

the said vessel has been employed in violation of any of said sections; and any vessel so employed is hereby declared to be forfeited; and in case the said judge or justice shall find the vessel has been so unlawfully employed, then he shall declare the same to be forfeited and shall so enter upon his docket, together with all her tackle, apparel, appurtenances, boats, sails and rigging; and he shall authorize and direct any sheriff or deputy sheriff to sell said vessel, together with all the apparel, tackle, boats and other things belonging thereto, at public auction to the highest bidder for cash, after giving at least twenty days' notice of the time and place of said sale printed in some newspaper published in the county in which the case may be tried; and the said officer shall be allowed the actual expenses of seizure, sale and keeping of said vessel and poundage fees, and the proceeds of said sale shall be first applied to the payment of all the costs, charges and expenses of the seizure, trial and sale of said vessel, and the balance of said proceeds, if any, shall be paid to the clerk of the court as herein provided, and by him to the comptroller to the credit of the oyster fund, unless a part thereof be remitted, as provided by section 25; provided, that the owner or any other person having any mortgage or any other lien on the said vessel shall in all such cases have the right of appeal to the circuit court at any time within sixty days after judgment rendered, and upon the trial of said appeal the court shall have the right to amend the warrant or any of the proceedings before the justice of the peace so as to bring the case to trial upon its merits; provided, that no new offense shall be charged; and in case such an amendment shall work a surprise to defendant he shall have further time to prepare for trial, and the rules governing amendments in cases originating in the said court shall govern such amendments so far as they are applicable, and upon bond in an amount equal to the value of said vessel being given by the person praying the appeal satisfactory to said justice the said vessel may be released pending the said appeal. Any person or persons offering to stand bail for any person or persons charged under the provisions of this article shall be sworn by the judge or justice of the peace trying the same as to his actual worth in unincumbered real estate, and if he swears falsely, upon proof of the same before any court of competent jurisdiction, shall be deemed guilty of perjury and subject to all the pains and penalties of the same; the judge or justice, before the party is sworn, shall acquaint him or her with the pains and penalties of false swearing. Any person having a lien upon any vessel seized hereunder may file a petition and the court, if the interests of justice will permit, may allow him a portion of said proceeds, but in all such cases the court shall retain a sufficient sum to pay costs, charges, expenses and a reasonable and proper equivalent to a fine, and amendment to the forms and procedure shall be allowed, as hereinbefore provided, in all cases of appeal from the judgment of justices of the peace.

The act of 1833, ch. 254, prohibiting the taking or catching of oysters in any of the waters of the state with a scoop or drag, etc., and providing as a penalty for the forfeiture to the state of the boat or vessel so employed, held not to be in conflict with the federal constitution, although applied to