on each end, resting on 12" galvanized steel vertical barrier piling backed by

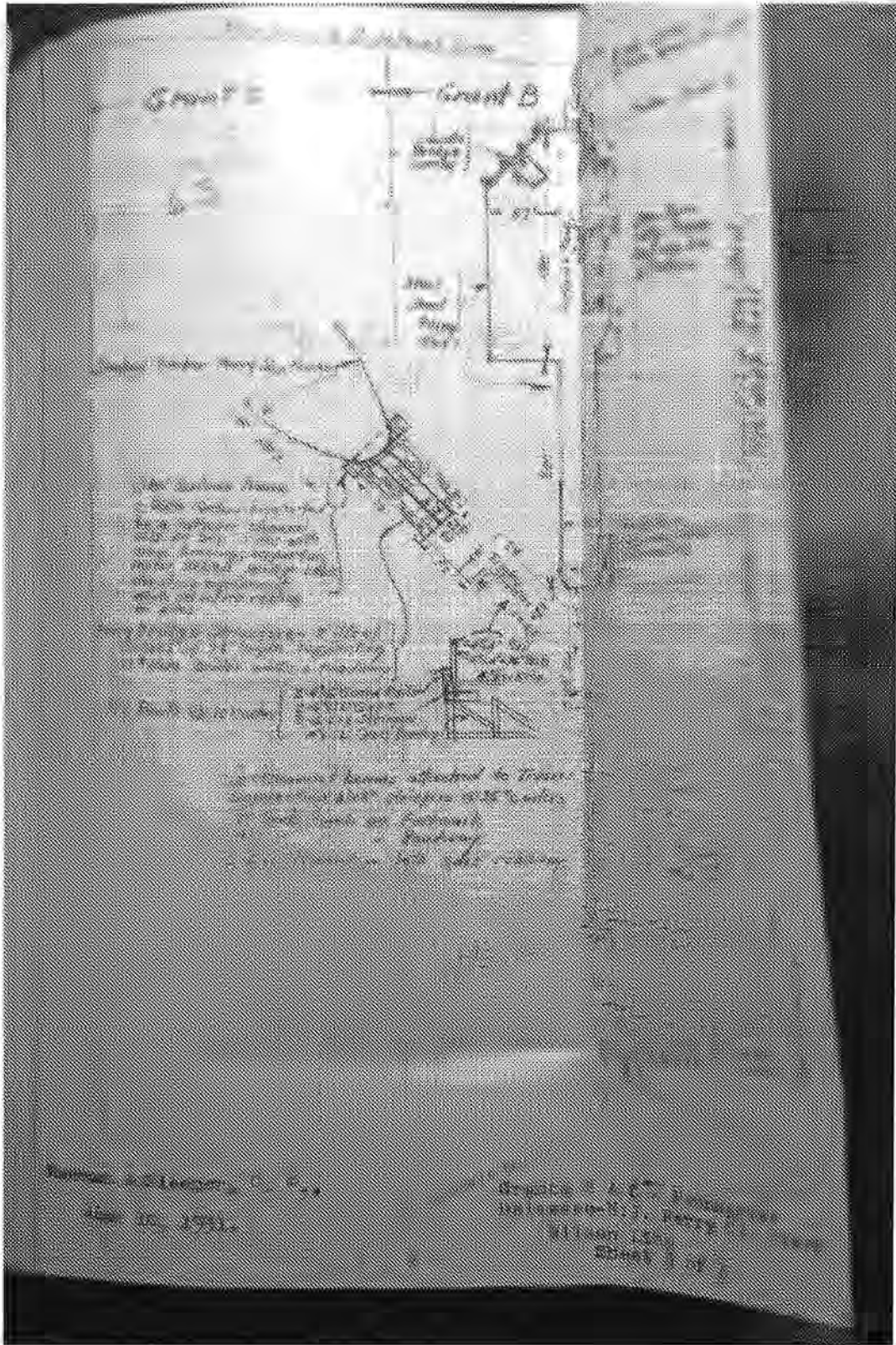
200132

Property construction,

Slip: Pier & Ferry Slip - Furnished by Delaware - New Jersey Ferry Co.

Net Book Value (Apr. 1, 1961)	\$ 57,000.00
Appraisal Value	32,000.00

Considering assessed valuation of \$52,000.00 as net value furnished by State Assessor gives valuation of \$32,000.00.











WATERPOWER DEVELOPMENT  
Dunsmuir Central Power Station

Plant No. 1: The Franklin Wash Estate Co.

Location: East bank of Willamette River about 1/2 mile  
of Pennegrove, B. J., in Lower Power West Division.

Name of Plant: Supplies electric power to the  
City Electric Co., the Delaware Power & Light Co., and the  
Philadelphia Electric Co. Also supplies with steam  
electricity to the plant of E. I. DuPont de Nemours & Co.

Ownership: Jointly by the American Gas & Electric Co.  
The United Gas Improvement Co.

Operators: Operated and managed by the Delaware River  
Manufacturing Co. in the common interests of the several  
companies.

Capacity: Planned for ultimate capacity of 100,000 KW.  
Present installation consists of total of 125,000 KW.

Divided as follows: One 55,000 K.W. unit for the A. G. I. Co.,  
another 55,000 KW. unit for The C. & I. Co., and one  
15,000 KW. unit for the DuPont Co. Power generated by  
turbines operating at 1000 lb. pressure and are designed  
steam at the turbine at 725° Fahr. total temperature.

Employees & Wage - 150 employees at average wage of \$1.50  
per month equals \$10,750.00 per year equals \$10,750.00

Operation and Equipment: Facilities and equipment for  
at least 10 years. The plant is designed for 100,000 KW.  
at 1000 lb. pressure and are designed steam at the turbine  
at 725° Fahr. total temperature.

By a combination of waterpower plants.

It is recommended that the plant be operated at 100,000 KW.

Proposed Project

response to heater, ball bearings, complete assembly  
also in boiler house, valves, instruments and  
boilers.

Other principal equipment available on site,  
superheaters, economizers, reheaters, preheaters, steam  
turbine generators, condensers, evaporators, steam  
electrical meters and instruments, and other auxiliary  
equipment.

Circulating water for condensers is obtained  
from the Delaware River through dredged channels and  
discharge channels, and through locks and  
cribs and tunnels.

The earth fill at the water edge is estimated at  
1,450 feet of timber and steel river walls and  
timber coal work.

The plant has been in operation about 1 year.  
Valuation: See attached valuation sheet.





Sheet 7: William D. Nelson

Sheet 8: Delaware-New Jersey Ferry Co.

Location: Foot of Main St., Pennsville, Long Point Neck Exp.

Description: There are two pier and ferry slip structures for the Pennsville-New Castle Ferry Co. The more northerly structure, on the extended line of Main St., is not used during ordinary traffic which is carried by the more recent southerly structure. The two lines originally ran in opposition to each other. Both are now the property of the Wilson Line.

The inner portion of the northerly pier consists of a solid fill roadway 25' x 200' between timber bulkheading, with an 8' wide timber sidewalk structure on piling on the northerly side; adjoining is the bridge pier structure 70' wide by 120' long. Next is the ferry bridge composed of two steel thru Harnen type trusses 75' long and 8' deep, built up of latticed channels and angle sections, 1 1/2' c. to c. of trusses with roadway section between and 3' sidewalk overhanging on each side. There is 6' open space between the sidewalk and 1 1/2' wide timber & pile platform on the outside of the structures giving access to the galleys frame & bridge elevating equipment. Extending beyond the bridge is the slip construction of customary racks, vertical fender planking, backed by piles and having pile clusters at end. A second timber bulkhead has been constructed about 3' south of the south side of the solid fill section.

Sheet 1 of 2

W. D. N.



CHART 3 - 2

The westerly pier extends from the low waterfront wall on the westerly side of Main St., at an angle of about 30 degrees to the adjoining northerly pier. The first section is typical timber & pile deck structure about 50' wide by 100' long, with a two lane roadway 30' wide and a 6' walk on the north side. Adjoining this is a one story frame store room and refreshment and supported a piling. Adjoining this is a section 50' long of heavy timber construction leading to the transfer bridge 65.5' long and having a 30' overall width. This bridge consists of two steel low trusses on either side of a 12' roadway with 8' walk outside. The low trusses have a height of 3' and are built up from 5" x 10" channel sections for the chords and web members. An 8' wide platform outside of both sidewalks gives access to the yellow crane elevating equipment. Beyond the transfer bridge is a heavy 1/2 bank rack ferry slip with pile dolphins bound by cable both at the rack entrances and along the outside. See sketch attached for further details.

Valuation: 2 pier structures - Furnished by Delaware-New Jersey Ferry Co. Net value - \$ 132,692.81

Appraisal Value - \$ 85,500.00

including appraised valuation of \$20,000.00, as fixed by statute, or to that of the true value makes a valuation of \$105,500. See sketch attached.

F. A. Q.  
Sheet 2 of 2.





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PLANNED GRANT Y

Kelly's Point

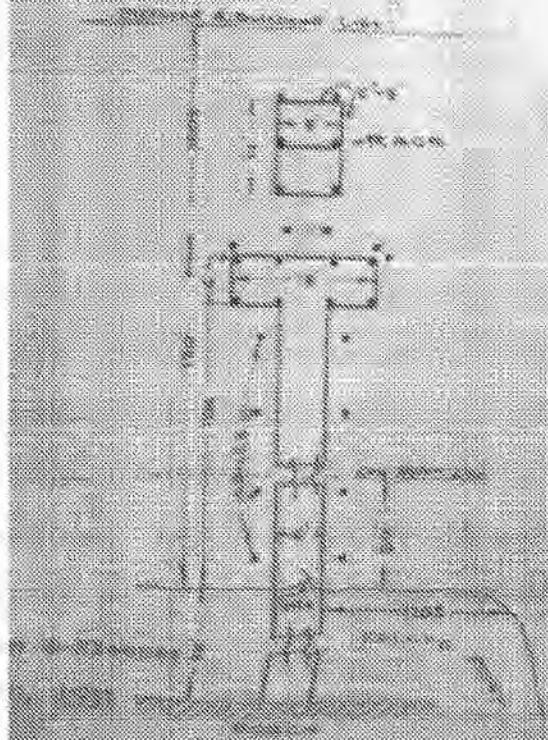
Grant Y - Penn Beach Property Owners Assn. 1988

Location: Sep. Lower Penns Neck, at Kelly's Point,

Penn Beach, about one mile below Fenwickville.

Description: Timber Pier attached to Club House, width of 6 ft; extending 50' from porch of building to S.W. 1/4 and 150' to head of T. 16' x 6' with about 50' of structure between S. W. 1/4 & L. W. 1/4

Valuation: Approximate Value - \$300.



SKETCH SHOWING PIER CONSTRUCTION



Grant Y  
Kelly's Point  
Penn Beach  
Property Owners  
Assn. Pier



LEGISLATIVE WHARF IS

PENNSGROVE

MAP DESIGNATED LA

CHAP. CCCXLIV, Laws of N. J. 1970 - Joseph Guest

Located at foot of Pennsylvania R. R. Station site, Pennsgrove, N. J. This wharf has disappeared excepting rock fill at inner end and stumps of piling visible at low water only. Piling were located and shown on sketch to indicate outline of former wharf. Rock fill extends from high water riverward 100 feet. (See sketch)

JOS. GUEST'S WHARF

PENNSGROVE  
(New Jersey)

