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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
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COMMISSIONERS.

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declaration of intention, within five years from the date of such publication, but this section shall not be construed so as to prevent any owner of lands throughout such tract, to drain his own lands meanwhile in such manner as he may have otherwise legally done.

Declared a public act.

(17.) SEC. XV. This act is hereby declared to be a public and general act, and may be amended by any subsequent legislature in any manner not destroying or impairing vested rights.

Conflicting acts repealed.

(18.) SEC. XVI. All acts and parts of acts contravening the provisions of this act are hereby repealed.

Act take effect when.

(19.) SEC. XVII. This act shall take effect and be in force from and after its passage.

An Act to authorize the Governor to select Lands, and secure the title thereof.

[Passed August 2, 1868.] c. 28

Commission to be appointed to select lands; donation by United States.

(20.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That the governor of this state is hereby authorized to appoint a commission, consisting of one or more persons, to assist him in the selection of certain lands granted to the state of Minnesota for the purpose of completing the public building, or for the erection of others at the seat of government, and also to take such measures as shall secure the title of said lands, when thus selected for the state.

Persons to be appointed to select salt springs and lands.

(21.) SEC. II. That the governor shall select or appoint some suitable person or persons to make the selection of the twelve salt springs and six sections of land granted to this state by the enabling act, and take such measures as are necessary to secure a title thereto.

Act when to take effect.

(22.) SEC. III. This act shall take effect and be in force from and after its passage.

CHAPTER 129.

DAMS AND MILLS.

1. Mill-dams may be erected on certain conditions.
2. Petition to be presented to the court of record, stating the purposes for which the dam is to be erected.
3. Judge shall appoint three commissioners to inquire.
4. Commissioners to take oath of office.
5. Commissioners shall give notice of meeting on request.
6. Manner of serving notice, and time.
7. Commissioners to view the premises and assess damages.
8. Thirty days thereafter shall report.
9. Manner of payment of damages assessed.
10. Appeals, how to be taken.
11. Appeals not to hinder the erection of dams; petitioner to file bond to abide decision.
12. Appellant to file bond to abide decision.
13. Appeals shall bring up the propriety of damages assessed, and shall be tried by jury, unless otherwise agreed to by parties.
14. Exemplary or vindictive damages not to be allowed.
15. Upon verdicts of jury, judgment shall be entered and payment made as provided for the assessments of commissioners.
16. No mill-dam shall be erected under this act, to the injury of power previously improved.
17. Limitation of time for action for damages.
18. Pre-emptors may have remedy for damages.
19. Section eighteen when to take effect.
20. Dams heretofore erected may be raised.
21. Suspension of suits for damages, upon filing of petition for rights under this act.
22. All costs to be paid by the petitioners except in appeals.
23. Right to enter upon land for purposes of survey.
24. Conditions to be complied with on part of petitioner to retain rights.
25. Relieves Olmsted county from the provisions of this act, and maintains all rights under previous law.

shall restore said road, highway, stream or water course so disturbed, to its former state, or in a manner not to impair their usefulness to the person or persons occupying, or to the public.

(10.) SEC. VIII. It shall be lawful for any such company to raise or save the water running through said drains, canals or conduits, by a dam or dams, at such places as they shall deem expedient, and to make use of such water for propelling any kind of machinery, or for any other purpose, and to sell or lease the right to use such water, or any part thereof, to any person or persons whomsoever.

Right to create water powers.

(11.) SEC. IX. In case the raising of the waters by means of the dams aforesaid, shall damage any land not owned by the company, and without the consent of the owner or owners thereof, or in case the right of way shall be taken by such companies across any field or lands without the consent of the owner or owners, to his or their detriment or damage, or in case any stream, lake, marsh or lands, shall be depleted, emptied or overflowed, to the injury or damage of any person or persons, without their consent, by the operations, act or acts of any such company, then and in all such cases, the owner or owners of any such lands so injured or damaged, shall recover from such company, just compensation for all damages occasioned by the passage of such drains or conduits through their lands, or by the depletion, emptying or overflowing of such lake, stream, marsh or lands, or by raising of the waters as aforesaid, and by maintaining such conduits and dams forever.

Damages for overflowing lands.

(12.) SEC. X. Such damages shall be determined by the verdict of a jury in an action brought in any court of record having jurisdiction of civil action, and at the request of either party the jury shall take a view of the premises, under order of the court.

Damages; how determined.

(13.) SEC. XI. In such action no exemplary or vindictive damages shall be allowed, but if judgment shall be rendered for the plaintiff, the court shall have power in its discretion to award to the plaintiff, extra cost in addition to the costs ordinarily taxable, but not exceeding in all, double the amount of ordinary costs.

Exemplary damages not to be allowed.

(14.) SEC. XII. Judgment shall be rendered and execution issued in such action, as in ordinary actions for injuries to real estate, and such judgment, from the time of docketing the same, shall become a lien upon the dam, or dams, of the company, the mills furnished with water thereby, and their rights and privileges in such water power, by whomsoever the same may be owned or possessed.

Judgments to become a lien upon company's works.

(15.) SEC. XIII. Upon payment and discharge of any such judgment, the said company or companies, or their assigns (as against the party recovering such judgment, his heirs and assigns) shall enjoy forever the right to keep up and maintain the conduit, dam, or dams, respecting which such judgment was rendered, and the remedy provided by this act for any such injuries to lands, or rights as are herein mentioned, shall be exclusive of all other remedies of whatever nature.

Rights of companies.

(16.) SEC. XIV. After the performance by any company or association of persons of the condition prescribed in section 2, it shall not be lawful for any other company or association of persons, to enter in any manner whatever upon the same lands for draining purposes, nor to tap or break into any conduit constructed by the first company, nor to drain any lake, stream, or marsh, drained or to be drained by the said first company, unless a default shall occur, or remain by the neglect or failure of the said company to commence their operations within one year from the filing of their declaration in the office of the register of deeds, as specified in section two (2) of this act, or a subsequent default in the failure of the said first company to complete their undertaking, as specified in their published

Prohibition to other companies to enter upon same lands:

A bill to encourage the erection of Mill Dams and Mills.

[Passed May 29, 1857.] c. 39

(1.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* When any person may be desirous of erecting and maintaining a mill dam upon his own land, across any water course not navigable, and shall deem it necessary to raise the water by means of such dam, or occupy ground for mill-yard, so as to damage, by overflowing, or otherwise, real estate not owned by him, nor damaged by consent, he may obtain right to erect and maintain said dam by proceeding as in this act provided. Right to erect mill-dams.

(2.) SEC. II. He shall present to the judge of any court of record in which jury trials are had in the county, or if there be 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 may be necessary to show the objects of the petition. Petition court.

(3.) SEC. III. 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, 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. Commissioners to be appointed.

(4.) SEC. IV. 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. Oath of commissioners.

(5.) SEC. V. 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. Public notice of meeting.

(6.) SEC. VI. 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, lunatics or distracted persons, 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 femes 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 in the county aforesaid, or the one nearest thereto, for three weeks in succession, previous to the meeting of said commissioners. Five days' notice to persons interested.

(7.) SEC. VII. The commissioners shall meet at the time and place specified in the notice, and shall 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 allegation 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 forever. Public notice to non-residents.

(8.) SEC. VIII. 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 the court, in the first section of this act mentioned, and shall give notice of the filing of said report as of their meeting. Commissioners to examine premises and assess damages.

(9.) SEC. IX. Upon the filing of said report the petitioners may make payment of the damages assessed to parties entitled to the same in File their report.

Payment of damages.

the manner following: first to parties laboring under no disability; second, to guardians of infants, husbands, or trustees of *femes covert*; third, to guardians or conservators of insane persons; and receipts for such payment filed in the office of the clerk aforesaid, shall stop the parties receipting from all further claim or proceeding in the premises. Payments to parties residing in the territory or state, but not in the county or counties where said dam or part of it is to be erected, as well as to the infants who have no guardian, and insane persons who have no guardians or conservators, and payments to parties residing out of the territory or state, and to persons whose names are unknown, and to persons who shall refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county or counties aforesaid, who shall pay out the same upon the order of the commissioners or court, 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 the first mentioned receipts unless an appeal be taken by the party entitled thereto.

Appeals from assessment.

(10.) SEC. X. 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 or conservators of insane persons; and in cases where infants or insane persons have no guardians or conservators, appeals may be taken by the friend of such parties, and a written notice of such appeal 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.

Appeals not to hinder erection.

(11.) SEC. XI. The erection of said dam shall not be hindered, delayed, or prevented, by the prosecution of any appeal: *provided*, the petitioner shall execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk with surety or 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.

Appellant to file bond.

(12.) SEC. XII. 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 people of the territory or state, as the case may be, for the use of all persons interested, in the condition 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.

Jury trial.

(13.) SEC. XIII. Appeals shall 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 case may be, shall assess the damages aforesaid, making the verdict conform to the question and facts in the case.

No exemplary damages.

(14.) SEC. XIV. No exemplary or vindictive damages shall be allowed by the commissioners, court, or jury.

Judgment rights vested in petition.

(15.) SEC. XV. Upon verdicts rendered by juries or an assessment by the court, judgment shall be entered, declaring that upon payment of the damages assessed by the court or jury, as the case may be, and costs, if any, the right to erect and maintain the mill dam aforesaid, according to the petition, shall, as against the parties interested in such verdict be, and

remain in the petitioner, his heirs and assigns forever, subject to be lost as hereinafter provided, and payments of such judgments may be made as payments of assessments by the commissioners as hereinbefore provided.

(16.) SEC. XVI. No mill dam shall be erected or maintained under the provisions of this act to the injury of any water power previously improved.

No injury to previous improved water power.

(17.) SEC. XVII. ^{c. 925.1} [As amended on pages 288 and 289 of the laws of 1858.] No action for damages occasioned by the erection and maintenance of a mill dam, shall be hereafter sustained unless such action be brought within two years after the erection of said dam or within three years after the passage of this act: *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 shall have been issued.

Limitation of time for actions for damages.

(18.) SEC. II. (a) The said act of which this is an amendment, shall not deprive any person legally holding any land under the pre-emption laws, who had not received a patent for such lands at the time of the passage of said act, of a remedy, or right of action for any damages, he or she may have sustained in consequence of the overflowing of any such land, and an action may be brought therefor, within the time fixed in said act, as hereby amended, and in case damages to any land so held as aforesaid, shall be assessed as provided in said act, equitable damages shall be allowed, and the right of appeal had the same as in other cases under said act.

Rights of pre-emptors to a remedy for damage.

(19.) SEC. III. This act shall take effect and be in force from and after its passage.

Act when to take effect.

(20.) SEC. XVIII. 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 act, adopting his petition to the nature of the case.

Right to raise a dam heretofore erected.

(21.) SEC. XIX. Upon evidence of the commencement of proceedings as provided in the second and eighteenth sections of this act, the court before which any suit for damages occasioned by such mill-dam shall be instituted after the commencement aforesaid, shall have power to suspend any such suit until the result of said proceedings shall be known.

Suits for damages.

(22.) SEC. XX. The costs of all proceedings under this act, 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 may direct.

Costs.

(23.) SEC. XXI. For the purpose of making surveys and examinations relating to any proceedings under the provisions of this act, it shall be lawful to enter upon any land, doing no unnecessary injury.

Lawful to enter upon land.

(24.) SEC. XXII. Any person having obtained right to erect and maintain, or to maintain or raise any dam under the provisions of this 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 shall be destroyed, shall not begin to rebuild in one year after such destruction and finish in three years, or having erected such mills shall fail to keep them in operation for one year any at one time, shall forfeit all rights acquired by virtue of the provisions of this act unless at the time of such destruction the owner be an infant or otherwise disabled in law, in

Duties of petitioner upon obtaining right to erect dam.

(a) This and the following section are from the act of August 11, 1858, which amends section 17 above, and refer to the act of which said section 17 forms a part.

which case the same time shall be allowed after the removal of such disability.

Exemption.

(25.) SEC. XXIII. The provisions of this act shall not apply to Olmsted county, nor destroy or impair the right of any person to erect and maintain a dam under the law heretofore and now existing.

CHAPTER 130.

GAME.

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SECTION

1. Prohibits killing of deer and elk between first of February and first of September; penalty.
2. Prohibits killing of grouse, prairie-chickens, partridge or quail from the fifteenth of February to the fifteenth of July.

SECTION

3. Act takes effect on passage.
4. Trout how not to be taken.
5. Penalty for taking trout unlawfully.
6. Sec. 4 and 5 when to take effect.

An Act for the Protection of Game,
 [Passed March 8, 1858.] c. 19

Killing of deer or elk; penalty.

(1.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That if any person shall, within this state, kill any deer or elk between the first day of February and the first day of September following, he shall, for every such offense, forfeit and pay the sum of fifteen dollars, to be collected by a civil action before any justice of the peace having jurisdiction thereof, which sum so recovered shall be paid by such justice to the proper officer, for the use of common schools in the school district where the offense was committed.

Killing of grouse, &c.; penalty.

(2.) SEC. II. If any person shall, within this state, shoot, trap or kill in any manner, any grouse, prairie-chicken, partridge or quail between the fifteenth day of February and the fifteenth day of July following, he shall for every such offense, forfeit and pay the sum of five dollars, to be collected in the same manner and paid over to the same use as is provided in the preceding section.

Take effect when.

(3.) SEC. III. This act shall take effect from and after its passage.

An Act for the Protection of Trout Fish.
 [Passed July 30, 1858.] c. 25

Trout how may not be taken.

(4.) SEC. I. *Be it enacted by the legislature of the state of Minnesota:* That all persons are hereby forbidden to take trout from any waters of this state, by means of any seine, net, basket or trap.

Penalty for so taking.

(5.) SEC. II. That any and all persons upon being convicted of a violation of the provisions of this act, shall pay a fine of not more than twenty-five nor less than five dollars, which fine shall be paid into the school fund in the county where the offense was committed, and the conviction had.

Take effect when.

(6.) SEC. III. This act shall take effect and be in force from and after the first day of August, 1858.