

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.

How expenses of banking to be defrayed.

When banks laid out, owners to meet, &c.

To choose managers, treasurer, clerk, &c.

1. [Amended by Sec. 55, *post.*]

2. That the expense of erecting, making, and maintaining the banks, dams, sluices, flood-gates, 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 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.

Passed November 29, 1788.

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. 46, *post.*] (a)

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. 47, *post.*]

How to recover assessment.

7. That if said estimate, so made and collected as aforesaid, should not produce a sufficient sum of money to fulfill 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. [Amended by Sec. 53, *post.*]

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.

Clerk's duty.

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.

Executors, &c., authorized to vote.

(a) By the supplement of January 22d, 1829, there must be a resurvey and new map, showing the present owners and quan-

ties, before there can be a lawful revaluation. *State v. Creek Co.*, 2 Gr. 801.

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. Outer works may be erected.

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.

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 inclosure, 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 inclosed 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.

19. That if any owner or possessor of any meadow, lying in company, or any other person, by his or her order, shall willfully cut his or her bank or dam, or open his or her flood-gate, 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.

Owners damaging the bank, to make it good.

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,

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

(a) Sufficiency of state of demand. *Westcott v. Danzenbaker*, 1 Hal. 132. The act must be followed. *Tracy v. Bowen*, Pen. *968.

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.
P. L. 1806, p. 739.

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.

Rev. 529.

R. S. 724.

Meeting to choose
managers and
clerk.

Supplement.

Passed November 27, 1806.

22. SEC. 1. [Amended by Sec. 56, *post.*]

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 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.

Duties of
managers.

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.

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 possessor'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.

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.

Supplement.

Passed February 10, 1819.

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

Accounts for
repairing, how
to be recovered.

Further duty of
managers.

When act to
become a law.

P. L. 1819, p. 60.

Rev. 655.

R. S. 726.

Cross or line
banks repaired.

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. 1828, p. 28.

Har. 198.

R. S. 727.

Time of annual meeting.

Supplement.

Passed January 22, 1828.

28. SEC. 1. [Amended by Sec. 57, *post.*]

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.

30. SEC. 3. [Amended by Sec. 58, *post.*]

31. SEC. 4. [Amended by Sec. 59, *post.*]

What repealed.

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.

P. L. 1832, p. 111.

Har. 386.

R. S. 728.

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

Supplement.

Passed March 7, 1832.

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.

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 inclosed 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

Manner of voting at elections.

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. [See Sec. 51, *post.*]

37. SEC. 5. [Repealed.]

38. 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.

Har. 413.
How sluices and water-courses may be laid.

Supplement.

Passed March 5, 1839.

P. L. 1839, p. 129.

R. S. 728.

Preamble.

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,

39. 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.

Compensation for materials.

How ascertained.

40. 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.

Damages to be paid.

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.

41. 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.

P. L. 1855, p. 696.

Supplement.

Approved April 5, 1855.

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

42. SEC. 1. That if the owners of more than one-half the number of taxed acres of any meadow now or hereafter to be inclosed 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 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.

Certificate of sur-
vey to be recorded.

Lands left unin-
closed by altera-
tions, how paid
for.

43. 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 banks, dams, sluices and other works, or any part thereof, leave a portion of the meadow uninclosed, 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.

Expenses to be
paid by meadow
company in thirty
days.

44. 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.

Meadow company
may maintain old
bank until new
bank, &c., com-
pleted.

45. 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.

Supplement.

Approved March 20, 1857.

P. L. 1857, p. 543.

46. 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.

47. 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 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.

Treasurer to make demand by advertisement.

Supplement.

Approved March 16, 1870.

P. L. 1870, p. 30.

48. 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.

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

Proviso.

Supplement.

Approved March 19, 1878.

P. L. 1878, p. 138.

49. SEC. 1. [Amended by Sec. 60, *post*.]

50. SEC. 2. That such part or parts of the act and supplements to which this is a further supplement, as come within the purview of this act and are contrary to the provisions thereof, and all other acts and parts of acts inconsistent with this act, be and the same are hereby repealed; *provided*, *always*, that this act shall not be so construed as to in any way change or affect the charter or rights of any private or public corporation aiming at the same results heretofore granted by the legislature of this state, or to apply to any streams which have been declared by an act of the legislature a public highway.

Repealer.

Proviso.

Supplement.

Approved March 10, 1882.

P. L. 1882, p. 85.

51. SEC. 1. That in the government and management of all banked-in meadow companies, organized under the laws of this state, each and every owner of banked-in meadow land shall have one vote for every five valued acres of meadow so owned, and one vote for every additional five valued

Number of votes owners of meadow land entitled to in meadow companies.

Proviso.

acres ; *provided*, that no owner of meadow lands shall be deprived of at least one vote in the government and management of said companies. [See Sec. 167, *post*.]

52. SEC. 2. [Amended by Sec. 54, *post*.]

Supplement.

P. L. 1885, p. 120.

Passed March 24, 1885.

Officers annually elected.

53. SEC. 1. That the ninth section of the above-recited act be and the same is hereby amended so that the same shall read as follows :

[That after the meeting of said owners and possessors at the time and place appointed as aforesaid, it shall and may be lawful for 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 of that day, at such places 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 last act contained shall be construed to prevent a manager from being treasurer, clerk, or both ; *and provided further*, that the owner or owners, possessor or possessors, lessee or lessees of two-thirds or more of the valued acres of meadow lands lying within the bounds of any meadow company organized under this act or any supplement thereto, may at any time, by notice in writing signed by him, her or them, and put up at three or more public places in the township in which the said lands or the greater part thereof may lie, and published for one week in a newspaper printed and published in the county where said lands are located, call a special meeting of the owners, possessors and lessees of said meadow lands for the election of officers of such company at a time and place to be specified in said notice, and at such time and place such owner or owners, possessor or possessors, lessee or lessees, may, by a vote of two-thirds or more of the owner or owners, possessor or possessors, lessee or lessees of two-thirds or more of said valued acres, elect a manager or managers, treasurer and clerk in the stead and place of those who before said meeting may have held those offices ; and the said manager or managers, treasurer and clerk so elected shall, from the time of their said election, have and exercise all the powers conferred by this act, or by any supplement thereto, until the time of the next annual meeting of such company, and from thence until others are appointed to supply their places ; and such newly-elected officers shall be, from the time of their election, entitled to all the minutes, books, maps and papers of such company.]

Proviso.

Proviso.

A supplement to an act entitled "Supplement to 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," passed November twenty-ninth, one thousand seven hundred and eighty-eight, said supplement was approved March tenth, one thousand eight hundred and eighty-two.

P. L. 1886, p. 81.

Passed March 10, 1886.

Repealer.

54. SEC. 1. That section two of the act to which this is a supplement [see Sec. 52, *ante*] be amended so that it shall read as follows :

[That all acts and parts of acts, general or special, inconsistent with the provisions of this act, be and the same are hereby repealed.]

Amendatory act.

Approved March 7, 1895. P. L. 1895, p. 212.

55. SEC. 1. That section one of the act entitled "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," passed November twenty-ninth, one thousand seven hundred and eighty-eight, shall be and is hereby amended by this act to read as follows :

[That if the owners of a majority of the number of acres 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 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, flood-gates 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 distances and places where the sluice or sluices or flood-gates 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 receive 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 of any creek or river capable of navigation for shallows or flats that can carry eight cords of wood.] (a)

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

Their duty.

Proceedings to be certified and recorded.

Proviso.

Proviso.

An act to amend the act entitled "A supplement to an act entitled 'An act to enable the owners of the tide swamps and marshes to improve the same, and the owners of meadow already banked in and held by different persons to keep the same in good repair,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which supplement was passed November twenty-seventh, one thousand eight hundred and six.

Approved March 7, 1895. P. L. 1895, p. 214.

56. SEC. 1. That section one of the act entitled "A supplement to an act entitled 'An act to enable the owners of the tide swamps and marshes to improve the same, and the owners of meadow already banked in and held by different persons to keep the same in good repair,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which

(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.

supplement was passed November twenty-seventh, one thousand eight hundred and six [see Sec. 22, *ante*], shall be and is hereby amended to read as follows :

Acceptance of act,
how to be certified.

[That it shall be lawful for the owners or possessors of more than one-half of any body of meadow who have subjected or shall subject themselves to the above-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)

An act to amend the act entitled "A further supplement to an act entitled '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,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which supplement was passed January twenty-second, one thousand eight hundred and twenty-nine.

P. L. 1895, p. 215.

Approved March 7, 1895.

57. SEC. 1. That section one of the act entitled "A further supplement to an act entitled '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,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which supplement was passed January twenty-second, one thousand eight hundred and twenty-nine [see Sec. 28, *ante*], shall be and is hereby amended to read as follows :

Cross banks, &c.,
how laid out, &c.

[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 more than one-half 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 banks, sluices and flood-gates and works requisite for securing the marsh or swamp from the overflow of the tide in such place and places and directions 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.]

58. SEC. 2. That section three [see Sec. 30, *ante*] of the said act be amended to read as follows :

Revaluation,
when and how
made.

[That whenever the owners and possessors of more than one-half 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

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

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 all subsequent duplicates and assessments agreeably to such revaluation.]

59. SEC. 3. That section four [see Sec 31, *ante*] of the said act be amended to read as follows:

[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 meeting, direct and appoint; *provided, always*, that the owners of more than one-half of such marsh, swamp or meadow ground shall vote or agree to such overflow.]

Owners of marshes may cause lands to be overflowed.

Proviso.

An act to amend the act entitled "A further supplement to an act entitled '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,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which supplement was approved March nineteenth, one thousand eight hundred and seventy-eight.

Approved March 7, 1895. P. L. 1895, p. 217.

60. SEC. 1. That section one of the act entitled "A further supplement to an act entitled '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,' passed November twenty-ninth, one thousand seven hundred and eighty-eight," which supplement was approved March nineteenth, one thousand eight hundred and seventy-eight [see Sec. 49, *ante*], shall be and is hereby amended to read as follows:

[That the owners and possessors of more than one-half of any body or tract of marsh or swamp in this state exposed to the overflow of the tide, desiring to improve the same, and who have complied with or subjected themselves to the before-recited act, may erect and construct across any stream of water that may flow through said land any bank, dam, sluice, flood-gates or other work necessary to secure the same from the overflow of the tide; *provided*, that this act shall not apply to streams or creeks running to or through any village, town or city, or to any established wharf or landing.]

Owners may dam stream to prevent overflow of tide-water.

Proviso.

Supplement.

Approved March 22, 1895. P. L. 1895, p. 649.

61. SEC. 1. That whenever the meadow lands lying within the bounds of two or more adjoining meadow banking companies (whether organized under special acts or general laws), are so situated that a breach in the bank of one of said companies would permit the overflow of the tide upon the meadow lands lying within the bounds of all such adjoining companies, it shall and may be lawful for said meadow companies to consolidate in the manner hereinafter provided and thereafter to have, hold, erect, make and maintain the banks, ditches, dams, sluices, flood-gates and other works of said companies which shall so consolidate, by assessments upon all the lands lying within the banks of said consolidated companies, to be made, enforced and collected in the manner provided by the act to which this act is a supplement.

Adjoining meadow bank companies may consolidate.

Consolidated companies may assess lands within their banks.

62. SEC. 2. That when the owners of a majority of the number of acres of lands lying within the bounds of each of such adjoining meadow banking companies, shall sign and acknowledge in the manner required for the acknowledgment of deeds of lands an assent to a certificate setting forth: first, the names of each of said companies which propose to consolidate, and the township and county in which its meadow lands are located;

Proceedings to consolidate companies.

second, the number of taxable acres of lands lying within the bounds of each of said companies, the names of each of the owners of said lands, and the number of taxable acres which each owner may hold ; third, a map of the said lands lying within the bounds of each of said companies, showing their relation to each other and also the location of the banks, dams, ditches, sluices and flood-gates of the said companies, when consolidated ; fourth, that the said owners of a majority of taxable acres lying within the bounds of each of said companies desire that said companies shall be consolidated, so that their banks, sluices, ditches and other water works shall be erected and maintained by assessments upon all the lands lying within the bounds of said consolidated company ; fifth, the name of said consolidated company ; and having so signed and acknowledged said assenting certificate, shall file the same in the office of the clerk of the county in which said lands lie, the said several adjoining meadow banking companies shall then and from thenceforth become and be consolidated under the name set forth in said certificate.

Powers of consolidated company.

63. SEC. 3. That from and after the said consolidation, the said consolidated company, and the owners of lands lying within the bounds thereof, and the officers of said company whenever thereafter elected, shall and may have and possess, exercise and enforce all the rights, powers and authorities which may be possessed, exercised or enforced by meadow companies organized under the act to which this act is a supplement, and in the same way and manner as prescribed in said act or in the several supplements thereto, and shall also be subject to the performance of the same duties and be liable to the same penalties as are therein prescribed.

Debts, obligations &c., of companies shall not be affected.

64. SEC. 4. That all debts and obligations, assessments and charges existent or outstanding against any of said meadow companies or against any lands lying within the bounds of any of said companies at the time of such consolidation shall not be in any way or manner affected by this act or by any proceedings had or done hereunder, but shall be and remain of full force and effect, and may be sued for or assessed, enforced and collected, as if this act had not been passed.

Notice for election of officers shall be advertised.

65. SEC. 5. That any two or more of the owners of lands lying within the bounds of said consolidated meadow banking company may call a meeting of the owners of the lands lying within the said bounds, their legal agents or representatives, for the electing of officers of said consolidated company by giving public notice of the time and place of such meeting, and of the object thereof, at least ten days before the time fixed for holding of said meeting, by setting up at least five of such notices in five of the most public places in the township where said lands lie, and by publishing such notice in one public newspaper printed and published at the county seat of the county where said lands lie at least seven days before the time fixed for the holding of said meeting ; and when said meeting shall convene at the time and place so appointed, the said owners, their legal agents or representatives may, between the hours of one and five in the afternoon, choose by ballot or otherwise, and by plurality of votes of those met, such person or persons as they may think proper for manager or managers, and a treasurer and clerk for the ensuing year, or until the next annual meeting ; and may also fix a time and place for the annual meetings of said consolidated company to be thereafter held ; and may also choose three or more impartial men, acquainted with banking, to value all the marsh and meadow lands secured by the bank of said consolidated company from the overflow of the tide, as provided in section four of the act to which this act is a supplement, and thereafter such further proceedings shall be had and done touching the valuation of said meadow lands, the assessment of taxes thereon, for the erection and maintenance of the banks, sluices and water works, the collection of such assessments, and other acts concerning the business of said company, as are in like cases prescribed by the said act and the several supplements thereto.

Election may be by ballot or otherwise.

Officers to be voted for.

Further proceedings to be had.

When organization has been effected, powers of separate companies shall cease.

66. SEC. 6. That from and after such consolidation the several companies which shall so as aforesaid join in said consolidation, shall be deemed to have been merged into said consolidated company, and the

meadow lands lying within the bounds of said several companies which have been so merged, shall be no further liable to any assessment or charge or other exercise of power, by any of said several companies, or the officers thereof, save only for the collection of debts, obligations, assessments or charges existent and outstanding at the time of said consolidation, as hereinbefore provided.

II. Of draining swamp or meadow ground.

Act 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.

Passed November 24, 1792.

R. S. 731.

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

67. 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.

Surveyor or freeholder interested, to whom application made.

68. 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.

69. 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

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

(a) After a ditch or drain has been laid out for a year, it is too late to object by *certiorari*. *Haines v. Cumpston*, 3 *Har.* 49. The writ will be refused if the delay of the prosecutors, in applying for it, has permitted the expenditure of public moneys, and, if allowed, will be dismissed when these facts are brought to the attention of the court. *Bowne v. Logan*, 14 *Vt.* 422. 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. *Ib.* Damages cannot be assessed to an applicant. *State v. Lord*, 2 *Dutch.* 140. A prosecutor, having no legal title or exclusive possession of the land, is not entitled to a writ to question the legality of the proceedings to drain lands. *Berryman v. Little*, 20 *Vt.* 182. Delay and acquiescence, inducing expenditure of money by others, in works of a quasi public nature, waive irregularities. *Ib.*

- 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.
- Act not to affect mill-dams, &c.**
- Fees of surveyors and freeholders.**
- 70. 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.
- Penalty for neglect.**
- Damages to be assessed.**
- 71. 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.
- Dams, sluices, &c., how to be made and kept in repair.**
- 72. SEC. 6.** [Repealed.]
- 73. 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.
- Ditches and water-courses to be laid on lines between proprietors.**
- 74. SEC. 8.** *Provided always*, that in all cases where ditches, drains or water-courses should 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.
- How assessments made and collected on proprietors' lands.**
- 75. SEC. 9.** *And whereas*, there are large tracts of lands 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, 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.

76. 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.

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

77. 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.

Party aggrieved may appeal.

Supplement.

Passed February 25, 1828.

P. L. 1828, p. 100.

Har. 174.

R. S. 735.

78. 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 purposes 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.

Ten days' notice to be given of meeting of owners.

79. 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 forever 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, &c.

Supplement.

Passed February 14, 1831.

P. L. 1831, p. 115.

Har. 344.

R. S. 736.

80. 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

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

Fees, &c.	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.
Lands to be resurveyed.	81. 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.
Allotment of work to each owner.	
How to proceed for neglect.	
Appraisalment of labor neglected to be done.	82. 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, on any such land and meadow as is contained in the certificate aforesaid, as will pay said judgment and costs; <i>provided</i> , that no such appraisalment or assessment shall be made more than once in six years.
How to be recovered.	
Proviso.	
Preamble.	<i>And whereas</i> , there are large tracts of land which lie adjoining on rivers, creeks, and streams of water, or otherwise, held by different owners, and not easily fenced in separate lots, but which might be inclosed in common under safe and easy regulations, therefore,
How to proceed to inclose lands of several owners lying contiguous to creeks, &c., in a common fence.	83. 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 inclosing, 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.

84. SEC. 5. That if any person or persons, owners or occupants of any such tract of land, as shall be ordered to be so inclosed, 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 inclosure, 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 inclosure, or shall not inclose his, her, or their lands separate and apart from such lands held in common.

85. 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.

86. 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.

Supplement.

Passed February 24, 1838.

87. 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.

Each owner to have assigned the number of cattle, &c., which may run on the inclosed pasture.

Proviso.

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

What navigable streams are not lawful fences.

Nothing in act to be construed to repeal fence act.

P. L. 1838, p. 158.

R. S. 739.

Ditches, &c., may be reviewed.

Proviso.

Supplement.

Approved March 4, 1852.

P. L. 1852, p. 108.

Survey to embrace all land, meadow and swamp benefited by ditch or drain.

88. SEC. 1. That 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.

Managers and other officers to be elected.

Managers to cause ditch, &c., to be completed as directed by survey and return.

Assessment therefor.

89. SEC. 2. That 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.

Treasurer to collect assessments.

90. SEC. 3. 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, 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.

How collected.

Further assessment for deficiency.

91. SEC. 4. That if said assessment, so made and collected as aforesaid, should not produce a sufficient sum of money to fulfill 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 assessed and collected in like manner as is hereinbefore directed.

92. SEC. 5. That 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.

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

93. SEC. 6. That 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.

Annual election of officers.

94. SEC. 7. 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, 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.

Duties of clerk.

95. SEC. 8. That 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.

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

Notice of meeting.

96. SEC. 9. That 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

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

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.

Persons aggrieved may appeal to court of common pleas.

97. SEC. 10. That 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 re-assessment of any and all the said damages as aforesaid, or a resurvey of the lands, as the case may be, which said re-assessment or resurvey shall be final and conclusive; and the said re-assessment shall be levied, collected, and paid over in manner as hereinbefore directed.

Expenses of examination, how paid.

98. SEC. 11. That 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 application for resurvey.

99. SEC. 12. That 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.

Repealer.

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

Supplement.

Approved February 28, 1862.

P. L. 1862, p. 79.

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

101. 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.

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

102. 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.

Supplement.

Approved March 4, 1874.

P. L. 1874, p. 23.

103. 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.

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

104. 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.

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

105. 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.

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

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

Passed February 12, 1817.

R. S. 786.

106. 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.

Tail-races of mills, &c., how opened.

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.

Passed November 18, 1822.

Har. 23.

R. S. 740.

107. 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

When and how managers, &c., are to be chosen.

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 plurality of the votes of those so met, to choose such person or persons 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. 114, *post.*]

Measurement, plot, valuation, &c., to be made.

108. 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. 116, *post.*]

Duplicate to be delivered to treasurer.

Managers to keep road in repair, &c.

Meadows may be rented to pay assessment.

109. 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.

Managers, when to meet.

110. 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.

Their powers.

111. 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.

By-laws may be passed at annual meetings.

112. 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.

A new valuation may be made every ten years.

113. 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.

Supplement.

Approved March 4, 1858.

P. L. 1858, p. 195.

114. 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 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.

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

115. 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 sluiceways, to prevent the overflow of tides, and the moneys required for the purpose shall be raised and expended in the same manner as the moneys required to be raised and expended by the act to which this is a supplement.

Duty of managers to build bridges, &c.

116. 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.

Assessments not invalidated if lots not strictly measured.

117. 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.

Repealer.

IV. The drainage of lands.

An act to provide for the drainage of lands.

Approved March 8, 1871.

P. L. 1871, p. 25.

118. 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 landowners 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

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

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.

are opposed to the drainage thereof at the common expense, then the court shall not appoint such commissioners as is directed in this section. (a)

119. SEC. 2. [Amended by Sec. 139, *post.*]

120. SEC. 3. [Amended by Sec. 140, *post.*]

Obstruction or
injury to water-
course or mill-
dam.

Damage, how
estimated.

Proviso.

Appeal, how
heard.

Copy to be served.

Amount of assess-
ment may be
paid into court.

Costs, who to pay.

Commissioners
may borrow
money and issue
bonds.

Provisos.

121. 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 impaneled 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.

122. 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.

(a) Only the lands described in the report of the managers of the geological survey, and in the notice of the application for the appointment of commissioners, are liable to assessment. *In Matter of Drainage along Pequest River*, 10 Vr. 197, 13 Vr. 553. The legislative right to order low lands to be drained at the expense of the owners, rests entirely on ancient custom, and cannot be deduced from the power to legislate unless, in the particular case, the lands are so situated or conditioned as to make their reclamation a matter of direct public concern. *In Matter of Drainage along Pequest River*, 12 Vr. 175. In this state ancient usage sanctions legislation that provides for the drainage of low lands at the expense of the owners. *Id.* But such legislation, to be valid, must conform to the usage upon which the right to legislate is founded. *Id.* The law authorized the

cost of the drainage scheme to be estimated and such estimated expense to be allotted to the landowner in proportion fixed by the mere judgment of the appraisors, in advance of the doing of the work. *Held*, that such a method was a departure from the old usage and was illegal. *Id.* The rule of the *Agens Case*, 8 Vr. 415, does not apply to these meadow cases. *Id.*, affirming *S. C.*, 10 Vr. 433. This act is constitutional, and the assessments made thereunder are to be apportioned, but not limited by special benefits, as under the law of eminent domain. *In Matter of Drainage on Pequest River*, 13 Vr. 553; affirmed, 14 Vr. 456. This case was taken to the supreme court of the United States and there affirmed. *Wurts v. Hoagland*, 114 U. S. 806. As to validity of assessments made under the police power of the legislature, see *State, Britton v. Blake*, 7 Vr. 442.

123. 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.

124. 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.

125. SEC. 8. [Repealed by Sec. 132, *post.*]

Supplement.

Approved March 19, 1874.

P. L. 1874, p. 44.

126. 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.

127. 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 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 installments as may be required for the payment of said expenses and apply the moneys so collected to the payment thereof.

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.

128. 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.

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

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.

129. 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 impaneled 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.

130. 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.

Supplement.

Approved March 8, 1877.

P. L. 1877, p. 71.

131. SEC. 1 [Amended by Sec. 134, *post*.]

Supplement.

Approved May 11, 1886.

P. L. 1886, p. 342.

Section repealed.

Act extended to salt marshes or lands flowed by tide-water.

132. SEC. 1. That section eight of the act entitled "An act to provide for the drainage of lands," approved March, eighth, one thousand eight hundred and seventy-one [see Sec. 125, *ante*], which reads as follows :

"That this act shall not extend to any salt marshes or lands flowed by tide-water," be and the same is hereby repealed.

133. SEC. 2. That all the provisions of the act to which this is a supplement shall be and the same are extended to any salt marshes or lands flowed by tide-water in this state.

Supplement.

Approved March 23, 1888.

P. L. 1888, p. 206.

Managers of geological survey may add to or amend system of drainage.

To be first submitted to supreme court.

134. SEC. 1. That section one of an act entitled "A further supplement to an act entitled 'An act to provide for the drainage of lands,' approved March eighth, one thousand eight hundred and seventy-one," which supplement was approved March eighth, one thousand eight hundred and seventy-seven [see Sec. 131, *ante*], be and the same is hereby amended so as to read as follows :

[That the board of managers of the geological survey may, and it shall be lawful for said board, at any time to add to, alter or amend any system or plan of drainage for any tract of land which is subject to overflow from freshets, or which is usually in a low, marshy, boggy or wet condition, which said board has heretofore adopted and filed in the office of the clerk of the supreme court, or which said board shall hereafter adopt and file in the office of the clerk of the supreme court; but such addition, alteration or amendment shall first be submitted by said board to the supreme court of this state, and approved by it upon such reasonable notice to the persons interested, by publication in the newspapers or otherwise, as said court

shall direct; every such addition, alteration or amendment, after being adopted by said board and approved by said court, shall be filed in the office of the clerk of the supreme court, and thereupon such addition, alteration or amendment shall become and be a part of the system or plan of drainage to which such addition, alteration or amendment relates, and shall be executed by the commissioners appointed by the supreme court, as if such addition, alteration or amendment had been incorporated into and formed a part of the original system or plan.]

135. SEC. 2. That any owner of land assessed for drainage under the act to which this is a supplement, who may be injured by reason of any drift of wood or accumulation of gravel or other substance or obstruction casually produced upon the lands of another in the channel of any ditch, stream or water-course for the construction or improvement of which his land shall have been assessed, after three days' notice previously given to the owner or occupants of such lands if they are occupied, and if not occupied, then without such notice, may enter thereon with such assistance as may be necessary, and then and there remove such drifts, gravel or other obstruction; but any person so entering shall remain liable as at common law for any injury done to the rights of the owner or occupant of such land which might be avoided in the removal of such obstruction, and shall not remove off of the land upon which such drift or obstruction may be situate, any of the substances composing such drift or other obstruction.

When owner of land may remove obstruction.

Liable for injury done.

136. SEC. 3. That the chosen freeholders of any county are authorized to cause to be removed from any river or water-course within their county which has been improved under the provisions of the act to which this is a supplement, any drift, timber, gravel-bed or other obstruction (except mill-dams or water works) that may impair the efficiency of any such improvement, whenever in their opinion such removal shall be conducive to the public health, or shall be advisable for the better protection of any county road or bridge, and the expense of such removal shall be a county charge.

Chosen freeholders authorized to remove obstructions.

137. SEC. 4. That whenever any improvement made under the provisions of the act to which this is a supplement requires to be repaired, or when any water-course or river which has been improved under the provisions of this act shall have become obstructed, any five owners of lands which have been assessed under the provisions of said act, and which shall be injured by such want of repair or obstruction, may apply by petition to the board of geological survey, setting forth a description of the work necessary and desired, with an estimate of the cost to be incurred, whereupon, if the work shall seem to the said board to be of sufficient importance, they shall investigate the application, and in case they shall approve the same shall report to the next term of the supreme court, setting forth what repairs are needed and what obstructions require to be removed, with a survey and plan of the necessary work, and with an estimate of the cost thereof, which report shall be considered by said court on such reasonable notice to the persons interested, by publication in the newspapers or otherwise, as said court shall direct; if such plan shall be approved by the court, the said court shall proceed to appoint three commissioners to execute the same, who shall proceed to carry it out and to raise money by the issuing of bonds if necessary, and to assess the cost upon the lands benefited by the improvement in proportion to the benefit received, and they shall proceed, in making such improvement and assessment and in the raising of money therefor, in the same manner as the commissioners appointed under this act to make the original improvement, and shall possess all the powers of the commissioners so appointed for the carrying out of said plan.

Proceedings to repair improvement or remove obstruction.

138. SEC. 5. That it shall be lawful for the commissioners appointed under this act, or under the act to which this is a supplement, with the approval of the board of geological survey, to contract with the owner of any mill-dam or water works for the construction and maintenance by such owner of flood-gates and for the use of the same to carry away the water in times of flood or freshet, and any contract so made shall be filed in the office of the clerk of the supreme court, and shall be enforced from time to

Lawful for commissioners to contract for construction of flood-gates.

Contract filed.

time as may be necessary, by the attorney-general at the request and in the name of the board of geological survey, by bill in equity or such other remedy as may be appropriate.

Supplement.

Approved May 9, 1894.

P. L. 1894, p. 268.

139. SEC. 1. That section two of an act entitled "An act to provide for the drainage of lands," approved March eighth, one thousand eight hundred and seventy-one [see Sec. 119, *ante*], be and the same is hereby amended so as to read as follows :

Oath of commissioners.

[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 ;

Compensation of.

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 and the collection of assessments, shall be made up by said commissioners and returned

Report of.

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

Notice to be given.

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

Objections may be filed.

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

Assessments to be made.

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

Assessments to be a lien.

in gross or at a rate per acre ; and the assessment made upon each parcel of land, with lawful interest thereon, shall be a first and paramount lien upon the said parcel of land, without regard to whom the owner or owners of said lands may be ; and when the said assessment shall be completed, the same shall be deposited in some convenient place

Notice of assessments to be given.

for the inspection of 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

To be filed in supreme court clerk's office.

meet to hear objections to said assessments ; and the commissioners, having heard and decided upon such objections as shall be made to them, they shall proceed to complete their assessments 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

To be confirmed by supreme court.

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 any objec-

tions 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 the 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 are 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 forthwith make, under their hands and seals, a copy of so much thereof as shall have been levied on lands within the boundaries of any township or townships, respectively, and deliver the same to the township committee wherein such lands are situate; and as soon as any such township committee shall receive such copy of said report, or part thereof, they shall give notice by publication in two or more newspapers circulating in the vicinity of said lands, such notice to be published at least once in a week for four weeks, requiring the several owners, or other parties interested in the lands so assessed, to pay the assessments thereon to the collector of the township in ten equal annual installments, at such times and places in said township as shall be designated by said township committee.] (a)

140. SEC. 2. That section three of an act entitled "An act to provide for the drainage of lands," approved March eighth, one thousand eight hundred and seventy-one [see Sec. 120, *ante*], be and the same is hereby amended so as to read as follows:

[That if any installment of such assessment on any lot or parcel of land in any such township shall not be paid within thirty days after the time mentioned in the said notice calling for payment thereof, the collector of the township is hereby authorized and empowered to advertise such lot or parcel of land for sale by advertisement, signed by him and published in two or more newspapers circulating in the vicinity thereof, for the period of four weeks next before the time fixed for such sale, and by posting five or more similar notices in different public places in the township; and at the time and place fixed in said notice, or at a subsequent time to be fixed by adjournment, the said collector shall offer to sell such lot or parcel of land for the least number of years that any person will take the same and pay the whole assessment thereon with interest at the rate of ten per centum per annum from and after the time fixed by said notice for the payment thereof, together with the costs and expenses of such sale, and on receiving from the purchaser the amount of the whole assessment with interest, costs and expenses of sale the said collector shall give him or her a deed of conveyance for said land for the period or term for which the same was struck off, and thereupon such purchaser shall be entitled to immediate possession of said land, and to take rents, issues and profits thereof for the period or term for which the same was sold; and if at the time when said collector shall offer such lot or parcel of land for sale as aforesaid no person shall agree to take the same for any term of years and pay such assessment, interest, costs and expenses, the said collector shall forthwith offer such lot or parcel of land for sale in fee-simple absolute for the highest price that any person will bid for the same, and upon receiving the amount so bid the said collector shall execute, under his hand and seal, and deliver to such purchaser a deed for said lot or parcel of land, and such purchaser, his heirs and assigns, shall thereby acquire and take a good and sufficient title to the same in fee-simple

Objections, how made and heard.

Proceedings in case assessment is reversed.

Further objections.

When assessment is finally confirmed, copy thereof shall be delivered to the township committee.

Notice to owners to pay assessments shall be advertised.

Land may be advertised and sold to pay assessment.

To be sold for a term of years.

May be sold in fee-simple.

(a) The objections must be supported by proof of facts, measurements, &c., and cannot be based on mere opinions and imperfect estimates made prior to the contract. It should appear, by direct and certain proofs, that their determination is so

clearly wrong as to manifest some bias, partiality or fraud. *In Matter of Drainage on Pequest River*, 18 Vr. 553. The statutory lien given by this act for assessments is not divested by the sale of the lands under the foreclosure of a prior mortgage. *Id.*

absolute, free of all incumbrances (except taxes, assessments or water-rates levied after the confirmation of the said report), of which the said deed shall be presumptive evidence in all courts and places; and in any proceedings or actions by the said purchaser, his legal representatives or assigns, taken, prosecuted or defended for the recovery or possession of the property so sold or in the establishment or defense of his title thereto, the said title shall not fail or be defeated by reason of any irregularity or formal defect in any proceeding had or taken under this act; *provided*, it does not appear that any substantial injury was done to the owner of the property by reason of any such irregularity or formal defect; the township wherein any such lot of land may be situate may be a purchaser at any sale of such lands, and thereby obtain the same title and estate therein as any other purchaser, and the deed therefor shall be delivered by such collector to the township committee for the benefit of the township, and if possession of any lot or parcel of land sold in pursuance of this act, either for a term of years or in fee, be denied or resisted by any person or persons, the supreme court of this state, on application made thereto, and the fact of such sale being shown by affidavit and a copy of the deed, shall make an order directing the sheriff of the county in which said land may be situate to put such purchaser in possession; and within one year from and after the time when such copy of said report or part thereof shall have been served on the township committee of any township, such township shall pay to said commissioners the whole amount of the assessment levied on land therein as shown by such copy, with interest collected or collectible thereon, less three per centum thereof, which may be retained by such collector for services in making collections, together with a charge of five dollars, which shall be made to cover costs and expenses of advertising or making sale of each lot or parcel of land sold; and in case any lot or parcel of land shall be sold for a greater sum than the amount of the assessment thereon with interest and costs and any question or doubt shall arise as to the person entitled to such surplus, the same shall be forthwith paid into the supreme court to be paid out to the person or distributed among the persons or parties entitled thereto, in pursuance of an order or orders to be made by said court for that purpose, upon application and notice to all parties interested.]

Proviso.

Township may purchase.

Court may order sheriff to put purchaser in possession.

Whole amount of assessment less expenses shall be paid to commissioners.

Surplus shall be paid into the court.

How the word "township" shall be construed.

Duties of treasurer or collector.

141. SEC. 3. That the word "township," as used in this supplement shall be construed to include town, village, borough, or such other municipal division of any county in which such lands so assessed may be situate, and that the legislative or governing body of any such town, village, borough or such other municipal subdivision, shall perform the duties in respect to such assessments and proceedings thereon within their respective municipalities as are hereby required of the township committee, in case such land lies in a township; and the treasurer of any such town, village, borough or other municipal subdivision, or such other officer as shall be charged with the duty of collecting therein, shall perform the duties in respect to such assessments and proceedings thereon within such municipalities as are hereby required of the township collector in case such land lies in a township.

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 land.

142. 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 dikes, dams, tide banks, drains, sluices, sewers, pumps or other mechani-

cal 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, &c.

Proviso.

143. 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.

144. 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.

145. 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

146. 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.

147. 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.

148. SEC. 1. That 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.

149. SEC. 2. That 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.

VII. Miscellaneous acts.

An act for incorporation of companies for draining and improving meadows and lands overflowed by tide-water.

P. L. 1880, p. 240.

Approved March 11, 1880.

Owners may associate and form a company.

150. SEC. 1. That the owners of any body or tract of not more than two hundred acres of meadow, marsh, swamp or low lands in this state exposed to the overflow of the tide, may associate and form an incorporated company for the purpose of improving such lands and for the further purpose of erecting and constructing across any stream of water that may flow through said land, any bank, dam, sluice, flood-gates or water works necessary to secure the same from the overflow of the tide. (a)

Owners to sign certificate of formation, and file same in office of clerk of county.

151. SEC. 2. That any such owners of three-fourths or more of any body or tract of not more than two hundred acres of such lands, who shall sign a certificate setting forth that they have formed such a company under the provisions of this act, and the name adopted for such company, and the city, borough or township where its business is to be transacted and the county wherein such lands are situate, and shall cause the same to be delivered to the clerk of such county, who shall immediately file and record the said certificate in his office, in the book of corporations therein kept; thereupon, together with all other owners of such body of land and all those who may afterwards become owners thereof, their successors and assigns, shall be a body corporate and politic in law, with all the usual powers incident to corporations aggregate in this state.

Meeting of company.

152. SEC. 3. That immediately after the filing of said certificate as aforesaid, any three of the members of such company may call a meeting of the said company, to be held not less than ten days from date of the filing of said certificate, and at some public place in the city, borough or township nearest to said lands, by giving five days' notice in writing to each of said owners, or by two weeks' notice by advertisement in one or more newspapers printed and published in the county where said lands are situate, specifying the time and place when and where said meeting shall be held, at which time and place the owners of one-half or more of the lands included in said company, having met in person or by proxy, shall proceed to adopt such a constitution and by-laws for the government and management of their business as they shall deem proper; *provided*, the same shall not be made inconsistent with this act or contravene the laws or constitution of this state or of the United States, and to elect by ballot or otherwise, as the said constitution shall prescribe, a president, three managers, a treasurer and a clerk, who shall be members of the said company, whose several duties and terms of office and the filling of any vacancy or vacancies therein, and all matters not herein provided for, shall be regulated by the constitution and by-laws of the company.

May adopt by-laws, &c.
Proviso.

President and managers shall cause surveys, maps, &c., to be made.

153. SEC. 4. That the president and managers of any company formed in pursuance of this act, shall, within one year after the organization of the same as aforesaid, make or cause to be made a survey of the exterior limits or boundaries of such body or tract of land over which the tide-water flows, and which may be reclaimed, and shall cause each owner's share within said limits to be strictly measured, and a correct plot or map of the same to be made, exhibiting the entire bounds of the survey, as also the owner's name and number of acres held by each owner respectively; and after they have made or caused to be made such a survey and map as aforesaid, they shall give ten days' notice in writing to each of the owners of said land, or by three weeks' notice by advertisement in one or more newspapers printed and published in the county wherein said lands are situated, that a meeting of the owners of said lands will be held in the city, borough, or township nearest to the place where said lands lie, at a certain time and place in said notice to be named, and that they will then

Owners of lands to meet.

(a) The court of chancery will not enjoin the erection of a dam by a company incorporated under this act, on the ground that it is a nuisance, where the evidence as to the effect of the

building of the dam upon the public health is conflicting. *McNeil v. Assisunk Creek Meadow Co.*, 10 Stew. 201.

and there have present said survey and map ; and that said president and managers shall, at such meeting so called, make a public exhibit of their said survey and map, with the names of the owners and the number of acres owned by each as aforesaid, and shall hear any objections that may be made to the same, and shall make such corrections and amendments thereto as the said president and managers, or a majority of them, shall deem just and right, which said survey and map, corrected and amended, if any corrections or amendments thereto be made, shall be indorsed with a certificate of said president and managers, or a majority of them, that said survey and map is correct and true according to the best of their skill and understanding, and the same shall be filed with the clerk of the county where such lands are situate, and the same so filed shall be final and conclusive against all parties concerned, and shall be the basis upon which all assessments of taxes for the purposes of this act shall be made.

Survey and maps, &c., to be open to inspection.

Survey and maps to be filed with county clerk.

154. SEC. 5. That it shall and may be lawful for any said company formed in pursuance of this act, to construct in and across any stream of water that may flow through their said lands, at the most convenient points thereupon, above any established wharf or landing and above where navigation for sailing and other vessels engaged in the transportation of passengers, goods, wares and merchandise at ordinary high water ceases, or may be obstructed, otherwise than by any such dam or bank, good and sufficient banks, dams, sluices, flood-gates or pipes, or any or either of them with the necessary foundations and abutments, and to do all necessary work in and about the construction of the same that will the more effectually exclude the tide from such land, and after the same are constructed to maintain and keep in suitable and proper repair ; and for the purpose of making and constructing such bank or dam, to take and use any earth, mud, sod or other materials in any part of said lands, the most convenient thereto, and to have free ingress and egress for themselves, their employes and teams through any part thereof, doing no unnecessary damage to the owners thereof ; and if any unnecessary damage should be done to any of said owners, such damage to be assessed by three disinterested persons mutually chosen by such aggrieved owner and the managers of said company, and the decision of any two of such arbitrators shall be final, and the amount of damages so assessed shall be paid by the said company forthwith.

Lawful for company to construct banks, dams, sluices, flood-gates, &c.

May enter upon lands, &c.

Damages, how assessed and paid.

155. SEC. 6. That on and after such map shall have been filed as aforesaid, then the president and managers of any such company, or a majority of them, shall have full power and authority to select the location and to construct any such dam or other water works in such way and of such materials and of such character and dimensions as they may think necessary and proper to carry into full effect this act, and to assess the owners of the lands included in said company ratably according to the number of acres thereof severally held by them, in such sum or sums of money as shall be necessary for the erection of the said banks, dams, and other water works, and from year to year so to assess such sum or sums of money as they may deem necessary to be raised for repairing and maintaining the said banks, dams, and other water works, and for redeeming and canceling the bonds of such company and for paying off and discharging the interest due thereon ; they shall determine the time or times of payment of such assessments, and shall make out and deliver a specific duplicate in writing thereof to the treasurer of the company forty days before the time or times of payment appointed therein ; and the said duplicate, or a copy thereof, duly certified by said treasurer, shall be by him immediately filed in the clerk's office of the county wherein said lands are situate, and the same so filed shall be sufficient notice of the lien upon said lands, and a full receipt for any such assessment given by such treasurer to any such owner, or a duplicate copy thereof filed in such clerk's office, shall be notice of the release of the lien of the assessment so receipted for.

President and managers empowered to construct dams, &c., and to assess owners of lands for cost of building, &c.

To determine the payment of assessments, &c.

If owners neglect or refuse to pay amount assessed, the managers empowered to sue for the same.

156. SEC. 7. That if any of said owners shall neglect or refuse to pay the sum or sums on them severally assessed from time to time, for the space of thirty days after the same shall have been demanded by the treasurer, in person or by notice in writing, left at the usual place of abode of each owner, or in case such owner is a non-resident, then to his agent or tenant in possession, then it shall and may be lawful for the said managers, or a majority of them, at their option, in the name of the company to sue for and recover the amount so assessed and remaining unpaid from the owner or owners as aforesaid, or from his, her or their legal representative, with interest and cost of suit, by an action of debt in any court of competent jurisdiction in this state, and give the said assessment and this act in as conclusive evidence for the plaintiffs, and the said court is hereby empowered to give judgment and grant execution for the same with costs of suit.

Assessments to remain a lien until paid.

157. SEC. 8. That all assessments which shall be assessed by any company formed in pursuance of this act, upon any lands included in said company, shall remain a lien thereon from the time of filing of such assessment as aforesaid until paid or otherwise satisfied, notwithstanding any subsequent descent, demise, alienation, mortgage or other incumbrance thereof; and if the full amount of any such assessment shall not be paid and satisfied within the time limited and appointed for the payment thereof, it shall and may be lawful for the managers of any such company, or the majority of them, to cause the said lands, or such parts thereof as they shall think proper, to be sold at public auction for the shortest term which any person will agree to take the same and pay such assessment or the balance thereof remaining unpaid, with interest thereon, and all costs, charges and expenses, including costs of advertising, selling and executing the deeds, and to make and execute, under the seal of the company, and deliver to the purchaser a deed for the same; and such purchaser, his, her or their legal representatives, shall, by virtue thereof, lawfully hold and enjoy the said lands for his, her or their own use, against the owner or owners thereof, and all persons claiming under him, them or any of them, until his, her or their term therein shall be completed and ended, and shall be at liberty, at or before the end of his, her or their term, to remove any building or buildings and materials erected and placed thereon by him, her or them, and when said term shall have been ended, shall peaceably and quietly yield up the said lands to the legal owner or owners thereof, in as good condition as when he, she or they took possession of the same, damage resulting from ordinary use and the elements excepted.

Lawful for the managers to cause lands to be sold at public auction if assessment is not paid.

Notice of sale to be given and published.

158. SEC. 9. That before making any sale by virtue of this act, it shall be the duty of such managers, or a majority of them, to give notice of the time and place of said sale by advertisement signed by themselves and inserted in one or more newspapers printed and published nearest to the place in the county in which said lands are situate for at least sixty days, once in each week, before the time appointed for such sale, and also set up, for the same period, in at least ten of the most public places in the township wherein said lands may lie, which advertisement shall mention a short description, with metes and bounds, of said lands, the amount of the assessment due, and the owner or reputed owner's name; and the said lands so sold may be redeemed by the owner or owners thereof, or by the mortgagee or mortgagees thereof, within two years from the day of sale, on the payment of the purchase-money, with interest thereon, and all expenses and charges necessarily incurred thereon by the purchaser or purchasers aforesaid, and in case the same shall be redeemed as hereinbefore provided for by the mortgagee or mortgagees, or, if the said mortgagee or mortgagees shall have paid any assessment, with interest and costs thereon, to prevent the said lands from being sold to pay the same, then in that case the whole amount of payment shall be recovered under and by virtue of the mortgage which the said mortgagee or mortgagees may hold upon said lands, in the same manner in all respects as if the same were included in and intended to be secured thereby, and any mistake in the name or names of the owner or owners, or omission to name the real owner of any said lands [in] making

Lands may be redeemed by the owner or mortgagee.

Mistake in name not to invalidate sale.

any such assessment, shall not invalidate the said assessment or the sale of said lands as aforesaid, and it shall be lawful for the tenant in possession of said lands upon which any such assessment may be a lien, to pay the same, if not paid within the time limited, and the receipt of the treasurer of said company therefor shall be a receipt of the tenant for so much rent paid.

159. SEC. 10. That as soon as such dam or other water works are constructed as is provided for in this act, it shall be the duty of each and every owner and occupier of the said meadow and low lands included in any said company to cause his, her or their respective portion or shares thereof to be thoroughly and effectually drained, as is in the judgment of the managers, or of a majority of them, deemed necessary to secure the improvement of the said meadow and low lands contemplated by the provisions of this act, and in case of default of the performance on the part of the said owners or occupiers to drain the same and to keep the same drained as aforesaid, after twenty days' notice, in writing, signed by the president and served upon the owner, his tenant or agent, it shall be lawful for the said managers, or a majority of them, to cause the same to be done, and all costs and expenses for doing the same shall be assessed upon the premises so drained, and shall be a lien thereon, and shall be collected as is provided in this act for the collection of other assessments.

Owner and occupier of meadow and low land to cause their lands to be drained, &c.

On failure of owner, managers, to drain lands, &c.

Costs and expenses to be assessed and remain a lien.

Managers empowered to borrow money and issue bonds, &c.

160. SEC. 11. That it shall and may be lawful for the president and managers of any company formed in pursuance of this act, and they are hereby empowered to borrow any sum or sums of money for the erection and construction, maintaining and repairing of such dams, banks and other water works as the said company may from time to time order and direct, and may issue bonds of said company therefor, and for the security of the payment thereof, all the lands included in any said company shall be a pledge for the payment of its respective share, in whose hands the same may come.

161. SEC. 12. That this act shall not apply to or affect any stream or body of water (or any meadow, marsh, swamp or low land through which the same may flow or in which the same may be) bordering upon which or lying adjacent to which there shall be more than two hundred acres of meadow, marsh, swamp or low land; that the legislature may, at any time, alter, amend or repeal the charter of any company created under this act.

Act not to apply to or affect certain streams, &c.

Supplement.

Approved March 18, 1881.

P. L. 1881, p. 186.

162. SEC. 1. That the owners and possessors of three-fourths or more of any body or tract of not more than two hundred acres of meadow, swamp or low lands that have been banked in but are now exposed to the overflow of the tide, or of meadows already banked in and held by different persons who have formed themselves into a company under mutual agreement or otherwise to bank, improve and keep the same in repair, may, to reclaim the same, or to keep the same in good repair and for the better government thereof, subject themselves to all the provisions of the before-recited act; *provided, always*, that this act shall not be so construed as to in any way change or affect the rights or privileges of said company aiming at the same results before granted or agreed upon by said company.

Certain meadow-owners may subject themselves to provisions of the act.

Proviso.

An act to authorize and enable small landowners to drain and improve their lands.

Approved March 28, 1883.

P. L. 1883, p. 234.

163. SEC. 1. That it shall and may be lawful for the owner or owners of any meadow, swamp or other lands, improved or otherwise, lying or being so situate that it cannot be drained sufficiently for the effectual improvement of the same without clearing out, cutting down and lowering the bed of creeks or natural water-courses, or cutting, opening or clearing out ditches or drains into or through the lands owned by or in possession of such person or persons as will not sufficiently clear out, cut down and

Proceedings to enable owners of meadows, swamps, &c., to drain the same.

lower the beds of creeks or natural 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, or will not assist others in such drainage, and who may desire the same, to apply to the two surveyors of the highways and the chosen freeholder of the township in which the lands lie, who are hereby directed and required, upon ten days' notice in writing, signed by the applicant or applicants, their agent or attorney, given for that purpose, as well to the person or persons who may in any way be benefited by the said drainage as to the surveyors and freeholder, particularly specifying the time and place of meeting; and when the said surveyors and freeholder, or a majority of them so met, on due proof being made to them that the required notice has been given to all persons to be affected by the said drainage, and who will be benefited thereby, on which the said surveyors and freeholders shall decide, and their decision shall be final and conclusive; and the said surveyors and freeholder having taken an oath or affirmation to act faithfully and impartially, shall proceed to view the premises, and shall, if they think the application necessary and reasonable, order and direct the applicant or applicants, in writing, to clear out, cut down and lower the beds of creeks or natural water-courses, or cut, open, clear out ditches or drains sufficient to drain and improve the same, giving the location, direction, depth and width said ditch or drain shall be cut, made, cleared out and opened, and the depth and width said creek or natural water-course shall be cleared out, cut down, straightened and the bed of the same lowered, and at the same time apportion to each landowner who may be in any way benefited by said proposed drainage his share of the expense of said drainage as well as the expense of the application and the fees of the surveyors and freeholder in proportion to the amount of benefits to be derived therefrom; *provided, however*, that the total cost of such improvements shall not exceed the sum of one thousand dollars.

Proviso.

May proceed to clear out creeks, &c., by contract or day's labor.

164. SEC. 2. That after the surveyors and freeholder have met and ordered the improvement to be made, they may proceed to have the beds of creeks and natural water-courses cleared out and lowered and the ditches or drains cut, opened and cleared out, as directed in the order made by the surveyors and freeholder, either by contract or by day's labor, keeping a correct account of all expenses incurred in and by the same; and assess from time to time, as the work progresses, each landowner with his share of the expenses incurred, in accordance with the apportionment made by the surveyors and freeholder.

Assessments, how collected.

165. SEC. 3. That the applicant or applicants shall, in person or by notice in writing left at the usual place of abode of each owner, demand of and from each owner, ten days before the time of payment, the sum assessed as aforesaid, together with a statement of money expended up to the time the assessment is made; 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 for the applicant or applicants, their agents or attorneys, to collect the same by action of debt, with costs of suit, in any court where the same may be cognizable. (a)

Proceedings when freeholder or surveyor is interested in improvement.

166. SEC. 4. That when any surveyor of 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, repaired or lowered, shall be interested for or against the same, application shall be made to any surveyor of the highways or chosen freeholders 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 freeholder as may by law be authorized to act in the premises, shall exercise the powers and perform the duties conferred and enjoined by this act.

(a) The action may be brought in the court for the trial of small causes. It is in no way necessary to a recovery of the assessment to prove title to land. The legality of the assess-

ment cannot be tried in a suit to recover the amount of it. Error in it must be established by means of proceedings in *certiorari*. *Craig v. Mackey*, 19 Vr. 363.

An act to provide for the revaluation of meadow and marsh lands, and providing for making a new measurement of the same for the purpose of making future assessments on the lands for the erection and maintenance of banks, dams, sluices and water-ways sufficient to prevent the tide from overflowing the same.

Approved March 10, 1886.

P. L. 1886, p. 82.

167. SEC. 1. That wherever any company shall exist under any act of the legislature of this state to enable the owners and possessors of meadow and marsh lands in any portion of the state to erect and maintain banks, dams, sluices and water-ways sufficient to prevent the tide from overflowing the same, that at any annual meeting of said company, but not oftener than once in five years, the owners and possessors of said meadow and marsh lands may proceed to elect by ballot, in the manner provided for elections by meadow companies in and by the supplement to the general meadow law, approved March tenth, anno domini one thousand eight hundred and eighty-two, three judicious and disinterested freeholders as commissioners, who, or a majority of whom, after a notification of their election by the managers of said company, or a majority of them, shall view the said premises and cause each owner and possessor's share to be exhibited on a correct plot or map, to be made either from previous measurements or new survey, setting forth the number of acres held by each owner, and also making a new valuation of the same, having regard to the quantity, quality and location; and their map, report and valuation, under their hands, or under the hands of a majority of them, in writing, shall be given to the managers of said company, and shall remain in their possession during their continuance in office, and at the expiration of such term be delivered to their successors, and shall be entered in the clerk's book and received as evidence of each owner's quantity of acres, and the value that each lot is rated at, and all future assessments shall be made in proportion thereto, unless changed thereafter, not oftener than once in five years, in like manner as provided in this act. [See Sec. 51, *ante*.]

Owners empowered to elect commissioners.

Commissioners to make survey and map and valuation of premises.

168. SEC. 2. That notice of an intention to take proceedings at any annual meeting under this act shall be given to the owners and possessors of such meadow or marsh land to be affected thereby.

Notice to be given to owners of land.

169. SEC. 3. That the duties of such commissioners mentioned in section one of this act, shall be performed within four months of the time of the aforesaid notice of their election, and their compensation shall be such as may be determined upon by vote at the annual meeting electing them.

When duties of commissioners are to be performed.

An act to provide for the drainage of lands.

Approved June 19, 1890.

P. L. 1890, p. 475.

170. SEC. 1. That in any township of this state having authority by law to provide by ordinance for the construction of sewers, drains and culverts and other necessary passages for water, and in which any meadow, swamp or other lands improved or otherwise are so situate that they cannot be sufficiently drained without clearing out, cutting down or straightening the beds of creeks or natural water-courses therein, it shall be lawful for the township committee or other legislative or governing body of such township, on application in writing therefor, to provide for the clearing out, cutting down or straightening the beds of such creeks or natural water-courses.

When lawful for townships to provide for clearing out, &c., beds of creeks.

171. SEC. 2. That it shall be lawful for the township committee or other legislative or governing body of such township, by ordinance, to cause the beds of such creeks or natural water-courses to be cleared out, cut down or straightened, and to take and appropriate the lands and real estate necessary therefor, upon making compensation to the owner thereof, in the same manner and in like proceedings as in cases where land is taken for the construction of a sewer, drain or culvert in such township.

Lands may be taken upon compensation.

Damages to be paid.

172. SEC. 3. That if in deepening, straightening or otherwise altering the bed of any creek or natural water-course, or removing any dam, flood-gate or other obstruction therefrom, under and by virtue of the provisions of this act, any owner of land or tenant thereof shall sustain damage, compensation therefor shall be made to such owner or tenant, and the same proceedings shall be had in relation to any award for such damage as in cases where lands are taken, and any such award or awards shall form part of the costs, damages and expenses for the making of any improvement herein provided for.

Assessment of costs, damages, &c.

173. SEC. 4. That the costs, damages and expenses incurred for making any improvement or performing any work under and by virtue of the provisions of this act, shall be assessed upon the lands specially benefited by such improvement, to the same extent and in the same manner and in like proceedings as in cases where an assessment for the costs, damages and expenses is made for the construction of a sewer, drain or culvert in such township.

Townships may issue bonds for paying for such improvements.

174. SEC. 5. That for the purpose of meeting any liabilities for the improvements or any of them mentioned in this act, that may at any time be contracted for or be in progress, it shall be lawful for the township committee, or other legislative or governing body in such township, to issue either the registered or coupon bonds of such township, to be styled improvement bonds, to such an amount as such committee or governing body shall by ordinance determine, not, however to exceed in the aggregate the whole cost of such improvement; such bonds shall be sealed with the corporate seal of such township, signed by the chairman of said committee or other governing body in such township, and countersigned and registered by the clerk thereof, and made payable in not less than one nor more than ten years from the date thereof, and shall bear interest at a rate not exceeding six per centum per annum payable semi-annually.

Bonds to bear interest.

Bonds not to be sold at less than par.

175. SEC. 6. That any bonds issued under the provisions of this act shall be negotiated or sold at not less than the par or face value thereof, and the proceeds of such negotiations and sales promptly appropriated and applied to the payment and liquidation of the obligations incurred for any improvement for which such bonds are issued, and for no other purpose whatever.

Money received from assessments to be appropriated for payment of bonds.

176. SEC. 7. That all moneys collected and received as principal and interest for and on account of assessments for any improvement for which such bonds are issued, are to be pledged and appropriated for the payment of the principal and interest of the bonds hereby authorized to be issued; and all sums of money, or balance over and above the amount necessary to pay the principal and interest of said bonds at maturity as aforesaid, or that cannot be vested in the purchase of said bonds at par before maturity, shall be safely vested in some readily-convertible securities and applied to the payment of said bonds when the same shall become due and payable.

Township committee, &c., to determine amount necessary to pay interest on bonds each year, and to order the sum to be raised by assessment.

177. SEC. 8. That it shall be the duty of the township committee or other governing body of said township, and such committee or other governing body of said township is hereby authorized and empowered, by resolution, to fix and determine annually, on or before the second Tuesday in May in each year, how much money is necessary to be raised by taxation to pay the interest on such bonds as fall due within one year from the time of adopting such resolution, and to order such sum to be assessed and collected for the purpose aforesaid; a copy of which resolution shall be served by the township clerk on the township assessor of such township, and thereupon the sum so ordered to be raised shall be assessed upon all the ratables and taxable property in such township, and collected in the same manner and at the same time that other township taxes are assessed and collected; and the money so raised shall be applied to the payment of such principal and interest falling due on said bonds and to no other purpose.

Money to be used in paying bonds.

Repealer.

178. SEC. 9. That all acts and parts of acts, whether general, public, local or special, inconsistent with this act, be and the same are hereby repealed.