

CHAPTER XXXIX.

A Bill to Encourage the Erection of Mill Dams and Mills.

- SECTION 1** Mill Dams may be Erected on certain conditions.
- 2 Petition to be presented to the Court of Record, Stating the Purposes for which the Dam is to be Erected.
- 3 Judge shall appoint three Commissioners to Enquire.
- 4 Commissioners to take an Oath of Office.
- 5 Commissioners shall give Notice of Meeting on Request.
- 6 Manner of Serving Notice, and Time.
- 7 Commissioners to View the Premises and Assess Damages.
- 8 Thirty days thereafter, shall Report.
- 9 Manner of Payment of Damages Assessed.
- 10 Appeals, how to be Taken.
- 11 Appeals not to Hinder the Erection of Dams--Petitioner to File Bond to abide decision.
- 12 Appellant to File Bond to Abide Decision.
- 13 Appeals shall bring up the Propriety of Damages Assessed, and shall be tried by Jury, unless otherwise agreed to by Parties.
- 14 Exemplary or Vindictive Damages not to be Allowed.
- 15 Upon Verdicts of Jury, Judgment shall be Entered, and Payment made as provided for the Assessments of Commissioners.
- 16 No Mill Dam shall be Erected under this Act, to the Injury of Power previously improved.
- 17 No Action for Damages to be sustained, except within one Year.
- 18 Dams heretofore Erected may be Raised.
- 19 Relates to Suspension of Suits for Damages, upon filing of Petition for Rights under this Act.
- 20 All Costs to be paid by the Petitioners except in Appeals.
- 21 Right to Enter upon Land for Purposes of Survey.
- 22 Conditions to be complied with on part of Petitioner to retain Rights.
- 23 Relieves Olmsted County from the Provisions of this Act, and Maintains all Rights under Previous Law.

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

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
Mill Dams

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.

Petition Court

Commissioners to be appointed 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 enquire touching the matters contained in said petition, and the Judge shall fix the fees of said Commissioners.

Oath of Commissioners SEC. 4. Before entering upon their duties the Commissioners shall severally take and subscribe an oath before some person qualified to administer oaths faithfully and impartially to discharge the duties of their appointment.

Public notice of Meeting SEC. 5. At the request of the petitioner the Commissioners shall give, or cause to be given, notice of the times, place and object of their meeting to every person named by said petitioner.

Five [days] notice to persons interested SEC. 6. At least five days' notice shall be given in all cases, and in case of infants such notice shall be served on their guardian, 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 case 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.

Public notice to non-residents

Commissioners to examine premises and assess damages 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.

File their report SEC. 8. Within thirty days after completing their examination, the Commissioners shall file the petition, their appointments, jurats, and a report of their doings, 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.

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: 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 aforesaid, shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the Territory or State, 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 or State, 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 Commissioners 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 assessment 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 conservators 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
assessment

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 may be required by the judgment of the Court, and abide any rule or order of the Court in relation to the matter in controversy.

Appeals not to
hinder erec-
tion

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 or State, as the case may be, for the use of all persons interested, in the condition in which bond the proceeding appealed from shall be 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.

Appellant to
file bond

Sec. 13. Appeals 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,

Jury trial

making the verdict conform to the question and facts in the case.

No exemplary & damages **Sec. 14.** No exemplary or vindictive damages shall be allowed by the Commissioners, Court or jury.

Judgment... rights vested in petition **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 heretofore provided.

No injury to previous improved water power **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.

Action for damages **Sec. 17.** No action for damages occasioned by the erection and maintenance of a mill dam shall be hereafter sustained, unless such action shall be brought within one year after the erection of said dam, or within one year of the passage of this act.

Right to raise a dam heretofore erected **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.

Suits for damages **Sec. 19.** Upon 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.

Costs **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.

Lawful to enter upon land **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.

Duties of Petitioner upon obtaining right to erect dam **Sec. 22.** Any person having obtained right to erect and maintain, or to maintain or raise any dam under the provisions 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 any at one time, shall forfeit all rights acquired by virtue of the pro-

visions 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.

Sec. 23. The provisions of this act shall not apply to Olmsted County, nor destroy or impair the right of any person to erect and maintain a dam under the law heretofore and now existing.

Exemption

J. W. FURBER,
Speaker of the House of Representatives.

JOHN B. BRISBIN,
President of the Council.

APPROVED—May twenty-third, one thousand eight hundred and fifty-seven.

S. MEDARY.

SECRETARY'S OFFICE, Minnesota, }
SAINT PAUL, July 22, 1857. }

I hereby certify the foregoing to be a correct copy of the original bill now on file in this office.

CHAS. L. CHASE,
Secretary of Minnesota Territory.

CHAPTER XL.

An Act to Organize the County of Manomin.

- SECTION 1 Organizes and Defines the Boundaries of Manomin County.
 2 Admitted to all Rights and Privileges of other organized Counties.
 3 Governor to appoint first County Commissioners—Clerk and Register.
 4 Governor to appoint other County Officers.

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

SECTION 1. That so much of the County of Ramsey as is embraced within the following boundaries, be, and the same is hereby constituted and organized into a separate county Boundary lines under the name of the County of Manomin, to wit: Beginning at a point on the Mississippi river where the line between township twenty-nine and thirty, north of range twenty-four west, strikes the said Mississippi river, running thence