

American Legal History – Russell

An Act for the Support and Regulation of Mills (Massachusetts, 1795)

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 --

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.

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 Sheriff of the same County; and if the Sheriff shall be interested, such Sheriff, 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 faithful 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.

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 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 intituled 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.

Sec. 4th. And be it further enacted . . . 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. . . .