

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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watercraft using waters adjacent to park to use public dock to exclusion of other shore lands of the park, notwithstanding fact that owners of such watercraft may have riparian rights in such shore lands, to charge a fee for a permit to use a space on dock, and to set apart for bathing purposes a part of such waters to the exclusion of all other uses of which waters are susceptible. *Nelson v. De Long*, 213M425, 7NW(2d)342. See Dun. Dig. 6950.

A riparian owner's rights on a body of navigable water are qualified, restricted, and subordinate to paramount rights of public to public use of waters for purposes of navigation, which include not only navigation by watercraft for commercial purposes, but also use for ordinary purposes of life such as boating, fishing, fowling, skating, bathing, taking water for domestic and agricultural purposes, and cutting ice. *Id.*

Power of Congress to regulate navigable waters is paramount to that of the state. *Id.* See Dun. Dig. 6931.

Absent exercise of state's paramount rights, a riparian owner not only may build and maintain, for his own use and that of others claiming under him wharves, docks, piers, and landing places on and in front of his land and extend the same to point of navigability, even though beyond low-water mark, but he also may transfer such rights, including those pertaining to particular areas of submerged lands. *Id.* See Dun. Dig. 6933, 6950, 6961, 6965.

As against the state, a riparian owner can exercise no dominion or make a valid grant of rights in waters adjacent to riparian lands or in submerged lands under such waters. *Id.* See Dun. Dig. 6950, 6965.

Title, points and lines in lakes and streams. 24MinnLawRev305.

3. Surface waters.

Rule of *Sheehan v. Flynn*, 59 Minn. 436, 61 N. W. 462, 26 L. R. A. 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights

and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. *Town Ditch No. 1 v. B.*, 208M566, 295NW47. See Dun. Dig. 2841a, 10165.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands and one of them later constructs a dam and fills ditch by plowing, the test of liability is reasonable use, not reasonable care or negligence. *Will v. Boler*, 212M525, 4NW(2d)345. See Dun. Dig. 10157a, 10165.

In action to enjoin adjoining owner from damming and obstructing a ditch, evidence sustained finding that plaintiff's predecessor in title and interest contributed to expense of construction of ditch in a natural watercourse. *Id.* See Dun. Dig. 10157a.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands, each is thereafter estopped from closing the ditch in such a way as to deprive the others of the drainage afforded thereby. *Id.* See Dun. Dig. 10157a.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands and one of the landowners later filled the ditch and deprived another landowner of benefits from its construction, a court of equity may grant injunctive relief. *Id.* See Dun. Dig. 10157a.

Common-law rule that surface water is a common enemy, which each owner may get rid of as best he can, is in force in this state, except that it is modified by rule that he must so use his own as not unnecessarily or unreasonably to injure his neighbor. *Id.* See Dun. Dig. 10165.

Where surface water is conveyed through natural channels from property of one landowner to that of another, lower owner, in absence of any means of natural drainage of the water, may not fill the depression so as to interfere with flowage of water therein even though natural depression may not amount to a swale. *Id.* See Dun. Dig. 10167.

Interference with surface waters. 24MinnLawRev891.

CHAPTER 43

Logs and Lumber

6603. Consolidation of offices of surveyor general, etc.

Appropriation provision of Laws 1943, c. 660, §40, does not prohibit the director of the Division of Forestry from also holding the position of Surveyor General. *Op. Atty. Gen.* (403), May 7, 1943.

6618. Recording; etc.

Logs, posts, and certain other lumber products in transportation must be marked with description of land from which cut. Laws 1941, c. 83.

6627-1. Identification of timber being transported—Nature of marks used.—Within the forest areas of this state, all loads of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging shall, while being transported from the place where such products were cut, be conspicuously marked on each side with the legal description of the land from which said products were cut, provided, however, that where timber is being cut from more than one 40-acre tract in a single logging operation, the loads of products from such operation may be marked with the legal description of all the lands being cut upon such operation, or the operation may register with the department of conservation, division of forestry, a list of the legal descriptions of lands to be cut over in such single operation, and the director of the division of forestry shall then assign to the operator a number covering the registered descriptions; such assignment to be for the period of one year and such number may be used to mark products being transported, in lieu of the legal descriptions. (Act Mar. 28, 1941, c. 83, §1.) [89.163]

No identification marks are necessary while products are being skidded or drayed from one point on operation to another. *Op. Atty. Gen.*, (933e), May 23, 1941.

6627-2. Same—Timber products manufactured on land where cut.—Any load of lumber or timber products which have been manufactured on the land where cut shall, while being transported from said land, be conspicuously marked on each side as provided hereinbefore. (Act Mar. 28, 1941, c. 83, §2.) [89.164]

6627-3. Same—Stored timber.—Any load of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging being transported from a point of temporary storage other than the land from which said products were cut, shall be conspicuously marked on each side with the name of the person, firm or corporation sending such products and the location of the point of storage from which said load is being hauled. (Act Mar. 28, 1941, c. 83, §3.) [89.165]

6627-4. Same—False marks.—No person, firm or corporation shall affix or use for identification purposes any legal description of land other than that from which the timber or timber products were cut or removed. (Act Mar. 28, 1941, c. 83, §4.) [89.166]

6627-5. Same—Violations of law—Inspection of loads.—Any forest officer or any officer with police authority shall have the authority

(a) to arrest, with or without warrant, any person violating any provision of this act.

(b) to stop any truck or vehicle and to inspect any such load wherever found and to make such investigation with reference thereto as may be necessary for the purpose of determining whether the provisions of this act have been complied with. (Act Mar. 28, 1941, c. 83, §5.) [89.167]

6627-6. Same—Offenses and punishment.—Any person who shall violate any of the provisions of this act shall upon first conviction be guilty of a misdemeanor and shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or by imprisonment in the county jail for not less than ten days nor more than ninety days, and in case of a subsequent conviction of the same or any other offense under this act shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100.00 or by imprisonment in the county jail for not

less than ninety days or by both such fine and imprisonment. (Act Mar. 28, 1941, c. 83, §6.) [89.168]

6632-1. Cutting practices in logging operations to be established and enforced.—The conservation of the forest resources of the state, the prevention of forest fires, wastage of timber, soil erosion, the conservation of water resources and the prevention of floods, the maintenance of a satisfactory tax base, and the promotion of a desirable land use program so as to maintain forest and timbered lands in a productive state, are hereby recognized and declared as requiring that uniform and wise cutting practices in logging operations shall be established and enforced. (Act Apr. 2, 1943, c. 290, §1.) [90.215]

6632-2. Size of trees which may be cut.—No spruce, balsam, pine, tamarack or other species of trees to be utilized for pulpwood, except aspen, shall be cut from trees having less than two or more 100-inch sticks per tree with a minimum stump diameter of less than six inches inside of the bark at 16 inches above ground level. Provided that on each acre cut over there shall be left at least eight thrifty trees of the minimum diameter or larger of predominant species as seed trees. (Act Apr. 2, 1943, c. 290, §2.) [90.215]

6632-3. Size of trees which may be cut.—No white nor Norway pine saw logs shall be cut which do not produce a butt log of 12 inches or more in diameter inside of the bark at its large end. Provided, that on each 40-acre tract from which pine saw timber is taken, eight or more such pine trees of the same minimum size or larger shall be left. (Act Apr. 2, 1943, c. 290, §3.) [90.215]

6632-4. Ties.—No trees of any species shall be cut for ties which do not produce at least one tie with a

top diameter of not less than eight inches inside of the bark. (Act Apr. 2, 1943, c. 290, §4.) [90.215]

6632-5. Director of the Division of Forestry to make rules and regulations.—The director of the division of forestry is hereby authorized and empowered to make such rules and regulations for the disposal of slash as in his judgment will afford adequate protection against fire hazards, and leave the land in a productive state, and may where conditions warrant grant special permits modifying the cutting regulations herein contained. Such regulations when published once in a legal newspaper shall have the same effect as though specifically provided herein. (Act Apr. 2, 1943, c. 290, §5.) [90.215]

6632-6. Not to apply to land clearing operations.—This act shall apply to all timber cutting in the state, except that it shall not apply to operations where land is being cleared by bona fide farmers for actual agricultural use or bona fide owners of cottage sites, nor shall the cutting provisions hereof apply to the cutting of cordwood for firewood. (Act Apr. 2, 1943, c. 290, §6.) [90.215]

6632-7. Violation a misdemeanor.—Violation of any of the provisions hereof shall constitute a misdemeanor punishable by a fine of not less than \$50 nor more than \$100, or imprisonment in the county jail for not less than 30 nor more than 90 days. Violation of the cutting practices herein prescribed shall constitute a separate offense as to each 40-acre tract involved. (Act Apr. 2, 1943, c. 290, §7.) [90.215]

6632-8. Effective date.—This act shall take effect and be in force six months from and after its passage. (Act Apr. 2, 1943, c. 290, §8.)

CHAPTER 44

Drainage

COUNTY DRAINS AND DITCHES [COUNTY DRAINS AND JUDICIAL DRAINS]

6728. Damages arising after construction, etc.

Liability of county ditch system for damages to property owner caused by flooding. Op. Atty. Gen. (844c-2), Sept. 29, 1943.

6784. County board may raise, lower or alter damages or benefits; etc.

There is no authority for reassessing benefited property to make up a deficit caused by nonpayment of some of special assessments, and bonds should be paid from proceeds of a general levy upon all property of county or counties. Op. Atty. Gen. (38B), Sept. 26, 1940.

6807. Establishment of district—Classes.

Supervision and control of county drainage ditches within village limits may be transferred from board of county commissioners to governing body of village. Laws 1941, c. 54.

By establishment of a county ditch pursuant to Law 1905, c. 230, land benefited and assessed acquired a property right, appurtenant to land, not to be taken away or impaired, except by due process, but where only relief sought in construction was to so enlarge outlet as to more effectually drain slough lands lying adjacent to outlet and to control sudden rises and floods that overflowed low lands lying adjacent to shores of a lake, landowners' rights are limited to benefits accruing within stated purposes and subsequent erosion of the lake outlet whereby natural water level was much lowered cannot be claimed to be a barrier against state in now seeking restoration of lake level to its natural and normal height. Lake Elysian High Water Level, 208M158, 293 NW140. See Dun. Dig. 2824.

6820. When contracts may be made.

County and village adjacent to a county ditch may not enter into contract whereby village would take over a ditch and use it for a sewer drain or overflow from

septic tanks and installation of disposal plant at outlet of ditch. Op. Atty. Gen., (387G-3), Sept. 20, 1939.

6829. Upkeep and repair of district.

While county has implied power to clean bed of judicial ditch, and use persons on relief for that purpose, any wood removed therefrom belongs to owner of land and cannot be given to workers. Op. Atty. Gen., (150c), Oct. 10, 1939.

6840-2. Powers of county boards; etc.

County commissioners cannot turn over a ditch to a village which has been using the ditch as a sewer. Op. Atty. Gen. (148a-6), Aug. 15, 1940.

6840-5. Engineer—Appointment, oath and bond.

County highway engineer may not be appointed engineer in county ditch proceedings, but assistant county highway engineer may be so appointed. Op. Atty. Gen. (122b-3), Nov. 5, 1943.

6840-21. Assessment of benefits limited; etc.

Section prohibits county board from assessing lands in repair if there are no benefits. Op. Atty. Gen. (602B), Sept. 25, 1941.

County board decides whether or not there are any benefits in a repair job upon filing of report of engineer in case of a county ditch. Id.

Though particular lands may receive no direct benefit from repairs, they may be assessed if drainage system as a whole is benefited. Op. Atty. Gen. (602b), Oct. 30, 1941.

6840-22. Bridges across drainage systems; etc.

Owner of bridge across ditch on private land with exclusive right to use may remove bridge at pleasure. Op. Atty. Gen. (642b-8), Oct. 16, 1942.

6840-23. Bridges and culverts; etc.

Township must repair or rebuild bridges on township road, and county must repair or rebuild bridges on