

Article 4.

Recovery of Damages for Erection of Mill.

§ 73-25. Action in superior court; procedure.

Any person conceiving himself injured by the erection of any gristmill, or mill for other useful purposes, may issue his summons returnable before the judge of the superior court of the county where the damaged land or any part thereof lies, against the persons authorized to be made parties defendant. In his complaint he shall set forth in what respect and to what extent he is injured, together with such other matters as may be necessary to entitle him to the relief demanded. The court shall then proceed to hear and determine all the questions of law and issues of fact arising on the pleadings as in other civil actions. (1876-7, c. 197, s. 1; Code, s. 1858; Rev., s. 2141; C.S., s. 2555.)

§ 73-26. When dams, etc., abated as nuisances.

When damages are recovered in final judgment in such civil actions, and execution issues and is returned unsatisfied, and the plaintiff is not able to collect the same either because of the insolvency of the defendant or by reason of the exemptions allowed to defendant, the judge shall, on the facts being made to appear before him by affidavit or other evidence, order that the dam, or portion of the dam, or other cause creating the injury, shall be abated as a nuisance, and he shall have power to make all necessary orders to effect this purpose. (1876-7, c. 197, s. 3; Code, s. 1859; Rev., s. 2142; C.S., s. 2556.)

§ 73-27. Judgment for annual sum as damages.

A judgment giving to the plaintiff an annual sum by way of damages shall be binding between the parties for five years from the issuing of the summons, if the mill is kept up during that time, unless the damages are increased by raising the water or otherwise.

In all cases where the final judgment of the court assesses the yearly damage of the plaintiff as high as twenty dollars (\$20.00), nothing contained in this Chapter shall be construed to prevent the plaintiff, his heirs or assigns, from suing as heretofore, and in such case the final judgment aforesaid shall be binding only for the year's damage preceding the issuing of the summons. (1868-9, c. 158, ss. 12, 14; Code, ss. 1860, 1861; Rev., ss. 2143, 2144; C.S., s. 2557.)

§ 73-28. Final judgment; costs and execution.

If the final judgment of the court is that the plaintiff has sustained no damage, he shall pay the costs of his proceeding; but if the final judgment is in favor of the plaintiff, he shall have execution against the defendant for one year's damage, preceding the issuing of the summons, and for all costs: Provided, that if the damage adjudged does not amount to five dollars (\$5.00), the plaintiff shall recover no more costs than damages. And if the defendant does not annually pay the plaintiff, his heirs or assigns, before it falls due, the sum adjudged as the damages for that year, the plaintiff may sue out execution for the amount of the last year's damage, or any part thereof which may remain unpaid. (1868-9, c. 158, s. 15; Code, s. 1862; Rev., s. 2145; C.S., s. 2558.)