

## 1795. — Chapter 74.

[January Session, ch. 50.]

AN ACT FOR THE SUPPORT AND REGULATION OF MILLS.

*Whereas the erection and support of Mills to accommodate the Inhabitants of the several parts of the State ought not to be discouraged by many doubts and disputes; and some special Provisions are found necessary relative to flowing adjacent lands and mills held by several proprietors — Therefore —*

Preamble.

SEC. 1st. *Be it enacted by the Senate and House of Representatives in General Court assembled and by the Authority of the same,* 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 lawfull 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.

Owners of mills may raise and continue sufficient water.

SEC. 2d. *And 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 Court of common pleas of the County wherein the lands so flowed shall be situated and the said Court shall issue a warrant to the Sherrif of the same County; and if the Sherrif shall be interested, then to some Coroner of the same County not interested, such Sherrif, or Coroner to be named by the Court, directing him to summon and impanel a jury of twelve good and lawfull men; which jury shall be sworn to make a true and faithfull 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 it shall be in the power of said Court to assess such sum to the officer for his services as they may judge reasonable.

Damages to be ascertained by verdict of jury.

SEC. 3d. *And be it further enacted,* that such verdict and judgment thereon so recorded shall be the measure of the yearly damages, untill the owner or occupant of

Such verdict to be the full yearly damages, 'till increased or decreased on a new complaint.

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 intitled 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 four pounds.

Mill-owners to give security for payment of damages, if desired, or to have no benefit of this Act.

SEC. 4th. *And 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. 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.

Jury to state what portion of the year lands ought not to be flowed.

Proprietors of mills authorized to call a meeting, to consult about repairing, &c.

SEC. 5th. *And 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 lawfull 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 \_\_\_\_\_ Form of notice.

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

Service of notice.

SEC. 6. *And 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 to recover the same, it shall be lawfull for those who shall so advance beyond their respective proportions jointly or severally, to have their actions against each one who shall be deficient; *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 —

Proprietors neglecting or refusing to meet or agree, subject to be sued for their proportions.

Proviso.

SEC. 7th. *And 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 curtesy, for Life, in tail, mortgagor or mortgagee, then the guardians of such minors legally appointed, husband of such *feme covert* in her right, such tenant, mortgagor or mortgagee in possession shall be deemed, for all the purposes of this act in so repairing or rebuilding such mill, the proprietor or pro-

Proprietors of different interests, to be notified, &c.

prietors thereof 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 have scales and weights, and to weigh grain, if required.

SEC. 8. *And be it further enacted*, that every miller shall be provided with seals and weights to weigh corn, grain and meal to and from the mill, if required, and if he shall neglect to keep such scales & 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.

Toll.

SEC. 9. *And be it further enacted*, that the Toll for grinding all sorts of grain shall not exceed one sixteenth part thereof.

Act to take effect.

SEC. 10. *And be it further enacted*, that this act shall take effect and be in force, on and after the first day of July next, and that an Act passed A D 1706 for the upholding and regulating mills, and an Act made in addition thereto A D 1713 (and a third act made in further addition thereto A D 1728) shall on, and after that day, be repealed, except so far as they shall respect any complaints, actions or meetings then pending by force thereof.

Acts repealed.

*Approved February 27, 1796.*

## 1795. — Chapter 75.

[January Session, ch. 45.]

AN ACT RELATING TO ACTIONS OF EJECTMENT AND DISCLAIMER & FOR PREVENTING STRIP & WASTE, PENDING SUCH ACTIONS.

Bond required in case of arrest.

SECT. 1st. *Be it Enacted by the Senate & House of Representatives in General Court assembled and by the authority of the same*, that when any person shall be arrested in trespass and ejectment or other real action, the defendant's own bond, & no other shall be required for his appearance to answer the same.

Persons sued in real actions, answerable for so much as they then hold.

SECT. 2d. *Be it Enacted by the authority aforesaid*, that when any person or persons, shall be sued in ejectment or other real action for any lands, tenements or hereditaments, they shall be holden to answer for so