

them as aforesaid; but before any commissioner shall proceed in the execution of any commission, otherwise than by giving notice as aforesaid, he shall take an oath, or affirmation, before some justice of the peace, or some other of the commissioners, that he will, without favour or partiality, lay out a way for a ditch, which, according to the best of his judgment, will best answer for draining off 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; provided always, 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 or herself aggrieved by the determination of the court, either in granting, or refusing to grant, the commission aforesaid, or in any matter in consequence of this act, may appeal to the general court, whose determination shall be final.

IV. AND BE IT ENACTED, That 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 twenty 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.

May adjourn, &c.

V. AND BE IT ENACTED, That the said commissioners, or a majority of them, or the major part of such majority met, shall determine the compensation to be made to the owners of the lands through which such ditch shall pass, which compensation, together with all the expences attending the commission, shall be paid by the person or persons applying for such commission, and the ditch, when cut, shall be kept open and repaired at the expence of the person or persons who may apply for the same.

And determine compensation, &c.

VI. AND BE IT ENACTED, That after any way for a ditch shall be laid out agreeably to this act, the court shall direct the application for such way for a ditch, and the return thereof, to be recorded at the expence of the party applying for the same, and thereupon and thereafter the privilege of venting and running off water through the same shall be vested in the person or persons applying for and paying for the same, and to their heirs or assigns for ever.

Application, &c. to be recorded, &c.

VII. AND BE IT ENACTED, That it shall not be lawful for any person or persons to stop up or change, or in any manner to impede, the flowing of the water in any ditch cut under this act, under the penalty of five pounds for every such offence to the party injured, to be recovered before a single magistrate; provided always, that the owner or owners of any lands through which a ditch, laid out as aforesaid, may run, shall not be debarred the privilege of crossing the said ditch with convenient bridges, and the necessary fences for enclosing and dividing his lands.

Penalty on stopping the water, &c.

VIII. AND, whereas the natural drains, sinks and branches, are frequently choked up by the falling down of trees, or other obstructions, so as to occasion the adjacent land to be overflowed with water, BE IT ENACTED, That the person or persons, whose lands, in the counties aforesaid, shall be overflowed with water in consequence of impediments from the falling of trees, or the floating of timber, or other obstructions, across any natural drain, sink or branch, may give notice to the owner of the land on which such impediment may be, and if he shall refuse or neglect to remove the same after two days notice, then it shall be lawful for the person or persons, whose lands may be overflowed as aforesaid, to cause the said impediment to be removed.

When lands are overflowed, notice to be given, &c.

IX. PROVIDED ALWAYS, AND BE IT ENACTED, That nothing in this act shall be construed to affect the rights of the owners of water mills, nor shall any commissioner under this act have power to lay out a ditch to draw off the water from any water mill.

Proviso.

X. AND BE IT ENACTED, That each commissioner shall be entitled to seven shillings and six-pence for every day he shall attend in the execution of such commission; that any person, acting as surveyor, shall receive such *per diem* allowance as shall be adjudged by the commissioners, not exceeding fifteen shillings for every day he shall necessarily be employed; that each chain-carrier shall be entitled to receive five shillings; to be paid by the person at whose request the service shall be performed, and, if necessary, attachment shall be issued by the county court to compel such payment.

Allowance to commissioners, &c.

By 1799, ch. 73, this act is extended to Talbot and St. Mary's counties in its various provisions, &c. as if those counties had been originally included.