

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. 28.

HOUSE.

AMENDMENT to a bill entitled “an act to repeal chapter 126 of the Revised Statutes.”

Strike out all after the enacting clause, and insert as follows:

SECTION 1. The provisions of the one hundred
2 and twenty-sixth chapter of the Revised Statutes shall
3 not be extended, except as herein provided, to any
4 case where a new mill dam shall hereafter be erected
5 upon a site not before occupied for such purpose, nor
6 to any case where a mill dam shall hereafter be re-
7 built or repaired, and by means of such rebuilding or
8 repairing, the water above such dam shall be flowed
9 higher than it was usually before flowed by means of
10 any dam upon the same site.

SEC. 2. Any person who may propose hereafter to
2 erect, rebuild, or repair any such mill dam as is men-
3 tioned in the preceding section, whereby the land of
4 any other person will be flowed, shall present his
5 petition to the district court holden within the county

6 where said mill site may be, praying for authority
7 therefor; and if the site of the proposed dam is in
8 more than one county, then the petition may be in
9 either county. The court shall order such notice as
10 it may deem expedient, upon any such petition, and
11 on the return thereof shall inquire and adjudge wheth-
12 er such erection, rebuilding or repairing will be of
13 public use, and whether any damages by flowing will
14 be caused thereby. For that purpose, the court shall
15 appoint three commissioners who shall be duly sworn.

SEC. 3. It shall be the duty of such commissioners
2 to view and describe the premises, and after notice to
3 all parties interested, to hear such evidence as may be
4 adduced on the prayer of the petition. Any person
5 interested adversely to such petition, may enter an
6 appearance thereto, at the term at which notice shall
7 be returnable, and shall have process for the taking
8 testimony before the commissioners and shall be heard
9 by the commissioners and the court.

SEC. 4. At the term next after the appointment of
2 commissioners, unless further time is granted on the
3 application of the petitioners, they shall make their
4 report and shall state therein whether the dam prayed
5 for, and the mills that may be erected thereon, will be
6 of public use, and shall also report the annual value
7 of such dam and mills and the annual damage that

8 will be caused to all the lands liable to be flowed
9 thereby. If the report shall find that such annual
10 damage will be equal to or greater than the annual
11 value of such dam and mills thereon, in that case, the
12 prayer of the petition shall not be granted; but if
13 such values are found otherwise, and the commission-
14 ers shall report that the dam will be of public use,
15 then the court shall grant authority for the erec-
16 tion, rebuilding or repairing prayed for; and such
17 dam may thereafter be maintained and kept up, with
18 all the privileges and subject to all the liabilities per-
19 taining to dams erected under the provisions of the
20 one hundred and twenty-sixth chapter of the Revised
21 Statutes, except as the same are hereinafter modified.

SEC. 5. The costs on any such petition and inquiry
2 shall in all cases be paid by the petitioners, before the
3 prayer of the petition shall be granted, or the court
4 may issue its warrant therefor, and in its discretion
5 may order any part of such costs to be paid to any
6 adverse party of record. The commissioners ap-
7 pointed on such petitions shall receive the same com-
8 pensation as is provided in cases of commissioners
9 appointed to make partition of lands.

SEC. 6. No person shall be allowed, under the
2 provisions of this act, or of the one hundred and

3 twenty-sixth chapter of the Revised Statutes, to flow
4 the land of another by means of a dam erected or
5 raised for the purpose of creating a reservoir for the
6 use of any mill or machinery on any other dam ; and
7 in estimating the annual value of any dam as pro-
8 vided in this act, no account shall be made of its value
9 for the purpose of creating such reservoir.

SEC. 7. Any person whose land shall be flowed by
2 means of any such dam as is authorized by this act,
3 may recover compensation therefor, by such com-
4 plaint and process as are provided in the said one
5 hundred and twenty-sixth chapter of the Revised
6 Statutes, subject to such modifications of the same
7 as are expressed in this act.

SEC. 8. Upon any complaint hereafter commenced
2 to obtain compensation for damages caused by flow-
3 ing, or to obtain increased compensation, the court
4 may order such notice as may be reasonable and
5 practicable to all persons owning or occupying the
6 dam complained of, and no such complaint shall be
7 abated or dismissed on any plea or allegation that any
8 person named therein is not an owner of such dam,
9 nor for any cause of nonjoinder of parties ; but all
10 such complaints, in which the dam is distinctly de-
11 scribed and on which due notice has been given, shall

12 be heard on default or otherwise, so as to ascertain
13 the injury suffered by the complainant. And in any
14 stage of the proceedings before the acceptance of the
15 report of commissioners, the court may order further
16 notice.

SEC. 9. In all cases of complaint to recover any
2 damages caused by flowing, the complainant, after
3 the report of the commissioners is made, may have
4 the right of trial by jury; but the report of the com-
5 missioners, if accepted by the court, shall be final
6 against any owner or occupant of the dam com-
7 plained of, or any mill thereon; nor shall a trial by
8 jury be allowed to any owner or occupant of a dam
9 who shall bring a complaint for diminution of any
10 damages before awarded against him. In all cases of
11 complaint, costs shall not be allowed against the
12 owner of land injured by flowing, except at the dis-
13 cretion of the court.

SEC. 10. Whenever judgment shall be rendered for
2 any damages caused by flowing, and for yearly dam-
3 ages, the court shall order at what time in each year
4 such yearly damages shall be paid. If the judgment
5 for damages sustained prior to the complaint, shall
6 not be paid within thirty days from the date of such
7 judgment, or if the yearly damages shall not be paid

8 in each year, at or before the time of payment deter-
9 mined by the court, then, in either case, the owner or
10 owners of the dam complained of, and the occupants
11 of the same, shall have no benefit of any of the priv-
12 ileges granted by this act, or by the chapter of the
13 Revised Statutes aforesaid ; and the complainant shall
14 be entitled to his remedy at common law and in
15 equity, for redress and satisfaction of the damage by
16 him sustained.

SEC. 11. Nothing contained in this act, or in the
2 one hundred and twenty sixth chapter of the Revised
3 Statutes shall authorize any person or persons to
4 erect, raise or keep up any dam, by means of which
5 any state road, highway or town way, or any railroad,
6 bridge, turnpike or canal, shall be overflowed, or in
7 any manner, injured or impaired.

SEC. 12. No length of time during which any lands
2 may have been flowed by any dam erected by any
3 person or corporation, before or after the passage of
4 this act, shall be taken as evidence, or afford any
5 presumption of a grant or license to flow such lands
6 or be taken to make up any part of the limitation of
7 twenty years, provided in the one hundred and forty
8 seventh chapter of the Revised Statutes.

SEC. 13. All acts and parts of acts, inconsistent

FLOWAGE.

7

2 with the provisions of this act, are hereby repealed ;
3 and this act shall take effect and be in force from and
4 after the fifth day of November next.

STATE OF MAINE.



HOUSE OF REPRESENTATIVES, }
July 17, 1846. }

Ordered, That 350 copies of the foregoing amendment, offered by Mr. Barnes of Portland, to bill entitled "an act to repeal chapter 126 of the Revised Statutes," be printed for the use of the Legislature.

SAMUEL BELCHER, *Clerk*.