

MASON'S MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
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Citer-Digest Company
St. Paul
1927

CHAPTER 42

WATER POWERS

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MILLS AND DAMS.

6579. 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) [5429]

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).

This chapter continues in force Pub. St. 1849-1858 c. 129 (113-33, 128+817).

127-23, 148+561.

The measure of damages for overflowing land where the flooding is to be permanent is the diminution in the value of the land; where the flooding is not to be permanent it is the diminution in the rental value of the land. 157-451, 196+649.

A finding that plaintiff is entitled to a specified sum for the damages which had accrued prior to the trial cannot be sustained where there is no evidence as to the rental value of the land nor as to the extent to which its rental value had been diminished. 157-451, 196+649.

Where land is conveyed subject to the flowage caused by the dam then existing or which might be built in the future, it will be presumed, in the absence of anything indicating the contrary, that the parties contemplated the continuance of existing conditions without any radical change, and did not intend to create an unlimited right of flowage. 157-451, 196+649.

Whether the breaking of an ice jam was the sole proximate cause of the wrecking of a steamboat moored near a dam was a jury question. 158-62, 196+811.

The doctrine expressed by the phrase *res ipsa loquitur* is applicable where a steamboat, moored by the owner above a dam across the Mississippi river, is wrecked as a consequence of the giving way of gates in the dam. 158-62, 196+811.

The right of the public to use a navigable river includes the right of moorage and extends to all parts of the stream within the limits defined by ordinary high-water mark. 158-62, 196+811.

The gates in a dam are a structural part thereof. The circumstances under which they gave way, as stated in the opinion, warranted the jury in drawing the same inference as if a portion of the dam itself had given way. 158-62, 196+811.

6580. 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) [5430]

6581. 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) [5431]

6582. 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) [5432]

6582-1. Dams by municipal corporations on Red River of the North—Any municipality owning or permanently controlling land upon which a proposed dam is to be constructed may construct a dam thereon and across that portion of the Red River of the North that forms a part of the boundary common to the state of Minnesota and the state of North Dakota, for the purpose of conserving water for municipal, com-

mercial and domestic use, constructing in connection therewith such appliances, fishways, race ways, sluice ways and waste ways as may be necessary or convenient for the proper construction and utility of such dam and as may be required by law. Provided, that if required by law or treaty, the consent of the United States and of the state of North Dakota shall be first obtained. ('25, c. 30)

LOGGING DAMS

6583. 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) [5433]

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).

6584. 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) [5434]

6585. Tolls—Lien—Upon granting such license, the board shall fix the tolls which may be demanded by the licensee for the sluiceage 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 cost 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) [5435]

6586. 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) [5436]

Cited (101-197, 112+395).

6587. 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) [5437]

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

Cited (101-197, 112+395).

UNIFORM STAGE OF WATER IN LAKES

6588. 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) [5438]

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

83-464, 86+455; 84-90, 101, 86+882, 1102; 84-472, 88+6.

Cited (101-197, 112+395).

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

146-150, 178+595.

In drainage proceedings, bulkheads and spillways, designed to keep waters outside the drainage basin in statu quo, may be constructed. 162-296, 202+496.

6589. 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) [5439]

6590. 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) [5440]

Cited (119-132, 137+298).

6591. 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) [5441]

6592. 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) [5442]

Cited (119-132, 137+298).

6593. Revision and confirmation of assessments—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. Such assessment may be distributed over a term of years not exceeding ten, and shall be extended and collected along with the taxes levied thereon. (R. L. '05 § 2557; G. S. '13 § 5443, amended '17 c. 395 § 1)

6594. 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) [5444]

Cited (119-132, 137+298).

6595. 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 chairman 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 §§ 6588-6594. And, except as otherwise provided in § 6596, 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) [5445]

6596. 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) [5446]

6597. Council given right to acquire title to navigable lakes—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. The council of any village or city may, for the purpose of this act, acquire title to any navigable lake which is not meandered. Such village or city is authorized to issue its certificate of indebtedness or bonds at a rate not to exceed 6 per cent per annum, to mature at a date corresponding with the date of payment of assessments upon benefited property, as provided by section 6593 of this chapter. Provided, however, that this act shall not apply to cities or municipalities incorporated under a home rule charter. (R. L. '05 § 2561, amended '09 c. 163 § 1; '17 c. 395 § 2) [5447]

6598. 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) [5448]

Cited (101-197, 112+395).

6599. Improvement of lakes in Steel and adjoining counties—When the whole or major part of any navigable lake in this state is situated in a single county having a population of not more than 18,000 inhabitants, the county board of that county, in order to improve navigation on said lake or to promote the public health or welfare, may appropriate a sum not exceeding \$1,000.00 in any one year, for any or all of the following purposes, viz.: To erect or maintain sufficient dams or embankments upon and along the shores of said 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 law; to acquire by condemnation or otherwise the necessary lands for the erection of such dams or embankments; to acquire by condemnation or otherwise 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 acquire by condemna-

tion or otherwise lands for public playgrounds or public parks and for public roads thereto; to acquire by condemnation or otherwise all lands to be overflowed by raising the waters of such lake; to pay for such damages as may be caused to, or upon, adjacent lands by the overflowing thereof, to pay the cost and expenses of such proceeding and for any other purpose incidental or necessary to such improvements. ('17 c. 338 § 1)

6600. Dam—Any such dam, embankment, lands or 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. ('17 c. 338 § 2)

6601. Appropriation—The county board of the county in which the smaller part of any such lake is

located may likewise appropriate a sum not exceeding \$500.00 in any one year, for any of the purposes hereinbefore mentioned. ('17 c. 338 § 3)

6602. Not to curtail power of county board—This act shall in nowise curtail any of the powers or authority granted to such county board by the provisions of chapter 42, Revised Laws 1905, or acts amendatory thereof. ('17 c. 338 § 4)

Explanatory note—R. L. '05, c. 42, is c. 42, hereof. Laws '17, c. 338, § 5, repeals Laws '13, c. 287 (G. S. '13, §§ 5449 to 5452).

6602-1. Laws repealed—Chapter 28, Laws 1913, is hereby repealed. ('17, c. 338, § 5)

Explanatory note—The laws repealed by this section were §§ 5449 to 5452 of G. S. '13.

CHAPTER 43

LOGS AND LUMBER

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6603. Consolidation of offices of surveyor general and governor authorized to appoint state surveyor general at salary of \$3,600—The offices of surveyor general are hereby consolidated into one office, which shall be located at the state capitol, St. Paul, and all the powers and duties and all the authority now by law conferred in said offices and officers shall devolve upon and be exercised by the state surveyor general of logs and lumber, hereinafter referred to as the surveyor general. He shall be appointed by the governor at a salary of not more than \$3,600.00 per year for a term of two years; and said term shall terminate at the end of each odd numbered fiscal year. The term of office of the surveyor general first appointed under the provisions of this act shall expire with the end of the fiscal year 1919. The duties of the surveyor general and of the state forester, and the duties of any deputy surveyor general and of any qualified forest officer, are hereby deemed to be not incompatible, and the state forester or any other forest officer may be the state surveyor general of logs and lumber or deputies surveyor general respectively, but no additional compensation shall be allowed for such additional service re-

dered by forest officers. The districts established for the survey and measurement of logs and timber are hereby discontinued, and the jurisdiction and control relating thereto is transferred to and the same shall devolve upon the office of the surveyor general. All public property and records now in the custody of each of the surveyors general or their deputies, wherever the same may be, shall forthwith be delivered into the custody and care of the surveyor general of logs and lumber. ('19 c. 440 § 1)

§ 8 repeals all inconsistent acts and parts of acts.

6604. Duty of surveyor general—It shall be the duty of the surveyor general, and he is hereby authorized and empowered to scale all state timber cut on any state lands. ('19 c. 440 § 2)

6605. State auditor to check scaling of timber—It is hereby expressly made the duty of the state auditor to check from time to time the scaling of state timber done by the surveyor general or his deputies. ('19 c. 440 § 3)

6606. Surveys to be made by surveyor general—The surveyor general or his deputy, upon request of the owner of any forest products, or of any person having written authority from the owner to deliver the same, or of any officer having possession thereof under judicial writ or process, shall survey the same and make a true bill thereof, showing by and to whom and at whose request the scale was made, the time and place of inspection, the number of pieces scaled, the marks thereon, the scale marks placed thereon by him, and the total number of feet board measure, or cords or pieces, as the case may be. He shall record such scale bill in his office, and upon payment as hereinafter provided to the state treasurer of all costs and expenses of making the scale, recording the same and making the bills thereof, shall deliver the original to the person to whom the scale was made, otherwise to the person requesting such survey. Such bill or the record thereof shall be prima facie evidence of the facts therein stated. The terms of this act shall apply to the scaling and billing of logs and timber in chartered booms or elsewhere. ('19 c. 440 § 4)

20-345, 298; 46-216, 48+911; 69-192, 71+935; 88+517; 93+661; 96-76, 104+833. See 34-289, 25+628; 37-220, 33+783; 77-206, 79+669; 116-96, 131+1059.

6607. Actual expense to be paid before survey or scaling—For the purpose of carrying out the provi-