

## Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments / Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

<b>10x</b>		<b>14x</b>		<b>18x</b>		<b>22x</b>		<b>26x</b>		<b>30x</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>							
<b>12x</b>		<b>16x</b>		<b>20x</b>		<b>24x</b>		<b>28x</b>		<b>32x</b>

2nd Session, 6th Parliament, 22 Victoria, 1859.

---

## BILL.

An Act respecting Mills and Mill-Dams in  
Upper Canada.

---

Received and read, first time, Friday, 18th  
Feb., 1859.

Second reading, Wednesday, 23rd Feb., 1859.

---

HON. MR. MOWAT.

---

TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

## An Act respecting Mills and Mill-Dams in Upper Canada.

**WHEREAS** to prevent harassing litigation and encourage the building of Mills for the public accommodation, it is expedient to make the provisions hereinafter contained; Therefore Her Majesty, &c., enacts as follows :

Preamble.

5 I. Any person may erect and maintain a water mill; and for the purpose of raising water to work it may erect, and from time to time raise, and maintain a dam upon and across any stream that is not navigable, subject to the conditions and regulations hereinafter contained.

Mill Dam may be erected, subject to this Act.

10 II. But no mill shall be built on the land of another person without such authority from the owner of the land as has heretofore been necessary; and no dam shall be placed on the land of another without like authority or without purchasing the land under the provisions of this Act.

Not on another's land.

15 III. Any person who has now a water mill on his own land or on the land of another, with his consent, may also keep up or raise from time to time and maintain the dam thereof on such land, subject to the same conditions and regulations hereinafter contained.

As to persons now having Mills.

20 IV. No dam, however, shall be erected, raised or kept up to the injury of any mill lawfully existing, either above or below it on the same stream, unless by agreement or otherwise independently of this Act the same might be so erected, raised and kept up; nor (except in that case) shall a dam be erected, raised or kept up, to the injury of any mill site on the same stream on which a mill or mill dam had theretofore been erected and used, unless the right to maintain a mill on such site had been lost.

No Dam to be kept up to the injury of another man's Mill, &c.

25 V. The height to which the water may be raised and the time in every year that the dam may be kept up under the foregoing provisions, shall be subject to restriction by the verdict of a Judge or Jury, or the decision of a Court as hereinafter provided.

Height of water how restricted.

30 VI. Any person who sustains damage in consequence of land in which he has some estate or interest being overflowed, or otherwise injured by any such dam shall be entitled to compensation for such damage, and shall also be entitled to elect in regard to future damages, whether to have an annual compensation therefor or a gross sum in lieu of all future damages during the continuance of his then estate or interest in the land.

Persons sustaining damage to be compensated.

How such compensation shall be estimated.

VII. Such compensation shall be ascertained by taking into account on the one hand, not only any damage occasioned by the dam to the land overflowed, but also to any other land of the party, and likewise on the other hand any benefit occasioned to him by the dam in relation to his lands.

5

Limitation.

VIII. But he shall have no compensation for any damage sustained more than three years before the institution of the suit therefor.

Lien for damages.

IX. The person entitled to such compensation shall for past damages or compensation, not exceeding three years, have a lien on the mill and milldam with their appurtenances and the land under and adjoining 10 the same and used therewith.

Fixing compensation.

X. The amount of compensation may be determined by agreement, or by arbitration, or by suit.

Proceedings to obtain a verdict fixing the compensation.

XI. When a person is entitled to compensation under this Act, and the amount thereof has not been already ascertained by agreement, 15 arbitration or suit, and a suit is therefore brought to ascertain and recover the same,—or when a suit is brought for an increase or a diminution of the annual compensation, if already ascertained subject to such increase or diminution under this Act—either party, by his pleadings, or in such other manner as the Court in which the suit is brought may, by general 20 or other rules or orders, direct—may, to prevent multiplicity of suits, call for, and shall be entitled to, a verdict embracing the following particulars or any of them :

What the verdict may establish.

(1.) What sum is due to the plaintiff, in respect of past damages for a period not exceeding three years before the institution of the suit. 25

(2.) What annual sum (if any) would be a reasonable annual compensation for the damages which may thereafter be occasioned to the plaintiff in respect to his land, by the dam, if used as theretofore, or if used in such modified manner as the verdict directs, and so long as the same is so used. 30

(3.) What sum in gross would be a reasonable compensation for all the damages which may thereafter be occasioned to the land by the dam (if used in a manner conformable to the verdict) for ever, or for such period as the plaintiff's estate in the land continues.

But if the damages have been ascertained within the next preceding ten years.

But if a gross sum for future damages was ascertained in a former 35 suit under this Act, within ten years before the commencement of the pending suit, the sum so ascertained shall not be open to re-investigation in the new suit, unless the interest which the party to receive the said sum then had in the land, was less than a fee, and his interest, or that of the party representing his interest in the new suit, had diminished by the 40 lapse of time, or had increased by the intermediate acquisition of some further estate in the land, and the sum formerly ascertained requires, from such causes, to be increased or diminished.

(4.) In case the Declaration or Bill alleges that the dam is raised to an unreasonable height, the verdict shall also state how much (if any) 45 the dam should be lowered.

(5.) And in case the Declaration or Bill alleges that the dam ought not to be kept up and closed during the whole year, the verdict shall state whether it shall be left open any part of the year, and (if any) what part.

5 XII. In case of the suit being at law, the verdict shall be given by the Judge without a Jury, unless any of the parties desires to have the verdict of a Jury, and gives written notice of such desire at some stage of the cause, but not later than the fourth day after the service of notice of trial; and the verdict of the Judge shall have the same effect and  
10 the proceedings on and after the trial as to the power of the Court or Judge the evidence or otherwise shall be the same as in the case of trial by Jury.

Verdict &c.,  
may be given  
by the Judge  
without a  
Jury.

XIII. If before the trial or on the application of either party, or if at or during the trial, it appears to the Court or Judge that the matters in  
15 dispute cannot be satisfactorily tried and decided by a Judge or Jury, as the case may be, at Nisi Prius, the Court or Judge may refer the matters in dispute or any of them to one or more competent persons to be chosen or approved by the Court or Judge, and may appoint the terms and conditions of the reference; and the certificate of the referee  
20 or of the referees, or a majority of them, shall be regarded as the verdict of a Jury, and may be moved against in the same way, and may be dealt with and enforced in as nearly as may be the same manner as the verdict of a Jury; and on the certificate of the referees being moved against, the matter may be remitted to the same or to other referees, or  
25 otherwise, as justice may seem to the Court to require.

Case may be  
referred.

Certificate of  
referee.

XIV. In case the verdict or certificate is moved against, and the Court is of opinion that sufficient ground of objection to the finding is shewn in regard to one or some only of the particulars embraced therein, the new trial or reference may be granted as to such particulars only.

New trial or  
reference.

30 XV. The judgment entered upon the verdict or certificate in regard to all the matters embraced therein shall bind not only the parties to the suit, but also all persons claiming through or under them after the institution of the suit, and shall be enforced by such process as may be necessary.

Judgment to  
bind all per-  
sons.

XVI. But the amount of the annual compensation shall be subject to  
35 subsequent increase or decrease by agreement of the parties, or by arbitration, or by a new suit, and the new suit for this purpose may be brought by the party who is for the time being to receive or pay the annual compensation, and shall be subject to the following conditions:

Annual com-  
pensations  
may be in-  
creased or de-  
creased on  
certain condi-  
tions.

(1.) Such suit shall not be brought until the expiration of at least a  
40 month after the last annual payment of such compensation became due.

(2.) Nor until after one month's notice to the opposite party of the intention to sue and of the object of the suit.

(3.) And the party to pay shall not be at liberty to give the notice  
45 until he has paid or tendered all arrears.

As to alternative in respect to future damages.

XVII. As to the alternative in respect to future damages, the party entitled thereto shall have one month after the time when either party is entitled to enter up judgment, within which month to elect whether he will take the sum in gross awarded in that behalf, or the annual compensation awarded by the verdict in the pending suit; and in case he elects to take the gross sum, he shall give notice thereof to the opposite party, or his Attorney or agent in the suit; but without leave of the Court granted on special grounds, execution shall not issue for such sum until the expiration of six months after service of the notice. 5

Defendant in such case not to have benefit of Act until compensation is paid.

XVIII. In such case, from the time execution is issued for such gross sum until the amount thereof with interest and costs of suit is paid or secured to the Plaintiff's satisfaction, the Defendant shall lose all benefit of this Act. 10

If the Plaintiff does not declare his election.

XIX. In case the Plaintiff does not elect within the month and does not enter up judgment for the gross sum within such month, he shall be deemed to have elected to accept the annual compensation; and judgment shall be entered accordingly and execution may from time to time issue by leave of the Court for the annual sum if default is made in paying the same. 15

He may sue for amount unpaid in Division Court, if the amount be within its jurisdiction.

XX. Or if the amount unpaid in respect thereof at any time does not exceed the amount for which the Division Court has jurisdiction to entertain suits in other cases, the Plaintiff (if he chooses) may sue in the Division Court for what is due to him instead of applying to the Superior Court for an execution on his judgment; and if he so sues, an exemplification or a certified copy of the judgment roll shall entitle him to recover the same amount as he would be entitled to an execution for in the Superior Court. 20 25

And also when the annual compensation has been fixed by agreement &c.

XXI. Where the annual compensation has been ascertained by agreement or arbitration, instead of the judgment of a Court, and the amount unpaid in respect thereof does not exceed the amount for which the Division Court has jurisdiction in other cases, any suit therefor shall be brought in the Division Court. 30

Certain decisions not to bar damages after verdict.

XXII. If in a suit in one of the Superior Courts, under this Act, the Court, Judge, Jury or Referee (as the case may be) decides that the plaintiff is not entitled to any annual compensation, the judgment shall not be a bar to damages arising after the verdict. 35

By whom costs shall be payable.

XXIII. As to costs, the party prevailing in any suit under this Act, shall be entitled to his costs, whatever may be the amount found in his favour, in regard to any of the matters in litigation: But in case the suit embraces a demand for past damages, if a tender of amends was made before suit, or if money is paid into Court, for the same purpose, after suit, such tender or payment shall have the same effect in regard to the costs of so much of the suit as relates to past damages, as a tender or payment into Court has in other cases in which the same is by law allowed. 40

The same:— where a written offer of compensation has been made.

XXIV. And in case one object of the suit is to determine what annual sum, if any, should be paid for future compensation, or for an increase or a decrease of the annual compensation ascertained by a former agreement or judicial determination, then if a written offer is shewn to have been 45

made before suit, of an annual compensation, or of an increased or diminished annual compensation, and if (to enable the other party to exercise the option given to him by this Act,) the said offer was accompanied by a written offer of a gross sum for future damages, where a gross sum therefor had not been ascertained by a proceeding under this Act within ten years previously, such offers shall have, as nearly as may be, the same effect in regard to so much of the costs of the suit as relates to the determination of the said particulars, as a tender has in cases in relation to which a tender is by law pleadable.

10 XXV. In case either offer is accepted, either party may require the other to execute a joint agreement embodying the effect thereof. If the offer is accepted.

XXVI. In case of a suit being hereafter brought in the Court of Chancery for an Injunction, or to enforce the lien of the landowner for compensation, or for any other equitable relief, between (on the one hand) any of the parties interested in a Mill or Milldam, and (on the other hand) any of those interested in land overflowed or otherwise injured by the dam; and if the plaintiff in such suit establishes his right to the relief in equity which he seeks, the Court may, as incidental to such relief, and to prevent unnecessary litigation and costs, proceed to give the parties or either of them such other relief as they would be entitled to in a suit under any of the preceding sections of this Act, conforming therein as nearly as may be to the provisions of this Act.

XXVII. In case any owner of land on which at any time there is a water mill, or on which he purposes building a water mill, desires, for the purpose of working the mill, to erect a dam across the stream on or abutting on land which is not his, he shall be entitled to purchase the land he needs for the purpose, at a fair valuation, subject to the conditions hereinafter provided ; Taking land for mill purposes: conditions.

10 Provided (1) that the land required does not exceed one acre besides what is the bed of the stream ;

And provided (2) that the stream is not navigable ;

And provided (3) that the proposed dam would not overflow, and that the land taken does not comprise and would not injure the mansion house of any one, or the out houses, yard, garden, or orchards belonging thereto ;

And provided (4) that the proposed dam would not injure any mill lawfully existing either above or below it on the same stream or any mill site on the same stream on which a mill or mill dam had theretofore been erected and used, unless the right to maintain a mill on such site had been lost, or unless the owners of such existing mill or of such mill site consent to the proposed purchase ;

And provided (5) that the health of the neighbors would not be injured by the stagnation of the water or otherwise.

XXVIII. In such case any of the Superior Courts of law and equity shall have jurisdiction on the application of the proposed purchaser, and notice to all parties concerned, to ascertain by proper proceedings whether the case falls within the preceding section ; and, if satisfied that it does, the Court may grant or refuse the claim to purchase as under all the circumstances may seem right ; and if the Court grants the claim, the grant may be upon such terms and subject to such conditions as the Court considers just. Right to be subject to jurisdiction of Courts.

Possession not to be taken until the price is paid or tendered, nor retained unless mill is commenced, &c.

XXIX. But the purchaser shall not take possession of the land until he has paid or tendered the amount at which the land has been valued and complies with all other terms and conditions which the Court may require him to perform before taking possession, and he shall not be entitled to retain the land unless the proposed mill is commenced within a year and is in good condition for use within three years from the time the claim to purchase is allowed by the Court; and the Court shall have power to enforce compliance with any terms and conditions the Court may impose in like manner, as nearly as may be, as like obligations could be enforced by the Court in any other case.

10

Plaintiff in certain cases touching rights in water, not entitled to verdict for nominal damages.

XXX. In case of an action at law being brought against the owner or occupant of a mill for an alleged infringement of the plaintiff's legal rights in respect to the water of a non-navigable stream used for the purposes of the mill, if it appears that by the acts complained of the Plaintiff did not sustain any actual loss or damage whatever, he shall not be entitled to a verdict for nominal damages, as heretofore, but the verdict shall be for the Defendant.

Certain sections of Common Law Procedure Act to apply.

XXXI. The 313th, 314th, and 315th sections of the Common Law Procedure Act 1856 shall be deemed incorporated with this Act, as if the provisions therein contained had been repeated in this Act, and expressly made to apply thereto, but it shall not be necessary to lay before Parliament the rules made by the said Court for the purpose of this Act.

Act limited to U. C.

XXXII. This Act shall apply to Upper Canada only.