

# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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so executed and acknowledged and verified, shall be recorded at length by said register of deeds in a book, to be by him provided for that purpose, entitled "Book of Plat Certificates;" and said register of deeds shall thereupon note upon such plat and the copy thereof filed in his office as aforesaid, and referred to in such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded, and he shall receive, from the person offering said certificate for record, the fees provided by law for similar services; and said certificate or the record thereof shall, together with such plat, be *prima facie* evidence in all cases as to the real estate covered by said plat, to the same extent as if the description thereof was originally indorsed on said plat. (1885, c. 264.\*)

**\*§ 21. Same.**

That in all cases where the plats, or what purport to be plats, of any towns or cities in this state, or of additions to or subdivisions thereof, or copies thereof, fail to identify and show correctly, upon their face, the tract of land covered or intended to be covered thereby, the surveyors, or one of them, who laid out or surveyed the same, and, in case said surveyor or surveyors shall have died, or his or their place of abode be unknown, or he or they be unable or refuse to make or execute such certificate, one of the original proprietors may within one year from the passage of this act make and file in the office of the register of deeds of the county in which said lands are situate a certificate duly executed and acknowledged by him or them, as deeds are to be executed and acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat. If such certificate be made by a proprietor or proprietors of such town, city, addition, or subdivision, the same shall also be sworn to by him or them as being correct in all respects; and such certificate so executed, acknowledged, and verified, shall be recorded at length by said register of deeds in a book by him provided for that purpose, entitled "Book of Plat Certificates;" and said register of deeds shall thereupon note upon such plat and the copy thereof filed in his office as aforesaid, and referred to in such certificate and affidavit, the fact of filing such certificate and the book and page where recorded; and he shall receive from the person offering said certificate for record the fees provided by law for similar services; and such certificate, or the record thereof, shall, together with such plat, be *prima facie* evidence in all cases as to the lands covered by said plat. (1887, c. 167.†)

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## CHAPTER 30.

### LIMITED PARTNERSHIP.

#### § 2. General and special partners.

A check drawn by the special partner on a bank in which he has funds, and delivered to the general partner, is not an actual cash payment such as will entitle him to the protection of a special partner. *McGinnis v. Farrelly*, 27 Fed. Rep. 33.

\* "An act relative to plats of towns and cities in this state, and of additions to and subdivisions thereof, and the correction and legalization of the same." Approved February 27, 1885.

† "An act relative to plats of towns and cities in this state, and of additions to and subdivisions thereof, and the correction and legalization of the same." Approved March 7, 1887.

### § 8. Certificate and affidavit—False statement.

A statement in the certificate of an amount greater than that actually contributed by the special partner renders him liable as a general partner; and under a complaint charging defendants generally as partners, the answer setting up an alleged special partnership, evidence is admissible to show the falsity of the certificate. *Sharp v. Hutchinson*, (N. Y.) 3 N. E. Rep. 500.

## CHAPTER 31.

### DAMS AND MILLS.

See *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 29 N. W. Rep. 161; *Siman v. Rhoades*, 24 Minn. 25.

### § 1. Erection of dams, etc.—Eminent domain.

The authorization of condemnation proceedings for the right of flowage, etc., is not unconstitutional. *Miller v. Troost*, 14 Minn. 365, (Gil. 282.)

See *Weir v. St. Paul, etc., R. Co.*, 18 Minn. 155, 164, (Gil. 139, 148.)

### § 2. Petition.

If the petition state facts which make a case within § 1, the court has jurisdiction. It need not negative the restrictions or limitations of the right contained in subsequent sections of the chapter, and it need not state want of consent by the owners of the land sought to be overflowed. *Faribault v. Hulett*, 10 Minn. 30, (Gil. 15.)

The petition need not contain a description of the lands with respect to which damages are sought to be assessed, but in good practice should do so. To bind the lands, however, they should be described in the judgment. *Siman v. Rhoades*, 24 Minn. 25.

### § 13. Appeal—Questions on—Trial.

The appeal brings before the district court only the question of the damages allowed by the commissioners, and not the propriety of the order appointing them. *Turner v. Holleran*, 11 Minn. 253, (Gil. 168;) followed *Warren v. First Div. St. P., etc., R. Co.*, 18 Minn. 384, 390, (Gil. 345, 353.)

Where proper notice has been served upon the owners of land affected, jurisdiction is acquired, and any indefiniteness in the description of the lands affected by such proceedings may, on appeal, be amended, and the lands described in the judgment entered. *Siman v. Rhoades*, 24 Minn. 25.

After appeal to, and trial and judgment in, the district court, it will be presumed, in the absence of anything to the contrary, that it was made to appear to the court below that such stream was not navigable. *Id.*

After the entry of judgment on appeal in the district court, that court has the power to correct such judgment and make it conform to what the parties were entitled, as the result of the trial. *Id.*

### § 15. Judgment on appeal.

The appeal brings before the district court only the question of the damages allowed by the commissioners, and not the propriety of the order appointing them. *Turner v. Holleran*, 11 Minn. 253, (Gil. 168.)

The proceedings authorized by c. 34, *infra*, for condemning lands for railroad purposes, are taken almost *verbatim* from §§ 2-15 of this chapter. *Lehmick v. St. Paul, etc., R. Co.*, 19 Minn. 464, (Gil. 406, 412.)

### § 16. Previously improved water-power.

The rights that may be acquired date from the time of commencing the proceedings, and are governed by the condition of the upper proprietor's power at that date. *Miller v. Troost*, 14 Minn. 365, (Gil. 282.)

A water-power which an owner on a stream has, with a *bona fide* intent, turned to use, and made improvements upon to any extent, is a water-power "previously im-