

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

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.....
1821.

a tract of land, consisting of several allotments, wish to inclose the whole in a general field—what proceedings are to be had.

of several allotments, shall be desirous of inclosing, fencing and improving the same in one general field, they may apply to the Circuit Court of Common Pleas in the county where such land lies; and when such land lies in different counties, then to the Supreme Judicial Court to be holden in either; and on such application the said Court shall notify the proprietors concerned in said land to appear at the same Court, at the same or the next term thereof, in such manner and form as the Court shall judge proper; and if on hearing the said proprietors, it shall be deemed for their general benefit by the said Court, they shall decide that such land shall be fenced, inclosed and improved in one general field; and after such tract of land shall be so established as a general field, the first meeting of the proprietors may be called, on application to a Justice of the Peace, in the manner provided by this Act, at any time in the year; and at such first meeting, the proprietors of such field may agree upon the manner of calling and notifying future meetings, as well the annual as special meetings, of such proprietors; and such proprietors shall be entitled to all the rights and privileges, and subject to all the duties, to which proprietors of general and common fields are.

[Approved February 24, 1821.]

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CHAPTER XLV.

An Act for the support and regulation of Mills.

Owners of water mills built on their own land, &c. may raise a sufficient head of water, paying damages, &c.

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 herein after 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.

Person injured by the flowing of his lands may complain to C. C. Com. Pleas.

Court to order notice to owner of mill to appear at next term—

or complainant may 14 days before Court, cause owner to be notified.

Mode of notifying.

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.

If certain facts stated in the complaint be disputed—trial to be had in Court.

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

On default or trial, Court may issue a warrant to Sheriff to empanel a Jury.

Mode of proceeding to select and empanel the Jury—

penalty for non
attendance of
jurors.

Officer may
return tales-
men, in case—

Jury to be
sworn

Duty of the ju-
ry and effect
of their ver-
dict.

Facts which
they are to
certify in their
verdict.

Verdict to be
accepted by
the Court.

Parties may
agree on a
committee in-
stead of a jury,

with the same
powers, &c.

and same pro-
ceedings to be
had.

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

Such verdict or report and judgment to be the measure of yearly damages till altered, on a new complaint.

Who may have an action of debt for such damages.

Costs, how taxed.

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.

If, on motion of party injured, owner of mill will not give security for such damages, he is to have no benefit of this Act.

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.

Costs for respondent when prevailing.

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

Owner of mill may make a tender of yearly damages, &c. effect thereof.

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 costs thereon unless he shall obtain an increase of the sum so tendered.

Owner of lands flowed may also offer to receive less than yearly damages established,

effect of such offer.

Limitation of complaint for increase or decrease of damages.

Meetings of mill proprietors how to be called.

Form of notice.

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.

SEC. 12. *Be it further enacted*, That when any mill, worked by wind or water, the under works or appurtenances thereof shall want repairs, or to be rebuilt, in whole or in part, in the opinion of the major part in interest, of the proprietors; it shall be lawful for any one or more of the proprietors thereof to call a meeting of the whole, at said mill, to consult and agree about repairing or rebuilding the same, in whole or in part; which notice to the said proprietors may be in substance as follows, to wit:

To A. B. of _____ in the county of _____ addition _____ Greeting.

You are hereby notified, that our mill in _____ wants repairs, or to be rebuilt, in order that the same may be of use to the concerned; and a meeting of the proprietors thereof will be held at the same mill, on the _____ day of _____ at _____ o'clock in the _____ noon, when and where your attendance is requested. Dated at _____ on _____ Which notification, signed by one or more of the proprietors, or a true copy thereof given to any other proprietor, or left

at his place of last and usual abode not more than thirty, nor less than ten days, before the day of the said meeting, shall be deemed sufficient notice, and may be proved by the testimony of any disinterested witness, who gave or left the same, or saw it done.

SEC. 13. *Be it further enacted*, That if any proprietor so notified shall neglect to attend the said meeting; or being met shall neglect or refuse to agree with the major part in interest, of the proprietors of such mill, for repairing or rebuilding the same, in whole or part, so as to make the same serviceable, to pay his part of the charges of doing the same; the rest of the proprietors, being the major part in interest, may cause the same to be done; and shall be reimbursed and paid such sum or sums as they, or any of them, shall advance thereon beyond their respective proportions, with interest for the same in the mean time, out of the said mill or the profits thereof; and if said sums so advanced shall not be reimbursed or paid by the profits of said mill, or by the proprietors neglecting and refusing as aforesaid, within six months after the said repairs and buildings shall be completed, it shall be lawful for the proprietors so advancing said sums, to charge, in addition to the same, one per centum a month on the amount so advanced, from and after said six months, till the same shall be reimbursed or paid as aforesaid; and their lien on such mill for the purpose of being reimbursed such repairs, shall continue notwithstanding the proprietor so neglecting or refusing, may decease, or may alien their interest in such mill: *Provided*, That nothing in this Act contained shall be construed to make void any particular contract, made or to be made, for the repairing or rebuilding any mill or mills.

After notice the majority may proceed to rebuild or repair,

and shall be reimbursed out of mill profits;

if not so reimbursed or paid —what proceedings shall be had.

Proviso—this act not to affect special contracts as to such mills.

SEC. 14. *Be it further enacted*, That where any part or parts of such mill, shall at the time of such notice and meeting, be held and possessed by any minors, feme covert, tenant for years, in dower, by courtesy, for life, in tail, mortgager or mortgagee; then the guardians of such minors legally appointed, husband of such feme covert in her right, such tenant, mortgager or mortgagee in possession, shall be deemed, for all the purposes of this Act in so repairing or rebuilding such mill, the proprietor or proprietors thereof,

Guardians, husbands and mortgagees, in certain cases to be considered as owners, within this act, and notified accordingly.

and such guardians, husbands and persons having in possession such limited estates therein, shall be notified, vote and contribute accordingly; and all advances so made by them respectively, for and on account of such minors, heirs of such married woman, those in remainder or reversion, or the other party in the mortgage, if not adjusted and paid by agreement, shall be recoverable in a special action on the case, with interest.

Millers to be provided with scales and weights.

SEC. 15. *Be it further enacted*, That every miller shall be provided with scales and weights to weigh corn, grain and meal to and from the mill, if required; and if he shall neglect to keep such scales and weights, or refuse so to weigh corn, grain and meal, when required, he shall be fined for each neglect or refusal not exceeding five dollars, to be recovered, with costs by action of debt, by the party suing to his use, before any Justice of the Peace of the county wherein the offence shall be committed.

Amount of toll not to exceed one sixteenth.

SEC. 16. *Be it further enacted*, That the toll for grinding all sorts of grain shall not exceed one sixteenth part thereof.

[Approved February 8, 1821.]

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CHAPTER XLVI.

An Act directing the manner of Conveyance to be used by Counties, in purchasing and disposing of Lands.

Deeds made to the inhabitants of a county, their successors and assigns to be good and valid.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That whenever any County in this State shall purchase any lands, whereon to erect a court-house, or jail, or for any other purposes authorized by law, the deed or deeds of the grantor or grantors duly executed, acknowledged, and registered, made to the inhabitants of the county, making the purchase, to have and to hold to the said inhabitants, their successors and assigns forever, shall be good and valid, to all intents and purposes, to vest in the said inhabitants and county their successors and assigns, in fee simple, all the right, title, interest and estate whatever which the grantor or grantors in such deed or deeds had, at the execution thereof, in the lands contained therein.