

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1839.

VOL. 2.

AUGUSTA:
SMITH & ROBINSON, PRINTERS TO THE STATE.

1839.

NINETEENTH LEGISLATURE.

NO. 9.

HOUSE.

AN ACT

ADDITIONAL

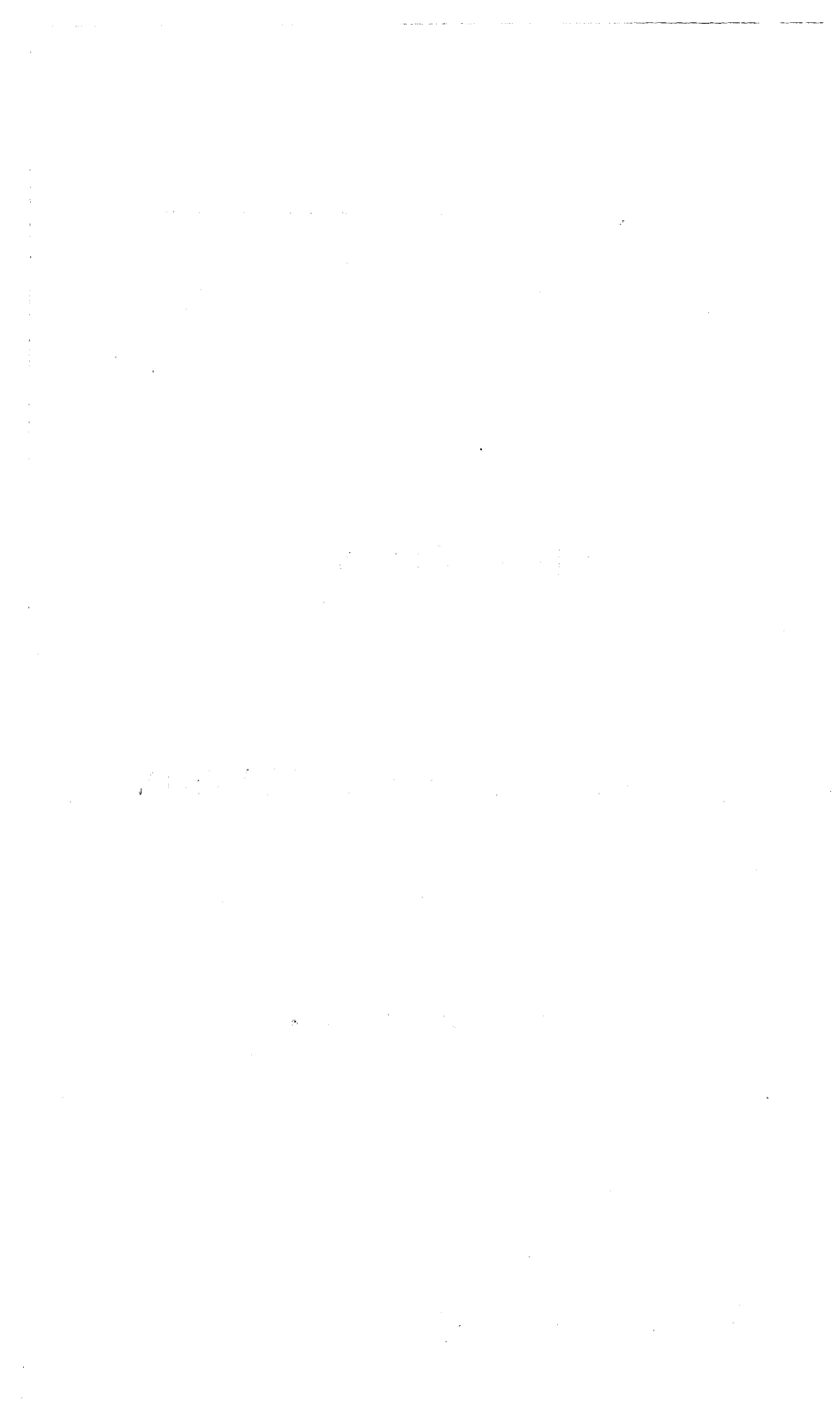
FOR THE

SUPPORT AND REGULATION

OF

M I L L S .

[SMITH & ROBINSON,.....Printers to the State.]



STATE OF MAINE.

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

AN ACT additional for the support and regulation
of Mills.

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10 four, be repealed, and this Act shall take effect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

Amendment offered by Mr. Ingalls of Denmark.

[Add the following after the word "passed," at the end of the Bill.]

And Provided further, That the repealing of
2 the several Sections and Act aforesaid, shall in no
3 way affect the rights and privileges enjoyed by
4 individuals or corporations prior to the passage
5 of this Act.

*Sections of the Act of Feb. 8, 1821, proposed to
be repealed.*

AN ACT for the support and regulation of Mills.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That where any person hath already erected, or shall erect any water mill, on his own land, or on the land of any other person, by his consent legally obtained, and to the working of such mill it shall be found necessary to raise a suitable head of water; and in so doing any lands shall be flowed not belonging to the owner of such mill, it shall be lawful for the owner or occupant of such mill to continue the same head of water to his best advantage, in the manner and on the terms hereinafter mentioned.

SEC. 2. *Be it further enacted,* That if any person shall sustain damages in his lands by their being flowed as aforesaid, he may complain to the Circuit Court of Common Pleas of the county wherein the lands so flowed, shall be situated; and the said Court shall order the complainant to notify the owner or occupant of the mill complained of, by

-serving him an attested copy of such complaint, (together with such order thereon) fourteen days at least before the then next term of said Court, that he may then appear and show cause, if any he have, why a warrant should not issue in the manner, and for the purposes prayed for in such complaint; or such complainant, may fourteen days at least before the sitting of the Court, to which he intends to prefer his complaint, cause the owner or occupant of such mill to be served with an attested copy of such complaint. And such service or notification, certified by the proper officer, shall be deemed sufficient evidence of proper notice.

SEC. 3. *Be it further enacted,* That if any owner or occupant of any mill shall plead to such complaint, and in his plea shall deny the complainant's title to the lands said to be damaged by flowing, or shall claim a right to flow such lands without payment of damages, or for an agreed composition; the Court shall order a trial of the issue which may be joined by the parties, by a jury at the bar of said Court; or if the issue be an issue in law, shall determine the same themselves, reserving to each party the liberty of appealing to the Supreme Judicial Court, as in other cases.

SEC. 4. *Be it further enacted,* That if the owner or occupant of a mill, notified as aforesaid, shall not appear, or appearing shall not show sufficient cause, the Court in which said complaint may be pending as aforesaid, may issue a warrant to the Sheriff of the same county, or either of his Deputies directing him to empanel a jury of twelve good and lawful men; and the officer to whom the warrant shall be directed, shall in writing require of the

Selectmen of the three towns nearest to that in which the land injured is situated, if so many there be within the same county, to return a number of jurors (not less than two, nor more than six from any one town,) to serve on the pannel; which jurors shall be drawn from the jury box, notified and returned as in other cases, excepting that the town need not be assembled, and that notice to the persons drawn, one day previous to the time appointed for their attendance shall be sufficient; and if any person so returned shall unnecessarily fail to attend, he shall forfeit and pay a sum, not exceeding ten dollars, at the discretion of the Court to whom the verdict shall be returned, to be divided among the jurors who do attend; and if, from accident or challenge there shall not be a full jury, the officer shall return some suitable person or persons to supply the deficiency; which jury shall be sworn to make a true and faithful appraisement of the yearly damage done to the complainant by so flowing his lands, and how far the same may be necessary. And said jury shall try the cause; and their verdict being returned by the officer to the same Court, and there allowed and recorded, shall be a sufficient bar to any action to be brought for any such damages. And if said jury shall find, and so return in their verdict, that no damage is done to the complainant by flowing his land, as aforesaid, the respondent shall recover his costs. And when the said jury shall so inquire of the said yearly damages, they shall also inquire and make return, in their said verdict, what portion of the year the said lands ought not to be so flowed; and during such portion of the year as the said jury shall certify in their verdict,

that the public convenience and the circumstances of the case do not justify such flowing; and the said verdict being accepted by the Court, this Act shall in no manner authorize the said owner or occupant of such mill so to flow the said lands of others. And it shall be in the power of said Court to assess such sum to the officer for his services, as they may judge reasonable.

SEC. 5. *Be it further enacted*, That the parties to said complaint may agree upon a committee of three persons, to be appointed by the Court in which said complaint may be pending; which committee after giving seasonable notice to the parties, of the time and place of meeting, shall have the same powers and be sworn in the same manner, as the jurors aforesaid. And said committee shall make their report in the same manner, as the said jury are required to make their verdict; and the said report being returned to the same Court, and there allowed and recorded, shall have the same effect as the verdict aforesaid.

SEC. 6. *Be it further enacted*, That such verdict or report and judgment thereon so recorded, shall be the measure of the yearly damages, until the owner or occupant of such mill, or the owner or occupant of such lands so flowed, shall on a new complaint to the said Court of the county, and by the form of process before prescribed, obtain an increase or decrease of the said damages. And the party entitled to any such yearly damages, whether the party to the record, his heirs, executors, administrators, or assigns may have an action of debt, grounded on such record, to recover the same. And the party prevailing in any complaint or action afore-

said, shall be allowed his full legal costs, though the damages so assessed or debt recovered shall not amount to the sum of twenty dollars.

SEC. 7. *Be it further enacted,* That if any person, whose lands shall be flowed as aforesaid, shall, on his filing his complaint for ascertaining or increasing his damages, or on bringing his action of debt as aforesaid, move the said Court to direct the owner or occupant of such mill to give security for the payment of the said damages from time to time, as they shall become due; and in that case, the said owner or occupant of such mill shall neglect or refuse to give such reasonable security as the said Court shall order, he shall have no benefit of this Act, but shall be liable to be sued for so flowing the lands of the complainant or plaintiff, in the same manner as though this Act had not been passed.

SEC. 8. *Be it further enacted,* That if the complainant shall fail to prosecute his complaint, in any stage of the proceedings, or the issue joined shall be determined against him, the respondent shall recover his costs as in other cases.

SEC. 9 *Be it further enacted,* That the owner or occupant of any mill dam may tender to the owner or occupant of such lands as may be flowed by the erection of such mill dam, any sum of money instead of the yearly damages he may be entitled to receive from the owner or occupant of such mill dam, by virtue of this Act, within one month after the past year's damages shall have become due. And if the owner or occupant of such lands shall not accept the same, but shall present a new complaint to obtain an increase of said damages, he shall not

be entitled to cost thereon unless he shall obtain an increase of the sum so tendered.

SEC. 10. *Be it further enacted*, That the owner or occupant of lands so flowed, may also offer the owner or occupant of such mill dam, to receive of him any proportion of the sum established as his yearly damages, by reason of the said flowing, within one month after the past year's damages shall have become due. And if the owner or occupant of such mill dam shall not agree to the same, but shall present a complaint to obtain a decrease of said damages, he shall not be entitled to costs thereon, unless he shall obtain a sum to be by him paid, as damages, less than the sum which the owner or occupant of such lands offered to receive of him.

SEC. 11. *Be it further enacted*, That no complaint shall be presented for an increase or decrease of said yearly damages, until the expiration of one month after the same shall have become due.

The Act of February 14, 1824, proposed to be repealed.

AN ACT additional to an Act for the support and regulation of Mills.

SEC. 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled*, That if any owner or occupant of a mill, being notified as directed in the second section of the act to which this is in addition, shall not appear, or appearing, shall not show sufficient cause, the Court in which the complaint therein mentioned may be pending, may appoint three or more disinterested freeholders of the same county, to make

true and faithful appraisement, under oath, of the yearly damages, if any, done to the complainant by flowing his said lands, and how far the same may be necessary, and to ascertain and make report what portion of the year such lands ought not to be so flowed. And the report of such commissioners, so made, shall, under the direction of the Court, be given in evidence to the Jury, who shall at the request of either party be empanelled to try such cause, at the bar of said Court, subject, however, to be impeached by evidence from either party. And if neither party request a trial of such cause by a jury, at the bar of said Court, for the purpose of impeaching such report, then said report, being accepted by said Court, judgment shall be rendered thereon according to the same. And the verdict of such jury, or the report of said commissioners, in case neither party shall request a trial by jury as aforesaid, shall be a sufficient bar to any action, to be brought for such damages; and shall in no manner authorize such owner or occupant to flow such lands during any portion of the period in which said commissioners or jury shall determine that the same ought not to be flowed. And the Court shall have power to award reasonable compensation to such commissioners, which shall be taxed in the bill of costs, to be recovered by the party prevailing.

SEC. 2. *Be it further enacted,* That the fourth and fifth sections of "an Act for the support and regulation of Mills," be, and the same hereby are repealed,

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 22, 1839. }

This Bill, having had three several readings, was, with the amendment of Mr. Ingalls of Denmark, laid on the table, and 300 copies of each, together with the Act and the Sections of the Act proposed to be repealed, ordered to be printed for the use of the Legislature.

CHARLES WATERHOUSE, *Clerk.*