

Dec. Ses. 1823

thereby granted to the Potomac Company shall be vested in the company hereby incorporated; and it shall be the duty of the said last mentioned Company until every section of the contemplated canal shall be completed, so as to be used and enjoyed for the purposes of navigation, to keep the corresponding part of the River in a proper state for navigation and in good order as the same now is, and in default thereof they shall be in all things responsible in the same manner as the Potomac Company is now responsible; and in all rivulets, streams, creeks and rivers, required for the Western section of the said Chesapeake and Ohio Canal, the same rights shall be and are hereby vested in the Chesapeake and Ohio Canal Company by this act as the charter of the Potomac Company vested in the said company in relation to the waters of the Potomac and the tributary streams thereof.

Public highway.

14. *And be it enacted*, That the said canal and the works to be erected thereon in virtue of this act when completed shall forever thereafter be esteemed and taken to be navigable, as a public highway, free for the transportation of all goods, commodities and produce whatever on payment of the tolls to be imposed as provided by this act, and no other toll or tax whatever, for the use of the said canal, and the works thereon erected shall at any time hereafter be imposed but by the consent of the said states, and the congress of the United States.

Condemnation of materials.

15. *And whereas*, it is necessary for the making the said canal, locks, dams, ponds, feeders and other works that a provision should be made for condemning a quantity of land for the purpose, *Be it enacted*, That it shall and may be lawful for the said president and directors, or a majority of them to agree with the owners of any land through which the said canal is intended to pass, for the purchase or use and occupation thereof, and in case of disagreement, or in case the owner thereof shall be a feme-covert, under age, non compos, or out of the state or county, on application to a justice of the county in which such land shall be, the said justice of the peace shall issue his warrant under his hand to the sheriff of the county, to summon a jury of eighteen inhabitants of his county, not related to the parties, nor in any manner interested, to meet on the land to be valued, at a day to be expressed in the warrant not less than ten, nor more than twenty days thereafter, and the sheriff upon receiving the said warrant, shall forthwith summon the said jury, and when met shall administer an oath or affirmation to every jurymen who shall appear, being not less than twelve in number, that he will faithfully, justly and impartially value the land, and all damages the owner thereof shall sustain, by cutting the canal through such land, or the partial or temporary appropriation, use or occupation of such land, according to the best of his skill and judgment, and that in such valuation he will not spare any person for favor or affection, nor any person grieve for malice, hatred or ill will; and in every such valuation and assessment of damages, the jury shall be, and they are hereby instructed to consider in determining and fixing the amount thereof, the benefit which will accrue to the owner from conducting the said canal through or erecting any of the said works upon his land, and to regulate their verdict thereby, except that no assessment shall require any such owner to pay or contribute any thing to the said company, where such benefit shall exceed in the estimate of the jury the value and damages ascertained as aforesaid, and the inquisition thereupon taken shall be

Land, &c.