

satisfy the demand, made in conformity with the provisions of this act, for work and labor done, or materials furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work, in the same manner, as if no such payment had been made: *Provided however*, that no lien shall attach to any building for work done for any tenant occupying said building, unless said work shall be done by consent, in writing of the owner of said building, or his authorized agent.

Liability

Proviso

Approved, December 9, 1841.

[No. 3.]

AN ACT

To be entitled an act to amend an act passed the 7th day of January, 1841, entitled an act, for the promotion of the health and convenience of the city of Mobile, by the introduction into said city, of a supply of wholesome water, to be used for domestic purposes, and for the extinguishment of fires.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That it shall be lawful for Albert Stein, his executors, administrators, and assigns, as often as it may be necessary, during the continuance of the privileges granted in the act, to which this act is amendatory to apply at any time to the Judge of the County Court of Mobile county, or in his absence, to the clerk thereof, for a writ of *ad quod damnum*, which it shall be the duty of the said Judge or clerk to issue immediately on such application, directed to the sheriff of Mobile county, commanding him to summon the proprietors of land, at any point on the Bayou Chataugue or three mile Creek, at which the said Albert Stein, his executors, administrators or assigns, shall conclude to fix his, or their aqueduct, dams, or reservoir, and also the proprietors of lands above and below the said points on the said Bayou and Creek, who may claim compensation for damage in consequence of the said works; and also to summon a jury of seven discreet freeholders of the said county to view the said premises, at a time not exceeding ten days from the issuing of the writ aforesaid; and the said jury shall examine the banks of the stream above and below the said points, and shall ascertain what amount of damage the said proprietors may sustain by the withdrawal of water or otherwise in consequence of the erection of the said works. And if the said Albert Stein, his executors, administrators, and assigns shall require any land for the use of his canal or ditches, or through which to pass his pipes, or for any of the purposes authorized by the act, to which this is amendatory, then the said jury shall ascertain the damage that the owner of the said land may sustain in consequence thereof; and it shall be the duty of the sheriff to return the verdict or verdicts of the said jury, to the Clerk of the County Court, as

Duty of judge or clerk

Jury

Damages

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soon as the same shall have been agreed upon by the said jury, or a majority of the same.

Decree

Proviso

Sec. 2. *And be it further enacted*, That any of the parties interested, may within ten days after the return of the said inquisition as aforesaid, except to the award of the said jury; and if within that time, no exceptions to the said award, shall be filed with the Clerk of the said County Court, then the Judge of the said Court shall forthwith make an order or decree, which shall vest absolute rights and ownership in the said Albert Stein, his executors, administrators, and assigns, in and to the land, water, privilege, or right, that shall have been condemned by the said jury, and in the said proprietors to the money that shall have been assessed: *Provided*, that if the said Albert Stein shall not fulfil the decree within thirty days from the entry of the same, he shall take no benefit therefrom.

Witnesses

Sec. 3. *And be it further enacted*, That if exceptions to the said award be filed as aforesaid, the same shall be heard and decided on by the said Judge, at the next session of the Court for testamentary or Orphans business—or on some day appointed by the said Judge, of which all parties interested, shall have due notice. And the parties excepting, may at the hearing, propound his interest, and exhibit and prove the damage he may sustain; and the said Judge may examine and decide upon all matters put in issue, and may upon the application of either party, cause a jury to be empaneled, to determine any issue of fact in the cause, and either party may subpoena witnesses, the cost of whose attendance, as well as the costs of the appeal, shall be borne by the party against whom the Judge may decide.

Sec. 4. *And be it further enacted*, That it shall be the duty of the Sheriff to administer an oath to the said jurors, as in other cases of the execution of the said writ.

Arbitrators

Sec. 5. *And be it further enacted*, That it shall always be lawful for the said Albert Stein, his executors, administrators, and assigns, instead of the writ of "*ad quod damnum*" allowed by the first section of his act, to agree with the said proprietors or any of them, upon the appointment of three arbitrators, and to apply to the said Judge, or the Clerk of the said Court in his absence, by petition, stating the land, water, privileges or rights to be condemned, and the willingness of the parties to refer the matter to the said arbitrators, and thereupon the said Judge or Clerk shall forthwith issue an order to the said arbitrators, stating the matter to them referred, and commanding them to view the premises, and ascertain the damages which may be sustained within ten days from the issuance of the said order, and to return their award to the said Clerk. And it shall be the duty of the said arbitrators to ascertain the damage in the same manner, as the jury are directed to do in the first section of this act; and the said arbitra-

Duty

tors, or a majority of them, shall make their award and return the same to the said Clerk within five days after viewing the premises; and the same proceedings shall be had upon the return of the said award, as are directed to be had upon the return of the inquisition in the second and third sections of this act.

Sec. 6. *And be it further enacted*, That the said arbitrators, before entering upon the investigation of the matters referred to them, shall take an oath or affirmation impartially, to determine the matter to them submitted, according to the equity of the case to the best of their judgment, without favor or affection, which oath shall be administered by the said Clerk or any justice of the peace.

Approved, December 25, 1841.

[No. 4.]

AN ACT

To amend the law in relation to witnesses in State cases.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That hereafter any person who shall be summoned as a witness on a criminal prosecution, in any of the Courts, shall appear accordingly, and continue to attend from term to term, until discharged by the Court, the Attorney for the State, or the party, at whose instance he shall be summoned; and in default of his attendance, shall be subject to the same penalty as is now prescribed by law, in like cases of default.

Sec. 2. *And be it further enacted*, That the Clerk shall not issue subpoenas for the same witnesses from term to term, during the proceedings of such cases.

Approved, January 1, 1842.

[No. 5.]

AN ACT

To repeal in part and amend an act entitled "an act to wind up the Land Office at Courtland." Approved, January 9th, 1841.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That so much of the above recited act as requires a sale of lands to take place at Tuscaloosa, be, and the same is hereby repealed.

Sec. 2. *And be it further enacted*, That it shall be the duty of the Secretary of State, to cause the said sale to be conducted at Courtland, and to offer all the refuse donation lands at the minimum price of one cent per acre; the proceeds of said sale, after paying the necessary expenses, shall be paid into the the branch of the bank of the State of Alabama at Decatur.

Approved, December 4, 1841.