

without any unnecessary delay; and any person, who shall be unnecessarily detained, shall be entitled to recover of the owners double the amount of damages they shall prove to have sustained by reason of said detention.

Penalty for destroying or injuring dam or lock.

SEC. 3. Any person, who shall destroy, or in anywise injure, either said dam or lock, shall be deemed to have committed a trespass, and shall be liable accordingly; and any person, who shall wilfully or maliciously destroy or injure said lock or dam, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined treble the amount of damages the owner may have sustained, or be imprisoned, at the discretion of the court.

Not to enter upon and overflow lands without consent of owner. Nuisances to be removed.

SEC. 4. Nothing herein contained shall authorize the individuals named in this act, their heirs and assigns, to enter upon and flow the lands of any person, without the consent of such person; and they shall remove all such nuisances as may be occasioned by the erection of said dam, which may endanger the health of the vicinity.

This act may amended.

SEC. 5. The legislature of this Territory (or State) may at any time alter or amend this act, so as to provide for the navigation of said river.

APPROVED, January 23, 1839.

## MILLS AND MILLERS.

AN ACT regulating Mills and Millers, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That when any person, owning lands on one side of any stream or water course, the bed of which wholly, or in part, belonging to himself, or herself, and may be desirous of building a water grist mill, or saw mill, on such lands, or to erect any dam across such water course for that purpose, and shall not own the lands on the opposite side of such stream or water course, such person on application to the district court of the county where the opposite lands may be, may obtain a writ of *ad quod damnum*, to be issued, directed, and proceeded on as is hereinafter directed: *Provided*, That notice, in writing, of such application be given four weeks before said application by personal service on the owner or owners of such lands, his, her, or their agents, if to be found in the county, and if not, by

Owners of land on one side of a stream, how to acquire a title on the other side.

Application to district court.

Proviso, as to notice.

affixing such notice on the court house door of the county.

SEC. 2. The said writ shall be directed to the sheriff of the county in which the lands to be affected thereby may lie, commanding him to summon twelve good and lawful men of the county, to meet upon the lands in such named, on a day therein to be specified, and ten days' notice of the execution of such writ shall be given by the sheriff to the proprietor of such lands as before directed in the case of notices, unless the party, his, or her, or their agents were present in court when such writ was obtained.

Writ, to whom directed, on whom served, and notice to owners, &c.

SEC. 3. The jury so summoned, when met, shall be sworn and charged by the sheriff impartially, and to the best of their skill and judgment to view the lands in the said writ described, and the lands above and below the proposed dam, and ascertain the damage as by said writ directed; and shall locate and set apart, by metes and bounds, so much land as they shall think necessary for the purpose of erecting such dam, not exceeding three acres, having due regard, in such location, to the interest of both parties, and shall appraise the same at its true value; also to examine the lands of other persons which may probably be overflowed by the erection of such dam, and say what damage each owner will sustain thereby, and whether the dwelling house, out-house, orchard, or garden, of any such owner will be overflowed, and whether, in their opinion, the health of the neighborhood will be injuriously affected by such overflowing; which inquisition shall be made and signed by all the jurors, and returned by the sheriff with the writ to the next term of the court whence it issued.

Jury to be sworn and charged to view and ascertain damage.

Metes and bounds Limitation.

Dwelling houses, orchards, gardens, health, &c. Duty of jury, as to Inquisition. Return by sheriff.

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same shall notify the owner or owners of lands mentioned in such inquisition, whose lands are to be affected by the same, to appear at the district court of the next term thereof, and show cause why leave should not be granted to build such mill and dam, which notice shall be served as before directed.

Notice to owners, to appear in court, and show cause, &c.

SEC. 5. Any person wishing to build such mill and dam any water course, who may own the land on both sides of such stream, shall make application as aforesaid to the court of the county where such mill is proposed to be erected, for a writ to examine

Where the land, on both sides, is owned by the same person.

Application for writ. Its object, service and return.	as aforesaid what lands may be thereby overflowed and what damage will be sustained by the owner or owners of such lands, and whether the health of the neighborhood will be affected by such overflowing; which writ shall be issued, directed, and returned, as before prescribed.
Inquest and evidence.	SEC. 6. If on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any out-house, garden, or orchard, will be overflowed or the health of the neighborhood impaired, they shall not give leave to erect such dam; otherwise if the said court shall judge it reasonable, and for the public benefit, they may give leave, and lay the party applying under such regulations and restrictions in respect to the navigation of such stream as they shall judge proper.
Discretion of the court. Regulations and restrictions	
Acquisition and character of title.	SEC. 7. If the party applying obtain leave to build the said dam, he shall, on paying the proprietors of the lands located, and the damages assessed by the jury as aforesaid, become seized in fee of the lands so located, to him, his heirs, and assigns. But if he shall not, within one year thereafter, begin to build the said mill and finish it in three years, and afterwards keep it in good repair, for the accommodation of the public, or in case the said mill or dam be destroyed, shall not begin to rebuild in one year after its destruction, and finish it in three years, the said land shall revert to the former owner and his heirs, unless at the time of such destruction, the owner of such mill be an infant, or otherwise disabled in law, in which case the same time shall be allowed after such disability is removed.
Limitations.	
When title to revert.	
Exception.	
Operation of this act, as to damages.	SEC. 8. The inquest of the jury aforesaid, or the opinion of the court, shall not bar any prosecution or action which would otherwise be maintained in law had this act never been passed, other than for such injuries as were foreseen and estimated by the jury.
Non-compliance and	SEC. 9. Any person having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same within the time aforesaid, or having erected such mill shall fail to keep it in repair and running for the accommodation of the public, for the space aforesaid, at any one time, shall forfeit all rights acquired by virtue of this act, or any act of this Territory.
Forfeiture.	
What constitutes a public mill.	SEC. 10. All mills now in operation, or which may hereafter be put in operation, in this Territory, for

grinding wheat, rye, corn, or other grain, and which shall grind for toll, shall be deemed public mills.

SEC. 11. The owner or occupier of every public mill, within this Territory, shall grind the grain brought to his mill as well as the nature and condition of his mill will permit, and in due turn as the same shall be brought, and may take for the toll, if a water mill, or steam mill, for grinding and bolting wheat, or rye, one-eighth part; for grinding Indian corn, oats, barley, and buckwheat, not required to be bolted, one-seventh part; for grinding malt and chopping all kinds of grain, one eighth part: For an ox or a horse mill, for all kinds of grain, one-fourth part: *Provided*, If the owner of any such grain, ground at an ox or horse mill, shall furnish team to grind the same, with the consent of the owner or occupier of such mill, the same toll shall be taken as is allowed for a water or steam mill, and no more.

Regulations of steam and water mills.

Rates of toll.

Ox, or horse mills, rates of toll.

Proviso.

SEC. 12. It shall be the duty of each and every owner and occupier of every public mill, to give due and punctual attention when his mill shall not be out of repair, and to aid and assist in loading and unloading all grain which shall be brought to him to be ground. And he shall keep, in his mill, an accurate half-bushel measure, and an accurate set of toll dishes, and for a failure to perform any of the duties required by this act, every owner or occupier of a public mill shall forfeit and pay the sum of five dollars, to the use of any person who will sue for the same, as an action of debt in any court having cognizance thereof.

Duty of millers.

Measure and toll dishes.

Forfeiture.

SEC. 13. Every owner or occupier of a public mill as aforesaid, shall be accountable for the safe keeping of all grain received in his mill, for the purpose of being ground, with the bags or casks containing the same, and shall, when required, deliver the same, or the flour or meal thereof, to the owner, or his or her agent or servant, with the bags or casks in which the same was received: *Provided*, That such miller shall not be accountable for any bags or casks unless the same be distinctly marked with the initial letters of the owner's name, nor for the loss of grain bags or casks, which happen by unavoidable accidents.

Safe keeping of grain, &c.

Bags and casks Delivery of grain or flour. Bags, &c., marked.

Accidents.

SEC. 14. If any miller, or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this act, or shall not sufficiently grind, or grind and bolt, as the case may be, agreeably to the capacity of his mill, and in due turn, as

Taking unlawful toll, &c.

the same may have been brought; any miller so offending, shall forfeit and pay the sum of five dollars as before directed.

Forfeiture.

This act, when to take effect. SEC. 15. This act to be in force from and after the first day of May next.

APPROVED, January 25, 1839.

## MINORS, ORPHANS, AND GUARDIANS.

AN ACT concerning Minors, Orphans, and Guardians.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That the courts of probate, in their respective counties, shall admit orphans, minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to, real or personal estate.

Orphan minors may choose guardians.

SEC. 2. Whenever it shall be represented to said court that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor to appear before the said court, at a time therein specified, and choose a guardian; and if such minor shall neglect or refuse to appear, or, on appearing, shall neglect to choose a guardian, the court shall appoint one for such minor, as if said minor were under the age of fourteen years.

Neglecting to do so, probate court to appoint.

SEC. 3. Where a minor, having a father living, shall be entitled to, or possessed of any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor should not be appointed; if sufficient reason be not shown, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose; if such minor neglect or refuse, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

In what case the father may be appointed guardian.