

# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA

36

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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istration; also to receive, examine, and report upon all bills for expenses or services that are payable from said appropriation, and at the end of each fiscal year to make a detailed report of all farmers' institutes held under his direction as such superintendent, to said board of administration. (*Id.* § 3.)

**\*§ 35. Superintendent's salary—Payment of expenses.**

That the expense of such institutes, together with the salary of said superintendent, which is hereby fixed at one thousand five hundred dollars per year, and the necessary expenses of his superintendence, shall be paid out of said institute fund, by the state treasurer, upon warrants issued by the state auditor, which warrants shall only be drawn upon the presentation and filing of an itemized statement of expenditures, the accounts of which must be sworn to by the parties claiming compensation, and approved by the said superintendent and by the officers of said board of regents. (*Id.* § 4)

**\*§ 36. Sessions.**

That in the appointment of such farmers' institutes they shall be held, so far as possible, at times and in places that shall be most convenient to the farmers of the state; that they shall continue for not less than one nor more than three days each, with morning, afternoon, and, where practicable, evening, sessions; and that they shall be free to the public; also, that they shall consist of practical lectures upon topics pertaining to the farm and home, with essays, addresses, discussions, and illustrations of such methods and practices as possess true merit and are adapted to the conditions of our agriculture; the sole object and purpose of these institutes being to disseminate practical knowledge upon questions pertaining to agriculture, horticulture, stock, and dairy farming, with the least expense or inconvenience to the people of the state. (*Id.* § 5.)

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## CHAPTER 38.

### PUBLIC LANDS.

#### TITLE 1.

##### SCHOOL LANDS.

**§ 2. Land commissioner—Powers and duties—Performance by deputy-auditor.**

The state auditor shall be *ex officio* commissioner of the land-office. He shall have the general charge and supervision of all lands belonging to the state, of all lands in which the state has an interest, or which are held in trust by the state, and may superintend, lease, sell, and dispose of the same in such manner as shall be directed by law. In the absence or inability of the auditor, the deputy state auditor shall perform the several duties required of the auditor in his capacity as land commissioner. (*As amended* 1885, c. 102, § 1.)

The state auditor is here "charged *eo nomine* with the duties pertaining to the land-office. He cannot be commissioner without being auditor, nor auditor without being commissioner. While auditor, he cannot avoid the charge and supervision of the lands. The duty of that charge and supervision is cast upon his department. The fact that the statute designates him commissioner of the land-office, and that, in transacting the business of the office, he may, though we do not think it essential that he should, so designate himself, does not affect this, nor make the commissioner of the land-office an independent officer." *State v. Whitcomb*, 28 Minn. 50, 8 N. W. Rep. 902.

See *State v. Galusha*, 26 Minn. 238, 2 N. W. Rep. 939, 3 N. W. Rep. 350.

**§ 5. Custody of maps, etc.—Books and records—Seal—Certificates as evidence—Clerk.**

The commissioner of the land-office shall have the custody of all maps, books, and papers relating to any of the public lands mentioned in this title. He shall cause books to be opened, and records kept of all lands owned or held in trust by the state for schools, public buildings, internal improvements, and for all other purposes, and shall keep a true record of all patents, deeds, and conveyances of such lands made by the state; which record, or a transcript therefrom, and all township plats on file in his office, or transcripts of such plats, properly authenticated, shall be received as legal evidence in all courts and places within the state. He shall also certify, upon each instrument recorded by him, the book and page where the same is recorded. He shall have an official seal, with a proper device thereon; and the seal of the land-office affixed to any certificate of purchase, receipt, or other instrument issued by the commissioner of the land-office, according to the provisions of this title, is *prima facie* evidence of the due execution of such certificate or other paper; and he shall have authority to appoint a clerk, whose salary shall be fixed by law. (*As amended* 1877, c. 56, § 1; 1885, c. 97.)

**\*§ 5a. Assistant land clerk.**

That the commissioner of the state land-office is authorized to employ an assistant land clerk, at a salary of twelve hundred dollars per annum. (1883, c. 146, § 2.)

**§ 6. School lands—Minimum price—Sales—Pine lands.**

The minimum price of the school lands shall be five dollars per acre, and all sales of such lands 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 estimated, appraised, and sold according to the provisions of this act; and when said pine timber has been sold and removed, the land may be appraised and sold in the same manner and on the same terms as other lands are appraised and sold under the provisions of this chapter. (*As amended* 1877, c. 56, § 2; 1885, c. 102, § 2.)

**§ 7. Terms of payment.**

The terms of payment of all state lands shall be for lands other than pine lands, which are chiefly valuable for the timber thereon, the value of such timber to be paid at the time of sale; and for all other lands fifteen per cent. of the purchase price thereof, to be paid at the time of sale; and the balance of the purchase money of all lands (at any time thereafter, from time to time) within thirty years, at the option of the purchaser, with interest annually, in advance, at the rate of five per cent. per annum on the unpaid balance, payable on the first day of June, or six days thereafter, in each and every year. (*As amended* 1877, c. 56, § 3; 1885, c. 195.)

See *McKinney v. Bode*, 32 Minn. 228, 20 N. W. Rep. 94; *post*, § 9.

**§ 8. Certificate to purchaser—Default in payment—Extension of time—Resale—Withdrawal.**

At the time of the sale of any such lands, the commissioner shall make out and deliver to the purchaser thereof a certificate, in which the said commissioner shall certify the description of the lands sold, the quality thereof, and the price per acre, the consideration paid and to be paid therefor, and the time and terms of payment. Such certificate shall be numbered and made assignable, but no certificate shall be delivered to the purchaser by the commissioner until the sum of money required by this title to be paid at the time of the sale is paid to the treasurer of the county where said sale takes place; and in case the purchaser fails to pay the amount so required to be paid at the

time of said sale, said commissioner may again immediately offer said land for sale; but no bid shall be received from the person so failing to pay as aforesaid: *provided*, that any holder of one or more certificates mentioned in this section heretofore issued on sales heretofore made, who shall have paid all interest due thereon before the presentation thereof as herein provided, may return to the state land commissioner such certificate or certificates, accompanied by an agreement, duly signed and acknowledged by him, in such form as the state land commissioner may prescribe and provide, conditioned that the balance of the purchase price of the land described therein shall not be payable before the expiration of fifteen years from the date of such agreement, and that during all of said time he will pay five per cent. interest per annum, in advance, on the balance of said purchase price; whereupon the state land commissioner shall indorse on said certificate that the time of payment is so extended, and the rate of interest changed from seven to five per cent. per annum, in consideration of such extension of time, and shall return said certificate so indorsed to said holder; and thereupon said holder of said certificate shall only pay interest at the rate of five per cent. per annum in lieu of seven per cent. per annum, from the first day of June next thereafter; *and provided, further*, that in case any holder of a certificate mentioned in this section desires for any reason to pay for said land at any time within fifteen years from the time of sale, or from the time of the change of the terms of the certificate herein provided for, he shall make application to the state land commissioner for leave to make such payment, and such application shall thereupon be granted: *provided*, the said holder of said certificate pay into the state treasury over and above the principal of said purchase money and the interest accrued on said lands, and to accrue thereon during such year, two per cent. interest per annum on the purchase price of said land, during all the time in which said holder or purchaser has paid five per cent. interest on said purchase price. The commissioner may, in his discretion, on or before the day of sale, withdraw any lands that may have been advertised for sale or included in any list to be offered in any county. (*As amended 1885, c. 201,\* approved March 7, and c. 102, § 3, approved March 9.*)

### § 9. Default in paying interest—Forfeiture.

An attack on the title of a purchaser of school land, upon the ground that the "certificate of purchase" issued to him by the commissioner of the state land-office has become void through failure to pay interest on an "unpaid balance" of the purchase money, is not sustained by the fact that such interest has been paid by persons other than the purchaser, whether "claiming under" him, in the meaning of the statute, or not, so long as it appears that the state has received the money (paid by them) on plaintiff's certificate, as interest, and has failed to assert any forfeiture of such certificate. *McKinney v. Bode*, 32 Minn. 228, 20 N. W. Rep. 94.

### § 12. (Sec. 11.) Certificate—Patents.

The patent cannot be avoided for irregularities on the part of the officers whose business it is to issue patents in such cases, though it may be defeated by want of title in the state or want of power in the officers. Except in such cases, the patent, when regular on its face, that is, when in proper form, and signed by the proper officers, and with the proper seal, is conclusive evidence of the legal title. *McKinney v. Bode*, 33 Minn. 450, 23 N. W. Rep. 851.

### \*§ 12a. School lands in St. Louis county—Patents—When issued.

Whenever the amount of five dollars per acre for all the school lands sold by the state in section sixteen, township fifty, range fourteen west, in the county of St. Louis, shall have been paid into the state treasury by the holders of the certificates thereof, it shall be the duty of the commissioner of the

\*See preamble to amendment by c. 201.

state land-office to certify the same to the governor of the state, who shall thereupon sign and cause to be issued, in accordance with law, patents of the lands to the holders of said certificates, the same as if the price for which said lands were originally sold for had been fully paid. (1879, c. 105.)

**§ 13. (Sec. 12.) Title to fee before patent issued**

The purchaser becomes the equitable owner, even before full payment. *Wilder v. Haughey*, 21 Minn. 106.

**§ 18. (Sec. 17.) Certificate—Effect.**

See note to § 9, *supra*.

**§ 19. Delinquent purchasers—Redemption.**

In all cases where the rights of a purchaser have become forfeited under the provisions of this chapter, by failing to pay the amount due upon his certificate of purchase, if such purchaser, his heirs or assigns, shall, before the resale at public auction of the lands described in such certificate, pay to the state treasurer the amount of interest then due and payable on such certificate, and all costs which have been incurred in addition thereto, together with interest at the rate of twelve per cent. per annum on the interest and costs so due from date of delinquency to date of payment, such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and said certificate, from the time of such payment, shall be in full force and effect as if no such forfeiture had occurred. (*As amended* 1877, c. 56, § 5; 1885, c. 64.)

**§ 35. (Sec. 38.) Payments to county treasurer—Receipts.**

See *commissioners of Redwood County v. Tower*, 23 Minn. 45, 8 N. W. Rep. 907.

**§ 36. (Sec. 39.) Bond of county treasurer.**

Before any county treasurer receives any moneys under the preceding section, he shall execute and give to the state a bond, with sufficient sureties, in an amount to be fixed by the commissioner of the state land-office, not less than double the sum liable to come into his hands by virtue of this title; which bond shall be conditioned for the honest and faithful discharge of all trusts and responsibilities imposed by this chapter, and for the faithful payment of and accounting for all moneys received by him, under the provisions of this title, to the state treasurer or other person entitled to receive the same; the sureties to be approved by the judge of probate and register of deeds, and to justify in double the amount of the bond. County treasurers giving such bonds shall be entitled to a fee of one-half of one per cent. on each dollar collected or received by them in payment of principal or interest on state lands, which fee shall be payable from the interest fund of the class of lands on which payment is made to said treasurers, and said fee shall not be payable to the county under any provision requiring county treasurers to pay fees received into the treasuries of their respective counties, and the necessary sums for the payment of such fees are hereby annually appropriated from the several interest funds. (*As amended* 1877, c. 56, § 7; 1885, c. 102, § 4.)

The sureties on a general bond of a county treasurer are not liable for deficiencies, or failure to pay over money collected on university or school lands. For such matters the sureties on his special bond, given under this section, are the ones liable. *State v. Young*, 23 Minn. 551, followed. *Commissioners of Redwood County v. Tower*, 23 Minn. 45, 8 N. W. Rep. 907.

See note to c. 8, § 145, *supra*.

On the trial of an indictment against defendant for an embezzlement of state moneys received by him as a county treasurer, under the provisions of this chapter, proof of the execution of the bond required by this section is not essential to maintain the charge. *State v. Mims*, 26 Minn. 183, 2 N. W. Rep. 683.

§ 37. (Sec. 41.) County auditor to return duplicate receipts to state auditor.

See State v. Mims, 26 Minn. 183, 2 N. W. Rep. 683.

§ 44. (Sec. 51.) Proceeds of land sales—Investment.

All moneys received from the sale of any of the lands mentioned in this title, or interest accruing from such sale, shall be paid into the state treasury, and the purchase money so received may be invested in Minnesota bonds (railroad bonds always excepted) or in United States bonds bearing not less than four per cent. interest, or in the bonds of either of the following states, viz., New York, Pennsylvania, Ohio, Illinois, Michigan, Wisconsin, Iowa, Missouri, Alabama, Georgia, and Tennessee, bearing not less than three per cent. interest: *provided, however, that no investment of such funds shall ever be made in bonds which may have been issued to aid in the construction of any railroad; and the governor, treasurer, state auditor, president of the board of regents of the state university, and the chief justice of the state, are hereby constituted a board of commissioners, whose duty it shall be to invest said funds; and whenever there shall have accumulated in the treasury funds belonging to said permanent school fund, or the permanent university fund, or both, to the amount of ten thousand dollars, it shall be the duty of said board of commissioners to immediately invest the same according to the provisions of this section. And the state auditor shall be secretary of said board of commissioners. He shall keep a record of all the proceedings of said board, and shall cause the same to be published with his annual report. It shall be the duty of the state treasurer to place to the credit of the respective funds, when received, the interest accruing on said bonds, and pay over the same as directed by law. The bonds purchased in accordance with this section shall not be transferable, except upon the order of the governor; and on such bonds shall be written, "Minnesota School-Fund Bonds," or "Bonds of the University of Minnesota," as the case may require, "transferable only upon the order of the governor and state auditor." The state auditor shall keep a record of such bonds, stating the name of stock, when issued, when redeemable, rate of interest, when and where payable, number and amount of bond, by whom executed, when purchased, when withdrawn, and for what purpose; and he shall credit the state treasurer for such bonds when purchased, and charge the same to the proper fund. (As amended 1873, c. 33, § 1; 1885, c. 102, § 5.)*

[Section forty-four is further amended "by inserting after the word 'auditor,' in the twenty-eighth line of said section, the words 'and state treasurer.'" (1885, c. 102, § 5.) The word "auditor" occurs in the twenty-seventh line, but not in the twenty-eighth.]

\*§ 45. Appropriations for investment.

There is hereby annually appropriated all moneys received into the state treasury to the credit of the permanent school fund, permanent university fund, internal improvement land fund, sinking fund, inebriate asylum fund, or other funds required to be invested in securities, to be invested in interest-bearing bonds of the United State, or of the state of Minnesota issued since the year eighteen hundred and sixty, or of the bonds, bearing not less than six per cent. interest, of the states of Massachusetts, New York, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri, Iowa, Alabama, Georgia, and Tennessee. (1875, c. 105, § 1, as amended 1885, c. 102, § 6.)

§ 47. (Sec. 52.) Sale of timber on pine lands—Regulations.

The commissioner may sell the timber on the pine lands in this state, including tamarack and pine suitable for railroad ties, and cedar suitable for

posts or telegraph poles, when the same is liable to waste, as provided in this section, and not otherwise. No such timber shall be sold or disposed of unless the same is liable to waste; and when lands have been cut over according to regular permits, or the timber upon any land may be subject to waste, destruction, or damage, by windfall, fire, or otherwise, he may grant permits to clear such lands, upon full payments of the amount for which the same may be sold. Before any permit shall be granted, the timber shall be estimated and appraised by the land commissioner, which estimate and appraisal shall show the amount and the value per thousand feet of all timber measuring not less than eight inches in diameter, twenty-four feet from the ground, and of other timber below this standard, on each tract or lot, with a statement of the situation of the timber relative to risk from fire or damage of any kind, and its distance from the nearest lake, stream, or [and] railroad. (*As amended 1877, c. 56, § 11; 1883, c. 6, § 1; 1885, c. 102, § 7.*)

**\*§ 48. Cutting timber—Permits—Regulations.**

No permit for such cutting shall be granted to any person by the said commissioner, except upon sale of timber to the highest bidder, at public auction, held at his office at the state capitol, notice of which shall be given at least sixty days prior to [the] date of the same in one or more daily papers published in Saint Paul; and the minimum price of all timber at such sale shall be the appraised value of the same as fixed by the provisions of this chapter, and approved by the commissioner. Every person purchasing timber at such sale, before the execution of a permit for the same, shall execute a bond to the state of Minnesota for the payment of double the amount of the estimated value of the timber included in the permit, with sufficient surety, to be approved by the commissioner, conditioned upon the payment to the state treasurer of the amount that may be found due, under the terms of such permit, and according to the provisions of law: *provided*, that if for any reason any person or persons bid more than the estimated price per thousand feet of said timber, he shall, before having his bid accepted, deposit with the commissioner a certified check, payable to the order of the state treasurer, for one hundred dollars, as a guaranty that he will execute the necessary bonds and permits to complete the purchase under his bid; and in case he does not comply with the law, and execute such bonds and permits within thirty days after said bid, then said certified check shall be delivered to the state treasurer, and be by him placed to the credit of the proper permanent fund. If the person depositing such check shall complete the purchase within the specified time of thirty days, then he shall be entitled to have such check returned to him. If any person or persons bid at said sale, and purchase timber at the estimated price, and fails to execute within thirty days the necessary bonds and permits to entitle them to cut the timber on the land bid for, then said sale shall be canceled by the commissioner: *and provided, further*, that whenever any person or persons shall cut, or cause to be cut, any log or logs upon any of the lands belonging to this state, such person or persons shall at the time any such log is cut, in addition to all other marks necessary to designate such log as the property of such person or persons, distinctly mark, or cause to be distinctly marked, upon each and every log the letters "M. I. N.," which mark shall be taken, deemed, and considered full and complete notice to all persons that the state has or may have the absolute ownership of such log or logs, or has or may have a lien thereto: *provided, however*, that where any person or persons shall have heretofore or shall hereafter purchase the right to clear any of the lands belonging to this state, and shall have paid for the same, such person or persons shall not be required to comply with the provisions of this section so far as the same relates to marking the logs cut from such lands: *and provided, further*, that any person or persons who shall cut, or cause to be cut, upon any lands belonging to this state, any log or logs, and who shall

fail or neglect to mark, or cause to be marked, any such log or logs, as provided in this section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (1877, c. 56, § 12, *as amended* 1885, c. 102, § 8.)

**\*§ 50. Surveyors of logs and lumber—Duties—Reports.**

The provisions of chapter thirty-two of the General Statutes shall apply to all timber or logs cut upon state lands; and the several surveyors of logs and lumber shall scale all logs so cut, and make a detailed report of the same to the commissioner of the state land-office on or before the first day of May in each year, showing the name of the party cutting, the description of the land cut upon, the number of logs cut, and the mark thereon, the total number of feet, and the value thereof per thousand, as shown by the records of his office, stating whether such cutting has been according to the terms of the permit, and, if not properly cut, the consequent damage to the state; and such timber or logs shall not be sold, transferred, or manufactured into lumber until the amount due the state, according to the report of said surveyor, shall have been paid in full; and it shall be the duty of the surveyors of logs and lumber to report to the commissioner all trespass which has been, or which may hereafter be, made upon the state pine lands, and all the logs cut by such trespass shall be disposed of as hereinafter provided. (1877, c. 56, § 14, *as amended* 1885, c. 102, § 9.)

**\*§ 53. Trespass—Seizure of property.**

As to the state auditor's power to settle with trespassers for stumpage, see *State v. Galusha*, 26 Minn. 238, 2 N. W. Rep. 939, 3 N. W. Rep. 350.

**\*§ 54a. Timber lands—Investigation—Duty of commissioner.**

It shall be the duty of the commissioner of the state land-office to make diligent and thorough inquiry and examination into the extent, character, and value of the timbered lands belonging to the state of Minnesota, and chiefly valuable for the pine timber thereon, belonging to the state of Minnesota, whether designated or set apart as school lands or for other purposes. (1885, c. 269, § 1.\*)

**\*§ 54b. Same—Protection, sale, etc.**

He shall take such measures as will protect the said timber from damage or loss by fire, trespass, or otherwise, and make such regulations for the care, control, sale, and disposition of the timber lands of the state, or the timber thereon, as will best protect the interests of the state. (*Id.* § 2.)

**\*§ 54c. Same—Employees.**

In the prosecution of such measures the commissioner shall have power to employ persons necessary to make the examinations and estimates of timber on all lands held by the state, and to carry out the provisions of this act. (*Id.* § 3.)

**\*§ 54d. Timber lands—Sale—Appraisal.**

Before any pine timber is sold from any of the lands of the state, the commissioner shall submit the appraisals and estimates of said timber, and statements regarding liabilities to loss or damage to said timber, to the governor, treasurer, and commissioner; and if a majority of them shall state that it is for the interest of the state that such timber shall be sold, and such state-

\*"An act to provide for the care and disposition of the timbered lands and the timber thereon belonging to the state." Approved March 7, 1885.

ment shall be indorsed on the estimate of said timber, and signed by said officers officially, the commissioner may then advertise and sell the timber on said lands so authorized to be sold, in the manner provided by law: *provided*, that no pine timber on any state lands is to be sold under any conditions unless the officers herein named shall state that such sale is necessary to protect the state from loss. (1885, c. 269, § 4.)

## TITLE 2.

## AGRICULTURAL COLLEGE LANDS.

## § 55. (Sec. 53.) Appraisal—Sale.

All lands donated to the state of Minnesota for the purpose of providing colleges for the benefit of agriculture and the mechanic arts, under the act of congress approved July second, eighteen hundred and sixty-two, "An act donating lands to the several states and territories, which may provide colleges for the benefit of agriculture and the mechanic arts," shall be appraised and sold, and the moneys arising therefrom shall be invested, in the same manner as is provided by law for the appraisal and sale and investing the moneys of school lands, under the provisions of the foregoing title, except that there shall be written on the bonds, "bonds of the agricultural college of Minnesota, transferable only upon the order of the governor:" *provided*, that no such lands shall be sold for a less sum than five dollars per acre, nor for less than the appraised value thereof: *provided*, that all the provisions of law relating to the taxation of school lands, and the rights of purchasers at any forfeited tax sale of such lands, as contained in section twenty-one of title one of this act, shall apply to all sales of lands made under the provisions of this title. (*As amended* 1881, *Ex Sess.* c. 12, § 1.)

## § 56. (Sec. 54.) Proceeds of sales—Investment—Appropriation of interest.

All moneys derived from the sale of the lands aforesaid shall be invested in stocks of the United States, or of this state, yielding not less than four and one-half per centum upon the par value of said stock; and the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, and the interest of which shall be inviolably appropriated to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as may hereafter be prescribed, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. (*As amended* 1883, c. 15, § 1.)

[See *ante*, §§ 44, 45; see, also, c. 37, § 7.]

## \*§ 56a. Purchase of bonds legalized.

The purchase of four and one-half per cent. bonds heretofore made with the proceeds of sales of agricultural college lands is hereby legalized. (1883, c. 15, § 2.)

## ISLANDS.

## \*§ 77a. Islands—Sale.

That the state auditor of this state is authorized to cause to be surveyed and platted any island belonging to this state, in any river or lake, or within any of the waters of this state; and after such lands shall have been surveyed and platted, the state auditor shall be authorized to sell the same at such times and in such parcels as to him shall seem best for the interests of the

state: *provided*, that no such sale shall be made without public notice thereof first having been given of the time and place thereof, as in case of sales of other public lands belonging to the state. (1883, c. 98, § 1.)

CONDEMNATION OF LAND FOR UNITED STATES.

**\*§ 98a. Improvement of waters—Condemning private property.**

In case it shall be found necessary or proper to overflow, occupy, or take the lands of any person in the prosecution or maintenance by the United States government of any works of public improvement on any of the rivers, lakes, or harbors of this state, the United States are hereby authorized and empowered to take, overflow, use, or occupy any lands necessary, requisite, or proper for the carrying on the public works of improvement on said rivers, lakes, or harbors within this state, in the same manner and with like effect as is now provided by title one, chapter thirty-four, General Statutes A. D. one thousand eight hundred and seventy eight, relating to the taking of private property for public uses by corporations; and all the provisions of law in said title, so far as the same may be applicable, shall apply in relation to such overflow, use, occupation, or taking, and the assessment of damages therefor, as if the United States were a corporation duly organized under said title. (1881, *Ex. Sess.* c. 67, § 1.)

CONSENT TO PURCHASE LAND BY UNITED STATES.

[Consent to purchase certain land in St. Paul for the purpose of erecting a building to be used as a depot for army supplies is given, and jurisdiction over same is ceded, to the United States from date of purchase. The state reserves concurrent jurisdiction over the same for the execution of state laws. (1883, c. 94.)

JURISDICTION CEDED TO UNITED STATES.

**\*§ 103a. Fish-hatchery—Ceding lands for.**

That jurisdiction is hereby ceded to the United States over so much land as may be appurtenant and necessary to the construction of a fish-hatchery by the United States, and the maintenance thereof, at the mouth of Lester river, near Duluth, in the state of Minnesota, not to exceed ten acres, five acres of which have been heretofore donated to the United States for said purpose. (1887, c. 162, § 1.)

**\*§ 103b. Same—Map.**

The secretary of state shall, within one month after the title to said land is vested in the United States, cause a map of the same to be made showing definitely the boundaries thereof, and shall file the same in his office, and make a proper record thereof. (*Id.* § 2.)

**\*§ 103c. Same—Reservation.**

From the cession of jurisdiction to the United States, hereby granted, the following reservation is hereby made, to-wit: The state of Minnesota shall have, and hereby does reserve and retain, a concurrent jurisdiction with the United States in and over the territory aforesaid, so far as may be necessary for said state and its officers to serve any process or papers, civil or criminal, that may be lawfully issued under the authority of said state, or of any of the departments of the government thereof, and to arrest on said territory and punish any person or persons charged with crime against the laws of said state whether committed within or without the boundaries of said territory,

in the same manner and to the same extent as though said cession of jurisdiction had not been made. (1887, c. 162, § 3.)

**\*§ 103d. Mississippi improvement—Overflow—Release of damages.**

That whereas, it is proposed by the United States to improve the navigation of the Mississippi river by the construction of dams and the creation of reservoirs upon the head-waters of said river and its tributaries, causing possible overflow and damage to the lands bordering upon such reservoirs, therefore, in consideration of such improvements, there is hereby ceded to the United States the right to overflow, so far as necessary in the construction of any such dams and reservoirs, any and all lands owned or held by the state, and that all right or claim of the state for damages occasioned by any such overflow, whether against the United States or any agent or employe thereof, be, and the same is hereby, fully released and satisfied. (1881, *Ex. Sess.* c. 60, § 1.)

RELINQUISHMENTS TO UNITED STATES.\*

**\*§ 105. Swamp lands—Relinquishment.**

That the governor of the state of Minnesota is hereby authorized and required to relinquish all the right, title, and interest of said state in and to all lands claimed by said state as swamp lands, now occupied or held by actual settlers, their heirs or assigns, or timber-culture claimants who hold the same by virtue of homestead or timber-culture entry, according to the laws of the United States relating thereto, whether patented to the said claimant or not: *provided*, that this section shall cover and apply to all such claims that have been filed on prior to January first, one thousand eight hundred and seventy-nine, and that may have been canceled by reason of the state having claimed the same as swamp lands. (1879, c. 84, § 1.†)

**\*§ 106. Same—List—Deed.**

It shall be the duty of the governor to procure from the commissioner of the general land-office a list of the lands described in section one of this act, with the names of the parties claiming them, and thereupon to execute to the United States a deed of relinquishment of the same; and the governor shall forward a copy of this act to each of our members in congress, and they are hereby requested to endeavor to secure indemnity in lands for the lands thus lost to the state. (*Id.* § 2.)

**\*§ 107. Same—Grantee of state—Indemnity.**

If any grantee of the state to which the lands mentioned in this act would have inured, except for this act and said homestead or timber-culture filing, shall relinquish to the state of Minnesota all its right, title, and interest in and to the said lands to which it is entitled as aforesaid, then said grantee so relinquishing said lands shall have the right to and may select any lands granted by the congress of the United States, to indemnify the state of Minnesota for lands relinquished under the provisions of this act by said state;

\*As to the duty of the attorney general to provide for the defense of actions by railroad companies concerning indemnity lands embraced in § 10, c. 201, Sp. Laws 1877, authorizing their relinquishment to the United States, and as to the appropriation for the reimbursement of settlers for the expense of defending such actions, and the manner of obtaining the benefit of it, see Gen. Laws 1885, c. 176; 1887, c. 203.

†The act is entitled "An act for the relief of homestead settlers and timber-culture claimants on lands now claimed by the state as swamp lands." The preamble recites that "whereas, certain settlers in this state have been allowed to take homesteads and timber-culture filings at the local land-offices of the United States on lands now claimed by the state as swamp lands; and whereas, said settlers have in good faith fulfilled all the requirements of the homestead and timber-culture laws, and in many cases have made final proof, and have sold and conveyed said lands by warranty deed: therefore, be it enacted," etc.

and the governor shall convey to said grantee the lands so granted and selected (when certified to the state by the general government) in the same manner, and upon the same terms and conditions, as if they were a part of the lands originally inuring to said grantee. (*Id.* § 3.)

**\*§ 108. Swamp lands—Relinquishment.**

That the governor of the state of Minnesota is hereby authorized and empowered to relinquish to the United States all the right, title, and interest of said state in and to all lands claimed by the said state as swamp lands now occupied or held by actual settlers, their heirs or assigns, or claimants who hold the same by virtue of homestead, pre-emption, or timber-culture entry, according to the laws of the United States relating thereto, whether patented to the said claimants or not, or that may have been, or may be hereafter, canceled by reason of the state having claimed the same as swamp lands. (1881, c. 154, § 1.)\*

**\*§ 109. Other lands—Relinquishment.**

If, in the adjustment of the state swamp-land grant, and other grants of land made by the United States to the state of Minnesota, it shall appear that the United States has reserved, sold, or otherwise disposed of any tract or tracts claimed by or inuring to the state under either of said grants, then it shall be lawful for, and the governor, if he shall deem it for the best interests of the state, may relinquish the claim of the state to any or all of such lands, to the end that new selections in lieu thereof may be made, or that indemnity may be secured in lands, or otherwise; for the lands so lost. (*Id.* § 2.)

**\*§ 110. List—Deed of relinquishment.**

It shall be the duty of the governor to procure from the commissioner of the general land-office, or the United States land-offices in this state, lists of the lands described in sections one and two of this act, showing the disposition of the same by the United States, and thereupon to execute to the United States a deed of relinquishment of the title, or shadow of the title, of the state of Minnesota to such of the lands described in said lists as in his judgment may be for the relief of settlers upon any of said lands, or necessary or proper for an adjustment of the grant under which the same are claimed; and the governor shall forward a copy of this act to each of our members in congress, and they are hereby requested to endeavor to secure indemnity in lands, or otherwise, for the lands thus lost to the state. (*Id.* § 3.)

**\*§ 111. Grantee of state—Indemnity.**

If any grantee of this state to which the lands mentioned in this act would have inured, except for this act and said homestead, timber-culture, or other entry, shall relinquish to the state of Minnesota all its right, title, and interest in and to the said lands to which it is entitled as aforesaid, then said grantee so relinquishing said lands shall have the right to and may select any lands granted by the congress of the United States to indemnify the state of Minnesota for lands relinquished by the state under the provisions of this act; and the governor shall convey to said grantee the lands so granted and selected (when certified to the state by the general government) in the same manner and upon the same terms and conditions as if they were a part of the lands originally inuring to said grantee. (*Id.* § 4.)

\*The act is entitled "An act for the relief of settlers on lands claimed by the state as swamp lands, and for the adjustment of land grants inuring to the state under the several acts of congress;" and the preamble recites that "whereas, certain settlers in this state have been allowed to make homesteads, timber-culture and other entries at the local land-offices of the United States, on lands now claimed by the state as swamp lands; and whereas, said settlers have in good faith fulfilled all the requirements of the laws under which their entries were made, and in many cases have made final proof on said entries, and have sold and conveyed said lands by warranty deed: therefore," etc.

**\*§ 112. Fort Ripley reservation—Relinquishment.**

That the governor of the state of Minnesota is hereby authorized and requested to relinquish all the right, title, and interest of said state in and to all lands lying within the limits of the said\* Fort Ripley military reservation to the United States, and he is hereby authorized to make, execute, and deliver a deed of relinquishment in accordance with the application of the commissioner of the general land-office dated October twenty-seventh, one thousand eight hundred and eighty. (1881, c. 155.)

**\*§ 113. Antietam National Cemetery—Relinquishment.**

That the state of Maryland be, and is hereby, authorized to convey to the United States all right, title, and interest of the state of Minnesota in and to the land occupied by the Antietam National Cemetery, in the county of Washington, in the state of Maryland; and if the said state of Maryland shall have already made such transfer of title to the United States, the assent thereto of the state of Minnesota is hereby granted, and the governor of this commonwealth is requested to transmit a copy of this act to the president of the United States, and to the governor of the state of Maryland. (1879, c. 102.)

## CHAPTER 39.

## CHATTEL MORTGAGES.

**§ 1. Chattel mortgages—Validity—Filing.**

A chattel mortgage upon exempt personal property, executed by a married man, a housekeeper, to secure the purchase money, given pursuant to the agreement upon which the property was purchased, is valid without the wife's signature. *Barker v. Kelderhouse*, 8 Minn. 207, (Gil. 178.)

As to the validity of a chattel mortgage upon crops, see *Lamson v. Moffat*, (Wis.) 21 N. W. Rep. 62; *Wheeler v. Becker*, (Iowa,) 28 N. W. Rep. 40; *Barr v. Cannon*, (Iowa,) Id. 413; *Miller v. McCormick Harvesting-Machine Co.*, 35 Minn. 399, 29 N. W. Rep. 52.

This section is not applicable to the vendee of a mortgagee in possession, and therefore it is not incumbent upon such vendee to show in the first instance, in defense of his title, that the mortgage was made in good faith, and not for the purpose of defrauding creditors. *Marsh v. Armstrong*, 20 Minn. 81, (Gil. 66.)

If a mortgage, which permits the goods to remain with the mortgagor for purposes of sales by him, requires the proceeds of the sales to be paid directly to the mortgagee, in payment of the mortgage debt, the mortgage is not necessarily fraudulent as against creditors of the mortgagor. *Bannon v. Bowler*, 34 Minn. 416, 26 N. W. Rep. 237. Where possession is retained by the mortgagor, the burden of proof rests on the mortgagee to show that the chattel mortgage was executed in good faith; but in the absence of proceedings under the insolvent act a mortgage is not to be deemed fraudulent or void simply because it was intended to prefer the mortgagee to other creditors. *Id.* What facts will render a mortgage void as to creditors, and particularly the effect of an agreement permitting the mortgagor to retain possession, and sell and dispose of the mortgaged property; when the intent to defraud must exist; and the rights of *bona fide* purchasers from the mortgagor of an unfiled mortgage,—see *Horton v. Williams*, 21 Minn. 187; *Chopard v. Bayard*, 4 Minn. 533, (Gil. 418.)

When a party claims under a chattel mortgage, the burden is upon him to show any delivery or change of possession of the things mortgaged which may be necessary to make the mortgage valid. *McCarthy v. Grace*, 23 Minn. 182. The fact that the sheriff who makes the levy is the mortgagee in a chattel mortgage upon the things levied upon, is not notice to the levying creditor of the existence of the mortgage. *Id.*

As against an attachment creditor of a mortgagor of a stock of goods destroyed by fire, who seeks to garnishee the insurance money, made payable to the mortgagee by the policy, "as his interest may appear," such mortgage, if valid on its face, and given in good faith, is sufficient to uphold the right of the claimant to the insurance money,

\*See preamble to act.