

TITLE 23

Navigation and Waters

CHAPTER 19. DAMS

§ 1901 Building on unnavigable streams.

Any person may erect or raise a dam to raise water for working any mill upon and across any stream in this State, where it is not navigable, upon the terms and conditions and subject to the regulations hereinafter expressed. No such dam shall be erected to the injury of any mill lawfully existing above it upon the same stream, nor to the injury of any mill site above it on the same stream, where the fall is more than 3 feet upon the lands of any 1 person lying on or upon the stream, above the land of the person who makes application for the building or raising of such dam, nor unless the person applying shall be the owner of the land where the abutment of the dam is built on 1 side of the stream. The Superior Court within each county shall have jurisdiction on all applications to authorize the building or raising of any dam in such county. The proceedings shall be by petition to the Court upon 14 days' notice, in writing, to all persons owning or holding land that will be affected by raising or building such dam. Such notice may be served upon persons residing in the county personally or by leaving a copy at their dwelling house, and persons residing out of the county by a copy sent to their address by mail. The Court shall by order appoint 5 disinterested and substantial freeholders of the county as commissioners, directing them to go upon and view the premises embraced within the application for authority to raise or erect any dam. In conformity with this section, after due and careful examination of the premises, they shall determine to what height the person making application may raise or build such dam, and they shall affix some durable mark at some place convenient and contiguous to such dam to designate the height thereof. They shall also assess the full value of the damages that each owner of the lands may sustain by reason of the erection or raising of such dam, taking into consideration the benefit as well as damages accruing to such owners, and shall make return in writing, on the first day of the next term of the Court held after their appointment, of their proceedings, clearly set forth in writing under their hands or the hands of a majority of them. Before the commissioners shall enter upon the discharge of their duties under this section, they shall severally take and subscribe an oath or affirmation to perform their duty with fidelity. The commissioners may employ a surveyor or civil engineer to go upon the premises with them, if they deem it necessary. The commissioners and surveyor or civil engineer shall be paid the sum of \$2.00 for each day they may be employed under the order. If any owner of land affected by raising or building any dam shall be dissatisfied with the damages assessed to the owner, as returned by the commissioners or a majority of them on an order for viewing, and shall apply to the Court, within 6 days after the return, for an order of review, the Court shall grant such order and appoint 5 other suitable persons to review the premises and reassess the damages to the lands of such persons as join in the application for a review, and which are or will be damaged by the raising or building of the dam. If no greater damages are allowed to the owner of any land than were given on the first order, the owner shall not receive any larger sum than is assessed by the commissioners appointed on the order of review.

All expenses on each order of Court shall be paid by the person who applies for the order. Whenever any person who makes any application to raise or build any dam shall have paid the damages assessed in conformity with this section, or, in case of a refusal to receive any of the damages, shall have made a lawful

tender of the sums so refused, the person may raise or build such dam to the height as returned by the commissioners, or a majority of them, who were appointed upon the petition.

11 Del. Laws, c. 537; 11 Del. Laws, c. 645; Code 1915, § 3669; Code 1935, § 4221; 23 Del. C. 1953, § 1901; 70 Del. Laws, c. 186, § 1.;

§ 1902 Procedure to condemn materials for building and repair of dams.

Whenever earth, sand, gravel, stone or other material requisite for the construction or repair of any lawful dam shall lie contiguous or adjacent to such dam, the owner of such dam may proceed by petition, setting forth the facts, to the Superior Court of any county in term time, or to any Judge thereof in vacation, upon 10 days' notice to the owner of such earth, sand, gravel, stone or other material, if resident within the State, or, if nonresident, to the tenant residing upon the premises. The Court or any Judge thereof shall thereupon by order appoint 5 disinterested freeholders of the county as commissioners, directing them to go upon the premises described in the petition and assess the value of such earth, sand, gravel, stone or other material stated in the petition to be required, and also to determine the damages sustained by the owner thereof by reason of taking the same, and make return thereof under their hands or the hands of a majority of them, which return shall be forthwith filed in the office of the Clerk of the Court in the county wherein the proceedings shall take place. Upon amount of damages so being paid unto the person entitled, or deposited to their credit in any state or national bank having an office or a branch in the county where the proceedings shall have been commenced, the owner of such dam may enter in and upon the premises described in the petition, containing such earth, stone, sand, gravel or other material, and take and remove and use the same for the construction or repair of their dam. If either party be dissatisfied with the amount of damages awarded, upon notice and petition filed within 30 days after the return of the commissioners, the Court or any Judge thereof shall grant an order of review and appoint 5 other freeholders, who shall review the premises and reassess the damages and make return.

If greater damages are allowed than were given on the first order, such increase shall be forthwith paid or deposited by the owner of the dam, and if less damages shall be allowed, the difference between the sums so awarded shall be refunded, the costs of such review to be borne by the unsuccessful party. Proceedings for a review shall not delay the right of the owner of the dam to take and use the materials in question in the repair or construction of such dam after having paid or deposited the amount first awarded.

13 Del. Laws, c. 450, § 1; Code 1915, § 3670; Code 1935, § 4222; 23 Del. C. 1953, § 1902; 63 Del. Laws, c. 142, § 40.;

§ 1903 Right of entry to repair banks of stream.

If at any time a breach in the banks of any stream, upon which a lawful dam shall exist, shall occur by reason of flood or from any other cause whereby the usual volume of water shall be diverted from its customary channel to the injury of the owner of such dam and water power, such owner may enter in and upon the lands where such breach shall have occurred and repair the dam. All damages which may occur unto the premises by reason of such entry and repair shall be assessed upon the application of either party in interest in the mode appointed in § 1902 of this title and subject to the same provisions as to payment or deposit and review.

13 Del. Laws, c. 450, § 1; Code 1915, § 3671; Code 1935, § 4223; 23 Del. C. 1953, § 1903.;

§ 1904 Forcing water back to injury of adjoining landowners; penalty; exceptions.

Whoever owns, leases or controls any milldam or millpond upon or across any stream of water shall construct and maintain the dam across such stream in such manner and with such gates and appliances that the waters of the stream shall not at any time be thrown, held or forced back upon the land of any other owner above such millpond to the injury or damage of such other owner.

Whoever violates this section, upon the complaint of the owner of land injured or damaged thereby, shall be fined not more than \$10 for each day such violation continues. Whoever offends shall also be liable in pecuniary damages to the owner of land injured by any violation of this section, to be recovered in an action at law. This section shall not apply to the flooding of lands by backwater occasioned by rains or freshets. This section shall apply within the limits of Kent and Sussex Counties only.

26 Del. Laws, c. 176, §§ 1, 2; Code 1915, § 3672; 28 Del. Laws, c. 231; Code 1935, § 4224; 23 Del. C. 1953, § 1904.;