

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING

THE GENERAL STATUTES OF 1866

As amended by subsequent Legislation to the close of the Session of 1873

TOGETHER WITH

ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO

JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY

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1873

CHAPTER XXIV.*

DAMS AND MILLS.

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TITLE I.

GENERAL PROVISIONS.

(This Title is Chapter XXXI. of the Statutes of 1866.)

SECTION I (AS AMENDED BY ACT OF MARCH 6, 1871). *Mill-dam may be erected on certain conditions.*—When any person is desirous of erecting and maintaining a mill-dam upon his own land across any water-course not navigable, or of erecting and maintaining a dam for milling purposes on land not his own, across the outlet of any lake, pond, or body of water which has been meandered by the survey of the United States, and deems it necessary to raise the water by means of such dam, or to occupy ground for mill-yard purposes, so as to damage, by overflowing or otherwise, real estate not owned by such person, he may obtain the right to erect and maintain said dam, by proceeding as in this title (chapter): *provided*, that nothing in this act contained shall give to any persons or person the right to lower or draw the same more than one foot below the low-water mark, and such drawing or

* When mill-dam a nuisance, 4 Wis. 387. The right to flood lands may be acquired by adverse enjoyment for twenty years, 14 Wis. 79; 17 Wis. 227; 19 Wis. 499. An agreement not to maintain mill-dam at certain point is not void, and may be enforced, 17 Wis. 424. As to removal of mill-dams *vide* 3 Wis. 319.

lowering below low-water mark shall only be done between the first day of November and the first day of April in any year.

S. L. 1871, 96. *Le Croix v. Halett*, 10 Minn. 30. *Vide* 22 Wis. 607.

SEC. 2. *Petition to be presented to court—what to contain.*—He shall present to the judge of any court of record in which jury trials are had in the county, or if there is no such court in the county, then in the district in which said dam, or any part thereof, is to be located, a petition setting forth the place as near as may be where said dam is to be located, the height to which it will be raised, the purposes to which the water-power will be applied, and such other facts as are necessary to show the objects of the petition.

SEC. 3. *Commissioners to be appointed.*—Upon the presentation of such petition, the judge shall appoint three disinterested residents of the county in which said dam, or a part of it, is to be erected, (as) commissioners to meet at the place of its proposed erection on a day specified by such judge, and to inquire touching the matters contained in said petition, and the judge shall fix the fees of said commissioners.

SEC. 4. *Oath of commissioners.*—Before entering upon their duties the commissioners shall severally take and subscribe an oath before some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

SEC. 5. *Public notice of meeting.*—At the request of the petitioner the commissioners shall give, or cause to be given, notice of the times, place, and object of their meeting to every person named by said petitioner.

SEC. 6. *Five days' notice to persons interested.*—At least five days' notice shall be given in all cases, and in case of infants such notice shall be served on their guardian, or on the person with whom they reside; in case of idiots or lunatics, on their guardian if they have any, and if not, then on the person under whose care or charge they may be found; in case of *femes covert*, on the husband as well as the *feme covert*; but notices to non-residents of the county or counties where said dam, or a part of it, is to be located, shall be published in some newspaper printed and published in the county aforesaid, or if there is none, then in a newspaper printed and published at the capital of the state, for three weeks in succession previous to the meeting of said commissioners.

SEC. 7. *Commissioners to examine premises and assess damages.*—The commissioners shall meet at the time and place specified in the notice, and proceed to examine the point at which said dam is proposed to be erected, and the lands and real estate above and below which will probably be injured by the erection of said dam; shall hear the allegations and testimony of all parties interested, and shall proceed to make a separate assessment of damages which will result to any person by the erection of said mill-dam and its maintenance for ever.

SEC. 8. *File their report.*—Within thirty days after completing their examination, the commissioners shall file the petition, their appointments, jurats, and a report of their doings, in the office of the clerk of said court, and shall give notice of the filing of said report as of their meeting.

SEC. 9 (AS AMENDED BY ACT OF FEBRUARY 19, 1868). *Payment of damages.*—Upon the filing of said report, the petitioners may make payment of the damages assessed to parties entitled to the same, in the manner following: first, to parties laboring under no disability; second, to guardians of infants, husbands, or trustees

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of *femes covert*; third, to guardians of insane persons; and fourth, to the clerk of the court in which the assessment is filed in the office of the clerk aforesaid, shall estop the claimant from making all further claim or proceeding in the premises. Payment shall be made to the state, but not in the county or counties where said dam is situated, as well as to the infants who have no guardian, and insane persons, guardians, and payments to parties residing out of the state, whose names are unknown, and to persons who refuse to receive the money so tendered, shall be made by depositing the money with the treasurer aforesaid, who shall pay out the same upon the order of the court. The treasurer shall take receipts for all payments, and file the same with the order, in the office of the clerk of the court aforesaid, and such deposit shall have the same effect as if the money mentioned receipts, unless an appeal is taken by the party entitled thereto: that the petitioner may, after the filing of the report of the commissioners, tender to any landowner, whose land is claimed to be flowed or injured by such dam, a sum not less than the amount found by the commissioners, and if such landowner shall refuse to receive the same, and upon appeal fails to recover a greater sum than the amount so tendered him, he shall be adjudged to pay all costs arising upon any such appeal subsequent to said tender.

S. L. 1868, 90.

SEC. 10. *Appeals, how taken.*—Appeals from the assessment made by the commissioners may be taken and prosecuted in the court aforesaid, by any party interested (the petitioner excepted), not under legal disability, by husbands or trustees of *femes covert*, guardians of infants, guardians of insane persons; and in cases where infants or insane persons have no guardians, appeals may be taken by the friend of such parties, and a written notice of such appeal shall be served upon the appellee as a summons in ordinary civil actions: *provided*, that no appeal shall be taken after the expiration of thirty days from the time of the notification of the filing of the report aforesaid.

SEC. 11. *Appeal not to hinder erection of dam, when.*—The erection of said dam shall not be hindered, delayed, or prevented by the prosecution of any appeal: *provided*, the petitioner executes and files with the clerk of the court in which the appeal is pending a bond to be approved by said clerk with sureties, conditioned that the person executing the same shall pay whatever amount may be required by the judgment of the court, and abide any rule or order of the court in relation to the matter in controversy.

SEC. 12. *Bond on appeal.*—The appellant shall file with the clerk aforesaid a bond with security (to be approved by said clerk) in double the amount of the assessment appealed from, payable to the state of Minnesota, for the use of all persons interested, in which bond the proceeding appealed from shall be recited, with condition for the due and speedy prosecution of the appeal, and that he or they will satisfy the judgment that may be rendered in the premises, and pay the costs of the appeal, if adjudged to do so by the court in reference to the matter in controversy.

SEC. 13. *Trial on appeal, how conducted.*—Appeals bring before the court the propriety of the amount of damages reported by the commissioners in respect to the parties to the appeal, and unless the parties otherwise agree, the matter shall be submitted to and tried by a jury as other appeal cases, and the court or jury, as the

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damages aforesaid, making the verdict conform to the case.

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Damages not allowed.—No exemplary or vindictive damages by commissioners, court, or jury.

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Verdict, how enforced—effect of.—Upon verdicts rendered by juries by the court, judgment shall be entered, declaring that upon damages assessed by the court or jury, as the case may be, and costs, the right to erect and maintain the mill-dam aforesaid, according to the amount, as against the parties interested in such verdict or assessment, be retained in the petitioner, his heirs, and assigns for ever, subject to be lost as hereinafter provided, and payments of such judgments may be made as payments on assessments by the commissioners as hereinbefore provided.

SEC. 16. *Water-power previously improved not to be injured.*—No mill-dam shall be erected or maintained under the provisions of this title (chapter), to the injury of any water-power previously improved.

Le Croix v. Halett, 10 Minn. 30; *Miller v. Troost*, 14 Minn. 365. *Vide* 14 Wis. 473; 17 Wis. 1, 306; also 10 Barb. 518.

SEC. 17. *Limitation of time for action for damages.*—No action for damages occasioned by the erection and maintenance of a mill-dam, shall be sustained unless such action is brought within two years after the erection of said dam: *provided*, that such limitation shall not run against or apply to persons living on and holding government land under the pre-emption laws, until a patent for the land damaged or overflowed is issued.

Thornton v. Farmer, 11 Minn. 336; *Cook v. Kendall*, 13 Minn. 324.

SEC. 18. *Right to raise a dam heretofore erected.*—Any person may obtain a right to maintain or raise a dam heretofore erected upon his own land across any water course not navigable, by complying with the provisions of this title (chapter), adapting his petition to the nature of the case.

SEC. 19. *Suits for damages.*—Upon evidence of the commencement of proceedings as provided in the second and eighteenth sections of this title (chapter), the court, before which any action for damages occasioned by such mill-dam shall be instituted after the commencement aforesaid, has power to suspend any such action until the result of said proceedings is known.

SEC. 20. *Costs.*—The costs of all proceedings under this title (chapter), except such as arise or grow out of appeals, shall be paid by the petitioner, and costs of appeal shall be paid as the court directs.

SEC. 21. *Lawful to enter upon land.*—For the purpose of making surveys and examinations relating to any proceedings under the provisions of this title (chapter), it shall be lawful to enter upon any land, doing no unnecessary injury.

SEC. 22. *Duties of petitioner upon obtaining right to erect dam.*—Any person having obtained right to erect and maintain, or to maintain or raise any dam under the provisions of this title (chapter), who shall not within one year thereafter begin to build (if he has not previously built) said dam and finish the same, and apply the water power thereby created to the purposes stated in his petition, within three years; or in case the said dam and mills connected therewith are destroyed, shall not begin to rebuild in one year after such destruction, and finish in three years, or

having erected such mills fails to keep them in operation, shall forfeit all rights acquired by virtue of (chapter), unless at the time of such destruction the owner is disabled in law, in which case the same time shall be of such disability.

Vide also *Eastman v. St Anthony Falls Water Power Co.*, 12 Minn. 13 Minn. 498; *Finch v. Green*, 16 Minn. 355.

TITLE II.

OF THE ERECTION OF MILL-DAMS NEAR HIGHWAY.

(*This Title is the Act of March 5, 1868. S. L. 1868, 91.*)

SEC. 23 (1). *Right to run raceway across public highway, obtained how.*—When any person is desirous of erecting and maintaining a mill-dam upon his own land across any watercourse not navigable, or digging a raceway across any highway, and deems it necessary to raise the water by means of such dam so as to overflow any highway or otherwise obstruct, impair, or render less commodious for the public travel, any highway, he may obtain the right from the township supervisors, or common council of any city in which said highway is situated to erect and maintain said dam or dig said raceway across any highway in the manner and upon the terms hereinafter provided.

SEC. 24 (2). *Petition to be presented to supervisors, etc.*—He shall present to the supervisors of the township, or the common council of any city in which said highway is to be so affected from the raising of such dam or digging such raceway, a petition by him signed, setting forth the place as near as may be where said dam is to be erected or said raceway is to be dug, also the height the dam will be raised, and the width the raceway will be dug, the purpose to which the water-power will be applied, and such other facts as are necessary to show fully the object of the said petition.

SEC. 25 (3). *Notice to be posted—what to contain.*—The supervisors of any township or common council of any city on receiving such petition, shall post or cause to be posted in three of the most public places in the township or city, notices in writing setting forth the time and place they will meet to make a personal examination of the highway to be affected by the erection of said dam or digging said raceway, also the name of the petitioner and the object and prayer of said petitioner, which notice shall be posted at least ten days before the time of meeting for such examination.

SEC. 26 (4). *Power to subpoena witnesses, etc.*—The supervisors or common council, as the case may be, shall meet at the time and place specified in the notice, and proceed to examine the point at which said dam is proposed to be erected or raceway dug, and the highway to be affected by the raising of said dam or digging said raceway, and shall have power to subpoena witnesses and take testimony touching the subject of their examination.

SEC. 27 (5). *When to make report.*—The supervisors or common council of any city shall, within thirty days after completing their examination, make a report in writing, granting or refusing the prayer of the petitioner. If the supervisors or

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may be, grant the prayer of the petitioner in whole or explicitly set out in their report the terms and conditions is granted to said petitioner, which said report, together duly recorded in the township records [or the records of the township [or city] clerk.

Petitioner to have right to erect, etc., dam, when.—Whenever such or assigns, shall fully comply with all the terms and conditions the supervisors, or common council, as the case may be, he shall erect and maintain such dam or dig such raceway, and use the as he might have done before the laying out of said highway.

Sec. (7). Of rights prior to passage of act.—Any person having already such a dam or dug such a raceway as above provided for, shall have the to avail himself of the provisions of this act within one year by complying with the same as above provided.

Sec. 30 (8). Petitioner to pay all costs.—The petitioner shall pay all costs and expenses of the proceedings and examination had by virtue of this act, at his request, whether the prayer of his petition be granted or otherwise.