

GENERAL STATUTES ³⁶
OF THE
STATE OF MINNESOTA

IN FORCE

JANUARY 1. 1889.

COMPLETE IN TWO VOLUMES.

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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.

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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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

depositing mill waste of any kind for the purpose of building or extending wharfs or yard room in any city or town on the Mississippi river. (1879, c. 104, § 1.)

***§ 3b. Same—Violation—Penalty.**

Any person, persons, or corporations offending against the provisions of this act shall, for each and every such offense, forfeit and pay a penalty not exceeding fifty dollars, besides such further sum as may be found in any action for the recovery of the penalty or penalties, to the extent of any expense in making good the damage incurred, or removing to a proper place the things deposited in violation of this act, such penalty to be recoverable in any of the courts in this state having jurisdiction thereof. (*Id.* § 2.)

TITLE 2.

LUMBER DISTRICTS.

§ 4. Number of districts.

There are established seven districts for the survey and measurement of logs and timber within this state. (*As amended* 1871, c. 28, § 3; 1885, c. 13, § 1.)

§ 5. Lumber districts defined.

The Saint Croix lake and river, and their tributaries, constitute the first district. The Mississippi river, and its tributaries above the mouth of the Saint Croix lake and Little Fork and Big Fork rivers, and their tributaries, constitute the second district. The Mississippi river, and its tributaries, between the mouth of Saint Croix lake and the outlet of Lake Pepin, constitute the third district. The Mississippi river, and its tributaries, below the outlet of Lake Pepin to the southern line of Wabasha county, constitute the fourth district. All the waters tributary to Lake Superior, and all the waters in the counties of St. Louis, Lake, and Cook, except Little Fork river and its tributaries, constitute the fifth district. The Mississippi river, and its tributaries from the southern line of Wabasha county to the southern line of the state of Minnesota, constitutes the sixth district. The Red river, Red lake, Lake of the Woods, Rainy lake and river, and their respective tributaries, except Little Fork and Big Fork rivers, and their tributaries, and except waters east of the west line of Saint Louis county, constitute the seventh district. (*As amended* 1871, c. 28, § 3; 1881, c. 64, § 1; 1885, c. 13, § 2.)

TITLE 3.

SURVEYORS—THEIR POWERS, DUTIES, AND FEES.

§ 6. Surveyors—Appointment—Duties—Seal.

There shall be biennially appointed by the governor, with the advice and consent of the senate, a surveyor general for each of the districts aforesaid, who shall be a citizen of the district for which he is appointed at the time of his appointment, and he shall enter upon the discharge of the duties of his office on the third Monday in April next succeeding his appointment, and shall hold his office for two years, and until his successor is appointed and qualified: *provided*, that it shall be the duty of the surveyor general, whose term of office has expired, to make the scale-bills, and record them in the books of the surveyor general's office, of all logs scaled by him or deputies prior to the time he surrenders the same to his successor, and for that purpose he shall have access to the books of the office; and all bills so made and recorded shall have the same validity as if made and recorded during his term of office.

Each of said surveyor generals shall have a seal of office, which seal shall be of the size prescribed by law for notarial seals, and shall have engraved thereon the arms of the state of Minnesota, and the words "Surveyor General — District," and in the said blank space shall be inserted the number of his district.* (*As amended* 1874, c. 77, § 1; 1877, c. 18, § 1; 1881, *Ex. Sess.* c. 45, § 1.)

§ 7. Offices—Location.

The surveyor general of the first district shall keep his office at the city of Stillwater; of the second district, at the Falls of Saint Anthony, and shall appoint a deputy, who shall reside at the city of Saint Cloud; of the third district, at the city of Red Wing; of the fourth district, at the city of Wabasha; of the fifth district, at Duluth; of the sixth district, at the city of Winona; and of the seventh district, at the city of Crookston. (*As amended* 1868, c. 42, § 2; 1874, c. 81, § 1; 1881, c. 64, § 2; 1885, c. 11, § 1.)

§ 11. Surveyors—Duties—Scaling logs.

An agreement that logs to be cut and hauled shall be measured and scaled by the surveyor general of logs, or his deputy, "whose decision shall be final," is not invalid because changing the effect of his official acts as provided by this section, nor as against public policy. *Leighton v. Grant*, 20 Minn. 345, (Gil. 298.)

§ 12. Surveying—Rules.

Cited, *Pevey v. Schulenburg, et al.*, Lumber Co., 33 Minn. 45, 46, 21 N. W. Rep. 844.

§ 15. Transferring logs—Scale-bill.

A certified copy of scale-bills taken from the records of the surveyor general of logs, purporting to be a scale of logs for the defendant in its mill-booms at Stillwater and Lakeland, and including, in separate columns, log-marks, the number of logs, and the quantity in feet of each log-mark, with date and place therein indicated, and signed by the surveyor general, and which purported to include logs bearing plaintiff's marks, were *prima facie* evidence of defendant's possession of the logs in controversy. *Clark v. Nelson Lumber Co.*, 34 Minn. 289, 25 N. W. Rep. 628.

§ 16. Fees—Lien.

Sp. Laws 1872, c. 106, § 3, which fixes the rate of compensation to be paid by defendant to the surveyor general of logs for surveying logs coming within defendant's boom, (the rate being less than that fixed by the general law,) affects equally the interests and rights of all owners of such logs, and is not liable to objection as partial and unequal, so as to be unconstitutional. *Merritt v. Knife Falls Boom Corp.*, 34 Minn. 245, 25 N. W. Rep. 403.

§ 19. Log-mark—Transfer—Record—Certificate.

The meaning of this section is that no unwritten and unrecorded transfer, etc., of a log-mark or logs shall be valid or binding, except between the parties thereto, as respects a person who has acquired some right thereto, (as, for instance, by transfer) from the person who, upon the records of the surveyor general's office, appears to be owner of the same. The statute is not intended to protect a mere stranger or trespasser, who has no show of right beyond what arises from his unlawful appropriation or possession. *Gaslin v. Bridgeman*, 26 Minn. 442, 4 N. W. Rep. 1111.

Logs in a boom, in the hands, and under the control, of the boom-owner, are subject to garnishment, and the provisions in regard to the title to logs, requiring transfers thereof to be recorded in the office of the surveyor general, has no application to such case. *Farmers' & Mechanics' Bank v. Welles*, 23 Minn. 475.

§§ 20, 22, 23. Same.

See note to § 19, *supra*.

* § 2, c. 11. Gen. Laws 1885, requires the governor to appoint a surveyor general for the Seventh district, to hold until the third Monday in April, 1887, and until his successor is qualified.

TITLE 4.

RECORD OF MARKS, AND MUTILATION THEREOF.

§ 27. (Sec. 23.) Mark to be recorded.

The portion of this section providing that logs or timber cut or coming into this state on Lake St. Croix, above Stillwater, unmarked, or the mark of which is unrecorded, shall not, in favor of the person cutting the same, or claiming to be the owner, be decreed to be his property, in any court within this state, in any proceeding for any purpose, does not apply to logs on the land and in the actual possession of the owner. *Plummer v. Mold*, 14 Minn. 532, (Gil. 403.)

See *Stanchfield v. Sartell*, 35 Minn. 429, 29 N. W. Rep. 145; *Farmers' & Mechanics' Bank v. Welles*, 23 Minn. 475.

TITLE 5.

SIDE BOOMS, INJURIES THERETO, AND TAKING LOGS THEREFROM.

§ 34. (Sec. 27) Side booms, etc.—Duty of constructing—Intermingled logs—Separation—Appraisalment.

The parties constructing and operating side booms upon any of the rivers or streams of this state shall construct and operate the same so as to reasonably exclude the logs and other floatables of other parties floating in said rivers or streams from entering such booms, and they shall also make and provide proper and sufficient openings for the admission of logs into such side booms. In case logs, timber, or other floatables belonging to other parties run, or by mistake are driven, into any such private boom or booms, neither the owners of such logs, timber, or floatables, nor any other person or party, shall be permitted to cut, open, or in any way injure such private boom, or otherwise interfere with the same, except so far as may be necessary to obtain the logs, timber, or floatables so run, or by mistake included therein, and then only when it can be done without injury to such private boom. When, however, such release cannot be made without hazard to such private boom, and the logs and timber or other floatables are there by accident or mistake, such logs and timber shall, upon the request of the owner thereof, be scaled, and other floatables counted, by the surveyor general of the district, and the value thereof fixed by him, or by consent of the parties, to be paid for by the owners of such pond or private boom, within thirty days from the time such scale is made: *provided*, that the provisions of this section shall not apply to the first lumber district. (*As amended* 1885, c. 104, § 1.)

§ 35. (Sec. 38.) Injury to booms, etc.—Penalty.

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 or maliciously cuts loose or turns adrift any boom, drift, string, or raft of logs, timber, or lumber, is guilty of a felony, and shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by imprisonment in the state prison for not less than six months, nor more than two years, or by both such fine and imprisonment, in the discretion of the court, and shall further be liable for all the damages sustained by reason of such wrongful act. (*Id.* § 2.)

TITLE 6.

LIENS.

§ 36. (Sec. 29.) Laborer's lien.

See *Davis v. Mendenhall*, 19 Minn. 149, (Gil. 113.)

***§ 48. First district—Enforcing lien—Attachment.**

The lien cannot be enforced unless the logs are attached. *Griffin v. Chadbourne*, 32 Minn. 126, 19 N. W. Rep. 647.

***§ 62. Claim for lien—Assignment.**

If an assignment of a lien on logs is not filed for record in the surveyor general's office, the assignee cannot proceed to enforce the lien. *Id.*

***§ 63. Laborer's lien upon logs, railroad cross-ties, etc.—Precedence—Waiver invalid.**

Any person who may do or perform any manual labor in cutting, banking, driving, rafting, cribbing, or towing any logs, railroad cross-ties, or timber in this state, shall have a lien thereon, as against the owner thereof and all other persons except the state of Minnesota, for the amount due for such services, and the same shall take precedence of all other claims thereon; and any verbal or written agreement, expressed or implied, made by or between any person or persons, or chartered company or companies, designed to act as a waiver of any right under this act, or any portion thereof, shall be wholly void. The lien herein created shall not attach as against the claim of the owner or legal occupant of the land upon which logs or timber were cut, in cases of trespass, or when the logs and timber were cut and carried away without the consent of such owner or legal occupant. (1876, c. 89, § 1, as amended 1878, c. 4, § 1; 1885, c. 86.)

***§ 64. Filing statement.**

The statement required by this section, to preserve a lien on logs, if not made by the claimant, must be made by some one with authority from him to make it, and the oath should state such authority. *Griffin v. Chadbourne*, 32 Minn. 126, 19 N. W. Rep. 647.

***§ 76. Act for protection of laborers only.**

This provision is inserted for the purpose of distinguishing the contractor—that is to say, the person who takes contracts for the performance of work which he employs others to do—from a laborer who works himself. It should therefore be read by omitting the comma found in the printed statutes after the word "contracting," which would be equivalent in sense to inserting the word "for" after the word "contracting," so that the provision would read, "This act shall not inure to the benefit of any person interested in contracting for cutting, hauling," etc. *King v. Kelly*, 25 Minn. 522.

***§ 78. Intermingled logs—Driving—Lien.**

The right to recover compensation for driving the logs of another person, which have become intermingled with those of the plaintiff, is not limited to cases where the intermingling has resulted from the wrongful acts of the defendant, but may arise where the logs have become intermingled by consent, or under a contract for driving, the performance of which has been abandoned. *Walker v. Bean*, 34 Minn. 427, 26 N. W. Rep. 232.

One may be charged with liability in favor of another, who drives the logs of the former, under authority of the statute, even without previous notice to the person to be charged. *Osborne v. Nelson Lumber Co.*, 33 Minn. 285, 22 N. W. Rep. 540.

If the logs of A. are in the way of the logs of B. so that B. cannot drive his until A.'s are got out of the way, B. is hindered or obstructed, within the meaning of this section. To constitute such hinderance or obstruction it is not necessary that the logs of B. should come in actual contact with those of A. *Anderson v. Maloy*, 32 Minn. 76, 19 N. W. Rep. 387.

A claim by plaintiff for driving logs of another, hindering the passage of his own logs, is not affected by the fact that at the time the stream had not, in its natural state,

sufficient water to float logs, and that to float them it was necessary to let into the stream water accumulated in artificial dams. *Merriman v. Bowen*, 33 Minn. 455, 23 N. W. Rep. 843.

The compensation allowed by statute is to be measured by the value of the labor performed in driving the logs of the defendant, and not by the value or extent of the benefit thereby conferred. *Osborne v. Nelson Lumber Co.*, 33 Minn. 285, 22 N. W. Rep. 540.

In an action to recover compensation for driving logs of the defendant intermingled with those of the plaintiff, the court struck out a portion of the answer, alleging as a defense that the defendant did not drive all of the intermingled logs of the defendant. The court, however, upon the evidence, found the fact to be substantially as alleged by the defendant, but that the conduct of the plaintiff had been in accordance with the request of the defendant. Held, that the defendant was not prejudiced by the striking out of the answer. *Id.*

See *Chesley v. De Graff*, 35 Minn. 415, 29 N. W. Rep. 167; *Beard v. Clarke*, 35 Minn. 324, 29 N. W. Rep. 142.

TITLE 8.

DAMS FOR SLUICING LOGS, TIMBER, AND LUMBER.

§ 83. (Sec. 41.) License.

A dam across a stream, which does not obstruct the passage of logs, lumber, or timber, erected and maintained by the owner upon his own land, without license, is not prohibited, and a contract with such owner for the sluicing of logs over such dam is valid. Such license is needed to enable him to collect tolls from those with whom he has no contract. *Lamprey v. Nelson*, 24 Minn. 304.

§ 87. (Sec. 45.) Licenses—Bond.

The owner of a sluice-dam across a stream, erected, maintained, and operated under a license, is not required by statute to perform the labor of conducting or driving logs, timber, or lumber through the sluice-way. This is no part of the "operation" of the dam within the meaning of the statute. *Anderson v. Munch*, 29 Minn. 414, 13 N. W. Rep. 192. The statute gives the board of county commissioners no authority to take a bond from the licensee requiring him to conduct or drive logs, timber, or lumber through the sluice-way, and if they should take a bond containing such a condition, it would not be a statutory condition, and hence would be void, and would not inure to the benefit of third persons, or give them any right of action for its non-performance. *Id.*

§ 88. (Sec. 46.) Rate of toll—Limitation.

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 sluiceage of logs, timber, and lumber; but the tolls for each dam 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. (*As amended 1877, c. 39, § 2, which in terms amends 1861, c. 50, § 6, which is identical with Gen. St. c. 32, § 46; also amended 1883, c. 141; 1885, c. 211.*)

[Amendment of 1885 repeals that of 1883, and restores the section to its form in Gen. St. 1878.]

CHAPTER 33.

BANKS AND BANKING.

§ 10. Formation—When authorized—Minimum amount of stock.

Any association of persons, not less than three in number, may establish offices of discount, deposit, and circulation, and become incorporated upon the