

THE 79
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 32.

LOGS AND LUMBER.

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TITLE 1.

RIVERS, DAMS, AND BOOMS.

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§ 2385. What rivers are public highways for logs.

All rivers within this state of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, are hereby declared to be public highways, so far as to prevent obstructions to the free passage of logs, timber or lumber down said streams, or either of them.

(G. S. 1866, c. 32, § 1; G. S. 1878, c. 32, § 1.)

As to the right to moor logs to the shore, on the Mississippi, and the duty of navigators to avoid collisions with them, see *Hayward v. Knapp*, 23 Minn. 430. See *Merriman v. Bowen*, cited in note to § 2466.

§ 2386. Dam and boom to have sluiceway.

No dam or boom shall be constructed or permitted on any river, as herein specified, unless said dam or boom has connected therewith a sluiceway, lock or other fixture, sufficient and so arranged as to permit logs, timber and lumber to pass around, through or over said dam or boom, without unreasonable delay or hindrance.

(G. S. 1866, c. 32, § 2; G. S. 1878, c. 32, § 2.)

§ 2387. Booms and wears declared nuisances, when.

Any boom or wear now in or on any river, as aforesaid, that is so constructed as to prevent the free passage of logs or lumber, is declared a public nuisance, which shall be abated unless a suitable sluiceway, lock or passage, as above provided, is made thereon as aforesaid, within thirty days after written notice given by any person interested; and any person so owning, holding or occupying said boom or wear, shall be liable to pay five dollars for every day the same is permitted to remain in or on said river, after having had thirty days' notice to remove said nuisance, which may be recovered before any justice of the peace having jurisdiction; and the amount so recovered shall be collected by said justice, and paid into the township treasury of the proper township, for the use of common schools; and said person shall also be liable for any damages sustained by individuals by reason of said nuisance.

(G. S. 1866, c. 32, § 3; G. S. 1878, c. 32, § 3.)

§ 2388. Mississippi river—Mill waste prohibited.

It shall not be lawful to cast, throw, or empty, or cause, suffer, or procure to be cast, thrown, or emptied, from mills of any kind whatever, any slabs, edgings, or timber, sound or unsound, or by falling or throwing any tree into the Mississippi river: *provided*, nothing in this bill will prevent persons from.

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depositing mill waste of any kind for the purpose of building or extending wharfs or yard room in any city or town on the Mississippi river.
(1879, c. 104, § 1; G. S. 1878, v. 2, c. 32, § 3a.)

§ 2389. Same—Penalty for violation.

Any person, persons, or corporations offending against the provisions of this act shall, for each and every such offense, forfeit and pay a penalty not exceeding fifty dollars, besides such further sum as may be found in any action for the recovery of the penalty or penalties, to the extent of any expense in making good the damage incurred, or removing to a proper place the things deposited in violation of this act, such penalty to be recoverable in any of the courts in this state having jurisdiction thereof.
(1879, c. 104, § 2; G. S. 1878, v. 2, c. 32, § 3b.)

TITLE 2.

LUMBER DISTRICTS.

§ 2390. Number of districts.

There are established seven districts for the survey and measurement of logs and timber within this state.
(G. S. 1866, c. 32, § 4, as amended 1871, c. 28, § 3; G. S. 1878, c. 32, § 4; 1885, c. 13, § 1.)

§ 2391. Lumber districts defined.

The Saint Croix lake and river and their tributaries constitute the first district; the Mississippi river and its tributaries above the mouth of the Saint Croix lake constitute the second district; the Mississippi river and its tributaries between the mouth of Saint Croix lake and the outlet of Lake Pepin constitute the third district; the Mississippi river and its tributaries below the outlet of Lake Pepin to the southern line of Wabasha county constitute the fourth district. All the waters tributary to Lake Superior, and all the waters in the counties of St. Louis, Lake and Cook, the Little Fork and Big Fork rivers and their tributaries, Rainy lake and Rainy Lake river as far as the Lake of the Woods and all the tributaries of Rainy lake and Rainy Lake river constitute the fifth district; the Mississippi river and its tributaries from the southern line of Wabasha county to the southern line of the state of Minnesota constitute the sixth district; the Red river, Red lake and Lake of the Woods and their tributaries, except Rainy lake, Rainy Lake river and their tributaries, constitute the seventh district.

(G. S. 1866, c. 32, § 5, as amended 1871, c. 28, § 3; G. S. 1878, c. 32, § 5; 1881, c. 64, § 1; 1885, c. 13, § 2; 1893, c. 80, § 1.)

TITLE 3.

SURVEYORS—THEIR POWERS, DUTIES, AND FEES.

§ 2392. Surveyors—Appointment, powers, and duties—Seal.

There shall be biennially appointed by the governor, with the advice and consent of the senate, a surveyor general for each of the districts aforesaid, who shall be a citizen of the district for which he is appointed at the time of his appointment, and he shall enter upon the discharge of the duties of his office on the third Monday in April next succeeding his appointment, and shall hold his office for two years, and until his successor is appointed and qualified: *provided*, that it shall be the duty of the surveyor general, whose term of office has expired, to make the scale-bills, and record them in the books of the

surveyor general's office, of all logs scaled by him or deputies prior to the time he surrenders the same to his successor, and for that purpose he shall have access to the books of the office; and all bills so made and recorded shall have the same validity as if made and recorded during his term of office. Each of said surveyor generals shall have a seal of office, which seal shall be of the size prescribed by law for notarial seals, and shall have engraved thereon the arms of the state of Minnesota, and the words "Surveyor General — District," and in the said blank space shall be inserted the number of his district.

(G. S. 1866, c. 32, § 6, as amended 1874, c. 77, § 1; 1877, c. 18, § 1; G. S. 1878, c. 32, § 6; 1881, Ex. S. c. 45, § 1.)

§ 2393. Offices—Location.

The surveyor general of the first district shall keep his office at the city of Stillwater; of the second district, at the Falls of Saint Anthony, and shall appoint a deputy, who shall reside at the city of Saint Cloud; of the third district, at the city of Red Wing; of the fourth district, at the city of Wabasha; of the fifth district, at Duluth; of the sixth district, at the city of Winona; and of the seventh district, at the city of Crookston.

(G. S. 1866, c. 32, § 7, as amended 1868, c. 42, § 2; 1874, c. 81, § 1; G. S. 1878, c. 32, § 7; 1881, c. 64, § 2; 1885, c. 11, § 1.)

§ 2394. To take oath and give bond.

Each surveyor general shall, before entering upon the duties of his office, take an oath before some person qualified to administer oaths, that he will faithfully discharge the duties of his office, and also execute a bond to the county in which he holds his office, with five or more sufficient sureties, to be approved by the county commissioners of such county, in the penal sum of five thousand dollars, conditioned for the faithful discharge of his duties as surveyor general, and for the delivery over to his successor of all bills, bonds, certificates and papers, and other effects appertaining to his said office.

(G. S. 1866, c. 32, § 8; G. S. 1878, c. 32, § 8.)

§ 2395. Bond and oath to be filed.

The bond and oath of office shall be deposited with the clerk of the board of county commissioners of the county where such office is kept; and when there is a failure to comply with the conditions of such bond, any person feeling himself aggrieved may commence an action thereon before any court having jurisdiction, and a recovery thereon (by one) shall not render the bond void, but the same may be prosecuted from time to time until the whole penalty is recovered.

(G. S. 1866, c. 32, § 9; G. S. 1878, c. 32, § 9.)

§ 2396. Surveyor may appoint deputies.

The surveyor general may appoint any number of deputies necessary to transact the business of his district; and for the correctness of their acts and doings he shall be responsible upon his bond.

(G. S. 1866, c. 32, § 10; G. S. 1878, c. 32, § 10.)

§ 2397. Duties of surveyors—Scaling of logs, etc.

The surveyor general, by himself or his deputy, at the request of the owner of any logs, timber, or lumber, or of any sheriff, coroner or constable, who has replevied, attached or levied on any logs, timber or lumber, or of any person who has a written order from the owner for the delivery of any logs, timber or lumber, to repair to any part of his district and survey such logs, timber or lumber, and, upon completing such survey, to make out a true and correct scale-bill thereof, stating the person by whom, the time when, and place where such logs, timber or lumber was scaled, at whose request and to whom scaled, if to any one, and the scale-mark placed thereon, the number of logs, and, when requested by the owner or any other person controlling the same, the number of pieces of logs or timber, together with the mark or marks thereon, and the number of feet therein contained, and shall sign

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the same; and thereupon he shall record such bill in the books of his office, and, upon being paid his fees for such services, he shall deliver the original bill to the person to whom the logs, timber or lumber is scaled, if any; if not, then to the person requesting the survey; and such bill and the record thereof shall each be prima facie evidence of the facts therein stated. No surveyor general or deputy surveyor shall in person survey any logs, timber or lumber owned wholly or in part by himself, but either may survey any such logs, timber or lumber, owned wholly or in part by the other: provided, that where logs which have been cut in any lumber district in this state have been run out of said district, it shall be lawful for the surveyor general of the district in which said logs were cut, when requested so to do as above provided, to scale said logs, by himself or deputy, and record the scale-bill thereof in the books of his office; and said scale and record thereof shall be received as of the same degree of evidence as if the same had been done in his own proper district.

(G. S. 1866, c. 32, § 11, as amended 1871, c. 28, § 1; G. S. 1878, c. 32, § 11.)

An agreement that logs to be cut and hauled shall be measured and scaled by the surveyor general of logs, or his deputy, "whose decision shall be final," is not invalid because changing the effect of his official acts as provided by this section, nor as against public policy. *Leighton v. Grant*, 20 Minn. 345, (Gil. 298.)

See *Lovejoy v. Itasca Lumber Co.*, cited in note to § 2401.

When a witness producing a scale bill of logs testifies that it is the original scale bill of the surveyor general, this is sufficient to entitle it to be received as prima facie evidence, though it has not the official seal of the surveyor general, and does not show that the scaler was his deputy. *Glaspie v. Keator*, 5 C. C. A. 474, 56 Fed. Rep. 203.

X § 2398. Rules for surveying—Record of survey.

The said surveyors and their deputies shall, in surveying or measuring logs or lumber, make such allowance for hollow, rotten and crooked logs as would reduce and make them equal to good, sound and straight merchantable logs; and in surveying lumber, shall throw off all rotten, shaly or waxy stuff, and make the same equal to good merchantable lumber. And the figures showing such survey shall, at the time of making the same, be entered by the surveyor in pass-books kept for the purpose, which books shall be preserved and filed by the surveyor general in his office, for the inspection of all persons interested therein.

(G. S. 1866, c. 32, § 12, as amended 1878, c. 19, § 1; G. S. 1878, c. 32, § 12.)

Cited, *Pevey v. Schulenburg, etc., Lumber Co.*, 33 Minn. 45, 46, 21 N. W. Rep. 844.

§ 2399. Written rule to be posted—Scribner's rule adopted.

The surveyor general shall keep posted in his office a written rule or scale of logs of all sizes and lengths, which shall govern him in his surveys, and the scale-rule known as Scribner's rule is hereby adopted as the only legal rule for the survey of logs in this state: provided, that every log shall be surveyed by the largest number of even feet which it contains in length over ten feet and under twenty-four feet, and all logs of twenty-four feet in length or more shall be surveyed as two logs or more.

(G. S. 1866, c. 32, § 13; G. S. 1878, c. 32, § 13.)

§ 2400. Scale-bill for boom owners—Its contents—Evidence.

Each surveyor general, by himself or deputy, shall survey all logs and timber running out of any boom now chartered, or which may hereafter be chartered by law in his district, and at the end of each month when he has surveyed any such logs or timber, make out and deliver to the owner of such boom, or the managing agent thereof, a true and correct scale-bill, stating the date of such survey, the number of logs and pieces of timber, the marks thereon respectively, and the number of feet of each mark so surveyed during the month, and shall sign the same; and he shall immediately record such bill in the books of his office, and, upon being paid his fees for such services, shall deliver the original bill to the owner or managing agent of such boom; and all boomage or fees of such boom on any logs or timber shall be collected

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in accordance with such survey. And all scale-bills heretofore made and signed by any such surveyor general, or the record thereof in the respective offices of such surveyor generals, or copies of such records, duly certified, shall, in all courts of this state, be prima facie evidence of the matters stated in such scale-bill, record or copy.

(G. S. 1866, c. 32, § 14, as amended 1877, c. 18, § 2; G. S. 1878, c. 32, § 14.)

Scale-bill as evidence. Pratt v. Ducey, 38 Minn. 517, 38 N. W. Rep. 611.

See Lovejoy v. Itasca Lumber Co., cited in note to § 2401.

"Averaged" scale-bill. Douglas v. Leighton, 53 Minn. 176, 54 N. W. Rep. 1053.

§ 2401. Transfer of logs—Scale-mark—Scale-bill, to whom delivered.

In all cases of a sale or other transfer of any logs or timber, by one party to another, if the surveyor general by himself or deputy surveys the same, he shall, at the time of making such survey, place upon each of such logs or pieces of timber the scale-mark of the purchaser or other transferee, and thereupon such scale-mark shall supersede all prior marks upon such logs and timber, and become and be the log-mark of such purchaser or transferee on the same logs and timber; and in all cases of a sale or other transfer of any logs or timber, the purchaser or other transferee shall pay for the scaling thereof, and shall be entitled to receive and have the scale-bill. And when the surveyor general delivers a scale-bill to any person, he shall note upon the margin of the record thereof the name of the person to whom delivered and the date of the delivery.

(G. S. 1866, c. 32, § 15; G. S. 1878, c. 32, § 15.)

A certified copy of scale-bills taken from the records of the surveyor general of logs, purporting to be a scale of logs for the defendant in its mill-booms at Stillwater and Lakeland, and including, in separate columns, log-marks, the number of logs, and the quantity in feet of each log-mark, with date and place therein indicated, and signed by the surveyor general, and which purported to include logs bearing plaintiff's marks, were *prima facie* evidence of defendant's possession of the logs in controversy. Clark v. Nelson Lumber Co., 34 Minn. 239, 25 N. W. Rep. 628.

A surveyor-general, in surveying and scaling logs for a boom company, also placed on them the scale-mark of the defendant, to whom the boom company delivered them. The boom company having paid him the statutory fees, held that he could not recover from the defendant fees for the same survey and scaling. Lovejoy v. Itasca Lumber Co., 46 Minn. 216, 48 N. W. Rep. 911.

§ 2402. Fees—Lien, how enforced.

The fees of surveyor generals shall be: for surveying, scale-marking, making scale-bills and recording the same and posting in the ledger, five cents per thousand feet for all logs and timber required to be surveyed; for surveying lumber, twenty-five cents per thousand feet; for travelling to perform any service more than two miles from their respective offices, five cents per mile going and returning; for recording any log-mark, fifty cents; for making and certifying a copy of any matter which may be of record in his office, or for making any duplicate scale-bill, ten cents per folio; for recording any instrument in writing authorized to be recorded in his office, other than scale-bills, ten cents per folio, payable when such instrument is presented for record and before it is recorded, and no such instrument shall be deemed to be recorded until it is entered upon the index to the record. And for the purpose of securing to the surveyor general the payment of his fees, whether the same are for travelling, surveying, making scale-bills, or recording the same, or for any or all of such services, such surveyor general shall have a lien upon all such logs, timber, or lumber surveyed and marked by him, for the amount due for his services thereon, and may retain such lien by affixing to the scale-bill of such logs, timber or lumber, before the delivery thereof, a true statement of the amount due him thereon, and that he scaled such logs, timber, or lumber, relying upon such lien, and that he claims a lien thereon for such amount, and costs of collection; and thereupon such surveyor general may take actual possession of a sufficient quantity of such logs, timber or lumber, and may retain the same until he is paid the amount due him thereon, and such logs, timber or lumber shall not be removed or taken from the possession or control of such surveyor general until such payment is made. If the amount is not paid within sixty days after the delivery of such scale-bill, the

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surveyor general may sell at public auction enough of such logs, timber or lumber to pay the amount due him, with the costs of collection, first giving ten days' notice of such sale, by posting up five written notices thereof, one in his office, and one in each of the four most public places in the town or city where the sale is to be made; and at such sale the surveyor general may become the purchaser. The sale may be made by the sheriff or any constable of the county, and the only costs of collection allowed shall be ten per cent. on the amount due, for taking care of the property and, to the officer making the sale, ten per cent. on the amount payable to the surveyor general.

(G. S. 1866, c. 32, § 16; G. S. 1878, c. 32, § 16.)

Sp. Laws 1872, c. 106, § 3, which fixes the rate of compensation to be paid by defendant to the surveyor general of logs for surveying logs coming within defendant's boom, (the rate being less than that fixed by the general law,) affects equally the interests and rights of all owners of such logs, and is not liable to objection as partial and unequal, so as to be unconstitutional. *Merritt v. Knife Falls Boom Corp.*, 34 Minn. 245, 25 N. W. Rep. 403.

§ 2403. Books of record—Form and contents—Records and copies as evidence.

The books of record in the surveyor general's office in each district shall be:
First. A book in which shall be recorded the log-mark of any person desiring to have the same recorded.

Second. A book in which shall be recorded all bills of sale, mortgages, and orders, and other instruments in writing for the sale, transfer, incumbrance or delivery of any logs or timber in the same district.

Third. A book in which shall be recorded the scale-bills of all the logs, timber and lumber surveyed by the surveyor general.

Fourth. A book, to be kept in ledger form, in which shall be posted and recorded, as soon as any logs or timber is surveyed, separately and under their respective marks, all the logs and timber of each particular mark surveyed, together with the date of scale, the number of logs and the number of pieces of timber, to whom scaled, if to any one, and the number of feet, which book shall be kept posted up so that it will show the matter above stated concerning each mark of logs scaled during each month. And the surveyor general shall make and deliver to any person authorized to demand the same, a certified transcript of said record, as to any mark or marks of logs or timber, upon being paid the fees prescribed in section sixteen of this chapter, and the sum of twenty-five cents for his certificate of the same; and an index of the names and marks contained in each of said books shall also be kept. Any books of the description before named, which have been kept in the office of any such surveyor general, and which belong to said office, are hereby declared to be the records of said office, and to have and be of the same validity, force and effect as if the same had been kept by express authority of law. All the books of record hereinbefore mentioned and authorized to be kept in the office of any surveyor general are hereby declared to be public records, and of as high degree of evidence as the original instrument therein recorded, and shall, in all courts and places in this state, be taken and held to be prima facie evidence of the matters therein stated; and such books shall not be removed from the surveyor general's office, but any paper purporting to be a copy of any matter or thing of record in such office, certified under the hand of the surveyor general or his deputy to be a correct transcript from the records in such office, shall, in all the courts of this state, be received and read as prima facie evidence of the matters and things in such record contained, and of the matters therein stated.

(G. S. 1866, c. 32, § 17, as amended 1877, c. 18, § 3; G. S. 1878, c. 32, § 17.)

§ 2404. Orders for scaling—Record and effect.

The surveyor general shall not be required, except upon the request of a sheriff or constable in case of an attachment or levy thereon, to scale any logs to any person other than the owner, as the title thereto appears by the records in his office, without an order in writing therefor recorded in his office; and the surveyor general shall record in the books of his office, in the order in which they are presented for record, all orders drawn by the owner

of any logs, directing him to scale any logs of his mark or marks to any other person; and the first logs scaled off, of the marks given in such order and within the limits or of the lot or parcel prescribed therein, shall be scaled to the person in whose favor the order is drawn according to the priority of record. Such order shall be recorded in the same book with bills of sale and mortgages, and shall have preference over any subsequent sale, transfer or incumbrance of such logs; and the fees for recording such order shall be collected in the same manner and at the same time with the fees for scaling such logs.

(G. S. 1866, c. 32, § 18; G. S. 1878, c. 32, § 18.)

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§ 2405. Certificate of record or transfer of mark—Transfers invalid unless recorded.

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The certificate of the surveyor general that any mark has been recorded in his office, in the district in which the logs were cut or into which they come, and that there is no transfer of such mark recorded in the books of his office, shall be prima facie evidence in any court in this state that the logs bearing such mark, not superseded by any other mark, are the property of the person in whose name such mark is recorded. If the surveyor general certifies that such mark has been transferred on the books of his office, and the name of the person to whom such mark was last transferred, such certificate shall be prima facie evidence of the ownership of the logs by the person to whom the mark was last transferred; and if the surveyor general certifies that such mark has been superseded on any logs, naming the person in whose favor the same was last superseded, such certificate shall be prima facie evidence of the ownership of the logs bearing such mark superseded, by the person owning such superseding mark. No sale or transfer of any log-mark, or sale, mortgage or other transfer or incumbrance of any logs cut in this state, or which come into any district of this state, shall be legal or binding, except between the parties thereto, unless such sale, transfer, mortgage or incumbrance is in writing, and recorded in the office of the surveyor general in the district where such logs were cut, or into which they have come if cut in another state: provided, that the surveyor general is authorized to transfer, in his discretion, any log-mark to any person wishing to use the same, after said log-mark has been recorded eight years, and the logs marked with that mark have become extinct.

(G. S. 1866, c. 32, § 19, as amended 1871, c. 23, § 4; G. S. 1878, c. 32, § 19.)

The meaning of this section is that no unwritten and unrecorded transfer, etc., of a log-mark or logs shall be valid or binding, except between the parties thereto, as respects a person who has acquired some right thereto, (as, for instance, by transfer) from the person who, upon the records of the surveyor general's office, appears to be owner of the same. The statute is not intended to protect a mere stranger or trespasser, who has no show of right beyond what arises from his unlawful appropriation or possession. *Gaslin v. Bridgeman*, 26 Minn. 442, 4 N. W. Rep. 1111.

Logs in a boom, in the hands, and under the control, of the boom-owner, are subject to garnishment, and the provisions in regard to the title to logs, requiring transfers thereof to be recorded in the office of the surveyor general, has no application to such case. *Farmers' & Mechanics' Bank v. Welles*, 23 Minn. 475.

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§ 2406. No logs to be scaled unless mark is recorded.

No logs shall be scaled by the surveyor general or his deputies, unless the marks upon the said logs are properly recorded in accordance with the provisions of this title; and no survey of any logs shall be received in any court in this state except the survey of the surveyor general or his deputy.

(G. S. 1866, c. 32, § 20; G. S. 1878, c. 32, § 20.)

See note to § 2405.

§ 2407. Surveyor to make report to legislature.

The surveyor general shall report to the legislature, at the beginning of each regular session thereof, the total number of feet of logs and lumber which he has surveyed in his district for the year ending the thirtieth day of November last past.

(G. S. 1866, c. 32, § 21; G. S. 1878, c. 32, § 21.)

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§ 2408. Instruments affecting ownership of logs to be recorded.

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He shall record all mortgages, liens and bills of sale or other written instruments in any way affecting the ownership of any mark of logs in his district, in a book kept for that purpose: provided, that said instruments shall specify the marks placed upon the said logs when they were cut, and shall be recorded in the office of the surveyor general in which the said marks are recorded; and no conveyances, lien, mortgage or transfer shall be valid until the same are so recorded.

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(G. S. 1866, c. 32, § 22; G. S. 1878, c. 32, § 22.)

See note to § 2405.

§ 2409. Surveyor of first district to keep record of marks.

The surveyor general of the first district shall keep an alphabetical list of all the log-marks, recorded in his office, and opposite each mark a statement of—

First.—The book and page in which the mark is recorded.

Second.—Date of record.

Third.—By whom cut.

Fourth.—By whom owned.

Fifth.—Reference to record of all instruments, orders, &c., affecting the mark in any way.

Entries to be made in such record, in their appropriate place, of all matters affecting each mark, as soon as the same shall be presented for record.

(1868, c. 41, § 1; G. S. 1878, c. 32, § 23.)

See note to § 2405.

§ 2410. To appoint deputies.

The surveyor general of the first district shall appoint such persons his deputies as may be recommended by the board of trade of the city of Stillwater, or by any number of petitioners living in said district, representing ten million feet of logs or lumber, one of whom shall reside either in the town of Denmark, Afton or Lakeland, Washington county, three or more in the city of Stillwater, one at Marine Mills, Washington county, one at Taylor's Falls, Chisago county.

(1868, c. 41, § 2; G. S. 1878, c. 32, § 24.)

§ 2411. All rafts and logs to be scaled—Record to be kept.

It shall be the duty of the surveyor general of the first district to scale or cause to be scaled, all rafts, brills or lots of logs which may pass down or through Lake St. Croix, before passing out of said Lake St. Croix. Also, all rafts, brills or lots of logs run through or gathered into any side booms or lake booms for sawing or other use within the limits of said district, subsequent to the scale at the St. Croix Boom Corporation's boom, and before using or passing out of said lake; and all parties having logs in his or their possession which have not been scaled by the surveyor general, as set forth in this section, shall, before sawing, using or running away said logs, give notice to the surveyor general in due time, that he may cause the same to be scaled. All logs thus scaled shall be entered on the surveyor general's books in their proper place.

(1868, c. 41, § 3; G. S. 1878, c. 32, § 25.)

§ 2412. Fees for scaling, by whom paid.

That in all cases whenever the surveyor general shall scale logs, the fees shall be paid by the party for whom the logs are scaled, unless otherwise agreed upon.

(1868, c. 41, § 4; G. S. 1878, c. 32, § 26.)

TITLE 4.

RECORD OF MARKS AND MUTILATION THEREOF.

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§ 2413. Mark to be recorded before logs are cut—Effect of record—Sale of mark—Logs not marked.

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Whoever cuts any logs in either of the districts of this state, shall, before proceeding to mark the same, cause to be recorded, in the office of the surveyor general in whose district such logs may be, a copy of the log-mark which is to be put upon said logs, and which mark shall be distinctly different from any other mark recorded in the same district. Whoever cuts any logs in any state adjoining either of the districts of this state, and intends to bring such logs into any such district, may have his log-mark recorded in the district into which he intends to bring such logs and into which they may be brought, with the same rights, force and effect as if such logs had been cut in such district. And when any log-mark is recorded in pursuance of the provisions of this chapter, such mark shall be deemed and held to be the property of the person in whose name it is recorded; and such mark borne upon any logs or timber, and not superseded by any other mark, shall be prima facie evidence that the logs or timber bearing such mark are the property of the person owning the mark. Any such log-mark may be sold or transferred by bill of sale recorded in the office of the surveyor general where the mark is recorded, executed by the person in whose name the same is recorded, and a note of such transfer made in the margin of the book where said mark is recorded, or by the order in writing, signed by the person owning such mark, directing the surveyor general to transfer said mark to any person therein named; and upon receipt of such order said surveyor general shall record the same in his office, and transfer said mark upon his books of record of log-marks to the person named in said order, upon receiving his fees therefor. And such sale or transfer of any mark so made shall operate as a sale or transfer of all the logs bearing such mark, and at the time owned by the person transferring the same. Any logs or timber cut in this state, or coming into this state in the first district, at any point on the lake or river St. Croix above the city of Stillwater, the marks of which are not recorded in the district in which they were cut or into which they may come, and all logs or timber not bearing any distinctive mark shall not—in favor of the person who has cut the same or who claims to be the owner thereof—be recognized, deemed or held in any of the courts of this state to be the property of any such person for any purpose whatever in any action or proceeding.

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(G. S. 1866, c. 32, § 23, as amended 1875, c. 82, § 1; G. S. 1878, c. 32, § 27.)

The portion of this section providing that logs or timber cut or coming into this state on Lake St. Croix, above Stillwater, unmarked, or the mark of which is unrecorded, shall not, in favor of the person cutting the same, or claiming to be the owner, be deemed to be his property, in any court within this state, in any proceeding for any purpose, does not apply to logs on the land and in the actual possession of the owner. *Plummer v. Mold*, 14 Minn. 532, (Gil. 403.)

See *Stanchfield v. Sartell*, 35 Minn. 429, 29 N. W. Rep. 145; *Farmers' & Mechanics' Bank v. Welles*, 23 Minn. 475.

The record of the log-marks is only prima facie evidence of title. *Fox v. Ellison*, 43 Minn. 41, 44 N. W. Rep. 671.

§ 2414. Previous transfers legalized.

All transfers of any log-mark heretofore made upon the books of the surveyor general of any district in this state, by the order or direction of the person at the time of such transfer owning the same, are hereby legalized and made valid to the same extent as if the said transfer had been made by bill of sale duly recorded. And such books of record of log-marks are hereby declared to be prima facie evidence that the person in whose name any mark now stands recorded, or to whom said mark is transferred, is the legal owner thereof, and of the logs and lumber bearing the same.

(1875, c. 82, § 2; G. S. 1878, c. 32, § 2S.)

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§ 2415. Transfer of records in second district.

That within thirty days after the passage of this act, the surveyor general of logs and lumber of the second district of this state shall open or cause to be opened a new book of record, in which shall be recorded the log-mark of any person desiring to have the same recorded; and it shall be the duty of the said surveyor general to transfer and re-enter of record in such new book, without charge, any log-mark or marks, now of record in his office, the owner of which shall request in writing, within six months after the passage of this act, to have the same so transferred; and the original record of any log-mark now of record in said office, not so transferred within six months after the passage of this act, shall thenceforth be void and of no effect, except as to logs or timber marked with any such mark previous to the opening of such record.

(1876, c. 88, § 1; G. S. 1878, c. 32, § 29.)

§ 2416. Such new records evidence.

The said record book hereinbefore mentioned is hereby declared to be a public record, and of the same character, force and effect as evidence as the other records in said office; and certified transcripts therefrom shall be admissible in evidence in the same manner and to the same extent as like transcripts of the other [records] of said office.

(1876, c. 88, § 2; G. S. 1878, c. 32, § 30.)

§ 2417. Recording log-marks in second district.

That within thirty days after the passage of this act, the surveyor general of logs and lumber of the second district of this state shall open or cause to be opened a new book of record, in which shall be recorded the log-mark or marks of any person desiring to have the same recorded; and it shall be the duty of said surveyor general to transfer and re-enter of record in such new book without charge, any log-mark or marks now of record in his office, the owner of which shall request in writing, within six months after the passage of this act, to have the same so transferred, and the original record of any log-mark now of record in said office not so transferred within six months after the passage of this act shall thenceforth be void and of no effect except as to logs or timber marked with any such mark previous to the opening of such record.

(1889, c. 61, § 1, as amended 1889, c. 62, § 1.)

§ 2418. Same—Evidence.

The said record book hereinbefore mentioned is hereby declared to be a public record, and of the same character, force and effect as evidence as the other record in said office, and certified transcripts therefrom shall be admissible in evidence in the same manner and to the same extent as like transcripts of the other records of said office.

(1889, c. 61, § 2.)

§ 2419. Stealing logs—Injury to mark—False marks.

Whoever takes from any of the rivers or their tributaries in or bordering on this state, or from any slough, ravine, island or land adjoining said rivers or tributaries into or upon which any logs may run, or cuts out, mutilates, destroys or renders illegible the mark or marks thereon, or in any manner wilfully injures any such logs not his own, or whoever, other than the surveyor general or his deputy, places upon any log or piece of timber any mark except the original mark, is guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by imprisonment in the state prison for not less than one year, nor more than three years, and shall be further liable for double the market value of said logs at the time so taken or injured, to be recovered by the owner of such logs in a civil action.

(G. S. 1866, c. 32, § 24; G. S. 1878, c. 32, § 31.)

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¹ An act in relation to the recording of log-marks in the second lumber district of the state of Minnesota. Approved March 19, 1889.

§ 2420. Receiver of logs stolen or mutilated, how punished.

Whoever purchases, receives or secretes saw-logs so taken or removed, or who cuts or otherwise injures logs so taken or removed, shall be punished in the same manner, and to the same extent as is provided in the preceding section: provided, that no person shall be so punished for receiving or buying logs as aforesaid, if he received or bought them under and by virtue of any scale-list, signed by a legal surveyor of logs or lumber in this state, and is in possession of said scale-list.

(G. S. 1866, c. 32, § 25; G. S. 1878, c. 32, § 32.)

§ 2421. Penalty for scaling such logs.

If any surveyor general or deputy scales or gives a scale-list of any logs to any person, which logs were taken or removed as aforesaid, the said surveyor general or deputy so offending shall forfeit and pay for every such offence the sum of twenty-five dollars, to be recovered by any person suing for the same in any court of competent jurisdiction.

(G. S. 1866, c. 32, § 26; G. S. 1878, c. 32, § 33.)

TITLE 5.

SIDE BOOMS, INJURIES THERETO, AND TAKING LOGS THEREFROM.

§ 2422. Operating side booms—Intermingled logs—Appraisalment, when.

The parties constructing and operating side booms upon any of the rivers or streams of this state shall construct and operate the same so as to reasonably exclude the logs and other floatables of other parties floating in said rivers or streams from entering such booms, and they shall also make and provide proper and sufficient openings for the admission of logs into such side booms. In case logs, timber, or other floatables belonging to other parties run, or by mistake are driven, into any such private boom or booms, neither the owners of such logs, timber, or floatables, nor any other person or party, shall be permitted to cut, open, or in any way injure such private boom, or otherwise interfere with the same, except so far as may be necessary to obtain the logs, timber, or floatables so run, or by mistake included therein, and then only when it can be done without injury to such private boom. When, however, such release cannot be made without hazard to such private boom, and the logs and timber or other floatables are there by accident or mistake, such logs and timber shall, upon the request of the owner thereof, be scaled, and other floatables counted, by the surveyor general of the district, and the value thereof fixed by him, or by consent of the parties, to be paid for by the owners of such pond or private boom, within thirty days from the time such scale is made: *provided*, that the provisions of this section shall not apply to the first lumber district.

(G. S. 1866, c. 32, § 27; G. S. 1878, c. 32, § 34; as amended 1885, c. 104, § 1.)

§ 2423. Injury to booms, etc.—Penalty.

Whoever willfully and maliciously opens, breaks, cuts, or otherwise destroys or injures any side or other boom, or turns the whole, or any part, of the logs or timber contained therein loose or adrift, except for the purpose herein mentioned, and except, also, in case such boom materially obstructs the navigation of any navigable stream, or unlawfully intrudes upon the property of any such person, the person so opening, breaking, cutting, injuring, or destroying such boom, or turning loose or adrift such logs, or who willfully or maliciously cuts loose or turns adrift any boom, drill, string, or raft of logs, timber, or lumber, is guilty of a felony, and shall be punished by a fine of not less than five hundred dollars, nor more than one thousand dollars, or by im-

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prisonment in the state prison for not less than six months, nor more than two years, or by both such fine and imprisonment, in the discretion of the court, and shall further be liable for all the damages sustained by reason of such wrongful act.

(G. S. 1866, c. 32, § 28; G. S. 1878, c. 32, § 35; as amended 1885, c. 104, § 2.)

TITLE 6.

LIENS.

(1) LIEN LAW OF 1866.

§ 2424. Laborer to have lien on logs.

Whoever performs manual labor upon any logs or timber, shall have a lien upon such logs or timber to secure the payment of the wages agreed to be paid for such labor, upon substantially complying with the requirements of this title, which said lien shall be subject to assignment and sale.

(G. S. 1866, c. 32, § 29; G. S. 1878, c. 32, § 36.)

See Davis v. Mendenhall, 19 Minn. 149, (Gil. 113.)

§ 2425. Conditions precedent to right of lien.

Before entering upon the performance of any such labor, the person proposing to perform the same shall cause to be filed and recorded in the office of the surveyor general of logs, timber and lumber, for the district in which the mark of the logs or timber upon which the said labor is to be performed is by law required to be recorded, a memorandum in writing of the terms of the contract under which the said labor is to be performed; which said memorandum shall contain—

First. The name of the persons by and for whom, respectively, the said labor is to be performed.

Second. The proposed mark of the logs or timber upon which the said labor is to be performed.

Third. The time when said labor is to be performed, and—

Fourth. The amount, time and manner of payment agreed upon for such labor; and shall be signed by the said parties respectively.

(G. S. 1866, c. 32, § 30; G. S. 1878, c. 32, § 37.)

§ 2426. Claim of lien to be filed—Contents.

In case any such person so performing labor upon any logs or timber, and having complied with the requirements of the preceding section, has not received the wages agreed upon as aforesaid for such labor, at the time and in the manner agreed upon as aforesaid, then, within thirty days thereafter, such person shall cause to be filed and recorded in the said office a claim of lien upon the said logs or timber to secure the payment of the said wages, which said claim of lien shall be in writing, signed by the person so claiming a lien, or by his agent or attorney, and verified by the oath of the person so signing the same; and shall contain—

First. A reference to the contract under which it is claimed labor has been performed.

Second. A statement of the amount of labor performed under such contract.

Third. What amount, if any, has been paid for such labor; and—

Fourth. The amount still due for such labor.

(G. S. 1866; c. 32, § 31; G. S. 1878, c. 32, § 38.)

§ 2427. Lien, how enforced.

Upon the said claim of lien being filed and recorded as aforesaid, the said logs and timber shall be holden for the payment of said wages so due, as aforesaid, for labor performed on the same, and the said lien shall take precedence of any other lien or claim whatsoever, or any sale or transfer of the said logs or timber: provided, the said person claiming such lien, within six months after filing such claim of lien, proceeds to institute an action in

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the proper court to recover the said wages so due, as aforesaid, and shall prosecute the same to judgment and execution with due diligence.

(G. S. 1866, c. 32, § 32; G. S. 1878, c. 32, § 39.)

§ 2428. Attachment to protect lien.

If, at the time of instituting the action, or at any time thereafter before judgment, the person claiming a lien on any logs or timber, as aforesaid, or his agent or attorney, makes and files in said action an affidavit stating that the said logs or timber are about to be removed out of the jurisdiction of the court, or are about to be manufactured into lumber, or that in any other manner the said person is in danger of losing the said logs or timber as security for the payment of the said wages so due, as aforesaid, then the said person may have an attachment issued against the said logs or timber, without any other act or thing being required on his part whatever; and if any other person whosoever, after the time of the filing of the memorandum above mentioned, removes any such logs or timber out of the jurisdiction of said court, or manufactures or otherwise disposes of any such logs or timber so as to hinder or prevent the payment of the wages so due for labor on the same, or to hinder or prevent the execution of the judgment which may be recovered in such action, such person shall be personally liable to the person so hindered or prevented from obtaining the payment of said wages or from obtaining satisfaction of the said judgment, to the amount of the value of the logs or timber so removed, manufactured or disposed of as aforesaid.

(G. S. 1866, c. 32, § 33; G. S. 1878, c. 32, § 40.)

§ 2429. Judgments, how enforced.

Upon judgment being obtained in any such action, the same shall be executed upon the said logs or timber in the usual manner, and to the persons buying any portion of such logs or timber, the officer having the execution of such judgment, and making sale thereon, shall give a certificate of the said purchase and sale; and upon such certificate being presented and delivered to the surveyor general aforesaid, he shall scale to the person to whom the said certificate was given, or his assigns, the said logs or timber so purchased as aforesaid, and shall deliver to such person a scale-bill therefor; which said scale-bill shall be conclusive evidence of ownership of the said logs or timber.

(G. S. 1866, c. 32, § 34; G. S. 1878, c. 32, § 41.)

§ 2430. Liens to take precedence in order of filing.

The said claims of lien shall have precedence one of the other, in the order in which the same are filed in the office of the surveyor general.

(G. S. 1866, c. 32, § 35; G. S. 1878, c. 32, § 42.)

§ 2431. Fees recoverable.

There shall be recovered in such actions, as disbursements, the fees paid to the surveyor general for filing and recording the aforementioned papers; which said fees shall in the first instance be paid by the party procuring the said papers to be filed and recorded.

(G. S. 1866, c. 32, § 36; G. S. 1878, c. 32, § 43.)

§ 2432. Surveyor general to file papers—Fees.

The surveyor general of the several districts for the surveying of logs, timber and lumber, shall file and record in his office the several papers hereinbefore required to be filed and recorded, and perform the other acts herein provided for; and as compensation therefor, the surveyor general may demand and receive the same fees as he is entitled to for other like services.

(G. S. 1866, c. 32, § 37; G. S. 1878, c. 32, § 44.)

§ 2433. Discharge of lien.

Whenever any person, who has filed a claim of lien as hereinbefore provided, has received his wages and costs in full in any manner, he shall, on the demand of the owner of any logs or timber upon which such claim was made, or of the assignee of such owner, give a receipt of the same to such person, which said receipt, being filed and recorded in the office of the surveyor general, shall be deemed a discharge of the said lien.

(G. S. 1866, c. 32, § 38; G. S. 1878, c. 32, § 45.)

(2) LIENS IN FIRST DISTRICT.

§ 2434. Lien on logs in the St. Croix and tributaries.

Any person, company or corporation that may do or perform any labor or services in cutting, falling, hauling, driving, running, rafting, booming, cribbing, or towing any logs or timber upon the St. Croix lake or river, or their tributaries in this state, shall have a lien thereon for the amount due for such services, and the same shall take precedence of all other claims thereon. The provisions of this act shall apply to all such labor or services that may have been done or performed prior to the passage of this act, so far as the provisions of this act can be made applicable thereto, and the person, company or corporation that may have done or performed the same can comply with the provisions of this act.

(1870, c. 71, § 1; G. S. 1878, c. 32, § 46.)

Cited, *Holcomb v. C. N. Nelson Lumber Co.*, 39 Minn. 342, 40 N. W. Rep. 354.

§ 2435. Petition to be filed—Contents—Time for filing.

No such debt, demand or claim shall remain a lien on any such logs or timber unless a petition or statement thereof in writing, under oath, by the petitioner or some one in his behalf, shall be made and filed in the office of the surveyor general of logs and lumber in Stillwater, in the first lumber district in the state of Minnesota; such statement or petition shall briefly set forth and state the nature of such claim or demand, the amount due, and a description of the logs or timber upon or against which the lien is claimed. If such labor and services be done and performed and completed between the first day of November and the first day of May, then such petition or statement shall be filed on or before the first day of July next thereafter; but if the same shall be done and performed, either in part or in whole, after the first day of May, then such petition or statement shall be filed within sixty days after the completion or last day of such labor or services; and suit shall be commenced for the recovery and enforcement of such claim or demand under the provisions of this act within four months after the filing of such statement or petition; a compliance with the requirements of this section shall make the lien of the claimant or petitioner perfect.

(1870, c. 71, § 2, as amended 1872, c. 90, § 1; G. S. 1878, c. 32, § 47.)

§ 2436. Claim of lien enforced by attachment.

Any person, company or corporation, having a lien upon or against any logs or timber pursuant to the provisions of this act, or of any other law, may enforce the same by attachment against such logs or timber in the district court of any county within the first lumber district of Minnesota, in which such logs or timber may be at the time of the commencement of the action, in the same manner prescribed in title nine of chapter sixty-six of the General Statutes, so far as the same can be made applicable thereto, and not herein otherwise provided, or inconsistent herewith. Before any attachment shall be issued, the petitioner or claimant, or some one in his behalf, shall make an affidavit, setting forth that the defendant therein named is indebted to each [such] claimant or petitioner in a certain sum over and above all legal set-off, which sum shall be stated as near as may be, and that such indebtedness is due or accrued for labor or services on logs or timber, (describing such logs or timber), and that the claimant or petitioner has filed a lien thereon. Upon the making and filing of such affidavit, together with a complaint as required in civil actions, in the office of the clerk of the district court of the county in which the logs or timber are at the time of filing said affidavit, the attachment shall be issued by the clerk of said court, upon the order of the judge of said district, or the court commissioner of any county thereof, and thereafter said claim shall be prosecuted in the manner provided by law for the prosecution of civil actions in the district court.

(1870, c. 71, § 3, as amended 1873, c. 101, § 1; G. S. 1878, c. 32, § 48.)

The lien cannot be enforced unless the logs are attached. *Griffin v. Chadbourne*, 32 Minn. 126, 19 N. W. Rep. 647.

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§ 2437. Contents of writ.

The attachment shall require the sheriff or other proper officer to attach and safely keep the logs or timber described in such affidavit, or so much thereof as may be necessary to satisfy the plaintiff's claim, with costs, disbursements, charges and expenses.

(1870, c. 71, § 4; G. S. 1878, c. 32, § 49.)

§ 2438. When no attachment shall issue.

No attachment shall issue under the provisions of this act in the district court unless the amount stated in such affidavit due to the plaintiff over and above all legal set-offs shall exceed the sum of one hundred dollars.

(1870, c. 71, § 5; G. S. 1878, c. 32, § 50.)

§ 2439. Security not required of plaintiff, etc.

The plaintiff in any proceedings to enforce such lien as herein provided shall not be required to give the bond mentioned in section one hundred and thirty-one, of chapter sixty-six, of the General Statutes, nor any bond or security whatever unless required by an order of the said court, or a judge thereof, or the court commissioner of said county; and no such order shall be made unless the defendant shall make an affidavit showing that he has a good and valid defence in whole or in part, setting out such defence therein; and where the defence is only to a portion of plaintiff's claim, before any such order shall be made, the defendant shall pay to the plaintiff that portion of his claim to which there is no defence, and such payment shall not affect the jurisdiction of the court or prevent the recovery by the plaintiff of the same costs, disbursements and charges that he could have done had not the amount of his claim been reduced by such payment. In all applications for such order the plaintiff shall have at least three days' notice.

(1870, c. 71, § 6; G. S. 1878, c. 32, § 51.)

§ 2440. Proceedings before justices of the peace.

Justices of the peace shall have cognizance and jurisdiction of all cases arising under this act, and of all cases for a lien upon or against personal property, when the debt or demand claimed shall not exceed the jurisdiction of a justice of the peace; and any person, company or corporation, holding such claim and lien, may enforce the same by attachment and actions in the manner prescribed by title ten, of chapter sixty-five, of the General Statutes, so far as the same may be made applicable thereto, and not herein otherwise provided for, and not inconsistent herewith. Before any such warrant of attachment shall issue, the plaintiff, (that is the person claiming such lien,) or some person in his behalf, shall make and file with the justice an affidavit setting forth the same facts and making the same statement as is required by section three of this act in actions in the district court. Upon the filing of such affidavit the attachment shall issue.

(1870, c. 71, § 7; G. S. 1878, c. 32, § 52.)

§ 2441. Form of attachment.

The attachment issued by any justice of the peace shall be returned as an ordinary summons, and be in the following form, to wit:

State of Minnesota. } ss.
County of _____ }

The state of Minnesota, to the sheriff or any constable of said county:

You are hereby commanded to attach the following goods and chattels, (here insert a description of the property described in the affidavit) or so much thereof as shall be sufficient to satisfy the sum of (here insert the amount mentioned as due in the affidavit), with interest and costs of suit, in whosoever hands or possession the same may be found in your county, and so provide that the same so attached may be subject to further proceedings thereon as the law requires, and also summon _____ if to be found, to be and appear before me at my office in said county, on the _____ day of _____ A. D. 18— at _____ o'clock, in the _____ noon, to answer to _____ in a civil action to his damage one hundred dollars or under.

Given under my hand at _____, this _____ day of _____, A. D. 18—.

Justice of the Peace.

(1870, c. 71, § 8, as amended 1873, c. 101, § 2; G. S. 1878, c. 32, § 53.)

§ 2442. Provisions applicable to justices' courts.

In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices' courts so far as the same can be made applicable, and as near as may be to the provisions of this act, as they apply in the district court, unless herein otherwise provided: provided, however, that the justice shall in no case require the plaintiff or plaintiffs to give security for costs, unless the defendant or defendants shall first make and file with said justice an affidavit, by which it must be made to appear that the defendant has a good and valid defence for the whole of plaintiff's demand.

(1870, c. 71, § 9; G. S. 1878, c. 32, § 54.)

§ 2443. Attachment, how served and returned.

All attachments issued by any justice of the peace shall be served and returned as ordinary writs of attachment are served and returned in justices' courts.

(1870, c. 71, § 10; G. S. 1878, c. 32, § 55.)

§ 2444. Who to be defendants in suits.

In all suits or actions under the provisions of this act, the person, company or corporation liable for the payment of such debt or claim shall be defendant.

(1870, c. 71, § 11; G. S. 1878, c. 32, § 56.)

§ 2445. Form of verdict, findings, judgment, and execution.

In all suits or actions under the provisions of this act the court, jury or justice of the peace who shall try the same or make an assessment of damages therein, or make an inquest therein, shall, in addition to finding the sum due the plaintiff, also find, generally, that the same is due for labor and services for which the action was brought, and was performed on the logs or timber set forth in the complaint therein, and that the same is a lien thereon; and the court (or justice of the peace, as the case may be) shall render judgment in accordance with such finding, and execution shall issue therefor; and such execution, in addition to the direction and commands contained in ordinary executions in civil actions, may direct and command that the said logs and timber, or so much thereof as shall be necessary for that purpose, be sold to satisfy such judgment, and all costs, charges and disbursements: provided, however, that if the court, jury or justice shall find that the amount due the plaintiff is not a lien upon the property described in the complaint, the plaintiff's action shall not be defeated thereby, but he shall be entitled to judgment as in other civil actions.

(1870, c. 71, § 12; G. S. 1878, c. 32, § 57.)

§ 2446. Officer to pay boomage, etc.

The officer making the attachment may pay the boomage on the logs or timber attached, not exceeding the rate per thousand on the quality actually attached by him, and retain the amount paid on the writ, which shall be included and taxed in the bill of costs as disbursements; but if paid after judgment, then the officer may charge and collect the same out of the property as other costs or disbursements.

(1870, c. 71, § 13; G. S. 1878, c. 32, § 58.)

§ 2447. Effect of taking note.

The action or lien under the provisions of this act, shall not be defeated by taking a note, unless it was taken in the discharge of the amount due, and of the lien.

(1870, c. 71, § 14; G. S. 1878, c. 32, § 59.)

§ 2448. Requisites of complaint.

The plaintiff shall allege in his complaint the filing of such statement or petition for a lien. All such allegations relating thereto shall be taken to be true unless expressly denied by the defendant in his answer under oath, or by the affidavit of the defendant or some one in his behalf.

(1870, c. 71, § 15; G. S. 1878, c. 32, § 60.)

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§ 2449. Surveyor to file such statements—Compensation.

The surveyor general of logs and lumber in said first lumber district is hereby required to file all such petitions or statements, and shall receive therefor twenty-five cents for each statement or petition filed, and, when demanded, shall give a certified copy thereof, for the making of which he shall be entitled to receive the same fee allowed registers of deeds for making a copy of any record; and such certified copy may be read and introduced in evidence in any of the courts of this state.

(1870, c. 71, § 16; G. S. 1878, c. 32, § 61.)

§ 2450. Assignment of claims for lien.

Whenever there are more than one person having claims upon the same mark or marks of logs or timber as hereinbefore provided, it shall be lawful for any one person having such claim to purchase the claims of the others, and take a written assignment of such interest; and it shall be the duty of the person taking such assignment to file the same with the petition or statement required by this act; and the assignee is hereby authorized to prosecute an action, as in this act provided, for the whole of the amount owned and assigned to him, without making the assignors parties to the action.

(1870, c. 71, § 17; G. S. 1878, c. 32, § 62.)

If an assignment of a lien on logs is not filed for record in the surveyor general's office, the assignee cannot proceed to enforce the lien. Id.

(3) LIEN LAW OF 1876.

§ 2451. Lien of laborer—Extent—Waiver wholly void.

Any person who may do or perform any manual labor in cutting, banking, driving, rafting, cribbing, or towing any logs, railroad cross-ties, or timber in this state, shall have a lien thereon, as against the owner thereof and all other persons except the state of Minnesota, for the amount due for such services, and the same shall take precedence of all other claims thereon; and any verbal or written agreement, expressed or implied, made by or between any person or persons, or chartered company or companies, designed to act as a waiver of any right under this act, or any portion thereof, shall be wholly void. The lien herein created shall not attach as against the claim of the owner or legal occupant of the land upon which logs or timber were cut, in cases of trespass, or when the logs and timber were cut and carried away without the consent of such owner or legal occupant.

(1876, c. 89, § 1, as amended 1878, c. 4, § 1; G. S. 1878, c. 32, § 63; 1885, c. 86.)

Where a man and a team are employed, the lien extends to the use of the team, though they work separately. *Martin v. Wakefield*, 42 Minn. 176, 43 N. W. Rep. 966.

Where all the services are under one contract in getting out a lot of logs bearing two different marks according to their grade, a laborer may enforce his lien for his entire services on the part bearing one of the marks. Id.

§ 2452. Statement to be filed—Suit to be brought.

No such debt, demand or claim shall remain a lien on any such logs or timber, unless a statement thereof in writing, under oath by claimant or someone in his behalf, shall be made and filed for record in the office of the surveyor general of the lumber district in which such logs or timber may be; and such statement shall briefly set forth and state the date of the commencement and termination of such labor, the rate of compensation therefor, the amount paid thereon if any, the amount or balance due, and a description of the logs or timber upon which the lien is claimed; that such labor was performed wholly on such logs or timber, and that the person performing the same claims a lien thereon for the amount due. For all such labor done and performed between the first day of October and the first day of April, such statement shall be filed on or before the first day of May next thereafter; and for all labor done and performed between the first day of April and the first day of October, such statement shall be filed within thirty days after

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the completion or last day of such labor or services; and unless suit shall be commenced for the recovery and enforcement of such claim or demand under the provisions of this act, within three months after the filing of such statement, the lien shall cease.

(1876, c. 89, § 2; G. S. 1878, c. 32, § 64.)

The statement required by this section, to preserve a lien on logs, if not made by the claimant, must be made by some one with authority from him to make it, and the oath should state such authority. *Griffin v. Chadbourne*, 32 Minn. 126, 19 N. W. Rep. 647.

§ 2453. Attachment to enforce lien.

Any person having a lien upon any logs or timber pursuant to the provisions of this act may enforce the same by attachment against such logs or timber, in the district court of said state, in the judicial district wherein is situate the office of the surveyor general in which the mark of such logs or timber is or should be recorded, in the same manner prescribed in title nine, of chapter 66, of the General Statutes, so far as the same can be made applicable thereto, and not herein otherwise provided or inconsistent herewith. Before any attachment shall be issued, the claimant, or some one in his behalf, shall make affidavit, setting forth that the defendant therein named is indebted to such claimant in a certain sum, over and above all legal set-off, which sum shall be stated as near as may be, and that such indebtedness is due or accrued for labor or services on logs or timber, describing the same as near as practicable, and that the claimant has filed a lien thereon. Upon the making and filing of such affidavit, together with a complaint as required in civil actions, in the office of the clerk of the district court, the attachment shall be issued by the clerk of said court upon the order of the judge of such district, or the court commissioner of any county thereof, and thereafter said claim shall be prosecuted in the manner provided for the prosecution of civil actions in the district court.

(1876, c. 89, § 3; G. S. 1878, c. 32, § 65.)

§ 2454. Attachment, how executed.

The attachment shall require the sheriff or other proper officer to attach and safely keep the property described in such affidavit, or so much thereof as may be necessary to satisfy the plaintiff's claim, with costs, disbursements, charges and expenses. In case of a levy upon logs, such officer shall file a certified copy of such writ, with a copy of his return of levy endorsed thereon, specifying the mark or marks upon such logs, and the quantity of the same levied upon him, in the office of the surveyor general of the lumber district within which suit is brought, and such mark or marks are recorded, and the same shall be a sufficient levy thereon; but the officer shall, if necessary to save the same from loss, proceed to have such logs scaled to him as provided by law, without delay, or as soon thereafter as such logs shall arrive within the limits of the boom which is the proper destination of such logs, and nothing shall be done to hinder or delay the driving of such logs to such destination. When more than one writ of attachment or execution shall be levied upon the same property, they shall take priority in the order in which the levies are made: provided, that logs and timber in the first lumber district may be held at Stillwater, and logs and timber in the second lumber district may be held at Minneapolis, by the sheriff attaching the same, notwithstanding the destination of such logs may be below those places respectively.

(1876, c. 89, § 4; G. S. 1878, c. 32, § 66.)

§ 2455. Plaintiff need not give bond—Defendant may release lien by giving bond.

The plaintiff, in any proceedings to enforce such lien as herein provided, shall not be required to give the bond mentioned in section 131 of chapter 66 of the General Statutes, nor any other security whatever; but the defendant or any person who may apply and be admitted to defend, upon making and filing an affidavit showing that he has good and valid defence, in whole or in part, setting out such defence therein, and upon the payment to the plaintiff of that portion of his claim to which there is no defence stated in his affidavit, and all costs incurred up to the time of such payment, may make

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and file with the clerk of the court a bond to the plaintiff, with sureties to be approved by the said judge or court commissioner, and in such sum as the said judge or court commissioner shall order, conditioned, that he will pay and satisfy such judgment as shall be recovered in the action; and thereupon such judge or court commissioner may order the property levied upon by virtue of such writ to be released therefrom. The defendant or person so applying shall give at least one day's notice of his intention to file such affidavit and apply for such order, and upon the hearing of such application the sureties shall justify orally, if required by the plaintiff, in addition to the usual justification by affidavit, which in all cases shall accompany the bond.

(1876, c. 89, § 5; G. S. 1878, c. 32, § 67.)

§ 2456. Parties to cause—Intervention.

In all suits under the provisions of this act, the person, company or corporation liable for the payment of such debt or claim shall be defendant; but any person having an interest in or lien upon the logs or timber upon which the lien is claimed, may apply and be admitted by the court, so far as necessary to protect his rights in the premises.

(1876, c. 89, § 6; G. S. 1878, c. 32, § 68.)

§ 2457. Finding of court or jury—Judgment—Execution.

In all suits under the provisions of this act, the court or jury who shall try the same, or make an assessment of damages therein, or make an inquest therein, shall, in addition to finding the sum due the plaintiff, also find generally that the same is due for labor and service for which the action was brought, and was performed on the logs or timber described in the complaint therein, and that the same is a lien thereon, or the amount or extent thereof to which the same is a lien thereon, if a lien only in part; and the court shall render judgment in accordance with such finding, and execution shall issue therefor, and such execution, in addition to the direction and commands contained in ordinary executions in civil actions, may direct and command that the said logs or timber, or so much thereof as may be necessary for that purpose, be sold to satisfy such judgment to the extent of such lien, and all cost or charges and disbursements: provided, however, that if the court or jury shall find that no part of the amount due the plaintiff is a lien upon the property described in the complaint, the plaintiff's action shall not be defeated thereby; but he shall be entitled to judgment as in other civil actions: and provided further, that in all cases where the property levied upon by writ of attachment in any such action has been released from such levy by the giving of a bond as herein provided, and the amount found due the plaintiff is adjudged to be in whole or in part upon such logs, then judgment shall also be rendered for the amount of such lien against all the persons liable on such bond.

(1876, c. 89, § 7; G. S. 1878, c. 32, § 69.)

§ 2458. Execution, levy, and sale—Notice—Title acquired.

All levies upon logs, by virtue of any such execution, shall be made in the same manner herein provided for the levying of writs of attachment in like cases, and sales thereon shall be made in the same manner as ordinary sales on execution, except that, in addition to the usual notices of sale, a notice shall also be posted in a conspicuous place in the office of the surveyor general of the district, and such sale, when made in the county where such surveyor general's office is located, shall be made at the office of the surveyor general, and when made in any other county, shall be made at the front door of the usual place of holding court therein; and the officer making the sale shall give his certificate thereof to any person who may buy such logs or timber, or any part thereof, at such sale, and the same shall vest in such purchaser an absolute title thereto; and upon such certificate being delivered to the surveyor general, he shall scale to such person or his assigns the said logs or timber so purchased, and shall deliver a scale-bill thereof to the person to whom such scale is made, which shall be evidence of his ownership of such logs or timber.

(1876, c. 89, § 8; G. S. 1878, c. 32, § 70.)

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§ 2459. Boomage and scalage—Payment and collection by sheriff.

The officer making a levy upon logs, as herein provided, may pay the boomage and scalage on the logs or timber levied upon, and return the amount paid on the writ, which shall be included and taxed in the bill of costs as disbursements; but if paid after judgments, then the officer may charge and collect the same out of the property as other costs and disbursements.

(1876, c. 89, § 9; G. S. 1878, c. 32, § 71.)

§ 2460. Lien not defeated by taking note for claim.

The action or lien under the provisions of this act shall not be defeated by the taking of a note or other evidence of indebtedness, unless it was taken in discharge of the amount due and of the lien.

(1876, c. 89, § 10; G. S. 1878, c. 32, § 72.)

§ 2461. Pleading in suits to enforce liens.

The plaintiff shall allege in his complaint all the facts upon which his right to a lien depends, and the filing of such statement for lien; and all such allegations shall be taken to be true, unless expressly denied by the defendant in his answer.

(1876, c. 89, § 11; G. S. 1878, c. 32, § 73.)

§ 2462. Filing of papers by surveyors general.

The surveyors general of logs and lumber are hereby required to file and record such statements, and any assignments thereof, and all such writs and returns, and certificates of sale, and shall receive therefor the same fees as for recording other instruments in their office; and such record, or a certified copy thereof, may be introduced and read in evidence in any of the courts of this state.

(1876, c. 89, § 12; G. S. 1878, c. 32, § 74.)

§ 2463. Assignment of claims—Rights of assignees.

Any person having a claim upon logs or timber as provided in this act, may assign the same in writing to any person, either before or after the making and filing of the statement therefor as provided in section sixty-four of this act, and the person to whom such claim may be assigned, his agent or attorney, may make and file for record the statement for a lien therefor as provided in said section sixty-four in case no such statement thereof has been filed. And when such statement, as provided for in section sixty-four of this act, and the assignment provided for in this section, has been made and filed in the office of the surveyor general of the lumber district in which said logs are situated, said person to whom said assignment is made shall be subrogated to all the rights of the original claimant, and is hereby authorized to enforce the lien against said logs or timber, in his own name, in the same manner and with the same effect, as the original claimant could have done had not such assignment been made. And any person holding the title to such logs or timber, or any lien by mortgage or otherwise thereon, as security for the payment of any sum as stumpage thereon, may, in like manner, purchase and take an assignment of any or all of such claims for labor, or may pay and discharge the same, and in either case may tack the same to his original claim, and hold the same as an additional incumbrance thereon, and may enforce the payment of the same, with interest in like manner as his original claim thereon; but in no case shall he be required to pay more than the reasonable and current value of such labor.

(1876, c. 89, § 13; G. S. 1878, c. 32, § 75; as amended 1893, c. 78, § 1.)

§ 2464. Act applies only to laborers for hire.

This act is intended only for the protection of laborers for hire, and shall not inure to the benefit of any person interested in contracting, cutting, hauling, banking or driving logs by the thousand.

(1876, c. 89, § 14; G. S. 1878, c. 32, § 76.)

This provision is inserted for the purpose of distinguishing the contractor—that is to say, the person who takes contracts for the performance of work which he employs others to do—from a laborer who works himself. It should therefore be read by omit-

ting the comma found in the printed statutes after the word "contracting," which would be equivalent in sense to inserting the word "for" after the word "contracting," so that the provision would read, "This act shall not inure to the benefit of any person interested in contracting for cutting, hauling," etc. King v. Kelly, 25 Minn. 522.

§ 2465. When act to take effect.

This act shall take effect and be in force from and after its passage, and all acts or parts of acts inconsistent with this act are hereby repealed: provided, that this act shall not take effect in the first lumber district until October 1st, 1876.

(1876, c. 89, § 15; G. S. 1878, c. 32, § 77.)

§ 2466. Lien of log-owner who is obliged to drive other logs intermingled with his own.

That any person who shall desire to float to market or place of manufacture any logs or timber in any of the streams of this state, and who shall be hindered and obstructed in so doing by the logs or timber of another; or any person whose logs or timber, in any of the waters of this state, are so intermixed with the logs or timber of another that the same cannot be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all logs or timber with which his own is or may be obstructed or intermixed, towards such market or place of manufacture, to some point where the same can be conveniently separated from his own, and shall be entitled to a reasonable compensation therefor from the owner of such logs or timber; and upon the filing in the office of the surveyor general of the district where such logs may be, within thirty days after the completion of such driving of any such logs or timber, a statement, setting forth when and where the same were driven, the amount of his claim therefor, together with the mark borne upon any such logs or timber, and verified by his oath or affidavit, such person shall have and retain a lien upon any logs or timber bearing such mark, for the amount of such claim, from the time of filing the same, and may have and maintain a civil action for the amount of such claim, or for the enforcement of such lien, against the owner of such logs or timber, or any person in whose name such mark shall be recorded at the time of filing such claims: provided, that a failure to commence such action within thirty days after the filing of such claim shall operate as a discharge of said lien.

(1866, c. 35, § 1; G. S. 1878, c. 32, § 78.)

The right to recover compensation for driving the logs of another person, which have become intermingled with those of the plaintiff, is not limited to cases where the intermingling has resulted from the wrongful acts of the defendant, but may arise where the logs have become intermingled by consent, or under a contract for driving, the performance of which has been abandoned. Walker v. Bean, 34 Minn. 427, 26 N. W. Rep. 232.

One may be charged with liability in favor of another, who drives the logs of the former, under authority of the statute, even without previous notice to the person to be charged. Osborne v. Nelson Lumber Co., 33 Minn. 255, 22 N. W. Rep. 540.

If the logs of A. are in the way of the logs of B. so that B. cannot drive his until A.'s are got out of the way, B. is hindered or obstructed, within the meaning of this section. To constitute such hindrance or obstruction it is not necessary that the logs of B. should come in actual contact with those of A. Anderson v. Maloy, 32 Minn. 76, 19 N. W. Rep. 387.

A claim by plaintiff for driving logs of another, hindering the passage of his own logs, is not affected by the fact that at the time the stream had not, in its natural state, sufficient water to float logs, and that to float them it was necessary to let into the stream water accumulated in artificial dams. Merriman v. Bowen, 33 Minn. 455, 23 N. W. Rep. 843.

The compensation allowed by statute is to be measured by the value of the labor performed in driving the logs of the defendant, and not by the value or extent of the benefit thereby conferred. Osborne v. Nelson Lumber Co., 33 Minn. 255, 22 N. W. Rep. 540.

In an action to recover compensation for driving logs of the defendant intermingled with those of the plaintiff, the court struck out a portion of the answer, alleging as a defense that the defendant did not drive all of the intermingled logs of the defendant. The court, however, upon the evidence, found the fact to be substantially as alleged by the defendant, but that the conduct of the plaintiff had been in accordance with the request of the defendant. Held, that the defendant was not prejudiced by the striking out of the answer. Id.

See Chesley v. De Graff, 35 Minn. 415, 29 N. W. Rep. 167; Beard v. Clarke, 35 Minn. 324, 29 N. W. Rep. 142.

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§§ 2466-2471

One who would avail himself of this section must actually drive the logs. It is not enough merely to get them out of the way, without further effort to keep them afloat in the stream. *Miller v. Chatterton*, 46 Minn. 338, 48 N. W. Rep. 1109.

§ 2467. Enforcement of lien.

Any person having a claim or lien upon any logs or timber, as provided in the preceding section, properly adjudicated before any court having jurisdiction thereof, may proceed to sell at public auction a sufficient quantity of such logs or timber to pay and satisfy such claim or lien, first giving at least six days' notice of the time and place of such sale, and amount of such claim, by posting notices of such sale in three of the most public places in the city or town where such logs may be, and where such sale shall take place; and any sheriff, constable or other person may act as auctioneer and execute proper bills of sale, without incurring personal liability on account thereof.

(1866, c. 35, § 2; G. S. 1878, c. 32, § 79.)

§ 2468. Booms for logs exempt.

Nothing in this act shall be so construed as to interfere with any boom or booms necessarily erected for the safe-keeping of logs or timber.

(1866, c. 35, § 3; G. S. 1878, c. 32, § 80.)

(4) LIEN LAW OF 1893.

§ 2469. Boom companies—Assorting ties and cedar poles.

That all corporations owning and operating any boom or booms for handling, storing and assorting logs and timber floating upon any of the navigable waters of this state, shall assort according to their respective marks, and deliver to their respective owners, all railroad ties and all cedar poles that shall come into their respective booms. All railroad ties and all cedar poles of ten feet or less in length shall be delivered in cribs of not less than thirty-two pieces each, and all cedar poles of greater length than ten feet shall be delivered in brails or cribs; ties of different kinds of wood shall be placed in separate cribs.

(1893, c. 38, § 1.2)

§ 2470. Same—Fees—Lien.

Any such corporation shall be entitled to receive for such assorting as is provided for in section one of this act, the following compensation: For all railroad ties assorted and delivered as aforesaid, two cents for each and every tie. For all cedar poles so assorted and delivered, four cents for each pole; provided, that if such cedar poles be cut into lengths of ten feet or less, then for all such short lengths such corporation shall only receive one and one-half cents for each pole. All such compensation shall be collected in the same manner, shall be due and payable at the same time, and any such corporation shall have the same lien therefor, and such lien may be enforced in the same manner as the charter or other law governing such corporation now provides for the collection of other compensation, or tolls, for services to be performed in handling, assorting and delivering saw logs.

(Id. § 2.)

§ 2471. Same—Exception.

The provisions of this act shall not apply to any such corporation whose charter provides any other or different rate of compensation than that hereinbefore provided.

(Id. § 3.)

²An act to provide for the assorting and delivering of railroad ties and cedar poles by boom companies, and fixing the compensation therefor. Approved April 6, 1893.

TITLE 7.

CONVERSION OF LOGS.

§ 2472. Wrongful intermingling of logs—Rule to govern.

In all cases of a wrongful or unlawful taking, detention or conversion of logs or timber, and intermingling of the same with other logs or timber so that they cannot be identified or separated therefrom by the owner, the rule of the common law applicable to the case of a wrongful and fraudulent confusion of goods shall govern in determining the right of property in respect to said logs and timber.

(G. S. 1866, c. 32, § 29; G. S. 1878, c. 32, § 81.)

§ 2473. Accidental intermingling of logs—Rule to govern.

In cases where logs or timber bearing the same mark, but belonging to different owners in severalty, have, without the fault of any of them, become so intermingled that the particular or identical logs or timber belonging to each cannot be designated, either of such owners may, upon a failure of any one of them having the possession to make a just division thereof after demand, bring and maintain against such one in possession an action to recover his proportionate share of said logs or timber, and in such action he may claim and have the immediate delivery of such quantity of said mark of logs or timber as shall equal his said share, in like manner and with like force and effect as though such quantity embraced his identical logs and timber and no other.

(G. S. 1866, c. 32, § 40; G. S. 1878, c. 32, § 82.)

A dam across a stream, which does not obstruct the passage of logs, lumber, or timber, erected and maintained by the owner upon his own land, without license, is not prohibited, and a contract with such owner for the sluicing of logs over such dam is valid. Such license is needed to enable him to collect tolls from those with whom he has no contract. *Lamprey v. Nelson*, 24 Minn. 304.

TITLE 8.

THE ESTABLISHMENT AND REGULATION OF DAMS FOR SLUICING LOGS, TIMBER, AND LUMBER.

§ 2474. License, when and to whom granted.

The board of county commissioners may grant a license to any person applying therefor, to construct and maintain a dam or dams across any stream within their respective counties and counties thereto attached for record or judicial purposes, for the purpose of raising a head of water sufficient to sluice logs, timber or lumber; upon being satisfied that such sluice-dam is necessary at the point applied for, and that the land on both sides of the stream is in the possession or under the control of the person so applying for a license.

(G. S. 1866, c. 32, § 41, as amended 1877, c. 39, § 1; * G. S. 1878, c. 32, § 83.)

*Laws 1877, c. 39, § 1, in terms amends Laws 1861, c. 50, § 1, which is identical with G. S. 1866, c. 32, § 41.

§ 2475. License when stream runs between two counties.

In all cases when the stream across which a license for a sluice-dam is sought runs between two counties, the board of county commissioners of either county have as full jurisdiction in the premises as though the stream was wholly within the county of which they are commissioners. And when the board of county commissioners of either county have exercised jurisdiction under this title, and have granted a license thereunder, the county commissioners of no other county have any power to exercise any jurisdiction over the same.

(G. S. 1866, c. 32, § 42; G. S. 1878, c. 32, § 84.)

[Tit. 8] ESTABLISHMENT AND REGULATION OF DAMS, ETC. §§ 2476-2480

§ 2476. Licenses, how executed.

All licenses granted under the provisions of this title shall be sealed with the seal of the board of county commissioners and signed by them, attested by the county auditor, and may be granted for a period not exceeding six years.

(G. S. 1866, c. 32, § 43; G. S. 1878, c. 32, § 85.)

§ 2477. Notice of application for license to be posted.

All persons intending to apply for a license at a certain point shall give notice of their intention by posting up at least three notices in public places at the county seat, and in the office of the surveyor general of logs of the district where the logs running from the place where such dam is proposed to be built, are required to be sealed, or if it is proposed to build said dam in an unorganized county, the said notices shall be posted up at the county seat of the county to which the same is attached for judicial purposes, and the said notices shall be given twenty days prior to such application: provided, that when application is made for a renewal of a license, when the former license has expired, the same may be granted or renewed without previous notice.

(G. S. 1866, c. 32, § 44; G. S. 1878, c. 32, § 86.)

§ 2478. Licenses, when granted—Bond of licensee.

The board, being satisfied that for the general interest of those engaged in the lumbering business a sluice-dam is needed, and that the applicant is a suitable person to build and maintain it, shall grant the license, which, however, shall not become valid until the applicant files a bond with sureties, to be approved by the board, in a penalty not less than one thousand dollars, with a condition that he will construct and maintain such dam with all reasonable diligence and skill, for the purpose of sluicing logs, timber and lumber, and to facilitate the driving of the same on such stream, and with such further special conditions, relating to the construction and operation of such dams, as the case requires.

(G. S. 1866, c. 32, § 45; G. S. 1878, c. 32, § 87.)

The owner of a sluice-dam across a stream, erected, maintained, and operated under a license, is not required by statute to perform the labor of conducting or driving logs, timber, or lumber through the sluice-way. This is no part of the "operation" of the dam within the meaning of the statute. *Anderson v. Munch*, 29 Minn. 414, 13 N. W. Rep. 193. The statute gives the board of county commissioners no authority to take a bond from the licensee requiring him to conduct or drive logs, timber, or lumber through the sluice-way, and if they should take a bond containing such a condition, it would not be a statutory condition, and hence would be void, and would not inure to the benefit of third persons, or give them any right of action for its non-performance. *Id.*

§ 2479. Rate of toll to be established—Limitation.

Whenever a board of county commissioners of any county grant a license to construct and maintain a sluice-dam across any stream within their jurisdiction, the said board shall establish the rate of tolls, which may be demanded for the sluicage of logs, timber, and lumber; but the tolls for each dam shall not exceed the sum of six cents per thousand feet so sluiced: *provided*, that at the Snake River dam, in Pine county, the said toll may be ten cents.

(G. S. 1866, c. 32, § 46, as amended 1877, c. 39, § 2; * G. S. 1878, c. 32, § 88; 1883, c. 141; 1885, c. 211.)

*Laws 1877, c. 39, § 2, in terms amends 1861, c. 50, § 6, which is identical with G. S. 1866, c. 32, § 46.

§ 2480. Lien for tolls—Enforcement of lien.

All tolls chargeable under this title for sluicing logs, timber and lumber, shall be deemed due and payable as soon as said logs, timber and lumber are sluiced, and for the payment of the said tolls, the proprietor of the sluice dam has a complete lien upon said logs, timber or lumber until the said tolls are paid. And when said tolls so due for sluicing logs, timber or lumber, are not paid on demand by the owner thereof, the proprietor of the dam through which the same have been sluiced, is authorized and empowered to take and sell a sufficient quantity of the logs, timber or lumber, at public auction, to pay the tolls so due: provided, that written or printed notices of the sale shall be posted up at the office of the surveyor general of logs and lumber of the district, and at the county seat of the county in which said property is seized.

(G. S. 1866, c. 32, § 47; G. S. 1878, c. 32, § 89.)