Report of The Committee on Long Pond and Madaket Ditch

Submitted March 20, 1882, at an Adjourned Meeting of the Annual Town Meeting of 1882.
Published by Vote of Town.

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Office of the Town Clerk,
Nantucket, March 28, 1882.

The following vote was passed March 20, 1882:

Voted, That 750 copies of the Committee's Report be printed and judiciously distributed about the Town.

A true copy: Attest,

JOHN F. BROWN, Town Clerk.

Reprinted by vote of the Board of Selectmen of Nantucket, September 24, 1913.

Reprinted by vote of The Nantucket Sportsmen's Club, Inc., February, 1954.

REPORT

Your committee respectfully report that the subject referred to them, viz: Whether the Town of Nantucket has a legal right to appropriate money to open the Madaket Ditch, leading from the Long Pond to the sea, has been carefully considered, the records thoroughly searched, and the laws concerning the same duly considered, with the following result:

In the eighteenth year of the reign of King James I. (Nov. 3, 1621), the Council for the Affairs of New England was created, known as the Plymouth Company. At the request of Charles I., in 1635, this Council conveyed unto William, Earl of Sterling, Pemaquid and its dependencies on the coast of Maine, together with Long Island and the adjacent islands. In 1637 the Earl of Sterling made James Forret his agent for selling and settling the islands between Cape Cod and the Hudson River. In 1641 James Forret sold the island of Nantucket to Thomas Mayhew and his son for £40. The title to the island being also claimed by Sir Fernando Gorges, the elder Mayhew purchased from Richard Vines, the agent of Gorges, another conveyance of Nantucket with other islands. In 1659 Thomas Mayhew sold the island of Nantucket to nine others, reserving to himself a one-tenth share. In 1660 the Indian titles were in part purchased by the English settlers.

In 1663 the Earl of Clarendon, on behalf of James, Duke of York, purchased of Henry, then Earl of Sterling, his interest in his American grant; and in 1664 the Duke received from his royal brother, Charles II., all that part of the main-land in New England, "and also those several islands called or known by the names of Martha's Vineyard and Nantukes, otherwise Nantuckett," together with all the "waters, lakes, fishing," &c. With this grant, the right of jurisdiction and government in all things was granted, not inconsistent with the laws of England.

After the English became established in their jurisdiction of New York, the proprietors of Nantucket obtained a new patent from Governor Lovelace, bearing date of June 28, 1671, which confirmed their previous titles, and granted in addition "all ye lands, soyles, woods, meadows, pastures, marshes, waters, ffishing, hawking, hunting and ffouling."

When New York was divided into counties, November 1, 1683, Nantucket and Martha's Vineyard, with the adjacent islands, constituted Dukes County.

In 1684, June 5, Thomas Dongan, then Governor of the Province of New York, made a new patent, reciting the previous grants and purchases, the tenure being according to the custom and manor of East Greenwich, in the county of Kent, in England, in free and common socage, and fealty only.

Three years later, the same Governor Dongan, after reciting his former patent, the patent of Governor Lovelace, and the purchase by Thomas Mayhew, &c., by another patent, dated June 27, 1687, conveyed the island in the following words: "Do give, grant, ratify, release, and confirme unto John Gardner, James Coffin, William Geyer, Nathaniel Barnard, Stephen Hussey and John Macy, freeholders and inhabitants of Nantucket, herein erected and made one body corporate and politic, and willed and determined to be called by the name of the TRUSTEES OF THE FREEHOLDERS AND COMMONALTY OF THE TOWNE OF SHARBORN, and their successors, all the aforerecited tracts of land within the limits and bounds aforesaid, together with all and singular, the houses, messuages, tenements, buildings, milnes, miln-dams, fences, enclosures, gardens, orchards, fields, pastures, woods, underwoods, trees, timber, feeding, common of pasture, meadows, marshes, swamps, plains, rivers, rivolets, waters, lakes, ponds, brookes, streames, beaches, quarries, mines, minerals, creeks, harbors, highways and easements, fishing, hawking, hunting and fouling, (silver and gold mines only excepted.)" The original parchment of this patent is now to be seen in the office of the Register of Deeds.

This patent gave to the inhabitants mentioned the sole and only proper right and liberty of purchasing from the Indian proprietors all the land not previously purchased.

It also gave them the powers of a corporation, providing for the use of a common seal by said Trustees and their successors. By virtue of which powers they could and did do and perform all the acts that corporations may now do, by vote of the said freeholders. They were also authorized to choose one Representative to the Provincial Assembly of New York.

This form of government continued until the succession of William and Mary to the throne of England. By the royal charter of 1691, which arrived in 1692, the Massachusetts Colony and the Plymouth Colony were consolidated into one Province, under the name of Massachusetts; and, by this new charter, Nantucket is expressly declared to be a part of Massachusetts. Not, however, until 1693, and then only after the Colonial Legislature had passed an act reciting the purchases made by the inhabitants of Nantucket from the Governors of New York, did they become a part of Massachusetts. [See Appendix No. 1.]

This colonial act of 1693 particularly declared that all rights and privileges acquired under New York should be reserved to the people of Nantucket; and, as they acquired the absolute ownership of the ponds by virtue of their several grants, while a part of New York, the ownership of all the ponds of Nantucket was still vested in the Proprietors of the Island. The State of Massachusetts never had and never can have rights in the ponds of Nantucket, by virtue of any subsequent legislation, for the constitution expressly declares that no *ex post facto* law shall be passed, neither can any law impairing the obligation of contracts be passed. The law of 1869, under which Commissioners of Fisheries may lease great ponds of the Commonwealth, excepted just such rights as the Proprietors have in the ponds of Nantucket. The Supreme Judicial Court (130 Mass., p 469), in Commonwealth vs. Perley, recognized this principle, and declared that the government had failed to make a case against the defendant.

In 1695 Nantucket was made a separate county of Massachusetts.

From the year 1665, five years after the English settlers came to Nantucket, up to 1841, the Proprietors of Nantucket improved, used, controlled, leased and exercised the exclusive ownership of Long Pond and Madaket Ditch as a fishery, as numerous extracts from the Proprietors' Records, to follow this report, will abundantly show. [See Appendix No. 2.]

In 1841 the Proprietors ceded their rights in Long Pond and Madaket Ditch to the Town of Nantucket, in its corporate capacity, which cession was duly accepted by the Town at a legally warned

Town Meeting of that year. The special committee of the Town, to whom the subject matter was that year referred, made an able report, which was duly recorded upon the Town's record book. [See Appendix No. 3.]

A special act of the Legislature was also obtained that same year, authorizing the Town to make and ordain ordinances and regulations for the free access, increase, preservation, and taking of fish in Madaket Ditch and Harbor and Long Pond. The Town was also authorized to appropriate annually a sum not exceeding two hundred dollars to carry the provisions of the act into effect. [See Appendix No. 3.]

Your committee further find that the Town has, at different times, appropriated sums of money for the purposes specified under the special act of 1841, the last one having been made in 1876. Your committee are, therefore, of the opinion that the Town has a good and valid title to the fishery in Long Pond, Madaket Ditch and Madaket Harbor, and they therefore recommend the appropriation of two hundred dollars, or as much thereof as may be necessary, for clearing out, widening and deepening Madaket Ditch, and otherwise improving the same, to be expended under the direction of a special committee to be appointed for that purpose.

ALLEN COFFIN,
WASHINGTON I. FISHER,
WILLIAM W. McINTOSH,
Committee.

APPENDIX No. 1.

[Acts and Resolves of the Province of Massachusetts Bay, Vol. I, page 117.]

CHAPTER 4.

AN ACT FOR CONFIRMATION OF TITLES WITHIN THE ISLANDS OF CAPAWOCK, ALIAS MARTHA'S VINEYARD AND NANTUKET.

WHEREAS Their Most Gracious Majesties, our Soveraign Lord and Lady, King William and Queen Mary, in and by their royal charter or letters patents, bearing date at Westminster the seventh day of October, in the third year of their said majesties' reign, for the uniting, erecting and incorporating of the colony of the Massachusetts Bay, and colony of New Plimouth, the province of Main, the territory called Acada or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said province of Main, into one real province, by the name of the province of the Massachusetts Bay in New England, have therein particularly named, comprehended and included the islands of Capawock and Nantuket as part of the said province of the Massachusetts Bay, and annexed the same thereto, and also all islands and islets lying within ten leagues directly opposite to the main land, within the said bounds;—

And whereas Their said Majesties have also been graciously pleased, in and by their said letters patents, to grant and ordain that all and every such lands, tenements and hereditaments and other estates, which any person or persons, or bodies politick and corporate, towns, villages, colledges or schools, do hold and enjoy or ought to have, hold and enjoy within the bounds of the said charter, by or under any grant or estate duely made or granted by any general court formerly held, or by virtue of the letters patents herein before recited, or by any other lawful right or title whatsoever, shall be by such person or persons, bodies politick and corporate, towns, villages, colledges or schools, their respective heirs, successors and assigns, forever hereafter held and enjoyed according to the purport and intent of such respective grant, under and subject, nevertheless, to the rents and services thereby reserved or made payable, &c., as in and by the before recited charter or letters patents, reference thereto being had, doth and will more fully and at large appear;—But forasmuch as the said island of Capawock, alias Martha's Vineyard, and the island of

Nantuket were, for some time, under the rule and government of the province of New York, and the properties and titles of the lands upon the said islands, respectively, being derived and founded upon several grants and patents made and granted by the successive governours of the said province of New York, and so legal there according to the constitution, usage and custom of the government of said New York; and the inhabitants and proprietors of lands within the said island of Capawock, alias Martha's Vineyard, and the island of Nantuket, for their better quiet and satisfaction desiring this court's confirmation of the same,—

It is therefore declared and enacted by the Governour, Council and Representatives convened in General Assembly, and by the authority of the same,

That all lands, tenements, hereditaments, and other estates, held and enjoyed by any person or persons, towns or villages within the said islands of Capawock, alias Martha's Vineyard, and Nantuket, and each of them respectively, by or under any grant or estate duely made or granted by any former government, or by the successive governours of New York, or any other lawful right or title whatsoever, shall be, by such person or persons, towns or villages, their respective heirs, successors and assigns, forever hereafter held and enjoyed according to the true purport and intent of such respective grant, under and subject, nevertheless, to the rents and services thereby reserved or made payable; and are hereby ratified and confirmed as fully and amply, to all intents, constructions and purposes, as the lands in any other parts or places within this province, by virtue of their majesties' royal charter.

[*Passed June 13; published June 17.*]

APPENDIX No. 2.

The first action taken by the Proprietors is without date, the last previous record being dated Oct., 1665:

At a meeting at Nantucket the Inhabitants agree to dig a Trench to drean the Long Pond forthwith with regard to a Ware for taking fish and also for making Meadow the work to be carried on thus the one half of the work is to be done by the Indians the other half by the English Inhabitants or owners the Indians to have one half the fish so long as they tend the Weare Carefully.

Jan. 4th, 1674.—Voted by the Town that Mr. Thomas Macy shall have the benefit of the fish in Long Pond if he lets it out.

Feb. 9th, 1676.—At a Legal Town Meeting Granted Thomas Macy and Peter Coffin their heirs and assigns Sole liberty for fishing in Creek at little Neck and Weare near Madaket on Condition that

they Set down their Wears or Nets 12 months and furnish Such as they catch to the town on reasonable terms as two Indifferent Men shall judge if they do not agree themselves this Grant to Stand for ten years provided they improve it as opportunity presents.

May 22d, 1730.—Voted that the Propriety will dig a Trench through Mattaket to drean the same in order to make feed for Cattle and for taking Alewives and other fish Committee chosen to carry the above Vote into effect Proprietors voted to suitably reward said Committee.

Feb. 21st, 1734-5.—Voted George Gardner Jethro Starbuck John Gardner John Coffin and Abel Gardner to be the men to manage Alewife Creek at Mattaket in the best manner and no other person to intermeddle without leave from them.

July 24, 1741.—Voted that some ditches be dug in Mattaket Swamp where a committee shall see cause.

Jan. 2d, 1765.—Voted that the ditch be new dug out through Mattaket Swamp and other Sluices where needed in said Swamp committee chosen to see it be dug out and managed in order.

Mar. 27th, 1776.—Voted to have the ditch dug out.

Nov. 20th, 1776.—Voted the Swampy Meadow at Mattaket Swamp except fourteen Acres already Granted be laid out and that eight feet wide be allowed for the ditch if occasion require.

Sept. 6th, 1783.—Voted there be a ditch dug through Mattaket Swamp Meadow Voted that a committee be chosen to Superintend the whole matter and how wide the ditch shall be dug.

Mar. 1st, 1798.—Voted that there be a committee chosen to inspect into peoples taking fish either by Seining or Scoopnets in the ditch that runs into Long Pond or in said Pond and to prosecute any person or persons that they find trespassing against these votes this year.

Apr. 22, 1801.—Voted that there shall be no fish taken in the Long Pond nor the ditch that leads into the said Pond with Seine until the Proprietors see cause to reconsider said vote and if any person or persons doth act contrary to said vote they must expect to suffer the penalty of the law Voted that the Proprietors Clerk advertise said vote in some public place in Town that no person may plead ignorance.

June 3d, 1806.—Report of committee which is appended:

[*COPY.*]

Proprietors' Records, Page 234, Book I.

At a legal meeting held by adjournment at the Town House in Nantucket, ye 6 mo. ye 3, 1806, Obed Marshall, Moderator,

Voted, That the Report of the Committee that was chose at the first seting of this Meeting to Inspect about the fishery, and to bring in at this Meeting have Brought it in and it is Axcepted and ordered to be Put on the Records and is as followeth: To the Proprietors now assembled the undersined being a Committee (chosen at a Pro-

priotors meeting held 27 ye 5 mo 1806) to Collect Information Respecting the fishery at the West end of the Island and also upon what Ground the Proprietors stand as to having Lawful Jurisdiction over the same, do Report that from an Instrument called a Pattent granted from George Loveless of New York ye 6 mo ye 28 1671 by and under the authority of the Duke of York the Island of Nantucket including all the fishery and other emoluments thereunto belonging &c to Tristram Coffin and Thomas Macy & their associates, and on ye 27 ye 6 mo 1687 one other Pattent was granted to the freeholders of the like tenure, respecting fishery by Thomas Dungan Governer of New York by & under the same authority the Proprietors held a meeting ye 1 mo ye 5. 1798 & ye 22 ye 5 mo 1801 one other meeting for the Regulation of the fishery at the Long Pond & Ditch Leading from thence into the Sea. Now we from the perusal of the above said Pattents & other Records believe that a compleat Jurisdiction of all & Singular the fisherys not only in Ponds & Ditches but in coves and harbbours Round the Island is in the hands of the Proprietors of the Island aforesaid & that they have Power to Regulate and Debar any Intrusians that may be made by any man or set of men without their having Liberty from the Proprietors in their Corporate Capacity or their agents, & looking over the Record of the Proprietors find it was voted in the meeting held ye 22 ye 4 mo 1801 that any Person or Persons that takes fish in the Long Pond or Ditch with a sein must expect to suffer the Penalty of the Law & that the Proprietors Clerk had orders to advertise said vote in Some Publick Place & did do it. Yet Nevertheless we Believe from good Information that there has Been Infringements made upon the fishery this season in a way we Deem verry Detrimental to the Growth of said fishery in Violation of the order of the Proprietors although they were Precautioned against the Destructive Measures. Now we in looking over the whole Business of the said fishery & considering it an Invaluable Privilege to the Inhabitants of this Place (if placed under proper Regulations & believing the good People of this County will unite for the Benefit of the Inhabitants in said fishery) Do give it as our opinian that for this Present Season it will be Beneficial to the Publick and no Damage to the Proprietors for any Person or Persons who are Inhabitants of this Island to have full Liberty to cetch Bass in any way they Please either with hook or sein, in any cove or harbour Round this Island in a way that shall not Disturb the Herring. With this Reserve that whosoever carries on the fishery in Cetching Bass this Present Season shall obbrige themselves to the agents or some Committee chose by the Proprietors to Supply the Town with Bass if they cetch any at a price that shall be Judged reasonable by the agents or said Committee, and we have further considered the fishing for herring & Give it as our oppinian that it would be a Benefit to the Proprietors & Publick at Large for the Proprietors to agree with some man or men to widen & Deapen Maddacit Ditch to a certain wedth and Depth and for the undertakers to have for their Pay the Sole Priviledg of the Herring fishery in a way & manner & for a term of time that shall be agreed by the Proprietors not excluding any one Inhabitant from cetchin Herrin with a net for their own Particular family use.

WALTER FOLGER
OBED MARSHALL
SILV MACY
FRANS MACY
RICHARD MACY

Voted at the Same Meeting that no Person that is not an Inhabitant of this Island shall have the Priviledg to cetch Bass or any other fish round this Island in any cove, crick, Ditch or harbour without Particular Permission from the Props in their corporate Capassity.

Voted that the agents with Charles Folger Paul Gardner Jr & Willm Macy be a Committee to Receive Proposals from any Person or Persons that Inclines to undertake the wedthing & Deapening of Mad-

acit Ditch with the Proviser they agree to Receiv compensation in a way that is sot forth in the Committees Returns, & make Returns to some futer Proprietors Meeting of said Proposals Received.

Voted that the agents and Committee superintend the fishery this Present year to see that no Person nor Persons not being Inhabitants Partakes as being some of the concerned in any Part of the fishery Round this Island & for their Troubel & Services to be Paid by the Proprietors Ten cents.

Feb. 17, 1807.—At a Legal Proprietors Meeting held at the Town house in Nantucket ye 2 mo 17. 1807 to Receive Proposals from George G. Hussey & Edward C. Hussey, Respecting the Deepening & widening Madacit Ditch Josiah Barker is chose Moderator for said Meeting,

Voted that there be seven men chose to assertain (when they have conversed with the said Husseys) what Priviledges they think will be necessary for the Proprietors to grant them Respecting the fishery in Madacit harbour the first crick & the Ditch through Maddacit Swamp & the Long Pond, and Lay it before the Propriety at the adjournment of this Meeting for their approbation or Disallowance.

Voted that Obed Marshall Charles Folger Shubael Barnard Uriah Swain Gershom Drue Josiah Barker & Silvanus Macy be the men to manage the whole of the above Business.

Voted that this Meeting shall be adjourned to the Seventh Day of this week the 21 Instand at one of the clock in the afternoon and then to meet at the Town House.

Feb. 21, 1807.—At a Legal Proprietors Meeting held at the Town house in Nantucket by adjournment ye 2 mo ye 21, 1807, Josiah Barker is Moderator to Receive the Returns of a Committee that was chose at the first seting of this meeting to converce with George G. Hussey & Edward C. Hussey Relative to the fishery at the West end of the Island and bring in their Judgment to this meeting have Brought in as followeth:

We the Committee appointed by the Proprietors to treat with George G. Hussey & Edward C. Hussey on account of a request they made to the Proprietors for a grant for the Sole priviledg of the fishery at the West end of the Island for seven years under certain Regulations Do Report that several of your Committee is of oppinian that the Right of Jurisdiction of said fishery Belongs to the Proprietors & several others of your Committee having Doubts on their minds in regard to the Proprietors having Jurisdiction solly over said fishery do in consequence of s'd Reasons, Report & say that we have not made any agreement with s'd Husseys but Recommend to them to bring in their proposals at Large to this adjournment & take the voice of the Proprietors as a Body upon the primises.
Signed by the Committee.

We, the Proprietors now assembled Taking the matter into consideration & viewing the same as belonging to the Proprietors do now agree & vote that George G. Hussey & Edward C. Hussey have the Sole Priviledg of the fisheries at Madacit harbour, the Long Pond &

Madacit Ditch, leading from s'd Pond into Madacit harbour for the Term of seven years with their complying with what is hereafter Named & Voted in this meeting the said Husseys shall suply the Inhabitants with fish for family use at a reasonable Price, also they shall cause to be built two Bridges over the Ditch in such Places as the Proprietors agents shall Point out & keep them in good Repair During the seven years. Also they shall Build one house sufficient to lodge ten men. Also they shall Build a shed forty feet by Twenty feet & Leave them together with the Bridges in Good order at the end of the above mentioned seven years to the use of the Proprietors, the said Husseys shall engage not to take fish in the Ditch oftener than every other Day in each week. it is further to bee understood that no man shall be Restricted from taking eals with spears & other fish with hooks at all times in the year, either in the Long Pond or Madacit harbour, nor shall any Person be Restrain'd from taking shell fish at any time or any Place During the seven years above mentioned, neither shall any Person be restrain'd from taking eals in Madacit Ditch with nets in the fall of each year. Provided they do not Dam up the Ditch, and the said Husseys engage also not to sweep their sein in the Long Pond, and to have the Ditch to be widened from s'd Pond into Madacit harbour not less than seven feet and to Deepen it to a suitable Depth for the fishery, and Leave the whole at the expiration of the above mentioned time of seven years in Good order for the use of the Proprietors, they the said Husseys engage to become Bound for the Performance of the above & to be Restricted as above mentioned, & when done by said Husseys & the Bonds deposited in the office of the Proprietors clerk to the satisfaction of s'd Clerk it shall & we vote that it compleats the contract Done in Proprietors Meeting held ye 2 mo ye 21, 1807 by adjournment.

A MINORITY PROTEST.

At a Legal Proprietors Meeting held at the Town House this Twenty first day of the Second month eighteen hundred and seven by adjournment have voted to grant to George G. Hussey & Edward C. Hussey the Sole use & Right of fishing in Maddacit harbour, the Long Pond & Maddacit Ditch, we the Subscribers being of opinian that said vote is wholy Illegal and that the Proprietors has no Right to make the said grant or vote we therefore wholy object & enter our Decent against said vote and all the Preceedings therein given under our hands this Twenty-first Day of the Second month A. D. 1807.

Daniel Allen	Shubael Barnard
Charles Bunker	Obed Marshall
Paul Coggeshall	Nathl Coffin
Daniel Allen for Peter Folger	Saml Swain
Nathl Hussey	Saml Swain for Reuben Swain
Josiah Barker	Solomon Coffin
John Cartwright	Obed Mitchell for Jethro Mitchell

Nantucket, 21 ye 2 mo., 1807.—Whereas we the subscribers have petioned the Proprietors of the Island of Nantucket for a grant of the fishery at the west end of the Island for the space of seven years under certain Regulations. We in Looking over the Business wishing in case of a war the Inhabitants might have free access to the fishery with consent of the Proprietors, do hereby Declare & agree that in case a War any time within the term of our grant or Lease of the fishery we will Relinquish our Right to the Proprietors During said war with their Paying the Reasonable expence we have been at, Provided they the Proprietors will agree that we or our heirs be reinstated in the said fishery after the War so long as to make the entire seven years for our use of the said fishery. for a further confirmation we have this Day as above Dated voluntaryly agreed & sined our Names.

GEORGE G. HUSSEY*
EDWARD C. HUSSEY*

Witnessed { SILVS MACY
OBED MACY

Received ye 1 mo ye 22. 1808. & Recorded by Silv. Starbuck Clerk.

Feb. 8th, 1814.—Voted that free liberty be Granted to the inhabitants to take fish in Madaket ditch with Scoopnets.

Voted that People have free liberty to catch fish in Madaket ditch in any way or manner providing they do not use Seines.

Oct. 27th, 1821.—We have also laid out Roads four Rods wide round all the Ponds within the Several tracts laid out. Signed, Daniel Allen, Daniel B. Macy.

No further action of the Proprietors is found of record till the cession to the Town in 1841, all of which proceedings are taken from the Town's records, and are as follows:

*It appears that both of said Husseys died before, or in the early part of the war of 1812-15, as a Proprietors' committee reported March 8, 1813, that they had settled with the executor of George G. Hussey and the administrator of Edward C. Hussey, they quit claiming all further right to the fisheries and conveying the buildings according to terms of the lease, and agreeing to repair the bridges that year.

APPENDIX No. 3.

[Book of 1841, page 34.]

TOWN'S ACTION ON LONG POND, MADAKET DITCH AND HARBOR.

At a legal Town Meeting held at Nantucket on seventh day evening, the 10th instant, at seven o'clock, as to the preceding warrant, William R. Easton was chosen Moderator of said meeting. The warrant was then read by the Moderator, as also the act of the Legislature, which is as follows:

COMMONWEALTH OF MASSACHUSETTS

In the year one thousand eight hundred and forty-one.

An Act in Relation to Certain Fisheries in Nantucket.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by authority of the same, as follows:

Section 1.—From and after the passage of this Act, the Town of Nantucket, at any meeting duly warned and held for that purpose, may make and ordain such ordinances and regulations for the free access, increase, preservation, and taking of fish in Madaket Ditch and Harbor, and Long Pond, situated in said Town, and may, for a violation of said ordinances and regulations, annex such penalties, not exceeding fifty dollars for one offence, to be recovered in an action of debt for the use of said Town by the Treasurer thereof, as they may deem for the good of the inhabitants, provided said ordinances and regulations are not repugnant to the laws and the Constitution of this Commonwealth.

Section 2.—Said Town shall annually appropriate a sum not exceeding two hundred dollars to carry into effect the provisions of this Act.

HOUSE OF REPRESENTATIVES, March 11, 1841.
Passed to be enacted.

GEORGE ASHMAN, Speaker.

IN SENATE, March 12, 1841.
Passed to be enacted.

DANIEL P. KING, President.

March 13, 1841 Approved,

JOHN DAVIS.

A true copy—Attest:

JOHN P. BIGELOW,
Secretary of the Commonwealth.

The committee appointed by the Town at a former meeting on the subject of Madaket Ditch and Fisheries, ask leave to report in part:

Firstly—That they have obtained from the Proprietors of the Common and Undivided Lands in the Island of Nantucket, the cession of all the jurisdiction they have in Madaket Harbor, Long Pond and Madaket Ditch. A copy of the vote of the Proprietors accompanies this report.

Secondly—That they have caused the Ditch to be widened, and the obstructions removed to the fish passing through the Ditch, which is all that seems to the committee necessary at this season of the year, and until the time may come for the completion of the duties assigned them.

Thirdly—That they petitioned the Legislature for an act to more fully protect the fisheries. The act they submit to the Town for consideration, and would recommend its acceptance.

The committee ask leave to submit to the Town, for adoption, the following ordinances and regulations relating to the fisheries in the waters referred to:

Firstly—Be it ordained by the Town of Nantucket, in Town Meeting assembled, in a meeting called for that purpose: That no person or persons shall be permitted to seine in Madaket Harbor, Long Pond or Madaket Ditch.

Secondly—That fish may be taken in Madaket Ditch, beginning on Monday morning (Secondday) at sunrise, and ending on Tuesday morning (Thirdday) at sunrise; and also beginning on Thursday morning (Fifthday) at sunrise, and ending on Friday morning (Sixthday) at sunrise, of each week, and at no other times.

Thirdly—That no other method shall be used in taking fish in Madaket Ditch than scoop-nets, the dimensions of which shall not exceed four feet in diameter, and that in no case shall the Ditch be obstructed so as to prevent the fish from passing.

Fourthly—That, for a violation or infringement of either or any part of the foregoing ordinances, a fine of fifty dollars be imposed, recoverable in any court having jurisdiction, the one-half of which fine shall be given to the complainant, and the other half shall go to the Town, and be appropriated to the improvement of the fisheries in Madaket Ditch and Long Pond.

Fifthly—That it shall be the duty of the Town Treasurer to prosecute, in the name of the Town, forthwith, on a complaint being made to him, of any violation of the above ordinances.

Sixthly—That these ordinances continue in force during the year 1841, and until rescinded or altered by the Town in a meeting to be called for that purpose.

The committee would further recommend that the Town choose a committee, whose duty it shall be to have the care of the fisheries

at Madaket Harbor, Long Pond and Madaket Ditch, and shall make immediate complaint to the Town Treasurer of all violations of the ordinances by the Town now adopted. That the Town appropriate a sum not exceeding two hundred dollars for the protection and preservation of the fisheries in Madaket Harbor, Long Pond and Madaket Ditch, to be expended under the direction of their committee, appointed at a meeting held for this purpose at a former sitting. That the proceedings of this meeting be published by the Town Clerk, with the laws, ordinances and reports of the committee, in the newspapers printed in Nantucket, for three weeks.

Respectfully submitted, by order,

P. H. Folger, Chairman.

Nantucket, April 10, 1841.

CESSION BY THE PROPRIETORS OF LONG POND, ETC.

At a meeting of the Proprietors of the Common and Undivided Lands on Nantucket, held at the Town House, by adjournment, 6th of 3d mo., 1841, it was moved by P. H. Folger that all the jurisdiction which the Proprietors have in Madaket Ditch, Long Pond and Madaket Harbor be ceded, and it is hereby ceded, to the Town of Nantucket, for a fishing station, which was passed in the affirmative.

OBED MACY, Proprietors' Clerk.

CESSION OF LONG POND, ETC., ACCEPTED.—ORDINANCES AMENDED.

Amendment of the second ordinance, recorded page 35, viz.:

Voted, (2d mo., 25th, 1843, page 179, viz:)—That every other 24 hours be substituted instead of twice a week, commencing on Secondday morning.

Voted, That the cession by the Proprietors of Long Pond, Madaket Ditch and Madaket Harbor, ceded to the Town by the Proprietors, be accepted.

Voted, That the ordinances, and all other matters relative to the herring fishery in Long Pond, Madaket Ditch and Madaket Harbor be accepted.

Voted, That a committee of three be appointed to see that the ordinances relative to the fisheries be kept inviolate, and to report to the Town Treasurer any violation thereof.

The committee are as follows: Nathan Chase, Robert Bennett and Zepheniah Coffin Macy.

Voted, That the standing committee be empowered to allow such compensation to the last chosen committee as they may deem proper.

Voted, to accept the fifth article of the Warrant, to appropriate

a sum not exceeding two hundred dollars, for the protection and preservation of the fisheries in Madaket Harbor, Long Pond and Madaket Ditch, to be expended under the direction of their committee, appointed at a former meeting for the above purposes.

Book of 1848, Page 212.

REPORT OF SPECIAL COMMITTEE ON ORDINANCES RELATING TO FISHERIES IN LONG POND, ETC.

The special committee appointed at the last Annual Meeting of the Town of Nantucket, to consider the expediency of altering or amending the existing ordinances in relation to the fishery in Madaket Ditch and Harbor and Long Pond, in said Nantucket, have attended to that duty, and respectfully report that, in the opinion of the committee, the following regulations ought to be adopted; and that the blank in the seventh regulation ought to be filled with a sum sufficient to carry into effect the full objects of the Town in passing the regulations.

Be it ordained by the Town of Nantucket, in legal Town Meeting, duly warned and assembled for that purpose, that the following regulations shall be duly observed and enforced for the increase, preservation and taking of fish in Madaket Ditch and Harbor and Long Pond in said Nantucket:

Regulation 1st.—No person or persons shall seine in Madaket Ditch, Madaket Harbor, or Long Pond, in Nantucket, between the twentieth day of February and the twentieth day of November, in any year; and no seine shall be put into or used in said pond for any purpose whatever during that time.

Regulation 2d.—No person shall take any fish in Madaket Ditch between sun-rising on Saturday morning, and sun-setting on the next following day.

Regulation 3d.—No obstructions shall be allowed in Madaket Ditch during the time specified in the second regulation, and no obstruction (except scoop-nets) shall be allowed at any other time; and no net shall be put into Madaket Ditch for any purpose whatever, that shall be of more than four feet diameter, measuring from where the handle connects with the bow, following the direction of the handle; and there shall not be two nets placed side by side in said Ditch.

Regulation 4th.—No person shall place any net, nor use any net in Madaket Ditch within one rod of any unlawful obstruction, whether such obstruction be placed there by himself or not.

Regulation 5th.—No person who has occupied the head of Madaket Ditch, or west fishing place, one or more times during any fishing season, shall hold the same against any person who may claim the same that has not occupied that place during the same fishing season,

nor against any one who may not have occupied it as many times in the same fishing season as the occupant or person from whom it is so claimed; and the same regulation as to the right to occupy any of the other places for setting nets in Madaket Ditch, as is above provided for the head of the Ditch, shall be observed.

Regulation 6th.—Every person who shall violate the first of the foregoing regulations, shall forfeit and pay for each offence the sum of twenty-five dollars; and every one who shall violate either of the other foregoing regulations, shall forfeit and pay for each offence the sum of ten dollars; all of which shall be recovered for the use of the Town in any court of competent jurisdiction.

Regulation 7th.—It shall be the duty of the Committee on Madaket Ditch, that now is, or that may be hereafter appointed from year to year, to see that the foregoing regulations are strictly conformed to, and that all violations thereof be immediately reported to the Town Treasurer, who shall forthwith prosecute for the penalty or penalties; and that a sum not exceeding one hundred dollars be appropriated from the Town Treasury to carry the foregoing regulations into effect.

Regulation 8th.—The foregoing regulations shall take effect and go into operation from and after their adoption by the Town, and all ordinances or regulations heretofore adopted by the Town inconsistent with the provisions of these regulations are hereby repealed; provided, always, that nothing contained in these regulations shall be construed to prevent any person in the month of October or November in any year, from taking eels or other fish in Madaket Ditch, in scoop-nets of the dimensions allowed in other cases.

ROBERT BENNETT, Chairman.

Nantucket, March 17, 1848.

Book of 1855, Page 250.

REPORT OF THE COMMITTEE ON THE FISHERIES.

The committee appointed at the Annual Meeting of the inhabitants of the Town, held February 13, 1855, to have the care and superintendence of the fisheries in Madaket Ditch and the Long Pond, herewith submit the following Report:

Soon after the adjournment of the Annual Meeting, your committee's attention was called to the practice of persons seining in the Long Pond during the time of herring running into said Pond from the sea, contrary to the ordinances respecting said fishery, made and promulgated by the Town, agreeable to the laws of this Commonwealth. Therefore, after a careful examination of the whole subject relating to the herring fishery, derived from various sources abroad and at home, and in view of the benefits arising from said fisheries

in Towns where protection is afforded by the strict enforcement of the laws, the committee, with a desire that the inhabitants of the Town generally might be benefited by the herring fishery in Madaket Ditch and Long Pond, determined upon a strict enforcement of the laws in relation thereto against all persons found violating the ordinances of the Town. They therefore appointed a person to watch the premises to see that no depredations were committed during the time of the herring running through said Ditch into said Pond and during the spawning season, except such as are prescribed by the ordinances for the taking of herring and other fish in Madaket Ditch; and the committee are of the opinion that the care and attention thus given has been the means of preserving the fishery from being destroyed the past summer; and, from the best information they have been able to obtain from persons who are in the practice of visiting the Pond, and are acquainted with the herring fishery, as well as from the person employed to have the care and watch the Pond, they believe that during the past season more herring have spawned in the Long Pond than for many years previous. And the committee believe that, with proper care to preserve the fishery, agreeable to the ordinances of the Town, it will become a source of great benefit to the inhabitants of the Town generally. During the past summer the subject of opening the ditch directly from Madaket Harbor to the Long Pond has been presented to the consideration of the committee, with a view to the better accommodation and the inducement of greater quantities of fish passing into the Long Pond. With a partial examination of the premises, the committee believe that a ditch might be opened with advantage to the fishery, and without the expenditure of much money, commencing at the harbor to the eastward of the Squantum House, so called, on the farm lately owned by Nathan Chase, and running through the Salt Pond and meadows of said farm to the highway, thence across the highway to the Pond in Madaket Swamp, and from thence to Madaket Ditch, intersecting said ditch about fifty rods to the eastward of the Bridge crossing at Madaket Meadows; and they would recommend the appointment of a committee to examine the premises and report the probable cost and practicability of the measure to some future meeting called for that purpose. The Town appropriated at the Annual Meeting the sum of one hundred dollars for the protection of the fisheries and to carry the ordinances of the Town in relation thereto into effect. And, in consequence of the necessity of employing a watch to protect said fisheries, the committee have expended for that and incidental expenses the sum of ninety-seven dollars. For several years past large quantities of herring and perch have been taken by seining from the Hummock Pond, and the committee believe that a valuable fishery might be made by opening a drain from the west head of the Pond to the sea, so constructed as to allow fish to enter and leave the Pond at stated seasons of the year. And the committee recommend

that the committee on the fisheries for the current year be authorized by the Town to contract with some person or persons to construct such drain and to have the use of said fishery for such time and under such restrictions as the Town may think proper to impose at a meeting called for that purpose. In conclusion, they would recommend to the Town the appointment of a committee to have the care and superintendence of the fisheries, and to carry the ordinances of the Town in relation to the same into effect, and that the Town appropriate a sum of money sufficient to cover the expense of the same. All of which is respectfully submitted.

P. H. FOLGER,
WILLIAM BARNEY,
SHUBAEL WORTH,
ISAAC AUSTIN,
Committee.

Nantucket, Feb. 5th, 1855.

Book of 1857, Pages 507-11.

REPORT OF COMMITTEE ON FISHERY ORDINANCES.

The committee appointed at a Town Meeting held April, 1856, to draft ordinances and by-laws for the protection and government of the fisheries in the ponds and creeks on the Island of Nantucket, have considered the subject and the duty assigned them, and herewith submit the following report, viz:

In relation to the Long Pond and its fisheries, your committee believe that, with proper protection, it can be made a source of great benefit to the inhabitants generally. Its connection with the salt water by means of Madaket Ditch, makes it naturally a rendezvous for herring, perch and eels, at certain seasons of the year, thereby affording to the citizens an opportunity of taking them within the time prescribed by law, in their passage through Madaket Ditch, without injury to their propagation; and your committee have thought best to recommend some alterations in the existing laws in relation to said ponds. The Hither Creek, also, being the natural channel for those fish in their passage from the sea to the pond, has been thought best by the committee to be included in the alterations recommended. Sesachacha Pond, although not connected with the salt water, except by draining, has been heretofore a nursery for large quantities of perch and other fish; and from its proximity to the village of Siasconset and other summer resorts, has afforded supplies of fish at a season when other fish were comparatively scarce. But for the last three or four years the fishing in said pond has been greatly injured by sweeping and drawing seines in the same during the Spring months, and thereby draining the pond of all the largest and best fish, and, at the

same time, destroying large quantities of small fish, which, if left to grow, would be of benefit to those who resort there for the purpose of taking fish with hook and line. And, inasmuch as it has become a well-settled principle in all fishing communities that seining in waters where fish cast their spawn is destructive to their propagation, we believe that, unless some restriction is made against seining (for the present at least) in said pond, the fishery therein will soon be destroyed.

The Hummock and Miacomet Ponds, like Sesachacha Pond, are not connected with salt water. But the former, or Hummock Pond, in consequence of the overflowing of many grass lots and meadows, is usually let out or drained into the sea once, and sometimes twice, in each year. In the Spring time, when let out, large quantities of herring pass into the pond, which can be taken in no other way out of the pond than by the use of seines, and which can be done by the twentieth day of April or the first day of May. After that time those herring not taken with seines will cast their spawn, and leave the pond with the young, at the letting out in the fall, and thereby the pond will be left undisturbed by seines during the summer months for the propagation and growth of the young fish.

In relation to the Miacomet Pond, it is only thought necessary to protect it during the Summer months, to prevent the small fish from being drawn ashore and left to die, instead of leaving them in the pond to grow up to be fit for use in the Fall and Spring.

In view of the foregoing reasons, and others that might be here stated, your committee, after carefully considering the whole subject matter, present to the Town the annexed by-laws and ordinances for their consideration, and recommend the adoption of the same.

ALEXANDER MACY,
SHUBAEL WORTH,
WILLIAM BARNEY,
Committee.

Nantucket, Feb. 6, 1857.

ORDINANCES AND BY-LAWS

For the Protection of the Fisheries in the Town and County of Nantucket.

Whereas, in the opinion of the Inhabitants of the Town and County of Nantucket, the taking of fish with seines, mesh-nets, or otherwise than the hook and line, from certain ponds and creeks within the Town and County of Nantucket, is detrimental to the propagation of fish, and tends to destroy the fisheries therein, and to deprive the inhabitants of the benefit of said fisheries,

Therefore, be it ordained by the inhabitants of the Town and County of Nantucket, in Town Meeting assembled, that the following By-laws and Ordinances be, and hereby are, adopted as the law of the Town and County for the regulation and protection of the fisheries in conformity with an Act of the Legislature passed March 15, 1855, in the ponds and creeks hereinafter named and specified, to wit:

Ordinance First.—Any person who shall set or draw any seine, mesh-net, or net of any kind, in Sesachacha Pond, Long Pond, or Hither Creek, or shall take any fish at any time from said ponds or creeks by the use of any seine, mesh-net, or net of any kind, shall forfeit and pay for each offence, on conviction thereof, a fine of not less than fifteen dollars, and not more than twenty dollars, with the forfeiture of all the fish illegally taken, the fines and forfeitures to be recovered in any Court competent to try the same, one half to be paid to the Town Treasurer for the use of the Town, and the other half to the person or persons who shall make the complaint.

Ordinance Second.—No person shall set or draw any seine, mesh-net, or net of any kind, in Hummock Pond or Miacomet Pond, between the first day of May and the first day of November, in each year, under a penalty of twenty dollars for each offence, the fines and forfeitures to be recovered and paid as in the preceding ordinance.

Ordinance Third.—The Selectmen of the Town are hereby authorized and empowered to carry into effect the foregoing ordinances, by publishing the same in the newspapers of the Town for a suitable term of time, for the information of the inhabitants and public generally and to prosecute each and every violation of the same.

Ordinance Fourth.—The foregoing by-laws and ordinances shall take effect and go into operation from and after their adoption by the Town, and all ordinances, by-laws, or regulations heretofore adopted by the Town, inconsistent with the provisions of the ordinances or by-laws, are hereby repealed.

The committee on the subject of protection to the fisheries (although not directly charged with the matter in question) nevertheless feel it incumbent on them in connection with the subject of fisheries in ponds, to call the attention of the Town to the situation of the fisheries in Madaket Ditch. It is well known to the inhabitants of the Town that at certain seasons of the year large quantities of eels pass from the sea through Madaket Ditch to the Long Pond as a place of resort or refuge during the winter months, and which was, in years passed, a source from which many persons, in the absence of other employment, supported their families in the winter months by taking eels by the spear. Since which, from the gradual filling up of Madaket Ditch by obstructions of various kinds, such as scoop-nets of vari-

ous sizes, and the breaking down of the sides of the ditch by those who resort there in the fishing season, the passage has been materially obstructed, and but few eels comparatively have found their way into Long Pond of late years. In the year 1841, the Town, feeling the necessity of preserving the fishing in said ditch, applied, through a committee, to the Proprietors of the Common and Undivided Lands, for the cession of all their jurisdiction in Long Pond, Madaket Ditch and Madaket Harbor to the Town, for a fishery for the general benefit of the inhabitants, which was so ceded the same year by the aforesaid Proprietors. The same year a committee was appointed to construct bridges across said ditch and to make by-laws for the regulation of the fishery therein, and a small appropriation was made by the Town for cleaning out said ditch. In the year 1848, the committee on the fisheries reported to the town certain regulations for the government of the fisheries in said ditch and the Long Pond, which were adopted by the Town and have remained in force to the present time. Since the year 1848, the appropriations have been very limited, and at the present time the ditch has become so contracted in width as to be almost, if not entirely, obstructed by the nets used for taking eels and other fish during the fishing season, and thereby allowing but few fish or eels to pass into the Long Pond. For reasons here stated, and others that might be given, your committee believe that it would be for the interest of the inhabitants, and tend to the preservation of the fishery, for a committee to be appointed with power to make the necessary surveys with a view to the opening said ditch of sufficient width and depth to facilitate the passage of fish and eels without obstruction into the Long Pond, and report to the Town the probable expense, and the practicability of the measure at some future meeting.

ALEXANDER MACY,
SHUBAEL WORTH,
WILLIAM BARNEY,
Committee on Fisheries.

Nantucket, Feb. 6, 1857.

REPORT OF COMMITTEE ON MADAKET DITCH

The committee appointed to investigate the matter relative to the improvement of the fisheries in Madaket Ditch, have attended to the duty assigned them, and herewith present the following report: That, upon examining said Ditch, from its commencement at the Salt Pond as far as was practicable at this season of the year, they find that at several points of said Ditch obstructions exist which the committee believe detrimental to the fishery, and they therefore recommend the appropriation of a sum not exceeding seventy-five dollars for removing said obstruction, and for otherwise improving the same,

for the benefit of the fishing therein. And we also recommend that the Town appoint a committee to carry into effect said improvements, by contract or otherwise, as they may deem best for the interest of the Town.

ALEXANDER MACY,
SHUBAEL WORTH,
WILLIAM BARNEY,
ALFRED FOLGER,
Committee

Nantucket, February 20th, 1857.