

vided, that that portion of the said waters in which oysters are, or are intended to be planted or laid down, not exceeding five acres in any one place, be kept plainly marked by means of bushes, stakes or buoys; and any person wilfully or maliciously removing said bushes, stakes or buoys, shall be liable to all the penalties of this section; and provided further, that nothing in this section shall affect the rights of owners of land to the exclusive use of any creek, cove or inlet within their said lands, not exceeding one hundred yards in width at its mouth; and any person violating any of the provisions of this section, shall be liable to be sued as for damages to any other property, and also to indictment by the grand jury of said county, and upon conviction of any such violation shall be fined not less than ten dollars nor more than one hundred dollars, with costs, or be imprisoned not less than one month nor more than six months in the county jail, or both, in the discretion of the court, for each offence; and in any prosecution for violating any of the provisions of this section it shall not be necessary in order to convict, to prove that the offender was actually taking up oysters, but only that he was at work in the waters so staked off by bushes, stakes or buoys as aforesaid.

1884, ch. 804.

176. Any person, except the owner or his employee, who shall take or remove any oysters from the waters of the Synepuxent bay or its tributaries in Worcester county, staked off and kept plainly marked by means of bushes, stakes or buoys, as provided in the preceding section, shall be guilty of a felony and liable to indictment by the grand jury of said county, and on conviction thereof shall be sentenced to the penitentiary for a term not less than one year nor more than two years, in the discretion of the court.

Ibid.

177. In order to convict, it shall not be necessary to allege in the indictment, or to prove, that the owner of the oysters taken or removed, as stated in the preceding section, is the same person who staked off and kept plainly marked by means of bushes, stakes or buoys, the waters of the said Synepuxent bay, or its tributaries, from which the said oysters were taken or removed; and the fact that one person staked off and kept plainly marked,