

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

No. 7.

HOUSE.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Feb. 5th, 1838.

The Joint Select Committee to whom was referred an Order of January 30th, directing them to inquire into the expediency of amending the statutes for the support and regulation of Mills, have had that subject under consideration, and respectfully

R E P O R T :

That the first statute in Massachusetts altering the common law as to flowing, was passed in 1713, wherein the preamble recites “ that it hath been found by experience that when some
“ persons in this Province have been at great cost and expens-
“ es for building of Mills serviceable for the public good and
“ benefit of the town or considerable neighborhood in or near
“ to which they have been erected, that in raising a suitable
“ head of water for that service, it hath sometimes so hap-
“ pened that some small quantity of lands or meadows have
“ been thereby flowed and damnified, not belonging to the
“ owners of such Mills, whereby several controversies have
“ arisen. ”

The evil then was that some persons owning small lots of meadow land stood in the way of erecting Mills, which, in the then weakness of the country, was a great effort, and a commendable public enterprise. The evil is now, that men in the lumbering business flow and render unproductive thousands of acres of good land, not their own.

Thus we see how a principle in violation of natural rights began in Massachusetts, which has descended to us in Maine like an hereditary disease. The same principle has extended to Rhode Island, and been adopted there to increase water power for factory purposes. In all the other Northern and Middle States, extending so far south as to include Maryland, Ohio and Indiana, and also in South Carolina and Georgia, flowing remains at common law. In the other Southern States, flowing is permitted by statutes, but proceedings to authorize it precede the right to flow. After hearing all parties interested in proper cases there, the Courts permit flowing, setting forth in their decree the terms and limitations.

The Constitution of Maine secures the right of acquiring and possessing property, except that private property may be taken for public use, with just compensation. Here is a condition without which private property may not be taken. Hence in all practicable cases, orders of notice ought to be sent out, that all parties interested may come forward and shew cause why their property ought not to be taken, or to be heard on settling the just compensation. However it may have been formerly, any further increase of mills at this day stands about in the same relation as to public use with wharves, stores and hotels.

We are of opinion that the provisions in the statutes authorizing one man, without a preliminary inquiry, to flow the land of another, is oppressive if not unconstitutional. Allowing the mill owner as he pleases to take into possession the land of another for his mill pond, throws the injured party into the false position of appearing to be a party disturbing the rights of others. This is one cause for the general failure of justice under the statute, on which have been many prosecutions, although many suffer who never prosecute. To purchase all the lands proper to be flowed would be generally far less expensive than the present statute system of permitting the lands to be flowed first, leaving to the owners only a remedy by pe-

tion. After a tedious controversy to settle the damages, it commonly happens that both parties are dissatisfied. This has a tendency to bring disrespect upon our system of administering justice.

Time has wrought such changes that now to promote Agriculture is more a public benefit than to encourage the increase of Mills. As in so many States, embracing much more than half the Union, no statutes as to flowing have been adopted, it would seem safe to return to the common law here, relying on time to point out proper remedies for any evils that may arise. Such has been the oppressive practice under the flowing provisions, and such difficulties have been experienced in the attempt to obtain justice under them, that in the cases that now exist it is fair to presume that the injured land owners would submit to any reasonable terms that the mill owners may offer.

Generally, the Mill owners being active and wealthy or commanding resources by their enterprize and credit have disregarded and triumphed over the more humble cultivators of the soil. In some instances poor men owning poor mills have done great mischief. In other cases failures occur and the mills are assigned, so that all damages in arrear are lost. All damages are lost where either party dies before final judgment as the statutes make no provision that the process shall survive. Sometimes the occupants are poor and the remedy lost when the owners cannot be all ascertained, or do not live within the jurisdiction of the Court. Insolvent owners may occupy, having mortgaged their Mills for all they are worth. The present right to flow, holds in great danger of destruction large tracts of valuable live timber. Such soils contain so much fibrous and woody matter that in dry seasons, heavy fires may burn and ruin the soil as well as the dead timber.

Spring freshets deposit much fertility on low intervalles. To encourage the draining and improvement of such lands is good policy. Lowering the water level but a few inches, where the stream is like a canal drain through a tract of meadow land, will

make the surface soil on the whole meadow, essentially drier and better adapted for grasses that form a firm sward. At a light expense for drainage in that way, lands too wet will become firm which before seemed a perfect mire. At the outlet of such tracts naturally collect in the stream obstructions easily removed where no advantage is taken to flow and keep up the head of water. During a controversy to settle the damages the right to flow and so prevent all fair chance to examine the facilities for draining operates oppressively upon the owners of the land flowed.

It is not correct policy to destroy good land to increase water power in a country where a great amount of water power runs to waste. During the proper season of the year it would be well to divert to agriculture a greater proportion of the labor devoted to lumbering, and to saw less when we ought to sow and plant. There need be no fear but that we can saw all the logs and timber to be had. The difficulty is to raise enough of grain and grass.

While the temperature is too cold for vegetation, say from late in October to early in May, flowing is a benefit, hence a security for consent as to that portion of the year.

There being much land highly productive naturally, or capable of being made so, injured by flowing, your Committee are of opinion that the provisions of our Statutes on that subject ought to be repealed or modified and report a Bill herewith submitted.

THOMAS SAWYER, JR. CHAIRMAN.

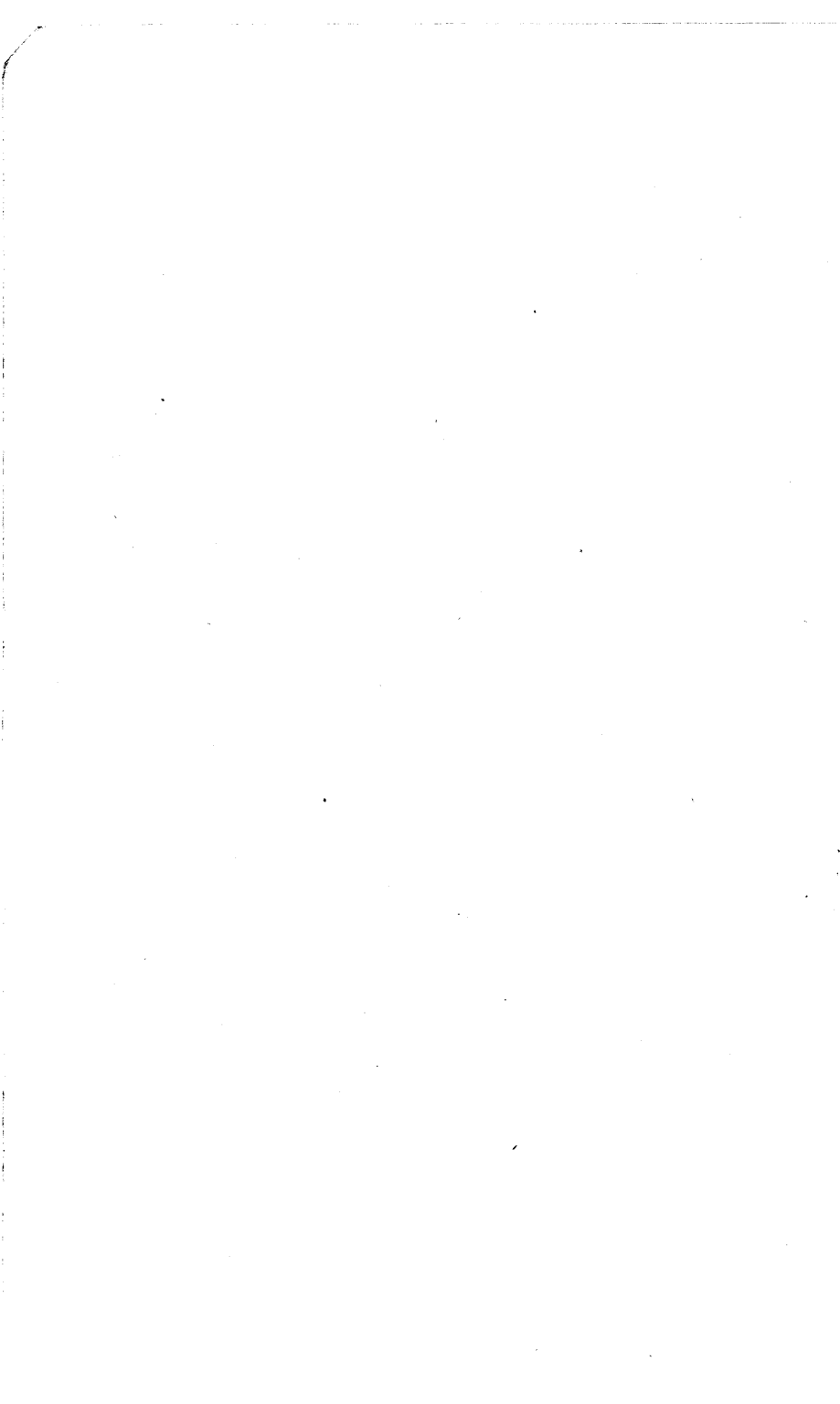
STATE OF MAINE.



IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND THIRTY-EIGHT.

AN ACT in addition to an Act entitled an Act for
the support and regulation of Mills.

*Be it enacted by the Senate and House of Rep-
2 resentatives in Legislature assembled, That all
3 the sections, from section first to section eleventh,
4 both inclusive, of an Act approved February
5 eighth one thousand eight hundred and twenty-one,
6 entitled an Act for the support and regulation of
7 Mills, and an Act additional thereto, approved
8 February fourteenth one thousand eight hundred
9 and twenty-four, be repealed, to take effect from
10 and after the tenth day of May next, provided,
11 nevertheless, that the same remain in force, for the
12 recovery of damages incurred before that time,
13 as though this Act had not passed.*



STATE OF MAINE.

**HOUSE OF REPRESENTATIVES, }
FEBRUARY 5, 1838. }**

**This Report and Bill, on being read, were laid on the table, and
500 copies ordered to be printed for the use of the House.**

(Extract from the Journal.)

Attest,

GEORGE C. GETCHELL, Clerk.