

tion, pass such bye-laws, as they may deem necessary for the admission of new members, the purchase of real and personal property, and the transfer thereof, the levying and collection of fines and assessments, the calling and conducting all meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes, the mode of voting by proxy, and for the general regulation of the affairs of the corporation.

SEC. 5. Whenever the said subscribers shall be organized as aforesaid, they and their successors, and such other persons as may hereafter become stockholders, are hereby declared to be bodies corporate and politic, in fact, and in name, by the name and style they shall have agreed upon, as provided in the first section of this act, and by that name shall be in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended; in all courts and places, and in all matters and causes whatsoever, and shall and may have a common seal, and may alter and renew the same at pleasure.

Corporation may have a common seal, &c.

SEC. 9. The said corporation may purchase and hold personal and real estate to any amount not exceeding three thousand dollars in addition to the value of books.

May hold real estate.

Approved, January 13, 1840.

No. 48.

AN ACT in relation to Mills and Mill-Dams.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Wisconsin*, as follows: Any person may erect and maintain a water-mill, and a dam to raise water for working it, upon and across any stream that is not navigable, upon the terms and conditions, and subject to the regulations hereinafter expressed.

Mills and dams, where to be erected.

SECTION 2. No such dam shall be erected; to the injury of any mill lawfully existing, either above or below it, on the same stream, nor to the injury of any mill-site, on the same stream on which a mill or mill-dam shall have been lawfully erected and used, or is in the process of erection; unless the right to maintain a mill, on such last mentioned site, shall have been lost or

Existing mills and privileges not to be injured.

defeated, by abandonment or otherwise, nor shall any mill or dam be placed on the land of any person, without such grant, conveyance or authority, from the owner, as would be necessary by the common law, if no provisions relating to mills had been made by statute.

**Height of dam.** SEC. 3. The height to which the water may be raised, and the length or period of time, for which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury, as hereinafter provided.

**Complaint for damages.** SEC. 4. Any person, whose land is overflowed, or otherwise injured, by such dam, may obtain compensation therefor, upon his complaint, before the District Court, for the county where the land or any part thereof lies; provided that no compensation shall be awarded for any damage sustained, more than three years before the institution of the complaint.

**Substance of.** SEC. 5. The complaint shall contain such a description of the land, alleged to be flowed, or injured, and such a statement of the damage, that the record of the case shall show, with sufficient certainty, the matter that shall have been heard and determined therein.

**Notice to mill owner.** SEC. 6. The complaint may be filed in the court, in term time, or in the clerk's office, in vacation, and in either case, notice thereof shall be given to the owner or occupant of the mill, by delivering to him, or by leaving at his dwelling house an attested copy of said complaint, or, if he is not to be found in the Territory, and has no dwelling house therein, then, by leaving such copy at the mill in question, or the complainant may, twenty days, at least, before the sitting of the court, at which his complaint may be brought, cause the owner or occupant of such mill, or dam, to be served with an attested copy of the complaint, by delivering or leaving such copy, in like manner, as when the complaint is filed as aforesaid.

**When to be served.** SEC. 7. The notice shall be given twenty days, at least before the term, at which the complaint is to be heard, and it shall be served by any officer, who is authorized to serve any other civil process between the same parties.

**Plead by respondent.** SEC. 8. The respondent may plead in bar of the complaint, that the complainant has no estate or interest in the land alleged to be flowed or injured, or, that the respondent has a right to maintain his dam, for an agreed price, or without any compensation, or any other matter, which may show that the complainant

cannot maintain the suit, but he shall not plead in bar of the complaint that the land therein described, is not injured by such dam.

SEC. 9. If any plea is filed, by the respondent, the replica- Further plead-  
tion and other pleadings, and the trial of the issue, whether of ings, trial.  
law or of fact, shall be conducted in like manner, as in actions at  
the common law.

SEC. 10. If upon such a plea, the issue is decided in favor of Costs for respon-  
the respondent, or, if in any stage of the proceedings, the com- dent when.  
plainant shall become non-suit, or shall discontinue his suit, the  
respondent shall be entitled to his costs, to be taxed as in common  
civil actions.

SEC. 11. If the issue is decided in favor of the complainant, For the com-  
or if the owner, or occupant of the mill, or dam, shall after due plaintant, venire  
notice, neglect to appear, or shall be defaulted, or if there be no for jury.  
plea in bar, and no other legal objection to the proceeding, the  
court shall, without any further pleadings in the case, issue a  
venire for a jury to hear and determine the matter of complaint.

SEC. 12. Either party may appeal to the Supreme Court, Appeal to the  
from the judgment of the District Court, upon any such plea in Supreme court  
bar, and the cause shall be there heard, and determined, as it allowed; pro-  
ceedings thereon  
ought to have been, in the District Court, except that if the judg-  
ment of the Supreme Court, in such case, shall be in favor of the  
complainant, the case shall be remanded to the District Court,  
who shall proceed therein, in like manner, as if such judgment  
had been rendered in that court.

SEC. 13. The jury, in estimating the damage to the land of Damages, how  
the complainant, shall take into consideration any damage, occa- to be estimated  
sioned to his other land, by the dam, as well as the damage occa- by jury.  
sioned to the land overflowed, and they shall also allow, by way  
of set-off, the benefit, if any occasioned by such dam to the com-  
plainant, in relation to his said lands.

SEC. 14. If the jury shall find that the complainant is not Verdict for the  
entitled to recover any damages, they shall return their verdict respondent.  
accordingly; and if it is allowed and recorded by the court,  
judgment shall be rendered thereon for the respondent.

SEC. 15. If the jury find that the complainant is entitled to For the occu-  
recover any damages, they shall assess the amount of such dama- plaintant, dama-  
ges, sustained within three years next preceding the institution of ges for what  
the complaint, and down to the time of rendering the verdict, time.

and if the verdict is allowed, and recorded by the court, the complainant shall have judgment and execution.

Jury may determine what.

SEC. 16. If it shall be alleged in the complaint, that the dam is raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall decide how much, if any, the dam shall be lowered; and also whether it shall be left open any part of the year, and if any, what part, and shall state such decision as a part of their verdict.

Same subject.

SEC. 17. The jury shall also ascertain, and determine, by their verdict, what sum, if any, to be paid annually to the complainant, would be a just and reasonable compensation for the damages, that shall be thereafter occasioned by the dam, so long as it shall be used in conformity with the verdict, and also, what sum in gross, would be a just and reasonable compensation, for all the damages to be hereafter [thereafter] occasioned, by such use of the dam, and for the right of maintaining and using the same forever in the manner aforesaid.

What the complainant may elect.

SEC. 18. The complainant, in such case, at any time within three months after the verdict is allowed and recorded, may elect to take the sum in gross, so awarded by the jury, for the right to maintain, and use the same forever; instead of receiving the annual compensation therefor, and if he shall make such election, he shall within the said three months, cause the same to be entered on the record of the case in the clerk's office.

Respondent must pay, or lose the benefits of this act

SEC. 19. The owner or occupant of the mill or dam, in such case, shall, within three months, after such election is entered on the record, pay to the complainant, or secure, to his satisfaction, the sum so due for the perpetual right to maintain the dam, with interest from the time of verdict, and after the expiration of said three months, such owner or occupant, shall lose all benefit of the provisions contained in this act, until the payment of said damages and interest.

If no election is made by complainant, he shall have, &c.

SEC. 20. If the complainant shall not, within the said three months, cause an entry of his election to be made on the record as before provided, he and all persons claiming under him, shall be entitled to demand and receive from whoever shall be the owner or occupant of the mill, the annual compensation, so established, by the jury so long as the dam shall be kept up and maintained, unless the sum due, in that behalf, shall be increased or diminished, upon a new complaint, as hereinafter provided.

SEC. 21. The person who shall be entitled to receive the said annual compensation, or gross damages, shall have a lien therefor, from the time of the institution of the original complaint, on the mill and mill dam, with their appurtenances, and the land under and adjoining the same, and used therewith; provided that such lien shall not extend to any sum due more than three years before the commencement of an action therefor.

Damages a lien on mill, &c.  
From what time.  
For what time to be assessed.

SEC. 22. The party entitled to the said annual compensation, or gross damages, may maintain an action of assumpsit or debt therefor, in the district court, against the person who shall own or occupy the mill where [when] the action is brought, and shall therein, recover the whole sum due and unpaid for the three years then last past, whoever may have owned or occupied the mill during that time, and the plaintiff shall be entitled to his full costs in such suit.

How recovered.

SEC. 23. The execution issued on such judgment, if not otherwise satisfied, may, at any time, within thirty days, after the judgment is rendered, be levied on the premises so subject to the lien, and the officer may, thereupon, proceed to sell the same, or so much thereof as shall be necessary to satisfy the execution and all charges of levying it.

Execution may be levied on said property.

SEC. 24. Such sale shall be valid and effectual against all persons claiming the premises, by any title that shall have accrued within the time covered by the lien.

Such sale valid against, &c.

SEC. 25. Any person entitled to the premises, sold as aforesaid, may redeem the same, at any time within one year after the sale, upon paying to the purchaser, or the person holding under him, the sum paid therefor, with interest thereon, at the rate of twelve per cent a year.

Premises how redeemed.

SEC. 26. The provisions of this act shall not affect the right to keep up, maintain, and use any water mill and mill dam now lawfully existing, except as herein expressly provided.

SEC. 27. Every verdict rendered in any proceeding under this act shall be under the control of the court, to which it is returned, in like manner as in trials at the common law, and may be set aside for any sufficient cause, and in such cases a new trial shall be had, upon a new venire, or otherwise, as the case may require.

New trial.

SEC. 28. No action shall be sustained, at common law, for the recovery of damages, for the erecting, maintaining, or using any mill or mill dam, except as provided in this act.

Action at common law taken away.

Costs.

SEC. 29. The party prevailing, in any suit under this act, shall be entitled to his full costs, unless where it is otherwise expressly provided.

Complainant to advance them.

SEC. 30. All necessary costs and charges, at the commencement of the suit, shall be advanced by the complainant, and shall be taxed and allowed in the bill of costs, if he shall prevail in the suit.

Damages increase of

SEC. 31. When either party shall be dissatisfied with the annual compensation, established by the jury, under the provisions of this act, a new complaint may be brought for the increase or diminution of the said annual compensation, or for ascertaining the gross amount of the damages, and all the proceedings for ascertaining and determining said compensation, or damages, shall be conducted, substantially, in the manner before provided, in the case of an original complaint; provided, that when any complainant shall, hereafter, decline to accept the amount of gross damages awarded him, no jury shall again determine the amount of gross damages, until the expiration of ten years thereafter.

Gross damages.

New complaint by and against whom.

SEC. 32. Such new complaint may be maintained, by and against either of the parties to the original suit, or by and against any person lawfully holding under either of them respectively, [respectively] as the case may require.

When to be commenced.

SEC. 33. No such new complaint shall be brought until the expiration of one month after the payment of the then last year shall have fallen due; and either party may, within the said month, make an offer or tender to the other, in the manner hereinafter provided.

Either party may make tender in such case.

SEC. 34. The owner of the mill or dam may, within the said month, offer, in writing, to the said owner of the land that is injured; any increase of the annual compensation to be hereafter [thereafter] paid, for maintaining and using said dam, and if the owner of the land shall not agree to accept the same, but shall bring a new complaint, in order to obtain an increase of the compensation, he shall not be entitled to costs thereon, but shall pay costs to the adverse party, unless he shall obtain a verdict for a greater annual compensation than was so offered to him.

Mill owner, how.

SEC. 35. The owner of the land that is injured may, also, within said month, offer, in writing, to the owner of the mill or dam, to accept any smaller sum than that which is established as the annual compensation, to be thereafter paid for maintaining and using the dam; and if the owner of the mill or dam shall not

agree to pay such reduced compensation, but shall bring a new complaint, in order to obtain a diminution thereof, he shall not be entitled to costs, upon his complaint, but shall pay costs to the adverse party, unless the annual compensation shall be reduced, by the verdict, to a sum less than that which was offered him.

SEC. 36. Such offer may be made, by, or to, the respective tenants, or occupants, of the land, and of the mill or dam in question, in like manner and with the like effect, as if made by or to the respective owners, except that no agreement founded thereon shall bind the said owners, unless it be made with their consent.

Land owner, how.

SEC. 37. If the offer, so made by either party, shall be agreed to and accepted by the other, it shall establish the annual compensation to be thereafter paid, in like manner, as if it had been established by a verdict and judgment upon a new complaint, provided, that a memorandum of such offer and acceptance, and of the agreement thereupon be made and signed by the respective owners of the mill or dam, and of the land, or by persons duly authorized by them, and filed and recorded in the clerk's office of the court, in which the former judgment was rendered, with a note of reference, on the record of the former judgment, to the book, where the agreement is recorded.

Effect of tender if accepted and recorded.

SEC. 38. If, upon any complaint, by the owner of the land, alleged to be injured, the jury shall decide, that he is not entitled to any annual compensation, the judgment thereon shall be no bar to a new complaint for damages, alleged to have arisen after the former verdict, and for the compensation for damages, that may be thereafter sustained.

Verdict for, respondent not to bar, &c.

SEC. 39. In every case of an original complaint, brought by the owner of land alleged to be injured, by a mill-dam, the respondent may bring into court, and there tender any sum, that he shall think proper, to be paid to the complainant, for the damages incurred up to the time of such tender and may also offer to pay any certain annual compensation for the damage, that may be, thereafter, occasioned by the dam in question, and if the complainant shall not accept the same, with his costs, up to that time, but shall proceed in the suit to recover greater damages or compensation than is so offered, he shall be entitled to his costs up to the time of the tender, and the respondent shall be entitled to recover his costs afterwards, unless the complainant shall recover

Costs, how effected by tender, in original complaint.

greater damages or greater annual compensation than was so offered.

Upon acceptance thereof judgment what.

SEC. 40. If the complainant, in the case mentioned in the preceding section, shall consent to accept the amount so offered for the past damage and the future annual compensation, he shall have judgment accordingly, and also for his costs, up to that time, and the judgment shall have the same effect, as if it had been rendered upon the verdict of a jury, empanelled according to the provisions of this act, or the complainant may accept either the sum tendered for past damages or the offer for future annual compensation, and proceed to trial on the residue of the complaint, under the same liability for costs as before provided.

Acceptance may be for past or future damages.

Complaint not to abate by death of parties.

SEC. 41. No complaint for flowing shall be abated, by reason of the death of any party thereto, but the same may be prosecuted, or defended, by the surviving complainants, or respondents, or the executors or administrators of the deceased; and if any such complaint shall be abated or otherwise defeated for any matter of form, or if, after verdict for the complainant, the judgment shall be reversed for error, upon certiorari, or otherwise, the complainant or any person claiming from, by, or under him, may bring a new complaint for the same cause, at any time within one year after the abatement or other determination of the original complaint, or after the reversal of the judgment therein, and may, upon the new complaint, recover such damages, as shall have been sustained, during the three years before the institution of the first complaint, or at any time afterwards.

New complaint when judgment is reversed.

Suits pending or rights now subsisting not affected by this act.

SEC. 42. This act shall not in any way or manner affect any suit or suits now pending either in law or chancery, nor shall it affect any causes of action, rights or remedies, which may have accrued before the passage of this act.

SEC. 43. This act shall take effect from and after the first day of May, A. D. 1840.

Approved, January 13th, 1840.