

allowed and from what fund the same is payable and he shall report to the Legislature annually, a complete list of all accounts so audited and certified: *Provided*, That no account shall be so audited, except the same be duly verified by the oath, affidavit, or affirmation of the claimant or his agent, together with the certificate of the officer ordering or making the claim. Provided.

§ 10. To enter in a book to be kept for that purpose a record of all accounts audited by him and certified by the State Treasurer, pursuant to the last subdivision of this act, showing the name of the claimant, the amount claimed and the amount allowed thereon certified to the Treasurer, specifying the fund from which the same is to be paid. To keep a record.

§ 11. To require every person who shall have received any money, property or goods belonging to the State, and shall have not accounted therefor to settle their accounts and to return such property or goods to the State. Other duties.

Approved, March 6, 1857.

Chap. 62.

Published, April 8, 1857.

AN ACT reviving and restoring an act entitled "an act in relation to mills and mill dams."

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

§ 1. So much of the revised statutes as repeals an act entitled "an act in relation to mills and mill dams," approved January 13, 1840, is hereby repealed and the said act is hereby revived and declared to be in full force and effect. Reviving territorial act.

§ 2. Wherever in said act hereby revived Territory is used, it shall be construed to mean State, and the words "district court" in said act shall be construed to mean Circuit Court. Construction.

§ 3. This act shall not in any manner effect any suit now pending nor rights heretofore accrued, but it shall Not to effect pending suits.

extend as far as applicable to all cases where compensation has not been made for damages sustained by the erection of any dam now maintained, or where the height to which the water may be raised has not been settled by contract with the owner or otherwise pursuant to law.

Acts to be published together.

§ 4. The above named act which is revived by this act shall be published in connection with this act, otherwise this act shall have neither force or effect.

Approved, March 6, 1857.

[See page 87, Enrolled Acts of 1839-40.]

[No. 48, Laws of 1840.]

AN ACT in relation to mills and mill dams.

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin, as follows:

May erect on streams not navigable.

§ 1. 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.

Must not interfere with other mills.

§ 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 defeated, by abandonment or otherwise, nor shall any mill or dam be placed on the land of any person, without such grant, conveyance or common laws, if no provisions relating to mills had been made by statute.

Height of water.

§ 3. The height to which 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.

Overflowed lands

§ 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.

§ 5. The complaint shall contain such a description Complaint. 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.

§ 6. The complaint may be filed in the court in term Complaint to be filed and notice served. time, or in the Clerk's office, in vacation, and in either case, notice thereof shall be given to the owner or occupants 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 occupants 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.

§ 7. The notice shall be given twenty days at least, Service of notice. 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.

§ 8. The respondent may plead in bar of the com- Plea in bar. plaint, that the complaint 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.

§ 9. If any plea is filed by the respondent, the repli- Form of trial, cation and other pleadings, and the trial of the issue, whether of law or of fact, shall be conducted in like manner as in actions at the common law.

§ 10. If any such a plea, the issue is decided in favor Costs in issue for defendant. of the respondent, or if in any stage of the proceeding the complainant 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.

§ 11. If the issue is decided in favor of the complain- Issue for complainant. ant, or if the owner or occupant of the mill or dam, shall after due notice, neglect to appear, or shall be defaulted, or if there be no plea in bar, and no other legal

objection to the proceeding, the Court shall without any further pleadings in the case, issue a venue for a jury to hear and determine the matter of complaint.

Appeal.

§ 12. Either party may appeal to the Supreme Court from the judgment of the District Court, upon any such plea in bar, and the cause shall be there heard and determined as it ought to have been in the District Court, except that if the judgment 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.

Damage.

§ 13. The jury, in estimating the damage to the land of the complainant, shall take in consideration any damage, occasioned to his or her land by the dam, as well as the damage occasioned to the land overflowed, and they shall also allow by way of set off, the benefit, if any, occasioned by such dam to the complainant in relation to his said lands.

Verdict for deft.

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

Verdict for com.

§ 15. If the jury find that the complainant is entitled to recover any damages, they shall assess the amount of such damages, sustained within three years next preceding the institution of the complaint, and down to the time of rendering the verdict; and if the verdict is allowed and recorded by the court, the complainant shall have judgment and execution.

Dam to be lowered.

§ 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.

Computation of damages.

§ 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.

§ 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.

Election of com't.
to take damages
in gross or yearly

§ 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.

Damage in gross
to be paid in 3
months after
election.

§ 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.

Annual compen-
sation.

§ 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.

Lien for compen-
sation.

§ 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.

Action for com-
pensation.

Execution.

§ 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 officers 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.

Sale.

§ 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.

Redemption.

§ 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.

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

Verdict as in other cases.

§ 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 trial 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.

No action at common law.

§ 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.

Costs.

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

§ 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.

New complaint.

§ 31. When either party shall be dissatisfied with the annual compensation, established by the jury, under the provision 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. Proviso.

§ 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 respectfully, [respectively] as the case may require. Parties to suit.

§ 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. Time of bringing complaint.

§ 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. Offer of increased compensation to set off cost.

§ 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. Offer of diminished compensation to cut off cost.

§ 36. Such offer may be made by or to the respective tenants or occupants to 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. To whom made.

§ 37. If the offer so made by either party shall be agreed to and accepted by the other, it shall establish Offer to be signed by both parties and filed.

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 clerks office of the courts, 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.

§ 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 or damages, alleged to have arisen after the former verdict and for the compensation for damages that may be thereafter sustained.

Former action no bar.

Offer of compensation to cut off costs after suit is commenced.

§ 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 the 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 greater damages or greater annual compensation than was so offered.

Judgment on offer if accepted.

§ 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 empannelled 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 complainant, under the same liability for costs as before provided.

§ 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 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.

Complaint not
affected by death
of parties.

§ 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 occurred before the passage of this act.

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

Approved, January 13th, 1840.

Chap. 63.

Published, May 13, 1857.

AN ACT to pay the postage of the several State Officers.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

§ 1. The Secretary of State is hereby authorized to audit the accounts of the Postmaster at Madison, for the postage of the Executive office, office of the Secretary of State, Attorney General, State Superintendent, Bank Comptroller, State Treasurer and Clerk of the Supreme Court, for the year 1857; said accounts to be certified by the said Postmaster at Madison by affidavit.

Sec. to audit ac-
count.