

Meadows.

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I. Of improving the swamps, marshes and meadows.

An act to enable the owners of the tide swamps and marshes to improve the same, and the owners of meadows already banked in, and held by different persons, to keep the same in good repair.

Rev. 82.

R. S. 716.

Passed November 29, 1788.

Court of common pleas to appoint commissioners, on application of owners.

Their duty.

Proceedings to be certified and recorded.

Certain navigable streams not to be stopped.

How expenses of banking to be defrayed.

When banks laid out, owners to meet, etc.

1. That if the owners of two-thirds of any body or tract of marsh or swamp, exposed to the overflow of the tide, and capable of being laid dry, and put in a proper state for improvement by one general bank, or dam, are desirous to improve the same, and the whole cannot agree, such owners, desirous of improving as aforesaid, after giving three weeks previous notice to those who refuse or neglect to join in such improvement, by notice left at each of their places of abode, or by advertising their intentions in three of the most public places in the neighborhood, at least three weeks previous thereto, may apply to the court of common pleas of the county, in which such marsh doth lie; or in case a county line shall run through the marsh or swamp proposed to be improved as aforesaid, to the court of common pleas nearest thereto; on which application the members of such court, who are disinterested and unconnected with the parties, shall, and they are hereby required to appoint, by a certificate under their hands and seals, three or more judicious and disinterested men, well acquainted with banking and improving tide meadows, as commissioners; which commissioners, after giving notice of the time and place of meeting, shall view the premises, and hear the parties, and, if they then think proper, lay out the bank, dam, sluices, floodgates, or other works necessary for securing the marsh or swamp from the overflow of the tide, in such place or places as may appear most safe and beneficial to the whole of the owners of the marsh or swamp intended to be secured from the overflow of the tide, and make an actual survey thereof, describing the place of beginning, courses, and distance, and places where the sluice or sluices, or floodgates, shall be laid, and where the bank or dam shall join the fast land; and also fix a name for the company, and appoint the time and place of their first meeting, and deliver a certificate of their proceedings, signed by a majority of them, to the clerk of the court, from which they received their appointment, which clerk shall forthwith record the said certificate in the road book kept in his office; *provided always*, that no navigable water shall be stopped by virtue of this act, the use of which navigation may, in the opinion of the majority of the men appointed as aforesaid, be of more than half the value to the inhabitants of the neighborhood, that the improvement of the meadow would be to the owners thereof; *and provided also*, that nothing in this act shall be construed to authorize the stopping out any creek or river capable of navigation for shallops or flats, that can carry eight cords of wood.(a)

2. That the expense of erecting, making, and maintaining the banks, dams, sluices, floodgates, and other works, laid out as aforesaid, and also all the general water courses necessary for draining the marsh, swamp, or meadow ground secured from the overflow of the tide by the aforesaid banks or works, as well as the expense of laying out the banks, works, and water courses, and every other necessary expense for the benefit of the company, shall be defrayed by a tax, laid on the meadow ground secured from the overflow of the tide as aforesaid, in manner hereafter directed.

3. That after the banks, dams and works are laid out, and a certificate thereof recorded as aforesaid, some one or more of the company shall give at least one week's notice of the time and place of the aforesaid first meeting, by notice left at the house of each owner, or by advertising the

(a) Not only the actual agreement but the evidence of that agreement in some legal, binding form, ought to precede the appointment and valuation, *State v. Creek Co.*, 2 Gr. 301.

same in three of the most public places in the neighborhood, at least one week previous to the said time of meeting.

4. That it shall and may be lawful for the owners and possessors of land, lying within the bank or dam laid out as aforesaid, their legal agents or representatives, to meet at the place appointed, and, between the hours of one and five in the same afternoon, to choose, by ballot or otherwise, and by plurality of votes of those met, such person or persons as they may think proper for managers, and a treasurer and clerk for the ensuing year, or until the next annual meeting thereafter, and three or more indifferent men, to value all the marsh, swamp or meadow ground secured by the bank from the overflow of the tide.

To choose managers, treasurer, clerk, etc.

5. That the managers, when appointed as aforesaid, or a majority of them, shall, as soon as may be, cause all the lots and parcels of the marsh, meadow ground or swamp, belonging to each owner, usually overflowed by the tide, and lying within the bounds of the proposed bank or dam and water works, to be carefully and strictly measured, and a draught or plot to be made, showing the quantity held by each owner; and cause a valuation to be made, by the men appointed as aforesaid, of the meadow ground of each owner, separately; and shall, thereupon, make an estimate of the sum or sums of money which will be necessary to defray the expenses of the different services required by this law, and also of making and erecting the bank, dam, and other works necessary to keep the tide from overflowing the meadows within them, until the said meadows shall be laid dry, and put in a proper state for improvement; and shall assess the same, ratably, on the said meadow, agreeably to the valuation and quantity each owner may have within the bank or dam; and shall state the said assessment in a regular duplicate, containing the names of the owners or possessors, the number of acres and parts of acres held by each, the sums assessed on them, severally, and the time or times of payment; which duplicate shall be delivered by them to the treasurer chosen as aforesaid. (See *Sec. 45*).^(b)

Marsh to be measured, valued and assessed.

6. That the treasurer, on receipt of the said duplicate, shall, in person, or by notice in writing, left at the usual place of abode of each owner or possessor, demand of and from each owner and possessor, twenty days before the time of payment, the sum assessed as aforesaid; and if any of the said owners or possessors shall neglect or refuse to pay the sum assessed as aforesaid, for the space of twenty days after the time fixed for payment thereof, it shall and may be lawful to and for the said treasurer to seize and rent out, by public vendue, to the highest bidder, for so long time, and no longer, as will be requisite, so much of the meadow ground within said bank belonging to, or in possession of such delinquent owner or possessor, as may suffice to discharge such assessment, and all expenses attending the recovery thereof, having first advertised the same, for the space of three weeks, in three of the most public places in the neighborhood where the said meadow lies, or may be sold. (See *Sec. 46*).

How to recover assessment.

7. That if said estimate, so made and collected as aforesaid, should not produce a sufficient sum of money to fulfil the purposes above mentioned, the said managers shall make, in like manner, an estimate of such sum as may be further necessary, which shall be collected in like manner, as is hereinbefore directed.

Assessment insufficient, another may be made.

8. That the said managers shall, from time to time, at least once in every three months, inspect and examine the banks, sluices and water works, whatsoever, erected or made for the benefit of the aforesaid company; and shall cause or procure to be made or done, all such repairs and amendments, as to them, or a majority of them, shall seem necessary; and for defraying the expense thereof, shall assess, in manner aforesaid, such sum or sums of money as may be requisite, which shall be collected in manner aforesaid.

Banks examined quarterly, and kept in repair.

9. That, after the meeting of the said owners and possessors at the time and place appointed as aforesaid, it shall and may be lawful for the said owners and possessors to meet and assemble statedly, on the first Monday in April, yearly and every year, at one o'clock in the afternoon

Officers annually elected.

^(b) By the supplement of January 22, 1829, there must be a re-survey and new map, showing the present owners and quantities, before there can be a lawful re-valuation *State v. Creek Co.*, 2 Gr. 301.

- of that day, at such place as a majority of those met at the first meeting, or at the last preceding annual meeting, may have from time to time appointed; and there, between the hours of one and five in the afternoon, by ballot or otherwise, and plurality of votes of those met, appoint managers, a treasurer, and clerk as aforesaid, to continue for one year, and from thence until others are appointed to supply their places; and the manager or managers, treasurer and clerk, shall have the like powers as those hereinbefore mentioned; *provided always*, that nothing in this act contained shall be construed to prevent a manager from being treasurer, clerk, or both.
- Proviso.
- Clerk's duty. 10. That it shall be the duty of the clerk, chosen as aforesaid, from time to time, to enter in a book, to be provided for that purpose, all votes, proceedings, orders and assessments, made by the said owners and possessors, or the managers, and all transactions whatsoever, which the said owners and possessors or managers shall direct.
- Executors, etc., authorized to vote. 11. That it shall and may be lawful for the executors or administrators of any person deceased, to whose estate a part of meadow ground lying in company did belong, and to and for the guardians of minors, and to and for the agents of single women, or other persons, who cannot attend the meeting of the owners and possessors, such agents being appointed in writing, to vote at said meetings.
- On death or disability of officers, others to be elected. 12. That if any of the managers, or treasurer, or clerk, should, at any time within the year for which they are elected, by death or other disability, become incapable of executing the duties required by this act, it shall and may be lawful for the managers, or a majority of them, or the survivors, or a majority of them, or the survivor, or if none remain, any two of the owners or possessors, to call a meeting by notice in writing left at the place of abode of each owner or possessor, or by advertising the same in three of the most public places in the neighborhood, at least two weeks previous thereto, for the purpose of supplying the vacancy or vacancies; and the persons appointed in consequence shall have the like powers for the remainder of the year, as those had in whose places they may be appointed.
- Wages of officers to be fixed by the company. 13. That the owners and possessors of meadow ground, lying in company as aforesaid, or their representatives at the annual meeting, from time to time, shall fix and determine, by the vote of a majority of those met, the wages or salaries to be paid to the managers, treasurer and clerk, from year to year.
- Mud and earth, where to be dug. 14. That it shall and may be lawful for the manager or managers, or a majority of them, to dig or cause to be dug, mud, sand or other earth, for the erecting and repairing the banks and works, from time to time, in such places as shall be most convenient to the banks and works under his or their direction, and least detrimental to the owners of the soil; and whenever it shall, in the opinion of the manager or managers, or a majority of them, appear necessary to lay or erect any works without the banks, to prevent the wash from damaging the banks or works, the said manager or managers are hereby empowered to cause such works to be made or done, and to defray the expense thereof, as hereinbefore directed for defraying the expense of other works and repairs.
- Outer works may be erected.
- What line ditches and drains declared lawful fences, and how maintained. 15. That all line ditches or drains, of nine feet wide at the surface of the meadow, four feet and a half at bottom, and three feet deep, and lying on a mud or miry bottom, shall be deemed and reputed, and the same are hereby declared to be lawful fences, and shall be divided in the same manner, and made and maintained in the same proportion as line fences are by law directed to be divided, made and maintained; and the mud, earth or rubbish shall be cast as equally as may be on each side, except the owners, by agreement, determine otherwise.
- Mode of proceeding against owners for neglect. 16. *And whereas*, many owners of meadows, already banked from the tide, suffer great loss and damage by the conduct of others, who own meadow lying within the same bank, and neglect or refuse to keep their part or parts of the bank, works, and water courses in good repair; therefore, *be it enacted*, that in all cases where several persons own meadow ground within one and the same bank, dam or other enclosure, and liable to be overflowed or damaged by a breach in any part of such bank, dam

or other works, and any of the owners or occupiers of any part thereof, shall neglect or refuse to keep his, her or their part or parts of said banks or works in repair, to the damage or danger of the other owner or owners, any owner or owners so damaged, or in danger of being damaged by such neglect, may, upon six days' notice being given to the other owners or occupiers, apply to the judges of the inferior court of common pleas of the county where such meadow may be, who shall appoint, by a certificate, under the hands of a majority of them, three or more men, as before described, who, after giving ten days' previous notice to all concerned of the time and place of meeting, shall hear the parties, view the premises, and, after taking into consideration every circumstance, matter and thing, which may tend to enable them to do justice between the parties, divide the bank and other works necessary for the safety and improvement of the meadows, and give and allot to each owner and occupier, his or her respective share or part to keep up and maintain; or direct that the whole of such bank and works shall be supported by a tax, laid from time to time, agreeably to the quantity and quality of the meadow enclosed from the tide by said bank; and likewise, in either case, lay out all the necessary general water courses in such places as may be most convenient and beneficial for the purposes of draining the meadows generally, and least detrimental to the owners of the soil; and order the maintenance of the water courses in the same manner as the banks and works, either by giving each owner his or her share or part of the bank and works to make, keep up and maintain, or order that the whole of the bank, dam and other works and general water courses shall be made and maintained by a general tax; and give a certificate of their proceedings, with the courses and distances, if required by any owner or owners, signed by a majority of the commissioners appointed as aforesaid.

17. That if any owner or owners shall think him, her, or themselves aggrieved by the proceedings of the commissioners appointed as aforesaid, he, she, or they conceiving themselves so aggrieved, shall apply to the court of common pleas, in the manner directed in the first section of this act, which is hereby directed to appoint double the number of commissioners as were appointed for the proceedings complained of, a majority of whom, after giving notice, hearing the parties, and viewing the premises, as before directed, may, and they hereby are empowered and directed to make a different order of maintenance or division, as to the bank and works; and alter, shut up, or relay the water courses, at their discretion, in such manner as to them may seem most beneficial for the safety and improvement of the meadows, and just and equitable between all parties concerned; and likewise alter the place of making and repairing any banks or works, whenever such alteration may become necessary, by wash, breaches, or otherwise; and make a certificate thereof, in manner aforesaid, which certificate, as well as all other certificates of laying out the banks, works, and water courses, or either of them, or of dividing into shares any banks, works, and water courses, shall be recorded in the road book, by the clerk of the court as aforesaid.

Grievances, how
to be redressed.

18. That in all cases where sudden breaches may happen, or other circumstances render immediate repairs necessary, either where the banks and works are under the direction of managers, or divided into parts to be maintained by the different owners or occupiers, and the manager or managers, owner or owners, or occupiers, whose duty it is to stop or repair the same, shall neglect or refuse to stop such breach or breaches, or make the repairs immediately necessary, then, and in all such cases, it shall and may be lawful for any owner or owners, or possessors, to enter upon the premises, and make the necessary repairs, in the same manner, and under the same restrictions, as the manager or managers, owner or owners, or occupiers, are by this law directed and empowered to do and perform the same, and recover the expense attending such repairs in any court wherein the same may be cognizable, with costs, from the person or persons, or managers, whose duty it was to do and perform such repairs. (a)

Sudden breaches
how repaired.

(a) Sufficiency of state of demand, *Westcott v. Danzenbaker*, 1 Hal. 182. The act must be followed, *Tracy v. Bowen*, Pen. *963.

Owners damaging the bank, to make it good.

19. That if any owner or possessor of any meadow, lying in company, or any other person, by his or her order, shall wilfully cut his or her bank or dam, or open his or her floodgate, or sluice or sluices, and thereby let in the tide, at any time between the first day of April and first day of December, in any year hereafter, without the consent of the other owner or owners, or possessors, of meadows lying within the same bank or dam, and thereby damage the property of his or her neighbors, such person or persons, so offending, shall make good all damages occasioned thereby, to be adjudged by two or more freeholders, chosen by the parties, and recovered by the owner or owners, or possessor or possessors, receiving the damage, in any court in which the same may be cognizable, with costs of suit.

Horses, etc., not to be put on the bank contrary to directions of managers.

20. That in all cases where banks or dams are maintained by a tax, and divided from the adjoining meadows by a lawful fence, ditch or drain, made and repaired at the expense of the company, if any owner or occupier shall put or keep on, or suffer to be put or kept on the part of the bank or dam assigned as his or her part to occupy, any horses, horned cattle, or swine, by his or her consent or order, contrary to the directions of the manager or managers, and thereby damage the bank, dam or works, such owner or occupier, so offending, shall make good all damages occasioned thereby, to be valued by two freeholders of the township, to be chosen, one by the manager or managers, and the other by the offender; and if the person so offending shall neglect or refuse to join in the choice, then, and in such case, the manager or managers shall choose both; and if the two so chosen cannot agree, they shall choose a third, any two of whom shall value the damage; which damage shall be recovered by the managers or manager from the person who had offended as aforesaid, and applied towards repairing the bank or other works, under the direction of the managers; *provided always*, that nothing herein contained, except the twentieth section of this act, shall extend to interfere with any private law heretofore passed, or any agreement heretofore made for banking and draining of meadows, without the consent of all persons concerned therein.

To what banks and drains this act shall not extend.

Fees for services.

21. That the fees to be paid for the different services required by this act, shall be as follows:

To the court, for appointing commissioners and giving a certificate, or for hearing the applicants where no certificate is granted, the sum of ten shillings.

To the clerk of the court, for recording the certificate of the appointment of commissioners, seven pence per sheet, allowing ninety words to a sheet.

And to each of the commissioners, seven shillings and six pence per day, for every day he may be employed in laying out the banks, works, and water courses, to be paid by the applicants; but in all cases where the banks, works, and water courses, or either of them, are maintained by a tax, the above costs shall be paid by the treasurer of the company; and the receipts of the court, clerk, and commissioners, shall be sufficient vouchers for so much of the company's money.

P. L. 1806, p. 739.

Rev. 529.

R. S. 724.

Acceptance of act, how to be certified.

Supplement.

Passed November 27, 1806.

22. SEC. 1. That it shall be lawful for the owners or possessors of two-thirds of any body of meadow, who have subjected, or shall subject themselves to the before recited act, and in all cases where the commissioners have, or may lay off to each owner or possessor their proportion of such bank, sluices, water works, and water courses, to uphold and maintain, to certify under their hands, to the clerk of the court of the county in which such meadow shall lie, that they have agreed to become subject to this supplement; which certificate it shall be the duty of such clerk to record in the road book of such county, for which he shall receive the same fees per sheet as are allowed by law for the recording of deeds. (a)

Meeting to choose managers and clerk.

23. SEC. 2. That after such a certificate shall have been recorded as aforesaid, it shall be lawful for any owner or possessor to call a meeting of such company, by serving each owner or possessor with a notice in

(a) A copy of such deed may be offered in evidence, *Doremus v. Smith*, 1 South. *142.

writing, or leaving the same at his or her dwelling house or usual place of abode, setting forth the time and place of such meeting; at which time and place the said company shall, by plurality of voices of those who shall meet, proceed to the choice of two managers, being owners or possessors in the said company, to continue for the term of one year, or till others shall be chosen; and in case of the death, removal or disability of any manager chosen in manner aforesaid, a meeting of the company may be called, in the manner hereinbefore directed, for the purpose of choosing a manager to supply such vacancy; and every manager so chosen shall be vested with the same powers, perform the same duties, and be subject to the same penalties, as if he had been elected in the manner hereinbefore mentioned, or at any annual meeting of the company; and the said company shall choose a clerk in the same manner as managers are hereby directed to be chosen, who shall record all their proceedings in a book to be provided for that purpose; and every manager, in performing any of the duties in this act required, shall receive one dollar per day, and in case of neglect or refusal to perform such duties, after being thereunto required, he shall forfeit and pay for every such neglect or refusal the sum of fifteen dollars, to be recovered by action of debt, by any owner or possessor who shall sue for the same, to be applied toward the support of the sluices and water works of the company.

Fees and penalties.

24. SEC. 3. That it shall and may be lawful for all managers appointed agreeably to this act, to view the banks, water works and water courses, and to see that they are kept in good repair, and if any owner or possessor shall neglect or refuse to repair his or her bank, water works, or water courses, laid off to him or her as aforesaid, then it shall be lawful for the manager or managers, after five days' notice in writing being given to such owner or possessor, to enter on the premises, and do all such repairs as may be necessary; and it shall be the duty of the managers to stop, mend, or put up, any breach in the bank of any owner or possessor without delay, if the person having such breach shall not immediately proceed to stop the same; and in performing any of the said duties, he shall do as little injury to the owners of the soil as possible; and it shall be the duty of the managers to erect any wharf or wharves that may be necessary for the preservation of the bank, and to cause the bank to be mowed and kept clear of brush and rubbish.

Duties of managers.

25. SEC. 4. That when any manager appointed as aforesaid, shall have done any repairs to the bank, water works or water courses, or have stopped any breach in the bank, or erected any wharf or wharves for the preservation of the bank of any owner or possessor, so laid off to him or her to maintain and uphold, he shall within ten days after the completing thereof, present his account for such repairs, to such owner or possessor, which account shall be attested by his oath or affirmation, if required; and if such owner or possessor shall neglect or refuse to discharge the same within twenty days thereafter, then it shall be lawful for such manager, on five days' notice being given by public advertisement in five of the most public places in the neighborhood, to sell at public vendue, so much grass as may be on said owner's or possessor's meadow as will be sufficient to discharge such demand; but if the grass on the meadow should not be sufficient to satisfy the same, then to lease at public vendue, as aforesaid, so much of the meadow of such owner or possessor as will be sufficient to discharge such demand, with reasonable cost, to any person who will pay such demand for the shortest term; and it shall be lawful for such manager to make and execute a lease to such purchaser for such term, which said lease shall be good and effectual in law, and shall vest the possession thereof in the purchaser, and bar the owners and all others during the term; and in all places where a sluice, dam, stopping, or water works, is or shall be laid off, to be supported or upheld by a certain portion of said meadow, or the owners or possessors thereof, it shall be the duty of any manager, appointed as aforesaid, to stop any breach in such dam, and to erect and lay any new sluice or erect any other water works that may be necessary, and to keep the whole in good repair; and to enable such manager to do and perform the same, it shall be lawful for him to make assessments from time to time on the valuation of each owner's or pos-

Accounts for repairing, how to be recovered.

Further duty of managers.

essor's meadow, made by the commissioners under the before recited act; and in case any owner or possessor shall neglect or refuse to pay or discharge the sum for which he or she may be so charged on any such assessment, then it shall be lawful for the said manager to proceed against him or her for the recovery thereof in the manner hereinbefore mentioned, or by action of debt, in which case he shall produce the assessment in evidence; and it shall be necessary, in either case, before he shall proceed, that his account shall be attested by his oath or affirmation; and that every such manager shall, at the annual meeting of the said company, produce such assessment, together with an account of his expenditures for the preceding year, and pay over the balance, if any in his hands, to the succeeding manager or managers, to be appropriated to the purposes for which such assessments were made.

When act to
become a law.

26. SEC. 5. That in all cases in which the operation of this supplement shall be commenced in the manner directed in the first section, it shall become a law of this state, anything in the before recited act, to which this is a supplement, or any law, usage or custom to the contrary notwithstanding.

P. L. 1819, p. 60.

Supplement.

Passed February 10, 1819.

Rev. 655.

R. S. 726.

Cross or line
banks repaired.

27. SEC. 1. That in all cases where there are or may be any cross or line banks between two or more companies created by virtue of the act to which this is a supplement, it shall and may be lawful for the managers of either company to enter upon said cross or line bank, and repair and keep up the same, in such manner as to prevent the water from passing and repassing through or over said banks; *provided*, that nothing herein contained shall interfere with any contract or agreement heretofore made, or which shall be made, in relation to cross or line banks as aforesaid.

P. L. 1829, p. 28.

Supplement.

Passed January 22, 1829.

Har. 198.

R. S. 727.

Cross banks, how
to be laid out, etc.

28. SEC. 1. That when any tract of marsh or swamp is exposed to the overflow of the tide, and the same may admit of a division, by one or more cross-banks, into separate parts, it shall be lawful for the owners of two-thirds of any part of said marsh which may be justly separated from the rest, by a cross-bank, to apply to the court of common pleas of the county in which such marsh doth lie, as directed by the first section of the act to which this is a supplement; upon which said court is required to appoint three or more judicious and disinterested men, well acquainted with banking and improving tide meadows, as commissioners, who shall view the premises, hear the parties applicant, and others interested; and, if they think proper, lay out the cross-bank as applied for, together with the other necessary banks, sluices and floodgates, and works requisite for securing the marsh or swamp from the overflow of the tide, in such place and places, and direction, as may appear reasonable and most safe and beneficial to the owners of such part of the marsh and swamp which is proposed to be secured from the overflow of the tide, subject to the like rules, regulations and proceedings as required by the act and supplements to which this is a further supplement.

Time of annual
meeting.

29. SEC. 2. That it shall and may be lawful for the owners and possessors of any meadow already banked in, or that may hereafter be banked in, to meet and assemble statedly, on such day in the month of April, yearly and every year, at one o'clock in the afternoon, and at such place as a majority of those met at the first meeting, or at the last preceding annual meeting, may from time to time have appointed, and there, between the hours of one and five in the afternoon, by ballot or otherwise, and plurality of votes of those met, appoint managers, a treasurer, and clerk, to continue for one year or until others are appointed to fill their places, and to settle the accounts of the company.

Officers.

Revaluation,
when and how
made.

30. SEC. 3. That whenever the owners and possessors of two-thirds of the marsh, meadow ground and swamp, lying within the bounds of any meadow bank company, shall agree to a revaluation and assessment of the several lots and parcels of such marsh, swamp and meadow ground, it shall and may be lawful for the owners and possessors of the same company, at

a special meeting to be held for such purpose, notice of which said meeting shall be given by the managers or clerk of the company, by putting up advertisements thereof in three or more public places near the premises, setting forth the time and place of meeting, to choose by ballot or otherwise, three or more indifferent and disinterested men, to revalue all the marsh, swamp and meadow ground secured by the bank or dams from the overflow of the tide; and the managers of the said company are hereby required to make out all subsequent duplicates and assessments agreeably to such revaluation.

31. SEC. 4. That it shall and may be lawful for the owners and possessors of any tract of marsh, swamp or meadow ground, lying within the bounds of any meadow bank company, organized or to be organized under the provisions of the act to which this is a supplement, to cause the same to be subjected to the overflowing of the tide, in such manner, and for such time or times, as the same company shall, at their annual meetings, direct and appoint; *provided always*, that the owners of at least three-fourths of such marsh, swamp or meadow ground shall vote or agree to such overflow.

Owners of marshes may cause them to be overflowed.

Proviso.

32. SEC. 5. That such part or parts of the act and supplements, to which this is a further supplement, as comes within the purview of this act, and is contrary to the provisions thereof, be, and the same is hereby repealed.

What repealed.

Supplement.

P. L. 1832, p. 111.

Passed March 7, 1832.

Har. 386.

33. SEC. 1. That the commissioners appointed by the court, agreeably to the first section of said act, shall be authorized and required, after they shall have laid out the said banks, dams, sluices, and other water works, to cause a plot, map, or duplicate to be made, showing the quantity and number of acres held by each person, respectively, as nearly as practicable from former surveys, duplicates, or other sources of information; that the said plot, map, or duplicate, shall be signed by a majority of the said commissioners, and placed in the hands of the managers that may be first chosen, there to remain until the water shall have been stopped off said meadow; said plot, map, or duplicate to be received as sufficient evidence of the quantity of acres belonging to each owner or possessor, and all assessments and votes, prior to the assessment and valuation made under the fourth and fifth sections of the act to which this is a supplement, shall be governed thereby; *provided always*, that nothing in this act shall be construed so as to prevent the stopping of any creek or river, which has been heretofore stopped by the act to which this is a supplement, or any other act of the legislature.

R. S. 728.

Commissioners to make a map showing the number of acres held by each owner.

Proviso.

34. SEC. 2. That, for the security of all moneys assessed or expended by virtue of this act or supplement, all the marsh or meadow enclosed by said bank or banks, laid out as aforesaid, shall be pledged and bound for the payment thereof, and be collected according to the sixth section of the said act, to which this is a further supplement.

Meadow pledged for payment of expenses.

35. SEC. 3. That if, after the meadow or marsh is drained, and a measurement and valuation had, according to the fifth section of the act to which this is a supplement, it shall appear that any of the owners or possessors have paid more than their ratable proportion of taxes, to defray the expenses of all prior improvements, then the said managers shall assess the same upon those owners or possessors who have not paid their equitable proportion, in such manner as shall to them appear just, and, with the moneys thus raised, refund to each individual the sum or sums by him or her overpaid, with interest for the same.

Surplus to be refunded to owners who have overpaid.

36. SEC. 4. That in all cases of an election for officers, or for other purposes, the mode of voting shall be in person or by proxy in writing, duly executed, in the following ratio: every person owning or possessing meadow or marsh in the said company, as described by the said commissioners, shall be entitled to one vote for any quantity, not exceeding five acres, which he, she or they may possess, and one vote for each and every five acres, not exceeding twenty acres, and one vote for each and every additional ten acres.

Manner of voting at elections.

[Sec. 5 repealed].

Har. 413.

How sluices and water courses may be laid.

37. SEC. 6. That any person or persons, owning meadow already banked in, or that may hereafter be banked in, by virtue of the act to which this is a supplement, where the water courses and sluices are not sufficient to drain the same, and the company cannot agree on laying out and making sufficient water courses and sluices, he, she or they having meadow so situate may apply, according to the provisions of the act to which this is a supplement, for the appointment of commissioners to lay out and direct the erection of such water courses, sluice, sluices or flood gates as they shall deem necessary to drain the same.

P. L. 1839, p. 129.

R. S. 728.

Preamble.

Supplement.

Passed March 5, 1839.

WHEREAS, by the fourteenth section of the act to which this is a further supplement, it is enacted, that it shall and may be lawful for the manager or managers, or a majority of them, to dig, or cause to be dug, mud, sand or other earth, for erecting and repairing the banks and other works, from time to time, in such places as shall be most convenient to the banks and works under his or their direction, and least detrimental to the owners of the soil; and whereas, it frequently happens that individuals owning lots of meadow and marsh near to and adjacent to such banks and works so wanting repair as aforesaid, are greatly damaged by reason of the digging up and conveying away their soil without just compensation; therefore,

Compensation for materials.

38. SEC. 1. That when the manager or managers of any meadow company organized agreeably to the provisions of the act to which this is a further supplement, shall dig, or cause to be dug, any mud, sand or other earth, within the bounds of such meadow company, and within the bank securing, or intended to secure, the meadows and marsh of such company from the overflow of the tide, then, and in that case, such manager or managers, or his or their successor or successors, shall pay, or cause to be paid, to the person or persons so damaged as aforesaid, a reasonable compensation for the same; and in case the said manager or managers cannot agree with the owner or owners of the soil, as to the amount of damages sustained, the said manager or managers shall choose one disinterested freeholder resident in the township in which the damage was sustained, and the owner or owners of the soil shall choose another disinterested freeholder resident as aforesaid, which two parties shall choose a third disinterested freeholder resident as aforesaid; and the three persons so chosen, shall view the premises and assess the damages sustained as aforesaid; and their decision, or the decision of a majority of them, put in writing under their hands, shall be binding and conclusive on the parties.

How ascertained.

Damages to be paid.

39. SEC. 2. That it shall be the duty of the said manager or managers, within ten days after a copy of the said decision shall have been served upon him or them, to pay to the owner or owners of the said soil the damages so ascertained, and also to pay the expenses and compensation of the said freeholders; and in case he or they shall neglect or refuse so to do, the said owner or owners may maintain an action, and recover judgment against him or them for the amount thereof, with costs, in any court of competent jurisdiction; and that the amount of the damages, expenses and compensation, which shall be paid by any such manager or managers, in pursuance of this act, shall be allowed and credited to him or them, in the settlement of his or their accounts.

P. L. 1849, p. 270.

Supplement.

Approved March 1, 1849.

WHEREAS, the security of the banks and other works, erected for the protection of meadows reclaimed from overflow by the tide, is frequently endangered by the removal of the mud, or guards, lying outside of said banks; therefore,

Mud or guards outside of bank not to be removed.

40. SEC. 1. That hereafter it shall not be lawful for any person to remove any portion of the mud, or guards, lying outside of the banks, or other works, and within six rods thereof, belonging to any bank or meadow company (except for necessary repairs to said banks or other works, in the manner prescribed in the act to which this is a supplement), without the consent of a majority of said company first obtained, at a regular meeting thereof, held according to law.

Supplement.

Approved April 5, 1855. P. L. 1855, p. 696.

41. SEC. 1. That if the owners of more than one-half the number of taxed acres of any meadow now or hereafter to be enclosed by a bank, dam, sluices and other water works, laid out by commissioners appointed and acting under the first section of the law to which this is a supplement, shall deem the location thereof unsafe or hard to be maintained, by reason of wash, breach, or other cause, they may apply to the court of common pleas, in the manner directed in the said first section of the law above recited, and the said court shall appoint double the number of commissioners first appointed for the laying out of said bank, dams, sluices and other water works, a majority of whom, after hearing the parties and viewing the premises, may, and they are hereby empowered to make such alterations in the location of said bank, dam, sluices and other works, as they shall think necessary; and it shall be their duty to make an actual survey, describing the alteration so made, and setting the same forth in a certificate, which certificate shall be recorded in a book by the clerk of the court from which they received their appointment.

How alteration in the location of banks, dams, sluices, etc., may be made.

Certificate of survey to be recorded.

42. SEC. 2. That when the commissioners, acting under the first section of this act, shall, by any alteration in the location or place of making the bank, dams, sluices and other works, or any part thereof, leave a portion of the meadow unenclosed, they shall set off such portion of the meadow adjacent to the bank, dams, sluices and other works, as they shall deem sufficient for the making and maintaining of the same, which said meadow so set off, they shall cause to be surveyed, and embody the survey thereof in the certificate required to be made by them in the first section of this act; and the said commissioners shall value the meadow so set off, and determine the amount to be paid therefor by the meadow company, to the owner or owners of the soil; which amount shall be final and conclusive to the parties.

Lands left unenclosed by alterations how paid for.

43. SEC. 3. That the amount so ascertained, together with the expenses attending the same, shall be paid by the manager or managers of the meadow company, in thirty days after notice of such decision shall be served on him or them, to the owner or owners of the soil; and if he or they neglect or refuse to pay the same, the said owner or owners may maintain an action against him or them therefor, in any court having competent jurisdiction; *provided always*, that the amount so paid by the said manager or managers, shall be allowed to him or them in the settlement of his or their accounts with the meadow company.

Expenses to be paid by meadow company in thirty days.

44. SEC. 4. That it shall be lawful for the manager or managers of the meadow company to enter upon the old bank and maintain the same until such time as the bank, dams, sluices, or other water works shall be completed, in the location fixed by the commissioners; and the old bank shall not be considered as abandoned unless the owners of more than one-half the number of taxed acres shall so determine, but shall remain and be considered as part of the bank of the company, until the bank, dams, sluices or other water works in the new location, shall be completed.

Meadow company may maintain old bank until new bank, etc., completed.

Supplement.

Approved March 20, 1857. P. L. 1857, p. 543.

45. SEC. 1. That in case the owner or possessor of any marsh, meadow ground or swamp, is unknown, the managers mentioned in the fifth section of the act to which this is a further supplement, may make the assessment required by said section upon marsh, meadow ground or swamp, belonging to a person or persons unknown, and whereof there is no possessor, and so state the same in their duplicate.

Assessments how made where owner unknown.

46. SEC. 2. That the treasurer, on the receipt of the duplicate mentioned in the sixth section of the act to which this is a further supplement, in case the owner or possessor of marsh, meadow ground or swamp named in such duplicate, cannot be found in this state, may make the demand required by said section, by advertising the same in a newspaper circulated in the county wherein the marsh, meadow ground or swamp of such non-resident owner or possessor may lie, for the space of four weeks next before the time of payment; and in case the owner is unknown, and there

Treasurer to make demand by advertisement.

is no possessor, such treasurer may make the demand required by said section, by advertising the same in such newspaper for the like space of time, giving in the advertisement a brief description of the marsh, meadow ground or swamp upon which the assessment has been made.

Supplement.

P. L. 1870, p. 30.

Approved March 16, 1870.

Change of water course, &c., must be laid before an annual meeting of the company, upon due notice.

47. SEC. 1. That whenever a change in locality, or otherwise, of water courses or sluices is thought to be advisable by any owner or owners of meadow already banked in, or which may hereafter be banked in, such change may be laid before an annual meeting of the company in which said meadow is located; or such owner or owners may call a meeting of the company to consider the same; but whether such proposed change shall be brought before the annual meeting or the special meeting called for the purpose, ten days' notice shall be given by advertisements set up in five of the most public places in the vicinity of said meadow, and by one advertisement in a newspaper circulating in the neighborhood, setting forth the time, place and object to be attained; if approved by said meeting, it may be lawful for the manager or managers to proceed to carry the same into effect; *provided*, no such change shall be made without the owners of a majority of the whole number of acres of meadow in such company are represented or present, and consenting thereto.

Proviso.

II. Of draining swamp or meadow ground.

An act to enable the owners of swamp or meadow ground, to drain the same, and to repeal a law heretofore made for that purpose.

Rev. 128.

R. S. 731.

Passed November 24, 1792.

Surveyors of the highways and chosen freeholders empowered to view the land, etc.

48. SEC. 1. That from and after the passing of this act, it shall and may be lawful for any person or persons, who may have any meadow, or land improved, or capable of being improved into meadow, lying or being so situated as that it cannot be drained sufficiently for the effectual improvement of the same, without clearing out creeks or natural water courses, or cutting into or through the meadows or other lands belonging to or in possession of such person or persons as will not join in cutting, clearing creeks, or natural water courses, or permit a sufficient ditch or drain to be cut and kept open into or through the same, to apply to the two surveyors of the highways and the two chosen freeholders of the township in which the land doth lie, who are hereby directed and required, upon ten days' notice given for that purpose, as well to the person through whose land or possession the said ditch is proposed to be cut, or creek or natural water course cleared, as to the surveyors and freeholders, particularly specifying the time and place of meeting to view the premises; when they, or a majority of them, in case the ditch or drain, or clearing the creek or water courses, applied for shall appear necessary and reasonable, shall lay out such ditch, drain or water course, as in their judgment shall be sufficient for the purpose, and in such place or places as will be most proper for draining the said meadow or land, with as little detriment, however, as may be to the owner or possessor of the premises through which the said ditch, drain or water course may run or be laid, causing a proper return of such ditch, drain or water course to be made, describing the beginning and several courses and distances thereof, from an actual survey made by a surveyor, and signed by him and the aforesaid surveyors of the road and freeholders; which actual survey shall be recorded in the clerk's office of the county, who shall be entitled to receive three shillings for the same; and the record thereof may be given in evidence in any court of law; the expenses thereof to be paid by the owners or possessors, in proportion to the benefit they may receive thereby.(a)

Survey to be recorded.

How expenses to be defrayed.

(a) After a ditch or drain has been laid out for a year, it is too late to object by *certiorari*, *Haines v. Campion*, 3 *Harr.* 49. In altering a ditch the same notice is necessary as in opening one, *State v. Lord*, 2 *Dutch.* 140. The freeholders are the sole judges of the necessity of the drain, and of the

damage that may be caused by it, *Stout v. Freeholders*, 1 *Dutch.* 202. How they acquire jurisdiction, *Ibid.* Damages cannot be assessed to an applicant, *State v. Lord*, 2 *Dutch.* 140.

49. SEC. 2. That in case any or either of the surveyors or freeholders aforesaid should be interested, either for or against the water course applied for, application shall be made to any other surveyor or freeholder of the same county, chosen as aforesaid, being disinterested and living nearest to the premises, who is and are hereby directed and required, upon notice as aforesaid, to attend in the room and stead of him or them so interested, and to do and perform the same duties, as if he or they resided in the township where the ditch or drain, or clearing of a creek or water course, shall be applied for.

Surveyor or freeholder interested, to whom application made.

50. SEC. 3. That whenever any such creek, ditch, drain or natural water course is necessary for the improvement of lands as aforesaid, shall happen to be in or on a line between two townships, or leading out of one township into another, it shall and may be lawful for the person or persons applying, and he, she or they is and are hereby required to call the surveyors of the highways and chosen freeholders of both the said townships, who, when met, or a majority of them, shall proceed in the same manner as is before directed for the chosen freeholders and surveyors of the highways of a township to proceed; and the decree of them, or a majority of them, shall be equally binding upon all parties; *provided always*, that nothing contained in this act shall empower the surveyors and freeholders aforesaid, to lay any water course through a mill dam or other works, erected for the accommodation of a mill or the manufacturing of iron.

When water courses in two townships, surveyors and freeholders of both to be called.

Act not to affect mill dams, etc.

51. SEC. 4. That there shall be allowed to the surveyors and freeholders, for the time they may respectively be employed in performing the duties enjoined them by this act, the sum of seven shillings and sixpence a day each, to be paid by the person or persons requesting such service; and in case either of the surveyors or freeholders, appointed for laying out or clearing the ditches, drains, creeks or water courses hereinbefore mentioned, shall neglect or refuse to do and perform the duties enjoined him by this act, he, so offending, shall forfeit and pay, for every such neglect or refusal, the sum of three pounds, to be recovered in an action of debt, by the party applying, to and for his use.

Fees of surveyors and freeholders.

Penalty for neglect.

52. SEC. 5. That in all cases where ditches or drains shall be laid into or through the land of any person or persons, not benefited by, or requesting such ditch or drain, or clearing a water course, that the surveyors and freeholders, laying out the same, shall be and they hereby are required to assess the damage the owner or owners of land damaged may sustain thereby, and also the quota each person shall bear, who shall be benefited thereby; which assessment or quota shall become a legal debt, and be immediately paid by each person so assessed, to the person or persons injured.

Damages to be assessed.

[Sec. 6 repealed].

53. SEC. 7. That whenever water, conveyed in ditches, drains or water courses as aforesaid, shall be carried or vented through gates, dams or sluices, or other works, that then all persons interested in such ditches, drains or water courses, shall bear such a share or proportion of the expense of keeping such dams, sluices or works in repair, as shall be fixed and determined by the surveyors and freeholders laying out such drains as aforesaid, in all cases where the surveyors and freeholders shall judge a proportion of such expenses ought to be borne by the owners of land drained as aforesaid.

Dams, sluices, etc., how to be made and kept in repair.

54. SEC. 8. *Provided always*, that in all cases where ditches, drains or water courses shall be laid out pursuant to the directions of this act, the same shall be on lines between proprietors of land, where the same can be done with convenience to all parties concerned.

Ditches and water courses to be laid on lines between proprietors.

55. SEC. 9. AND WHEREAS, there are large tracts of land unimproved, and lands held in common by the general proprietors in this state, by means whereof it will be difficult to recover the assessments and expenses directed by this act in case of default, *be it, therefore, further enacted*, that it shall and may be lawful, for the recovery of the said assessments and expenses, for any person or persons entitled to recover the same, upon his or their giving notice, by advertisement, of the sum assessed or expenses adjudged, in three or more public places in the county where the lands lie,

How assessments made and collected on proprietors' lands.

and in one or more of the newspapers of this state, for the space of six weeks, and the general proprietors refusing or neglecting to discharge the same, the party entitled to receive the same, may make return of such delinquents to one of the judges of the inferior court of common pleas for the county, who shall enter judgment against such delinquent proprietor for such assessment, which judgment shall be filed in the clerk's office of the county, as of record, and writ of execution shall issue and be recorded by the clerk against the lands of the said delinquents, directed to the sheriff of the county, to make sale and dispose of so much of said lands, as near as may be, as will be sufficient to discharge the said assessment or expenses; and if upon such sale there should be any overplus, the said person or persons so prosecuting are hereby declared to be accountable for the same to the general proprietors, their agent, or attorney.

Survey of land to be made, when necessary to apportion the expense.

56. SEC. 10. That in order the more fully to enable the surveyors and freeholders, appointed as aforesaid, to allot to each person concerned, his or her just proportion of such ditch, drain or water course, to clear, make, support and keep open, they be empowered and directed, whenever they deem it necessary, to cause actual surveys to be made of the quantity of meadow or swamp held by each owner or possessor, that is benefited thereby, the expense thereof to be paid by each owner and possessor in proportion, as before directed.

Party aggrieved may appeal.

57. SEC. 11. That if any person or persons shall think themselves aggrieved by any assessments made by virtue of this act, that on payment of such assessment, he, she, or they may appeal to the next court of common pleas, to be held in and for the county in which such assessment is made, which court is hereby authorized to decide thereon, by making abatement or otherwise, as shall appear equitable and just.

P. L. 1828, p. 100.

Supplement.

Passed February 25, 1828.

Har. 174.

58. SEC. 1. That in addition to the notice required to be given in and by the first section of the act to which this is a supplement, ten days' notice shall be given, by advertisement in one of the newspapers printed in this state, and circulating in the township or townships in which the meadow or land proposed to be drained is situated, and also by advertisements, set up in five public places in each of said townships, specifying the time, place, and purpose of the meeting of the surveyors of the highways and chosen freeholders; on the legality of which notices, the said surveyors and freeholders, when met, may decide, and their decision shall be final and conclusive.

R. S. 735.

Ten days notice to be given of meeting of owners.

59. SEC. 2. That the said surveyors and freeholders, who shall concur in laying out any ditches or drains, or clearing any water courses, as mentioned in the act to which this is a supplement, shall, at the same time, allot to each person interested therein, whether the said ditch, drain, or water course shall be laid into or pass through his or her meadows or lands, or not, the part or parts thereof which he or she shall clear, make, support, and keep open; which part or parts, so allotted, he or she, or his or her heirs or assigns, shall for ever thereafter be empowered and obliged to make, open, and clear out, from time to time, whenever the same may be necessary; and if any person or persons shall neglect or refuse to make, repair, and keep open his, her, or their proportion or allotment of such ditch, drain, or water course, after having been notified in writing, twenty days, to do so, by any person or persons benefited or to be benefited by the said ditch, drain, or water course, then and in such case, at any time after the expiration of the said twenty days, such person or persons so giving notice, may make, open, and clear out the part or parts of the said ditch, drain, or water course allotted to the said person or persons so neglecting or refusing, doing as little damage to the owners or possessors of the said land or meadow, as the nature of the case will admit of; and may recover the expenses thereof, from the person or persons so neglecting or refusing as aforesaid, in an action of debt, with costs of suit; *provided always*, that in all cases where ditches, drains, or water courses, laid out as aforesaid, shall be on lines between different proprietors, the mud, earth, and rubbish shall be cast equally on each side, except the owners or possessors, by agreement, shall otherwise determine.

Apportionment of labor among owners, etc.

Supplement.

Passed February 14, 1881.

P. L. 1831, p. 115.

Har. 344.

R. S. 736.

Owners of meadows within the former act, may apply to the surveyors, etc., to apportion the work.

60. SEC. 1. That from and after the passing of this act, it shall and may be lawful for any person or persons, who may have any meadow or land improved, or capable of being improved into meadow or pasture, or arable lands, which hath heretofore been, or may hereafter be surveyed and laid out in ditches, drains, creeks, or water courses, under and by the directions, and in conformity to the act to which this is a supplement, as often as the same may, from time to time, require to be renewed, ditched, cleared out, and effectually repaired, to apply to the two surveyors of the highways, and the two chosen freeholders of the township in which the land doth lie, who are hereby directed and required to proceed to view and examine the premises so laid out as aforesaid, and which are wanting to be renewed, ditched, cleared out, and effectually repaired, and to take, order, and direct how and in what manner, and in what proportions, the same shall be done by each owner or occupant of any such meadow or swamp lands; and shall in all things be governed by the directions contained in the act to which this is a supplement; and shall be entitled to the same fees, and be subject to the same penalties, as are provided for in the act to which this is a supplement.

Fees, etc.

61. SEC. 2. That whenever any person or persons shall apply to the surveyors of the highways and the chosen freeholders, as aforesaid, and have given the notice required by law, of the time and place of such meeting, it shall be the duty of such person or persons to produce to the said surveyors and freeholders a certified copy from the clerk of the county, of the actual survey of such lands as shall be recorded in the clerk's office of the county, and which it is intended to have the ditches, drains, creeks, and water courses renewed, cleared out, and effectually repaired, and also to furnish a competent surveyor, with compass and chain, to resurvey and mark out said meadow or swamp lands, agreeably to the said original survey and the directions of said surveyors of the highways and the chosen freeholders, who shall thereupon allot to each person interested therein, the part or parts thereof, he or she shall clear, make, support, and keep open, and in what manner and at what times the work shall be done; and if any person or persons, owners of land and meadow directed to be drained as aforesaid, shall neglect to make, repair, and keep open his, her, or their proportion or allotment of said ditch, drain, or water course, that then, and in such case, any one or more of the owners of such land or meadow may make, open, and clear out the said ditch, drain, or water course, from time to time, and recover the expenses thereof from the person or persons neglecting to do the same, by a sale of the wood, grass, herbage, or pasture on said land or meadow which shall be so ditched and drained.

Lands to be resurveyed.

Allotment of work to each owner.

How to proceed for neglect.

62. SEC. 3. That whenever it shall be necessary to sell the wood, grass, herbage, or pasture, on any such land and meadow as aforesaid, it shall be the duty of any one of the said surveyors of the highways, or chosen freeholders of the township in which the said land or meadow hath been so drained, as aforesaid, and who is no ways interested therein, to go upon the ground and view and appraise such opening, draining, clearing out, and ditching of such land or meadow, in presence of the owner thereof, if he, she, or they will be present upon notice given them, if easily to be found, and then and there to assess the amount due for such work, and one dollar for his services, all of which he shall certify in writing, under his hand and seal; and the person having done such work, shall thereupon file the said certificate before some justice of the peace of the county, where the land lies, who shall thereupon enter judgment for the sum so appraised or assessed, with costs, and grant execution thereon, for the sale of so much of the wood, grass, herbage, or pasture, or any such land and meadow as is contained in the certificate aforesaid, as will pay said judgment and costs; *provided*, that no such appraisal or assessment shall be made more than once in six years.

Appraisalment of labor neglected to be done.

How to be recovered.

Proviso.

AND WHEREAS, there are large tracts of land which lie adjoining on rivers, creeks, and streams of water, or otherwise, held by different owners,

Preamble.

and not easily fenced in separate lots, but which might be enclosed in common under safe and easy regulations, therefore ;

How to proceed to enclose lands of several owners lying contiguous to creeks, etc., in a common fence.

63. SEC. 4. That it shall and may be lawful for any persons having lands so situated, and when the owners of two-thirds of such lands shall agree to fence the same, to apply to the two surveyors of the highways and the two chosen freeholders of the township in which the land doth lie, who are hereby directed and required, upon ten days notice given for that purpose, as well to the persons owning or in possession of said lands intended to be fenced, particularly specifying the time and place of meeting, to view the premises, and when the lines of such lands are not known, then they, or a majority of them, shall cause an actual survey of said lands to be made by a surveyor, and a map and return thereof shall be recorded in the clerk's office in the county where the land lies ; and shall thereupon mark out, determine, and fix upon the distance and kind of fence each owner or occupant of such tract of land shall make and maintain of such outside or boundary fence ; and also to assign to each one of said owners or occupants, his, her, or their proportion of horses, cattle, or sheep, that may run at large and be pastured thereon ; and the time or times when no such horses, cattle, or sheep shall be suffered to run thereon ; and the amount of damage each one shall pay for a breach of any such regulations ; all of which said allotment of fence and regulations shall be made out in writing, and signed by the said surveyors and freeholders, and recorded in the clerk's office of the county, a certified copy of which, shall be received in evidence in any court of record in this state ; *provided always*, that nothing herein contained shall be construed to prevent any person or persons from enclosing, with lawful fence, his, her, or their lands separate and apart, so as not to be subjected to any of the conditions of this act, in relation to fences.

Each owner to have assigned the number of cattle, etc., which may run on the enclosed pasture.

Proviso.

How to proceed when any of the owners neglect to fence.

64. SEC. 5. That if any person or persons, owners or occupants of any such tract of land, as shall be ordered to be so enclosed, who shall refuse or neglect, for the space of six months after notice in writing shall have been served upon him, her, or them, it shall and may be lawful for any one of the said owners to make, amend, keep up and repair such person's or persons' part or allotment of said fence or enclosure, and have and enjoy his, her, or their proportion of the pasture of such horses, cattle, or sheep that may be allotted to the owners of such lands as shall neglect or refuse to fence the same, so long only as such owner or occupant shall neglect to pay a reasonable compensation for such fencing or enclosure, or shall not enclose his, her, or their lands separate and apart from such lands held in common.

What navigable streams are not lawful fences.

65. SEC. 6. That no river, creek, pond, or navigable stream, where the tide ebbs and flows, so as to leave less than three feet depth of water therein at low tide, shall be adjudged or deemed a lawful fence within the meaning of the act entitled "An act regulating fences," passed the twenty-third day of January, A. D. seventeen hundred and ninety-nine.

Nothing in act to be construed to repeal "Fence Act."

66. SEC. 7. That nothing herein contained, shall be construed as repealing any part of the act to which this is a supplement, or the act entitled "An act regulating fences," passed the twenty-third of January, seventeen hundred and ninety-nine.

P. L. 1833, p. 156.

Supplement.

Passed February 24, 1838.

R. S. 739.

Ditches, etc., may be reviewed.

67. SEC. 1. That in any case where a ditch, drain, or water course has heretofore been, or shall hereafter be laid out and opened, pursuant to the act to which this is a supplement, for the period of one year, it shall be lawful for any owner or possessor of any land drained thereby, or through which the same shall be cut or run, or the water flow, to apply to the surveyors of the highways and chosen freeholders for the time being, to review the premises, proceeding therein in all respects as by the said act is required to be done to lay out the ditch, drain, or water course ; and the said surveyors and freeholders, or a majority of them, shall have authority to alter, change, or abolish the said ditch, drain, or water course, as shall then appear to them to be just and reasonable, and to make a new assessment of damages, if they judge the same proper, proceeding in all respects as is required to be done in laying out said ditch, drain, or water course ;

provided, that if they shall abolish the said ditch, drain, or water course, instead of an actual survey, they shall make and sign a certificate to that effect, which shall be recorded in the clerk's office of the county. Proviso.

Supplement.

Approved March 4, 1852. P. L. 1852, p. 108.

68. SEC. 1. The survey to be made, as directed in the first section of the act to which this is a supplement, shall embrace all the land, meadow and swamp, that in the judgment of the said surveyors and freeholders, or a majority of them, will be benefited by the said ditch or drain; and, within six months after the said survey shall have been recorded in the clerk's office of the county, it shall be lawful for any two or more of the owners of land to be benefited by said drain, to call a meeting of the persons through whose land the said drain is laid, or who are to be benefited thereby, by written or printed notices served upon the owners or possessors of all the land, meadow and swamp, embraced within the limits of said survey, for at least two weeks prior to said meeting; and when assembled, the said owners or persons interested as aforesaid, shall and may, by plurality of the votes of those met, choose one or more manager or managers, a treasurer and clerk, who shall hold their offices for one year and until others are elected. Survey to embrace all land, meadow and swamp benefited by ditch or drain.
Managers and other officers to be elected.

69. SEC. 2. It shall be the duty of the said manager or managers to proceed and cause the said ditch or drain to be cut, dug, cleared out, and fully completed, and the necessary dam or dams, sluice or sluices, and other water works, as directed by the survey and return of the said surveyors and freeholders aforesaid, to be made, laid and constructed, so as effectually to complete the said drain; and the said manager or managers are fully authorized and empowered, from time to time, during the progress of the work, or whenever occasion may require, to make out estimates of the expense thereof, under his or their hand or hands, and cause the same to be recorded in the clerk's book of said company, and shall then assess the same ratably on all the land that is embraced within the said survey of the surveyors and freeholders, agreeably to the quantity each owner may have within the said survey, and in proportion to the benefit to be derived therefrom; and shall state the said assessment in a regular duplicate, containing the names of the owners, the number of acres and parts of acres held by each, the sums assessed on each severally, and the time of payment, which duplicate shall be signed by the said manager or managers, and delivered to the treasurer chosen as aforesaid. Managers to cause ditch, &c., to be completed as directed by survey and return.
Assessment therefor.

70. SEC. 3. The treasurer, on receipt of the said duplicate, shall in person, or by notice in writing left at the usual place of abode of each owner, demand of and from each owner (if resident in the said county), twenty days before the time of payment, the sum assessed as aforesaid; and if any of the owners reside out of the county, then public notice shall be given, in a newspaper published in said county, for at least three weeks before the time of payment; and if any of the said owners shall neglect or refuse to pay the sum assessed as aforesaid for the space of ten days after the time fixed for the payment thereof, it shall and may be lawful to and for the said treasurer to seize, and sell at public vendue (after ten days' notice set up in three of the most public places in the township where the premises lie) the wood, grass, pasture, herbage or other vendible property thereon, sufficient to make the amount of the assessment and cost of sale; and for want of sufficient vendible property on said premises to make the amount required, it shall and may be lawful to and for the said treasurer to seize and rent out by public vendue, to the highest bidder, for so long a time and no longer as will be requisite, so much of the land, swamp, or meadow ground within said survey, belonging to or in possession of such delinquent, as may be sufficient to discharge such assessment, and all expenses attending the recovery thereof, having first advertised the same, for the space of three weeks, in three of the most public places in the neighborhood where the said land, swamp, or meadow lies. Treasurer to collect assessments.
How collected.

71. SEC. 4. If said assessment, so made and collected as aforesaid, should not produce a sufficient sum of money to fulfil the purposes above men- Further assessment for deficiency.

tioned, the said managers shall make, in like manner, an estimate of such sum as may be further necessary, which shall be assessed and collected in like manner as is hereinbefore directed.

Managers to
cause repairs to
be made in
drains, &c.

72. SEC. 5. The said manager or managers shall, from time to time, at least once in every six months, inspect and examine the said drain, sluice, and water works so erected or made for the benefit of the aforesaid company, and shall cause or procure to be made or done, all such repairs and amendments as to them, or a majority of them, shall seem necessary, and for defraying the expense thereof, shall assess, in manner aforesaid, such sum or sums of money as may be requisite, which shall be collected in manner aforesaid.

Annual election
of officers.

73. SEC. 6. After the first meeting of the said owners, at the time and place appointed as aforesaid, it shall and may be lawful for the said owners to meet and assemble statedly, yearly and every year thereafter, at such time and place as a majority of those met at the first meeting may have appointed, and there, by ballot or otherwise, and plurality of votes of those met, appoint a manager or managers, a treasurer and clerk, as aforesaid, to continue for one year, and from thence until others are appointed to supply their places; and the manager or managers, treasurer and clerk, shall have the like powers as those hereinbefore mentioned; *provided always*, that in all the meetings of the said owners, each shall be entitled to one vote for each acre he holds within the aforesaid survey; and nothing in this act contained shall be construed to prevent a manager from being treasurer, clerk, or both.

Duties of clerk.

74. SEC. 7. It shall be the duty of the clerk, chosen as aforesaid, from time to time to enter in a book, to be provided for that purpose, all votes, proceedings, orders, and assessments made by the said owners, or the manager or managers, and all transactions whatsoever which the said owners or manager or managers shall direct, which book shall, at all times, be open to the inspection of any owner of land embraced within the limits of the survey.

Examination
and hearing by
surveyors and
freeholders on
application to lay
out ditch or
water course, &c.

75. SEC. 8. Whenever application shall be made to the surveyors and freeholders, as directed in the act to which this is a supplement, to lay out any ditch, drain, or artificial water course, straightening and clearing out, in whole or in part, any stream, creek, or natural water course running through any low meadows and swamp lands upon which said stream, creek, or natural water course, and below the said ditch or drain proposed, are situate, any water powers, mill dams, and mill privileges, and a notice shall be given in writing to said surveyors and freeholders, at any time previous to the laying out of any such ditch or drain, by any owner or owners, of any such water powers, mill dams, and mill privileges, requesting the said surveyors and freeholders to meet upon his, her, or their premises so as aforesaid situate, with a view of ascertaining any damage or injury that may accrue to said mill owner or owners by reason of the cutting of said ditch or drain, it shall be the duty of, and the said surveyors or freeholders are hereby directed and required to so meet upon said premises, at some short time after the service of such notice and before the laying out of such ditch or drain (notice of the time, place, and object of such meeting having been given by advertisements put up in three of the most public places in the township where the premises lie, at least ten days previous to said meeting), and to hear any allegations and proofs the parties interested may make and produce before them, touching the nature of said stream or natural water course so to be ditched and cleared out, and the situation of said water powers, mill dams, and mill privileges, with reference to any damages or injury to be done or caused to the same by reason of the cutting of said ditch or drain, and to weigh and take the same into consideration and account in determining whether or not the laying out of such ditch or drain shall be proper, reasonable and necessary.

Notice of
meeting.

If they lay out
ditch or drain
they shall assess
damages.

76. SEC. 9. If after such examination and hearing, the said surveyors and freeholders shall lay out such ditch or drain, they shall at the same time make an assessment of any and all damages that may arise and accrue (if any in their judgment will arise or accrue) to the said owner or owners of said water powers, mill dams, and mill privileges, by reason of the laying out and cutting said ditch or drain, and the same shall be

levied and collected, by the said manager or managers, in manner as hereinbefore provided in case of expense assessments, and immediately thereafter paid over to said mill owner or owners.

77. SEC. 10. If any owner or owners of such water powers, mill dams, and mill privileges, or any person or persons whose lands are included in the survey aforesaid, shall be dissatisfied and feel aggrieved at any such assessment or survey, an appeal may be had to the next term of the court of common pleas of the county where the premises lie, which court, upon proper cause shown, shall award a venire in proper form, directed to the sheriff of said county, for a jury of view, composed of twelve good and lawful jurors of said county, who shall (public notice having been given as aforesaid) meet upon the premises, and having been duly sworn or affirmed, before an officer competent to administer an oath or affirmation, faithfully and impartially to determine the question of damages or the limits of the said survey (as the case may be) about to be submitted to them, view the same, and, with the sheriff presiding, hear the allegations and proofs of the parties interested, in manner as hereinbefore provided, and make a reassessment of any and all the said damages as aforesaid, or a resurvey of the lands, as the case may be, which said reassessment or resurvey shall be final and conclusive; and the said reassessment shall be levied, collected, and paid over in manner as hereinbefore directed.

Persons aggrieved may appeal to court of common pleas.

78. SEC. 11. If the said surveyors and freeholders shall adjudge no damage or injury will accrue to said owner or owners of said water powers, mill dams, and mill privileges, by reason of said ditch or drain, and the said jury of view, if an appeal be taken, shall also so adjudge, then and in that case the expenses of the said surveyors and freeholders, together with the court and jury expenses, when an appeal is taken, shall be borne and paid by the said mill owner or owners; but if the said surveyors and freeholders shall adjudge any damage or injury shall or will accrue to said mill owner or owners, then the expenses so as aforesaid shall be borne and paid by the owners of the low meadows and swamp lands benefited and improved, as included in the survey or resurvey aforesaid, by the cutting and making of said ditch or drain, and shall be assessed, collected, and paid over, by the said manager or managers, as is hereinbefore directed.

Expenses of examination how paid.

79. SEC. 12. In case of an appeal by any owner or owners of any of the lands, meadows, or swamp, included within any survey under this act, for a resurvey, if no resurvey shall be ordered, then the expense of the said appeal shall be borne and paid by the appellant or appellants; but if a resurvey shall be ordered, then the expenses shall be borne and paid by the persons whose lands are included within the limits of said resurvey.

Expenses of application for resurvey.

80. SEC. 13. Such parts of the original act as are inconsistent with or repugnant to this supplement, be, and the same are hereby repealed.

Repealer.

Supplement.

Approved February 28, 1862. P. L. 1862, p. 79.

81. SEC. 1. That from and after the passing of this act it shall be lawful for any person or persons who intend to make application for the laying out of any ditch, drain or water course, pursuant to the provisions of the act to which this is a supplement, in case there shall be no surveyors of the highways duly elected and qualified in the township through which the ditch, drain or water course runs, to apply to the surveyors of highways of any of the next adjacent townships, who are hereby vested with the same power and authority as now belongs to the surveyors of the highways of the township through which the said ditch, drain or water course runs.

In case no surveyors of highways qualified in township, application to be made to surveyors of adjacent township.

82. SEC. 2. That all ditches, drains and water courses heretofore laid out by the overseers of the highways of the township, other than that through which the same runs, shall be deemed and taken to be as good and effectual in law, as if laid out by the overseers of the highways of the township through which it runs.

Ditches, drains, &c., heretofore laid by surveyors of other townships made good and effectual.

Supplement.

Approved March 4, 1874.

P. L. 1874, p. 23.

Proceedings in case it is necessary to clear out natural water courses, in order to drain land.

83. SEC. 1. That it shall and may be lawful for the owner or owners of any land improved or otherwise, lying or being so situate that it cannot be drained sufficiently for the effectual improvement of the same, without clearing out creeks or natural water courses, or cutting, opening or clearing out ditches or drains, into or through other lands owned by or in possession of such person or persons as will not sufficiently clear out creeks or water courses, or will not cut, make, clear out and keep open sufficient ditches or drains in or through the lands so owned or possessed by them, to make application for the laying out of a ditch, drain or water course, under the provisions of the act to which this is a supplement; and upon such application the same proceedings shall and may be had in all respects, for all purposes, and with the like effect, as can or may be had under the provisions of said original act, and the several supplements thereto, on any application now authorized thereby.

In townships where but one chosen freeholder is elected application may be made to him and to the chosen freeholder of an adjoining township.

84. SEC. 2. That in all cases where but one chosen freeholder shall be elected in the township, in or through which any ditch, drain or water course is proposed to be laid out or renewed and repaired, or altered or abolished, application may be made to the chosen freeholder of such township, and the chosen freeholder of any adjacent township of the same county, who in conjunction with such surveyors of the highways as are or may be authorized by law to act in the premises, shall exercise the powers, and perform the duties conferred and enjoined by the said original act and the several supplements thereto.

Proceedings in case the chosen freeholder or surveyor of highways is interested.

85. SEC. 3. That when any surveyor of the highways, or chosen freeholder of any township, in or through which any ditch, drain or water course is proposed to be laid out or renewed and repaired, or altered or abolished, shall be interested for or against the same, application shall be made to any surveyor of the highways, or chosen freeholder of any adjacent township of the same county, in place of the surveyor of the highways or chosen freeholder so interested as aforesaid, who in conjunction with such other surveyors and freeholders, as may by law be authorized to act in the premises, shall exercise the powers and perform the duties conferred and enjoined by said original act and the supplements thereto.

An act to provide for the opening and clearing out of the tail races and natural streams of grist mills and other water works.

R. S. 786.

Passed February 12, 1817.

Tail races of mills, etc., how opened.

86. SEC. 1. That the provisions of the act entitled "An act to enable the owners of swamp or meadow ground to drain the same, and to repeal a law heretofore made for that purpose," passed the twenty-fourth of November, one thousand seven hundred and ninety-two, shall be extended to the clearing out, to their accustomed and natural depth, the tail races and natural water courses of all grist mills or other water works now erected or hereafter to be erected in this state, under the provisions and restrictions contained in the said act.

III. Of roads to salt marsh or meadow.

An act to enable two-thirds of the owners in value of any body or tract of salt marsh or meadow, within this state, using a common road to the fast land, to support the same.

Har. 23.

R. S. 740.

Passed November 18, 1822.

When and how managers, etc., are to be chosen.

87. SEC. 1. That in case the owners of any body or tract of salt marsh or meadow, where roads to the fast land have been or hereafter may be laid out by law, or have been and hereafter may be established by contract or by the consent of the proprietors, cannot agree to support and keep the same in good and sufficient repair, it shall and may be lawful for two-thirds of the owners in value thereof, after giving three weeks' previous notice of their intentions, and the time and place of meeting, by advertisements set up in three of the most public places in the neighborhood, to meet, and by a plurality of the votes of those so met, to choose such person or per-

sons as they may think proper for manager or managers, treasurer, and clerk for the ensuing year, or until their next annual meeting, they shall likewise, at said first meeting, appoint three judicious and disinterested persons to value the said marsh or meadow belonging to each individual using said road, having regard not only to the value of said marsh or meadow, but also to the comparative benefit that may be derived to the owner, from the road so contemplated to be improved. (See *Sec. 94*).

88. SEC. 2. That the manager or managers, when appointed as aforesaid, shall, as soon as may be, cause all the lots or parcels of marsh belonging to each owner to be carefully and strictly measured, and a draught or plot to be made, showing the quantity held by each owner, and the valuation made thereon, and shall thereupon make an estimate of the sum or sums of money which will be necessary to defray the expense of the different services required by this law, and also of making and keeping the aforesaid road sufficiently good for hauling hay over, and shall assess the same ratably on said marsh, and shall state the said assessment in a regular duplicate, containing the names of the owners or possessors, the number of acres and parts of acres held by each, the sums assessed on them severally, and the time or times of payment, which duplicate shall be delivered by him or them to the treasurer appointed as aforesaid; and it shall be the duty of the manager or managers to keep in repair the said road, from time to time, as he or they shall think necessary; and the said manager or managers shall be accountable for any moneys remaining in his or their hands at the end of every year, or at the annual meeting; and if the said manager or managers shall refuse to pay such balance remaining in his or their hands, to his successor or successors in office, then such successor or successors shall sue for and recover the same, in an action of debt, with costs of suit. (See *Sec. 96*).

Measurement, plot, valuation, etc., to be made.

Duplicate to be delivered to treasurer.

Managers to keep road in repair, etc.

89. SEC. 3. That the treasurer, on receipt of said duplicate, shall in person, or by notice in writing left at the usual place of abode of each owner or possessor, demand of and from such owner or possessor, twenty days before the time of payment, the sums assessed as aforesaid; and if any of the said owners or possessors shall neglect or refuse to pay the sum assessed as aforesaid, for the space of twenty days after the time fixed for the payment thereof, it shall be lawful to and for the said treasurer to seize and rent out by public vendue, to the highest bidder, for so long a time, and no longer, as will be requisite, so much of the said marsh belonging to, or in possession of said delinquent owner or possessor, as may suffice to discharge such assessment and all expenses attending the recovery thereof, having first advertised the same for the space of three weeks, in three of the most public places in the neighborhood where said marsh lies, may be sold.

Meadows may be rented to pay assessment.

90. SEC. 4. That the owners and possessors of said marsh shall meet annually, after their first meeting, on the first Monday in May, at such places as they shall, by a majority of those met, appoint.

Managers, when to meet.

91. SEC. 5. That it shall and may be lawful for the said manager or managers, and he or they are hereby authorized and empowered, from time to time, to dig and take for the purpose aforesaid, any earth, mud or sod, in any part of the said marsh most convenient and least detrimental to the owners thereof, and to have free ingress and egress, for himself or themselves, his or their team or teams and workmen, through any part of said marsh, whenever he or they may deem it necessary.

Their powers.

92. SEC. 6. That it shall and may be lawful for the owners and possessors of two-thirds of said marsh in value, at their annual meeting, to pass such by-laws respecting the pasturing of said marsh, as a majority of those so met may think proper.

By-laws may be passed at annual meetings.

93. SEC. 7. That a new valuation or assessment may be had every ten years, if two-thirds of the owners in value and possessors deem it necessary.

A new valuation may be made every ten years.

Supplement.

Approved March 4, 1858.

P. L. 1858, p. 195.

94. SEC. 1. That the meeting authorized by the first section of the act to which this is a supplement, may be called by any three of the owners of any salt marsh or meadow, by serving a notice on the other owners

Meeting may be called by any three owners of salt marsh or meadow.

thereof, or in case they cannot be found, or giving four weeks' notice of the time and place of meeting to the other owners thereof, by advertisement in one of the newspapers published in the place nearest the road so contemplated to be improved, at least once in each week.

Duty of managers to build bridges, etc.

95. SEC. 2. That it shall be lawful for, and it is hereby made the duty of the manager or managers to be appointed by the first section of said act, to build, maintain and keep in repair good and sufficient bridges over all creeks, brooks, and ditches, that shall be otherwise impassable, and to construct dikes, dams, or sluice-ways, to prevent the overflow of tides, and the moneys required for the purpose shall be raised and expended in the same maner as the moneys required to be raised and expended by the act to which this is a supplement.

Assessments not invalidated if lots not strictly measured.

96. SEC. 3. That the assessment contemplated and required to be made by section second of said act shall not be held to be irregular or invalid, by reason of any omission, on the part of the manager or managers, to cause all the lots or parcels of marsh belonging to each owner, to be carefully and strictly measured; but it shall be the duty of the said manager or managers to ascertain as correctly as may be, without an accurate survey, the quantity held by each owner, and to make such draught or plot as is directed to be made by the second section of said act.

Repealer.

97. SEC. 4. That such parts of the original act as are inconsistent with, or repugnant to this supplement, be, and the same are hereby repealed.

IV. The drainage of lands.

An act to provide for the drainage of lands.

P. L. 1871, p. 25.

Approved March 8, 1871.

Managers of geological survey empowered on application of five owners of lots to examine low or wet lands.

98. SEC. 1. That the board of managers of the geological survey, on the application of at least five owners of separate lots of land included in any tract of land in this state, which is subject to overflow from freshets, or which is usually in a low, marshy, boggy or wet condition, shall be and hereby are authorized and empowered to examine such tract, and if they shall deem it for the interest of the public and of the land owners to be affected thereby, they are further authorized from time to time to make surveys of any such tract or tracts of land, and to decide upon and adopt a system of drainage for draining the same, and to cause maps of the same, together with the plans of drainage by them adopted, to be made; and for this purpose they shall be authorized to call in the assistance of the state geologist and such other persons as they may deem expedient, and when they shall have completed their said surveys, maps and plans, they shall make a written or printed report of the same to the supreme court of this state; and thereupon it shall be the duty of the said court at the same or next stated term thereof, or as soon as can conveniently be done upon reasonable notice given to that effect and published in a newspaper circulating in the county where such tract of low lands is situate, to appoint three commissioners (not interested in the lands to be drained) to superintend and carry out the drainage of any particular tract or tracts aforesaid, whose duty it shall be to carry out and execute the system of drainage which may thus have been adopted and reported by the said board of managers in reference to said particular tract or tracts; *provided*, that if, at the time fixed for such appointment of commissioners, it shall appear to the court by the written remonstrance of the owners of a majority of the said low and wet lands, duly authenticated by affidavit, that they are opposed to the drainage thereof at the common expense, then the said court shall not appoint such commissioners as is directed in this section.

May decide upon a system of drainage.

Report to supreme court.

Appointment of commissioners to superintend and carry out drainage.

Majority of owners may remonstrate.

Oath of commissioners.

Powers of.

99. SEC. 2. That the said commissioners, before entering upon their duties, shall take an oath before the chancellor or a justice of the supreme court, faithfully to perform the duties of their office, and shall cause the same to be filed in the clerk's office of the supreme court, and shall thereupon have full power to cause the said tract of land, for the drainage of which they shall have been appointed commissioners, to be drained in accordance with the general plan of the said board of managers; and for that purpose the said commissioners and all contractors or other persons employed by them

or under their authority, shall have power to enter upon any lands for the purpose of executing the requisite work or procuring materials therefor; and after the completion of said work, the expense thereof and of all materials used therefor, including the compensation of said commissioners (estimated at the rate of five dollars per day for every day actually employed) and also the expenses of the said board of managers, shall be made up by said commissioners and returned to the said supreme court in a report to be made by them, together with a general outline, description or delineation of the lands and territory which, in their judgment, ought to contribute to the said expense; notice of which report shall be given in some newspaper or newspapers circulating in the vicinity of said lands for the space of four weeks, at least once in each week, in order that any persons interested may examine said report, and, if they see fit, file objections to the same; if any such objections, duly verified on oath, be filed within said period of four weeks, the supreme court shall determine upon the same in a summary manner, and with as little delay as possible, and shall thereupon, without further notice, make a rule or order directing the said commissioners to distribute and assess the amount of said expense and interest upon the lands contained within the territory reported by them, originally or as corrected by the supreme court, in proportion, as near as they can judge to the benefit derived from said drainage by the several parcels of land to be assessed, and in making said assessment the several parcels of land assessed may be designated by the name of the owner or the occupier, or in such other manner as may be most convenient in each case, and the assessment may be made either upon each separate parcel in gross, or at a rate per acre, and the assessment made upon each parcel of land, with lawful interest thereon, shall be a lien upon the said parcel of land without regard to whom the owner or owners of said land may be; and when the said assessment shall be completed, the same shall be deposited in some convenient place for inspection by the parties interested; and notice of the completion of said assessment, and of the place where the same shall be so deposited, shall be given in at least two newspapers circulating in the vicinity of said lands, and published at least once a week for six weeks, which notice shall designate a time and place when and where the said commissioners will meet to hear objections to said assessment; and the commissioners having heard and decided upon such objections as shall be made to them, they shall proceed to complete their assessment and shall file the same in the clerk's office of the supreme court, and a copy thereof, or of so much of the same as shall be made on lands in any one county shall be filed in the clerk's office of said county, and notice of the filing thereof shall be given in at least two newspapers, circulating as before mentioned, once a week for at least four weeks, after which, if no objections be made to said assessment, the same shall be confirmed and made absolute by the supreme court; if objections to said assessment be filed in the said period of four weeks, the supreme court shall hear and determine said objections in a summary manner and with as little delay as possible; but they shall not reverse said assessment, or any part thereof, except for some error in law, or in the principles of assessment made or committed by said commissioners; if for any such cause the said assessment or any part thereof shall be reversed, it shall be again referred to the said commissioners to be corrected in accordance with the decision of the court in that behalf, and when corrected and filed as before, four weeks' notice as aforesaid shall be given thereof, after which, if no further objections be made, the said assessment, as corrected, shall be confirmed; but if any further objections be made, the same shall from time to time be considered and determined as before, until the court shall finally confirm the assessment as duly modified and corrected; and when said assessment shall be finally confirmed, the said commissioners shall give public notice in two newspapers circulating as aforesaid, once in each week for four weeks, requiring the several owners or other parties interested in the lands assessed, to pay the assessment thereon at such time and place in the vicinity of said lands as shall be designated by the commissioners, at which time and place the said commissioners, or one of them, or some person or persons by them appointed, shall attend to receive the said assessments.

Compensation of.

Report of.

Notice to be given.

Objections may be filed.

Assessments to be made.

Assessments to be a lien.

Notice of assessments to be given.

To be filed in supreme court clerk's office.

To be confirmed by supreme court.

Objections, how made and heard.

Proceeding in case assessment is reversed.

Further objections.

Agents to be appointed to collect assessments.

In case owner is not known or non-resident.

Land may be sold.

Immediate possession to be had.

Obstruction or injury to water course or mill-dam.

Damage, how estimated.

Proviso.

Appeal, how heard.

Copy to be served.

Amount of assessment may be paid into court.

Costs, who to pay.

100. SEC. 3. That if the assessment on any parcel or parcels of land be not paid at or before the time mentioned in the said notice for paying the same, the commissioners are hereby authorized and empowered to employ and authorize an agent or agents to demand and receive the said assessments which may be so unpaid, together with interest thereon, and two per centum commission for collecting the same, which agent or agents shall proceed to demand payment of all persons whose lands shall be assessed, and whose assessments shall be placed in their hands respectively for collection, so far as such persons may be known and may reside in the county in which such lands shall be situate, and not incapacitated to transact business; but if the owner of any such lands shall not be known or shall not reside in said county, or cannot be found by said agent or agents, or shall be under age, insane, or otherwise incompetent to transact business, or if, on being found, and such demand being made, he or she shall neglect or refuse to pay such assessments, with interest and costs, the said commissioners shall be and they are hereby authorized and empowered to sell said parcel of land for the least number of years that any person will take the same, and pay the assessment thereon with interest thereon, and the costs and expenses of such sale shall be the same as allowed to sheriffs in like cases, which term shall be ascertained by a public bidding and outcry, of which two months' notice shall be given in a newspaper circulating in the vicinity of said land, and when such sale shall be made, the said commissioners, on receiving from the purchaser the amount of the assessment, with interest, costs and expenses of sale, shall give him or her a deed for the land for the period or term for which the same was bid off, and thereupon the said purchaser shall be entitled to immediate possession of said land, and to take the rents, issues and profits thereof, for the period or term aforesaid, and if possession be denied or resisted by any person or persons, the supreme court, on application made thereto, and the fact of such sale being shown by affidavit and a copy of the commissioner's deed, shall make an order directing the sheriff of the county in which said lands lie to put the said purchaser into possession.

101. SEC. 4. That if the system of drainage which may be adopted in any case herein provided for shall require the obstruction or injury of any water course, or the alteration or lowering of any mill dam, or the permanent occupation of any land, whereby the owner or occupier thereof shall be injured, or shall sustain damage to his legal rights, such damage shall be estimated and appraised by the said commissioners, and shall form part of the expenses of such drainage to be raised by assessment as herein directed; *provided*, that any person whose damage may be so assessed shall and may appeal from the award of said commissioners, so far as relates to the amount of said damage, to the then or next circuit court of the county in which such damage shall occur, which court shall cause a jury to be empaneled to try the said appeal without further pleadings and without other notice of trial than the service of a copy of said appeal upon the said commissioners, or one of them, designating the time of trial at least ten days prior thereto, and the verdict of such jury shall be conclusive as to the amount of said damage, unless set aside for some illegality or misdirection of the court, but such appeal shall not have the effect of delaying or interrupting the proceedings of said commissioners, who shall be authorized to assume the amount of said damage to be so assessed by them until the same shall be varied by such verdict of a jury, and on paying or tendering the amount so assessed by them, the said commissioners, to the party injured, or in case he be a non-resident of this state, or cannot be found, or is under any incapacity to receive the same, upon paying said amount so assessed by them into the said supreme court, the said commissioners may take possession of the property in question, and proceed to execute the work necessary to effect said drainage in accordance with the plan adopted as aforesaid; if the verdict of the jury be the same as, or shall be less than the award of the commissioners, the party appealing shall pay the costs of the appeal, otherwise no costs shall be recovered on either side; if the verdict shall be greater than the award of the commissioners, the excess shall be added to the expenses to be assessed for such

drainage, at any time before the actual collection thereof, and shall be distributed to the various parcels of land to be assessed therefor in the same proportion as the other expenses shall be assessed upon the same; if such excess be not ascertained until after the general assessment has been made, and the collection thereof commenced, a new assessment of such excess shall be made in the same proportion as the general assessment, and shall be collected in the same manner.

102. SEC. 5. That to enable the said commissioners to raise the necessary moneys to carry on the work of draining said lands, they are hereby authorized to borrow such sums from time to time as may be necessary for that purpose at the legal rate of interest, and to give their bonds as such commissioners therefor, and to pledge for the repayment thereof, the assessment to be made as aforesaid; *provided*, that the said commissioners shall not be personally bound to pay the said bonds or any interest thereon; *and, provided further*, that if the said interest on said bonds (which interest shall not be made payable at shorter intervals than once in every six months) shall not be paid, as the same may become due, it shall bear lawful interest until paid.

Commissioners may borrow money and issue bonds.

Provisocs.

103. SEC. 6. That any vacancy happening among the commissioners so to be appointed by the supreme court shall be filled by the said court at the first stated term after such vacancy may occur, but until such vacancy is filled, the other two commissioners shall have full power to proceed with the duties of the commissioners, and in all cases the action or decision of any two of the commissioners shall be valid and sufficient; and the compensation of the commissioners and also of the board of managers of the geological survey, when engaged on any tract or in reference to the drainage thereof shall be five dollars per day, and the expenses of said board of managers for their own time and services, and for compensation paid to any other persons in examining, surveying and reporting, in reference to any tract of land which they shall report as necessary or proper to be drained, shall be added by the commissioners to the expenses to be assessed for the drainage of said tract.

Vacancy, how filled.

Compensation.

104. SEC. 7. That if at any time after any tract of land has been drained under this act, the ditches or other works of drainage shall require alterations or repairs, the supreme court on the application of any person interested in such drainage may appoint three commissioners to make said repairs, who shall qualify and proceed in the same manner as the original commissioners, and the expense when footed up shall be assessed upon the same lands which were assessed for the expense of the original drainage; and in precisely the same proportion, and the same remedy shall be had for the collection thereof.

Alteration or repairs, how made.

105. SEC. 8. That this act shall not extend to any salt marshes or lands flowed by tide water.

Not to extend to salt marshes or tide water lands.

Supplement.

Approved March 19, 1874.

P. L. 1874, p. 44.

106. SEC. 1. That when the assessment made by the commissioners appointed to carry out and execute the drainage of any tract of land by virtue of the act to which this act is a supplement, shall have been approved and confirmed by the supreme court, the said commissioners may either collect the whole amount of the same immediately, according to the provisions of said act, or at their discretion, from time to time, and at different times collect such proportionate parts of the same as may then be required for the current expenses of said drainage, and the interest on any money raised by said commissioners by the issue of bonds in pursuance of said act, and for a sinking fund for the redemption of such bonds.

Assessments for drainage may be collected at one or several times at the option of the commissioners.

107. SEC. 2. That if the said commissioners, after having commenced the drainage of any such tract, and proceeded therewith, shall before the drainage of the same shall be completed, be compelled to suspend the completion thereof, from any inability at that time to raise the money required therefor, they shall proceed to ascertain the tracts of land benefited or intended to be benefited by said drainage, and the relative proportions in which the said respective tracts have been or will be benefited thereby, and also the expenses already incurred in said drainage, and as near as may be the additional expenses required for the completion thereof, which expenses.

If drainage is suspended before completion, the expenses shall be collected proportionably from lands benefited.

Proceedings to be reported to and approved by the supreme court

they shall assess on the respective tracts of land in the proportions aforesaid, and make report of said assessment and their proceedings in the premises to the supreme court, who shall hear and determine any objection thereto in the manner prescribed in the act to which this act is a supplement, and after said assessment shall have been approved and confirmed by said court the said commissioners shall collect the same in the manner prescribed by said act, either at one time or at different times, in such instalments as may be required for the payment of said expenses and apply the moneys so collected to the payment thereof.

Lands conveyed for the purpose of drainage shall be in trust.

108. SEC. 3. That any lands conveyed for the purpose of effecting said drainage, shall be conveyed to the said commissioners in trust, for the use and benefit of all the owners of said lands proposed to be drained, but said owners shall have power to encumber their respective interests in the same.

Appeals from the award for damages shall be made to the supreme court, who shall order a trial in the circuit court of any county.

109. SEC. 4. That the appeal given by the fourth section of the act to which this act is a supplement, to the owner or occupier of any lands who shall be injured or sustain damage in his legal rights by said damage from the award of the assessment of said damages by the said commissioners, shall be made to the supreme court instead of the circuit court of the county in which the lands lie, as provided by said act, and the supreme court shall order said appeal to be heard before the circuit court of such county as the supreme court shall deem proper, and such court shall cause a jury to be empanelled to try said appeal, and shall try the same in the same manner as is directed in said fourth section of said act.

Supplement.

Approved March 31, 1875.

P. L. 1875, p. 48.

Amounts received from assessments, shall be applied to the redemption and cancellation of bonds.

110. SEC. 1. That when any portion of the assessment made by the commissioners appointed to carry out and execute the drainage of any tract of land, by virtue of the act to which this is a supplement, or of the supplement to said act, approved March nineteenth, eighteen hundred and seventy-four, shall be called for and collected, the said commissioners shall apply the amount thus received to the redemption and cancellation of bonds, for the payment of which the said assessment was pledged in pursuance of the act to which this is a supplement, or as the case may be, they may decrease or withhold from issuing bonds to the same amount; *provided*, that if it becomes necessary to sell the bonds authorized to be issued by section five of the act to which this is a supplement, at less than par, they shall not be sold at a discount of more than ten per centum.

Proviso.

V. Of the drainage of meadow and swamp lands by cities.

An act to authorize the corporate authorities of cities and towns to drain meadow and swamp lands lying within their corporate limits.

P. L. 1876, p. 377.

Approved April 21, 1876.

Corporate authorities of any town or city may enter into contract to drain meadow or swamp lands.

111. SEC. 1. That the corporate authorities of any town or city having within its corporate limits any meadow or swamp lands, may by the unanimous vote of all members elected to the board of aldermen, council or other legislative body of such town or city, with the approval of the mayor or other chief executive officer of said town or city, enter into a contract with any person or persons to drain the same by the construction of dykes, dams, tide banks, drains, sluices, sewers, pumps or other mechanical means necessary or useful, for a term of years not to exceed ten, and to renew the said contract at the expiration of the said term, for a further period of ten years; *provided*, that before the making and entering into any such contract, the said authorities shall first cause an advertisement to be inserted for the space of thirty days, in at least one newspaper printed and published in the said city or town, for proposals, plans and estimates for draining said meadow or swamp lands lying within the corporate limits of said town or city; *and provided further*, that this act shall not be construed to interfere with any corporation of this state now having authority to drain any territory.

Proviso.

Advertisement for proposals, etc.

Proviso.

112. SEC. 2. That the annual expense of draining said lands shall be assessed by commissioners of assessments or other persons authorized and empowered to perform those duties in any town or city, upon the said lands so drained and upon all the lands of said town or city, according to the special benefit received by said lands, together with five per centum additional for the costs and expenses of making such assessment and collecting the same, two per centum to be paid to the persons making, and three per centum to the person or persons collecting the same.

Annual expense to be assessed on lands specially benefited.

113. SEC. 3. That should the annual amount of the consideration money of said contract exceed the amount assessed upon the real estate specially benefited thereby, such excess shall be borne by and paid out of the contingent fund of said town or city, or shall be added to the annual tax levy of said town or city, and be assessed and collected the same as taxes are collected and assessed in said city.

If contract exceeds amount assessed for benefits, excess paid out of contingent fund.

114. SEC. 4. That the said assessment shall be made at the same time as the annual assessment for taxes is made in the said town or city in which said meadow or swamp lands are situate, and by the corporate authorities of which said contract has been made; and that on or before the last day of making such annual assessment of taxes, the said commissioners of assessment shall file, in each and every year, an assessment map of such assessment in the office of the clerk of said town or city.

When assessment shall be made.

115. SEC. 5. That said assessment shall be collected at the same time and in the same manner and by the same person or persons, as the same shall be collected by the city or town in which said meadow or swamp lands may be situate, and by the corporate authorities of which said contract has been made.

Time and mode of collecting assessment.

116. SEC. 6. That said assessment shall be a lien upon all real estate which shall be assessed for benefits specially arising from the drainage of said meadow and swamp lands, and shall be sold in the same manner and at the same time as lands are now, or hereafter may be, sold for the non-payment of taxes in the said town or city in which any said meadow or swamp lands may be situate.

Assessment to be a lien.

VI. Limitation of assessments.

An act to limit assessments for the drainage of wet or overflowed lands.

Approved April 2, 1868. P. L. 1868, p. 733.

117. SEC. 1. In all cases where any assessment on lands is authorized to be made for the costs and expenses of drainage of wet or overflowed lands, by any commissioner or commissioners appointed by any court, or by any justice or judge thereof, by or under any general or special law of this state heretofore enacted, said general and special acts shall be so construed and enforced that in all cases the assessments on any lands or premises provided for in and by such act or acts shall be made with reference to the benefits, and shall in no case be greater than the benefits resulting from said drainage under the act authorizing the same.

Assessments for cost of drainage not to exceed benefits.

118. SEC. 2. All special and general laws heretofore enacted, providing for the drainage of any wet or overflowed lands, whereby commissioners may be appointed as aforesaid, be and the same are hereby modified and amended so as to conform to the provisions of the first section of this act, and shall be so considered and construed in all courts of law and equity, the same as if this was a supplement to such act.

All general or special acts amended to conform to this act.

Mechanics Lien.

I. OF THE LIEN.

1. Debts contracted in erection of a building to be a lien.
2. Building erected under contract filed, liable to contractor alone.
3. Remedy of workmen and material men if contractor refuses to pay.
4. Estate of persons erecting buildings alone liable, unless owner consent in writing.
5. Additions and fixed machinery to be considered a building.
6. Construction of the words in the preceding section.
7. Extended to repairs of fixed machinery, &c.
8. Extended to repairs on buildings.