

THE *J. Rogers*  
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND  
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,  
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE  
ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

---

Edited and Published under the authority of Chapters 15 and 16 of  
the Laws of 1866.

---

ST. PAUL.  
PUBLISHED BY DAVIDSON & HALL,  
STATE PRINTERS, 170 THIRD STREET.  
1872.

CHAPTER XXXII.\*

LOGS AND LUMBER.

- |   |  |
|---|--|
| <p><b>SECTION</b></p> <p>1. <i>Livers of certain size declared public highways.</i></p> <p>2. <i>Dam and boom to have sluiceway.</i></p> <p>3. <i>Booms and wears declared public nuisances—when—penalty for not making sluiceway.</i></p> <p>4. <i>Seven districts established.</i></p> <p>5. <i>Districts described.</i></p> <p><b>SURVEYORS, THEIR POWERS, DUTIES AND FEES.</b></p> <p>6. <i>Surveyor general to be elected for each district.</i></p> <p>7. <i>Surveyors when to keep office.</i></p> <p>8. <i>To take oath and give bond.</i></p> <p>9. <i>Bond to be deposited—where.</i></p> <p>10. <i>Surveyor general may appoint deputies.</i></p> <p>11. <i>Duties of surveyors.</i></p> <p>12. <i>In surveying, shall make allowance, how.</i></p> <p>13. <i>Surveyor to keep written rule posted—Scribner's rule adopted.</i></p> <p>14. <i>Shall deliver scale bill.</i></p> <p>15. <i>Shall affix marks to logs surveyed.</i></p> <p>16. <i>Fees—lien on logs surveyed—may enforce lien—when.</i></p> <p>17. <i>Books of record.</i></p> <p>18. <i>Orders to be recorded.</i></p> <p>19. <i>Effect of certificate as evidence—sale of logs, how effected by want of record.</i></p> <p>20. <i>No logs scaled unless mark is recorded.</i></p> <p>21. <i>Surveyor general to report to legislature.</i></p> <p>22. <i>To record all written instruments affecting ownership of logs.</i></p> <p><b>RECORD OF MARKS AND MUTILATION THEREOF.</b></p> <p>23. <i>Person cutting logs to record his mark—effect of record of mark.</i></p> | <p><b>SECTION</b></p> <p>24. <i>Penalty for mutilating mark.</i></p> <p>25. <i>Receiving logs mutilated—penalty.</i></p> <p>26. <i>Penalty for scaling such logs.</i></p> <p><b>SIDE ROOMS.</b></p> <p>27. <i>Logs to be turned out of side boom on demand.</i></p> <p>28. <i>Injury to side boom, how punished.</i></p> <p><b>LIENS.</b></p> <p>29. <i>Laborer to have lien—lien may be sold.</i></p> <p>30. <i>Conditions precedent to right of lien.</i></p> <p>31. <i>Claim of lien—when filed.</i></p> <p>32. <i>Lien to take precedence of all other liens.</i></p> <p>33. <i>Lien holders may have attachment—when.</i></p> <p>34. <i>Judgment—how executed.</i></p> <p>35. <i>Liens to have precedence in order of filing.</i></p> <p>36. <i>Disbursements recoverable.</i></p> <p>37. <i>Surveyor general to record papers—fees.</i></p> <p>38. <i>Lien, how discharged.</i></p> <p><b>CONVERSION OF LOGS.</b></p> <p>39. <i>Rule in case of conversion and intermingling of logs.</i></p> <p>40. <i>Rule in case of intermingling of logs without fault of owners.</i></p> <p><b>DAMS FOR SLUICING LOGS, ETC.</b></p> <p>41. <i>County commissioners may license party to erect dam.</i></p> <p>42. <i>Who has jurisdiction when stream runs between two counties.</i></p> <p>43. <i>License how issued.</i></p> <p>44. <i>Notice to be given.</i></p> <p>45. <i>When license may be granted.</i></p> <p>46. <i>Commissioners to establish rate of tolls.</i></p> <p>47. <i>Lien for tolls—how enforced.</i></p> |
|---|--|

TITLE I.

RIVERS, DAMS AND BOOMS.

**SECTION 1.** All rivers within this state of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, are hereby declared to be public highways, so far as to prevent obstructions to the free passage of logs, timber or lumber down said streams, or either of them.

**SEC. 2.** No dam or boom shall be constructed or permitted on any river, as herein specified, unless said dam or boom has connected therewith a sluiceway, lock or other fixture, sufficient and so arranged, as to permit logs, timber and lumber to pass around, through or over said dam or boom, without unreasonable delay or hindrance.

**SEC. 3.** Any boom or wear now in or on any river, as aforesaid, that is so constructed as to prevent the free passage of logs or lumber, is declared a public nuisance, which shall be abated unless a suitable sluiceway, lock or passage as above provided is made thereon as aforesaid, within thirty days after written notice given by any person interested; and any person so owning, holding or occupying said boom or wear, shall be liable to pay five dollars for every day the same is permitted to remain

Rivers public highways, when.

Dam and boom to have sluiceway.

Booms and wears declared nuisances, when.

\* Consult in connection with this chapter an act approved February 24, 1866, entitled "An Act in relation to the driving of logs, timber and lumber."

in or on said river, after having had thirty days' notice to remove said nuisance, which may be recovered before any justice of the peace having jurisdiction; and the amount so recovered shall be collected by said justice, and paid into the township treasury of the proper township, for the use of common schools; and said person shall also be liable for any damages sustained by individuals by reason of said nuisance.

TITLE II.

LUMBER DISTRICTS.

SEC. 4. There are established seven districts for the purpose of the survey and measurement of logs, lumber and timber within this state. Number of districts.

SEC. 5. The St. Croix lake and river and their tributaries constitute the first district. The Mississippi river and its tributaries between the mouth of the St. Croix lake and the mouth of Elk river constitute the second district. The Mississippi river and its tributaries between the mouth of the St. Croix lake and the outlet of Lake Pepin constitute the third district. The Mississippi river and its tributaries above the mouth of Elk river constitute the fourth district. The Mississippi river and its tributaries below the outlet of Lake Pepin to the southern line of Wabashaw county, constitute the fifth district. The bay of Superior, Saint Louis bay, Saint Louis river and their tributaries constitute the sixth district. The Mississippi river and its tributaries from the southern line of Wabashaw county to the southern line of the state of Minnesota constitute the seventh district. Limits of districts.

1868-64

TITLE III.

SURVEYORS—THEIR POWERS, DUTIES AND FEES.

SEC. 6. There shall be annually elected by the legislature, a surveyor general for each of the districts aforesaid, who shall be a citizen of the district for which he is elected at the time of his election, and shall enter upon the duties of his office on the first Monday of April next succeeding his election, and shall hold his office for one year, and until his successor is elected and qualified. Surveyor general for each district.

1867-14

1874-223

SEC. 7. The surveyor of the first district shall keep his office at the city of Stillwater; of the second district at the Falls of St. Anthony; of the third district at the city of Red Wing; of the fourth district at the city of St. Cloud; of the fifth district at the city of Wabashaw; of the sixth district at Oneota. Where to keep office.

1868-6-

SEC. 8. Each surveyor general shall before entering upon the duties of his office, take an oath before some person qualified to administer oaths, that he will faithfully discharge the duties of his office, and also execute a bond to the county in which he holds his office, with five or more sufficient sureties, to be approved by the county commissioners of such county, in the penal sum of five thousand dollars, conditioned for the faithful discharge of his duties as surveyor general, and for the delivery over to his successor, of all bills, bonds, certificates and papers, and other effects appertaining to his said office. To take oath and give bond.

SEC. 9. The bond and oath of office shall be deposited with the clerk of the board of county commissioners of the county where such office is Bond and oath—filed where.

kept, and when there is a failure to comply with the conditions of such bond, any person feeling himself aggrieved may commence an action thereon before any court having jurisdiction, and a recovery thereon (by one) shall not render the bond void, but the same may be prosecuted from time to time until the whole penalty is recovered.

Surveyor may appoint deputies.

SEC. 10. The surveyor general may appoint any number of deputies necessary to transact the business of his district; and for the correctness of their acts and doings he shall be responsible upon his bond.

When he shall scale logs.

SEC. 11. The surveyor general, by himself or his deputy, at the request of the owner of any logs, timber or lumber, or of any sheriff, coroner or constable, who has replevied, attached or levied on any logs, timber or lumber, or of any person who has a written order from the owner for the delivery of any logs, timber or lumber, to repair to any part of his district and survey such logs, timber or lumber, and upon completing such survey to make out a true and correct scale bill thereof, stating the person by whom, the time when and place where such logs, timber or lumber was scaled, at whose request and to whom scaled, if to any one, and the scale mark placed thereon, the number of logs or pieces of timber, together with the mark or marks thereon, and the number of feet therein contained, and shall sign the same, and thereupon he shall record such bill in the books of his office, and upon being paid his fees for such services, he shall deliver the original bill to the person to whom the logs, timber or lumber is scaled, if any; if not, then to the person requesting the survey; and such bill and the record thereof shall each be prima facie evidence of the facts therein stated. No surveyor general or deputy surveyor shall in person survey any logs, timber or lumber owned wholly or in part by himself, but either may survey any such logs, timber or lumber owned wholly or in part by the other.

Surveys, how conducted.

SEC. 12. The said surveyors and their deputies shall, in surveying or measuring logs or lumber, make such allowance for hollow, rotten and crooked logs as would reduce and make them equal to good, sound and straight merchantable logs; and in surveying lumber, shall throw off all rotten, shaly or waxy stuff, and make the same equal to good merchantable lumber.

Rule to be posted in office of surveyor general.

Scribner's rule adopted as the only legal rule.

SEC. 13. The surveyor general shall keep posted in his office a written rule or scale of logs of all sizes and lengths, which shall govern him in his surveys, and the scale-rule known as Scribner's rule is hereby adopted as the only legal rule for the survey of logs in this state: *provided*, that every log shall be surveyed by the largest number of even feet which it contains in length over ten feet and under twenty-four feet, and all logs of twenty-four feet in length or more, shall be surveyed as two logs or more.

Scale bill to be delivered—what to contain.

SEC. 14. Each surveyor general, by himself or deputy, shall survey all logs and timber running out of any boom now chartered, or which may hereafter be chartered by law in his district, and at the end of each week when he has surveyed any such logs or timber, make out and deliver to the owner of such boom or the managing agent thereof a true and correct scale bill, stating the date of such survey, the number of logs and pieces of timber, the marks thereon respectively, and the number of feet of each mark so surveyed during the week, and shall sign the same; and he shall immediately record such bill in the books of his office, and upon being paid his fees for such services shall deliver the original bill to the owner or managing agent of such boom, and all boomage or fees of such boom on any logs or timber shall be collected in accordance with such survey.

Scale mark to be placed on logs.

SEC. 15. In all cases of a sale or other transfer of any logs or timber, by one party to another, if the surveyor general by himself or deputy

1871-71

surveys the same, he shall at the time of making such survey, place upon each of such logs or pieces of timber the scale mark of the purchaser or other transferee, and thereupon such scale mark shall supersede all prior marks upon such logs and timber, and become and be the log mark of such purchaser or transferee on the same logs and timber, and in all cases of a sale or other transfer of any logs or timber, the purchaser or other transferee shall pay for the scaling thereof, and shall be entitled to receive and have the scale bill. And when the surveyor general delivers a scale bill to any person, he shall note upon the margin of the record thereof the name of the person to whom delivered and the date of the delivery.

SEC. 16. The fees of surveyor generals shall be: for surveying, scale marking, making scale bills and recording the same and posting in the ledger, five cents per thousand feet for all logs and timber required to be surveyed; for surveying lumber, twenty-five cents per thousand feet; for traveling to perform any service more than two miles from their respective offices, five cents per mile going and returning; for recording any log mark, fifty cents; for making and certifying a copy of any matter which may be of record in his office, or for making any duplicate scale bill, ten cents per folio; for recording any instrument in writing authorized to be recorded in his office, other than scale bills, ten cents per folio, payable when such instrument is presented for record and before it is recorded, and no such instrument shall be deemed to be recorded until it is entered upon the index to the record. And for the purpose of securing to the surveyor general the payment of his fees, whether the same are for traveling, surveying, making scale bills, or recording the same, or for any or all of such services, such surveyor general shall have a lien upon all such logs, timber or lumber surveyed and marked by him, for the amount due for his services thereon, and may retain such lien by affixing to the scale bill of such logs, timber or lumber, before the delivery thereof, a true statement of the amount due him thereon, and that he scaled such logs, timber or lumber, relying upon such lien, and that he claims a lien thereon for such amount, and costs of collection; and thereupon such surveyor general may take actual possession of a sufficient quantity of such logs, timber or lumber, and may retain the same until he is paid the amount due him thereon, and such logs, timber or lumber shall not be removed or taken from the possession or control of such surveyor general until such payment is made. If the amount is not paid within sixty days after the delivery of such scale bill, the surveyor general may sell at public auction enough of such logs, timber or lumber to pay the amount due him, with the costs of collection, first giving ten days' notice of such sale, by posting up five written notices thereof, one in his office, and one in each of the four most public places in the town or city where the sale is to be made; and at such sale the surveyor general may become the purchaser. The sale may be made by the sheriff or any constable of the county, and the only costs of collection allowed shall be ten per cent. on the amount due, for taking care of the property, and to the officer making the sale, ten per cent. on the amount payable to the surveyor general.

SEC. 17. The books of record in the surveyor general's office in each district shall be:

*First.* A book in which shall be recorded the log-mark of any person desiring to have the same recorded.

*Second.* A book in which shall be recorded all bills of sale, mortgages, and orders, and other instruments in writing for the sale, transfer, incumbrance or delivery of any logs or timber in the same district.

*Third.* A book in which shall be recorded the scale bills of all the logs, timber and lumber surveyed by the surveyor general.

*Fourth.* A book to be kept in ledger form, in which shall be posted and recorded from time to time, as soon as any logs or timber is surveyed and the scale bill thereof recorded separately and under their respective marks all the logs and timber of each particular mark surveyed, together with the date of scaling, the number of logs or pieces of timber, to whom scaled, and the number of feet, and an index of the names and marks contained in each of said books, shall also be kept. Any books of the descriptions before named, which have been kept in the office of any such surveyor general, and which belong to said office, are hereby declared to be the records of such office, and to have and be of the same validity, force and effect, as if the same had been kept by express authority of law. All the books of record hereinbefore mentioned, and authorized to be kept in the office of any surveyor general, are hereby declared to be public records, and of as high degree of evidence as the original instruments therein recorded, and shall in all courts and places in this state be taken and held to be prima facie evidence of the matters therein stated; and such books shall not be removed from the surveyor general's office, except for use as evidence in court in the town or city where such office is situated. A copy of any matter or thing, of record in such office, certified under the hand of the surveyor general or his deputy to be a correct transcript from the record in such office, shall be received and read in any court of this state as of the same degree of evidence and with the same force and effect as the original instrument or record.

Order to scale logs to be recorded.

SEC. 18. The surveyor general shall not be required, except upon the request of a sheriff or constable in case of an attachment or levy thereon, to scale any logs to any person other than the owner, as the title thereto appears by the records in his office, without an order in writing therefor recorded in his office; and the surveyor general shall record in the books of his office, in the order in which they are presented for record, all orders drawn by the owner of any logs, directing him to scale any logs of his mark or marks to any other person, and the first logs scaled off, of the marks given in such order and within the limits or of the lot or parcel prescribed therein, shall be scaled to the person in whose favor the order is drawn according to the priority of record. Such order shall be recorded in the same book with bills of sale and mortgages, and shall have preference over any subsequent sale, transfer or incumbrance of such logs; and the fees for recording such order shall be collected in the same manner and at the same time with the fees for scaling such logs.

Effect of surveyors' certificate of record of mark.

SEC. 19. The certificate of the surveyor general that any mark has been recorded in his office, in the district in which the logs were cut or into which they come, and that there is no transfer of such mark recorded in the books of his office, shall be prima facie evidence in any court in this state that the logs bearing such mark, not superseded by any other mark, are the property of the person in whose name such mark is recorded. If the surveyor general certifies that such mark has been transferred on the books of his office, and the name of the person to whom such mark was last transferred, such certificate shall be prima facie evidence of the ownership of the logs by the person to whom the mark was last transferred; and if the surveyor general certifies that such mark has been superseded on any logs, naming the person in whose favor the same was last superseded, such certificate shall be prima facie evidence of the ownership of the logs bearing such mark superseded, by the person owning such superseding mark. No sale or transfer of any log mark, or sale, mortgage or other transfer or incumbrance of any logs cut in this state or which come into any district of this state, shall be legal or binding; except between the parties thereto, unless such sale, transfer, mortgage or incum-

brance is in writing and recorded in the office of the surveyor general in the district where such logs were cut, or into which they have come if cut in another state.

SEC. 20. No logs shall be scaled by the surveyor general or his deputies, unless the marks upon the said logs are properly recorded in accordance with the provisions of this title, and no survey of any logs shall be received in any court in this state, except the survey of the surveyor general or his deputy.

No logs to be scaled unless mark is recorded.

SEC. 21. The surveyor general shall report to the legislature at the beginning of each regular session thereof, the total number of feet of logs and lumber which he has surveyed in his district for the year ending the thirtieth day of November last past.

Surveyor to make report to legislature.

SEC. 22. He shall record all mortgages, liens and bills of sale or other written instruments in any way affecting the ownership of any mark of logs in his district, in a book kept for that purpose: *provided*, that said instruments shall specify the marks placed upon the said logs when they were cut, and shall be recorded in the office of the surveyor general in which the said marks are recorded, and no conveyances, lien, mortgage or transfer shall be valid until the same are so recorded.

To record written instruments affecting ownership of logs.

## TITLE IV.

### RECORD OF MARKS, AND MUTILATION THEREOF.

SEC. 23. Whoever cuts any logs in either of the districts of this state shall, before proceeding to mark the same, cause to be recorded in the office of the surveyor general in whose district such logs may be, a copy of the log mark which is to be put upon said logs, and which mark shall be distinctly different from any other mark recorded in the same district. Whoever cuts any logs in any state adjoining either of the districts of this state, and intends to bring such logs into any such district, may have his log mark recorded in the district into which he intends to bring such logs, and into which they may be brought, with the same rights, force and effect as if such logs had been cut in such district. And when any log mark is recorded in pursuance of the provisions of this chapter, such mark shall be deemed and held to be the property of the person in whose name it is recorded, and such mark borne upon any logs or timber, and not superseded by any other mark, shall be prima facie evidence that the logs or timber bearing such mark are the property of the person owning the mark. Any such log mark may be sold or transferred by bill of sale recorded in the office of the surveyor general where the mark is recorded in the name of the first owner, and a note of such transfer made in the margin of the book where the mark is recorded; and a sale or transfer of any mark so made shall operate as a sale or transfer of all the logs-bearing such mark and at the time owned by the person transferring the mark. Any logs or timber cut in this state or coming into this state in the first district at any point on the lake St. Croix above the city of Stillwater, the marks of which are not recorded in the district in which they were cut or into which they may come, and all logs or timber not bearing any distinctive mark shall not, in favor of the person who has cut the same or claims to be the owner thereof, be recognized, deemed or held in any of the courts of this state to be the property of any such person, for any purpose what ever, in any action or proceeding.

Mark to be recorded before logs are cut.

Effect of record of mark.

Mark may be sold.

SEC. 24. Whoever takes from any of the rivers or their tributaries in or bordering on this state, or from any slough, ravine, island or land

Mutilation of mark—penalty.

adjoining said rivers or tributaries into or upon which any logs may run, or cuts out, mutilates, destroys or renders illegible the mark or marks thereon, or in any manner willfully injures any such logs not his own, or whoever, other than the surveyor general or his deputy, places upon any log or piece of timber, any mark except the original mark, is guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the state prison for not less than one year, nor more than three years, and shall be further liable for double the market value of said logs at the time so taken or injured, to be recovered by the owner of such logs in a civil action.

Liable to action.

Receiver of logs mutilated—how punished.

SEC. 25. Whoever purchases, receives or secretes saw logs so taken or removed, or who cuts or otherwise injures logs so taken or removed, shall be punished in the same manner, and to the same extent as is provided in the preceding section: *provided*, that no person shall be so punished for receiving or buying logs as aforesaid, if he received or bought them under and by virtue of any scale list, signed by a legal surveyor of logs or lumber in this state, and is in possession of said scale list.

Penalty for scaling such logs.

SEC. 26. If any surveyor general or deputy, scales or gives a scale list of any logs to any person, which logs were taken or removed as aforesaid, the said surveyor general or deputy so offending, shall forfeit and pay for every such offense, the sum of twenty-five dollars, to be recovered by any person suing for the same in any court of competent jurisdiction.

## TITLE V.

### SIDE BOOMS: INJURIES THERETO AND TAKING LOGS THEREFROM.

Logs in scale booms to be turned out—when.

SEC. 27. In case any logs are found in any side boom or boom other than a chartered boom, which have not been bargained for by the owner, holder or managing agent of such boom, the owner of such logs may demand that the same shall be turned out of such boom and unless such logs are turned out of such boom within three days after such demand is made, the owner of such logs may open such boom and turn out the same, doing no unnecessary damage to such boom, nor allowing more of other logs to escape out of such boom than can be reasonably avoided.

Injury to scale-booms—how punished.

SEC. 28. Whoever willfully and maliciously opens, breaks, cuts, or otherwise destroys or injures any side or other boom, or turns the whole or any part of the logs or timber contained therein loose or adrift, except for the purpose herein mentioned, and except also, in case such boom materially obstructs the navigation of any navigable stream or unlawfully intrudes upon the property of any such person, the person so opening, breaking, cutting, injuring or destroying such boom, or turning loose or adrift such logs, or who willfully and maliciously cuts loose or turns adrift any boom, Brill, string or raft of logs, timber or lumber, is guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment, in the discretion of the court, and shall further be liable for all the damage sustained by reason of such wrongful act.

TITLE VI.

LIENS.

SEC. 29. Whoever performs manual labor upon any logs or timber, shall have a lien upon such logs or timber to secure the payment of the wages agreed to be paid for such labor, upon substantially complying with the requirements of this title, which said lien shall be subject to assignment and sale.

Laborer to have lien.

SEC. 30. Before entering upon the performance of any such labor, the person proposing to perform the same shall cause to be filed and recorded in the office of the surveyor general of logs, timber and lumber, for the district in which the mark of the logs or timber upon which the said labor is to be performed is by law required to be recorded; a memorandum in writing of the terms of the contract under which the said labor is to be performed; which said memorandum shall contain—

Conditions precedent of lien.

1870 - 153

*First.* The name of the persons, by and for whom respectively, the said labor is to be performed.

*Second.* The proposed mark of the logs or timber upon which the said labor is to be performed.

*Third.* The time when said labor is to be performed, and—

*Fourth.* The amount, time and manner of payment agreed upon for such labor; and shall be signed by the said parties respectively.

SEC. 31. In case any such person so performing labor upon any logs or timber, and having complied with the requirements of the preceding section, has not received the wages agreed upon as aforesaid, for such labor at the time and in the manner agreed upon as aforesaid, then within thirty days thereafter, such person shall cause to be filed and recorded in the said office, a claim of lien upon the said logs or timber to secure the payment of the said wages, which said claim of lien shall be in writing, signed by the person so claiming a lien, or by his agent or attorney, and verified by the oath of the person so signing the same; and shall contain—

Claim of lien to be filed.

*First.* A reference to the contract under which it is claimed labor has been performed.

*Second.* A statement of the amount of labor performed under such contract.

*Third.* What amount, if any, has been paid for such labor; and—

*Fourth.* The amount still due for such labor.

SEC. 32. Upon the said claim of lien being filed and recorded as aforesaid, the said logs and timber shall be holden for the payment of said wages so due, as aforesaid, for labor performed on the same; and the said lien shall take precedence of any other lien or claim whatsoever, or any sale or transfer of the said logs or timber: *provided*, the said person claiming such lien, within six months after filing such claim of lien, proceeds to institute an action in the proper court to recover the said wages so due, as aforesaid, and shall prosecute the same to judgment and execution with due diligence.

Lien—how enforced.

SEC. 33. If at the time of instituting the action, or at any time thereafter, before judgment, the person claiming a lien on any logs or timber, as aforesaid, or his agent or attorney, makes and files in said action an affidavit stating that the said logs or timber are about to be removed out of the jurisdiction of the court, or are about to be manufactured into lumber; or that in any other manner the said person is in danger of losing the said logs or timber as security for the payment of the said wages so due, as aforesaid, then the said person may have an attachment

Attachment granted, when.

issued against the said logs or timber, without any other act or thing being required on his part, whatever; and if any person whosoever after the time of the filing of the memorandum above mentioned, removes any such logs or timber out of the jurisdiction of said court, or manufactures or otherwise disposes of any such logs or timber so as to hinder or prevent the payment of the wages so due for labor on the same, or to hinder or prevent the execution of the judgment which may be recovered in such action, such person shall be personally liable to the person so hindered or prevented from obtaining the payment of said wages or from obtaining satisfaction of the said judgment to the amount of the value of the logs or timber so removed, manufactured or disposed of as aforesaid.

Judgment—how enforced.

SEC. 34. Upon judgment being obtained in any such action, the same shall be executed upon the said logs or timber in the usual manner, and to the persons buying any portion of such logs or timber, the officer having the execution of such judgment and making sale thereon, shall give a certificate of the said purchase and sale; and upon such certificate being presented and delivered to the surveyor general, aforesaid, he shall scale to the person to whom the said certificate was given, or his assigns, the said logs or timber so purchased as aforesaid, and shall deliver to such person a scale bill therefor; which said scale bill shall be conclusive evidence of ownership of the said logs or timber.

Lien to take precedence in order of filing.

SEC. 35. The said claims of lien shall have precedence one of the other, in the order in which the same are filed in the office of the surveyor general.

Fees recoverable.

SEC. 36. There shall be recovered in such actions as disbursements, the fees paid to the surveyor general for filing and recording the aforesaid papers; which said fees shall in the first instance be paid by the party procuring the said papers to be filed and recorded.

Surveyor general to file papers.

SEC. 37. The surveyor general of the several districts for the surveying of logs, timber and lumber, shall file and record in his office, the several papers hereinbefore required to be filed and recorded, and perform the other acts herein provided for; and as compensation therefor, the surveyor general may demand and receive the same fees as he is entitled to for other like services.

Lien—how discharged.

SEC. 38. Whenever any person, who has filed a claim of lien as hereinbefore provided, has received his wages and costs in full in any manner, he shall, on the demand of the owner of any logs or timber upon which such claim was made, or of the assignee of such owner, give a receipt of the same to such person, which said receipt being filed and recorded in the office of the surveyor general, shall be deemed a discharge of the said lien.

## TITLE VII.

### CONVERSION OF LOGS.

Conversion of logs—rule to govern.

SEC. 39. In all cases of a wrongful or unlawful taking, detention or conversion of logs or timber and intermingling of the same with other logs or timber so that they cannot be identified or separated therefrom by the owner, the rule of the common law applicable to the case of a wrongful and fraudulent confusion of goods, shall govern in determining the right of property in respect to said logs and timber.

Intermingling of logs—rule to govern.

SEC. 40. In cases where logs or timber bearing the same mark but belonging to different owners in severalty, have without the fault of any

of them become so intermingled that the particular or identical logs or timber belonging to each cannot be designated, either of such owners may upon a failure of any one of them having the possession, to make a just division thereof after demand, bring and maintain against such one in possession an action to recover his proportionate share of said logs or timber, and in such action he may claim and have the immediate delivery of such quantity of said mark of logs or timber as shall equal his said share, in like manner and with like force and effect as though such quantity embraced his identical logs and timber and no other.

### TITLE VIII.

#### THE ESTABLISHMENT AND REGULATION OF DAMS FOR SLUICING LOGS, TIMBER AND LUMBER.

SEC. 41. The board of county commissioners may grant a license to any person, applying therefor, to construct and maintain a dam across any stream within their respective counties, for the purpose of raising a head of water sufficient to sluice logs, timber or lumber, upon being satisfied that such sluice dam is necessary at the point applied for, and that the land on both sides of the stream is in the possession or under the control of the person so applying for a license.

License granted—  
how and by  
whom.

SEC. 42. In all cases when the stream across which a license for a sluice dam is sought runs between two counties, the board of county commissioners of either county have as full jurisdiction in the premises as though the stream was wholly within the county of which they are commissioners. And when the board of county commissioners of either county have exercised jurisdiction under this title, and have granted a license thereunder, the county commissioners of no other county have any power to exercise any jurisdiction over the same.

Who may act  
when stream  
runs between  
two counties.

SEC. 43. All licenses granted under the provisions of this title shall be sealed with the seal of the board of county commissioners and signed by them, attested by the county auditor, and may be granted for a period not exceeding six years.

Licenses, how  
executed.

SEC. 44. All persons intending to apply for a license at a certain point shall give notice of their intention by posting up at least three notices in public places at the county seat, and in the office of the surveyor general of logs of the district where the logs running from the place where such dam is proposed to be built, are required to be scaled, or if it is proposed to build said dam in an unorganized county, the said notices shall be posted up at the county seat of the county to which the same is attached for judicial purposes, and the said notices shall be given twenty days prior to such application: *provided*, that when application is made for a renewal of a license, when the former license has expired, the same may be granted or renewed without previous notice.

Notice of inten-  
tion to apply for  
license to be  
posted.

SEC. 45. The board being satisfied that for the general interest of those engaged in the lumbering business a sluice dam is needed, and that the applicant is a suitable person to build and maintain it, shall grant the license, which however, shall not become valid until the applicant files a bond with sureties, to be approved by the board, in a penalty not less than one thousand dollars, with a condition that he will construct and maintain such dam, with all reasonable diligence and skill for the purpose of sluicing logs, timber and lumber, and to facilitate the driving of the same on

Licenses, when  
granted.

such stream, and with such further special conditions, relating to the construction and operation of such dams as the case requires.

Rate of toll, how established

SEC. 46. Whenever a board of county commissioners of any county grant a license to construct and maintain a sluice dam across any stream within their jurisdiction, the said board shall establish the rate of tolls, which may be demanded for the sluicage of logs, timber and lumber, but the tolls shall not exceed the sum of six cents per thousand feet so sluiced: *provided*, that at the Snake river dam, in Pine county, the said toll may be ten cents.

Lien for tolls.

SEC. 47. All tolls chargeable under this title for sluicing logs, timber and lumber, shall be deemed due and payable as soon as said logs, timber and lumber are sluiced, and for the payment of the said tolls, the proprietor of the sluice dam has a complete lien upon said logs, timber or lumber until the said tolls are paid. And when said tolls so due, for sluicing logs, timber or lumber, are not paid on demand by the owner thereof, the proprietor of the dam through which the same have been sluiced, is authorized and empowered to take and sell a sufficient quantity of the logs, timber or lumber, at public auction, to pay the tolls so due: *provided*, that written or printed notices of the sale shall be posted up at the office of the surveyor general of logs and lumber of the district, and at the county seat of the county in which said property is seized.

## CHAPTER XXXIII.

### BANKS AND BANKING.

1869-107

#### SECTION

1. Bank note plates to be procured by auditor, for banks; and notes printed for banking purposes.
2. Denominations of bank notes.
3. Notes to be countersigned and registered by auditor.
4. Auditor to receive what stocks for banking—must produce six per cent. interest—depreciation to be made good—insecure stocks not receivable.
5. Securities—how indorsed.
6. Securities becoming insecure—auditor to receive interest and dividends.
7. Securities not to be used to pay fees of protest.
8. Registered and countersigned notes to be so recorded upon their face.
9. Powers of attorney may be given to receive interest on deposited stock; may be revoked on failure to redeem notes.
10. Capital stock not less than \$25,000; not to be established in a town of less than two hundred inhabitants.
11. Certificate for incorporation of bank to contain:
  1. Name;
  2. Place of business;
  3. Capital;
  4. Names of shareholders, and number of shares;
  5. When to commence and terminate.

#### SECTION

12. Certified copies of certificate to be evidence in courts.
13. Enumeration of banking powers.
14. Shares to be personal property, and transferable.
15. Failure to redeem circulating notes on demand, forfeiture of charter, unless redeemed within forty days after notice from auditor, procedure to close a bank and redeem its bills.
16. Damages for non-redemption of notes.
17. Auditor to countersign bills; penalty for violation of restrictions imposed.
18. The capital of a bank may be increased.
19. Contracts of banks, and bills, to be signed by president and cashier; suits to be brought in corporate name.
20. Purchase of real estate:
  1. For its immediate accommodation;
  2. As a mortgagee;
  3. By conveyance for debts previously contracted;
  4. By execution in its favor.
21. Names of shareholders and amount of stock, to be filed with register of deeds and auditor; individually liable to double amount of stock, and for one year after transfer.
22. Billholders to be preferred to all other creditors.
23. Notes of banks payable only at place of issue.