

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

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

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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1872.

CHAPTER XXXI.

DAMS AND MILLS.

SECTION

1. Mill-dams may be erected on certain conditions.
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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.

SECTION

14. Exemplary or vindictive damages not to be allowed.
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16. No mill-dam shall be erected under this chapter to the injury of power previously improved.
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18. Dams heretofore erected may be raised.
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21. Right to enter upon land for purposes of survey.
22. Conditions to be complied with on part of petitioner to retain rights.

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SECTION 1. When any person is desirous of erecting and maintaining a mill dam upon his own land, across any water course not navigable, and deems it necessary to raise the water by means of such dam, or to occupy ground for mill yard, so as to damage, by overflowing, or otherwise, real estate not owned by him, he may obtain the right to erect and maintain said dam by proceeding as in this chapter provided.

Right to erect mill dam. 1891-96
10 Min. 30.

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SEC. 2. 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.

Petition court.

SEC. 3. 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.

SEC. 4. 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.

SEC. 5. 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.

SEC. 6. 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

Five days' notice to persons interested.

Public notice to non-residents.

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.

Commissioners to examine premises and assess damages.

SEC. 7. 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 forever.

File their report.

SEC. 8. 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.

Payment of damages.

SEC. 9. 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 of femes covert; third, to guardians of insane persons; and receipts for such payment filed in the office of the clerk aforesaid, shall estop the parties receiving from all further claim or proceeding in the premises. Payments to parties residing in the 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, and payments to parties residing out of the state, and to persons whose names are unknown, and to persons who refuse to receive the payments when tendered, shall be made by depositing the money with the treasurer of the county 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 is taken by the party entitled thereto.

Appeals, how taken.

SEC. 10. 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.

Appeal not to hinder erection of dam, when.

SEC. 11. 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.

Bond on appeal.

SEC. 12. 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 ap-

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peal, 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. 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 case may be, shall assess the damages aforesaid, making the verdict conform to the question and the facts in the case. Trial on appeal—how conducted.

SEC. 14. No exemplary or vindictive damages shall be allowed by the commissioners, court or jury. Punitive damages not allowed.

SEC. 15. 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 or assessment, 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. Judgment, how enforced—effect of.

SEC. 16. No mill dam shall be erected or maintained under the provisions of this chapter, to the injury of any water power previously improved. Water power previously improved not to be injured. 10 Min. 30.

SEC. 17. 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. Limitation of time for action for damages.

SEC. 18. 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 chapter, adapting his petition to the nature of the case. Right to raise a dam heretofore erected.

SEC. 19. Upon evidence of the commencement of proceedings as provided in the second and eighteenth sections of this 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. Suits for damages.

SEC. 20. The costs of all proceedings under this 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. Costs.

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

SEC. 22. 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 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 for one year at any one time, shall forfeit all rights acquired by virtue of the provisions of this chapter, unless at the time of such destruction the owner is an infant or otherwise disabled in law, in which case the same time shall be allowed after the removal of such disability. Duties of petitioner upon obtaining right to erect dam.