CAP. XLIX.

An Act to provide for the better Maintenance of Works executed under the Acts for the Drainage of Lands in *Ireland*. [16th *July* 1866.]

5 & 6 Vict. c. 89.

'WHEREAS by an Act of Parliament of the Session held in the Fifth and Sixth Years of Her Majesty, Chapter Eighty-nine, and by certain other Acts amending or varying the Provisions of the same, Provision is made for the Appointment of Trustees for the Maintenance of Drainage Works executed under the Powers of the said Acts, and for the charging and levying such Sums as may be necessary for the Maintenance and Conservancy of such Works: And whereas large Sums of Public Money have been advanced and expended in the Drainage and Improvement of Lands under the Provisions of the said Acts, and the Lands so drained and improved form the Security for Repayment of such Advances: And whereas it is frequently found that Lands improved by such Drainage Works are allowed to be injuriously affected by reason of the insufficient Maintenance of such Works; and the Trustees of the Districts in which such Lands are included neglect in many Instances to maintain or repair the said Works, and to take such Proceedings as may be necessary to secure the Lands in the District against Deterioration arising from such Neglect, and by reason thereof the said Lands are prejudicially affected as to the Security for the Repayment of such Expenditure, and no efficient Remedy in such Cases is provided by the said Acts: And whereas an Act was passed in the Session of Parliament held in the Twenty-sixth and Twenty-seventh Years of the

26 & 27 Vict. c. 88.

Reign of Her Majesty, Chapter Eighty-eight, intituled *An Act to enable Landed Proprietors to construct Works for the Drainage and Improvement of Lands in* Ireland; and Provision is by the said Act and the Acts since passed amending the same made for the Advance of Public Monies to Drainage Boards constituted under the said last-mentioned Acts to be expended upon the Drainage and Improvement of Lands within their respective Districts, and to be secured upon such Lands; and Provision is also thereby made for Maintenance of the Works constructed by such Drainage Boards by means of Rates assessed upon the Lands within such Districts, and the Proprietors thereof, according to the Proportions specified in the Awards in the said last-mentioned Act mentioned: And whereas the Advantages to be derived from Works of Drainage are dependent upon the proper Maintenance of such Works: And whereas it is apprehended that Difficulty may be experienced in enforcing the future Maintenance of the Works so constructed by such Drainage Boards, and it is expedient that further Provision should be made for the Maintenance of all such Drainage Works executed under the Provisions of the said Acts, or any of them:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Short Title.

1. This Act may be cited for all Purposes as the Drainage Maintenance Act, 1866.

Where Lands are subject to Charge for Drainage, &c. and the same are injuriously affected, Person may take Proceedings.

2. Where the Lands of any Person being a Proprietor or Lessee thereof shall be or shall have been subject to any Charge for the Drainage of any District under the Provisions of the said Acts, or any of them, or to any Rates or Assessments for the Maintenance of the Drainage Works in the same District, and the same Lands shall be injuriously affected owing to the insufficient Maintenance of the said Drainage Works, it shall be lawful for such Person to take such Proceedings as are herein-after directed.

Such Person to give Notice to Trustees or Drainage Board.

3. Any such Person or Complainant shall and may serve a Notice in Writing, signed by himself or his authorized or known Agent, upon the Trustees or Drainage Board, as the Case may be, for the Time being of such District, or any Two or more of them, or their Clerk or other Officer (if any such shall be appointed), setting forth the particular Lands alleged to be injured, and the particular Defects arising from the Neglect or Insufficiency of the proper Maintenance of such Drainage Works to which Injury shall be alleged to be attributable, and calling upon the said Trustees or Drainage Board forthwith to cause such Defects to be remedied or supplied: Provided always, that in case such Complainant shall be unable to effect Service of such Notice in manner as aforesaid, it shall be lawful for him

to

to publish the same not less than Three Times in some Newspaper circulating in such District, and such Publication shall be deemed equivalent to such Service as herein-before is mentioned.

In case the Trustees or Drainage Board neglect, Complainant to apply to the Commissioners of Public Works.

4. In case the said Trustees or Drainage Board shall, for the Space of Fourteen Days, neglect to comply with the Terms of such Notice, it shall be lawful for such Complainant to present a Memorial to the Commissioners of Public Works in *Ireland*, stating the Neglect of such Trustees or Drainage Board in the proper Maintenance of such Works, the Nature of the Injury and Defect arising from such Neglect, and the Purport or Contents of such Notice as aforesaid, and the Date or Dates of the Service, or of such Publication as aforesaid of the same, and showing the particular Nature of the alleged Neglect or Default of the said Trustees or Drainage Board.

The Commissioners to consider Memorial.

5. The Commissioners shall consider such Memorial and the Subject thereof, and shall and may, if they shall think fit so to do, appoint an Engineer or other competent Person to inspect and report upon the Subject of such Memorial and the State of the Works in any such District, and, if necessary, to furnish a Specification and Estimate of the probable Cost of the necessary Repair of such Works, and a Copy of such Report, or the Purport thereof, shall be furnished to the said Trustees or Drainage Board, or their Clerk or other Officer; or the Commissioners may cause the same, or the Purport thereof, to be published not less than Three Times in some Newspaper as aforesaid, and shall and may at the same Time, by Notice served or published as aforesaid, call upon such Trustees or Drainage Board, within such Period as shall be therein appointed (not less than One Fortnight from the Date of the Service or Publication of such Notice), to show cause why the Provisions of this Act should not be put in force with respect to the Matters complained of.

The Commissioners to make an Order.

6. The Commissioners shall take into their Consideration all such Matters (if any) as shall be submitted to them by the said Trustees or Drainage Board, and shall make, or cause to be made, such Inquiries with reference to the Premises as they may deem expedient, and shall and may, if they think fit, make an Order under their Common Seal, declaring that the Works of Maintenance and Repair therein specified ought to be forthwith executed pursuant to the Provisions of this Act; and thereupon it shall be lawful for the Commissioners to proceed to carry out such Works of Repair and Maintenance as they may consider necessary.

Repairs to extend to Bridge.

7. The Repair and Maintenance of the Works by the said recited Acts and this Act authorized to be made by the Trustees or Drainage Boards, or by the said Commissioners of Public Works, shall extend to and include the Removal, Reconstruction, or Alteration of any existing Bridge (not being a County Bridge), Culvert, or Archway which in the Opinion of the Commissioners of Public Works may be insufficient for the Discharge of the Water in any District, and thereby causing Injury to any Lands within such District.

Commissioners may appoint a Superintendent.

8. The Commissioners may appoint some fit and proper Person to be the Superintendent for the Execution of such Works; and so from Time to Time, as Occasion may require, the Commissioners may appoint some other proper Person to be such Superintendent in the Place of any Person so originally appointed who may die, or refuse or become incapable to act, or whom the Commissioners may think fit to remove and supersede; and the Commissioners, by any such Order, may fix and declare a proper Salary or Remuneration to be paid to such Superintendent.

Complainant to pay preliminary Expenses.

9. The Commissioners, if they shall think fit, and before the making of any such Order, may require any Complainant as aforesaid to pay or secure to them such Sum of Money as shall be sufficient to defray any preliminary Expenses to be incurred by the Commissioners in relation to such Complaint.

The Powers of the Commissioners to carry out Works.

10. The Commissioners shall possess all such Powers and Authorities for the Purpose of executing the Works to be by them executed as by any of the Acts herein-before mentioned or referred to are conferred on the Trustees of any Drainage District or on any Drainage Board as aforesaid.

Expenses to be charged to the District.

11. The Expenses of the said Works so to be constructed, and including all Costs and Charges properly incurred by the Complainant or the Commissioners in and about the obtaining and making such Order or Orders as aforesaid, or preliminary or consequential thereto, and the Salary or Remuneration of such Superintendent as fixed and determined by the Commissioners, shall be charged as herein-after provided.

The Commissioners may make an Order declaring the Amount expended.

12. The Commissioners shall and may, upon Completion of such Works, or such Part thereof as they may think proper and necessary, make an Order declaring amongst other things that the Amount mentioned in such Order is and shall be charged upon the Lands in such District and the Proprietors thereof respectively; and in such Order the Commissioners shall state and declare the Time or Times when the Amount mentioned in any such Order shall be paid to the Commissioners, the Parties by whom, and the respective Proportions in which such Amount shall be paid, the Commissioners in making such Order having regard to the final Award in the District for which such Order shall be made, so far as any Change of Circumstances in each Case may admit; and the Commissioners may also insert in any such Order all such other Determinations, Matters, and Things as they may think necessary and proper, and such Order shall be called the Charging Order.

Power to make further Order.

13. And in case the Amount of Money mentioned in such Order as aforesaid shall be found insufficient for the Purposes aforesaid, and of all Expenses incidental to the Execution of the said Works, it shall be lawful for the Commissioners, by any further Order as aforesaid, from Time to Time to order and declare such further Sum as they shall think fit to be charged on the said District for the Purpose of the said Works and the Expenses incidental thereto; and thereupon such further and additional Amount shall be deemed and taken to be Part of the Amount charged by such original Order as aforesaid, and rated and recovered accordingly.

The Commissioners to make Advances.

14. It shall be lawful for the Commissioners, if they deem it expedient, out of any Monies under their Control and applicable to Loans, and with the Sanction of the Lords Commissioners of Her Majesty's Treasury, to advance the Sum mentioned in any such Order or Orders made by the Commissioners, as herein-before provided, to be expended on the Repair and Maintenance of such Works.

The Amount to be charged on Lands in the District.

15. The Amount mentioned in any such Order, with Interest on any Sum so advanced, at a Rate not exceeding Five Pounds *per Cent. per Annum* from the Date of such Advance until Repayment thereof, shall thereupon become charged upon the Lands in the said District and the Proprietors thereof respectively, in like Manner and in the same Priority as Maintenance Rates imposed by virtue of the aforesaid Acts or any of them; and the said Proprietors and their Lands respectively shall be assessed, rated, and taxed therewith in the Proportions mentioned in the Order of the Commissioners, in like Manner in all respects as any Sums of Money could have been rated and assessed by the Trustees or Drainage Board of any Drainage District for the Maintenance of the Works within the same by virtue of the Provisions of the aforesaid Acts or any of them.

If Amount not paid Parties and Lands to be liable to 1*s.* in the Pound Receiver's Fees.

16. In addition to all and every the Sums which by any Order of the Commissioners shall be fixed and determined as payable in respect of any of the Lands under the Provisions of this Act, and the Interest on such Sums, there shall be paid to the Commissioners One Shilling in the Pound on the total Amount of the same respectively as and for Receiver's Fees thereon, to be charged, payable, and recoverable in like Manner as such Sums and Interest aforesaid: Provided always, that no Party or Person, or the Lands or Property of such Party or Person, shall be liable to such additional Charge, who shall, within Thirty-one Days next after the Time appointed by any such Order for Payment of any such Sum and Interest as aforesaid, pay the Amount thereof to the Credit of the Commissioners into the Bank of *Ireland*, or into such other Bank as the Commissioners may for that Purpose appoint.

Recovery of Monies.

17. The Commissioners, for the Purpose of assessing such Sum of Money as aforesaid, and for the Recovery of the same, shall possess the same Remedies against the same Lands

Lands and Persons, and the same Powers, Rights, and Privileges, as are or would be possessed by any Trustees or Drainage Board of any District, for the Purpose of assessing and recovering any Sums of Money rated and assessed by them for the Maintenance of the Works in such Districts, including a Right to recover such Rates and Charges for Maintenance by Civil Bill from the Person or Persons for the Time being in possession or in receipt of the Rents and Profits of Lands as Proprietors in respect of which such Rates or Charges shall be payable.

Power to appoint a Collector.

18. It shall be lawful for the Commissioners, if they shall consider it necessary so to do, by Warrant, to appoint any Person to be the Collector of such Rates or Charges; and in case any Person from whom such Rates or Charges shall be recoverable as aforesaid shall not pay the same to such Collector when demanded, then and in such Case such Collector shall leave at the Dwelling House or last Place of Abode of such Person a Notice in Writing, subscribed with the Name and Place of Abode of such Collector, requiring Payment of such Rate or Charge within Six Days from the Date of such Notice, and expressing that within Six Days the same may be paid to the Collector at his House or Office; and if the same shall not be paid within such Period of Six Days, then it shall be lawful for the said Collector to levy the same by Distress and Sale of the Goods of such Person wherever such Goods may be found; and the Proceeds of such Distress or Sale shall be applied in Payment of the Expenses of such Distress and Sale, and in the next place in Payment of such Rate, and the Residue shall be paid to the Owner of such Goods.

Commissioners may cause Inspection of Works and make the necessary Repairs.

19. It shall be lawful for the Commissioners from Time to Time to cause Inspection to be made by some Engineer or other competent Person of the Works executed in any District under the said Acts or any of them; and if it shall appear from the Report of the Person so appointed that the Works in any such District have not been kept and maintained in good Order, Repair, and Condition, so as in the Opinion of the Commissioners to be fit and proper for their intended Purposes, or that any sudden Breach or Damage has occurred to any Embankment or other Work in any such District, it shall be lawful for the Commissioners to cause a Notice, addressed to the Trustees or Drainage Board of such District, to be served or published as herein-before is directed, calling upon them to execute such Works as in the Opinion of the Commissioners the Circumstances of the Case shall render necessary (and the Nature of which shall be stated in such Notice) within such Period as shall be therein mentioned, and informing them that in default thereof such Works will be executed by the Commissioners pursuant to the Provisions of this Act; and in case such Works shall not be executed in accordance with the Terms of such Notice, it shall be lawful for the Commissioners, by and with the Sanction of the Lords Commissioners of Her Majesty's Treasury, to make and execute all such Works as they may consider necessary and proper for the due and efficient Repair of such Works, and for the Purposes aforesaid the Commissioners shall possess all the Powers so herein-before expressed to be conferred upon the Trustees of any Drainage District or any Drainage Board as aforesaid; and the Commissioners, after the Completion of such Works, shall make an Order declaring the Amount expended by them in such last-mentioned Works, including the Expense of any preliminary Survey as aforesaid, and of any Superintendent appointed by the Commissioners, and declaring that such Amount, together with Interest thereon from such Date as in such Order shall be mentioned, shall be charged on the Lands and Proprietors in such Districts, and such Order shall have the like Effect in all respects, and all the Provisions of this Act shall apply thereto in like Manner, as if the same were an Order of the Commissioners made in pursuance of the Provisions herein-before contained, and called the Charging Order.

Order to be Evidence.

20. Any Order purporting to be made by the Commissioners by virtue of this Act, or any Copy thereof sealed by the Commissioners, shall be conclusive Evidence in all Courts of Justice and elsewhere that all the Preliminaries required by this Act in order to the due making of such Order have been duly complied with, and that the Superintendent in such Order named has been duly appointed, and that all and every the Sums of Money in such

such Order mentioned have been duly charged on the Lands in such District, pursuant to the Provisions of this Act; and any Certificate of the Commissioners stating that any Monies therein mentioned have been advanced or expended under the Provisions of this Act shall be in like Manner conclusive Evidence that such Monies have been so advanced or expended.

Commissioners to be a Corporation, and Proceedings to be taken by them as such.

21. The Commissioners of Public Works shall be a Corporation for the Purposes of this Act, with perpetual Succession and a Common Seal; and all Actions and other Proceedings to be taken for the Purpose of recovering any Sums charged, rated, or assessed by virtue of this Act shall be taken by the said Commissioners so incorporated; and all Costs, Charges, and Expenses properly incurred in and about the same shall be deemed Part of the Expenses incidental to the said Works to be executed as aforesaid.

Orders, &c. may be sealed by the Commissioners.

22. All Orders, Warrants, or Certificates made by the Commissioners under this Act shall be under the Seal of the Commissioners.

Penalty for obstructing or injuring Works.

23. Any Person who obstructs any Person in making any of the Drains, or Improvements in Drains, made and executed under any of the Acts herein-before mentioned or referred to, or in this Act, and any Person who dams up, obstructs, or permits to be dammed up or obstructed, or in any way injure or permit to be injured, any Drains so opened or made, or injures or permits to be injured any of the Banks or other Works made or constructed in any such District, shall for each such Offence incur a Penalty not exceeding Ten Pounds, to be recovered in a summary Manner before Two or more Justices at Petty Sessions, and all such Penalties shall be paid to the Trustees or Drainage Board, as the Case may be, for the District in which such Offence may be committed.

Construction of Terms.

24. The Term "Commissioners" in this Act shall mean "the Commissioners of Public Works in *Ireland*;" and this Act shall be read and construed together with the said Act of the Fifth and Sixth Years of Her Majesty, Chapter Eighty-nine, and the Acts amending the same; and also with the said Act of the Twenty-sixth and Twenty-seventh Years of Her Majesty, Chapter Eighty-eight, and the Acts amending the same. The Definition of the Term "Proprietor" in the Act of Fifth and Sixth of Her Majesty, Chapter Eighty-nine, shall apply to this Act.

CAP. L.

An Act to revive Section Sixty-nine of "The Nuisances Removal (*Scotland*) Act, 1856," relating to Burials in Burghs. [16th *July* 1866.]

19 & 20 Vict. c. 103. s. 69.

'WHEREAS an Act was passed in the Session held in the Nineteenth and Twentieth Years of Her Majesty Queen *Victoria*, being the Nuisances Removal (*Scotland*) Act, 1856, Section Sixty-nine of which Act contains certain Provisions for the Amendment of the Act of the Eighteenth and Nineteenth of Her Majesty Queen *Victoria*, being the Burial Grounds (*Scotland*) Act, 1855, so as to make the last-mentioned Act available in Burghs comprehending Parts of more than One Parish:

18 & 19 Vict. c. 68.

25 & 26 Vict. c. 101.

'And whereas by the General Police and Improvement (*Scotland*) Act, 1862, the said Section Sixty-nine of the Nuisances Removal (*Scotland*) Act, 1856, was inadvertently repealed:'

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

So much of s. 1. of 25 & 26 Vict. c. 101. as

1. That the First Section of the said General Police and Improvement (*Scotland*) Act, 1862, be and the same is hereby repealed in so far, but in so far only, as the same repeals and