

*v. Muir*, 65 Md. 599. See also, *Powell v. Wilson*, 85 Md. 357; *Windsor v. State*, 103 Md. 613; *Phipps v. State*, 22 Md. 380.

The three classes of proprietors under this section and section 48, distinguished. The priority given is not an incident of the estate of the riparian owner, but is a mere privilege which is essentially different from the rights conferred by article 54, section 48, *et seq.* Construction of the words "lying and bordering." To whom the notice under this section must be given; when the notice is dispensed with, and when it may be posted. *Handy v. Maddox*, 85 Md. 550.

Under the act of 1894, ch. 380, the only question that can be summarily determined by the judge of the circuit court in accordance with this section, is whether the five acres located, constitute a natural bed. The judge is without jurisdiction to determine other matters and if he undertakes to do so, the court of appeals may review his order. *Travers v. Dean*, 98 Md. 75.

No appeal lies from the determination of the circuit court that an appropriated bed is a natural bed, and setting aside the location. *Jackson v. Bennett*, 80 Md. 77.

There is no conflict between this section and section 49. *Powell v. Wilson*, 85 Md. 358.

For a case construing and declaring constitutional a similar section in the code of 1860, see *Phipps v. State*, 22 Md. 380.

For a case involving the act of 1829, ch. 87, see *Baltimore v. McKim*, 3 Bl. 469.

*Quære*, as to whether the portion of this section denying its benefit to non-residents, is valid. *Hess v. Muir*, 65 Md. 606 (separate opinion).

See notes to sec. 49.

1904, art. 72, sec. 47. 1900, ch. 380, sec. 46 A.

**48.** It shall be unlawful for any person or persons or corporation to locate or appropriate any natural bar or bed of oysters by certificate, as provided in section 47 of this article, and such unlawful location is hereby declared a misdemeanor, and upon conviction before a court of competent jurisdiction or justice of the peace, there shall be a fine of not less than fifty dollars or imprisonment for not more than three months or both fine and imprisonment, in the discretion of the court.

See notes to sec. 47.

*Ibid.* sec. 48. 1894, ch. 380, sec. 47.

**49.** If any creek, cove or inlet not exceeding one hundred yards at low water in breadth at its mouth make into the land, or if any creek, cove or inlet of greater width than one hundred yards at low water mark make into the land, the owner or other lawful occupant shall have the exclusive right to use such creek, cove or inlet when the mouth of said creek, cove or inlet is one hundred yards or less in width; and when the said creek, cove or inlet is more than one hundred yards in width at its mouth at low water, the said owner or other lawful occupant shall have exclusive right to use such creek, cove or inlet so soon as said creek, cove or inlet in making into said land or lands shall become one hundred yards in width at low water, for preserving, depositing, bedding or sowing oysters or other shell fish, although such cove, creek or inlet may not be included in the lines of any patent; and in all such cases such rights of the riparian proprietor shall extend to the middle of such creek, cove or inlet.

There is no conflict between this section and section 47. If more than twelve months subsequent to the location of a private bed, the creek becomes