

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1846.



AUGUSTA:

WM. T. JOHNSON, PRINTER TO THE STATE.

1847.

TWENTY-SIXTH LEGISLATURE.

No. 4.

HOUSE.

REPORT.

The Joint Standing Committee on Agriculture, to which was referred an order in relation to flowage, have had that subject under consideration, and respectfully

REPORT :

That in 1836, the same was brought to the notice of the legislature by numerous petitions, now on the files of the Senate. In 1838, a Joint Select Committee reported a bill to repeal so much of the Acts for mills as related to flowage, with an able report, wherein it is stated, that flowing is at common law in the states of New Hampshire, Vermont, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Ohio, Indiana, South Carolina and Georgia. See documents, 1838.

As expressed by the late C. J. Parker, in 1814, the committee are of opinion that the act on flowage was incautiously copied from a provincial statute of 1713, passed to encourage the building of mills, then much wanted to promote the settlement of the country, when lands liable to be flowed were of little value. In like manner, after the separation, the same act was incautiously continued among the other statutes of Maine.

In the report of the commissioners for the revision of the statutes, this principle was made to stand alone in a chapter separated from

that on mills, apparently to facilitate an after repeal. When first enacted in 1713, there existed no declaration of rights, such as stands at the head of the Constitution of Maine, declaring that private property shall not be taken for public use without just compensation, nor unless the public exigencies require it. At this day, mills stand in about the same relation to public use with stores, wharves and hotels.

In a short time, flowing by dams gives to a prime alluvial tract of meadow the appearance of a drowned bog. Without any previous enquiry, chapter 126 gives to any man, however interested, a right to erect and maintain a dam, and flow, no matter whose land, no matter of what quality, to what purpose appropriated, or how much, subject only to such yearly damages and limitations as can be got by law, at a heavy expense. The land owner is compelled to seek his remedy through mud and mire, after the fair face of his land has been destroyed, and perhaps under water.

This unlimited right to flow, prevents from being into good grass a great amount of rich meadow land, for want of drainage. The courts have ruled that under the principle of chapter 126, flowing to create reservoirs is protected, no matter about the miles that may intervene between the reservoir and mills, whereby some meadows are also subject to injury from water let down from above, perhaps in hay time, as such is a season of probable demand on the reservoir, when small sluggish streams are apt to be much choked up by vegetation. The value of many farms depends much on an unfailling resource for hay from lands liable to be affected by dams.

Men differ very much in opinion, as to the value of lands thus flowed. It is easy for mill owners to hunt up witnesses, who believe and will honestly testify that such lands are worth very little; hence a fair jury are very liable to, and do in fact, often, perhaps generally, set the yearly damage so low that the owner had better have given up his land as lost. Others again consider much of the land liable to be overflowed by dams, as the best land in the country. In places where the matter is well understood, after such lands are put under improvement, they are rarely sold, except from necessity, and then command the highest prices.

As to future erections, the bill herewith reported, is calculated to restore flowage to common law, as it is and always has been, in nearly all the northern and middle states, giving to the courts a salutary power for the protection of dams now erected.

Generally the cases of flowage from dams now erected, liable to occasion much trouble and expense in future, as they have done in times past, would be quietly compromised by the parties at home, as they could do, if so disposed, better than any courts or juries could do for them. To make a proper arrangement, both parties would then lie under strong motives, knowing that the court could compel right to be done—such motives as cannot exist where one party has an undue advantage over the other.

If applied to, the Judge would ordinarily cite or order the parties to appear before him, in term time or out of term time, as might be convenient. By the complaint and written answer, and by oral admissions, the Judge would soon see about what the case required, and in the way of friendly advice, would indicate something of his opinion and thus set wide open the door for adjustment by compromise, having stopped, by injunction, actions at law and abatement of dams during the time required to look into the matter. If a trial must be had, the Judge would direct a view and report from a civil engineer or from a committee, and frame his final decree according to the peculiar circumstances of each case. By thus dispensing with jury trials, and also cutting off a fruitful source of law questions, much litigation would be cut up by the roots and much time and expense be saved, not to the parties only, but to all others attending court.

Statutes ought not to be such as to encourage lawsuits, as this flowing principle does in a high degree. Suppose chapter 126 to remain and the public sentiment to take a turn, as is natural when a prevailing error comes to be understood, and juries should give fair, perhaps heavy damages, numerous claims of damage for flowing would start up, now dormant from a dread of expense, and of inadequate damages. There is no end to the law questions that may be raised under chapter 126, as is usual when a statute thus breaks in

upon the common law. Let not "too much legislation" be said of this bill, designed to clear off the too much legislation from a subject plain, if not so incumbered.

BENJAMIN B. THOMAS, *Chairman*.

STATE OF MAINE.

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

AN ACT to repeal Chapter one hundred and twenty six
of the Revised Statutes.

*Be it enacted by the Senate and House of Represent-
atives in Legislature assembled, as follows :*

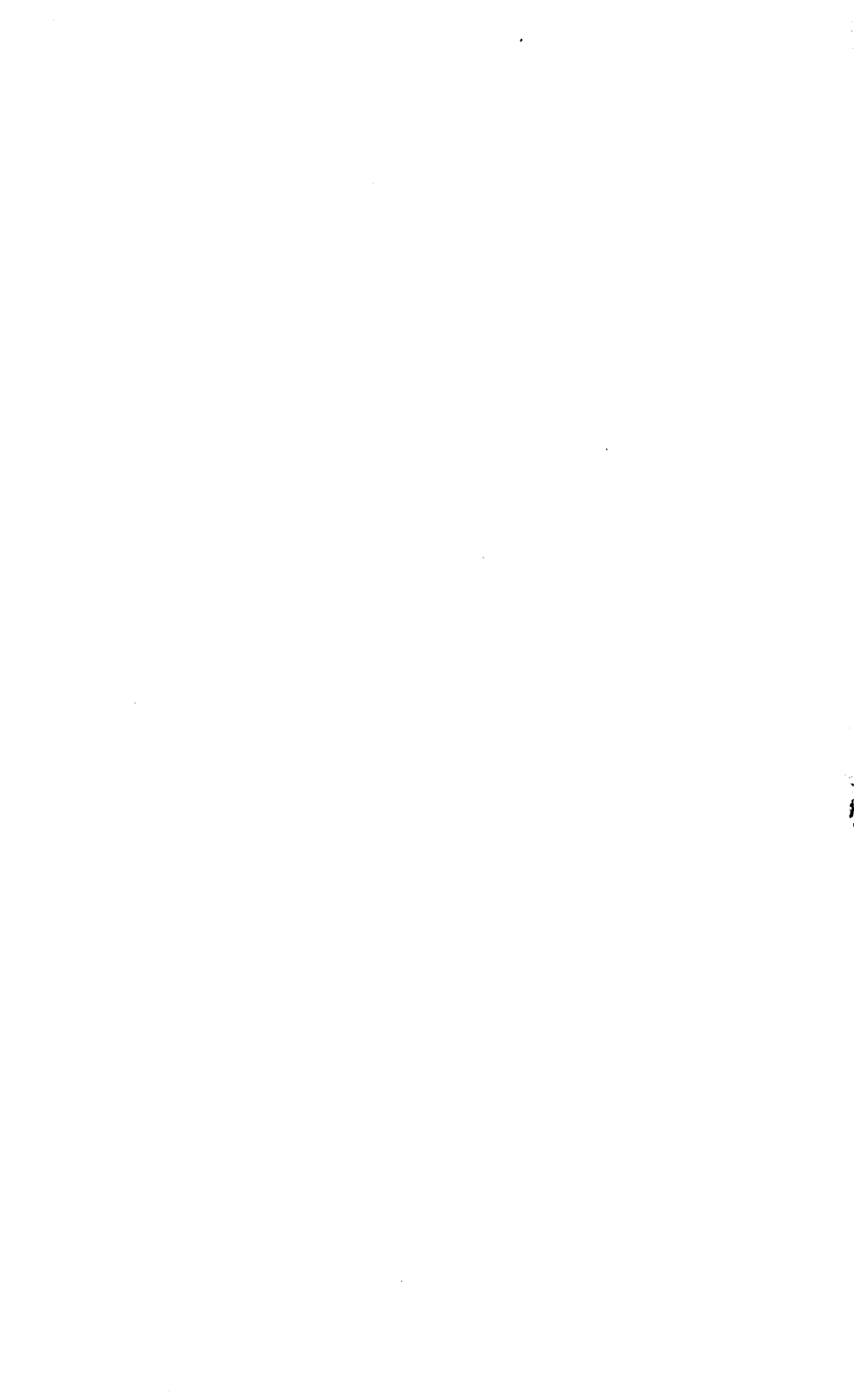
SECTION 1. Chapter one hundred and twenty
six of the Revised Statutes is hereby repealed, re-
serving in force so much thereof as may be necessary
for the recovery, as therein provided for, of damages
incurred before this Act shall take effect, and cost.

SEC. 2. The Judges of the District Courts shall
severally, in their respective Districts, have the
power of a Court of Equity as to flowage, over all
cases arising from dams now erected and maintained,
including power to protect such dams from abatement
and to prevent actions at law, and generally in relation
to such dams as to flowage to make decrees to promote
the ends of justice, and to issue writs of injunction to
prevent injustice, so as to grant an equitable and ad-
equate relief to the parties.

SEC. 3. Said Judges are authorised to execute the
powers given in the preceding section out of term

3 time, provided the parties be heard or neglect to be
4 heard after due notice. If required, the party com-
5 plaining shall give a bond to the satisfaction of such
6 Judge to pay all cost he may order such party to pay ;
7 and the same or so much thereof as he may direct shall
8 be taxed in the bill of cost in favor of the prevailing
9 party. A record of all such proceedings shall be
10 made by the clerk under the direction of the court in
11 the county where the dam is situated.

SEC. 4. No length of time during which lands
2 may have been flowed by dams erected for working
3 water mills before this Act shall take effect, shall
4 be evidence of a grant or licence to flow such lands,
5 or make up any part of the twenty years limitation
6 provided for in Chapter one hundred and forty seven
7 of the Revised Statutes.



STATE OF MAINE.

HOUSE OF REPRESENTATIVES, June 3, 1846.

Ordered, That this report and the bill accompanying the same.
be printed for the use of the Legislature.

SAMUEL BELCHER, *Clerk*.