

1. ANY person or persons seized or possessed of land which is overflowed, or is liable to be overflowed with water, having given 2 months notice, by advertisement set up at the court house door of the county wherein the land lies, and to the owners of or persons residing on the lands through which he wishes to cut a ditch for the purpose of draining his or her lands, of his or her intention to apply to the county court of the said county for a commission to have a way laid out for that purpose, may apply, by petition in writing, to such court for a commission, and, upon proof being made to the satisfaction of the court, that notice was given as aforesaid, or upon the other persons interested appearing and waving the notice, the court may issue a commission to any 5 persons agreed on by all the parties empowering them, or a majority of them, to lay out a way for a ditch to run through the lands mentioned in such commission, but if the persons interested shall not agree on the persons for commissioners, then shall the court appoint 5 discreet persons, not interested in the lands, nor related to either of the parties, to whom a commission shall issue in manner aforesaid.—1790, c. 3, § 2.

2. The said commissioners, or a majority of them, shall give notice, by advertisement set up at the court house door of their county, and such other places as they may judge most effectual, of the time of their meeting, 30 days at least before their meeting, and shall meet on the land to proceed in the execution of their commission, agreeably to the notice given by them as aforesaid; but before any commissioner shall proceed in the execution of any commission, otherwise than by giving notice, he shall take an oath or affirmation, before some justice of the peace, or some other of the commissioners, that he will, without favor or partiality, lay out a way for a ditch, which, according to the best of his judgment, will best answer for draining of the water from the land mentioned in such commission, regarding the interests of all the parties, and truly ascertain the damages, and a true return thereof make to the court—*ibid.* § 3.

3. The said commissioners, or any one or more of them, may adjourn from time to time, as he or they may think necessary, and they, or a majority of them, or the major part of such majority met, may and shall cause a way for a ditch to be cut, to be laid out by the surveyor of the county, or by such other person as they may think fit to appoint, of such width, not exceeding 20 feet, and of such length as they may judge necessary for draining off the water, regarding the interests of all the persons through whose lands the water may run, until it shall be lost or emptied in some branch, creek, or other sufficient vent to discharge the same, and may cause trees to be marked, or marks to be set up to perpetuate the location of the same: provided that no such ditch shall be laid out or made through any garden, yard or orchard, except with the consent of the proprietor; and provided also that any person apprehending himself