

GENERAL STATUTES

OF

MINNESOTA

1913

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5428. **Same—Procedure, etc.**—In such action the plaintiff may join as defendants all persons having or claiming any interest in the land, and may in the same complaint include several tracts of land owned or claimed by different persons, but the owners of different tracts may demand separate trials. Upon all issues of fact either party shall be entitled to a jury trial, and the action shall be governed by the rules applicable to an action to determine adverse claims to real estate, except that §§ 4430, 4431 shall not apply thereto, and the plaintiff cannot recover costs or disbursements. (2542)

As to R. L. §§ 4430, 4431, see note under § 5426.

CHAPTER 42

MILLS AND DAMS

WATER POWERS

5429. **Dams—For what purposes—Eminent domain**—Whenever any person, in order to create or improve a water power for milling or manufacturing purposes, shall desire to erect and maintain upon his own land a dam across any stream or other watercourse not navigable, or to raise or extend any such dam already erected, whereby lands owned by other persons shall be overflowed or otherwise damaged, he may acquire the right so to do by causing such damages to be ascertained and paid as prescribed in chapter 41. But no such dam shall be erected, raised, or maintained to the injury of any water power previously improved. (2543)

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

10-30, 15; 14-365, 282; 18-155, 139; 24-25.

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

This chapter continues in force Pub. St. 1849-1858 c. 129 (113-33, 128+817, 32 L. R. A. [N. S.] 59, Ann. Cas. 1912A, 108).

5430. **Nonuser—Forfeiture—Exceptions**—Whenever the right to erect, raise, or extend any such dam shall have been acquired hereunder, the improvement shall be commenced within one year, and completed and the water power applied to the purpose stated in the petition within three years, after such acquisition; and if any such dam, or the machinery connected therewith, be destroyed, the rebuilding thereof shall be commenced and completed within the same periods after such destruction. Failure to comply with the foregoing requirements shall work a forfeiture of all rights so acquired, and a like forfeiture shall result from a failure to operate such mill or machinery, after the same is erected, for one consecutive year: Provided, that if the owner be an infant, or be otherwise legally disabled, the periods herein named shall be allowed after the disability is removed. (2544)

5431. **Highways—Overflow, etc.**—Whenever it shall be necessary, in creating, improving, or operating any water power, to overflow, obstruct, or impair any public street or other highway, or to dig any raceway therein, the right so to do may be granted by the town board or common council, as the case may be, of the town or municipality in which the part of such highway to be affected lies. Such grant shall be made upon petition, and by an order, defining all the terms and conditions thereof, passed at a meeting of the board or council called to consider said petition, of which meeting, and the purpose thereof, ten days' posted notice shall have been given. Testimony may be taken, and all expenses of the meeting and examination shall be paid by the petitioner, whether his prayer be granted or refused. (2545)

5432. **Repairs—Servient estate—Damages**—Whenever the right to overflow the land of another by means of a dam shall have been acquired, either by condemnation or contract, and thereafter, by reason of the breaking away of the banks on said land, the waters of the stream shall be diverted, the owner of the dam may enter upon the lands of such person and repair said banks so as to restore the previous flow of such stream. All damages caused by such entry and repairs shall be paid by the owner of the dam. (2546)

LOGGING DAMS

5433. County board may license—The county board may license any suitable person applying therefor to erect and maintain a dam or dams across any stream within the county, or bordering thereon, for the purpose of sluicing and driving logs, lumber, and timber thereon, upon being satisfied of the necessity therefor at the places specified, and that the land on both sides of the stream at such points is owned or controlled by the licensee. If the stream runs between two counties, the county board first granting such license shall have exclusive jurisdiction in the premises. (2547)

24-304; 29-414, 13+192; 75-335, 77+989.

1861 c. 50 authorizing county commissioners to grant licenses for construction of dams for sluicing logs and lumber, held not to limit right acquired by owner of dam to sluicing logs and lumber, as against owners of land submerged by dam (107-370, 120+373).

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

5434. Notice—Form of license—Bond—The applicant shall give twenty days' posted notice of the time and place of his intended application, and of the site of the several dams proposed, one copy of which notice shall also be posted in the office of the surveyor general of logs, who is required by law to scale the logs and timber running over such dams. The license shall state the purpose and location of such dams, and be signed by the members of the board, and sealed with its seal; but it shall not be valid until the licensee shall have given bond to the county, in the sum of at least one thousand dollars, conditioned for the construction and maintenance of the dams with all reasonable diligence and skill for the purposes named. (2548)

5435. Tolls—Lien—Upon granting such license, the board shall fix the tolls which may be demanded by the licensee for the sluicage of logs, lumber, and timber, which shall not exceed the rate of six cents per thousand feet for each dam. Such tolls shall be due and payable as soon as said logs, lumber, or timber are sluiced. To secure the payment thereof, a lien is hereby given upon such property, which the holder may enforce by seizing and selling at auction so much thereof as may be necessary to pay the same, with the costs of seizure and sale. Ten days' posted notice of such sale shall be given in the county where the seizure was made, and at the office of the surveyor general of the district. (2549)

See § 6263.

5436. Logging streams—Boundary waters—The owner of land bordering upon that part of any stream or other watercourse not navigable by steam, but available for the floating of logs, lumber, or timber, may dam the same, and construct, in connection with such dam, all raceways and other appliances necessary to the development of water power for any lawful purpose, or for the supplying of water to municipalities. If such stream or watercourse be a common boundary between this state and any other state or country, the consent, if any, required by law or treaty from owners of the opposite bank, from the states or countries bordering thereon, and from the United States, shall first be obtained. (2550)

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

5437. Sluiceways, etc.—Eminent domain—Every dam so erected shall be provided with a sluiceway, lock, or other means for floating logs, lumber, and timber over or around the same, without unnecessary hindrance or delay, and with a fishway as required by law. All private property necessary to be taken or damaged for the purposes of such dam may be condemned under the provisions of chapter 41. (2551)

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

UNIFORM STAGE OF WATER IN LAKES

5438. County board may establish—Eminent domain—When the whole or major part of any navigable lake is situated in a single county, the county board, in order to improve navigation thereon or to promote the public health or welfare, may establish a uniform height at which the waters of such lake

shall be held, and may erect and maintain all dams necessary to such holding. And it may acquire, in the name of the county, by gift or purchase, or by condemnation proceedings under chapter 41, any existing dam which may affect the level of such waters, and all other lands and property needful or convenient in fully carrying out the purposes hereof. (2552)

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

83-464, 86+455; 84-90, 101, 86+882, 1102, 54 L. R. A. 473, 87 Am. St. Rep. 332; 84-472, 88+6.

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

Irregularities held not fatal (119-132, 137+298).

5439. Resolution—Filing of copy, map, etc.—Upon the petition of one or more owners of land abutting upon such lake, or upon its own motion when it sees fit, the board shall consider the establishing of such level, and, if satisfied that the improvement of navigation thereon or the public health or welfare require it, shall adopt a resolution specifying the level at which such waters shall be maintained, and designating the lands necessary to be acquired in order to raise and hold such waters to the height so fixed. It shall cause a certified copy of such resolution and a map of the lands to be filed with the clerk of the district court, and shall thereupon purchase or otherwise acquire such lands, and cause such waters to be so raised and retained. (2553)

5440. Assessment of benefits and damages—When the entire cost of acquiring such lands and raising the waters of such lake to the specified height shall have been ascertained with reasonable certainty, the board shall apply to the court, upon two weeks' published notice, for the appointment of three disinterested resident freeholders of the state as assessors of benefits and damages. Upon proof of such service being filed, the court shall hear all persons interested, and, if satisfied that the same is proper, shall appoint such assessors, and fix their compensation and the time and place of their first meeting. The order of appointment shall also state the maximum sum which may be assessed upon benefited lands. (R. L. § 2554, amended '09 c. 211 § 1)

Cited (119-132, 137+298).

5441. How made and reported—Vacancies—Said assessors, having duly qualified, shall meet at the appointed time and place to perform their duties. They may adjourn from time to time, giving oral notice to those present of the time and place of their next meeting. If vacancies occur or any become disabled, the court may appoint others without notice. They shall first determine what lands, if any, are specially benefited by the improvement, whether abutting upon the lake or not, and shall then assess upon each tract thereof such sum as they shall deem just, not exceeding in the aggregate the total sum to be assessed, with the cost of the assessment added. They shall hear and consider all pertinent testimony offered by interested parties, and, when their assessment is completed, shall sign and file the same with the clerk. The tracts so assessed shall be deemed to include all the lands benefited. (2555)

5442. Application to confirm—The board shall give two weeks' published notice of the filing of such assessment, and of the time and place of its application to the court to confirm the same; and said notice shall set forth the boundaries of the district within which assessments have been made. The court, upon such application, shall consider all written objections filed before the hearing, which shall specify the particular tract to which they relate; but objections to the amount assessed shall be disregarded, unless it be made to appear that in fixing such amount the assessors were governed by improper motives, or acted upon erroneous principles, or under an obvious mistake as to the facts. (2556)

Cited (119-132, 137+298).

5443. Revision—Confirmation, etc.—Lien—The court may revise, correct, amend, or confirm such assessment, in whole or in part, or it may order a new assessment, in whole or in part, and, upon like notice, revise, correct, amend, or confirm the same. A copy of the assessment as finally determined, or of so much thereof as relates to assessed lands lying in the several counties, shall be filed with the auditor of each such county; and such assessment shall be a

lien upon the tract to which it relates, and shall be extended and collected along with the taxes levied thereon next after such filing. (2557)

5444. Cost of maintenance, etc.—Management—The cost of maintaining such improvements, and so much of the cost of making the same as is not paid by the assessment of benefits, shall be borne by the county in which the proceedings are taken; and the county board thereof shall so control and manage such improvements as best to promote the public good. (2558)

Cited (119-132, 137+298).

5445. Lakes in three or more counties—Water boards—Whenever any such navigable lake lies partly within three or more counties, having fewer than one hundred and fifty thousand inhabitants each, the chairmen of the county boards thereof shall constitute a water board for said counties, and, as such, shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by §§ 5438-5444. And except as otherwise provided in § 5446, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed. (2559)

5446. Same—Organization—Special provisions—The member of said water board from the most populous of said counties shall be its chairman, and it shall elect one of its members as the clerk thereof. All petitions to the board may be filed with such clerk, or delivered to one of its members. Its meetings shall be held at the county seat nearest to such lake, and all court proceedings instituted by the board shall be conducted in the court sitting thereat. The cost of all such proceedings and all expenditures incident to such improvements shall be borne by said counties in equal parts, and the title to all property so acquired shall be vested in said board for the equal use and benefit of such counties. All damages awarded for lands taken or injured shall be paid by the county in which the lands lie, and all benefit money collected shall be divided by the board amongst the several counties in proportion to the damages by them incurred. (2560)

5447. Cities and villages—The council of every city and village within which the whole or any part of any navigable or meandered lake is situated, or the council of any city or village which is a riparian owner on any such lake adjoining such village or city, shall have all the powers in respect to establishing and maintaining the waters thereof at a uniform level that are conferred by this chapter upon county boards, and all the provisions of this chapter regulating the exercise of such powers shall be applicable in such cases. Provided, however, that this act shall not apply to cities or municipalities incorporated under a home rule charter. (R. L. § 2561, amended '09 c. 163 § 1)

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

5448. Logging dams and waters exempt—All dams maintained and used for the sluicing and driving of logs, lumber, or timber shall be exempt from the provisions of this chapter relating to the maintenance of lakes at a uniform level, and nothing herein shall be construed as authorizing any interference therewith, nor with the stage of any waters used in such sluicing or driving. (2562)

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

5449. Lakes in certain counties—Powers of county board—When the whole or major part of any navigable lake is situated in a single county in this state having a population of not more than eighteen thousand (18,000) inhabitants, the county board of that county, in order to improve navigation thereon or to promote the public health or welfare, may appropriate not exceeding in any one year, the sum of five hundred (\$500) dollars for any or all of the following purposes, viz.: To erect or maintain sufficient dams or embankments upon and along the shores of such lake, or across any of its outlets, to raise and maintain the waters therein at such uniform height as said board may establish as provided by chapter 42 of the Revised Laws of Minnesota, 1905; to acquire the necessary lands for the erection of such dams or embankments; to acquire the right of way for such public highways leading

to such lake, dam or embankment as may be necessary or convenient for public uses; to pay such damages as may be imposed upon adjacent lands by the over-flowing thereof; to pay the costs and expenses of such proceeding and for any other purpose incidental or necessary to such improvements. ('13 c. 287 § 1)

The provisions of R. L. 1905, c. 42, are included in chapter 42 hereof.

5450. Same—Dam, etc., where located—Any such dam, embankment, lands and highways may be located in either county in which such lake or any part thereof is located. The money so appropriated shall be expended under the direction of such county board. ('13 c. 287 § 2)

5451. Same—Power to appropriate—The county board of the county in which the smaller part of any such lake is located may likewise appropriate not exceeding in any one year the sum of three hundred (\$300) dollars for any of the above mentioned purposes in connection with such lake. ('13 c. 287 § 3)

5452. Same—Other powers not curtailed—This act shall in nowise curtail any of the powers or authority granted to such county board by the provisions of chapter 42 of the Revised Laws, 1905, and the amendments thereto. ('13 c. 287 § 4)

The provisions of R. L. 1905, c. 42, are included in chapter 42 hereof.

CHAPTER 43

LOGS AND LUMBER

5453. Lumber districts—There are hereby established, for the survey and measurement of logs and timber, seven districts, as follows:

1. The St. Croix lake and river and their tributaries;
2. The Mississippi river and its tributaries above the mouth of St. Croix lake;
3. The Mississippi river and its tributaries between the outlet of St. Croix lake and the outlet of Lake Pepin;
4. The Mississippi river and its tributaries below the outlet of Lake Pepin to the southern line of Wabasha county;
5. All the waters tributary to Lake Superior, all in the counties of St. Louis, Lake, and Cook, the Little Fork and Big Fork rivers and their tributaries, Rainy Lake, Rainy Lake river as far as the Lake of the Woods, and all the tributaries of said Rainy Lake and Rainy Lake river;
6. The Mississippi river and its tributaries from the southern line of Wabasha county to the northern line of Iowa;
7. The Red river, Red Lake, and Lake of the Woods and their tributaries, except Rainy Lake, Rainy Lake river, and their tributaries. (2563)

5454. Surveyors general—The governor, with the advice and consent of the senate, shall appoint a resident of each of said districts as surveyor general of logs therein, who shall enter upon his duties on the third Monday in April next following such appointment, and hold office for two years, and until his successor qualifies. The surveyor general whose term of office has expired, shall 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. Vacancies shall be filled by like appointment for the unexpired term. Each shall have a seal of office bearing the words, "Surveyor General, District," the blank being filled with the appropriate number. And each may appoint as many deputies as are necessary to transact the business of his office, who may perform any of his official duties, and for whose acts and doings he shall be responsible on his bond. (2564)

5455. Bond and oath—Each surveyor general shall give bond to the county in which his office is situated, to be approved by the county board, in the sum