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GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

FRANCIS B. TIFFANY



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CHAPTER 39

BOUNTIES AND REWARDS

5196. Horse stealing—

A mule is not a "horse" within the meaning of this section (129-520, 152+866). Rewards, ~~8~~.

A village constable, who without a warrant aids in making an arrest outside his village for a horse theft committed outside the village, may participate in a reward offered for the arrest and conviction of the offender (134-67, 158+796). Rewards, ~~11~~.

5203. Method of payment—Additional bounties by towns—The four feet of striped and gray gophers and woodchucks, and both front feet of pocket gophers and the heads and rattles of rattle snakes, and the bodies of birds and reptiles other than rattle snakes shall be produced to the chairman of the town board of the town where they were killed, and if he shall be satisfied that they were killed within the designated territory and by the person producing them, he shall certify to the county auditor the number of each kind so killed. Such certificate shall be issued by the chairman of the town board at the end of each month and shall show the names of all persons entitled to bounty for the preceding month, the number of each kind of animals, reptiles and birds so killed and the amount of bounty that each person is entitled to receive. The county auditor shall issue thereon a warrant on the county treasurer payable to the chairman of the town board who issued such certificate, for the full amount of the bounty allowed by law according to such certificate, and upon receipt of such warrant the chairman shall pay the proper persons the bounty allowed by law for the preceding month.

The chairman to whom such feet, heads and bodies and rattles are produced shall immediately cause such heads, feet, bodies and rattles to be destroyed and shall cause the removal of one foot from each bird.

Any town board may also offer a bounty for the destruction of the animals, birds and reptiles described in the title of this act, and adopt rules for the payment thereof which bounty so offered by a township shall be in addition to any bounty which may be offered by the board of county commissioners. (Amended '15 c. 357; '17 c. 290 § 1)

CHAPTER 40

PUBLIC LANDS

SALES BY AUDITOR

5204. School lands—Minimum price—Pine lands, etc.—The minimum price of school lands shall be five dollars per acre, and all sales thereof shall be within the county in which said lands are situated; provided, that pine lands shall not be sold until the timber thereon has been sold according to the provisions of this chapter; and, when such timber has been sold and removed, the land may be appraised and sold as in this chapter provided. Not more than one hundred thousand acres of school lands shall be sold in one year. Provided, further, however, that where patent has been issued by the federal government to any school land as above defined previous to 1864, and the taxes thereon have been paid for a period of at least fifty years, that then and in such event the state auditor may in his discretion cause such amount of such taxes to be applied upon the minimum price of \$5.00 per acre as above provided, as he may deem proper, in order that the minimum sales price of the land may be so reduced as to make it saleable. (Amended '17 c. 76 § 1)

5210. Terms of payment—Interest—The terms of payment on the sale of all state lands other than pine lands shall be as follows: On those which are chiefly valuable for the timber thereon, the purchaser shall pay at the time of sale the value of such timber, and on other lands fifteen per cent of the purchase price. In all cases, including pine lands from which the timber has been sold, the balance of the purchase price shall be payable at any time within forty years, at the option of the purchaser, with interest at the annual rate of four per cent., payable on June 1 in each year. (Amended '15 c. 13 § 1)

Cited (135-408, 161+156).

[5217—]1. **Resurveys—**Whenever a tract of land has been sold by the state of Minnesota, according to the United States survey, and the state auditor is of the opinion that an injustice has been done the purchaser because of an incorrect survey, he may cause a re-survey thereof to be made by a competent surveyor, who shall thereafter prepare a plat showing the correct acreage of each subdivision so re-surveyed to be filed in the state auditor's office and in the office of the register of deeds of the proper county, and the said auditor is hereby authorized to call in such land certificates as are affected by the re-survey and to issue new ones in lieu thereof showing the correct acreage, giving full credit for all payments of principal and interest which had previously been made. ('17 c. 197 § 1)

5227. Certificate of sale—Default—Resale—

Cited (135-408, 161+156).

5229. Assignment—Extensions of payment—

A quitclaim deed by the holders of a certificate of sale conveys their equitable interest in the land (135-408, 161+156). Public Lands, ~~5~~135(5).

An assignment of a certificate, with the assignee's name left blank, is a nullity until the name of the grantee is inserted therein; and a purchaser of the interest of such assignee has no right to judgment against the original assignor for breach of contract to transfer the certificate (135-449, 161+155). Public Lands, ~~5~~135(5).

The assignment is a conveyance of real estate within § 6813, and, when recorded, protects a good-faith purchaser against a prior unrecorded assignment (135-408, 161+156; 135-449, 161+155). Public Lands, ~~5~~54(10), 138.

[5229—]1. **Certain assignments validated—**That all assignments of school land certificates of real property within this state, made during the month of October, 1911, wherein a married woman has assigned such school land certificate, and the real property therein described, direct to her husband, shall be, and the same are hereby declared to be legal and valid, and the record of such assignments heretofore actually recorded in the office of the register of deeds of the proper county, shall be in all respects legal and valid, and such assignments, and the record thereof, shall have the same force and effect in all respects, for the purpose of notice, evidence and otherwise, as may be provided by law in regard to assignments and conveyances in other cases. Provided that the provisions of this act shall not apply to any action or proceedings now pending in any of the courts of this state. And provided further, that this act shall not impair vested rights heretofore acquired by third parties in such property. ('15 c. 267 § 1)

5230. Effect of certificate—Record—

The holder of a certificate of sale of public land is the equitable owner, and an assignment of the certificate is a conveyance under § 6813, and a purchaser in good faith of a certificate, who places his assignment of record, is protected by the recording acts against a prior unrecorded assignment (135-408, 161+156; 135-449, 161+155). Public Lands, ~~5~~54(10), 138.

[5236—]1. **Payment after time limit authorized in certain cases, etc.—**That the treasurer of the State of Minnesota is hereby authorized to receive payment, up to and including December 31, 1918, of the principal on all state land certificates where the time for payment of the said principal has expired or will expire on or before July 31, 1917, and the governor of the State of Minnesota is hereby authorized to execute patents covering those tracts on which all demands due the state have been paid in full as hereinbefore provided. ('17 c. 7 § 1)

[5236—]2. **Same—Interest**—That interest on the principal remaining unpaid on July 31, 1917, shall run thereafter at the rate of ten (10) per cent per annum until the said principal is paid in full. ('17 c. 7 § 2)

5237. Patents—

Where, after a good-faith purchaser of a certificate of sale of state land has become the owner of the equitable title by recording his assignment, the holder of a prior unrecorded assignment pays the balance due the state and surrenders the certificate, and receives a patent, the patent cannot be canceled and the legal title revested in the state at the suit of the equitable owner; but the patentee may be adjudged to hold the legal title in trust for the equitable owner, and may be required to convey it to him upon payment of the amount so paid to the state (135-408, 161+156). Public Lands, ~~§~~138.

[5245—]1. **Investment secretary for board of investment**—There is hereby created an investment secretary, who shall be the secretary of the state board of investment (called in the Constitution board of commissioner), and who shall perform the duties of his office under the direction of the state board of investment; provided, however, that the responsibility for the safe investment of all state trust funds, under its jurisdiction, shall remain with the board. ('17 c. 271 § 1)

[5245—]2. **Same—Salary—Assistants**—The annual salary of the secretary shall be \$3,000. The board of investment may provide necessary assistants and fix their compensation. The total disbursement for such assistants shall not exceed \$2,500.00 per annum. ('17 c. 271 § 2)

[5245—]3. **Same—Powers and duties**—The said secretary shall, under the direction of said board of investment, have general supervision of the investigation of applications for loans, the negotiation of new investments, examination of securities, and the records of municipalities applying for loans, and such other work relative to the trust funds of the state as shall be required by the said board of investment. The secretary shall report to the board of investment all relevant facts in connection therewith. ('17 c. 271 § 3)

[5245—]4. **Same—How appointed—Term, etc.**—The investment secretary shall be appointed by the state board of investment. The first appointee shall hold office until January 1, 1920. Thereafter the term of the secretary shall be three years and until his successor shall be appointed and qualified. The board of investment may remove the secretary at its discretion. Vacancies caused by resignation or removal shall be filled by the board of investment for the unexpired term. ('17 c. 271 § 4)

[5245—]5. **Same—Assistants—Bonds**—The secretary shall, with the approval of the board of investment, appoint and dismiss all assistants. The said board shall require the secretary and, in its discretion, may require his assistants to give a bond payable to the state in such sum as the board shall determine. ('17 c. 271 § 5)

[5245—]6. **Same—Quarters—Expenses**—Said secretary shall be provided with suitable quarters, office furniture and supplies, and be allowed necessary expenses when traveling on official business. All expense accounts of the secretary shall be approved by the board of investment, and when so approved, shall be audited and paid as provided by law. ('17 c. 271 § 6)

[5245—]7. **Same—Custody of bonds and securities**—The state treasurer shall continue to have the custody of the bonds and securities belonging to the trust funds of the state, but the secretary shall have access thereto in the presence of a representative of the state treasurer, during the usual office hours of the treasury department. ('17 c. 271 § 7)

[5251—]1. **Sale of bonds of other states—Reimbursement of funds**—That the state board of investment is hereby authorized to sell the bonds of other states, or any part thereof, now held in the trust funds of the state, for a sum less than the cost to such funds, should the board of investment deem it for the best interests of the state to make such disposition of said bonds. In order that the principal of such funds, as derived from the sales, or other disposition of said lands, or other property, granted or intrusted in this state for educational purposes, or for purposes of internal improvement, shall not be im-

paired, the said board of investment is hereby authorized to make up any deficit, or loss, which may accrue by reason of the sale of said bonds, from the fund hereinafter created, or from the profit derived from former sales of bonds of said trust funds, as shown upon the books of the state auditor, or partly from the said fund and partly from said profits. ('17 c. 464 § 1)

[5251—]2. **Same—Fund to meet prospective loss—Bonus on bonds purchased from municipalities**—The board of investment is hereby authorized to create a fund to meet any prospective loss arising from the sale of such bonds, or any portion thereof, by charging a bonus upon the bonds of municipalities of the state purchased by said investment board, not exceeding one-fourth of one per cent per annum for the period for which the loan is to run. Such bonus shall be deducted from the amount of such loan when made and credited to such fund. The board of investment may, in its discretion, exempt loans to school districts from the provisions of this section. Municipalities making application to the state for loans under this act are hereby authorized to pay such bonus upon approval by the governing board of such municipalities. ('17 c. 464 § 2)

[5251—]3. **Same—Loss from sale of bonds, how paid**—Whenever the board of investment shall sell any of said bonds and a loss to the trust funds shall accrue therefrom, the amount of such loss shall be paid from the fund provided for by section 2 [5251—2], if said fund is created by the board of investment, if the amount in said fund, or the anticipated receipts thereto, be sufficient to meet such loss; if insufficient the deficiency shall be paid from the profits of former sale of bonds of said trust funds. ('17 c. 464 § 3)

[5251—]4. **Same—Anticipating receipts**—The board of investment may anticipate the receipts to accrue to the fund authorized by section 2 [5251—2]. For the purpose of temporarily providing for any loss in the sale of said bonds, pending the collection of the bonus provided for herein, the auditor and treasurer are hereby authorized to transfer from the revenue fund, upon a certificate of the state board of investment, a sum sufficient to cover such loss. When there are sufficient funds the amount of such transfer shall be repaid to the revenue fund. ('17 c. 464 § 4)

[5251—]5. **Same—Appropriations**—There is hereby appropriated from the revenue fund such sum as may be necessary to carry out the provisions of this act, not to exceed \$100,000; and there is also appropriated from the profits of the former sale of bonds, as shown upon the books of the state auditor, such sum as the board of investment may deem necessary to expend for the purposes of this act. ('17 c. 464 § 5)

[5256—]1. **Lease for certain purposes**—The State Auditor may at public or private vendue and at such prices and under such terms and conditions as he may prescribe, lease any unsold school, university, internal improvement, and swamp land, for the purpose of taking and removing sand, gravel, clay, rock, marl, peat, and black dirt therefrom for storing thereon ore, waste materials from mines or tailings from ore milling plants, and for building or garden sites, and for other temporary uses that shall not result in any permanent injury to the land; provided that no such lease shall be made for a term to exceed one year, except in the case of leases of lands for storage sites for ore, waste materials from mines or tailings from ore milling plants, which may be made for term not exceeding ten years; provided further that all such leases shall be made subject to sale and leasing of the land for mineral purposes under legal provisions. All money received from leases under this act shall be credited to the fund to which the land belongs. ('15 c. 192 § 1, amended '17 c. 31 § 1)

[5257—]1. **Revolving fund for clearing school and swamp land**—The sum of \$100,000 is hereby set apart and appropriated from the fund derived from the sale of school and swamp lands. The said sum of money is to be used as a revolving fund and as contemplated by the amended section 2 of article 8 of the Constitution of the State of Minnesota in clearing unsold school and swamp land. ('17 c. 164 § 1)

[5257—]2. **Same—Auditor to have charge of investment and expenditure**—The state auditor shall have the charge of the investment and expenditure of the moneys hereinbefore appropriated. ('17 c. 164 § 2)

[5257—]3. **Same—State land improvement board**—The governor shall appoint a state land improvement board of three members, who shall serve without salary, but whose expense shall be paid. This board may be consulted at any time by the auditor and shall, when any land is to be improved under contract, or when any land improved under this act is to be sold, be consulted, and give their approval in writing. ('17 c. 164 § 3)

[5257—]4. **Same—Auditor to have charge of improvements, etc.—Engineers, etc.**—The state auditor shall have charge of the improvements of all public lands and of the administration of this act. He shall appoint such engineers, agricultural experts, and other employes as shall be necessary for the administration of this act and determine their compensation; provided that the governor may on recommendation of the auditor require any expert work necessary in the administration of this act to be performed under the direction of the auditor by employes of other state bureaus, departments and institutions. ('17 c. 164 § 4)

[5257—]5. **Same—Improvements, where made, etc.**—The auditor shall, from time to time, determine the townships within which the improvement of state lands shall be made and he shall at all times give preference to those lands which, in his judgment, can most successfully be used at the time for agricultural purposes; provided that unless the state land improvement board shall decide otherwise, and consent in writing, no contract shall be let for an improvement involving less than the equivalent of one section of state land within the limits of any township, unless and until the state shall have no land in such quantity which, in the judgment of the auditor, is suitable for improvement under this act. ('17 c. 164 § 5)

[5257—]6. **Same—Extent and character of improvements, how determined**—The auditor shall determine the extent of the improvements to be made on any area, the character of the improvements to be as provided in this act; provided that not more than five acres shall be cleared on each forty-acre tract and the total cost of the improvements on any area improved shall not exceed \$300.00 on each forty (40) acre tract. ('17 c. 164 § 6)

[5257—]7. **Same—Contract, how let, etc.**—The work of making any improvements upon state lands, authorized by this act, shall be done under contract by the lowest responsible bidders. Contracts may be let for different classes of work separately or combined, or for different tracts in the same selected area separately or combined. The contractor may be paid for his work either on its completion or from time to time during its progress as the state auditor shall determine; provided that no payment shall be made until a competent inspector appointed by the auditor shall have examined the work and shall have certified that the work was done well and fully justifies the payment. Contracts shall be let under such regulations, terms and conditions as the state auditor, with the advice and consent of the state land improvement board, may determine. ('17 c. 164 § 7)

[5257—]8. **Same—Cost, how apportioned**—The actual cost of the improvement of any selected area, and a proper proportion of the cost of the administration of this act, shall be apportioned in equal portions to the forty-acre tracts upon which any such improvement is made, to be repaid to the state as hereinafter provided; provided that the cost of administration to be so charged shall include only the expenses actually incurred by reason of this act and shall include no charges for the general administration of state lands as otherwise provided for by law. ('17 c. 164 § 8)

[5257—]9. **Same—Lands, how sold—Agreement of purchaser**—Lands improved under this act shall be sold as are other state lands, provided, that the cost of improvements apportioned to any tract shall be paid for by the purchaser of such tract as a sum independent of the purchase price of the land itself, and provided further that every purchaser of a tract so improved shall

sign an agreement in writing that he will establish his residence upon such tract within eighteen months of the date of purchase, that he will cultivate and further improve it in a husbandlike manner, and that he will so maintain his residence and so cultivate and improve the land until the cost of improvements apportioned to that tract are paid to the state in full. Such agreement shall be a condition of the sale and its breach shall terminate the contract of sale, unless within three months after notice given by the state auditor, residence is established on the land purchased, and unless such residence is maintained and the other conditions agreed to be performed for the period herein provided. Provided, however, that the condition in said contract as to actual continuous residence on said land may be waived by the state auditor when because of the death of the purchaser or for other good cause arising after the establishment of such residence he believes such waiver will be just and equitable to all concerned. ('17 c. 164 § 9).

[5257—]10. **Same—Price of land and cost of improvements, how paid—Interest—Lien**—On the sale of any lands improved under this act the purchaser shall pay at the time of sale a sum equivalent to 15% of the purchase price of the land, exclusive of improvements, which sum shall be received by the state auditor in part payment of the cost of such improvements, in lieu of the part payment of the purchase price of the land provided for in Section 5210, General Statutes 1913, and the same shall be turned into the revolving fund herein provided for. The purchase price of the land, exclusive of improvements, shall be payable at any time within forty years at the option of the purchaser, as provided in section 5210, General Statutes of 1913. The balance of the cost of such improvements shall be payable twenty-five (25%) per cent in two years from date of purchase, twenty-five (25%) per cent in three years from date of purchase, twenty-five (25%) per cent in four years from date of purchase, and twenty-five (25%) in five years from date of purchase. The purchaser shall have the privilege of paying any larger sum at any time. Interest at four (4%) per cent per annum shall be collected annually on all accounts remaining unpaid. The state shall have a first lien upon the land for the interest and unpaid principal of the cost of such improvements. ('17 c. 164 § 10)

[5257—]11. **Same—Revolving fund, how credited, etc.**—As soon as any tract of land improved under this law shall have been sold or disposed of under contract of sale with agreement on the part of the purchaser to pay for such improvements, as provided, in this act, the state auditor shall credit to the revolving fund the principal amount contracted to be paid for such improvements by the purchaser. Such amount when collected in whole or in part shall thereupon become a part of the revolving fund provided for by this law, and may again be expended for the purpose of carrying out this act. It shall be a first lien on the interest of the person holding the certificate or other title to such land. ('17 c. 164 § 11)

TRESPASS ON STATE LANDS

5258. Damages—Penalty—Presumption—

This act is not violative of Const. art. 4 § 27, providing that no law shall embrace more than one subject, which shall be expressed in its title (128-300, 150+912): Statutes, ~~6~~117(1).

A complaint alleging that one cut timber on state lands without a permit required by R. L. 1905 § 2442 states a cause of action in trespass, though words equivalent to "wrongfully" or "willfully" are not used; and a holder of a permit to cut timber of not less than a specified size is a trespasser in cutting timber of a less size (128-300, 150+912). Public Lands, ~~6~~16.

TIMBER LANDS

[5269—]1. **State appraiser**—The state auditor is hereby empowered to appoint one or more employees to be known as state appraiser. Whenever it is necessary to appraise state lands under the terms of existing law the state auditor shall appoint as such appraiser on the part of the state land commissioner or state auditor, one of the state appraisers duly qualified as herein

provided, who shall except as herein otherwise provided, hereafter perform the duties heretofore devolved upon state land examiners or timber estimators. ('17 c. 162 § 1)

Section 6 repeals inconsistent acts, etc.

[5269—]2. **Same—Duties**—The duties of such state appraiser shall be to estimate and appraise timber upon all state lands; to make valuations of lands suitable for agricultural purposes; to check scale timber cut from state lands in trespass either situated upon state lands or removed therefrom; to check-scale any scale of timber cut on state land; to make check scales by the stump and top or any other method of timber removed from state lands; and to perform such other duties as may be assigned to him by the state auditor. Nothing contained in this act, however, shall be construed to in any way amend the provisions of title 1, chapter 38, General Statutes 1866, or any act amendatory thereto relating to the appointment of appraisers by officials other than the state auditor. ('17 c. 162 § 2)

[5269—]3. **Same—Oath of**—Each such state appraiser shall before entering upon the duties of his office take and subscribe an oath before a person qualified to administer oaths, that he will faithfully and impartially discharge his duties as appraiser according to the best of his ability, and that he is not interested directly or indirectly in any of the state lands or materials improvements thereon, and has entered into no combination to purchase the same or any part thereof, which said oath shall be made a part of the bond as hereinafter provided for. ('17 c. 162 § 3)

[5269—]4. **Same—Bond—Powers and duties—Arrest of trespassers—Badge—Report, etc.**—At the time of the appointment of any such state appraiser he shall give a bond to the state in a penal sum of not less than \$5,000 conditioned for the faithful performance of his duties, which bond shall be approved by the attorney general, and together with the oath as hereinbefore provided for, be filed in the office of secretary of state. Such bonds shall be paid for out of the general land, timber, swamp or contingent fund of the auditor of the state.

Every such state appraiser is hereby authorized to arrest any person found trespassing, or to have trespassed, upon state lands and deliver him to the sheriff of the county, and such state appraiser shall immediately enter a complaint before a court of competent jurisdiction in said county charging the person so arrested with such trespass, and the person so charged shall be arraigned and given a hearing on such complaint.

Such state appraiser shall wear when upon duty a badge of office to be designated and provided by the state auditor.

It is hereby declared a misdemeanor for any person not a duly appointed and acting state appraiser to wear a badge or to impersonate or claim to be a state appraiser.

Whenever an appraisal or valuation is made upon lands suited for agricultural purposes, such state appraiser shall place an estimate and valuation of any timber thereon, and make a separate report thereof; such report shall be made from his field notes made on the land and be by him entered in his own hand in a book kept for that purpose, and shall be made a part of the record of the state auditor's office, such entry shall be dated when made and sworn to upon the record at the same time the state appraiser shall file in the state auditor's office all plats and field notes made by him, and affix his signature to each said plat and to each said page of the field notes. Such records shall show that said state appraiser was actually upon the land when such estimate and valuation was made.

No such report shall embrace more than one section or fractional section of land according to the government survey thereof, and shall show the amount of timber upon each forty acre tract or subdivision; provided, however, that as ownership may appear to each subdivision of land so appraised in the various trust funds of the state, so shall all appraisements, sales, and accountings therefor be done according as such title may appear as of record in the office of the state auditor; and provided further, that where appraisals,

sales, and accountings heretofore made have not been made in accordance with this provision, the state auditor is authorized to make such apportionment to the various funds as he may deem equitable and just to each such fund, and such apportionment is hereby legalized and confirmed.

The report shall state the amount of each kind of timber, the value per thousand feet, and the value per piece of all such timber.

In making such estimate and valuation the appraiser shall take into consideration distance of the timber from the nearest lake, stream, or railroad, and the character of the land, what amount, if any, of the timber has been burned, and the extent and character of such burning; the situation of the timber relative to risks from fire or damage of any kind, and the injury which will result in the prospective price that may be obtained in the future by reason of the removal of timber operations contiguous to or in the community of, such tract, thereby leaving such tracts isolated and the value of the timber to the State thereby lessened. ('17 c. 162 § 4)

[5269—]5. **Same—False report—Penalty**—Every such State Appraiser, who shall make a false report, or insert in any such report a false date, estimate appraisal, valuation quantity or statement of whatever nature; or shall make any such report without having examined the land embraced therein, or without having actually been upon the land; or who in executing his oath of office; or who in stating his qualifications as State Appraiser to the state auditor for the purpose of securing such appointment or who shall insert therein any false statement, shall be guilty of a felony. ('17 c. 162 § 5)

5270. **Board of timber commissioners—Powers and duties—Rules, etc.**—The governor, treasurer, auditor, state forester and attorney general shall constitute a board of timber commissioners, of which the governor shall be chairman. The auditor shall be ex-officio secretary of the board, and he or his deputy shall attend each meeting and make full minutes of the proceedings, which shall be signed at the close of each meeting by the commissioners present, and shall be kept subject to public inspection in the office of the auditor. The governor and two other members shall be a quorum for the transaction of business. Before any timber is sold the auditor shall submit to the board, which shall meet from time to time, upon the call of the governor, the question of such sale, and shall produce the record of appraisal of such timber and the board shall examine the same, together with other documents and records and such witnesses as it may require. If the governor and at least two other members of the board shall so determine, they shall enter upon the record of appraisals a statement, dated and signed by them that such timber is in danger of being injured, and that a sale thereof is necessary to protect the state from loss. Thereafter, and not before, the auditor may make such sale. Whenever any member of the board becomes satisfied, before issuance of a permit, that, by reason of fraud or misstatement on the part of any estimator, witness or officer, or by reason of any combination or irregularity, the interests of the state so demand, he shall withdraw his approval of any sale, by an entry signed by him upon the record of the appraisals. No sale of timber shall be made until not less than two independent estimates have been made.

The timber board shall upon call by the chairman thereof, meet during the month of January and formulate rules to be followed in regard to the bark mark, end mark, or other mark or marks to be utilized by the purchasers of timber, the method to be pursued in the settlement of trespass cases, and to establish such other rules as it may deem wise in the transaction of the state's timber business.

The timber board shall have power to instruct the state auditor how timber that has been seized by him shall be disposed of, and it may order sold at private vendue timber cut in trespass or removed from state lands in violation of law, where the appraised value thereof shall not exceed \$50.00. ('05 c. 204 § 13, amended '17 c. 326 § 1)

5273. **Stumpage in small parcels—Conduct of sale, etc.**—The board of timber commissioners may authorize the auditor to sell the stumpage of pine,

spruce, tamarack, cedar, balsam, balm of gilead, birch or poplar, on any tract of state land not exceeding one section in area, where the estimated quantity of log timber thereon does not exceed 100,000 feet, at public auction to the highest bidder, at the county seat of the county in which such tract is located. He shall give three weeks' published notice of any such sale in a paper published at the county seat of the county where such land is situated, instead of eight weeks' notice in papers at St. Paul and Minneapolis, as provided for in section 15 for the sale to be held at the capitol building. Such notice of sale shall contain a description of each tract of land upon which is situated any timber that is to be offered, and a statement of the estimated quantity of each kind of timber thereon, and of the appraised price of each kind of such timber per thousand feet, or per piece, or per cord, as the case may be. Timber estimated and appraised as log timber shall be offered and sold by the thousand feet; timber estimated and appraised as tie, or pole or post timber shall be offered and sold by the tie, or pole, or post, as the case may be; timber estimated and appraised as pulpwood, or lathbolts, or mine lagging, or wood for fuel purposes, shall be offered and sold by the cord; all cords to be single cords. The sale shall be made to the party who shall bid the highest price for all the several kinds of timber as advertised. The purchaser of any such timber at any such sale shall immediately pay to the auditor, or the person conducting the sale for him, for delivery by such official to the state treasurer, 25 per cent of the appraised value of such timber, and shall thereupon be entitled to receive from the auditor a permit to enter upon such land and cut and remove such timber. Before receiving such permit, however, he shall execute a bond to the state of Minnesota, with sureties to be approved by the auditor, in an amount at least double the appraised value of such timber, conditioned upon cutting of all said kinds of timber that there may be upon said land, clean, acre by acre, and paying the state the balance that may be due therefor, and for the faithful performance of all the terms and conditions of the law governing such matters. All timber cut on any of the state lands under any such sale and permit is to be scaled, or counted, as the case may be by a deputy surveyor general. In no case shall any such timber be removed from the land where it was cut, until it has been so scaled or counted by a deputy surveyor general. Any person removing any such timber from the land where it was cut before it has been so scaled or counted by a deputy surveyor general shall be deemed guilty of a felony, and may be prosecuted criminally therefor. The purchaser of any such timber shall pay the state for all timber that may be cut upon or removed from such land during the life of his permit, at his purchase price per thousand feet, or per piece, or per cord, as the case may be. In all other respects such sale shall be subject to all the restrictions and conditions applicable to the sale of other state timber. ('05 c. 204 § 16, amended '09 c. 476; '17 c. 325 § 1)

5274. Annual and emergency sales—Except as provided in this and the preceding section, there shall be only one sale of timber in each year, which shall be held not later than November 1st, and may be adjourned from day to day, but no longer, until complete; provided, that in case of emergency, if the board of timber commissioners shall unanimously determine that it is for the best interests of the state that more sales shall take place before the next regular sale, they shall be held under the same regulations, so far as practicable, as are provided for regular sales. ('05 c. 204 § 17, amended '17 c. 322 § 1)

5276. Permit—Upon the delivery and filing of the duplicate receipts mentioned in the preceding section, the auditor shall issue a permit to such purchaser, in a form approved by the attorney general, by the terms of which he shall be authorized to enter upon the land, and to cut and remove the timber therein described, according to the provisions of this chapter. Such permit shall be correctly dated and executed by the auditor, and signed by the purchaser. No permit shall cover more than two logging seasons, and the timber shall be cut and removed within the time specified therein. Not more than one section or fractional section of land, according to the government

survey, shall be described in any one permit, and no permit shall be issued to any person other than the purchaser in whose name the bid was made. The permit shall state the amount of timber estimated to be thereon, the estimated value thereof, and the price at which it is sold, or the price per thousand feet, in case it is sold by the thousand feet, and shall specify the bark, end or other mark to be used. A separate bark, end or other mark shall be used on the timber cut under each permit, and, if the permit covers more than one season, it shall specify a separate mark to be used each season. It shall provide that the purchaser shall place the specified bark mark, upon every piece of timber cut, and also plainly upon the end thereof the stamp mark MINN, and, that, in case of any failure to place both bark and stamp mark upon any such piece, the state shall have the right to take possession of the same wherever found. It shall contain such other provisions as may be necessary to secure to the state the title of all timber cut thereunder, wherever found, until full payment thereof, and until all provisions of the permits have been fully complied with. It shall also provide that all timber standing on the land and sold shall be cut; that the same shall be cut clean, acre by acre, without damage to other timber; that the purchaser agrees to remove all timber whether it be log timber or any other timber of value, unless specifically withheld under the terms of sale, and that timber sold by board measure, determined by the state auditor as not convertible into board measure may be paid for by the piece upon a graduated scale based upon the size, species, or value of each piece or cord, as may be determined by the state timber board; that the purchaser shall pay to the state the permit price for all timber, including timber which he fails to cut and remove, and the amount of fees of the surveyor general; and that he shall, in writing, notify the surveyor general for the district, and also the auditor, at least fifteen days before any cutting is done, at what time such cutting will begin, at least fifteen days before any timber is removed from the land, at what date such removal will begin.

It shall provide that the purchaser shall make a report in writing to the state auditor under oath, enumerating and stating the amounts of timber cut under such permit; the kinds of timber removed and the amounts of each in board feet per piece, in cords, or any other dimension, in the manner and forthwith whenever so required by the state auditor. The permit shall further state that a false return made contrary to the provisions of the permit shall constitute a gross misdemeanor and be punished as such, and such return when wilfully made is hereby declared to be a gross misdemeanor, and shall be punished as such. The permit shall state that the state auditor shall have power to order suspended all operations under the permit and any timber cut or removed during the period of suspension is hereby declared to be cut in trespass. The permit shall further state that the timber board may cancel the permit at any time when in its judgment the conditions thereof have not been complied with, and such cancellation shall constitute repossession of the timber by the state. The purchaser shall have ninety days within which to remove his equipment from such land. The permit shall further state that if the purchaser at any time fails to pay any obligation to the state under all or any other permits, this, any or all other permits may be cancelled as hereinbefore provided for. The permit shall also state that any timber removed in violation of the terms of the permit or any law shall constitute trespass. A provision shall be contained in the permit that the statute of limitations shall not prevent the bringing of an action growing out of any violation of any provision, either civil or criminal, of this act, and no statute of limitations shall so operate. The permit shall state that the timber board reserves the right to change the bark end or other marks of identification from time to time as may be expedient which the purchaser must place upon all timber purchased from the state. The state board of timber commissioners, state forester, attorney general, or state auditor are hereby specifically empowered to enforce all provisions and all conditions contained in any timber permit executed pursuant to the provisions of this act. Any permit failing to conform to the requirements of this section shall be void on

its face. All permits shall be filed for record with such surveyor general. ('05 c. 204 § 19, amended '17 c. 327 § 1)

5277. Bond of purchaser—

Joint demurrer by principal and surety in action for trespass (see 128-300, 150+912). Pleading, Ⓞ198.

[5278—]1. **Certain permits extended**—All logging permits, the holders of which could not cut and remove the timber described in them before their expiration, whether said expiration was at the time of the original expiration or after one or more extensions thereof, are hereby extended for another logging season ending June 1, 1917, provided, that the facts relative to the failure to cut and remove timber under said permits be presented to the board of timber commissioners within thirty (30) days from the passage of this act and be found by said board sufficient justification for the failure of said logging permit holders to conform to the terms of said permits prior to June 1, 1916. ('17 c. 28 § 1)

[5278—]2. **Further extension of permit**—The board of timber commissioners is hereby authorized to extend the time within which purchasers of state timber, who at the time of the passage of this act shall have been granted two extensions of one year each under the provisions of section 5278, General Statutes 1913, may remove the same from the state land where cut, such cutting having been done before the expiration of the second extension of the permit. Such extension shall be granted only by unanimous consent of the board of timber commissioners, shall in no instance exceed the period of 12 months and shall be granted only to purchasers of state timber who have been prevented by conditions beyond their control from removing from state lands the timber cut by them on said lands before the expiration of the second extension period provided for by section 5278, General Statutes 1913. ('17 c. 444 § 1)

[5278—]3. **Same—Construction**—Nothing in section 21, chapter 204, Laws 1905 [5278—2] or acts amendatory thereof shall be construed to invalidate or nullify this act. ('17 c. 444 § 2)

[5281—]1. **Cancellation of certain contracts and permits**—That the State board of timber commissioners shall have power in cases where any contracts for the purchase of timber has been entered into on or prior to October 15th, 1914 and the purchaser has failed to cut and remove the timber therefrom and has defaulted in payment to the State, making the bondsmen liable under their bonds to cancel such contracts or permit and repossess the state of the timber standing thereon, releasing the bondsmen from responsibility for payment for the timber not removed from the land so placed under permit. ('17 c. 314 § 1)

Section 2 provides that this act shall be of no force and effect after October 1, 1917.

5284. Rescale—

Finding that rescale was made jointly by the representative of the state auditor and the deputy surveyor general held sustained by the evidence. Such officer selected by the state auditor to make a rescale held not disqualified because he participated in making the original scale. It may be shown that the rescale included timber which the purchaser had no right to remove under the contract, and such timber may be deducted from the recovery by the state. In an action by the state to recover from a purchaser of pine timber for a deficiency in the scaling of the timber as shown by a rescale, held, that the findings of a trial court are sustained by the evidence. The demand for a rescale was properly made upon the person holding office of surveyor general at the time the demand was made (122-400, 142+717). Officers, Ⓞ110; Public Lands, Ⓞ16.

If the doctrine of laches applies against a state, held, that there was no unreasonable delay in demanding a rescale of timber sold (122-400, 142+717). Equity, Ⓞ71(2).

5302. Limitation of actions—The statutes of this state limiting the time for bringing either civil, or criminal actions shall not apply to any action brought by the state for trespass upon any of its lands, or for violating any of the terms of the permit under which timber is removed from state lands, or for failure to pay the state for all the timber removed under any such permit, or to any criminal prosecution instituted under this chapter, and any civil action brought under this chapter may, at the election of the attorney general,

be brought in any county in this state. ('05 c. 204 § 43, amended '17 c. 323 § 1)

This section is applicable to a trespass committed prior to its enactment by one holding a permit to cut timber of not less than a specified size, in cutting timber of a less size (128-300, 150+912). Public Lands, § 16.

MINERAL LANDS

5304. Reservation of minerals and water powers—

Cited (124-271, 144+960).

5317. Permits, leases, and assignments—Filing—Copies—

This section is not a statute of frauds, and contracts relating to the assignment of state mining leases, which observe, in their execution, the requirements of contracts for the sale of lands, are valid between the parties (125-81, 145+791). Mines and Minerals, § 5.

[5318—]1. **Failure of co-owner of lease to pay proportion—Payment by other owner—Notice to delinquent—**Upon the failure of any one of several co-owners of any lease of mineral land from the State of Minnesota which it may heretofore or may hereafter make, to pay his proportion, represented by his proportionate interest in said lease, of any annual payment or royalty payment of taxes assessed against the land covered by said lease or the improvements thereon, or the iron ore products thereof, or any personal property at any mine on said land, according to, as required by and when due under the terms of said lease or the laws of this state, any co-owner of said lease who may have heretofore or who may hereafter pay the same or any part thereof, who was not under contract obligation at the time of making said payment to make it, may after the expiration of the time fixed by said lease or the law for making said payment, give such delinquent co-owner and the other co-owners, if any, personal notice in writing or by publication for at least six successive weeks, once a week, in the newspaper published nearest the said land entitled under the laws of this state to publish legal notices, that he has made said payment, describing the lease and the land covered thereby on account of which it was made, the amount due, when due, and for what due, on account of which said payment was made and the date of making the same, and demand that said delinquent co-owner contribute his said proportionate share of said payment by paying the same together with six per cent interest thereon from the time of said payment until the time of repayment, together with the cost of said publication, to him within ninety days after the personal service of such notice upon him, or within ninety days after the completion of said publication, and that if he fails so to do that his said interest in said lease will become the property of and be forfeited to his co-owner or co-owners paying the same. ('15 c. 303 § 1)

[5318—]2. **Same—Failure of delinquent to contribute—Rights of other owner—**If said delinquent co-owner before the expiration of said time shall refuse or fail to contribute and pay his said proportionate share together with said interest and cost of publication as and when herein and in said notice provided, his interest in said lease shall thereafter become the property of and belong to said co-owner making said payment, and the other co-owners thereof, if any, who shall within ten days after the expiration of said ninety days, pay to him their share of the amount due him under said notice, represented by their respective interests in said lease, with the same force and effect as to said delinquent's interest in said lease, as if said lease as to said delinquent's interest had been forfeited and cancelled by the state of Minnesota, and a new lease on the same terms and conditions as said old lease had been issued by said state of and for said delinquent's share therein to his said co-owner or co-owners making said payment. Such co-owners so contributing and paying within said ten days shall share in the interest of said co-owner so forfeited, in proportion to their then respective interest in said lease. ('15 c. 303 § 2)

[5318—]3. **Same—Affidavits to be filed with auditor, etc.—**The affidavit of the party making such personal service and the affidavit of the publisher of said newspaper accompanied by a duplicate original of said notice, together with the affidavit of said co-owner making said payment, that said delinquent

has not paid to him the amount due under said notice within the time herein and in said notice specified with the names of the other co-owners, if any, who during said ten days contributed their proportionate share thereof may be filed in the office of the auditor of the state of Minnesota and shall constitute conclusive evidence in all courts and proceedings of the matters therein stated, except as to such as may be proven to be untrue. Said auditor shall receive, file without charge and safely keep the foregoing and all thereof which shall be open to the inspection of anyone interested therein. ('15 c. 303 § 3)

[5319—]1. **Mining under public lakes and rivers forbidden**—It shall be unlawful for any individual, co-partnership or corporation to mine any mineral below the low water mark of any public lake or river without first having obtained authority from the state. ('15 c. 78 § 1)

[5319—]2. **Same—Draining meandered lake for mining forbidden**—It shall be unlawful for any individual, co-partnership or corporation to drain any meandered public lake for the purpose of mining of minerals without first having received the consent of a board hereby created for such purpose consisting of the governor, attorney general, secretary of state, state treasurer and state auditor, or other officers which may be empowered by law to grant such permission. ('15 c. 78 § 2)

[5319—]3. **Same—Penalty for violation**—Any individual, co-partnership or corporation violating the provisions of this act shall upon conviction thereof be punished by a fine of not exceeding \$10,000.00, or by imprisonment in the state prison for not to exceed five years, or by both such fine and imprisonment at the discretion of the court. ('15 c. 78 § 3)

[5319—]4. **Iron ore under lakes and rivers—Contracts for mining—Royalties—Eminent domain**—The governor, attorney general and state auditor are hereby empowered to enter into contracts or agreements with persons, co-partnerships or corporations for the mining and disposing of the iron ore situate under any waters of any public lake or river in the state of Minnesota. The minimum royalty for each gross ton of iron ore disposed of under such contract, shall be not less than fifty cents per ton upon the ore in its natural condition as mined. Such contracts or agreements for the mining, removing and disposing of such iron ore may provide for the drainage of such lake or river, or the diversion of the waters thereof to a new bed or channel. The contracting parties herein provided for on the part of the state of Minnesota, shall have power to institute condemnation proceedings to pay for the interests of private persons or corporations who may be injured or whose rights may be destroyed by the carrying on of such operations, and such contracts or agreements for mining, removing or disposing of such iron ore may contain a covenant on the part of the second party to return the waters of such lake or river to their former beds as nearly as possible after the ore shall have been removed. ('17 c. 110 § 1)

[5319—]5. **Same—Proceeds to be added to school fund, etc.**—The principal of all funds arising from the disposal of such iron ore shall forever be preserved inviolate and undiminished and shall be added to the permanent school fund of the state to be invested and re-invested as provided by law for the investment of said permanent school fund, and the interest thereon shall be distributed in the same manner as the income from the present school fund is now, by law, distributed. ('17 c. 110 § 2)

[5319—]6. **Same—Contracts, how sold**—All contracts or agreements for the mining, removing and disposing of iron ore provided for in section 1 of this act [5319—1] shall be sold at public sale to the highest bidder on the basis of the royalty to be paid to the state, after such sale shall have been advertised for three weeks in such a manner and in such legal publications as the above named state officers shall determine, but no bids shall be entertained that shall not equal or exceed the minimum price specified in this act. ('17 c. 110 § 3)

[5319—]7. **Certain options for mining leases given by counties validated**—That in all cases where an option for a mining lease without the required

publication in the official proceedings of the county commissioners, of a resolution fixing the time for considering the same, and setting out the terms and conditions thereof, has since December 1st, 1914, been granted by any county of the State of Minnesota, calling for a mining lease on a royalty basis of twenty cents a ton of 2,240 pounds, with the provision, however, that if such lessee should receive by an assignment or sub-lease thereof a greater royalty than twenty-five cents per ton, such county to receive one-half of such excess over said twenty-five cents per ton, such options and leases thereto attached and made a part thereof are hereby declared legal and valid, provided that nothing herein contained shall be considered to apply to actions now pending which involve the validity of any such options. ('15 c. 122 § 1)

STATE PARKS

[5361—]1. **Certain lands added**—That the boundaries of Minneopa State Park as established and created by chapter two hundred ninety-seven (297) of the General Laws of the State of Minnesota for 1905, and as enlarged by chapter four hundred and nine (409) of the General Laws of the State of Minnesota for 1909, be and the same are hereby enlarged by adding to said park the following land situate in Blue Earth county, and State of Minnesota, to-wit: All the south twenty-six (26) acres of the southeast quarter of the northeast quarter (SE $\frac{1}{4}$ of NE $\frac{1}{4}$) of section twenty (20) in township one hundred and eight (108) north of range twenty-seven (27) west, which lies west of the public highway now located on said twenty-six (26) acre tract, containing about eleven and one-half acres, and the said land shall be and the same hereby is set apart perpetually as a public park and is made a part of said Minneopa State Park. ('17 c. 157 § 1)

STATE FORESTS

[5378—]1. **Certain lands established as state forests**—The state school and other public lands owned by the State of Minnesota, included within the following described limits: Townships 61, 62, 63, 64, 65, 66, 67 and 68 N., Ranges 7 east to 14 west inclusive; Townships 62, 63, 64, 65, 66, 67 and 68 N., in ranges 15 and 16; Townships 63, 64, 65, 66, 67, 68, 69 and 70 N., in ranges 17 and 18; Townships 64, 65, 66, 67, 68, 69 and 70 N., in range 19, and townships 65, 66, 67, 68, 69, 70 and 71 in ranges 20 and 21; are hereby established as state forests under the designation of Minnesota state forests. Said lands are hereby placed under the jurisdiction and control of the state forestry board, to be managed, as other state forests are managed by the said board, on forestry principles for timber production, and for such other uses as are not inconsistent therewith. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state. ('17 c. 448 § 1)

[5385—]1. **Water powers owned or controlled by state withdrawn from sale, etc.**—All water powers having a possible average development of one hundred horse power or more, owned by or subject to the control of the state of Minnesota, and all lands so owned, controlled or held in trust by the state of Minnesota lying within one mile of such water powers are hereby withdrawn from sale and held for the purpose of the improvement and utilization of the same for the purpose of having paper manufactured by plants built at and using the power of such water powers. ('17 c. 360 § 1)

[5385—]2. **Same—Lands overflowed and unfit for agricultural purposes, but suitable for re-forestation, withdrawn from sale, etc.**—All the lands owned, controlled or held in trust by the state of Minnesota, which lands would be overflowed by the complete and full development of the water powers hereinbefore referred to are hereby reserved and withdrawn from sale in order that they may be overflowed by the improvement of the water powers within whose basin of overflow they lie. All lands unfit for agricultural and suitable for reforestation purposes are hereby withdrawn from sale. The state auditor is hereby requested and directed to ascertain all the water powers and

lands hereinbefore referred to with all due speed and to withdraw from sales all such lands and to report such withdrawals, including in such report the description of the land, the present character and the growth thereon and the estimated value of the land and also of the timber, if any, now growing thereon. Also the quantity and character of the timber suitable for use in the manufacture of paper, growing on said land and the most accessible method of transportation of said timber, of use in the manufacture of paper, to the nearest reserved water power, or any water power which in the opinion of the state auditor can advantageously be procured by the state, by condemnation or purchased for the purposes provided in this act. ('17 c. 360 § 2)

[5385—]3. **Same—Duty of auditor**—The state auditor shall make an investigation of the possibility of the state securing by purchase or condemnation water powers in the vicinity of state lands, wherein pulpwood is now growing or upon which it may be profitably grown in the future. For such purpose it shall be proper for him to call upon the state drainage engineer for assistance. ('17 c. 360 § 3)

[5385—]4. **Same—Duties of board of control, auditor and forester**—The state board of control is hereby directed to investigate the advisability and feasibility of having the inmates of the state reformatory engaged in the manufacture of pulpwood in a pulp mill to be operated by the state. The state auditor shall make a full and complete report to the next session of the legislature of all suitable water powers that may be utilized in the operation of a state owned pulp and paper mill.

The state forester shall make an estimate of how many cords of pulpwood per year can be grown upon state owned lands, unfit for agricultural purposes, and which in his opinion can wisely be utilized in the product of pulpwood and he shall make report thereof to the next legislature. ('17 c. 360 § 4)

UNITED STATES LANDS

[5394—]1. **Minnesota state land commission**—That a commission to be known as the Minnesota state land commission is hereby created, to consist of the governor, attorney general and state auditor. The governor shall be ex-officio chairman, the state auditor shall be ex-officio secretary and shall report to the legislature the findings and conclusions of said commission, as hereinafter directed. ('17 c. 324 § 1)

[5394—]2. **Same—Claims to lands under federal acts—Terms of settlement, etc.**—This commission shall have power to consider and propose terms of settlement of all claims to the legislature of all differences or controversies that now exist or may hereafter arise between the state of Minnesota and the United States over lands granted to the state of Minnesota by the United States under any act of congress. It may consider and propose terms of settlement of such claims, differences or controversies separately or in toto. To the end that such settlement or settlements may be carried out and completed, said commission is hereby authorized to accept patents of lands issued by the United States and to reconvey to the United States any state lands which it may by unanimous vote determine should be so reconveyed in order to carry out the provisions of this act, whenever approved by the state legislature. ('17 c. 324 § 2)

[5394—]3. **Same—Ratification by legislature**—This commission shall refer its findings and conclusions to the legislature for confirmation and no adjustment or settlement of any claim by the commission shall be final until ratified by the legislature. Provided however, that the commission have authority to make final settlement and adjustment of individual claims of settlers or Indian allottees, where the land in question does not exceed 160 acres in area. ('17 c. 324 § 3)

[5394—]4. **Same—Auditor to report claims**—The state auditor is hereby directed to report to said commission the status of all claims of the state against the United States for lands patented to the state by the United States

under any acts or grants relating to lands; and the status of all claims of the United States against the state for lands alleged to have been wrongfully patented or conveyed to the state by the United States. ('17 c. 324 § 4)

[5394—]5. **Same—Expenses—**The state auditor is hereby directed to expend from any fund or funds appropriated for the maintenance of any department of the state auditor's office such sums as may be necessary for clerk hire, expenditure of travel, hotel bills or otherwise as may be necessary to carry out the provisions of this act. Such expenditures shall be audited by the state auditor and approved by the commission and for such purpose a per diem expenditure may be audited and approved. ('17 c. 324 § 5)

CHAPTER 41

EMINENT DOMAIN

5395. Scope of chapter—

Cited (121-376, 141+801).

The state's power of eminent domain defined (125-194, 145+967). Eminent Domain, ¶4.

The use of the words "private property" does not prevent the implication that state lands may be appropriated under the power of eminent domain. State land cannot be appropriated, unless expressly or by necessary implication authorized by statute. This authority was granted by G. S. 1894 § 2606, and such right was carried forward into the revision of 1905 (124-271, 144+960). Eminent Domain, ¶46.

5396. Definitions—

Executor may recover proceeds of land condemned (121-233, 141+170). Eminent Domain, ¶156; Executors and Administrators, ¶130(1).

5397. Proceedings, by whom instituted—

The petition need not allege that the proceedings have been authorized by the board of directors of the petitioning corporation (128-415, 151+198). Eminent Domain, ¶191(2).

5399. Petition and notice—

Cited (121-233, 141+170).

State land cannot be appropriated, unless expressly or by necessary implication authorized by statute. This authority was granted by G. S. 1894 § 2606, and such right was carried forward into the revision of 1905 (124-271, 144+960). Eminent Domain, ¶46.

A description of waters of a stream sought to be taken by a power company held sufficiently definite (128-415, 151+198). Eminent Domain, ¶191(6).

The petition need not allege that the proceedings have been authorized by the board of directors of the petitioning corporation (128-415, 151+198). Eminent Domain, ¶191(2).

G. S. 1894 § 2606 cited—124-271, 144+960.

5401. Order made thereon—Commissioners—

Cited (121-233, 141+170).

A judgment of condemnation for a school site held justified, without proof of necessity (121-376, 141+801).

The rights of a public service corporation to divert water from navigable streams of one drainage basin into those of another drainage basin determined (127-23, 148+561). Eminent Domain, ¶1, 13, 66; Navigable Waters, ¶34.

Burden of proof and evidence as to propriety of appropriation (127-23, 148+561). Eminent Domain, ¶196.

5402. Powers and duties of commissioners—

Where a leasehold estate is taken, the measure of damage is the fair market value of the estate so taken; and if only a part be taken, the measure of damages is the difference between the value of the entire estate and the value of the part not taken (135-389, 160+1021). Eminent Domain, ¶147.

Measure of damages, where leasehold in part of premises is taken, front wall of building removed, which landlord is not required to rebuild, and where lease is terminable on 60 days' notice and payment of a specified sum, stated (see 135-389, 160+1021).

In proceedings by city of St. Paul to condemn land for street purposes, award for land occupied by tenant held properly made in gross, such award to be thereafter apportioned between the landlord and tenant according to their interests (135-389, 160+1021). Eminent Domain, ¶157.

Damages awarded held not so inadequate as to indicate passion and prejudice of the jury (128-415, 151+198). Eminent Domain, ¶150.

Conclusiveness of award as to title to land (121-233, 141+170).