

wildfowl are permanently located in their places a great deal of work of this sort will be undertaken.

The work of preparing the garden for the public goes on most energetically, and walks and drives are being made. A system of labeling the cages has been devised by which a small picture, painted on each label with the name of the bird or animal, will enable the individual most unlearned in matters zoological to associate the name on the label with the animal in the cage. This is a matter of very great importance, since it will transform the Society's collections from a mere wild beast show into an exhibition of very high educational value, enabling each observer to identify the animals that he may see.

The Society has just issued its fourth annual report, a document which, for the information it contains and its illustrations, ought to be in the hands of every one interested in wild creatures. As yet the New York Zoological Park has been seen by very few people, but as it comes to be more and more known its value both from the point of entertainment and education will come to be highly appreciated.

Light Stations and the Birds.

THE Lighthouse Board has recently sent out a circular letter to light-keepers cautioning them against the violation of the game laws of the States in which they may be stationed, and to inculcate in them a spirit of protection, not only of the game birds, but of song birds, and of all bird life.

See the list of good things in Woodcraft in our adv. col.

Game Bag and Gun.

Preservation of African Game.

THE text of the Convention signed at London, May 15, for the preservation of the wild life of Africa, has just been issued as a Parliamentary Paper. The contracting parties are the Queen, the German Emperor, the King of Spain, the King of the Belgians (for the Congo State), the French President, the King of Italy and the King of Portugal. The articles defining the scope and adopted methods of the Convention are as follows:

ARTICLE I.

The zone within which the provisions of the present Convention shall apply is bounded as follows: On the north by the twentieth parallel of north latitude, on the west by the Atlantic Ocean, on the east by the Red Sea and by the Indian Ocean, on the south by a line following the northern boundary of the German possessions in Southwestern Africa, from its western extremity to its junction with the River Zambesi, and thence running along the right bank of that river as far as the Indian Ocean.

ARTICLE II.

The High Contracting Powers declare that the most effective means of preserving the various forms of animal life existing in a wild state within the zone defined in Article I. are the following:

1. Prohibition of the hunting and destruction of the animals mentioned in Schedule I. attached to the present Convention, and also of any other animals whose protection, whether owing to their usefulness or to their rarity and threatened extermination, may be considered necessary by each local Government.
 2. Prohibition of the hunting and destruction of young animals of the species mentioned in Schedule II. attached to the present Convention.
 3. Prohibition of the hunting and destruction of the females of the species mentioned in Schedule III. attached to the present Convention when accompanied by their young. The prohibition, to a certain extent, of the destruction of any females, when they can be recognized as such, with the exception of those of the species mentioned in Schedule V. attached to the present Convention.
 4. Prohibition of the hunting and destruction, except in limited numbers, of animals of the species mentioned in Schedule IV. attached to the present Convention.
 5. Establishment, as far as it is possible, of reserves within which it shall be unlawful to hunt, capture or kill any bird or other wild animal except those which shall be specially exempted from protection by the local authorities. By the term "reserves" are to be understood sufficiently large tracts of land which have all the qualifications necessary as regards food, water, and, if possible, salt, for preserving birds or other wild animals, and for affording them the necessary quiet during the breeding time.
 6. Establishment of close seasons with a view to facilitate the rearing of young.
 7. Prohibition of the hunting of wild animals by any persons except holders of licenses issued by the local Government, such licenses to be revocable in case of any breach of the provisions of the present Convention.
 8. Restriction of the use of nets and pitfalls for taking animals.
 9. Prohibition of the use of dynamite or other explosives, and of poison, for the purpose of taking fish in rivers, streams, brooks, lakes, ponds, or lagoons.
 10. Imposition of export duties on the hides and skins of giraffes, antelopes, zebras, rhinoceroses and hippotami, on rhinoceros and antelope horns, and on hippopotamus tusks.
 11. Prohibition of hunting or killing young elephants, and, in order to insure the efficacy of this measure, establishment of severe penalties against the hunters, and the confiscation in every case, by the local Governments, of all elephant tusks weighing less than 5 kilograms.
- The confiscation shall not be enforced when it shall be duly proved that the possession of the tusks weighing less than 5 kilograms was anterior to the date of the coming into force of the present Convention. No such proof shall be accepted a year after that date.
12. Application of measures, such as the supervision of sick cattle, etc., for preventing the transmission of contagious diseases from domestic animals to wild animals.
 13. Application of measures for effecting the sufficient reduction of the numbers of the animals of the species

mentioned in Schedule V. attached to the present Convention.

14. Application of measures for insuring the protection of the eggs of ostriches.

15. Destruction of the eggs of crocodiles, of those of poisonous snakes, and of those of pythons.

ARTICLE III.

The contracting parties undertake to promulgate, within a year from the date on which the present Convention comes into force, unless they already exist, provisions applying in their respective possessions within the zone defined in Article I. the principles and measures laid down in Article II., and to communicate to one another, as soon as possible after issue, the text of such provisions, and, within eighteen months, information as to the areas which may be established as reserves. It is, however, understood that the principles laid down in paragraphs 1, 2, 3, 5 and 9 of Article II. may be relaxed, either in order to permit the collection of specimens for museums or zoological gardens, or for any other scientific purpose, or in cases where such relaxation is desirable for important administrative reasons, or necessitated by temporary difficulties in the administrative organization of certain territories.

ARTICLE IV.

The contracting parties undertake to apply, as far as possible, each in their respective possessions, measures for encouraging the domestication of zebras, of elephants, of ostriches, etc.

SCHEDULE I.

Animals referred to in paragraph 1 of Article II., whose preservation it is desired to insure:

(Series A).—On account of their usefulness: 1, vultures; 2, secretary bird; 3, owls; 4, rhinoceros birds or beef-eaters (*Buphaga*).

(Series B).—On account of their rarity and threatened extermination: 1, giraffe; 2, gorilla; 3, chimpanzee; 4, mountain zebra; 5, wild asses; 6, white-tailed gnu (*Connochaetes gnu*); 7, elands (*Taurotragus*); 8, little Liberian hippopotamus.

SCHEDULE II.

Animals referred to in paragraph 2 of Article II., of which it is desired to prohibit the destruction when young: 1, elephants; 2, rhinoceroses; 3, hippopotami; 4, zebras of the species not referred to in Schedule I.; 5, buffaloes; 6, antelopes and gazelles; 7, ibex; 8, chevrotains (*Tragulus*).

SCHEDULE III.

Animals referred to in paragraph 3 of Article II., the killing of the females of which, when accompanied by their young, is prohibited: 1, elephants; 2, rhinoceroses; 3, hippopotami; 4, zebras of the species not referred to in Schedule I.; 5, buffaloes; 6, antelopes and gazelles; 7, ibex; 8, chevrotains (*Tragulus*).

SCHEDULE IV.

Animals referred to in paragraph 4 of Article II., of which only limited numbers may be killed: 1, elephants; 2, rhinoceroses; 3, hippopotami; 4, zebras of the species not referred to in Schedule I.; 5, buffaloes; 6, antelope and gazelles; 7, ibex; 8, chevrotains (*Tragulus*); 9, various pigs; 10, colibi and all the fur monkeys; 11, aardvarks (genus *Orycteropus*); 12, dugongs (genus *Halicore*); 13, manatees (genus *Manatus*); 14, small cats; 15, serval; 16, cheetah (*Cynalularus*); 17, jackals; 18, aardwolf (*Proteles*); 19, small monkeys; 20, ostriches; 21, marabous; 22, egrets; 23, bustards; 24, francolins, guinea fowl, and other "game" birds; 25, large tortoises.

SCHEDULE V.

Harmful animals referred to in paragraphs 3 and 13 of Article II., of which it is desired to reduce the numbers within sufficient limits: 1, lions; 2, leopards; 3, hyenas; 4, hunting dogs (*Lycan pictus*); 5, otter (*Lutra*); 6, baboons (*Cynocephalus*) and other harmful monkeys; 7, large birds of prey, except vulture, the secretary bird and owls; 8, crocodiles; 9, poisonous snakes; 10, pythons.

The Marin County Case.

In the United States Circuit Court for the Northern District of California.

IN RE APPLICATION OF W. A. MARSHALL FOR A WRIT OF HABEAS CORPUS.

THE petitioner was convicted in the Justices' Court of Marin county, California, of a violation of the provisions of an ordinance enacted by the Board of Supervisors of that county declaring in its seventh section that "Every person who, in the county of Marin, shall use any kind of a repeating shotgun or any kind of magazine shotgun for the purpose of killing or destroying any kind of wild duck, geese, quail, partridge, doves, or any other birds, shall be guilty of a misdemeanor"; and by its eighth section prescribing that "Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than ten days or more than thirty days, or pay a fine of not less than twenty dollars or more than two hundred dollars, or by both such fine and imprisonment. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of imprisonment, which must not exceed one day for every dollar of the fine."

The complaint upon which the petitioner was prosecuted and on which his conviction rests charges in substance that on the 12th day of January, 1900, he did in the county of Marin, State of California, use a repeating shotgun for the purpose of killing quail and bluejays, and did on that day and in that county shoot and kill with a repeating shotgun one quail and one bluejay, contrary to the provisions of the seventh section of the ordinance mentioned. A judgment of imprisonment having followed the conviction, the petitioner seeks his discharge from custody under the judgment by means of a writ of habeas corpus, on the ground that the judgment and his imprisonment thereunder are in contravention of provisions of the Constitution of the United States and therefore void.

By the fourteenth amendment of that Constitution it is, among other things, declared that "No State shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The broad question in the case is whether all or either of these provisions have or has been violated by the judgment under which the petitioner is held in custody. "Life," said Mr. Justice Swayne, in the Slaughter-House Cases, 16 Wall., 127, "is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property." This was said in a dissenting opinion, but it is none the less true. The evidence given on the hearing of the application of the petitioner shows that the repeating shotgun with which the petitioner killed the quail and bluejay he was convicted of killing was his own gun, manufactured by a concern whose annual output of such guns aggregate several million dollars in value; that the petitioner killed the quail and bluejay on his own land, and that the gun in question with which he did the killing was not only not more but in fact less destructive than the double-barreled automatic ejector shotgun not prohibited by the Marin county ordinance. Guns are made, not for ornament, but to be used; and their chief, if not their only, value is in their use. "The constitutional guaranty," said the Court of Appeals of New York in the matter of Jacobs, 98 N. Y., 105, "that no person shall be deprived of property without due process of law may be violated without the physical taking of property for public or private use. Property may be destroyed, or its value may be annihilated; it is owned and kept for some useful purpose and it has no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived; and hence any law which destroys it or its value, or takes away any of its essential attributes, deprives the owner of his property." See also *Pumpelly vs. Green Bay Co.*, 13 Wall., 177; *Wynehamer vs. People*, 13 N. Y., 398; *People vs. Otis*, 90 N. Y., 48. To deprive the petitioner of the use of the gun in question is therefore to deprive him of his property. Not only so, but if Marin county may lawfully prohibit the use of such a gun, every other county within the State of California may, as a matter of course, do likewise, and so may every other State and Territory within the United States, thus practically destroying the manufacture of this class of guns for the shooting of game within the United States.

Of course, this right of property, as well as the higher right of liberty of action on the part of the owner—the rights here involved of freely using one's own property—is subject to the lawful exercise of the police power; a power which, as said by the Court in the Slaughter-House Cases, 16 Wall., 36, 62, "is, and must be from its very nature, incapable of any very exact definition or limitation." It is not denied on the part of the petitioner, and cannot be successfully denied, that private property and private rights must always yield where the public safety, public health, or public morals demand the sacrifice. Thus, if a great conflagration is spreading toward one's house and the public exigency demands it, the individual's home may be torn down or blown up, if such drastic measure be necessary to stay the fire. So may gambling and dance houses and such devices and other things as have direct relation to public morals be absolutely inhibited and prohibited. On the same principle—that of danger to the public—it is held that the sale of intoxicating liquor by retail may be entirely prohibited and the value of breweries destroyed by the laws prohibiting the manufacture of malt liquors. *Carroll vs. Christensen*, 137 U. S., 86; *Muegler vs. Kansas*, 123 U. S., 669. But surely, in a case like the one at bar, where there is no question of the public safety, public health, or public morals, and where the prohibited act is in no respect *malum in se*, the absolute prohibition of the use of one's own property on his own land cannot be held to be a reasonable exercise of the police power, when regulation will plainly attain the end desired by the legislation in question. In the present instance, what was the end sought? Manifestly only the prevention of the taking or killing by one person of more than twenty-five quail, partridge or grouse in any one day; for section 3 of the ordinance provides: "Every person who in the county of Marin shall take, kill or destroy more than twenty-five quail, partridge or grouse in one day, and every person who in the county of Marin shall have in his possession in any one day more than twenty-five quail, partridge or grouse, shall be guilty of a misdemeanor." That end is just as effectively accomplished without the obnoxious section as with it. It is wholly immaterial to that object whether the sportsman or hunter use a repeating or magazine gun, or a double or single barreled gun. When the limit is reached he has to stop shooting or incur the penalty prescribed. And the opportunity of detection is just as great in the one case as in the other. No valid reason is therefore perceived, and none has been suggested by counsel, why the owner of a repeating or magazine shotgun should be prohibited from using it, and the owner of the equally if not more effective double-barreled automatic ejector shotgun be free to use it, in killing the twenty-five quail, partridge or grouse permitted to be killed by any person in one day. The equal protection of the laws to which every person is, by the provision of the Constitution of the United States above quoted, declared entitled, would indeed be a vain thing if such discriminatory legislation was sustained by the courts. If section 7 of the ordinance in question is valid, no reason is perceived why the process of elimination may not be extended by next prohibiting the use of the double-barreled automatic ejector shotgun, next all but muzzleloading guns, and so on until the population is permitted to be used upon wild duck, geese, quail, partridge, grouse, doves, or other birds in Marin county. Laws enacted in the exercise of the police power, whether by a municipal corporation acting in pursuance of the laws of a State, or by a State itself, must be reasonable and are always subject to the provisions of both the Federal and State constitutions; and they are always subject to judicial scrutiny. *Yick Wo vs. Hopkins*, 118 U. S.,