

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

JANUARY 1. 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

§ 8. Certificate and affidavit—False statement.

A statement in the certificate of an amount greater than that actually contributed by the special partner renders him liable as a general partner; and under a complaint charging defendants generally as partners, the answer setting up an alleged special partnership, evidence is admissible to show the falsity of the certificate. *Sharp v. Hutchinson*, (N. Y.) 3 N. E. Rep. 500.

CHAPTER 31.

DAMS AND MILLS.

See *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 29 N. W. Rep. 161; *Siman v. Rhoades*, 24 Minn. 25.

§ 1. Erection of dams, etc.—Eminent domain.

The authorization of condemnation proceedings for the right of flowage, etc., is not unconstitutional. *Miller v. Troost*, 14 Minn. 365, (Gil. 282.)
See *Weir v. St. Paul, etc.*, R. Co., 18 Minn. 155, 164, (Gil. 139, 148.)

§ 2. Petition.

If the petition state facts which make a case within § 1, the court has jurisdiction. It need not negative the restrictions or limitations of the right contained in subsequent sections of the chapter, and it need not state want of consent by the owners of the land sought to be overflowed. *Faribault v. Hulett*, 10 Minn. 30, (Gil. 15.)

The petition need not contain a description of the lands with respect to which damages are sought to be assessed, but in good practice should do so. To bind the lands, however, they should be described in the judgment. *Siman v. Rhoades*, 24 Minn. 25.

§ 13. Appeal—Questions on—Trial.

The appeal brings before the district court only the question of the damages allowed by the commissioners, and not the propriety of the order appointing them. *Turner v. Holleran*, 11 Minn. 253, (Gil. 168.) followed *Warren v. First Div. St. P., etc.*, R. Co., 18 Minn. 354, 390, (Gil. 345, 353.)

Where proper notice has been served upon the owners of land affected, jurisdiction is acquired, and any indefiniteness in the description of the lands affected by such proceedings may, on appeal, be amended, and the lands described in the judgment entered. *Siman v. Rhoades*, 24 Minn. 25.

After appeal to, and trial and judgment in, the district court, it will be presumed, in the absence of anything to the contrary, that it was made to appear to the court below that such stream was not navigable. *Id.*

After the entry of judgment on appeal in the district court, that court has the power to correct such judgment and make it conform to what the parties were entitled, as the result of the trial. *Id.*

§ 15. Judgment on appeal.

The appeal brings before the district court only the question of the damages allowed by the commissioners, and not the propriety of the order appointing them. *Turner v. Holleran*, 11 Minn. 253, (Gil. 168.)

The proceedings authorized by c. 34, *infra*, for condemning lands for railroad purposes, are taken almost *verbatim* from §§ 2-15 of this chapter. *Lehmick v. St. Paul, etc.*, R. Co., 19 Minn. 464, (Gil. 406, 412.)

§ 16. Previously improved water-power.

The rights that may be acquired date from the time of commencing the proceedings, and are governed by the condition of the upper proprietor's power at that date. *Miller v. Troost*, 14 Minn. 365, (Gil. 282.)

A water-power which an owner on a stream has, with a *bona fide* intent, turned to use, and made improvements upon to any extent, is a water-power "previously im-

proved," and a lower proprietor cannot afterwards acquire a right to improve the same by proceedings under the statute. *Id.*

This section cited, *Faribault v. Hulett*, 10 Minn. 30, 35, (Gil. 15, 20.)

§ 17. Action for damages—Limitation.

The time to sue commences to run from the time when the damage is occasioned, and not from the time of the erection of the dam. *Thornton v. Turner*, 11 Minn. 336, (Gil. 237.)

Under the proviso extending the right of action in favor of the pre-emption claimant until after the issuance of the patent, it is material to show the filing of the plaintiff's declaratory statement in the proper land-office. The certified copy of the land-office record is competent *prima facie* evidence of the fact. *Dorman v. Ames*, 12 Minn. 451, 454, (Gil. 347, 349.)

Where a defendant has a right to maintain a dam, but it does not appear to what height he may maintain it, a finding as to the height at which he does maintain it will not authorize an abatement or injunction. *Finch v. Green*, 16 Minn. 355, (Gil. 315.)

This section cannot be extended to an action to abate or enjoin a dam as a nuisance. *Cook v. Kendall*, 13 Minn. 324, (Gil. 297;) *Thornton v. Webb*, 13 Minn. 498, (Gil. 457.)

See *Thornton v. Smith*, 11 Minn. 15, (Gil. 1.)

*§ 31. Repairs—Entry upon servient estate.

Whenever, by any contract or by proceedings under chapter thirty-one of the General Statutes, and acts amendatory thereof, the owner of any mill-dam has heretofore acquired, or shall hereafter acquire, the right to flow the lands of another person, in order to maintain a head of water at said dam, and by reason of the breaking away of any natural or artificial bank or margin of said stream, upon such lands of such other person, the water has become or shall become divided from said stream, it shall be lawful for the owner of said dam to enter upon the lands of such other person, doing no unnecessary damage, and to repair and restore said bank so as to prevent the further diversion of the water from said stream. (1879, c. 74, § 1.)

*§ 32. Same—Damages—Adjustment.

Any damage that may be caused to the owner of such lands by reason of such entry thereon, and the repairing of such bank, shall be maintained and paid in the manner provided in said chapter thirty-one of the General Statutes in other cases. (*Id.* § 2.)

CHAPTER 32.

LOGS AND LUMBER.

TITLE 1.

RIVERS, DAMS, AND BOOMS.

§ 1. Rivers declared public highways.

As to the right to moor logs to the shore, on the Mississippi, and the duty of navigators to avoid collisions with them, see *Hayward v. Knapp*, 23 Minn. 430.

See *Merriman v. Bowen*, cited in note to section 78, *infra*.

*§ 3a. Mississippi river—Mill-waste in, prohibited.

It shall not be lawful to cast, throw, or empty, or cause, suffer, or procure to be cast, thrown, or emptied, from mills of any kind whatever, any slabs, edgings, or timber, sound or unsound, or by falling or throwing any tree into the Mississippi river: *provided*, nothing in this bill will prevent persons from