

having been duly summoned, unless he shall have demanded his witness fees and the same shall not have been tendered, shall fail to appear and answer or to file his affidavit as required by the garnishee summons the court may render judgment against him as provided in section 5391 of the Revised Codes.

§ 6. SHALL SERVE WRITTEN NOTICE.] A plaintiff electing to take issue upon the affidavit of the garnishee must within ten days from the date fixed for appearance and answer serve written notice to that effect upon the garnishee, whereupon the proceeding may be as provided in section 5393.

§ 7. GARNISHEE'S APPEARANCE.] If a defendant desire to defend the garnishment proceedings upon the ground that the indebtedness or property involved is exempt from execution, as contemplated in section 5395, such defense must be interposed at the time fixed for the garnishee's appearance or within three days thereafter, unless the justice, upon good cause shown, shall grant a longer time.

Approved March 9th, 1897.

GAME AND FISH.

CHAPTER 83.

[S. B. 138.]

RELATING TO PROTECTION OF GAME AND FISH.

AN ACT to Amend Sections 1642, 1643, 1644, 1645, 1647, 7677, 7678 and 7679 of the Revised Codes of North Dakota, Relating to the Protection of Game and Fish and the Issuing of Permits to Hunt, and Prescribing Penalties for Violations of the Provisions Thereof; and Enacting Other Provisions Relating Thereto, and Providing Penalties for Violations Thereof.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That sections 1642, 1643, 1644, 1645, 1647, 7677, 7678 and 7679 of the Revised Codes of North Dakota be and the same are hereby amended so as to read as follows:

§ 1642. GAME WARDEN—HOW APPOINTED—BOND—DUTIES.] There shall be appointed by the Governor a State game warden, whose term of office shall be two years, commencing on the first Tuesday in April next succeeding his appointment and until his successor is appointed and qualified. He shall give a bond to be approved by the Governor, in the sum of two thousand dollars, conditioned for the faithful performance of his duties. It is the duty of the State game warden to superintend and aid in the enforcement of all laws of this State for the preservation of game

therein. He shall appoint deputy game wardens as follows: In each county having less than three thousand inhabitants, one deputy; in each county having more than three thousand inhabitants and less than seven thousand, two deputies; in every other county three deputies, and special deputies wherever and whenever he deems it advisable. Each deputy shall be an elector of the county for which he is appointed, and shall hold office at the pleasure of the State game warden, or until disqualified for any reason.

§ 1643. UNLAWFUL TO HUNT WITHOUT PERMIT.] It shall be unlawful for any person to hunt, kill or wound in this State any of the wild animals or birds mentioned in section 7677 of the of the Revised Codes of North Dakota, as amended, without having first obtained a permit as hereinafter provided for, which permit shall be subject to inspection by any person upon demand, and any person violating any of the provisions of this section is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty dollars nor more than fifty dollars, or may be imprisoned in the county jail not more than thirty days, or may be subjected to both such fine and imprisonment; *Provided, however,* that nothing in this section shall prevent any resident of this State, or member of his family living at home, from hunting on lands owned or controlled by him during the open season as provided by law, unless such person either alone or with another or others use any dog in hunting, setting, pointing or retrieving any game, in which case such permit must first be obtained.

§ 1644. PERMITS—FORM OF.] The State game warden shall cause forms of such permits to be printed, which shall be substantially as follows:

State of North Dakota, }
 County of } ss.
, a resident of North
 Dakota, is hereby licensed to hunt in North Dakota under the
 provisions and conditions of the game laws thereof, from August
 twentieth to and including the fifteenth day of December next
 after the date of this permit. This permit is nontransferable.

Dated at this day of 189.....

.....
 County Auditor.

Such permits shall be endorsed by the State game warden and issued by him to the county auditors of the several counties of the State.

§ 1645. COUNTY AUDITORS TO ISSUE PERMITS—FEES.] The county auditor shall fill out and issue one of such permits to any person applying therefor on payment of twenty-five dollars if the applicant is a nonresident of the State; and on payment of seventy-five cents, if the applicant is known to the auditor or satisfactorily proven to him to be a resident of this State;

Provided, that any nonresident who may own cultivated lands, or be carrying on the cultivation of any lands in the State, not less than one quarter section, for a period of not less than one year prior to the time of making application for such license, shall be entitled to take out a resident's permit, whether such nonresident is the owner of the lands so cultivated in whole or in part; *Provided*, that such nonresident shall take out such permit in the county where such cultivation is carried on. No permit shall be valid unless endorsed by the State game warden, signed by the county auditor and sealed with the county seal. Such permit shall authorize the holder to hunt throughout the State, either with or without dogs. All permits shall expire on the fifteenth day of December next after their issuance. It shall be unlawful for the State game warden, or any of his deputies, or any county auditor, to issue to any person any complimentary or special permit, or in any way, directly or indirectly, to grant permission to or authorize any person to violate any of the provisions of the game laws of this State, and any such officer so doing shall for each offense forfeit and pay the sum of not less than fifty dollars, nor more than two hundred dollars, with costs, to be recovered in a civil action, for the payment of which sum such officer shall be liable upon his official bond. Any person informing against such officer shall be entitled to one-half of the amount so recovered, the balance to be disposed of as provided in section 7736 of the Revised Codes.

§ 1647. POWERS AND DUTIES OF GAME WARDEN AND DEPUTIES.] For the purpose of enforcing the laws of this State for the protection of game, the State game warden and his deputies shall have all the powers conferred by law upon constables. It shall be the duty of each deputy game warden diligently to inform himself of all violations of such laws and to prosecute the same, and to arrest the party so violating them, with a warrant sworn out before any justice of the peace of the county in which the offense is committed. If caught in the violation thereof at the time of his arrest a party may be arrested therefor without a warrant, when he shall be at once taken before a court having jurisdiction of the offence and a warrant issued, when the same proceedings shall thereafter be had as if a warrant had been issued before his arrest, but no person shall be arrested without a warrant for any such violation when not engaged in such violation at the time of his arrest. Upon any conviction had for any violation of the provisions of this act, there shall be paid to the deputy making the arrest a fee of five dollars, to be taxed and collected as a part of the costs in the case.

§ 7677. SHOOTING OR KILLING RESTRICTED—PENALTY.] Every person who either:

1. Shoots or kills any prairie chicken, pinnated grouse, sharp-tailed grouse, ruffed grouse or woodcock between the first day of

November and the twentieth day of August following, or any song bird or insect-eating bird at any time; or

2. Shoots, kills or takes any quail, English or Chinese pheasant, wild swan, until after the twentieth day of August, A. D. 1905, and after that time between the first day of November and the twentieth day of August following; or

3. Shoots or kills any wild duck, wild goose or brant, or wild crane between the first day of May and the twentieth day of August following; or

4. At any time kills or shoots any wild duck, goose or brant, with any swivel gun or other gun except such as is commonly shot from the shoulder, or in hunting such birds makes use of any artificial light or battery; or

5. Uses or employs any trap, snare, net or bird lime, or medicated, drugged or poisoned grain or food to capture or kill any of the birds mentioned in subdivisions 1, 2 or 3 of this section; or

6. Wantonly destroys any nest or eggs of any of the birds mentioned in subdivision 1, 2 or 3 of this section; or

7. Shoots or kills any buffalo, moose, elk, deer, antelope, caribou or mountain sheep, between the fifteenth day of December and the fifteenth day of October following; or

8. Shoots, kills, traps or takes any beaver or otter at any time prior to the fifteenth day of October, A. D., 1903, or thereafter between the fifteenth day of December and the fifteenth day of October following; or

9. At any time uses or employs any hound or dog in running or driving any of the animals mentioned in subdivision 7 of this section; or

10. Sets any spring or other gun, trap, snare, or other device to kill, wound or destroy any of the animals mentioned in subdivision 7 of this section; or

11. Knowingly hunts, in any way, upon the enclosed or cultivated lands of another without the consent of the owner or his agent or tenant; or

12. Shoots or kills in any one day more than twenty-five of the game birds mentioned in subdivision 1, 2 or 3 of this section, or in any one season more than five of the animals mentioned in subdivision 7 of this section,

Is guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county, is punishable by a fine of ten dollars for each of the birds mentioned in subdivision 1, 2 or 3 of this section so shot or killed or nest or eggs so destroyed, and for each violation of subdivision 4, 5 or 11 of this section; and one hundred dollars for each animal mentioned in subdivision 7 or 8 of this section, so shot, killed, trapped or taken, and one hundred dollars for each violation of subdivision 9, 10 or 12 of this section.

§ 7678. HAVING SAME IN POSSESSION.] Every person who has

in his possession any of the birds or animals mentioned in the last section, after fifteen days from the close of the respective seasons during which it shall be lawful to hunt or kill the same, shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county, is punishable in the manner and to the extent provided in the last section for the killing of the same.

§ 7679. CATCHING FISH RESTRICTED.] Every person who either,

1. Takes, catches, kills or destroys any fish of any kind in any of the lakes, streams or other waters of this state, except in the navigable rivers thereof, or in rivers which flow both into and out of the state, in any manner other than by angling with hook and line; or,

2. Between the first day of November and the following first day of May in each year, takes, catches, kills or destroys in any manner or by any device in any of the waters of this state, except in the navigable rivers thereof, or in rivers which flow both into and out of the state, any pike, pickerel, perch, bass or muskallonge for any purpose other than for propagating or breeding the same; or,

3. Exposes any such fish for sale during such period,
Is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than five and not exceeding twenty-five dollars, and for every subsequent offense by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than ten and not exceeding one hundred dollars or by both.

§ 2. GAME WARDEN, DEPUTIES AND PEACE OFFICERS SHALL SEIZE GAME.] It shall be the duty of the state game warden and his deputies and all peace officers of this state at any and all times to seize and take possession of any and all animals or birds which have been caught, taken, killed, shipped or received for shipment, had in possession or under control, contrary to the provisions of the laws of this state. Such seizure may be made without a warrant. Any court having jurisdiction of the offense, upon receiving, by oath or affirmation, proof of probable cause for belief in the concealment of any birds or animals caught, taken, killed, shipped or received for shipment, had in possession or under control contrary to the provisions of the laws of this state, shall issue a search warrant and cause a search to be made therefor in any place particularly described in said warrant, and to that end may cause any building, enclosure or car to be entered, and any apartment, chest, box, locker, crate, basket or package to be broken open and the contents thereof examined. Deputy game wardens and all peace officers taking or seizing any such animals or birds shall at once report the facts attending the same to the State game warden, and shall at his request turn the same over to him. After such taking such animals or birds shall be

subject to the direction and control of the State game warden, and shall be considered in his possession.

§ 3. GAME SEIZED AND SOLD—HOW PROCEEDS DISPOSED OF.] Any animals or birds caught, taken, killed, shipped or received for shipment, had in possession or under control, contrary to the provisions of the laws of this State which may come into the possession of the State game warden either directly or through any deputy or peace officer, shall be sold or disposed of within this State, and the State game warden may issue a certificate to the person purchasing, certifying that the same were legally obtained and possessed, and anyone so acquiring same within this State shall have the right to deal therewith as if the same had been killed or possessed in accordance with the law of this State. The deputy game warden or peace officer making such seizure shall be entitled to two-thirds of the proceeds of the sale of any of the animals or birds sold or disposed of as herein provided, and the State game warden shall be entitled to one-third of the proceeds of such sale.

§ 4. RESISTING OFFICER—PENALTY.] Whoever shall resist or obstruct any of the said officers by threat or otherwise, in the discharge of their duties under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars nor more than fifty dollars and the costs of prosecution, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment.

§ 5. CONSTRUCTION OF GAME LAWS.] All provisions of the laws of this State relating to the having in possession or under control any game bird or animal, or to the shipment of the same out of the State, shall be construed to include any and all parts of the meat thereof. Any attempt to violate any provision of the game laws of this State shall be deemed a violation of such provision.

§ 6. PROPAGATION OF GAME AND FISH.] The commissioners of any county may expend not to exceed the sum of one hundred dollars per annum for the purpose of propagating game or fish, when it shall appear to them that such an expenditure would be beneficial to the county.

§ 7. INDIANS SUBJECT TO GAME LAWS.] It shall be unlawful for any Indian who is a ward of the United States Government to hunt on any lands within this State at any time, except upon such lands as are known to be Indian reservation lands. It shall be the duty of the State Game Warden, his deputies, and all peace officers of this state, to arrest any Indian found hunting in violation of this act. It shall be the duty of the states attorney in any county within this state to prosecute any Indian so arrested under the provisions of this act, and upon conviction such Indian shall be deemed guilty of a misdemeanor and be punishable by a fine of not less than twenty dollars nor more than fifty dollars, or may

be imprisoned in the county jail not less than ten days nor more than thirty days, or may be subjected to both such fine and imprisonment; *Provided*, that the provisions of this section shall not apply to any Indian who takes out a permit to hunt, as provided in section 1643 of the Revised Codes as amended.

§ 8. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 9. EMERGENCY.] *Whereas*, an emergency exists in that there is no adequate law on the subject matter of this act, *therefore*, this act shall take effect and be in force from and after its passage and approval.

Approved February 26th, 1897.

CHAPTER 84.

[H. B. 151.]

PENALTY FOR DESTRUCTION OR INJURY.

AN ACT to Protect Planted Fish in the Waters of the State of North Dakota, and to Provide Penalties for Their Destruction or Injury.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. PROTECTED FOR FIVE YEARS.] All planted fish or fish eggs placed in the public waters of the State of North Dakota for the purpose of propagation, breeding or growth, shall be and are hereby protected for a period of five years from the time of such planting.

§ 2. PENALTY FOR DESTRUCTION OR INJURY.] Whoever shall remove any planted fish or fish eggs from the public waters of this state, before the end of five years from the time of said planting, either with a hook and line, or by any other device or way, or shall destroy or injure the same in any manner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined the sum of no less than twenty dollars and no more than fifty dollars for every fish, or fish egg thus caught, removed, destroyed or injured, or be confined in the county jail not less than thirty (30) and no more than ninety (90) days, or be subject to both fine and imprisonment in the discretion of the court having jurisdiction in such cases.

§ 3. PEACE OFFICERS EMPOWERED TO ARREST.] All sheriffs and other peace officers of this state are hereby empowered and required to arrest and bring to punishment all persons found guilty of the offense named in section two.

§ 4. EMERGENCY.] *Whereas*, there are no adequate laws in operation in the State of North Dakota for the protection of planted fish, *therefore*, an emergency exists, and this act shall be in full force and effect from and after its passage and approval.

Approved March 9th, 1897.