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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

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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 sufficient-ly 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).

**5404. Payment—Tender—Deposit in court—**

See notes under § 5402.

Cited (124-271, 144+960).

Determination as to right to money paid into court in condemnation proceedings held not to bar a subsequent action to determine ownership of such bond (126-1, 147+662, Ann. Cas. 1915D, 589). Eminent Domain, Ⓒ245.

**5407. Appeal—**

Cited (162+523).

All parties entitled to share in an award in gross for land taken for street purposes had the right to appeal from the award and have the same reassessed (135-389, 160+1021). Eminent Domain, Ⓒ254.

Under a provision of a special municipal charter authorizing an appeal "from an assessment of damages and benefits," an aggrieved party on such appeal could not question the regularity of the proceedings, the jurisdiction of the municipal council, or the validity of the provisions of the charter authorizing the proceeding (135-436, 161+154). Eminent Domain, Ⓒ251.

Where the commissioners imposed on the railroad company the duty to construct a cattle pass and culverts for the benefit of the landowner, such conditions were not nullified by the failure of the petitioner, in its notice of appeal from the award, to mention such conditions, and such conditions remained in force after determination of the appeal (128-321, 150+906). Eminent Domain, Ⓒ238(4).

**5408. Trial—Costs—**

The appeal is to be treated, and heard and disposed of, as an ordinary civil action commenced in the district court; and hence such appeal, where taken on the question of damages, may be dismissed without the consent of the respondent, under § 7825 (128-66, 150+222). Eminent Domain, Ⓒ238(1, 7).

**5409. Judgment—Possession—**

See notes under § 5402.

Cited (162+523).

All parties are bound and concluded by the award as fixed and determined in the condemnation proceedings (135-389, 160+1021). Eminent Domain, Ⓒ243(3).

Where the commissioners, in their award, imposed the condition that the railroad company should construct cattle passes and culverts for the benefit of the landowner, but such condition was not incorporated in the petitioner's notice of appeal, the court, after determination of the appeal, had power to amend its judgment, so as to include such condition (128-321, 150+906). Eminent Domain, Ⓒ241.

**5411. Record evidence, how perfected—**

To bar a party from sharing in the award on the ground that it has been determined in the condemnation proceedings that he was entitled to no part thereof, it must be shown affirmatively that the question was in fact considered and determined in such proceeding (135-389, 160+1021). Eminent Domain, Ⓒ158.

Any party entitled to share in the award may bring an action for his share against any other party to whom such share has been paid (135-389, 160+1021). Eminent Domain, Ⓒ245.

[5411—]1. Proceedings by state, etc.—Rights, interest or estate, how described, etc.—Fee simple—In all cases where proceedings shall hereafter be instituted for the condemnation of property for public use by the state of Minnesota or by any political subdivision thereof, the right, interest or estate in said property proposed to be taken, if greater than an easement, shall be specifically described in said proceedings, and if the right, interest or estate so described shall be a fee simple absolute, said fee simple absolute shall be an estate without any right of reversion under any circumstances whatsoever. ('17 c. 419 § 1)

**5423. Railroad built without right—Action—**

In ejectment, converted into a condemnation proceeding by defendant's answer, under this and the next section, held, that the award of damages is excessive, and a new trial should be granted (124-413, 145+161). Eminent Domain, Ⓒ263.

**5424. Answer—Ascertainment of damages—**

See note under § 5423.

The question of the competency of witnesses in cases under this section rests largely in the discretion of the trial court (124-413, 145+161). Evidence, Ⓒ498½.