

MILL DAMS AND MILLS.

CHAPTER 51.

AN ACT TO ENCOURAGE THE ERECTION OF MILL DAMS, AND MILLS.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

Section 1. When any person may be desirous of erecting and maintaining a mill dam upon his own land, across any water course not navigable, and shall deem it necessary to raise the water by means of such dam, or occupy ground for mill yard, so as to damage, by overflowing, or otherwise, real estate not owned by [him], nor damaged by consent, he may obtain right to erect and maintain said dam, by proceeding as in this act provided.

Right to erect dams, how obtained.

Sec. 2. He shall present to the judge of any court of record in which jury trials are had in the county, or if there be no such court in the county, then in the district in which said dam or any part thereof is to be located, a petition setting forth the place as near as may be, where said dam is to be located, the height to which it will be raised, the purposes to which the water power will be applied, and such other facts as may be necessary to show the objects of the petition.

Shall present petition to judge what to contain.

Sec. 3. Upon the presentation of such petition, the judge shall appoint three disinterested residents of the county, in which said dam or a part of it is to be erected, commissioners to meet at the place of its proposed erection, on a day specified by such judge, and to inquire touching the matters contained in said petition, and the judge shall fix the fees of said commissioners.

Judge shall appoint commissioners; their duties.

Sec. 4. Before entering upon their duties, the commissioners shall severally take and subscribe an oath before some person

Commissioners shall take oath.

qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

Notice of meeting to be given.

Sec. 5. At the request of the petitioner the commissioner shall give, or cause to be given, notice of the time, place and object of their meeting to every person named by said petitioner.

Five days' notice to be given, upon whom served.

Sec. 6. At least five days notice shall be given in all cases, and in cases of infants such notice shall be served on their guardians, or on the person with whom they reside; in case of idiots, lunatics or distracted persons, on their guardian, if they have any, and if not, then on the person under whose care or charge they may be found; in cases of *femes covert*, on the husband as well as the *femes covert*; but notices to non-residents of the county or counties where said dam or a part of it is to be located, shall be published in some newspaper in the county aforesaid, or the one nearest thereto, for three weeks in succession, previous to the meeting of said commissioners.

Duty of commissioners when convened.

Sec. 7. The commissioners shall meet at the time and place specified in the notice, and shall proceed to examine the point at which said dam is proposed to be erected, and the lands and real estate above and below, which will probably be injured by the erection of said dam; shall hear the allegation and testimony of all parties interested, and shall proceed to make a separate assessment of damages which will result to any person by the erection of said mill dam and its maintenance forever.

Shall file report of proceedings, &c., in office of clerk of court.

Sec. 8. Within thirty days after completing their examination, the commissioners shall file the petition, their appointments, jurats, and a report of their proceedings, in the office of the clerk of the court in the first section of this act mentioned, and shall give notice of the filing of said report as of their meeting.

Manner of payment of damages

Sec. 9. Upon the filing of said report the petitioners may make payment of the damages assessed to parties entitled to the same in the manner following, to wit:

First, to parties laboring under no disability;

Second, to guardians of infants, husbands or trustees of *femes covert*;

Third, to guardians or conservators of insane persons; and receipts for such payment filed in the office of the clerk afore-

said, shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the territory, but not in the county or counties where said dam or part of it is to be erected, as well as to the infants who have no guardian, and insane persons who have no guardians or conservators, and payments to parties residing out of the territory, and to persons whose names are unknown, and to persons who shall refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county or counties aforesaid, who shall pay out the same upon the order of the commissioner or court, take receipts for all payments, and file the same with the order, in the office of the clerk of the court aforesaid, and such deposit shall have the same effect as the first mentioned receipts unless an appeal be taken by the party entitled thereto.

Sec. 10. Appeals from the assessments made by the commissioners may be taken and prosecuted in the court aforesaid, by any party interested, (the petitioner excepted), not under legal disability by husbands or trustees of *femes covert*, guardians of infants, guardians or trustees of insane persons, and in cases where infants or insane persons have no guardians or conservators, appeals may be taken by the friend of such parties, and a written notice of such appeal be served upon the appellee, as a summons in ordinary civil actions: *Provided*, That no appeal shall be taken after the expiration of thirty days, from the time of the notification of the filing of the report aforesaid.

Appeals from decision of commissioners, how taken.

Sec. 11. The erection of said dam shall not be hindered, delayed or prevented, by the prosecution of any appeal: *Provided*, The petitioner shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with surety or sureties, conditioned that the person executing the same shall pay whatever amount is required by the judgment of the court, and abide any rule or order of the court in relation to the matter in controversy.

Erection of dam not to be hindered by prosecution of appeal
Proviso.

Sec. 12. The appellant shall file with the clerk aforesaid a bond with security (to be approved by said clerk) in double the amount of the assessment appealed from, payable to the people of the territory, for the use of all persons interested, in the condition in which bond the proceeding appealed from shall be

Appellant to file bond.

recited, with condition for the due and speedy prosecution of the appeal, and that he or they will satisfy the judgment that may be rendered in the premises and pay the costs of the appeal, if adjudged to do so by the court in reference to the matter in controversy.

Proceedings upon appeal.

Sec. 13. Appeal shall bring before the court the propriety of the amount of damages reported by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the matter shall be submitted to and tried by a jury as other appeal cases, and the court or jury, as the case may be, shall assess the damages aforesaid, making the verdict conform to the question and facts in the case.

Exemplary damages not allowed.

Sec. 14. No exemplary or vindictive damages shall be allowed by the commissioners, court or jury.

Judgments shall declare what.

Sec. 15. Upon verdicts rendered by juries or an assessment by the court, judgment shall be entered, declaring that upon payment of the damages assessed by the court or jury, as the case may be, and costs, if any, the right to erect and maintain the mill dam aforesaid, according to the petition, shall, as against the parties interested in such verdict be, and remain in the petitioner, his heirs and assigns forever, subject to be lost as hereinafter provided, and payments of such judgments may be made as payments of assessments, by the commissioners, as hereinbefore provided.

Previous right not impaired.

Sec. 16. No mill dam shall be erected or maintained under the provisions of this act to the injury of any water power previously improved.

When action for damages shall not be sustained.

Sec. 17. No action for damages occasioned by the erection and maintenance of a mill dam, shall be hereafter sustained unless such action be brought within two years after the erection of said dam: *Provided*, That such limitation shall not run against or apply to persons living on and holding government land under the pre-emption laws, until a patent for the land damaged or overflowed shall have been issued.

Proviso.

Right to raise dam.

Sec. 18. Any person may obtain a right to maintain or raise a dam heretofore erected upon his own land, across any water course not navigable, by complying with the provisions of this act, adopting his petition to the nature of the case.

Sec. 19. Upon the evidence of the commencement of proceedings as provided in the second and eighteenth sections of this act, the court before which any suit for damages occasioned by such mill dam shall be instituted after the commencement aforesaid, shall have power to suspend any such suit until the result of said proceedings shall be known. Court has power to suspend proceedings.

Sec. 20. The costs of all proceedings under this act, except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeal shall be paid as the court may direct. Costs, by whom paid.

Sec. 21. For the purpose of making surveys and examinations relating to any proceedings under the provisions of this act, it shall be lawful to enter upon any land, doing no unnecessary injury. For purpose of making survey. may enter upon land.

Sec. 22. Any person having obtained right to erect and maintain, or to maintain or raise any dam, under the provision of this chapter, who shall not within one year thereafter begin to build, (if he has not previously built) said dam and finish the same, and apply the water power thereby created to the purposes stated in his petition, within three years; or in case the said dam and mills connected therewith shall be destroyed, shall not begin to rebuild in one year after such destruction, and finish in three years, or having erected such mills shall fail to keep them in operation for one year at any one time, shall forfeit all rights acquired by virtue of the provision of this act unless at the time of such destruction, the owner be an infant or otherwise disabled in law, in which case the same time shall be allowed after the removal of such disability. Rights may be forfeited, how.

Sec. 23. This act shall take effect and be in force from and after its passage and approval by the governor. To take effect, when.

APPROVED January 7, 1863.