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Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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CHAPTER 41

Eminent Domain

6537. Right of eminent domain.

177M146, 225NW86.
State cannot condemn allotted Indian lands for a highway without consent of Secretary of the Interior. U. S. v. Minnesota, (CCA8), 95F(2d)463. Affirmed, —US—, 59 SCR292.

Title to upland acquired by condemnation includes appurtenant riparian rights to the use of the bed of the stream adjacent to such land and to the use of the water flowing thereover. Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902.

Government held entitled to condemn state owned lands for an Indian reserve, notwithstanding that the state was proceeding to condemn substantially all of the land in the area for a game refuge, with due regard to protection of Indian rights. U. S. v. 4,450.72 Acres of Land, (DC-Minn), 27FSuppl167.

An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated route. It is the exercise of a legislative function constitutionally delegated to the commissioner by the Legislature and is conclusive on the courts as to the necessity of the taking. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

Eminent domain is a right possessed by state in its sovereign capacity. It is not conferred by the constitution, but is restricted by it. Its exercise rests exclusively in legislature. Judicial power comes into play only to extent that constitution guarantees owner of property right to compensation. State v. Severson, 194M644, 261 NW469. See Dun. Dig. 3012, 3013, 3014, 3080.

General power granted to a municipality to lay out, open, and extend streets authorizes by implication an extension of a street across a railroad right of way when such extension does not essentially impair it for railroad purposes; and necessity for taking of easement is a legislative question not subject to judicial review. Village of Lamberton v. C., 196M597, 265NW801. See Dun. Dig. 6621.

Street railway does not have power of eminent domain. Bruer v. C., 201M40, 275NW368. See Dun. Dig. 3020, 3009.

Sanitary district in conducting a condemnation proceeding does so as an arm of state in discharge of a sovereign legislative function, and is not liable in tort for alleged malicious prosecution of such proceeding. Barmel v. M., 201M622, 277NW208. See Dun. Dig. 3091, 3122.

Where private property is not taken but is damaged for public use without compensation first paid or secured, the owner has his cause of action in tort. McCarthy v. C., 203M427, 281NW759. See Dun. Dig. 3128.

Exercise of right of eminent domain by condemnation proceedings is an exertion of legislative power, and judicial power comes into play only to extent that constitution guarantees to owner of property right to compensation. State v. May, 204M564, 285NW834. See Dun. Dig. 3014, 3079.

Village of North St. Paul has authority to condemn rights of way for an alley or to condemn an easement for water and sewer pipes across private property. Op. Atty. Gen., May 26, 1931.

School district is not entitled to reimbursement from state by reason of reduction of assessed valuation by taking of large amount of land by condemnation proceeding. Op. Atty. Gen. (8170), June 22, 1934.

School house on private land remains personal property and as such property of district, and district, though it did not appear and assert its title in condemnation proceedings, is entitled to compensation for such school house, if such building was not considered a part of the land in arriving at its value. Id.

City of Waseca under its home rule charter has power to condemn lands outside its limits for airport, and procedure to be followed is that provided by such charter. Op. Atty. Gen. (8177), Aug. 3, 1934.

Laws 1935, c. 52, is not applicable to proceedings for acquisition of land for Talcot Lake project for which federal government is providing money for construction purposes but not for acquisition of land. Op. Atty. Gen. (817h), Mar. 25, 1935.

Cities operating under Laws 1921, c. 462, may acquire land for street purposes pursuant to §1828-74. Op. Atty. Gen. (817p), Oct. 24, 1935.

Whether city could condemn part of public park for purpose of constructing a cooling tower in connection with nearby municipal utility plant depends on whether it would materially impair use of land as a park. Op. Atty. Gen. (59a-40), July 30, 1937.

General rule is that property already devoted to a public use cannot be taken for another public use, but

this rule does not apply where second use does not materially or seriously interfere with first use. Op. Atty. Gen. (700d-12), Aug. 26, 1937.

It is doubtful whether township may condemn road along edge of land used by state hospital without general or special legislative authority. Id.

Condemnation of land for improving and enlarging county fair grounds should proceed under this chapter. Op. Atty. Gen. (817d), Mar. 4, 1938.

County board desiring to establish road more than four rods wide should proceed under §2582 and not under §6537 et seq., no statute limiting roads to four rods in width. Op. Atty. Gen. (817N), May 29, 1939.

6538. Definitions.

Owner of lot abutting on a street has no right of action against a railroad which crosses the street upon an embankment and obstructs its use when the damage he suffers it not special. Locascio v. N., 185M281, 240NW 661. See Dun. Dig. 3049(14).

Property owners cannot recover for diminution in value of their property caused by the noise and vibration of street cars operating over bridge. Even though the street car tracks had been on the street in front of their property there would not have been an additional servitude. McCarthy v. C., 203M427, 281NW759. See Dun. Dig. 3017.

6541. Petition and notice.**1. Proceedings generally.**

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

2. Petition.

Court did not err in ordering corrected an apparent misuse of word "highway" instead of "playground" in petition filed Sackette v. C., 201M121, 275NW617. See Dun. Dig. 3093.

3. Notice.

One who has been duly served with notice of hearing may not have proceeding vacated on ground that other owners of part of land sought to be taken, had not been served with valid published notice. Sackette v. C., 201M 121, 275NW617. See Dun. Dig. 3085.

6543. Order made thereon—Commissioners.

Owner of land abutting on trunk highway on which easement for highway purposes has been taken may object to placing of mail box thereon by another person. Op. Atty. Gen., Sept 6, 1932.

6546. Payment—Tender—Deposit in court.

The United States seeking to condemn lands for a public building, has no further interest in the condemnation proceedings after it pays the award to the clerk of the court. St. Paul v. Certain Lands, (CCA8), 48F(2d)805. See Dun. Dig. 3100.

Boundary dispute between claimants of land condemned. Fitzpatrick v. B., 176M468, 223NW767.

Where an award is made to owner of land upon which mortgage is being foreclosed, the purchaser at the foreclosure sale is entitled to the award in the absence of redemption. Op. Atty. Gen., Apr. 2, 1931.

When a portion of a parcel of trust land sold by state under contract is taken by eminent domain, entire award must be applied on indebtedness due state up to amount of such indebtedness before any portion is applied on taxes or expenses of condemnation proceedings. Op. Atty. Gen. (700d-12), Sept. 19, 1936.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should not endorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

6548. Accruing taxes.

Delinquent taxes on land are a first lien and should be paid first out of an award made in condemnation proceedings by the highway department. Op. Atty. Gen., Aug. 8, 1930.

Where damages are awarded in condemnation proceedings by the highway department, and they are insufficient to cover taxes against the land, they should be distributed among the various funds the same as they would be if the taxes had been paid. Op. Atty. Gen., Aug. 8, 1930.

Where Government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Title 40, §258, title relates back to the date of the filing of the commissioner's award. Op. Atty. Gen., Jan. 26, 1931.

Where City of St. Paul acquired by condemnation portions of property for widening of street and property

owner gave City deed on December 26th, 1930, and award was ratified by City Council on December 30th, 1930, but proceedings of Council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930, constituted a lien on the property and should be paid by the City. Op. Atty. Gen., April 25, 1931.

6549. Appeal.

City intervening to recover special assessments, held not entitled to appeal from award. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3107.

Although condemnation proceedings may properly include in one petition numerous tracts of land which state desires to take for one highway, state cannot join in one appeal to district court or supreme court separate awards to two property owners, and such appeal must be dismissed for duplicity. *State v. May*, 204M564, 285NW 834. See Dun. Dig. 3107.

6550. Trial—Costs.

To the extent that traffic upon a trunk highway is beneficial to an abutting farm, as such, it is a benefit in common with the general public. 176M525, 223NW 923.

Special benefits may be shown in the reduction of damages. 176M525, 223NW923.

Gross damages are first to be determined and then award is to be apportioned as justice may require. 176M525, 223NW923.

Where such rule is ignored, and a different procedure is adopted without objection, in which the dissatisfied party has acquiesced, he cannot thereafter complain. 176M525, 223NW923.

Persons appointed by the court, and who serve as appraisers in a condemnation proceeding, are competent witnesses who may be called by either party on an appeal. *Northern States Power Co. v. B.*, 187M353, 245NW 609. See Dun. Dig. 3112.

In condemnation owner occupies position of ordinary plaintiff in action for recovery of damages, and as such has right to open and close case, and upon him rests burden of proof to establish his damages. *Minneapolis-St. Paul Sanitary Dist. v. F.*, 201M442, 277NW394. See Dun. Dig. 3111, 9788.

Landowner is not entitled to receive compensation for land actually taken, equal to its market value for a use or purpose wholly distinct and disconnected from use and purpose to which remainder of his land is applied, and at same time receive compensation for damages which he claims result to remainder by reason of taking. Id. See Dun. Dig. 3052, 3053.

Elements affecting value that depend upon events or combinations of occurrences which, while within realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration in fixing compensation. Id. See Dun. Dig. 3054, 3062.

Value of property taken by eminent domain proceedings for special purpose for which it is taken is not basis on which owner is entitled to be compensated, but its availability for that purpose, is an element to be considered. Id. See Dun. Dig. 3054.

Just compensation is market value at time of taking contemporaneously paid in money, to be arrived at upon just consideration of all uses for which land is suitable; and highest and most profitable use for which property is adaptable and needed, or likely to be needed, in reasonably near future, is to be considered to extent that prospects of demand for such use affect market value while property is privately held, but that value does not include any element resulting subsequently to or because of taking. Id. See Dun. Dig. 3054.

Market value of property is not measured by benefits to, or needs of, condemnor. Id. See Dun. Dig. 3055.

Knowledge on part of a witness of specific sales of property of similar character to that under consideration in a condemnation proceeding may be employed by him in forming an opinion of value of other lands equally circumstanced, but other specific sales of similar lands and prices paid therefor may not be introduced as substantive evidence of value of particular tract involved in condemnation. Id. See Dun. Dig. 3071.

Court erroneously refused to permit cross-examination of landowner to show that he had made verified application for reduction of taxes on claim that land had been assessed in amounts exceeding true and actual value. Id. See Dun. Dig. 3075.

6551. Judgment—Possession.

Where the United States condemned property on which special assessments had been levied for a street improvement, and title passed to the government by deposit of the condemnation money in court, the city had no equitable lien on the condemnation money where judgment confirming the assessment was reversed on appeal, and the lien of the assessment did not attach to the land prior to the transfer of the title to the government, especially where there was no presumption that the condemnation commissioners included in the award any increase in the value of the land arising from the improvement, though a reassessment was made after the government obtained title. *Drake v. C.*, (CC A8), 65F(2d)119. See Dun. Dig. 3076.

One obtaining market value of property was not entitled to an additional award for expense of removal from the premises. 176M389, 223NW458.

Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement in highway condemnation. *State v. Hall*, 195M79, 261NW 874. See Dun. Dig. 3078a.

Final judgment of court must be obtained before school district can take possession of premises in condemnation proceedings. Op. Atty. Gen. (817f), Oct. 8, 1935.

6552. Interest—Award, when payable—Dismissal.

Commercial Station Post Office v. U. S., (CCA8), 48F (2d)183.

In condemnation proceedings the charter provisions, in force at the time the order of the city council confirming the award is adopted, governs the right to interest thereon. *L. Realty Co. v. C.*, 183M499, 237NW192. See Dun. Dig. 3103.

Landowners as to whom proceedings have been discontinued properly proceeded to obtain costs in condemnation proceeding itself rather than by independent action. *State v. Lesslie*, 195M408, 263NW295. See Dun. Dig. 3091.

State is not in position to question amount of counsel fee allowed landowners in discontinued eminent domain proceeding, having presented no evidence in opposition to that of respondents, and having moved trial court to substitute for its findings proposed findings wherein value of counsel fee is same amount as allowed by court. Id.

This section applies to all eminent domain proceedings where instituted by state or its agencies or by others, and, on discontinuance by state, landowners are entitled to judgment for costs. Id. See Dun. Dig. 3118.

In proceeding to establish a judicial road award of damages by commissioners bears interest from entry of order of court confirming it, as in case of any other judgment. *Blue Earth County v. W.*, 196M501, 265NW 329. See Dun. Dig. 3103.

Petition may be amended to omit part of tract first described, and proceeding as to that tract dismissed, if there is no distinct and severable issue as to omitted area, without entitling landowner to allowance of costs and disbursements. *Minneapolis-St. Paul Sanitary Dist. v. F.*, 197M275, 266NW848. See Dun. Dig. 3118, 3121.

Section 6552, *Mason's Minn. Stat. 1927*, which creates a cause of action in favor of a landowner for his expenses incurred in a condemnation proceeding under Chapter 41 of those statutes, does not apply to expenses incurred under the provisions of §1552 et seq. *Barmel v. M.*, 201M 622, 277NW208. See Dun. Dig. 3121.

This section has no application to proceedings with reference to establishment of town and county roads under §§2582, 2583 and 2585. Op. Atty. Gen. (377b-10(d)), Sept. 7, 1934.

6554. Property taken by state to be an estate without right or reversion.

One who has been duly served with notice of hearing may not have proceeding vacated on ground that other owners of part of land sought to be taken, had not been served with valid published notice. *Sackette v. C.*, 201M121, 275NW617. See Dun. Dig. 3085.

Court did not err in ordering corrected an apparent misuse of word "highway" instead of "playground" in petition filed. Id. See Dun. Dig. 3093.

State highway department usually only acquires an easement for road purposes or to take out gravel from gravel pits, and ownership of trees or timber remains in original owner, in absence of agreement. Op. Atty. Gen., Oct. 30, 1933.

6557-1. Eminent domain proceedings by state or its agencies—Procedure.

State v. Stanley, 188M390, 247NW509; note under §2554. This section is constitutional. *State v. Severson*, 194M 644, 261NW469. See Dun. Dig. 1677.

This section is not special legislation because it limits time for appeal in condemnation proceedings brought by state to acquire rights of way for trunk highways without requiring notice to start running of 30-day limitations, as is required in other condemnation proceedings. Id.

A highway condemnation proceeding is in rem, and no question of jurisdiction is presented if, without formal intervention under statute, interested taxpayers are permitted to appear and to apply for and procure injunctive relief appropriate to proceeding. *State v. Werder*, 200M148, 273NW714. See Dun. Dig. 3177.

Although condemnation proceedings may properly include in one petition numerous tracts of land which state desires to take for one highway, state cannot join in one appeal to district court or supreme court separate awards to two property owners, and such appeal must be dismissed for duplicity. *State v. May*, 204M564, 285NW 834. See Dun. Dig. 3107.

Final judgment of court must be obtained before school district can take possession of premises in condemnation proceedings. Op. Atty. Gen. (817f), Oct. 8, 1935.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should

not endorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

In condemnation proceedings by state to acquire lands to be transferred to federal government, minimum price for which state trust fund lands may be taken is \$5 per acre, and this includes state swamp lands. Op. Atty. Gen. (700d-7), Jan. 20, 1938.

(b).

Section 6552 applies to all eminent domain proceedings where instituted by state or its agencies or by others, and is not repealed by this act. *State v. Lesslie*, 195M 408, 263NW295. See Dun. Dig. 3091.

(c).

Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement in highway condemnation. *State v. Hall*, 195M79, 261NW 874. See Dun. Dig. 3078a.

Final certificate was intended to and in fact took the place of the final decree applicable under Gen. St. 1923, §6553. *State v. Hall*, 195M79, 261NW874. See Dun. Dig. 3105.

Intervention was not available after closing of condemnation proceedings by approval of certificate in state highway establishment. *Id.* See Dun. Dig. 4897a.

(e).

Where commissioner of highways trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. *Nelson v. B.*, 188M584, 248NW49. See Dun. Dig. 3128.

6557-4. Easement for snow fences.—Whenever the right to establish a public road is acquired by the state or by any of its agencies or political subdivisions, there shall be included in the easement so acquired the power to erect and maintain temporary snow fences as required upon lands adjoining the highway part of which lands have been taken for road purposes. The right to erect and maintain such fences shall be considered in awarding damages and any award shall be conclusively presumed to include the damages, if any, caused by the right to erect and maintain such fences provided that if the state or agency or political subdivision thereof shall file with its petition or at any time before the question of damages is submitted to a jury a written disclaimer of its desire and intention to acquire a right to erect and maintain snow fences as to any particular tract of land involved, then no such right shall be acquired in such proceeding and no consideration given to such fences as an element of damage. (Act Apr. 26, 1929, c. 396, §1.)

6569. Answer—Ascertainment of damages.

Where in action by power company for trespass by railroad company upon its property in the construction of a bridge, the defendant railroad converted the action into one for condemnation under this section by answer praying for determination of amount of damages to which plaintiff was entitled by reason of defendant's taking of plaintiff's property, but not denying plaintiff's ownership nor claiming title in defendant or praying equitable relief, defendant's equitable title to the property was not within the issues. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Where in suit against railroad company to enjoin trespass and for damages, which was converted by defendant into condemnation proceedings, the court found that equitable title to land involved was in defendant though that question was not within the issues, the only issue on appeal from decree awarding defendant specific performance was whether the facts found supported the decree, in the absence of a settled case or bill of exceptions. *Id.*

6578-1. Award of compensation and damage in condemnation proceedings.—Whenever an award of compensation and damages shall be confirmed by the city council of any city of the first class in the State of Minnesota, existing and governed under a charter adopted pursuant to Section 36, Article 4, of the State Constitution, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and whenever the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city, to the owner of such property, the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damage claimed. In case of neglect to furnish such abstract, or if there shall be any doubt as to who is entitled to such compensation or damage or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded and all loss, costs of expenses on account of such claim, Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said city council may order a warrant to be drawn for the same, payable to the clerk of the district court, and the city clerk shall deliver the same to said clerk of the same court, and take his receipt for the same; which deposit with said clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the said District Court, setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of said award or appropriation or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same, and may forthwith enter upon and use the same. Provided that whenever any such award shall be confirmed by the city council of any such city and an appeal shall be taken therefrom, the city council shall be and hereby is authorized and empowered, by resolution enacted by affirmative vote of a majority of all of its members elected, to appropriate and set aside in the treasury of the city, in a fund therein to be known as the "Condemnation and Award Fund," a sum of money equal in amount to such award providing for the retention thereof therein, during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use or uses for which such condemnation was made. ('21, c. 219, §1; Apr. 25, 1931, c. 396.)

This section is not violative of the 14th amendment, in that it does not afford a fair tribunal to a property owner. *Uihlein v. St. Paul*, (CCA8), 32F(2d)748.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

This section sufficiently protects the landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Proceedings held to sufficiently show purpose for which land was taken and that it was taken for a public purpose. 177M146, 225NW86.

In street widening proceeding, landowner is entitled to damages at least to the extent of market value of the land taken in the condition and situation it then occupied, not an isolated tract, but as a part of the whole. *Improvement of Third St.*, 177M159, 225NW92.

Landowner cannot claim damages on theory that at some future time there may be a change of the grade of the street, his right to receive damages at any such

time not being affected. Improvement of Third St., 177 M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See Dun. Dig. 5412.

In action for conversion of personal property, question whether city's conduct in entering upon condemned property was in contravention of forcible entry and unlawful detainer statute, held not presented by record. *Dow-Arneson Co. v. C.*, 191M28, 253NW6. See Dun. Dig. 386.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. *Id.* See Dun. Dig. 728.

6578-3. Commissioner of conservation to acquire certain lands.—Authority is given to the Commissioner of Conservation to acquire and to use the procedure set forth in Chapter 52 of the Laws of 1935 [§§5620-29, 5620-30], as far as applicable, in acquiring the land necessary for the Talcot Lake Project in Murray

and Cottonwood Counties, such land to be paid for from any available funds of the Department of Conservation or from money provided by the United States government. (Act Apr. 1, 1935, c. 105, §1.)

Preamble.

Whereas, the federal government has allocated \$75,000 for the improvement of Talcot Lake in Murray and Cottonwood Counties and the lands in the vicinity thereof as a public hunting ground and game refuge on condition that the state acquire title to the necessary land on great advantage to the state, and

Whereas, the acquisition of such lands and the improvement thereof for said public purposes will be of great advantage to the state, and

Whereas, other projects of a similar character are pending in which the federal government may provide funds for improvement in case the state promptly acquires title to the necessary land:

6578-4. Authority of commissioner.—Authority is likewise given to the Commissioner of Conservation to acquire and to use the procedure set forth in said Chapter 52, so far as applicable, in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements. (Act Apr. 1, 1935, c. 105, §2.)

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

The common law riparian right to build a dam across a navigable stream was not abolished by the Rivers and Harbors Act of March 3, 1899 (Mason's U. S. C. A. title 33, §401), but merely suspended until consent of Congress was obtained and plans approved. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Rights and liabilities arising out of construction of dam under license issued by Federal Power Commission resulting in injuries to piers of railroad bridge constructed under authority of an Act of Congress are determined by the laws of the state, as the shores of navigable waters, the soil thereunder, and the rights appurtenant thereto were not granted to the United States by the constitution, but were reserved to the states. *Id.*

Power company constructing dam held liable for damages to those piers of railroad bridge which were constructed in the river bed on the west side where the railroad was the equitable owner of the abutting land on that side of the river, but it was not liable for damages to piers constructed in river bed on the east side where the power company owned the abutting land on that side and the railroad was a trespasser. *Id.*

Owner and operator of a dam for industrial purposes in a river or natural water course is not an insurer of its safety, but is bound to exercise a degree of care in its construction, maintenance, and operation proportionate to injuries likely to result to others; care commensurate with danger. *Willie v. M.*, 190M95, 250NW 809. See Dun. Dig. 10191, n. 78.

Doctrine of *res ipsa loquitur* applies where a dam is wholly within control of defendant and its failure or operation results in injury to others such as could reasonably be anticipated. *Id.* See Dun. Dig. 7044.

Negligence of owner and operator of dam in flooding river valley, held for jury, notwithstanding rainfall was unusually heavy and other flood water came into valley and contributed to flood and notwithstanding there were obstructions in river below dam. *Id.* See Dun. Dig. 10191.

Procedural effect of *res ipsa loquitur*. 20MinnLawRev 241.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

Section confers no authority upon a county board to fix levels or erect dams on lakes, major parts of which lie outside county, and, where there is no adoption or ratification by county of acts of board in fixing a level above high-water mark or furthering erection of a dam which so raises water in such a lake, defense of ultra vires is available to county. *Erickson v. C.*, 190M433, 252 NW219. See Dun. Dig. 10187-10189.

Right of riparian owners does not prevent raising of lake level to natural highwater mark, though lake is temporarily dry. *Op. Atty. Gen.*, Jan. 30, 1934.

Statute does not authorize county board to make an appropriation for a "dredging project" in connection with improvement of a lake, unless purpose of dredging is to establish or maintain the water level thereof. *Op. Atty. Gen.* (273a-6), Aug. 11, 1938.

6589. Resolution—Filing of copy, map, etc.

Board has power to rescind resolution establishing water level if no vested rights are thereby interfered with and all parties concerned are stored to same position they were before adoption of resolution. *Op. Atty. Gen.* (273a-33), Feb. 23, 1937.

6594. Cost of maintenance, etc.—Management.

There cannot be a second assessment for benefit. *Op. Atty. Gen.* (408b), May 6, 1935

County board may appropriate money for purpose of maintaining and operating pumping plant and may maintain water level in a lake without payment of any damages to riparian owners of lake or stream as long as water level is not raised above natural high water mark. *Op. Atty. Gen.* (273a-14), Sept. 13, 1938.

6595. Lakes in two or more counties—water boards.—Whenever any such navigable lake lies partly within two 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 Sections 6588-6594. And except as otherwise provided in Section 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. (R. L. '05, §2559; G. S. '13, §5445; Apr. 1, 1935, c. 99.)

6597. Council given right to acquire title to navigable lakes.

Cities of fourth class having population of 6,000 to 8,000 and valuation of \$2,000,000 to \$2,250,000, may dredge lakes within their boundaries. Laws 1939, c. 261.

State may legally delegate to village council authority to supervise operation of dam in connection with control of water level. *Op. Atty. Gen.* (4007), June 14, 1935.

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and