

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 2 (Pages 811 – 1524)**

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Plaintiff's Exhibit No. 161

NEW JERSEY-DELAWARE BOUNDARY

*Messages, Proclamations and Correspondence of the Governors, and Minutes, Reports, Proceedings and Acts of the Legislature, of the State of New Jersey 1820-1929.*

*N. J. Laws 1820, p. 205.*

AN ACT concerning the boundaries and jurisdiction of this state in the bay of Delaware.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That the governor be, and he hereby is, authorized, empowered and directed to appoint three commissioners on the part of this state, who shall be entitled to a reasonable compensation, to meet commissioners appointed by the competent authority of the state of Delaware, should the state of Delaware think proper to appoint such commissioners; which said commissioners of the state of New-Jersey and of the state of Delaware, when so met, shall have full power and authority to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.

2. *And be it enacted,* That the agreement so made by the commissioners, shall not be binding on the state of New-Jersey, until ratified and confirmed by the legislatures of the states of New-Jersey and Delaware, respectively.

3. *And be it enacted,* That the governor of this state transmit to the governor of the state of Delaware, a copy

of this act, and request him to communicate it to the legislature of that state.

A. Passed November 7, 1820.

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*Votes and Proceedings of the Forty-Seventh General Assembly of the State of New Jersey, Trenton, 1822, pp. 110-112.*

Mr. Elmer, from the committee to whom was referred a communication from his excellency the Governor, covering a correspondence with the secretary at war respecting the island in the Delaware bay called the Pea-Patch, respectfully reports,

That it appears by the documents submitted to them, and from other information upon which your committee rely, that in the year 1813, the United States having determined to erect fortifications for the defence of the Delaware bay and river, selected the Pea-Patch as a position suitable for that purpose. This island lies within the jurisdictional limits of New-Jersey, and was at that time in the peaceable occupation of one of our citizens, claiming under a grant of the West-Jersey proprietors, made in 1784. No application, however, was made on the subject to the authorities of this state, but military possession was taken by the United States officers, and the occupant dispossessed. The district attorney of Delaware, and other legal characters in that state and Pennsylvania, it seems, were consulted; who being of opinion that the title to the soil and territory was in the state of Delaware, the Legislature of the latter state made a cession, and under that title the United States took possession and commenced constructing a fort. The individual dispossessed instituted a suit against the engineer, which is now pending before the circuit court of the United States.

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A difference unhappily exists between New-Jersey and Delaware relative to their boundary, and their respective rights in the river and bay of Delaware; and this difference is not limited to the Pea-Patch, but embraces other subjects of dispute. In the year 1820 the Legislature of this state, having been made acquainted with the (p. 111) facts above mentioned, and with the circumstance that a suit was pending; actuated by a desire to effect a speedy and amicable settlement of the controversy, as well in relation to this particular subject as to all other questions growing out of the disputed boundary, passed an act for the appointment of commissioners, to meet commissioners to be appointed on the part of Delaware with full powers to make and conclude an agreement between the two states, defining their respective boundaries, jurisdiction, rights to islands, &c. in the river and bay of Delaware. To this overture the state of Delaware did not think proper to accede, nor was any answer ever returned to the proposal.

In the year 1821, the Legislature of this state passed an act (among other things) to authorize and empower the Governor to appropriate a certain sum of money at his discretion to prosecute or defend to final issue or judgment any suit or suits which he might deem necessary for trying or finally determining the jurisdictional line between the two states. The attempt to effect an amicable settlement having failed, it was believed that the pending suit afforded a favorable opportunity of obtaining the decision of an impartial and enlightened judicial tribunal. The United States claiming under Delaware and the former occupant under this state the jurisdictional line will fairly come in question—this must inevitably happen unless the plaintiff should fail on account of some technical defect in his title. It would therefore be manifestly unsafe to leave this question of jurisdiction to be tried and determined in an action brought solely by an in-

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dividual, free from all control or interference of the state. Though the state would not be concluded by such a trial and decision, yet its rights might be greatly prejudiced by the action being brought to trial without all the advantage which might arise from a direct interference by employing counsel, and taking the management and control of the suit.

The Secretary at War under the direction of the President now asks for a cession from this state for the purpose of further strengthening the title of the United States, and of enabling them the better to resist the claim of our citizen.

Your committee are decidedly of opinion that were the subject freed from the danger of affecting as well the rights of our citizen, who has been deprived in the manner stated of his possession, as the question of boundary between this state and Delaware, the required cession ought to be unhesitatingly made. The position is deemed by the Secretary at War a very valuable one, not only as it regards the defence of the state of New-Jersey, but the country bordering on the Delaware. Whatever opinion we might be disposed to entertain on this point as individuals, it would certainly be yielded to the decision of the distinguished officers composing the board of engineers, approved as that has been by the able and enlightened head of the war department. New-Jersey has at all times evinced a sincere desire to afford every facility to the measures of the general government, and your committee are well aware that the present is a time when we are peculiarly called on to encourage by all proper means (p. 112) the laudable effort to arrange and complete a well digested system of defence. Your committee, however, are of opinion that taking into view all the circumstances, it will be most prudent and consist better with the dignity and interests of the state, to delay a cession of the island in question.

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No injury can result from such a course. The works commenced will not be interrupted in their progress, and in the meantime the controversy existing between this state and Delaware may be settled by a judicial decision and the claim of our citizen decided in the same manner. The general government will duly appreciate the motives by which we have been governed, and cannot impute to this state any desire to obstruct or delay the completion of the fort now erecting. In the event of a determination adverse to our claim, no cession will be necessary, and should the contrary as we confidently believe be the result, we can then with more propriety transfer our right in the manner requested, and at the same time protect the interests of the individual claimant. Your committee therefore respectfully propose that the documents referred to them be recommended to the consideration of the next Legislature.

By order of the committee,

LUCIUS Q. C. ELMER, Chairman.

Which report was read and ordered to lie on the table.

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*Votes and Proceedings of the Fiftieth General Assembly  
of the State of New Jersey.*

(P. 174)

FRIDAY—December 9 1825

Nine o'clock the House met

Mr. Pennington, from the committee to whom was referred a communication from the Governor, with a letter from the Secretary of War, respecting the island in the Delaware river called the Pea Patch,

*Reported,* That the committee have had the subject referred to them under consideration, and that it appears, from the minutes of this House and the journals of Council, that, in the session of 1822, the then Secretary of

War, under the direction of the President of the United States, made a similar application to the legislature for a cession to the general government of the right of this state to the land in question, when it was deemed by the legislature not prudent and advisable, for the reasons stated in a report made by a committee of this House, and afterwards agreed to by both branches of the legislature, to delay making the cession required.

The committee cannot but consider it a subject of very serious regret, that a state of things exists to cause delay in making the cession, especially as the position is considered by the Secretary of War essentially connected with the defence of this state, as well as other parts of the Union. But, unhappily, the same circumstances which formerly existed, and which induced the legislature to delay making the cession still continue, and it would *now*, as *then*, be manifestly unsafe to the important right of the state for the legislature to withdraw their interference and control over the suit which is now pending, at leave the disputed question of *boundary* between New-Jersey and Delaware, to be tried and decided in an action, in which an individual will then be the sole plaintiff against the officer of the United States, who entered and took possession of the island, under a claim of title derived by the United States from the state of Delaware; when, on the trial of the action, the claims of the latter state, in opposition to what New-Jersey considers its just rights, will be insisted on and endeavoured to be maintained, both by the general government and the state of Delaware.

If any arrangement can hereafter be made between the parties concerned, by which the question of boundary between the states of New-Jersey and Delaware shall be prevented from being drawn in question on the trial of the action which is now pending, or by which it shall become unnecessary to bring that action to trial for the purpose of deciding on the claims of the individual who

has been dispossessed; in either of these events, the committee would respectfully recommend that the cession required should be made.

The committee, however, at present recommend that the subject be referred to the consideration of the next legislature.

SAMUEL PENNINGTON,  
Chairman of committee.

(P. 175) Which report was read, and agreed to.

*N. J. Laws 1872, p. 115.*

A Proclamation by the Governor of New Jersey.

Whereas, citizens of New Jersey, while pursuing the occupation of fishing in the river Delaware, on the eastern side of said river, and within the jurisdiction of this state, have recently been arrested by persons claiming to act under the laws and authority of the State of Delaware, and taken as prisoners out of this state.

And whereas, the business of those so arrested has been seriously interrupted, and the like business of many other citizens will be disturbed should similar aggressions upon the authority and jurisdiction of this state be continued.

And whereas, disputes in relation to jurisdiction between states should be submitted to the legal tribunal created with especial reference to such disagreements, and should not be permitted to result in a collision of opposing local authorities, or in individual retaliation.

Therefore, I hereby give notice and proclaim that the State of New Jersey claims jurisdiction over that part of the river Delaware, between the States of Delaware and New Jersey, which is easterly of the middle line of said river, and further claims that all persons who conform to the fishing laws of the State of New Jersey, have the right

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to fish on the eastern side of said river, without permission or license of any other state.

And I notify and warn all persons not to molest, disturb, arrest, or attempt to arrest, without lawful process issued by some legal authority in this state, any citizen of New Jersey at any place within her jurisdiction.

And I exhort the people of this state, if any illegal arrest or interference be attempted, to refrain from acts of violence, assuring them that every effort will be made to have the questions involved determined by the proper legal tribunal.

Given at the Executive Chamber, at Trenton,  
[L. s.] this eighth day of May, A. D. one thousand  
eight hundred and seventy-two.

JOEL PARKER.

Attest:

JNO. A. HALL, *Private Secretary.*

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*Documents of the Ninety-seventh Legislature of the State  
of New Jersey, Printed by order of the Legislature,  
Jersey City, 1873, pp. 3-9.*

CORRESPONDENCE.

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STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, May 9, 1872.

*His Excellency James Ponder, Governor of the State of  
Delaware:—*

Sir:—I have received information that W. W. Prichett, a constable residing at Wilmington, in the State of Delaware, accompanied by an armed posse, on the second day



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of May instant, embarked on the steam-tug Falcon, proceeded to the eastern portion of the river Delaware, and there arrested twenty-two citizens of New Jersey, while engaged in the business of fishing, and carried them as prisoners to Delaware. I am further informed that the arrests were made by advice of the Attorney-General of Delaware, under the claim that the place of arrest was within the jurisdiction of that State, and because the persons arrested were there pursuing this business without the license of Delaware.

I am aware that a grant by the State of Delaware to the United States of "Pea Patch Island" was, in the year 1848, decided by the arbitrator, chosen by the United States and Mr. Humphrey, to be valid. New Jersey was not a party to that litigation; nor was she represented by counsel. This State has never considered that the opinion of the arbitrator in that submission decided, even incidentally, the boundary and jurisdiction of the respective States. Neither before that opinion, nor since, until now, has Delaware made the practical claim, from the effects of which many respectable and industrious citizens of this State are suffering. This is the first time that an attempt has been made by the authorities of Delaware to interrupt the business of fishing on the eastern side of the river.

Being confident that the State of Delaware does not desire that proceedings, such as those herein complained of, should be continued any further than to assert her claim and put it in course of judicial determination; and this State being anxious to submit the question to the proper legal tribunal at as early a period as practicable, I trust that the authorities of Delaware will abstain from further attempts to practically enforce her claim of jurisdiction, until a decision of the Supreme Court of the United States shall settle the controversy.

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faithfully executed." The act in regard to fishing in the Delaware waters being a law upon our statute book, I have no power, as the Executive of this State, to suspend its execution for an instant.

The spirit of comity which dictated your communication affords me much gratification, and I regret exceedingly that you did not commence the correspondence before issuing your proclamation. The rights of the State of Delaware are too well known for us to fear a judicial investigation, and her citizens can have no objection to a legal trial of the entire question, before the proper tribunal, for final adjudication and settlement. I would much prefer an amicable adjustment; but the constitution gives me no power to agree upon or appoint an arbitrator. Probably your Excellency can suggest some plan by which the affair can be arranged.

With the same spirit which dictated your communication, I would respectfully suggest that your Excellency advise the citizens of New Jersey to refrain from fishing in said waters within the jurisdiction of the State of Delaware, unless they conform to the laws of this State until the question of jurisdiction can be judicially determined.

I have not issued a counter proclamation, for the reason that it might be the means of stirring up contention and strife between the citizens of the neighboring States, when they should live in peace and harmony with each other, as they have in the past.

Hoping that the friendly relations heretofore existing between New Jersey and Delaware may long continue, and that the question may be settled in a satisfactory manner at an early day,

I am, very respectfully,

Your obedient servant,

JAMES PONDER.

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STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, May 22, 1872.

*His Excellency James Ponder, Governor of the State of Delaware:—*

SIR:—Your reply to my letter of the 9th inst. has been received.

The communication of your Excellency claims that the State of Delaware has exclusive jurisdiction over the waters of the Delaware river to low-water mark on the New Jersey side, within what is called the twelve-mile circle. In other words, it is insisted that the State of Delaware has such title to the territory, embracing some twenty-four miles in length of the river, as to exclude the people of New Jersey from fishing on the eastern side thereof, unless they obtain the permission of Delaware.

The State of New Jersey denies that Delaware has jurisdiction over any part of the waters of the river east of the middle line, and insists that her citizens have the legal right to fish on the New Jersey side of the river without the license of Delaware, either within or without the so-called circle. The question involved is one of great importance, and I agree with your Excellency that it should be settled at an early day.

It seems that the State of Delaware bases her claim to exclusive jurisdiction over the waters of the river within the twelve mile circle upon the decision of the arbitrator in the Pea Patch case, and also upon the original grants. As the communication of your Excellency emphatically states these two grounds of confidence in the claim of Delaware, it is proper that I should briefly notice them.

The submission in the Pea Patch case was between the Secretary of War, acting for the United States, and James Humphrey, and the question submitted was whether the

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United States or Mr. Humphrey had title to the land of that island.

The award in that case has never been considered authority binding on any but the parties to the submission.

In his decision, the arbitrator states that "he is fully aware that his opinion is of no authority whatever, except for the single purpose as to which the agreement of the parties has made it conclusive, that is, the question of title *between them.*"

The award, therefore, does not amount to judicial authority, and is only the opinion of an able lawyer antagonistic to the opinions of other able lawyers contemporaneous with the arbitrator, and in conflict with the charge of Judge Baldwin, in a case tried in the United States Circuit Court involving the same question. It certainly cannot conclude either Delaware or New Jersey on the question of jurisdiction. The disputed jurisdiction of States can be settled only by treaty, or by the decision of the Supreme Court of the United States.

Even if the award in the Pea Patch case be considered judicial authority, it does not decide the question of the right of the respective States to *jurisdiction upon the waters* of the Delaware.

The opinion of the arbitrator only determined the *title to land not covered by water*. The question raised by the arrest of which New Jersey complains, relates not to title to land which is *jus-privatum*, but to jurisdiction on navigable water, which is *jus-publicum*.

The further claim of the State of Delaware to jurisdiction over the waters of the river within the twelve mile circle up to the Jersey shore, is founded on the ancient grants. A careful examination of these has led me to a conclusion different from that of your Excellency.

Two years before the Duke of York executed his grant to William Penn for the New Castle Circle, the Duke, who

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had derived his title to the territory and government of New Jersey from the crown, granted to the proprietors the territory and government of West Jersey, annexing to the grant these words: "and also the free use of all bays, rivers and waters *leading unto* or lying between the said premises, for navigation, free trade, *fishing*, or otherwise."

Long before the feoffment to William Penn of any part of Delaware, Penn, claiming to be one of the proprietors of West Jersey, with other proprietors, gave a system of government to the people who had colonized there, in the form of "concessions and agreements," in which he guaranteed "that all the inhabitants within the said province of West Jersey have the *liberty of fishing in the Delaware river.*"

The deed from the Duke of York to William Penn, for the twelve mile circle, was executed before the Duke had title thereto, and no conveyance was afterwards made to Penn. The right of government of Delaware was never granted to Penn by the King or the Duke. The right of government, and the *regalia* thereto attached, including the public rights of navigation and fishing, were in the crown when the declaration of American Independence was proclaimed. The King held the great rivers in trust for his subjects, and when the States achieved their independence, the rights of the King over navigable waters, including the right of fishing, vested in the States in trust for the people; and where a river separated two States, each, under the law of nations, took jurisdiction to the middle of the stream.

It is true that Penn based his claim to the present State of Delaware upon the feoffments from the Duke of York, but through her legislation, Delaware has, in a solemn manner, denied the validity of these feoffments, under one of which the claim for the whole of the river for twenty-four miles is now made. Near the close of the last

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century, her legislature, against the protest of the Penn heirs, denied that Penn ever had title, and derived the right of the State to soil and sovereignty from the crown, upon the treaty of peace with Great Britain in 1783.

For more than two hundred years the people of New Jersey have enjoyed, uninterruptedly, the right of fishing on the eastern side of the Delaware river. The invasion of what I believe to be the jurisdiction of New Jersey, the arrest of her citizens while engaged in fishing on her public waters, the taking of the persons arrested as prisoners to another State and compelling them to pay a license fee, the sudden and serious interruption of the business of a large number of the people, without notice to them or to the authorities of this State, were proceedings so unusual that I deemed it proper and necessary promptly to issue the proclamation, a copy of which I sent you, as an official claim of the rights of this State, in protest against the arrest of her citizens that had been made, and also as a means of preventing breaches of the peace, by giving assurance to those immediately interested that the controversy would be settled amicably by legal action.

I have considered the suggestion made by your Excellency to issue a proclamation, requesting citizens of this State to cease fishing on the waters on the New Jersey side of the river pending the decision of the legal question of jurisdiction, and after reflection, I have concluded that it would be so disastrous to the livelihood of a large class of men who depend on the occupation of fishing for subsistence, and so abruptly deny them a public right which they and their ancestors have enjoyed for two centuries, that it would be neither just nor wise to take that course. It appears to me that the jurisdiction of Delaware, as now claimed, but in no wise asserted, over the locality in question, by her law of 1871, should not be insisted upon in such a way as to produce these consequences. In my former communication I did not intend to suggest that the

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Governor of a State had power to suspend a law, for it appears to me that the question was simply whether the Delaware authorities might not, pending a legal controversy, allow a question of jurisdiction, which her law of 1871 does not assert, to remain practically as it was found by that law. I regret exceedingly that notice was not given the authorities of this State, soon after the passage of the law of 1871, that Delaware would claim to enforce its provisions on the eastern side of the river, within the twelve mile circle, so that the question could have been decided before the commencement of the fishing season of 1872, and thus the arrest of industrious and peaceable citizens, and the interruption of their business have been avoided.

It is to be regretted that the legislature of our States are not in session, so that commissions to negotiate and settle the whole question might be authorized. But as this cannot now be done, I am much gratified with your ready acquiescence in the proposition to submit it to judicial decision. The mode of such submission can doubtless be arranged by the law officers of the respective States, and I will at once refer that part of the communication of your Excellency to the Attorney General of this State. I suppose a case can be made, and the facts agreed upon.

I join your Excellency in the hope that the question may soon be settled in a satisfactory manner, and that the friendly relations which have always existed between the States of Delaware and New Jersey may continue uninterrupted.

Very respectfully,

Your obedient servant,

JOEL PARKER.

*N. J. Laws 1873, p. 20.*

CHAPTER XCVIII.

An Act for the Settlement of the Territorial Limits and Jurisdiction of the State of New Jersey and the State of Delaware.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the governor shall, by and with the advice and consent of the senate, appoint three commissioners, who shall have full powers on the part of the state of New Jersey, to meet three commissioners appointed or to be appointed under or by virtue of a law of the state of Delaware, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New Jersey and the state of Delaware, and if by death, resignation, or otherwise, a vacancy do happen among those appointed by the state of New Jersey, the governor or person administering the government of this state, is hereby authorized to supply the same.
2. *And be it enacted*, That the said commissioners on the part of the state of New Jersey, or a major part of them, shall have full power and authority to agree upon, settle and determine the limits of territory and jurisdiction between the said states, as to them may seem just; and their agreement in the premises in writing, signed and sealed by the said commissioners of both, or a majority of them, respectively, if made on or before the first day of January next, shall become binding on the state of New Jersey, when confirmed by the respective legislatures of the state of Delaware and of the state of New Jersey, and the congress of the United States shall consent thereto.
3. *And be it enacted*, That the said commissioners shall meet at such time and place as they may agree upon; and that the expenses and disbursements of the said commissioners for surveys, if any shall be necessary, for maps



and copies of maps, of documents of any kind that may be deemed useful, and for any other purpose which shall aid them in the discharge of their duties, and a reasonable compensation for their services, shall be ascertained and allowed by the governor, and paid by the treasurer, on the governor's warrant, out of any moneys in the treasury not otherwise appropriated.

4. *And be it enacted*, That the governor shall transmit to the governor of the state of Delaware a copy of this act.

5. *And be it enacted*, That this act shall take effect immediately.

Approved February 26, 1873.

*N. J. Laws 1873, p. 40.*

#### CHAPTER CLXI.

A Supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An Act for the settlement of the Territorial Limits and Jurisdiction of the State of New Jersey and the State of Delaware."

WHEREAS, it appears that the state of Delaware has in some measure modified the original joint resolution passed by the legislature of that state, with respect to the subject of difference between the state of New Jersey and that state, and thereby declined to submit to commissioners any question as to the title claimed by said state to a part of the Delaware river, but has authorized the submission of the question whether the citizens of New Jersey have the right to fish in that part of the Delaware river claimed by the state of Delaware and the nature and extent of that right; *and whereas*, it is expedient to settle at this time so much of the difference between the said states as may be settled amicably, therefore;

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1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the commissioners already appointed under the act to which this is a supplement and their successors shall have power to settle so much of the difference between this state and said state of Delaware as the said state of Delaware has submitted, or may from time to time hereafter submit; *provided, however,* that nothing in this act contained shall be construed to, or to authorize said commissioners by any act or agreement to affect any other claim or jurisdiction of New Jersey in or over the whole or any part of the Delaware river or the soil thereof, notwithstanding the settlement of the said fishery question.

2. *And be it enacted,* That if the said state of Delaware shall hereafter give more enlarged powers to its commissioners, the said commissioners of this state and their successors may act upon and exercise every of the powers given in this act, or the act to which this is a supplement, to the extent of the submission under such enlarged powers so to be given by said state of Delaware.

3. *And be it enacted,* That the said commissioners and their successors shall remain charged with the matters mentioned in the said act to which this is a supplement, until the same shall be finally settled under the powers by said act given, and such as shall be given by said state of Delaware or otherwise, notwithstanding the agreement contemplated by said act to which this is a supplement, may not be made on or before the first day of January next, and that any agreement made under this act or the act to which this is a supplement, shall be submitted to the legislature of this state, and be ratified and confirmed by this state in the manner prescribed by the act to which this is a supplement, and be consented to by congress before the same shall be finally binding on this state.

4. *And be it enacted*, That a copy of this act shall be transmitted to the governor of Delaware, and that the same shall take effect immediately.

Approved March 11, 1873.

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*Documents of the One Hundredth Legislature of the State of New Jersey, Printed by order of the Legislature, Jersey City, 1876, pp. 3-4.*

### REPORT.

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STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, MARCH 22, 1876.

*To the Legislature:—*

In reply to the concurrent resolution requesting me to communicate what action, if any, has been had by the commissioners of the States of Delaware and New Jersey, in relation to the dispute concerning fisheries in the Delaware river, I respectfully submit herewith copies of correspondence between the commissioners of this State and myself, and to which I refer for the information desired.

I have received no official notification of an abandonment of the commission by the Legislature of Delaware, but the published laws of that State show that on the 26th day of March, A. D. 1875, a joint resolution was passed relieving the Delaware commissioners from further duty.

This is greatly to be regretted, for no other legislation can be had in that State until next year, as its Legislature meets only biennially.

Every effort, however, within the scope of executive duty, will be made with the authorities of Delaware tending to an eventual settlement, and also, in the meantime,

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to prevent any personal conflicts between the citizens of each State arising out of the questions involved.

I would also suggest that power be conferred, in case negotiations cannot be resumed, to bring the case before the Supreme Court of the United States as provided in the Federal Constitution.

Respectfully,

J. D. BEDLE.

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STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, MARCH 7, 1876.

*To Honorable A. Browning, Courtland Parker and Albert H. Slape, Commissioners:—*

DEAR SIRS:—The Legislature has passed a concurrent resolution, of which the enclosed is a copy, and the first section of which requests information as to the action had by you with like commissioners of the State of Delaware upon the matters of difference referred to in the acts under which you were appointed. I will be glad to have you communicate to me, in writing, the exact status of the negotiations, with such other information as will enable me to accurately answer the resolution.

Yours respectfully,

J. D. BEDLE.

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CAMDEN, March 22d, 1876.

*To His Excellency, Joseph D. Bedle, Governor of New Jersey:—*

DEAR SIR:—In answer to your letter of the 7th instant, addressed to Messrs. Parker, Slape and myself, as commissioners on the part of New Jersey, in conjunction with commissioners on the part of the State of Delaware, to determine the question of jurisdiction over the Delaware river, or bay, within a circuit of twelve miles around New Castle, in that State, I beg leave to state, that sometime after the several appointments of the joint commission, the commissioners met on several occasions in the city of Philadelphia. After having, on those occasions, discussed to some extent the questions involved, it was agreed that the Delaware commissioners should agree upon, have printed and served on us, a statement of the case on their part; to which we in turn, in like manner, were to submit a statement on our part.

Some considerable time after this arrangement, at a meeting of the joint commission in Philadelphia, we were served with their statement. To prepare a proper reply to this, required no inconsiderable time and investigation. Before it was accomplished, the State of Delaware very unexpectedly to us, and as advised, to them also, revoked their commission. This terminated, or at least suspended, all further proceedings; and so the matter remains to this present.

Very truly your obedient servant,

A. BROWNING.

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N. J. Laws 1876, p. 418.

## NUMBER II.

Joint resolution relative to the rights of the State of New Jersey in that part of the Delaware river which runs between the States of Delaware and New Jersey:

WHEREAS, the State of Delaware now claims to own the bed and to have exclusive jurisdiction, from shore to shore, of a portion of the Delaware river, extending from the boundary line between the States of Pennsylvania and Delaware, for some distance below the town of New Castle; and has lately endeavored to exercise jurisdiction co-extensive with said claim, and whereas, this state always claimed and now doth claim to own the bed of said river to the middle thereof, so far as said river lies between this state and the state of Delaware, and to be entitled to exclusive jurisdiction, (subject to the constitution of the United States and the acts of congress made in pursuance thereof) over its half of said river and hath always, heretofore exercised jurisdiction accordingly: and, *whereas*, it is desirable and necessary that the rights of this state, as between it and the State of Delaware, in and to said river shall be definitely, finally and conclusively settled; and, *whereas*, the efforts heretofore made to settle said matters of difference by consultation and agreement between the said differing states have proved ineffectual, therefore:

1. BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey*, That the governor of this state be, and he is hereby authorized to cause to be instituted and prosecuted, in the supreme court of the United States, a suit in equity, or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine and settle the true territorial boundary line between said states and the extent of the

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jurisdiction of each of said states in and on said river and for that purpose the Governor shall have power to employ, on behalf of this state, counsel to assist the Attorney General in the commencement and prosecution of said suit, or action, and the expenses necessarily and reasonably attending the commencement and prosecution of said suit, or action, on bills certified by the Governor, shall be paid out of any moneys in the treasury not otherwise appropriated.

2. *And be it further resolved*, That this resolution shall take effect immediately.

Approved March 30, 1876.

*Minutes of the Votes and Proceedings of the One Hundred and Twenty-seventh General Assembly of the State of New Jersey, Trenton, 1903, pp. 422-424.*

(March 3, 1903.)

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, March 3d, 1903.

*To the Legislature:*

In the year 1871 the Legislature of the State of Delaware passed an act entitled "An act for the protection of fishermen," in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware river, for alleged

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violation of this act, the State of Delaware alleging that her title extended to low-water mark on the New Jersey shore of said river, and not to the middle thereof or the mutual boundary line between the two States. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two States defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both Legislatures a commission of distinguished citizens of each State was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in *statu quo* for nearly twenty-five years, until about a year ago, when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney-General has been for several months in friendly communication with the Attorney-General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy if possible. These conferences finally reached a point where the respective Attorney-Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney-General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney-General of Delaware and the special counsel of the State of Delaware in this litigation were present. The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of

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this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney-General and the special counsel of that State in this litigation commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval.

Respectfully,

FRANKLIN MURPHY,

*Governor.*

*N. J. Laws 1903, p. 39.*

JOINT RESOLUTION No. I.

Joint Resolution relating to the boundary controversy between the states of New Jersey and Delaware.

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

L. Franklin Murphy, governor, Thomas N. McCarter, attorney-general, and Edward C. Stokes be and they hereby are appointed and constituted commissioners of the state of New Jersey to confer with like commissioners representing the state of Delaware for the purpose of

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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.

Approved March 5, 1903.

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*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Seventh General Assembly of the State of New Jersey, Trenton, 1903, pp. 549-550. (March 16, 1903.)*

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STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, March 17th, 1903.

*To the House of Assembly:*

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,

FRANKLIN MURPHY,  
*Governor.*

*To the Senate and General Assembly of the State of New Jersey:*

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the

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State of Delaware, to frame 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 final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

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In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,  
THOS. N. McCARTER,  
EDWARD C. STOKES.

*N. J. Laws of 1903, p. 515.*

CHAPTER 243.

An Act to ratify and confirm a compact or agreement between the states of New Jersey and Delaware respecting the Delaware river, and to authorize the execution thereof.

WHEREAS, By joint resolution of the legislature of the state of New Jersey, approved March fifth, nineteen hundred and three, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes were appointed to represent the said state as commissioners to confer with like commissioners to be appointed on the part of the state of Delaware for the purpose of framing an agreement or compact between the said states respecting certain controversies between them concerning the Delaware river, lying between the said states, and their respective rights therein; and

WHEREAS, By joint resolution of the general assembly of the state of Delaware, approved March nineteen hundred and three, John Hunn, Herbert H. Ward and George H. Bates were appointed to represent the said state as commissioners to confer with the commissioners of the state of New Jersey for the purpose before recited; and

WHEREAS, The commissioners of the said two states, having duly conferred as directed by said resolution, have

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framed and submitted to this legislature a proposed compact or agreement between the said states; and WHEREAS, The compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

\* \* \* \* \*  
(Text of Compact given in Plaintiff's Exhibit No. 53; U. S. Stat. L., Vol. 34, Pt. 1, Ch. 394, p. 858.)  
\* \* \* \* \*

(p. 520) THEREFORE,

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

1. The foregoing compact or agreement, and every clause, matter and thing therein contained, be and the same is hereby adopted, ratified and confirmed as and for the act and deed of the state of New Jersey, and the commissioners of the said state are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the state of Delaware.
2. It shall be the duty of the governor, at or before the next session of congress of the United States, to transmit a duly certified copy of this act to the president of the United States, with the request that it be communicated to congress for its action thereon.
3. This act shall take effect immediately.

Approved April 8, 1903.

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(p. 653) JOINT RESOLUTIONS.

Joint Resolution No. 1.

Joint Resolution relating to the boundary controversy between the States of New Jersey and Delaware.

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

Edward C. Stokes, Governor, Robert H. McCarter, Attorney-General, Franklin Murphy and Chauncey G. Parker, be and they hereby are appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of 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.

This joint resolution shall take effect immediately.

Approved February 14, 1905.

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*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Ninth General Assembly of the State of New Jersey, Trenton, 1905, pp. 456-461, (March 1, 1905)*

A message was received from the Governor by the hands of his Secretary, as follows:

EXECUTIVE DEPARTMENT,  
TRENTON, March 1st, 1905.

*To the Speaker and Members of the House of Assembly:*

I herewith transmit the report of the action of the Commissioners appointed under Joint Resolution of the State of New Jersey, approved February 14th, 1905, and the Commissioners representing the State of Delaware, for the purpose of framing a compact between the said States and legislative action thereon, looking to an amicable termination of the suit between the two States now pending in the Supreme Court of the United States and a final adjustment of all controversy relating to the boundary line between this State and Delaware, and to their respective rights in the Delaware river and bay.

This report, covering the compact agreed upon by the Commissioners of the States of New Jersey and Delaware, and a proposed bill to make the same effective, is respectfully submitted for your consideration and action.

E. C. STOKES.

PLAINTIFFS EXHIBIT NO. 101

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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.

(Recites all of Chapter 243, N. J. Pamphlet Laws 1903, pp. 515-520. For text see that Act *supra* in this Exhibit, and also Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 585.)

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

Section 1. The foregoing compact or agreement, and every clause, matter and thing therein contained be, and the same is hereby adopted, ratified and confirmed as and for the act and deed of the state of New Jersey, and the commissioners of the said state are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the state of Delaware.

Section 2. It shall be the duty of the governor at or before the next session of the congress of the United States, to transmit a duly certified copy of this act to the president of the United States, with the request that it be communicated to congress for its action thereon.

Section 3. This act shall take effect immediately.

The Governor's message was then taken up, which, together with the accompanying report, was, on motion of Mr. Duffield, referred to the Committee on Judiciary.



*Laws of New Jersey 1905, Pages 563, 67, 462.*

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CHAPTER 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.

WHEREAS, by joint resolution of the Legislature of the State of New Jersey, approved February fourteenth, one thousand nine hundred and five, Edward C. Stokes, Governor; Robert H. McCarter, Attorney-General; Franklin Murphy and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of 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 the said two States for action thereon looking to the amicable termination of the suit between said two 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; and

WHEREAS, by like joint resolution of the General Assembly of the State of Delaware, approved February thirteenth, one thousand nine hundred and five, Preston Lea, Governor; Robert H. Richards, Attorney-General; Herbert H. Ward and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey for the purpose before recited; and

WHEREAS, the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this Legislature a proposed compact or agreement between the said States; and

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WHEREAS, the compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE  
STATE OF DELAWARE RELATING TO THE BOUNDARY  
CONTROVERSY BETWEEN SAID STATES.

(Here follows the compact as given in Plaintiff's Exhibit 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

Therefore,

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

1. The foregoing contract or agreement, and every clause, matter and thing therein contained, be and the same is hereby adopted, ratified and confirmed as and for the act and deed of the State of New Jersey, and the commissioners of the said State are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the State of Delaware.

2. It shall be the duty of the Governor, at or before the next session of the Congress of the United States, to transmit a duly certified copy of this act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

3. This act shall take effect immediately.

Approved March 21, 1905.

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## CHAPTER 239.

An Act appointing three commissioners on the part of the State of New Jersey to confer with three commissioners to be appointed on the part of the State of Delaware, 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 Legislature of the State of New Jersey has 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 has received the approval of the Governor of the State of New Jersey, and the Legislature of the State of Delaware has passed an act of the same title and of the same purport, which act has received the approval of the Governor of the State of Delaware; and

WHEREAS, Said compact or agreement between said two States has been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphy 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 has been retained by said commissioners of Delaware, to be delivered to the Governor of that State, and the other of which duplicate originals has 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:

(Here follows Articles IV and V of the Compact given in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

(Page 464)

Now, THEREFORE, in pursuance of the terms of said compact:

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

1. William J. Bradley, James Strimple and John Boyd Avis, be and they are hereby appointed commissioners on the part of the State of New Jersey to confer with like commissioners appointed or to be appointed by the Legislature 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 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 New Jersey commissioners shall fill any vacancies occurring in the membership of said New Jersey commission by the selection of some other suitable citizen or citizens of the State of New Jersey.

2. Said commissioners shall, on or about the first day of June, anno domini nineteen hundred and five, organize by the election from their number of a president and a 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 New Jersey commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties,

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acts, matters and things stipulated for in the said compact. Said New Jersey 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, experts 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 New Jersey commission, and shall be paid, for attendance and mileage, the fees usually paid in the State of New Jersey for the attendance of witnesses at the trial of civil causes in the circuit Courts of said State. The attendance of witnesses before said New Jersey commission, or before said joint commission, may be compelled by attachments issued by said New Jersey commission to the sheriff of any county in the State of New Jersey. Said attachments shall be signed by the president of said New Jersey 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.

3. The sum of two thousand dollars is hereby appropriated out of the moneys 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 moneys shall be drawn from the State treasury from time to time as occasion shall require, upon the warrant of the comptroller drawn upon the State treasurer upon the certificate, in writing, to said comptroller, signed by the president and countersigned by the secretary of said New Jersey commission, giving the details of such expenditures made, or to be made, as aforesaid.

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4. This act shall take effect immediately.  
Approved May 11, 1905.

**Report of New Jersey Commissioners on  
New Jersey and Delaware Fisheries.  
Trenton, 1907.**

The commissioners appointed on the part of the State of New Jersey by an act of the Legislature, approved May eleventh, one thousand nine hundred and five, to confer with like commissioners appointed by the General Assembly 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, and also to ascertain the dividing line between said river and bay 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 Legislature as follows:

That, in accordance with the provisions of said act of the Legislature, they did, on the twenty-ninth day of May, one thousand nine hundred and five, meet, and after being duly qualified, according to law, did organize by the election of William J. Bradley president and John Boyd Avis 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 public meeting was held in Pennsgrove, New Jersey, and a large number of fishermen from different sections of the State were represented. With their aid and suggestions, and with the aid of full copies of the fishing laws heretofore

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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 Delaware, to wit, Alexander B. Cooper, William S. Hillis and Walter Hayes, and arranged for meetings of the joint commission in the city of Philadelphia.

On the fifth day of December, one thousand nine hundred and five, 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 procedure agreed upon. Meetings of the joint commissioners and the respective State commissioners were held from time to time until the sixteenth day of January, one thousand nine hundred and seven, 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 heretofore submitted to the Legislature of the State of New Jersey, signed by all the commissioners on behalf of both States, to take such action thereon as provided in "The act to ratify and confirm the compact and agreement between the States of New Jersey and Delaware, respecting the Delaware river and bay, and to authorize the execution thereof," approved.

Owing to the 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 Delaware. With the exception of these slight changes in the matter of procedure, so as to adapt the bills to the

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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 two States. The commissioners on the part of this State and the commissioners on the part of the State of Delaware have submitted the bills for uniform laws as so drawn to the Attorney-Generals 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.

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 industrious to ascertain what protection shall 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 maps, and on the twenty-second day of June, one thousand nine hundred and six, the 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

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little difficulty in doing that, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monument. After a thorough and careful inspection, however, of both sides of said river and bay, and in view of the information above mentioned, they determined that a monument should be erected on the New Jersey shore at or near the mouth of Hope creek and that a similar monument should be erected on the Delaware shore at or near Linton Point, 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 Delaware bay, and thereupon they determined to acquire title in the State of New Jersey to a sufficient quantity of land upon which said monument is to be erected on the New Jersey shore, and instructed the secretary to ascertain if such title could be obtained. They have arranged with the owner of said land to convey to the State of New Jersey a sufficient quantity thereof upon which said monument is to be erected.

On the thirty-first day of October, one thousand nine hundred and six, the commission entered into a contract with William Davidson, of the city of Wilmington, a competent and trustworthy dealer in and manufacturer of monuments, to erect two suitable monuments, one on the New Jersey shore, at the point above designated, and one on the Delaware shore at the point above designated. The cost of the erection of and inscription on both these monuments amounts to \$370. 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

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to his approval. These monuments are precisely alike in size and manner of erection. Each is eight feet four inches high, one foot 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. 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 is to be at least four feet square at the bottom, to continue at that size six inches in height, to taper on all sides to the top of the concrete, which shall be at least two feet 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 New Jersey shore is to be the following inscription:

"MOUTH OF DELAWARE RIVER.

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Liston Point on the Delaware shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, one thousand nine hundred and six, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"WILLIAM J. BRADLEY,

"JOHN BOYD AVIS,

"JAMES STRIMPLE,

*"Commissioners of New Jersey.*

"ALEXANDER B. COOPER,

"WILLIAM S. HILLIS,

"WALTER H. HAYES,

*"Commissioners of Delaware."*

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

“MOUTH OF DELAWARE RIVER.

“A straight line drawn from the center of this monument to the center of a similar monument erected at or near Hope creek on the New Jersey shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, A. D. one thousand nine hundred and five, in pursuance of uniform acts of the Legislatures of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

“ALEXANDER B. COOPER,

“WILLIAM S. HILLES,

“WALTER H. HAYES,

“*Commissioners of Delaware.*”

“WILLIAM J. BRADLEY,

“JOHN BOYD AVIS,

“JAMES STRIMPLE,

“*Commissioners of New Jersey.*”

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 the cost of making, erection and inspection of said monuments and other expenses.

W. J. BRADLEY,

JOHN BOYD AVIS,

JAMES STRIMPLE,

*Commissioners of the State of New Jersey.*

*Laws of New Jersey, 1927, Page 806.*

JOINT RESOLUTION No. 4

Joint Resolution relating to the boundary controversy between the State of New Jersey and the State of Delaware.

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

1. That Walter H. Bacon, J. Forman Sinnickson, Joseph N. Fowler, August J. Meerwald and J. Gilbert Borton, be and they are hereby appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislature 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 the 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 travelling 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.

3. This joint resolution shall take effect immediately.  
Approved March 28, 1927.

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*Journal of the Eighty-fifth Senate of the State of New Jersey, Trenton, 1929. p. 1022.*

Mr. McAllister offered the report of the New Jersey-Delaware Boundary Line Commissioners, dated April 16th, 1929, and moved that same be spread in full on the Journal.

Which motion was adopted.

*To the Senate and General Assembly of the State of New Jersey:*

By the terms of Joint Resolution No. 4, approved March 28, 1927, the undersigned were,

“appointed and constituted Commissioners of the State of New Jersey to confer with like Commissioners representing the State of Delaware, for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislature 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 were directed to report at the then present or some subsequent session of the Legislature.

A similar resolution was adopted by the Delaware Legislature and Commissioners appointed thereunder, and subsequently the Joint Commission met, organized and held two sessions without definite result.

Afterwards, two members of the Delaware Commission died, two resigned, and at the 1929 session of the Delaware Legislature the Governor was authorized to appoint a new Commission.

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There have been two meetings of the Joint Commission, as now constituted, one in Wilmington and one in Bridgeton, without reaching an agreement.

Your Commission respectfully recommends that the matter of the boundary line controversy between the two States be referred to the Attorney-General to the end that appropriate action be taken in the Supreme Court of the United States to fix and determine the boundary line between New Jersey and Delaware from the Pennsylvania line, through the Delaware River and Bay, to the Atlantic Ocean.

The Delaware Commissioners have given assurance that they will make a similar recommendation to the Governor of Delaware.

Respectfully submitted, April 16, 1929.

WALTER H. BACON,  
J. FORMAN SINNICKSON,  
JOSEPH N. FOWLER,  
AUGUSTUS J. MEERWALD,  
J. GILBERT BORTON,

*Commissioners.*

*(See Plaintiff's Exhibit No. 5, N. J. J. R. 25, P. L. 1929, p. 834.)*

To the General Assembly, of the State of Delaware.

I lay before the General Assembly, for their consideration, a communication from the Governor of the State of New Jersey, and also an act passed by the Legislature of that State on the 7<sup>th</sup> of November last entitled "An act concerning the boundaries and jurisdiction of this State in the Bay of Delaware": By which act it will be seen that the State of New Jersey proposes that commissions should be appointed, by that State and by the State of Delaware, "to meet and conclude an agreement between the said States defining their respective boundaries, jurisdiction, right to islands, subaqueous soil, fisheries and products of the River and Bay of Delaware, South Eastly of the circular boundary between the States of Delaware and Pennsylvania"

Done - 5 Jan. 1821

Jacob Stout

Copied for reference only from the original  
in the custody of the Delaware Public  
Archives, Hall of records, 121 Duke of York  
St., Dover, DE 19901. Permission for repro-  
duction must be obtained.

Volume

Page

Exec Papers  
Governor's Messages  
1821



Plaintiff's Exhibit No. 37  
New Jersey Laws 1821, page 6.

A further Supplement to the act, entitled "An act to preserve and support the jurisdiction of this State," passed December third, one thousand eight hundred and seven.

Sec. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the boundary lines of the counties of Salem, Cumberland and Cape May, are hereby declared to be the main ship channel in the river and bay of Delaware adjoining said counties respectively.

Sec. 2. *And be it enacted*, That the sum of two thousand dollars be appropriated, under the direction of the Governor of this state, for the time being, who is hereby authorized and empowered, at his discretion, to prosecute or defend, to final issue or judgment, any suit, or suits, which he may deem necessary for trying, or finally determining the jurisdictional line between this state and the state of Delaware, and for defending the common and exclusive rights of the citizens of this state to the natural oyster banks within the same.

Sec. 3. *And be it enacted*, That if the state of Delaware shall, at any time before the first day of May next, empower commissioners to enter into a friendly negotiation with the state of New-Jersey, for the settlement of the aforesaid jurisdictional line, it shall, in that case, be lawful for the Governor, or person administering the government of the state, on receiving due notice thereof, to appoint commissioners for that purpose, agreeably to an act passed November seventh, one thousand eight hundred and twenty, entitled "An act concerning the boundaries and jurisdiction of this state in the bay of Delaware," and that he be also empowered to stay proceedings at law, if he deem it expedient, while such negotiations are pending.

A. Passed November 21, 1821.



4. *And be it enacted*, That the northern bounds of the county of Salem, shall be taken and deemed to be as follows: to extend from the middle of the channel at the mouth of Oldman's Creek to the main ship channel of the River Delaware, striking the same at a right angle, and the southern bounds extending from said ship channel along the Cumberland line, to the middle of the channel at the mouth of Stow creek.

5. *And be it enacted*, That the northerly bounds of the county of Cumberland, shall be taken and deemed to extend from the middle of the channel at the mouth of Stow-creek, to the main ship channel in the river Delaware, striking the same at a right angle, and the southern bounds shall be taken and deemed to extend, from opposite the middle of the mouth of West's creek, to the main ship channel in Delaware Bay, making a right angle therewith.

6. *And be it enacted*, That the line of partition between the counties of Cumberland and Cape May, shall be taken and deemed to be as follows, to wit: to begin at the place where the waters of Mill or Hickman's creek fall into the channel of Tuckahoe river, at the boundary line of Gloucester county, and running thence directly into the mouth of said creek, continuing the same course by a line of marked trees, (which by the present position of the compass is south, fifty-seven degrees, and about thirty minutes west) until it strikes Hughes' on the lower mill-pond, on West or Jerak's creek, thence down the middle of the ancient watercourses thereof, until it falls into Delaware Bay, and thence continue a due south-west course until it strikes the line of said counties, at the ship channel of the said bay.

C. Passed November 28, 1852.



Plaintiff's Exhibit No. 162

Delaware Laws Relating to New Jersey-Delaware  
Boundary Dispute.

*Revised Statutes of Delaware, 1852, pp. 23.*

CHAPTER I

OF SOVEREIGNTY; JURISDICTION AND LIMITS

Sec. 1. The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the State to the United States.

Sec. 2. The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by commissioners, and approved on the 11th of January, 1769; the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the feoffment 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 New Castle; and the middle of the bay below said circle.

Sec. 3. The State shall be divided into three counties—New Castle, Kent and Sussex.

Sec. 4. The dividing line between New Castle and Kent counties shall be, as heretofore established, from the mouth of Duck Creek westwardly through the "Thoroughfare" north of Bombay Hook Island, and up said creek "to the mouth of a branch issuing from the main branch of Duck Creek, and opposite part of Enoch Jones' land on the Kent side, and Richard Nash's land on the New Castle side; and running from thence up the said

branch on the several courses thereof westwardly six hundred and two perches, to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch; from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cypress branch."

SEC. 5. The dividing line between Kent and Sussex counties shall be "up the Mispillion creek continued from a fork thereof at the junction of the Tan-trough branch and Beaver-dam branch, running up the Tan-trough branch with the several courses thereof, eight hundred and eight perches to the head thereof; thence south-westwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a beaver-dam, on the west side of a beaver-pond, the original temporary division between Kent, Sussex and Maryland; and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line between Delaware and Maryland."

SEC. 6. New Castle county shall be divided into ten hundreds, namely: Brandywine, Christiana, Wilmington, Mill Creek, White Clay Creek, Pencader, New Castle, Red Lion, Saint Georges, and Appoquinimink.

SEC. 7. Kent county shall be divided into six hundreds, namely: Duck Creek, Little Creek, Dover, Murderkill, Milford and Mispillion.

SEC. 8. Sussex county shall be divided into ten hundreds, namely: Cedar Creek, Broadkilm, Nanticoke, North West Fork, Broad Creek, Little Creek, Dagsborough, Baltimore, Indian River, and Lewes and Rehoboth.

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*Laws of Delaware, 1873, Vol. 14, Pt. 2, pp. 668-669, 674, 680.*

RESOLUTIONS.

CHAPTER 583.

Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.

WHEREAS it appears by the message of His Excellency the Governor, and the documents accompanying the same, that the State of New Jersey makes claim for her citizens of the right to fish in that part of the waters of the Delaware within the limits of the "twelve mile circle" and eastward of the channel of said river, thus denying the exclusive jurisdiction of this State over the said waters within the said circle, a jurisdiction never doubted in Delaware, nor questioned elsewhere with confidence until now, so far as this General Assembly is informed;

AND WHEREAS His Excellency the Governor of New Jersey, in his correspondence with the Governor of this State, has suggested that the question of exclusive jurisdiction, and of authority involved in the claim maintained by that State, be settled by resort to legal proceedings, which this Legislature have respectfully declined to adopt, believing that the question can be more appropriately settled and justice done otherwise, and as hereinafter provided for;

AND WHEREAS it is of the utmost importance that no questions of sovereign title or rights should exist between States;

AND WHEREAS in this case such do exist they should be set-settled as becomes the high parties; therefor,

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the whole subject of controversy be submitted to the decision of six commissioners, three to be appointed by the legislature of each State, and that their decision shall be final.

*Resolved*, That said decision be submitted in writing, upon parchment, under the hands of the said commissioners, to this Legislature, and to that of the State of New Jersey, and be entered upon the Journal of each House of the General Assembly of each State as a perpetual memorial of the end of the aforesaid controversy; and that similar certificates be made and delivered to the Governor of each State, to be placed among the executive archives; and further, that each State, through its Governor, make proclamation for six months in the newspapers printed within its borders of the aforesaid decision, to the end that full public information thereof may be given.

*Resolved*, That Joseph P. Comegys, of Kent county, William G. Whitely, of New Castle county, and Edward L. Martin, of Sussex county, be appointed commissioners on the part of this State for the purpose aforesaid. That they be at once notified by the Speaker of the Senate of such their appointment, and in case at the end of five days from such notice either of them has not accepted said appointment, that another from the same county be appointed in his place.

*Resolved*, That a copy of the foregoing preamble and resolutions, duly certified, be forwarded by the Governor to the Governor of New Jersey, with a request that they be laid before the Legislature, that the aforesaid controversy shall be settled during the present session of the Legislature of each State.

*Resolved*, That the said commissioners shall each receive for his services hereunder the sum of five hundred dollars, to be paid by the State Treasurer, on the certificate of the Speaker of the Senate that the said services have been performed.

*Adopted at Dover, January 30, 1873.*

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## CHAPTER 593.

Joint Resolutions supplementary to those passed on the 30th of January last respecting the Fishery question with New Jersey.

To avoid all questions or debate as to the extent of the powers conferred upon the commissioners appointed by this State under the resolutions adopted on the 30th day of January last, and on those to be appointed by the State of New Jersey according to the suggestions therein,

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That no question was intended to be submitted by the said resolutions respecting the title of this State to the River Delaware and the soil thereof, within the limits of the "twelve miles circle," but only whether, notwithstanding such title, the citizens of New Jersey have the right to fish in said river within that circle, and if so the nature and extent of that right; and the said commissioners are to consider that no other question but that here mentioned is submitted to them, this State refusing to allow her aforesaid title to be drawn in question by said commissioners, or in any other manner.*

*Resolved, That a copy of the foregoing, duly certified, be forwarded by the Governor to the Governor of New Jersey.*

*Adopted at Dover, February 14, 1873.*

## CHAPTER 594.

Joint Resolution supplementary to the Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That all*

of the preamble to the "Joint Resolution with respect to the subject of difference between the State of New Jersey and this State," adopted on the 30th ultimo, after the words "so far as this General Assembly is informed," be and the same is hereby stricken out, and in lieu thereof these words shall be substituted, and the said preamble shall be read and construed and published according to the change made:

"AND WHEREAS it is important that the said question should be at once settled, so that there shall be no conflict of claim hereafter."

*Adopted at Dover, February 19, 1873.*

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#### CHAPTER 605.

Joint Resolution in Reference to the Fishery Question.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

1st. That any and all laws of the State requiring a license to fish for shad within the waters of this State be and the same are hereby suspended pending the negotiations between the commissioners appointed by this State and the State of New Jersey for the settlement of the fishery question.

2d. That upon determination of the questions submitted to the said commissioners favorable to the claim of this State, the commissioners appointed on the part of this State are hereby authorized to make such a compromise or settlement as will secure to the people of the State of Delaware and the people of the State of New Jersey the mutual right of fishery in the Delaware Bay and in that part of the Delaware River lying between the two States.

*Adopted at Dover, April 8, 1873.*

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*Laws of Delaware 1877, Vol. 15, Part 2, pp. 641-642.*

## RESOLUTIONS.

## CHAPTER 504.

Joint Resolutions relative to the rights of the State of Delaware, in a certain part of the Delaware river which runs between the States of Delaware and New Jersey.

WHEREAS, The State of Delaware claims to own the bed and to have exclusive jurisdiction (subject to the constitution of the United States and the acts of Congress made in pursuance thereof) over that portion of the Delaware river which is included within a circle of twelve miles radius, taking the court house in the city of New Castle as a central point—and

WHEREAS, The State of New Jersey disputes the validity of such claim, and asserts, upon her part, jurisdiction and ownership over that part of the same area on the east side of the channel of said river—and

WHEREAS, Legally authorized commissioners have heretofore held frequent conferences and consultations which have failed to result in any satisfactory determination of the points in dispute—and

WHEREAS, It has officially come to the knowledge of this General Assembly, through a properly certified copy of a joint resolution, adopted by "the Senate and General Assembly of the State of New Jersey," March 30th, 1876, that the Governor of said State is authorized to cause to be instituted and prosecuted, in the Supreme Court of the United States, a suit in equity or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine, and settle the true territorial boundary line between said States, and the extent of the jurisdiction of each of said States in and on said river, and—

WHEREAS, As the State of Delaware was the first to give her assent to the Constitution of the United States which

provides the arbiter of the Supreme Court for the decision of controversies between States, so she will promptly accept the gage of contest in that august tribunal tendered her by her sister State; Therefore,

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That the Attorney General be, and he is, hereby, authorized and directed, to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional counsel to assist the Attorney General in the defence of the said suit.

*Resolved,* That the Governor of this State be, and he is, hereby, requested to transmit to the Governor of New Jersey, a certified copy of the foregoing preamble and resolutions.

*Adopted at Dover, January 26, 1877.*

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*Revised Statutes of Delaware, 1852, pp. 3-4, as Amended to 1893, pp. 3-4.*

SOVEREIGNTY, JURISDICTION AND LIMITS.  
CHAP. 1. CHAP. 548, VOL. 19.

SEC. 1. The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the State to the United States.

SEC. 2. The limits of the State are declared to be the divisional lines between it and Maryland, run and marked by commissioners, and approved on the 11th of January,

1769; the circular line between it and Pennsylvania, surveyed and marked in 1701, under a warrant issued by William Penn in pursuance of the feoffment 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 New Castle; and the middle of the bay below said circle.

CHAPTER 548. VOL. 19. LAWS OF DELAWARE.

AN ACT TO PROTECT THE MARKS OF THE BOUNDARIES OF THIS STATE.

SECTION I. That if any person shall willfully deface, mutilate, damage, displace, or remove any stone or monument placed or fixed under authority of this State to mark any boundary line of this State, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay to the State a sum not exceeding one thousand dollars, (one-half of which shall be for the use of and paid to the informer) and shall be imprisoned for a term not exceeding one year.

Passed at Dover, April 27, 1893.

SEC. 3. The State shall be divided into three counties—New Castle, Kent and Sussex.

SEC. 4. The dividing line between New Castle and Kent counties shall be, as heretofore established, from the mouth of Duck Creek westwardly through the "Thoroughfare" north of Bombay Hook Island, and up said creek "to the mouth of a branch issuing from the main branch of Duck Creek, and opposite part of Enoch Jones' land on the Kent side, and Richard Nash's land on the New Castle side; and running from thence up the said branch on the several courses thereof westwardly six hundred and two perches, to a white oak corner tree of Benjamin Hazle and Richard Hollet's lands at the head of said branch;

from thence continued due west one thousand seven hundred and eight perches, till it intersects the tangent or divisional line between these counties and Maryland, where the same crosses the Cypress branch."

SEC. 5. The dividing line between Kent and Sussex counties shall be "up the Mispillion creek continued from a fork thereof at the junction of the Tan-trough branch and Beaver Dam branch, running up the Tan-trough branch with the several courses thereof, eight hundred and eight perches to the head thereof; thence southwestwardly to a small fork of a small branch of the river Nanticoke; thence down said branch to the southward end of a beaver-dam, on the west side of a beaver-pond, the original temporary division between Kent, Sussex and Maryland; and from thence due west two thousand eight hundred sixty and four perches to the north and south or tangent line between Delaware and Maryland."

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*Joint Resolution relating to the controversy concerning the boundary line between the States of New Jersey and Delaware.*

Whereas, the Governor has communicated to the General Assembly a report of the Attorney General respecting the present condition of the litigation pending in the Supreme Court of the United States between this State and the State of New Jersey, concerning the boundary between said States, and has thereon recommended action by this General Assembly in that behalf;

And Whereas, this General Assembly is desirous to maintain the claims of this State set forth in the Joint Resolution passed January 28, 1877, to exclusive jurisdiction over that portion of the Delaware river which is included within the circle of twelve miles radius, taking the Court House in the City of New Castle as a central point; Therefore,

*Laws of Delaware.* 1901, p. 78.

CHAPTER 46.

Of the Revenues of the State.

AN ACT to appropriate money for payment of disbursements made or to be made in the defense of the action of the State of New Jersey against the State of Delaware, pending in the Supreme Court of the United States.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (three-fourths of all the members elected to each House concurring therein):

Section 1. That the sum of one thousand dollars is hereby appropriated to meet the necessary expenses and disbursements, made or to be made, in the defense of the suit pending in the Supreme Court of the United States, wherein the State of New Jersey is complainant and the State of Delaware is defendant. And the Governor is hereby authorized, from time to time, to draw his warrant or warrants upon the State Treasurer for the said sum or any part or parts thereof upon the certificate of the Attorney-General that such disbursements have been made or are proper to be made.

Approved March 9, A. D. 1901.

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

That the Attorney General and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, he and they are hereby instructed to maintain the defense of said suit, and they are hereby authorized to take such steps therefor as may be necessary.

JAS. V. McCOMMONS,  
Speaker of the House of Representatives.

PHILIP L. CANNON,  
President of the Senate.

Approved this the 26th day of February, A. D. 1901.

JOHN HUNN,  
Governor.

STATE OF DELAWARE.

OFFICE OF SECRETARY OF STATE.

I, CALEB R. LAYTON, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of the Joint Resolution relating to the controversy concerning the boundary line between the States of New Jersey and Delaware, approved February 26th, A. D. 1901, as the same appears on file in this office.

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State, at Dover, this twenty-sixth day of February, in the year of our Lord one thousand nine hundred and one.

CALEB R. LAYTON,  
Secretary of State.



*Laws of Delaware, 1905, Vol. 23, Pt. 2, pp. 462, Appendix  
pp. 2-6, pp. 12-20.*

## RESOLUTIONS.

## CHAPTER 216.

Joint Resolution relating to the Boundary controversy between  
the States of New Jersey and Delaware.

*Be it resolved by the Senate and House of Representa-  
tives of the State of Delaware in General Assembly met:*

That Preston Lea, Governor, Robert H. Richards, Attor-  
ney General, Herbert H. Ward and George H. Bates,  
special counsel, 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 conse-  
quent 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.

Approved, February 13, A. D. 1905.

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## APPENDIX.

## COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE, RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

(Here follows the compact as recited, including signatures, in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

## CHAPTER 5.

## OF SOVEREIGNTY, JURISDICTION AND LIMITS.

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.

Whereas By joint resolution of the Legislature of the State of New Jersey, approved February 14th 1905, Edward C. Stokes, Governor, Robert H. McCarter, Attorney General, Franklin Murphy and Chauncey G. Parker, were appointed and constituted Commissioners of the State of New Jersey to confer with like Commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation thereon, to be submitted to the legislatures of the said two States for action thereon, looking to the amicable termination of the suit between said two 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;

And Whereas By like joint resolution of the General Assembly of the State of Delaware approved February 13th 1905, Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates were appointed to represent the said State as Commission-

ers to confer with the Commissioners of the State of New Jersey, for the purpose before recited;

And Whereas The Commissioners of the said two States having duly conferred as directed by said resolutions, have framed and submitted to this General Assembly a proposed compact or agreement between the said States;

And Whereas The compact or agreement so framed and submitted is in the words following, that is to say:

“Compact between the State of New Jersey and the State of Delaware relating to the boundary controversy between said States.

(Here follows the compact, without signatures, as recited in Plaintiff's Exhibit No. 53; 34 U. S. Stat. L. Pt. 1, Ch. 394, p. 858.)

*Therefore, be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met:*

Section 1. The foregoing compact or agreement, and every clause, matter and thing therein contained, be, and the same is, hereby adopted, ratified and confirmed as and for the act and deed of the State of Delaware, and the Commissioners of the said State are hereby authorized and empowered, on its behalf, to execute the same in duplicate, and to deliver one copy thereof to the Commissioners of the State of New Jersey.

Section 2. It shall be the duty of the Governor, at or before the next session of Congress of the United States, to transmit a duly certified copy of this Act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

Approved March 20, A. D. 1905.

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## CHAPTER 6.

## OF SOVEREIGNTY, JURISDICTION AND LIMITS.

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 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 so 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. 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. Hillis 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 Delaware 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 a 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 in 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 the 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 Com-

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

Approved, March 23, A. D. 1905.

*Laws of Delaware 1927, Vol. 35, p. 644.*

## 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.

*Laws of Delaware 1927. Vol. XXXV, pp. 550, 556.*

CHAPTER 261.

OF THE REVENUES OF THE STATE.

AN ACT MAKING APPROPRIATIONS FOR THE EXPENSES OF THE STATE GOVERNMENT OTHER THAN LEGISLATIVE EXPENSES FOR THE FISCAL YEAR ENDING ON MONDAY IMMEDIATELY PRECEDING THE SECOND TUESDAY OF JANUARY, IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND FOUR.

*Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, (with the concurrence of three-fourths of all the members elected to each House of the General Assembly):*

Section 1. That the several amounts named in this Act, or so much thereof as may be necessary, are hereby appropriated and authorized to be paid out of the Treasury of this State to the respective public officers and for the several purposes specified for the current fiscal year ending on Monday immediately preceding the second Tuesday of January in the year of our Lord one thousand and four; provided, however, that all parts or portions of the several sums appropriated by this Act which, on said Monday immediately preceding said second Tuesday of January, A. D. 1904, shall not have been paid out of the Treasury shall be converted back into the General Fund of the Treasury. The said several sums hereby appropriated are as follows, viz.:

(p. 556) For to provide for the defense of the suit of the State against the State of New Jersey in the matter of the boundary dispute between the two States, pending in the United States Supreme Court, ten thousand dollars, to be drawn by the warrant of the Governor on the State Treasurer, and to be placed at the disposal of the Attorney General.

*Approved March 23, A. D. 1903.*

## STATUTE I.

June 28, 1834.

CHAP. CXXV.—*An Act in reference to pre-emption rights in the south-eastern district of Louisiana. (a)*

Register of land office to issue patents in conformity with acts of April 5, 1832, ch. 93, and June 15, 1833, ch. 140.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the pre-emption rights granted by the register and receiver of the land office at New Orleans, to certain individuals claiming the same, in the south-eastern land district of Louisiana, under the act of Congress approved fifth April, eighteen hundred and thirty-two, entitled "An act supplementary to the several laws for the sale of public lands," and the act approved fifteenth June, eighteen hundred and thirty-two, entitled "An act to authorize the inhabitants of the state of Louisiana to enter the back lands," be, and they are hereby, confirmed; and the register of the land office is hereby directed to issue patent certificates accordingly.

Re-survey on Bayou St. Vincent confirmed.

Sec. 2. *And be it further enacted*, That the re-survey made under the supervision of the surveyor general of Louisiana, of certain lands on the bayou St. Vincent, in sections designated as numbers one hundred and ten and one hundred and forty-three, in township thirteen of range fourteen east, situate in the south-eastern district of Louisiana, and which re-survey purports to include the improvements of the actual settlers within its limits, claiming the right of pre-emption thereto under the act of fifth April; eighteen hundred and thirty-two, aforesaid, be, and the same is hereby, confirmed; and payments may be made and patents issued in accordance therewith.

1832, ch. 65.

APPROVED, June 28, 1834.

## STATUTE I.

June 28, 1834.

CHAP. CXXVI.—*An Act giving the consent of Congress to an agreement or compact entered into between the state of New York and the state of New Jersey, respecting the territorial limits and jurisdiction of said states. (b)*

WHEREAS commissioners duly appointed on the part of the state of New York, and commissioners duly appointed on the part of the state

(a) See notes of acts which have been passed relative to pre-emption of public lands, vol. iv. p. 420.

(b) The decisions of the Supreme Court upon the compacts between states have been:—

The compact of 1789, between Virginia and Kentucky, was valid under that provision of the constitution which declares, that "no state shall, without the consent of Congress, enter into agreement or compact with another state, or with a foreign power:" no particular mode, in which that consent must be given, having been prescribed by the constitution; and Congress having consented to the admission of Kentucky into the Union, as a sovereign state, upon the conditions in the compact. *Green v. Biddle*, 8 Wheat. 1; 5 Cond. Rep. 369.

The compact is not invalid upon the ground of its surrendering rights of sovereignty, which are inalienable. *Ibid.*

To bring a case within the protection of the seventh article in the compact between Virginia and Kentucky, it must be shown that the title to the land asserted, is derived from the laws of Virginia, prior to the separation of the two states. *Lessee of Fisher v. Cockerell, & Peters*, 248.

The construction of a compact between the states of Virginia and Pennsylvania, is not to be settled by the laws or decisions of either of those states, but by the compact itself. *Marlatt v. Silk et al.*, 11 Peters, 1.

The decision of a question of the construction of such a compact, is not to be attested from the decisions of either state, but is one of an international character. *Ibid.*

It is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between the respective limits; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the real boundaries. This right is expressly recognised to exist in the states of the Union, by the constitution of the United States; and is guarded in its exercise by a single limitation or restriction, only, requiring the consent of Congress. *Ibid.*

The compact between New Jersey and Pennsylvania, recognises the right of fishery in riparian owners on the Delaware. *Bennet v. Boggs, Baldwin's C. C. R.* 60.

The plaintiffs, in the circuit court of West Tennessee, instituted an ejectment for a tract of land held under a Virginia military land warrant, situate south of a line called Mathews' line, and south of Walker's line; the latter being the established boundaries between the states of Kentucky and Tennessee, as fixed by a compact between those states, made in 1820; by which compact, although the jurisdiction over the territory to the south of Walker's line, was acknowledged to belong to Tennessee, the titles to lands held under Virginia military land warrants, &c.; and grants from Kentucky, as far south as "Mathews' line," were declared to be confirmed: the state of Kentucky having, before the com-

of New Jersey, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, have executed certain articles, which are contained in the words following, viz :

Agreement made and entered into by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state, entitled "An act concerning the territorial limits and jurisdiction of the state of New York and the state of New Jersey, passed January 18th, 1833, of the one part; and Theodore Frelinghuysen, James Parker, and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said state, entitled "An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York," passed February 6th, 1833, of the other part.

Articles of  
Agreement.

**ARTICLE FIRST.** The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay, to the main sea; except as hereinafter otherwise particularly mentioned.

**ARTICLE SECOND.** The state of New York shall retain its present jurisdiction of and over Bedlow's and Ellis's islands; and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that state.

**ARTICLE THIRD.** The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York; and of and over all the waters of Hudson river lying west of Manhattan Island

tract, claimed the right to the soil, as well as the jurisdiction over the territory, and having granted lands in the same. The compact of 1820 was confirmed by Congress. The defendants in the ejectment claimed the lands under titles emanating from the state of North Carolina, in 1786, 1794, 1795; before the formation of the state of Tennessee; and grants from the state of Tennessee, in 1809, 1811, 1812, 1814, in which the lands claimed by the defendants were situated, according to the boundary of the state of Tennessee, declared and established at a time when the state of Tennessee became one of the states of the United States. The circuit court instructed the jury that the state of Tennessee, by sanctioning the compact, admitted, in the most solemn form, that the lands in dispute were not within her jurisdiction, nor within the jurisdiction of North Carolina, at the time they were granted; and that, consequently, the titles are subject to the compact: Held, by the Supreme Court, that the instructions of the circuit court were entirely correct. *Pool v. Fleezer*, 11 Peters, 185.

The seventh article of the compact between Virginia and Kentucky declares "all private rights and interests of lands within the said district (Kentucky,) derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state (Virginia)." Whatever course of legislation, by Kentucky, would be sanctioned by the principles and practice of Virginia, should be regarded as an unaffected compliance with the compact. Such are all reasonable quieting statutes. *Hawkins v. Barney's Lessee*, 5 Peters, 467.

From as early a date as the year 1705, Virginia has never been without an act of limitation; and no class of laws is more universally sanctioned by the practice of nations, and the consent of mankind, than those laws which give peace and confidence to the actual possessor and tiller of the soil. Such laws have frequently passed in review before the Supreme Court; and occasions have occurred in which they have been particularly noticed, as laws not to be impeached on the ground of violating private rights. It is impossible to take any reasonable exception to the course of legislation pursued by Kentucky on this subject. She has in fact literally complied with the compact in its most rigid construction. For she adopted the very statute of Virginia in the first instance, and literally gave her citizens the full benefit of twenty years to prosecute their suits, before she enacted the law now under consideration. As to the exceptions and provisos, and savings in such statutes, they must necessarily be left, in all cases, to the wisdom or discretion of the legislative power. *Ibid.*

It is not to be questioned, that laws limiting the time of bringing suits constitute a part of the *lex fori* of every country; the laws for administering justice, one of the most sacred and important of sovereign rights and duties, and a restriction upon which must materially affect both legislative and judicial independence. It can scarcely be supposed that Kentucky would have consented to accept a limited and crippled sovereignty; nor is it doing justice to Virginia to believe that she would have wished to reduce Kentucky to a state of vassalage. Yet it would be difficult, if the literal and rigid construction necessary to exclude her from passing the limitation act were adopted, to assign her a position higher than that of a dependent on Virginia. *Ibid.*

The limitation act of the state of Kentucky, commonly known by the epithet of "the seven years law," does not violate the compact between the state of Virginia and the state of Kentucky. *Ibid.*

Articles of  
agreement.

and to the south of the mouth of Spuytenduyvel creek; and of and over the lands covered by the said waters to the low water-mark on the westerly or New Jersey side thereof; subject to the following rights of property and of jurisdiction of the state of New Jersey, that is to say: -

1. The state of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan island and New Jersey.

2. The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks, and improvements, made and to be made on the shore of the said state: and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the state of New York, which now exist or which may hereafter be passed.

3. The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters, *Provided*, That the navigation be not obstructed or hindered.

ARTICLE FOURTH. The state of New York shall have exclusive jurisdiction of and over the waters of the Kill Van Kull between Staten Island and New Jersey to the westernmost end of Shooter's Island in respect to such quarantine laws, and laws relating to passengers, as now exist or may hereafter be passed under the authority of that state, and for executing the same; and the said state shall also have exclusive jurisdiction, for the like purposes of and over the waters of the sound from the westernmost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the said state of New York.

ARTICLE FIFTH. The state of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey lying south of Woodbridge creek, and of and over all the waters of Raritan bay lying westward of a line drawn from the lighthouse at Prince's bay to the mouth of Mattavan creek; subject to the following rights of property and of jurisdiction of the state of New York, that is to say:

1. The state of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

2. The state of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or dock; except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New Jersey, which now exist or which may hereafter be passed.

3. The state of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters: *Provided*, That the navigation of the said waters be not obstructed or hindered.

ARTICLE SIXTH. Criminal process, issued under the authority of the state of New Jersey, against any person accused of an offence committed within that state; or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid; or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the state of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws thereof; may be served upon any of the said waters within the exclusive jurisdiction of the state of New York, unless such person or property shall be on board a vessel aground upon, or fastened to, the shore of the state of

New York, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New York.

Articles of agreement.

**ARTICLE SEVENTH.** Criminal process issued under the authority of the state of New York against any person accused of an offence committed within that state, or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the state of New York against any person domiciled in that state, or against property taken out of that state, to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New Jersey.

**ARTICLE EIGHTH.** This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the Congress of the United States.

Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state,) at the city of New York this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three and of the independence of the United States the fifty-eighth.

B. F. BUTLER,  
PETER AUGUSTUS JAY,  
HENRY SEYMOUR,  
THEO. FRELINGHUYSEN,  
JAMES PARKER,  
LUCIUS Q. C. ELMER.

And whereas the said agreement has been confirmed by the legislatures of the said states of New York and New Jersey, respectively,—therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part and article thereof, *Provided,* That nothing therein contained shall be construed to impair or in any manner affect, any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Consent of Congress given to the agreement. Proviso.

APPROVED, June 28, 1834.

STATUTE I.

June 30, 1834.

**CHAP. CXXVIII.**—*An Act to amend an act entitled "An act to annex a part of the state of New Jersey to the collection district of New York; to remove the office of collector of Niagara to Lewistown; to make Cape St. Vincent, in the district of Sackett's Harbour, a port of delivery; and out of the districts of Miami and Mississippi, to make two new districts, to be called the districts of Sandusky and Teche, and for other purposes."*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there shall be paid, annually, to the collector of the port of Franklin, in the district of Teche, in lieu of all demands against the government of the United States for house rent, storage, and so forth, the sum of two hundred and fifty dollars.

Vol. II. 857. Annual pay of the collector of the district of Teche.

APPROVED, June 30, 1834.

Plaintiff's Exhibit No 39

New Jersey Laws, 1846. Approved April 10, 1846. (2  
Comp. Misc. 1890)

An Act to define the boundary lines of Salem, Cumberland and Cape May.

(Rev. & H. S. 171. Rev. 1877 p. 203)

§1. Boundaries of Salem, Cumberland and Cape May counties. Sec. 1. That the boundary lines of the counties of Salem, Cumberland and Cape May, are hereby declared to be the main ship channel in the river and bay of Delaware adjoining said counties respectively. (Rev. 1877, p. 203)





*G. C. ...*  
REPORT OF THE COMMISSIONERS  
ON  
Lands Under Water,  
1849.

OPINIONS OF  
Messrs. PARKER, ZABRISKIE, FRELINGHUYSEN & BROWNING.  
1864.

NOTES OF CHARGE OF CHIEF JUSTICE GRIER,  
BELL vs. COLES.

*Act Appointing Commissioners, 1865.*

SYNOPSIS OF  
ALL GRANTS OF LAND UNDER WATER,  
MADE BY THE  
STATE OF NEW JERSEY.

JERSEY CITY:  
PRINTED BY JOHN H. LYON,  
1866.

OPINION OF CORTLANDT PARKER, Esq.

STATEMENT.

In compliance with a resolution, asking whether the legislature has the right to sell and dispose of the lands under water, adjoining the shore, to others than riparian owners, or to appropriate the same to any other purposes, against or inconsistent with the rights of such owners, except for public uses; and what are such public uses?—the following opinions were presented to the Legislature:

Certain gentlemen, friends of a bill now before the New Jersey Senate, No. 154, have submitted to me the following questions:

1. Has the State the right to dispose of lands under water, except to owners of the adjoining shore?
2. Has the State the right to appropriate them to any but public use without the consent of such owners? If not,
3. To what public uses, and on what terms, may they be appropriated?

OPINION.

By "lands under water," I mean lands lying below low water mark or tidal waters. Much of such land in this State lies next the shore of Hudson river and New York bay, and is of great value because of its neighborhood to the great emporium of the continent. It is understood that the inquiry into the rights of the legislature respecting this class of real estate, originated in certain propositions now before them, respecting these lands, and what I now say must be understood principally to apply to them.

I.

It is now fully settled that the property in land below high-water mark in New Jersey belongs to the State. The earlier opinion placed it in the proprietors. But it was first decided by our Supreme Court (*Arnold v. Mundy*, 1 Halst., 1), and then by the Supreme Court of the United States (*Martin v. Waddell*, 15 Peters, 387), that such property was an incident of Government: that the "surrender" by the lords proprietors vested this royalty in the crown, and that on the Revolution it passed to the State, as its successor in the rightful administration of government and law. Those decisions have since been carefully followed, *Gough v. Bell*, 1 Zabriskie, 158; 2 Zabriskie, 441; 3 Zabriskie, 324. *State v. Jersey City*, 1 Dutch, 528.

## II

In the application of this doctrine a difference has been made in New Jersey according to circumstances, and the character of the property in question. A peculiar common law has been recognized by the highest courts of the State. Common law comprises customs "whereof the memory of man runneth not to the contrary,"—and the first year of King Richard I. is the established date of this memory. But it has been decided, first by our Supreme Court (3 Zab, 443), and then by the Court of Errors (3 Zab, 624), that there was a peculiar common law in this State, applicable to this subject, deducible from ordinary usage, received opinions popularly and at the bar, and implied admissions in legislative acts; and that by this, if a shore owner took possession, and actually reclaimed land down to low-water mark, it became his, so that he could sue, if need be, for trespass, should any one enter thereon. And in the much contested suit of Gough v. Bell, judgment was rendered for plaintiff, so far as regarded lands lying between high-water and low-water mark which had been reclaimed by the labor of the claimant.

## III.

It is to be observed that even this result was not reached without much diversity on the subject discussed, though the judges of the court of Errors and Appeals agreed in the decision of the particular case. Justice Randolph, in the Supreme Court, and other justices in the court of appeals, earnestly denied the existence of such common law as was alleged by their associates, and maintained that the common law of England must rule, that by it the State was absolute owner of all lands below high-water, and could prosecute for nuisance and abate anything done thereon without its permission to improve, dock out or reclaim any land below high-water mark; and that she could, likewise, without regard to the shore owner, sell or otherwise dispose of such land. The reasoning in favor of this view of the matter is very cogent. All jurists unite in the declaration, since Martin vs. Waddell, that the property in all lands below high-water belongs to the State, who, as sovereign, holds and is bound to hold or dispose of them for the benefit of all her citizens. There may be good reasons, having regard to public policy, why upland owners should have the right to reclaim, to build wharves, or otherwise "improve." That result might have been attained by act of the Legislature. To decide that the ancient common law was overridden by usage, opinion, and obscure or questionable statutory implication was establishing a precedent possibly hazardous in the future.

## IV.

As I understand them, so far only do the decision of our courts going down to low-water mark. His title ends at high-water. The rest is simply a privilege, which, if he exercises it, confers a right to defend his possession by ordinary action at law. Whether the State, if

she dispose of any land under water beyond him, must respect his privilege and provide for compensation, if it be taken or invaded for public use, or whether any grantee of the State takes subject to such compensation, are questions left undecided. Nor do I suppose these decisions settled what the law is, if a riparian owner fills up and improves, below low-water mark. But it is settled, and very clearly, that the property to such land not only belongs to the State, but that "it may be granted by the State to a stranger, at any time before it is actually reclaimed and annexed to the upland." (Judge Elmer in *State vs. Jersey City*, 1 Dutcher, 528). "In that matter," said the learned judge, "I concur myself with the opinion expressed by Judge Randolph," in 2 Zabriskie, 491; and Chief Justice Green, and Justices Ogden and Haines concurred in the decision, without any dissent from the opinion delivered.

The views of Judge Randolph referred to, are very decided, and most ably presented. The owners' "rights," he says, "are circumscribed by his boundary, which is the high-water line; any filling up or erection below that amounts either to a nuisance or encroachment, (encroachment). If it interferes with the public rights of navigation and fishing, it is a nuisance which may at once be abated, or the individual committing it indicted and convicted. Any building, or the encroachment, or intrusion below high-water, though not amounting to a nuisance, is a preposterous, which the state may demolish or seize at pleasure, or proceedings in chancery may be taken to prevent the wrong."

The *State vs. Jersey City*, was decided in 1856. In September, 1858, the subject was reviewed by Mr. Justice Grier, of the Supreme Court of the United States, in an ejectment brought in the circuit court for the district of New Jersey, by Mary Bell against those who claimed under the decision of our Court of Errors in *Gough vs. Bell*. The controversy regarded the same land, and the plaintiff's claim was based upon the title rejected there, viz: An act of the Legislature vesting the lands under water in front of the riparian owner. The court directed the jury to find for the plaintiff for the land covered by water in November, 1836, (the date of the act), and not reclaimed by natural or factitious accretion. Judge Grier delivered an elaborate charge to the jury, laying down several propositions, among them the following:

1. In East Jersey the shores of navigable rivers and arms of the sea when the tide ebbs and flows, which includes all between high water and low water mark, belongs to the sovereign or people of New Jersey, and not to the riparian owners.
2. A boundary to, or upon, or along a navigable river, bay, &c., extends to high water mark only.
3. By the common law, a riparian owner acquired a title to all land added by gradual accretion, and, by the custom of New Jersey also, to land added by factitious accretion, or reclaimed from the sea by filling in by himself so long as the title to the shore remains as a mere prerogative right in the sovereign or people of the State for common or public use.

The claim of compensation is based on two grounds. First, the asserted customary right spoken of by Chief Justice Green, in *Clough vs. Bell*, and said to belong to all shore owners, of reclaiming and wharfing. Second, the statutes of March 18, 1851, authorizing the owners of lands upon tide waters to build wharves in front of the same.

The customary right is rather a privilege, respected when exercised, proceeding by implied license from the State, than an appropriation to the soil. In default of its exercise, it is annulled, as held by Judge Grier, "ipso facto," by the grant of the State to another person. Before its exercise, the shore owner has little more than the simple privilege of access and egress. Fishery he has none, more than any other citizen, for the legislature has long made grants of such lands, by way of lease, for shell fishery. And it is difficult to see, why his right of access should exist as an easement over the soil of the State; any more than on any other neighboring proprietor. Nor can it be soundly argued that the act referred to vests any rights. On the contrary, it confesses those of the State. The act provides that it shall be lawful for such owners to build docks on the shore in front of their lands, and when so built upon, or thereupon, to appropriate the same to their own exclusive use. To build farther than low water license is necessary, to be sought and obtained as regulated in the act. All this is but a public law, repealable at the will of the legislature, conferring no right which they cannot, without compensation, take away, just as, without compensation, it is given. And to prevent all doubt on this point, (Sec. 8) it is expressly enacted that nothing in the act shall authorize any shore owner to extend an improvement over lands below low-water mark, the title to which, or any easement therein, by grant from the State or otherwise, may be vested in any other person than such shore owner. And nothing therein shall, before any improvement is actually made by virtue thereof, prevent the State from appropriating to public uses the lands lying under water in the same manner as holders may require a wharf authorized below low water, or as a public wharf, open to all, at established rates of toll. True, if a shore owner accepts the privilege and uses it, the State may be bound to pay for what they take from him, but that is every one has nothing but the State's license, which the State, like every other licensor, may revoke.

But should the State, enlightened by science and experience, conceive it to be its duty, instead of leaving so important a matter to the whims of shore owners, and the scarcely less variable opinions of county boards, to appoint commissioners authorized to establish permanent and correct water-line, deepen the channel, fill up and reclaim the flats, build wharves, and lease or sell the property thus retracted from the sea, creating a commercial city, where it finds useless sand, and, perhaps, at farthest, a shad fishery, and, while it pours the benefits of commerce around, procure a revenue which would decrease, perhaps destroy, taxation, who can say that the legislature's hands are tied, and that with or without compensation given for the asserted

4. The Legislature of New Jersey, as the agents and representatives of the sovereign people, may grant and alien land under navigable rivers, bays, and arms of the sea.

5. The erection of a dock or wharf by a riparian owner on the soil of the State, without any special license or grant from the Legislature, will not confer on him a title to the land on which it is erected as against the State, except where the land has been reclaimed from the sea by his labor.

6. The license to make land added by reclaiming it, to erect docks adjoining, is necessarily revoked by a grant of the land to an individual.

7. The Legislature representing both the State, which holds the legal title by prerogative, and the people who have its use in common have the absolute title, and may, by legislative acts, vest it in an individual.

8. The numerous acts of Assembly of this State concerning these public rivers, bays, &c., brought to our notice by counsel, as well as discordant dicta and opinions of many able and learned judges and lawyers, clearly demonstrate that there is no well known and established customary laws on this subject, peculiar to this State, with the exception of that stated (see Point numbered 3 above), which has been adjudicated by the Supreme Court and Court of Appeals in a suit between these parties.

The jury were therefore instructed to find a verdict giving the plaintiff the land covered by water in November, 1833, and not reclaimed by natural or factitious accretion. The Long Dock, the court said, did not come within that category, except so far as it was at that time converted into solid ground or reclaimed by filling up from the dominion of the sea or waters of the bay or river.

V.

I have been induced to set forth this decision of the United States Circuit Court at greater length, because it is not reported, and therefore not widely known, and because it is the only decision, except that in the State vs. Jersey City, governing the exact point of inquiry, viz.: the right of the State in lands covered by water. With these several authorities before me, there is no doubt upon the subject. Such lands belong to the State, and the Legislature has the right to sell and dispose of them, though adjoining the shore, to any one. And it would seem clearly established by the opinions of Judge Ran- dolph, Judge Elmer, and Judge Grier, above referred to, that the Legislature may grant for private use, and without compensation made to any riparian proprietor.

VI.

But certainly, a grant for public uses and upon reasonable compensation, would be within this power, if it be not indeed the duty of the Legislature, and in making such grant they have the right to regard the general interest of the State, and if they can, increase its revenue.

privilege of the shore owner, the flats must remain, or the profits belong only to him?

As far back as 1824 (Comp. 74), the legislature exercised the right of gaining profit from such lands by leasing them for oyster beds. This was disposing of them to individuals for rent. It did not interfere with navigation, the great public use for which the State holds them. As little will it interfere with—may—it will promote navigation interests, if the State should use these shallows, make them what now they are not, avenues for passage out to the channel, and thus create a commerce, which in their present state they tempt, but really prevent.

CORTLANDT PARKER.

Newark, March 21st, 1864.

OPINION OF A. O. ZABEISKIE, ESQ.,

*In relation to the Rights of the State in Lands under Water and of the Shore Owners thereof, &c.*

HON. THEODORE F. RANDOLPH:

SIR—You ask my opinion as to what right the State of New Jersey has to the lands in the State covered by tide waters below high water mark? What right or interest the owner of lands above and adjoining high water mark, usually called the shore owner, has in such lands under water, and for what public uses the State has the right to appropriate such lands?

By the laws of New Jersey, the legal title to all lands covered by tide waters below ordinary high water mark is in the State. This was so determined and settled after a long contest in the thoroughly considered case of Bell and Gough, in the Court of Errors, by the opinion of the majority of the court, and I think it may be considered settled. This decision was not the point of the case, but is found in dicta of the judges. The point in dispute between the parties and decided was, that the title held by the State was subject to the right of shore owner to fill in, reclaim, and appropriate the lands in front of and adjoining his lands. This was held to be the local common law in New Jersey, established by usage different from the common law of England, and the last decision of the Supreme Court and the nearly unanimous decision of the Court of Errors affirmed this doctrine; and their judgment established the title of Gough's landlord, who had reclaimed the land in dispute from the tide water against Mary Bell, who held by a conveyance of the land from the State. The first decision in the Supreme Court, delivered by Justice Randolph, which held that the common law rule of England prevailed, and that the shore owner had no right of any kind in the lands under water in front of him, or to reclaim the same, was overruled by the Supreme Court on the second argument there, and also in the Court of Errors.

To the second part of your inquiry, as to what right the shore owner has in such lands in front of him, I answer, that in the words of the Chief Justice in the Supreme Court, in Gough vs. Bell (2 Zab. 462), "there has undoubtedly existed, from a very early period, rights of the riparian proprietors, which have been recognized by the legislature, inconsistent with the idea of that exclusive property in the State, sectioned by the common law." (p. 462.) "But in the absence of legislative restriction, when no nuisance is created, the riparian proprietor may appropriate the shore between high and low water

rights supposed to exist in the shore owner before the decision in *Gough vs. Bell*. That it was the intention to grant and vest rights is clear from the provision in the eighth section, which provides that nothing in this act shall restrain the State before reclamation made from appropriating such lands under water to public use as it could before. This was a useless reservation if no right vested, and the State could at any time appropriate these lands for any purpose. On the faith of this act strips of land along the shore, themselves of no value, have been sold at large prices, for the right of reclaiming existing before and confirmed and defined by this act. And the Supreme Court has held that the strip could be assessed for taxation at the value given to it by the right to lands under water appurtenant thereto.

And I am of opinion that these rights declared and vested by this statute, like all other rights vested in and appurtenant to land, either by common or statute law, cannot be divested except for public use.

In answer to the third question, for what public uses can the state by general principles of law or the provision in the statute, appropriate these lands,—I am of opinion that the words in the wharf act must receive the well-settled construction given to them in political and judicial discussions and decisions as to the exercise of the right of eminent domain. The right by eminent domain to take away property necessary for the use of the government in fulfilling its duties and discharging its functions, is an acknowledged right. By the federal, and most state constitutions, it is to be taken on compensation

only. The only property that can be taken is that which itself the government needs or intends to use. It can take any shore and lands, for a fort, custom house, light house, or any other public purpose for which it is useful, but it cannot take my house and lands to make an advantageous barrier for another man's land, which it has occasion to use for such public object. They may take my horse and forge for the army, but they cannot take them from me to sell for raising money to pay the officers of government; that must be done by taxation, a different power from the right of eminent domain. The meaning of these words were well settled before their introduction in the wharf act, and that meaning must be given to them there.

I am of opinion, therefore, that the State has no right to take the right of the shore owner in lands under water, vested in him, and sell the same to raise money for the support of the State Government, and this is not the public purpose for which the power is reserved.

A. O. ZABRISKIE.

Dated, March 21, 1864.

mark to his own use. The custom of making such appropriation, long enjoyed and universally acquiesced in, constitutes a local common law which this court will recognize, and which it would be alike unsafe and unwise to disregard." This doctrine was confirmed by the decision in *Bell vs. Gough*, the same case, in the Court of Errors (3 Zab. 629), in which some of the judges expressly, and nearly all impliedly, held that the shore owner is entitled, besides this right of filling in, to other rights of adjacency to the water, of which the State could not even, as the law stood then, deprive them. This was also the opinion of Justice Grier, in the Circuit Court of the United States, expressed in an ejectment between the same parties for that part of the lands granted by the State to Mrs. Bell's father, which were still covered by tide waters. I am of opinion that, before the wharf law, the shore owner in New Jersey had a vested and indefeasible right in the lands in front of him covered by tide waters, consisting of the right of filling, reclaiming and adjacency to such waters, of which the State could not deprive him, except for public uses, and then upon compensation; and that no fisheries, wharves, docks, ferry landings, then held in New Jersey, could be taken by the State nor the lands in front of such docks, wharves and ferry landings, sold or filled in and reclaimed by or under the State, so as to cut off the owners of such docks, wharves and landings from access to the water, without compensation, and then only for public purposes. And that the shore, when unimproved, was entitled to the same protection.

The wharf act of March 18th, 1852, which was passed immediately after the last decision in *Gough vs. Bell* in the Supreme Court, was intended to settle and quiet the rights of the shore owners in lands under water in front of them. It had been the general impression in the state that the tide to the shore to low water mark was vested absolutely in the shore owner. These decisions had disturbed them, and left their rights somewhat vague and indefinite.

That act gave to every shore owner the right to reclaim the lands under water in front of him, so far as did not interfere with navigation, requiring beyond low water a license from the freeholders, which they were required to grant if it did not conflict with the public right of navigation.

I am of opinion that this act left the legal title to the lands below high water in the state, subject to the rights before existing, and to those in and by said act granted to the shore owner. That the act vested in the shore owner as property appurtenant to his land the right or easement of reclaiming and appropriating the lands in front of him, so as not to injure navigation, to be exercised at the pleasure of the shore owner to low water, but beyond that only upon license from the county freeholders, to be granted upon their being satisfied that it would not injure navigation. This act was not an act to regulate the building of wharves, which, like other public regulations, may be changed, but it was an act to authorize the owners to build wharves. It gave to and vested in them these rights, leaving the title to remain in the state, and the use as a highway in the public until reclaimed. It was intended in this manner and to this extent, to confirm the

OPINION OF HON. F. T. FRELINGHUYSEN.

*To the Senate of New Jersey :*

In compliance with your resolution asking my opinion whether "the legislature has the right to sell and dispose of the lands under water adjoining the shore to others than riparian owners, or to appropriate the same to any other purposes, against or inconsistent with the rights of such owners, except for public uses, and what are such public uses?" I respectfully submit the following opinion :

The resolution involves the consideration of the respective rights of the State and of the shore owner as to lands under water, and the inquiry is confined to no locality, but as all parts of New Jersey are subject to the same general laws, it embraces the entire State.

A very general statement of the State's title to the lands under water is this :

The English possessions in this country are held to have vested in the crown. Charles II. granted to the Duke of York, for the purpose of establishing here a colony, the territory now New Jersey, with all the rights of government. The territory and the governmental rights became by succeeding grants vested in proprietors, who subsequently, in 1702, surrendered the governmental rights to the crown. The lands under water, where the tide ebbs and flows, and the lands between ordinary high and low-water marks were, according to the common law of England, regalities or governmental rights, which passed to the Duke of York, and were by his grantees surrendered to the crown, and existed in the sovereign of England at the time of the American Revolution : and when the people of New Jersey took the reins of government, the sovereignty, the prerogatives, and regalities, which before belonged either to the crown or parliament, vested in the State, and as against the proprietors (whose claim of title to lands over which the tide ebbs and flows depended entirely on the grant from the British crown), the State became and is the owner of such lands.

The inquiry of the resolution divides itself into three branches :

I. Considering the term *shore* as used in its popular signification, and as meaning the "termination of land adjacent to the sea," or ordinary high-water mark, has the State the right to dispose of lands below that high-water mark, and above low-water mark ?

II. Considering the term *shore* as used in its legal sense, as "the lands between the limits of ordinary high and low-water mark" (the wharf act of 1851, sec. xi., 2 Zab., 455), has the State the right to dispose of lands below ordinary low-water mark to others than the riparian owners ?

in Revenue Laws, 65 and 659—show that fisheries were subject to private ownership. In *den. ex den. Bispham v. Rice*, a fishery was recovered in ejectment. *Bennett v. Boggs* (Baldwin R. 60) recognized the right of fishery in riparian owners.

The numerous meadow acts are not grants of the property of the State, but acts conferring additional power, by means of common regulations, to those possessed of rights equivalent to ownership, to improve their own property, and this is property below high-water mark. Docks and wharves and piers have been, from the earliest settlement of New Jersey, built out into tide-water and held as private property by the riparian owner, and yet the first act giving any authority to do so was February 28, 1839. The right existed by custom.

Chief Justice Kirkpatrick, in *Arnold v. Mundy*, says: "The intermediate space between high and low-water mark may be exclusively appropriated by the owners of the adjoining land, by building docks, wharves, storehouses, and other structures, which exclude the reflux of water." Chief Justice Green, in *Gough v. Bell* (2 Zab. 461), says: "Notwithstanding the acknowledged title of the State, in her sovereign capacity, to the soil of navigable rivers below high-water mark, there has undoubtedly existed, from a very early period, rights of the riparian proprietors, which have been recognized by the legislature, inconsistent with the idea of that exclusive property in the State sanctioned by the rule of the common law." And again, in 2 Zab. 464, the chief justice says: "There is, I conceive, unquestionably, in New Jersey, a local common law affecting the title of riparian proprietors upon tide waters, and conferring upon them rights and privileges unknown to the common law of England." Justice Elmer, in his very able opinion in *Bell v. Gough* (3 Zab. 669), says: "I am of opinion that there is satisfactory evidence that the doctrines of the common law of England, in regard to the shores of tide rivers, have been materially changed in this State, by a common usage recognized as law by the legislature and the courts. And that, by the common law of New Jersey, the owners of land bounding on such rivers have an absolute and exclusive right to wharf out, and otherwise reclaim and improve the adjoining shore, to the ordinary low water line, and to the use of the same for fisheries, and all other lawful purposes not obstructing the navigation."

Justice Carpenter, in 2 Zab. 480, expresses similar views. The common law in regard to shores has in fact been modified in most of the Atlantic States. Chief Justice Green, 2 Zab. 469. Justice Carpenter, 478. Justice Elmer, 3 Zab. 669.

The adjudication referred to, viz.: That where the riparian owner claims land below *original* high water mark, he has title to *actual* high water mark, is a modification of the common law of England.

Some of the judges in *Gough vs. Bell*, who did not adopt the doctrine of a local common law, did hold that the common law of England gave the riparian owner, as appurtenant to his upland freehold, all the rights incident to his adjacency to the sea, of which he could not be deprived even for a public use without compensation.

The decisions of the Supreme Court of the United States, in *Martin*

III. Can the State take lands under tide-water for public use, and what is meant and intended by the term "public use?"

I. Can the State dispose of lands below ordinary high-water mark? It is adjudicated in New Jersey, that when the shore owner reclaims or improves the shore adjoining his lands so as to carry high-water mark farther out, that he has title to the lands so reclaimed, that his title extends to *actual* high-water mark, and that the lands reclaimed cannot be granted away by the State, and that they cannot be taken for public uses without adequate compensation.

*Gough vs. Bell*, 2 Zab. 441—*Bell vs. Gough*, 3 Zab. 624. The inquiry remains: Can the State dispose of the lands below high-water mark which have not been so reclaimed?

The question involves an immense amount of valuable property. The tide-waters which constitute the boundaries of, and which intersect, the State are of great extent. In all our large towns this property is now valuable, and becoming more so, for wharves and piers. Along the fresh waters of the Delaware, and the numerous creeks opening from it, where the tide ebbs and flows, are extended flats and meadows, in some places overflowed by the tide, and in other places secured from it by embankments constructed and kept in repair by the land and earth excavated from the land below high-water mark. In many places contiguous to piers running out into the water; and resting on piles, are large structures, under which the tide ebbs and flows. Ship and boat yards, fisheries, beds for planting oysters, are to be found in various parts of the State, located both on the shore and below low-water mark, which give employment and afford very considerable income to a large number of our citizens.

There are also bathing places, with large establishments attached thereto, which are the resort of multitudes. Many expensive villas and residences, valuable for the incidents of their adjacency to the water, are to be found on our tide-waters. And prominent in this catalogue are the lands under the shoal waters of the Hudson and New York bay, which are increasing in value from their proximity to the commercial metropolis of the country.

By the common law, the title of the owner of land bounded by the sea, or navigable river, where the tide ebbs and flows, extends only to ordinary high-water mark. And below high-water mark the title is in the State. "Hale de jure maris," art. 1, chap. 4; *Arnold vs. Munday*, 1 Hal. 67; *Martin vs. Waddell*, 16 Pet. 367. This common law rule, unmodified, would work a serious revolution in what the people have considered the rights of the shore owner.

The common law has been modified by long usage and custom, recognized by our courts, by the legislature, and by a general statute. Custom and usage, in this State, give the shore owner the right to wharf out, to erect piers and ferries, to have and convey fisheries and meadows below high-water mark. Various statutes have been passed, not creating, but recognizing these rights. The statute ratifying the agreement made in 1788, between this State and Pennsylvania (Nixon's Digest, 824), together with the act of 13th June, 1789 (Pat., 416, sec. 9), and act of 28th November, 1808 (Bloomfield, 204), act found



vs. Waddell, and of the Supreme Court of New Jersey, in *Arnold vs. Mundy*, have been much considered by our courts; and it has been held by some of the judges that these cases reaffirm the English common law rule, that the rights of the riparian owner are limited by high water mark. Other of our judges insist that in *Martin vs. Waddell*, the plaintiff claimed no right as an owner of the upland, but claimed only under the grant from the crown through the East Jersey proprietors. And that as against the crown and its grantees, the common law rule was of course not modified by any local common law of New Jersey. And that while the plaintiff in *Arnold vs. Mundy* did claim as an owner of the upland as well as under a grant from the proprietors, yet no allusion was made to the local custom of New Jersey, and the main stress of the case was the proprietary grant. It is worthy of remark, that in the three arguments of Gough vs. Bell, all the Judges of the Supreme Court and of the Court of Errors, with one exception, either from one view of the subject or another, were found voting in favor of the riparian right and against the State's grant. It is a matter of little importance whether we conclude that the title is in the riparian owner to low water mark, or whether we conclude that, as appurtenant to his freehold, he has rights in the land under water to low water mark, of which he cannot be deprived. The latter conclusion is the right one, and the more advantageous to both the State and to the riparian owner.

In this condition of the law the Legislature of New Jersey interposed and affirmed what was in fact the usage and custom (whether introduced or was not the common law of the State), and by an act approved March 18th, 1851, declared it lawful for the owners of land on tide waters in any way to improve the shore between high and low water mark, and when so improved to appropriate the same to his own exclusive use; and declared it lawful for the owner of lands on tide water to build docks, wharves and piers, beyond the limits of ordinary low water, in such manner as not to interfere with navigation, and according to a license which it made the duty of the chosen freeholders to grant. Under the authority of this law of New Jersey affirmative of an existing usage, and understanding of the rights of the shore owner, during the last thirteen years many improvements have been made, and much property conveyed at advanced prices. Whether this act vests such a right in the shore owner as would be unaffected by the repeal of the act, is a question I do not deem necessary now to consider; for even if the statute was looked upon as a mere regulation, the riparian owner would rest his right upon what some of the judges call "the local common law of the State," or he would, rest it upon what other judges call the common law rights of the riparian owner in the adjacent shore and waters.

I thus conclude that the riparian owner has, subject to the State's regulation, a right to improve the lands between high and low water mark, and that one claiming under a grant from the State cannot deprive him of such right; that, until improved, the shore between high and low water mark is subject to be used by the public, as any other part of the waters.

To have reached any other conclusion would have been contrary to the established usage of the State, and to the statute affirmative thereof, and it would have been contrary to both of the diverse course of reasoning adopted by the Court of Errors in *Gough vs. Bell*, and would have tended to unsettle rights which it is very questionable whether it is even the pecuniary interest of the State to disturb. The Senate, probably, in making the inquiry by resolution, as to their right of disposing of lands under water adjoining the shore, intended to use the word *shore* in its legal, and not in its popular signification; and to seek information as to their right to dispose of lands below low water mark.

The consideration of the riparian owner's rights to lands above low water mark seemed, however, necessary to the proper consideration of the second inquiry.

II. Has the State the right to dispose of lands under water adjoining the shore, that is, beyond low water mark, to others than the riparian owner that such lands lie in front of? Chief Justice Green, in *Gough vs. Bell*, 2 Zab. 451, says: "The claim of New Jersey to land flowed by the tide is in no sense proprietary. The only title which the State claims to the soil is by virtue of its sovereignty, for the protection of the public or common right; and where the soil of navigable rivers is permanently appropriated, without prejudice to the public rights, and where the State tacitly acquiesces in such appropriation, there would seem to be but little reason in her setting up a title as proprietor of the soil for no public use."

Justice Carpenter holds in the same case that the shore owner has a right to appropriate beyond low water mark.

Justice Elmev, 3 Zab. 658, says, "that it is the common understanding, as well in West as in East Jersey, that the owner of land on navigable waters has a right to reclaim the land down to and even beyond low water." Justices Nevins, Ogden and Potts, in *Gough vs. Bell*, in 3 Zab. 624, held that while the title was limited to high water mark, yet the riparian owner had a vested right in the advantages arising from his lands adjoining the sea.

Chief Justice Taney, in *Martin vs. Waddell*, says: "The man who first settled this country would not have been expected to encounter the many hardships of the New World, and people the banks of its bays and rivers, if the land under water at their very door was liable to be immediately appropriated by another as private property, and the settler upon the first land thereby excluded from its enjoyment, and unable to take a shall-fish from its bottom, or fasten there a stake, or even bathe in its waters, without becoming a trespasser upon the rights of another."

Justice McLean, in *Bowman's devisees vs. Waltham*, 2 McLean, C. C. R. 376, says: "The State cannot directly or indirectly divest him (the riparian owner) of any of these rights, except by the constitutional exercise of the power to appropriate private property for public purposes, and any act of the State, short of such an appropriation, which attempts to transfer any of these rights to another without

the consent of the proprietor, is inoperative and void, and can afford no justification to the grantee against an action of trespass." Lord Hale says: "If A hath a ripa or bank of the port, the king may not grant a right to land upon that bank or ripa without his consent."

Justice Potts says: "The doctrine that the Legislature may intrude new owners between the riparian owner and the navigable waters would certainly be received with equal surprise and consternation." 3 Zab. 677.

But without quoting further dicta of our courts, it is manifest that if the riparian owner has by virtue of the local custom, affirmed by the statute of 1851, or by virtue of the common law of adjacency to the sea (as some of the Judges hold), the right to reclaim down to or have docks down at low water mark, then no one can have a right to cut him off from the sea. The right to have a dock cannot exist in one, and the right to have another dock in front of such docks exist in another.

Mary Bell, having failed to establish her right under the State's grant against the riparian owner, where he had reclaimed the lands brought an ejectment under the same grant in the Circuit Court of the United States, for lands in front of the lands so reclaimed, and Justice Grier, of the Supreme Court of the United States, suffered her to recover under the grant, but distinctly stated that her grant would give her no right to interfere in any manner with the rights which the owner of the upland had by reason of his lands adjoining tide water. A grant to others than the riparian owner might prevent the riparian owner from reclaiming the land, but would not authorize the grantee to reclaim and so cut the riparian owner off from the water.

On this second point the conclusion is that the State has the title to the lands under water, and can regulate the manner in which the riparian owner shall use the rights that his position gives him, or the State can prevent his reclaiming lands below low water mark, or the State can permit and license him to reclaim only on terms, and for compensation, but cannot sever his adjacency to the water.

III. The other inquiry of the resolution is, Whether the State can take lands under tide-water for public use, and what is meant by "public use?"

The statute affirmatory of the local custom of the State, passed in 1851 (viz.: section 8, Nixon's Digest, 872), provided "that nothing therein contained shall, before any improvements be actually made by him; virtue thereof, prevent the State from appropriating to public use the lands lying under water, in the same manner as could be done before the passage of the act."

Whatever other effect, therefore, the passage of the act may have from being taken for a public use.

As to the inquiry, Whether such lands could be taken prior to the statute, for public use, Justice Carpenter remarks, 3 Zab. 474: "If the riparian proprietor has any peculiar rights from his position, how-

ever derived, I think it may be assumed that they are within the protection given by the Constitution, of which he can be divested, even for public use, only after due compensation." Justices Nevins and Poits, while they limited the title of the riparian owner to high water mark, held similar language as to what they considered his rights in navigable water appurtenant to his freehold in the adjoining shore. 3 Zab., 681, 685.

The opinion of Justice McLean, of the Supreme Court of the United States, I have quoted.

But this question will probably become of little importance when we consider what is meant in the statute by "public use." Property is taken for public use when it is taken to be appropriated and devoted to the use of the public, as in the case where lands are taken for a railroad, canal, highway, arsenal, &c. The public uses to which this land might be devoted are public wharves, piers, fortifications, &c. The property of every citizen is subject to be taken for such public use on just compensation being made therefor. Taking the property of one citizen and giving or selling it to another to raise a revenue, is not taking it for a public use.

Justice Carpenter, in 3 Zab., 474, remarks: "Such legislation would be repugnant to the first principles of justice, and has been held void not merely upon the special provisions of constitutional law, but upon those great fundamental principles which support all government and property."

The conclusions arrived at are as follows:

I. That the State, as the sovereign, has, in the sea and in navigable rivers, where the tide ebbs and flows, the title up to ordinary high water mark; that in lands reclaimed, the title is in the riparian owner, and the title of the State limited to *actual* high water mark. That the riparian owner has (whether by local custom, ripened into a local common law, and affirmed by the statute of 1851, or by the common law right of enjoying the advantages arising from the fact that his upland freehold adjoins the water) the right, under State regulations (in the language of the statutes), to appropriate to his exclusive use the shore between ordinary high and low-water mark. And that, the shore between ordinary high and low-water mark, it is subject to be used by the public the same as any other part of the waters.

II. That the State cannot authorize another than the riparian owner to interpose between him and tide-water, and thus destroy the advantage which the fact of the riparian owner adjoining tide-water gives; that the docks and wharves in this State cannot be destroyed by others than their owners building docks and wharves in front of them; that the riparian owner cannot be deprived of his right to have his freehold front on the nation's highway; that the State, having the title, and, as sovereign, holding the navigable waters for the public, may prohibit the riparian owner from reclaiming lands beyond low-water mark; or the State may confer upon him *that right for compensation* or otherwise.

III. That the State cannot take the shore between high and low-water mark for public use, without giving compensation; that the

public uses for which the rights of the riparian owner are (on compensation being given) subject, are only such public uses to which the identical property taken shall be appropriated and devoted. Taking the property and granting it to an individual, or taking it and making sale of it for revenue, is not a taking for public use, and is not lawful.

FRED'K T. FRELINGHUYSEN,  
*Attorney-General.*

## OPINION OF HON. A. BROWNING.

### STATEMENT.

A bill is now pending in the legislature of New Jersey, called Senate Bill, No. 29, having for its object the creation of a private corporation, with authority, without compensation to the State, to reclaim and dispose of, as the property of said corporation, all the lands under water, in Communipaw bay, southerly of the Central Railroad of New Jersey.

This bay lies adjacent to the east land of New Jersey, nearly opposite the city of New York. It is some five or six miles in length, by about a mile and a quarter in mean width, measuring from the shore out to the deeper waters of the Hudson river; and the water, according to the latest coast survey, is from one to six feet deep at low tide; consequently, from seven to thirteen feet at high tide.

The peculiar character of this bill gave rise to the introduction of another—called Senate Bill, No. 154—having for its object the appointment of commissioners to examine into and report to the legislature, at its next session, as to the extent and value of these lands, and the best means of rendering them available to the State.

The deliberations upon these incongruous bills have, necessarily, incited inquiry as to the legal rights of the State and of the riparian proprietors to these submerged lands; touching which, the friends of the latter bill—No. 154—have submitted to me, for opinion, the following questions:

1. Has the State the right to dispose of these lands, except to the owners of the adjoining shore?
2. Has the State the right to appropriate them to any but a public use without the consent of such owners? and
3. If not, what are the public uses to which they may be appropriated?

### OPINION.

I shall confine my opinion to those lands in Communipaw bay; which lie beyond low-water mark, as distinguished from the shore, which is alternately bare and covered with water, by the ebbing and flowing of the tides. I do this because, if the shore may be considered as included in the inquiry, it is so small a part of the subject matter, as not materially to affect it; and because the question of title to the *shores*, may still be considered unsettled in this State.

The Bay of New York, of which the bay in question is a part, is the boundary between the States of New York and New Jersey; and, without tracing the anterior title, it may be assumed as a fact, based

permitted the States, not only to construct wharves and piers out into these waters, but to bridge them, and even to dam up the smaller ones, without interference, I shall, also, consider the questions submitted without reference to this power in Congress.

Again, by an act of the legislature of this State, approved March 15th, 1851, the owners of lands bounding on navigable streams, are authorized to reclaim the shore, in front of them, to low-water mark, at pleasure; and to build docks, wharves and piers beyond, by permission of the board of chosen freeholders of the county in which the lands lie. But, as this is a public law, *provisores*, only, in its character, and repealable at pleasure; and when repealed, would leave riparian rights exactly where they stood before its enactment, except as to improvements then made, I shall also consider the questions submitted without regard to this act.

Having thus limited the inquiry to lands in the bay, beyond low-water mark, without regard to the compact between the States, or the power in Congress to regulate commerce, or the wharf act, I proceed to answer:—Premising, in advance, that the questions submitted do not involve the private rights between adjoining proprietors, or mere makers of public policy, but the *powers* of the government over the public domain.

1. In the first place, the lands are under the navigable waters of the State, beyond low-water mark; and it cannot be denied that by the common law of England, anterior to the American Revolution, the legal title to such lands was in the king, or reigning sovereign, who, in contemplation of law, was the universal occupant, and the fountain from which all titles to lands were derived. And nothing is now more authoritatively settled, than that by the Revolution, and consequent establishment of New Jersey as an independent State or sovereignty, she became vested with all the title to such lands within her territory, which, prior to that event, had been in the crown. Thus, that title became vested in the State of New Jersey, where it must still remain, unless she has since parted with it, which is not pretended (1 Halsted 1.—4 W. & A. c. c. 371, Bald. 60.—16 Peters, 367.—1 Zab, 156.—2 Zab, 441.—3 Zab, 524.—1 Dutch, 526). It is equally clear from these authorities, that the title of the riparian proprietors stops where that of the State begins. There is no comingling of ownership—no *divisum imperium*. The titles are distinct; and the line of partition is a definite one; at the upper or lower margin of the river.

2. The legal title to those lands being in the State of New Jersey, and her jurisdiction extending to them, the right of the State to dispose of them at pleasure, would seem to follow as a necessary consequence. For where property and dominion unite in the same hands, the right of disposal becomes an incident. At least, that is the general rule; and they who would limit the right must point out the principle or authority on which they claim its limitation.

Prior to Magna Charta, the king of England not only held the title to the lands under the navigable waters of his kingdom, but exercised the right of disposing of them to so great an extent as to call for its

on well settled principles of international law, that at the close of the Revolution the jurisdiction over those waters, and the lands under them, resulted to those States. But whether the title to the lands was in the States, or in the riparian proprietors, is a question which lies at the foundation of the present inquiry.

As to how far into the bay the jurisdiction of each State extended, or where the proper boundary between them was, is a question which would here necessarily arise, if it had not been already settled by compact. By an agreement those States, bearing date of September 16th, 1838, subsequently ratified by their respective legislatures, and approved of by Congress, it was agreed, in substance, that "the State of New York should have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the lands covered by the said waters, to the low-water mark on the Jersey or Jersey side thereof: Provided, that the State of New Jersey should have the exclusive right of property in and to the lands under the water to the middle of the bay of New York," and should have "the exclusive jurisdiction of and over the wharves, docks and improvements, made and to be made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock;" and should "have the exclusive right of regulating the fisheries" to the middle of the bay, not obstructing navigation. (Nix. Dig. 863).

It will be perceived that, by this peculiar compact, New Jersey has ceded to, or acknowledged to exist in New York exclusive jurisdiction over both the waters of New York bay and the lands under them, up to the Jersey shore; reserving to herself a naked title, or "right of property" only to the lands under the water; with a limited right of "regulating" the fisheries on those lands, to the middle of the bay. That is, New York is extended, or acknowledged to extend to the Jersey shore; and New Jersey, either by acknowledgment or cession, becomes simply the owner of certain lands under water, in the State of New York.

The lands in question are a part of the lands thus held by New Jersey. What are the limits to legislation, assigned by this compact to those States, respectively, is a matter between them—not easily determined—and not between New Jersey and these shore owners. I shall, therefore, consider the question submitted, without reference to it: as if the jurisdiction of New Jersey extended to the middle of the bay; and assuming that her legislation will not be interfered with by New York.

By the Constitution of the United States, Congress has power "to regulate commerce with foreign nations, and among the several States;" (Art. I. Sec. 8.) This power has been held by the Supreme Court of the United States to be exclusive—impliedly prohibiting legislation on the subject by the States. (Passengers Case, 7 How. 283.) But whether exclusive or not, it is a conceded power, which draws to it, as necessary to its exercise, the right to preserve the navigable waters of the country, which are the main channels of commerce, both foreign and domestic. Still, as Congress has, heretofore

restraint in that horizontal plane of English liberty. The title still continued in the king, who has since held, as trustee only, for his subjects; and the right of disposal has been confined to parliament. It will not be questioned that it has, and does exist in that body. Parliament, undoubtedly, has the power. How, and when to exercise it, are questions only of policy and justice. And I think, without entering into any elaborate argument to prove it, that when the title of the king and the powers of parliament became united in New Jersey as a sovereign and independent State, her legislature acquired the same absolute powers over her public domain; and that it still has them, except so far forth as they are limited by our own constitution, or that of the United States.

3. The Constitution of the United States prohibits the States passing any law impairing the obligation of contracts." (Art. 1, Sec. 10.) And our State Constitution imposes the same prohibition on the legislature, with the additional one, "that private property shall not be taken for public use, without just compensation." (Art. 1, pl. 16.) Would the disposition of the submerged lands in question, without the consent of the shore owners, and without compensation, come within either of these prohibitions?

I am not able to perceive any contract between the State of New Jersey and these shore owners, of any kind; much less a contract to the effect that the State will not dispose of those lands, or reclaim them herself; or, that if sold or reclaimed, that they shall have the privilege of purchasing or reclaiming. No such contract has been made in terms, and I do not see how any such can be implied. They are not the grantees of the State—certainly not the immediate grantees; and, in my judgment, those under whom they claim, were not. But if they could be so considered, where is the COVENANT MADE, or anything in the nature of such covenant, to pass with the lands, and bind the State, in the hands of their assignees?

If the power of the State to dispose of these lands is limited by the Constitution, it must be by that clause prohibiting the taking of "private property for public use, without just compensation." Two things are necessary to bring the shore owners within this clause of the Constitution. They must have a "PRIVATE PROPERTY"—not a common right or privilege; and the thing injured must be "TAKEN"—not consequently damaged. Mr. Sedgwick, in his treatise on Statutory and Constitutional Law, says: "It seems to be settled that, to entitle the owner to protection under this clause, the property must be actually taken in the physical sense of the word; and that the proprietor is not entitled to claim remuneration for indirect or consequential damages, no matter how serious, or how clearly or unquestionably resulting from the exercise of the power of eminent domain." (pp. 619 and 20.) The cases cited, I think, fully sustain the text.

As then the sale, or other disposition of the lands in question, will, in no sense, TAKE the bank or shore, unless the proprietors have a "private property" in the bay, the injury to them, however serious, would necessarily be consequential, and not, therefore, within the protection of this clause of the Constitution. Hence the inquiry is

reduced to this single question—have the shore owners a "private property" in the bay, beyond low-water mark?

In considering this question, it is important to keep in mind the distinction between private property and common or public rights, such as the rights of navigation and fishing. These may be very important, and much more valuable to the riparian proprietor than to others more remote. But they are public rights, common to all. However justly entitled to be regarded in wise and prudent legislation, they do not come under the protection of the Constitution.

We have already seen that the title to the lands in question is in the State. If, then, these proprietors have any property in them, it must be as an APPURTENANT to their ownership of the bank or shore. They and the State are owners of adjoining lands. The title of each is distinct. How, then, does the property of one become an appurtenant to that of the other? One piece of land is not an appurtenant of an adjoining piece, simply because one is covered by navigable water, and the other not; or, because one is the bed of a navigable stream and the other the bank. As to the matter of appurtenance, the bed could as well draw or extract property from the bank as the bank from the bed.

The decisions of the courts, both in England and this country, are remarkably uniform on this point. "In regard to navigable streams," says Mr. Redfield in his treatise on railways, "it seems to be a conceded point that the owner of land adjoining the stream has no property in the bed of the stream; and hence that the legislature in England may give permission to a railway company to so construct their road, as to interfere with, and alter the bed of such a stream, to the damage of any owner of adjoining land in regard to flowage of other-wise, even to the hindrance of accustomed navigation, without compensation; and that the railway company in constructing their road within the provisions of the act, do not become liable to an action for damages to any such proprietor of adjoining land." He adds, "The same point has been often decided in this country. In tide waters and navigable lakes, the rights of the owners of land adjoining such waters in the stream, are subservient to the public rights, and are consequently subject to legislative control; and any loss the owner of such land may thereby sustain is *dammum absque injuria*." (pp. 168-8.)

It thus seems to me that, both upon principle and authority, the shore owners in question have no "private property" in the bay fronting them, and are not, therefore, protected by the Constitution. Hence, as between them and the State, the result to which I have arrived is, that the lands in question are the absolute property of the State, and that she has the power to dispose of them in any way that her sense of justice and sound policy dictates.

In my opinion, therefore, the first and second questions submitted should be answered in the affirmative; and thus, any answer to the third becomes unnecessary.

A. BROWNING.

Dated, Camden, March 19th, 1864.  
For Messrs. Obb and others.



OPINION

CONCERNING

RIPARIAN RIGHTS,

BY

Hon. GEORGE M. ROBESON,

*Attorney-General of New Jersey.*

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Presented to the Senate, and Ordered Printed.

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## OPINION.

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*To the Senate of the State of New Jersey :*

By your authority, the following questions have been presented for my opinion, viz:

“Has the Legislature the right to sell and dispose of the lands under water adjoining the shore to others than riparian owners, or to appropriate the same to any purposes against or inconsistent with the rights of such owners, except for public uses, and what are such public uses?”

These questions are understood to relate to the lands covered by the navigable waters which bound the eastern portion of our State upon the shores of which the tide ebbs and flows. They may be stated in substance as follows:

1. Does the State own the “lands under water” adjoining the shore of these tidal waters? If so, then—

2. Has the Legislature the right to grant them for money to any person other than the riparian owners? If this may be done, then—

3. Has the riparian owners any private right which must be regarded by the State and its grantees in the use to which the lands are put; and to what extent are they limited by them? If they are limited to public uses, then—

4. What classes of uses are for this purpose considered public; and what are the qualities which give them their public nature; and upon what terms may the lands be used for the several classes of public uses respectively?

The form of the questions submitted would certainly admit of direct answers without an examination of several of these points, but I have felt that by so treating it, I should fail to answer the real meaning of your inquiry, and I have therefore stated them as above for the better understanding of the extent of the questions, and of the



effect of the answers. I have used certain terms in their strict legal significations, and to prevent confusion, the term "riparian owner" must be understood to mean, the owner of the bank above high water mark; the word "shore," the land between high and low water mark, upon which the tide ebbs and flows; and "lands under water," the lands covered by water lying below low water mark.

The first question as I have stated it, need not detain us. The State does own "the lands under water" adjoining the "shore" of these tidal waters. This question is *res adjudicata*, authoritatively settled in our own and in the Federal courts; and though the lands were formerly claimed on behalf of the proprietors, the fact that the *title* is in the State is not now seriously disputed by any one. 1 *Halsted*, 1; 15 *Peters*, 367; (*Gough v. Bell*, 1 *Zab.* 158, 2 *Zab.* 441, 3 *Zab.* 624); 1 *Dutch.* 428.

The answer to the second question, as to the absolute right of the Legislature to grant these lands to any person other than the "riparian owner," seems to me to be equally clear. A simple brief of the title of the State, viewed in the light of settled principles, will serve to illustrate it.

In the year 1664, what is now the State of New Jersey, was granted by Charles II. of England, to his brother, then Duke of York. Under the terms of the grant, the Duke of York was invested, not only with the right of property in the soil of the country included in the description, but also with the powers and rights of government over it, carrying with them all the prerogatives of sovereignty.

The royal title to the things granted, whatever may be thought of the principles upon which it was first assumed, and afterwards maintained, is the same title under which we held all our real property: and must of course be considered good.

These things were of two general classes, the rights of property, which passed under the grant of the land, and the sovereignty, with its accompanying rights, which passed under the grant of government. The title to the soil of the tidal waters of the country, where the tide ebbs and flows, was by the common law of England in the King, as one of the "*Jura Regalia*" or rights of the Crown, by reason of and for the exercise of sovereignty; and as such, it passed to the Duke of York, not under the grant of the property, but under the grant of the government.

The Duke of York afterward granted all his rights, both of pro-

erty and government in East Jersey, to Berkley and Cartaret, who, in turn, transferred them to the proprietors. In the year 1702, the proprietors surrendered to Queen Anne all the rights of government held by them, reserving, however, the rights of property. The title to the soil of the tidal waters was not within the reservation, but passed by the surrender of the government. Thus, while the title to the uplands of East Jersey remained in the proprietors and their grantees, the title to the soil of the tidal waters passed again to the Crown of England.

Since Magna Charta, however, the title in the Crown by reason of sovereignty, was held in trust for the whole people, for the purposes of common defence and public safety, subject to certain common rights, including that of navigation. Held under these restrictions, the King could grant only for public uses, but Parliament, representing the people, could, in the exercise of their unlimited power of government, with the assent of the King, dispose of the land absolutely.

When, by means of successful revolution, New Jersey, with her sister States, had cast off the authority of England, the control of these waters, with the title to the soil under them, vested with the other sovereign rights, in the sovereignty of the State—as they had previously been in the crown of England—for the benefit of the people, for the same great public purposes, and subject to the same common rights.

The actual title then being in the sovereignty of the State, and the usufruct, or right to the benefit in the people, the control of these lands, and the right and the power of disposing of them, is in the Legislature, which represents at once the sovereignty and the people—subject, however, to the restrictions of the Federal and State constitution, and to the obligations of that natural law which lies at the foundation of all government. Thus uniting in themselves every element of title in these lands—dominion and property, possession and use—the naked power of the Legislature to sell and grant them to any person, natural or artificial, whether it be to the owner of adjoining land or to a stranger, cannot, I think, be successfully denied.

But the grantee of the State will, of course, take the lands with all the servitudes and limitations as to use, to which they were subject in the hands of the State, by reason of any easement or right in or over them vested in any other person; and therefore the question remains: "Has the 'riparian owner' any private rights which must be regarded by the State in the use to which these lands are put,

and if he has, to what extent are the State and its grantees limited by them?

I have purposely used the expression "*private rights*," because (within the limits of constitutional restriction) the Legislature has the power to regulate the "*common rights*" of the public; and any right which is to limit the action of the State in regard to the use of their own lands, must be a *private* property right, and as such, under the protection of organic or constitutional law. The common rights of air and prospect, of fishing and internal navigation, are not the subjects of compensation or damages to individuals; but, subject to the legislative control, they may be regulated and restricted, and, perhaps, destroyed for the public benefit.

Has the "riparian owner" in East Jersey then, by reason of his ownership of the upland, any private rights in or over the lands in front of him covered by tidal waters, and owned by the State?

This question, involving in its decision interests the most weighty, is not directly settled; but the principles which must govern its solution have been the subject of consideration, and, to some extent, of judicial decision in the highest courts of the State. It is the conflict, between the inferences from these decisions and the strict principles of the common law of England, which has surrounded the question with difficulty.

If it is to be settled by the common law of England, it cannot be denied that the land of the "riparian owner" extends only to the high water line on the "shore" of tidal waters, and that his *property* rights are limited by his boundaries. We have already seen that the title to the lands below high water line—though derived through the same person as the title to those lying above that line—had its origin in a different right, and is governed by different principles. The one was held as private property, the other as a sovereign prerogative, for the purposes of government; and there is certainly nothing in this situation which would enlarge the limits of the private estate, and give to the owner any special rights in the domain of the sovereign adjacent to it.

But it is authoritatively and finally settled that the common law of New Jersey differs, in some material respects, from that of England in relation to this question.

The case of *Gough vs. Bell*, before referred to, the leading case on the subject in our State, was three times argued in our courts, and during its progress no less than eight justices of our Supreme Court

and two of the judges of the Court of Errors delivered written opinions upon the questions involved. The particular point finally decided was merely that, where the "riparian owner" had actually reclaimed the land in front of him over which the tide flowed, by docking out and filling in, thus pushing the high water line forward, he had, by the common law of New Jersey, in the land thus rescued from the sea, a title under which he could recover in an action of trespass against the person to whom the same land had been subsequently granted by the Legislature of the State.

Of the fourteen judges who, in the Supreme Court and Court of Errors, voted on this case, Justice Randolph alone maintained the application of the English law, and denied the title of the "riparian owner" even to the land actually reclaimed by him; the other judges united in recognizing his title, though they differed to some extent as to the principles upon which it rested; two of them held that by the common law of New Jersey, the title of the "riparian owner" extended by virtue of his *grant*, to low water, instead of being restricted as by the common law of England to the high water line. But the majority of the Court of Errors, as well as of the justices of the Supreme Court, rested their decision upon the ground substantially that, though the naked title to the land below high water line was in the State, yet the "riparian owner," under the local common law, established by immemorial usage of the people, and recognized by repeated legislative enactment, had, in the absence of legislative restriction, the right, by reason of his adjacency to the tidal water, to establish the connection of his land with the water, by docking out and reclaiming the "shore" in front of him, over which the tide ebbod and flowed.

This, then, is the common law of New Jersey, as established in her courts of last resort.

It may be said that this case established only the single fact that Gough's landlord had title to the wharf which he had built, as against Mrs. Bell, who was the heir of a grantee of the State; but I think it must be admitted that, in addition to this, the case established also the legal force in New Jersey of the principle upon which it was necessarily dependent. This principle seems to have been fully recognized and affirmed by the Legislature in the passage of the general wharf act of 1857 (Nixon's Digest, p. 910), and I have been thus particular in stating it as a clear foundation for the legitimate deductions therefrom.

The settled rights of "riparian owners" on the tidal waters of

East Jersey rest upon this case, and they are directly adjudicated and established only to this extent; but assuming as we are bound to do, the law of this case to be the law of New Jersey, then it must follow, directly and of necessity, that the "riparian owner," who has, in derogation of the original law, the right, by reason of his adjacency to the tidal waters, to encroach upon, take possession of and fill up the "shore" belonging to the State as far as low water line, for the purpose of establishing a connection with the water, must have some right to the enjoyment of the water, which he is thus allowed to reach. If his right upon the "shore" was his by virtue of his grant which extended his line to low water, this inference would perhaps not follow, for then his right might still be said to be limited by his boundary and to carry no inference beyond it; but the very fact that the local common law of the State, takes in his favor, this departure from the principles of the English common law, and allows him to advance, over land to which he has no title, to the water beyond it, presupposes that his rights are not limited, in this respect, by his boundaries, but that, by this very local common law, they extend to and are to be exercised and enjoyed upon the water which he is thus permitted to reach.

And these rights of the "riparian owner" are not common rights, for they do not belong to his neighbor, who lies behind him on the main land, nor are they mere rights of adjacency to land belonging to the State, for mere adjacency to a mud flat belonging to the State lying inland would give no right in or over it; they are therefore private rights of the "riparian owner" in the lands of the State lying in front of him beyond the "shore;" which rights are his by the local common law of the State by reason of his adjacency. It must be admitted, indeed, that these rights, extending beyond the "shore," while they are not in accordance with the common law, and the current of decision in many of the States, are not directly established here. They rest in opinion only, and are dependant upon the strict inference from the principles upon which the judgment in *Gough vs. Bell* seems to be founded; but they cannot be gainsayed by a mere reiteration of the common law of England, or a recital of the decisions of other States; the simple answer remains, such is the common law of New Jersey.

The view taken seems, as has been said, to be sanctioned by the passage of the wharf act of 1851 (*Wiscon's Digest* 910) which recognizes the right of the "riparian owner" to reclaim and cross the

"shore" and provides terms upon which he shall be permitted to advance beyond it; and the case of the *State vs. Jersey City*, (1 *Dutcher* 525) decided by the Supreme Court as late as 1856, assumes that the owners of lands adjoining the "shore" have water rights which are of taxable value. These rights beyond the "shore" are however rights of enjoyment only, and not of encroachment, except so far as they are exercised by license under the general wharf act, or some special grant from the legislature; they arise not from the mere adjacency of the State's land as land, but from its adjacency as land covered by navigable water; and they consist only in the enjoyment of it peculiarly as such, and are confined to uses naturally incidental to the right to occupy the shore, such as the right of passage and landing, of egress and ingress to and from, and the general use of the docks and wharves which the "riparian owner" may have constructed. Any pretence of a right to encroach is at once destroyed by a grant of the land by the State.

Such rights are not inconsistent with the ownership of the soil by any other person, nor with the use of it and the water covering it, for any purpose which does not materially injure or destroy them. The absolute right of the State to grant to a stranger is affirmed by the Supreme Court (1 *Dutcher*, 525), and by Judge Grier, before whom, in the Circuit Court of the United States, in 1853, the old controversy of *Gough and Bell* arose in a new form; and the land granted may be used without compensation for any public or private purpose, not inconsistent with these rights of enjoyment in the "riparian owner;" rights which carry with them neither ownership, possession nor exclusive use. I am not unmindful of the fact that the wharf act of 1851, above referred to, has been thought to operate as a grant to the "riparian owner" of an exclusive use in these lands; but I am not able to see how this view is justified under the provisions of the act, nor why it may not be repealed at the will of the Legislature, as far at least as relates to privileges to be enjoyed on special license from the freeholders, not yet acted upon.

The rights of the "riparian owners," however, to the extent guaranteed by the local common law, are rights of private property, and may not be destroyed, or materially injured, for mere private purposes, with or without compensation. Governments were instituted for the protection of private property, and may not be perverted to its destruction; any attempt, therefore, to take away or destroy the property of one man for the private benefit of another, by an exertion of

legislative power, would be void, as inconsistent with the purposes of government and contrary to natural law.

But all governments are possessed of the power to appropriate the private property within their jurisdiction for public use, by virtue of what is called the right of "eminent domain," which consists in the right to appropriate, to the necessities, of government the property of the citizen, for whose benefit government was established and is maintained. "Public uses" are such as accomplish the direct purposes of government, and thus benefit the whole people without reference to individuals or classes. Government is established not to give rights but to protect them; human life with all its natural relations is the gift of Heaven, liberty is an inherent right of man, and private property should be the reward of personal exertion; government bestows none of these; its immediate object is to provide for their safety and enjoyment.

"Public uses," then, for which we may invoke the power of "eminent domain," are not such as serve merely to increase the wealth of a state, they are rather those which tend to insure the safety of the government, the liberty of the citizen, the security of life and property, and to provide those great facilities of inter-communication and intercourse which are necessary or valuable for their enjoyment; thus we include among these uses, together with fortifications, arsenals, post roads and the like, the protection of the great interests of commerce and the construction and improvement of the great highways of internal intercourse and trade.

Confined within these limits, "public uses" will be seen to divide themselves naturally into two great classes, the one comprising the essential interests of governmental strength and public safety, upon which the government itself acts directly; and the other, those objects, which more remotely affecting the public welfare, are usually committed to the conduct of private enterprise, under the regulating supervision of the government.

To this division I shall again call your attention, for though it is rarely considered in the application of the power of "eminent domain," it should not be lost sight of in examining the subject before us.

"Riparian rights," in common with every other kind of property in the State, are liable to be impaired or taken for public uses, by virtue of this superior authority which resides in the government, to be exercised for the common benefit of the whole people; all prop-

erty is held under these conditions, and, but for the restrictions of our constitution, might have been taken for these "public uses" without compensation.

Consequential injuries to property are not the subjects of compensation or damages from persons acting immediately in behalf of the State for the public benefit, and clothed with the immunity of the sovereign. Injuries of this kind are those which affect the property of one person by reason of something done on the property of another, as where a man building a dam on his own land, overflows the property of another; thus if the "riparian owner" had no right in these lands of the State, any injury to his land on the upland from the public use by the State of its own property would be a consequential injury to the upland, and not the subject of compensation; but these rights of the "riparian owner" in the "lands under water" are themselves property, and their destruction is a direct and not a consequential injury.

The rights of the "riparian owner" to the enjoyment of the State's domain lying in front of him, are then rights of *private* property, which cannot be taken without compensation for ordinary "public uses." I use the expression ordinary public uses, because these riparian rights are, I think, in their very nature themselves subject to that class of "public uses" which have been spoken of as the peculiar objects of direct governmental action. The legal title to the lands covered by tidal waters was held by the crown of England, as a prerogative of sovereignty for the very purposes of public defence and safety, for these very ends the trusteeship of the public domain existed, and it was in this essential quality that it differed from an ordinary right of property; the title to the lands in question came to the sovereignty of the State of New Jersey for the same purpose, and, to the extent that it is in the sovereignty, is governed by the same principles; the conclusion then is reasonable, if not absolutely imperative, that any local common law, growing out of a modification of the common law, in relation to the public domain, to suit the conditions and exigencies of a new colony, and the founding of a new empire, grew into recognition, always subject to the great governmental prerogatives exercised for the purposes of common defence and public safety; and that the "riparian rights" were first recognized by the local common law, and have since been maintained, expressly subject to them. Thus it follows, that these rights over the property of the State are held, subject, as a condition of

of the public domain for public purposes, the "riparian rights" may be taken and extinguished by the exercise of the right of eminent domain, upon compensation rendered.

The Legislature is the judge of the necessity of taking private property for "public uses" by virtue of the power of "eminent domain," but must exercise this discretion within the legal limits of such uses. In the exercise of its power the distinction between "public domain" and "eminent domain" must not be lost sight of. The former is the right of the State in its own property, and may be granted or disposed of for money; the latter is the power of the State over the property of the private citizen; this is a part of the sovereignty and may not be sold or bartered. It is only to be used for the common benefit, and can be granted to the purchaser of the "public domain" only to enable him to use it for public purposes.

These are the legal principles upon which this subject rests, and I think, they are at once consistent with the interests of the State, and the rights of private property. If the "riparian owner" desires to improve the State's lands in front of him, he may do so, at greater advantage than a stranger, for he owns already a valuable interest, and should be purchase of the State, he may use for any purpose.

If he is unable or unwilling to purchase, then the State may grant to the more enterprising stranger, who will use them for any private or public purposes, which do not interfere with the rights of the "riparian owner," while for public purposes, which may so interfere, the power of "eminent domain" may be invoked to extinguish the restricting rights, for reasonable compensation. Thus the "riparian owner" is fairly compensated for all he may justly claim as property, and at the same time, the progress of public improvement is not impeded, at the will of the timid or the selfish. It would not be wise, even if it were just, to disregard the rights of the "riparian owner," in favor of a stranger, for the State's grantee becomes himself the "riparian owner," and if the value of his grant may be destroyed in turn, by a subsequent Legislature, the disposable value of the "public domain" will be sensibly lessened. I am called upon however, only to declare the absolute rights of the State as they seem to me to exist, the questions of policy in their exercise are solely for the judgment of the Legislature, and they will be guided only by those considerations, which should govern the representatives of a just, though progressive people, dealing with their own citizens.

GEO. M. ROBESON,  
*Attorney General.*

March 15th, 1867.

their existence, to the use of the public domain for the governmental purposes of defence and public safety; and the use of this domain for such purposes would be in no sense a "taking" of them.

But for the extinguishing of "riparian rights" for the benefit of any of that class of "public uses" which, while they are public in the sense that they ultimately benefit the community, yet are the subjects of private enterprise, and the sources of private profit, the power of "eminent domain" must be resorted to.

The conclusion then is, that the legal title to these "lands under water" is in the State of New Jersey, as part of the public domain.

That the "riparian owner" has rights over them, growing out of his adjacency to the navigable waters by which they are covered; these, however, are rights of enjoyment only, and not of possession or encroachment; and will prevent the free use of the lands only for purposes inconsistent with them.

That the Legislature, at once the representatives of the sovereignty of the State and of the people, may grant these lands to any person, but the grantee will take them subject to the rights of the "riparian owner."

That these rights, are rights of private property and cannot be taken for private uses.

That in their nature they are themselves subject to the right of navigation and the great public uses for defence and public safety, (fortifications, arsenals, break-water and light-houses, are examples of this class of "public uses").

That they may be taken for other "public uses," upon compensation rendered, (turnpikes, railroads, canals, ferries, public basins, docks and wharves, are examples of these other "public uses").

These lands, then, are the public domain; the riparian rights over them are private property. The State may use its public domain for its great governmental purposes, without compensation for the "riparian rights," which are themselves subject to these purposes.

The Legislature may grant it to whomsoever they will.

If the grantee be the "riparian owner," he may use it as he pleases, for he will unite in himself at once the State's title and his own restricting rights.

If the State grant to a stranger, the grantee may use it, without compensation to the "riparian owner," for any purpose, public or private, not inconsistent with such owner's rights of enjoyment, but he may not destroy these rights for mere private purposes.

If it is desired to authorize individuals or corporations to make use



## OF THE GENERAL POLICE.

Stock to be advertised at public sale.

Proceeds of sale shall be deposited with some Justice of the Peace, and if not claimed, paid over to Clerk of School Dist.

SECTION 4. In case said stock is not claimed and all just charges are [not] in accordance with this act satisfied within thirty days, the person having said stock in charge shall advertise the same at public sale, by not less than three written or printed notices, posted for at least ten days previous to said sale in three conspicuous places in the district in which said stock was taken up, at the expiration of which time they shall proceed to sell the same, the proceeds of which sale, after deducting all just charges, shall be deposited with some justice of the peace in said county, who shall hold the same for one year, if no sooner claimed by some person who shall prove to his satisfaction that they are the real owner of said stock; if not so claimed, it shall be subject to and paid over on the order of the clerk of the school district in which said stock was taken up, to be devoted to the school purposes of said district.

*Passed at Dover, March 28, 1871.*

## CHAPTER 72.

## AN ACT for the Protection of Fishermen.

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

Unlawful for non-resident to catch fish without license.

Fee for license, \$20 for one year. Proviso.

Violation of this act is misdemeanor. Penalty.

SECTION 1. It shall be unlawful for any person, not being a citizen of this State, to catch or take fish of any kind in Delaware bay or river, or any of the creeks emptying into the same within the limits of this State, without first obtaining from the Clerk of the Peace of one of the counties a license therefor, which license shall be granted on paying to the Clerk, for the use of the State, twenty dollars, and shall be in force for one year from its date, and shall be confined to one boat or vessel named therein: *Provided* that transient vessels may catch fish for their own immediate use. If any master of a boat or vessel, or other person, shall violate this section, he shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of fifty dollars, and the boat or vessel used in such violation of the law, with all her tackle, apparel and furniture, and all her implements for fishing, gill-net or seine, or any contrivance for taking fish, and anything so taken shall be forfeited and may be seized and de-

## OF THE GENERAL POLICE.

tained for trial by any officer or person. Such trial may be had <sup>Trial before</sup> before any justice of the peace, and if condemned, the property <sup>Justice of</sup> seized shall be sold by his order, and the proceeds, deducting <sup>the Peace.</sup> costs and charges, be equally divided among the captors: *Provi-*  
*ded* that an appeal shall be allowed from the judgment of the <sup>Appeal,</sup> justice, if applied for within ten days, to the Court of General <sup>when.</sup> Sessions of the Peace and Jail Delivery, on security being given by bond and sufficient surety, in the full value of the property condemned, conditioned to be void if such judgment be reversed by said court. Upon such appeal a jury trial shall be had on <sup>Jury trial.</sup> the issue whether the boat or vessel seized has been used in violation of this chapter, and if it be found in the affirmative, the court shall affirm the judgment of the justice; otherwise such judgment shall be reversed and the property seized shall thereupon be sold or released accordingly. The Attorney General <sup>Attorney-General.</sup> shall appear for the captors and defend the appeal. Any justice <sup>Justice to</sup> of the peace shall, upon affidavit made that a boat or vessel is <sup>issue war-</sup> violating this chapter, issue his warrant to the sheriff or constable, commanding them, or either of them, to seize and detain such boat or vessel, and any sheriff or constable shall also have power under this act to make said seizure and detention without warrant, and in the performance of his said duty may, if necessary, summon a *posse comitatus*, armed with fire-arms and ammunition, and use the same, if forced to do so, in execution of the <sup>Posse Com-</sup> law, and if maiming or death follows such use of arms, it shall be <sup>itatus.</sup> considered justifiable, and the officer and his posse be free from legal responsibility. He may also require the assistance and use <sup>May require</sup> of any other boat or vessel, they receiving compensation as here- <sup>assistance.</sup> after provided. It shall not be necessary that the affidavit shall state the name of the vessel, or of her master; such names may be inserted in the proceedings after the seizure. The sheriff or constable shall be entitled to five dollars per day, and each person <sup>Fees of</sup> summoned by him, and rendering him aid, two dollars per day, <sup>Sheriff and</sup> and for each boat he may require for his assistance a just com- <sup>constables.</sup> pensation, to be paid out of any property seized and condemned, or if not condemned, the officer or officers will be paid by the State. If any owner, master, or person belonging to, or on board <sup>Penalty for</sup> of any boat or vessel, shall oppose or resist the sheriff or other <sup>resisting off-</sup> person in the execution of such warrant, or shall resist any lawful <sup>icer.</sup> seizure of such boat, vessel, or other property, such person shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of one hundred dollars. It shall be the duty of the Attorney <sup>Attorney-</sup> General to cause any person indicted under this chapter, and who <sup>General's</sup> is out of the State, to be demanded and brought to trial. <sup>duty.</sup>



## OF THE GENERAL POLICE.

**Unlawful to catch fish and put them on board of a vessel.** SECTION 2. It shall be unlawful for any person, not being a citizen of this State, to catch or take fish in any river, creek, or pond within this State, and put them on board of any boat or vessel not wholly belonging to and owned by citizens of this State, and the violation of this section shall subject the party offending to the same forfeitures and penalties, to be prosecuted in the same way, as is provided in Section 1 of this chapter.

**Gill seine or net.** SECTION 3. It shall be unlawful for any person to lay out, float, or set any gill-seine or net, or any contrivance to catch shad, nearer than one mile from the shore, or mouth of any river or creek within the limits of the State, after the fifteenth day of June in each year, under the same penalties and forfeitures of Section 1 of this chapter.

**Penalty against Sheriff for neglect or refusal.** SECTION 4. If any sheriff or constable refuses or neglects to serve the warrant issued by the magistrate 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 boat or boats shall refuse to render the assistance the sheriff or constable or other person may demand, they, or each of them shall forfeit and pay the sum of five dollars, and forfeit the protection of this law.

**Citizen shall not get out a license for non-resident.** SECTION 5. It shall be unlawful for any citizen of this State to get out a license for a citizen of another State, or in any way or manner combine with a citizen of another State to enable him or them to evade this law directly or indirectly, either by becoming a partner or assuming the ownership of nets, seines or boats, and giving to the citizen or citizens of another State the control of, or profits arising from the fishing of said citizen or citizens of another State, and in case a citizen of this State should so evade the law, it shall be considered a misdemeanor, and he shall forfeit and pay the sum of one hundred dollars, to be collected as other fines and forfeitures are collected, one-half of which shall go to the State and the other half to the informer after its collection.

**License to be produced.** SECTION 6. Every person who shall fish in the waters of this State, not a citizen thereof, shall, on demand of any justice of the peace, sheriff, deputy sheriff, constable, or citizen within this State, produce the license thereof, and unless he shall do so, it shall be presumptive evidence that he has no license, and he shall be proceeded against as though he had none; but if, when arrested and proceedings advanced, it shall be found he has a license, but refused to show it on the above demand, he shall be fined five dollars for such refusal, to be collected as other fines and forfeitures.

## OF THE GENERAL POLICE.

SECTION 7. It shall be unlawful for any person to have in his or her possession, or expose for sale, any shad caught in the River Delaware or its tributaries, within the jurisdiction of this State, above the southern point of Reedy Island, between the eleventh day of June and the tenth day of August in any year, under a penalty of five dollars for each and every shad so had in possession or exposed for sale, to be recovered in an action of debt, with costs of suit, by any person or persons in his or their names, before any justice of the peace in the county, or where the defendant resides or lives; and in all prosecutions or proceedings under this act it shall not be necessary to file any statement of demand or to comply with the formalities required in penal actions, and in all such actions both parties may be sworn. One-half of said penalty shall be paid to the informer.

SECTION 8. It shall be unlawful for any person to make use of any gill-seine of a less mesh than ten inches for the purpose of catching fish in the River Delaware, within the jurisdiction of this State, above the southern point of Reedy Island, between the tenth day of June and the tenth day of August in any year, and he, she, or they so offending shall forfeit or pay the sum of one hundred dollars, together with costs of suit, for each and every offense, and one-half of said penalty shall be paid to the informer.

SECTION 9. It shall be unlawful for any person to cast, draw, fasten, or otherwise make use of any net, trap, device, or contrivance for the purpose of catching fish in the River Delaware, or of the bay thereof, within the jurisdiction of this State, between the hours of sunset on Saturday and midnight of Sunday, throughout the year, and he, she, or they, so offending, shall forfeit and pay the sum of fifty dollars, together with costs of suit, for each and every offense, and one-half of said penalty shall be paid to the informer.

SECTION 10. All fines and penalties collected under this act, after deducting the amounts due to the informer and the costs of the suit, shall be paid to the State Treasurer for the use of the State.

*Passed at Dover, March 23, 1871.*

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THIRD ANNUAL REPORT

OF THE

Commissioners of Fisheries,

OF THE

STATE OF NEW JERSEY,

*For the Year 1872.*

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## REPORT.

*To His Excellency Joel Parker, Governor of New Jersey :*

SIR :—The undersigned, Commissioners of Fisheries of the State of New Jersey, respectfully present this their third annual report :

The main propositions made in our last report to your predecessor, having been approved by you, were submitted to the Honorable Legislature of our State, and promptly acted upon, the members of that body, without a dissenting vote, passing the modifications of existing laws as suggested by your Commissioners. By an act approved by you February 28, 1872, the clause requiring the concurrence of Pennsylvania in such parts of the bill approved March 15, 1871, as conflicted with the compact of 1783, was repealed, thus given to your Commissioners and their assistants the power fully to protect the fisheries and enforce the laws. The section declaring the mode in which fish baskets, and other equally fatal fixed engines of destruction, should be destroyed, was slightly modified and made concurrent with the new law passed by the Pennsylvania Legislature during its previous session. The experiments of the Commissioners of Fisheries in Connecticut having shown beyond all doubt, that by means of artificial propagation our nearly exhausted streams could be replenished with shad, by an act approved April 4, 1872, \$3,000 were appropriated for the purpose of propagating shad in the Delaware river, provided a similar amount, for the same purpose, be appropriated by the Legislature of Pennsylvania during its then session. A concurrent act was promptly passed in Pennsylvania, but being encumbered with other matters, some of which did not meet the approval of the Governor of that Commonwealth, he refused his approval, and the bill failed to become a law. This was much to be regretted, as upon the passage of this bill, aid of the most valuable character was at once voluntarily offered to your Commissioners from various quarters, which, had the requisite appropriation been made by Pennsylvania, would have been gladly accepted, and would have greatly furthered the work. We would especially note the kindness of the Trenton Water Power Company, who, through Mr. Charles Hewitt, offered to place at the disposal of your Commissioners the ground upon which the work of propagation could be carried on.

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It is noteworthy that the great interest in fish culture which has engaged public attention within the last decade, so far from diminishing has steadily increased, and bearing its legitimate fruits by its practical application to the restocking of our rivers and lakes depleted, and in some instances nearly exhausted, of valuable varieties of fishes which were formerly so plentiful as to constitute an important element of the food supply of the people.

The first successful attempt was made in the head waters of the Savannah river in 1807, when and by whom they were placed in the last named river does not yet appear.

In 1807, that prince of fish culturists, Seth Green, of Mumford, New York, by a process strictly his own, began the hatching of shad by the million, and turning them into the Connecticut and Hudson rivers, where in due time they returned in numbers seven-fold greater than at any time in fifty years, and the prices ruling proportionately less.

In the summer of 1871, Green took the fry of ova hatched in the Hudson, and planted them in the Sacramento river, in California.

In the same year he placed a number in the Genesee river, and as young shad six and seven inches in length were taken the past season at the mouth of that river, it is *prima facie* evidence that they hybridized in lake Ontario, and did not run to salt water as shad usually do.

During the past summer nearly a million of shad fry have been distributed in the head waters of the Alleghany, the White river, at Indianapolis, the Mississippi, at St. Pauls, and the Platte river, at Denver.

The black bass, as stated in a previous report, transported in the tank of a locomotive from the Ohio to the Potomac river, where, during the rebellion, as little fishing was done, they multiplied greatly, have since been carried from that river and put into the Susquehanna, Schuylkill and Delaware, where they are said to be increasing rapidly.

From these successful plantings, we feel warranted in recommending their introduction into every lake, pond and stream in our State, not already abounding in valuable fishes, such as the speckled trout, on which they would prey.

At a meeting of the Commissioners of Fisheries of the various States held in Boston, June 25, 1872, it was decided that the efforts of the present year should be mainly directed to the introduction of salmon.

The following report was made by Prof. S. F. Baird, and it is known through which it is even claimed that shad can ascend. The Commissioners.

One-quarter of a million will be taken in charge by your Commissioner in charge of non-tidal waters, and when hatched, placed in the Delaware river.

For the propagation of salmon, the king of fishes, this stream possesses unequalled advantages. Not a dam or impediment of any kind which cannot be readily surmounted by them exists within the jurisdiction of the State. Suitable spawning grounds are found in the upper portion below the Jackawaxen dam, and this structure will be rather of advantage than otherwise to our citizens, by retaining these fishes within our own boundaries. The salmon, when hatched, will be placed in a tributary of the river, where they will pass through the stages known as parr and smolt. As has been found by repeated experiment, a portion will then go to sea, returning as grilse, while the remainder will not leave until the ensuing season, when all will depart, and soon return as salmon.

From its vicinity to the fish-farm, at which the spawn will be hatched, the purity of its water, and freedom from predatory fishes, the Musconetcong creek, at the reach where it divides Hunterdon and Warren counties, has been chosen for the temporary sojourn of the salmon.

A few spawns, (about six thousand) of the Sacramento salmon have been received from California, which have hatched, and are now doing well in the hatching-house at Troutdale, near Bloomsbury, N. J. These are, however, intended for the Susquehanna river, to which they will be sent in January, 1873. They are the result of the experiments made by the Rev. Mr. Stone, now stationed upon the McCloud river, California, by order of Prof. Baird, and it is confidently expected that in future, spawn in unlimited numbers may be derived from this source. The Sacramento salmon, (S. quinnat) in rapid streams whose average temperature is far higher than that of any other waters in which the members of other species of salmonidae can exist, and is therefore more peculiarly adapted to our southern waters.

The take of the fisheries of the Baritan river has not been equal to that of either 1870 or 1871. Four smolt nets and five shad seines have been in operation, though with but small success. These are all located below Boundbrook, the dam of the Delaware and Baritan Canal Company, near that place, completely preventing the ascent of any anadromous fishes above that point. The so-called fish-way in the dam is of no possible use, and at the time when most needed, i. e., when the water is low, is entirely closed. We have been informed by an employee of the company that the worthlessness of the fish-way is well known, shad and other fishes having been frequently taken by himself and others, endeavoring, without success, to ascend through it to the upper waters of the river. The question of fish-ways is a serious one, and as yet undecided one, there being but one known through which it is even claimed that shad can ascend. The

salmon, alewife, and ordinary fresh water fishes can be easily led over any ordinary dam, but the shad, far more timorous, require special and careful means to induce them to make the ascent.

No improvement has taken place in the cat-fish fishery, formerly a lucrative branch of industry, near the city of New Brunswick, the waste material discharged upon their spawning grounds from the gas works, india rubber, and other factories, having, it is feared, entirely driven them away. It is believed by your Commissioners that no spawning grounds for the shad exist in the Raritan river; but that the stream is supplied with young through the Delaware and Raritan Canal. These fishes are received into the feeder at Bull's Island, upon the Delaware; a large percentage are destroyed by passing through the locks, and many are killed by the mills at Lambertville, eleven wheels being supplied by the feeder, many of which have, during the past season, been in operation both night and day. Of those which escape part are again discharged into the Delaware at Bordentown, while the remainder pass through the canal to its outlet at New Brunswick; by this means is the Raritan stocked. The number observed in both canal and feeder during the present season has been greatly in excess of that of any previous one. It is feared that the substitution of a permanent dam for the temporary one formerly existing at Bull's Island, will have the effect of driving a still greater number of young shad into the feeder. A fish-guard placed at the mouth would probably be of benefit. No direct injurious effect upon the fisheries is anticipated from the dam itself, as a passage one hundred and twenty feet in width will be left open in the centre through which shad can readily ascend.

Some work has been done during the past season upon Wells' Falls, below Lambertville, but nothing affecting the fishing interest has transpired. The extreme low water during the month of April and May caused a marked difference in the catch above and below Scudder's Falls. During the day the shad collected below the falls in large numbers, their great timidity causing them to remain until after dark before attempting the ascent of the chute. Fishing below was, therefore, much more successful than above the falls, as may be seen by the following table:

BELOW.		
<i>Name of Fishery.</i>	<i>Length of Net.</i>	<i>Catch.</i>
Taylor's Point,	200 fathoms,	7,000
Swamptown,	140 "	5,000
Long Bar,	140 "	4,000
Emily's Island,	200 "	6,000 S.
Smith's Island,	120 "	7,000 S.
Moon Point,	200 "	6,000
White's Island,	100 "	no returns.

ABOVE.		
<i>Name of Fishery.</i>	<i>Length of Net.</i>	<i>Catch.</i>
Keeler's Island,	150 fathoms,	900
Hole in the Wall,	75 "	300
Sand Gully,	90 "	1,700
Lowlands,	140 "	1,659
	<hr/>	
	1,555	39,559

Not to weary your Excellency with minute tabular statements, we might state that the number of fisheries in operation in or opposite the counties of Mercer, Hunterdon, Warren and Sussex is forty-eight. The average length being 100 fathoms. Allowing twenty-five shad to be taken per fathom, which, from careful examination of voluminous reports from our wardens we believe to be correct, we have 120,400 shad as the catch of the season of 1872. The prices at which they were sold varied from fifteen to forty cents. Allowing thirty cents as a mean, we have \$36,120. As frequent hauls were made by parties owning private nets, and allowed to fish by courtesy, and as numbers of shad were taken in the small meshed sucker nets, from which no reports have been received, it is probable that the value of the entire catch above Trenton falls, will reach the large sum of \$40,000. This, by artificial impregnation, could be readily quadrupled without involving the fishermen in additional expense.

We take pleasure in announcing that through the active and energetic measures taken by the wardens, fish baskets, brush weirs, and other fixed engines of destruction, have entirely disappeared from the Delaware river, within the jurisdiction of your Commissioners. Some opposition was made, and even violence, at first, threatened by their proprietors, but sober second thoughts showed them the uselessness of opposing the law. Above the State line, however, numbers have been in operation, but as the dam at Lackawaxen presents an almost insurmountable barrier to the ascent of anadromous fishes but little injury is done by them. The result has been that the number of young shad seen descending the river has been greatly in excess of that of any previous year, no impediment being offered to their downward passage to the sea.

Your attention is especially called to a new and ingenious, though fatal method of capturing fishes, which has lately prevailed to some extent in the northern counties of our State. From the perfect system with which it has been pursued, and the completeness of the arrangements, requiring apparatus involving some expense, it is believed it is pursued rather by an organized company than by individual enterprise. Cartridges of giant powder, a new and most powerful explosive agent, are sunk to the bottom of the lake or stream, (ten or fifteen cartridges being frequently used,) and simultaneously ex-

ploded by means of electricity. The result is the instant destruction of every living inhabitant of the waters within the radius of the force of the concussion. Not only are fishes killed, but also, as was shown by experiment in water owned by one of your Commissioners, turtles and aquatic insects, the latter valuable as food for our fishes. Even the eel, the most tenacious of life of our fishes, were instantly killed. The finer and more valuable fishes were taken and disposed of in our city markets, while the coarser varieties and smaller specimens were discarded. We have been informed that at least a ton of these rejected fishes, many of which would have, in a few years, afforded good and cheap food, were seen at one time at the outlet of the lake. Unfortunately, no law at present exists upon our statute book by which this wasteful process can be stopped, but it is hoped that this defect will be removed during the ensuing year. If not, speedy and utter extinction of our valuable food fishes in river, lake and sea will inevitably follow. Thus far in our State, only our purely fresh water fishes have thus been destroyed, but if allowed to be pursued with impunity, our herring, shad and other anadromous fishes will undoubtedly fall victims, and their rapid disappearance can be readily foreseen.

Another means of taking fishes which should at once be checked, is that of poisoning them with cocculus indicus (fish berries). These are pounded into a pulp with water, mixed with dough, moulded into pellets, and thrown by handful into a stream. The pellets are greedily devoured by the fishes. The first effect is a species of delirium or intoxication, speedily followed by death. We have been unable to positively ascertain any case in which death has followed in the human species from eating fishes captured by this means; but may not some of those cases of poisoning from fish food which are reported from time to time, possibly arise from this cause? The berries are, as is well known, poisonous to animals, as has been proven by the experiments of Orfila upon dogs, and it is important that even the possibility of danger from this cause be provided against. The pestiferous object for which the fishes, mostly chub, (*Semotilus corporalis*) are taken, is as bait for other fishes upon the set lines; but we have every reason to believe that the larger specimens not unfrequently find their way to our markets. As an indication of the extent to which this method of taking fishes is employed, we might state that at least 200 lbs. of fish berries are annually sold in Belvidere alone. We had supposed that this method of fishing was prohibited by law, in our, as in adjacent States, but find that we were mistaken. A law prohibiting the capture of fishes with any device save net, line or spear, would cover this as well as the previously mentioned evil.

On entering upon their duties, your Commissioners learned that laws the most wholesome and stringent had been enacted and implemented from time to time, for the regulating of fishing in the river Delaware, within the joint jurisdiction of Pennsylvania and New Jersey, but with no practical provision for their enforcement. To

accomplish this object they recommended the appointment of First Wardens for this special duty, and under the authority of the acts of March 15, 1871 and February 28, 1872, your Excellency appointed nine wardens, one for each of the counties fronting on the river Delaware, viz: Sussex, Warren, Hunterdon, Mercer, Burlington, Camden, Gloucester, Salem and Cumberland.

By the terms of the act of March 15, 1871, the said wardens were to be furnished, at the expense of the State, with such appliances as in the judgment of the Commissioners having charge of that department should be deemed necessary. Whereupon the wardens of the four first named counties were to apply to the Commissioner in charge of the northern department, and those of the five last named counties to Commissioner Howell, in charge of the southern department.

The water front of the southern department is considerably over one hundred miles. Apart from the numerous established shore fisheries, a table of which is given in our first annual report, this reach of the river is fished by over eight hundred drift nets, one half of which number hail from New Jersey, the remainder from the States of Pennsylvania and Delaware.

The latter class of fishermen are nomadic in their way of fishing. On the first appearance of the shad in the upper bay they intercept them with their nets of four hundred and fifty fathoms in length, stretched across the channels. When later in the season the shad have succeeded in reaching the upper parts of the river, their nets are reduced in length to from one hundred to three hundred fathoms, thus endeavoring to keep pace with the successive runs of shad.

In view of the fact that the chief theatre of drift net fishing lies between the shores of Delaware and New Jersey, it was deemed of the highest importance by your Commissioners that the fishing codes of these two States should be in accord.

To accomplish this object, with the approval of your predecessor, and furnished by him with a letter to the Governor of Delaware, they visited Dover March 9, 1871. For the history of that visit and its results, we respectfully refer you to our second annual report. Suffice it to say, the object of our visit was fully attained by the incorporation of three important measures in a bill then in course of preparation, viz: a close time was established between sunset Saturday and twelve o'clock Sunday night. The use of gilling seines of less mesh than ten inches between the tenth of June and the tenth of August, was prohibited. This last provision was in lieu of our bill, which prohibited the use of all seines of less mesh than ten inches within the period last mentioned, and was made in the interest of the blue fish and tailor-fish fishermen. The season for taking these fish commencing about the time that shad fishing ceases. Selling shad out of season was also interdicted.

The requirements that residents should pay five dollars and that non-residents should pay twenty dollars for fishing in the Delaware,

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within their jurisdiction, was a discrimination over which your Commissioners had certainly no control.

It is true, the bill first introduced in the New Jersey Senate required drift-net men to pay five cents per fathom on their nets, on the equitable ground that as shoremen paid a tax on their fisheries as for real estate, and on their appliances as for personal property, so drift-net men should pay a consideration for the important privilege they enjoyed. A strong opposition, however, being made to it by this class of fishermen, and it appearing to be strictly a question of revenue, the obnoxious measure was stricken out, and it was the reprint of our bill thus altered, and which had just passed the New Jersey Senate that the Commissioners bore with them to Dover.

On the question of State bounds, of course, your Commissioners had no authority to treat. In view, however, of the difficulties likely to arise from the existing nature of the case, and as the readiest means of averting them, they did suggest that an agreement be entered into between the two States similar to that now existing between Pennsylvania and New Jersey. This seemed to meet with favor, but the near approach of the adjournment of their Legislature precluded any steps being taken toward the consummation of so desirable an object.

The recent difficulty between the two States grew out of the attempt of Delaware to put into practical exercise her claim to exclusive jurisdiction over the entire breadth of the river within a circle the radius of which is twelve miles, measured from the court house at New Castle, by arresting certain New Jersey fishermen while fishing in the eastern or New Jersey channel, but within the said circle, without having first obtained license from Delaware.

It was a matter of sincere regret to your Commissioners that anything should have occurred to disturb the harmony existing between these two States, whose mutual interest at the present time demands entire sympathy and cordial co-operation.

It is, then, with infinite satisfaction that the Commissioners have learned that your Excellencies have agreed to refer the whole matter to your respective Legislatures for adjustment. With the legislation of Pennsylvania, Delaware and New Jersey in accord and properly enforced, we may hope confidently for the most beneficial results to the fishing interests of the river Delaware.

It gives us pleasure to be able to say, from information derived from the reports of the fish wardens, that the catch of shad and herring the past year, generally, has been in excess of the year before, and that the laws have been, with few exceptions, observed by our own fishermen, and realizing the fact, that these laws are intended for their good, acquiesce in their importance. It would appear, however, that a class of fishermen, chiefly from the purchase of the city of Philadelphia, has given no little trouble. Collected in considerable force, they have defied our wardens, who were unable to meet the sudden emergency, either with suitable appliances or

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sufficient force. When the extent of the reach assigned to each warden, and that much of the illegal fishing is done at night, are considered, the office of warden will be held to be no sinecure.

Unhappily, through the failure on the part of Pennsylvania to appoint special officers to enforce the law, our wardens had the whole onus of the duty upon themselves. A difficulty in the way of arrests also confronted them.

Under the compact both States have jurisdiction from shore, yet in Article 2nd we find this language: "but that all capital and other offences, trespasses or damages committed on said river, the judicial investigation and determination thereof shall be exclusively vested in the State wherein the offender or person charged with such offence shall be first apprehended, arrested or prosecuted."

The conclusion arrived at by the foregoing language, is: that an offender with his net stretched far over both sides of mid-channel, can be arrested only by an officer of that State to which he chances to be nearest when arrested.

There being then no special officers from whom our wardens could receive co-operation, the Commissioner having charge of the southern department, waited upon His Honor the Mayor of the city of Philadelphia, and afterwards addressed to him the following letter:

WOODBURY, N. J., June 19, 1872.

*His Honor Mayor Stockety, Philadelphia:*

DEAR SIR:—My call yesterday upon your honor may require further explanation than the evident pressure of your duties permitted me to make at the time.

By the withholding of the Executive signature to the bill passed by both branches of your Legislature, Pennsylvania has at present no Commissioners to look after her important fishing interests in the river Delaware. The New Jersey Fishing Commissioners, through their special wardens, are endeavoring to enforce the existing concurrent and salutary fishing laws of the two States. To this end, they have had these laws now in force printed on a sheet for circulation among the fishermen, and for the guidance of the wardens in the discharge of their duties. By their efforts, much illegal fishing has been prevented, but a number of lawless men from your city have, (and still continue to do so,) defied our officers, and go armed and in numbers for that purpose. As an instance, on Sunday, May 26th, ult., Mr. Frederick Shinder, First Warden of Camden county, N. J., arrested two men from your city, while fishing in violation of the Sunday close time, in the channel between Petty's Island and the Jersey shore. He was set upon by a number of persons collected there evidently for that purpose, his assistants maltreated, and his boat and men carried over to the city, where I believe the boat is still held. The difficulty of identification prevented him, as it does the other wardens, from bringing the offenders to justice.



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To prevent a repetition of such occurrences, which may lead to serious results, and for the better enforcement of the fishing laws, I felt constrained to wait upon your honor and obtain your aid, which I thought could be rendered through your efficient harbor police probably, to whom most of the fishermen are doubtlessly known.

This, with the enforcement of ordinance of 1858, prohibiting sale of shad out of season, would have a salutary effect, and result eventually in a large increase of this valuable food for the people. The ready sale of shad thus taken, is a powerful incentive to the infraction of the law. The importance of this subject is my apology for having trespassed on your time yesterday, while occupied by your important official duties.

With great respect, I am truly yours,

BENJAMIN P. HOWELL,  
*Commissioner, &c.*

What steps were taken on the part of the city authorities either to suppress illegal fishing, or the vending of shad out of season, your commissioners are unable to say.

As the bulk of the shad taken in the tidal portion of the Delaware go to her great metropolis, Philadelphia, it behooves Pennsylvania to appoint fishery commissioners to look after her fishing interest.

N. D. Carman, Fish Warden of Burlington county, in his report, says, till the real object of his office was understood he was received coldly by the fishermen. An appeal, however, to their intelligence and sense of justice soon secured for him better treatment, and the admission on their part of the necessity and importance of the legal restrictions. In this county are five shad fisheries, employing eighty-three men. Length of seines, seven hundred and eighty fathoms; average depth, twenty-five feet; mesh, five inches. These fisheries are rented and fished by non-residents, who manifested an unwillingness to impart information. He did not succeed in ascertaining the amount of their catch the past season.

The number of drift nets from this county is 132, men 264, length of nets from one hundred to one hundred and thirty fathoms, depth from 20 to 30 feet, mesh 5 to 5 1-8 inches, catch for the season 500 to 1,800 shad per net.

Owing to the clearness of the waters above Rancocas Creek little fishing can be done in the day time.

Anchoring or staking of nets, prohibited by law, has been done occasionally only.

Crosswick Creek has a clear passage for fish of ten miles. Its waters are several degrees colder than those of the river. It has several tributaries in which trout and other fishes formerly abounded. Thousands of the fry of shad are received into this creek from the river above, through the Delaware and Raritan feeder and canal.

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Thousands die from injuries received while in the locks and from contact with vessels.

Will not the canal company put an apron or screen across the mouth of the feeder, and thus divert the shad fry from it?

On the 23th of May last, a tow boat brought up thirteen fishing boats with all kinds of appliances for fishing, as drag nets, gill nets, fyke nets, and lay-out lines, with 1,500 hooks to a line. By these visitors every breeding stream was robbed of its inhabitants and the fry left to perish.

Black's Creek, formerly well stocked with fish, has become worthless as a fishing place, from robbery during breeding season, and from defilement of its waters by gas tar.

One hundred acres of marsh attached to Biddle's Island, and 1½ miles by ½ mile of the waters of English Creek having been banked in as in ponds, two of the best breeding grounds for perch, catfish, and we presume he might have added for herring, have thus been destroyed. Rancocas Creek, a broad, deep and beautiful stream, noted for the clearness of its water, unobstructed for twenty miles, a resort for the earlier run of shad, because of the higher temperature of its water, is also a noted breeding ground. Here, too, the same complaint is made against these small meshed summer nets.

The bass, and other new and valuable fishes, could be introduced here. The fishermen complain also of the practice resorted to by these summer net visitors of mowing off the so-called channel grass, at low water, to bait the ground, and to facilitate the drawing in of their nets, thus depriving the fishes of their natural aliment, and the young of shad, herring and other fishes, of a refuge from their enemies, of which the striped bass or rockfish is the greatest.

Fishermen from Delaware, it is said on credible authority, are now (October 19th), engaged in fishing for young shad, the largest of which are salted down and sold as herring. Similar complaint was recently made by citizens of Pennsylvania, residing on the shore of the Delaware, to Col. Worrall, late Commissioner of Fisheries for that State, but whose commission expired January 7, 1872, by limitation.

Mr. Carman advocates the idea of a time being established when all may alike commence fishing operations, thus securing a more equal distribution of the shad through the whole length of the river. It would certainly be of great advantage to the dwellers along the upper portion of the stream, but would be a very unpopular measure with those who have so long enjoyed a sort of monopoly of the shad in the bay and lower part of the river by the obstructive gilling seines.

The same advantage may be attained, and be more abiding, by a strict observance of the Sunday close time, which, when observed, has constantly proved beneficial by the increased catch at the upper fisheries for several days together in the early part of the ensuing week.

Mr. F. Shindle, First Warden of Camden county, reports the

number of gilling seines going out from his county to be about thirty, length of seine while fishing opposite its shore from one hundred to two hundred fathoms, depth from 40 to 50 feet, size of mesh 5 inches, catch to each net the past season from 1,000 to 2,000 shad. At the large shore fishery, Hugg & Howell, below Gloucester City, the catch has been quite good, better than for several years.

From what he can gather from the fishermen themselves, the legal restrictions are deemed proper and beneficial, and the law generally observed. Some have said that the increased catch on Monday paid better than if they had fished during the Sunday close time, as they had done heretofore.

As stated in another place, the Philadelphians were the only ones who caused him trouble. They boasted that no Jersey law could prevent their fishing in the Delaware. On one occasion they attacked Mr. Shindle, took his boat and men, beat them, threw one man overboard, and took the boat to the city, but afterwards stealthily restored it.

Having identified the leaders of the gang, he has instituted legal proceedings against them, and hopes that they will receive their merited punishment.

The State should provide the wardens with a small steam tug, well manned and equipped, by which means all such illegal acts would soon be suppressed.

H. V. Heritage, First Warden of Gloucester county, reports 83 gilling seines now in his county, length of seine from one hundred to three hundred fathoms, depth clear of float lines about 20 feet, 5-inch mesh.

The sentiment among the better class of these fishermen is favorable to the law, which has been, by them, well observed during the past season.

From the difficulty in reaching the length of his district, by reason of strong adverse tides, and the character of the fishermen from the opposite State, he and the warden from Camden county, were supplied on two occasions with a tugboat. Threatening demonstrations were made within his district, after the season had expired, on several occasions, by the same men who had given his colleague, Mr. Shindle, so much trouble. On the night of June 11th, he seized a net found fishing out of season, and within the bounds of Howell's fishery. The men escaped. The net, in accordance with law, was forfeited by two justices of the peace, and by their order was sold. On another occasion he detected three men fishing with a gilling seine after the expiration of the shad season. He made complaint before a magistrate and had them arrested. They were released on bail to appear at the September term. He went before the grand jury and made oath that, to the best of his knowledge and belief, they were fishing with a shad gilling seine. By law no seine of a larger mesh than three inches is allowed below the falls at Trenton, between the tenth of June and the tenth of

July. Shad gilling seines have a mesh of five inches. Satisfied from his nearness to the net that it was of that description, but as he could not swear positively to the size of the mesh, the grand jury found no bill, and the supposed offenders escaped trial and possible punishment. Those fishing in his county being all non-residents, except at the Howell's two fisheries, he has not been able to ascertain their catch for the season. At Howell's two fisheries, employing 70 men, each seine 450 fathoms, the catch of shad the past season was 55,000, against 45,000 the season before; which excess may be assumed as typical of the increase at the other shore fisheries in the county. The same may be said of herring. At Howell's it was 18,000 in 1872 against 6,000 only in 1871, which was unusually poor. The tax paid by Howell's was \$130. That by the others not ascertained. James S. Hannab, Fish Warden of Salem county, reports three shore fisheries in Salem county, viz: at Helmo Cove, Carney Point and Salem Cove. They are fished by non-residents. He complains of their unwillingness to impart information, or the catch of fish the past season, and other statistics; much, however, may be found tabulated in first report.

One hundred and eighty-five shad gilling seines go out from Salem county. Average length of nets while fishing in the bay is 450 fathoms; when fishing higher up in the river they are reduced to about 325 fathoms. Total catch of these nets the past season was 250,000 shad. Price, about 20 cents. Cost of boat and seine, \$225. Number of drift herring nets not ascertained. The catch of herring was about 150,000. Price, \$5 per thousand.

Within his jurisdiction the regular sturgeon fishing is done by one person, who employs five nets and boats. Fishes from May 1st to August 15th. Total catch in that time, 2,250. Price, \$1 a piece. To this add 750 taken by shad fishermen (shad gill nets?) not to mention the large number caught by the shore nets. He complains of the great destruction of young fish at certain seasons of the year by the shore seines (small meshed summer nets.) He says that they haul them ashore by the thousand, where they are left to perish, and that the stench arising from them is a nuisance. That they should be required by law to restore them, when thus taken, at once to their native element. Some of the drift net men think gilling nets should be limited by law to 300 fathoms, but he is not prepared to say it is the opinion of the majority of them.

Till section 2d of the act of March, 1871, goes into effect, the small-meshed summer nets are allowed, while the eleven-inch sturgeon nets are prohibited, which should be reversed.

Representing the wishes of fishermen of Salem county, he expresses the hope that steps will be taken to have the question of jurisdiction over the waters of the Delaware fronting on Salem county, settled as speedily as possible.

Mr. James Logue, First Warden of Cumberland county, reports the number of gilling seines from his county to be 21. Average

- 2d. The entire abolition of fish-racks, weirs, and other fixed engines of destruction to the young fishes.
- 3d. The appointment of an efficient fish police.
- 4th. Arrangements made for the introduction of a valuable fish (the salmon) into our waters, without expense to the State.

Hoping that the work thus far done, and that contemplated, will meet with Your Excellency's most obedient servants,  
 Your Excellency's most obedient servants,

B. P. HOWELL, M. D., *Woodbury, N. J.*  
 J. E. SLACK, M. D., *Bloomsbury, N. J.*

length, 450 fathoms. Depth, 30 feet. Mesh, 5 inches. Average catch to the net the past season, about 1,000; being an increase of that for 1871, but under that of 1870. Price, the past year, about 35 cents. They commence fishing about the 18th of March.

In Cohansey creek are three regular shore fisheries. Average catch of each the past year, was about seven hundred shad. Ten or twelve gilling seines of thirty fathoms in length and twenty feet deep, and five-inch mesh. Outfit in boat and net, \$35 each. Average catch of shad each, four hundred. Price, thirty-five cents. Commence to fish about April 1st. There has been a yearly decrease of shad. Laws for their protection are greatly to be desired. Besides shad, there are large numbers of rock-fish, cat-fish and perch, taken by those seines. Two men to each boat. Cost of outfit, from \$25 to \$100.

During the past season no cases of infraction of the laws regulating fishing, applicable to his county, have come to his knowledge, nor a single shad exposed for sale out of season.

The acts which relate to the river within the concurrent jurisdiction of Pennsylvania and New Jersey, do not apply to Cumberland county, but they are approved of by the fishermen, and should be amended so as to be so applicable.

From the foregoing synopsis of the reports of the Fish Wardens, we have the gratifying intelligence that during the past season there have been comparatively but few instances of infraction of the fishing laws by citizens of our own State, and that there is a growing sentiment to the effect that these laws are proper and beneficial, and have their approval.

Until the visit of your Commissioners, in March, 1871, Delaware and New Jersey had never legislated in unison upon this subject—that our own acts had heretofore related almost solely to that portion of the river lying within the concurrent jurisdiction of Pennsylvania and New Jersey. Now that Delaware has legislated in conformity with this joint legislation of Pennsylvania and New Jersey, it remains for the latter to apply some further legislation, as well to that part of the river lying between her shores and those of Delaware.

With the prospect of a speedy and amicable settlement of the vexed question of jurisdiction with Delaware, it is hoped that the Legislature of Pennsylvania, at its ensuing session, will appoint Commissioners, when we will have the assurance that the three States will act in perfect accord in regard to the fishing interest of this noble river in its entire length.

In conclusion, your Commissioners would state that the following work has been accomplished:

1st. The enforcement of the previous existing fishing laws, which, until the past season, had been broken with impunity by the fishermen of our State.

New Jersey State Archives  
Commissioners of Fisheries Annual Reports  
1972

# REPORT

OF THE

CORRESPONDENCE BETWEEN

Govs. Parker and Bondar,

TO THE LEGISLATURE—SESSION OF 1873.



TRENTON, N. J.:

THE STATE GAZETTE—MURPHY & BECHTEL, BOOK AND JOB PRINTERS,

1873

## CORRESPONDENCE.

STATE OF NEW JERSEY, }  
EXECUTIVE DEPARTMENT, }  
TRENTON, May 9, 1872. }

*His Excellency James Ponder, Governor of the State of Delaware:*

SIR—I have received information that W. W. Prichett, a constable residing at Wilmington, in the State of Delaware, accompanied by an armed posse, on the second day of May instant, embarked on the steam-tug Falcon, proceeded to the eastern portion of the river Delaware, and there arrested twenty-two citizens of New Jersey, while engaged in the business of fishing, and carried them as prisoners to Delaware. I am further informed that the arrests were made by advice of the Attorney General of Delaware, under the claim that the place of arrest was within the jurisdiction of that State, and because the persons arrested were there pursuing this business without the license of Delaware.

I am aware that a grant by the State of Delaware to the United States of "Pea Patch Island" was, in the year 1848, decided by the arbitrator, chosen by the United States and Mr. Humphrey, to be valid. New Jersey was not a party to that litigation; nor was she represented by counsel. This State has never considered that the opinion of the arbitrator in that submission decided, even incidentally, the boundary and jurisdiction of the respective States. Neither before that opinion, nor since, until now, has Delaware made the practical claim, from the effects of which many respectable and industrious citizens of this State are suffering. This is the first time that an attempt has been made by the authorities of Delaware to interrupt the business of fishing on the eastern side of the river.

Being confident that the State of Delaware does not desire that proceedings, such as those herein complained of, should be continued any further than to assert her claim and put it in course of judicial determination; and this State being anxious to submit the question to the proper legal tribunal at as early a period as practicable, I trust that the authorities of Delaware will abstain from further attempts to practically enforce her claim of jurisdiction, until a decision of the Supreme Court of the United States shall settle the controversy.

Believing that the arrest of citizens of New Jersey, made as hereinbefore stated, was an infringement upon the rightful authority and jurisdiction of this State, I have issued a proclamation (a copy of which I herewith send you,) which, while it asserts the claim of New Jersey to jurisdiction over the eastern half of the Delaware river, and warns all persons to refrain from arresting any persons there without legal process from the proper authority in this State, and from molesting or disturbing

citizens there in pursuit of a lawful occupation, also calls upon all citizens of New Jersey to abstain from acts of violence.

Trusting that the spirit of comity which dictates this will so be met by your Excellency that the public peace may not be disturbed, and that the question may be submitted to judicial decision,

I am, very respectfully,

Your obedient servant,

JOEL PARKER.

STATE OF DELAWARE, }  
OFFICE SECRETARY OF STATE }  
DOVER, DEL., May 14, 1872. }

*His Excellency Joel Parker, Governor of the State of New Jersey:*

SIR—I am in receipt of your communication of the 9th inst., enclosing your proclamation in reference to fishing in the river Delaware.

The act of General Assembly of the State of Delaware, requiring all persons to procure license before engaging in the business of fishing in the Delaware river within the limits of this State, was passed in 1871, at the suggestion and request of the fish commissioners of New Jersey, Messrs. Howell and Slack, who attended the session of the legislature, bringing letters of introduction from your predecessor, ex-Governor Randolph. Anterior to this time, the legislature of New Jersey had passed an act more stringent in its provisions than our present law, and the said commissioners desired the passage of a similar enactment by the legislature of Delaware. But the committee to whom the matter was referred, differing from the said commissioners after several conferences, finally modified their bill to meet the approbation of all parties; and the said bill so modified, was afterwards enacted as our present law. The reasons which actuated the legislature in the passage of said act, were founded solely in a feeling of courtesy and amity to the State of New Jersey, and the act was passed for the purpose of aiding the propagation of certain fish which were fast becoming extinct. It is certainly, therefore, entirely unexpected, and much to be regretted that the controversy arising under this act should be between the States of New Jersey and Delaware, as to their respective powers over said waters. The State of Delaware does not regard the question as to her jurisdiction over the said river and bay, as claimed by her, as an open question. The jurisdiction thus claimed is exclusive over the waters of said river to low water mark, on the eastern side of said river, within the twelve mile circle from New Castle, and is regarded by said State as paramount to any which may be claimed by any other State. This opinion is founded not only upon the original grants, but also upon the decision made by the arbitrator in the case of the United States, concerning Pea Patch Island, to which you refer

in your communication. Whether New Jersey was or was not a party to that litigation, or whether or not she was represented by counsel, we apprehend, does not affect the principle, that the decision confirmed the title of the State of Delaware to the property in question as complete and valid.

The constitution of this State renders it obligatory upon the Governor that "he shall take care that the laws be faithfully executed." The act in regard to fishing in the Delaware waters being a law upon our statute book, I have no power, as the Executive of this State, to suspend its execution for an instant.

The spirit of comity which dictated your communication affords me much gratification, and I regret, exceedingly, that you did not commence the correspondence before issuing your proclamation. The rights of the State of Delaware are too well known for us to fear a judicial investigation, and her citizens can have no objection to a legal trial of the entire question, before the proper tribunal, for final adjudication and settlement. I would much prefer an amicable adjustment; but the constitution gives me no power to agree upon or appoint an arbitrator. Probably your Excellency can suggest some plan by which the affair can be arranged.

With the same spirit which dictated your communication, I would respectfully suggest that your Excellency advise the citizens of New Jersey to refrain from fishing in said waters, within the jurisdiction of the State of Delaware, unless they conform to the laws of this State, until the question of jurisdiction can be judicially determined.

I have not issued a counter proclamation, for the reason that it might be the means of stirring up contention and strife between the citizens of the neighboring States, when they should live in peace and harmony with each other, as they have in the past.

Hoping that the friendly relations heretofore existing between New Jersey and Delaware may long continue, and that the question may be settled in a satisfactory manner, at an early day,

I am, very respectfully,

Your obedient servant,

JAMES PONDER.

STATE OF NEW JERSEY, }  
EXECUTIVE DEPARTMENT, }  
TRENTON, May 22, 1872. }

*His Excellency James Ponder, Governor of the State of Delaware:*

Sir—Your reply to my letter of the 9th inst. has been received.

~~The communication of your Excellency claims that the State of Delaware has exclusive jurisdiction over the waters of the Delaware river to low water mark on the New Jersey side, within what is called the twelve mile circle. In other words, it is~~



insisted that the State of Delaware has such title to the territory, embracing some twenty-four miles in length of the river, as to exclude the people of New Jersey from fishing on the eastern side thereof, unless they obtain the permission of Delaware.

The State of New Jersey denies that Delaware has jurisdiction over any part of the waters of the river east of the middle line, and insists that her citizens have the legal right to fish on the New Jersey side of the river without the license of Delaware, either within or without the so-called circle. The question involved is one of great importance, and I agree with your Excellency that it should be settled at an early day.

It seems that the State of Delaware bases her claim to exclusive jurisdiction over the waters of the river within the twelve mile circle upon the decision of the arbitrator in the Pea Patch case, and also upon the original grants. As the communication of your Excellency emphatically states these two grounds of confidence in the claim of Delaware, it is proper that I should briefly notice them.

The submission in the Pea Patch case was between the Secretary of War, acting for the United States, and James Humphrey, and the question submitted was whether the United States or Mr. Humphrey had title to the land of that island.

The award in that case has never been considered authority binding on any but the parties to the submission.

In his decision, the arbitrator states that "he is fully aware that his opinion is of no authority whatever, except for the single purpose as to which the agreement of the parties has made it conclusive, that is, the question of title *between them*."

The award, therefore, does not amount to judicial authority, and is only the opinion of an able lawyer antagonistic to the opinions of other able lawyers contemporaneous with the arbitrator, and in conflict with the charge of Judge Baldwin, in a case tried in the United States Circuit Court involving the same question. It certainly cannot conclude either Delaware or New Jersey on the question of jurisdiction. The disputed jurisdiction of States can be settled only by treaty, or by the decision of the Supreme Court of the United States.

Even if the award in the Pea Patch case be considered judicial authority, it does not decide the question of the right of the respective States to *jurisdiction upon the waters* of the Delaware.

The opinion of the arbitrator only determined the *title to land not covered by water*. The question raised by the arrest of which New Jersey complains, relates not to title to land which is *jus-privatum*, but to jurisdiction on navigable waters, which is *jus-publicum*.

The further claim of the State of Delaware to jurisdiction over the waters of the river within the twelve mile circle up to the Jersey shore, is founded on the ancient grants. A careful examination of these has led me to a conclusion different from that of your Excellency.

her citizens that had been made, and also as a means of preventing breaches of the peace, by giving assurance to those immediately interested that the controversy would be settled amicably by legal action.

I have considered the suggestion made by your Excellency to issue a proclamation, requesting citizens of this State to cease fishing on the waters on the New Jersey side of the river pending the decision of the legal question of jurisdiction, and after reflection, I have concluded that it would be so disastrous to the livelihood of a large class of men who depend on the occupation of fishing for subsistence, and so abruptly deny them a public right which they and their ancestors have enjoyed for two centuries, that it would be neither just nor wise to take that course. It appears to me that the jurisdiction of Delaware, as now claimed, but in no wise asserted, over the locality in question, by her law of 1871, should not be insisted upon in such a way as to produce these consequences. In my former communication, I did not intend to suggest that the Governor of a State had power to suspend a law, for it appears to me that the question was simply whether the Delaware authorities might not, pending a legal controversy, allow a question of jurisdiction, which her law of 1871 does not assert, to remain practically as it was found by that law. I regret, exceedingly, that notice was not given the authorities of this State, soon after the passage of the law of 1871, that Delaware would claim to enforce its provisions on the eastern side of the river, within the twelve mile circle, so that the question could have been decided before the commencement of the fishing season of 1872, and thus the arrest of industrious and peaceable citizens, and the interruption of their business, have been avoided.

It is to be regretted that the legislature of our States are not in session, so that commissions to negotiate and settle the whole question might be authorized. But as this cannot now be done, I am much gratified with your ready acquiescence in the proposition to submit it to judicial decision. The mode of such submission can doubtless be arranged by the law officers of the respective States, and I will at once refer that part of the communication of your Excellency to the Attorney General of this State. I suppose a case can be made, and the facts agreed upon.

I join your Excellency in the hope that the question may soon be settled in a satisfactory manner, and that the friendly relations which have always existed between the States of Delaware and New Jersey may continue uninterrupted.

Very respectfully,

Your obedient servant,

JOEL PARKER.

## FISHERIES.

The Commissioners of Fisheries recommend that laws be passed to prevent the taking of fish by poison, the explosion of cartridges of giant-powder, or by any other engine of destruction, and recognizing the seine, line, and spear as the only lawful modes of taking fish from the waters of this State.

A quarter of a million of salmon spawn have been procured without expense to the State, for the purpose of stocking our rivers with that delicious fish. It is believed that salmon will thrive in our waters. They are more vigorous and less timid than shad, and the dams which cross many of our rivers will not be an insurmountable obstacle to their ascending the stream.

Experiments in other States prove that rivers can be replenished with shad by means of artificial propagation. On the fourth day of April last the Legislature of this State passed an act appropriating the sum of three thousand dollars for the purpose of propagating shad in the river Delaware, to be expended under the direction of the Commissioners of Fisheries, provided the Legislature of the State of Pennsylvania should appropriate a like sum for the same object. Pennsylvania having failed to pass a similar law the money has not been drawn. The increase of this valuable fish, even to the number formerly found in that river, would cheapen food and give employment to thousands of our people.

During the last fishing season the fish-wardens were zealous in the discharge of their duties. Through their exertions fish-baskets, rocks, brush-weirs, and other fixed means of catching fish have almost disappeared from this side of the river. They report the catch of fish larger than that of the previous year. They found very little opposition to the fishing laws among our own people, but some were resisted in the execution of those laws by a few residents of Philadelphia, who with violence assailed the officers sent to arrest them. Efforts have been made to bring to justice the guilty parties.

It is hoped that the Legislature of Pennsylvania will, at its present session, pass such laws as will aid New Jersey in protecting and augmenting the common fishing interest of the two States in the Delaware. As the city of Philadelphia is the market to which nearly all the fish caught in that river are taken, it would seem to be the true policy of her people to use their influence to have an efficient code of fishing laws in each bordering State.

In the month of May last I received information that twenty-two citizens of New Jersey, while engaged in fishing in the river Delaware east of the middle thereof and nearly opposite

the boundary line of the counties of Salem and Gloucester, were arrested and taken as prisoners out of this State. Upon obtaining an authentic statement of the facts from the fish commissioner, who resides in the southern part of the State, from which it appeared that the fishermen were arrested by persons claiming to be officers acting under authority of laws of the State of Delaware, and that they were arraigned before a magistrate in the city of Wilmington charged with the violation of the fishing law of Delaware, by fishing in the locality before mentioned without the license of that State, I issued a proclamation claiming for the State of New Jersey jurisdiction over the river east of the middle line, declaring that persons conforming to the fishing laws of this State have the right to fish there; and warning all persons not to arrest any citizen of New Jersey within her jurisdiction unless by virtue of her lawful process. This prompt action by proclamation was taken because the arrests had interrupted and threatened to destroy the business of a large number of our citizens who were accustomed to pursue the avocation of fishing in that part of the river, and whose livelihood depended upon their uninterrupted enjoyment of the fishing season. Otherwise I would have opened a correspondence with His Excellency the Governor of the State of Delaware before issuing a proclamation.

On the day that my proclamation issued I wrote to the Governor of Delaware and enclosed a copy. A correspondence followed, which with my proclamation before referred to, are herewith submitted. It will be seen that His Excellency Governor Ponder claims for his State exclusive and paramount jurisdiction over the waters of the Delaware river to low water mark on the eastern side, within a circle, the radius of which is twelve miles as measured from New Castle as a centre, and also the right to demand and collect a license fee for fishing therein. My absolute denial of the legality of this claim and the reasons given to sustain the position taken in my proclamation, are fully stated in the correspondence.

It is not my purpose, nor would it be proper under the circumstances, to discuss in this communication to the Legislature the questions at issue. Subsequent to the correspondence and growing out of the same, I had a conference with His Excellency, the Governor of Delaware, at which the Attorney Generals of both the States were present, and which, after a free interchange of views, resulted in an agreement that no further arrests should be made under the fishing law of Delaware east of the middle of the river, and that we would recommend to the Legislatures of our respective States the appointment of commissioners to agree what the jurisdiction of each State

should be in the Delaware, the soil and islands thereof, and the right of each to the products thereof, the same to be valid if confirmed by the States. I therefore recommend that an act be passed as speedily as possible, providing for the appointment of three commissioners on the part of the State of New Jersey to meet a similar commission to be appointed on the part of the State of Delaware, for the purpose aforesaid. It is hoped that a settlement of the question will soon be consummated, in a manner satisfactory to the people of both States, and that the friendly relations that have always existed between them will be continued.

#### CONSTITUTIONAL AMENDMENTS.

The present constitution of the State of New Jersey was adopted nearly thirty years ago. The convention by which it was framed was composed of able men, among whom were many distinguished jurists, and the work which came from their hands was thought to be as good as human wisdom could devise; but experience proves that with increasing population, wealth and enterprise, and with new subjects of legislation constantly arising, some amendments to our organic law are needed.

It will be admitted by all reflecting persons that there should be such radical reform in our system of legislation as cannot be secured under the present constitution. The necessity of providing every possible safeguard to secure the Legislature against imposition is obvious, if we consider that when an act has been certified as passed, by the signature of the presiding officers of each House, approved by the Governor and filed in the office of the Secretary of State, it becomes law, the exemplification of which under the Great Seal of the State is conclusive evidence as to its existence and contents, and that no evidence to prove that the act signed varies from the act voted upon is admissible in a court of law. So important are the interests affected by legislation, that in view of the decision of our Supreme Court on the subject we owe it to the public and to the fair fame of the State that such constitutional checks should be provided as will prevent the possibility of fraud or interpolation.

Haste in legislation is a great evil which requires correction. The brief session to which the Legislature is now virtually limited by the constitution, does not give opportunity for the proper consideration of the business which under the present system is brought before it. If all bills were presented on the first day of the session this time would scarcely suffice, but a large majority are introduced at so late a period that it is impossible even to read them with the deliberation necessary to a full

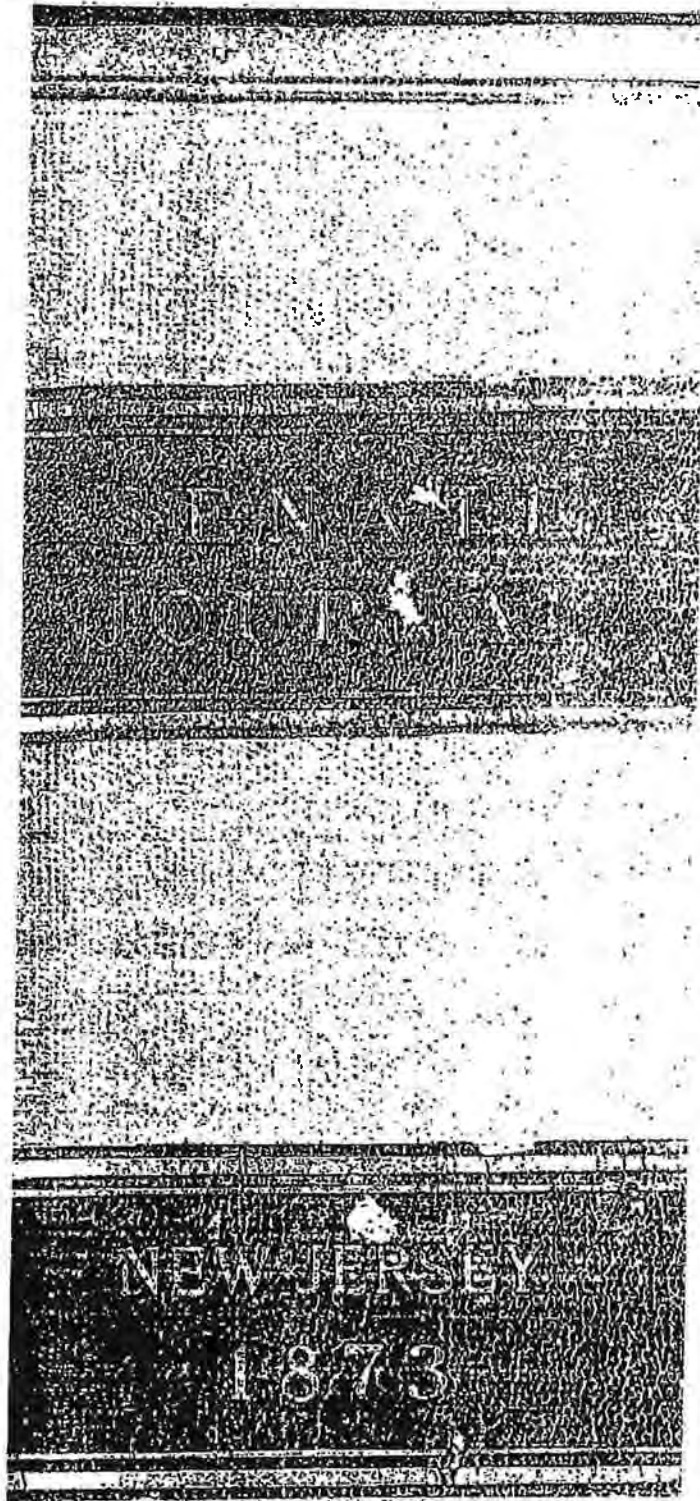
knowledge of their contents, much less to discuss their provisions. That part of our constitution which limits the pay of members of the Legislature to a mere pittance after the period of thirty days is unwise as well as a standing imputation upon the honor of the representatives of the people in every Legislature that assembles under it. It should be stricken out and a reasonable annual salary paid, without limit as to the duration of the session. If legislation be necessary, sufficient time to deliberate and act understandingly should be given. Either the session should be longer or the business less.

But this is not the only or the most important change required to prevent hasty legislation. Other amendments to the constitution may be made that will enable the Legislature thoroughly to examine and discuss every measure brought before it, without extending the session beyond the period heretofore usual in this State. The constitution should require general laws, and forbid the enactment of all special or private laws embracing subjects where general laws can be made applicable. This would dispense with at least nine-tenths of the business brought before the Legislature under the present system. The general public laws passed at the last session are contained in about one hundred pages of the printed volume, while the special and private laws occupy over twelve hundred and fifty pages of the same book. If made comprehensive and liberal, why should not cities, towns, corporations of all kinds, and associations of individuals organize and act under general laws? Those heretofore passed in this State have not answered the desired object because the constitution permits special legislation on the same subjects, and so long as this is permitted there will be those who will seek such legislation.

Should it be deemed advisable not to provide for general laws, haste in legislation could be prevented by a constitutional amendment requiring the preamble of every private or special bill containing the substance of its important provisions to be published, and the bill itself filed in the office of the Secretary of State, for public information on or before the first day of the session; and providing further that if a bill pass without these requirements having been observed, it shall be held void, and of no effect by any court of competent jurisdiction before which its validity shall be questioned, upon certificate of the Secretary of State that the same was not filed as above stated in his office. This would give employment to the Legislature at the commencement of the session, enable each member to inform himself of the contents and ascertain the merits of each bill before being called upon to vote upon it, and prevent the sudden

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Senate Journal - Governor's Annual Address  
January 14, 1875





ALEX  
DOCLAW

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A further supplement to the act entitled "An act for the better enforcement in Maurice river cove and Delaware bay of the act entitled 'An act for the preservation of clams and oysters,'" approved April 14, 1846, and of the supplements thereto,

Senate bill, No. 120, entitled

A further supplement to an act entitled "An act to regulate fees," revision approved April 16, 1846,

And delivered the following bill which originated in the Senate to the Secretary of State, to be filed in his office without my signature, viz :

Senate bill, No. 74, entitled

An act to establish districts courts in the city of Newark.

JOEL PARKER.

The following communication was also received from His Excellency, the Governor, by the hands of his Private Secretary:

EXECUTIVE DEPARTMENT,  
STATE OF NEW JERSEY,  
TRENTON, March 5, 1873. }

*To the Legislature :*

Since the passage of the act entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware," approved by me February 26, 1873,

I have received a copy of joint resolutions passed by the Legislature of Delaware, on the 30th day of January, 1873, and also, a copy of a supplementary joint resolution, passed on the 14th day of February, 1873,

The latter is amendatory of the former resolutions.

It will be seen by these joint resolutions, that the Legislature of Delaware, have not invested the commissioners on the part of that State with powers as broad as those with which our commissioners are clothed.

On account of the restrictions imposed upon the commissioners of Delaware, by the joint resolutions referred to (copies of which are herewith transmitted), and the doubt which exists as to the propriety under our act of the commissioners from New Jersey, entering upon negotiations in reference to only a part of the subject matter of difference, additional legislation on your part is necessary.



The important practical question which interests most of our citizens is the right of fishing in the river Delaware, its nature and extent, and I trust you will pass as speedily as possible a supplementary act, that will enable our commissioners to convene with those of Delaware to negotiate upon that question before the fishing season commences,

JOEL PARKER.

The communication was read and referred to the special committee having said subject under consideration, together with the accompanying joint resolutions, passed by the Legislature of the State of Delaware, viz.:

Joint Resolution with respect to the subject of difference between the State of New Jersey and this State.

WHEREAS, It appears by the message of His Excellency, the Governor, and the documents accompanying the same, that the State of New Jersey makes claim for her citizens of the right to fish in that part of the waters of the Delaware within the limits of the "twelve mile circle," and eastward of the channel of said river, thus denying the exclusive jurisdiction of this State over the said water within the said circle, a jurisdiction never doubted in Delaware, nor questioned elsewhere with confidence until now, so far as this General Assembly is informed;

AND WHEREAS, It is important that the said question should be at once settled, so that there shall be no conflict of claim hereafter; therefore;

*Be it resolved, by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the whole subject of controversy be submitted to the decision of six commissioners, three to be appointed by the Legislature of each State, and that their decision shall be final.*

*Resolved, That said decision shall be submitted in writing, upon parchment, under the hands of the said commissioners, to this Legislature, and to that of the State of New Jersey, and be entered upon the journal of each House of the General Assembly of each State, as a perpetual memorial of the end of the aforesaid controversy, and that a similar certificate be made and delivered to the Governor of each State, to be placed among the executive archives; and further, that each State, through its Governor, make proclamation for six months in the newspapers printed within its borders, of the aforesaid decision—to the end that full public information thereof may be given.*

*Resolved, That Joseph P. Comegys, of Kent county, William*

G. Whitely, of New Castle county, and Edward L. Martin, of Sussex county, be appointed commissioners upon the part of this State for the purpose aforesaid; that they be at once notified by the Speaker of the Senate of such—their appointment; and in case at the end of five days from such notice, either of them has not accepted said appointment, another from the same county be appointed in his place.

*Resolved*, That a copy of the foregoing preamble and resolutions, duly certified, be forwarded by the Governor to the Governor of New Jersey, with the request, that they be laid before the Legislature of that State; it being the wish of this Legislature that the aforesaid controversy shall be settled during the present session of the Legislature of each State.

*Resolved*, That, the said commissioners shall each receive for his services hereunder the sum of five hundred dollars, to be paid by the State Treasurer, on the certificate of the Speaker of the Senate that the said services have been performed.

Adopted at Dover, January 30, 1873, amended February 19, 1873.

ALLEN VOORHEES LESLEY,  
*Speaker of the Senate.*

JOSEPH BURCHONAL,  
*Speaker House of Representatives.*

#### EXECUTIVE DEPARTMENT.

I, John H. Paynter, Secretary of the State of Delaware, do hereby certify that the above and foregoing is a true copy of the preamble and resolutions entitled "Joint Resolution with respect to the subject of difference between the State of New Jersey and this State," adopted at Dover, January 30, 1873, and amended February 19, 1873, the same having been compared by me with the original roll now on file in this office.

In testimony whereof, I have hereunto set my hand and official seal, at Dover, this 24th day of February, A. D. 1873.  
[L. S.] one thousand eight hundred and seventy-three.

JOHN H. PAYNTER,  
*Secretary of State.*

(2)

To avoid all questions on debate, as to the extent of the powers conferred upon the commissioners appointed by this State, under the resolutions adopted on the 30th day of January

last, and on those to be appointed by the State of New Jersey according to the suggestions herein.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That no question was intended to be submitted by the said resolutions respecting the title of this State to the river Delaware and the soil thereof within the limits of the "twelve mile circle," but only whether notwithstanding such title, the citizens of New Jersey have the right to fish in said river within that circle, and if so, the nature and extent of that right, and the said commissioners are to consider that no other question but that here mentioned is submitted in them; this State refusing to allow her aforesaid title to be drawn in question by said commissioners, or in any other manner.

*Resolved,* That a copy of the foregoing, duly certified, be forwarded by the Governor, to the Governor of New Jersey.

Adopted at Dover, February 14, 1873.

ALLEN VOORHEES LESLEY,

*Speaker of the Senate.*

JOSEPH BURCHENAL,

*Speaker of the House of Representatives.*

EXECUTIVE DEPARTMENT.

I, John H. Paynter, Secretary of State of the State of Delaware, do hereby certify that the above foregoing is a true copy of the resolutions entitled "Joint resolutions supplemental to those passed on the 30th of January last, respecting the fishing question with New Jersey," adopted February 14, 1873, the same having been compared by me with the original roll now on file in this office.

In testimony whereof I have hereunto set my hand and official seal at Dover, this 26th day of February, A. D., one thousand eight hundred and seventy-three.

JOHN H. PAYNTER,

*Secretary of State.*

Assembly bill, No. 66, entitled

An act to restore Ezekiel M. Pritchard, Thomas Edmondson, Frederick A. Goetz, Thomas A. Gross, Isaiah J. Hutton and Edward L. McWilliams to the rights of suffrage and other rights,

Was read for the first time by its title, ordered to have a



OF THE GENERAL POLICE.

SECTION 22. All acts and parts of acts inconsistent herewith are hereby repealed. Inconsistent acts repealed.

SECTION 23. That this act shall go into effect on the first day of September, A. D. 1873, and that persons keeping inns or taverns, or restaurants, whose license expire before the sitting of the Court of General Sessions of the Peace and Jail Delivery in the respective counties of the State in the months of October and November, A. D. 1873, and persons desiring to keep inns or taverns, or restaurants, shall have the right to obtain a fractional license under the present law, which shall expire at the time of the sitting of the court aforesaid. Act to go into effect 1st of September, A. D. 1873. Fractional licenses.

Passed at Dover, April 10, 1873.

*Handwritten notes:*  
New Section 23 - 1873  
April 10, 1873

CHAPTER 419.

FOR THE PROTECTION OF FISH, OYSTERS AND GAME

A Supplement to the act entitled, "An Act for the Protection of Fishermen." Current volume 84.

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

SECTION 1. That it shall be unlawful for any person not being a citizen of this State, under this act, to use more than three hundred fathoms of gill-net or seine, and any person who may violate this section shall be deemed guilty of a misdemeanor, and shall pay to the State a fine of twenty-five dollars for every such violation. Non-resident not to use more than 300 fathom of seine. Misdemeanor. Fine.

SECTION 2. That the Governor be and he is hereby authorized to appoint five commissioners, who shall be appointed in and for and shall reside in the County of New Castle, in the towns of Port Penn, Delaware City, New Castle, Wilmington and Claymont, one in each place; and the appointment shall be made and vacancies filled by the Governor for and during the period of two years. The said commissioners are hereby authorized and required to take cognizance of all violations of the act to which this is a supplement, to arrest any and every offender against the aforesaid law, to seize and detain the boat or boats of said Commissioners. Appointment made and vacancies filled by Governor. Duties of commissioners.

## OF THE GENERAL POLICE.

offender, and are hereby invested with all the powers, privileges and remunerations of the sheriff and constables enumerated in the act aforesaid.

Section 9.  
Chapter 72.  
Volume 11.  
amended. SECTION 3. That section nine be amended by striking out, in the fifth line, the word "sunset" and inserting in lieu thereof the word "eight."

SECTION 4. That section two (2) and section five (5) be stricken out of the bill to which this [is] a supplement.

*Passed at Dover, February 19, 1873.*

## CHAPTER 420.

## FOR THE PROTECTION OF TERRAPINS.

Vol. 13-415. AN ACT to amend an act entitled, "An act for the Protection of Terrapin in Indian River and Rehoboth Bay and waters adjacent thereto."

Section 1.  
Chap. 45.  
Volume 13.  
amended. SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That chapter four hundred and thirty-five, volume thirteen of the laws of the State of Delaware, passed at Dover, March 16, 1869, be and the same is hereby amended in the first section thereof by inserting, after the words "dispose of" and before the word "any," in the fifth line of said section, the following words: "or any person or persons buying or receiving;" and by striking out the word "four," in the seventh line of said section, and inserting in lieu thereof the word "six;" and by striking out the word "four," in the tenth line of said section, and inserting in lieu thereof the word "six;" and also by striking out the word "ten," in the fourteenth line of said first section, and inserting in lieu thereof the word "fifteen."

*Passed at Dover, April 8, 1873.*

Antonio O. Gonzales,  
 Thomas P. Okie, Jr.,  
 John White,  
 Charles T. Henry,  
 William M. Berger,  
 Lucius W. How,  
 Albert Van Wagner,  
 Frederick R. Anderson,  
 William H. Meeks,  
 A. D. Mellick, Jr.,  
 Ludwig R. Miller,  
 George W. Browns,  
 Arthur W. Knapp,  
 Washington I. Jacques,  
 Andrew W. Keut,  
 Henry Schmidt,  
 Francis P. Burke.

## TENNESSEE.

R. Dudley Frazer.

## VIRGINIA.

Hill Carter.

## PENNSYLVANIA.

Edward D. Ledyard,  
 Henry Reed,  
 Charles P. Clarke,  
 Robert P. D. Ebert,  
 Asa J. Fish,  
 Charles F. Orson.

[L. S.]

Attest:

JOHN A. HALL,

*Private Secretary.*

Mr. Irick moved that the rules be suspended, which requires nominations to be referred to the Judiciary Committee.

Which motion was agreed to.

Upon the question, will the Senate advise and consent to the foregoing nominations? the yeas and nays were ordered, yeas and resulted as follows:

In the affirmative, were

Messrs. Banghart, Beesley, Cutler, Edsall, Havens, Hendrickson, Hewitt, Hopkins, Irick, Jarrard, MacPherson, Moore, Newkirk, Sheppard, Stone, Taylor. (President), Williams, Wood—18.

In the negative—none.

On motion of Mr. Williams, the Executive Session then arose.

THURSDAY, February 27, 1873.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Banghart, Cornish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Sewall, Stone, Taylor. (President), Williams, Wood—16.

The President laid before the Senate a sealed communication from the Governor, endorsed "nominations."

Mr. Williams moved that the seal of said communication be broken by the President, and that it be read by the Secretary. Which was agreed to.

And the Secretary read as follows:

STATE OF NEW JERSEY,  
 EXECUTIVE CHAMBER,  
 TRENTON, February 27, 1873.

HON. JOHN W. TAYLOR, *President of the Senate:*

Sir:—I hereby nominate for appointment, with the advice and consent of the Senate,

For Major General of Militia, Gershon Mott, of the county of Burlington, in place of General Theodore Banyon, resigned. For Commissioners to negotiate and agree respecting the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,

Abraham Browning, of the county of Camden,  
 Cordlandt Parker, " " Essex,  
 Albert H. Slape, " " Salem.

For Judge of the Court of Errors and Appeals,

Caleb S. Green, of the county of Mercer, for the unexpired term of Charles S. Olden, resigned.

For Prosecutor of the Pleas for the county of Atlantic,

Albert H. Slaps.

For Prosecutor of the Pleas for the county of Cape May,

James H. Hoagland.

For Commissioner of Sinking Fund,

Barker Gummers, of the county of Mercer, (now filling unexpired term of Charles S. Olden,) for full term, to commence April 8, 1873.

For Trustees of the Normal School,

First District—Richard M. Acton, of the county of Salem,  
Second District—Thomas D. Armstrong, of the county of Burlington.

Third District—Robert Allen, Jr., of the county of Monmouth.

Fourth District—Bynear H. Veghter, of the county of Somerset.

Fifth District—John M. Hows, of the county of Passaic.

Sixth District—William A. Whitehead, two years; William H. Steele, one year.

Seventh District—Charles K. Imbrie.

For Visitors of the Agricultural College,

First District—Chalkley Albertson, of the county of Camden, to succeed James Mecum, who declines a re-nomination; term to commence 3d of April, A. D., 1873.

Second District—William E. MacIlvaine, of the county of Mercer.

Third District—William A. Newell, of the county of Monmouth, for unexpired term of James Bishop, resigned.

Henry B. How, of the county of Middlesex, to succeed William H. Hendrickson, who declines re-nomination; term to commence April 8d, 1873.

Fourth District—William H. Janeway, of the county of Somerset.

Seventh District—Abraham H. Duryee, Peter Hendrickson.

For Commissioners of Pilotage,

David Cox, of the county of Hudson, re-appointed; George W. Johnson, of the county of Monmouth, (now filling vacancy in place of Charles S. Boggs, resigned, for full term.

For Harbor Master for Elizabeth and Elizabeth Creek,

John F. Bonnell, of the county of Union, re-appointed.

For Commissioners to take acknowledgment and proof of deeds in other States,

Edward J. Jones—Massachusetts,

David E. Swan—New York.

[L. S.] Signed,

JOEL PARREER.

Attest:

JOHN A. HALL,

Private Secretary.

Mr. Williams moved that the usual reference be dispensed with, and action be taken on all the foregoing nominations at once,

Which motion was agreed to.

Upon the question; will the Senate advise and consent to the nomination of Gershon Mott, of Burlington county, for Major-General of Militia? the yeas and nays were taken with the following result:

In the affirmative, were

Messrs. Banghart, Cornish, Outler, Edsall, Havens, Hendrickson, son, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Wood, Sewell, Stone, Taylor, (President), Williams, Wood—16.

In the negative—none.

Upon the question, will the Senate advise and consent to the foregoing nominations for Commissioners to negotiate and agree respecting the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware? the yeas and nays were taken with the following result:

In the affirmative, were

Messrs. Banghart, Cornish, Outler, Edsall, Havens, Hendrickson, Hewitt, Irick, Jarrard, Lydecker, MacPherson, Sewell, Taylor (President), Williams, Wood—15.

In the negative—none.

Upon the question, will the Senate advise and consent to the nomination of Caleb S. Green, of the county of Mercer, for Judge of the Court of Errors and Appeals? the yeas and nays were taken, with the following result:



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Senate Journal  
Feb. 27, 1873

DE02825



Mr. Moore presented a communication from George H. Cook, secretary of the State Board of Agriculture, inviting the members of the Senate to attend a meeting of the said board in the Assembly Chamber this evening.

Which was read and the invitation accepted.

Mr. Hopkins, of the special Committee relative to the boundaries between the States of New Jersey and Delaware, reported by introducing

Senate bill, No. 386, entitled

A supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,

Which was read for the first time by its title, ordered to have a second reading, and to be printed without reference.

Mr. Stone, (for the President) on leave, introduced

Senate bill, No. 337, entitled

A further supplement to the act entitled "An act constituting a public road board for laying out, constructing, appropriating, improving and maintaining public carriage roads in the county of Essex," approved March 31, 1869.

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

The same Senator, (for the President), on leave, introduced

Senate bill, No. 338, entitled

An act to authorize the election of commissioners of streets, avenues and public squares, in the township of Caldwell, county of Essex,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

Mr. Hopkins, Chairman of the Committee on Railroads, Canals and Turnpikes, reported

Assembly bill, No. 65, entitled

An act to incorporate the North and South Jersey Railway Company,

Assembly bill, No. 107, entitled

WEDNESDAY, MARCH 5, 1873.

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An act to incorporate the North Elizabeth Horse Railroad Company,

Both with amendments.

The amendments made by the committee to

Assembly bill, No. 171, entitled

An act to authorize Benjamin Fish and George S. Green, to construct a railroad track in the city of Trenton,

Were read, concurred in, and ordered to be engrossed, and the bill to have a third reading.

Assembly bill, No. 177, entitled

An act for the instruction and maintenance of indigent deaf and dumb, blind and feeble-minded persons, inhabitants of this State,

Was taken up, read a second time, considered by sections agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

Messrs. Beesley, Cornish, Cutler, Edsall, Havens, Hendrickson, Hewitt, Jarrard, MacPherson, Moore, Newbirk, Sewell, Sheppard, Stone, Taylor (President), Wood—18.

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same without amendment.

Assembly bill, No. 198, entitled

An act to incorporate the Hoboken Widow and Orphans' Aid Association,

Was taken up, read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

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DE02827

Senate bill, No. 48, entitled

An act to incorporate the New Egypt and Whittings Railroad Company.

Also, the amendments made in the Senate to the following bills:

Assembly bill, No. 171, entitled

An act to authorize Benjamin Fish and George S. Green to construct a railroad track in the city of Trenton,

Assembly bill, No. 198, entitled

An act to incorporate the Newton Land Company,

Severally as corrected engrossed.

Senate bill, No. 386, entitled

A supplement to an act approved February 26, 1873, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,"

Was taken up and read a third time.

Upon the question, shall this engrossed bill pass? it was decided as follows:

In the affirmative, were

Messrs. Cudler, Edsall, Havens, Hendrickson, Hewitt, Hopkins, Jarrard, Lydecker, MacPherson, Moore, Newkirk, Sewell, Sheppard, Stone, Taylor (President), Williams, Wood—17.

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same, and requested their concurrence therein.

Mr. Havens, Chairman of the Committee on Miscellaneous Corporations, reported

Assembly bill, No. 422, entitled

An act to incorporate the Star Pottery Company,

Without amendment.

Mr. Stone, Chairman of the Committee on Revision and Amendment of the Laws, reported

Senate bill, No. 840, entitled

A further supplement to the act entitled "An act to facilitate

Judicial proceedings in the county of Union," approved February 25, 1867,

Senate bill, No. 844, entitled

A supplement to the act entitled "An act for the better securing the property of married women,"

Both without amendment.

And Assembly bill, No. 170, entitled

A supplement to act entitled "An act for the better preservation of the early records of the State of New Jersey," approved April 6, 1871,

With amendment,

Assembly bill, No. 320, entitled

An act for the relief of Anna Butler,

Was taken up and read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

Messrs. Beesley, Cudler, Havens, Hendrickson, Hewitt, Hopkins, Lydecker, MacPherson, Moore, Newkirk, Sewell, Sheppard, Stone, Taylor (President), Williams, Wood—18.

In the negative—none.

Under the direction of the President, the Secretary carried said bill to the House of Assembly, and informed them that the Senate had passed the same without amendment.

Assembly bill, No. 340, entitled:

An act to incorporate the New Jersey Spring and Manufacturing Works,

Was taken up and read a second time, considered by sections, agreed to, and ordered to have a third reading.

Under a suspension of the rules, said bill was taken up and read a third time.

Upon the question, shall this Assembly bill pass? it was decided as follows:

In the affirmative, were

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Senate Journal  
March 10, 1873

DE02831

*Mr. President*—I have this day approved and signed the following bills, which originated in the Senate, and have delivered the same to the Secretary of State to be filed in his office:

Senate bill, No. 59, entitled

An act to incorporate the National State Trust Company of New Jersey,

Senate bill, No. 80, entitled

An act to extend the charter of the Cape Island Gas Company,

Senate bill, No. 98, entitled

A further supplement to the act entitled "An act to create a new township in the county of Union, to be called the township of Cranford," approved March 14, 1871,

Senate bill, No. 107, entitled

An act to incorporate the Public Hall Association of the city of Rahway,

Senate bill, No. 109, entitled

An act to incorporate the Long Branch Association,

Senate bill, No. 110, entitled

An act to incorporate the Toms River Cranberry and Fruit Company,

Senate bill, No. 173, entitled

An act to incorporate the Sisters of Charity of St. Elizabeth,

Senate bill, No. 174, entitled

Supplement to an act entitled "An act to incorporate the Hospital of Saint Barnabas," approved February 18, 1867,

Senate bill, No. 175, entitled

An act to prevent the cancellation of lost mortgages,

Senate bill, No. 176, entitled

A further supplement to an act entitled "An act to facilitate entries of satisfaction on the records of judgments," approved April 20, 1890,

Senate bill, No. 184, entitled

A supplement to the act entitled "An act to complete the geological survey of this State," approved March 30, 1884,

Senate bill, No. 246, entitled

An act to repeal an act entitled "An act to divide Deerfield township, in the county of Cumberland, into four road districts,

and to provide for raising money, and for the election of overseers in the same,

Senate bill, No. 336, entitled

A supplement to the act approved February twenty-sixth, one thousand eight hundred and seventy-three, entitled "An act for the settlement of the territorial limits and jurisdiction of the State of New Jersey and the State of Delaware,"

Senate bill, No. 94, entitled

An act to incorporate "The New Brunswick and Elizabeth Railroad Company,"

JOEL PARKER,

Mr. Hopkins, on leave, introduced

Senate joint resolution, No. 2, entitled

Joint resolution in relation to reports made to the Governor and Legislature for the fiscal year ending October 31, 1872,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Miscellaneous Business.

Mr. Stone, on leave, introduced

Senate bill, No. 355, entitled

An act for altering the seat of government in this State.

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on the Revision of the Laws.

Mr. Jarrard, on leave, introduced

Senate bill, No. 356, entitled

A further supplement to an act entitled "An act concerning taxes," approved April 14, 1846,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Finance.

The same Senator, on leave, introduced

Senate bill, No. 357, entitled

An act authorizing the inhabitants of the township of Wood-bridge, in the county of Middlesex, to purchase land and erect a town hall, and to issue bonds therefor,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Municipal Corporations.

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Senate Journal  
March 12, 1873





State of New Jersey

Attorney General's Office.

Jersey City  
Trenton Oct 2

1873

My dear Sir

I caught sight in the street yesterday of your son; & suppose that his return has been so prompt that he did not receive the letter which I wrote to you suggesting what might be procured in London.

I am sure that a thorough investigation of the Penn title will show that he had no claim as against the crown to the government of Delaware.

This alone is enough to put our title to the middle of the Delaware by revolution of 76.

But I think Penn had no title to the soil as against the Delaware crown & of course none to the soil of the River.

Mr Clement's investigations as far as I have seen their result go to the one point that if the circle was not a complete one as intended to be described in the deed to Penn from Duke of York; - but whether the circular line went into the river or not his investigations do not determine.

Yours (w)

MG 399 1/4 Wayne letter Oct. 2, 1873 #1

must rely on the invalidity of the supposed  
grant of Charles II to Duke of York which  
Bergant put the Pea patch case upon

We cannot establish the invalidity it seems  
to me without a most thorough search  
in England.

I regret you son did not get  
the letter I sent to you

I have had a  
talk with Holborn on several times  
about the investigations conducted in  
London

He knows a good deal about  
Colonial history & has taken a good  
deal of interest in the case & has looked into  
the "State of the Divertion" pretty well.

He has satisfied me that  
the expense of staying in London need  
not be very great. It has struck me  
that he might be relied on to make  
the investigation.

It would be an exceedingly  
good thing for the state if the investigation  
could be made promptly.

Your reputation  
that of Economy & Slavery are

M67 399 1/4 Wayne Letter Oct 3 1873#2

certainly involved in this matter & I feel  
sure you can establish the title of the  
State to the Delaware - if you will  
have the investigation already made  
thoroughly.

You have ample power to go to  
any necessary expense & really, expense  
in a matter of this kind is as nothing.

The point is to establish the  
right of the State through it be expensive to  
do so.

It appears to me that if Dan  
shall be esteemed competent to make  
the investigation abroad, & I think he  
is, we can do it cheaply through  
him.

He has a taste for such matters &  
is studious & thorough on such a subject.

I merely suggest Dan as  
one person who may conduct the  
investigation. It would be good for  
him & be of the greatest benefit to him  
aside from all employment it would  
give him & his remuneration which  
need not be great. His expenses only  
need be advanced, his remuneration  
is an after consideration. But by ~~whom~~

MG 399  
114 Wampye letter Oct 2, 1873 #3

When it is done - it should be done all  
once I am sure.

I am willing to  
give the best instructions I can to  
whoever undertakes it & to direct by  
letter before he starts.

It is as important  
a matter as we have ever had in the field

Wm. L. Garrison

Yrs truly  
R. B. Church

Wm. L. Garrison  
Recd Oct. 3. 1843

MG 399 Wayne Letter Oct. 2, 1873 #4  
1/4



*From A. H. G. ...*

THE  
FISHERY QUESTION.

ARGUMENT

OF THE

DELAWARE COMMISSIONERS

UPON THE QUESTION,

WHETHER THE CITIZENS OF NEW JERSEY HAVE THE  
RIGHT TO FISH IN THE WATERS OF THE DELA-  
WARE WITHIN THE CIRCLE OF TWELVE  
MILES AROUND NEW CASTLE.

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WILMINGTON, DEL.  
JAMES & WEBB, PRINTERS,  
224 Market Street.

## THE FISHERY QUESTION.

The question submitted for our decision is, in itself, not a common one ; but its solution, as we conceive, depends upon another question which, although not within the scope of our authority to decide, yet necessarily enters into the present discussion : we refer to the title of the State of Delaware to that part of the Delaware River contained within a circle of twelve miles around the town of New Castle. And as commissioners on the part of that State, we may say that it is a most gratifying though not unexpected fact, duly appreciated by the authorities and people of Delaware, that the State of New Jersey should have, so promptly, responded to the suggestion of her ancient sister for the settlement of a claim so nearly affecting her sensibilities as an independent member of the family of States ; and we may also express our personal gratification that she has selected, as her representatives in this commission, such distinguished lawyers and gentlemen as those with whom we are to deliberate.

In order to a proper understanding of the title of the State of Delaware to the River, and its soil or bottom within the twelve miles circle around New Castle, it will be found useful to look behind the charters from the Duke of York to William Penn, under which, and other *indicia* of ownership, the State of Delaware holds her territory :

Without entering upon any examination of the question, who first discovered the River Delaware, and the lands bordering upon it, it is sufficient for the purpose of this discussion to state the uncontroverted fact, that the Duke of York acquired title by patent from his brother Charles II of England to all the land lying between the River St. Croix (the boundary between what is now the State of Maine and the Province of New Brunswick) and the east side of the Delaware Bay and

River, on the 12th day of March 1664, in the 16th year of that monarch's reign; and soon afterwards entered upon the occupancy and enjoyment of his grant—the Dutch who held New York, and a large part also of the tract granted to him (including what is now New Jersey,) having surrendered their possession to his forces under the command of his Deputy Governor, Sir Richard Nicholls. So soon as the agents of the Duke and the King's servants felt that the territory belonging to him at the centre and within the defined limits of his patent, was secure to him, they, acting under his authority, dispatched a force under the command of Sir Robert Carr for the reduction of the settlement and territory within and upon the Bay and River Delaware, occupied by the Dutch as a dependency of their principal seat of authority and jurisdiction at New York. The instructions under which Carr sailed emanated from the commissioners of King Charles and the Duke's agents jointly; the forces employed, though subject to the superior authority of the King, were in reality the Duke's, for the protection of his transatlantic demesnes; and they were officered by those either directly in his employment, or holding their possessions under him. The outlying territory upon the Delaware had been settled and treated by the Proprietors of New Netherlands, the Dutch, as an appendage of their chief seat of power within that colony, at New York; and when the surrender of the fort at that place was made by Peter Stuyvesant, the Dutch Governor, to the Duke's deputy Sir Richard Nicholls and the King's commissioners acting with him for its reduction, the dependencies of the chief colony passed with them. This at least was the view taken by them; and on the 1st of October 1664 the forces sent from New York having arrived before the town of New Castle (called by the Dutch New Amstel,) surrender of the place and the territory connected with it was demanded, and was soon afterwards yielded. Formal possession was then taken, and the English authority under the Duke was established. Shortly afterward, grants of land began to be made in Delaware by the courts established under the English rule, as they had been before made by Directors Kiefft, and Governor Stuyvesant representing the Dutch power at

New York; and subsequently and until the grant to Penn, hereafter mentioned, they were made by Sir Richard Nicholls, Sir Edmund Andros or Sir Francis Lovelace, all deputy Governors of the Duke under his patent of 1664. Between the period of the 12th of March 1664, the date of the patent, and the 29th day of June 1774, and whilst the war between the States General of Holland and England was going on, the Dutch repossessed themselves of the territory surrendered to the English, and continued for a short time to hold and govern it: but the war having ended in their defeat, the English recovered dominion and sovereignty, and the Duke of York became reinstated in his rights and property by another charter from his brother the King, dated the day last mentioned. It is not necessary to inquire particularly why this latter charter was made; but a reason can be found in the fact that the capture by the Dutch of the New York colony and its dependency upon the Delaware, re-invested them with the absolute title to the lands wrested from them by the English, and thus annulled all charters or documents conveying any title to parts of the territory, which had been made or issued by English authority. At the close of that war, the English, supporting the Duke's title, and acting under his authority as proprietor and owner, re-entered upon his possessions, never to be again disturbed until the war of the Revolution in 1776.—This recital gives us a view of the case essential to a proper understanding of subsequent events; and informs us how it was that the Duke of York assumed authority to make the charter of feoffment to William Penn of the 24th of August 1682, and a prior lease to him for ten thousand years of the circular territory—hereafter to be adduced in the more formal statement of the Delaware title,—

Another piece of history:—

In the year 1680 and on the 14th day of the month of June, William Penn applied to the Privy Council of Charles II for a Patent of Territory bordering upon the river Delaware; his object being to thus obtain payment of debts owing by the King to his late father Admiral Sir William Penn and himself. In his application he stated that he would accept the grant as

payment of said debts, or at least in part payment. It was referred to the Board of Trade and Plantations, who submitted it to the agents of Lord Baltimore in England and to the Duke of York, in order that they might, if they chose, suggest objections to it, if there were any. The former contented themselves with requiring that, in case his request should be granted, the limits of his patent on the south should not be allowed to go below the Susquehanna Fort and a line east and west of it. There was, at that time but slight knowledge of latitude and longitude in those parts. The Duke however, was more particular; and while he did not resist the proposed grant, yet required that the lower line should be at the distance of twenty or thirty miles from his colony of New Castle. Upon a reference of the Duke's requirements to Penn, he stated his objections, alleging that if he were confined to a southern limit so far from New Castle, he would not have sufficient of the River for the benefit of his patent, and suggesting twelve English miles north of New Castle. The Duke, through his agent, Sir John Werden, so far receded as to consent that the limit suggested by himself need not be observed, provided Penn was kept at a proper distance from his property, he not insisting upon any specific limit. The parties not being able themselves to agree upon the precise boundary between them, and the Privy Council being naturally, as we suppose, unwilling to decide a question of such importance to the Duke as owner of the colony of New Castle, or as it was also called Delaware, the question of the limit of the proposed Patent was referred to the Lord Chief Justice North, who made his report or decision, establishing that part of the southern boundary abutting upon the Duke's territory according to the suggestion of Penn. And thus was the separating line between Pennsylvania and Delaware determined, and thus it now remains. To verify this account of the twelve miles circle boundary, the undersigned refer to the Patent of Pennsylvania to be found set out in the Colonial Records of that Province, collected and published by authority of the Legislature of what is now the Commonwealth of Pennsylvania, in Volume one, at pages ix, x, xi, xii, xiii, xiv, xv, xvi, xvii, & xviii, of the Introduc-

tion, and to the application aforesaid of Penn for his Patent and the documents connected therewith above referred to, to be found in Hazard's Pennsylvania Register, Volume one, at pages 269, 270, 271, 273, 274. For the sake of more easy and satisfactory examination of these *documents*, we have thought proper to copy them into this brief. In their order, in point of time, they are as follows:—

(Note. Between the period of William Penn's application for a tract of land in America and the date of the Charter, considerable time elapsed, and numerous difficulties occurred, respecting the boundaries to be embraced by that instrument, on account of prior grants to the Duke of York and Lord Baltimore. The proceedings relating to them are the documents above referred to.)

*“Extract of the proceedings of the Lords of the Committee of His Majesty's most honorable Privy Council, for the affairs of Trade and Plantation.*

IN THE COUNCIL CHAMBER, Monday, the Fourteenth of June, 1680.

PRESENT ;

Lord President, . . . . . Bishop of London.  
Duke of Albemarle, . . . . . Mr. Secretary Jenkins.  
Sir John Chicheley.

The Petition of William Penn referred by an order from the Earl of Sunderland, of the first instant, is read, praying in consideration of debts due to him, or his father, from the crown, to grant him letters patent for a tract of land in *America*, North of *Maryland*; on the East bounded with *Delaware River*; on the West limited as *Maryland*; and Northward to extend as far as plantable; whereupon Mr. Penn is called in and being asked what extent he will be contented with, northerly, declares himself satisfied with three degrees to the northward, and that he is willing, in lieu of such a grant to remit his debt due to him from his Majesty, or some part of it, and to stay for the remainder until his Majesty shall be in a better condi-

But I am further to offer unto your Lordships, that there are several *Dutch* and *Swedish* plantations, which have been under the *English* government, that lie scattered on the *westward* of *Delaware* river, and some of (them?) perhaps within the bounds of *Mr. Penn's* petition, and have, for a long time, either acknowledged the protection of his Royal Highness, who took them from the *Dutch*, upon the conquest of *New York*, or of the *Lord Baltimore*, near whose borders they are settled; and how far *Mr. Penn's* grant may, in this consideration, concern his neighbors, is most humbly submitted to your Lordships.

*Report of Mr. Penn's Patent.*

MAY IT PLEASE YOUR MAJESTY,

In obedience to your Majesty's order, signified unto us by the Earl of *Sunderland*, on the first of *June* last, we had prepared the draught of a charter, constituting *William Penn Esq:* absolute proprietary of a tract of land in *America*, therein mentioned, which we humbly present to your majesty, for your royal approbation, leaving also the naming of the said province to your Majesty, which is most humbly submitted."

We have now and here, as we conceive, an explanation of (what has not before been understood, at least in these times, and which seems to have escaped the researches of those who so ably and successfully conducted, in behalf of the Government of the United States, the celebrated "*Pea Patch case*,") the authority under which the Duke of *York* assumed to grant to *William Penn*, first his lease of ten thousand years aforesaid of the town of *New Castle* and territory and river around and about the same; his subsequent deed or charter of Feoffment for the same premises; and, upon the day of the date of the latter, another charter of Feoffment for all the land bordering

upon the river and bay of Delaware down to Cape Henlopen, then forming the extreme eastern projection of Fenwick's Island, which is the end, at the sea, of the east and west line between Delaware and Maryland. The country thus conveyed to Penn, was the same that had been wrested from the Dutch as a dependency of New York, or the patent of 1664, and was the Duke's own land, as much as the country from the St. Croix to the eastern side of the Delaware river and bay, granted to him by his brother the King, whose heir presumptive he was. His claim was no secret or unadmitted one; it had been enjoyed by him in virtue of the conquest of the Dutch; had been garrisoned and governed as other parts of his territory were; and was recognized by the Royal authority, through the Privy Council of his majesty, as above shown, as belonging to him, and him only. Though the circle had not before been established or known as bounding the Duke upon the north, yet the patent of Penn for his colony or province of Pennsylvania, contains a description of that line; thus recognizing the Duke's right that far north of his colony of New Castle or Delaware. It has been, in all the controversies about the Pea Patch Island, asserted by those who claimed against the Delaware title, that the Duke of York had no right to the territory of Delaware, when he granted it to Penn; whereas we respectfully submit that the foregoing facts establish, in this case, that he had a title at that time, and a good one; at least the only person or power who could dispute it, the King of England, admitted it by and through the proceedings of his Privy Council, in relation to the boundaries to be assigned to Mr. Penn. Nor was there ever any serious question of his right made by any valid authority under the English government. After the date of his Deed of Feoffment to Penn, all the land grants in Delaware, issued under the authority of that Deed, were in Penn's name, or that of his heirs.

The Duke of York being thus the undisputed proprietor and owner of the Delaware colony, and having the full possession thereof, by his indenture of lease aforesaid, dated the 21st day of August 1680, granted the territory within the cir-



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cle and the river and the soil thereof within it also, to William Penn for the term of ten thousand years, and afterwards by his charter of Feoffment dated the 24th day of August 1680, conveyed, enfeoffed and assured the same to him in fee simple; and, on the same last mentioned day, he conveyed to him by another Feoffment, all the before mentioned land south of the circle and down to Cape Henlopen at Fenwick's Island. Formal possession was given and taken by Penn under these deeds; the agents and attorneys of the Duke named in the charters, John Moll and Ephraim Harman, making formal livery of seisin, not only of the dry land but of the river and its soil, and Penn receiving it in person. The manner of this is set forth in the record of the Pea Patch case, to which reference is here made, the formal evidence thereof not being necessary, as we conceive, to be produced. Afterwards, and on the 22nd day of March 1683, not quite seven months from the Feoffment to Penn, King Charles II, made a formal grant of all the same territory including the river and its soil, within the circle of twelve miles radius around New Castle, to his brother the Duke. We thus have the Royal authority, supporting the Duke, to Penn. This grant or charter is in the following words.

*King Charles the Second's Grant of the Town of New Castle, and the Three Lower Counties, to the Duke of York.*

Charles, by the Grace of God, King of *England, Scotland, France, and Ireland*, defender of the Faith etc. To all to whom these presents shall come, *Greeting*: KNOW ye, that we, for divers good causes and considerations us thereunto moving, have, of our especial grace, certain knowledge, and meer motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our dearest Brother James, Duke of *York*, his heirs and assigns, all that the Town of *New Casile*, otherwise called *Delaware*, and Fort therein or thereunto belonging, situate, lying and being between *Maryland* and *New Jersey*, in *America*; and all that tract of land lying within the compass or circle of

perfection whatsoever to the contrary in any wise, notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by us, or by any of our progenitors heretofore made to the said James, *Duke of York*, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction heretofore had, made, enacted or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in any wise notwithstanding. In WITNESS whereof, we have caused these our letters to be made Patents: Witness OUR SELF, at *Westminster*, the Twenty-second day of *March*, in the Thirty-fifth year of our reign.

*Votes of Assembly, Penna., Vol. 3, p. 590, 591.*

The original document itself, then in the possession of the family of the Penn agents in America, and also three several exemplified copies thereof in due form, were all before the Arbitrator in the Pea Patch case, as appears by the report of the trial, among the Archives of the Government:

Now, laying out of view all the above stated facts with respect to the ownership of the Duke of York at the time of his lease and feoffments to Penn, and admitting for a moment that there are no such facts, yet we contend, that by the plain rules of law and equity, the grant from the King to the Duke, enured to the benefit of Penn; and whether by estoppel of the Duke, or as a trust in his hands for Penn's benefit, makes no difference whatever. It is a familiar rule of *equity* that where one sells land to another, himself having at the time no title, if he afterwards acquire it, it shall enure to the benefit of his grantee—the grantor being held to be a trustee of the land for the benefit of his grantee, and being such, he may be compelled to a conveyance of the legal title, like any other Trustee. Again, *at law*, under such circumstances, the grantor having by

his act of conveyance by deed, asserted title in himself, is not allowed afterward to set up his acquired title against his alienee: in other words he is said to be *estopped* to deny his purchaser's title; and thus that purchaser is said to have a legal title, and has such a title; by *estoppel*. This is especially true of a *feoffment*, which operates to convey the legal title, and does not depend for that effect upon the covenant of warranty. To speak more strictly, his title is *preserved* by the *estoppel*. These principles are too familiar to require any formal illustration.

William Penn, and those claiming under him the Province of Pennsylvania and the "three lower counties upon Delaware" as they were called, claimed the property within them, and exercised jurisdiction over the entire territory without question, until the Revolution destroyed the relations existing between those proprietaries, and the inhabitants; exercised without interruption exclusive control, as owners of the property or *corpus* of the whole territory conveyed by the Duke; and there never was any disturbance of his right to legislate for the country, except for one short period during the reign of William and Mary (successors of the Duke who ascended the throne as James II. and abandoned it in 1688 after a short reign of three years,) when he fell into disgrace from his supposed attachment to the fortunes of his late master, and was deprived of his governing authority, under the pretence that he neglected his duties as Proprietor and Governor; but he was soon afterward, restored to it, and held it, as it was held after him by those to whom the proprietorship of the country passed, without any interference until the colonies asserted their independence. During all this long period of ninety four years, extending from the reign of Charles II. through five reigns and part of a sixth, the Penns legislated through their council and assemblies (there were two of the latter after the secession in 1701 of the counties comprising Delaware) for the inhabitants of his Province of Pennsylvania and the said counties; and yet so far as anything appears to the contrary, there never was any serious question of his or their right in any quarter. This would seem to be irrefragable proof that Penn's title to the

lands within his Patent and Deeds of feoffment was perfect: especially when the additional fact is considered, that all the enactments of his legislature which (it must not be omitted to say) ran in his name with the advice and consent of his council and assemblies respectively, were submitted to the home government for approval: if disapproved they became inoperative. How can the thought be entertained for a moment, that the title of Penn was not considered perfect at home; when, had it not been, he would have been a mere usurper and liable to be dealt with as such!

Having arrived at the conclusion that the Penn title was perfect, as an assurance, at law and in equity, it may be interesting to inquire why it was that the charter of Charles II was not made to Penn instead of the Duke of York: though the circumstance that it was not, has no effect, in our opinion, upon the main question. In the deeds of feoffment there is a covenant for further assurance, which entitled Penn to call upon the Duke at any time, within the period of seven years fixed as the limit of its operation, for a performance. This was doubtless known to the King; and to put his brother in a situation to make it, he invested him with the legal title, which technically was in the crown, in virtue of the conquest by its forces acting under the Duke's orders. Besides, it was more seemly that the Duke should perfect Penn's title, rather than the King, with whom there was no contract.

It being thus shown, as we think, that the Duke of York had a good title to the twelve miles' circle at the time of his feoffment to Penn, at least as good as anything short of the possession of the actual muniments of a prepared legal title can be, or if he had not, that the charter of Charles II to him, supplied him with the means of making such title, it remains to inquire whether such title (the estoppel through the King's charter to the Duke, working upon his feoffment to Penn, to clothe the latter with the entire legal estate) can be assailed with success by the State of New Jersey, so as to invest her citizens with any right within the river circumscribed by the circle, except that of navigation, which is recognized and protected by the commercial clause of the Federal Constitution.

It may safely be admitted that in the colonial times, the whole territory in America claimed by Great Britain, was so far vested in the crown, that the common rights of navigation and fishery existed in every part of it for all her subjects within its several divisions; or at least for all of them within a division, or colony, with respect to such division. No doubt therefore, the subjects of the crown inhabiting within the limits of the patent to the Duke of York, dated 1664, and the subsequent confirmation of it in 1674, which Patent embraces New Jersey, were entitled to every common right which subjects of the crown anywhere could enjoy; and the Delaware River, being within the King's Dominions in America, there was a common right of piscary in all the King's subjects who inhabited within those parts.

In the case of *Martin v. Waddell* (16 Peters U. S. S. Ct. R. page 369), it was decided by the Supreme Court of the United States, that the limits of the Duke of York's Patent from Charles II only extended westward to the eastern side or edge of the Delaware Bay and River; in other words that it was bounded by the edge of the water where it touched the shore of the land granted, and did not extend into the stream itself. That question may, therefore, be considered closed. And it follows, necessarily, that the inhabitants of that territory could have no right of fishing in the bay or river by virtue of the Patent. When, then, if ever, were such rights acquired? If it be answered that all the King's subjects had a common right of fishing in the royal domain, and if such answer be admitted to be sufficient, yet upon the severance of the colonies from the crown by the war of the Revolution, each of those colonies became the sole owner and proprietor of the territory within its limits to the same extent precisely as all independent states are.

Now if a navigable river or stream form a boundary between two nations or states, it is admitted that both hold *ad filum aquæ*; provided the boundaries of neither extend beyond the margin. But if the boundaries of one do go beyond such margin, they are valid boundaries to the extent to which they reach. Applying this doctrine to the case before us, and how

does the matter stand? The boundaries of the Duke with reference to his colony of New Castle, were by the terms of the Royal Charter to him, made to extend in every direction twelve miles distant from the town; and they would unquestionably be considered to include the land of New Jersey within the circle, but for the prior grant of that land to the Duke by the charter of 1664, confirmed by that of 1674. When the separation from the crown took place, each colony, by force of the Declaration of Independence, and the success of the arms of the colonists, became as entirely independent as any state or nation in the universe, and clothed with every attribute and power of sovereignty, including the royalties theretofore held and enjoyed by the crown. But for the effect of the feoffment to Penn therefore, made perfect by way of estoppel by the royal charter to the Duke of York of the 22nd of March 1683, Delaware and New Jersey would each have held the Bay and river Delaware flowing between them to the channel, and *flumen aquæ*; and the inhabitants of each would have been entitled to, and enjoyed the right to fish within their several limits; that is, each upon his side of the channel. By such effect however, the limits of each colony were precisely such as belonged to each before that event; and consequently Delaware became entitled to claim and hold all the bed of the river within the twelve miles circle; and by the law of nations, each being bounded by the waters below the circle, they severally became entitled to extend their jurisdiction to the channel thereof; and the piscary rights followed their several titles, and did not extend beyond their respective boundaries. If, therefore, stress should be laid upon the fact that common of fishing in all the waters within the King's domain, was in all his subjects; yet when the treaty of peace of 1783 was made, each several colony became her own proprietor to the exclusion of any common right in any others by reason of their former relation to the crown of Great Britain. The common right after that was confined to the *public of the new state*, and excluded all other people. Upon this principle the states have acted ever since.—all the fisheries in every part of the country within state limits being held by the courts, and recognized by the public

of the country at large, as the property exclusively of those states respectively. Now, should it be contended and established that the people of New Jersey were accustomed to fish within the circle prior to the Revolution; that circumstance would not invest them with any right to do so afterward, each of the states, after the separation from England, becoming seised of all her territory within her chartered or accustomed limits as her entire sovereign estate, to the exclusion of every claim founded upon a prior ownership or sovereignty of the whole. This is a plain principle of public law, needing no citation of authority to support it. A claim by New Jersey therefore, of the right of her citizens to fish in the circle, must be shown independent of ante-revolutionary usage or right.

As a summary or statement of points arising out of the foregoing, the undersigned present the following:—

I. The Dutch, either as the city of Amsterdam, or the States General, were in possession of, or exercised dominion over, and governed as a province or colony, that part of America called New Netherlands, which embraced New England, New York, the Islands about them, New Jersey, and that part of the western shore of the Delaware Bay and River, now comprising the State of Delaware, or the most eastern part of it, for many years before they were surrendered by them to the English. They granted the lands within them as proprietors and owners, and exercised all other acts of sovereignty. Plenary evidence upon this point is to be found.

1st. In the first four volumes of "Documents relating to the Colonial History of New York." Its place is indicated by the title *Delaware* in the General index in vol. 5.

2nd. In an ancient record of the Recorder's Office of Kent County Delaware, called the "York Book of Records of the State of Delaware" which from the 1st to the 32nd page inclusive, is taken up with Dutch grants of land within what is now the State and the county of New Castle, the first of which was made in 1646 by William Kieft, styling himself "Director General and Council in behalf of the High and Mighty Lords,

the States General of the United Netherlands, His Highness of Orange, and the Honorable Gentlemen the Directors of the privileged West India company residing in New Netherlands."

II. The Duke of York had title to the colony of New Castle, and the land and river bed within the twelve miles circle, and the country south, all within the State of Delaware, before and on the 24th of August 1682, on which day he granted it to William Penn by a Deed of feoffment.

1st. By the aforesaid Colonial History of New York.

2nd. By the fact that his Governors, Sir Richard Nicholls, Sir Edmund Andros, and Sir Francis Lovelace, made grants of land there; which follow those made by the Dutch previously. The first is dated 20th of June 1665, and they continue up to the time of the grant to Penn.

3rd. That as proprietor of the New Castle colony, he was consulted by the crown, about the limits of Penn's proposed patent, of Pennsylvania. This appears by the correspondence between his secretary Sir John Werden and the Sec'y Blaythwaite, of the Privy Council of King Charles, above quoted; also indirectly by the evidence hereinafter given of validity of Penn's title.

III. By the Deed of feoffment from the Duke of York to William Penn of the 24th of August 1682, and the livery of seisin accompanying it, Penn became the proprietor and owner within the circle of all the dry land on the western side of the river, and of the river and its soil or bed. See the Deed in vol. 1. Del. Laws, appendix. The language of the Deed shows, conclusively, as we respectfully submit, what was meant to be conveyed: and the livery is confirmatory of the construction given to the language. It was by delivery of New Castle through the possession of the Fort there, and by turf and twig at the centre of the Colony, and representative of the dry land, and of the water and soil of the river, as representing such river and its bed. The form of livery appears by the evidence in the "Pea Patch case" before Mr. Sergeant.

IV. But if Penn's title was not complete under the feoffment from the Duke of York, it became so, at law and in equity by the charter of Charles II. to the Duke, dated 26th March



1683, above set forth—the words of description in which are identical with those in the feoffment).

1st. Because Penn being enfeoffed by the Duke, and a legal estate being thereby created in him, the Duke was estopped from setting up a claim, under the charter of '83, against his prior deed. Hence Penn's title became complete *at law* by estoppel; which ran with the land.

Shep. Touch. 204, 210:—Co. Litt. 9, a, 49, a. Plow: 423. Rawle on Cov. for title, 405: also the whole of Chap. ix. and the authorities cited there. Kent's Comm. vol. 4. page 98. Trevinian v. Lawrence 1 Salk. 276: S. C. 6 Mod. 258. Palmer v. Elkins, 2nd Ld. Raym. 1551.

2nd. Because *in equity* where one sells land having no title, and afterwards acquires the ownership, the newly acquired right enures to the benefit of his alienee.

3rd. Also because in equity such a grantor is held to be a trustee for his grantee. He may be compelled to convey to his grantee, under a covenant for further assurance, any title he may have acquired since the conveyance.

Penn v. Baltimore, 1 Ves. sr. page 454.

Kildare v. Eustace, 1 Vern. 439.

Burgess v. Wheate, 1 Eden 223.

2 Sim. & Stuart 519.

Rawle on Cov. for title. Chap. VI.

4th. Penn's title, though questioned sometimes in the courts, as in the case of Penn v. Baltimore in chancery, and oftener in the Privy Council of reigns following that of Charles II, was never overthrown or weakened. On the contrary, the decision of Lord Hardwicke, in the above case, admits it; and the doubts suggested concerning its validity, in the controversies before the Privy Council, never went to the extent of any steps to establish a title superior to his. We refer to the Pea Patch case and the arguments of the counsel of the U. S. and the evidence shown by them, to establish this point.

5th. All statutes enacted in the colonies during the English rule were subject to supervision by the crown, and were not to become laws if disapproved of in six months from their

passage. The statutes enacted by Penn and his deputies, and those who succeeded him, assisted by the Provincial council and the separate assemblies, were never disapproved for want of authority, during any reign—thus establishing a recognition of his and their power to pass them.

The whole system of political administration under which Pennsylvania and the three counties now composing Delaware, were governed, up to the time of the Revolution, was the fruit of Penn's jurisdiction and authority derived in the case of Pennsylvania from the King's charter of 1681. It is impossible to conceive such a state of things existing in an empire so well governed as that of Great Britain, without a conviction that the right of the actor must have been recognized as valid. A usurpation of authority cannot be imagined; for intercourse with the home government was so frequent as to preclude such an idea. Besides it was well known that Penn was governing Pennsylvania and the three counties under a claim of proprietorship and sovereignty, for he was deprived of the *sovereign* function for near two years during the reign of William and Mary when Benjamin Fletcher governed in his stead; but he was not disturbed in his propriety or ownership of the territory, and his government was restored to him on the 20th of August 1694 by the King and Queen. For the evidence upon this point, the undersigned point to the legislative records of Pennsylvania and Delaware, and Vol. 1 of the Colonial records of Pennsylvania, pages 312 and 437.

The undersigned, also refer, upon all the points presented to the Pea Patch case, and particularly to the arguments of the counsel of the United States, and the authorities, records, muniments, testimony and other the evidences in favor of the Delaware title adduced by them. Though the case itself is not technically authority, yet the positions assumed and points made and the reasoning employed in support of them by those counsel and the decision reached by the distinguished arbitrator, the late Honorable John Sergeant, are believed to be unassailable.

JOSEPH P. COMEGYS,  
WILLIAM G. WHITELEY,  
EDWARD L. MARTIN.

JULY 2, 1874

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## REPORT.

STATE OF NEW JERSEY, }  
EXECUTIVE DEPARTMENT, }  
TRENTON, March 22, 1876. }

Resolved, that the Governor be and he is authorized to communicate to the Legislature, if any, has been had by the commissioners of the States of Delaware and New Jersey, in relation to the dispute concerning the title in the Delaware river, I respectfully submit herewith copies of correspondence between the commissioners of this State and myself, and to which I refer for the information desired.

I have received no official notification of an abandonment of the negotiation by the Legislature of Delaware, but the published laws of that State show that on the 26th day of March, A. D. 1875, a joint resolution was passed relieving the Delaware commissioners from further duty.

This is greatly to be regretted, for no other legislation can be had in that State until next year, as its Legislature meets only biennially.

Every effort, however, within the scope of executive duty, will be made with the authorities of Delaware tending to an eventual settlement, and also, in the meantime, to prevent any personal conflicts between the citizens of each State arising out of the questions involved.

I would also suggest that power be conferred, in case negotiations cannot be resumed, to bring the case before the Supreme Court of the United States as provided in the Federal Constitution.

Respectfully,

J. D. BEDLE.

4 REPORT OF THE GOVERNOR TO LEGISLATURE.

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, March 7, 1876.

To *Honorable A. Browning, Courtland Parker and Albert H. Slape,  
Commissioners* :—

DEAR SIRS :—The Legislature has passed a concurrent resolution, of which the enclosed is a copy, and the first section of which requests information as to the action had by you with like commissioners of the State of Delaware upon the matters of difference referred to in the acts under which you were appointed. I will be glad to have you communicate to me, in writing, the exact status of the negotiations, with such other information as will enable me to accurately answer the resolution.

Yours respectfully,

J. D. BEDLE.

CAMDEN, March 29th, 1876.

To *His Excellency, Joseph D. Bedle, Governor of New Jersey*.

DEAR SIR :—In answer to your letter of the 15th inst., addressed to Messrs. Parker, Slape and myself, as commissioners on the part of New Jersey, in conjunction with commissioners on the part of the State of Delaware, to determine the question of jurisdiction over the Delaware river, or bay, within a circuit of twelve miles around New Castle, in that State, I beg leave to state, that sometime after the several appointments of the joint commission, the commissioners met on several occasions in the city of Philadelphia. After having, on those occasions, discussed to some extent the questions involved, it was agreed that the Delaware commissioners should agree upon, and have printed and served on us, a statement of the case on their part, to which we in turn, in like manner, were to submit a statement on our part.

Some considerable time after this arrangement, at a meeting of the joint commission in Philadelphia, we were served with their statement. To prepare a proper reply to this, required an inconsiderable time and investigation. Before it was accomplished, the State of Delaware very unexpectedly to us, and as advised, to them also, revoked their commission. This terminated, or at least suspended, all further proceedings; and so the matter remains to this present.

Very truly your obedient servant





SEVENTH ANNUAL

REPORT  
OF THE  
COMMISSIONERS OF FISH AND MARINE AFFAIRS



OF THE  
COMMISSIONERS OF FISH AND MARINE AFFAIRS

STATE OF NEW JERSEY,

FOR THE YEAR

1876.



TRENTON, N. J.:  
JOHN L. MURPHY, STATE GAZETTE PRINTING HOUSE.

1876

# REPORT.

*Joseph D. Bedle, Governor of the State of New*

the honor of presenting to you the seventh  
the Commissioners of Fisheries of the State of New  
York we beg leave to reproduce the act under which  
the Fisheries of the State were first appointed. (See  
subsequently, by legislative enactment, provision  
for the appointment of a third Commissioner, and that  
the three should continue five years.  
The Commissioners have, in the performance of their duties  
from time to time inspected the bay and river  
and have suggested such legislation as to their  
the observation and knowledge derived from  
with the important interests under considera-  
conductive to private and public good.

In many instances, have been accepted and  
legal enactments. In others, they have failed  
the fishing interests. We find legislation in regard  
to variance in adjoining counties. This strict-  
ness to that over the bays, or, rather, sounds  
the subject of just complaint with those who  
fish, or are dependent upon, the supply of fish  
sounds. We therefore respectfully suggest  
general character be enacted, to give the neces-  
sary fostering care over, the fishing interests in

We call the attention of your Excellency to the  
of the laws regulating fishing in the river  
river once bounded in the choicest varieties  
as anadromous fishes, but has been greatly  
these years, by causes repeatedly presented in the  
Commissioners, Riparian to the States of Pennsyl-

vania, Delaware and New Jersey, each of these States is to a greater or less degree interested in the fishing of this great river and bay.

As between Pennsylvania and New Jersey, the laws regulating its fisheries have always been concurrent, and indisputably so, because each of these States, under the compact of seventeen hundred and eighty-three, exercises jurisdiction over the entire surface of the river, from shore to shore, and from the northwest corner of New Jersey to where the northern or circular boundary of the State of Delaware touches the same.

Delaware, also, in 1871, enacted laws regulating her fisheries in the river Delaware, in entire harmony with those of Pennsylvania and New Jersey; but, unfortunately, owing to her claim of exclusive jurisdiction over the entire surface of the river within the famous "Twelve Mile Circle," the laws of the two States over that area remain, at present, in abeyance. Consequently, illegal fishing has been carried on without let or hindrance, greatly to the injury of the fishing interests of these three States. It is greatly to be desired that this mooted question be speedily and definitely settled.

The concurrent laws of Pennsylvania and New Jersey, of 1808 and 1809 have been so frequently supplemented by acts supplied to meet arising contingencies, that they have become exceedingly complicated and obscure.

To remedy this evil, your Commissioners met the Commissioners of Fisheries of Pennsylvania, at Philadelphia, last winter, and, after careful consideration, prepared a draft of a proposed law, intended to take the place of the conflicting statutes now lumbering our books. This law, with some verbal corrections, and a copy of the address to the Legislatures of the two States, as signed by the Commissioners, are appended to this report (see Appendix E), and we respectfully urge that speedy action should be taken thereon. The different sections, except the twenty-fourth, are all re-enactments of existing laws, with slight verbal changes. We have only left out obsolete and useless law. No new restrictions have been placed on any class of fishermen. We were at great pains to explain this matter to the Joint Fishery Committee of the last Legislature, and are ready at any time to give such further information as to the operation of existing laws as the Legislature may require. It is important that the law should be passed substantially as presented, for the reason that it requires the joint action of the States, and, as prepared, has the concurrence of all the Fish Commissioners. We do not believe that any new regulations are required. It will suffice if these old ones can be made plain, so that all may understand.

In references to the shore fisheries, so-called, it is proper to report a strong feeling in favor of general restrictive legislation, as above stated. Pounds, weirs, and other stationary apparatus for the capture of fish, should be prohibited in all such waters, except so far as

the same may from time to time be licensed by the Commissioners of Fisheries, and, when thus licensed, should be used subject to the restrictions prescribed by the Commissioners. It is unwise and impracticable to attempt to do away with these structures altogether, as we have accordingly prepared a draft of a proposed law, modified after one drawn by the experienced Commissioners of Massachusetts, providing for the use of such apparatus when duly licensed. We append a copy of said law to this report (see Appendix G), and respectfully ask for its consideration of the Legislature.

In October last, Dr. Edmunds, of Vermont, and Dr. Hadson, of Connecticut, with one of your Commissioners, were appointed to make a report as to legislation required for the protection of shores on the whole coast. The Committee will procure statistics, and it is hoped that the collation of facts and the comparison of them will be of advantage to all the States interested. From the following reports of the Fish Wardens, it will be found that the shad fishing in the Delaware was less remunerative the past year than the preceding one. The season, as has been the case for many years, was very cold and backward. The shad entered in considerable numbers, but were there intercepted by an unusually large number of drift nets. This large accession to the number of drift nets, together with the fact that the shad were unusually early in coming, and that the season was unusually long, has resulted in a very high price, for the fishes of our river to supply food for the States drawn to Philadelphia by the Centennial Exposition. The shad were largely increased number of nets, and the fact that the season was extended to their utmost capacity, the aggregate catch for the season is admitted to be far less than usual. In the Northern or Tidal department, and the Northern or Non-Tidal

I. THE SOUTHERN DEPARTMENT.

CUMBERLAND COUNTY.

George Esq., Warden for Cumberland County, reports the shad nets the past season to be thirty-four, against fifteen in 1875. The fishermen add to the length of their nets, the average length this year being over five hundred feet. He attributes the greater number of nets, and their increased length, to the extraordinary catch of the year before. No such extraordinary catch of the fishermen this season. The early season proved an almost total failure. The average catch was



Commissioners, that the fishermen, in past years, when the law was respected, looked forward to Monday as being the best day in the week to catch shad; but, during the past season, that day was but little better than any other, on account of the Sunday nets breaking up the schools of shad.

These few lines speak volumes in behalf of the importance of the observance of the close times established by law. At the shore fisheries it has been observed, ever since the drift nets were introduced, that when the Sunday close time was even partially respected, the catch, not only on Monday, but also on Tuesday and Wednesday, was much larger, all things being equal, than on the remaining three days of the week, for the simple reason that during those three hours large schools of shad had uninterruptedly made their way into the upper reaches of the river. And we hail it as a most auspicious sign of a better time coming, when the fishermen themselves begin to see that what too many of them have hitherto considered an unwarrantable restriction on the "poor man's rights," is really, as it was intended to be, to his ultimate real benefit.

On the 15th of November, 1876, the Warden assisted in planting fifty black bass in Salem creek, below the dam, at Sharpstown, and forty-nine in Alloway creek, below the dam, at Allowaytown, since which time he has neither seen nor heard from them. They will undoubtedly show themselves by another year. Wherever placed, without an exception, we believe they have multiplied rapidly.

#### GLoucester County.

Helms V. Heritage, the Warden of Gloucester county, reports five shore fisheries in operation during the last season, all fished by Philadelphia. The catch was not nearly so great as was that of last year though the shad were larger, some weighing seven pounds. The average weight was from four to five pounds. So scarce were the shad that at some shore fisheries the crews were discharged, and the nets taken out and put away before the close time of the legal fishing season, viz., the tenth of June.

Of drift-nets there were about two hundred and fifty, varying in length from two to six hundred fathoms. These nets did pretty well while fishing in the bay, in the early part of the season.

The observance of the weekly close times, from sunset Saturday to twelve o'clock Sunday night, was better than was the case the previous season, except by some Philadelphians. No violations of law after the season closed came to his knowledge. Neither was he able to get an account of the aggregate catch of shad by the two classes of fishermen.

#### CAMDEN COUNTY.

No report was received from the Warden of Camden county.

## COMMISSIONERS OF FISHERIES.

### BURLINGTON COUNTY.

Thorn, the Warden of Burlington county, reports one drift-net and four drift-nets in operation during the past season in the county against seventy-five in use the year before. From Bordentown, Fieldsborough and Florence, he reports thirty-six nets, of an average length of sixty-five fathoms, and an average catch of one hundred and seventy-five shad. The price was forty dollars per shad. Sizes of mesh, 54 inches.

At Burlington, Shedders, Edgewater and Beverly, thirty-one nets, of an average length of one hundred fathoms, and a catch of one hundred and thirty-five dollars per hundred. Sizes of mesh, 54 inches. At Delano, Riverside, Bridgeborough and Riverton, thirty-seven nets, of an average length of one hundred and forty fathoms and a catch of one hundred. The catch was 1,800, which were sold at thirty dollars per hundred. Pennsylvania also sent out from her corresponding number of nets.

The fisheries of this county were as follows:

At Dover there was a seine of one hundred and six fathoms and thirty feet in depth, operated by a crew of twelve men. In use from April 10th to June 6th, and yielded the amount of \$1,800.

At Cove there was a seine of one hundred and seventy-five feet in length and twenty-four feet in depth, operated by a crew of five men. The daily hauls were ten, and was fished from May 20th to June 6th. Gross receipts, \$1,600.

At what there was a seine of one hundred and eighty fathoms and thirty feet in depth, operated by a crew of twelve men. In use from April 12th to June 6th, and yielded the amount of \$1,500.

At Seaside there was a seine of one hundred and eighty-two fathoms and thirty feet. Crew, thirty-four; daily hauls, ten; fished from May 20th to June 6th; gross receipts, \$8,000; profits, \$1,800.

At Seaside there was a seine of one hundred and sixty fathoms and thirty feet. Crew, sixteen; daily hauls, ten; fished from April 18th to June 6th; gross receipts, \$3,500; profits, \$900.

At Seaside there was a seine of one hundred and sixty fathoms and thirty feet. Crew, thirteen; daily hauls, eleven; fished from May 4th to June 6th; gross receipts, \$1,200.

At Seaside there was a seine of one hundred and sixty fathoms and thirty feet. Crew, twenty; daily hauls, ten; fished from April 18th to June 6th; gross receipts, \$3,000.

At Seaside there was a seine of one hundred and thirty fathoms; depth, twenty; crew, eight; daily hauls, nine; catch, 5,000; average receipts, \$1,125.

New Jersey State Archives  
Commissioners of Fishery Annual Reports  
1876

L A W S  
OF THE  
STATE OF DELAWARE,

PASSED AT A SESSION

OF THE  
GENERAL ASSEMBLY,

COMMENCED AND HELD AT DOVER.

ON TUESDAY, THE FIFTH DAY OF JANUARY,

A. D. 1875,

AND OF THE

INDEPENDENCE OF THE UNITED STATES,

THE NINETY-NINTH.

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VOL. 15.—PART 1.

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WILMINGTON, DELAWARE:  
JAMES & WEBB, PRINTERS,  
1875.

DE00029

RESOLUTIONS.

same as follows, to wit: Two hundred and sixty (260) copies to the House of Representatives, one hundred and twenty (120) copies to the Senate, seventy (70) copies to the State auditor, and fifty copies to each of the prothonotaries of the several counties.

How distributed.

*Resolved*, That the clerks of the two Houses of this General Assembly, be and they are hereby directed to omit the said State Auditor's Report from publication in connection with their journals.

Clerks of the two houses to exclude said Report from publication in journals.

*Adopted at Dover, January 19, 1877.*

CHAPTER 501.

Joint Resolution for the appointment of a joint committee to which shall be referred the report of the Delaware State Centennial Commission.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the report of "The Delaware State Centennial Commission" be referred to a joint committee of three on the part of the House, and two on the part of the Senate.

Joint committee on Report of "The Delaware State Centennial Commission."

*Adopted at Dover, January 23, 1877.*

CHAPTER 502.

Joint Resolution directing the State Treasurer to pay to Joseph P. Comegys and Leander F. Riddle, the sum of eleven hundred and fifty-one dollars and nine cents. (\$1,151 09.):

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That the State



LAWS OF DELAWARE.

RESOLUTIONS.

State Treasurer be and he is hereby directed to pay to Joseph P. Comgys and Leander F. Kiddle, the sum of eleven hundred and fifty-one dollars and nine cents, (\$1,510.09) balance due from the State, as an additional appropriation to defray the Centennial Commission of this State.

Adopted at Dover, January 14, 1877.

CHAPTER 503.

Joint Resolutions on Federal relations.

WHEREAS, the unsettled and threatening attitude of public opinion upon the Presidential contest, has made it expedient and in comity with the harmony of an American citizenship, and the tranquility of political loyalty to the Constitution of these United States, to adopt measures for the preservation of those vital qualities in good government, therefore,

Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That they do approve and cordially endorse the bill, reported as the first of the deliberation of the joint committee of the National Congress for the peaceful settlement of the existing Presidential difficulties, as a fair course of equal law.

Resolved, That the representatives from this State in the Congress of the United States be, and they hereby are, respectfully and earnestly requested to give a cordial and united support to this broad and liberal measure, to the end that the great and absorbing question of Presidential succession may be decided in the interests of justice, liberty and peace.

And be it further resolved, That a copy of the foregoing preamble and resolutions be transmitted to our Senators and Representative in Congress, with a request that they be presented to the Senate and House of Representatives.

Adopted at Dover, January 25, 1877.

Sp. enrolled.

LAWS OF DELAWARE.

RESOLUTIONS. CHAPTER 504.

Joint Resolutions relative to the rights of the State of Delaware, in a certain part of the Delaware river which runs between the States of Delaware and New Jersey.

WHEREAS, The State of Delaware claims to own the bed of the Delaware river (subject to the constitution of the United States and the acts of Congress made in pursuance thereof) over that portion of the Delaware river which is included within a circle of twelve miles radius, taking the court house in the city of New Castle as a central point—and and to have exclusive jurisdiction (subject to the constitution of the United States and the acts of Congress made in pursuance thereof) over that portion of the Delaware river which is included within a circle of twelve miles radius, taking the court house in the city of New Castle as a central point—

WHEREAS, The State of New Jersey disputes the validity of such claim, and asserts, upon her part, jurisdiction and ownership over that part of the same area on the east side of the channel of said river—and

WHEREAS, Legally authorized commissioners have heretofore held frequent conferences and consultations which have failed to result in any satisfactory determination of the points in dispute—and

WHEREAS, It has officially come to the knowledge of this General Assembly, through a properly certified copy of a joint resolution, adopted by "the Senate and General Assembly of the State of New Jersey," March 30th, 1876, that the Governor of said State is authorized to cause to be instituted and prosecuted, in the Supreme Court of the United States, a suit in equity or an action at law, by the State of New Jersey against the State of Delaware, by the State of New Jersey and settle the true territorial boundary line between said States, and the extent of the jurisdiction of each of said States in and on said river, and—

WHEREAS, As the State of Delaware was the first to give her assent to the Constitution of the United States which provides the arbiter of the Supreme Court for the decision of controversies between States, so she will promptly accept her sister State; Therefore,

Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the Attorney General be and he is hereby authorized and directed,

to appear for the State of Delaware in the Supreme Court, and to prosecute the same.

LAWS OF DELAWARE.

RESOLUTIONS.

CHAPTER 507.

Joint Resolution in relation to new business, after Monday, the 26th inst.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That no new business will be received by either branch of this General Assembly after Monday, the 26th inst.

*Adopted at Dover, February 15, 1877.*

CHAPTER 508.

Joint Resolution inviting Mr. Cesar A. Rodney to read an historical paper before the General Assembly.

*Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That a joint committee of one on the part of the Senate, and one on the part of the House of Representatives, be appointed to invite Mr. Cesar A. Rodney to read his history of the 1st Delaware Regiment of the Revolutionary war, before the General Assembly, on such evening as will be convenient.

*Adopted at Dover, February 19, 1877.*

CHAPTER 509.

Joint Resolution appointing directors for the Farmers Bank of the State of Delaware.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That the following persons be, and they are, hereby appointed directors of the Farmers Bank of the State of Del-

LAWS OF DELAWARE.

RESOLUTIONS.

CHAPTER 505.

to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional counsel to assist the Attorney General in the defence of the said suit.

*Resolved,* That the Governor of this State be, and he is, hereby, requested to transmit to the Governor of New Jersey, a certified copy of the foregoing preamble and resolutions.

*Adopted at Dover, January 26, 1877.*

CHAPTER 506.

Joint Resolution inviting Rev. J. H. Caldwell to preach a sermon before the General Assembly.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That Rev. J. H. Caldwell be, and he is, hereby, invited to preach a sermon in the M. E. church, before the members of this General Assembly, at such time as he may designate, and as shall suit their convenience.

*Adopted at Dover, February 6, 1877.*

CHAPTER 507.

Joint Resolution to pay William Reynolds four hundred dollars in full, for services as Adjutant General of the State.

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,*

That the State Treasurer be, and he is, hereby, directed to pay William Reynolds the sum of four hundred dollars in full for services to the State as Adjutant General.

*Adopted at Dover, February 7, 1877.*

Governor of New Jersey, and he is, hereby, authorized to employ, in behalf of the State, additional counsel to assist the Attorney General in the defence of the said suit.

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Volume \_\_\_\_\_ Page \_\_\_\_\_

Laws of DE  
Vol 15

DE00033



Plaintiff's Exhibit No. 40

New Jersey Laws 1881, page 367.

### SPECIAL PUBLIC ACTS

Passed by the

ONE HUNDRED AND FIFTH LEGISLATURE.

#### CHAPTER VII.

An Act for the division of the township of Upper Penna Neck, county of Salem, and to create a new township of the same, to be known as Oldmans township.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That all that part of the township of Upper Penna Neck, in the county of Salem, lying within the following boundaries, to wit: Beginning at the middle of Oldmans creek, being the east corner of said township and corner to Pilesgrove township, and running along said township line until it intersects the middle of the Course Landing road; thence down the middle thereof to a public road from the Pilesgrove line near Atwood's house; thence down the middle thereof, (1) north, fifty-two and three-quarter degrees west, thirty-seven chains, seventy-five links; (2) north, twenty-three degrees, forty minutes west, thirty-seven chains, twenty-five links; (3) north, thirty and one-half degrees west, seventy-one chains, seventy-five links; (4) north, thirty-nine degrees, forty minutes west, seven chains, twelve links; (5) north, thirty-three and one-half degrees west, nine chains, to a public road leading from Perkontown to the forked hickory; thence north fifteen degrees west, about one and a half miles to the Delaware river railroad, where it intersects West Hook Run, and from thence running down the middle of the main stream thereof, along its general windings to the Delaware River, being about one mile; thence

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... of said  
... the main  
... about twenty-  
... shall be, and hereby  
... in the  
... be  
... by the name of "The Township of Oldmans."

2. And be it enacted, That the inhabitants of the town-  
ship of Oldmans are hereby constituted a body politic and  
corporate in law, and shall be styled and known by the  
name of "The Inhabitants of the Township of Oldmans,  
in the county of Habersham," and shall be entitled to all the  
rights and powers, authority, privileges and advantages,  
and subject to the same regulations, government and lia-  
bilities as the inhabitants of other townships in the said  
county of Habersham are or may be entitled or subject to by  
existing laws of this State, and to the provisions of any  
special laws in relation to the said township of Upper  
Peach Neck, so far as the same are or can be applicable  
to said township of Oldmans when set off as aforesaid.

3. And be it enacted, That the inhabitants of the town-  
ship of Oldmans shall hold their first town meeting at the  
school house in Piedmont, in said township of Oldmans,  
on the day appointed by law for holding the annual town  
meetings in the county of Habersham, and thereafter at  
such place in said village as the inhabitants may appoint  
at each year annual town meeting.

4. And be it enacted, That the township committee of  
Upper Peach Neck and Oldmans shall meet on the second  
Tuesday of April next at ten o'clock in the forenoon, at  
the Old Farmers Hall in the village of Piedmont, in the  
township of Upper Peach Neck, and shall then and there  
prepare by writing to be signed by a majority of those

passed, to settle and divide between the said townships, all the property and money on hand or due, in preparation for the taxable property and taxable, as valued and assessed by the assessors, within the respective limits of said townships, at the last assessment; and may adjourn the said meeting from time to time, and to such time and place as a majority of those present may think proper; and the township of Odumac shall be liable to pay their just proportion of the debts, if any there be; and if any of the members of the said committee shall neglect to meet as aforesaid, those present may proceed to make such division, or the decision of a majority of them shall be final and conclusive.

4. *And be it enacted*, That all paupers who may be chargeable in the said township of Upper Penn Neck at the time this act goes into operation shall thereafter be chargeable to and supported by that township within the bounds of which they require their settlements respectively, or in which the paupers may reside at the time of requiring their respective settlements.

5. *And be it enacted*, That nothing in this act shall be so construed as to impair or in anywise affect the right of the said township of Odumac, of, in, or to any portion of the surplus revenue of the United States government to which the said township may now, or at any time hereafter, be entitled in the distribution of the surplus revenue of its income.

6. *And be it enacted*, That nothing in this act shall be so construed as to interfere with the officers now elected in that part of the township set off and called Odumac, nor with the justice of the peace, nor commissioners to take and give judgments of debts until they shall expire by their own limitation.

7. *And be it enacted*, That nothing in this act contained shall be construed to impair, or in anywise affect, the right

of the said township of Clemons to any portion of the state school fund to which the said township may now or at any time hereafter be entitled in the distribution of said moneys.

5. And be it enacted, That the inhabitants of the township of Clemons shall hold their first township meeting at the time and place hereinafore set forth, and at the first township election William H. Patrick shall be the judge of election, and Joseph W. Cooper and Alexander Justice, inspectors of election; and in case of the absence of one or more of them the vacancy shall be filled by the electors present as in other township elections, and a majority of such inspectors and judge shall appoint a clerk of said election.

10. And be it enacted, That this act shall take effect immediately.

Approved February 7, 1881.

26/



NEW JERSEY  
ATTORNEY-GENERAL'S OFFICE  
REPORT ON THE DIVIDING LINE  
BETWEEN THE DELAWARE RIVER AND BAY,  
AUGUST 12th, 1885.

DE13939

REPORT  
OF  
JOHN P. STOCKTON  
ATTORNEY GENERAL OF NEW JERSEY,  
ON THE  
Dividing Line between the Delaware River and Bay,  
AUGUST 12th, 1885.



Hon. Leon Abbott:

Governor—I enclose herewith a copy of the correspondence which took place between the Hon. John H. Paynter, Attorney General of Delaware, and myself, in reference to the division line between the Delaware River and Bay.

You will see that we have both reached the same conclusion on the authority of the United States Coast Survey and the report of Prof. Mitchell, who has made special study of the subject. It is fortunate that a question which involves such important interests should be capable of a solution so conclusive and satisfactory.

You will recall that at the time of the conference between the Governors and Attorneys General of Delaware and New Jersey in Philadelphia, the boats and nets of citizens of our State had been seized by Delaware under the charge that they had violated the statute law of Delaware by fishing within the limits of that State.

An injunction of the Supreme Court of the United States was at the time in force commanding and enjoining the State of Delaware, its officers and agents to desist and refrain from arresting, imprisoning, trying, fining, or in any manner punishing or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in the River Delaware, as they had theretofore been accustomed to do, until the said Court should make other order to the contrary.

The authorities of Delaware insisted that the law of Delaware had been violated by the parties arrested, because the fishing was done within the limits of Delaware, in Delaware bay, and, therefore, not within the territory covered by the injunction of the Supreme Court of the United States, which applied only to the river. The Governor of Delaware, at the conference, proposed that the proper location of the dividing line between the river and the bay, for the pur-

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poses of this injunction, should be referred to the Attorneys General of the respective States, and agreed that during the pendency of the injunction no citizen of New Jersey should be molested for fishing above the line so to be located. That line, as you will see by the correspondence, has now been established as a line drawn from Cohansy light to Bombay Hook Point. This question is therefore definitely settled, as long as the injunction shall remain in force. This agreement, of course, surrenders no right of any citizen of New Jersey, but is simply a construction of the expression "Delaware River," as used in the injunction, so that no question could thereafter arise as to the extent of the territory protected by the court.

I also report that, in accordance with an agreement made at the same time, all the proceedings against the boats and nets, as well as citizens of New Jersey, in reference to this matter, have been discontinued. The boats and nets had previously been restored to their owners in New Jersey by the United States Marshal, by virtue of writs of replevin and other proceedings, instituted by me, under your direction.

It is proper for me to say that Mr. C. G. Garrison, of Camden, visited Delaware on several occasions, procured valuable information and conducted under my direction the above proceedings to a successful result. I am also indebted to Mr. A. H. Slape for valuable information and counsel in the matter.

The position of the fishery question in Delaware Bay, below the line which has been fixed as a division line, remains unchanged.

The authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, stated that no citizen of New Jersey would be molested for fishing in any part of the bay beyond the Delaware side of the channel.

The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is not a violation of that clause of the Constitution of the United States which ordains that the citizen of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terræ*, is a question of great doubt and delicacy.

In *Dunham v. Lamphere*, 3 Gray, 288, Chief Justice Shaw held, that an act to regulate the time and manner of taking fish within the territorial limits of the State was within the authority of the State Legislature, and binding on citizens of other States, and on vessels enrolled and licensed as fishing vessels under the laws of the United States. He said, however, "It has been contended, and with some plausibility,

REPORT OF ATTORNEY GENERAL STOCKTON. 3

that any act of the State which should give to our own inhabitants a right of fishing in the sea within our own territorial limits, and prohibit the same to citizens of other States, or allow them to participate in it only on the payment of some tax or duty, would be obnoxious to Section 2, Article 4th, of the Constitution.

\* \* \* In deciding this case, therefore, on the ground that the act on which it is founded makes no discrimination, in its prohibitions, between the inhabitants of other States and those of this commonwealth, we wish not to be understood as implying that, if the law had been otherwise, it would have been unconstitutional. Until it has been directly determined by the Supreme Court of the United States that such a law, appropriating the coast fisheries within the territorial limits of the State to the inhabitants of the commonwealth, is repugnant to the Constitution of the United States and void, it must be deemed an open question, to be decided by the competent tribunals when it arises."

This was not, however, a matter which either the Executive of Delaware or of New Jersey could legally regulate, and they did not attempt to do so. It is a question, which, when it arises, must be determined on constitutional grounds by the tribunals established for that purpose, or be settled by the States by a treaty, with the consent of Congress.

No legal right, or supposed legal right of any citizen of New Jersey has been surrendered or compromised by the conference, but simply defined the territorial limits over which the injunction operated for the protection of New Jersey citizens, and more

clearly established their rights in points not covered by the injunction.

I am very respectfully, your obedient servant,

JOHN F. STOCKTON,  
Attorney General.

STATE OF NEW JERSEY,  
OFFICE OF ATTORNEY GENERAL.  
TRENTON, July 7th, 1885.

Hon. John H. Paynter, Attorney General of Delaware, Georgetown, Del.:

MY DEAR SIR:—Since my letter to you under date of June 18th I have received two communications from Prof. J. E. Hilgard, one under date of June 23rd and the other July 2nd. The high authority of Prof. Hilgard which is confirmed by Prof. Mitchell you will observe adopts a line from Cohansy Light to Bombay Hook Point as the dividing line between the river and bay.

By reference to Prof. Mitchell's paper on the Estuary of the Delaware, Appendix 8, Report 1883, of the United States Coast Survey, you will find the reasons given for the opinion he entertained then as well as now.

By reference to sheet No. 2 of the chart of the Delaware Bay and River founded upon a trigonometrical survey under the directions of F. H. Hassler and A. D. Bache, superintendent of the Coast Survey of the United States published in 1848, you will find the conditions on which the judgment of the distinguished authorities above referred to are founded.

The chart of the estuary of the Delaware accompanying the United States coast survey for 1883, exhibits what Prof. Mitchell calls the submerged delta where the stream splits into numerous channels.

I had collected various authorities on this question, but an examination of the charts of the coast survey satisfied me that there could be no authority so conclusive and satisfactory as that derived from the opinion of the specialists alluded to founded upon the results of the scientific surveys, in their possession.

This matter has been referred to us under the impression that we would come to a speedy decision, and I would therefore thank you to advise me at your earliest convenience, whether you

agree with me that it is proper for us to accept the decision of the scientific authorities, referred to and a copy of whose communications I enclose to you.

I have the honor to remain yours very truly,  
JOHN P. STOCKTON,  
Attorney General of New Jersey.

U. S. COAST AND GEODETIC }  
SURVEY OFFICE,  
WASHINGTON, June 23, 1885. }

Hon. John P. Stockton, Attorney General New Jersey, Trenton, N. J.:

MY DEAR SIR—In reply to your inquiry as to the dividing line between Delaware Bay and Delaware River, I should be disposed to place it as high as Bombay Hook Point and Cohansey Light. In this I am guided by my general judgment and experience, without being able to assign any definite reason for not placing it at a line from Ben Davls Point to Goose Point, or from Arnold's Point to Bombay Hook Light.

My colleague, Henry Mitchell, has made so special a study of the estuary of the Delaware that I have preferred to refer the question to him, and will send you his reply as soon as received.

Very truly yours,  
J. E. HILGARD, Supt.

U. S. COAST AND GEODETIC SURVEY, }  
OLD PRODUCE EXCHANGE, 29 June, 1885. }

DEAR CHIEF—In the same sense that we speak of the mouth of the Ganges as lying at the extremity of the Sunderbunds, so the mouth of the Delaware lies just below Bombay Hook. Both of these rivers have submerged deltas beyond their mouth.

In my report, which I have not at hand, I have given the number of nautical miles below League Island, at which the break in the law of sectional area occurs, I think, 47. I should stick to this point as the head of the bay.

Very truly yours,  
H. MITCHELL

U. S. COAST AND GEODETIC }  
SURVEY OFFICE,  
WASHINGTON, July 2, 1885. }

MY DEAR SIR—I send you herewith Mr. Mitchell's reply, which means a line from Cohansey Light to Bombay Hook Point. You see that he applies rather erudite considerations to the questions, while in reality its present application depends upon the actual relative level of land and water. Since I have, from the obvious considerations, reached the same conclusion as Mitchell from those relating to the formation of the bay, it would appear that there are very good grounds for adopting the conclusion we have both reached. I hope that it will commend itself to your judgment.

I remain very truly yours,  
J. E. HILGARD, Supt.

To Hon. John P. Stockton, Attorney General of New Jersey:

P. S.—Let me show you a consideration which has some weight with me. The sailing lines (which are practically the mid-channel lines) on the opposite sides of the Joe Flogger Shoal diverge from a point on the line proposed. This is the beginning of the spread.

JOHN H. PAYNTER, ATTORNEY-AT-LAW, }  
SOLICITOR IN CHANCERY,  
GEORGETOWN, Del., July 28, 1885. }

Hon. John P. Stockton, Attorney General of New Jersey:

DEAR SIR—My delay in answering yours of the 7th inst., is due to a desire to acquire all the information within my reach, as to the question referred to us, than to any carelessness on my part. There is considerable diversity of opinion among the pilots, sailors and river-men in our State, as to the question in dispute, and such difference has embarrassed me in coming to a definite conclusion. I supposed at first that this class of people would agree as to the exact spot where the Delaware river ends, and the Delaware Bay commences; but in consultation with different persons, likely to know, I discovered that it was a mooted question, which could not be settled in any other way than by scientific research or reference. The several points suggested to me as the head of the bay and the mouth of the river are as follows:

1st. A straight line from Ben Davis' Point to Goggs Point.

2d. A straight line from Cohansev Light to Bombay Hook Point.

3d. Bombay Hook Light.

4th. Liston's Tree, now called Liston Point.

5th. The lower end of Reedy Island.

6th. Fort Delaware.

The last named place, however, has not been gratuitously urged by any one making pretensions as an expert. The lower end of Reedy Island seems to be the favorite location for the divisional line with the people residing in that vicinity, whilst Bombay Hook and Liston's Point have more advocates among the pilots and river sailors. These reasons are not as erudite as those of Superintendent Hilgard and Professor Mitchell; but I consider it due to them as well as yourself to give their most important reasons for their conclusions. The advocates of Reedy Island say that has been considered by the people of that vicinity as the head of the bay "from the time the memory of man runneth not to the contrary"—that the residents opposite have always considered they lived on the bay shore—that they are of opinion that the charts so designate—that they have been informed and believe that the government issues two sets of licenses to tug-boats, one for the river as far as Reedy Island, and the other for the river and bay; this fact being verified by most of the vessels being towed to Reedy Island and then cast loose, that Reedy Island is a distinctive point, whilst Bombay Hook is not; the latter not being an Island, but only a part of the Delaware shore with a small creek running behind it from Smyrna Creek to Leipsic Creek, the former being really an Island nearly a mile from the Delaware shore, containing about one hundred acres, with a light house thereon, and a channel between it and said shore, besides being the most prominent Harbor on the Delaware between the breakwater and Philadelphia—that the bay at this point immediately widens to six or seven miles, whilst a few miles above it is not more than one and a half to two miles wide, the bay at this place being as wide as it is ten miles below at Bombay Hook—that there is much more to designate Fort Delaware as the head of the bay than Bombay Hook; but it is within the twelve-mile circle, the radius extending nearly to the lower end of Reedy Island, and that the language of our statute defining our sovereignty, jurisdiction and limits, (Revised Code of Delaware, 1874, Chap. 1, Sec. 2.) after

running the line between this State and Maryland and Pennsylvania, in speaking of the line between Delaware and New Jersey, says: "Low water mark on the eastern side of the River Delaware within the twelve-mile circle from New Castle; and the middle of the bay below said circle," implying (if not saying in express words) that all below said circle is the bay. Most of the pilots are of the opinion that the river ends at Bombay Hook, as at that point the bay narrows as well as the channel; but some of this class contend that the lower end of Reedy Island is the proper divisional line. Another class of river sailors popularly called shallop men, are clear that the head of the bay is Liston's Tree, that being the point they were accustomed to steer to as such, and that they were informed during boyhood by the sailors of a former generation that this old land mark designated the bay's head. None of these opinions are given from a scientific standpoint, but are formed more from tradition, custom and implication than of any knowledge of the peculiar formation of the bay, and river. I give you the reasons for what they are worth, but have desired information from some scientific source, that the question might be placed beyond dispute. Like yourself, I regard the charts of the Coast Survey, or the opinions of officers and scientists connected with this branch of the Government service as of the highest authority. The letters of Superintendent Hilgard and Prof. Mitchell, (copies of which you kindly furnished me) seem conclusive on the point, and their reasons are especially cogent, not only from the fact that they are founded upon the formation of the banks and shores, as well as the bed of the waters, but also the fact of the opinions emanating from such distinguished gentlemen, who have made the estuary of the Delaware and of other rivers a special study, entitles them to the highest consideration. They both agree that the bay commences and the river ends at a straight line from Cohansev Light to Bombay Hook Point, and it would be unreasonable to contend for a divisional line contrary to the decision of such distinguished scientific authorities, upon the mere cursory opinions of rivermen or persons living in the vicinity of the place in dispute, who base their beliefs upon nothing stronger than tradition or implication. The actual relative level of land and water, and the fact of the sailing (which are practically the mid-channel lines) on the opposite sides of the Joe Flogger shoal, diverging from a point on this line, spoken of by Superintendent

## NEW JERSEY vs. DELAWARE.

Hilgard, coupled with his statement that this is the beginning of the spread, and also the theory of Prof. Mitchell as to the submerged delta, are far more weighty reasons than traditional statements without regard to scientific causes or geodetic surveys. I am, therefore, of opinion that it would be proper for us to accept the decision of the scientific authorities referred to, a copy of whose communications are in my possession. I

will further state that an atlas of the State of Delaware from actual surveys by and under the direction of D. C. Beers, published by Pomeroy & Beers, in 1868, indicates the point named by Supt. Hilgard and Prof. Mitchell as the divisional line between the bay and river.

Yours very truly,

JOHN H. FAYSTER,  
Attorney General of Delaware.





REPORT

OF THE

COMMISSIONERS OF FISHERIES

OF

NEW JERSEY.

1884-1885.

TRENTON, N. J.:  
JOHN L. MURPHY, STATE PRINTER.  
1886.



possibly improved in the last three years, which is probably owing to the fact that the Delaware on several occasions has been visited by a severe epidemic of shad.

It will be apparent to every one who is familiar with the matter that the difficulty of procuring accurate statistics of the annual catch of shad is owing to the fact that the Delaware is a river, the number of gill-nets and the many avenues they have for disposing of their catch. Their voluntary statements have heretofore been accepted and may have had private reasons for exaggerating or curtailing their reports. The wardens faithfully endeavored to obtain a correct statement in both years covered by this report and their success may be judged from the fact that eight districts in five counties along the river were returned, in 1884, a total catch of one million nine hundred and eighty thousand nine hundred and twenty-eight (1,908,928) shad, and in 1885 seven of the same districts showed a total catch of one million five hundred and eighty thousand eight hundred and sixty-eight (1,580,868). Both of these reports probably fall far below the actual catch and the unusual size of its shad. Active fishing was not done for three weeks longer than usual and yet the fishermen of this season with a better balance in their favor than they did the year before. Seven, eight and even eight and one-half pound shad were frequently displayed and the general run of fish was the same as on the river. The prices obtained for the shad were satisfactory and the market was never overstocked during the season. In the height of the season the United States steamer "Albatross" spent several weeks at Gloucester City and other points on the river, taking spawning fish from the shore fisheries, hatching and shipping from them and turning millions of young shad into the Delaware every day. The Lookout, another government steamer, was also at the same work at Burlington and Lambertville for several weeks. The total output of young fish by the government during the season was reported as twenty million (20,000,000).

Some complications arose during the season of 1885 between the Delaware fishermen and the authorities of the State of Delaware, on account of alleged trespass on the rights of Delaware fishermen in violation of Delaware laws. An injunction of the Supreme Court of the United States was obtained, commanding and enjoining the State of Delaware, its officers and agents, to desist from arresting, punishing, fining, trying, or in any manner punishing or seizing, or taking any property of any citizen or resident of the State of New Jersey for fishing in the river Delaware. While this injunction was in force, and the Governors and Attorneys-General of the State of New Jersey were seized by Delaware under the charge

this point, was discussed by the Commissioners last spring, and the owners of many of the fisheries were consulted in regard to it. Without exception, shore fishermen and gillmen said that if another day was taken from the fishing week it would cripple the industry by driving fishermen from the State. They said that it would be unprofitable to keep up the large plants and hard to induce the men to remain if the season was further abbreviated. While this argument on the part of the fishermen seems perfectly natural from a business point of view, it appears to the minds of the Commissioners that it would perhaps be better for all concerned if the fishing days were so arranged that the fish could have at least twelve hours more of immunity, and they recommend the extension of the close period to 12 o'clock on Monday night. This they feel will give the shad ample time to reach the spawning ground, and will be much better than adding another close day in the middle of the week.

That efficient work has been done by the State officers in preventing violations of the shad laws on the Delaware river is shown by the lack of complaints and the few arrests that were made last year. The import of the law, and the severity of the penalty, was taught in a number of cases in previous years, and the lesson sunk so deeply that few fishermen had the temerity to attempt illegal fishing, with the prospect of arrest and confiscation of their boats and nets. The necessity of vigilant and constant policing during the shad season scarcely exists in any other river in this State than the Delaware. Other rivers are so hopelessly polluted that it is extremely doubtful if shad fishing can ever be made profitable in them again.

The shad fishing of the Passaic river appears to be a thing of the past, owing to the pollution of the river by the sewage of two great cities and the refuse of numerous chemical works, gas houses, refineries and fertilizer manufactories. The Passaic at one time was second only to the Delaware for the production of shad for New Jersey markets, and a dozen fisheries were situated on its banks, but they have entirely disappeared and there is now seldom one shad taken during any season above the mouth of the river. The catch in seines and fykes in Newark bay is frequently large enough to encourage the fishermen along the Bergen county shore to maintain scores of fyke nets, and they find a ready sale for the fish in the markets of Newark and Jersey City. The average annual catch for the last five years is roughly estimated at fifty thousand (50,000) shad in the Hackensack and Passaic rivers and Newark bay. The Hackensack river fishing has visibly improved during the last two years. Fishermen along Newark bay, and both rivers emptying into it complain loudly of the pollution of the water by the refuse from oil refineries along the Kill von Kull. They claim that the oily and foul-smelling brown scum which frequently covers the greater part of the surface of the bay prevents shad and other food fishes from ascending the river. The shad fishing in the Raritan river is said

that they had violated the statute law of Delaware by fishing within the limits of that State.

The Delaware authorities insisted that the law had been violated by the parties arrested because they fished within the limits of the State in Delaware bay, and therefore not within the territory covered by the injunction. The Governor of Delaware proposed at the conference, that the proper location of the dividing line between the river and the bay, for the purposes of the injunction, should be referred to the Attorneys-General of the respective States, and agreed that, during the pendency of the injunction, no citizen of New Jersey should be molested for fishing above the line so located.

Attorney-General Stockton, of New Jersey, and Attorney-General Paynter, of Delaware, with the aid of Professors Mitchell and Hilgard and Messrs. C. G. Garrison and A. H. Slape, of counsel for this State, decided that the dividing line between the river and the bay should be drawn from Cohansey Light to Bombay Hook Point. This agreement surrendered no right of any citizen of New Jersey, but was simply a construction of the term "Delaware river" as used in the injunction, so that no question could thereafter arise as to the extent of the territory protected by the court. The proceedings against the boats and nets were dropped by mutual agreement. The property was previously restored to the owner by the United States Marshal, by virtue of writs of replevin and other proceedings instituted by Attorney-General Stockton.

During the coming shad season the Commissioners will adopt a method which will insure an accurate report of all the details of the fisheries of the State. Blank forms will be distributed before the opening of the shad season, with instructions to the wardens which will aid them in securing detailed reports each day or week of the catch of shad and other fish, of the number of men employed, the amount of net used and the value of the catch.

By the order of the Commissioners a shad hatchery was established at Lower Black's Eddy, on the Delaware river, on June 1st, 1885, under the charge of Mr. E. B. Reading, an experienced fish culturist. Operations were continued until July 4th, and in the short space of time intervening three million four hundred and forty-five thousand (3,445,000) shad were hatched and turned into the Delaware river. Two hundred thousand (200,000) eggs were turned over to John Frank Ellis to be hatched in the U. S. Fish Commission Car, No. 3, and placed in the upper reaches of the same river. Mr. Reading, in his report to the Commissioners, substantially says:

"Taking into consideration the lateness of the season, the unprecedented run of shad in May, which seemed to exhaust the run, and the bad weather in the early part of June, our operations have been in every way successful, and I take pride in being able to report that the amount of money to which we were limited in our expenses our success seems most gratifying, and the result must be of vast benefit

shad-fishing of the Delaware river. The largest part of the shad hatched in the Seth Green boxes, and where we have such a current of water as can be had in the Delaware river, they give the best results. About eight hundred thousand (800,000) shad were hatched in McDonald jars, which also give good results, although they should do not seem to be as strong as those hatched in the boxes where the water is of the same temperature as their natural grounds."

The expense for securing and hatching the eggs for the forty-four thousand (44,000) shad for one dollar (\$1), or seventy (70) for one cent.

#### COAST FISHERIES.

Shad is a very important item in the economy of the State, and estuaries along the coast of New Jersey annually furnish enough to place the State sixth in the list of fish producers, and employment to between four and five thousand people. In the best years the value of the catch has reached considerable millions of dollars (\$1,000,000) exclusive of oysters and other shellfish. In the worst of seasons it has aggregated at least one million (\$1,000,000).

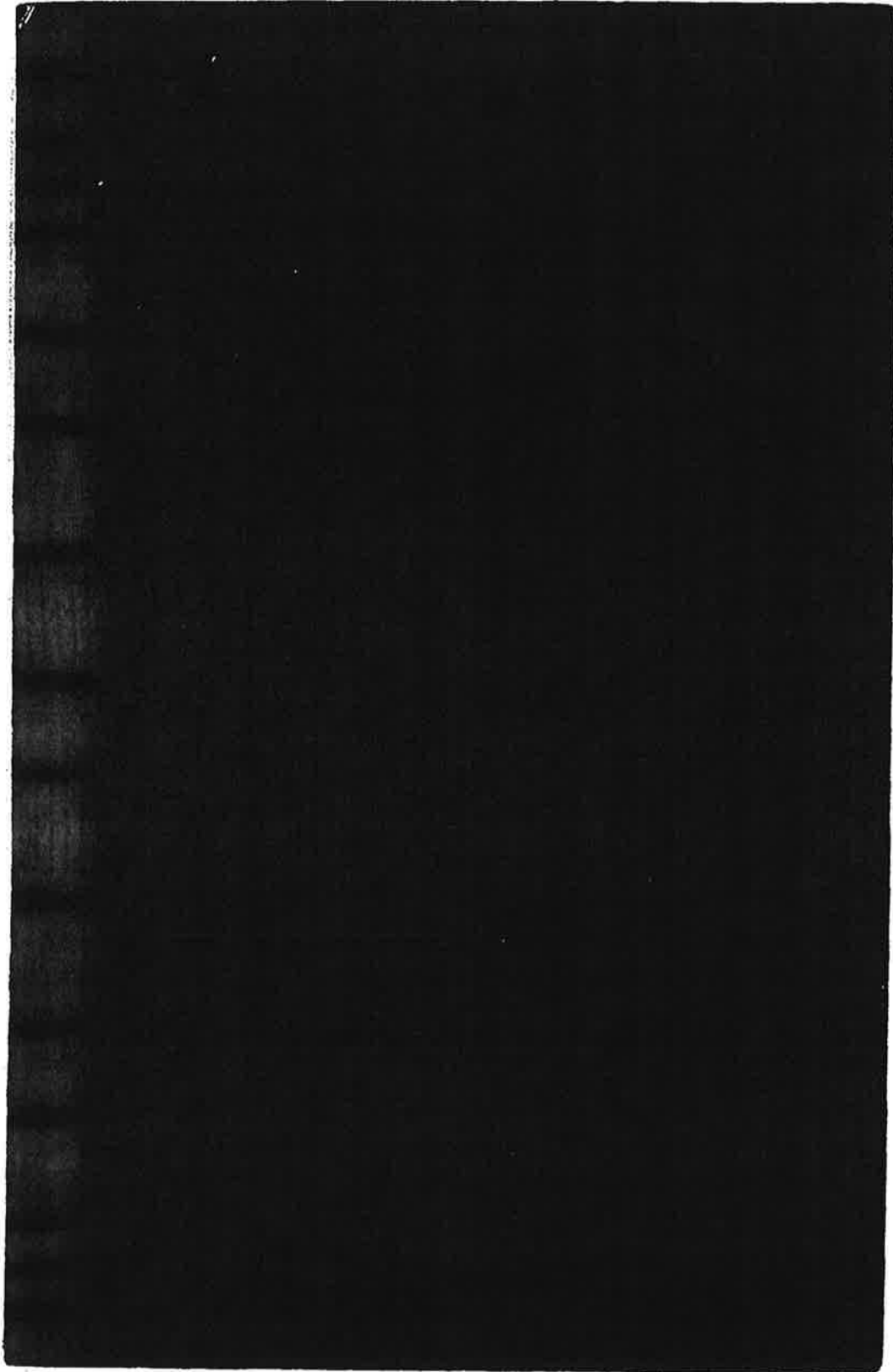
The importance of this industry will be seen in the fact that over one million dollars (\$1,000,000) is invested in the apparatus for processing shad, and that over one hundred thousand dollars (\$100,000) are annually used. The two seasons covered by this report have been unusually poor in results, and the decline of the industry almost invariably been attributed to the reckless work of the shad fishers, who are known to destroy millions of pounds of shad in their pursuit of material for making oil and fish meal. This, however, is the least part of the evil that they do, as they are in the highest authority that the wholesale capture of shad is driving from our coast the fish that depend upon them for food. Almost all of the salt water species prey upon menhaden, the natural result of depleting their stock of food is to deplete it elsewhere. Blue fish are especially valuable to shad fishermen, and in 1880 the catch was valued at nearly one million dollars (\$1,000,000). Last year, it is claimed, the catch did not reach one-seventh of that amount, and the blame is laid upon the shad fisherman. Weak fish were also scarce during the season of 1884, while sea bass and other bottom fish were more abundant than usual and aided in bringing up the total figures of the catch. It is not satisfactory to the fishermen who had invested their money in shad boats and tackle, and the catch in Delaware bay and along the New Jersey coast is anything in the recollection of the oldest fisherman.

New Jersey State Archives  
Commissioners of Fisheries Annual Reports  
1884 - 1885

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DE17050

ANNUAL REPORT  
OF THE  
ATTORNEY GENERAL  
OF THE  
STATE OF NEW JERSEY,  
FOR THE YEAR 1887.



TRENTON, N. J.  
NAAR, DAY & NAAR, BOOK AND JOB PRINTERS.  
1888.



# ATTORNEY GENERAL'S REPORT.

STATE OF NEW JERSEY,  
OFFICE OF ATTORNEY GENERAL,  
TRENTON, January 3, 1888.

HON. ROBERT S. GREEN,

*Governor of the State of New Jersey:*

GOVERNOR:—I have the honor to make the following report, embracing such portions of the business of the Attorney General's office as it seems proper should be communicated to you at this time. The matters embraced in the report are in addition to the ordinary duties required to be performed in the Attorney General's office.

## RAILROAD TAXATION.

The legal business of the Attorney General's office during the year, 1887, has been heavier than at any period in its history.

The opinion of the Supreme Court, delivered in February, 1886, declaring that the Railroad Tax Act of 1884 was unconstitutional, left the finances of the State in a deplorably unsettled condition. Thirty-four of the railroad companies of the State had refused the payment of the taxes assessed against them on the ground that the act of 1884

4 ATTORNEY GENERAL'S REPORT.

was unconstitutional, and had instituted suits for the purpose of having that question decided. The result of the decision of the Supreme Court was to prevent the State from collecting any of the taxes then due from any of those corporations, and imposed upon the State the liability of being compelled to return to the other railroad companies an enormous amount of money which had already been received by it on account of the taxes for that year. That court, having decided that the law was unconstitutional, left all other questions which had been argued at great length, and many of which were of great importance, both to the State and to the railroad companies, undecided. So long as the opinion of the Supreme Court, that the Railroad Tax Act of 1884 was unconstitutional remained unchallenged, no further progress could be made in the collection of the revenues of the State. Nothing could be done until the opinion of that court was reviewed by the court of last resort. In the meantime the whole of the annual tax due to the State from the various railroad companies for the year 1885 had fallen due, but notwithstanding the fact that the Supreme Court had declared the Railroad Tax Act of 1884 to be unconstitutional, the payment of a portion of those taxes was enforced by the State, by appropriate legal proceedings, as a prerequisite to the institution of suits by the various railroad companies for the purpose of testing the legality of the taxes for that year. Thirty-nine companies instituted suits against the State for the purpose of having the taxes assessed against them for the year 1885 declared void; so that before any steps could be taken to have the judgment of the Supreme Court reviewed by the Court of Errors, there were between

seventy and eighty suits pending against the State, brought by the various railroad companies.

As speedily as possible a review of the judgment of the Supreme Court was had in the Court of Errors, and that review resulted in the reversal of the judgment of the court below, and the declaration that the Railroad Tax Act of 1884 was constitutional.

That being the only question decided by the Supreme Court when the cases were originally before that tribunal, it necessarily was the only matter considered and passed upon by the Court of Errors. The burden, therefore, was thrown upon the State of having all of the thirty-four cases, which had been removed to the Court of Errors, returned by that court into the Supreme Court for further consideration, with the exception of four cases—those of the Morris and Essex Railroad Company, the Morris Canal and Banking Company, the Paterson and Ramapo Railroad Company, and the Paterson and Hudson River Railroad Company—which were retained by the Court of Errors for the purpose of considering the legality of the claim put forward by those several companies to the effect that they were each entitled to be protected from the operation of the Railroad Tax Act of 1884, by irrevocable contracts contained in their respective charters. These four cases, it will be seen, presented fundamental questions of vast moment, involving an annual revenue to the State of over one hundred thousand dollars.

The case of the Morris and Essex railroad, after elaborate argument, was decided against the State, the judgment of the Court of Errors being founded on a decision of the United States Supreme Court, in a case where the Morris

and Essex Railroad Company was the plaintiff and the Commissioner of Railroad Taxation of the State of New Jersey was defendant; that decision being that the Morris and Essex Railroad Company had an irrevocable contract with the State on the matter of taxation, by force of a supplement to its charter, passed in 1865. This decision was not controverted, but it was insisted before the Court of Errors by the counsel for the State that the Delaware, Lackawanna and Western Railroad Company, which was the lessee of the Morris and Essex Railroad Company, was not entitled to the same exemption from taxation which had been originally granted by the State to its lessor, but was liable to taxation under the Railroad Tax Act of 1884.

The other three cases have since been argued in the Court of Errors, and decision thereon is now pending.

After the Court of Errors had remitted all of the cases, with the exception of the four already specified, to the Supreme Court, a large number of questions of vital importance, both to the State and to the railroad companies still remained to be determined,—the most important of those questions being the construction to be given to the various sections of the act; the legality of the methods and of the proceedings of the State Board; the correctness of the valuations placed by them; upon the vast mass of railroad property in the State, the legality and correctness of the valuations of the franchises of the various companies, and the right of the State to tax property used in interstate commerce. These same questions were also involved in the suits brought by the thirty-seven companies to test the validity of the taxes assessed against them for the year 1885. It is obvious that these questions embraced the

whole field of taxation, and the labor thrown upon the office of the Attorney General, in preparing thorough and exhaustive briefs on each of these questions, was enormous. All of the questions still remaining undetermined, were carefully considered and elaborately and thoroughly argued in the Supreme Court from time to time, both orally and on briefs; the foundation of the arguments being many thousands of printed pages of testimony, taken for the purpose of throwing light on the various questions still in issue. All these questions were finally decided by the Supreme Court in favor of the State, with the exception of some few restrictions upon the action of the State Board in the taxing of property used in interstate transportation.

Both the State and the various railroad companies, being dissatisfied with the views expressed by the Supreme Court on the question of interstate commerce, have taken steps to have the same reviewed by the higher courts, and this question, before it is finally determined, will, in all probability, go to the Supreme Court of the United States for its decision.

Besides disposing of all the cases which involved the taxes assessed for the year 1884, the thirty-eight cases involving the taxes for the year 1885 have all been determined in favor of the State during the present year, and judgment entered in each case. Besides that, large amounts of arrears in taxes, extending over a period of ten years, have been in litigation, between the State and the Central Railroad Company of New Jersey; and after a long struggle a determination has been reached in those cases which will probably result in the payment by that company

to the State of the whole of the amount of such arrears in the course of a few days.

The decision of the Court of Errors in the Morris and Essex case having been, that its lessee, the Delaware, Lackawanna and Western Railroad Company, was entitled to the tax exemption originally granted by the State to the Morris and Essex railroad, and that this railroad could not legally be taxed under the general laws of the State, even in the hands of a lessee company, an investigation was ordered by the legislature to be made by the State officers for the purpose of ascertaining whether the Morris and Essex Railroad Company had, since its incorporation, annually paid to the State of New Jersey the full amount of taxes which it was required to pay by the terms of its charter contract. That investigation has been made and the result was a report to the legislature that large amounts of taxes were due and owing from that corporation to the State. The effect of this report was the introduction into the legislature of a bill to repeal the charter of that company. The effect of the introduction of that bill (although it was never passed by the legislature) was to cause the payment by that company of a large amount of taxes which the State claimed was due and owing to it, and also an agreement between that company and the State to arbitrate the question of arrears of taxes found to be due by the report to the legislature above referred to. The report was based upon an examination of the books of the company, made on behalf of the State by Mr. Richard F. Stevens, an expert accountant. Mr. Stevens was subsequently employed by the Congressional Committee, appointed to investigate the affairs of the Union Pacific Railroad

Company, and this employment necessitated his presence in California for a period of several months, making it impossible to begin the taking of testimony under the agreement to arbitrate, until his return to this State, which occurred in the latter part of October last; and since that time the office of the Attorney General has been diligently engaged in taking testimony in that matter in support of the claim of the State. The evidence is being taken as rapidly as possible, and every effort is being made to press this matter to a speedy conclusion.

Various railroad companies have also sued out writs of certiorari to review the taxes assessed against their property for the year 1886. These cases raise questions not yet passed upon by the courts, and the time for their argument has not yet been reached. A hearing in those cases will take place before the Supreme Court at the coming February Term.

I enclose herewith a copy of an act amendatory of the existing law which was prepared by me and introduced into the House of Assembly at the last session of the legislature.

Its object was simply to correct certain imperfections in the existing law, and obviate as far as possible the delay in the collection of the taxes consequent, under the present system, upon continuous and protracted litigation. The bill was not objected to by any one, so far as I am informed, but failed to pass on account of complications which arose in reference to other questions connected with the system of taxation, on which there was a diversity of opinion. These contested propositions became incorporated into the bill in the House, and in the process of legislation retarded

the consideration of the unobjectionable portions until too late for the separate consideration of the proposed amendments.

I think this bill should become a law.

#### MISCELLANEOUS CORPORATIONS.

The Comptroller has placed in my hands for collection, from time to time, the taxes due from delinquent corporations, assessed by the State Board of Assessors by way of a franchise tax or license fee, under and by virtue of an act entitled "An act to provide for the imposition of State taxes upon certain corporations, and for the collection thereof," approved April 18, 1884.

It was ascertained, upon investigation, that many of these corporations either had failed to commence or ceased to do business within or without the State, while others had become defunct or insolvent, so that it was concluded best to apply to the Court of Chancery, by petition, in the name of the State, for an injunction to restrain them from the exercise of any franchise or the transaction of any business within the State until they respectively paid the tax, &c.

Petitions were accordingly prepared and served. Many of the corporations suffered an injunction to issue by default, while others appeared and filed answers, alleging that the act was unconstitutional or that they were not liable to be taxed under it.

The American Glucose Company, with a capital stock of over thirteen millions of dollars, against whom a tax had been assessed to the amount of \$13,322, contested the validity of the act. The Chancellor, after an argument,



held the act to be constitutional, and said if this company was not liable the act would not apply to any company. An appeal was taken to the Court of Errors and Appeals, where the decision of the Chancellor was affirmed, in 1887, at the June Term of said court.

In the case of The Society for Useful Manufactures, the Chancellor dismissed the petition on the ground that said company possessed an irrevocable contract on the subject of taxation.

In the cases of the Faure Electric Light Company, the New York File Sharpening Company, the National Underground Electric Company, the Middlesex Land Company and the Cape May Ocean Pier Company, the Chancellor dismissed the petitions on the ground that these companies had done nothing under their franchises, consequently were not liable to taxation under said act on their mere franchises.

The Western Union Telegraph Company paid their tax under protest, and then prosecuted a writ of certiorari out of the Supreme Court to set the same aside as illegal, alleging, first, because of its operation upon a franchise granted by the United States, and used for its purpose and benefit; second, because it is a tax upon interstate commerce, and in violation of the constitution of the United States.

This case is still pending, and undoubtedly will be carried to the United States Supreme Court before the same is finally settled.

The list of delinquent corporations placed in my hands for the year 1884 contained one hundred and seventy-six

in number, against which an aggregate tax had been assessed, amounting to \$91,574.94.

The delinquent list for 1885 contained two hundred and sixty-four in number, against which an aggregate tax had been assessed amounting to \$116,914.32.

The delinquent list of 1886 contained three hundred and thirty-five in number, against which an aggregate tax had been assessed amounting to \$126,191.03.

The delinquent list for 1887, I am informed, will contain a much larger number than in any previous year.

These taxes are assessed annually against the respective corporations by the State Board of Assessors, and range all the way from \$1 to \$5,000, consequently, the list of delinquents is increased from year to year by reason of the formation of new companies as well as by reason of the failure or abandonment of those already in existence; so that while it appears as if a large amount of tax was accumulating which should be collected, yet, in fact, the list is collected every year as closely as possible.

In view of the constant changes, which this class of corporations undergo, it would seem necessary to adopt some step to prevent the necessity of assessing or proceeding to collect a worthless tax. It is suggested that the act could be so amended as to permit the Board to exercise its discretion in assessing corporations which have failed to commence or ceased to do business, with power to cancel all assessments heretofore or hereafter made against such corporations, where no good result can be attained by carrying such a tax on the books of the State.

The act might be improved by other amendments, as it is imperfect in other particulars.

## THE BRIDGE OVER ARTHUR'S KILL.

After consulting with you, on the 25th of June I filed an information in the Court of Chancery for the purpose of enjoining the Staten Island Rapid Transit Company and the Baltimore and New York Railroad Company from taking possession of the lands of the State and appropriating them to their own use, without asking the consent of the State or Riparian Commission, or making compensation for the lands so taken.

The injunction was granted as prayed for in the information, but the case was subsequently removed to the Circuit Court of the United States, and was argued before Mr. Justice Bradley, on final hearing.

Mr. Barker Gummere and Mr. Cortlandt Parker assisted me, and ably presented the case on behalf of the State. Mr. Keasby, Mr. Cowen and Mr. McFarland appeared on the part of the defendant corporations.

The decision was adverse to the State: the court holding that an act of Congress authorizing the said companies to build a bridge over the Arthur's Kill was sufficient authority to justify the corporations in doing the acts complained of by the Attorney General. From this decision I have directed an appeal to be taken to the Supreme Court of the United States, and have instituted other proceedings in order that the court in the last resort may fully comprehend the gravity of the situation. Vital questions of constitutional law and fundamental doctrines concerning the tenure by which private property is held in this country are among the issues involved in the controversy. No more important case has ever been before our courts.

It was insisted by the counsel for informant that the State of New Jersey is seized and possessed of and entitled to an estate in fee simple absolute, in the soil covered by the waters of the Arthur Kill and being within the boundaries of said State, subject only to the easement of navigation and the power of regulating such navigation ceded by the State to the general government by the Constitution of the United States; and that neither the right to exercise the easement of navigation or the power to regulate commerce, embraced the power to take the private property of the State, without compensation for a purpose which obstructed navigation.

Chief Justice Waite, in delivering the opinion of the court in the case of *McCready v. Virginia*, simply announced what had been the uniform ruling of the courts. He said:

“The principle has long been settled in this court, that each State owns the beds of all tide waters within its jurisdiction, unless they have been granted away. In like manner, the States own the tide waters themselves and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its people, and the ownership is that of the people in their united sovereignty. The title thus held is subject to the paramount rights of *navigation*, the regulations of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the *exclusive* control of the State, which has, consequently, the right in its discretion to appropriate its tide waters and *their beds* to be used by its people as a common

for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is, in effect, nothing more than a regulation of the use by the people of their common property. The right which the people of the State thus acquire comes not from their citizenship alone, but from their citizenship and property combined. It is, in fact, a *property right* and not a mere privilege and immunity of citizenship. \* \* \* Following, then, this salutary rule, and looking only to the particular right which is here asserted, we think we may safely hold that the citizens of one State are not invested by this clause of the Constitution [Article 4, Sec. 2,] with an interest in the common property of the citizens of another State. \* \* \* \* The planting of oysters in the soil covered by water, owned in common by the people of the State, is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purposes of cultivation and profit; and if the State, in the regulation of its public domain, can grant to its own citizens the *exclusive* right of dry land, we see no reason why it may not do the same thing in respect to such as are covered by water. And as *all concede* that a State may grant to one of its citizens the *exclusive* use of a part of the common property, the conclusion would seem to follow, that it might, by appropriate legislation, confine the use of the whole to its own people alone."

Chancellor Kent says, "It is admitted that the grant to Congress to regulate commerce on the navigable waters of the several States contains no cession of territory or of public or private property." 1 *Kent Comm.*, 439; *Caulfield v. Coryell*, 4 *Washington C. C. Rep.*, 371.

The right of the general government to take private property by virtue of its power of eminent domain for its own purposes was not questioned by me in the argument.

The right of Congress to authorize an agent, under the theory that it was for a public purpose, to take the property of the State on making compensation was not denied, as it was unnecessary to the argument.

It was claimed, however, that as the act did not, in terms, authorize it, it should not be presumed by the court that Congress intended to confer the power on a corporation of the State of New Jersey and a foreign corporation, to violate the laws of the State by building a bridge to another State which would be a serious obstruction to navigation; and as an incidental power thereto, to take the land which the State held in fee simple without making compensation therefor.

The bill had been passed by Congress under the declarations made by eminent lawyers that it contained *no such powers* and that a construction which gave the bill such an operation made it unconstitutional.

Senator Hoar, who is admitted to have no superior as a constitutional lawyer in the Senate, took this view of the bill. He spoke as follows during the debate which occurred on the passage of the bill in the Senate:

"It is conceded that the power exists in the United States to authorize the dealing with navigable waters as it sees fit. It may authorize the extension of a wharf from Boston harbor, and it may authorize the taking of land by eminent domain for that purpose, if that be a matter of general public interest. It may authorize the crossing of the Mississippi river. That is one thing it may do.

"There is another thing which Congress may do. It may authorize the crossing of the entire continent for purposes of interstate commerce with a railroad, and confer eminent domain. That is a separate thing which it may do. But it cannot take away the power from New Jersey to control its corporations. If a corporation whose charter New Jersey created, and whose charter it may alter or repeal, as I assume it can the charter of this corporation, undertakes to go into a business of interstate commerce, to build a railroad across Pennsylvania, or anywhere else, New Jersey may stop it, and that is in the control of New Jersey, notwithstanding all the authority which Congress may have given it.

"In the next place, if it be necessary to take New Jersey soil to come down to the line of navigable water on one side, and the bridge cannot be built without that, the control of that proceeding is solely within the power of the New Jersey legislature, unless the Congress of the United States, in addition to its license to cross or occupy or to interfere with the waters of the navigable streams, have added the authority to come down to the bank, and have added the authority to exercise eminent domain under national power conferred upon it for that purpose.

"That does not appear in this bill. We have simply said that a New Jersey corporation may cross this navigable stream, and that is all. A great deal is necessary to put this thing out of the control of New Jersey. New Jersey may destroy this New Jersey corporation. It may say that it shall exist only on condition that it shall not exercise the power to interfere with this navigable stream; but in the absence of any such thing, unless New Jersey has

conferred the power of eminent domain to put one end of this structure upon her soil, this bill, it seems to me, is nugatory. That is the proposition I make."

Under such circumstances it became my imperative duty to the State, and an absolute obligation arising from the trust which my position as Attorney General of the State imposed, that I should take such proceedings as the practice of the courts permitted to protect and defend the rights and dignity of the State.

#### STATE BOARD OF HEALTH.

Other matters, some of them of grave importance to the interests of the State, have required the attention of the Attorney General's office. Prominent among these was a suit brought by the Newark and South Orange Horse Railroad Company against the State Board of Health, to recover the sum of \$20,000, the alleged value of a large number of horses belonging to that company and which had been destroyed by the agents of the Board as being infected with glanders; the foundation of the suit being the alleged want of power on the part of the State to authorize the destruction of private property without making compensation for it. It will be seen that this case involved the question of the constitutionality of the various acts of the legislature creating the State Board of Health and defining its powers. The importance of this branch of the State government is at this day so thoroughly understood, that the absolute necessity of resisting an attack upon it which, if successful, will destroy its existence, must be apparent to every one. Careful attention, therefore,



was given to the preparation of this case, and it was thoroughly argued on the part of the State at the last November Term of the Supreme Court. A decision has not yet been reached.

The law of Congress, passed at its last session, for the purpose of preventing the spread of pleuro-pneumonia in cattle, and its effect upon the legislation of this State on the same subject, have received the careful consideration of this office, and such advice given to the members of the State Board of Health in the matter as will, it is believed, result in producing harmonious action by the agents of the Federal government and the Board in the endeavor to eradicate this disease.

#### FISHING IN THE DELAWARE RIVER AND BAY.

Under date of August 12, 1885, I made a report in reference to the dividing line between the Delaware river and bay.

An injunction of the Supreme Court of the United States was at the time in force commanding and enjoining the State of Delaware, its officers and agents, to desist and refrain from arresting, imprisoning, trying, fining, or in any manner punishing, or seizing, holding or selling any property of, any citizen or resident of New Jersey for fishing in the river Delaware, as they had theretofore been accustomed to do, until the said court should make other order to the contrary.

The line was then established as a line drawn from Cohansey Light to Bombay Hook Point. It was definitely settled by agreement that as long as the injunction should

be in force there should be no interference on the part of Delaware with the citizens of New Jersey fishing above that line in the Delaware river.

This agreement has not, to my knowledge, been violated, and I have not heard of any complaint on the part of our citizens in reference to any alleged interference with their rights in the river Delaware above the dividing line. My attention has been called, however, by communications sent to me by you as well as from other sources to the continued effort on the part of Delaware to enforce the statutes of that State, which prohibit the taking of running fish within its territorial limits, against the citizens of New Jersey below the dividing line—in Delaware bay.

In the report of August 19, 1885, I stated to the Governor that the authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, had agreed that no citizen of New Jersey should be molested for fishing in any part of the bay beyond the Delaware side of the channel.

The report then proceeded to state the exact point of difference between the States as follows :

“The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

“It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is

not a violation of that clause of the Constitution of the United States which ordains that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

“Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terræ*, is a question of great doubt and delicacy.

“In *Dunham v. Lamphere*, 3 Gray, 268, Chief Justice Shaw held, that an act to regulate the time and manner of taking fish within the territorial limits of the State was within the authority of the State legislature, and binding on citizens of other States, and on vessels enrolled and licensed as fishing vessels under the laws of the United States. He said, however, ‘It has been contended, and with some plausibility, that any act of the State which should give to our own inhabitants a right of fishing in the sea *within our own territorial limits*, and prohibit the same to citizens of other States, or allow them to participate in it only on the payment of some tax or duty, would be obnoxious to Section 2, Article 4th, of the Constitution. \* \* \* In deciding this case, therefore, on the ground that the act on which it is founded makes no discrimination, in its prohibitions, between the inhabitants of other States and those of this commonwealth, we wish not to be understood as implying that, if the law had been otherwise, it would have been unconstitutional. Until it has been directly determined by the Supreme Court of the United States that such a law, appropriating the coast fisheries within the territorial limits of the State to the inhabitants of the commonwealth, is repugnant to the Constitution of the United

States and void, it must be deemed an open question, to be decided by the competent tribunals when it arises.'

"This was not, however, a matter which either the Executive of Delaware or of New Jersey could legally regulate, and they did not attempt to do so. It is a question, which, when it arises, must be determined on constitutional grounds by the tribunals established for that purpose, or be settled by the States by a treaty, with the consent of Congress."

I have examined the decisions which have taken place since the above report was made, and I am still of the opinion that it is very unwise for either New Jersey or Delaware to attempt to prohibit the citizens of either State from taking running fish in any part of the bay. I have no doubt that it is the common interest of the fishermen of the two States to preserve the fishing in the waters which divide the States for their mutual benefit.

I recommend that a commission be appointed, with power to confer with a similar commission, which may be appointed by the State of Delaware, in reference to this important subject.

All which matters are respectfully submitted.

JOHN P. STOCKTON,

*Attorney General.*

*Extract from*

FIRST ANNUAL MESSAGE  
OF HIS EXCELLENCY  
**ROBERT S. GREEN**  
GOVERNOR OF NEW JERSEY  
TO THE  
Legislature--Session of 1888

DIFFERENCES WITH THE STATE OF DELA-  
WARE.

I refer to the report of the Attorney General for a detailed statement of the points in difference between New Jersey and the State of Delaware. It has led to litigation, the obtaining of an injunction, various conferences and agreements, but the source of the difficulty remains and gives rise to acts on the part of citizens and officers which are considered as invasions on the rights of others. The question involved has never been settled by the Supreme Court of the United States. I adopt the suggestion of the Attorney General, and recommend that a commission be appointed with power to confer with a similar commission which may be appointed by the State of Delaware, to settle these serious disputes.

SHORE FISHERIES.

Serious complaint has been made of late years of the decrease in the food fish which formerly furnished a cheap and excellent article of diet. This is charged to the depredations of menhaden fishermen, who swarm our shores with their steamers and purse nets. The subject was carefully examined by a committee of the United States Senate, who reported a law in 1884 to regulate this kind of fishing. Under the opinion of the Attorney General and the committees of the United States Senate the States are powerless to make effective laws to protect our coast. The injury is not only one by which the supply of food is decreased, but it is destructive of a large deserving industry, that of the shoremen who formerly supplied the market with edible fish.

It is competent for Congress to enact the proper laws to regulate the catching of fish within three miles of our coast, and I recommend that our Senators and Representatives be requested to use their best efforts to secure the passage of the same.

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GEOLOGICAL SURVEY OF NEW JERSEY.

FINAL REPORT

OF THE

STATE GEOLOGIST.

VOL. I.

TOPOGRAPHY.

MAGNETISM.

CLIMATE.

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## PHYSICAL DESCRIPTION OF NEW JERSEY.

BY C. CLARKSON VERMEULE, C.E.

## GEOGRAPHICAL POSITION.

The northernmost point of the State is Tri-States rock, at the forks of the Delaware and Navesink rivers, just south of Port Jervis, New York. It is in latitude 41 deg. 21 min. 22.6 sec., and longitude 74 deg. 41 min. 40.7 sec. The most easterly point is in the middle of the Hudson river nearly opposite Hastings, New York, and due east from the terminal monument of the State line on the west bank of the river. This point is in latitude 40 deg. 59 min. 50.1 sec., and longitude 73 deg. 53 min. 39 sec. Cape May is the southernmost point of land, and lies in latitude 38 deg. 55 min. 40 sec., and longitude 74 deg. 56 min. 40 sec. In the middle of the Delaware river, just above Pea-patch island, and in latitude 39 deg. 37 min. 00 sec., and longitude 75 deg. 35 min. 00 sec., lies the most westerly point.

The extreme length of the State from Tri-States rock to Cape May is 166 miles, and its narrowest part is at a line drawn from Trenton to Great Beds light-house, in Raritan bay, which is 33½ miles long. The portion lying north of this line is nearly square, measuring about 55 miles from northwest to southeast, and 65 miles from the New York line southwest to the Delaware river. The Delaware forms the northwest and southwest boundaries of this square, the New York and New Jersey line between Tri-States rock and the Hudson the northeast side and the Hudson river, New York bay, Kill van Kull and Arthur Kill the southeast side. This line makes a natural dividing line between northern and southern New Jersey, and marks a decided change in topographic and other physical features. Southern New Jersey measures 36½ miles in width from Bordentown to the seashore, and gradually increases to 57 miles from opposite Chester, Pennsylvania, to Great Egg Harbor inlet. Its length from Raritan bay to Delaware bay is just about 100 miles. Excepting on the above-described line from Trenton to South Amboy, this portion of the State is surrounded by water.



## BOUNDARIES.

New Jersey is bounded for a distance of 108 miles on the north and east by the State of New York; for 137 miles on the east by the Atlantic ocean; for 78 miles on the south and west by the State of Delaware, and for a distance of 164 miles on the west by the State of Pennsylvania. Her total frontier measures 487 miles, of which all but 48 miles is defined by natural boundaries—rivers, bays and the ocean.

This area was first constituted and named as a distinct colony or province in the year 1664, when it was sold by James, Duke of York (afterward King James II.) to Lord Berkeley and Sir George Carteret. In the deeds of lease and release, dated respectively 23d and 24th of June, 1664, it is described as "That tract of land adjacent to New England, and lying and being to the west of Long Island and Manhitas 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 northernmost branch of the said bay or river Delaware, which is in 41 deg. 40 min. of latitude; and crosses over, thence, in a straight line, to Hudson's River, in 41 deg. of latitude; which said tract of land is hereafter to be called Nova Casarea, or New Jersey."\*

This description led to long controversies as to the location of the northern boundary, for subsequent examination showed that there was no important fork of the river Delaware near latitude 41 deg. 40 min. The eastern extremity of the boundary was first determined to be at the mouth of Tappan creek, afterwards it was claimed that it properly began opposite the mouth of Spuyten Duyvil creek, and still other claims were presented for its location at various points between these extremes. The western end of the boundary was proposed by some to be fixed at the head of Delaware bay, and by various others at the mouths of the Lehigh, the Navesink, the Popaxton and the Mohawk branches of Delaware river, and at the lower end of Minisink island. Many attempts were made to reconcile these conflicting claims and to ascertain and mark the line.

The commission appointed in 1767, to determine the northern

\* Leaming & Spicer, p. 10.

boundary, decided that this description had been based on the map shown on next page, the errors of which account for the vagueness of the description. This map was published shortly before the above grant was made, and it may be noted that it bears a marked resemblance to one published by Van der Donck in his "Description of the New Netherlands as it now is," 1656. It is reproduced because of its interest as the map by which the boundaries of the State were first described, and also as showing what important difficulties may arise from erroneous maps. It will be noticed that its latitudes are about one-quarter of a degree too great at the northern boundary.

This grant clearly includes Staten Island. This, however, was early claimed as a part of New York and her title to it was finally confirmed by the action of the Legislatures of the two States and of the Congress of the United States, in 1834.

Various commissions have been appointed since 1718 to fix different portions of the State boundaries, but the work is still incomplete. The work of these commissions is given in detail further on. For the benefit of those who have no need to follow out these details, the following brief descriptions of the State boundaries are given, as near as at present known.

#### TERRITORIAL BOUNDARIES.

Beginning at Tri-States rock, at the forks of the Delaware and Navesink rivers, the line between New York and New Jersey runs southeast, changing its course slightly at the end of each mile, so that at Greenwood lake it swerves southward 2,415 feet from a straight line, joining its two ends, so continuing to the terminal monument on the west bank of Hudson river opposite Hastings. The line is marked by a granite monument at each highway and railroad crossing, and also at the end of each mile as measured from the bank of the Hudson; thence the line runs east to the middle of Hudson river, and then down the middle of the said river and New York bay to a point midway between the headlands of Constable Hook, New Jersey, and Bay Ridge, Long Island; thence westerly along the middle of Kill van Kull (to the northward of Shooter's island\*), and down the middle of Arthur Kill to a point at the mouth of said Arthur Kill. From here it follows a straight line to Great Beds light; thence on a straight line toward Waacake light until it inter-

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\* So accepted, but open to question.



sects a line from United States Coast and Geodetic Survey station "Morgan 2" through Romer Stone beacon; and thence on the same line until it intersects a line drawn from Sandy Hook beacon to United States Coast and Geodetic Survey station "Oriental Hotel," on Coney Island; thence on a line at right angles to this last-mentioned line to the open ocean. Down the coast the boundary is a line three geographical miles from the coast line until we reach a line drawn through the middle of Delaware bay; thence up the middle of the bay and river\* to the line between Pennsylvania and Delaware. The line between New Jersey and Pennsylvania follows thence up the middle of the Delaware, leaving the several islands of said river to the State nearest which they lie, to Tri-States rock, the place of beginning.

## LIMITS OF JURISDICTION.

The above bounds limit the property rights of the State. In some cases they coincide with the jurisdictional limits, and in other cases they do not. The limits of jurisdiction follow the line from Tri-States rock to the Hudson river as described above; thence due east to the middle of said river, and following the middle of the river to a point opposite the mouth of Spuyten Duyvil creek; thence westward to low-water mark on the western shore of the Hudson. Jurisdiction is limited by low-water mark of the western shore from this point southward along the river and New York bay to Kill van Kull, and changes as the shore line is changed by improvements. Continuing, the limits follow the north shore of Kill van Kull and the west shore of Arthur Kill to the mouth of Woodbridge creek; thence crossing the Kill and following low-water mark of the Staten Island shore around to Prince's Bay light-house. From here they follow a line drawn from Prince's Bay light-house to the mouth of Matawan creek, until said line intersects the previously-described line of territorial limits drawn through the middle of Raritan bay; thence along said line to the ocean, and down the coast to a point midway between the Delaware capes. From here New Jersey claims jurisdiction to the middle of Delaware bay and river as far up as the line between Delaware and Pennsylvania. From this point northward to Tri-States rock the States of New Jersey and Pennsylvania

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\* This is New Jersey's claim. It has been disputed by the State of Delaware. See Revised Code of Delaware, 1874, chap. 1, sec. 2.

exercise joint jurisdiction over the waters of the Delaware river, offences being tried in that State which first apprehends the offender.

The right to regulate fisheries extends to the property limits so far as the question has been settled by inter-state compacts.

The above description embodies the best understanding which can be reached of the results of the various inter-state commissions. The territorial boundary through New York bay and across Newark bay from the head of Kill van Kull to the head of Arthur Kill has not yet been settled with proper definiteness; and, as before stated, no agreement has been reached with Delaware as to the boundary between that State and New Jersey. For the use of those wishing to pursue the subject further, the results of the various boundary agreements are outlined below.

#### NORTHERN BOUNDARY BETWEEN NEW JERSEY AND NEW YORK.

The following is on record in the office of the Secretary of State of New Jersey, Book F 2 of Deeds, p. 435 :

“By His Excellency Lewis Morris, Esq., Captain General and Governor in Chief of His Majesty's Province of New Jersey and Territories thereon depending in America, and Vice Admiral in the same, &c.

“I do hereby certify that sometime in or about, as I believe, the year 1685 or 1686, Colonel Thomas Dongan then Governor of New York with some of the gentlemen of the Council of New York and others, met with Gawen Lawrie then Governor of New Jersey and some of the gentlemen of the Council of New Jersey and others, at a place nigh which stood afterwards the house of Col. William Merret on the west side of Hudson's River, where an observation was there made of the latitude, and marked with a pen knife on a beech tree standing by a small run or spring of water that runs down on the north side of the place where, I think, Merret's house afterwards stood. Some time early in the beginning of the year 1691, I went and re-marked the said tree, but do not remember what was the latitude that was marked thereon. They went afterwards to a house to the southward of a place called Verdrietige Hook, and from thence southerly to a farmer's house to the northward of the Tapan meadow, at the bottom of the Bay. I cannot particularly remember whether observations were made at one or both these places, but I was told they then did agree that the mouth of Tapan Creek, should be the point of partition on Hudson's River, between the Province of New York and that of New Jersey.

“LEWIS MORRIS.

the Oriental Hotel, on Coney Island, New York; then southeasterly, at right angles with the last-mentioned line, to the main sea.

"*Third.* The monumental marks by which said boundary line shall be hereafter known and recognized, are hereby declared to be as follows:

- "1. The 'Great Beds light-house.'
- "2. A permanent monument marked 'State Boundary Line New York and New Jersey,' and to be placed at the intersection of the line drawn from the 'Great Beds light-house' to 'Waackaack or Wilson's beacon,' Monmouth county, New Jersey, and the line drawn from 'Morgan No. 2' triangulation point, U. S. Coast and Geodetic Survey, in Middlesex county, New Jersey, to 'Romer stone beacon.'
- "3. Eight buoys or spindles, to be marked like the permanent monument above mentioned, and placed at suitable intervening points along the line from the said permanent monument to the 'Romer stone beacon.'
- "4. The 'Romer stone beacon.'

"*Fourth.* The maps accompanying and filed with this agreement, showing the location of the above-described boundary line between the state of New York and the state of New Jersey, in Raritan bay to the main sea, and of the monumental marks by which it is marked, and to be marked, duly authenticated and attested by the signatures of the said commissioners, and placed on file in the offices of the secretaries of state of the respective states, shall constitute the permanent and authentic records of said boundary line, and are hereby adopted by the parties hereto and made part of this agreement.

"In witness whereof, the said commissioners have hereto set their hands and seals in duplicate, this 12th day of October, in the year of our Lord 1887.

" M. W. HAZELTINE,	[L.S.]	GEO. H. COOK,	[L.S.]
" ROBERT MOORE,	[L.S.]	ROBERT C. BACOT,	[L.S.]
" G. C. HANUS, Lieut. U.S.N.,	[L.S.]	A. B. STONEY,	[L.S.]

#### THE BOUNDARY SEAWARD.

The question as to how far the jurisdiction of the State extends seaward is not well defined. The territorial limits may be regarded as extending three geographical miles from the coast line. †

#### BOUNDARY BETWEEN NEW JERSEY AND DELAWARE.

Uncertainty as to the limits of territory and jurisdiction of these two States has led to serious and sometimes violent disputes, chiefly as

\* Report of the Proceedings of the New Jersey Boundary Commission, etc., 1887.

† Gould on Waters, sec. 4.

to the fisheries. A statute of Delaware defines its limits to be "low-water mark on the eastern side of the river Delaware within the twelve-mile circle from New Castle, and the middle of the bay below said circle."\*

The following sets forth the claim of New Jersey, conflicting with the first clause of the above:

"Joint Resolution relative to the rights of the state of New Jersey in that part of the Delaware river which runs between the states of Delaware and New Jersey. †

"Approved March 30, 1876.

"WHEREAS, The state of Delaware now claims to own the bed and to have exclusive jurisdiction, from shore to shore, of a portion of the Delaware river, extending from the boundary line between the states of Pennsylvania and Delaware, for some distance below the town of New Castle; and has lately endeavored to exercise jurisdiction co-extensive with said claim; and whereas, this state always claimed and now doth claim to own the bed of said river to the middle thereof, so far as said river lies between this state and the state of Delaware, and to be entitled to exclusive jurisdiction (subject to the constitution of the United States and the acts of congress made in pursuance thereof) over its half of said river, and hath always heretofore exercised jurisdiction accordingly; and whereas, it is desirable and necessary that the rights of this state, as between it and the state of Delaware, in and to said river, shall be definitely, finally and conclusively settled; and whereas, the efforts heretofore made to settle said matters of difference by consultation and agreement between the said differing states, have proved ineffectual; therefore,

"Sec. 1. That the governor of this state be and is hereby authorized to cause to be instituted and prosecuted, in the supreme court of the United States, a suit in equity, or an action at law, by the state of New Jersey against the state of Delaware, to ascertain, determine and settle the true territorial boundary line between said states, and the extent of the jurisdiction of each of said states in and on said river, and for that purpose the governor shall have power to employ, on behalf of this state, counsel to assist the attorney-general in the commencement and prosecution of said suit, or action, and the expenses necessarily and reasonably attending the commencement and prosecution of said suit, or action, on bills certified by the governor, shall be paid out of any moneys in the treasury not otherwise appropriated."

Previous to this, however, in 1873, an act was passed authorizing the Governor to appoint three commissioners with full power and

\* Revised Code of Delaware, 1874, chap. I, sec. 2.

† Revision of 1877, p 1185.

authority to agree upon, settle and determine the limits of territory and jurisdiction between the States; the Legislature of Delaware having passed a joint resolution authorizing the appointment of commissioners to meet with them, Delaware refused afterwards to submit the question as to the title claimed by that State to the bed of the Delaware river to the commission, and nothing was accomplished.

An injunction of the Supreme Court of the United States having been obtained, "commanding and enjoining the State of Delaware, its officers and agents, to desist and refrain from arresting, imprisoning, trying, fining or in any manner punishing or seizing, holding or selling any property of any citizen of New Jersey for fishing in the river Delaware, as they had heretofore been accustomed to do, until the said court should make other order to the contrary," the Attorneys-General of the two States agreed that for the purposes of this injunction the head of Delaware bay should be considered to be a line drawn from Cohansey light-house to Bombay Hook Point.

Although, as we have seen, the claims of the two States conflict as to limits in the Delaware river, from the Pennsylvania and Delaware line to the foot of Reedy island, there seems to be an agreement that below Reedy island the middle of the bay is the territorial line. The Attorney-General of New Jersey holds this to mean the middle line between low-water marks of the opposite shores. He states, however, in his report to the Governor for the year 1887, that his attention has been called to the continued effort on the part of Delaware to enforce the statutes of that State which prohibit the taking of running fish within its territorial limits, against the citizens of New Jersey, in Delaware bay.

In a report submitted to the Governor August 12th, 1885, on this dividing line, the Attorney-General states as follows:

"The authorities of Delaware, while claiming that the boundary of the State of Delaware was the middle of the channel, and that the operation of their laws was confined only by that limit, had agreed that no citizen of New Jersey should be molested for fishing in any part of the bay beyond the Delaware side of the channel."

The report then proceeded to state the exact point of difference between the States as follows:

"The statutes of Delaware prohibit the taking of running fish within these limits, although there should be no interference with the



soil. The statute law of New Jersey protects oyster beds within her territorial limits, because they are attached to the soil, of which she is the proprietor.

"It has been held that the statute of New Jersey prohibiting citizens of another State from coming upon the lands under water belonging to the State, and subverting the soil and interfering with the property there found, is not a violation of that clause of the Constitution of the United States which ordains that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

"Whether any State has the right to claim the exclusive privilege of taking running fish in the great navigable rivers, bays and seas within the *fauces terre*, is a question of great doubt and delicacy."

He closes the report submitted on this matter, for 1887, as follows :

"I have examined the decisions which have taken place since the above report was made, and I am still of the opinion that it is very unwise for either New Jersey or Delaware to attempt to prohibit the citizens of either State from taking running fish in any part of the bay. I have no doubt that it is the common interest of the fishermen of the two States to preserve the fishing in the waters which divide the States, for their mutual benefit.

"I recommend that a commission be appointed, with power to confer with a similar commission which may be appointed by the State of Delaware, in reference to this important subject."\*

#### BOUNDARY BETWEEN NEW JERSEY AND PENNSYLVANIA

In an opinion by Judge Elmer, of the New Jersey Supreme Court, it is stated that "the river Delaware was never within the jurisdiction either of this State or Pennsylvania until, by the Revolution, the rights of the Crown were extinguished, and each State then held to the middle. Under these circumstances, the agreement between the two States, adopted in 1783, provided that the two States should have concurrent jurisdiction in and upon the water of that river."†

The results of this commission of 1783 are given in the following act :

\* Annual Report of the Attorney-General of the State of New Jersey, for the year 1887.

† State v. Babcock, 1 Vr. 29.



THE LAW ASSOCIATION OF PHILADELPHIA,  
ROOM 600 CITY HALL,  
PHILADELPHIA,

Sept 23/98

Geo H Bates, Esq

Dear Mr Bates:

I just had picked  
up a pamphlet by Thomas  
Kays on the jurisdiction of the  
State of New Jersey over the Fishing  
Territory of the State and its  
authority to protect and  
regulate the Fisheries of the  
State and specially of the  
Delaware River.

Prepared at the request of  
the Commissioners of Fisheries,  
March 10, 1888,

Yours truly  
Suther E. Hewitt.  
per M. N. K.

DE H.S.  
Box 7 File 7

DF17178

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MESSAGE OF THE GOVERNOR  
TO THE GENERAL ASSEMBLY

AND

OPINION OF THE ATTORNEY GENERAL  
OF THE STATE OF DELAWARE,

in relation to the Suit pending in the  
United States Supreme Court be-  
tween the States of Delaware  
and New Jersey.

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## MESSAGE OF THE GOVERNOR.

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TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE  
OF DELAWARE IN GENERAL ASSEMBLY MET :

I have received and herewith transmit for your information a communication from the Attorney General relating to the suit now pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. It is unnecessary for me to enlarge upon the importance of this report. The unanimity with which the people of this State, through various General Assemblies and Executives, have always defended the integrity of the jurisdiction, territory and sovereignty of this State in this controversy, constitutes a just guide for present action. I cannot bring myself to believe that the present generation of Delawareans will, when properly advised on the subject, find themselves less sensitive and earnest in maintaining the rights of the State than the generations which have preceded us. It would seem that if the controversy is ever to be settled finally, it could not be placed in a position of greater advantage than to embrace the present opportunity to have it forever set at rest by the decision of that tribunal which, under the Federal Constitution, is competent to sit in judgment between sovereign States. From personal conference with the Attorney General and counsel who have heretofore represented the State in this litigation, and from such investigation of the case as I have been able to make, I believe that the interests of the State have been carefully guarded

in the past; and that such interests will be fully protected in the future by such of the existing counsel for the State as are now living and as are now free to act in her behalf, together with the Attorney General of the State.

I therefore recommend that the General Assembly renew its declaration of purpose, not to abandon the vindication of its sovereign right and title to the territory which immemorially has been conceded to be a part of its domain, and that it shall make such provision for the further defense thereof against what must be considered the unfounded pretensions of the State of New Jersey, as will comport with the honor, dignity and best interests of the State.

JOHN HUNN,  
*Governor.*

## ATTORNEY GENERAL'S OPINION.

WILMINGTON, DELAWARE, February 14th, 1901.

TO HIS EXCELLENCY,

JOHN HUNN,

*Governor of the State of Delaware.*

DEAR SIR:

It becomes my official duty to direct your attention to the litigation which has long been pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. This litigation grew out of legislation in our State, prohibiting persons who were not citizens of Delaware from fishing within certain limits which were claimed to be within the exclusive jurisdiction of our State, and over which limits the jurisdiction of our State has, from time immemorial, been asserted and maintained.

The Act in question was passed on March 28th, 1871, being Chapter 72 of Volume 14, Laws of Delaware, and such parts of which as are now in force can be found on page 467, &c., of the Revised Code as published in 1893. The jurisdiction in question is that claimed by the State of Delaware over the waters of the Delaware River to low water mark on the New Jersey shore, within the limits of the twelve mile circle having its center at the Court House at New Castle, and an arc of which circle constitutes the Northern boundary of this State.

The enforcement of the provisions of the Act of March 28th,

1871, by the arrest of citizens of New Jersey engaged in fishing within that portion of the Delaware River lying within the twelve mile circle, was promptly opposed by the authorities of that State, with a claim of jurisdiction over said river east of the middle line, and of the legal right of her citizens to fish on the New Jersey shore of the river without the license of Delaware, either within or without the said circle.

During the year 1872, the then Executives of the two States had certain correspondence and conferences over this controversy, the result of which was their recommendation to the legislatures of their respective States that commissioners should be appointed on the part of each to settle the matter in dispute. Upon such recommendation, a joint commission, consisting of three members from each State, was appointed by legislative authority, and the General Assembly of this State suspended the law of 1871, pending the negotiations between such commissioners.

These joint commissioners having failed to reach a satisfactory basis of settlement of the matter in controversy, the commissioners from this State reported to the Executive, in 1874, their failure to arrive at a satisfactory settlement of the matter in dispute, and delivered a statement asserting and vindicating the claim and title of Delaware. On March 26th, 1875, the General Assembly of this State adopted a joint resolution, declaring that the commissioners on the part of this State having fully performed their duties and reported the results of their labors, were relieved of further duty as such commissioners. This joint resolution appears in Chapter 249, Volume 15, Laws of Delaware. The effect of this resolution was to abrogate the authority of such commissioners, to terminate their negotiations, and to revive the suspended license laws. Such license laws were thereafter enforced by the authorities of this State and the original conditions resulting therefrom recurred. As the result of this state of affairs, New Jersey, in pursuance of leave

granted on March 13th, 1877, filed a Bill in Equity in the Supreme Court of the United States to restrain the State of Delaware from the exercise of its jurisdiction.

Prior to the filing of said Bill in Equity, your predecessor, Honorable John P. Cochran, then Governor of the State of Delaware, on the second day of January, 1877, addressed and delivered to the General Assembly his message, in the course of which he recited the foregoing historical facts and informed the General Assembly of the purpose, as communicated to him by the Governor of New Jersey, of said State to commence proceedings in the Supreme Court of the United States. In concluding his discussion of the subject, Governor Cochran said:

“If this proceeding shall be taken by New Jersey, it will be incumbent upon the General Assembly at its present session, to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but which, on the contrary, is based upon original and incontestable grants, and has been uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation.”

As a result of this message of Governor Cochran, the General Assembly, on the twenty-sixth day of January, 1877, adopted joint resolutions, reciting the claim of this State to the ownership and exclusive jurisdiction of that portion of the Delaware River which is included within a circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, and declaring

“That the Attorney General be, and he is, hereby, authorized and directed, to cause his appearance, in behalf of this State, to be promptly entered upon the record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And he is further resolved, that the Governor be, and he is, hereby, authorized to employ in behalf



of the State, additional counsel to assist the Attorney General in the defense of the said suit."

These resolutions are contained in Chapter 504, Volume 15, Laws of Delaware.

In pursuance of said resolutions and authority, the Governor subsequently, from time to time, appointed Messrs. Thomas F. Bayard, George Gray, and George H. Bates, as counsel to represent the State in this cause. Subsequently, Mr. Bayard withdrew from his position as counsel, upon his appointment as Secretary of State of the United States. Mr. George Gray has since been appointed United States Circuit Judge. Of the original counsel in the cause, Mr. George H. Bates now remains.

At a very recent date, I have received communications from the Clerk of the Supreme Court of the United States, from the Honorable Samuel H. Grey, Attorney General for the State of New Jersey, and from the Honorable George H. Bates, the special counsel for the State of Delaware, calling my attention to the cause and communicating to me the order of the Supreme Court that the cause before it should be forthwith proceeded with. Upon a conference with Messrs. Gray and Bates, and upon the examination of the record of the cause, it appears that the State of Delaware must take the next step in the action, by filing its Answer to the Bill of Complaint of New Jersey. Inasmuch as the State of New Jersey has not heretofore been pressing its suit against this State, under a written agreement of counsel filed in the cause, no Answer for the State of Delaware has heretofore been filed. Further delay is now impracticable on account of the determination of the Supreme Court to bring the case to a final determination.

The action of counsel for this State hitherto seems to me to have been characterized by good judgment and discretion. So long as the representatives of the State of New Jersey seemed disinclined to press the claims of that State, those of Delaware were content to

let the matter rest, while they kept themselves prepared at any time to make formal defense to the suit when it should be seriously prosecuted. Now that the court has insisted that the case shall be proceeded with, and the matter has been called to my official attention, I find the case in such condition as will enable those who represent this State to meet promptly the claims set up by the State of New Jersey in its Bill of Complaint.

In the opinion of eminent jurists, upon whose judgment the State of Delaware has a right to rely, the title and jurisdiction of this State to and over the disputed territory is unimpeachable.

The question of jurisdiction and title involved in the present litigation is not a new one. It was submitted to an extended investigation which, though not conducted by a court of record, was eminently judicial in its character, and is entitled to be considered as almost in rank of judicial precedents by reason of the circumstances which surround it, and the high character of the Arbitrator who decided it.

This case was to determine the title to the Pea Patch Island, which had been acquired by the United States under cession from the State of Delaware, for the purpose of erecting a fort thereon. The title of the United States, as derived from the State of Delaware, was impeached by an individual of New Jersey, who claimed under the title of New Jersey, so that, although the States were not directly parties to the proceeding, the title and jurisdiction of the respective States to so much of the river as is included in the twelve mile circle to low water mark on the New Jersey shore, was the exact point involved in the litigation.

After many years of dispute, an amicable arrangement was entered into between the United States Government and the New Jersey claimant for the decision of the controversy by the Honorable John Sergeant, of Philadelphia, who was then recognized as one of the leaders of the Bar in the United States. The case was heard at

Philadelphia, in Independence Hall, and was argued by Messrs. John M. Clayton and James A. Bayard on behalf of the Delaware title, and Messrs. George M. Ribb and John H. Eaton for the New Jersey claimant. The character of the counsel involved was sufficient guarantee for the thoroughness of the argument, and the decision of the Arbitration was thus characterized at the time:

“As the well reasoned opinion of a very able lawyer—whose greater distinction in his profession has made him unsolicitous about judicial station—and as having been framed after full and careful public argument before him for many days together by other able lawyers, it is far more authoritative than any opinion merely professional, and has all the intrinsic weight of the highest judicial opinion. It can scarcely be reversed in any case which may again involve the question of this boundary, and will take its place, of course, among the most enduring historical monuments of the States of New Jersey and Delaware.”

The Arbitrator, Mr. Sergeant, decided in favor of the title and jurisdiction of Delaware on every point. He found, as a matter of fact, that upon the paper title the original property was not in New Jersey, but that it was in the State of Delaware, and that that State had not, by any act or default of her own, parted with or lost her right; that no evidence had been adduced to establish a single instance of the exercise by New Jersey of jurisdiction over that part of the river and islands, and that there was no reason to believe that there was one; that, “on the part of Delaware, the evidence is full and complete of the exercise of the jurisdiction over that part of the river and islands as far back as evidence can be expected to go.”

This trial took place in January, 1848. In the course of this trial, the Honorable Kensey Johns, then above eighty-eight years of age, who had been Chief Justice of Delaware for thirty-eight years, and afterwards Chancellor of the State, testified that:

“It has always been considered and held by the courts,

public officers and lawyers of Delaware, as far as my memory reaches, that the title and jurisdiction of the State of Delaware, extended to a circle of twelve miles around New Castle, to low water mark on the New Jersey shore. I have never heard the title and jurisdiction of the State of Delaware, over that part of the River Delaware, doubted by any court, public officer or lawyer in Delaware, on any occasion whatever. Within my knowledge and remembrance, writs have been often issued out of the courts of Delaware, to seize vessels and persons on all parts of the River Delaware, within the circle to low water mark on the New Jersey shore, and no dispute, question, or plea was ever made or suggested, within my memory, before any court in Delaware, against the title of Delaware over all such parts;” again,—“The State of Delaware, for the whole period of my remembrance, and as far back as my researches extend, has claimed and exercised jurisdiction over the Delaware River and soil thereof, within the circle to low water mark on the Jersey shore, and the State has never failed to exercise this jurisdiction when called upon or asked to do so.”

At the time of the passage of the Act of 1871, and during the controversy resulting therefrom, Governor Cochran asked the opinion of Chief Justice Gilpin upon the general questions raised in the controversy attending the execution of that Act, and in the course of that opinion, the Chief Justice used this language:

“I entertain no doubt that the limits and jurisdiction of this State extend within the twelve mile circle about New Castle to low water mark on the Jersey shore, and below or south of the circle, thence by the channel of the Bay to the Ocean; and that this is so, I think there can be no serious question.”

The Commissioners for the State of Delaware above referred to, who were appointed by a joint resolution of the General Assembly of January 30th, 1873, were Joseph P. Commins, afterwards Chief Justice of the State, and the most profound student of our early history, William C. Whiteley, afterwards an Associate Judge of this State, and Edward L. Martin, afterwards a member of Congress from this State. These Commissioners, after an exhaustive

investigation of ancient documents, and of all data available at that time, which bore on the question, including some of the records of the privy council which had not been considered in the Pea Patch case, found and reached the conclusion that the original title to the river within the twelve mile circle was valid, and could not be assailed with success by the State of New Jersey so as to invest her citizens with any right within the river circumscribed by the circle, except that of navigation, which is recognized and protected by the commercial clause of the Federal Constitution." And that "Delaware became entitled to claim and hold all the bed of the river within the twelve mile circle."

Inasmuch as the controversy involves territory always heretofore steadfastly claimed and defended by the State, and in view of the above mentioned legal opinions, I am of the opinion that the cause now pending in the Supreme Court should be defended by the State.

During the long period in which this case has been pending, counsel heretofore employed by the State have, with diligence and zeal, prepared themselves to meet the claim of the State of New Jersey whenever called upon to do so, and to that end, have expended much time and labor in the preparation of the case of the State of Delaware, and in the collection of documents and investigation of historical and legal authorities. This preparation is now available, and will be continued and extended in the trial of the case in the Supreme Court.

In view, however, of the lapse of time since the commencement of the above mentioned suit in the Supreme Court, and since the General Assembly of the State has acted in relation to this controversy, and in view of the importance to the State of a vigorous defense of its jurisdiction, territory and sovereignty, and in view of the fact that under the direction of the Supreme Court, New Jersey must now press the claims which she has so long permitted

to slumber, I deem it expedient to advise you of the propriety of your communicating to the General Assembly the past history and present condition of this important controversy and litigation for the information of its members and of the people of the State.

I would suggest that you send to the General Assembly a message, embodying the facts set forth in this report, and that you recommend the passage of a joint resolution by this General Assembly, which shall reiterate the authority of this State to defend said action to its termination, and renew its statement of confidence in the position heretofore assumed in this controversy by this State.

II. H. WARD,

*Attorney General.*

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Volume Page

RG 0150.000 002  
NJ vs DE Suit exhibits  
"Message of The Governor"  
to GA + opinion of the  
Att. Gen  
BC 150881

**New Jersey-Delaware Boundary Suit.**

*New York Times* (1857-Current file); Apr 9, 1901; ProQuest Historical Newspapers The New York Times (1851 - 2001)  
pg. 6

**New Jersey-Delaware Boundary Suit.**

WASHINGTON, April 8.—Upon motion of George H. Bates, the State of Delaware was given until the first Monday in the next term of the United States Supreme Court to file an answer or a demurrer in the proceedings between that State and the State of New Jersey. The case involves the inter-State boundary line in Delaware Bay and grew out of a dispute in regard to oyster fishing rights. The case was docketed in 1877, and is the oldest one on the docket. It has been allowed to rest because both States appeared to be satisfied with the status quo, Attorney General Grey was present in the interest of the State of New Jersey, and indicated a purpose to press the case.



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MESSAGE

OF  
JOHN HUNN,

Governor of the State of Delaware

TO

Senate and House of  
Representatives

OF THE STATE OF DELAWARE

January 1891

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# GOVERNOR'S MESSAGE

AND

# JOINT RESOLUTION

Relating to the Suit and Controversary, now Pending  
in the Supreme Court of the United States, between  
the States of New Jersey and Delaware.

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# Governor's Message.



*To the Senate and House of Representatives of the State of Delaware in General Assembly met :*

I herewith transmit for your information an official communication from the Attorney General to the Governor, relating to the suit now pending between the States of New Jersey and Delaware in the Supreme Court of the United States.

As set forth in said communication, I have, in my Message upon this subject at the last General Assembly, expressed the opinion that the above mentioned case involved interests of the highest value and importance to this State, concerning as it does the territorial limits and jurisdiction thereof. The last General Assembly, by its joint resolution referred to in the accompanying communication of the Attorney General, authorized the vigorous defense of the rights of the State in this behalf. At the same time, it is entirely appropriate and fitting that the chosen representatives of the people now gathered in General Assembly in this State, should consider any just suggestion of the settlement of this long standing controversy with our neighboring State, upon terms which may be wholly consistent with the dignity, rights and interest of this State.

In accordance, therefore, with the suggestion of the Attorney General, I now recommend that the Senate and House of Representatives do appoint a special joint committee to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey.

JOHN HUNN, GOVERNOR.

WILMINGTON, DELAWARE, JANUARY 31, 1903.

TO HIS EXCELLENCY,

JOHN HUNN, GOVERNOR OF THE STATE OF DELAWARE:

DEAR SIR:—

It becomes my official duty again to direct your attention to the litigation which has long been pending in the Supreme Court of the United States, between the States of New Jersey and Delaware, concerning which I addressed you in February, 1901. This litigation, as I then stated, grew out of legislation in our State, prohibiting persons who were not citizens of Delaware from fishing within certain limits which were claimed to be within the exclusive jurisdiction of our State, and over which limits the jurisdiction of our State has, from time immemorial, been asserted and maintained.

The Act in question was passed on March 28th, 1871, being Chapter 72 of Volume 14, Laws of Delaware, and such parts of which as are now in force can be found on page 467, &c., of the Revised Code as published in 1893. The jurisdiction in question is that claimed by the State of Delaware over the waters of the Delaware River to low water mark on the New Jersey shore, within the limits of the twelve miles circle having its center at the Court House at New Castle, and an arc of which circle constitutes the Northern Boundary of this State.

The enforcement of the provisions of the Act of March 28th, 1871, by the arrest of citizens of New Jersey engaged in fishing within that portion of the Delaware River lying within the twelve mile circle, was promptly opposed by the authorities of that State, with a claim of jurisdiction over said river East of the middle line,

and of the legal right of her citizens to fish on the New Jersey shore of the river without the license of Delaware, either within or without the said circle.

During the year 1872, the then Executives of the two States had certain correspondence and conferences over this controversy, the result of which was their recommendation to the legislatures of their respective states that commissioners should be appointed on the part of each to settle the matter in dispute. Upon such recommendation, a joint commission, consisting of three members from each state, was appointed by legislative authority, and the General Assembly of this State suspended the law of 1871, pending the negotiations between such commissioners.

These joint commissioners having failed to reach a satisfactory basis of settlement of the matter in controversy, the commissioners from this State reported to the Executive, in 1874, their failure to arrive at a satisfactory settlement of the matter in dispute, and delivered a statement asserting and vindicating the claim and title of Delaware. On March 26th, 1875, the General Assembly of this State adopted a joint resolution, declaring that the commissioners on the part of this State having fully performed their duties and reported the results of their labors, were relieved of further duty as such commissioners. This joint resolution appears in Chapter 249, Volume 12, Laws of Delaware. The effect of this resolution was to abrogate the authority of such commissioners, to terminate their negotiations, and to revive the suspended license laws. Such license laws were thereafter enforced by the authorities of this State and the original conditions resulting therefrom recurred. As the result of this state of affairs, New Jersey, in pursuance of leave granted, on March 13th, 1877, filed a Bill in Equity in the Supreme Court of the United States to restrain the State of Delaware from the exercise of its jurisdiction.

Prior to the filing of said Bill in Equity, your predecessor, Honorable John P. Cochran, then Governor of the State of Delaware, on the second day of January, 1877, addressed and delivered to the General Assembly his Message, in the course of which he recited the foregoing historical facts and informed the General Assembly of the purpose, as communicated to him by the Governor of New Jersey, of said State to commence proceedings in the Supreme Court of the United States. In concluding his discussion of the subject, Governor Cochran said :

“If this proceeding shall be taken by New Jersey, it will be incumbent upon the General Assembly at its present session, to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but, which, on the contrary, is uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation.”

As a result of this message of Governor Cochran, the General Assembly, on the twenty-sixth day of January, 1877, adopted joint resolutions, reciting the claim of this State to the ownership and exclusive jurisdiction of that portion of the Delaware River which is included within a circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, and declaring,

“That the Attorney General be, and he is, hereby authorized and directed to cause his appearance, in behalf of this State, to be promptly entered upon the Record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional Counsel to assist the Attorney General in the defense of the said suit.”

These resolutions are contained in Chapter 504, Volume 15, Laws of Delaware.

In pursuance of said resolutions, and authority, the Governor subsequently, from time to time, appointed Messrs. Thomas F. Bayard, George Gray and George H. Bates, as Counsel to represent the State in this cause. Subsequently, Mr. Bayard withdrew from his position as Counsel, upon his appointment as Secretary of State of the United States. Mr. George Gray has since been appointed United States Circuit Judge. Of the original Counsel in the cause, Mr. George H. Bates now remains.

In February 1901 I received communications from the Clerk of the Supreme Court of the United States, from the Honorable Samuel H. Grey, then Attorney General for the State of New Jersey, and from the Honorable George H. Bates, the special Counsel for the State of Delaware, calling my attention to the cause, and communicating to me the order of the Supreme Court that the cause before it should be forthwith proceeded with. Upon a conference with Messrs. Grey and Bates; and upon the examination of the record of the cause, it appeared that the State of Delaware must take the next step in the action, by filing its answer to the Bill of Complaint of New Jersey. Inasmuch as the State of New Jersey had not heretofore been pressing its suit against this State, under a written agreement of Counsel filed in the cause, no Answer for the State of Delaware had heretofore been filed.

On February, 14th, 1901, I addressed you, reciting the history of the controversy, and suggesting that you send to the General Assembly a Message, embodying the facts set forth in said report, and that you recommend the passage of a joint resolution by the General Assembly then in session, which should reiterate the authority of this State to defend said action to its termination,

and renew its statement of confidence in the position heretofore assumed in said controversy by this State. Thereupon, you sent the following Message to the Senate and House of Representatives:—

"I have received and herewith transmit for your information a communication from the Attorney-General relating to the suit now pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. It is unnecessary for me to enlarge upon the importance of this report. The unanimity with which the people of this State, through various General Assemblies and Executives, have always defended the integrity of the jurisdiction, territory, and sovereignty of this State in this controversy, constitutes a just guide for present action. I cannot bring myself to believe that the present generation of Delawareans will, when properly advised on the subject, find themselves less sensitive and earnest in maintaining the rights of the State than the generations which have preceded us. It would seem that if the controversy is ever to be settled finally, it could not be placed in a position of greater advantage than to embrace the present opportunity to have it forever set at rest by the decision of that tribunal which, under the Federal Constitution, is competent to sit in judgment between sovereign states. From personal conference with the Attorney-General and Counsel who have heretofore represented the State in this litigation, and from such investigation of the case as I have been able to make, I believe that the interests of the State have been carefully guarded in the past; and that such interests will be fully protected in the future by such of the existing counsel for the State as are now living and as are now free to act in her behalf, together with the Attorney-General of the State.

"I therefore recommend that the General Assembly renew its declaration of purpose, not to abandon the vindication of its sovereign right and title to the territory which im-

memorially has been conceded to be a part of its domain, and that it shall make such provision for the further defense thereof against what must be considered the unfounded pretensions of the State of New Jersey, as will comport with the honor, dignity and best interests of the State."

Acting upon the suggestion of this Message, the Senate and House of Representatives adopted the joint resolution, which was approved February 26th, 1901, and which appears at page 531, Volume 22, Laws of Delaware. This Resolution, after reciting that said General Assembly was desirous to maintain the claims of this State set forth in the joint Resolution passed January 26th, 1877, to exclusive jurisdiction over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, declared :—

"That the Attorney General and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, be and they are hereby instructed to maintain the defense of said suit, and they are hereby authorized to take such steps therefor as may be necessary."

In due course the Answer of the State of Delaware was prepared and duly filed in the Supreme Court of the United States, and a copy of which Answer I herewith send you. Issue has been joined upon by the pleadings by the State of New Jersey. The case has, therefore, now arrived at the stage when proof may be produced. No testimony has been taken. The preparation and presentation of this testimony, both on the part of New Jersey and upon the part of the State of Delaware will entail the production of ancient original documents, which are distributed probably mainly between London, England, and Albany, N. Y. There may be some few records in the archives of the various



counties of this State—chiefly New Castle County. The proper production of this testimony will entail very considerably expense.

Owing somewhat to the expiration of the term of the Hon. Samuel H. Grey, late Attorney General for the State of New Jersey, and the succession of the Honorable Thomas M. McCarter, present Attorney General for said State, and the necessity which Mr. McCarter found himself under to familiarize himself with the case, the actual taking of testimony has not begun. There has recently come from the Supreme Court of the United States an intimation that the case must advance.

On the 27th inst. there was a conference between the Attorneys Generals of New Jersey and Delaware, together with the Honorable George H. Bates, associate counsel for the State of Delaware, for the purpose of expediting the progress of the cause. Upon a full consideration at this conference of the difficulties and probable cost of the production of proof upon each side of the controversy to sustain the allegations in the Bill and Answer, and upon a somewhat careful consideration of the history and bearing of the controversy upon the citizens of the two States interested in the cause, it was agreed between counsel for the two States to again make an attempt to equitably determine and settle the rights of Delaware and New Jersey to the disputed territory, and if possible to adjust all differences between the two States arising out of Delaware's territorial claim, in a manner satisfactory to both States.

In my former official communication to you, under date of February 14th, 1901, certain reasons were set forth which justified confidence in the validity and strength of the claim of the State of Delaware to the territory in question. The very labor-

ious and critical examination of ancient documents and reprints thereof, made by the Attorney General and Mr. Bates, Associate Counsel for Delaware, which preceded the preparation of the somewhat voluminous Answer of the State which was filed in the said cause, has greatly strengthened the belief and reliance of counsel for this State upon the justice of her claim. Notwithstanding this well grounded hope that the State of Delaware would be ultimately successful in the suit now depending in the Supreme Court of the United States, yet if the entire controversy between the two States can be settled out of court in a manner creditable and satisfactory to both States, it would seem the part of good reason to attempt to make such a settlement.

At the conference above mentioned, between counsel for the two States, it was agreed that the Attorneys General and associate counsel of the respective States should confer with the executive and legislative authorities of Delaware and New Jersey respectively, in order to ascertain the sentiment of the said authorities of the two States concerning the settlement of the cause upon lines to be hereafter determined.

In view of the foregoing, I would therefore advise you to send to the General Assembly a Message, recommending the appointment of a special joint committee of the Senate and House of Representatives to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey.

I remain, yours very truly,

HERBERT H. WARD,  
ATTORNEY GENERAL.

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JOINT RESOLUTION

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DE17026

## JOINT RESOLUTION

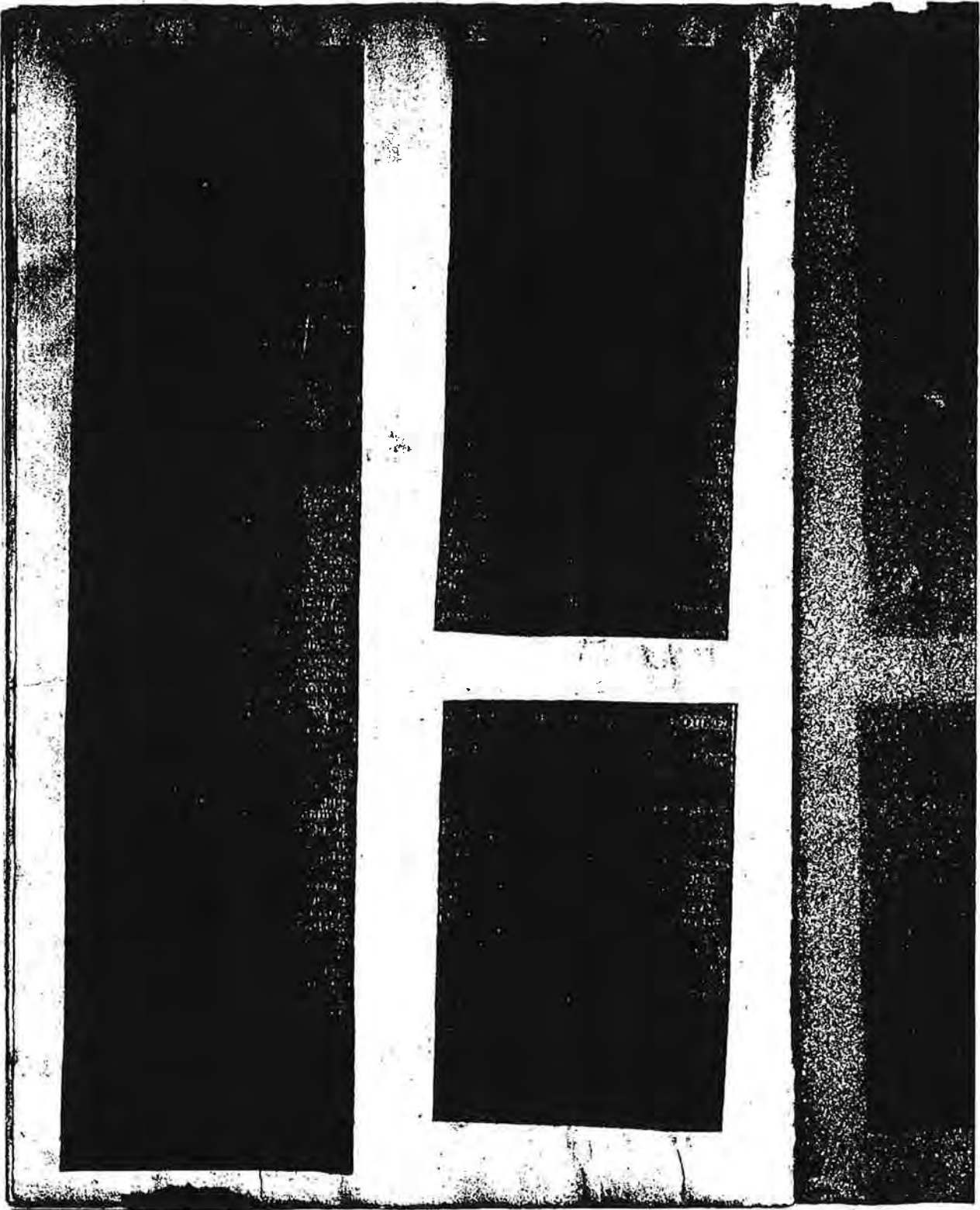
Relating to the Suit and Controversy Now Pending in the Supreme Court of the United States Between the States of New Jersey and Delaware.

WHEREAS, this General Assembly has received from the Governor a Message accompanied by a communication from the Attorney General, relating to the litigation and controversy now pending in the Supreme Court of the United States, between the State of New Jersey and the State of Delaware, concerning the boundary between said States ;

AND WHEREAS, upon the advice of said Attorney General, the Governor has recommended to the Senate and House of Representatives in General Assembly met, to appoint a special joint committee to consider and advise with the Attorney General and special counsel for this State, concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey ;

THEREFORE, BE IT RESOLVED by the Senate and House of Representatives of the State of Delaware in General Assembly met, that a joint committee of three members on the part of the Senate, and three members on the part of the House of Representatives be appointed to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the territorial controversy between this State and the State of New Jersey, now pending in a cause in which the State of New Jersey is complainant and the said State of Delaware is defendant, in the Supreme Court of the United States.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161 [www.hsd.org](http://www.hsd.org)



DE17028

DE H.S. Box 12  
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DE17029

Trenton, N. J. March 3rd 1903.

To the Legislature:-

In the year 1871 the legislature of the State of Delaware passed an act entitled "An Act for the protection of fishermen", in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this state were arrested by the authorities of Delaware, while fishing on the Easterly side of the Delaware river, for alleged violation of this act, the State of Delaware alleging that her title extended to low water mark on the New Jersey shore of said river and not to the middle thereof or the natural boundary line between the two states. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two states defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both legislatures

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DE08446

(2)

a commission of distinguished citizens of each state was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in statu quo for nearly twenty five years until about a year ago when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney General has been for several months in friendly communication with the Attorney General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy, if possible. These conferences finally reached a point where the respective Attorney Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney General of Delaware and the Special Counsel of the State of Delaware in this litigation, were present. The discussion was most harmonious and I am very hopeful that the matter can be adjusted without the continuance of the litigation, the labor and expense of which would be very great, the means of

DE08447



(5)

securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of <sup>Assembly</sup> ~~Assembly~~ of Delaware has passed a Joint Resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney General and the Special Counsel of that state in this litigation, commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said states, to be submitted to the respective legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our state and its fishery interests and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective legislatures of the two states, both of which are now in session, and receive their approval.

Respectfully,



Governor.

DE08448



Mr. Hall, Chairman of the Committee on Public Health, reported

Senate Bill No. 68, entitled "An act to amend an act entitled 'An act to establish a sanatorium for persons afflicted with tuberculous diseases, and to provide for the selection of a site and the erection of buildings therefor, and the government thereof,'" approved April third, one thousand eight hundred and ninety-two,

Senate Bill No. 69, entitled "A supplement to an act entitled 'An act to establish a sanatorium for persons afflicted with tuberculous diseases, and to provide for the selection of a site and the erection of buildings therefor, and the government thereof,'" approved April third, one thousand nine hundred and two,

Senate Bill No. 130, entitled "A supplement to an act entitled 'An act to regulate the manufacture of flour and meal-food products,'" approved April sixteenth, one thousand eight hundred and ninety-six,

Favorably, without amendment.

Mr. Elvins, Chairman of the Committee on Towns and Townships, reported

Senate Bill No. 84, entitled "An act to consolidate with and annex to the town of Phillipsburg, in the county of Warren, a certain part of the township of Lopatcong, in said county,"

Favorably, with amendment, which amendment was adopted.

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, March 3d, 1903. }

*To the Legislature:*

In the year 1871 the Legislature of the State of Delaware passed an act entitled "An act for the protection of fishermen," in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware river, for alleged violation of this act, the State of Delaware alleging that her title extended to low-water mark on the New Jersey shore of said

river, and not to the middle thereof or the mutual boundary line between the two States. In the year 1877 the State of New Jersey filed its bill in the Supreme Court of the United States against the State of Delaware to enjoin Delaware from enforcing the provisions of the above mentioned law against citizens of New Jersey and to have the boundary line between the two States defined. A preliminary injunction was granted by the Supreme Court to the State of New Jersey. Under authority of both Legislatures a commission of distinguished citizens of each State was appointed for the purpose of adjusting the controversy, if possible, but their efforts came to naught. The suit then remained in *status quo* for nearly twenty-five years, until about a year ago, when the State of Delaware filed its answer to the bill of complaint of the State of New Jersey and has served notice of its intention to insist upon a disposition of the case. The Attorney-General has been for several months in friendly communication with the Attorney-General of Delaware with reference to this suit, with a view to an amicable settlement of the controversy if possible. These conferences finally reached a point where the respective Attorney-Generals thought it wise to bring the matter to the attention of the Governor of Delaware and myself. Last week, accompanied by the Attorney-General, I attended a conference in Philadelphia at which the Governor of Delaware, the Attorney-General of Delaware and the special counsel of the State of Delaware in this litigation were present. The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the Attorney-General and the special counsel of that State in this litigation commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation. This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that

the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval.

Respectfully,

FRANKLIN MURPHY,  
*Governor.*

Mr. Boyd moved that the message from the Governor be spread at length upon the minutes of the House,

Which motion was carried.

Mr. Boyd, on leave, introduced

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware."

On motion of Mr. Boyd, the rules were suspended, and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, read a second time, considered by sections, agreed to, and ordered to have a third reading, without reference.

On motion of Mr. Boyd, the rules were suspended, and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, and, under suspension of the rules, was read for the third time by its title and passed by the following vote:

In the affirmative were—

Messrs. Avis, Ayers, Boyd, Brown R. W., Brown W. T., Buck, Cannon, Colby, Colclough, Cook, Coyne, Cresse, Dalrymple, Duff, Elvins, Fielder, Gannon, Gibbs, Gnichtel, Gulick, Hall, Harris, Harrison, Hillery, Horner (Speaker), Howe, Howland, Iliff, Jackson, Keasler, Kelly, Leavitt, Lehlbach, Lord, Loveridge, McDonald, McGlennon, Miller, Montgomery, Newcorn, Petterson, Posten, Schmidt, Schumann, Scovel, Sharwell, Shedaker, Stalter, Stillwell, Swackhamer, Treacy, Van Blarcom, Weismann, Wildrick, Willever, Williams—56.

In the negative—None.

Ordered, that the Speaker sign the said resolution, and that the Clerk carry it to the Senate and inform the Senate that the House of Assembly has passed the same, and requests its concurrence therein.

Mr. Boyd moved that the rules be suspended, and that

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary-controversy between the states of New Jersey and Delaware,"

Be sent to the Senate at once,

Which motion was carried.

Mr. Miller, on leave, by request, introduced

Assembly Bill No. 270, entitled "A supplement to an act entitled 'An act concerning corporations (Revision 1896),' " approved April twenty-first, one thousand eight hundred and ninety-six,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Corporations.

Mr. Lord, Chairman of the Committee on Militia, reported

Assembly Bill No. 156, entitled "An act to provide for the acceptance of sites for and the erection and equipment of a company armory in cities, towns, boroughs, townships and all other municipalities of this state wherein is or hereafter shall be located the headquarters of a company of the national guard of this state,"

Favorably with amendment, which amendment was adopted.

On motion of Mr. McDonald,

Assembly Bill No. 122, entitled "A supplement to an act entitled 'An act to protect bathers in the waters along the coast in this state,'" approved March twenty-third, one thousand nine hundred,

Was taken up, and, under suspension of the rules, was read a third time by its title, and passed by the following vote:

In the affirmative were—

Messrs. Avis, Ayers, Boyd, Brown R. W., Brown W. T., Buck, Cannon, Colby, Colclough, Cook, Coyne, Cresse, Dalrymple, Duff, Elvins, Fielder, Gannon, Gibbs, Gnichtel, Gulick, Hall, Harris, Harrison, Hillery, Horner (Speaker), Howe, Howland, Iliff, Jackson, Keasler, Kelly, Leavitt, Lehlbach, Lord, Loveridge, McDonald, McGlennon, Miller, Montgomery, Newcorn, Pettersen, Posten, Schmidt, Schumann, Scovel, Sharwell, Shedaker, Stalter, Stillwell, Swackhamer, Treacy, Van Blarcom, Weismann, Wildrick, Willever, Williams—56.

In the negative—None.

New Jersey State Archives  
Minutes of the Assembly  
3/3/1903

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In the affirmative were—

Messrs. Bacheller, Bradley, Childs, Cross, Gebhardt, Haines,  
Hand, Lee, Martin, McKee, Shinn, Strong, Welsh—13.

In the negative—none.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, without amendment.

Assembly Bill No. 49, entitled "An act for the relief of Joseph M. Delacy,"

Was taken up and read a third time.

Upon the question, "Shall this Assembly bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Childs, Cross, Gebhardt, Haines, Hutchinson  
(President), Lee, McKee, Shinn, Strong, Welsh—11.

In the negative was—

Mr. Martin—1.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, without amendment.

The following message was received from the House of Assembly by the hands of its Clerk:

STATE OF NEW JERSEY,  
ASSEMBLY CHAMBER,

March 3d, 1903.

Mr. President:

I am directed by the House of Assembly to inform the Senate that the House of Assembly has passed the following Joint Resolution:

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

In which the concurrence of the Senate is requested.

JAMES PARKER,

*Clerk of the House of Assembly.*

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Judiciary.

Mr. Wakelee, Chairman of the Committee on Judiciary, reported

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Without amendment.

The rules were suspended and

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware,"

Was taken up, read a second time, considered by sections, agreed to, ordered to have a third reading and,

Under a suspension of the rules, said joint resolution was taken up and read a third time, without reprinting.

Upon the question, "Shall this joint resolution pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Brown, Childs, Cross, Gebhardt, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strong, Wakelee, Welsh—16.

In the negative—None.

The rules were suspended and the Secretary was directed by the President to carry said joint resolution to the House of Assembly at once, and inform that body that the Senate has passed the same without amendment.

Senate Bill No. 160, entitled "A supplement to an act entitled 'An act concerning disorderly persons'" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,

Was taken up and read a third time.

Upon the question, "Shall this Printed bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Bacheller, Brown, Childs, Cross, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strong—13.

In the negative were—

Messrs. Gebhardt, Wakelee—2.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, and requests its concurrence therein.

Senate Bill No. 24, entitled "An act providing for the appointment of clerks of police boards in cities of this state,"

Senate Bill No. 72, entitled "A supplement to an act entitled 'An act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases (Revision of 1898),' " approved June fourteenth, one thousand eight hundred and ninety-eight,

Senate Bill No. 158, entitled "An act granting the consent of the state of New Jersey to the acquisition by condemnation, purchase, grant or otherwise by the United States of a tract or tracts of land in the city of Atlantic City for the purpose of erecting buildings thereon,"

Senate Bill No. 165, entitled "A supplement to an act entitled 'An act respecting the orphans' court and relating to the powers and duties of the ordinary and the orphans' court and surrogates'" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,

And

Senate Bill No. 175, entitled, "An act to amend an act entitled 'A general act relating to boroughs'" (Revision of 1897), approved April twenty-fourth, one thousand eight hundred and ninety-seven,

Were severally taken up, read a second time, considered by sections, agreed to, ordered to be printed and to have a third reading.

Assembly Bill No. 42, entitled "A further supplement to an act entitled 'An act respecting the court of chancery,'" approved March twenty-seventh, one thousand eight hundred and seventy-five,

Assembly Bill No. 81, entitled "Supplement to an act entitled 'An act providing for the formation, establishment and government of towns,'" approved March seventh, one thousand eight hundred and ninety-five,

And

Assembly Bill No. 169, entitled "Supplement to an act entitled 'A general act relating to boroughs'" (Revision 1897),

Were severally taken up, read a second time, considered by sections, agreed to and ordered to have a third reading.

In accordance with the direction of the President, the Secretary carried the following Joint Resolution to the House of Assembly, informed it that the Senate had passed the same and requests its concurrence therein:

Assembly Joint Resolution No. 2, entitled "Joint resolution relating to the boundary controversy between the states of New Jersey and Delaware."

On motion of Mr. Wakelee, the Senate then adjourned.

WEDNESDAY, March 4th, 1903

At 11 o'clock the Senate met.

The session was opened by prayer by the Rev. Jos. McNulty, Woodbridge, N. J.

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Bacheller, Bradley, Brown, Childs, Cross, Ferrell, Gerhardt, Haines, Hand, Hutchinson (President), Lee, Martin, McKee, Minch, Shinn, Strimple, Strong, Wakelee, Welsh—19.

Journal of Tuesday March 3d, was read and approved.

Mr. McKee, on leave, introduced

Senate Bill No. 217, entitled "Supplement to an act entitled 'An act to authorize the formation of gaslight corporations and regulate the same,'" approved April twenty-first, one thousand eight hundred and seventy-six,

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Corporations.

The same Senator, on leave, introduced

Senate Bill No. 218, entitled "An act to regulate the practice of osteopathy in the state of New Jersey, and to provide for a state board of osteopathic examiners, and to license osteopaths to practice in this state, and punish persons violating the provisions of this act,"

Which was read for the first time by its title, ordered to have a second reading, and referred to the Committee on Public Health.

The same Senator, on leave, introduced

New Jersey State Archives  
Journal of the Senate  
3/3/1903

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## TRUST'S IN PERIL

What Which Aided  
ation Appears  
Senate.

## OTHER MEASURES

Staff Correspondent.  
March 4.—Senator Shinn, of  
the Senate this morn-  
ing act passed last year,  
Charles A. Reed, under  
rust made its famous  
Morgan for the re-  
ferred stock. The law  
in the start as a steel

allowed that corporation  
dan it is to be wiped  
that no other corpora-  
-antage of it.  
d the bill authorizing  
provement of the New-  
o the absence of Sen-  
o is laid up with an  
: bill was supported by

erson's repeal of the  
inexation bills "was  
te on second reading.  
resolutions for a com-  
-and report on the  
in's reformatory also  
ng.

ors, Wakelee, Strong  
d for the Glichtel bill  
y report next year the  
board of control for  
il institutions, and the

tion the Senate com-  
-ons of Frederick M.  
y City, for trustee of  
" Essex, Norman Fox,  
-anager of the State  
ics, and Ralph Traut-  
of the Palisades com-  
-bill to compel the trial

ourt term in which  
-ound was beaten by a  
-ator Coons opposing it,  
-ual when an indictment  
-e current term the de-  
-fendant on his own  
-the court extended  
-aking all discretion out  
-prosecutor.

is passed by the Sen-  
-renew ninety-six and  
-t of unpaid bonds at  
-of issue. Defeated year-  
-ed.

inishment of persons  
-s with electric light  
-ent from company.  
-epartment of entomol-  
-ary stock and take  
-spread of San Jose  
-ets.

governor from the duty  
-bills of State depart-  
-ing the work to be done  
-ments.  
-posed the House bill to  
-chambers in Paterson.  
-embers in Newark and  
-near enough. The ten-  
-3 to establish chancery  
-armory in every city  
-retorted that chambers  
-ry in Paterson than in  
-Camden, which now  
-it passed by a vote of

passed by the Senate

## TO FIX STATE BOUNDARY LINE

Message from Governor as to  
Delaware Dispute Acted Upon  
by Legislature.

## COMMISSION TO MOVE AT ONCE

Special from a Staff Correspondent.  
TRENTON, March 4.—Record time was  
made by the Legislature yesterday after-  
noon in passing a resolution through both  
houses authorizing Governor Murphy,  
Attorney-General Thomas N. McCarter  
and Chancery Clerk Edward C. Stokes to  
negotiate for a treaty with Delaware to  
put an end to the boundary dispute in  
Delaware Bay.

The necessity for action on the part  
of the Legislature was brought to the at-  
tention of the lawmakers by a special  
message sent to the House and Senate  
late in the afternoon by the Governor,  
reviewing the entire situation.

The message was as follows:  
"The Governor's Message.

"In the year 1871 the Legislature of the  
State of Delaware passed an act entitled  
"An act for the protection of fishermen,  
in and by the terms of which it sought  
to prohibit non-residents from catching  
fish in the Delaware River or bay within  
the limits of the State of Delaware with-  
out obtaining a license therefor from the  
State of Delaware.

"Subsequently certain residents of this  
State were arrested by the authorities of  
Delaware while fishing on the easterly  
side of the Delaware River, for alleged  
violation of this act, the State of Dela-  
ware alleging that her title extended to  
low water mark on the New Jersey shore  
of said river and not to the middle there-  
of or the mutual boundary-line between  
the two States.

"In the year 1877 the State of New Jer-  
sey filed its bill in the Supreme Court of  
the United States against the State of  
Delaware to enjoin Delaware from en-  
forcing the provisions of the above men-  
tioned law against citizens of New Jer-  
sey and to have the boundary line be-  
tween the two States defined.

"A preliminary injunction was granted  
by the Supreme Court to the State of  
New Jersey. Under authority of both  
Legislatures a commission of distin-  
guished citizens of each State was ap-  
pointed for the purpose of adjusting the  
controversy if possible, but their efforts  
came to naught. The suit then remained  
in statu quo for nearly twenty-five years  
until about a year ago, when the State  
of Delaware filed its answer to the bill  
of complaint of the State of New Jersey  
and has served notice of its intention to  
insist upon a disposition of the case.

"The attorney-general has been for sev-  
eral months in friendly communication  
with the attorney-general of Delaware  
with reference to this suit, with a view  
to an amicable settlement of the contro-  
versy if possible. These conferences fi-  
nally reached a point where the respective  
attorney-generals thought it wise to bring  
the matter to the attention of the Gov-  
ernor of Delaware and myself.

"Last week, accompanied by the attor-  
ney-general, I attended a conference in  
Philadelphia, at which the Governor of  
Delaware, the attorney-general of Dela-  
ware, and the special counsel of the State  
of Delaware in this litigation were pres-  
ent.

"The discussion was most harmonious,  
and I am very hopeful that the matter  
can be adjusted without the continuance  
of the litigation, the labor and expense  
of which would be very great, the means  
of securing the necessary evidence ex-

## EACH MEMBER GETS MACHINE

Republican Senators in Caucus  
Decide to Give \$40,000 for  
81 Voting Devices.

## PRIMARY REFORM BILL'S FATE

Special from a Staff Correspondent.  
TRENTON, March 4.—After holding up  
the primary reform bill in committee  
for five weeks, the Republican Senators  
met in caucus yesterday afternoon and  
decided that it was time to do something  
about it. What they decided to do was  
to keep the bill in committee another  
week and ask the members of the com-  
mission that drafted the act to come into  
the caucus and explain what the bill is  
and what it is for. Although the meas-  
ure has been under discussion for more  
than a year, the desirability and neces-  
sity for a law to purify the State of  
primary scandals in both parties has  
been demanded by the press, pulpit, party  
leaders and people in every part of the  
State, and the general scope and plan  
of the proposed law has been publicly  
known for at least two months, the Sen-  
ators. It is understood, expressed in ca-  
ucus profound ignorance of the meaning  
of the measure and decided that until  
they knew more about it they would not  
be justified in allowing the bill to get  
before the Senate.

Besides their action regarding the pri-  
mary bill, the Republican Senators voted  
in caucus to pass Senator Wakelee's vot-  
ing machine bill and to appropriate about  
\$40,000 to the State voting machine com-  
mission for the purchase of machines.  
This amount, it was figured out by some  
of the caucus statisticians and mathe-  
maticians, would just about buy eighty-  
one machines, or one for each member  
of the Legislature, and their proposition  
is to have the machines allotted to the  
counties for trial in proportion to the  
number of lawmakers in each county.  
Thus, Essex will have twelve machines  
to scatter among the 18 voting districts  
in the county, while Cape May, Sussex  
and the other counties with one Assem-  
blyman will have two machines to a  
county.

The Senators refused to discuss the  
details of their momentous caucus or the  
reasons that actuated their decision on  
the voting machine and primary  
measures, but it is understood that the  
plan to buy a few machines this year was  
born of a desire to avoid possible trouble  
and extravagance by taking a step at a  
time. One reason said to have been ad-  
vanced for not buying enough machines  
at one time to make their general use  
at elections practicable at once was that  
while voting machines have proved entire-  
ly satisfactory and successful in every  
city and State where they have been  
tried, including something like sixty  
cities in New York State, it was feared  
there might be something in the politics  
or climate of New Jersey that would in-  
terfere with their successful operation  
here.

Incidentally, it was suggested, there  
was a wish on the part of some party  
men to know just how badly the use  
of the machines in elections would har-  
monize or interfere with the operations  
of the county political machines before  
the State was committed beyond reprisal  
to the new manner of voting.  
It was also suggested after the caucus  
that the known opposition of some of  
the party bosses and machine leaders to  
the Republican came in the proposed

## MORRIS CANAL BILL DELAYED

Abandonment Measure Is With-  
held Till Next Week.  
Wants Changes.

## INSISTS ON MORE SAFEGUARDS

By Telegraph from a Staff Correspondent.  
TRENTON, March 4.—A renewal of the  
effort to obtain legislative sanction for  
the abandonment of the Morris Canal is  
to be made in the closing days of the  
present session. An abandonment bill  
has been prepared and was to have been  
introduced in the House to-day, but a  
member of the Essex delegation, who was  
to have introduced the measure, insisted  
on some changes at the last minute, and  
it was agreed to let it go over until next  
week.

It is understood that the Lehigh Valley  
Railroad Company, the lessee of the  
canal, are not at all anxious for abandon-  
ment this year, and that the plan is be-  
ing urged by Newark Republican leaders  
and officials, and the Lackawanna Rail-  
road Company, who are interested in  
getting the canal out of the way, so that  
the grade crossings along the Lacka-  
wanna in Newark can be abolished.

What terms are to be suggested for  
abandonment have not been disclosed.  
The general impression is that the Le-  
high is taking an independent stand in  
the matter, believing that the anxiety  
of the Lackawanna and of Newark to get  
the canal out of the way is sufficiently in-  
tense so that almost any terms asked  
for can be had.

"The Lehigh is going to use Newark  
to pull its chestnuts out of the fire," is  
the way many lawmakers are siding up  
the situation.

A fight over the bill is inevitable when it  
comes up. The Lehigh is not willing to  
abandon the canal unless it retains enor-  
mously valuable water rights in Lake  
Hopatcong and Greenwood Lake, and  
Morris County residents, especially prop-  
erty owners at Lake Hopatcong, are or-  
ganized to fight any such gift of water  
rights. The Lehigh, it is understood, be-  
lieves that Newark and the Lackawanna  
are so impatient over the delay in track  
repression that they will be willing to  
get rid of the canal on almost any terms.

There was a general air of mystery  
around the State house corridors this  
morning. Among those who bustled from  
House to Senate and held conferences in  
corners and offices were Robert H. Mc-  
Carter, counsel for the Lehigh Valley; W.  
H. Ross, of the Lackawanna; Major Carl  
Lentz and President Winton C. Garrison,  
of the Newark Board of Works. All dis-  
claimed that their presence was in any  
way connected with the canal question.  
Yesterday, as told in the NEWS, the  
Newark Board of Works Street Commit-  
tee adopted resolutions, offered by Mr.  
Garrison, advocating the canal's abandon-  
ment.

Senator Bacheller to-day denied that he  
was to rather, he talked of bill.  
"All I can tell you about it is that I  
won't introduce it," he said.

No member of the Essex House dele-  
gation would admit that he was to stand  
oppose for the abandonment scheme. It  
is understood that the reason the bill was  
not introduced to-day was that the Essex  
Assemblyman who was to introduce it re-  
fused to do so unless the water and other  
rights of the State and of individuals  
were better safeguarded than in the orig-  
inal measure.

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an armory in every city, as reported that chambers sary it: Paterson than in or Camden, which now bill passed by a vote of 111s passed by the Senate of the landlord and tenant rles of sergeants-at-arms mbers to \$1,000 a year. clair Council to make a sion of garbage. Introduced a bill making rior of \$2,000 each for d Essex troops of cav- s. by Senator McKee pro- new petit jury drawn s in the Passaic County done in Essex and Hud- present Passaic County the entire court term.

## THAT HAVE PASSED HOUSE

In One Authorizing Means Judge to Sit on Juvenile Court.

Without debate or discussion yesterday afternoon a bill, authorizing the Court of Common Pleas to invest with the power to reform institutions, to place or suspend sentence or fine under sixteen years minor offences. The bill was introduced by Senator McKee and passed by the House.

McDonnell, made his bill to amend the law relating to bathing resorts. The McDonnell bill, in that all bathing-houses shall have a master in attendance and lifeboat ready.

Assemblyman Williams introduced a bill to amend the law relating to the boundary of two counties in Passaic and Essex counties. The bill was introduced by Assemblyman Williams and passed by the House.

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of Delaware in this litigation were present. "The discussion was most harmonious, and I am very hopeful that the matter can be adjusted without the continuance of the litigation, the labor and expense of which would be very great, the means of securing the necessary evidence extremely difficult and the decision impossible to forecast with accuracy. As a result of this conference the House of Representatives of Delaware has passed a joint resolution, which I am informed will be concurred in by the Senate, constituting the Governor, the attorney-general and the special counsel of that State in this litigation, commissioners to confer with like commissioners to be appointed by the State of New Jersey for the purpose of framing a compact or agreement between the said States, to be submitted to the respective Legislatures looking to an amicable termination of this litigation.

"This matter is one of great importance to the southern section of our State and its fishery interests, and it should be adjusted as speedily as possible. I recommend that the Legislature, by joint resolution, appoint three commissioners to meet and confer with the Delaware commissioners, in the hope that the whole matter may be reported back almost immediately to the respective Legislatures of the two States, both of which are now in session, and receive their approval."

Joint Resolution Rushed Through. Immediately after the reading of the message in the House a joint resolution was introduced by Majority Leader Boyd appointing the commission for the conference with the Delaware officials. It was rushed through three readings under suspension of the rules and sent immediately to the Senate, where the same record time was made. Within half an hour after the receipt of the message the joint resolution had passed both houses and been delivered to the executive. A conference is to be had between the two State commissions this week, if possible, with the idea of reaching a compromise at once and having bills ready to present to the Legislatures of both States for a settlement of the controversy some time next week.

## SPLITS VILLAGE AND TOWNSHIP ELECTIONS

Assemblyman Williams Introduces Repealer of His Own Law Governing South Orange.

By Telegraph from a Staff Correspondent. TRENTON, March 4.—A plan to divorce the township and village elections in South Orange, Essex County, is incorporated in a bill introduced in the House this week by Assemblyman Williams. South Orange Village is a part of the township of the same name. Residents of the village vote for both village and township officers, until 1901 the elections were held separately. In that year Mr. Williams had passed a law consolidating the elections. The idea of the law was that, by having the village and township elections at the same time, the commuters, who take a live interest in village affairs and none at all in township matters, would vote for both sets of officers, and the township would be made Republican. The plan did not work out as expected, and the township committee is still Democratic. The only explanation given by Mr. Williams of his new bill, to repeal his own law of 1901, is that there is a complication in local affairs there, and that local Republicans want the repealer. The combined election, if not interfered with, will be held next Tuesday. A South Orange Republican, who was at the State house yesterday, said the repealer was not wanted by the people of that place, either in the township or village. A delegation of South Orangettes is expected in Trenton Monday to oppose the bill at a hearing.

Assemblyman Williams introduced a bill to amend the law relating to the boundary of two counties in Passaic and Essex counties. The bill was introduced by Assemblyman Williams and passed by the House.



manize or interfere with the operations of the county political machines before the State was completed beyond referral to the new manner of voting.

It was also suggested after the caucus that the known opposition of some of the party bosses and machine leaders in the Republican camp to the proposed purification of primary methods had had as much to do with the disinclination of the Senators to do anything with the primary bill previously as the determination of Governor Murphy to have the law put on the books and the reproach to the State offered by recent primary scandals wiped out had to do with yesterday's action.

In accordance with the caucus decision of the members of the commission that drew up the bill, Chancery Clerk Edward C. Stokes, County Counsel Joseph L. Mann, of Essex, and Corporation Counsel George L. Record, of Jersey City, will be invited to attend another caucus of the majority Senators Monday night, and tell them all about the measure, and why there is any reason for having the Legislature brave the displeasure of the machine bosses in the party by trying to pass it this year.

## AMENDS AND ADVANCES VOTING MACHINE BILL

Senate Also Passes Bill and Changes for Tramps Measure Among Others.

Special from a Staff Correspondent. TRENTON, March 4.—In accordance with the decision reached at the Republican caucus the Senate Committee on Appropriations yesterday afternoon reported favorably the Wokelee voting machine bill, with an amendment requiring the machines bought by the State to be set up in the polling places by the contractors, who are also to give instructions to the election officers in operating them. The bill and amendment were adopted and passed on second reading. The Senate passed Senate bills as follows:

- Incorporating the borough of Demarest, Bergen County.
- Allowing ball and chain to be used on tramps sentenced to hard labor under the vagrancy act.
- House bills passed by the Senate were: Fixing a license fee of \$5 a year for practicing architects, to be paid to the State board of architects.
- Allowing widows of Union soldiers and sailors to be admitted to the Vineland Soldiers' Home.
- Requiring the use of barrels of standard size in shipping cranberries.
- Authorizing Hudson freeholders to issue bonds to meet deficiency in appropriation for court expenses.
- Giving a pension of \$50 a month to Joseph Delaney, a State prison employe, injured in an accident at that institution several years ago.

## BATCH OF NEW BILLS BEFORE LEGISLATURE

House to Date Has Nearly 300 Measures and the Senate More Than 200.

Special from a Staff Correspondent. TRENTON, March 4.—Although the time limit set by the House two weeks ago for the introduction of bills expired last Tuesday, there has been no let-up this week in the number of new measures introduced, and the members introducing them seem as confident of their passage as though the time limit had never been set. With those introduced yesterday there are now 272 bills before the House and 215 before the Senate. Some of those presented yesterday were: Senator Bradley—Authorizes gas companies to maintain pipes in public streets for the purpose of conveying gas through one municipality to another.

Senator Lee—Increasing the salary of the prosecutor of the pleas in Burlington and Atlantic counties to \$3,000 a year. Mr. Leavitt—Allows Mercer County to issue additional bonds for the erection of its new courthouse.

is understood that the reason the bill was not introduced to-day was that the Essex Assemblyman who was to introduce it refused to do so unless the water and other rights of the State and of individuals were better safeguarded than in the original measure.

## SUBSTITUTE BILL FOR MEDICAL ACT CHANGES

Assemblyman Williams Offers It After Withdrawing His More Stringent Measure.

Special from a Staff Correspondent. TRENTON, March 4.—To placate the druggists, opticians, Christian Scientists and others who have been up in arms against some of its provisions, Mr. Williams, of Essex, withdrew from the House yesterday afternoon his bill changing the act to regulate the medical practice, and introduced a new measure whose provisions are less stringent.

Under the old act now in force the use of a medical title or hanging out of a sign, use of advertising, etc., by any person not a properly registered physician, is considered prima facie evidence of a violation of the law. The Williams bill, as introduced originally, proposed that any advertising, sign, etc., indicating the practice of medicine or surgery by a person not licensed should be sufficient ground for indictment and punishment.

The united influence of faith healers, massage manipulators, Christian Scientists, bonesetters and others of this ilk was at once directed against the proposed amendment, as calculated to lead to their prosecution and put them out of business. Druggists and opticians also objected to the change as being likely to make trouble for them.

A committee of the State Board of Medical Examiners, headed by Dr. C. A. Groves, of East Orange, visited the State house yesterday, and after a conference with Mr. Williams agreed to a new bill, leaving the provision referred to as it now stands. This bill, introduced later in the afternoon, also exempts from its provisions and restrictions registered pharmacists of the State of New Jersey actually engaged in the practice of pharmacy.

An effort was made by the opticians to secure exemption from the restrictions of the law, but the board of examiners refused to make such a concession until the men who fit eyeglasses elevate the standard of their calling and establish a system of examination and registry to keep out the quacks.

The first sections of the original bill are unchanged in the new one, the amendments proposed to the present act being intended to raise the grade, educationally and professionally, of licentiates. One of these amendments will enable the board of examiners to admit practitioners of experience from other States. Under the present law, it is asserted, the board cannot pass an applicant for license on examination if he has been practicing twenty years or longer, for the reason that his course of study at that time would not comply with present requirements.

## STATE OFFICIALS DINED.

Supreme Court Justices to Be Governor's Next Guests—Correspondent's Dinner March 17.

Special from a Staff Correspondent. TRENTON, March 4.—About forty heads of State departments, members of State boards and other officials and Republican leaders were the guests of Governor Murphy in the fourth of his series of Tuesday night dinners at the temporary executive mansion last night. As has been the rule at the preceding dinners, political lines were not drawn, and speeches were of an entirely informal nature.

Next Tuesday night the Governor is to entertain the justices of the Supreme Court at dinner. Because of this arrangement the date for the annual banquet of the Legislative Correspondents' Club, which was set for that date, has been changed to the night of St. Patrick's

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# DELAWARE FISHERMEN DON'T ASK JERSEYMEN TO BE KEPT OFF RIVER

*At a Public Meeting Held  
in Delaware City Last  
Evening, the Matter  
Was Discussed*

*Sentiment Was in Favor  
of Allowing Men From  
Both States to Fish in  
Delaware*

*Delaware Men Do Not  
Want New Jersey to  
Place Officers on the  
River*

The fishermen of Delaware City, Port Penn and New Castle met the commission appointed by the Legislature in Central Hall, Delaware City, last night to learn what the fishermen wanted regarding a settlement in reference to the boundary of Delaware river between this State and New Jersey.

The meeting was the outcome of an venture of the New Jersey authorities, who wish to settle the disputes constantly occurring between fishermen of the two States. The State of New Jersey claims an imaginary boundary in the middle of the river and because Delaware fishermen have not acceded to their laws they have been arrested.

### History of Trouble.

The whole trouble arises from the twelve mile circle from the old Court House at New Castle, which covers the whole of the Delaware river as far down as Port Penn. Delaware claims the river to the low tide mark on the Jersey shore. Under the grant of the Duke of York to William Penn in 1682 the twelve mile circle was established from the fort in New Castle which stood about where the Court House now stands. This circle took in a portion of New Jersey. In the adoption of the constitution of the United States the portion of land lying beyond the Delaware river was conceded to New Jersey.

The question of fishing in the waters of the Delaware at this point was later settled by the Jerseymen paying an annual fee of \$5 and the Delawareans \$4 for the same at each side of the river. The Jerseymen

what he thought about allowing the fishermen of both States to use the river where they wanted to said: "Every man who fishes for a living should go where he can catch the most fish and I think if the river were thrown open to both Delaware and New Jersey fishermen to go where they want there would be no trouble."

The general impression of all the fishermen was that the river be conceded to Delaware, but that an agreement be made that fishermen from both States should cast their nets wherever they wanted, but that they should camp upon their own shores, but that no Jersey authorities be placed in the river and that all cases be tried before Delaware courts, as the water is part of the State and that the game warden's duty was only to prevent Sunday fishing and the close of the season.

### Much Money Involved.

The fishing industry within the boundary of the twelve mile circle in Delaware is a large one. There are about 165 boats within the circle and each of them earns about \$50 a month during the chad season.

Governor Hunn was to have been at the conference, but his going to Washington prevented him from being there. Many were disappointed as it was rumored about the town that he would be there and many people attended the meeting solely to see him.

The meeting was an enthusiastic one and the fishermen all expressed themselves as well pleased with the outcome. Some of those who took part in the meeting were F. J. Ithien, William Gillson, Thomas Neal, John J. O'Neil, George Jones, Henry Tangend, Charles Bowen, John Bowen, Frederick Tangin, Delaware City; Oliver Kershaw, Robert Carponier and Frank Hickman, Port Penn; George Postles, New Castle.

The Attorney-General expressed himself as well pleased with the meeting and thinks he knows the wants of the fishermen, which he will respect in the conference with the New Jersey authorities.

## TESTING OLD FIRE ENGINE

New Property of Elkton Company, But Formerly Belonged to Washington Fire Company.

The engine of the Binger Fire Company, No. 1, of Elkton, which has been repaired by the Remington Machine Company was given a trial this morning at Third street bridge, the water being gotten from the Christina river.

# ALLEE LOOKED FRIGHTENED AS HE TOOK OATH

Presiding Officer Had to  
Quell Noisy Delaware  
Delegation

## ADDICKS WATCHES FROM GALLERY

Smiles With the Air of Proprietorship  
Upon the New Senator After the  
Oath of Office Has Been Administered.

Washington, March 4.—With J. Edward Addicks seated triumphantly in the Senators' private gallery, surrounded by his henchmen from the Delaware Legislature, and smiling with the air of a proprietor upon J. Frank Allee, that gentleman and J. Heisler Ball were sworn in yesterday as Senators of the United States.

The ceremony was brief, but it attracted more attention than is usual on similar occasions.

Before either Senator Allee or Senator Ball had appeared in the Senate chamber, Addicks and the Delaware Legislators and all the others who had come here to witness the ceremony filed into the galleries. Addicks led the delegation, which numbered more than 100 men.

Fifty found seats in the private gallery and the others were shown into a public gallery, where, for lack of seats, most of them were compelled to stand against the wall.

### Delaware Noise Stops Teller.

The noise they made caused a suspension of business in the Senate. Senator Teller was talking, but he stopped and looked with amazement at the crowd of heavy men from Delaware filing into the galleries. When they were all seated Senator Teller went on with his speech.

Governor Huna was brought into the chamber by Representative Ball. His hair was closely cropped and his big black mustache and air of embarrassment gave him the appearance of a heavy-weight pugilist in his best clothes.

Few of the Senators knew him, but so great was the interest aroused by his appearance that it was not long before his name had been passed around both sides of the chamber.

Senator Hanna was the first to hurry over to where he sat and extend a warm greeting as he arose to shake hands with

for Dela started Ball." w Senator Dr. R dispatch lectly w his colle confirm Byrne, I fairly n the put ware R. Effort blocked made b arrived would b ceed He. Asked would I would Mr. Bal "I do Allee w this ag Loç The n of the yesterd afterno o'clock.

## AFT Friends

That anxious streets that ar erty in (but on the Market ship f the we Teeth Men's have b

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The Evening Journal. 3/4/03, p.1

the Delaware at this point, was later settled by the Jerseymen paying an amount of \$10,000 to the Delawaremen for the right to fish in the river. The Jerseymen, claiming they were being wronged, made a strong objection to the fee, the outcome of which was, the Superior Court placed an injunction upon the river and as a consequence Delaware lost much money from the fees, which have not been collected since that time and the question now regarding the boundary between the two States in the middle of the river.

It was at the suggestion of the New Jersey authorities that a commission of three men be appointed including the Governor, the Attorney-General and another person to arbitrate and make an amicable settlement if possible.

It was to this end that the meeting was held in Delaware City last night, it being reported as about the centre of the disputed territory.

Attorney-General Ward and George H. Bach, two of the Delaware Commission went there to learn what the fishermen thought of a settlement and to get their views upon the situation generally.

T. Bayard Heisel was elected chairman of the meeting and William Townsend, secretary. Mr. Ward was the first speaker and he made a statement explaining the objects of the meeting. He said that Attorney-General McCortle, of New Jersey, seemed to admit a compact between the two States and agreed that each State hold a meeting and get the sentiment of the people and hold a conference of the commissions to see if a compact could be drawn of mutual advantage to both States.

In closing his talk Mr. Ward said: "If a compact cannot be made to be of advantage to Delaware fishermen, then we do not want to make one, we want enlightenment on the subject, so that we may talk intelligently to the New Jersey Commission."

#### Fishermen Give Views

Then followed a general discussion in which several of the fishermen took part, explaining how they fished and the courses they took.

William Anderson, New Castle County Fish Commissioner, in a short talk, explained to the commission that both sides of the river were now used by Delaware fishermen in catching shad and that the best sturgeon fishing was on the Eastern or Jersey shore.

Joseph Anderson, a brother of the Fish Commissioner was asked regarding the arrest of his men and damage to his boat and tackle by New Jersey authorities. He said: "My men were fishing on the Delaware side of the river, but the New Jersey authorities claimed they were in mid-stream and arrested them. I, as a citizen of the State of Delaware, do not believe they had the right to arrest the men and action in the case is still pending. If the claim of Delaware to the river is sustained I shall sue to recover \$500 damage done my boats by the Jersey officers." He further said:

"As there is no one here from the two lower counties, I do not think it would be wise for us to give away property which they have the right to dispose of, or fix the jurisdiction for them."

#### No Objection to Jerseymen

Mr. Justice, of New Castle, when asked

paired by the Remington Machine Company, was given a trial this morning at Third street bridge, the water being gotten from the Christians river.

The engine is an old one and was formerly the property of the Washington Fire Company, but was sold twelve years ago. Despite its age the engine is still a good one and was considered the best in this city for many years. It still compares favorably with the engines of more modern make.

There were several veteran members of the Washington Company present at the test to again see the old engine, which they knew so well, throw water and they were not disappointed as the test was thoroughly satisfactory and the engine will be shipped to Elkton shortly.

## PUSHING WORK ON NEW RAILROAD BUILDINGS

### Will Rush Them to Completion to Make Room for Elevated

Work upon the new shops of the Pennsylvania railroad at Todd's Cut will be pushed with all haste so as to get the buildings of the company in this city out of the way of the construction of the elevated road, which they are now hindering.

It is the intention of the company to complete the power house first and this will be followed by the saw mill. The next building to be finished will be the blacksmith shop and the freight car repair department will be next finished. While the work on these buildings is progressing the round house will be constructed and it is the belief that it will be finished by the first of June. The round house is an immense building and work upon its foundation has gone on all winter. It will accommodate many more engines than the present structure and is specially designed to meet the requirements of the big engines, recently introduced on the Delaware road, which have caused so much trouble at the old round house.

The buildings will be finished in the rotation where the ground space is most badly needed here for the erection of the elevated.

The contractors are experiencing much trouble in securing good laborers and the construction of the buildings will be retarded to a certain extent from this cause.

Work on all the buildings is now going on by the different contractors and the scene at Todd's Cut is a busy one, there being several hundred laborers employed there.

#### Dockstader Denies Report

W. L. Dockstader denied the report which was current last night that he had abandoned his intention of erecting his Market street playhouse. He said there was positively no ground for such a report and that the place would be opened next September.

of the chamber. Senator Hanna was the first to get over to where he sat and, upon his greeting, as he arose to shake hands with Hanna the Delaware Governor bowed above the man from Ohio in a way that made the latter look insignificant.

#### Allee Looks Frightened.

A few moments later J. Frank Allee entered. He looked frightened and embarrassed. His statement that he never expected to be elected a United States Senator was fully borne out by his demeanor.

Senator Hanna asked a suspension of business until two new Senators from Delaware could be placed. And when he had made his point he took Allee by the arm and led him down the centre aisle to the President's desk. They were followed by Senator Aldrich and Senator Ball.

Senator Frye administered the oath, and after having sworn the new members to support the flag and the Constitution and several other things he hesitated a few moments, trying to remember the last sentences. The men from Delaware in the galleries thought he was going to make Allee swear he would not resign. There was a sigh of relief when the oath was finished without the interpolation of any new conditions.

#### Delaware Visitors Applaud.

As the two new Senators were marched down the aisle the Delaware men applauded vigorously, and they broke forth in applause again after Allee and Ball had been sworn in and conducted to seats.

When Senator Teller, who still held the floor, resumed his speech with the statement that he also felt like applauding the renewal of Delaware's representation in the Senate the Delaware men again applauded. This time they were checked by Senator Frye, who said that while the applause had been all right up to that point it must not be continued.

After this the Delaware men remained silent in the gallery and wondered as the minutes went by why Allee did not get up and address the Senate. They also wondered why the Senators appeared to have forgotten that there was such a person as Mr. Allee in the Senate chamber, and why it was that Senator Ball, who is known there, could walk easily about addressing first one man and then another with apparent familiarity.

#### Day a Great One for Delaware.

It was all so wonderful to the men from Delaware that they got tired of it very quickly and retired from the gallery, making almost as much noise as they went out as they did when they came in.

In the corridor they were joined by Allee and Ball and were shown about the Capitol, attracting much attention everywhere. Tonight the whole delegation was entertained at dinner at the Arlington by Senator Allee.

It was a great day for Delaware, when for the first time in four years the State was again represented by two members in the United States Senate and the only circumstance that marred the occasion was the fact that it made so little impression on the Senate.

When the Delaware men arrived in Washington in the morning they were met at the station by Senator Ball and J. Edward Addicks, National Committeeman

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STATE OF DELAWARE.

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JOURNAL of the SENATE

AT A SESSION OF THE

GENERAL ASSEMBLY

CONVENED AND HELD AT DOVER, ON TUESDAY, THE  
SIXTH DAY OF JANUARY, IN THE YEAR OF OUR  
LORD ONE THOUSAND NINE HUNDRED AND  
THREE AND OF THE INDEPENDENCE OF  
THE UNITED STATES, THE ONE HUN-  
DRED AND TWENTY-SEVENTH.

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1903.

CHRONICLE POWER PRINT,  
MILFORD, DEL.

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Nays—None.

So the question was decided in the affirmative,

And the joint resolution having received the required constitutional majority,

Was declared

Adopted.

Ordered that the House be informed thereof, and the joint resolution returned to that body.

Mr. Hodgson, Clerk of the House, being admitted, informed the Senate that the House had non-concurred in the following Senate bill:

Senate Bill No. 68, entitled:

"An act to amend Chapter 36, Volume 21, of the Laws of Delaware, entitled, 'An act providing for a uniform system of registration of all qualified voters in this State.'"

Mr. President directed the following communication read: To the Senate and House of Representatives of the State of Delaware, in General Assembly met.

We, the undersigned Commissioners, appointed by joint resolution of your Honorable Bodies, to confer with Commissioners appointed in behalf of the State of New Jersey, to frame 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, respectfully report as follows:

That on Thursday, the 12th day of March, A. D. one thousand nine hundred and three, the Commissioners of the State of Delaware met, in the City of Philadelphia, in the State of Pennsylvania,

113

Monday, March 16, 1903—10.30 o'clock A. M.

Senate met pursuant to adjournment.

Prayer by the Chaplain.

Roll called. Members present—Messrs. Brasare, Clements, Conner, Groves, Harrington, Jefferson, Latta, McNulty, Moore, D. O., Moore, T. C., Pennewill, Smith, Sparks, Stirling, Wright. Mr. President pro tempore, Mr. President.

On motion of Mr. Pennewill, the reading of the Journal was dispensed with.

Mr. Sparks asked that

House Joint Resolution No. 23, entitled:

"Joint resolution appointing Directors for the Farmers' Bank of the State of Delaware, for the branch at Wilmington,"

Be read.

Mr. Sparks moved that the joint resolution be adopted.

On the question, "Shall the joint resolution pass the Senate?"

The yeas and nays were ordered, which, being taken, were as follows:

Yeas—Messrs. Brasare, Clements, Conner, Groves, Harrington, Jefferson, Latta, McNulty, Moore, D. O., Moore, T. C., Pennewill, Smith, Sparks, Stirling, Wright. Mr. President pro tempore.

Franklin Murphy, Thomas N. McCarter and Edward C. Stokes, the duly accredited Commissioners of the State of New Jersey, for the purpose of performing the duties imposed upon them under said Commission. Further conferences between said Commissioners and Committees thereof were held on the same day on Friday and Saturday, the thirtieth and fourteenth days of March, A. D. one thousand nine hundred and three. The Delaware Commissioners have annexed hereto and further submit, as their report, a draft of the compact framed by said joint Commissioners, covering the subject submitted to their consideration, so far as any agreement could be reached by said joint Commissioners.

They also herewith report the form of an act, uniform with one prepared for the State of New Jersey, to ratify and confirm said compact and to authorize its execution.

All of which is respectfully submitted this sixteenth day of March, in the year of our Lord one thousand nine hundred and three.

JOHN HUNX,  
HERBERT H. WARD,  
GEO. H. BATES.

COMPACT BETWEEN THE STATE OF NEW JERSEY  
AND THE STATE OF DELAWARE RELATING TO  
THE BOUNDARY CONTROVERSY BETWEEN  
SAID STATES.

Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware, relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an act of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said State to so settle and determine such controversy as to prevent future complications arising therefrom:

And whereas, There is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the

State of Delaware restraining the execution of certain Statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-five years and upwards:

And whereas, or the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes have been appointed Commissioners on the part of the State of New Jersey, by joint resolution of the Legislature of said State, and John Hunx, Herbert H. Ward and George H. Bates have been appointed Commissioners on the part of the State of Delaware by joint resolution of the General Assembly of said State, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislature of said two States for action thereon, looking to the amicable termination of said 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:

Now, therefore, the said State of New Jersey, by its Commissioners above named, and the said State of Delaware by its Commissioners above named, do hereby make and enter into a compact, or agreement between said States, as follows:

Article I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States, from low water mark on the New Jersey shore to low water mark on the Delaware shore, except upon Reedy and Ten Patch Islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of

Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of Delaware.

Article II. Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low water mark on the Delaware shore to low water mark on the New Jersey shore, unless said person, or property, shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

Article III. The inhabitants of the said 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 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.

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 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 so named and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended, or of

other concurrent legislation for the regulation of said common right of fishery, 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 between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States.

The faith of the said contracting States is hereby pledged to the enactment of said laws so recommended by said Commissioners, or of 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 to arrest, try and punish its own inhabitants for violation of the concurrent legislation relating to the regulation of the right of common 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.

Article VI. 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.

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.

Article 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 sub-aqueous soil thereof, except as herein expressly set forth.

Article IX. This agreement shall be executed by the said



Commissioners, when authorized to do so by the Legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the Commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the Commissioners of New Jersey, to be delivered to the Governor of that State) this            day of           , in the year of our Lord, one thousand nine hundred and three.

Mr. Sparks moved the communication be accepted, spread upon the Journal, and referred to the Special Committee on Boundary.

Which motion

Prevailed.

Mr. Hodgson, Clerk of the House, being admitted, informed the Senate that

House Bill No. 70

Had been enrolled and signed by the Speaker of the House, and presented the same to the Senate for the signature of the President, entitled:

"An act to reincorporate the Commissioners of Rehoboth."

And presented the same to the Senate

Mr. Smith, in pursuance of previous notice, asked leave to introduce a bill,

Senate bill No. 121, entitled:

"An act to ratify and confirm a compact, or agreement, between the States of New Jersey and Delaware respecting the Delaware River, and to authorize the execution thereof."

And the bill was read a second time, by its title, and

Referred to the Committee on Boundary—a special committee.

On motion of Mr. Sparks,

House Bill No. 220, entitled:

"An act in relation to the Ferris Industrial School."

Was read a first and second time, and

Referred to the Committee on Finance.

On motion of Mr. McNulty,

House bill, No. 260, entitled:

"An act to amend Chapter 418, Volume 14, Laws of Delaware, changing the time and manner when applicants for the sale of intoxicating liquors shall make oath to such application."

Was read a first time.

And further on his motion, the bill was read a second time, by its title, and

Referred to the Committee on Revised Statutes.

On motion of Mr. Smith,

House Bill No. 311, entitled:

"An act authorizing the Mayor and Council of New Castle to borrow a sum of money not exceeding twenty-five thousand dollars, for the permanent and substantial improvement of the City of New Castle."

Was read a first and second time, and



ler, Montgomery, Newcorn, Pettersen, Posten, Roberts, Schumann, Scovel, Sharwell, Shedaker, Treacy, Weismann, Wildrick, Willever—45.

The Speaker thereupon declared the amendment lost.

The Committee Substitute for

Assembly Bill No. 195, entitled "An act to consolidate with and annex to the city of Newark, in the county of Essex, the territory embraced within the bounds of the town of Irvington, in the county of Essex, provided a majority of the votes cast in said town upon the question of such annexation and consolidation shall be in favor thereof, and to provide for the submission of the said question to the voters of said town,"

Was then read a second time, considered by sections, agreed to, ordered to be printed, and to have a third reading.

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT,  
TRENTON, March 17th, 1903.

*To the House of Assembly:*

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,  
FRANKLIN MURPHY,  
*Governor.*

*To the Senate and General Assembly of the State of New Jersey:*

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the State of Delaware, to frame 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 final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of

the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,  
THOS. N. McCARTER,  
EDWARD C. STOKES.

The Governor's message was then taken up.

Mr. Boyd moved that the Governor's message be spread at length upon the minutes of the House, and that it be referred to the Committee on Judiciary,

Which motion was carried.

Mr. Shedaker offered the following resolution, which was read and adopted:

*Resolved* (the Senate concurring), That the Governor be requested to return to the house, in which it originated

Assembly Bill No. 87, entitled "A supplement to an act entitled 'An act to establish standard packages for cranberries,'" approved March twenty-third, one thousand eight hundred and eighty-eight,

A message was received from the Senate, by the hands of its Secretary, as follows:

New Jersey State Archives  
Minutes of the Assembly  
3/16/1903

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# DELAWARE AND JERSEY'S PACT

## Text of Proposed Treaty, Which Gives Equal Fishery Rights and Joint Jurisdiction.

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Special from a Staff Correspondent.  
TRENTON, March 17.—A compact proposed to be enacted into treaty by the agreement of the legislatures of New Jersey and Delaware, to put an end to the fishery war and litigation over the boundary line between the two States in Delaware Bay, was submitted to the Legislature last night in the form of a report from the special commission appointed by the Legislature two weeks ago for the purpose of settling the boundary dispute. This commission, which was composed of Governor Murphy, Chancery Clerk Edward C. Stokes and Attorney-General Thomas N. McCarter, conferred in Philadelphia with a commission from Delaware, consisting of Governor John H. Hann, Attorney-General Herbert D. Ward and George H. Bates. A copy of the treaty bill was submitted to the Delaware Legislature yesterday.

No effort was made by the joint commission to establish the actual boundary line in the bay, and the treaty proposes to give joint jurisdiction and equal fishery rights to the inhabitants of the two States from shore to shore.

The text of the proposed treaty is as follows:  
"Whereas, a controversy hath existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware.

"Article I provides that criminal process issued under the authority of the State of New Jersey against a person accused of an offense committed upon the soil of said State or upon the eastern half of the Delaware River or committed on board of a vessel under the jurisdiction of that State, and civic process issued out of New Jersey against any person domiciled in that State may be served upon any portion of the Delaware River between the said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Pelee and Pea Patch Islands, unless said person or property shall be on board a vessel grounded upon or fastened to the shore of the State of Delaware or to a wharf adjoining thereto, or unless such persons shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"Article II. That criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State or upon the western part of the Delaware River, or committed under the jurisdiction of that State, also civil process issued under the authority of Delaware against a person domiciled in that State, or against property taken out of that State, may be served upon any portion of the Delaware River between the said States from low water mark on the Delaware River to the low water mark on the New Jersey shore, unless said person or property shall be on board a vessel grounded upon or fastened to a wharf adjoining thereto, unless such person shall be under arrest or such property shall be

nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States.

"Article VIII. Nothing herein contained shall affect the territorial limits, rights of jurisdiction of either State, in or over the Delaware River or the ownership of the subaqueous soil thereof, except as herein set forth.

"Article IX. This agreement shall be executed by the said commissioners, when authorized to do so by the legislatures of both States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification by Congress it shall be and become binding in perpetuity upon both States and the suit now pending in the United States Supreme Court shall be discontinued."

# DELAWARE TO CONTINUE BOUNDARY LINE FIGHT

Bill in To-day Appropriates \$10,000 to Carry Dispute in United States Supreme Court.

Special Dispatch to the EVENING NEWS.  
DOVER, Del., March 17.—The Delaware Legislature will adjourn finally to-morrow. Promptly at noon to-day and in accordance with the resolution providing for adjournment, Lieutenant-Governor Cannon in the Senate shut off the consideration of all business except action on appropriations. The Senate to-day killed the \$500,000 street loan for Wilmington. This bill passed the House.

In view of the bill providing for a settlement of the New Jersey and Delaware fisheries boundary dispute having been unfavorably reported by the committee this morning, another bill was introduced carrying an appropriation of \$10,000 for the commissioners and the attorney-general to continue the dispute in the United States Supreme Court.

# TEACHERS ON TO TRENTON.

Governor Will Give a Hearing on Proposition to Have State Pay Retirement Fund Expenses.

A party of teachers and other educators of this city will go to Trenton to-morrow afternoon, where they will be accorded a hearing by Governor Franklin Murphy, the House Committee on Education and the Committee on Appropriations. The delegation will lay before the Governor and the two committees its reasons for bolting the administrative expenses of the State Teachers' Retirement Fund should be paid by the State.

Last week Governor Murphy announced that he would not sign the bill providing that the State should administer the fund. This created considerable feeling among the teachers of the State, and the result was that the members of the joint legislative committee of the Teachers' Retirement Fund issued a circular letter asking the teachers of every municipality in the State to send a representative to the conference at Trenton. The Governor promised to give them a hearing and appointed the time.

Mrs. Fannie W. Smith, president of the Essex County Teachers' Guild, received one of the circular letters from the State and took the matter up and issued a formal letter to every school in Newark, asking the teaching staff of the institution to send at least one delegate to Trenton to-morrow. Mrs. Smith suggested that the expenses of the delegates be met by all the teachers in the school. In most cases this is being done. President Charles W. Menk, of the Board of Education, has excused the teachers from school so that they can catch the 2:44 train from the Market Street Depot. Dr. Addison B. Poland, superintendent of schools, who is a member of the retirement fund, expects to accompany the teachers to Trenton.

The Educational Association is also sending much interest in the conference of the teachers with the Governor and its

# FIGHT ON R. R. MERGER PLAN

Senator Gebhardt Insists on Amending Lehigh Bill and Refuses Substitute.

LOBBYISTS FOR MEASURE HIT

By Telegram from a Staff Correspondent.

TRENTON, March 17.—All the morning session of the Senate was taken up with a running fight over the Lehigh Valley merger bill, which allows the New Jersey Lehigh railroads to be assimilated with the Lehigh Valley company incorporated in Pennsylvania. Senator Gebhardt led the fight on the bill, insisting on amendments to protect the State's interests and prevent increases in freight and passenger tariffs. The bill was still under discussion at recess, and the fight will be continued this afternoon.

When the bill came up on third reading the Hunterdon Senator offered an amendment making it unlawful for the Lehigh company to charge higher passenger and freight rates than at present exist. Senator Bachelier, who introduced the bill, asked the reason for such an amendment, and the Hunterdon member explained that after such a merger was consummated the State and the courts would not have the same control as at present. He referred to the recent increase in freight rates by coal-carrying companies, and declared there was no reason for such increase.

As business increased the railroads, he said, could afford to decrease the rates. He thought that the amendment was reasonable and fair and that the railroads affected ought to be willing to accept it. He was not asking to have rates reduced.

President Hutchinson asked if the amendment in case of a reduction would prevent the Lehigh from increasing its rates ever such reduction. Mr. Gebhardt replied that the rates could not be increased over the present rates at any time and if reduced could be raised to the rates now in vogue.

Mr. Hudspeth thought the amendment would be unjust. He had made a thorough investigation and searched the law with relation to the bill. He recognized his responsibility as a representative of a great county and to assist in procuring proper legislation. The amendment, in his opinion, was unworkable and would interfere with the business of a great corporation.

The Hudson men characterized the amendment as an attempt to render the proposed legislation impotent and impregnable.

The merger, said Hudspeth, should stand or fall on its merits and not be made impotent by unfair and blundering amendments. No other road in the State, he pointed out, was subject to such restriction as proposed. All freight and passenger rates were covered effectually by the railroad charters and the general railroad laws. To burden the Lehigh with such a requirement and exempt rival roads would be to stifle competition. Mr. Hudspeth denied that the merger would affect the jurisdiction of the New Jersey courts over the company.

Senator Strong declared there was no hidden purpose in the bill, and opposed the amendment.

Senator Lee said he was unable to understand why the amendments should not prevail. If the Legislature gives the corporation the power to combine, the people should have some right, and be protected against the constant increase in the

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Clark Edward C. Stokes and Attorney-General Thomas N. McCarter, conferred in Philadelphia with a commission from Delaware, consisting of Governor John H. Hamm, Attorney-General Herbert T. Ward and George H. Bates. A copy of the treaty bill was submitted to the Delaware Legislature yesterday.

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Article IV. The Legislature of both States each to appoint three commissioners to confer, for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River. The commissioners to report to the Legislatures within two years recommending the passage of such laws as will regulate the common right of fishery.

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, shall continue in force in said respective States until the enactment of concurrent legislation.

Article VI. Nothing herein contained to interfere with the oyster industry, as now or hereafter carried on under the laws of either State.

Article VII. Each State see its own side of the river, to continue to exercise riparian jurisdiction of every kind and

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The Educational Association is also evincing much interest in the conference of the teachers with the Governor and its outcome. At first the legislative committee of the society planned to send several delegates from the association, but later it was deemed more advisable to write a letter to the Governor stating that the society approved of the clerical expenses of the retirement fund being paid by the State, and asking him to reconsider his decision and sign the bill.

Some of the teachers who will go from Newark are Mrs. Georgia B. Crater, Lawrence Street; Mrs. Fannie W. Smith and Miss Emma L. Hutchings, Newton Street; Miss S. Emily Potter, Washington Street; Miss Anna E. Fussell, South Tenth Street; Miss Sarah N. Branum, South Eighth Street; Miss A. Augusta Swoasy, Marshall Street; Miss Grace M. Duffy, Morton Street; Miss Ida E. Smith, William Street; Mrs. Addie B. Whittemore, Chestnut Street; Miss Almida M. Olds, Washington Street; Miss Helena McClelland, Fifteenth Avenue, and Miss Annie M. Eagles, Central Avenue.

Leaves \$100 to Eighth Avenue Church. A bequest of \$100 to the Eighth Avenue Methodist Episcopal Church is made in the will of the late Anna Augusta Jacobus, and to Rev. Frederick Bloom, a former pastor, and to Rev. Wesley Martin, his present pastor, is left \$50 each. The will is dated March 4, last, and the executor is Ethel Van Ness. The witnesses were George R. Kent, John H. Baldwin and Herace P. Baldwin.

will be continued this afternoon.

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Mr. Hudspeth thought the amendment would be unjust. He had made a thorough investigation and ascribed the law with relation to the bill. He recognized his responsibility as a representative of a great county and to assist in procuring proper legislation. He considered the bill proper legislation. The amendment, he thought, was unnecessary and would seriously interfere with the business of a great corporation.

The Hudson man characterized the amendment as an attempt to render the proposed legislation impotent and impracticable.

The merger, said Hudspeth, should stand or fall on its merits and not be made impotent by unfair and discriminating amendments. No other road in the State, he pointed out, was subject to such restriction as proposed. All freight and passenger rates were covered effectually by the railroad charters and the general railroad laws. To burden the Lehigh with such a requirement and exempt rival roads would be to stifle competition. Mr. Hudspeth denied that the merger would affect the jurisdiction of the New Jersey courts over the company.

Senator Birong declared there was no hidden purpose in the bill, and opposed the amendment.

Senator Lee said he was unable to understand why the amendments should not prevail. If this Legislature gives the corporation the power to combine, the people should have some rights, and be protected against the constant increase in the freight rates which the various companies see fit to impose from time to time.

A barrel of cement, he said, can be shipped to Europe for one-half the rate that it costs to send the same from Atlantic City to Philadelphia since the Pennsylvania Railroad acquired control of the Reading, all opposition having been removed.



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## BRIGHT GREEN PARROT WITH YELLOW HEAD SOUGHT LIBERTY THIS MORNING

A green parrot that had a topknot of golden-yellow feathers is missing to-day from the home of Charles Goldman at 773

## The Bacillus of Catarrh

may not, as yet, have been officially discovered and catalogued; but, all the same, it can be hunted down, and absolutely ex-



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Dover, Delaware,

March 28th 1903.

Gentlemen:

After the adjournment of the meetings of the Joint Commission on the New Jersey-Delaware boundary controversy, we communicated to the General Assembly the result of our conferences with you. The bill prepared for submission to the Legislatures of both States was introduced and considered and it was made to appear to both houses that it represented the conclusions as to which it was found practicable to reach an agreement on the part of the commissioners of the two States. The scope and effect of the proposed measure were clearly made known by us before the committees, in personal conference with members and in a public hearing in which by invitation the subject was explained and our views expressed by the Attorney General on our behalf.

260  
The result was that the bill not only failed of passage, but it encountered so vigorous an opposition that we are satisfied that its enactment would be impossible under any circumstances by this Legislature.

Upon careful consideration of the public opinion of the people of the State, we are also satisfied that the opposition to the measure which developed in the Legislature was the reflection of a sentiment among the people of the State unalterably opposed to the surrender directly or indirectly of the title and jurisdiction which the State of Delaware claims to and over the soil and waters

-:1:-


of the Delaware River within the twelve mile circle.

We believe that this sentiment is so strong that it will be satisfied with nothing short of a final and conclusive settlement of the questions involved in the pending suit, and therefore that it is for the interest of both States that the case be proceeded with and the whole subject disposed of by the only tribunal which can settle the controversy.

Regretting that the situation and the nature of the controversy were such as to involve failure of our joint efforts to reach a settlement out of court, and with the most cordial expression of the satisfaction which we have personally derived from our conferences with you, and of our appreciation of your courtesy, we are,

With great respect,

Your obedient servants,

  
Commissioners of the State  
of Delaware.

To/  
Hon. Franklin Murphy  
Hon. Thomas N. McCarter  
Hon. Edward C. Stokes  
Commissioners of the State of New Jersey.

Governor Frankim Murphy

Correspondence Box 10 Folder 260

New Jersey - Delaware Boundary Controversy, March - April 1903

New Jersey State Archives



*Office of the Attorney General,  
Delaware.*

HERBERT H. WARD,  
ATTORNEY GENERAL.  
ROBERT H. RICHARDS,  
DEPUTY ATTORNEY GENERAL.

*Wilmington, Del. April 21st 1918.*

**Gen. George M. Bates,  
2022 Lathrop Avenue,  
Philadelphia.**

**Dear Mr. Bates:**

I enclose you letter from McCarter, received this day. I have advised him that we shall not, under the circumstances, press his brother into the matter on Monday next, and have suggested that we fix Monday the 10th of May on which to make this motion. As I understood it, the court sits through the month of May. Kindly return McCarter's letter, after reading. He sent an acceptance of the notice which we sent him. I have suggested that we will, under the circumstances, send his brother a new notice, rather than to have a continuance of the old notice for his acceptance, and that his brother write me if the 10th of May will suit.

Yours very truly,

*H. H. Ward*

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161  
www.hsd.org

**DE H.S.**  
**Box 7 File 8**



STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

Newark, April 2, 1903

Dear Sir:-

I enclose herewith my check for \$16.75 in the Delaware boundary matter. The charge is very reasonable.

Our Legislature passed the boundary bill before adjournment, and I think every effort should be exhausted, either now or at some future time, to get the Delaware House of Assembly to concur in the bill, so that our work may not go for naught. It is too sensible and practical a solution of this difficulty for both states not to carry into effect.

Very truly yours,

*W. M. Carter*

Attorney General.

George H. Bates, Esq.,

3002 Lehigh Avenue,

Philadelphia, Pa.

x

*Office of the Attorney General  
Newark, N. J.  
April 2, 1903*

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161  
www.hsd.org

**DE H.S.**  
**Box 7 File 8**

April 6th 1903.

My dear Governor:

On consultation this afternoon, Mr. Ward and I agreed that it is desirable for us to send to the New Jersey Commissioners a formal notification of the failure of our Legislature to pass the Bill, and such an expression of opinion with regard to the sentiment on the subject as will aid us in pressing for immediate arrangements for a trial of the cause, which we both think should now proceed as rapidly as possible.

I enclose what we have drawn up for that purpose, signed by us both, and if you approve of it will you at your early convenience add your signature where your initials are marked in pencil and return it to me as early as possible (to-morrow if you can) to #3002 Lehigh Avenue, Philadelphia, so that I can forward it without any further delay. I have just caught Mr. Ward here on his way to Georgetown this afternoon.

Very sincerely yours,



To Hon. John H. ...

George W. Ward

**DE H.S.  
Box 7 File 8**

DE17282

HERBERT H. WARD.  
ATTORNEY GENERAL.  
ROBERT H. RICHARDS,  
DEPUTY ATTORNEY GENERAL.

*Office of the Attorney General,  
Delaware.*

*Wilmington, Del. May 2nd 1908.*

**Gen. George E. Nelson,  
2022 Lehigh Avenue,  
Philadelphia.**

**Dear Sir:**

I am this morning in receipt of a letter from Thomas F. McQuarrie enclosing acknowledgment of notice of motion in the Supreme Court on May 11th. He says that his brother has not yet taken office, and will not until the 15th inst. He says, however, that he will have to attend to the matter on May 11th. I have asked him to fix a day next week when you and I, he and his brother may get together to consider the substance of the motion.

Yours very truly,

*H. H. Ward*

DE17298

**DE H.S.**  
**Box 7 File 8**

DE17299

HERBERT H. WARD,  
ATTORNEY GENERAL.  
ROBERT H. RICHARDS,  
DEPUTY ATTORNEY GENERAL.

*Office of the Attorney General,*

*Delaware.*

*Wilmington, Del. May 28th 1908.*

**Hon. George E. Dubois,  
525 North Broad Street,  
Philadelphia.**

**Dear Sir:**

**I have to-day received the following letter from**

**Mr. McCarter:**

**"The engagements of my brother and myself are such that we cannot well arrange for a conference, such as you suggest, this week. One or both of us will certainly be in Washington next Monday and it may be that we can have a conference that morning before the session of court. My brother's attitude about the case seems to be that as the matter has peacefully slept for twenty five years it is a little hard to force it on him in the first few weeks of his administration. There would seem to be some fairness in this proposition."**

**I think we should have a conference .**

**Very truly yours,**

*H. H. Ward*

**DE H.S.**  
**Box 7 File 8**



3008 Lehigh Ave.

Philadelphia, June 9, 1908

Hon. H. H. Ward,

Attorney General, Wilmington, Del.

My dear sir,

As the result of a two or three months search, at times discouraging, I had a great find for <sup>NO</sup> today. I have ascertained the whereabouts of and have seen and examined the original royal grant, the reoffment, and the two leases from the Duke of York to Wm. Penn, the very ones which were put in evidence in the Pea Patch case (see pp. 8-13). I will tell you all about it when I see you which ought to be very soon, as there is a lot of things needing attention, at once. I was not able to stop on my way back from Washington, and since that have waited until you did not seem to be in court. We need an undisturbed hour or two, and I will meet you either here or in Wilmington, either day or evening. I wish you would call me up on telephone, before court tomorrow morning, if possible so that we may have an understanding. I would have called you today if I had had any idea that I could get you at your office.

I have a copy of the order as entered and presume you received one as that was the promise. Rawle notified me in a letter addressed to us both that he had received one. It differs in immaterial points from the one suggested but you will doubtless agree with me that it is satisfactory.

For reasons which I will explain to you I advise that we keep absolutely to ourselves the fact of our having the original charter available. I have been studying its relation to the case and am sure it will play a large part in the New Jersey calculations.

Very truly yours,

**DE H.S.**  
**Box 7 File 2**

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SUPREME COURT OF THE UNITED STATES  
October Term, 1884

No. 1. ORIGINAL.

THE STATE OF NEW JERSEY,

Complainant,

vs.

THE STATE OF DELAWARE,

Defendant.

Office of Commissioner, 328 Chestnut Street, Philadelphia,

November 7, 1903, at 10.45 A.M.

Presented to the Court by the Attorney-General of New Jersey

Robert H. McCarter, Esq., Attorney-General of New Jersey  
and Howard W. Hayes, Esq., for the complainant;  
George H. Bates, Esq., of Wilmington for the defendant.

OPENING STATEMENT ON BEHALF OF COMPLAINANT BY THE  
ATTORNEY-GENERAL OF NEW JERSEY.

The importance and unusual character of  
this suit makes it proper that a brief explanation of its  
purposes and object should be made at this time. It is not a

a common-place affair for a sovereign state to be summoned into court and required to answer the complaint of a suitor, and the dignity of such a controversy is increased when the complaining party is also a state. The framers of the federal constitution, with characteristic foresight, provided a forum for such a suit and appreciating the importance of litigation of this character opened the doors of the Supreme Court of the United States for the high parties litigant. It is to that high but peaceful tribunal that the State of New Jersey, feeling itself aggrieved, has confidently appealed. The State of Delaware, with equal confidence in the court, has willingly accepted the gage and filed its answer setting up its side of the controversy.

The suit concerns the title to so much of the Delaware river or bay as lies between what is commonly known and designated as the States of New Jersey and Delaware, or rather, to be more precise, the issue involves a determination as to whom the valuable right of fishing in that body of water belongs.

The citizens of New Jersey resident on the shore of, or near the water, have been, until the grievance in this cause complained of, accustomed from time immemorial, to fish in the waters of the Delaware without the slightest molestation from the State of Delaware. The right so to do has become a

valuable property right. Improvements to enable them to avail themselves of that right have from time to time been created at great expense, and laws in recognition thereof have frequently been enacted by the legislature of New Jersey. Disregarding the history anterior to the American Revolution it is safe to say that for a period of nearly one hundred years thereafter this right was freely exercised and enjoyed by residents of New Jersey without molestation or even a suggestion from the State of Delaware that it was not lawful. Without considering the question of the statute of limitations, surely a strong presumption arises from the uninterrupted exercise for so long a time of this valuable right.

In the year 1871, however, the Legislature of Delaware passed an act making it unlawful for citizens of New Jersey to further pursue their time-worn practice of fishing in the Delaware without first securing an annual license from the State of Delaware at a cost of twenty dollars, and imposing a penalty for violation of confiscation of vessels with their tackle and appliances, and arrest of the person. This act being immediately followed by the arrest of New Jersey fishermen, the Governor of New Jersey issued a proclamation protesting against the enforcement of this law by the State of Delaware and claiming for New Jersey jurisdiction over that

part of the River Delaware East of the middle line thereof, and for its citizens the free and untrammelled right (so long as they conformed to the laws of New Jersey) to fish on the Eastern side of the River. A correspondence between the Governors of Delaware and New Jersey ensued which resulted in the appointment of a Commission of three distinguished men from each state to negotiate and if possible settle the question as to the extent of the right of the citizens of New Jersey to fish in the Delaware River. While this Commission was still deliberating the Delaware members were, by Joint Resolution of the Legislature of that State, relieved of further duty thereunder, and the announcement was made that the State of Delaware proposed to enforce the license law above referred to; whereupon the State of New Jersey, on the 13th of March, 1877, was granted leave by the Supreme Court to file its bill of complaint in that court and to issue a subpoena to the State of Delaware requiring it to answer. An application, on notice, was subsequently made to the court for a preliminary injunction which on the twenty seventh of March next thereafter issued, restraining the State of Delaware, its officers, agents and servants from imposing any tax, assessment or imposition whatsoever, by way of license fee or otherwise, upon any citizen or resident of the State of New Jersey, or from requiring them, or any of them, to take a license from or

under the State of Delaware for right or authority to fish in  
the River Delaware, as they have heretofore been accustomed to  
do, and from arresting, imprisoning, trying, fining or in any  
manner punishing or seizing, holding or selling any property  
of any citizen or resident of New Jersey for fishing in said  
river. This injunction was promptly served and is still in  
effect. The subpoena to answer, together with an order that  
the State of Delaware answer the bill of complaint on or before  
the second Monday of October, 1877, were at once served, but  
not being complied with, the counsel of the respective States  
stipulated early in May, 1892, that the status quo continue  
until the complainant by sixty days notice shall require the  
defendant to plead, answer or demur to the bill, or the  
defendant shall voluntarily plead, answer or demur thereto.  
The cause slept in this situation - one that was obviously  
entirely satisfactory to New Jersey - for over five years.  
when the Supreme Court, on its own motion, directed that the  
suit proceed, whereupon an answer was duly filed by Delaware,  
to which New Jersey has interposed a replication, and on the  
first day of June, 1893, the cause was referred to FRANCIS  
RAWLE, Esquire, who was appointed commissioner with the powers  
of a master in chancery "to take and return the testimony in  
this cause, together with findings of fact and conclusions

of law."

It is not our purpose at this time - if it were otherwise proper - to felicitate the parties to this suit upon the choice that has been cordially made by their respective Attorneys General for the person who shall perform the profoundly important duties outlined in this order, but rather to thus introduce the subject to the Master, and to ascertain his view of the conduct of the case, so that in presenting its evidence and proofs the complainant may, so far as possible, conform thereto.

A few words may profitably be spent in adverting to the claims of the two States, as set up in their pleadings.

On the twelfth of March, 1663-64, Charles II, King of England, in Council by Patent to his Brother the Duke of York, conveyed a large quantity of land, including what is now the State of New Jersey. The Westerly boundary of the land was thus described: "and all the lands from the West side of Connecticut to the East side of Delaware Bay." The Duke of York, his heirs, deputies, &c., were, by the same Patent, also bestowed with "full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us,



... The King, by a letter ... about the same time, our heirs and successors, as shall from time to time adventure ... themselves into any the parts or places aforesaid x x x x x x x ... according to such laws, orders, ordinances, directions and ... instruments as by our said dearest brother, or his assigns, shall be established x x x x x x x .

The Duke of York, on June 24, 1664, by his deed of lease and release granted the present State of New Jersey to Berkeley and Carteret, describing the territory as being "all that tract of land x x x x hath upon the west, Delaware Bay or River." No right of government was attempted to be granted in this conveyance, but Berkeley and Carteret undoubtedly undertook the government of the Province, and their right so to do was subsequently recognized by the King. The subsequent war between Holland and England gave opportunity for the Dutch to take possession of both New Jersey and Delaware, but upon the treaty of peace being concluded the North American Provinces, including these two states, were ceded to the Crown of England, whereupon Charles II, in order to confirm the title of his Brother, regranted on the twenty ninth of June, 1674, to the Duke of York, the land now known as New Jersey, using the identical language of his former Patent. On the same day the Duke of York, by lease and release, granted Eastern New Jersey (not including the portien abutting upon Delaware Bay) to Car-

... The King, by a letter written about the same time, fully recognized the property and governmental rights of Carteret. Subsequently, by the well known Quinti-partite deed, West Jersey, including the portion bounding on Delaware Bay, became vested in four persons, among whom was William Penn, but no right of government passed. After several of persons by name conveyances had become seized of numerous tracts in West Jersey, these grantees, including Penn, of the Quinti-partite deed, on or about March 3, 1676, executed the famous well known "Concessions and Agreements" to the inhabitants of West Jersey, whereby, among other privileges, there was granted "that all the inhabitants within the Province of West Jersey have the liberty of fishing in Delaware River or on the sea-coast." On the 18th of August, 1680, the Duke of York conveyed to Billinge, Penn, Lawry, Lucas, Eldridge, and Warner, West Jersey and "also the free use of all bays, rivers and waters leading into or lying between the said premises, or any of them, in the said parts of America, for navigation, free trade, fishing or otherwise." The Proprietors of both East and West Jersey by deed dated April 15, 1702, surrendered to QUEEN ANNE all powers of government acquired by them through the Duke of York from Charles the Second, so that such right

was vested in the Crown at the time of the American Revolution and passed to the State of New Jersey, with all the other property rights appertaining thereto, including the bed of the Delaware River East of the middle line thereof, and the State of New Jersey, since the fourth day of July, 1876, has possessed and enjoyed as of right the bed to the East half of the river, and its inhabitants have also legally enjoyed the right in common with the inhabitants of the State of Delaware to fish in the waters thereof. It is this right thus acquired that the bill of complaint seeks to protect. The proprietors of West Jersey have always believed and claimed themselves to be the owners of the Islands in Delaware Bay and River East of the centre line thereof. The tides in those waters ebb and flow far above the leaves in question. Most if not all of such Islands are held under titles emanating from New Jersey. Shad fisheries have grown within that territory to enormous proportions, and by the common and statute law of New Jersey are transferable by deed, and have always been held under titles from the New Jersey Proprietors. Statutes of New Jersey have from time immemorial regulated oyster fisheries within the same boundaries and the courts of that state have uniformly imposed penalties created thereby.

The basis for the tardily asserted claim of Delaware

will be but briefly adverted to. On the twenty fourth of August, 1682, (eighteen years after his conveyance of New Jersey) the Duke of York, then having no grant from the King, by deed of feoffment containing a covenant of further assurance was conveyed to William Penn and his heirs a "tract of land lying within the compass or circle of twelve miles" about New Castle "situate upon the River Delaware." The Town of New Castle is located in the Northerly part of Delaware about five miles west of low water mark on the New Jersey side of Delaware Bay. By virtue of this description the State of Delaware claims as part of its territory all the waters of Delaware Bay lying within such a circle drawn with New Castle as its centre. Reference to a map with a circle so drawn upon it shows that it includes not only all the waters within its circumference of Delaware Bay, but also a greater part of Salem County in New Jersey. Delaware, however, generously makes no claim to anything but the Bay and the land thereunder. Delaware fortifies its title by the claim that Charles the Second, on March the twenty second, 1683, seven months after the feoffment of the Duke of York to Penn, last above referred to, by Letters Patent granted the Town of New Castle, and the premises lying within the twelve mile circle, to the Duke of York, and the contention therefore is that by virtue of the covenant for further assurance contained in the Duke's feoffment the title

thus acquired enured to the Duke's grantee. The fact of the legal issue of this patent will be contested by the complainant and the contention made that whether legally issued or not it was ineffectual to transfer to Delaware the ownership and control of the Delaware River and Bay.

Without further particularizing, New Jersey will rely on its anterior and well established title and on the acquiescence by Delaware in the claims arising thereunder by New Jersey and its citizens. Such claim to the centre of the river accords with the situation between Pennsylvania and New Jersey and harmonizes with the general rule where a navigable stream separates two states - a rule that impresses one as being both consonant with equity and based on common sense.

MR. MC CARTER: We feel that it will be a part of our case and tend to elucidation of the somewhat mystic subject that is now to be investigated to have the Commissioner and the Court enlightened by the views of English lawyers, learned in the ancient common law and the proper construction of some of these ancient documents, to testify in that line. I am not able to say at this moment - speaking entirely frankly and

candidly - whether or not that evidence would be strictly rebuttal or not. I will assume, for the purpose of this suggestion, that it is not; although I am not clear that it would be. It is, I think, agreed by us all that at some stage of this controversy -- of the taking of evidence, at least, in this controversy - it will be necessary for the counsel, and I hope the Commissioner, to go to England for the purpose of putting in some evidence that can only be procured there; and I suggest for the consideration of counsel, and also of the Commissioner, that we now agree, or as soon as we can, that the taking of any expert evidence of the character that I have suggested, whether it be strictly rebuttal or not, be deferred until such time as it will suit both the complainant and the defendant to go to England. It is quite evident, I think, that the defendant, of course, won't be able to go there until our main case is closed. We have still to the end of January to do that. It would seem an unnecessary trouble and hardship to require us in midwinter, in the midst of active practice, to all go abroad or to send over there - some of us go at least - and take such testimony as we might need in the lines indicated and then come back here and let the defendant take up its case and then all go over a second time, after the defendants are ready to take such evidence as they may desire.

in that line or otherwise, in England; and I therefore suggest to my friend Mr. Bates and to the Commissioner, the propriety of our agreeing that either side, at a time that will be mutually agreeable to both the Commissioner and the respective counsel, be permitted without regard to strict rules of rebuttal as against direct evidence, to take the evidence that we desire in England - say next June, or such time when we are all more or less at leisure, and we will thereby avoid making two trips abroad.

Mr. Attorney-General Fard, on the only occasion that I have had the pleasure of meeting him, made the significant remark to me that this was a large suit, and one which should not becomingly be tried on lines of sharp practice. I realize the more I get into it the entire truth and strength of that statement; and while I am -

MR. BATES: The Supreme Court has stated practically the same thing in the Rhode Island and Massachusetts case.

MR. MC CARTER: And while I appreciate that the case must be governed along the lines of the great rules of evidence that complainant's main case must be presented and then the defendant put in its main case and if the defendant have any rebuttal properly so-called it should then follow - yet I think that in view of all the circumstances, the suggestion I make

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is not perhaps unwarranted and will conduce to our mutual convenience and will not work the slightest injustice or hardship to any side. I regret very much that Mr. Ward has not been able to be here to-day, and am glad to hear Mr. Bates assurance that he does not misunderstand the situation.

THE COMMISSIONER: I feel that this is something more than mere litigation. The parties are sovereign states, and they are represented by their respective attorneys-general. The questions at issue are public questions. Perhaps there is a sense in which we all sit as commissioners to adjust rights between contesting states. While, of course, the taking of testimony must proceed in an orderly way, I should have no doubt that it would be proper - particularly when taking documentary evidence the existence and nature of which is known in advance to both parties, or can if desired be made known in advance to both parties - it could properly be taken at such times as can be agreed upon by counsel, without regard to whether it is necessarily a part of the complainant's case in chief or rebuttal testimony. If counsel for the parties agree in the taking of testimony - and particularly documentary testimony - I see no reason why it should not be taken in accordance with such stipulation as counsel may make.

MR. BATES: I have inferred that we would ask the Com-



missioner to take testimony at some other points than this, on both sides; because it would undoubtedly be more convenient to you and possibly might be convenient for us at New Castle or Wilmington, a saving of expense in bringing witnesses and all that sort of thing.

THE COMMISSIONER: I think there is no doubt that the Commissioner ought to meet at any point in any of the three states which the counsel who has the burden of taking the testimony indicates is suitable. Ordinarily, we would meet here; but if it suits the counsel, I should think we would meet in any one of the three states, or elsewhere.

MR. BATES: I judge, from what I have seen of your New Jersey publications, that you must have over there a very large number of London records - copies of exemplifications; and we have none.

MR. MC CARTER: Yes. Do you think there would be any trouble about our arranging to take that English testimony?

MR. BATES: I was just going to say we had been a little puzzled to know exactly -- we expected that someone would have to go to London to look up some matter; and I did not know, quite, when it would be convenient to do it; because we could not either of us go away pending the time that you were taking testimony, and then after our time comes in we would have to be at it ourselves.

THE COMMISSIONER: And you must close the 1st. of June.

MR. BATES: Yes.

THE COMMISSIONER: So that summaries are rebuttal.

MR. BATES: I understand the suggestion of Mr. McCarter and having it down in writing to show Ward will enable me to talk the matter over with him, and then we will be prepared to talk it over with both of you when we meet next time.

Adjourned to meet Wednesday, November 11, 1903, at 10.30  
A.M., at the office of the Attorney-General,  
State House, Trenton, New Jersey.

*Office of the Attorney General*

*Delaware*

HERBERT HWARD,  
ATTORNEY GENERAL.  
ROBERT H. RICHARDS,  
DEPUTY ATTORNEY GENERAL.

*Wilmington, Del.* April 23rd 1904.

Hon. Francis Rawle,  
328 Chestnut Street,  
Philadelphia.

My dear Mr. Rawle:

I have personally been so engrossed with court work, both private and official, since the New Jersey side of the case was closed that we have been unable to fix a date to begin the taking of testimony for Delaware. I have, however, an arrangement with Mr. McCarten that the time limit shall be extended under orders made by you, in accordance with the Supreme Court rule under which you were appointed, so that we will not be prejudiced by our delay. Mr. Bates and I are preparing a minute of our order, and endeavoring to make it so exhaustive as to enable us to take our proof with great rapidity when once we start. I have asked Mr. McCarten to hold himself in readiness, so far as other engagements are concerned, to devote considerable time during the two weeks beginning with the 1st day of May to the taking of our testimony. Until that time I will be practically all the time kept at Dover, in my official work.

Write you this so that you may understand why we have not yet taken testimony. If your own time during some part of the two weeks beginning with the 1st of May can be devoted to this case we will greatly appreciate it.

Yours very truly,

Attorney General.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161 www.hsd.org

**DE H.S.**  
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*Office of the Attorney General,*

*Delaware*

HERBERT H. HARRIS,  
ATTORNEY GENERAL.  
ROBERT H. RICHARDS,  
DEPUTY ATTORNEY GENERAL.

*Wilmington, Del.* April 23, 1904.

Hon. Robert H. McFarter,  
Attorney General,  
Newark, N. J.

My dear Sir:

My court work took up so much of my time since I last saw you that we have been unable to fix a date, until now the time has arrived when I must go to Dover. I will probably be kept there for two weeks.

We hope, in the interval between the 9th and the 23rd of May to introduce a considerable part of our case. We are getting the same fully digested and we can put it in quite rapidly and are having a number of duplicate copies made, so that you can peruse them at a good deal of our case as we introduce them. I would bear in mind that we may want some of the exhibits beginning with the 9th of May.

Attorney General.

**DE H.S.**  
**Box 7 File 10**

DE21685

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HISTORICAL SOCIETY OF DELAWARE  
Care of the Society  
Wilmington, DE 19801

Nov. 23, 1961

Hon. Wm. C. Spruence,  
Wilmington, Del.

My dear judge,

The enclosed memorandum will, I think, explain itself. Mr. Ward and I are anxious to have your testimony on the points suggested or as many of them as possible. I shall make it a point to see you in a few days, but have thought that it would save your time to give you an opportunity to consider the subject in advance. I have talked to Judge Gray about the <sup>matter</sup> ~~subject~~ and he authorized me to say that he would be able to testify as desired.

I regret the necessity of trespassing at all upon your time, but <sup>feel</sup> ~~am~~ sure that you will <sup>feel</sup> ~~have~~ an interest in sustaining the contentions of the State.

Very truly yours,

Same letter to Hon. Ignatius C. Guille, Wilmington, Del.  
" " " Edward G. Bradford. " "  
" " " Benjamin Hildes, Esq. " "  
Each enclosing copy of memo.

PROBATION IN CIVIL SERVICE PROCEEDINGS  
vs. HILLMAN.

In the trial of the boundary suit between New Jersey and Delaware, the main question involved, being the jurisdiction claimed by Delaware over the river Delaware within the 12-mile circle, we desire to put in evidence the testimony of members of the Bench and Bar of Delaware in New Castle County of the same character as that which was produced with so much effect by Messrs. Seyward and Stanton in the Fox Patent Case from the elder Chancellor Johns, Chief-Justice Booth, Mr. Rogers, and others. If you have not recently looked over that case we would be glad to have you do so. An excellent abstract of the testimony is published in the appendix to First Wallace's U.S.C. Reports and reprinted in the last or next to the last volume of Federal Cases. Doubtless the service of civil process from the state courts on the river has been less frequent in our time than during the practice of the witnesses in the Fox Patent Case. This is due, without question, to the dilution of the writ of <sup>a</sup> ~~enigma~~ in ordinary civil cases. Nevertheless, it would seem that we can legitimately put in evidence, an impressive body of traditional knowledge and expert legal and official opinion, not to speak of the uniform custom of serving admiralty process anywhere on the river within the circle. The legal testimony on the latter point will be supplemented to the fullest extent by that of probably every living clerk, marshal, or deputy marshal of the U.S. Admiralty Court.

We also wish to put in expert legal testimony, with respect to



the original titles under which land is held in Delaware and as to the validity of the Fern title under the Duke of York.

This is intended to outline the points on which we desire testimony from from all the Judges, State and Federal, sitting within the county as well as that of some of the leading members of the Bar.

Points which we would like to establish by such testimony are:

1. That it has always been considered by the courts, public officers and lawyers of Delaware, that her title extended within the 16-mile circle around New Castle to low water water mark on the New Jersey shore. That writs have often been issued out of her courts for the service of process on vessels or persons in all parts of the Delaware river within the circle and that no dispute was ever made before any court against the title and jurisdiction of Delaware over all such parts.

2. That under writs and process issued out of the U.S. Admiralty Courts of the Delaware district, vessels have been seized in any and all parts of the river within the circle.

3. The practice of the court in New Castle County, as known to you, either from your practice, personal observation of practice, the records of the court, or the traditions of the court and bar with respect to the service of process issuing out of criminal courts of Delaware upon persons found on the Delaware river within the 16-mile circle. That such process has been served wherever necessary on persons found at any point on the said river within the circle.

4. That Delaware has always claimed jurisdiction and title over

the Delaware River and soil thereon within the circle to low water <sup>and</sup> mark on the New Jersey shore, has exercised that jurisdiction when called upon or asked to do so. Also that her citizens have always fished and towed on the river and used it within the circle under claim of right existing within the state.

4. That lands in Delaware are generally held under the title of William Penn and his heirs and that lawyers tracing title for the plaintiff in trespass or ejectment back to the original claim, incepted or began their title with the Penn grants. That the Penn title under the Duke of York was the true title to the lands and waters in Delaware. That any exceptions were confined to deeds or grants from the aborigines, of the Dutch government at New Amsterdam, or the English governor, under the Duke of York, at New York, before the conveyance to Penn, or grant from Delaware, after its independence.

5. That prior to the passage of laws abolishing imprisonment for debt, it was customary for sheriffs and deputy sheriffs of New Castle County to serve writs of habeas ad respondendum on persons found on boats or vessels down the Delaware River at any point within the circle west of low water mark on the New Jersey shore. This is intended to cover any knowledge derived from your own practice as a lawyer, your observations of practice of others, records of the court, or the traditions of the court and bar.

7. Any personal knowledge of particular cases.

(2)

Historical Society of Delaware  
Bates Collection  
Box 7



OD GIVES TO POLICE

James E. Wood, a suspect of the Williams case...

to have been the blame to drive his grandmother...

have since learned, from a man in the Philadelphia...

in Trenton.

one as Henry Wood, a man...

ES MOVE TO CONFAB

be made by the council for the members of the Manufacturers' Association...

ARE HELD OF YOUNG GIRL

Direct Wire. Charges of kidnapping E. J. Jody, William Catherine...

tion School. "Miss" received the best record for absence of tardy...



ART SCHOOL NOTES

The heading to this column was designed by George Hamilton, the caricaturist...

The one hundredth anniversary exhibition of the Academy of Fine Arts of Philadelphia...

The subject for competition for next Tuesday is "The Church Door."

The Trenton Times ordered some designs for decorative title headings to several departments...

Miss VanDerveer designed an advertisement for the Lee Bargain Store...

C. Bewley made a striking and artistic drawing of the building occupied by Harrington & Co., opticians.

The painting done by Miss Mumford in the studio of the famous and late Mr. Walther...

Original illustrations loaned by Scribner's Magazine of New York, are now on exhibition...

Among the interesting pieces of work being done at present is applied design in a poster for a poultry show...

Some very interesting examples of Chinese and Japanese embroidery were shown the classes in design...

KING JAMES DEED SHOWN DELAWARE JERSEY DISPUTE

By Publishers' Press Direct Wire. Wilmington, Feb. 4.—At the hearing in the Delaware-New Jersey boundary dispute...

WARNS CHURCHES OF SOCIAL PERIL

In announcing a new series of sermons on "Modern Social Problems," the Rev. Alfred W. Wharft...

The discussion of these problems is to commence with a sermon tomorrow evening on "The Social Peril of the Church," which Wharft will give...

"Notwithstanding the revivals of religion in various parts of Christendom, it must be apparent to every thoughtful observer of our times that the existing social order is on the brink of revolutionary changes..."

DR. HALL'S VIEW

"Meanwhile another disturbing feature of the struggle between the classes has been recognized. The Rev. Dr. Thomas C. Hall, professor of theology in Union Theological Seminary, a man of commanding influence...

DANGEROUS RIVAL

"Let the modern Christian Church settle down quietly to a blind acquiescence in things as they are; let her ministers refuse to become moral guides in economics and in politics..."

TRINITY METHODISTS AID FAMILY IN DISTRESS

The Rev. C. H. Stover and members of the Trinity M. E. Church will look after the immediate wants of the family of Joseph Hill, of Ross street...

HENRY W. GREEN IS URGED FOR BERTHS

(Continued from Page 1)

of this city. Mr. Green's grandfather was rather well known in the respective days. Mr. Green is president of the Lawrenceville school and a trustee of Princeton University...

OTHER CANDIDATES

Another very likely candidate is Deputy Supreme Court Clerk Charles M. Coddling, who holds from the Chancellor's home county, Union...

The name of John G. Dickinson, son of that late General Dickinson, has also been presented to the Chancellor as a candidate for the place...

Others whose names have been spoken in connection with the place are former speaker Benjamin F. Jones of Essex county, Stephen C. Cook of this city, Edmund Wilson of Red Bank, Assemblyman Harry B. Seovel of Camden and Senator John G. Horner of Burlington county...

NOT SO COLD AS MANY FOLK BELIEVE

"This weather is twice as cold as last winter," and like statements are being made just now and every one who reads a lively argument will recall...

A GUARANTEED CURE FOR PILES

Removes Itching, Bleeding, Protruding Piles. JUDICIALLY TESTED. PREPARED BY DR. J. W. HARRIS. OINTMENT TALKS TO CURE. 6 to 24 Days.

PATRICK CONNELLY IS BURIED TODAY

Many Persons Attend Services in Sacred Heart Church—Other Deaths.

The funeral of Patrick Connelly was held this morning at 9 o'clock from his late home, 118 Lombard street...

The Rev. Father Hogan celebrated the mass and he was assisted by Father McKeon as deacon and Father Capon as altar server.

Mr. Connelly's funeral was one of the largest ever held in the Church of the Sacred Heart, and had a host of friends...

FUNERALS

Mrs. Christian Koch. The funeral of Katie Koch, wife of Christian Koch and daughter of Mary and the late John Koch...

Mrs. Jane Hollingshead. The funeral services of Jane Hollingshead were held last evening at the home of Harry M. Fisher...

Mrs. Mary E. Cross. Mrs. Mary E. Cross, 33 years of age, died yesterday at her home at Grosvenor...

William R. Boer. William R. Boer, one of the best-known residents of the old Chambersburg district...

William R. Boer. William R. Boer, one of the best-known residents of the old Chambersburg district...

William R. Boer. William R. Boer, one of the best-known residents of the old Chambersburg district...

William R. Boer. William R. Boer, one of the best-known residents of the old Chambersburg district...

WICOFF'S GO TO

Counsel at the against. Licenses remaining up the Court just before adjournment...

HURLBY CAJ

The case of Caj against the Trenton and Atlantic Railroad a day afternoon when it will be on trial.

In March City afternoon, before will of the late J. W. Hurlby...

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love CLOTHING We Have Goes at Half Price one in and see if we can fit and suit you. The price won't prevent you from buying.

Furniture Exposition of Grand Rapids referred to Trenton!

better parts—the choicest selections—the cream, as it were, of the handiwork Furniture can produce. Mr. Brand is acknowledged to be an expert in Furniture buying...

EXTENSION TABLES Of solid oak, polish finish—either style of plain, fancy

Bring in your Sales Slips if you have any dated January 12.

We'll pay you cash for them—just exactly the amount of money you spent to make that purchase. The "Lucky" day has been selected for February and everybody has an equal chance of securing their money back.

IN DECEMBER it was the 6th IN JANUARY it was the 10th IN FEBRUARY it will be ???

BIG MONEY SAVINGS IN SMI

Economize when you can—take advantage of opportunity. Here's where you save—half in some cases—third in others.

- 24 papers of Hair Pins, for 2c
25c large Shell Hair Pins, for 2c
Large box of Hair Pins, worth 25c, for 12c
Unbreakable Loco Pins, all colors, for 2c
In DECEMBER it was the 6th
In JANUARY it was the 10th
In FEBRUARY it will be ???



...last robbery, he was tall and thin, and about 25 years of age. He remained in this city one day. Inquiries at the other hotels found that no George H. Wood had registered. The police say a man named George H. Wood was committed to State Prison from this city a number of years ago for robbery.

...are five bargain stores, which will be used in newspaper advertising.

C. Rowley made a striking and artistic drawing of the building occupied by Harrington & Co., opticians.

The painting done by Miss Mumford in the studio of the famous and late Mr. Whistler, has arrived at the school. This posthumous gift from James D. Tatum, M. D., is one that is gratefully appreciated by the students and will have a lasting influence in the school. Many of the students think that Whistler himself did some of the work on this notable painting.

Original illustrations loaned by Scribner's Magazine of New York, are now on exhibition. Among them are some wonderful drawings by Glackens, Joseph Pennell, Appleton Clark, Howard Pyle, etc.

Among the interesting pieces of work being done at present in applied design is a poster for a poultry show. Two colors are used, red and green, and these in combination from a third green bronze tone, which is successfully used in this treatment. A peacock and turkey on the background of a decoration landscape form the principal features of the poster.

Some lovely and interesting examples of Chinese and Japanese embroidery were shown the classes in design. The things were brought from Japan by the owner, one of the students.

### KING JAMES DEED SHOWN DELAWARE JERSEY DISPUTE

By Publishers' Press Direct Wire.  
Wilmington, Feb. 4.—At the hearing in the Delaware-New Jersey boundary dispute yesterday Colonel J. Harry Rogers of New Castle, Del., was the principal witness. He produced a deed of the original grant of the twelve mile circle from King James to William Penn. The deed has been handed down by Colonel Rogers's ancestors.

has been recognized. The Rev. Dr. Thomas C. Hall, professor of theology in Union Theological Seminary, a man of commanding influence, recently published an article on "Socialism as a Rival of Organized Christianity," in which he frankly confesses that 'feudal Roman Catholicism and individualistic Protestantism are not able to cope with the dangers that beset modern society.' This fact constitutes, in my judgment, the real religious peril of the hour. 'The equality of man,' exclaims Disraeli in Tancred, 'can only be accomplished by the sovereignty of God. The longing for fraternity can never be satisfied but under the sway of a common Father.'

#### DANGEROUS RIVAL

"Let the modern Christian Church settle down quietly to a blind acquiescence in things as they are; let her ministers refuse to become moral guides in economics and in politics, as well as in religion; let them be silent on the transgressions of the nation, and deaf to the cry of the multitude, and no man can contemplate the future, under such conditions, with any other emotion than that of despair. The hunger for a wider distribution of the fruits of labor and the envious ambition for power to wreak revenge on the privileged classes are passions that animate far too many.

"But certain it is that the workingmen will be detached in increasing numbers from the churches if the ideal of modern religion is stripped of its economic and political elements. With rare exceptions, the advocates for social progress are propagating their opinions outside the church. The feeling spreads that the church is the friend of the established order and the refuge of the power-possessing class. Ignorant of the splendid services which organized Christianity has rendered to the cause of the slave, the poor and the weak, and minimizing the value of her labors today. Able writers and eloquent speakers who have the ears

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## LABOR MAKES MOVE FOR PEACE CONFAB

An effort is to be made by the Building Trades Council for a conference between members of the Manufacturers and Employers Association and a committee of the council for the purpose of discussing the present "open shop" matter. The idea of the conference is to have a complete understanding of both sides of the trouble with a view of adjustment.

## THREE PERSONS ARE HELD FOR DEATH OF YOUNG GIRL

Publishers' Press Direct Wire.  
Greenville, Feb. 4.—On charges of manslaughter, Dr. Sigmund E. Jondy, William C. Bowen and Mrs. Catherine Botsch were arrested here today, a few hours before Miss Annie Van Doren, 18 years of age, died in Christ Hospital. It is charged that three persons are responsible for an infection which caused Miss Van Doren's death. Judge Manning refused to accept

Charles Skelton School.  
Miss Blackman's class received the county banner for the best record for attendance and absence of tardy pupils.



**Whatever CLOTHING We Have Goes at Half Price**  
Come in and see if we can fit and suit you. The price won't prevent you from buying.

## The Furniture Exposition of Grand Rapids Transferred to Trenton!

The better parts—the choicest selections—the cream, as it were, of the handsomest Furniture the world can produce. Mr. Brand is acknowledged to be an expert in Furniture buying, and he is doing himself proud this season. Never did we receive such gorgeousness, such elegant taste for beauty in home furnishing—never such an opportunity to please the public in low prices. The Brand leadership for fine Furniture is safe this year; there's little fear of any of our competitors outstripping us in the race for supremacy. The greater part will be sold while our first anniversary sale takes place. Little regard is paid for profits. We want to sell, and sell we will.

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**EXTENSION TABLES**  
Of solid oak, polish finish—  
either style of plain, fancy  
or pedestal base.  
\$8.00 Extension Tables, \$5.00  
9.50 Extension Tables, 6.00  
12.00 Extension Tables, 8.00  
15.50 Extension Tables, 9.50



**HALL RACKS**  
From \$5.75



COUCH

TT  
Feb. 4, 1905

"King James Deed Shown  
Delaware Jersey Dispute"





HERBERT H. WALL  
ANDREW C. GIBBS  
LONG BRANCH, DELAWARE 1987

February 11th 1905.

Hon. George H. Bates,  
3002 Lenig Avenue,  
Philadelphia.

Dear Mr. Bates:

Our General Assembly yesterday passed a joint resolution of precisely similar terms to that of two years ago, with the addition of the words "and bay" at the end, appointing Governor Lea, Attorney General Richards, yourself and myself as commissioners to confer with the commissioners of New Jersey to frame a compact settling the boundary dispute. Inasmuch as our General Assembly may adjourn by the first of March, it is important that we should get promptly to work as a joint commission to frame this compact and get it returned in proper shape to our General Assembly, so that we may not be caught in the closing hours with it on our hands as we were caught two years ago. I have notified Attorney General McCarter of the passing of this resolution. New Jersey passed its resolution on Tuesday of this week.

I suppose the primary thing will be to secure a place for our meetings. The place where we met before was very convenient and central. Have you any idea whether we can secure the same place again? If not, I presume we can sit in the room in the United States Court House where we took our testimony for several days. Kindly give me your ideas on this subject at once. I think the sentiment of the General Assembly is at present very favorable to the adoption of any reasonable agreement between the two states.

Yours very truly,



From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161 www.hsd.org

**DE H.S.**  
**Box 7 File 2**

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Consul General to Australia, writes:  
**Peruna Medicine Co., Columbus,  
 Ohio:**

**Gentlemen:**—The use of your  
**Peruna** as a remedy or cure for  
 catarrh by many of my friends who have been  
 benefited by the same, as well as my own ex-  
 perience as to its efficacy and good tonic prop-  
 erties cause me to recommend it to all persons,  
 and you are at liberty to use this endorsement and my photograph  
 if it will give any force to same.—James M. Morgan.



will also prove a more powerful  
 cleanser of the system.

If you do not derive prompt and satis-  
 factory results from the use of Peruna,  
 write at once to Dr. Hartman, giving a  
 full statement of your case and he will  
 be pleased to give you his valuable ad-  
 vice gratis.

Peruna can be purchased at any first-  
 class drug store for fifty per cent.  
 Address Dr. Hartman, President of  
 The Hartman Sanitarium, Columbus, O.

John G. Gray in this city for several days.  
 Miss Kimble will sing at a tournee to  
 be given by the Three Cities Club on  
 February 27 at St. John's Parish House.  
 She will be accompanied by H. August  
 Wagner.

Frank Barker is visiting his parents  
 in Dublin.

**Townsend**

Special to The Evening Journal.  
 Townsend Feb. 11 Mrs. W. T. De-  
 vey was a Middletown visitor Thurs-  
 day.

Miss K. E. Swell has returned to her  
 home in Wilmington after a visit with  
 relatives here.

John Lattimore spent Thursday in Wil-  
 mington.

Mrs. Bette Bradley has returned home  
 after spending several days with relatives  
 in Philadelphia and Camden.

Miss Beatrice Holden of Camden is  
 spending several days as the guest of  
 Miss Mary Money.

Miss Agnes Atwell of near town is  
 spending the week with Miss Lucy  
 Boardley.

Mrs. Robert Wilson spent Thursday  
 with relatives in Middletown.

Superintendent A. H. Sproul of New  
 Castle county schools was a recent visitor  
 at the public school here.

Mrs. Richard Hodson and sons, Rey-  
 nolds and Paul, have returned home from  
 a visit with her sister, Mrs. James Wil-  
 son, in Smyrna.

Mrs. Harvey Taylor spent Friday as  
 the guest of her parents, Mr. and Mrs. J.  
 Downey of Middletown.

Mrs. Edward Graves and son Alfred,  
 spent Wednesday with her parents, Mr.  
 and Mrs. Alfred Trason, of Middletown.

Mr. and Mrs. William Wright were Wil-  
 mington visitors on Thursday.

George M. Outten of Philadelphia, is  
 visiting his family here.

George Watts visited friends in Middle-  
 town on Friday.

W. T. Devalinger, who has been sick at  
 his home on Main street, is very much  
 improved.

**To Address Odd Fellows.**

W. C. Jason, president of Delaware  
 State College, will address the Odd Fel-  
 lows at Odd Fellows' Temple, 10th and  
 Orange streets, February 12, 1903, at  
 2:30 p. m.

Remember the F. O. E. hall, Feb. 13.

**IT IS SERIOUS.**

**Some Wilmington People Fail to Realize  
 the Seriousness.**

The obstinate acting of a bad back  
 the weakness, the tired feeling,  
 the pain and ache of which the  
 are victims is neglected.

The symptoms are very deceptive. Follow  
 a Wilmington man who says he has been  
 cured.

When the symptoms begin to return  
 the weakness, the tired feeling,  
 the pain and ache of which the  
 are victims is neglected.

**PLAN TO SETTLE THE  
 BOUNDARY DISPUTE**

**Legislature Adopts Joint  
 Resolution Looking to an  
 Amicable Adjustment**

Special to The Evening Journal.

Friday, Feb. 11 In order to settle the  
 long standing boundary dispute over Dela-  
 ware and New Jersey's fishing grounds,  
 the Legislature yesterday passed a joint  
 resolution which will give New Jersey an  
 opportunity to amicably settle the contro-  
 versy.

The resolution, which was submitted by  
 Ex. Attorney General Ward during his ad-  
 dress to the members of the General As-  
 sembly yesterday, reads:

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

That Preston Lee, Governor; Robert  
 H. Richards, attorney-general, and George  
 H. Bates, speaker of the house, be and they are  
 hereby appointed and constituted Commis-  
 sioners of the State of Delaware to confer  
 with the commissioners representing  
 the State of New Jersey, for the pur-  
 pose of framing a compact or agreement  
 between the said States and legislation  
 consequent 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 Delaware  
 river and bay.

The resolution passed both Houses, and  
 will be sent to Governor Lee for his ap-  
 proval.

Both States have been obliged to spend  
 large sums of money in the struggle to  
 decide the eastern boundary of William  
 Penn's twelve-mile circle from the city  
 of New Castle, and now that an expendi-  
 ture of \$1000 confronts the State of  
 Delaware, decisive action will be taken.

The dispute will cost more than it is  
 worth, so far as immediate results are  
 concerned. New Jersey has carried the  
 fight to the United States Supreme Court  
 in her contention to secure control of  
 the Eastern channel of the Delaware for  
 her Governor Francis Rawls, Jr., of  
 Philadelphia, is taking testimony in the  
 case, which has been in dispute since 1862.  
 His remarks heard a number of prom-  
 inent witnesses in Wilmington.

**SIGNAL TOWER BURNED**

Sparks From a Passing Locomotive Set  
 Fire to Structure.

The fire company of Wilmington  
 extinguished the fire which started  
 when the Wilmington train passed  
 the signal tower at Wilmington.

Admiral Roden 23th.

In one of the many old world  
 stories on the creation of women in the  
 Talmud the Emperor Hadrian is re-  
 lated as conversing with Saint  
 Gamaliel on several religious questions.  
 With the subject of women's position in  
 the Bible, Hadrian inquired: "Why  
 your God is represented therein as a  
 thief? He carried Adam to his home  
 and robbed him of one of his ribs?"

The rabbi's daughter, with one rib  
 cut, creeps pertinently in upon the  
 emperor. This is granted her, "But  
 first let me inquire the Emperor's re-  
 flection, punishment and the conse-  
 quence."  
 "A grave outrage has been committed  
 on our house." "What has done so?  
 Did any harm on the shade of a  
 friend?" asked the emperor.

"Under cover of the night an audacious  
 thief broke into our house, took a  
 silver spoon from our dining and hid a  
 golden one in its stead." "What a wretched  
 thief!" cries Hadrian. "Would  
 that such robbers might visit my palace  
 every day!" "And was not the  
 Creator even such a thief as this,"  
 archly rejoins the bleaching deacon,  
 "who deprived Adam of a rib and in  
 lieu thereof gave him a loving, lovely  
 bride?"

"Dixie."

No other song has ever touched the  
 hearts of all the people of this land as  
 "Dixie" touches them. During the  
 war "John Brown's Body" swept the  
 heartstrings of the north and their  
 brave "boys in blue." The war has  
 passed and the song is passing, to al-  
 ready much of a memory. But "Dixie"  
 is more vibrant with life today than  
 it was when it cheered the lean and  
 hungry legions that were battling for  
 the "lost cause." It has not only sur-  
 vived the war, but since then it has  
 conquered the conquerors and echoes  
 in the hearts of those that loved the  
 blue as in the hearts of those that  
 loved the gray. It has the magic of  
 the "Marseillaise" in it. But it is  
 without its clarion-call that excited the  
 red blood of strife. It is gay, sweet,  
 serene, indefatigable. It may not be  
 great music, but it has the quality of  
 all that counts in this world—survival  
 —and it is one of those ballads of a  
 nation that the very wise man reckon-  
 ed as more powerful than laws.—  
 Kansas City News.

When They Rehearsed "Red Lady."

"Some weeks ago I had an opportu-  
 nity of inspecting the hotel register of  
 a Niagara Falls hotel of the year  
 1870-71," said a Middletown man.  
 "Even if that time the falls were in  
 1870's been a favorite resort, but what  
 surprised me was that the only in-  
 scription of that time.

The following was the last  
 that was recorded in that regis-  
 ter, even during those haunting

Even Journal, 2/11/05, p.5

Wilmington Public Library  
Evening Journal

2/11/1905

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DE04433



LAWS

OF THE

521

STATE OF DELAWARE,

PASSED AT A

SPECIAL SESSION OF THE GENERAL ASSEMBLY

COMMENCED AND HELD AT DOVER,

ON THURSDAY, DECEMBER 29TH, A. D. 1904

AND

IN THE YEAR OF THE INDEPENDENCE OF THE UNITED  
STATES THE ONE HUNDRED AND  
TWENTY-NINTH.

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PUBLISHED BY AUTHORITY.

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VOLUME XXIII—PART I.

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1905:  
THE DELAWAREAN PRINT,  
DOVER, DEL.

DE04492

## RESOLUTIONS.

## CHAPTER 216.

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:*

Appointment of Commissioners of State of Delaware to frame a compact with Commissioners of New Jersey.

That Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates, special counsel, 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 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.

Approved, February 13, A. D. 1905.



(p. 653) JOINT RESOLUTIONS.

Joint Resolution No. 1.

Joint Resolution relating to the boundary controversy between the States of New Jersey and Delaware.

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

Edward C. Stokes, Governor, Robert H. McCarter, Attorney-General, Franklin Murphy and Chauncey G. Parker, be and they hereby are appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of 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.

This joint resolution shall take effect immediately.

Approved February 14, 1905.

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PLAINTIFFS EXHIBIT NO.

161

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*Minutes of the Votes and Proceedings of the One Hundred and Twenty-Ninth General Assembly of the State of New Jersey, Trenton, 1905, pp. 456-461, (March 1, 1905)*

A message was received from the Governor by the hands of his Secretary, as follows:

EXECUTIVE DEPARTMENT,  
TRENTON, March 1st, 1905.

*To the Speaker and Members of the House of Assembly:*

I herewith transmit the report of the action of the Commissioners appointed under Joint Resolution of the State of New Jersey, approved February 14th, 1905, and the Commissioners representing the State of Delaware, for the purpose of framing a compact between the said States and legislative action thereon, looking to an amicable termination of the suit between the two States now pending in the Supreme Court of the United States and a final adjustment of all controversy relating to the boundary line between this State and Delaware, and to their respective rights in the Delaware river and bay.

This report, covering the compact agreed upon by the Commissioners of the States of New Jersey and Delaware, and a proposed bill to make the same effective, is respectfully submitted for your consideration and action.

E. C. STOKES.

AGREEMENT BETWEEN THE STATES OF NEW JERSEY  
AND DELAWARE.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A CERTIFIED COPY OF AN ACT TO RATIFY AND CONFIRM A  
CERTAIN COMPACT OR AGREEMENT BETWEEN THE STATES  
OF NEW JERSEY AND DELAWARE.

---

DECEMBER 5, 1905.—Read; referred to the Committee on the Judiciary and ordered  
to be printed.

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*To the Senate and House of Representatives:*

I transmit herewith, for action by the Congress thereon, a certified copy of an act passed by the general assembly of the State of Delaware 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 was submitted to me by Hon. Preston Lea, governor of the State of Delaware, in pursuance of the mandate of the law.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *December 5, 1905.*

---

STATE OF DELAWARE, EXECUTIVE DEPARTMENT,  
*Dover, Del., November 9, 1905.*

DEAR SIR: Pursuant to the mandate of the law I have the honor of transmitting to you a certified copy of 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," and respectfully request that said act be communicated to Congress for its action thereon.

Respectfully, yours,

PRESTON LEA,  
*Governor.*

To His Excellency THEODORE ROOSEVELT,  
*President.*

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.

Whereas by joint resolution of the legislature of the State of New Jersey, approved February 14th, 1905, Edward C. Stokes, governor, Robert H. McCarter, attorney-general, Franklin Murphy, and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation thereon, to be submitted to the legislatures of the said two States for action thereon, looking to the amicable termination of the suit between said two 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;

Whereas by like joint resolution of the general assembly of the State of Delaware, approved February 13, 1905, Preston Lea, governor; Robert H. Richards, attorney-general; Herbert H. Ward, and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey, for the purpose before recited; and

Whereas the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this general assembly a proposed compact or agreement between the said States; and

Whereas the compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

1. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State

of Delaware by joint resolution of the general assembly of said State, to frame 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 said 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: Now therefore,

The said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offence committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

ARTICLE II. Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ARTICLE III. The inhabitants of the said 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.

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 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 so 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. 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 the 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.

ARTICLE VI. 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.

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.

ARTICLE 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.

ARTICLE IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this — day of —, in the year of our Lord one thousand nine hundred and five.

Therefore, Be it enacted by the senate and house of representatives of the State of Delaware in general assembly met:

SECTION 1. The foregoing compact or agreement, and every clause, matter, and thing therein contained, be, and the same is hereby, adopted, ratified, and confirmed as and for the act and deed of the State of Delaware, and the commissioners of the said State are hereby authorized and empowered, on its behalf, to execute the same in duplicate and to deliver one copy thereof to the commissioners of the State of New Jersey.

SECTION 2. It shall be the duty of the governor, at or before the next session of Congress of the United States, to transmit a duly certified copy of this act to the President of the United States, with the request that it be communicated to Congress for its action thereon. Passed at Dover the seventeenth day of March, A. D. 1905.

ISAAC T. PARKER,  
President of the Senate.  
WM. D. DENNEY,  
Speaker of the House.

Approved this the twentieth day of March, A. D. 1805.

PRESTON LEA,  
Governor.

STATE OF DELAWARE.

OFFICE OF SECRETARY OF STATE.

I, Joseph L. Cahall, secretary of state of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of "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," approved March 20, A. D. 1905, as the same appears on file in this office.

In testimony whereof I have hereunto set my hand and official seal, at Dover, this thirtieth day of October, in the year of our Lord one thousand nine hundred and five.

JOSEPH L. CAHALL,  
Secretary of State.

( )

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Samuel Johnson

Biographies

c. 1900

Box 2

59th Congress, House of Representatives agreement  
Between the States of New Jersey & Delaware  
1905

DE00028

STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

ROBERT H. MC CARTER  
ATTORNEY GENERAL  
EDWARD D. DUFFIELD  
ASSISTANT ATTORNEY GENERAL

Trenton, N. J., March 6, 1906.

His Excellency, Edward C. Stokes,  
Governor of New Jersey.

My dear Governor:-

I write to remind you of the importance of sending at once to Congress, pursuant to the provisions of the law of last winter, to which I have previously directed your attention, a copy of the proceedings taken by our Legislature in the New Jersey-Delaware matter. Not knowing whether you have already done this, I take this means of reminding you of the situation.

I saw by the paper this morning that the Supreme Court yesterday announced a suspension of the case for sixty days only, and it is therefore of the very greatest importance that all our energies be directed to securing Congressional action at once, so that the treaty between the States of New Jersey and Delaware will have been ratified by Congress by that time.

Very respectfully yours,

  
Attorney General.



New Jersey State Archives

Governor Stokes Papers

Box 22 Folder 855



AGREEMENT BETWEEN THE STATES OF NEW JERSEY  
AND DELAWARE.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES.

TRANSMITTING

A COPY OF 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."

MARCH 9, 1906.—Read; referred to the Committee on the Judiciary, and ordered to be printed.

*To the Senate and House of Representatives:*

In compliance with the request of the governor of the State of New Jersey, I transmit herewith, for the action of the Congress thereon, a certified copy of an act of the legislature of the State of New Jersey, 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."

THEODORE ROOSEVELT.

THE WHITE HOUSE, March 9, 1906.

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT,  
Trenton, N. J., March 7, 1906.

SIR: I beg to inclose herewith a certified copy of an act of the legislature of the State of New Jersey known as chapter 43 of the laws of 1905, by the second section of which it is made the duty of the governor of this State to transmit a duly certified copy of the act in question to the President of the United States, with the request that it be communicated to Congress for its action thereon. As the matter referred to in this act of our legislature is of considerable public interest, both

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to the State of New Jersey and the State of Delaware, I will esteem it a favor if you will kindly communicate to Congress the fact that a certified copy of this act has been brought to your attention at your earliest opportunity.

I am, with great respect, very truly yours,

E. C. STOKES,  
Governor of New Jersey.

The PRESIDENT,  
Washington, D. C.

STATE OF NEW JERSEY.

CHAPTER 87. 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.

Whereas by joint resolution of the legislature of the State of New Jersey, approved February fourteenth, nineteen hundred and five, Edward C. Stokes, governor; Robert H. McCarter, attorney-general; Franklin Murphy, and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of 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 the said two States for action thereon looking to the amicable termination of the suit between said two 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; and

Whereas by like joint resolution of the general assembly of the State of Delaware, approved February thirteenth, nineteen hundred and five, Preston Lea, governor; Robert H. Richards, attorney-general; Herbert H. Ward, and George E. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey for the purpose before recited; and

Whereas the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this legislature a proposed compact or agreement between the said States; and

Whereas the compact or agreement so framed and submitted is in the words following—that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve miles radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

Whereas there is now pending in the Supreme Court of the United States a case wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which case an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upward; and

Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George E. Bates have been appointed commissioners on the part of the State of Delaware, by joint resolution of the general assembly of said State, to frame 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 said 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;

Now, therefore, the said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

ARTICLE II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

ARTICLE III. The inhabitants of the said 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 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.

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 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 so 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. 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 the 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 violations 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.

ARTICLE VI. Nothing herein contained shall affect the planting, catching, or taking of oysters, clams, or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

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.

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ARTICLE 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.

ARTICLE IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislature of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued, without costs to either party and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this \_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and five.

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

1. The foregoing compact or agreement, and every clause, matter, and thing therein contained, be, and the same is hereby, adopted, ratified, and confirmed as and for the act and deed of the State of New Jersey, and the commissioners of the said State are hereby authorized and empowered on its behalf to execute the same in duplicate, and to deliver one copy thereof to the commissioners of the State of Delaware.

2. It shall be the duty of the governor, at or before the next session of the Congress of the United States, to transmit a duly certified copy of this act to the President of the United States, with the request that it be communicated to Congress for its action thereon.

3. This act shall take effect immediately.

Approved March 21, 1906.

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 21st day of March, A. D. 1906, 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 7th day of March, 1906.

[SEAL.]

S. D. DICKINSON, *Secretary of State.*

STATE OF NEW JERSEY.

I, Edward C. Stokes, governor of the State of New Jersey, do hereby certify that S. D. Dickinson, esq., who hath signed the annexed certificate, and whose official seal is thereto annexed, was, at the doing thereof, and now is, secretary of state of the State of New Jersey, duly appointed, commissioned, and sworn, and that full faith and credit are to be given to his official attestations; that the said signature is in the proper handwriting of the said S. D. Dickinson, and the seal his seal of office, and that the said certificate is in due form of law and by the proper officer.

In testimony whereof I have hereunto set my hand and caused the great seal of the State of New Jersey to be hereunto affixed, at the city of Trenton, in said State, this seventh day of March, in the year of our Lord one thousand nine hundred and six, and of the Independence of the United States the one hundred and thirtieth.

[SEAL.]

E. C. STOKES.

By the governor:

S. D. DICKINSON,  
*Secretary of State.*

A bill (H. R. 10914) granting an increase of pension to John Hamilton;

A bill (H. R. 7770) granting an increase of pension to Burgess Cole;

A bill (H. R. 11745) granting an increase of pension to James D. Billingsley;

A bill (H. R. 12280) granting an increase of pension to Joseph C. Grissom;

A bill (H. R. 12591) granting an increase of pension to J. Frederick Edgell;

A bill (H. R. 13511) granting an increase of pension to William Clough;

A bill (H. R. 13643) granting an increase of pension to Davis W. Hatch; and

A bill (H. R. 7390) granting an increase of pension to John E. Ball.

Mr. BULKLEY, from the Committee on Military Affairs, to whom was referred the joint resolution (S. R. 51) authorizing the Secretary of War to award the Congressional medal of honor to Peter B. Cogg, submitted an adverse report thereon; which was agreed to, and the joint resolution was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. 3174) authorizing the Secretary of War to procure medals for the members or the legal heirs of the deceased members of the Worth Infantry and York Rifles, who were the first fully armed and equipped soldiers to do active service in response to President Lincoln's call for 75,000 volunteers, and for other purposes, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. LA FOLLETTE, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 1977) granting a pension to Emma C. Anderson;

A bill (H. R. 1967) granting an increase of pension to Joseph Baker;

A bill (H. R. 1963) granting an increase of pension to John Monroe;

A bill (H. R. 3225) granting an increase of pension to William B. Philbrick;

A bill (H. R. 1440) granting an increase of pension to Matilda E. Lawton;

A bill (H. R. 1460) granting an increase of pension to Charles W. Renel; and

A bill (H. R. 10886) granting an increase of pension to Martha S. Campbell.

Mr. BRANDEGEE, I am directed by the Committee on Forest Reservations and the Protection of Game, to submit a written report to accompany House joint resolution No. 63, for a report, etc., upon the preservation of Niagara Falls, heretofore reported by me.

The VICE-PRESIDENT. The report will be received and printed.

Mr. BRANDEGEE, I am directed by the Committee on Forest Reservations and the Protection of Game, to whom the subject was referred, to report an original bill.

The bill (S. 4933) for the purpose of acquiring national forest reserves in the Appalachian Mountains and White Mountains, to be known as the Appalachian Forest Reserve and the White Mountain Forest Reserve, respectively, was read twice by its title.

The VICE-PRESIDENT. The bill will be placed on the Calendar.

Mr. BRANDEGEE, from the Committee on Forest Reservations and the Protection of Game, to whom was referred the bill (S. 24) for the purchase of a national forest reserve in the White Mountains, to be known as the "National White Mountain Forest Reserve," reported adversely thereon, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. 493) for the purchase of a national forest reserve in the Southern Appalachian Mountains, to be known as the "National Appalachian Forest Reserve," reported adversely thereon, and the bill was postponed indefinitely.

Mr. FOSTER, from the Committee on Commerce, to whom was referred the amendment submitted by Mr. Frazier on the 13th ultimo, proposing to appropriate \$400,000 for continuing the improvement at the mouth of Columbia River, intended to be proposed to the sundry civil appropriation bill, reported it with an amendment, and moved that it be printed, and, with the accompanying paper, referred to the Committee on Appropriations; which was agreed to.

Mr. MORGAN, from the Committee on Public Health and National Quarantine, to whom was referred the bill (S. 1830) making appropriation for the removal of the quarantine station

at San Diego, Cal., and to acquire a new site, and for other purposes, reported it with amendments.

#### IMPROVEMENT OF MOUTH OF COLUMBIA RIVER.

Mr. FOSTER. I am directed by the Committee on Commerce, to whom the subject was referred, to report a bill (S. 4852) making an appropriation for the improvement of the mouth of the Columbia River; to which I call the attention of the Senator from Oregon (Mr. Frazier).

Mr. FULTON. Mr. President, as that bill carries an emergency appropriation, as the proposition is very strongly endorsed by the Engineering Department, and as the bill has been reported unanimously by the Committee on Commerce, I ask unanimous consent that it may be given immediate consideration.

The VICE-PRESIDENT. The Senator from Oregon asks unanimous consent for the present consideration of the bill just reported. Is there objection?

There being no objection, the bill was read the first time by its title, and the second time at length, as follows:

Be it enacted, etc., That the sum of \$400,000 be, and is hereby, appropriated to be paid out of any money in the Treasury not otherwise appropriated, to be immediately available, and to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers, for continuing the improvement at the mouth of the Columbia River, Oregon and Washington, in accordance with the existing project.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

#### BILLS INTRODUCED.

Mr. FRYE introduced a bill (S. 4954) authorizing Capt. Ragnar Mikkelsen to act as master of an American vessel; which was read twice by its title, and referred to the Committee on Commerce.

Mr. BLACKBURN introduced a bill (S. 4935) for the relief of N. G. Pettit; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 4956) to provide for the purchase of a site and the erection of a building thereon at Versailles, in the State of Kentucky; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. GALLINGER introduced a bill (S. 4957) to correct the military record of Alexander J. MacDonald; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. ALGER introduced a bill (S. 4958) granting an increase of pension to William W. Duffield; which was read twice by its title, and referred to the Committee on Pensions.

Mr. FENROSE introduced a bill (S. 4959) to further the administration of justice; which was read twice by its title, and referred to the Committee on the Judiciary.

He also introduced a bill (S. 4980) to provide for the cancellation of certificates of naturalization fraudulently procured or improperly issued, and prescribing a penalty for the use of such canceled certificate or issuing a duplicate thereof; which was read twice by its title, and referred to the Committee on the Judiciary.

He also introduced a bill (S. 4961) granting an increase of pension to William Ictes; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 4962) to correct the military record of Jacob Rockwell; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4963) to correct the military record of John Reighard; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4964) for the relief of Thomas F. Walter; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4965) authorizing the appointment of Harold L. Jackson, a captain in the retired list of the Army, as a major on the retired list of the Army; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 4966) providing for the promotion of assistant paymasters in the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 4967) to establish additional aids to navigation in Delaware Bay and River; which was read twice by its title, and referred to the Committee on Commerce.

Mr. ELKINS introduced a bill (S. 4063) to fix the time of holding the circuit and district courts for the northern district of West Virginia; which was read twice by its title, and, with the accompanying paper, referred to the Committee on the Judiciary.

Mr. LODGE introduced a bill (S. 4069) granting permission to Rear-Admiral O. H. Davis, United States Navy, to accept a silver cup and salver and silver punch bowl and cups tendered to him by the British and Russian ambassadors, respectively, in the name of their Governments; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Foreign Relations.

He also introduced a bill (S. 4070) to amend section 3 of chapter 1140 of the United States Statutes at Large; which was read twice by its title, and referred to the Committee on the Judiciary.

He also (by request) introduced a bill (S. 4071) for the relief of certain claimants under the Geneva award; which was read twice by its title, and referred to the Committee on Finance.

Mr. PERKINS introduced a bill (S. 4072) granting an increase of pension to Sarah E. Hull; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DICK introduced a bill for the senior Senator from Nebraska (Mr. MILLARD), who is detained in his committee room.

The bill (S. 4073) for the relief of Albert H. Reynolds was read twice by its title, and, with the accompanying papers, referred to the Committee on Indian Affairs.

Mr. OLAY introduced a bill (S. 4074) to execute the findings of the Court of Claims in the case of the estate of William M. Vaughan; which was read twice by its title, and referred to the Committee on Claims.

Mr. KEAN introduced a bill (S. 4075) giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States; which was read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENTS TO BILLS.

Mr. SMOOT submitted an amendment proposing to appropriate \$10,500 for the support and civilization of the Esabab Indians in Utah, etc., intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. FENROSE submitted an amendment providing that officers of the Marine Corps with creditable records who served during the civil war and were retired prior to 1904, shall receive the full benefit of the act approved April 23, 1904, etc., intended to be proposed by him to the naval appropriation bill; which was referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. ELKINS submitted eight amendments intended to be proposed by him to the bill (H. R. 12957) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission; which were ordered to lie on the table, and be printed.

Mr. PERKINS submitted an amendment proposing to appropriate \$10,000 for the eradication of pear blight in the State of California, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$5,000 for the investigation of the hop industry of the Pacific coast, with special reference to growing, airing, and handling crops, intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$5,000 for the erection of a permanent rostrum in the national cemetery at the Presidio of San Francisco, Cal., for the convenience of the members of the Grand Army of the Republic, etc., intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$25,000 for the improvement of the grounds within the Presidio and other military reservations on the bay of San Francisco, intended to be proposed to the Army appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

POSTAGE ON CERTAIN PERIODICAL PUBLICATIONS.

Mr. STONE. A few days ago I gave notice that on Wednesday, the 14th instant, after the routine morning business, I would ask permission of the Senate to call up the resolution in-

structing the Committee on Post-Offices and Post-Roads to ascertain and determine whether the construction of the Post-Office Department of the law as to postage on certain publications of alumni of colleges as second-class matter, etc., is correct, etc., for the purpose of submitting some remarks thereon. I now ask unanimous consent that the time be changed from Wednesday, the 14th, to Thursday, the 15th.

The VICE-PRESIDENT. Without objection, the request of the Senator from Missouri is granted.

REGULATION OF RAILROAD RATES.

Mr. RAYNER. I desire to give notice that on Wednesday, the 14th instant, after the routine morning business, I shall ask leave to submit some remarks on the bill H. R. 12387, known as the "railroad rate bill."

DELAWARE RIVER AND BAY.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read, and, on motion of Mr. KEAN, was, with the accompanying papers, referred to the Committee on the Judiciary, and ordered to be printed:

To the Senate and House of Representatives:

In compliance with the request of the governor of the State of New Jersey, I transmit herewith, for the action of the Congress thereon, a certified copy of an act of the legislature of the State of New Jersey, 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."

THE WHITE HOUSE, March 9, 1900.

THEODORE ROOSEVELT.

HOUSE BILL REFERRED.

H. R. 15831. An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907, was read twice by its title, and referred to the Committee on Indian Affairs.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. T. BAXTER, one of his secretaries, announced that the President had approved and signed the following acts:

- On March 7, 1900:
- S. 537. An act granting a pension to Mary J. Chenoweth;
- S. 173d. An act granting a pension to Lena S. Penn;
- S. 2377. An act granting a pension to Clara T. Leathers;
- S. 8. An act granting an increase of pension to William M. Hull;
- S. 75. An act granting an increase of pension to Uriel J. Streeter;
- S. 77. An act granting an increase of pension to Granville P. Mason;
- S. 73. An act granting an increase of pension to Mary E. Blethen;
- S. 79. An act granting an increase of pension to James F. Tilton;
- S. 121. An act granting an increase of pension to John Cook;
- S. 124. An act granting an increase of pension to Curtis B. Mcintosh;
- S. 125. An act granting an increase of pension to John E. Hadsall;
- S. 127. An act granting an increase of pension to Anthony H. Crawford;
- S. 126. An act granting an increase of pension to Sebastian Lendner;
- S. 129. An act granting an increase of pension to Frederick Le Huard;
- S. 176. An act granting an increase of pension to Benjamin F. Marsh;
- S. 181. An act granting an increase of pension to Francis E. Stevens;
- S. 186. An act granting an increase of pension to George P. Howe;
- S. 201. An act granting an increase of pension to Lyman E. Farrand;
- S. 207. An act granting an increase of pension to Marion F. Howe;
- S. 213. An act granting an increase of pension to John M. Doersch;
- S. 478. An act granting an increase of pension to Emily Peterson;
- S. 506. An act granting an increase of pension to James Wilson;
- S. 533. An act granting an increase of pension to Francis M. Munson;
- S. 566. An act granting an increase of pension to George Wiley;

Mr. MORGAN. If an objection will carry that joint resolution over. Mr. President, I must object.  
The VICE-PRESIDENT. Under objection, the joint resolution will lie over without prejudice.

**BATTLE MOUNTAIN SANITARIUM RESERVE.**

The bill (H. R. 15035) to set apart certain lands in the State of South Dakota, to be known as the Battle Mountain Sanitarium Reserve, was announced as next in order.

The bill was read.

Mr. ALLISON. Let that bill go over without prejudice.  
The VICE-PRESIDENT. Under objection, the bill will lie over without prejudice.

**PENALTY FOR CERTAIN OFFENSES IN THE DISTRICT.**

The bill (H. R. 2377) increasing the penalty for certain offenses in the District of Columbia was announced as next in order.  
Mr. GALLINGER. Let that bill go over. The other House acted on a similar bill yesterday and passed it with certain amendments, and doubtless it will soon be before the Senate.  
The VICE-PRESIDENT. On the objection of the Senator from New Hampshire, the bill will lie over without prejudice.

**JAMES A. RUSSELL.**

The bill (S. 502) for the relief of James A. Russell was considered as in Committee of the Whole. It proposes to appropriate \$100 to pay James A. Russell for transporting the mail on route No. 6331, from New Smyrna to Indian River, Florida, from January 1 to March 31, 1891.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

**RIGHTS UNDER BERGEE SEA ARBITRATION AWARD.**

The bill (S. 2386) to confer jurisdiction upon the circuit court of the United States for the ninth circuit to determine in equity the rights of American citizens under the award of the Bergee Sea arbitration at Paris, and to render judgment thereon, was announced as next in order.

Mr. NELSON. Let that bill go over, Mr. President.

The VICE-PRESIDENT. Under objection, the bill will lie over.

**KIOWA, ETC., INDIAN RESERVATIONS IN OKLAHOMA.**

The bill (H. R. 431) to open for settlement 505,000 acres of land in the Kiowa, Comanche, and Apache Indian reservations in Oklahoma Territory, was considered as in Committee of the Whole.

Mr. SPOONER. I desire to inquire whether the bill is recommended by the Secretary of the Interior? There is no report with it, except one of five lines. It is a House bill, however, and I suppose it is all right.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

**MONUMENT TO JOHN PAUL JONES.**

The bill (S. 655) for the erection of a monument to the memory of John Paul Jones was considered as in Committee of the Whole.

It proposes to appropriate \$50,000 for the erection, in the city of Washington, D. C., of a statue to the memory of John Paul Jones; and for the purpose of procuring and erecting the statue, with a suitable pedestal, and for the preparation of a site.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

**MONUMENT TO DOROTHEA LYDIE DIX.**

The joint resolution (S. R. 1) for the erection of a monument to the memory of Dorothea Lynde Dix, was considered as in Committee of the Whole.

It proposes to appropriate \$10,000 for the purpose of preparing and improving a site and erecting and completing the erection of a monument to the memory of Dorothea Lynde Dix on the property now owned by The National Dorothea Dix Memorial Association at Hampden.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Mr. FLYE. I do not think there is any necessity for a preamble being in the bill.

Mr. GALLINGER. Let the preamble be stricken out.

The VICE-PRESIDENT. Without objection, the preamble will be stricken out.

**SITE FOR STATUE OF HENRY WADSWORTH LONGFELLOW.**

The joint resolution (S. R. 20) directing the selection of a site for the erection of a bronze statue in Washington, D. C., in honor of the late Henry Wadsworth Longfellow, was considered as in Committee of the Whole.

The joint resolution was reported from the Committee on the Library with an amendment to strike out all after the resolving clause and insert:

That the chairman of the Committee on the Library of the Senate, the chairman of the Committee on the Library of the House of Representatives, the Secretary of War, and the president of the Longfellow National Memorial Association are hereby created a commission to select and prepare a site on property belonging to the United States in the city of Washington, other than the grounds of the Capitol or Library of Congress, and erect thereon a suitable pedestal for a statue in honor of the late Henry Wadsworth Longfellow, to be provided by the Longfellow National Memorial Association.

Sec. 2. That for the preparation of the site so selected and the erection of the pedestal the sum of \$4,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated: Provided, That the funds for said statue shall be approved by the commission herein created.

The amendment was agreed to.

The joint resolution was reported to the Senate as amended, and the amendment was concurred in.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

**PROPOSED GENERAL BRIDGE LAW.**

The bill (H. R. 6009) to regulate the construction of bridges over navigable waters was considered as in Committee of the Whole.

The bill had been reported from the Committee on Commerce with an amendment, to insert after line 18, on page 2, the following as a new section:

Sec. 3. That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use, or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him.

The amendment was agreed to.

Mr. GALLINGER. It strikes me that it would be well to transpose sections 6 and 7, so as to make the repealing clause the last section. I make that motion.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

**PUBLIC BUILDING AT EUREKA, CAL.**

The bill (S. 1331) to provide for the purchase of a site and the erection of a public building at Eureka, Cal., was considered as in Committee of the Whole.

The bill had been reported from the Committee on Public Buildings and Grounds with an amendment, to strike out all after the enacting clause and insert:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a site and cause to be erected thereon a suitable building, including fireproof vaults, heating and ventilating apparatus, elevators, and approaches, for the use and accommodation of the United States post-office and other Government offices in the city of Eureka, State of California, the cost of said site and building, including said vaults, heating and ventilating apparatus, elevators, and approaches, complete, not to exceed the sum of \$175,000.

Proposals for the sale of land suitable for said site shall be invited by public advertisement in one or more of the newspapers of said city of at least twenty days prior to the date specified in said advertisement for the opening of said proposals.

The building shall be constructed to danger from fire by an open space of at least 40 feet on each side, including streets and alleys.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

**NEW JERSEY-DELAWARE TERRITORIAL LIMITS.**

Mr. KNOX. I ask unanimous consent, out of order, to make a report. I am directed by the Committee on the Judiciary, to whom was referred the bill (S. 4975) giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States, to report it favorably with amendments to the preamble.

Mr. KEAN. I ask unanimous consent for the present consideration of the bill just reported.

The VICE-PRESIDENT. The Senator from New Jersey asks unanimous consent for the present consideration of the bill just reported. Is there objection?

Mr. GALLINGER. I think we had better proceed with the Calendar.

The VICE-PRESIDENT. There is objection.

Mr. KEAN. Allow me to say to the Senator that this is an

important matter. It concerns only the States of New Jersey and Delaware, and the bill proposes to settle a lawsuit which has been going on for more than sixty years. It will take but a moment.

Mr. CALLINGER. It being important, of course I withdraw my objection and will let the bill be considered.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

The amendments of the Committee on the Judiciary to the preamble were, on page 5, line 9 of the preamble, after the word "this," to insert "twenty-first;" in the same line, after the word "of," to insert "March;" in line 10 to strike out the word "and;" in the same line, after the word "five," to strike out the semicolon and insert a period; and to strike out lines 11, 12, and 13 and to insert:

EDWARD C. STOKES.	FRESTON LEE.
ROBERT H. McCARTER.	ROBERT H. RICHARDS.
FRANKLIN MURPHY.	HERBERT H. WARD.
CHARLES O. PARKER.	GEORGE H. BATES.

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore—

So as to make the preamble and bill read :

Whereas commissioners duly appointed on the part of the State of New Jersey and commissioners duly appointed on the part of the State of Delaware, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States have executed certain articles, which are contained in the words following, to-wit: "First, Whereas a controversy has heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of 12-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

Whereas they are now pending in the Supreme Court of the United States a cause wherein the said State of New Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

Whereas for the purpose of settling the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Charles O. Parker have been appointed commissioners on the part of the State of New Jersey, by joint resolution of the legislature of said State, and Preston Lee, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware, by joint resolution of the legislature of said State, and 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 said 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 the islands therein;

That the said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

"ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Goody and Pea Patch islands, unless said person or property shall be on board a vessel anchored upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process of authority of the State of Delaware.

"ART. II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel anchored upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process of authority of the State of New Jersey.

"ART. III. The inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout the said river of the State of Delaware for the purpose of catching unknown fish in the Delaware River between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

"ART. 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 unknown 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 so framed and recommended by said joint commission. Upon the adoption and passage of said laws to be recommended by the respective legislatures of said two States said laws shall constitute the sole law 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 interest 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 dividing 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 the 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.

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

"ART. VI. Nothing herein contained shall affect the plying, catching, or taking of oysters, clams, or other shellfish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

"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.

"ART. IX. This agreement shall be executed by the said commissioners who are authorized to do so by the legislatures of the said States, and which thereupon is submitted to Congress for its consent and approval upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Further the ratification hereto by Congress said suit shall remain in statu quo.

"Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that State) this 21st day of March, in the year of our Lord 1907.

EDWARD C. STOKES.	FRESTON LEE.
ROBERT H. McCARTER.	ROBERT H. RICHARDS.
FRANKLIN MURPHY.	HERBERT H. WARD.
CHARLES O. PARKER.	GEORGE H. BATES.

And whereas the said agreement has been confirmed by the legislatures of the said States of New Jersey and Delaware, respectively: Therefore—

Be it enacted, etc., That the consent of the Congress of the United States is hereby given to the said agreement and to each and every part and article thereof: Provided, That nothing therein contained shall be construed to impair or in any manner affect any right or jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

The amendments were agreed to.  
The preamble as amended was agreed to.

LAND IN HOT SPRINGS, ARK.

The bill (S. 4334) ceding a parcel or strip of land to the city of Hot Springs, Ark., for use as a public street, was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PRIVATE SALMON HATCHERIES IN ALASKA.

The bill (S. 1459) to encourage private salmon hatcheries in Alaska was announced as the next business in order on the Calendar.

Mr. PERKINS. I ask that the bill go over without prejudice, retaining its relative place on the Calendar.

The VICE-PRESIDENT. It is so ordered.

BONDS AND OATHS OF SHIPPING COMMISSIONERS.

The bill (S. 4339) to amend section 4502 of the Revised Statutes of the United States, relating to bonds and oaths of shipping commissioners, was considered as in Committee of the Whole. It proposes to amend the section so as to read as follows:

SEC. 4502. Every shipping commissioner so appointed shall give bond to the United States, conditioned for the faithful performance of the duties of his office, for a sum, in the discretion of the Secretary of Commerce and Labor, of not less than \$5,000, in such form and with such security as the Secretary of Commerce and Labor shall direct and approve; and shall take and subscribe the oath prescribed by section 1797 of the Revised Statutes before entering upon the duties of his office: Provided, That nothing in this section shall be construed to effect in any respect the liability of principal or sureties on any bond heretofore given by any shipping commissioner.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.



- S. 4188. An act granting an increase of pension to Frank D. Smith;
- S. 2340. An act granting an increase of pension to George L. Jaguffa;
- S. 2446. An act granting an increase of pension to John W. Reml;
- S. 2368. An act granting an increase of pension to George W. Fitch;
- S. 1863. An act granting an increase of pension to Garrett Bourke;
- S. 2735. An act granting a pension to Marcelino S. Groff;
- S. 2548. An act granting an increase of pension to Jesse M. Furman;
- S. 2472. An act granting an increase of pension to Charles L. Noggle;
- S. 2406. An act granting an increase of pension to Thomas Millman;
- S. 2701. An act granting an increase of pension to John L. Clark;
- S. 2832. An act granting an increase of pension to Ashley A. Youmans;
- S. 4181. An act granting an increase of pension to Margaret Hallett;
- S. 4159. An act granting an increase of pension to Mary P. Johannes;
- S. 4131. An act granting an increase of pension to John Connor;
- S. 4100. An act granting an increase of pension to Carlton A. Wheeler;
- S. 1908. An act granting an increase of pension to Francesco Del Giudice;
- S. 1623. An act granting an increase of pension to Peter Shipman;
- S. 784. An act granting an increase of pension to George L. Cooley;
- S. 772. An act granting a pension to Jarusha Hayward Brown;
- S. 725. An act granting an increase of pension to William M. Smith;
- S. 716. An act granting an increase of pension to Theodore H. Hanson;
- S. 4331. An act granting an increase of pension to John T. McGarraugh;
- S. 4319. An act granting an increase of pension to Frederick C. Sturm;
- S. 4280. An act granting a pension to Aurelia Cotten;
- S. 4286. An act granting an increase of pension to Thomas J. Davies;
- S. 4227. An act granting a pension to John H. McKenzie;
- S. 2344. An act granting an increase of pension to Albert O. Andrews;
- S. 2218. An act granting an increase of pension to David W. Magee;
- S. 2260. An act granting an increase of pension to John Rauch;
- S. 2182. An act granting an increase of pension to John J. Buffington;
- S. 2163. An act granting an increase of pension to Isaac B. Hewett;
- S. 2142. An act granting an increase of pension to Adelle D. Irwin;
- S. 2152. An act granting an increase of pension to Helen B. Read;
- S. 2103. An act granting an increase of pension to Lorin R. Bingham;
- S. 2098. An act granting an increase of pension to Nathaniel E. Kent;
- S. 2090. An act granting a pension to Ruth E. Bennett;
- S. 2050. An act granting an increase of pension to Sarah E. Adams;
- S. 2091. An act granting an increase of pension to John P. Bambush;
- S. 1927. An act granting an increase of pension to John H. Odenheimer;
- S. 1427. An act granting an increase of pension to William F. Davis;
- S. 1420. An act granting an increase of pension to Sarah A. Tyler;
- S. 1230. An act granting an increase of pension to Eugene Gage;
- S. 1223. An act granting an increase of pension to Julia L. Plimpton;
- S. 1227. An act granting an increase of pension to Henry J. Patterson;
- S. 4187. An act granting an increase of pension to Nathaniel E. Skelton;
- S. 1173. An act granting an increase of pension to James M. Fernald;
- S. 1534. An act granting an increase of pension to Frederick W. Partridge;
- S. 1024. An act granting an increase of pension to Peter Bess;
- S. 1011. An act granting an increase of pension to John E. Woodsum;
- S. 1665. An act granting an increase of pension to John C. Estes;
- S. 4220. An act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes;
- S. 2050. An act granting an increase of pension to Joseph B. Silves;
- S. 2382. An act granting an increase of pension to Samuel H. Johnson;
- S. 4007. An act granting an increase of pension to Julius T. Williams;
- S. 4080. An act granting an increase of pension to Norman W. Lombard;
- S. 4020. An act granting an increase of pension to Henry C. Johnson;
- S. 1133. An act granting an increase of pension to Albert S. Blake;
- S. 4637. An act granting an increase of pension to Frederick Zimmerman;
- S. 4636. An act granting an increase of pension to Henry R. Feske;
- S. 4595. An act granting an increase of pension to Amos McMenis;
- S. 4507. An act granting an increase of pension to Joseph Chandler, Jr.;
- S. 4406. An act granting an increase of pension to Alphonse Brooks;
- S. 4422. An act granting an increase of pension to Lindsay Kirby;
- S. 1978. An act granting an increase of pension to Thomas Edgall; and
- S. 2044. An act granting a pension to Solomon F. Wehr.

## SENATE BILLS AND RESOLUTIONS REFERRED.

Under clause 2 of Rule XXIV, Senate bills and joint resolutions of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

- S. 4613. An act to authorize the Mobile Railway and Dock Company to construct and maintain bridges across Dog River and Bowli River in Mobile County, State of Alabama—to the Committee on Interstate and Foreign Commerce.
- S. H. 1. Joint resolution for the erection of a monument to the memory of Dorothea Lynde Dix—to the Committee on the Library.
- S. H. 20. Joint resolution directing the selection of a site for the erection of a bronze statue in Washington, D. C., in honor of the late Henry Wadsworth Longfellow—to the Committee on the Library.
- S. 503. An act to reimburse James M. McGee for expenses incurred in the burial of Mary J. De Lange—to the Committee on Claims.
- S. 531. An act authorizing and directing the Secretary of War to condemn and turn over to the State of Idaho two Krapp field guns captured from the enemy by the First Regiment Idaho Volunteer Infantry at the battle of Santa Ana, Philippine Islands, February 5, 1899—to the Committee on Military Affairs.
- S. 532. An act to provide for the purchase of a site and the erection of a public building thereon at Denver, in the State of Colorado—to the Committee on Public Buildings and Grounds.
- S. 685. An act for the erection of a monument to the memory of John Paul Jones—to the Committee on the Library.
- S. 1633. An act to provide for the purchase of a site and the erection of a public building thereon in the city of Kearney, State of Nebraska—to the Committee on Public Buildings and Grounds.
- S. 1802. An act to regulate the use by the public of reservoir sites located upon the public lands of the United States—to the Committee on the Public Lands.
- S. 1831. An act to provide for the purchase of a site and the erection of a public building at Eureka, Cal.—to the Committee on Public Buildings and Grounds.
- S. 2206. An act authorizing the Joint Committee on the Li-

Library to purchase a bust of President Zachary Taylor—to the Committee on the Library.

S. 2270. An act for the relief of Nicola Marino, of the District of Columbia—to the Committee on the District of Columbia.

S. 2298. An act to confer jurisdiction upon the circuit court of the United States for the ninth circuit to determine in equity the rights of American citizens under the award of the Berling Sea arbitration of Paris and to render judgment thereon—to the Committee on the Judiciary.

S. 4170. An act to amend an act approved March 3, 1891, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes"—to the Committee on the District of Columbia.

S. 4190. An act to amend an act entitled "An act to amend section 2453 of the Revised Statutes of the United States," approved February 26, 1893—to the Committee on the Public Lands.

S. 4302. An act to amend the provision in an act approved March 3, 1899, imposing a charge for tuition on nonresident pupils in the public schools of the District of Columbia—to the Committee on the District of Columbia.

S. 4434. An act ceding a parcel or strip of land to the city of Hot Springs, Ark., for use as a public street—to the Committee on the Public Lands.

S. 4975. An act giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States—to the Committee on the Judiciary.

S. 535. An act to amend and reenact section 1 of chapter 77 of volume 27 of the United States Statutes at Large, being "An act to provide for a term of the United States circuit and district court at Branston, Wyo.," approved May 23, 1892—to the Committee on the Judiciary.

Senate concurrent resolution No. 17:

Resolved by the Senate (the House of Representatives concurring), That there be printed 4,750 copies of the "Report on the Japanese naval medical and sanitary features of the Russo-Japanese war to the Surgeon-General, United States Navy, by Surgeon William C. Dralman, United States Navy," the same to include the illustrations, of which 1,250 copies shall be for the use of the Senate, 2,500 copies shall be for the use of the House of Representatives, and 1,000 copies for the use of the Bureau of Medical and Surgery of the Navy Department—

To the Committee on Printing.

#### MESSAGES FROM THE PRESIDENT.

The SPEAKER laid before the House the following message from the President:

To the House of Representatives:

In compliance with the resolution of the House of Representatives of the 17th instant (the Senate concurring), I return herewith House bill No. 8424, "An act granting an increase of pension to David A. Jones,"

THEODORE ROOSEVELT.

Two Weeks House, March 14, 1906.

Mr. LOUDENSLAGER. Mr. Speaker, I move that the message be referred to the Committee on Pensions.

The SPEAKER. The gentleman from New Jersey moves that the message be referred to the Committee on Pensions. The question was taken, and the motion was adopted.

The SPEAKER also laid before the House the following message from the President, which was read, ordered to be printed, and referred to the Committee on Claims:

The Senate and House of Representatives:

I transmit herewith for the consideration of Congress a report by the Secretary of State, recommending a claim of the owners of the British steamship *Leedsford*, amounting to \$128,111, for damage to that vessel while undergoing repairs necessitated by a collision with the U. S. Army transport *Crook* in New York Harbor on May 21, 1900.

THEODORE ROOSEVELT.

The White House, March 14, 1906.

R. L. VASQUEZ.

Mr. CASSEL. Mr. Speaker, I offer the following report by resolution from the Committee on Accounts, and move that it be adopted.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House resolution No. 351.

Resolved, That the Clerk of the House is hereby authorized and directed to pay, out of the contingent fund of the House, to R. L. Vasquez the sum of \$67.53, being the amount of clerk-hire allowance due the late Representative George A. Carter from February 1 to the date of his death, February 19, 1906.

The question was taken, and the resolution was agreed to.

Mr. LITTAUER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 4 o'clock and 56 minutes p. m.) the House adjourned to meet to-morrow, at 12 o'clock noon.

#### EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred in follows:

A letter from the Secretary of the Treasury, transmitting a copy of a letter from the Secretary of Commerce and Labor submitting an estimate of appropriation for a relief light-vessel for the exclusive use of the twelfth light-house district—to the Committee on Interstate and Foreign Commerce, and ordered to be printed.

A letter from the Secretary of War, transmitting, with a copy of a letter from the Chief of Ordnance, a report of tests of iron and steel and other materials for industrial purposes at Watertown Arsenal—to the Committee on Manufactures.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. FLETCHER, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 15425) to empower the Secretary of War to convey to the city of Minneapolis certain lands in exchange for other lands to be used for sewage purposes, reported the same without amendment, accompanied by a report (No. 2250); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. ADAMS of Pennsylvania, from the Committee on Foreign Affairs, to which was referred the bill of the Senate (S. 1345) to provide for the reorganization of the consular service of the United States, reported the same with amendment, accompanied by a report (No. 2251); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. BARTHOLDT, from the Committee on Public Buildings and Grounds, to which was referred the bill of the Senate (S. 2501) to withhold from sale a portion of Fort Brady Military Reservation, at Sault Ste. Marie, Mich., reported the same without amendment, accompanied by a report (No. 2252); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. LACEY, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 15513) to declare and enforce the forfeiture provided by section 4 of the act of Congress approved March 3, 1878, entitled "An act granting to railroads the right of way through the public lands of the United States," reported the same without amendment, accompanied by a report (No. 2253); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. PRINCE, from the Committee on Banking and Currency, to which was referred the bill of the House (H. R. 5124) to amend section 5136 of the Revised Statutes of the United States permitting national banking associations to make loans on real estate as security, and limiting the amount of such loans, reported the same with amendment, accompanied by a report (No. 2254); which said bill and report were referred to the House Calendar.

Mr. TYNDALL, from the Committee on the Public Lands, to which was referred the bill of the Senate (S. 2292) for the relief of certain surveyors and settlers within the limits of the Northern Pacific Railway land grant, reported the same with amendment, accompanied by a report (No. 2255); which said bill and report were referred to the House Calendar.

Mr. LACEY, from the Committee on the Public Lands, to which was referred the House joint resolution (H. J. Res. 117) extending the time for opening to public entry the unallotted lands on the ceded portion of the Shoshone or Wind Indian Reservation, in Wyoming, reported the same without amendment, accompanied by a report (No. 2256); which joint resolution and report were referred to the House Calendar.

#### PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred, as follows:

By Mr. DEEMER: A bill (H. R. 16728) providing for the erection of a public building at Lock Haven, Clinton County, Pa.—to the Committee on Public Buildings and Grounds.

EMILY MAY. 27. 2005 3:07PM  
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**Date: Friday, May 27, 2005**

**Time: 4:06 pm**

**NOTIFICATION OF FACSIMILE TRANSACTION**

**To: Tammy**  
**FAX Telephone Number: 609-633-6555**

**Number of Pages to Follow: 10**

---

**From: Brian**

**FAX Telephone Number: 202-224-0879**

**Comments:**

Attached is the Senate Document that you requested. Following the document are Congressional record pages dealing with the introduction of a related bill, its referral to a Senate committee, the bill's consideration and passage by the Senate, and its referral to a House committee. I've marked the relevant text.

DE00024

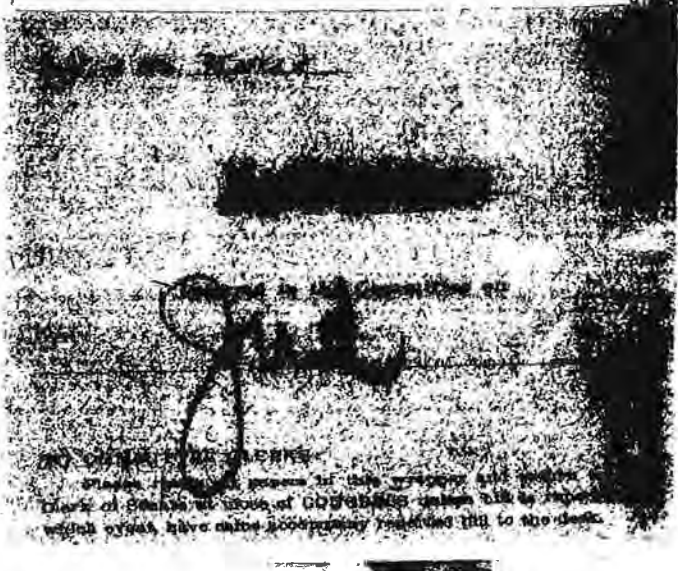
59<sup>TH</sup> CONGRESS, } S. 4975.  
1st Session.

## A BILL

Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States.

By Mr. KEAN.

MARCH 9, 1906.—Read twice and referred to the Committee on the Judiciary.



59TH CONGRESS,  
1ST SESSION.

# S. 4975.

---

IN THE HOUSE OF REPRESENTATIVES.

MARCH 14, 1906.

Referred to the Committee on the Judiciary.

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## AN ACT

Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States.

Whereas commissioners duly appointed on the part of the State of New Jersey and commissioners duly appointed on the part of the State of Delaware, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles, which are contained in the words following, namely:

“First. Whereas a controversy hath heretofore existed between the States of New Jersey and Delaware relative to the jurisdiction of such portion of the Delaware River as is included within the circle of twelve-mile radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom; and

“Whereas there is now pending in the Supreme Court of the United States a cause wherein the said State of New

Jersey is the complainant and the said State of Delaware is the defendant, in which cause an injunction has been issued against the State of Delaware restraining the execution of certain statutes of the State of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-seven years and upwards; and

“Whereas for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H. McCarter, Franklin Murphy, and Chauncey G. Parker have been appointed commissioners on the part of the State of New Jersey by joint resolution of the legislature of said State, and Preston Lea, Robert H. Richards, Herbert H. Ward, and George H. Bates have been appointed commissioners on the part of the State of Delaware by joint resolution of the general assembly of said State, to frame 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 said 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: Now therefore,

“The said State of New Jersey, by its commissioners above named, and the said State of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said States as follows:

“ARTICLE I. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed upon the soil of said State, or upon the eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that

State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

"ART. II. Criminal process issued under the authority of the State of Delaware against any person accused of an offense committed upon the soil of said State, or upon the western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

"ART. III. The inhabitants of the said 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.

“ART. 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 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 so 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. 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 the 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.

“ART. 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.

“Art. VI. 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.

“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.

“ART. IX. This agreement shall be executed by the said commissioners when authorized to do so by the legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the



Office of Secretary of State  
DOVER, DEL.

JOSEPH L. CONNALL  
Secretary

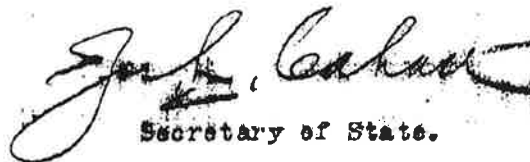
December 21st, 1906

Hon. Hiram R. Burton,  
Washington, D. C.

Dear Sir:-

I am directed by the Governor to send the within copy of the resolution adopted by the Delaware and New Jersey Commissions, pursuant to the request of said Commissions, and respectfully request that you act therein in accordance with said request.

Respectfully yours,

  
Secretary of State.

DE18295

COPY.

"Mr. Hillel 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."

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club" No. 1510 Walnut Street, Philadelphia, Friday, December 15th, 1905.

John Boyd Avis,

Secretary.

DE18296



State of New Jersey,  
Assembly Chamber,

Woodbury, ~~Trenton~~, December 19, 1905

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

Dear Sir:-

I send to you enclosed, a copy of the resolution, memorandum and certificate which I have forwarded to Governor Lea and Governor Stokes. I have also mailed to you, under separate cover, a copy of the New Jersey Game Laws. You will find the laws relating to the Delaware River between pages 95 and 127.

Yours respect'y.

*John Boyd Thaw*

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.

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club," No. 1510 Walnut Street, Philadelphia, Friday, December 15th, 1905.

*John Boyd Andrews*

Secretary



State of New Jersey  
Assembly Chamber

Woodbury, ~~Trenton~~ December 13, 1905

Walter H. Hayes, Sec'y,  
907 Market Street,  
Wilmington, Del.

Dear Sir:-

I have received your letter fixing the University Club, 1510 Walnut Street as the place, and Friday, December the 15th instant, at two thirty P. M. as the time for holding the conference between the Delaware and New Jersey Commissioners under the compact recently agreed to.

The New Jersey Commission expect to be present at the time and place fixed.

Yours respect'y.

*J. Boyd Davis*

*Book submitted Jan, 16, 1907*



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 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 Strickle 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 certain duties, to-wit: to ascertain the dividing line between the Delaware River and Bay, and to regulate the catching and taking of fish in the Delaware River and Bay, between the said States, and to report thereon to the Legislature of the State of New Jersey, and the General Assembly of the State of Delaware, respectively, and the said Commissioners on the part of the State of New Jersey, in conformity with the said Compact, have conferred with the said Commissioners on the part of the State of Delaware, and the said Commissioners on the part of the State of Delaware, have reported to the Legislature of the State of New Jersey, and the General Assembly of the State of Delaware, respectively, and the said Commissioners on the part of the State of New Jersey, and the said Commissioners on the part of the State of Delaware, have agreed upon the following 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 States, to-wit:



Section 8. 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 flowing into the said waters.

Section 9. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters with a seine or net of any character, the meshes of which shall be less than five and one quarter inches stretched measure, 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 shad in any manner whatsoever, between the first day of May and the tenth day of August of each and every year.

Section 10. That hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rock

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 any such sturgeon under five feet in length 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 any 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 fish, or to allow any of the fish, or to allow any of the stuff, wood or gas, tar, saw dust, tan bark, cocculus indicus (otherwise known as harrisa), 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

*Handwritten signature*

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, wire-gears, 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 overall 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 six 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 said Delaware River or Delaware Bay, with purse net, or operated by the method of said net, any fish, shellfish, or other aquatic life.

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 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 State Treasurer for the use of the state.

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 the same into any 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 <sup>also</sup> have concurrent jurisdiction over all offences and violations of <sup>A</sup> 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 named 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 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 named 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

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 23. 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 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 laws relating to fish, game and birds and for the imposition of penalties for violations thereof," approved March 23, 1909, 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.

*Passed by  
with yeas and nays*

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Volume \_\_\_\_\_ Page \_\_\_\_\_

EC-0914.1

Delaware Commissions

DE-NJ Fisheries Compact

General Files 1905-1967

Folder # 3 - Legislation

STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

Trenton, N. J. May 9th 1905.

Hon. Joseph L. Cahall,  
Secretary of State,  
Dover, Del.

Dear Sir:-

Your letter of the 28th ult., addressed to the Secretary of State of the State of New Jersey, informing him of the fact that the Commissioners recently appointed by the State of Delaware, to meet with a similar commission appointed from New Jersey, had organized and were ready to meet with the New Jersey Commission, has been handed over by the Secretary of State to me. I beg to state to you that our legislature, pursuant to law, just before its adjournment, appointed William J. Bradley, John Boyd Avis and James Strimple, Commissioners. I will at once communicate with Senator Bradley and announce the fact that your commission has organized and suggest that similar action be taken by our commission, and that a meeting of the two commissions be arranged for. I am,

With great respect,

Your obedient servant,

*Robert Hull Carter*  
Attorney General.

DE Public Archives

0914,1

DE Commissioner's  
Fisheries Compact

1905-1907

Brian's

338631

1905

## Report of New Jersey Commissioners on New Jersey and Delaware Fisheries.

The commissioners appointed on the part of the State of New Jersey by an act of the Legislature, approved May eleventh, one thousand nine hundred and five, to confer with like commissioners appointed by the General Assembly 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, and also to ascertain the dividing line between said river and bay 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 Legislature as follows:

That, in accordance with the provisions of said act of the Legislature, they did, on the twenty-ninth day of May, one thousand nine hundred and five, meet, and after being duly qualified, according to law, did organize by the election of William J. Bradley president and John Boyd Avis 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 public meeting was held in Penns Grove, New Jersey, and a large number of fishermen from different sections of the State were represented. 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 Delaware, to wit, Alexander B. Cooper, William S. Hillis and Walter Hayes, and arranged for meetings of the joint commission in the city of Philadelphia.

(3)

On the fifth day of December, one thousand nine hundred and five, 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 procedure agreed upon. Meetings of the joint commissioners and the respective State commissioners were held from time to time until the sixteenth day of January, one thousand nine hundred and seven, 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 heretofore submitted to the Legislature of the State of New Jersey, signed by all the commissioners on behalf of both States, to take such action thereon as provided in "The act to ratify and confirm the compact and agreement between the States of New Jersey and Delaware, respecting the Delaware river and bay, and to authorize the execution thereof," approved.

Owing to the 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 Delaware. 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 two States. The commissioners on the part of this State and the commissioners on the part of the State of Delaware have submitted the bills for uniform laws as so drawn to the Attorney-Generals 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.

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

especially industries to ascertain what protection shall be given to these fish and industries. They have been unable to discover any cause or causes for the present conditions, excepting the overhauled 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 maps, and on the twenty-second day of June, one thousand nine hundred and six, the 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 that, as the character of the soil was so spongy and marshy that it was almost impossible to select suitable places for erecting the monument. After a thorough and careful inspection, however, of both sides of said river and bay, and in view of the information above mentioned, they determined that a monument should be erected on the New Jersey shore at or near the mouth of Hope creek and that a similar monument should be erected on the Delaware shore at or near Linton Point, 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 Delaware bay, and thereupon they determined to acquire title in the State of New Jersey to a sufficient quantity of land upon which said monument is to be erected on the New Jersey shore, and instructed the secretary to ascertain if such title could be obtained. They have arranged with the owner of said land to convey to the State of New Jersey a sufficient quantity thereof upon which said monument is to be erected.

On the thirty-first day of October, one thousand nine hundred and six, the commission entered into a contract with William Davidson, of the city of Wilmington, a competent and trustworthy dealer in and manufacturer of monuments, to erect two suitable monuments, one on the New Jersey shore at the point above designated, and one on the Delaware shore at the point above designated. The cost of the erection of and inscription on both the monuments amounts to \$370. The contract was awarded to said

Oct 31, 1906

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 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. 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 is to be at least four feet square at the bottom, to continue at that size six inches in height, to taper on all sides to the top of the concrete, which shall be at least two feet 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 New Jersey shore is to be the following inscription:

*"MOUTH OF DELAWARE RIVER.*

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Liston Point on the Delaware shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, one thousand nine hundred and six, in pursuance of uniform acts of the Legislature of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"WILLIAM J. BRADLEY,

"JOHN BOYD AVIS,

"JAMES STRIMPLE,

*"Commissioners of New Jersey.*

"ALEXANDER B. COOPER,

"WILLIAM S. HILLS,

"WALTER H. HAYES,

*"Commissioners of Delaware."*

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

*"MOUTH OF DELAWARE RIVER.*

"A straight line drawn from the center of this monument to the center of a similar monument erected at or near Hope creek on the New Jersey shore is the dividing line between the Delaware river and bay, ascertained June twenty-second, A. D. one thousand nine hundred and five, in pursuance of uniform acts of the Legislature of the State of New Jersey and the State of Delaware, approved A. D. one thousand nine hundred and five.

"ALEXANDER B. COOPER,

"WILLIAM S. HILLS,

"WALTER H. HAYES,

*"Commissioners of Delaware.*

"WILLIAM J. BRADLEY,

"JOHN BOYD AVIS,

"JAMES STRIMPLE,

*"Commissioners of New Jersey."*

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 the cost of making, erection and inspection of said monuments and other expenses.

W. J. BRADLEY,

JOHN BOYD AVIS,

JAMES STRIMPLE,

*Commissioners of the State of New Jersey.*



State of Delaware,



Office of Secretary of State  
DOVER, DEL.

JOSEPH L. CAHALL,  
SECRETARY.

COPY.

Woodbury, N. J.,

August 7, 1905.

Hon. Joseph L. Cahall,  
Dover, Delaware.

Dear Sir:-

Your letter addressed to Gov. E. C. Stokes has been forwarded to me for reply. The names of the New Jersey Commissioners are Senator W. J. Bradley, Camden, Senator J. Strimple, Pedricktown, N. J., and myself. We have organized by the election of Senator Bradley as President, and I was elected Secretary. We shall be very glad to receive any communication from the Delaware Commission, and will make arrangements for a meeting at any time that they think advisable. Our plans were to gain as much knowledge as we can of Jersey Fishermen, before holding a joint meeting. If the Delaware Commission feel, however, that it is best for us to meet early in joint session, we shall be glad to do so.

Yours very truly,

John Boyd Avis,

Secy. New Jersey Commission.

0914.1

DE Commissioners  
fisheries compact

Brians

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WILLIAM S. HILLES.

WALTER H. HAYES,  
SECRETARY.

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

Wilmington, Del., March, 14, 1906.

Mr. Mram R. Burton,  
House of Representatives,  
Washington, D. C.

Dear Doctor:-

The New Jersey Commissioners and the Delaware Commissioners contemplated under the Compact between these two States and who were appointed under said Compact, and additional Legislation of both States for the purpose of drawing uniform fishing laws to be enacted by both states in regard to fishing in the Delaware River and Bay, met and organized on December 15, 1905 by the election of Hon. Alexander B. Cooper of Delaware, President and the Hon. J. Boyd Avis of New Jersey, Secretary.

At that meeting a resolution was unanimously adopted in reference to the ratification of the Compact, by Congress.

I inclose you a certified extract from the minutes of that meeting. Under the laws the Secretary of the Delaware Commission and the Secretary of the New Jersey Commission are both required to keep the minutes of the meeting of the Joint Commission.

  
Secretary.

DE18304

ALEXANDER B. COOPER,  
PRESIDENT.

WILLIAM B. HILLER

WALTER H. HAYES,  
SECRETARY.

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

Mr. Hiller 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 carry out the provisions of the Compact entered into between the States of Delaware and New Jersey, and that the Commission shall take further action.

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.

I, Walter H. Hayes Secretary of the Delaware Commissioners, (Delaware-New Jersey Fisheries Compact) hereby certify that the above and foregoing is a true copy of a portion of the minutes of the Delaware Commissioners. Witness my hand and seal of office of a meeting of the joint Commission of Delaware and New Jersey, number 18th A. D. 1908.

*Walter H. Hayes*  
Secretary.



State of New Jersey,  
Assembly Chamber,

Woodbury, Trenton, December 19, 1905

Hon. E. C. Stokes,  
Trenton, N. J.

Dear Governor:-

I send enclosed, a copy of the resolution and minute adopted by the Delaware and New Jersey Commission in joint session last Friday.

The desire of the Commission is that a request be made to either the President or other persons who may have the charge and control of this compact, to hold the matter up for a short period.

I will see you about the matter in a few days.

Yours respect'y.

*John Boyd Dowd*

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New Jersey State Archives  
Governor Stokes Papers  
Box 22 Folder 855

" Mr. Hillis 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.

The above resolution was adopted at a joint meeting of the Delaware and New Jersey Commissions, appointed by the General Assembly of the State of Delaware and the Legislature of the State of New Jersey, by acts approved March 23rd, 1905 and May 11th, 1905, respectively, at a meeting held at the "University Club" No. 1510 Walnut Street, Philadelphia, Friday, December 15th, 1905.

  
Secretary.

New Jersey State Archives  
Governor Stokes Papers  
Box 22 Folder 855



Wilmington, Delaware, January 19, 1907.

*Hon.* Hiram R. Burton, Esq.,  
House of Representatives,  
Washington, D. C.

My dear Sir:

The time has now come when it is necessary that the Compact now pending in Congress for ratification be finally ratified by the passage of the Act which is now in the House of Representatives and, as I understand it, is in the hands of the Judiciary Committee of the House. The passage of said Act, ratifying said Compact, was delayed upon your request and such request by you was made in accordance with my letter of March 16th, 1906 and in accordance with letters to you from Members of the Fishery Commission of the State of Delaware. The reason for these requests for delay was in order that it might be ascertained whether the Joint Commission representing the States of New Jersey and Delaware could agree upon a uniform fishing law. My personal judgment at the time was that the ratification of this Compact should not be delayed for the above stated reason, and that the State was in honor bound to procure the

H. R. B. #2.

ratification of the Compact without any delay. I joined in the request, however, ye you to delay such ratification by the House of Representatives in deference to the views and desires of the Members of the Delaware Fishery Commission. On June 8, 1906 I wrote you a letter setting forth in extenso the reasons why the passage of the Bill to ratify the Compact should be accomplished before the adjournment of Congress. The chief reason for <sup>action</sup> ~~delay~~ at that time was that the Supreme Court had only agreed to postpone proceedings in the case of the State of New Jersey vs. the State of Delaware until the Ninth of October, 1906, which date would arrive before the re-assembling of Congress. The Compact, however, was not ratified by the last Session of Congress and it required all the efforts of Counsel from this State and from the State of New Jersey to secure a further postponement of the proceedings in the above stated cause. The Supreme Court, however, did finally postpone proceedings in the case until the First of February, A.D. 1907 for the purpose of permitting Congress to ratify this Compact, and in taking this action the Supreme Court gave Counsel to understand that no further postponement could be expected but that the case must be finally disposed of.

Rather than run the risk of any further opposition to the ratification of this Compact by the Fishery Commission of this State, I have delayed any attempt to have the above mentioned Act passed by the House of Representatives earlier in the present Session and have been urging the Fishery Commission to finally finish their work and notify me

Form No. 165.

# THE WESTERN UNION TELEGRAPH COMPANY.

INCORPORATED  
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ROBERT C. CLOWRY, President and General Manager.

**RECEIVED** at

5 NY U1 Ds 18 Dh

Washington D.C., Mch 14, '06

Hon H.C. Stokes,

Delaware Commissioners with Attorney wire Burton to hold up consideration of agreement charge bad faith. Wire me fully.

H.C. Loudenslager.

540 P.M.

~~Handwritten signature~~  
675-

New Jersey State Archives

Goerner Stokes Papers

Box 12, Folder 675

25  
Congressman Loudenslager 'phones me that Burton, Congressman from Delaware and Bates, are at Washington claiming that the Commissioners passed a resolution which provided that certain suits should be disposed of before Congress took any action. A copy of these resolutions is there ~~signed~~ certified to by the Delaware Secretary of the Commission. What are these suits and what resolution was passed. Won't you go down to Washington and see Senator Kean and Congressman Loudenslager as Senator Kean and Senator Allee have agreed to hold up the bill until further information is given.

Ask if he wants to talk to the Governor. He does not understand the thing at all.

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New Jersey State Archives  
Governor Stokes Papers  
Box 12 Folder 675

March 22, 1906.

Hon. H. C. Loudenslager,

House of Representatives,

Washington, D. C.

Delaware and New Jersey represented by respective commissioners,  
agreed upon a compact for the settlement of long-standing disputes  
as to fishing and other rights, and cessation of litigation concern-  
ing the same. The legislature of both states ratified the compact  
agreed upon by their commissioners. The consent of Congress is nec-

675-

(2)

essary as provided for in the pending bill. There was no bad  
faith on our part. Have written.

(Signed) E. C. Stokes.

New Jersey State Archives  
Governor Stokes Papers

Box 12 Folder 675





HOTEL MORTON  
ATLANTIC CITY

March 19th 1906

Hon Alexander B Cooper  
Dist Del & Sec. Fisheries Compact Commission

My dear Sir

I am in receipt of your favor of  
March 17th calling my attention to the  
action of Senator Kean in passing  
a bill passed giving consent of Congress  
to the Compact entered into between the  
States of New Jersey & Delaware in  
relation to that boundary question  
&c Mr Aris Antipica Governor  
notes of the action of the Joint  
Committee requesting that nothing  
be done by Congress until we have  
agreed upon uniform fishing laws  
I have written to Senator Kean  
and Congressman Loudenslager  
requesting that nothing further be  
done until Delaware & New Jersey  
agree to uniform fishing laws

DE16091



HOTEL MORTON  
ATLANTIC CITY

I regret that such action was  
taken by Senator Keam but  
feel assured that some misun-  
derstanding of matter is responsible  
for the occurrence.

I shall call upon Governor  
Stokes tomorrow and find  
out how the mistake occurred.

Sincerely yours

W. J. Bradley



**HOTEL MORTON**  
ATLANTIC CITY



Hon Alexander B Cooper  
Del. Fisheries Com, 907 Market st  
Wilmington  
Del

DE Public Archives

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DE Commissioners  
Fisheries Compact  
General Files  
1905-1907

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DE16094

GEO. H. BATES  
3002 LEXINGTON AVE.

PHILADELPHIA, MARCH 22, 1906

Hon. Robert H. McJarter.

My dear sir -

It seems necessary that we should speedily have a conference to determine what action, joint or separate, is required to make clear to the Supreme Court the necessity of acceding to our joint request. On returning from Wilmington last week I was on the point of writing you about several matters, having had an understanding with Atty. Gen. Richards that I would confer with you on the particular subject above mentioned. I was interrupted in my purpose by the unexpected information that Senator Kean, acting under what advice I know not, had abused the confidence of the Senate, in the absence of anyone from Delaware, by procuring the passage of a bill by unanimous consent, obtainable only by what was in fact, however intended, very sharp practice. The refusal of Senator Kean to have the bill recalled, upon the return to Washington of Senator Allee, would seem to justify the belief that the absence of the latter was purposely taken advantage of, and was, to say the least, inconsistent with the spirit of courtesy and fair dealing which has hitherto characterized the relations of representatives of both states.

The fact that the Governor of Delaware had requested delay in congressional action and the Governor of New Jersey had been asked to do so by representatives of both states having the business in charge would seem to have justified all concerned in assuming that the fairness and courtesy hitherto observed might still be relied on. But aside from this, in such a matter, it might reasonably have been assumed that those who represent Delaware, either before the Court or in Congress, would be advised and consulted as to any such proposed action as that of which

DE18162

R.H.McC. 2.

5.22.06.

Senator Kean, so far as the record shows thus far, is the author,

I deprecate the introduction into the business of any such incident, and would regret a necessity for its public discussion. I believe that

you and I can meet speedily, we can arrange for a definite and satisfactory understanding with the Court. It is clear that there must be a fuller statement of the situation presented on April 9th, when the original docket is to be gone over for the express purpose of explanations on counsel in this and other cases. Such statement we should have in print and supplement it by any required verbal explanations.

I will meet you at any convenient point, but it ought to be very soon.

Very truly yours,

[Copy of telegram received by telephone]

Newark, N.J. Mch. 23. 1906.

Geo. H. Bates, 3002 Lehigh Ave. Phila. Pa.

Will meet you at Bellevue-Stratford Saturday morning at 10 o'clock.

Robert H. McCarter.

DE18163

**DE H.S.**  
**Box 7 File 2**

DE18164

March 24, 6.

Alexander B. Cooper, Esq.

Dear Aleck,

I have been delayed, from day to day, in writing you. I found the situation at Washington unsatisfactory, but succeeded, at least, in arresting the efforts to shove the bill through both houses, post haste. It was put through the Senate by unanimous consent obtained by Senator Kean. I have no doubt, by producing the impression, if not actually representing, that it was a mere perfunctory matter. Mr Allee was absent and could undoubtedly have obtained the recall of the bill, upon a statement that, if present, he would have objected and that he and Kean had an understanding that the bill was to rest undisturbed, by agreement of both states. When I met Kean and Allee together the former would not agree to move, himself, for the recall of the bill and Allee would not insist on it. This satisfied me that the one ~~intentionally~~ intentionally called the matter up in the way he did; and that the other either did not understand or did not care about the effect upon Delaware. He did seem sensitive to probable criticism at home of which I made a plain suggestion. This point, if you can get it brought home to him by one of his political friends, I think may yet wake him up. Can you not accomplish this through Walter Hayes. Anyone can see that Allee cannot escape the most lively and even bitter criticism if this bill now gets through the House, since it was in the Senate that it could have been most effectually delayed. Dr. Burton put this view strongly to Allee and if the matter gets into public discussion, <sup>in Delaware</sup> (as it is pretty sure to do unless Allee retrieves his blunder) the conduct of the two men will be in marked contrast. ~~Mr. B. was very efficient and secured the hanging up of the bill in the~~ Judiciary committee of the House, to which it is referred.

DE18169



3, 24, '06.

I am in correspondence with McCarter and invoking his cooperation in having the Court suspend the proceedings indefinitely. I believe, however, that New Jersey people are using the action of the Court to push the bill through, and that they all ignore the action of your commission and theirs. I know that Gov. Stokes was doing this and doubt if he acted upon your request to him and Gov. Lee. I will do the best I can with McCarter but fear that he is among those behind Kean; at least if he is not Kean prevaricated. While I am doing what I can, I trust you will pull every string within your reach. Some points which occur to me I venture to suggest.

1. Try to have it made apparent to Allee that he cannot escape responsibility for the surreptitious passage of the bill in his absence, unless he insists on ~~the~~ <sup>its</sup> recall, and, if Kean prevents his doing this by unanimous consent, then by putting himself on record in open Senate as to the way in which its passage was secured. As I said Hayes ought to be able to secure this.

2. Try to impress Richards with the gravity of the situation and the importance of securing present non-action by Congress. He was very weak-kneed but I understood from you that you had made some impression on him. Do get all the pressure upon him that you can arrange for, both from yourself and others; and let me know, as soon as possible, how he talks. He and M. McCarter and I were to meet this morning, but the meeting was called off because of illness in McCarter's family. I would like you to see Richards and let me know the result before he and I meet McCarter, which will be soon.

3. Won't you see Judge Gray and get him fully informed of the situation and then ascertain what he advises. He was too much occupied, when I saw him, to get his mind on it. If you get him advised of the facts I am sure he will help us in any way he can,--certainly by advice. If you could get from him a letter to you or me, personal in form, but which he would permit us to show to anyone required to act officially upon the matter, it would be of great value.

4. Dr. Burton asked from me (and I promised to prepare it) a statement of

A. B. Cooper, - 3.

5, 24, '06.

the whole matter so far as its present status is concerned. I am to give him this in such form as to be embodied by him in any statement he may wish, or be called on to make, either before the committee or in the House. Now, I want you, if you will, to send me within a day or two, a memo. (pen-  
cill will do,) of points to be suggested to him, so as to insure against my omitting anything of importance.

5. I think Handy can render great service in influencing members of the Judiciary committee with whom he served in the House. Can you see him and put him in possession of the facts necessary for him to act intelligently? I will also write to him, but I am under some pressure just now and it would help me very much if you will post Handy, which you can do verbally with less labor than I can do it in writing at length.

Let me hear from you soon. I am sorry to bother you so much but time is everything. *If you can get a tolerably leisure day you could cover all these points.*

Very truly yours,

Thanks for the newspapers. I am treasuring them up.

**DE H.S.**  
**Box 7 File 2**

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DE18172

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 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 Tuesday the 8th day of May 1906, at 2.30 o'clock P. M.



President.

0914.)

DE Commissioners

Fisheries compact

1905-1907

Briant  
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State of Delaware,  
Attorney General

RICHARD H. RICHARDS,  
ATTORNEY GENERAL.  
WILMINGTON, DELAWARE.

Wilmington, Delaware, Jan. 19, 1907.

To the

Chairman of the Judiciary Committee,  
House of Representatives,  
Washington, D. C.

Dear Sir:

At the first Session of this Congress a Bill was passed by the Senate to ratify a Compact which had previously been signed and agreed to by the States of New Jersey and Delaware. The object and purpose of this Compact was to settle certain matters concerning fisheries which had been the cause of the litigation for years pending in the Supreme Court of the United States between the two States. This Compact was passed by the Legislature of the State of Delaware and also by the Legislature of the State of New Jersey and, in accordance with the Acts of the respective Legislatures, the Commissioners from each State, of whom I have the honor to be one, on the part of the State of Delaware, signed and formally executed the Compact which had been agreed to by the respective Legislatures. This Compact provided that it should be ratified by

DE18312

of the United States. It does not purport to settle any question of the boundary line between the two States, but on the other hand, expressly provides that the boundary line between the two States shall not in any wise be affected by the Compact. The Governors of the two States upon the assembling of the First Session of the present Congress transmitted a copy of the Compact to the President of the United States, requesting that he submit the same to Congress for ratification. The matter was transmitted to the President by a separate communication from each of the Governors with a separate specific request that he submit the Compact to Congress for ratification. The President acting in accordance with the two requests, submitted the Compact to Congress by a Message to the Senate, as I am informed. A Bill was drawn to ratify the said Compact and introduced in the Senate by Senator Kean of New Jersey, and immediately passed the Senate. The Bill was then transmitted to the House of Representatives and referred to your Committee, as I am informed. About this time a Joint Commission appointed by the Governors of New Jersey and Delaware for the purpose of drafting a uniform fishing law, to carry out the provisions of said Compact, joined in a request to me and to the Governors of each of the said States, that the ratification of the Compact be delayed until it could be ascertained whether the said Joint Commission could agree upon such uniform fishing laws. At the time of this request, my judgment was that the ratifi-

23.

of the Compact should not be delayed for this or any other reason. As I viewed the matter, each State was in honor bound to secure, if possible a speedy ratification of the Compact by Congress, and I further was of opinion that neither State could afford other help. Through the executive, I requested the President of the United States to call upon Congress to ratify this Compact, subsequently to make requests to Congress itself to delay such ratification. Notwithstanding my personal views upon the subject, out of deference to the request of the Joint Fishery Commission, I joined in a request to Congressman Burton of this State for a delay of the passage of the Act to ratify said Compact. Pursuant to the requests thus made, Congressman Burton, I am informed, made a request of your Committee that the Bill to ratify said Compact should be held up by said Committee and should not be reported to Congress until a further communication from him. The request made of Congressman Burton to ask for a delay of the ratification of this Compact was on or about March 15th, 1906. At the time I joined in such request, I was lead to believe by the Fishery Commission that they would be able to ascertain whether they could agree upon uniform fishing laws within a few weeks and that the Compact could be ratified by the last Session of the present Congress. Subsequently I was informed by some Member of Members of said Commission that they felt satisfied that they could do so but had not at that time agreed upon the law itself. Shortly before the adjournment of the last Session of the present Congress, to-wit, on 20

DE18314



14.

1906, I wrote Congressman Burton a long letter setting forth the reasons why, in my judgment, the Compact should be ratified at once. In that letter I suggested to Congressman Burton, as is the fact, that the considerations involved in the matter were legal considerations and, of course, to assume all responsibilities for his action in the matter. Congressman Burton at that time, both verbally and by letter, gave me to understand that he would withdraw any objection that he had made and bring about the ratification of the Compact before the adjournment of the last Session of Congress. I did not know that he had failed to do this until after Congress had adjourned, when he wrote me, after the adjournment of Congress stating reasons why he did not care to withdraw his opposition to this measure. Not only was he at that time advised to bring about the ratification of the Compact by myself, but he was also so advised by the Governor of this State.

I am writing to-day a letter to Congressman Burton requesting him to press at once for the passage of the Bill to ratify this Compact, advising him that we had great difficulty in securing a further postponement of the proceedings in the case of the State of New Jersey vs. the State of Delaware by the Supreme Court when we last appeared before that Court on October 9th, and that the Court clearly intimated that the delay which they then granted until the First of February, 1907 for the express purpose of giving Congress a further opportunity to ratify this Compact, would not be again extended.

DE18315

I enclose herewith a copy of my letter to Congressman Burton and also a copy of all enclosures which were contained in my letter to him.

It will appear from the statements contained in my letter to Congressman Burton that the Governor of this State desired the ratification of this Compact, that the present Legislature so desired, that of course the last Legislature, which agreed to the Compact, so desired, and that the majority of the people of this State by their vote at the last election was in favor of this agreement between the two States.

It will, therefore, clearly appear, in case Congressman Burton should further oppose the passage of the Bill ratifying this Compact, that such action would be contrary to the wish of the present State Government of this State and contrary to the wishes of a majority of the people of this State.

I do not know what attitude Congressman Burton will now take in the matter. I do not desire to incur any further opposition from him in the matter. I do, however, desire to state to you as the Chairman of the Committee having charge of the Bill in question, that in my opinion this Bill should be passed by the House of Representatives at once, and I further state that such is the opinion of the Governor of this State.

I remain,

Yours very truly,



Attorney General.

THE SENATE OF NEW JERSEY

June 18, 1906.

Walter H. Hayes, Sec'y,  
907 Market Street,  
Wilmington, Del.

Dear Sir:-

I have received your letter fixing Friday, the 22nd day of June for the trip down the Bay.

After consultation with Senator Bradley, we have made arrangements to meet you, leaving Philadelphia on the 8.32 train, arriving at Wilmington at 9.10.

We hope to have all the Commissioners present, but will have no guests.

We think it will be a good time to go over the provisions of the joint fishing law and if possible, hope we can arrive at a definite conclusion, so that the compact may be approved by Congress, with the consent and approval of the Delaware Commissioners.

Yours truly,

0914.1

DE Commissioners

Fishes compact

Prians

33863)

FRANCIS RAWLE  
HENRY C. EBLING  
JOSEPH S. LOVERING

LAW OFFICES  
328, CHESTNUT STREET  
BROWN BROTHERS BUILDING  
PHILADELPHIA

COPY

THE STATE OF NEW JERSEY, )  
Complainant, )  
vs. )  
THE STATE OF DELAWARE. )

SUPREME COURT OF THE  
UNITED STATES.

January 16th, 1906.

Hon. Robert H. Richards,  
Attorney General of Delaware.

Dear Sir:\*

Counsel for both parties have expressed their acquiescence in my suggestion of a meeting. I will therefore, if you please, fix Friday, February 2nd, 1906, at three o'clock at this office. Please let me know if that will suit you.

Yours very truly,

*Francis Rawle*

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161 www.hsd.org

**DE H.S.  
Box 7 File 2**

State of Delaware,



Office of Attorney General

ROBERT H. RICHARDS,  
ATTORNEY GENERAL.  
DANIEL O. HASTINGS,  
DEPUTY ATTORNEY GENERAL.

Wilmington, Del., Jan. 17, 1906.

Hon. George H. Bates,  
3002 LeHigh Avenue,  
Philadelphia, Pa.

My dear Sir:

I am in receipt of a letter to-day from Mr. Rawle in which he fixes Friday, February 2nd, at three o'clock P. M., at his office, as the time and place for the meeting of Counsel concerned in the case of the State of New Jersey vs. the State of Delaware, with the Master appointed in said case. This date is entirely satisfactory to me and also to Mr. Ward and I have so advised Mr. Rawle. I further advised Mr. Rawle that I felt confident that the date would be satisfactory to you, but that I would communicate with you. If the date is not satisfactory, will you immediately communicate with Mr. Rawle in relation to the matter and oblige,

Yours very truly

*Robert H. Richards*

*1/18. Ackgd saying that  
- Date is satisfactory, also  
recommending him to secure some  
copies of last pamphlet Delaware.*

**DE H.S.**  
**Box 7 File 2**

---



GEO. H. BATES  
8002 LEHIGH AVE.

PHILADELPHIA Feb. 22, 1906

*Richards*  
Hon. Robert H. McCarter,

*Richards*  
My dear Mr. McCarter:-

Mr Rawle and I were both in the Court at Washin-  
ton on Monday and Mr. Rawle filed his report of which he is sending  
you a copy, as neither you nor *McCarter* Mr. Richards appeared, we did nothing  
further, but Mr. McKenney had a little talk with the Chief Justice  
and he said that it would not be necessary to call the matter to  
the attention of the Court that day, as no one from New Jersey was  
present. He suggested that if we were agreed as to what order should  
be entered, it could be done next Monday.

I have drawn a short stipulation which seems to me to cover  
all that is necessary, and having shown it to Mr Rawle, I enclose a  
copy herewith in the form which expresses Mr. Rawle's thought on  
the subject as well as my own. It is designed to leave the matter in  
statu quo until counsel desire to stir the Court up on the subject.

*and hand*  
If this is satisfactory to you, please sign it and return it  
to me so that I can receive it on Saturday and I will undertake to  
see that an order is entered in accordance with the stipulation,  
if the Court care to do it, as I have no doubt they will.

*Mr. McCarter*  
I am sending a copy by this mail to *my* colleagues in Wilming-  
ton) and hope to hear from you all on Saturday.

If you want to consult with me about the matter tomorrow, you  
can call me up on the telephone. My number is Bioga 27-58 L.

Very truly yours,

As the time is so short I wish you would telephone me tomorrow morn-  
ing, if you receive this, so that I can send it to the printer at once.  
He closes Saturday at noon.

From the collections of the Historical Society of Delaware, 505 Market St., Wilmington, DE 19801  
302-655-7161 www.hsd.org

**DE H.S.**  
**Box 7 File 2**

Feb. 23, 1906.

Hon. Robert H. Richards,

Dear Mr. Richards:-

Mr Rawle and I were both in the Court at Washington on Monday and Mr Rawle filed his report of which he is sending you a copy. As neither you nor Mr McCarter were present we did nothing further, but Mr McKenney had a little talk with the Chief Justice, and he said that it would not be necessary to call the matter to the attention of the Court that day, as no one from New Jersey was present. He suggested that if we were agreed as to what order should be entered, it could be done next Monday.

The enclosed stipulation covers all that Mr Rawle thinks necessary and leaves the matter in statu quo, subject to future action of counsel. If satisfactory to you and Ward, please sign and return it so that I can receive it on Saturday, and I will arrange for the entry of the order in the terms of the stipulation, if agreeable to the Court. I am sending a copy to Mr McCarter and hope to hear from you all on Saturday. As you and Mr Ward are so near together and I am hurried, I send one copy for you both to look over, and as the time is short, I wish you would telephone to me tomorrow morning, if you receive this, so that I can give it to the printer at once.

Very truly yours



Engineer Office, U.S. Army,  
815 Witherspoon Building,  
Philadelphia, Pa. March 10, 1906

Brig. Gen. A. Mackenzie,  
Chief of Engineers, U.S.A.,  
Washington, D.C.  
General:-

Referring to the question as to whether or not the United States will have a clear title to ~~the~~ the artificial island now under construction on Dan Baker and Stony Point shoals, Delaware River, when this island shall have been completed, I have the honor to report that I have today had a conference on this subject with Governor Stokes, of New Jersey. The island lies in the lower part of the Delaware River between New Jersey and Delaware. While it is nearer to the New Jersey shore than to the Delaware shore, it is within the circle of 12 miles radius drawn from New Castle, Del., as a center, within which circle the State of Delaware claims to own the bottom of the Delaware River, thus claiming within this circle the ownership of the river bottom up to the New Jersey shore. The question of the legality of this claim has never been settled. Governor Stokes suggests that if the Secretary of War were to write him a letter suggesting that ~~if the Secretary of War were to write him a letter suggesting that~~ the Legislature of New Jersey pass an act ceding to the United States title to the river bottom on which this island is constructed "so far as the interests of the State of New Jersey may appear", he would bring the matter promptly to the notice of the State Legislature, which is now in session; and that, if a similar letter were written to the Governor of Delaware, the same action would probably be taken at the proper time. The New Jersey Legislature will, it is presumed, adjourn in about 4 weeks; hence he considers it advisable that prompt action be taken. The Delaware Legislature is not now in session, but prior action on the part of the New Jersey Legislature will, it is thought, favorably impress the Delaware Legislature and assist in the passage of such an act by the latter.

Very respectfully,

Your obedient servant,

J. C. Sanford,

Major, Corps of Engineers.

1st indorsement  
War Department,

Office of the Chief of Engineers,

Washington, March 20, 1906

1. Respectfully submitted to the Secretary of War:
2. In carrying out the improvement of the Delaware River under authority of Congress, it was necessary to construct a bulkhead around portions of what are locally known as "Dan Baker" and "Stony Point" shoals, so as to form a basin within which to deposit the material dredged from the channel. When completed this area will be in the form of an island, which it is important should be under the possession and control of the Federal Government. This area is in the bed of the river between the States of New Jersey and Delaware, but nearer the New Jersey shore, and consequently belongs to one of the two States mentioned. It is understood that there is a contention between the two States as to the ownership of the bed of the Delaware River, and that a suit to settle the question is now pending in the Supreme Court of the United States.
3. I have the honor to recommend that letters be addressed to the Governors of the two States, requesting that the matter be laid before the respective legislatures with a view to securing such action as may

be necessary to vest in the United States title to that part of the river bottom on which the aforesaid island is constructed.

4. Two maps with description of the submerged land desired are herewith.

58654  
A. Mackenzie,  
Brig.Gen., Chief of Engineers, U.S. Army.

Two copies of inclo.3 with two  
copies of inclo.2 attached.

Chief Clerk,  
War Department, Mar.20, 1906

W.D.Letter 3/27 to Sec.of State, L.B. 13 page 251

Rec'd Office Chief of Engrs. Mar. 27, 1906

Major Sanford to note and return. O.C.of E. 28th Mch. '06.

58654 & inclo. 4

Noted by Major Sanford and respectfully returned to Chief of Engineers, U.S.A.

Inclo.4 herewith.

Mch.31/06.







**Engineer Office, U. S. Army**

215 WASHINGTON BUILDING

Philadelphia, Pa., March 16, 1906.

Brig. Gen. A. Mackenzie,  
Chief of Engineers, U. S. A.,  
Washington, D. C.

General:

As directed by your telegram of the 12th instant, I have the honor to submit inclosed tracing and description of submerged land on Dan Baker and Stony Point Shoals covering the site of the artificial island under construction for the deposit of material dredged from Delaware River.

Very respectfully,

Your obedient servant,

J. C. Sanford,

Major, Corps of Engineers.

(2 Inclos., tracing in sep. roll)



DESCRIPTION OF SUBMERGED LAND IN DELAWARE RIVER PROPOSED TO BE CEDED  
TO UNITED STATES. BY THE STATES OF NEW JERSEY AND DELAWARE.

---

Location of said land with reference to the United States Engineer Department triangulation of the Delaware River.

Beginning at a point A in said land distant four thousand three hundred and fifteen feet from triangulation Station Stony Point on a line South sixty-five(65) degrees, forty-one(41) minutes West therefrom; this point A being also North sixty-two(62) degrees, fifty(50)minutes and twenty-six(26)seconds West, ten thousand eight hundred fifteen and nine-tenths(10815.9)feet from triangulation Station Hope; thence from A North seven(7)degrees and thirty-three(33)minutes West, two thousand and six and two tenths(2006.2)feet to B; thence North five(5)degrees and forty-seven(47)minutes West, three hundred eighty-two and six-tenths(382.6)feet to C; thence from C, North three(3)degrees fifty-three (53) minutes West, eight thousand one hundred and fifty-five (8155) feet to D; thence from D, North seven(7)degrees forty-nine(49)minutes and twenty(20)seconds West, four thousand five hundred and nineteen (4519)feet to E; the beginning of a curve the degree of which is thirty (30)degrees eleven(11) minutes and twenty-five(25)seconds and which covers a central angle of one hundred and fifty-two(152)degrees four (4)minutes and ten(10)seconds to F. The bearing and length of the chord from E to F is North eighty-three(83)degrees fifty-one (51)minutes and twenty-five(25)seconds West; three hundred and seventy-two and six-tenths (372.6)feet. Point E is also South eighty-three(83)degrees fifty-two(52)minutes and forty-five(45)seconds West, two thousand eight hundred twelve and seventy-six hundredths(2812.76)feet from triangulation

Station Alloway Creek; thence from F South twenty(20)degrees six(6) minutes and thirty(30)seconds West, one thousand one hundred and five (1105)feet to G; thence from G south eleven(11) degrees thirty-one(31) minutes West, six hundred and eighty-three(683)feet to H; thence from H South four(4)degrees twenty(20)minutes and ten(10)seconds West, six-thousand seven hundred and forty-seven(6747)feet to K; thence from K South seven(7)degrees seventeen (17)minutes and thirty(30)seconds East, two thousand nine hundred twenty-two and six-tenths(2922.6)feet to M; thence from M along a fifty-nine(59)minute curve, covering a central angle of twenty-five(25)degrees and twenty-eight(28)minutes to N. The bearing and length of the chord from M to N is Souty twenty(20)degrees and three(3)minutes East, two thousand five hundred and sixty-eight and four-tenths(2568.4)feet; thence from N South thirty-two(32)degrees forty-seven(47)minutes East, one thousand eight hundred nine and eight-tenths (1809.8)feet to O; thence from O along a sixteen(16)degree twenty-five (25)minutes and thirty-six(36)seconds curve, covering a central angle of one hundred and fifty-four(154)degrees and forty-six(46)minutes to A, the place of beginning. The bearing and length of the chord from O to A, the place of beginning, is North sixty-nine(69)degrees and fifty (50)minutes East, six hundred and eighty-three and one-tenth (683.1) feet.





War Department,

11255

Washington. March 27, 1906

Dear Sir:

In carrying out the improvement of the Delaware River under authority of Congress, it was found necessary to construct a bulkhead around portions of what are locally known as "Dan Baker" and "Stony Point" shoals, so as to form a basin within which to deposit the material dredged from the channel. When completed, this area will be in the form of an island, which it is important should be under the possession and control of the Federal Government. It appears from a report of the engineer authorities that the area is in the bed of the river between the States of New Jersey and Delaware, but nearer the New Jersey<sup>3</sup> shore, and consequently belongs to one of the two States mentioned.

In view of the foregoing, the War Department will appreciate the good offices of the Department of State in requesting the Governors of the States of New Jersey and Delaware to lay the matter before the Legislatures of their respective States at the earliest practicable date, with a view to securing such action as may be necessary to vest in the United States a title to that part of the river bottom on which the aforesaid island is constructed. Maps in duplicate and description of the submerged land desired are forwarded, <sup>herewith</sup> for transmission to the Governors.

Very respectfully,

Wm. H. Taft,  
Secretary of War.

The Honorable,  
The Secretary of State.

Inclos: copy of 2 & 3 of 58654 Engrs. in duplicate.

DE16707

New Jersey State Archives

DE16708



Department of State,

Washington, March 29, 1906

The Honorable  
The Secretary of War .

Sir:

I have the honor to acknowledge the receipt of your letter of the 27th inst., asking that the Governors of Delaware and New Jersey be requested to lay before the Legislatures of their respective States the desire of the Federal Government to secure title to submerged land in the Delaware River on which an island will be formed in the construction of a bulkhead around portions of Dan Baker and Stony Point shoals.

The substance of your letter, together with the maps and descriptions of the submerged land, has to-day been sent to the Governors of Delaware and New Jersey, and they have been requested to lay the matter before the respective Legislatures at the earliest practicable moment.

I have the honor to be Sir,

Your obedient servant,

Robert Bacon,

Acting Secretary.

Major Sanford. To note and return.

Office C. of E.  
31 st Mch. '06.

Noted by Major Sanford and respectfully returned to the Chief of Engineers.

2d Apl. 1906.

DE16709

New Jersey State Archives

Governor Stokes Papers

Box 22 Folder 855

DE16710

State of New Jersey

Executive Department, April 2, 1906

Hon. Elihu Root,

Secretary of State,

Washington, D. C.

My dear Sir:

I have the honor to acknowledge the receipt of your favor of March twenty-ninth concerning the proposed improvement in the Delaware River under authority of Congress, which requires the construction of a bulkhead around portions of water known as "Dan Baker" and "Stony Point" shoals and the necessary acquisition of title to the section of land under water by the United States Government.

I have referred your letter to the Legislature with the request that they join with Delaware in ceding to the United States the title to that section of the river necessary for the contemplated improvement.

Very sincerely yours,

E. C. Stokes.

DE16711

New Jersey State Archives  
Governor Stokes Papers  
Box 22 Folder 855

DE16712

# Engineer Office, U. S. Army

315 Washington Building

Philadelphia, Pa., Dec. 20, 1906.

His Excellency,

Hon. T. O. Stokes,

Governor of New Jersey,

Trenton, N. J.

Sir:

I have the honor to acknowledge the receipt of your letter of the 10th inst. in reply to mine of the 5th ult. in which I spoke of the desirability of cession to the United States by the New Jersey Legislature <sup>of</sup> the necessary title to submerged land in the Delaware River on which an island will be formed in the construction of a bulkhead around portions of Dan Baker and Stony Point shoal. I can see some ways in which my letter appeared confusing, especially as you did not receive the maps nor description of the submerged land referred to by the Acting Secretary of State in the letter of which I inclosed a copy. In one respect, also, my letter of November 30, 1906, might have been somewhat clearer. The last two lines of this letter uses these words: "in accordance with your request as stated in your letter of April 2, 1906, to the Secretary of State". It would probably have been clearer had it read: "in accordance with your request to the New Jersey Legislature as stated in your letter of April 2, 1906, to the Secretary of State".

In order to explain the status of the matter, as well as I can, from the records that I have, I inclose the following copies of correspondence:

DE16713

1st. My letter of March 10, 1906, to the Chief of Engineers, with indorsements (the conference spoken of was at the luncheon given by Dr. Dixon, Commissioner of Health, State of Pennsylvania, at the Philadelphia Club, this city, at which time you very kindly suggested to me a practicable method by which the United States might secure undisputable title to the submerged land in question).

2nd. Telegram dated March 12, 1906, of the Chief of Engineers, U. S. Army.

3rd. My letter dated March 16, 1906, to the Chief of Engineers.

4th. Letter dated March 27, 1906, of the Secretary of War to the Secretary of State.

5th. Reply of the Secretary of State to above letter.

6th. Your letter of April 2, 1906, to the Secretary of War.

The above carries the correspondence so far as I have record of it, up to my letter to you of the 30th ult. A copy of the map and description sent to the Chief of Engineers with my letter of March 16, 1906, is also sent you herewith, the description being inclosed and the map being sent under separate roll.

When I visited Washington last week, the Chief of Engineers inquired particularly as to the status of this matter, and appeared to be greatly interested in obtaining the cession of title from the states of New Jersey and Delaware. He was much pleased at the suggestion which you made me in November, 1905, as described in my above mentioned letter of March 10, 1906. I informed him of having writted to you and to the secretary to the Governor of Delaware on the 30th ult. I am sure that he will most highly appreciate your

calling the attention of the Legislature to this matter at its next session, as you very kindly offer to do in your letter of the 10th inst.

Very respectfully,

Your obedient servant,



Major, Corps of Engineers.

(6 inclosures, map in sep. roll)

New Jersey State Archives  
Governor Stokes Papers  
Box 22. Folder 855

DE16716



# Engineer Office, U. S. Army

315 Wisconsin Building

Philadelphia, Pa., May 11, 1907.

To Governor E. C. Stokes,  
of the State of New Jersey,  
Trenton, N. J.

Sir:

Under date of March 29, 1907, you gave your approval to an Act passed by the Legislature of the State of New Jersey, entitled:

"An Act authorizing the Governor to cede to the United States certain lands under water in the Delaware River for the purpose of aiding in the improvement of said river".

The Act authorizes and directs the Governor of the State to "cede jurisdiction over and convey to the United States all the right, title and interest of this State in and to certain submerged land in the Delaware River, between the States of Delaware and New Jersey". The location of said lands with reference to the United States Engineer Department triangulation of the river, is particularly described in the Act.

A copy of this Act certified by the Secretary of State of New Jersey, has been filed in the office of the Chief of Engineers, U. S. Army, at Washington, and a copy of same is on file in this office.

The matter of proposed conveyance of these lands to the United States was laid before the Legislature of New Jersey by you at the request of the Department of State in a letter to you dated March 29, 1906, the lands being needed by the General Government

DE16717

in carrying on the work of improvement of the Delaware River.

In compliance with instructions of the Chief of Engineers,  
U. S. Army, given in accordance with directions of the Acting  
Secretary of War, application is hereby made to you as Governor  
of the State of New Jersey, for the formal conveyance which the  
above referred to Act authorizes and directs you to execute.

Very respectfully,

Your obedient servant,

  
Major, Corps of Engineers

New Jersey State Archives  
Governor Stokes Papers  
Box 22 Folder 855

DE16719



STATE OF NEW JERSEY,  
EXECUTIVE DEPARTMENT.

(copy)

May 23, 1907.

Major G. B. F. Flagler,  
Engineer Office, U. S. Army,  
615 Witherspoon Building,  
Philadelphia, Pa.

My dear Sir:

I beg to hand you herewith an indenture in proper form, signed and witnessed, ceding certain submerged lands in the Delaware River between the State of Delaware and New Jersey to the Federal Government. Will you please acknowledge receipt?

Yours very truly,

Secretary to the Governor.

DE16720

New Jersey State Archives

Gaerner Stokes Papers

Box 22 Folder 855

DE16721

# Engineer Office, U. S. Army

512 WASHINGTON BUILDING

Philadelphia, Pa., May 25, 1907.

Mr. E. W. Gray,  
Secretary to the Governor  
State of New Jersey,  
Trenton, N. J.

623

Dear Sir:

I have to acknowledge the receipt of your letter dated the 23rd instant, inclosing an indenture signed by the Governor of your State, ceding certain submerged lands in the Delaware River between the States of Delaware and New Jersey to the United States, sent for file in the Office of the Chief of Engineers, U. S. Army, War Department, as requested in my letter of May 11.

Very respectfully,

  
Major, Corps of Engineers.

New Jersey State Archives  
Governor Stokes Paper  
Box 22 Folder 855

DE16723



POSTAL TELEGRAPH  COMMERCIAL CABLES

CLARENCE H. MACKAY, PRESIDENT.

**TELEGRAM**

REGISTERED TRADE-MARK. DESIGN PATENT NO. 80000.

The Postal Telegraph-Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

55-P. A.B./21 Gov Ra e 145P

Washingt D.C. 3-14-08

Received at  
News Bldg., 511 Market St

(WHERE ANY REPLY SHOULD BE SENT.)

Walter H. Hayes

Wilmington, Del.

Wilmington.

See Kean joint resolution in full on yesterdays congressional record passed senate yesterday

J. Frank Allee.

DE04443

DE Public Archives

0914.1

DE Commissioners  
Fisheries Compact

Brian's  
338631

DE04444

B. Cooper,  
President

William S. Hilles,

Walter H. Hayes,  
Secretary.

DELAWARE COMMISSIONERS,

(Delaware-New Jersey Fisheries Compact)

904 Market Street,

Wilmington, Delaware.

January 19, 1907.

Honorable Robert H. Richards,  
Attorney General,  
Wilmington, Delaware.

Dear Sir:

We enclose a copy of a resolution, passed by the Joint  
Commission (Delaware-New Jersey Fisheries Compact) on January 16th,  
1907.

In view of this resolution, the Delaware Commissioners  
have no further request to make of Congress in the matter, for  
delay or otherwise.

Yours very truly,

(Sgd.) Alex. B. Cooper

(Sgd.) Wm. S. Hilles

WHEREAS the Joint Commission (Delaware-New Jersey Fisheries Compact) did, on the Fifteenth 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 the State of New Jersey until the Commission shall make further request"; and

WHEREAS, said Congress has deferred final action of the ratification of said Compact:

NOW, THEREFORE, BE IT RESOLVED by the said Joint Commission this Sixteenth 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 states of Delaware and New Jersey.

# STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL

ROBERT H. McCARTER  
ATTORNEY GENERAL  
EDWARD D. DUFFIELD  
ASSISTANT ATTORNEY GENERAL

Trenton, N. J. Jan. 9th 1906.

To his Excellency, Edward C. Stokes,  
Governor of the State of New Jersey.

675

Sir:-

I beg to call your attention to the fact that by the provisions of section 2 of Chapter 42 of the laws of 1905, it is made the duty of the Governor, at or before the next session of Congress after the approval of said act, and being the present session of Congress, to transmit a duly certified copy of said act to the President of the United States, with the request that it be communicated to Congress for its action thereon. As you know, a similar act was passed by the Legislature of the State of Delaware at or about the time of the approval of the foregoing act, and I am informed by Senator Keen that pursuant to the provisions of the Delaware act the Governor of the State of Delaware has duly forwarded to the President of the United States a certified copy of the Delaware act, which, in turn, has been brought to the attention of Congress by the President in connection with a special message. I beg respectfully to suggest that you transmit at once to the President a certified copy of Chapter 42 of the laws of 1905 for similar action by him. Very truly yours,

*Robert H. McCarter*

New Jersey State Archives

Governor Stokes Papers

Box 22 Folder 85T

THE SENATE OF NEW JERSEY

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.



DE Public Archives

0914.1

DE Commissioners  
Fisheries Compt

1905-1907

Brian's

338631

DE16155



Came in Jan 9th 1907

Hon Alex B Cooper

Pres. Ill. Fisheries Commission

My dear Sir

Replying to your letter of Jan 6th relative to the Amendments to the Wilson Fisheries 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 &c not later than next Monday evening and will immediately communicate with your Commission.

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

With sincere regards

I am faithfully  
Wm J Bradley  
Pres. Ill. Commission

0914.1

DE Commission  
Fisheries Compact

Brians  
338631

THE SENATE OF NEW JERSEY

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,

DE Public Archives

0914, 1

SE Commissioners

Fisheries Compact

Brian's

338 631

REPORT OF THE PROCEEDINGS OF THE PUBLIC  
MEETINGS HELD BY THE DELAWARE COMMISSION-  
ERS, (DELAWARE-NEW JERSEY FISHERIES COMPACT).

New Castle, Delaware,

March 14th, 1906.

7.30 o'clock p. m.

Meeting held on the above date at the Town Hall Building for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Commissioners.

-----

MR. ALEXANDER B. COOPER: Under the present law shad and herring cannot be caught in the State of Delaware between the tenth of June and the tenth of August. In New Jersey the law is between the fifteenth of June and the tenth of August for shad and the twenty-fifth of June and August tenth for herring.

What have you gentlemen to say in reference to that point? Is that provision of law, that shad shall not be caught between June tenth and August tenth, satisfactory to the fishermen who are here present?

MR. GEORGE PUSTILL: I would like to see it

made the first of June instead of the tenth of June.

MR. ALEXANDER B. COOPER: From June first to August tenth?

MR. GEORGE PUSTILL: Yes, sir.

MR. WILLIAM PEDRICK: I should ~~xxxx~~ think it would be better for the shad industry if all would stop fishing from the first day of June. Up the river they claim that the fish are caught up below, and that they can fish up the river further until July. I think the law should be that all shad fishing should stop on the first day of June. That would give the shad a chance to get up the river further and spawn, and we would all get better results in the following year, because if we have to stop here the first day of June and those people above do not stop until the fifteenth of June, it cuts us short and gives them the privilege of fishing fifteen days longer than we can. That would give the fish a chance to go up the river and spawn, that is, if they would stop fishing the first of June.

MR. WILLIAM S. HILLES: We have nothing to do, practically, with the fishery laws so far as they relate to Pennsylvania and that part of the Delaware River north

of the boundary line of Delaware. Would your suggestion hold in the event they should not make a similar provision up there in Pennsylvania, that is, would you be willing that the fishing season should close here on the first of June and that it should continue in Pennsylvania until the fifteenth, say ?

MR. WILLIAM PEDRICK: Yes, sir.

MR. GEORGE PUSTILL: Couldn't the Commission frame a joint law for the three states ?

MR. WILLIAM S. HILLES: It can as between New Jersey and Delaware.

MR. JOSEPH ANDERSON: (of Delaware City): The closed season for shad fishing is now the fifteenth of June in New Jersey, but I understand from the reading of extracts from our laws that it is the tenth of June here. Of course, for the protection of the fishing interests, the states should unite in closing the fishing season at the same time. I think it would be selfish to permit New Jersey to fish fifteen days after we are compelled to cease fishing.

MR. ALEXANDER H. COOPER: Understand, these suggestions to-night are for the purpose of incorporating



them into a law which will be passed by the Legislature of the State of New Jersey as well as by the Legislature of the State of Delaware. It will be the same law in New Jersey as it is in Delaware.

MR. JOSEPH ANDERSON: I understand that after you get beyond the jurisdiction of the State of Delaware, which is the twelve mile circle, we have no voice whatever in the enactment of any law, and if we are going to allow these men up beyond that distance permission to catch fish, I think we ought to have the same right to fish here, because the shad do not spawn below that limit, or very seldom do so. They go beyond that limit to spawn. The spawning of fish is beyond that limit, that is, beyond the twelve mile circle. If you want to protect the interests of the shad industry in the Delaware River--if we do not catch them all here, we have some other fish which you will hear about later--I think we had better have an open season to the extent that no man can catch shad until the first day of April. For the preservation of the fishing interests of the combined states, I think that ought to be done. Then you will get more fish up to the head of the river for

spawning purposes and thereby continue the fish family.  
If you catch all the old fish you will have no young ones.

MR. WILLIAM S. HILLES: What time of the year do shad spawn? What is the spawning season?

MR. JOSEPH ANDERSON: In the month of May. As soon as the temperature of the water gets to sixty degrees the fish spawn, and they will not spawn until that time.

MR. CHARLES LANCASTER: I am in favor (and I believe all the fishermen I have talked with agree with me) of a closed season commencing on the first day of June, because the fish that we catch, say, during the latter part of May and the first of June, are in bad condition. They are what we call spawners or runners, and there are a great many fish destroyed after the first of June in this locality as well as up the river by the catching of those fish. In speaking of the law, I think we should allow the fishermen up the river a little longer time, because I have lived up the river and have fished some little up that way myself, and I know that the fish up there are in better condition later in the season than they are down in this section.

MR. ALEXANDER B. COOPER: Do you know what the Pennsylvania law is ?

MR. CHARLES LANCASTER: No, sir; I do not. I think the first of June is ample time. We are all done down here before the first of June. Once in a while there are a few that will come this way.

MR. ALEXANDER B. COOPER: You think that the fishing for shad ought to stop here on the first of June, even though it should continue after that time in Pennsylvania ? Of course, we have nothing whatever to do with the Pennsylvania jurisdiction.

MR. CHARLES LANCASTER: I should say fix the time for the Delaware fishermen as of the first of June; that is, of course, with the understanding that this law is to be the same as the New Jersey law.

MR. WILLIAM PEDRICK: How can the state of New Jersey enact a law that will govern only a portion of her bay and river and then permit the balance of the state to fish ?

MR. ALEXANDER B. COOPER: That is a question which the Legislatures of the two states have decided by entering into this compact.

MR. JOSEPH H. KING: I think the shad fishing ought to cease on the first of June.

MR. ALEXANDER B. COOPER: Mr. Anderson of Delaware City suggested that he thought we should not begin the season for catching shad before the first of April. What do you think of that suggestion?

MR. GEORGE PUSTILL: I think we ought to be able to catch them as long as we are able to fish. If we can start the tenth of March, we ought to be allowed to catch them at that time.

MR. JOSEPH ANDERSON: I know from the early catching of fish in other fishing interests that we have almost annihilated the fishing that is worth more money than any other fish in the rivers, and that is the sturgeon fishing. If we had had a beginning season and had not been permitted to fish for sturgeon before the first of May, enough sturgeon would have gotten to the head of the river and spawned to have kept our river stocked from now clear on as long as time lasted; but we have almost annihilated them. Here it is the first fish that goes up to spawn that counts.

MR. ALEXANDER B. COOPER: What is the opinion of the meeting with reference to not beginning fishing

until the first of April ?

MR. WILLIAM PEDRICK: If we start on the fifteenth of March it does not give us a very long season, but if we start on the first of April it makes it a kind of a short season here, and we claim a short season is no good. I don't think there ought to be any restriction as to when we should start, but I think the restriction ought to apply as to when we should stop.

MR. WILLIAM S. HILLES: Would the first of March be early enough ?

MR. WILLIAM PEDRICK: The first of March would be early enough.

MR. WILLIAM S. HILLES: No one fishes for shad in the fall, do they, in this locality ?

MR. WILLIAM PEDRICK: February twenty-second is the earliest time I have ever known people to catch shad here.

MR. WILLIAM S. HILLES: The first of March would not do harm to anybody?

MR. WILLIAM PEDRICK: No, sir. The weather would be cool, and it would not harm anyone.

MR. JOSEPH ANDERSON: We are acting and trying to frame laws to govern the whole state of Delaware, and

that means clear to the capes, if I understand it. Then I will call back all that I have said in reference to the beginning of the fishing season as of April first. Our neighbors in Kent and Sussex Counties have got to catch all the fish there are to be caught down there by the first of April, because they have passed there by that time. We must be a little generous towards our neighbors in Kent and Sussex Counties.

A FISHERMAN: I have seen the largest fish ever caught in this neighborhood caught on the fourteenth day of February.

MR. GEORGE PUSTILL: I think it would be a good idea to make the time as of the first of March. I do not think we have any starting point in the law now.

MR. ALEXANDER B. COOPER: Yes, we have. We have the tenth of August. Then, in your opinion, the season ought to be from June first to March first, that is, the closed season?

MR. GEORGE PUSTILL: Yes, sir; that would be my idea.

MR. ALBERT PEDRICK: It ought to be from March first to June first. That is my opinion.

MR. ALEXANDER B. COOPER: Would you say the

same thing as to herring ?

MR. JOSEPH ANDERSON: I do not think they need any open season or closed season. I think they are very prolific. Sometimes they are worth but a very small amount of money. Of course, scarcity advances the prices, always.

MR. ALEXANDER B. COOPER: Do I understand by that it is now your opinion that you would have no time fixed as to the beginning of the catching of herring ?

MR. JOSEPH ANDERSON: I do not think there is any needed. There is nobody here interested in it.

MR. ALEXANDER B. COOPER: You want to catch them just as you please ?

MR. JOSEPH ANDERSON: To catch them just as we please.

MR. ALEXANDER B. COOPER: Is that the opinion of the meeting ?

(No vote was taken, and no voices were heard either pro or con.)

I would prefer to have the matter settled by voting. Those in favor of not enacting any law in reference to herring will vote aye.

(Motion unanimously carried.)

The next point is, that under the present law no shad or herring can be caught nearer than one mile from the mouth of any river or creek within the state. What have you to say about that ?

MR. JOSEPH ANDERSON: I think it would be a good idea to leave that out, so far as New Castle County is concerned, because, otherwise, we could not fish at all. That law was enacted to protect the small creeks in Kent and Sussex Counties.

MR. ALEXANDER B. COOPER: What is the feeling about that law, that it shall remain in, or shall we keep it out ?

MR. JOSEPH ANDERSON: Out that out altogether. It is a selfish law.

MR. GEORGE PUSTILL: I say to out it out.

(A number of other gentlemen present also expressed the desire that this law should be out out.)

MR. ALEXANDER B. COOPER: The next point is, under the present law, that no person can have in their possession or expose for sale any shad caught in the Delaware river or its tributaries above the southern point of Reedy Island between the tenth of June and the



tenth of August. What have you to say about that ?

(A number of gentlemen present expressed the belief that this matter was sufficiently covered.)

I think that is sufficiently covered.

The next point is, no gill seine shall be of a less mesh than ten inches for catching fish in the <sup>DeWare</sup> river ~~until~~ above the southern point of Reedy Island from the tenth of June to the tenth of August. What have you to say about that ?

MR. GEORGE PUSTILL: Five and one-half inch mesh is the largest net used.

MR. ALEXANDER B. COOPER: Five and one-half inch mesh stretched, you mean, of course ?

MR. GEORGE PUSTILL: Yes. There are no shad nets under five inches.

MR. ALEXANDER B. COOPER: How would it do to make it not less than five inches ?

MR. JOSEPH ANDERSON: I do not think it would be wise to meddle with the size of the mesh at all, because you will fish for trout with meshes two and one-half inches. I don't think it would be wise to make any such law. I think the fish will regulate the size of the mesh. A man can't catch shad with anything less

than a five inch mesh . It will not gill him; it will not even tangle him. A fisherman knows enough to know what size mesh to use. Fishermen are now having their meshes made five and one-half inches. They used to be five inches. They want the mesh larger and larger because the fish are getting larger.

MR. ALEXANDER B. COOPER: And that is regardless of the size of the shad ?

MR. GOERGE PURSTIL: Yes, sir.

MR. ALEXANDER B. COOPER: The size of the meshes of the net under this law is two and five-eighth inches ?

MR. JOSEPH ANDERSON: That was to govern the herring fishing, I think. I know in Kent and Sussex Counties the haul seines have a two inch mesh, because I have seen many of them.

MR. WILLIAM S. HILLES: Is it a good or a bad law to have the mesh two and five-eighth inches ?

MR. GEORGE PURSTILL: I think it is small enough, that is, a two and five-eighth inch mesh.

MR. CHARLES LANCASTER: It doesn't affect the people here, but it affects the people down below.

A FISHERMAN: They fish with a two inch mesh

all the way from Leipsic creek down.

MR. ALEXANDER B. COOPER: Is it the feeling of this meeting that there shall be no fishing in the Delaware Bay and River with a mesh less than two and five-eighth inches? If not, what size shall it be, to control the general fishing? That means, for any net or seine.

MR. GEORGE PUSTILL: I think a fish caught in a net with a mesh less than two and five-eighth inches is not fit to eat or sell, and that a two and five-eighths inch mesh would be a good mesh for all general fishing.

MR. ALBERT PEDRICK: I am of the same opinion, that the mesh should be two and five-eighths inches.

MR. GEORGE PUSTILL: Lots of people fish with a mesh less than two and five-eighth inches. They ought not to do it, because they destroy quite a good many of our fish.

MR. ALEXANDER B. COOPER: The next point is the time of fishing. From eight o'clock Saturday to midnight of Sunday in Delaware, and from sunset on Saturday until twelve o'clock, midnight, in New Jersey. What have you to say about that?

MR. GEORGE PUSTILL: My idea is that if you can make a joint law and stop fishing at twelve o'clock Saturday noon and not start again until four o'clock on Monday morning, and likewise all through the week stop at four o'clock in the afternoon and start at seven o'clock in the evening, it would be a good thing.

MR. CHARLES LANCASTER: I think the fishing would be better if we stopped at seven o'clock in the evening and started at four o'clock in the morning every day during the week. That would do away with the question of the up river fishermen in reference to their complaint of not getting any fish. They are complaining now in the papers, and say that they would like to have another day closed besides Sunday as regards the lower part of the river and bay. That would not be of any use, however, because at the present time, when we have a Sunday rest, Monday is a big catch, but Tuesday is the poorest catch of the week. So that the extra efforts of the men on Monday would be the same way after a rest in the middle of the week. Say, Wednesday was a closed day. Thursday would be a big catch, but on Friday there would be no fish. If the fish could rest every night, it would distribute them along the Delaware river much

better than they could be distributed in any other way.

MR. JOSEPH ANDERSON: If the fishermen, in the interest of fishing and for the benefit of the fish themselves, were to quit fishing on Saturday night at sundown and not begin again until Monday morning at sunrise, you would then know whether anybody fishes, or not; because it would take twenty men and twenty boats to guard this river if the time was any earlier than that, to find out whether a man is fishing, or not. Twenty boats cannot patrol this river and bay. You must remember your limits take you clear down to the capes. They catch shad clear down to the capes. They are catching them now at Rower's. How will you know whether they are fishing, or not? It gives an advantage to a man who does not care for God, man or fish. Sunrise is daylight, and you can see whether a man is robbing, or not.

MR. GEORGE PUSTILL: He means to do away with night fishing.

MR. ALEXANDER B. COOPER: I understand your idea is practically to do away with the night fishing?

MR. CHARLES LANCASTER: And to fish until twelve o'clock on Saturday?

MR. WILLIAM PEDRICK: My idea about that is, I think it would be a good idea to stop on Saturday at twelve o'clock, and then stop every day at sundown and start again at twelve o'clock at night. That would give everybody a chance. A man can go out here at twelve o'clock at night and fish until sundown the next night. If he does that, he has got fishing enough. If he stopped at twelve o'clock on Saturday, and then through the week stopped at sundown and started in at twelve o'clock midnight, it would give both the men and the fish a rest. That four o'clock business will cut a great deal of a disadvantage to many of us.

MR. ALEXANDER B. COOPER: I understand the first proposition is to close at twelve o'clock on Saturday, noon, and open up again at four o'clock on Monday morning.

(Upon motion being put on this proposition, it was unanimously carried.)

A FISHERMAN: I think it would be a good idea to let it go the way it is.

MR. ALEXANDER B. COOPER: The next proposition, as I understand it, is to close at seven o'clock in the evening and open up again at four o'clock in the morning, during the week days.

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is as to the length of the shad net.

MR. WILLIAM PEDRICK: I think the law should be that a man should not be allowed to fish over fifty pounds of line.

MR. JOSEPH ANDERSON: I think you ought to let him fish two miles of net, if he wants to, and if he can take care of it.

MR. GEORGE PUNTILL: I do not think there ought to be any restriction as to the length of net. It ought to be all they are able to buy and pay for, even if that is two miles in length.

MR. CHARLES LANCASTER: I think a man ought to be able to fish all the net his boat will hold.

MR. JOSEPH ANDERSON: I think Maryland has such a law that you cannot fish over so many fathoms in a net. They put them in pieces, and when the warden comes along they untie the knots. They don't say how many nets you shall fish.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no limit as to the length of

nets ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is in reference to the casting of nets, that is, how far you shall cast ahead of another man who is already out.

MR. JOSEPH ANDERSON: I think I should have a right to cast my net just as close as I can get without getting into him. That is my opinion.

MR. WILLIAM FEDRICK: I think that should be out out. I am not going to measure the distance when I go out to fish, and I think I have a right to put my net where I please, so long as I do not put it in another man's boat .

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no law concerning the casting of nets ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is, whether or not there shall be a penalty attached for wilful interference with nets already cast in the water, either by boat, person, or otherwise ?



MR. WILLIAM S. HILLES: The point is whether or not it would be wise to put in a provision which would prevent launches and boats of other kinds from running over your nets and making a penalty for doing so.

MR. JOSEPH ANDERSON: I do not think we can enact a law here in our state to grant us the privilege of laying off five hundred or one thousand fathoms of net and blocking the channel and then say a man shall not run over the net.

MR. WILLIAM S. HILLES: That is not the question at all. The question is not what we can do. The question is what you gentlemen want us to try to do; and we are here for that purpose; not to determine what we can do or cannot do. That is our business, and the business of the courts when they pass upon this law. What do you gentlemen want put in this law for your protection? That is what we are here for.

MR. CHARLES LANGASTER: I think the law as it stands is all right.

MR. ALEXANDER B. COOPER: Are there any other suggestions in reference to the law concerning shad fishing?

(No further suggestions were offered.)

The next point is in reference to mummichog fishing--young sturgeon. What have you to say about that matter?

MR. JOSEPH ANDERSON: In reference to that matter, I think the law ought to be extended; that is, the length of the fish ought to be at least six feet, and that no one ought to be permitted to catch fish for sturgeon with a net smaller than a fourteen inch mesh. That would be for the protection of the fish. There is no man who knows more than I do what it means to catch the young fish and destroy them. I think there ought to be a penalty put in the law of ten dollars for every mummichog that is destroyed by any man. Of course, these men who fish for shad catch the mummichog, that is, the young sturgeon. They will get into the shad nets, and the fishermen have got to get them out. They are not fishing for sturgeon; they are fishing for shad; so let them take the fish out and return it to the water again and be fined if they bring them ashore. That would be for the protection of the fish. There is not a fish that swims in the high seas, or in any river, that has got as much value in him as the sturgeon. They are worth one hundred dollars apiece when they

have matured. They contain about two buckets of roe-- from two to two and a half buckets, and they are worth one hundred dollars apiece. There isn't any shad that is worth any such money, according to his pounds.

MR. ALEXANDER B. COOPER: Is the fishing for sturgeon a profitable business, so far as the Delaware River is concerned now?

MR. JOSEPH ANDERSON: Since we have been destroying young fish so much here, they are fishing now with a ten inch mesh for sturgeon. After the shad fishing closes, these sturgeon are caught up. Some men have been known to catch as high as one hundred of these fish in a day. I have seen sturgeon brought into Delaware City during this last year that were less than three feet in length. I know that to be a fact, because I measured them; but to keep from being in hot water with my neighbor I had to keep my tongue between my teeth and grit my teeth together because I was just that much enraged. There is no man that knows more than I do what that means to me. I have got a property worth more than three thousand dollars, and it doesn't pay me to fish it, because the fish are destroyed, that is, our sturgeon are being destroyed. The reason--they

are commonly called a mace--is a sturgeon, as has been settled by scientists. It doesn't make any difference what any other man says, they are sturgeon.

MR. WILLIAM B. HILLES: Your idea would be not to permit the catching of any sturgeon under six feet in length?

MR. JOSEPH ANDERSON: Not under six feet in length, and the size of the mesh to be not less than fourteen inches. If the mesh is smaller than that you catch the smaller fish. New Jersey has a law which says a ten inch mesh. That is what our law means when it says a ten inch mesh, as was read by your Chairman. Mr. Postill here thinks a six feet sturgeon is very large. I have handled twenty-five hundred sturgeon in one season, and I have measured the small fish, and a six feet sturgeon will not draw over thirty pounds; so he ought to be permitted to go until he reaches maturity.

MR. ALEXANDER B. COOPER: The New Jersey law provides that no sturgeon under four feet shall be taken and the size of the mesh shall be ten inches, and they have the same season as they have for shad, sunset Saturday to twelve o'clock on Sunday night.

Is it the sense of this meeting that no sturgeon should be caught of less than six feet in length ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is as to the size of the mesh for sturgeon fishing.

Is it the sense of this meeting that the mesh shall not be less than fourteen inches, stretched ?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point is in reference to the closed season for sturgeon fishing.

MR. JOSEPH ANDERSON: The size of the mesh regulates the closed season, because we let the small ones all go by.

MR. WILLIAM S. HILLES: Is there anything to be gained by regulating the season for sturgeon fishing ?

MR. JOSEPH ANDERSON: I have had men fishing for three weeks, and we have not caught any; so we ought to be allowed to catch them, if we can catch them, in July.

MR. WILLIAM S. HILLES: Would you make the same hours as you did in relation to the shad fishing ?

MR. JOSEPH ANDERSON: That would be a good thing to make the law the same as to the shad fishing.

MR. ALEXANDER B. COOPER: As to the Sunday fishing ?

MR. JOSEPH ANDERSON: I do not mean to bar us from the week night fishing.

MR. ALEXANDER B. COOPER: From twelve o'clock on Saturday until four o'clock Sunday morning ?

MR. JOSEPH ANDERSON: Or sunrise. We had a closed season, and we went to the Legislature and had it made into an open season.

MR. WILLIAM S. HILLES: Would it not be wise to have a closed season for a number of years, in view of the fact that there is not much sturgeon fishing now ?

A FISHERMAN: It would be, if you passed a law which applied to both Delaware and New Jersey.

MR. JOSEPH ANDERSON: I do not think it would be a good thing. I have got about twenty-five hundred dollars worth of nets on hand, and that would be all dead stock to me.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be a closed season for

sturgeon fishing, absolutely prohibiting sturgeon fishing for that length of time ?

(No expressions of opinion were made either way relative to this proposition.)

Have you anything to say with reference to fishing for trout ?

MR. JOSEPH ANDERSON: A seine with a two and five-eighth inch mesh will regulate that.

MR. ALEXANDER B. COOPER: You do not want any closed season except as regards the Sunday provision ?

MR. JOSEPH ANDERSON: We do not catch trout up here.

MR. GEORGE PUSTILL: We have already got a closed season in New Castle County for trout and bass.

MR. ALEXANDER B. COOPER: What have you to say about the carp fishing ? The present law prohibits fishing for carp during the months of May, June and July.

MR. GEORGE PUSTILL: Where is the boundary, at the south point of the Appoquinimink River ?

MR. ALEXANDER B. COOPER: There was an Act passed by the last Legislature giving people the right to catch carp from the south point of the Appoquinimink River.

MR. JOSEPH ANDERSON: This commission is only instructed to enact laws for the river and bay, and not for its tributaries.

MR. ALEXANDER B. COOPER: This says the Delaware River and Bay, or any of the tributaries. This includes them all. Do you want any further legislation with reference to carp fishing in the Delaware River or Bay?

MR. GEORGE PUSTILL: I think there ought to be a joint law making a three months closed season in each state.

MR. ALEXANDER B. COOPER: What months?

MR. GEORGE PUSTILL: May, June, July and August--make it four months.

MR. ALEXANDER B. COOPER: That is what it is at present, north of this point. It is stated by the Act of the last Legislature to be south of the Appoquinimink River during the months of July and August.

MR. GEORGE PUSTILL: I think four months would be a good closed season.

MR. ALEXANDER B. COOPER: Throughout the bay and river?

MR. GEORGE PUSTILL: Yes, sir; for the protection



of the fish. That is the reason these people got this Act passed at the last Legislature, so that they could catch them and stock their ponds with them. I should think if you would make a state law having a closed season for four months, that it would be a good thing.

MR. JOSEPH ANDERSON: New Jersey has no closed season for carp fishing. They fish the whole season round. They fish over there and pound them.

MR. GEORGE PUSTILL: They have a closed season.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting to make May, June, July and August a closed season for carp fishing?

(Upon motion being put on this proposition, it was unanimously carried.)

What about the size of the mesh? Is it to be the same as the other?

MR. GEORGE PUSTILL: No size ought to be stated. Nothing less than two and five-eighth inches will cover it.

MR. ALEXANDER B. COOPER: Is there anything further you can suggest about any other kind of fishing, or anything else upon this general subject? I have a note made here of rock fish, cat fish, and eels.

They have a law in New Jersey bearing upon all these. Is there any legislation necessary concerning the rock fish ?

MR. JOSEPH ANDERSON: I think there is a law in regard to rock fish, that you cannot catch them beyond a certain size.

MR. ALEXANDER B. COOPER: Will a two and five-eighth inch mesh do for them ?

MR. JOSEPH ANDERSON: You can catch rock fish with a skad net.

MR. GEORGE PUSTILL: There is already a law regarding the catching of big rock fish.

MR. JOSEPH ANDERSON: There is a law concerning the catching of spawm rock weighing over twenty pounds.

MR. WILLIAM B. HILLES: Ought there to be a limit concerning the size of rock fish to be caught ?

MR. JOSEPH ANDERSON: Yes, sir; for the protection of the rock fish. A two and five-eighth inch mesh, I think, is a very good mesh. Anything smaller than that is too small to catch; that is, anything that will go through that size mesh.

MR. ALEXANDER B. COOPER: Do you want any closed season on the rock fish ? In New Jersey a man

cannot fish for them between the fifteenth day of June and the fifteenth day of August in each year.

Is there any necessity for a closed season in Delaware ?

MR. GEORGE PUSTILL: You may catch one or two, maybe, along in a week or so, but it is very seldom you catch any in those months, that is, during June, July and August.

MR. JOSEPH ANDERSON: You catch them sometimes in Kent County with a net and haul seine.

MR. ALEXANDER B. COOPER: Do you think there ought to be any closed season? Is it the sense of this meeting that there should be no closed season for rock fishing ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. JOSEPH ANDERSON: I think there ought to be a law prohibiting the catching of rock fish weighing over twenty pounds.

MR. WILLIAM PEDRICK: There ought to be a law as to the limit of the size of the rock fish to be caught, because I have seen rock fish come in here weighing from twenty-five to thirty to forty pounds, when they should have been cast into the river.

MR. JOSEPH ANDERSON: I once caught a rock fish that weighed seventy-five pounds, and I sold it for seventy-five cents.

MR. ALEXANDER B. COOPER: Your suggestion is that they ought not to weigh over twenty pounds?

MR. JOSEPH ANDERSON: Yes, sir.

MR. CHARLES LANCASTER: I haven't anything to say in relation to this subject, except to state that I once caught a large rock fish opposite New Castle, probably eight or ten years ago, which was fully as large as Mr. Anderson has stated, that is, seventy-five pounds—it might have been a little more and it might have been a little less—and we took it into the boat and examined it closely and found that it was pretty near ready to spawn, so we put it overboard again and let it go. I think there ought to be a law to protect the fish when they are about to spawn, both the male and the female, because one is of no good without the other. I think the fish that weigh anywhere from twenty to twenty-five pounds ought to be protected. They ought not to be allowed to be taken from the water at any time.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the limit on the weight of rock fish to

be caught should be twenty pounds ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. WILLIAM DEAKYNE: I do not think I have anything to say. I am not a practical fisherman, except with a hook and line.

MR. WILLIAM S. HILLES: We would like to get the sentiment of this meeting about these oil fish boats, that is, the menhaden fishing boats, the business that is carried on about the capes. What have you to say about allowing the menhaden boats to fish within three miles of the Delaware capes ?

MR. JOSEPH ANDERSON: I think these fishermen should not be permitted to enter our capes, and should be compelled to keep away three miles from the shore. Of course, we cannot regulate them beyond that distance of three miles from the coast, but they should not be permitted to fish within that distance because they are destroying more food fish than you have any idea of. They are catching shad, they are catching trout, they are catching rock and they are catching whatever kind of fish they can get in their nets, and they just put the whole business right in the pot

and boil them all up together and make fertilizer of them.

MR. ALEXANDER B. COOPER: I know they have caught pretty good mackerel, because I have had some of them.

MR. JOSEPH ANDERSON: They should not <sup>to</sup> be permitted to enter within our capes, and there ought to be a pretty heavy fine imposed on them. They will pay the fine, and it ought to be made very heavy. It ought to be put at about ten thousand dollars.

MR. GEORGE PUSTILL: I think Mr. Anderson's suggestion is a very good one. I do not think there are any fishermen who object to that.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the menhaden fishing question should be taken care of as outlined by Mr. Anderson?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. GEORGE PUSTILL: There is another suggestion in the interest of the fishermen, and that is in regard to those pound fishermen along the Jersey coast. They are doing more injury to the fish than anything else. They have pounds up there along the Jersey coast for miles, and vessels can hardly get up the Atlantic coast

for them. I think that is a very important matter for our Delaware Commissioners to look into.

MR. ALEXANDER B. COOPER: You mean within the bay ?

MR. GEORGE PUSTILL: In the ocean, away down along the Atlantic coast.

MR. ALEXANDER B. COOPER: They have a pretty severe law in New Jersey.

MR. JOSEPH ANDERSON: I think we ought to have a law similar to the New Jersey law, as to our Delaware Bay and River. I know there are pounds on the Delaware Bay, and that they are fishing every day, whether it is against the law, or not. Probably our Chairman can tell us whether it is against the law, or not.

MR. GEORGE PUSTILL: There are more on the Atlantic coast by ten to one than there are on the Delaware Bay, and they do more injury to the fish than anything else.

MR. WILLIAM S. HILLES: The sentiment of this meeting is then that there ought not to be any pounds introduced in the Delaware Bay ?

MR. JOSEPH ANDERSON: At Bower's they stake the shad nets; they don't drift them at all.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that there shall be no pounds or other similar devices ?

(Upon motion being put on this proposition, it was unanimously carried.)

MR. GEORGE PUSTILL: How far does the jurisdiction of the Commissioners of New Jersey extend ?

MR. ALEXANDER B. COOPER: From the Delaware Bay and River to three miles at sea.

MR. CHARLES LANCASTER: It seems to me to be the corner-stone of this whole thing, the migrating of fish, and there are more fish destroyed on the coast as the fish are migrating than anywhere else. The shad and all fish that migrate are caught in these traps, these permanent traps set both night and day, and which employ less men. They are all outside of the river and bay. They are along the coast.

MR. ALEXANDER B. COOPER: Both states joining together can make a law covering the coast of New Jersey and the coast of Delaware.

MR. JOSEPH ANDERSON: I would suggest that it would be made as against the law to anchor any net, of any kind. That would be for the protection of the



fishing interests. You gentleman may wonder why I say "anchor". Along our coast, between the capes, and as far as our jurisdiction runs south, they are fishing for all manner of fish with not only fish pounds but with nets anchored, day in and day out, and night in and night out, and sometimes they are not attended for three days in succession on account of high winds. They also fish for sturgeon in that way. We want to look after the sturgeon interest. We want to get them into the bay, if possible. I know that men come from the state of New York and that they come from the state of New Jersey and that they fish our coast for sturgeon in that way. Let them go beyond the three mile limit, and they can anchor the nets all they please. Let them stay outside of that limit.

MR. ALEXANDER B. COOPER: They have quite a rigid law in New Jersey concerning that very thing.

MR. JOSEPH ANDERSON: I know that they are permitted now, and I know one firm in Ocean City, Maryland, and another firm at Rehoboth that has as high as twenty nets anchored out there—twenty sturgeon nets. We are not asking for a law to prohibit them from using drifting nets, but to stop them from anchoring

their nets so the fish cannot get up the bay.

MR. GEORGE FUSTILL: That includes all nets and traps, according to Mr. Anderson's suggestion.

MR. JOSEPH ANDERSON: A pound net is different from an anchored net. These sturgeon nets are anchored at each end to hold them in place.

MR. ALEXANDER B. COOPER: It is the sense of this meeting not to allow the anchoring or fastening of any net ?

(Upon motion being put on this proposition, it was unanimously carried.)

It is part of the duty of this joint Commission of New Jersey and Delaware to locate and fix monuments at the mouth of the Delaware River. The Commission would very much like to hear you tell us, as near as you can, where the mouth of the Delaware River is, or where what you consider is the mouth of the Delaware River is located.

MR. JOSEPH ANDERSON: I would suggest that you fix a stone every one hundred feet, beginning at the twelve mile circle, and going all along the low water mark of New Jersey, clean down to Stony Point,

and put the final stone of the twelve mile circle---

MR. ALEXANDER B. COOPER: At the mouth of the river on the Jersey shore; and where would you put it on the Delaware side ?

MR. JOSEPH ANDERSON: Twelve miles distant. I don't know how far that would measure. Do not let them have any jurisdiction so far as enacting or enforcing the law is concerned..

MR. GEORGE PUSTILL: I agree with Mr. Anderson in that suggestion.

MR. CHARLES LANCASTER: It seems to me that that would be a question for another body than the fishermen.

MR. GEORGE PUSTILL: The Government Inspector terms it at Dan Baker.

MR. ALEXANDER B. COOPER: How far is that from Stony Point ?

MR. GEORGE PUSTILL: It is right at Stony Point, about two miles below Reedy Island.

MR. JOSEPH ANDERSON: If these stones are put there, does that mean, according to this compact, that New Jersey has the privilege to control our river all the way across and take our citizens where

they please ?

MR. ALEXANDER B. COOPER: No, it does not mean that at all. This compact, so far as jurisdiction is concerned, whether wise or unwise, gives them the right to serve process upon citizens of their own state to the low water mark on the Delaware shore, and we have the right to serve process against citizens of our state violating the law to the low water mark on the New Jersey shore.

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*Mr. Sawyer*

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

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Delaware City, Delaware,

March 16th, 1906.

8.00 o'clock p. m.

Meeting held on the above date at Mulligan's Hall, for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Commissioners.

MR. ALEXANDER B. COOPER: You are all aware that under the present law shad and herring cannot be caught in the state of Delaware between the tenth day of June and the tenth day of August. Is that satisfactory to the fishermen of Delaware City? I may say that at the meeting in New Castle they thought that the shad fishing should not begin before the first of March, and that it should terminate on the first day of June, believing that after that date the fish were getting ready to spawn. What dates are agreeable to you? That is, whether we shall retain the dates as they now are, or whether they shall be changed in conformity with the

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sense of the meeting at New Castle ? What is your idea ?

MR. LEONARD YOUNG: What is the matter with the laws which we have at present ? The laws we now have suit me. I believe they are just as good as any other laws you can make. The trouble is, there are some of the fishermen who work in this way: They are getting a little bit too old, and they can't fish the four tides. You know, there are four tides in the twenty-four hours.

MR. ALEXANDER B. COOPER: The question is whether we shall prohibit any fishing from the tenth of August until the first of March; in other words, making the season for fishing from March first to June first instead of to June tenth, as at present.

MR. LEONARD YOUNG: That is alright, because you don't catch anything anyhow before or after those dates.

MR. ALEXANDER B. COOPER: You don't catch anything before the first of March ?

MR. LEONARD YOUNG: No, sir; you don't catch anything in the shape of shad.

MR. ALEXANDER B. COOPER: In order to get the sense of this meeting, I shall ask all those in favor of

the season beginning on the first of March and ending on the first of June, to so signify. Is that the sense of this meeting?

(The motion was carried, there being only one dissenting vote.)

MR. FRANK LABOUBE: If you start before the first of March you will go out there and you will not catch anything. We mostly commence our fishing about the twenty-fifth of March.

MR. ALEXANDER B. COOPER: You don't have to go out unless you want to. That is only in view of an early spring, or an early run of the fish.

MR. FRANK LABOUBE: Make the end of the season later. Let it be near about the same it is now--say the tenth of June.

MR. ALEXANDER B. COOPER: You would prefer the tenth of June instead of the first of June?

MR. FRANK LABOUBE: Yes, sir. Our laws are good enough as we have them now, I think. That is, they suit me all right. Of course, I don't know how they suit other people.

MR. ALEXANDER B. COOPER: The next point is, under the provisions of our law no shad or herring can

be caught nearer than one mile from the mouth of any river or creek within the state.

I may suggest, so as to get the opinion of the fishermen here present, that at the meeting in New Castle they suggested that that ought to be stricken out; that we ought not to have any law which confines you in limits of that kind.

MR. LEONARD YOUNG: If that was the case here we could not fish any net.

MR. FRANK HICKMAN: There are lots of people and lots of fishermen who have been fishing for a good many years around here, and I have been fishing for twenty years, and if you restrict them and make them go off one mile from shore, there are lots of these men who cannot fish, because they cannot go to the expense of rigging up that kind of a net. As Mr. Young has just said, there are lots of them that can't fish any kind of a net, if you put that restriction upon them. There are also another class of fishermen, what we call dippers. If they are not able to buy a new net they will go out and buy some second-hand net of some kind, and they will rig that net up and fish with it right close to the shore. If you are going to drive the



fishermen away one mile from shore, you are merely giving the man with the large haul seine a chance to fish his net. That is the whole trouble. The man with the large net wants that space in the river all to himself. I say make no restriction. Restrict no one. If they want to lay off on the mud, let them lay there--give them that privilege.

MR. WILLIAM GIBSON: I think it would be a grave mistake to put a restriction of that kind upon the fishermen. There is a creek right close to the place where I live, and there the river is very narrow between Reedy Island and Port Penn. They can't go off a mile from shore there. If they do, they will go on the island. I have seen that space entirely filled during the fishing season. When it happened to be blowing hard they could not get outside, and they would all go in. I think it would be a grave mistake to pass a law restricting the fishermen to anything like that.

MR. WILLIAM S. HILLES: That is the law as it is now. We want to know whether you want it to stay in that way.

MR. WILLIAM GIBSON: There is the Augustine Creek, the Blackbird Creek, the Appoquinimink Creek, and

all the way down on that shore there are creeks within almost a mile of the nets where they are drifting along; and it is all flats inside of that. I think that is one thing that ought not to be put in the law. There are some haul seiners along the beach that have two or three hundred fathoms of haul seine, and they want to keep all of us out that they can keep out so as to keep that space for themselves. I say let them lay where they please and also let the gillier do the same. If the haul seiners do not want to go out there, let them stay in close to the shore. That is a mean law, in my opinion. It is just like a fellow who has found an apple tree with a whole lot of good apples on. He says to himself, "I hope nobody will find that tree but me." I think that is the way with the haul seiners, "I hope nobody will find it but me."

MR. JOSEPH ANDERSON: That law was enacted for the benefit of the fishermen in Kent and Sussex Counties, and we, in New Castle County, did not know there was such a law enacted as would effect us in our fishing. We have been fishing under that law without knowing it. We are just awakening up to the fact that we have been fishing under that law. You will probably, when you

have your meetings in Kent and Sussex Counties, have that thing to come up against as in competition with New Castle County. If such does come up, I would suggest that there be a compromise in reference to the three Counties. If Kent and Sussex Counties want such a law as not to fish within a mile of the streams flowing into the Delaware Bay, give it to them and let the line be from Bombay Hook to the Breakwater. Let them have that privilege if they want it. The object of that law was this:

In all of these small streams we have nothing to prohibit a man from fishing by staking. They don't drift there. They stake their nets. There is nothing to prohibit them from staking their nets within a mile of these streams; that is, I mean, there is a law which prohibits nets from being staked within a mile from the outside of these streams so as to allow the fish to go up these small rivers or streams, and up those rivers or streams they do not drift their nets, but stake them. That is what that law was passed for. I would move that we have that law stricken out entirely and to allow every man the privilege of fishing in all the waters within the state of Delaware clear down to the capes.

(Upon the seconding of the motion, it was unanimously carried.)

MR. ALEXANDER B. COOPER: The next question is in reference to the size of the mesh in the seine. I may say here that the fishing laws of the state of Delaware have been very much confused. They have been amended from time to time (by whom I do not know) and amendments have been put in the wrong places. Therefore, at present, they are very much confused. The present law is a ten inch mesh. That was, evidently, intended for sturgeon; but it is in the shad fishing part of the law. The sense of the meeting at New Castle the other night was that no gill seine should have a mesh of less than five inches, that is, stretched, of course.

MR. LEONARD YOUNG: That is a gill net for shad?

MR. ALEXANDER B. COOPER: Yes; of not less than five inches. How does that strike you?

MR. LEONARD YOUNG: That is all right. That suits me.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the mesh of the shad net shall not be less than

five inches ?

(Upon motion being put on this proposition,  
it was unanimously carried.)

The next question is as to the length of the net. The sense of the meeting at New Castle was that they should be privileged to fish all they wanted to. We have a provision in the law limiting it to three hundred fathoms for non-residents, but nothing as regards residents. Is it the sense of this meeting that the length of the net shall not be limited ?

MR. LEONARD YOUNG: I say to let them fish all they please.

MR. ALEXANDER B. COOPER: Is that the sense of this meeting ?

(The motion being put on this proposition,  
it was unanimously carried.)

Next comes the question as to the closed season, with reference to fishing from Saturday until Monday morning. The present law is from eight o'clock on Saturday until midnight of Sunday. The law of New Jersey is from sunset on Saturday until midnight Sunday. Our law was the same as the law in New Jersey, but it was amended to eight o'clock on Saturday instead of

sunset. At the meeting in New Castle it was there resolved that they should stop fishing on Saturday at twelve o'clock noon and not begin again until Monday morning at four o'clock. What is your feeling about that ?

MR. LEONARD YOUNG: I would say to have the same law as we have at present.

MR. ALEXANDER B. COOPER: Your idea is not to change it ?

MR. LEONARD YOUNG: To have the same law that we have now, from eight o'clock on Saturday until midnight Sunday.

MR. ALEXANDER B. COOPER: You want it to remain just the same ?

MR. LEONARD YOUNG: Yes, sir.

MR. WILLIAM S. HILLES: This is an important matter, and we would like to have a full expression of opinion.

MR. LEONARD YOUNG: If we stop at that time they will fish over at the other place in the same way they are now fishing.

MR. ALEXANDER B. COOPER: No, they will not. This is for the purpose of drafting a uniform law, that is, the same law to apply to New Jersey and to the state of Delaware, and the same penalties for violations to be

applied.

MR. FRANK HICKMAN: It is an entirely different proposition as regards fishing here and fishing at New Castle. New Castle is not troubled with Jerseymen and people from Chester and from Philadelphia.

All our creeks down here, that the gentleman just named, are ranned and jammed full of Chester men, Philadelphians, New Castle people, Wilmington people and Jerseymen, and also with people from Marcus Hook.

From all up the river they come down here to get the Bay fishing. They use big nets when they come down here, and when they go back up home after the season is closed down here, they divide those large nets up into two nets, because they haven't the room up there.

If you should restrict us until four o'clock on Monday morning, there are eight thousand boats and there would be eight thousand nets all laying off at one place at four o'clock. Now, if that is so, where are they all going to fish? That is the question.

If we go out from our home at Port Penn, they will come out of the creek and they go right over to the westward to drift--they would all go over to the westward to drift at four o'clock in the morning. When we start

and get down to Ray's ditch there will be two or three hundred more, and also those coming out of Blackbird Creek and Augustine Creek, and some out from Collins, and so you see there will be a tremendous number of nets all to be stretched at four o'clock in the morning. The consequence will be nobody will get any fish, and I will be into some other man and some other man will be into me. As I say, consequently we would get no fish. I say, let them fish up until Sunday morning, and then when Sunday night is through let them start fishing again, because the season down this way is very short. Whatever fishing is done we have to do within a short time. The fishing is different down here from what it is at New Castle. We have got to contend with fresh water and salt water. If there is a run of shad that comes on, what will they do? Ninety-nine times out of a hundred it will be on Saturday that the fish will come up the bay in large numbers. Very nearly every time it will be on a Saturday, and if that water is salt those fish will go right straight to Philadelphia. So if you restrict us and not permit us to go out there and fish when the fish are coming up, they get by us. When Monday



morning comes around they have gone by, and when we go out there the fish are gone, and they have gone up to New Castle and they have gone to Philadelphia, and they go into those big haul seines which you will find in the neighborhood of Philadelphia. I say start the season on the first of April and then close the season on the twenty-second of May. You have got a very small space of time within which to catch fish, and after you take into consideration the fact that men have five hundred dollars invested in nets, I think we ought to be allowed to catch them when they are coming up. There are men here who have gotten five hundred dollars invested in nets, and you can very readily see the small space of time these men have in which to get their money out of those nets. So that if you say a man can't fish from dinner time on Saturday until four o'clock the next Monday morning, you are still shortening the time within which he can get a return from his investment in nets. Monday is the best day in the week. His time is limited, and if you restrict him, he would not have a chance to fish when he ought to.

MR. ALEXANDER B. COOPER: What hour would be satisfactory to you ?

MR. FRANK HICKMAN: If a man wants to fish up to twelve o'clock Saturday night, I say let him either dry his net then or keep it on his boat, and when twelve o'clock midnight of Sunday arrives, let him go to fishing again, if he wants to.

MR. R. S. YEARSLEY: I am in perfect accord with the remarks just made by the gentleman. You say we shall begin fishing on Monday morning at four o'clock, and shall quit fishing on Saturday at eight o'clock?

MR. ALEXANDER B. COOPER: The present law is that you shall stop fishing at eight o'clock on Saturday and begin again at midnight on Sunday. The suggestion at the meeting in New Castle the other evening was to close the fishing at twelve o'clock, noon, on Saturday, and not to start again until four o'clock on Monday morning.

MR. R. S. YEARSLEY: I have been fishing ever since I have been knee high to a grass hopper, and for the last two years I can say that I have made one-third of my success in fishing on Saturday. Why did I do it? These up river fellows fish down the Bay, and some of them come down here and they are

fishing during the day and night during the week days, one right after the other, and when Saturday comes along I go down and they go home. Then I have a chance to catch some fish. It may probably be blowing a little heavy, and I go down there and I catch a lot of fish. I have made one-third of my spring fishing, I might say, in those two days, and paid for my net and cleared myself and had the balance of my time and catch clear. I would suggest that we begin at twelve o'clock on Sunday night and fish until dark on Saturday.

MR. ALEXANDER H. COOPER: The same as under the present law ?

MR. R. S. YEARSLEY: Yes, sir; just as it stands now, from eight o'clock Saturday until midnight Sunday.

MR. JOSEPH ANDERSON: The last speaker said that he generally made his best catches on Saturday. That has been the experience of men ever since I have been fishing. I have always made it a point to fish on Saturday. I generally allowed to leave my net on the boat, and when I left it on the boat I left it there so as to be ready to go to fishing as early as possible on

Monday. I wanted to be in the best position I could to make the best of it. I have always made some of my best catches on Saturday. I would suggest that the laws which are at present on the records be continued. I put that in the form of a motion.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the present law, which is from eight o'clock on Saturday night until midnight on Sunday, be continued?

(Upon motion being put on this proposition, it was unanimously carried.)

There was another suggestion made, in view of what was considered the scarcity of the shad in the river. That suggestion was adopted in New Castle the other evening, and was to the effect that there should be a sort of closing hours in the week days; that is, that they should stop fishing at seven o'clock at night and not begin again until four o'clock in the morning, that to apply to every night in the week except Sunday. That would practically stop the night fishing. Have you any suggestions to make in reference to that matter?

MR. J. A. JORDAN: I have been fishing ever since 1858, and I have never missed a spring's fishing

that I know of. I don't think we want any limited time like that for fishing. When the shad come here we want to have the privilege of going after them whenever we feel like going after them, and whenever it is suitable for us to go, and whenever we feel able to go and the weather will permit us to go, except on Sundays.

MR. ALEXANDER B. COOPER: In justice to the men who suggested this at New Castle, I will say that it was made upon the ground of preserving the fish; that is, allowing them a little more time in view of their getting scarce.

MR. J. A. JORDAN: It takes all of our time now to get out clear. We have to fish here all the time to get out of the expense of our net, and if we are going to be limited as to time that way, it will not be worth while to bother about investing in nets. I don't think we want any better law than the present one.

MR. R. H. YEARSLEY: You say from four o'clock in the morning to seven o'clock in the evening?

MR. ALEXANDER B. COOPER: From seven o'clock in the evening until four o'clock in the morning as the closed part of the fishing day.

MR. R. H. YEARSLEY: We have about twenty boats from this city, and we all have a place to lay off; and there are three or four close shore fishermen. We all know that some fish all night, and some will go out at one o'clock and some want to go later. I am a middle aged man and I like to fish from one o'clock. There are some men who are older than I am who will go out at three or four o'clock. Let them go whenever they please. There is another set that we call the dippers. They want to go out at six or seven o'clock. Let them go. If we make this law so as to make us all go down there and start at one time, there will be a great big mix-up there, and there will not be room enough for us all to fish in. At sometime in the morning when they are all out, it would be impossible to fish. We could not begin to fish. We would be all mixed up, and there would be a terrible time there and nobody would be able to fish. Those fellows who want to fish get up early and go to fishing. They attend to their business. They donot walk up and down the streets and lay around until seven or eight o'clock, too tired to fish. That may suit them. Who made that suggestion? If he had been a fisherman, he would not

have said anything of the kind. It is the man who does the fishing that is to be considered in this matter. It is not the fellow who sits around the barroom and around on the tables and around the stores. These are not the shad fishermen. It is the snap shot, the steam launch, and the net; these are the things that produce the fish.

MR. FRANK NICKMAN: At our place we have a very bad place to fish in, because the Government has taken it all up with buoys. I refer to Port Penn. We cannot lay out directly from our village. We cannot row directly out from there and lay off, but we must go down the river three or four miles before we can stretch a net, because if we laid a net off in the night or day opposite our village, we would have to pull it up to clear the buoys there. Then there is Ray's ditch, and Blackbird creek, and Appoquinimink creek, they are all right there. They are all full of nets, Philadelphia people, Jersey people, Delaware City people, and New Castle people, they are all piled in there ready to start at four o'clock. If the rest are all there, of course, our men are going to be there also, and these men from these different

creeks are going to be there; and who is going to get any fishing? If you put any restriction on it, the men down there will go out when they get ready and go fishing. Like enough they will wait until I come down, and then again they may not. If you restrict it until four o'clock, they cannot go and I cannot go until that time, and when we all get there we will all be in a huddle, and nobody will get any fish. My idea is to let a man start when he pleases. That is my idea. Then when he gets a fill of fishing, let him go home. Let the Jerseyman look out for themselves. They fish night and day down there. In the spring of the year if you come down to our place and look out there on the river it looks like the city of Philadelphia lighted up. They fish night and day. They fish every tide. While one man sleeps the other two fish. We don't want to make any laws in this state, at least, I do not, that are going to restrict us to a certain number of hours for fishing, because, if we do, we can't afford to rig our nets; we can't afford to pay for them; that is, we can't catch enough fish to pay for them. We have good fishermen at Port Penn who have a great deal of money invested in nets. The highest catch at our



town last season was 1716 shad, which were shipped to Philadelphia. They were caught because that man was given all the time he wanted to catch them in. That man is a good fisherman, an A-I man. He caught 1716 shad. Suppose you restricted him to a certain number of hours to have caught those fish. Could he have done it? No, sir; he couldn't. Therefore, if you make such a law as this, that man could not rig a net; he could not afford to rig a net at all, because there would be too much money invested in it in comparison with the amount of money he would get out of it. That man has got a boat that cost him three hundred and seventy-five dollars. The catch around there went on down from 1716 shad--I am talking from actual facts now--all the way down from 1716 shad to none. Now, how about the poor devil that catches five and ~~big~~ and seven hundred, and he had to pay one hundred and fifty dollars for a shad net? He would not have rigged that net this spring. He would have had to go out on the farm and husk corn, or plant corn, or something else of that kind, to make a living. When you restrict any set of fishermen to a certain number

of hours within which to fish, they are left, because, as I say, our season starts about the first of April and ends about the twenty-second of May. You can figure up yourself the amount of time the fishermen have, and the amount of money they have invested in their nets, to find out how they are going to get out of it and to make a living for themselves.

MR. ALEXANDER B. COOPER: There seems to be a sentiment in opposition to the closed part of the week day fishing. I will, therefore, put the question before you in this manner: All those who are opposed to any closed hours during the week days, and are in favor of allowing free and open fishing during the week days, will so signify by saying aye.

(Upon the seconding of the motion made it was unanimously carried.)

There was another question which was brought up, and that was as to whether or not there should be any provision in the law with reference to the distances of the nets apart; that is, whether a man should be allowed to cast his net in ahead of another man, or not. Do you want any provision in reference to that, or will

you take your chances on it ?

MR. WILLIAM GIBSON: I commenced fishing when I was a boy, and I never heard of such a thing as that before in all my life. Sometimes ~~xxxx~~ you have got to go wherever you can. The tide may be pretty near gone, and there may be three or four fishermen there, and we all have got to go to fishing and get our fish inside of an hour. If we had to be put a couple of hundred of fathoms apart, some of us would not get in at all. If you put a space of a quarter of a mile between each one, the greater portion of them would get left. If you make a prescribed time as to when I shall lay off my net, say so many minutes, and then another fellow comes along and he lays his net off, and if I rig up my net and he rigs up his net, and I put ten pound of lead to the one hundred fathoms and he puts six pounds of lead to the one hundred fathoms, his net will drift faster than mine; and then along comes the patrol man, and he sees that this other fellow is getting too close to me, has he got a right and is he going to arrest him ? If you set a certain limit of time as regards the laying off of nets, you

have got to make a law that will compel people to rig their nets all alike.

MR. ALEXANDER B. COOPER: The point is as to the casting in of the nets; not what becomes of them after you get them in. That is, if I cast my net out along here, whether or not another fisherman--and for instance the tide was running ebb--could put his net right in ahead of me, twenty feet, for instance, in order to prevent the shad getting into my net? What provision do you want made for that? I understand from the sense of this meeting that you are opposed to anything like that, and that you desire to put your nets in where you please. Is that the sense of this meeting?

(Upon the putting of this proposition, the motion was unanimously carried.)

There was another question which came up. Our law is not very explicit, or very full, about the matter, but they have a very stringent law in New Jersey about it. That matter is as regards the pound fishing, the anchoring of nets, and the catching of shad by contrivances of that kind other than the usual drift net. Have

you anything to say about that ? In New Jersey  
the general law in reference to that is as follows:

(Here reads section of New Jersey law.)

MR. WILLIAM S. HILLES: The question is,  
wherever or not there ought to be a law prohibiting the  
use of that kind of contrivance in the Delaware River  
and Bay.

MR. LEONARD YOUNG: The large haul seines  
up the river kill more fish than anything else. They  
pull the small fish ashore and they walk on them  
while they are getting the large fish out.

MR. ALEXANDER B. COOPER: I should think that  
place at Gloucester would do that.

MR. LEONARD YOUNG: Yes; and they do it  
at Washington Park, too.

MR. ALEXANDER B. COOPER: They work their  
seines there by steam, do they not?

MR. LEONARD YOUNG: Yes. It is hauled in by  
steam.

MR. ALEXANDER B. COOPER: Has anybody anything  
to suggest either in favor or against anything of that  
kind ? It seems to be a measure for the protection

of those who are regularly fishing with drift gill nets.

MR. R. H. YEARSLEY: I can't get it into my head why Jersey has any right to make laws for this Delaware River.

MR. ALEXANDER B. COOPER: That is their law at present.

MR. R. H. YEARSLEY: There is no Jersey river.

MR. ALEXANDER B. COOPER: The New Jersey legislature has entered into this compact, and it is under this compact that we are now acting. Is there anything further you want to say about the pound fishing?

MR. JOSEPH ANDERSON: I think pound fishing, and allsuch fishing, ought to be prohibited within the waters of the state of Delaware, that is, within its jurisdiction, the Delaware River and Bay; and I would make a motion that it be inserted in the law.

MR. ALEXANDER B. COOPER: That there be no pound fishing permitted?

MR. JOSEPH ANDERSON: That there be no pound fishing or stake net fishing permitted of any description.

(Upon the seconding and putting of the motion, it was unanimously carried.)

MR. ALEXANDER B. COOPER: The next point is in reference to herring. Have you anything to say about the fishing for herring? It was suggested at the meeting in New Castle that the herring fishing could take care of itself. Is it the sense of this meeting that no provision be made in reference to herring fishing?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point in order is carp fishing. The present law of Delaware is that you cannot fish for carp during the months of May, June, July and August. Is that satisfactory? The fishermen at New Castle were in favor of letting the law remain as it is, May, June, July and August for carp fishing.

MR. R. S. YEARSLEY: That is all right. They are no good during that time, anyway.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the law shall remain as it is in reference to carp fishing?

(Upon motion being put on this proposition, it was unanimously carried.)

The next point was as to the mesh of the net for carp, and that was two and five-eighths inches. Is that satisfactory? As a matter of fact, our present law is, you cannot fish for anything with less than a two and five-eighths inch mesh. Is it the sense of this meeting that the law should stand as it now is?

MR. FRANK HICKMAN: Does that mean that that is the smallest mesh you can fish for any kind of fish with?

MR. ALEXANDER B. COOPER: For any kind of fish.

MR. FRANK HICKMAN: Then what are you going to do with the eel?

MR. ALEXANDER B. COOPER: Do you fish for them with a net?

MR. FRANK HICKMAN: That is one of the biggest fishing industries we have here. They fish for them with baskets and they fish for them with nets, that is, with fike nets. You take a string of nets and bait them and go out in the river and sink them.

MR. ALEXANDER B. COOPER: That is intended to apply to the gill seine and drift net.

Is it the sense of this meeting that the size of the mesh of the gill net shall be not less than two and



five-eighths inches ?

(Upon motion being put on this proposition,  
it was unanimously carried.)

The next point is as to sturgeon fishing .  
It was suggested at New Castle, and carried there as  
the sense of the fishermen, under the head of sturgeon  
and mammoose, that no sturgeon of any kind should be  
caught that were less than six feet in length. That  
was for the preservation of the sturgeon. I do not  
think there are many of them around.

MR. FRANK LABOUBE: If you make the law  
that they shall be six feet in length, you might  
as well make it a closed season for a length of time.

MR. ALEXANDER B. COOPER: It was suggested  
at the meeting the other night and carried that none  
less than six feet should be caught. That was supposed  
to be for the purpose of preserving the younger  
sturgeon.

MR. FRANK LABOUBE: A sturgeon measuring  
six feet would dress from fifty to seventy-five  
pounds, that is, some of them. I had a sturgeon in  
my net which was six feet long--I am saying now, if I had

such a fish, and he would come up alongside of my boat there, he would look like a mile long to me. If he had twenty-five or thirty dollars worth of rice in him, I would throw two big hooks into him so as to keep him from making trouble, and then I would scoop him into the boat, and he would probably die, because after having gotten him in there and measured him I found he was five to six inches under six feet, and would, therefore, throw him overboard again. He would probably die from the wounds he would receive. I think a four foot fish is a medium size. That would be my idea.

MR. JOSEPH ANDERSON: The gentleman said that a fish which measured six feet would be a large fish, a large cow fish. I was the gentleman who made that motion in New Castle. I have been fishing for sturgeon for many years, and probably fished for them before he know was born, and ~~as~~ more about a sturgeon, I expect, or as much as the average man that ever fished for them, and I know the size of a sturgeon, and how it will weigh, for I have handled as high as twenty-five hundred sturgeon in one year, more than the gentleman himself ever caught, and I know that I have measured many sturgeon

and butchered them all, many sturgeon measuring six feet in length, and they have netted twenty-five pounds in weight. I measured some sturgeon last year, and the reason I put that motion was for the protection of our young fish. I measured some sturgeon on our wharf down here last year. There were thirteen sturgeon there. There were sturgeon there that measured seven feet long. I bought the fish from the man after they were butchered and paid him ten cents a pound for them right there, and there wasn't a sturgeon in that lot that weighed thirty-five pounds, not one in the whole bunch. The gentleman just left the room, the one to whom I refer. A sturgeon to weigh seventy pounds will have to measure eight feet in length, and I will wager from one hundred to five hundred dollars--- and I can get the money backed up at any time---to any man, and I dare him to take it up. I have measured them as long as eleven and twelve feet, but the average length of the sturgeon is nine feet. A sturgeon does not spawn until it is seven years old, and it will then measure from eight to nine feet in length. These men are young in the business. They have been catching

sturgeon only a few years. They have not learned it all as yet. They have got a good bit to learn. I would suggest, for the protection of the sturgeon interest, that there is more money in the sturgeon than in any other fish that swims, and for the protection of the fish, I would move that it be unlawful for any man to catch a sturgeon that measures less than six feet in length. You will find the same thing to contend with in New Jersey, when you come to it.

MR. FRANK NICKMAN: I am not quite as old a man as the gentleman who just addressed you, and have not handled as many fish as he has, but I have caught sturgeons, and I have caught a good many of them; and furthermore, I have not only caught sturgeon, but I have cleaned and sold the fish in the Dock street fish market; and I beg to differ with the gentleman, because I have butchered fish that did not measure six feet, and yet they weighed over one hundred and fifty pounds. These thirteen fish that he spoke of, whether they were what we call "sulkers", or not, I do not know, fish that had the spawa taken from them and had no meat on their back bone. I have seen them with a whiskey barrel full of roe in them, and after they spawn that roe

there is no meat left on them. I have seen a thousand fish less than six feet in length that have dressed one hundred and fifty pounds, and I remember one particular fish that dressed one hundred and sixty-five pounds. When you go to saying six feet, you are going to make a law restricting the rights of the fishermen, because it is not worth while to rig up a net, and you had better make it a closed season. I have gone out there and fished for ten days and two weeks, and never had a strike, let alone catch a fish. If you are going to make the size of the mesh fourteen to sixteen inches to catch six feet fish, you are going to make a law that will prevent any fishing at all, because you will not catch the fish.

MR. R. H. YEARSLEY: I have caught sturgeon with a ten inch mesh, and I have caught them just as well as he could with a fourteen inch mesh. Mr. Anderson, I think, is just a little off when he says a fish has got to be seven feet long to dress seventy-five pounds. I think there is a little difference there. I think a fish averaging five feet in length will dress from forty-five to fifty pounds; that is what

we call the buck. Of course, we catch moose in those small nets. I have got a new net, brand new last summer, and have not fished it very much, and I have caught very few small fish, and some big ones, and just about got my net out. Next year I will not be able to use it, just because this gentleman wants to make the mesh fourteen inches. He has got a lot of nets with fourteen inch mesh, and he wants me to fish with a fourteen inch mesh. I have got to make my mesh suit him, because he wants to catch all the big fish, and I want to catch what comes along.

MR. WILLIAM S. HILLES: What is your idea as to the smallest sizes of sturgeon that should be caught?

MR. R. H. YEARSLEY: Four feet. A sturgeon that measures four feet will dress from thirty-five to forty pounds right along. A five foot sturgeon will dress from forty-five to fifty pounds. That is, the bucks. I saw a buck last summer that dressed over two hundred pounds, and I know he wouldn't measure six feet. He was naturally fat.

MR. WILLIAM S. HILLES: What was the size of the mesh?

MR. R. H. YEARSLEY: That was caught in a ten

inch mesh, but I don't suppose a ten inch mesh would suit this gentleman. However, that is my idea. There are no nets in Port Penn that have a fourteen inch mesh. I have got nets down there, and there are lots of others down there that have bought nets, bought them last summer, and if you want to give us a limited mesh with which to catch the fish, we will have to stop.

MR. FRANK HICKMAN: Professor Rider of the University says that little sturgeon will spawn.

MR. JOSEPH ANDERSON: I expect I have perused professor Rider's statement on the propagation of sturgeon about as much as anyman in the room, and I have probably been interested in the sturgeon industry as much as any man in the room, as far as this section is concerned, and in regard to the size of the mesh I do not ever recollect of suggesting or stating that I had a number of nets that were of an exact size. I do not recollect just what size those meshes are at all. I am perfectly willing to compromise to a less size mesh. For instance, at New Castle I suggested a fourteen inch mesh, and I am willing to compromise it by lessening it to thirteen inches; but when

you come to fishing with a ten inch mesh, you necessarily catch all those small fish, and you will catch fish so small that they are not fit to be brought ashore for market; they are good enough for the market, but you are catching up all of our young fish, and finally we will have no fish at all left in the river to fish for; and it will not pay any man to fish for them. They will see it themselves when it is too late. It is too late after you have killed off all the young to expect old ones afterwards.

MR. R. H. YEARSLEY: I think myself that it is somewhat of a mistake in placing that measurement upon the fish, because some of them are very short in length, and yet they weigh like everything when they are fat. The only way you can do Brother Anderson any good is to shut him down for two or three years the same as everybody else, and then I think his business will start up again. I have caught as high as fifty fish a day, that is, my partner and myself, and there have been lots of fish in among that lot six feet long. I know they would average six feet long. You talk about a cow fish when she is spawning, she is



sickly. They are not any bigger around than that (indicating about eight inches). They are great long thin things, and are not fit for anything. Some of them die, and some of them pick up again. He has got her goods and gone to market, and you are not going to eat them, nor is anybody else going to eat them. All this talk about a big mesh will not do any good now, because they are not out here to get, unless he shuts down for a few years.

MR. ALEXANDER B. COOPER: There seems to be a conflict of opinion, and the first question I will put this way: Those who are in favor of a closed season of two years will so signify by voting aye.

(Motion lost.)

I will begin with the smaller fish and go up. Those who are opposed to catching sturgeon of a length less than four feet, will so signify by voting aye.

(Upon motion being put on this proposition, it was carried.)

Those who are in favor of increasing the length of the fish to six feet will say aye.

(Upon motion being put on this proposition,

it was lost, there being but one affirmative vote.)

As to the size of the mesh, it ranges from ten to fourteen inches. Those in favor of a ten inch mesh will signify the same by voting aye—that being the lowest size.

(Upon motion being put on this proposition, it was carried.)

Is there anyone who is in favor of making the mesh larger than ten inches? If so, they will please stand up.

(Mr. Joseph Anderson here stood up.)

The next matter is as to trout and rock fishing. Have you anything to say about that matter, so far as concerns the size of the mesh? You voted that that should be the smallest size mesh used, the two and five-eighth inch mesh, and that would apply to trout and rock fish, unless you want some particular provision for those. As to the size of the rock caught, there was a suggestion made at New Castle and carried that no rock fish weighing over twenty pounds should be caught. What have you to say about that?

MR. JOSEPH ANDERSON: I would suggest that there be a penalty of twenty-five dollars in each case where a man fishes a net for sturgeon with a mesh of less than ten inches. Then we will catch them all. I put that in the form of a motion.

MR. AMOS COLLINS: Suppose a man catches a sturgeon in his shad net which is only about a five inch mesh? He can't take that sturgeon out of his shad net, because it is not a ten inch mesh net.

MR. ALEXANDER B. COOPER: He is fishing for shad then.

MR. AMOS COLLINS: According to Mr. Anderson's idea he has got to fish a ten inch mesh for sturgeon.

MR. ALEXANDER B. COOPER: If he accidentally catches a sturgeon in a shad net, or a shad in a sturgeon net, it doesn't make much difference.

(Upon motion being put on this proposition, it was carried.)

Is it the sense of this meeting that no rock fish shall be caught weighing over twenty pounds, and that a penalty shall be imposed?

(Upon motion being put on this proposition,

it was unanimously carried. )

The next point is as to the menhaden fishing business. I do not know that you are so directly interested in that, although you ought to be. In reference to the menhaden fishermen, they are patrolling our coast and are also coming inside of the Bay now, as I understand, and it is claimed that they are catching great numbers of food fish, and I guess that claim is made with a great deal of correctness.

MR. JOSEPH ANDERSON: Probably the gentlemen will agree with me in this matter, even though they did not agree with me on the sturgeon fishing question. The menhaden fishermen are a very destructive set of fishermen. There isn't any branch of the fishing business that is more destructive to the food fish than the menhaden fishing. They catch all manner of fish in their nets, all manner of food fish, and they put them into the pot and boil them up and make fertilizer and oil out of them. I think such a business should be kept out of our waters and prohibited by law, and that the penalty should be made very heavy.

MR. ALEXANDER B. COOPER: In that connection I would say the New Jersey law is very severe against it.

MR. JOHN YEABLEY: I had a brother-in-law who fished for the menhaden fisheries for twenty years, and he told me that they caught all kinds of fish and put them right in the press, that it didn't make any difference whether they were sheep head, trout, black fish, or blue fish, whatever came along went into the press. He said at one time he saw a sheep head that weighed fifteen hundred pounds go into the press. I think they ought to be kept outside of the Bay. When they come up the Bay, and along in close quarters, they catch just that many more than they would if they were outside. I think they ought to be prohibited first and last.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that menhaden fishing in the Delaware Bay and River should be prohibited?

(Upon motion being put on this proposition, it was unanimously carried.)

We have a law in reference to sharks, porpoises

and herring hogs. I don't suppose you care much about that.

Now, with reference to catching fish and eels, what have you to say ?

MR. JOSEPH ANDERSON: I would suggest that they be permitted to fish with any kind of a net that they can catch them with, regardless of size of mesh.

MR. FRANK HICKMAN: That is my idea in regard to eels, because that has gotten to be quite an industry with us down at my place. They fish for them with both baskets and nets. They go out in the river, bait them, set them, and let them set over night, and they make a good living at it. So far as I am concerned we want no law to stop them fishing in any way they please, so far as eels are concerned.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that no law be enacted with reference to catching fish and eels ?

(Upon motion being put on this proposition, it was unanimously carried.)

Are there any other suggestions that any of you gentlemen would like to make in regard to fishing

of any character --any kind of fish ?

There was one question that was taken up the other evening, and that is this: Do you want any legislation with reference to willful interference with drift nets ? For instance, such as launches and boats willfully running into your nets. Do you want a law to make them get out of your way ? Do you want any law of that kind ?

MR. JOHN YEARSLEY: We can't do anything with that, so far as vessels, and things of that kind are concerned. They are bound to run the channel, and if we go out into the channel they are bound to run over our nets.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that nothing be done with that matter ?

MR. R. S. YEARSLEY: Sometimes we don't fish the channel, but in coming up to Delaware City some of these fellows who work on the tug boats will come out there and run over your net. They will say, "If you don't get out of the way we will run over you, damn you." They will tell you they will run over you and over your net. If we could get anything in the way of a law to

govern that matter, I think it would be one of the best things that ever happened. When we are in their way in the channel we can get out.

MR. FRANK HICKMAN: If the Government gives a license to these people to ply the Delaware River and Bay, what law could you gentlemen make to stop them?

MR. ALEXANDER B. COOPER: This suggestion does not contemplate that at all. It contemplated a willful and malicious interference with your nets. If a vessel is coming up the channel from the ocean, of course, she cannot go out of her channel. That is not willful interference; that is interference that is necessary. But it is where it is malicious and willful, where it is maliciously and willfully done, that is all this refers to.

MR. R. S. YEARSLEY: If a sailing vessel comes along, and the wind is blowing, and she is going before the wind, and you have got your net out there, and probably the bar will be on one side of you, and you dare not let her go the other way, because her boom will go over your mast-head, then what are you going to do?



MR. ALEXANDER B. COOPER: That is not a willful or malicious interference. If I come down in my naptha launch and I see your net right ahead of me, and by my turning out one hundred yards I can escape your net, but I still rush on and rush right through your net, that is what I call willful interference.

Is it the sense of this meeting that no legislation of that kind shall be had ?

(Upon motion being put on this proposition, there were but two votes, one in the affirmative and one in the negative.)

Are there any further suggestions which you have to make in reference to fishing ?

MR. FRANK HICKMAN: What are you going to do with non-residents ?

MR. ALEXANDER B. COOPER: You cannot make a law discriminating against non-residents. That has not only been decided over and over again by the courts, but it is a constitutional provision of the United States that any citizen of any other state has the same privileges and immunities in any other state that he has in his own state. He comes into your state and subjects

himself to the same laws you are subject to. If you put a license on a non-resident, you have got to put a license on yourselves.

MR. R. H. YEARSLEY: We have a law against Sunday fishing, which is right, and Sunday fishing should be stopped. I do not like the idea if I go out fishing next Sunday and I should happen to get over a little bit too far on the other side, of a Jerseyman coming out and getting me.

MR. ALEXANDER B. COOPER: He cannot do it under this law. There is a clause in this compact which gives the state of Delaware exclusive jurisdiction and power to arrest her own inhabitants for violation of the fishing laws, and the state of New Jersey has the same power with reference to her inhabitants.

MR. R. H. YEARSLEY: Suppose one of us should go over there, or they should come over here. If I am going to be arrested, I want to be arrested by my own people and in my own state.

MR. ALEXANDER B. COOPER: That is the only power they have to arrest their own citizens. They have no right under this compact to arrest a Delawarean.

They can arrest a Jerseyman, but they cannot arrest a Delawarean, and a Delawarean can arrest a Delawarean but cannot arrest a Jerseyman.

MR. AMOS COLLINS: Doesn't it say in this compact between the two states that a Jerseyman can follow a citizen of the state of Delaware to low water mark ?

MR. ALEXANDER B. COOPER: A New Jerseyman can follow a native of New Jersey to low water mark of this state, and a Delawarean can follow a Delawarean to low water mark in the state of New Jersey.

MR. JOSEPH ANDERSON: It pertains to men violating the laws of the state of Delaware, whether they be fishermen, or whoever they may be. It doesn't say fishermen.

MR. R. H. YEARSLEY: Then who will arrest the men who are neither Jerseymen or Delawareans ? Nobody can arrest them, under that compact.

MR. ALEXANDER B. COOPER: That will not be a part of the uniform fishing laws.

There is one thing more the Commission would like to be advised about, and it is a matter that appears to me, and I think to the rest of my brothers

on the Commission, to be a pretty hard thing to locate precisely, and that is, where is the mouth of the Delaware River? We are called upon (and whether it be in an arbitrary way or in any other way) to erect monuments at the mouth of the Delaware River. I would like to know from you gentlemen what you understand to be the mouth of the Delaware River.

MR. JOHN YEARSLEY: Reedy Island lighthouse.

MR. ALEXANDER B. COOPER: How far is the Reedy Island lighthouse from the mouth of the Appoquinimink Creek?

MR. JOHN YEARSLEY: Three miles. The Reedy Island lighthouse is down at the lower end of Reedy Island. Stony Point is a little below that place. Some of the smaller tug boats are only allowed to run to the Reedy Island lighthouse, by their license. Reedy Island lighthouse is the head of the Bay.

MR. ALEXANDER B. COOPER: Where does it strike the Jersey shore?

MR. JOHN YEARSLEY: Just a little above Stony Point.

MR. ALEXANDER B. COOPER: Where would it strike the Delaware shore ?

MR. JOHN YEARSLEY: About Port Penn.

MR. ALEXANDER B. COOPER: Is it the sense of this meeting that the mouth of the Delaware River should be located, as near as it can be ascertained by measurements or otherwise, upon what we call the twelve mile circle ?

(Upon motion being put on this proposition, it was unanimously adopted.)

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

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Lewes, Delaware,

April 13th, 1906.

8.00 o'clock p. m.

Meeting held on the above date at the Town Hall Building for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander R. Cooper, Esq.,

William S. Hilles, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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MR. ALEXANDER R. COOPER: This meeting was called for the purpose of receiving information as to what you desire concerning the changing of our present laws or creating new laws relative to fishing in the Delaware Bay and River. Under the present law shad and herring cannot be caught in the state of Delaware between the tenth day of June

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and the tenth day of August. At our meeting in New Castle the expression of opinion was to the effect that shad fishing should not begin before the first of March, and that it should terminate on the first day of June.

MR. SAMUEL E. PRETTYMAN: We don't start to catch shad here before March tenth. The first shad caught this year was on March twenty-ninth.

MR. WILLIAM S. HILLES: What is the size of the mesh used?

MR. SAMUEL E. PRETTYMAN: Five and a quarter inch mesh, stretched.

MR. ALEXANDER B. COOPER: How do the present laws in reference to day fishing suit you? That is, to stop about sun down on Saturday and start again about midnight on Sunday? The Legislature of 1905 passed a law appointing Mr. Hilles, Mr. Hayes and myself Commissioners for this state, and the state of New Jersey, at the last session of its Legislature, appointed similar Commissioners; the object of such appointment being for the two Commissioners to confer with the fishermen of the two states and to draft uniform laws as between the two states in connection with the compact which they had entered into

in reference to the boundary question. New Jersey's closed season is from sunset Saturday evening until twelve o'clock Sunday night. Our law is from eight o'clock Saturday evening until midnight Sunday. Some of the fishermen up our way have various ideas about that. They want to protect the shad as much as they can. Some say to stop at twelve o'clock Saturday noon and start again at twelve Monday noon; while others say to stop every day in the week at seven o'clock in the evening and begin again the next morning at four o'clock.

MR. SAMUEL E. PRETTYMAN: That would give them a night's sleep. That would not do for us down here. We have got to go five miles to get the fish, and the water is so clear around here that we have to fish at night. We do the biggest part of our fishing at night.

MR. ALEXANDER B. COOPER: The way the law is now suits you fishermen down here ?

MR. SAMUEL E. PRETTYMAN: Yes. The fish that we would catch in the day time wouldn't amount to anything.

MR. WALTER H. HAYES: Do you want the size of the mesh changed ?

MR. SAMUEL E. PRETTYMAN: No, sir.



MR. ALEXANDER B. COOPER: Five and a half inch mesh stretched is what you want ?

MR. SAMUEL E. PRETTYMAN: Yes, sir; five and a half inch mesh stretched. A five and a half inch mesh stretched down here is just as good as a five and a quarter inch mesh up there. Their nets up there don't slime like ours do down here. The sea nettles and the marshes is what causes the sliming.

MR. ALEXANDER B. COOPER: There isn't much competition down here among the fishermen ?

MR. SAMUEL E. PRETTYMAN: No.

MR. ALEXANDER B. COOPER: You don't care much about the length of the nets, or anything of that kind ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WALTER H. HAYES: It doesn't make any difference how close you get to the net of the other fellow ?

MR. SAMUEL E. PRETTYMAN: No, sir; I don't think so.

MR. ALEXANDER B. COOPER: Are you troubled with carp down here ?

MR. SAMUEL E. PRETTYMAN: No, sir. We don't see

any here.

MR. ALEXANDER B. COOPER: What do you think about pound fishing ?

MR. SAMUEL E. PRETTYMAN: It is all right.

MR. ALEXANDER B. COOPER: Up at New Castle and Delaware City there was some considerable difference of opinion as to the size of sturgeon that should be caught. Their general idea was not to allow them to be caught of a less length than four feet. In New Jersey the length is three feet. The size of the mesh wanted was ten inches. The old gentleman Anderson wanted the length to be six feet.

MR. WILLIAM S. HILLES: Is there any sturgeon fishing down here ?

MR. SAMUEL E. PRETTYMAN: They fish a little for them off Rehoboth .

MR. WILLIAM S. HILLES: I mean, is there any sturgeon fishing in this district ?

MR. SAMUEL E. PRETTYMAN: There hasn't been any sturgeon fishing since Kershaw left here. There has been some fishing off Rehoboth, but I mean out here in the

bay. Rehoboth is out on the ocean. In our bay they drift for them, while at Rehoboth they stake for them; stake their nets to catch them.

MR. WALTER H. HAYES: Where does the bay begin, and where does the river commence ?

MR. HARRY W. LYONS: Just about Reedy Point.

MR. WALTER H. HAYES: The lower end ?

MR. HARRY W. LYONS: Yes.

MR. WALTER H. HAYES: How would the lower end of Reedy Island strike Stony Point ?

MR. HARRY W. LYONS: The lower end is just above Stony Point.

MR. WALTER H. HAYES: The people in New Jersey think that about Stony Point is the mouth of the river.

MR. HARRY W. LYONS: That is about right. I have always understood the mouth of the river was right below Reedy Island.

MR. WALTER H. HAYES: By putting that on the twelve mile circle it would put it just a little north of Appequinimink Creek, which is not much further down than the point of Reedy Island ?

MR. HARRY W. LYONS: No, sir; it is all pretty much on a line there. There is not much difference.

MR. ALEXANDER B. COOPER: I do not suppose you have much of what we call devices or tricks for catching fish down here. You are not bothered much with them.

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. ALEXANDER B. COOPER: The size of the mesh for trout and rock fish was two and five-eighths inches and that no rock fish should be caught weighing over twenty pounds.

MR. SAMUEL E. PRETTYMAN: Not over twenty pounds?

MR. ALEXANDER B. COOPER: Not over twenty pounds.

MR. SAMUEL E. PRETTYMAN: There are more rock fish weighing under twenty pounds that are spawning than there are over twenty pounds.

MR. ALEXANDER B. COOPER: You can catch as many as you please under that weight.

MR. SAMUEL E. PRETTYMAN: You will find very few of them that weigh over twenty pounds.

MR. ALEXANDER B. COOPER: Cat fish, eels, and

those things, they don't interest you much down here ?

MR. SAMUEL E. PRETTYMAN: No.

MR. ALEXANDER B. COOPER: How about the menhaden fishing ?

MR. SAMUEL E. PRETTYMAN: We don't catch those.

MR. ALEXANDER B. COOPER: What is the feeling about that industry down here ? Do they catch them or fish in the bay ?

MR. SAMUEL E. PRETTYMAN: Yes, sir; they fish in the bay and pay a license for it. They pay one hundred dollars a boat.

MR. ALEXANDER B. COOPER: How many boats ?

MR. SAMUEL E. PRETTYMAN: Twenty-two this season. They haven't caught any here yet. I think they had eleven or twelve licenses last year. They only fished last season with eleven boats in the bay. They go outside and in the bay, too.

MR. WILLIAM S. HILLER: Do they catch any food fish ?

MR. SAMUEL E. PRETTYMAN: It is very seldom they catch any food fish. They didn't catch enough food fish

last season to eat.

MR. ALEXANDER B. COOPER: What kind do they catch when they go catch them ?

MR. SAMUEL E. PRETTYMAN: Mackerel, trout and blue fish. More blue fish than anything else, but they don't get a whole lot of fish.

MR. HARRY W. LYONS: We have gone to them time and time again to get food fish, but we couldn't get any from them.

MR. ALEXANDER B. COOPER: You don't think they hurt the food fish ?

MR. HARRY W. LYONS: I do not think so. We have just as many fish here now as we ever had.

MR. SAMUEL E. PRETTYMAN: We have had to lay on the beach two or three hours at a time so that those menhaden fish could get off shore so that we could catch the trout.

MR. WALTER H. HAYES: Is there any decrease in the number of fish now from what there were ten years ago ?

MR. SAMUEL E. PRETTYMAN: There are not as many fish now as there were ten years ago; nothing like as many.

MR. WALTER H. HAYES: Do you get as many in a haul as you used to ?

MR. SAMUEL E. PRETTYMAN: No, sir. Ten or twelve years ago one haul would give you all you wanted, while now you have got to make a number of hauls.

MR. HARRY W. LYONS: How long has it been since we have been getting these big trout off the breakwater ?

MR. SAMUEL E. PRETTYMAN: Ever since I was a boy.

MR. HARRY W. LYONS: Don't you get more than you used to ?

MR. SAMUEL E. PRETTYMAN: No, sir. X

MR. WALTER H. HAYES: Are there any lobsters down here ?

MR. SAMUEL E. PRETTYMAN: There were more lobsters here last year than there have been for a number of years.

MR. WALTER H. HAYES: There is no protection for them ?

MR. SAMUEL E. PRETTYMAN: No protection for them.

MR. WALTER H. HAYES: Ought there to be ?

MR. SAMUEL E. PRETTYMAN: There ought to be, of course, but there is not.

MR. WALTER H. HAYES: What size ought they be compelled to throw back? How small?

MR. SAMUEL E. PRETTYMAN: I think they have a regular size. The law says you shall only catch the regular size, and you must throw the small ones back.

MR. WALTER H. HAYES: No, there has never been any law in regard to them.

MR. WILLIAM S. HILLES: How big ought a lobster to be?

MR. SAMUEL E. PRETTYMAN: They weigh two, three, four or five pounds apiece. A one pound lobster is plenty small enough. The principal part of the meat of the lobster is in his claws.

MR. ALEXANDER B. COOPER: You mean not to catch them less than one pound in weight?

MR. SAMUEL E. PRETTYMAN: Yes, sir.

MR. WILLIAM S. HILLES: What is the cause of the disappearance of the sheep head?

MR. SAMUEL E. PRETTYMAN: I think the cause of the disappearance of the sheep head is the blowing up of the wrecks by dynamite.



MR. ALEXANDER B. COOPER: You gentlemen, Mr. Loafland, Mr. Lyons, Mr. Prettyman, Mr. Maule, Mr. Thompson and Mr. Waples, are all of the opinion that the menhaden fishermen do not catch any food fish ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. CHARLES H. MAULE: No, sir.

MR. WILLIAM LOAFLAND: No, sir.

MR. ALEXANDER B. COOPER: Do they fish more on the outside than they do on the inside ?

MR. SAMUEL E. PRETTYMAN: Yes, sir. They do all their principal fishing on the outside, that is, outside of the bay.

MR. ALEXANDER B. COOPER: When they come on the inside, how far do they come up ?

MR. SAMUEL E. PRETTYMAN: Up as far as the Ledge across on the Jersey side, west of the Flogger. They go anywhere they can get a school of fish. Then they put this net around them and drag them to the boat.

MR. CHARLES H. MAULE: They do not catch any food fish ?

MR. SAMUEL E. PRETTYMAN: What food fish they

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catch wouldn't amount to anything. I will bet they didn't catch a barrel of food fish during all of last season.

MR. WILLIAM LOAFLAND: They wouldn't get a barrel of oil out of one hundred barrels of trout.

MR. WILLIAM S. HILLES: What do they do with the oil?

MR. HARRY W. LYONS: They make paint out of it.

MR. ALEXANDER E. COOPER: Is that the principal use to which they put it, the making of linseed oil?

MR. HARRY W. LYONS: Yes, sir; I think so. You can go to any paint store and buy a quart of linseed oil, and just as soon as you put anything hot into it you will smell the fish right away.

MR. ALEXANDER E. COOPER: How many menhaden fish would it take to make a barrel of oil?

MR. SAMUEL E. PRETTYMAN: About two thousand to the barrel. These people are very particular about their fish. They won't catch edible fish if they can help it. Of course, sometimes they get in with the moss bonkers, and they can't help but get a few of them. If they do come in with a few food fish, say four or five barrels, they won't

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allow the men to come up here with them and sell them,  
but they eat them right there at their factory.

MR. WALTER H. HAYES: What size mesh do they  
use ?

MR. SAMUEL E. PRETTYMAN: All the way from one  
inch to two and a half inches.

MR. WALTER H. HAYES: How many men are on the  
boats ?

MR. SAMUEL E. PRETTYMAN: When they are running  
five or six hundred feet there are fifteen to thirty  
men to a boat-- a double crew. X

MR. WILLIAM S. HILLES: Are there any other claws  
you want to cover the fishing down here ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WILLIAM S. HILLES: Where is the next fishing  
done above here ?

MR. SAMUEL E. PRETTYMAN: Slaughter's Beach,  
Milford.

MR. ALEXANDER B. COOPER: How far from Milford ?

MR. SAMUEL E. PRETTYMAN: About twelve miles,  
or about fourteen miles from here.

MR. WILLIAM H. HILLIS: And the next place above that is what ?

MR. SAMUEL E. PRETTYMAN: Kitt's Hammock. There are twenty-five or thirty fishermen there, and they fish all the way up from there to a place called Big Stone. Trout is the principal part of their fishing.

MR. ALEXANDER B. COOPER: We have a law now which says that no one can fish for shad within a mile of the mouth of any creek.

MR. SAMUEL E. PRETTYMAN: I don't know what the reason of that is, unless it is to permit them to go into the creeks to spawn.

MR. ALEXANDER B. COOPER: They have a law now in New Jersey against fishing with baskets, fike nets, pound nets, dip nets, etc., or any illegal devices for catching fish. In Delaware there is some such law, but not to that extent. That does not effect you people down here. Is there much pound fishing here in the bay, or the catching of fish by devices of all sorts ? There are one or two that I know of in the Delaware river for private purposes by private parties.

MR. SAMUEL E. PRETTYMAN: That is above Duck Creek.

MR. ALEXANDER B. COOPER: Along about in the neighborhood of Port Penn. But that does not effect you people down here ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. ALEXANDER B. COOPER: You have no trouble down here with your nets being run down by boats ?

MR. SAMUEL E. PRETTYMAN: No, sir.

MR. WALTER H. HAYES: What do you think about making a closed season for sturgeon for two or three years ? That would bring them back.

MR. SAMUEL E. PRETTYMAN: From off the pier day before yesterday I saw sturgeon jumping. I saw them jumping clear out of the water six or eight feet. Then I have seen them off the Hawk's Nest; that is, this side of Reedy Bar. There isn't anybody down here that fishes for them. If you don't fish for them you certainly can't get them.

MR. WALTER H. HAYES: What about letting them go for a while so that they can propagate ?

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MR. SAMUEL E. PRETTYMAN: There were more young sturgeon last spring than I ever saw before.

MR. WILLIAM B. HILLES: How far off shore is your pound net?

MR. SAMUEL E. PRETTYMAN: From one-half to five-eighths of a mile. It has to be one-half mile off. Then the leaders reach out from that.

MR. ALEXANDER B. COOPER: Do you express the sentiment of a majority of the fishermen of this locality?

MR. SAMUEL E. PRETTYMAN: There are about twenty or thirty fishermen here, and I think I know the sentiment of them all. The opinions I have expressed are in accordance with their sentiments. I asked my men what they thought of it, and they said it suited them as it was. You should not catch marmoset in the Delaware bay under four feet during the sturgeon season, which is from the twenty-fifth of this month until--I don't know how late they catch them, but until the last of June, I think.

MR. ALEXANDER B. COOPER: From the first of March until the first of June I think is the open season.

MR. SAMUEL E. PRETTYMAN: They turn them out

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here in August. I got a letter the other day from a Fish Commissioner named Gibbs. He was going to send me down twenty-five or thirty thousand to put out in Broadkill Creek.

MR. WALTER H. HAYES: Is there any closed season for lobsters ?

MR. SAMUEL E. PRETTYMAN: The last season was a good season.

MR. ALEXANDER B. COOPER: How many do you catch in a season ?

MR. SAMUEL E. PRETTYMAN: You can catch them in season whenever you have got bait. They will take care of themselves. They are just like the black fish.

MR. WILLIAM S. HILLES: What kind of bait do you use for lobsters ?

MR. SAMUEL E. PRETTYMAN: Moss bonkers, skate sides, stingaree sides, --so you can tie it up in the pot. You have got to tie it or they will take their claws and pull it out. There were more lobsters here last season than I have known for years. If anybody would go out there to the breakwater and fish for lobsters for a business

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I believe they could get plenty of them. We had to leave one place out there one day while fishing and go to another place because they kept taking the bait off.

MR. ALEXANDER B. COOPER: There are no lobsters on the other side of the bay?

MR. HARRY W. LYONS: I never heard of any.

MR. ALEXANDER B. COOPER: They come around the stone pier?

MR. HARRY W. LYONS: Yes, sir.

X MR. SAMUEL E. PRETTYMAN: There is money in lobster fishing. You can get from twelve to eighteen cents a pound for them. Every one of those lobster pots are worth one dollar apiece. I think the menhaden fish factories are a benefit to the fishermen of this town. We get all our second-hand net from them. The seine net people have gone into a trust now. All the seine we used to get we bought in New York, but now we have got to buy it in Baltimore. X

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Dover, Delaware,

April 14th, 1906.

11.00 o'clock a. m.

Meeting held on the above date at the Levy Court Room for the purpose of receiving expression of opinion on the part of local fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander B. Cooper, Esq.,

William S. Hilles, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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MR. ALEXANDER B. COOPER: The object of calling this meeting is for the purpose of getting the views of you gentlemen as to perfecting the laws for all kinds of fishing in the Delaware river and bay. Do you desire any change in the laws as they are at present ? One

of the first fish considered by the fishermen up the river was shad. We are not speaking of Jones' Creek, or River, but more particularly of the bay fishing. Do you care about any legislation in reference to shad ?

MR. ALEXANDER MINNER: Gentlemen of the Commission, I have a common interest with my fellow-man in fishing, although I have no pecuniary interest in it. I am from Bowers Beach. We saw the advertisement that you sent to Bowers Beach, but we did not just exactly understand altogether what the nature of it was, although we did understand that there was an effort being made towards the creation of uniform laws as between this state and the state of New Jersey. I do know a good bit about the fishing interests, and our people simply suggested to me that I should come along with Mr. Short and come here. Mr. Short has an interest in the matter, and they suggested that I should come along with him and see what was wanted and answer

any questions and give any information that we might possibly be able to give.

So far as the shad industry, or shad fishing, is concerned in our neighborhood, we have quite a few who fish for shad; but I must say that their success has been very poor this spring so far.

As to a uniform law, that is, a law that will protect the Delaware fishermen as well as the New Jersey fishermen, I think myself (and as we have always understood it) that so far as making it uniform, it should be made so as not to allow non-residents, as we so term them, to come on our shore to fish, and not to allow our men to go to some other state to fish, for instance, New Jersey, or, as the case may be. I believe there ought to be a division line. So far as we are concerned, it don't hurt us much. We don't have such a great deal of it. We used to have a great deal of trouble with sturgeon fishing, but that industry is about played out with us, and we do not have any sturgeon fishing down there with us now. That is confined more particularly to up the river. I have always believed,

and I still believe, that what is known as the ship's channel would be a very good division for us, that is, to go up as far as Ship John, for instance. Then you come to the mouth of the river; that is, where the bay and the river meet. What would satisfy us, perhaps wouldn't satisfy those people up the river, and I have no doubt you have heard different views expressed up with you. From what I can glean from our fishermen, they think the ship's channel would be a good dividing line, and our men would stay on their side and the New Jersey fishermen would have to abide by the same decision and stay on their side.

As to the shad fishing which you speak of, we fish for shad when there are any to catch.

MR. WILLIAM S. HILLES: When does your season begin ?

MR. ALEXANDER MINNER: As I understand it, about the twentieth of March, or the twenty-fifth of March.

*Robert Knipe*  
MR. ~~GEORGE~~ WRIGHT: The twenty-fifth of March.

MR. ALEXANDER MINNER: At the time of the

creation of the first shad law, the Honorable James B. Corney was one of the most interested and very best men we ever had so far as trying to protect the interest of the shad and oysters in this state. If I recollect right, he dictated and I wrote, perhaps, the very first Act. I know I met him on several different occasions, and I used to go out to his place and we talked the matter over and we formulated, or rather he formulated a shad law. In those days people fished just where they pleased, when they pleased and at any time they pleased, with any kind of net they pleased, or contraptions, or whatever it might be, and he got it into his head (and he was right) that certain obstructions, that is, certain nets called stake nets-- if you know what I mean by stake nets--were placed around the mouths of Jones and Murderkill rivers, and that it was wrong to have them so placed. You understand, the head waters of Murderkill were right up to Mr. Corney's mill. So we formulated that law and it was passed by the Legislature.

MR. ALEXANDER B. COOPER: About what year was

that ?

MR. ALEXANDER MINNER: I think it has been as long as twenty years ago. Maybe along in the early 60's, anyway.

MR. ALEXANDER B. COOPER: I think that was about 1883.

MR. ALEXANDER MINNER: Somewhere about that time.

MR. ALEXANDER B. COOPER: He had some special action taken in relation to the stocking of that pond.

MR. ALEXANDER MINNER: Yes, sir; that is right. It was about that time. That law has been changed a little, but none to hurt. The first law was that they should not go nearer than a mile of the mouth of the creek with these contraptions, and then afterwards it was changed to a half mile from the mouths of either one of those creeks, that these nets should not be put there any closer than that (I refer to the stake nets), and that the float nets should not be nearer than a mile. They cannot go within a mile of any ordinary creek or river with a gill net or floating net. They cannot go

any nearer than that anyway.

MR. ALEXANDER B. COOPER: There is a law now that you cannot fish with a gill seine nearer than a mile of the mouth of the creeks or rivers.

MR. ALEXANDER MINNER: Tha' is the law now, as I understand it, and they cannot put out those stake nets in the bay within less than a half mile of either one of those creeks.

MR. ALEXANDER B. COOPER: Is that what you call a pound net ?

MR. ALEXANDER MINNER: No, sir.

MR. ALEXANDER B. COOPER: Something like a weir ?

MR. ALEXANDER MINNER: No, sir. It is a long seine net with the same kind of seine, but just staked out on stakes. Mr. Corsey, of course, he broke up those obstructions, so that from twelve o'clock on Saturday until twelve o'clock Monday morning, or rather midnight Sunday the fish had an opportunity to go up these creeks to spawn. You are fully aware that a shad will go back to where it sprang from. Wherever they spawn, they will go back to. After Mr. Corsey

got this matter straightened up, got it as he wanted it, he turned his attention over to the propagation of shad, in which he was very much interested. He went to these shad hatcheries and insisted on having plenty of shad supplied him. They were furnished him, and right up behind his mill he would turn them out into Murderkill and Jones', that is, down at the head waters of Jones'. He insisted on getting them and he got a great many of them, and he kept at it continually, so that by not letting up on it the consequence was we had lots of shad. That was the result eight years ago. On the twenty-ninth day of March eight years ago down at our place the fishermen who were fishing off from our shore caught between twenty-eight and twenty-nine hundred shad. I don't know that I could give you the exact number they have caught this year, but I will venture to say that every fisherman we have there, all combined, have not caught one thousand shad this year up to the present time. This same hatching arrangement goes on, but we have not had a man who would persist in the matter as Mr. Corsey did; we have not had such a



man since Mr. Corsey died. I believe if we could have the same interest taken in it as was taken by Mr. Corsey, our shad would be just as plentiful and our shad would be protected.

MR. WALTER F. HAYES: You mean if you could get the fish spawn you would have just as many shad as you used to have ?

MR. ALEXANDER KINNER: I do, yes. Then in addition to this law, Mr. Corsey had a fish policeman—not a fish commissioner, but a fish policeman, you understand, whose duties extended from Blackbird Creek to Milford, or perhaps Mispillion Creek, I think. That officer is still in existence, and the consequence now is, so far as Bowers beach is concerned and the people who fished there, you do not know of any violations at all. The people have always tried to live up to that law. But our fish are scarce, and there is no other reason for such scarcity that I know of except the simple reason that we do not get as many shad to turn out into the head waters.

MR. WALTER H. HAYES: Have you tried the Government this year ?

MR. ALEXANDER MINNER: You know the nature of the shad is that it takes from three to four to five years for them to get large enough to use. They go out a little mysteriously, but they go out, and I have seen them in the fall of the year after they have been turned out in the spring or in the summer, and I have seen shad down about the mouth of the creek that long (indicating about three or four inches), nice little shad, maybe four or five inches long. Then they would be going for the deep water, for the sea. That is all I can say to you about the matter, except to say that the nets used at our place are the same as those usually used.

MR. WALTER H. HAYES: What size mesh do you use for shad?

MR. ALEXANDER MINNER: Five and a half inches stretched.

MR. ALEXANDER B. COOPER: What have you to say about the closed season? This propagation of shad is a very important matter and ought to be attended to, and the mesh you have spoken of concurs

with the size of the mesh used by our fishermen up our way, at New Castle.

MR. ALEXANDER MINNER: I believe that if there is a scarcity of shad with us there may also be a scarcity at New Castle with the fishermen there; but that is not altogether the case. That is my notion about the shad: If we have lots of these shad fry turned into our head waters, then the shad will come back when they are large enough to eat; and they want to come back to spawn at the same place they started from. If they turn out lots of them about New Castle and up the river, I believe that our shad will be much more numerous. When they come in the mouth of the bay at the coves they keep in deep water; they don't come in on the low flats, and they generally hunt for these streams to go up and spawn. That is the reason why our men can't catch them. Our men don't go out to drift any further than one or two miles in the bay. These stake nets are out, and a great many of them, when the tide runs off the flats, you can wade out to with hip boots on.

MR. WILLIAM S. HILLES: Are the stake nets used to any extent ?

MR. ALEXANDER MINNER: They are used more than drift nets.

MR. WALTER H. HAYES: All along the shore down here, or only at Bowers' ?

MR. ALEXANDER MINNER: All along the shore. I think they extend from the beach at Lewes to the mouth of Mispillion. That is about twenty miles.

MR. WILLIAM S. HILLES: You say the present law requires that they should be kept one-half mile from any stream ?

MR. ALEXANDER MINNER: Yes, sir.

MR. WILLIAM S. HILLES: Is that far enough away from the mouth of the streams ?

MR. ALEXANDER MINNER: That is far enough, yes, sir. I understand this part of it, and Mr. Corsey understood the same thing. You take the mouth of the St. Jones' going up towards the Hammock. When you take a mile on the beach and a mile from the mouth of St. Jones' on the beach, it is a mile the other way.

and our people here, if they have a little stake net, for instance, just want it for family use. It is a long ways for them to have to go to it. That matter was thoroughly discussed and considered and Mr. Corsey was perfectly willing that one-half mile would be satisfactory; and that after it was tried and it was not found satisfactory, it would be made satisfactory, provided this police fisherman saw that they didn't violate the law.

MR. ALEXANDER B. COOPER: That was concerning the stake net ?

MR. ALEXANDER MINNER: And the gill net in the same way. They can't go any closer than a half mile anyway, because there are obstructions. They can't go any closer than that even if they wanted to.

MR. ALEXANDER B. COOPER: The fishermen up with us are pretty generally of the opinion that the shad season ought to open March first and close on June first.

MR. ALEXANDER MINNER: That would suit our people, because our people will quit as soon as the trout season comes on. They will quit the shad business

as soon as the trout come.

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: Our fishing always closes  
May first, so far as the shad is concerned.

MR. ALEXANDER MINNER: If a person wanted to  
go in the Murderkill or Jones River, they want a little  
net, and they cannot float more than fifty or sixty  
fathoms of net in the river. He has got to go a half  
mile from the mouth of the river even if he goes in  
the river; that is, in order to give the fish an oppor-  
tunity so that they can get in there, and if they get in  
there they are more likely to keep up in the river until  
they strike fresh water, where they spawn.

MR. ALEXANDER E. COOPER: What have you to say  
about closing on Saturday and beginning again on  
Monday? Some say twelve o'clock Saturday until  
twelve o'clock Sunday; some say from sunset Saturday  
until twelve o'clock Sunday night, and some say not until  
four o'clock on Monday morning.

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: Of course, different  
times will suit different places.

MR. ALEXANDER MINNER: So far as we are con-  
cerned down at Bowers peach, if there was no law touching

that part of the matter, the fishermen would respect it because they want to rest. If they get the fish early Saturday morning, they have got to get them to market.

MR. ALEXANDER B. COOPER: The New Jersey law is from sunset Saturday until twelve o'clock Sunday night. What do you think about closing part of the fishing time during the week? Some fishermen with us say that it would be a good thing to close every night at seven o'clock and open up again the next morning.

*Robert Knight*  
MR. ~~G. GEORGE KNIGHT~~: That would be very much against us here in the bay, but so far as the river is concerned, I think it would be beneficial. Here in the bay we only cover a small portion of the water, while up there they cover the whole river. Fishing in a twenty mile scope, and they going up in deep water, we do not disturb their passage up, except what few come in on the flats; whereas, up the river they do. They drift across from one channel to the other and they obstruct the passage of the fish. Here we do not obstruct very much outside of a mile from shore.

MR. ALEXANDER B. COOPER: Would it suit you to fish right straight along during the week and close at twelve o'clock Saturday night, opening up again at twelve o'clock Sunday night ?

MR. <sup>Robert Knight</sup>~~C. GEORGE WRIGHT~~: Yes, sir. We never fish any after twelve o'clock on Saturday, because we can't do anything with the fish.

MR. WILLIAM S. HILLES: Do you mean twelve o'clock Saturday noon or Saturday night ?

MR. <sup>Robert Knight</sup>~~C. GEORGE WRIGHT~~: Twelve o'clock Saturday noon.

MR. ALEXANDER MINNER: We don't want to fish after that.

MR. ALEXANDER B. COOPER: Are you interested in oary ?

MR. ALEXANDER MINNER: Not much.

MR. ALEXANDER B. COOPER: You are not troubled with them as much as we are ?

MR. ALEXANDER MINNER: No, sir.

MR. ALEXANDER B. COOPER: Are you interested in sturgeon ?



MR. ALEXANDER MINNER: Yes, sir. The sturgeon industry used to pay us well at one time.

MR. WILLIAM S. HILLES: What ought we to do to build up the sturgeon industry ?

MR. ALEXANDER MINNER: I do not know of anything else except you propagate them the same as you do shad.

MR. WALTER H. HAYES: How about a closed season for two or three years ?

MR. <sup>Robert Knight</sup> ~~C. GEORGE WRIGHT~~: I don't see where that would benefit the state of New Jersey, or Delaware, or Pennsylvania. I think the proper thing to do would be to go to Washington and get a national law passed, having its effect start with these southern states. They start to catch them in Florida, Georgia, South Carolina and Virginia, and they catch them before they get here. Just the same with the shad. They haul them right up. While the shad are coming up the southern coast they are caught all the way up before they get here which is their spawning ground. If we make a closed season here, and these parties still catch them in the other states, I can't see how that

would benefit us. I can't see how you could obtain any benefit except by getting a national law passed, and getting all the states to have a closed season. I cannot see how it would benefit the state of Delaware or the state of New Jersey by making a closed sturgeon law and at the same time permit these other states to catch them.

MR. ALEXANDER B. COOPER: What have you to say about mammoose? The fishermen up our way think no sturgeon less than four feet in length should be caught. That is the present law in New Jersey. Our law is three feet.

*Robert Wright*  
MR. ~~C. GEORGE WRIGHT~~: I would like to see a law passed that no sturgeon should be caught until it was of age and of proper size. Three feet or four feet is not the proper size for a sturgeon. That is very small. A sturgeon is not a large fish, but they are very long. I have seen them as long as eleven feet.

MR. ALEXANDER B. COOPER: One or two or three fishermen wanted to make the length six feet, but the

general sentiment up our way seemed to be about four feet.

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: That is too small.

MR. ALEXANDER MINNER: When a sturgeon reaches six feet in length, the principal part of that sturgeon is the roe. The roe is what pays. It is not the flesh. Of course, the flesh sells, but it is the roe that pays nicely.

MR. WILLIAM S. HILLES: How old are sturgeon when they begin to spawn?

MR. ALEXANDER MINNER: I don't know.

MR. WILLIAM S. HILLES: How large are they?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: I think about nine years before they get their full growth.

MR. ALEXANDER MINNER: They are about five or six feet long when they begin to spawn.

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: They are longer than that. There are two different species of sturgeon. The roe sturgeon is chunky, while the other is not very thick. I have caught them where they measured, I suppose, seven or eight or maybe nine feet, and the roe was no

good, because the fish was too small.

MR. ALEXANDER B. COOPER: About four feet would be a fair length ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: No, six; it is not by any means. It will not pay us to catch so many of these little ones. A four foot sturgeon is not any good except for the flesh. That is not the particular part of the sturgeon. The roe is the principal part of the sturgeon. A four foot sturgeon is no good except for the flesh.

MR. WALTER H. HAYES: What size sturgeon mesh would you say should be used ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: When I fished I used a thirteen inch net stretched mesh. Some use fourteen, some use twelve, but I used a thirteen inch stretched mesh.

MR. ALEXANDER MINNER: That would be about an eight inch square mesh ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: No. That would be about six and one-half inches. When they were wet they would draw up considerably. I used a net from fourteen to fourteen and a half inches, that is a

stretched mesh, and then in boiling it it would draw it down to about thirteen inches.

MR. ALEXANDER B. COOPER: How about trout, rock fish, and those things?

MR. ALEXANDER MINNER: Those are the principal fish.

MR. ALEXANDER B. COOPER: What do you think about the size of the mesh? Do you think it should be from two and a half to two and five-eighths inch stretched?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: I have been fishing thirty-one years, nearly all my life. You take the trout in the spring--and what I mean by in the spring is the first of May, and along there--we generally have schools of them in here, coming up to spawn. If you fish anything larger than an inch mesh you catch lots of fish that are no good to you. What I mean by that is, you gill so many, and when you gill them you destroy the value of them. I would like to see a law passed that would give you from the twentieth of April to the first of September to use an inch mesh,

and then from the first of September until the twentieth of April a larger mesh.

MR. ALEXANDER B. COOPER: Do you mean an inch mesh stretched ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: No, sir; two inches stretched, or an inch square mesh.

MR. ALEXANDER MINNER: You mean the bag of the net ? Of course, you can have larger nets ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: Yes. If I understand the gentlemen rightly, you can use as large as you like.

MR. ALEXANDER B. COOPER: But not smaller than two and a half or two and five-eighths inches ?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: A two inch stretched mesh should be used from the twentieth of April until the first of September, and then if I had any suggestion to make, I would suggest a three inch mesh; that is, a stretched mesh. When I speak of mesh I mean stretched mesh.

MR. WILLIAM S. HILLES: Why do you fix those two sizes ?

MR. ALEXANDER MINNER: When these fish come in

the bay, they come in in the month of May. That is their spawning month. These fish, by the first of September, will be getting, probably, that length, about five inches, and they will gill in an inch mesh, but before the first of September they will go through an inch mesh and will not gill at all. The twentieth of September, or it may be a little sooner--of course, they might do it a little before, or they might not--but right at the first of September they will gill in an inch mesh, and you will catch lots of them.

MR. WILLIAM S. HILLES: Lots of small fish, you mean?

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: Lots of small fish, yes, sir. I would want a two inch stretched mesh for trout from the twentieth of April until the first of September, and then a three inch stretched mesh the balance of the season.

MR. ALEXANDER MINNER: And that includes the rock fish and the perch?

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: That includes rock and

perch. That gives the little fish a chance to grow.

MR. ALEXANDER WINNER: Between this time in the trout season, and then there is the rook and other fish.

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: We do not get any rock or perch after October. The rock and perch fishing begins with the fishing here.

MR. WALTER H. HAYES: That is when you would have your three inch stretched mesh?

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: Yes, sir.

MR. ALEXANDER B. COOPER: What would you make the size of the rook fish?

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: Do you mean the size of the mesh?

MR. ALEXANDER B. COOPER: The size of the fish.

*Robert Knight*  
MR. ~~G. GEORGE WRIGHT~~: You limit the size of the mesh and that will limit the size of the fish.

MR. ALEXANDER B. COOPER: A great many of the fishermen say that they should not be caught if weighing more than twenty pounds; that is, not to catch any larger ones.



*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~ That is all right.

MR. WALTER H. HAYES: There are not many caught larger than that ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~ No, sir; that is, what we call mother rocks we let go.

MR. WILLIAM S. HILLES: Is that a good weight for the mother rocks to be let go ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~ I have caught them weighing as high as ninety pounds, but I think they spawn when they are smaller than that; that is, I think they spawn when they are as small as ten pounds.

MR. WILLIAM S. HILLES: They do spawn after they get over twenty pounds ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~ Yes, sir; and they spawn at ten pounds.

MR. ALEXANDER B. COOPER: There is only one other matter that occurs to me in reference to the general subject before us. Do you people wish to say anything about the menhaden fishing in the bay ? Do they bother you any ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~ No, sir; they don't

bother us any if they don't catch the food fish.

MR. ALEXANDER B. COOPER: Do they catch  
the food fish ?

MR. ~~G. GEORGE WRIGHT~~ <sup>Robert Wright</sup> I am unable to say.

MR. ALEXANDER B. COOPER: Do they fish up as  
far as Bowers reach ?

MR. ~~G. GEORGE WRIGHT~~ <sup>Robert Wright</sup> I have seen them  
fishing up as far as the Cross Ledge Light.

MR. ALEXANDER B. COOPER: That is a little  
below Bowers' ?

MR. ~~G. GEORGE WRIGHT~~ <sup>Robert Wright</sup> Above.

MR. ALEXANDER MINNER: I would like to say a  
little something in regard to this menhaden fishing.  
When I was Oyster Revenue Collector this law for  
licensing boats for menhaden fishing was passed.

MR. WALTER H. HAYES: When was that?

MR. ALEXANDER MINNER: I was appointed Revenue  
Collector in 1891, and the law was passed in 1893.  
It was during the first Legislature that passed the law  
that I was appointed Revenue Collector. I will give you  
my reasons for saying what I do. I was under the

impression that the menhaden fishing was detrimental to our food fishing. I was under the impression that they caught whole lots of edible fish; and, in fact, there was a party that came here from Lewes, to the Legislature, when it was in session, and protested against this fishing for menhaden fish and the fish factories at Lewes. I was a little inclined to be with them. There came here some parties who were interested in menhaden fishing, and they wanted a compromise, and in that compromise they were willing to pay the state quite a good revenue, as I understand, and as an inducement to allow them to fish they agreed on one hundred dollars revenue from each steamer that was engaged in the business. Some of the men around here were opposed to their fishing for menhaden in view of the fact that they thought it destroyed the food fish, and I guess, in order to try to win me over to this resolution which they offered before the Legislature, they said that the collector of Revenue—it was a percentage office then—being the same person to collect this revenue, that is, the oyster revenue, could collect that revenue. Of course,

when I saw it was ten dollars for me for each and every vessel that was licensed, that caused me to think that they might think it would make me keep my mouth shut.

Luce Brothers and S. S. Brown Company,

I think they have consolidated, if I am not mistaken. They are down at Lewes now, and I think they are all together; but they had two large factories, and they had several boats employed in the menhaden fishing. The resolution was passed; it went through the legislature, anyway, and one of the Luce Brothers came to my place. He wanted to license his boats, and he came to my place. I said to him that if he had told me who he was and what his business was I would just simply have said to him that he could have sent me his check for the license, or if he had notified me I would have come down. He said, "I have come up here because I wanted to see you and talk with you. I want to ask you to come down. I want you to know, and I want you to see for yourself." So he licensed two boats, I think, that day. Yes, he gave me a check for two hundred dollars, and I told him that just as soon as I could get the papers,

the blank licenses for them, I would send him his licenses. Anyway, he gave me a check for two hundred dollars for two boats, the names of the boats and the names of the captains, and so on. He says, "I want you to come down." I promised him that I would come in August. They commenced fishing sometime along in July. I guess they don't commence much before July, but I said, "I will come down in August, and I will call on you." In August I went down. S. S. Brown Company licensed two boats that year. I think the first year there were four steamers licensed and they paid the state a revenue of four hundred dollars. I went down there. At first I thought I would go out on their steamers with them and see them fish, and see what they caught, but I didn't. I didn't go out with them, but I stayed on land for a couple of days, and at night when they would come in I would go to their boats where they were unloading and examine their fish. I did the same thing the next year. I was Collector for four years, and, in fact, collected from them for two years. I was there for two years

and I examined their boats; that is, the fish. I would stay there and see them lift them out and put them into their oars that were on the track which ran to their factory, and I did not, all the time that I was there and around there, see any more fish, that is, food fish, than what they had men on those boats and at the factory to eat. They told me, that is their head man, their boss at the factory told me, that whenever there was any edible fish, trout or blue fish or sheep head, or any kind of food fish which they caught in the sea, if there were more than they really wanted for their men, the men who worked for them, that they would send them up to the town of Lewes and give them to the people there; but it was very seldom that they ever had to send any up. The last year I was there the Government at Washington sent an inspector and the inspector was aboard of one of those boats for over two weeks, and I had a private talk with that inspector and he told me that such was the case, that they did not bother the edible fish; that is, they did not catch many of them. He said,

"Of course, there were a few." Menhaden fish are something that other fish don't want to bother with. They are fish that swim up on the water. That is the way they find the schools of them, you know. They work in the water, and they go around them, and it is very few edible fish that they destroy.

MR. WALTER H. HAYES: How deep a net do they use?

MR. ALEXANDER MINNER: I couldn't tell you that, but it is a tremendous net.

MR. ~~C. GEORGE YELVERT~~ <sup>Robert Knight</sup>: They fish from six to seven hundred mesh.

MR. JOHN R. SHORTE: Six hundred meshes deep.

MR. ALEXANDER MINNER: That is the report that was brought to me.

MR. ALEXANDER B. COOPER: Some of their seines were one hundred feet deep, about eleven thousand meshes, one thousand and four feet long, seven hundred and fifteen meshes, two and one-eighth to two and one-quarter inch mesh stretched, and cost about nine hundred dollars rigged.

That kind of fish do they principally catch of the food fish ?

MR. ALEXANDER MINNER: Trout and blue fish. That is what they told me.

MR. WALTER H. HAYES: And some snapping mackerel ?

MR. ALEXANDER MINNER: That is what we call blue fish. And some sheep head, and some sea croakers.

MR. ALEXANDER B. COOPER: The sheep head are pretty nearly all gone, are they not ?

MR. ALEXANDER MINNER: There are not many sheep head left. That pretty well convinced me that they did not get as many edible fish as a person might suppose they would. They used to come up in the bay, but they do not come into the bay so much now.

MR. WILLIAM S. HILLES: Do the trout feed on these menhaden ?

MR. ALEXANDER MINNER: No, sir.

MR. WALTER H. HAYES: But the blue fish do.

MR. ALEXANDER B. COOPER: And the shark does.

MR. ALEXANDER MINNER: The sharks do. The blue fish will drive them. They are afraid of the blue fish,



yes, sir. /

MR. WILLIAM S. HILLES: Are there any pound nets around here ?

MR. ALEXANDER MINNER: No, sir.

MR. WILLIAM S. HILLES: Do you use those at all ?

MR. ALEXANDER MINNER: Where are there any pound nets, Mr. Wright ?

MR. <sup>Robert Knight</sup>~~G. GEORGE WRIGHT~~: I don't know of any on our side.

MR. ALEXANDER MINNER: I don't know of any on our side, but on the New Jersey side, abreast of us, they use pound nets. They don't use pound nets with us. I don't know of any between our place and Lewes.

MR. <sup>Robert Knight</sup>~~G. GEORGE WRIGHT~~: I think Charlie Schubert has one just below the cove here on Reedy Island. If there is any on the Delaware river shore they are up above Smyrna Creek. I think Charlie Schubert has one there in Appoquinimink cove.

MR. WILLIAM S. HILLES: Are they good or

bad things for the fishermen in general ?

*Robert Knight*  
 MR. ~~G. GEORGE WRIGHT~~: I am unable to say,  
 because I am not positive as regards them .

MR. ALEXANDER MINNER: I do not know anything  
 about a pound net. I have seen them, and that is about  
 all. I don't know whether they are destructive, or  
 whether they are an advantage, or what they are.

MR. WILLIAM S. HILLES: We have rather  
 a two fold task before us, as I understand it. The  
 first is to frame such laws as will enable the fishermen  
 to catch the fish profitably in their business, and  
 the second is to preserve the fish.

MR. ALEXANDER MINNER: That is what I under-  
 stand.

MR. ALEXANDER B. COOPER: And the third is,  
 or might be said to be to give the other fellow a fair  
 chance.

MR. ALEXANDER MINNER: While I think of it,  
 I want to call your attention to another matter.  
 Some two or three years, or, I guess, six or eight  
 years ago—perhaps Mr. Hayes is familiar with it; I

don't know but what he may have been in the Legislature here at the time as an attorney if not as a member, although I believe he was here in the Legislature--

MR. WALTER H. HAYES: In 1899 I was attorney.

MR. ALEXANDER MINNER: Maybe it might have been before that time. Anyway, there was a change made in our nets, that is, in our trout fishing nets, and they made it two and five-eighths inches stretched mesh. Some of the fishermen had procured nets of that dimension. I am speaking of our people down there with us at Bowers. Others had not procured such nets, and they were using the old nets with the small mesh. They were using them and they were ignorant of the fact that the law had been changed. The State Fish Commissioner, who was Mr. Anderson, under Governor Hunn when he was Governor, sent an advertisement or a notice down there and had it stuck up where the people could see it, the tenor of such notice being that they were violating the law fishing with a net having a mesh under this size of mesh. About all of those nets down there, or nearly all of them were

under that size mesh, and here it was in March, right at the latter part of March and right when they were about to go to fishing, and some of them had ordered new nets and stretched them in order to get them ready, when this notice was sent down. It naturally put the boys to thinking, and it stirred them up and worried them considerably. There was no Legislature in session at the time, or any body of that kind, and nothing could be done. I suggested to some of them, "Boys, I don't see any other way out of this in the world except to go to some of the authorities, go to the Attorney General or go to the Governor, and see if they will not step in between you and the law and give you a little leeway." So Mr. Alloway, a man who was interested in fishing, and myself, went over to see Governor Hunn and we stated the matter to him. He says, "Boys, I see you are in a hole. I will say this much to you, being it is so close to your fishing season and you have got these nets and it is going to cost you a good bit to get other nets, and some of you not

being able to get them, I will see the Fish Commissioner, and I will also see the Attorney General and state the facts to them, and I do not believe that they will have any objection to your going on fishing this spring; but bear in mind the thing must be either changed at the next Legislature, or you have got to change your nets, either one thing or the other. I will only bridge this over for the time being and help you out.\* I went back and I told them, and they went on fishing that spring, and there was nothing said. At the last Legislature which was in session they got them to change the law.

MR. ALEXANDER B. COOPER: They reduced it to two inches ?

MR. ALEXANDER MINNER: Yes, sir; reduced it to two inches. I want to say this to you gentlemen: That I was talking with some of the men at our place after the notice was received and was hung up in the postoffice one evening this week, and the question that was foremost in their minds then was, What do these Commissioners propose to do ? I simply said this to them: "Men, you have got your notice. You know

just what kind of a scrape you got into a year or two ago. You have got your notice, and you are interested in fishing. The thing for you to do is to go and see these men. These men are commissioned to do a certain thing, and the best thing you can do is to go and meet them. They invited you; they requested you to be present. Go to them and hear what they have to say, and they will tell you all about it. Don't let this thing go by and nobody go there and say anything to them. They don't know what you wish done. If you do not go there, and they do something you do not like, you cannot blame anybody else but yourselves. The best thing you can do is to go." So they wanted to come here. Some of them suggested that I should come here, and Mr. Shorts said he would bring me. So I told them I would come. We were naturally talking about fishing, and this matter of a two and five-eighths inch stretched mesh was brought up, and one of the men remarked, "Here is another one that had one of those nets."

MR. WALTER H. HAYES: Two and five-eighths inches ?

MR. ALEXANDER MINNER: Yes, sir; two and five-eighths inches. I heard several of the men speaking about it, that they saw him make a haul with that net last spring and when he pulled his net ashore there was a trout in every mesh, or in pretty nearly every mesh--the thing was just completely blocked. I will tell you gentlemen, and I argue this, that I think those fishermen will bear me out in saying that I do not believe it can be successfully contradicted--and if old Mr. Corsey was here he would bear me out--that if you will take a mesh that is large enough for a trout to gill himself, and as was stated a little while ago there are certain schools of trout that will come in--sometimes you will come across a school of trout that are a little under size, and then you will come across schools that are larger; but you take one of those large meshes that will gill a trout; his nose is sharp and he goes in for it, and pretty nearly every other mesh in the net is filled with a trout, and those trout that you have got in there, there is no possible chance, hardly, for a small fish, if

there are any, to get through these meshes and escape. Hence they all get in a bag and you pull them right in.

MR. WALTER H. HAYES: You get the meshes full and then you catch those that are not in the mesh?

MR. ALEXANDER MINNER: Yes, sir. Mr. Shorts told me in coming along this morning that he had twenty-five bushels at one time last spring that were gilled, and they were wasted. I know if he was to go down anywhere along this shore, and a fisherman would tell him, "There are five or ten bushels of fish that were gilled, and you may have them for five or ten cents a bushel", he would hardly have them, because they are mashed. The gill is torn out. This throat piece is broken, and they are bloody, and by the time you get them into the market they are no good.

MR. JOSEPH L. BONSALL: They usually smell and nobody wants them.

MR. WALTER H. HAYES: It is the larger net that does that?

MR. ALEXANDER MINNER: Yes.

MR. WILLIAM S. HILLES: Where is the dividing line as between the mesh that is going to catch them



in that way and the mesh that is going to let the little fellows go ?

MR. ALEXANDER MINNER: You take an inch square <sup>a</sup> mesh or two inch stretched mesh, and put that out, and you don't have many gilled fish. You don't have so many small fish unless you happen to strike a school of small fish.

MR. ALEXANDER B. COOPER: Your nets now are almost all one inch square or two inches stretched mesh ?

MR. ALEXANDER MINNER: Yes, sir.

*Robert Wright*  
MR. ~~G. GEORGE WRIGHT~~: If a man wants to use a larger one, of course he can do so, but he will not do it more than one season, I will guarantee.

MR. WALTER H. HAYES: Do you gentlemen, Mr. Minner, Mr. Wright and Mr. Shorts represent the fishermen down in this section, and do you have authority to speak for them generally ?

MR. MINNER: Mr. Shorts and myself at the request of the men who fish at Bowers', came over here. They requested that Mr. Shorts should bring me here. He has got more nets than any other man

downthere, and, of course, he is pecuniarily interested in it; while I, as I told you a while ago, have only a common interest in it. I like fishing, and I like to see the boys catch them, and I go with them sometimes when the weather is warm.

MR. WALTER H. HAYES: The statements made by you are the views of your fishermen?

MR. ALEXANDER MINNER: Yes, sir; those are the views of the fishermen there.

MR. ALEXANDER B. COOPER: How many fishermen are there around in that neighborhood?

MR. ALEXANDER MINNER: Do you mean to say all?

MR. ALEXANDER B. COOPER: The individual fishermen.

MR. ALEXANDER MINNER: I should think there would be fifty men at our place.

MR. ALEXANDER B. COOPER: That fish with net, not with hook and line.

MR. ALEXANDER MINNER: Fully fifty.

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: I can safely say there are twenty-five at Kitt's Hammock.

MR. WILLIAM S. HILLES: Is there any change that occurs to any of you in the law as it now stands in relation to any of these fish, excepting those you have mentioned ?

MR. ALEXANDER MINNER: I do not know of anything.

MR. WILLIAM S. HILLES: Looking at it from the stand point that a fisherman would look at it.

MR. ALEXANDER MINNER: I do not know of any.

MR. WILLIAM S. HILLES: No law for the protection of the fish ? Do you want any protection in our law concerning the perch ?

MR. ALEXANDER MINNER: Mr. Wright spoke about the first of September. What size mesh did you say ?

*Robert Wright*  
MR. ~~G. GEORGE WRIGHT~~: Three inch.

MR. ALEXANDER MINNER: I think that would be the greatest protection. The size of the mesh would protect the perch and the rock fish.

*Robert Wright*  
MR. ~~G. GEORGE WRIGHT~~: I should want that to include the waters of the creeks, rivers and bays.

MR. WALTER H. HAYES: We have got nothing to do with the creeks.

MR. ALEXANDER MINNER: If you protect the bay that certainly does protect our rivers, so far as fish are concerned.

MR. ALEXANDER B. COOPER: Do you know of anything else regarding the fish or fishing here, other than what has been stated ?

MR. ALEXANDER MINNER: I do not.

MR. <sup>Robert Wright</sup>~~C. GEORGE WRIGHT~~: We want a small mesh net from the twentieth of April to the twentieth of September, and a three inch mesh from the twentieth of September until the twentieth of April, and if you see fit, give us the privilege of using an inch mesh if we want to between September and April.

MR. WILLIAM S. HILLES: Ought there to be any season during which the trout ought to be protected absolutely ?

MR. <sup>Robert Wright</sup>~~C. GEORGE WRIGHT~~: I think not.

MR. ALEXANDER MINNER: He comes in April and leaves in September or October, and that is the last we see

of him until the next season.

MR. ALEXANDER B. COOPER: He is like all the fish, he takes care of himself?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: Yes. Of course, the perch and rock are with us the whole year. That is, they do not stay in the bay, but they stay in the creeks and rivers, and they catch quite a good many in the creeks. I know we do catch them in the bay with an inch mesh.

MR. WALTER H. HAYES: Where do you say the bay ends up here ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: Reedy Island.

MR. WALTER H. HAYES: The lower end of Reedy Island ?

MR. ALEXANDER B. COOPER: Suppose a monument was put up at Stony Point, and there was one put up just immediately north of the mouth of Appoquinimink Creek. How close would that be to the mouth of the river ?

*Robert Knight*  
MR. ~~C. GEORGE WRIGHT~~: That would be all right. That would be near enough.

MR. ALEXANDER B. COOPER: That would not be very far below the lower end of Reedy Island ?

*Robert Knight*  
 MR. ~~C. GEORGE WRIGHT~~: No, sir. That would  
 be somewhere about abreast of what we call Dan Baker  
 buoy.

MR. WALTER H. HAYES: Do you know anything  
 about a new island over on Stony Point on the Jersey  
 shore where the Government is dumping in there?

*Robert Knight*  
 MR. ~~C. GEORGE WRIGHT~~: No, sir. I  
 remember over at Alloway's Creek there is.

MR. WALTER H. HAYES: There is an island  
 there over a mile long and three-quarters of a mile  
 wide.

*Robert Knight*  
 MR. ~~C. GEORGE WRIGHT~~: No, sir. Those parties  
 there could best form a line in the river to suit  
 themselves. What will suit us here would not suit  
 them there, probably.

MR. ALEXANDER MINNER: When we went before  
 the Legislature to change the size of the mesh for  
 fishing, that is, to a two inch stretched mesh, we  
 mentioned particularly that we did not want to interfere  
 with the New Castle fishermen, because we thought that  
 might be against us.

MR. ALEXANDER B. COOPER: Your principal  
fishing here is trout and rock and those fish?

MR. ~~C. GEORGE WRIGHT~~ <sup>Robert Knight</sup>: Yes, sir. The principal  
fishing here is trout. Of course, we catch other fish.

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

Wilmington, Delaware,

April 26th, 1906.

4.00 o'clock p. m.

Meeting held on the above date at the County Court House, in Levy Court Room, for the purpose of receiving expression of opinion on the part of local and menhaden fishermen relative to the proposed laws governing fishing in the Delaware River and Bay.

PRESENT:

Alexander E. Cooper, Esq.,

Walter H. Hayes, Esq.,

Commissioners.

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Walter E. Hathaway, Esq.,

Robert Penington, Esq.,

Appearing on behalf of American Fisheries Company.  
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MR. ALEXANDER B. COOPER: What is your connection, Mr. Hathaway, with the menhaden companies ?

MR. WALTER E. HATHAWAY: I am secretary of the Fisheries Company and a member of the bar of Lancaster County, Virginia. I represent that company here to-day, professionally.

MR. ALEXANDER B. COOPER: You are connected personally with the industry itself, I presume ?

MR. WALTER E. HATHAWAY: Yes, sir; I am secretary of the company.

MR. ALEXANDER B. COOPER: Of what company ?

MR. WALTER E. HATHAWAY: Of the American Fisheries Company, the company which represents the most of the menhaden fisheries along the Atlantic coast.

MR. ALEXANDER B. COOPER: That includes Luce Brothers and others ?

MR. WALTER E. HATHAWAY: Yes.

MR. ALEXANDER B. COOPER: I understand you desire to be heard on the menhaden fishing matter ?

MR. WALTER E. HATHAWAY: Yes, sir; and if there are any matters which you desire to ask questions upon, either now or as we go along, I should be very glad to answer them.

MR. ALEXANDER B. COOPER: Of course, the principal matter for our investigation is with reference to the charge which has been made, as you are very well aware of, that the menhaden fishermen destroy a great many food fish. That, it seems to me, is the principal point upon which we desire to hear you. If there is anything else which you wish to state as you go along, of course, you are privileged to state it.

MR. WALTER E. HATHAWAY: I will state my position first. I am secretary of the Fisheries Company, and the Fisheries Company represents largely now the people engaged in the menhaden fishing on the Atlantic coast outside of the Chesapeake Bay. Our people operate forty steamers and we own and operate a plant in Delaware, at Lewes. We are, technically, a New Jersey corporation, but as far as Delaware is concerned, we are, really, to a very

large extent, a Delaware institution, because Luce Brothers and the other people who formerly operated there are in the Fisheries Company. The Fisheries Company has become the owner of all the plants at Lewes, and, I believe, all in the State of Delaware. We employ down there each season at the plant on shore about two hundred and fifty men, all of whom, or the majority of them, are citizens of the State of Delaware.

MR. WALTER H. HAYES: How long is the menhaden fishing season?

MR. WALTER E. HATHAWAY: The season usually begins about the middle of May and lasts until about the middle of November. It varies a little, according to conditions. We never operate, or I have never known our company to operate earlier than the middle of May.

MR. WALTER H. HAYES: I see by a resolution of our legislature that you are licensed from the twentieth of May to the twentieth of November.

MR. WALTER E. HATHAWAY: I really did not recollect that; but, however, that is practically the time. We fish about twelve steamers there, and these steamers gen-

erally fish there entirely.

MR. ALEXANDER B. COOPER: You mean off the coast of Delaware ?

MR. WALTER E. HATHAWAY: Yes, sir; nearly all of them fish off the coast of Delaware, but they deliver their fish to the plant at Lewes principally. We work on those steamers here some three hundred men, making the total number of men employed on account of the enterprise in the State of Delaware between five and six hundred. It would be useless for me to tell you, but it is a fact both there and at other places, that a very large percentage of the money gotten out of the menhaden business has gone into the hands of the people who did the work and not into the hands of the stockholders. The company has been fairly prosperous for two years out of five of its existence, and the other three years it has simply been able to meet expenses. Therefore, the industry is primarily a benefit to the town of Lewes and to the State of Delaware.

MR. ALEXANDER B. COOPER: Do you pay any compensation to the town of Lewes ?

MR. WALTER E. HATHAWAY: The only compensation is, the land belongs to the town of Lewes and the company leases it.

MR. ROBERT PENINGTON: They pay twelve hundred dollars a year and they have an arrangement with the town of Lewes by which they use their water. That has only been in effect this year.

MR. ALEXANDER E. COOPER: That is an entirely satisfactory revenue, is it not ?

MR. ROBERT PENINGTON: The mayor of Lewes has said that the revenue derived from the Fisheries Company is sufficient to pay the interest on the bonded indebtedness of the town.

MR. ALEXANDER E. COOPER: The amount of that revenue is twelve hundred dollars ?

MR. ROBERT PENINGTON: Twelve hundred dollars in addition to the water rent. The water use, of course, is operated upon some basis. I do not remember whether that is paid locally or to the state and then accounted for afterwards; that is, so far as the State of Delaware is

directly concerned in this industry.

MR. WALTER H. HAYES: About what is the value of your property in Delaware ?

MR. WALTER E. HATHAWAY: I would say now, from a very rough estimate of the value-- of course, I wouldn't like to be bound by this--but my own opinion is about from two hundred to two hundred and fifty thousand dollars. I have not looked the matter up. That is, I mean the factory and the plant and the piers and the other investments there.

MR. ALEXANDER B. COOPER: That does not include the vessels ?

MR. WALTER E. HATHAWAY: That does not include the vessels. The twelve vessels, I should say, were worth on an average of from twenty to twenty-five thousand dollars apiece, the average vessel being at least twenty thousand dollars, and probably a little over that. The most of them are vessels of an improved character. I can see no reason why any intelligent man in the state of Delaware should oppose us or our industry, unless we carry with it an injury to somebody else. We are,

certainly, a benefit to that town. We are, certainly, a benefit to the people who work there, and certainly we are a benefit to the state of Delaware to the extent that we have a very important industry within the state. These things go without saying. If we injure anybody, or other people, or a large number, or property in a greater proportion than we benefit, necessarily it is a matter that the state of Delaware would have a right to look into and, necessarily, ought to look into; but how could we work an injury to anybody in the state of Delaware unless we destroy food fish, either by taking them and grinding them into fertilizer (which would be an extravagant use of one of the blessings of the Almighty), or driving them away in some way?

This question which we have up here now has been asked in nearly everyone of the Atlantic seaboard states, commencing about thirty years ago in Maine, and from its inception in North Carolina last year, where our company got the worst of it. There have been legislative enactments proposed and passed in these various states; in the New England states first, and

then following on down the coast from time to time. But the result of all that is this: The state of Massachusetts prohibits fishing in Buzzards Bay-- I am referring now entirely to the menhaden steamers operated exactly as we operate here--and in two other small bodies of water, the names of which I do not just remember now. A bill was proposed in the last Massachusetts legislature by somebody to prohibit fishing in Boston Bay, but it was defeated by a unanimous vote. A bill was proposed and passed the lower House of the Massachusetts Legislature--and it may or may not pass the Senate, as opportunity to get to it may or may not present itself--prohibiting fishing in those other inland waters, but it was not a matter that we were interested in particularly, because we probably would not have fished in those little waters through the fishing season there at all.

In Maine there is no prohibition whatever, either against residents or non-residents.

In Connecticut there is practically no prohibition.



In Massachusetts there is no prohibition or license of any kind, except Buzzards Bay is prohibited.

In Rhode Island there is no prohibition.

In New York there is no prohibition except around inside of Sandy Hook and up around Coney Island, and in that part of the waters of New York; that is, in the waters around Coney Island fishing is prohibited.

In New Jersey there is no prohibition, but a license is required, each license varying from one to two hundred dollars per steamer for a season, which embraces the men. That is, on the basis of one hundred dollars for steamers under and up to one hundred tons net. Above that, and up to two hundred tons net, it increases; and over two hundred tons net it is two hundred dollars. Above that it is no higher.

Last winter there was quite a hue and cry raised in New Jersey, as there has been more or less at every Legislature, and as I fear there will be until the end of time in New Jersey, and especially so long as there is still an opportunity to pull some fellow's leg in defending it. This matter was taken up by

Governor Stokes in his message. He took the bull by the horns and sent that in in his message. The result of that recommendation by the Governor was that the Legislature authorized the appointment of a Commission by the Governor, which Commission was appointed. These are facts. Not facts I am stating myself, but facts that anybody will bear out. That Commission was practically packed against us. I do not mean to say that they took any undue advantage of us or of our industry, but the Commission was composed of Mr. Shrinex, who had been the ex-officer in control, the game warden at large, and who instituted proceedings against certain people in this line further back, and Mr. Crawford, who was secretary of the Essex County Game Club, and who, by his own statement, was opposed to menhaden fishing, and Senator Shinn, who represented a district that did not contain over one thousand people, and who said that we were destroying the food fish industry. Then, back of this proposition or of this prosecution or investigation in New Jersey were the seaside resorts, claiming that we destroyed food fish, that we took away

the natural food of the food fish, thereby driving them away from the coast, and we were, to that extent, detrimental to the boarding house and hotel keepers.

The first meeting we had was at Cape May, and that was before an organization composed of the Mayors and representatives of the municipalities on the seacoast of the state of New Jersey from Sandy Hook down to Cape May. These people were practically a unit against our industry, as it appeared from the way they started out when we went there. They never made any report whatever, however. The matter was finally taken up, and when it came to a question of whether they would report for or against us--although no final action on this thing was taken-- I presumed they were unanimously against us. Mayor Stoeck of Atlantic City, who was president of the association named, after hearing our statement at that meeting said (showing that if these people started out loaded against us they changed their views), "Why, you can report them more of a benefit to us there than otherwise." That was the Commission created and appointed by Governor Stokes of New Jersey, inspired by a resolution of the New Jersey

Senate in January of last year, I think--I have forgotten the exact date--which held its investigation during the months of February and March. If you gentlemen will read that report it will show you the conclusion that these people there came to on that point.

Then came the next Legislature and a bill passed the Senate but did not pass the House, the term being too short for it to pass the House. So, as a result of that, nothing was done whatever, and the law remained just the same as it had always remained, that we be not permitted to catch food fish. You will find there the bill that they proposed and which passed the New Jersey Senate, I believe, by a unanimous vote, but did not pass the House, that is, it did not get out of the Committee in time, to the effect that we be prohibited, under penalty, from grinding up and making into fertilizer food fish. We were not unfavorable to any provision of that kind, because, coming down to the facts, while running over this end of it further in the state of Maryland, there is no fishing except on the Atlantic seaboard. So there is no provision for or against. The

state of Maryland prohibits fishing, of course, in the Chesapeake Bay, but as the menhaden go very seldom above the Potomac River, it is a matter of very little importance, because there would be very little fishing done in the Chesapeake Bay above that point.

In the state of Virginia there is a prohibition against non-residents, but gives permission to a resident to fish upon the payment of a license fee of one hundred dollars.

North Carolina has a prohibition of the same kind as Virginia.

MR. WALTER H. HAYES: What is the size of the mesh used ?

MR. WALTER E. HATHAWAY: The usual size depends upon the locality. In this locality we fish with a two to two and a quarter inch mesh. Then further south they use a smaller mesh, because the fish are smaller. North of Cape Cod they do fish with as much as a three inch mesh.

The result of these various investigations has come to this: In several of the states they collect a

revenue from this industry, New Jersey and Virginia being the only ones charging a license tax. I am leaving Delaware out of this discussion now. Two or three of the other states have prohibited purse net fishing in small bodies of water, which practically includes streams of water like Buzzards Bay, Raritan Bay and the bay on the opposite side of the Sound, the name of which I forget now. In both Virginia and North Carolina they have the same prohibition. The state of South Carolina prohibits non-residents taking fish in the state altogether, though a member of the Legislature recently wrote us that they never intended that for menhaden, and he did not consider, from a construction of the law, that it did apply to the menhaden, and that we could go ahead and fish in South Carolina, as the law did not apply to menhaden. We catch a few fish in South Carolina, or rather the Cape Fear Fisheries Company does, in which company we are interested.

These matters have been investigated by the different states and by the United States. I will come back to the food fish question.

The United States Government some years ago made an investigation. This was in 1894, I think. I will be glad to give you a copy of the result of that investigation, and if you gentlemen will take it and read it carefully it will give you a good bit more information than I will have the time to give you now. But briefly going over that: The conditions were absolutely the same; that is, in other words, this business has been improved as almost every other business has from year to year, but along the line of taking fish there is practically no difference except the seines are bigger and the steamers are a little bigger, and the matter of procuring is very much improved, and so on, being such improvements as have taken place within the last twenty years. This report is by Mr. Hugh M. Smith of the Division of Statistics and Methods of the Fisheries of the United States.

What I wanted to say was that this Commission was placed on two steamers, one of which fished on the Atlantic coast mainly and the other fished in the Chesapeake Bay mainly, with instructions to investigate

every haul and find out exactly how many food fish were taken during the time they were on board.

The steamer "Arizona" belonged to the Fisheries Company (which is the same company that is now being represented here), and if you refer to page 10 you will find that the steamer "Arizona", during that season of 1894, caught in the Delaware Bay--that is coming close home to you--five million nine hundred and thirty-five thousand five hundred menhaden. Then if you will follow that column down you will find they caught sixteen alewives--being of practically no food value--ninety-four blue fish, two hundred and twenty-six butter-fish, eight bonito, one drum, one pompano, one sea-robin, one hundred and sixty-six sharks, eighteen skates--if I have got the line right--twenty-five weak fish, eight Spanish mackerel and no shad.

MR. ALEXANDER B. COOPER: That represents the catch for the season ?

MR. WALTER E. HATHAWAY: That represents the



entire catch in the Delaware Bay for the season beginning May sixteenth, 1894. It would be an absolutely safe assertion that the experience of every single fisherman for food fish in the Delaware Bay would be practically the same, and would be to the effect that the sharks destroy more food fish than anything else. In going down that line of fish caught you will notice that the sharks were the principal fish. One hundred and sixty-six sharks caught, the only food fish of which a greater number was caught being the butter-fish. One hundred and sixty-six sharks, in all probability, destroy in a year more weak fish and blue fish than that steamer would catch in a thousand years, if each year was comparable to this year that we are now referring to. I will state this one fact, that the one hundred and sixty-six sharks that were destroyed by the "Arizona" in the Delaware Bay that year would, in all human probability, have destroyed more fish, blue fish and weak fish, and fish upon which the shark principally feed, than that steamer could have caught in one thousand years had she been able to run a thousand

years from that year fishing in the Delaware Bay, under similar conditions, because, you know, it is reported from all sources that one shark can destroy an enormous quantity of fish in one year. The investigation shows right here that the blue fish mainly, but both the weak fish and blue fish are destroyed by sharks and other fish on the Atlantic coast, and that their number are very much greater, and many fold greater, than those that are caught by these vessels. One shark in the Delaware Bay would catch more fish in one night, more food fish in one night than one of these steamers would catch in a whole season's work. Of course, she fished in other places besides the Delaware Bay, and she caught in all six million of menhaden, nearly; in other words, that out of the six million of menhaden there were less than five hundred food fish caught-- I am only guessing at that now, without taking the time to count it up--leaving the sharks out there were less than five hundred food fish caught, not nearly enough, gentlemen, to supply food to the crew on that steamer alone.

MR. ALEXANDER B. COOPER: How do you account for that ?

MR. WALTER E. HATHAWAY: In two or three ways. One way is that it is a well-known fact that fish of different varieties do not herd together unless one is feeding upon the other. For instance, the blue fish is the only fish that feeds upon menhaden to any extent whatever, as far as we know--I am not counting sharks now, because I do not think they could be counted as food fish; and another thing is--while we do not know very much about Delaware--in recent years we have caught quite a number of drums in the state of New Jersey at the request of the Fish and Game Commission of that state, it being a fact that in recent years the drums have destroyed in the inland bays north of Atlantic and around Atlantic more oysters in value this year than were ever known to be destroyed before.

MR. ALEXANDER B. COOPER: Do you mean catch them if they are there ?

MR. WALTER E. HATHAWAY: They asked us to.

Under the law of New Jersey the drum is one of the fish which it is against the law to catch with a net, but the Fish and Game Commission of the state of New Jersey requested us, whenever we could find schools of drum, to take them.

MR. ALEXANDER E. COOPER: Do you mean to catch them independent of menhaden ?

MR. WALTER E. HATHAWAY: Yes, sir. In the deep water, in the ocean water, all classes of school fish will school up, and when they get into the bays they scatter out. We could catch weak fish on the Atlantic Ocean, or we could catch blue fish, or we could catch mackerel, or we could catch drum.

MR. ALEXANDER E. COOPER: As I understand you, you find them in different schools ?

MR. WALTER E. HATHAWAY: Entirely. It is one of the rules of nature that fish of a different variety and class will not go together except when one is preying upon the other. When we catch blue fish, we could catch them while they would be preying upon the menhaden. The menhaden goes in shallow water, usually

in big schools, in from ten to twelve to fourteen feet of water, almost usually, to the bottom, and <sup>in</sup> that water in which they are you find only here and there a scattered food fish.

We would be perfectly willing, and we are perfectly willing, at any time, to give this Commission, or any representative Commission, the privilege of going, and we invite you to go, on board of any steamer at Lewes, at any time, either known or unknown to us, and investigate the matter for yourselves; and if you find that these steamers catch a sufficient quantity of food fish to be detrimental to the food fish industry, then we will make no objection to the laws that you propose; but all we ask is that when you do investigate or you do visit the steamer, that we have an opportunity given us to have an entry made in the log of the steamer of the time and what work was done.

MR. ALEXANDER B. COOPER: How do you account for the great decrease in the quantity of food fish?

MR. WALTER B. HATHAWAY: In the first place I would not agree with your premises that there was a

decrease in the quantity of food fish. I would not say as to Delaware, but I am speaking generally. As a matter of fact, the quantity of food fish taken each year on the Atlantic coast from Florida to Maine has increased more rapidly than the consumption. I appreciate the fact, of course, that the consumption has increased enormously.

I understand the principal fishing industry on the Delaware river is shad .

MR. WALTER H. HAYES: Only in certain seasons. The trout and rock fish come on later.

MR. WALTER E. HATHAWAY: We will take the shad first. Running down the column under Delaware Bay you will see that not a rock or striped bass, not a perch and not a shad was taken, and that only twenty-five trout were taken by that steamer that year, and out of a catch of six million of menhaden in the Delaware Bay. In the first place, we do not begin fishing until the latter part, or the middle, of May, at which time the shad season is practically over. That is, the spawning season is over.

MR. WALTER H. HAYES: The fishing season is over.

MR. WALTER E. HATHAWAY: Yes, virtually over. You will observe over here in the other column that in the Chesapeake Bay the steamer "J. W. Hawkins", on page 11, the second from the last column, caught in the Chesapeake Bay six million two hundred and sixty-three thousand and five menhaden and eight shad. That fishing began that year on the seventh of May.

MR. ALEXANDER B. COOPER: You have no report of the "Hawkins" on the Delaware ?

MR. WALTER E. HATHAWAY: The "Hawkins" didn't fish in the Delaware.

MR. ALEXANDER B. COOPER: She didn't fish there at all ?

MR. WALTER E. HATHAWAY: Not that year. The only part of the United States in which shad are ever caught by the purse seines is in the waters of the state of Maine, and they are there caught mixed with menhaden, though you will observe that the "Hawkins" that year did catch, in the state of Maine, seventeen hundred

and ninety-nine shad. You will observe that she caught eight shad in the Chesapeake Bay and that she caught one shad in New Jersey. It is a peculiar thing that the shad has to come to this coast to spawn, beginning away down as low as St. John's river and working up the coast until they get to the Connecticut river, at least, and will school in the latter part of July or August. Up in Maine some twelve or fourteen years ago a menhaden steamer went out to catch a lot of fish. The captain got his eye on them and he caught enough shad in that one setting to load two steamers. They sold a good many of them and gave a good many of them away, and cooked up the balance, because they were too much spoiled to use for food fish. We never heard of anything like that down here, and when I first heard of it, I didn't believe it, but I investigated it for myself, for my own satisfaction, and I found that something over twenty-five hundred to three thousand pounds of white shad were taken in one purse net in the waters about one hundred and twenty-five miles northeast of Portland, Maine.



Nobody ever saw them school down here. They school after they have gone there, after they have gone through this spawning season. They do not spawn there, but if they do, it is to a very limited extent, as a captain of one of the steamers told me that it was, probably, to have a good time if they did go up there.

There have been orders given to the captains of the seine steamers fishing for the Fisheries Company since it was organized in 1900, never to set upon food fish knowing them to be food fish of any kind. Of course, what fish are caught mixed up with the menhaden are picked out. One or two men are put in the hold of the steamer and the fish are dipped up by the barrel, and at each dip <sup>of</sup> the barrel the food fish are picked out. Last year our general manager put a keg on board one of the steamers and asked them to pick him out a keg of blue fish, or of big weak fish. That was done over a month and a half before the season ended, and they returned the keg not half full --and it was a small keg that wouldn't hold but about one-quarter as much as a common fish barrel--

stating that they did not catch enough to fill it.  
That was on one of the largest fish steamers in the world.

MR. WALTER H. HAYES: How much fish oil do you get out of food fish?

MR. WALTER E. HATHAWAY: Practically none. There has been no test made; that is, there has never been any definite test made, because, so far as I know, there never has been food fish enough ground up anywhere to test it. I do not say that food fish have not been caught this year up to now. Five and one-half millions of herring have been ground up in the Chesapeake Bay for fertilizer this year so far, although it is against the law of the state for anybody to grind up food fish. If that was not done, the fish wouldn't be of any value to anybody. They are caught with a purse seine, and they pay one dollar and fifty cents a thousand for them and grind them up. There would be absolutely no market for them otherwise. They have packed and salted and sold all they could sell, but notwithstanding that, up to the twentieth of this month five and one-half millions of

herring have been ground up that they caught in two counties, the counties of Lancaster and Northumberland, in Virginia. In the county of Northumberland over four and one-half millions of herring have been ground up this season into fertilizer. These people there have ground them up notwithstanding it is against the law; but they have done that, and everybody lets it go on. They have ground up more fish in the limited area of one county having a population of about ten thousand people than the Fisheries Company with its forty steamers and three million dollars has ground up since it has been in existence on the Atlantic coast from Maine down to Savannah. We have not tried to catch food fish, although we can catch food fish. The captain of one of our steamers told us last winter that he believed he had seen in the Atlantic Ocean, off in the neighborhood of Atlantic City, and about twelve to fourteen miles off shore, enough weak fish travelling south to load every steamer the Fisheries Company had at that time during last year. Of course, this only goes to show you in what enormous quantities they come and go.

This investigation and the investigations of the other states have shown positively that these people do not catch, together with the menhaden catches, food fish in quantities sufficient to feed the crews on the steamers. We carry salt cod fish on everyone of the steamers, and on some of the steamers on the eastern end of Long Island we have quite a number of Catholics, and we have fish on Friday, and four times out of five it is salt fish gotten from Gloucester or Boston. There are not enough food fish caught to supply the fish dinners on Friday for the people employed there, only on an average of one out of three or four or five. We buy a quantity of salt mackerel and cod and haddock in Boston and Gloucester as food.

If there is any investigation you want to make on that point, we should be glad to have you make it. If we had anything to conceal, or anything to hide, or if we wanted to hold back anything, we could not do it very well, at least, when we give you a perfect free invitation, and extend to you an invitation to investigate that matter with your own eyes on board of any one of

our steamers. And invitation will be extended to you for any time you see fit next summer. We will be glad to have you make this investigation, because we have been harassed, and we have been put to expense and trouble and we have had grafters at us from one state to another on this very question, when we are absolutely innocent. It is a right and just proposition for a guilty man to have to pay, but when an innocent man has to go to the trouble of defending himself over and over again, it gets very tiresome.

There is no oil, practically, in any food fish. There are no food fish that can be taken in any quantity which will produce over from one-half a pint to two quarts of oil to the thousand fish.

MR. WALTER H. HAYES: How many menhaden are there to the barrel of oil?

MR. WALTER E. HATHAWAY: I could not answer that to save my life, only in this way:

MR. WALTER H. HAYES: They told us down at Lewes that it was nearly two thousand.

MR. WALTER E. HATHAWAY: Two thousand fish

cannot make a barrel of oil. The largest quantity of oil ever gotten from menhaden was twenty-three gallons to the one thousand fish, and they were caught in the Penobscot Bay, in Maine; and that is so old a story that every fisherman knows about it and remembers it. Twenty-three gallons to the thousand, that would be, practically, two thousand to the barrel.

We have made this year (and it has been a very poor season) one hundred and thirty-nine tons of acidulated scrap in the factory at North Carolina this season. That means a catch of about one and one-quarter million fish. The usual amount of oil made during the average season of purse net fishing in Delaware will run from five to seven gallons to the thousand fish, or from seven to ten thousand fish to the barrel of oil. In the Chesapeake Bay the average there to the thousand fish will not run over from three to four gallons, but generally from two to two and a half to three gallons to the thousand fish, if the fish are in good order. We make practically no oil south of Chesapeake Bay and north of Cape Cod. In other words, if the fish caught

anywheres north of Caps Cod are worth two thousand, the fish caught south of Cape Hatteras would be worth three thousand. They only produce from one-half a pint to two and a half to three quarts of oil to the thousand, under varying conditions, therefore, making, I believe, by that basis, less than one gallon to the thousand.

MR. ALEXANDER B. COOPER: You fish rather near to shore, don't you? What scoops have you outside of a school of menhaden?

MR. WALTER E. HATHAWAY: That will depend very much upon the menhaden, but these nets will cover, roughly speaking, from one and a half to two acres, when brought around.

MR. WALTER H. HAYES: How deep do they go?

MR. WALTER E. HATHAWAY: They run from twenty-five to forty feet deep, and, of course, they will touch the bottom in shallow water.

MR. ALEXANDER B. COOPER: You have some deeper than that?

MR. WALTER E. HATHAWAY: Yes, sir; but the average would run about that size. Unlike the other

fish that school the menhaden travel close to shore. I think that is largely due to the fact that it is the most timid and helpless of all fish. It is a prey to everything in the fish world. As far as anybody knows, menhaden do not feed upon fish, but upon the silt that comes from the bottom and comes down from the land. It is one of the things in nature that the fertility of the soil is constantly being washed down into the ocean by rains and snows, and the menhaden are fed by that silt and infinite animalculae matter, and when they are caught and turned into fertilizer, that matter goes back to the soil; in other words, it goes from whence it came .

MR. WALTER H. HAYES: Why don't the menhaden go further up these streams ?

MR. WALTER E. HATHAWAY: They have never been known to go into fresh water, only here and there a scattered fish and in limited quantities. These statistics will show later on that menhaden are caught near the shore. Take the steamer "Arizona": One mile from shore, three million five hundred and twenty-five



thousand five hundred menhaden caught in less than one mile of shore—all these being caught, practically, on the Atlantic coast. You will find that on page 12. Between one and two miles, nothing less, seven million and fifty-seven thousand five hundred menhaden caught. Between two and three miles, nearly two million caught. Between three and five miles, nearly four million caught. Five miles and over five miles, nearly five million caught. In other words, about one-third of the catch of that steamer that year was within the three miles limit. The menhaden goes in shore, while other fish, in their migratory periods usually go off shore anywhere from three to twenty miles.

That brings up again the question about the three mile limit. As a lawyer, I do not believe that the state of Delaware, or any other state, has a right, if the question was thoroughly investigated, to control its sea coast beyond low water mark. However, I will not take up that question here.

MR. WALTER H. HAYES: We do not go outside of the bay.

MR. WALTER E. HATHAWAY: You would not be bothered with that question, then, as you are confined to the Delaware Bay; but this case of the Buzzards Bay was taken up to the United States Court and that court decided that the state of Massachusetts had a right, in Buzzards Bay, to regulate menhaden fishing, and to impose a penalty for catching fish with a purse net; but insofar as the other cases are concerned, they were practically inland waters, because they were small waters and were almost surrounded by land. It might be a very different proposition as to the Delaware and Chesapeake Bays.

MR. ALEXANDER B. COOPER: Both the Buzzards Bay and Raritan Bay. The one in New Jersey had absolute territorial jurisdiction, and also the one in Massachusetts.

MR. WALTER E. HATHAWAY: I am inclined to think so too (although I have forgotten), outside of the general principals of common law.

Then there is another point, and that is a matter of very great interest to the state of Delaware, and probably more to the state of Delaware--I am speaking in a general and broader sense--than any other state in the whole union.

The sources of organic ammonia in commercial fertilizers are two, alone (efforts are being made to get organic ammonia from the refuse of the cities, but every concern that has engaged in it up to this time have gone to the wall, and it is still in its experimental stage), from the offal from the packing houses in the west, blood and bone, and from the offal of the menhaden fish. They bear a proportion to each other of about two hundred and twenty-five thousand tons produced by the beef trust to seventy-five thousand tons produced by the fishing scrap. I will tell you, this question involves you to a much greater extent than you have any idea. Swift and Company have recently increased their capital stock, and have gone into the food fish business, having established at Cape Ann and Gloucester two very large plants for the purpose of

handling and taking their food fish and supplying them to their customers at certain times. Swift and Company have also made investigations into this menhaden proposition on account of the profits in the fertilizer end of the business. If the menhaden was out out, either by law or by act of nature, then the source of organic ammonia, a most essential element in every trucking community like yours, would be dependant absolutely upon the beef trust, and it would be an easy matter within a very short time for them to combine, whether under a strict operating agreement, or otherwise, and to put up the price of organic ammonia from three to five dollars a ton. They cannot do it now. We are the one element outside interfering with the increasing in price of organic ammonia to five dollars a ton to the farmers of the state of Delaware. It would be one of the heaviest taxes you could levy on your state, if you opened the door for such action on their part. It would soon have every farming and trucking community in the United States in its seine, and every farmer in this state would be included therein.

It is not a question of loss of fish, but it is a question of far greater importance than that to every farmer in your state, and if each one thoroughly understood this situation he would see at once that the industry which we operate down there, and the other industries located elsewhere by our company, keep the price of organic ammonia down to where it is to-day--if either of you have ever paid any attention to the various increases in it.

Out of the seventy-five thousand tons of fertilizer made from the fish caught, we make about fifty thousand tons and the other people make the remaining twenty-five thousand tons of scrap fertilizer. Then there is the oil. That amounted last year to less than five thousand tons, most of which was sold in New England.

This is a very important industry, and a far reaching one. I have been told that it enters very largely into what is called linseed oil, and that after it is refined it can be used both as cod liver oil and olive oil. It don't taste quite as good, but then neither one of them are very nice to the taste.

The only other question is, whether or not, by catching the menhaden, we take away from the food fish its food, and thereby limit the quantity of food fish. I have heard it argued that sheep head have left certain parts of the New Jersey coast, that striped bass and rock could not be found, that perch could not be found, and that our catching of menhaden did that. Any man knows that sheep head and perch and the striped bass were never known to feed on the menhaden. I wouldn't be afraid to bet a hat that no man ever found a menhaden in the stomach of these fish. The menhaden is a type of fish that swims on top of the water entirely, and these other fish mentioned are nearly all bottom fish. The blue fish eat the menhaden, and they are the only fish that we would catch that you would probably denote as a food fish. The shad do not eat menhaden, but the white fish and the blue fish do eat menhaden. It has been stated by the scientists of the United States Government that the blue fish alone on the coast of New Jersey probably destroyed three hundred times as many menhaden each season as the

fishing steamers caught. That the blue fish alone on the coast of New Jersey probably destroyed three hundred times as many menhaden each season as all the fishing steamers combined caught on that coast. That was a statement made by a government official. When you consider the fact that the waters are alive with blue fish--for a blue fish is one of the strangest things that ever a man tried to fathom--that fifteen years ago blue fish were unknown in the Chesapeake Bay, but for the last five years they have been caught in large quantities. Menhaden have been taken at the rate of from two hundred to two hundred and fifty million a year out of the Chesapeake Bay for the last twenty-five years, and during the first half of that time blue fish were not known there, but during the last half of that time they have been there and have been taken in large quantities. Your blue fish have disappeared on the inland waters of New Jersey, according to the idea of fishermen whose judgments are good, but they say that the blue fish have been just as abundant in deep water from Cape Henlopen up as they ever were before ; in fact, more so than

they ever were before; that has reference to last season.

They did not come in shore, because the waters of the Atlantic Ocean over this territory have been practically alive with what they call white bait, or white fish, about that long (indicating about six inches.)

They have become so numerous that there are now three or four fishing industries at Montauk and Neapeague. They catch them in the month of May and put them in pens from the seines, and sometimes two-thirds of the catch are put in these pens out in the ocean and taken out from time to time so as to keep the price high enough. There is an agreement between all the fishermen up there.

These fish are fed from the middle to the last of May until as late as September, and then are brought up in large quantities. Last year we had ten thousand barrels penned and kept alive in sufficient condition that they could be marketed--that is, these little white bait.

Fishermen can testify to the fact, and, especially, Captain Castro, the hero of last summer (who has been a fisherman all his life) has stated that last season he had seen more blue fish in the Atlantic Ocean from Sandy



Hook to Cape May than he had ever before seen in his life. He said they had fished for three days without being able to catch a blue fish; that then for thirty-six hours there was a storm, when they could not fish, but that immediately after that they caught fish enough to load his boat in about eight or ten hours.

The weak fish have been exceedingly abundant on the New Jersey coast, in fact, so much so that Mr. France, for his entire shipment during the month of July last, only averaged two dollars and twelve cents a barrel for weak fish in the Fulton street market, New York, and he paid for the barrel and the ice--there being three hundred pounds of fish to the barrel.

Another thing can be said in attempting to explain these things, and that is about the mackerel. More mackerel have been seen between Cape Hatteras and Cape Charles this year than there was ever known before, and the number of loaded scows every day loaded down, coming into the market in Boston with this year's catch of mackerel is unprecedented, and proves that the fish are not decreasing in number.

They say we are destroying the menhaden. The menhaden industry has gone on for thirty years or more, and with increased quantities all the time. About five hundred million have been taken on the Atlantic coast in the year 1891. In the year 1892 the catch was only two hundred and fifty million. The next year and the year following that it was about seven hundred and fifty million. The largest catch of menhaden ever known in its history was made in 1903. Since then they have not been caught in any such quantity. The natural feeding ground of the menhaden is from Cape Hatteras to Cape Cod. Above that is spawning ground and below that is spawning ground. From Cape Charles to Sandy Hook the catch varies nearly the same as it does anywhere else on the Atlantic coast. The Delaware Bay and the immediate sea coast to the Delaware Bay has been one of the most valuable fishing grounds on the Atlantic coast, having stood constant fishing with good results.

MR. ALEXANDER B. COOPER: You are speaking of these fish being abundant. I recollect one season when

a party of New Castle wharf fishermen caught quite a number of elegant salmon, but I have never heard of one being caught since.

MR. WALTER E. HATHAWAY: Salmon have been known at times to be on the coast further north of here, but now they are not. Blue fish were caught on the coast of Ireland some thirty years ago, but since then they have not been known.

Another point, the herring factories are in the United States, largely--in some states more than others. The New England states have been more active in that line than the states further south. The herring fishing has been examined and investigated, and they have statistics in both England and the continent countries of Europe for four hundred years, and the herring practically disappeared from the coast of Norway for a period of fifty years some one hundred and odd years ago. There were few, but in no quantities, though, that would come and go away.

There is no rule or no regulation that any man knows of except this: The total production of the food

fish in the civilized world has increased in greater proportion than the population of man. That is in the broad; that is not as to any particular locality. You can lay it down as an absolute fact that no device or agency that man has ever been able to discover or invent can materially destroy or diminish the deep sea fish, when not caught upon its spawning ground. It is absolutely impossible:

You take the Delaware Bay and compare it with the Atlantic Ocean. These menhaden go along the Atlantic coast from Portland, Maine, down to the Savannah river, and there is a vast difference in the temperature of the water there in that territory as compared with the warmer waters from which these fish come. They go away in the fall, but nobody knows where. We have attempted to make an investigation to find out where they go to. There have been theories of all kinds. Fish have been caught ready to spawn in Maine as early as the latter part of July and as late, in lower Virginia, as the first of December. The menhaden certainly spawn, in limited quantities, on the Atlantic coast, but not in fresh water.

A gentleman told me the other day that he had been in the fish business all of his lifetime, and that he had seen young menhaden twelve miles up the Mississippi river in the state of Louisiana. I think he must have been mistaken, because nobody else ever saw them. I asked a gentleman not long ago (who had been a menhaden fisherman for forty years, of one kind and another), "What do you know about menhaden as to its breeding and spawning grounds and its methods of propagating?" He looked at me in a kind of a quizzing way and said, "I don't know a damned thing." That old gentleman was a very intelligent man, and he had been in this business all of his lifetime, since he had been a man. However, the accepted theory is that the menhaden spawn somewhere in the warm waters of the South America or Caribbean Sea. Nobody ever saw menhaden in the waters of the Delaware Bay under that length (indicating about four inches). I have been acquainted with this industry, more or less, ever since I was a very small boy--just as much acquainted with it as I am with anything else--and I have seen many of these fish in the Chesapeake Bay, these little fish, along about

the latter part of July or August. They have come up further north after that time, and they have appeared further south as early as June, or the latter part of May. They are certainly as much as six months old. Where do they come from? Nobody ever saw them in cold water. These fish were evidently spawned sometime about the month of December, or January, somewhere in the southern waters, and came up here.

The result of all these various things is this: That no intelligent investigating commission, in any state, would interfere with an industry in which a large amount of money was invested and in which quite a number of people obtain employment at lucrative wages, unless there was some special reason for it. If anybody can suggest any reason that will stand the test of investigation, that will stand the test of common sense, that will stand the test of common judgment, and which will show we do any damage whatever to any interests in the state of Delaware--except, I believe, as regards the factories down at Lewes we have a kick coming from some people in that locality--I would like to hear it.

As regards the Government investigation, I think it showed that less than one-tenth of one percent. of the total catch in numbers was food fish. However, it is an absolutely safe assertion and a man can bet his clothes on it, if he wanted to, that during the season not one percent. of the fish caught would be food fish, and those that were caught were consumed as food there by the fishing crews, or the men on the shore, or by being given away to friends. If we should catch them we do not grind them up. We use what we can and then give the balance away, or we sell them, if we have them in any quantity. If we had any large quantities we would find a market for them, but never having had such quantities we have not resorted to the finding of such a market.

That being the situation, the effect of it is that we do benefit the state of Delaware, and we do benefit the town and the people there—and we, of course, aim to benefit ourselves, but, as a matter of fact, we have benefited the neighborhood more than we have ourselves.

I suggest that there can be no reason that I know

of, or that can be devised that will meet intelligent investigation, where we do any harm or any injury to anybody. We do not take Peck fish except in limited quantities, and in such limited quantities as would not interfere in any way with the supply. We do not destroy the menhaden so as to diminish the menhaden, taking the Atlantic coast as a whole, or taking the Delaware Bay, because, as I said a little while ago, the run is more regular here than perhaps at any other place on the Atlantic coast, and the supply is practically the same year in and year out, and has been so for years. The biggest year ever known was in 1903. The biggest and most profitable catch of menhaden ever known in the history of the fishing industry, taking the whole territory, was in the year 1903.

MR. ALEXANDER B. COOPER: How far up the bay do they come ?

MR. WALTER E. HATHAWAY: Up the Delaware Bay ?

MR. ALEXANDER B. COOPER: Yes.

MR. WALTER E. HATHAWAY: I cannot answer that question.



MR. WALTER H. RAYES: We were informed by the fishermen down the state that they fished up to the Cross Ledge.

MR. WALTER E. HATHAWAY: I cannot answer that question. I never did know. I do not know, but I would assume, that as a general rule the fishing would not be profitable over half the distance there. I never asked that question and I never found out. I know in the Chesapeake Bay there is no fishing above the Potomac River, and there are practically no fish above that point.

We court the fullest investigation as to the facts. I have stated to you that we have a report here of an investigation made by the United States Government. We have another pamphlet which is practically a re-statement of what I have been saying to you. From that report, or rather, we have that report of the New Jersey Commission which is more in point, and as Mr. Crawford stated, when he had finally agreed that he would report on one point, in making a reply to my remark, "You have changed your views from what they were at first?", "Well, I will tell you. I will illustrate by a story."

A friend of mine was going to an insane asylum many years ago and he saw a man whom he knew was crazy, and he thought he would humor him. He says, 'It is a fine horse you have got?' He says, 'This is no horse.' 'What is it?' 'It is just a hobby.' Then he said, 'The difference between riding a hobby and being insane is that when a man has got a hobby he can get off, he has got some chance.' He had been before the New Jersey Legislature five different sessions opposing the menhaden fishing, and it had been a kind of a hobby with him; but after he had investigated the matter he was free to say that we did not catch food fish, and the evidence showed that we did not, unless we purposely went out for them, and if a bill would be passed to prohibit us from taking <sup>food fish</sup> in any quantities, except sufficient quantities to supply food, within the territorial jurisdiction of the state of New Jersey, as they claimed, the three mile limit, that he was perfectly willing to agree to the present law, or the new law.

MR. ALEXANDER B. COOPER: Coming right down to the point: I understand you gentlemen would not

object to a law prohibiting the catching of food fish ?

MR. WALTER E. HATHAWAY: No, sir. We make no objection to a law regarding the catching of food fish, but we would like to have that law so drawn that a small number could be taken, whatever would be needed for food purposes, and that we should be obliged to throw the balance overboard; but it would look like a mighty foolish proposition to throw a few food fish overboard when the folks on board were anxious to eat them.

You will observe in the drafting of this law here, which the New Jersey people were going to pass, but, as I say, did not, at page 13--

MR. ALEXANDER B. COOPER: Why is it that the food fish are becoming so scarce ?

MR. WALTER E. HATHAWAY: There are many reasons that can be assigned for that.

Section 5 of that Act says, "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."

Let there be some such provision as that.

MR. ALEXANDER B. COOPER: Was that Act passed?

MR. WALTER E. HATHAWAY: No, sir. It passed the Senate, but failed to pass the other House.

MR. WALTER H. HAYES: Have you been up in New Jersey before the Legislature?

MR. WALTER E. HATHAWAY: Yes.

MR. WALTER H. HAYES: Then you have met Senator Bradley, the president of the Senate?

MR. WALTER E. HATHAWAY: Yes, sir.

MR. WALTER H. HAYES: Did you see both members of the New Jersey joint compact?

MR. WALTER E. HATHAWAY: Yes. I am a little surprised at that being the case. I did not know they were even on this Commission. I met one of these gentlemen and I saw the other one, but they were not present at any of these meetings. We held two or three meetings, or three or four meetings, in Trenton, in the state house, two in the Senate chamber and one

in the room of the Fish and Game Committee of the House; but neither of these gentlemen were present, and I did not know that they were on this Commission.

MR. WALTER H. HAYES: What I was getting at is this: Unless you appeared before that Commission, and we were to go to them with the statement you have made before us, they might take exception to it.

I was going to suggest to you that you get in communication with Senator William J. Bradley first, of Camden, New Jersey, and Mr. J. Boyd Avis, of Woodbury, who is secretary of the New Jersey Commission.

MR. WALTER E. HATHAWAY: I am very much obliged to you gentlemen for having given me as much time as you have. I might still not be able to put this matter before you in a better light than I have. It is purely a business proposition. We have got nothing in the world to conceal. Some people think we do not want people to go over our plants, go through our plants. Nobody in the world will make any objection, at any time, to their going through our plants, unless they make themselves a nuisance. We would

be glad to have them. We are conducting an absolutely legitimate business, as legitimate a business as we know how to conduct, and we are beneficial to the people engaged in it here to a more or less extent. Quite a number of people work on these steamers, and while all of them are not Delaware people, we employ quite a number of Delaware people. We are the sole shield between the farmers of your state and the other states--especially the four states that need ammonia in the fertilizers more than they do in the interior--and the beef trust. If you eliminate us, just as certain as I am talking to you, and as certain as we are living men, the price of organic ammonia will advance from three to five dollars a ton in less than one year's time.

MR. WALTER H. HAYES: What effect would it have upon your company if the taking of the menhaden was prohibited in the Delaware Bay?

MR. WALTER E. HATHAWAY: It would practically break up our industry at Lewes. I could not say, but I assume it would be a very serious blow. Not nearly the entire catch used at the Breakwater

is taken in the Delaware Bay. Here is the position: Say that the steamer "Hawkins" caught that year about five millions of fish in the Delaware Bay; say the average catch of twelve steamers was from three to four million--which I assume would be about right--say that the Fisheries Company caught in each year in the Delaware Bay from thirty-five to forty millions of fish, and say we handle at the plant at the Breakwater from seventy-five to one hundred millions. I should make the rough guess that one-third to one-fourth of those fish were caught in what you might call the Delaware Bay, either directly in the Delaware Bay or near around its mouth, so that the tide might carry you in and out. Now, then, if they were taken away from us, if that was cut out, we would be deprived of from one-half to one-third, or from one-quarter to one-third of the business, and, necessarily, the profit would be all gone. While that factory has been more successful, perhaps, than any other factory the company operates, taking it year in and year out, I do not think the company could operate the plant without the Delaware Bay.

That is my opinion. If a bill was passed by the joint Legislatures of the state of Delaware and the state of New Jersey prohibiting fishing in the Delaware Bay and it became a law, so far as I was concerned I would say at once to tear the thing down and get away, because I am absolutely certain it would not be profitable to operate it with fish caught outside, unless we violated the law and put the two states to a whole lot of trouble in keeping up with us--all of which could be done, but which we would not want to do.

MR. ALEXANDER B. COOPER: If the Commission should signify their intention of taking a trip down there sometime during the summer, how would we reach you?

MR. ROBERT PENNINGTON: Just tell me.

MR. WALTER E. HATHAWAY: If you will just advise Mr. Pennington at any time you decide to come, we would prefer it. Some gentlemen suggested that if the Commission would let us know we would arrange for them to go on such steamers as would not take food fish at that time.



MR. WALTER H. HAYES: That is what the public would say .

MR. WALTER E. HATHAWAY: How the deuce can we, or any other human being, tell what is in that two or two and a half acres of water where the menhaden fish are?

MR. ALEXANDER B. COOPER: I did not want to see you go into a school of food fish. All I want to see you do is to go into a pretty large school of menhaden and see what the result is with one of your large nets.

MR. WALTER E. HATHAWAY: You can use your own judgment about that. We would prefer to give you a letter to the superintendent down there instructing the superintendent to introduce you to the captain of whatever steamer you may select, so that you can be shown proper courtesy and attention. It would be more of a matter of common courtesy to you gentlemen, and it would be more pleasant to you. Some steamers are much more pleasant than others. However, if you prefer it otherwise, we will extend an invitation to you to go on any steamer you may select, and you are welcome to stay on there as

long as you please. We would be very glad to have you.

MR. ALEXANDER B. COOPER: I can see how people at home in these local fishing districts, ignorant of the menhaden fish and their habits, would throw up their hands at quantities of fish like that—as this book says, one hundred feet deep and seven or eight or nine hundred fathoms long—they would throw their hands up with horror and say, "Why, they can't help but catch food fish." That would appear so to many men who did not know to the contrary.

MR. WALTER E. HATHAWAY: A fellow says, "There is no use to tell me that. You can't tell those things to me. Some of these nets are one hundred feet deep, and cover, probably, three acres of water. You can't put them out in the Atlantic Ocean anywhere and not catch food fish." If they had to put them out anywhere and had to make a living from the food fish they would catch, they would feel as though they were up a tree. I cannot account for that, except on the ground that fish, like all other wild things,

segregate according to their species, and also that the feeding ground for different classes of fish are very different. You might find sometimes a few bottom fish when you catch the menhaden, but the top fish you would never find, except a few fish like the blue fish and white fish, and a great quantity of sharks. Quite a number of sharks are caught, especially in the summer. The catching of the sharks is a benefit to the other fish.

MR. ALEXANDER B. COOPER: We have to-day probably ten to twelve to twenty fish where we used to have one hundred. We have these oil tankers, which did not use to come up, throwing out their surplus, or waste water, or whatever you chose to call it. I have had shad on my table at New Castle that tasted of oil. I met a man--quite an intelligent man--a doctor from Philadelphia, and we were talking about the shad fishing and about the scarcity of fish. He spoke about the fishing for the menhaden. He was not speaking against them at all. I do not think he was speaking of them at all, but he made the remark, I think, that in his opinion the whole trouble was

this: "You take the Atlantic coast, beginning away down at North Carolina, and all the way up they have these pound nets, and all that sort of thing, and they catch the fish before they can come in to spawn."

MR. WALTER E. HATHAWAY: There is no question in the world but that that is an intelligent solution of the fishing problem in the United States. That matter was taken up and a bill was proposed by the representative from Rhode Island, some twelve or fourteen years ago, in Congress, but it never got out of the Committee. One of the chief oppositions then, and in the future, would come from the southern states, especially; not that it was not an intelligent idea to regulate the fish being taken by general laws, but as regards the state rights, that the United States ought not to assume any further powers. States like Tennessee and Louisiana would oppose it violently.

MR. ALEXANDER B. COOPER: All along the New Jersey shore they have pound nets and these other contraptions.

MR. ROBERT PENINGTON: On page 22 of this pamphlet, concerning the menhaden industry, will be found practically all the literature on this subject that we have. If there is any other you want, you can have it--all the reports of the Fish Commission, and everything.

MR. WALTER E. HATHAWAY: One of these reports pays particular attention to pound net fishing, and condemns it; whereas, in their investigation of the menhaden industry they say it does not harm the food fish. I have that report, if you wish to have it.

MR. ROBERT PENINGTON: There is also a list of the fish caught at--

MR. ALEXANDER B. COOPER: How were they caught?

MR. ROBERT PENINGTON: By pound nets.

MR. WALTER E. HATHAWAY: The whole question can be summed up practically in this shape. In ancient times, at the beginning of this country, fish were caught with hook and line and small haul seines. As time increased and as the people increased in number, the fish were caught by appliances of different kind from

time to time. The quantity caught in the old days was so small that it would not begin to compare at all with what is caught now. Thousands of barrels are caught now where thousands of fish were caught then. The substance of it is that it is all up with the hook and line fisherman, and they will have to go out of business, practically. It is just the same idea as if a man was to undertake to use the old hand scythe for cutting wheat.

Fish to-day in the New York and Boston markets are cheaper per pound than they were years ago, and they form a larger proportion of the food of human beings.

MR. ALEXANDER B. COOPER: I never saw the price of the shad so high. Shad, in Delaware, in 1883, sold for five cents apiece.

MR. WALTER E. HATHAWAY: I went with my father once to a wharf down near where I was born in Virginia and we bought one hundred shad for five dollars and fifty cents. Last month I saw shad sold at that same wharf for one dollar and ten cents apiece.

MR. ALEXANDER B. COOPER: You were buying by the who esa

wholesals, by the one hundred?

MR. WALTER E. HATHAWAY: I was going to say that since then I have been down there. I was down there last week and shad were then selling at from twenty to twenty-five cents for the roe and twelve cents for the buck.

MR. ALEXANDER B. COOPER: Retail ?

MR. WALTER E. HATHAWAY: No, sir; locally, at the wharf. But here is the point: In the old days, when they could be bought at from five to eight cents apiece—I am talking now of that section -- probably the whole catch of shad would not amount to as much as I have seen shipped at one time from that wharf, off the mouth of the Rappahannock River in recent years. I am absolutely certain, in the whole county, twenty-five years ago, they did not catch as many as I have seen shipped at one time within the last ten days. They have been more plentiful, but not to the same extent. The shad breeds in fresh water alone, and when caught in the quantities

in which they are caught, they may be finally destroyed.

I cannot say about that.

MR. WALTER H. HAYES: There is one thing, and that is, the hatching boat has not been here for several years. She is here this year right up the river.

MR. WALTER E. HATHAWAY: That question ought to be very carefully investigated. If the states would investigate that thing more, it would be beneficial. About thirty years ago the United States Government sent striped bass and rock fish over to the Pacific coast. They spent five thousand dollars in the doing of that. Before that striped bass had not been caught on the Pacific coast, and were not known. Since then there have been over thirty thousand rock fish marketed contiguous to where these little fish were put, and the quantity is much larger.

I have received a letter from Doctor Smith in the last two or three weeks upon that very point. He had just returned from propagating new species in new waters. All these things can be done here. It is a



matter worthy of some investigation.

If there is any matter or question you may desire to have information upon, and it is within our power to furnish it, we will be very glad to do so, and to give you all the facts in connection therewith.

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