

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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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
REPORTER SYSTEM

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COMPLETE IN TWO VOLUMES

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VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,  
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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1894

CHAPTER 38.

PUBLIC LANDS.<sup>1</sup>

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TITLE 1.

SCHOOL LANDS.

§ 3958. State land-office established.

A state land-office is hereby established, which shall be and remain at the seat of government of the state as fixed by law.

(G. S. 1866, c. 38, § 1; G. S. 1878, c. 38, § 1.)

§ 3959. Land commissioner — Powers and duties — Performance by deputy-auditor.

The state auditor shall be *ex officio* commissioner of the land-office. He shall have the general charge and supervision of all lands belonging to the state, of all lands in which the state has an interest, or which are held in trust by the state, and may superintend, lease, sell, and dispose of the same in such manner as shall be directed by law. In the absence or inability of the auditor, the deputy state auditor shall perform the several duties required of the auditor in his capacity as land commissioner.

(G. S. 1866, c. 38, § 2; G. S. 1878, c. 38, § 2; as amended 1885, c. 102, § 1.)

For salary of land commissioner, see § 530, subd. 4.

The state auditor is here "charged *eo nomine* with the duties pertaining to the land-office. He cannot be commissioner without being auditor, nor auditor without being commissioner. While auditor, he cannot avoid the charge and supervision of the lands. The duty of that charge and supervision is cast upon his department. The fact that the statute designates him commissioner of the land-office, and that, in transacting the business of the office, he may, though we do not think it essential that he should, so designate himself, does not affect this, nor make the commissioner of the land-office an independent officer." State v. Whitcomb, 28 Minn. 50, 8 N. W. Rep. 902.

See State v. Galusha, 26 Minn. 238, 2 N. W. Rep. 939, 3 N. W. Rep. 350.

§ 3960. Assistant land clerk.

That the commissioner of the state land-office is authorized to employ an assistant land clerk, at a salary of twelve hundred dollars per annum.

(1883, c. 146, § 2; G. S. 1878, v. 2, c. 38, § 5a.)

§ 3961. Commissioner to keep record.

The commissioner shall keep a record of the sales of lands, and of the money received on account either of principal or interest, the date of such

<sup>1</sup>By Laws 1867, c. 77, the title of this chapter is changed to "An act for the protection and management of the public lands of the state of Minnesota, and to provide for the punishment of trespassers thereon."

See Laws 1885, c. 230, for authority to lease the west one-half of section 36, town 47, range 19.

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sale or payment, the description of the lands sold, with the number of acres thereof, and the name of each purchaser or person paying such moneys, and shall credit the proper fund therewith.

(G. S. 1866, c. 38, § 3; G. S. 1878, c. 38, § 3.)

## § 3962. Annual report.

He shall annually make a report to the legislature of his official proceedings, showing the quantity of land sold or leased, and the amount received therefor, the amount of interest moneys received to the credit of the several funds, and all such other matters relating to his office as he may think proper to communicate.

(G. S. 1866, c. 38, § 4; G. S. 1878, c. 38, § 4.)

## § 3963. Custody of maps, etc.—Books and records.—Seal—Certificates as evidence—Clerk.

The commissioner of the land-office shall have the custody of all maps, books, and papers relating to any of the public lands mentioned in this title. He shall cause books to be opened, and records kept of all lands owned or held in trust by the state for schools, public buildings, internal improvements, and for all other purposes, and shall keep a true record of all patents, deeds, and conveyances of such lands made by the state; which record, or a transcript therefrom, and all township plats on file in his office, or transcripts of such plats, properly authenticated, shall be received as legal evidence in all courts and places within the state. He shall also certify, upon each instrument recorded by him, the book and page where the same is recorded. He shall have an official seal, with a proper device thereon; and the seal of the land-office affixed to any certificate of purchase, receipt, or other instrument issued by the commissioner of the land-office, according to the provisions of this title, is *prima facie* evidence of the due execution of such certificate or other paper; and he shall have authority to appoint a clerk, whose salary shall be fixed by law.

(G. S. 1866, c. 38, § 5, as amended 1877, c. 56, § 1; G. S. 1878, c. 38, § 5; 1885, c. 97.)

## § 3964. Custody of abstracts of title and conveyances.

That all abstracts and conveyances of title to the state of Minnesota of any lands now owned or hereafter acquired by the state, whether the said lands be held for penal, educational, charitable or other institutions or purposes shall be, by those in whose charge said conveyances now are, or may come, deposited with and remain in control of the state treasurer.

(1889, c. 25, § 1.2)

All inconsistent acts are repealed by § 2.

## § 3965. School lands—Minimum price—Sales—Pine lands.

The minimum price of the school lands shall be five dollars per acre, and all sales of such lands shall be within the county in which said lands are situated: *provided*, that pine lands shall not be sold until the timber thereon has been estimated, appraised, and sold according to the provisions of this act; and when said pine timber has been sold and removed, the land may be appraised and sold in the same manner and on the same terms as other lands are appraised and sold under the provisions of this chapter.

(G. S. 1866, c. 38, § 6, as amended 1877, c. 56, § 2; G. S. 1878, c. 38, § 6; 1885, c. 102, § 2.)

## § 3966. Terms of payment—Rate of interest—Outstanding contracts.

The terms of payment of all state lands shall be for lands other than pine lands, which are chiefly valuable for the timber thereon, the value of such

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<sup>2</sup>An act designating a place of deposit for all abstracts and conveyances of title to the state of Minnesota of lands now owned or hereafter acquired by the state. Approved March 7, 1889.

timber to be paid at the time of sale, and for all other lands fifteen per cent of the purchase price thereof to be paid at the time of sale, and the balance of the purchase money of all lands at any time thereafter from time to time within forty years, at the option of the purchaser, with interest annually in advance at the rate of five per cent per annum on the unpaid balance, payable on the first day of June or six days thereafter in each and every year. Provided, that all outstanding contracts bearing seven per cent, or contracts on which the interest has been reduced to five per cent under certain conditions, shall hereafter draw interest at the rate of five per cent without any restrictions whatever.

(G. S. 1866, c. 38, § 7, as amended 1877, c. 56, § 3; G. S. 1878, c. 38, § 7; 1885, c. 195; 1893, c. 106, § 1.)

See McKinney v. Bode, 32 Minn. 228, 20 N. W. Rep. 94; post, § 3968.

§ 3967. Certificate to purchaser—Default in payment—  
Extension of time—Resale—Withdrawal.

At the time of the sale of any such lands, the commissioner shall make out and deliver to the purchaser thereof a certificate, in which the said commissioner shall certify the description of the lands sold, the quality thereof, and the price per acre, the consideration paid and to be paid therefor, and the time and terms of payment. Such certificate shall be numbered and made assignable, but no certificate shall be delivered to the purchaser by the commissioner until the sum of money required by this title to be paid at the time of the sale is paid to the treasurer of the county where said sale takes place; and in case the purchaser fails to pay the amount so required to be paid at the time of said sale, said commissioner may again immediately offer said land for sale; but no bid shall be received from the person so failing to pay as aforesaid: *provided*, that any holder of one or more certificates mentioned in this section heretofore issued on sales heretofore made, who shall have paid all interest due thereon before the presentation thereof as herein provided, may return to the state land commissioner such certificate or certificates, accompanied by an agreement, duly signed and acknowledged by him, in such form as the state land commissioner may prescribe and provide, conditioned that the balance of the purchase price of the land described therein shall not be payable before the expiration of fifteen years from the date of such agreement, and that during all of said time he will pay five per cent. interest per annum, in advance, on the balance of said purchase price; whereupon the state land commissioner shall indorse on said certificate that the time of payment is so extended, and the rate of interest changed from seven to five per cent. per annum, in consideration of such extension of time, and shall return said certificate so indorsed to said holder; and thereupon said holder of said certificate shall only pay interest at the rate of five per cent. per annum in lieu of seven per cent. per annum, from the first day of June next thereafter; and *provided, further*, that in case any holder of a certificate mentioned in this section desires for any reason to pay for said land at any time within fifteen years from the time of sale, or from the time of the change of the terms of the certificate herein provided for, he shall make application to the state land commissioner for leave to make such payment, and such application shall thereupon be granted: *provided*, the said holder of said certificate pay into the state treasury over and above the principal of said purchase money and the interest accrued on said lands, and to accrue thereon during such year, two per cent. interest per annum on the purchase price of said land, during all the time in which said holder or purchaser has paid five per cent. interest on said purchase price. The commissioner may, in his discretion, on or before the day of sale, withdraw any lands that may have been advertised for sale or included in any list to be offered in any county.

(G. S. 1866, c. 38, § 8; G. S. 1878, c. 38, § 8; as amended 1885, c. 201, approved March 7; Id. c. 102, § 3, approved March 9.)

See preamble to amendment by c. 291.

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## § 3968. Certificate to be void on failure to pay interest.

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The said certificate shall further set forth, that in case of the non-payment of the annual interest due by the first day of June, or within six days thereafter, in each and every year, by the purchaser, or by any person claiming under him, then the said certificate shall, from the time of such failure, be utterly void, and the said commissioner may take possession thereof, and resell the same as hereinafter provided.

(G. S. 1866, c. 38, § 9; G. S. 1878, c. 38, § 9.)

An attack on the title of a purchaser of school land, upon the ground that the "certificate of purchase" issued to him by the commissioner of the state land-office has become void through failure to pay interest on an "unpaid balance" of the purchase money, is not sustained by the fact that such interest has been paid by persons other than the purchaser, whether "claiming under" him, in the meaning of the statute, or not, so long as it appears that the state has received the money (paid by them) on plaintiff's certificate, as interest, and has failed to assert any forfeiture of such certificate. *McKinney v. Bode*, 32 Minn. 223, 20 N. W. Rep. 94.

Evidence held to sustain a finding that the holder of certificates abandoned all claim to the lands. *Murphy v. Burke*, 47 Minn. 99, 49 N. W. Rep. 387.

See *State v. Bruce*, 50 Minn. 491, 52 N. W. Rep. 970.

## § 3969. Surrender and division of certificates.

That whenever the holder of any certificate of purchase of any state or school lands shall surrender the same to the commissioner of the state land-office, with a request to have the same divided into two or more certificates, it shall be lawful for said commissioner to issue the same: provided, that if the applicant shall desire new certificates, dividing said land by boundaries other than regular government or state subdivisions, the applicant shall file with his application a plat and survey, showing the lines of the division desired, and the quantity of land in each subdivision: provided, that no new certificate shall issue while there is due and unpaid any interest, nor in any case where said commissioner shall be of opinion that the security of the state would be impaired and endangered.

(1875, c. 106, § 1; G. S. 1878, c. 38, § 10.)

## § 3970. Further security may be required.

The said commissioner shall, whenever in his opinion the interests of the state will not be secured by the terms of payment in this title required to be made at the time of the purchase, require of the purchaser such further security for the payment of the moneys to become due and payable, according to the terms of the certificate of purchase, as in his judgment will secure the respective funds against loss.

(G. S. 1866, c. 38, § 10; G. S. 1878, c. 38, § 11.)

## § 3971. Patents.

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The governor shall sign, and cause to be issued under the seal of the state land-office of this state, and attested by the commissioner, patents for the lands described in the certificate of sale, whenever the same are presented to him, with the further certificate of the commissioner indorsed thereon, that the whole amount of principal and interest specified therein, and all rents and taxes due on said lands, have been paid, and that the holder of the certificate is entitled to a patent of the lands described therein; and the governor shall, in like manner, sign and cause to be issued patents of said land, to any purchaser of the right, title and interest of the original purchaser, his heirs or assigns, at an execution or mortgage sale, upon presentment to him of the certificate of the commissioner, that the whole amount of principal, interest, rents and taxes due thereon has been paid according to law, and that said purchaser at execution or mortgage sale is entitled to a patent for the land described in such certificate.

(G. S. 1866, c. 38, § 11, as amended 1877, c. 56, § 4; G. S. 1878, c. 38, § 12.)

The patent cannot be avoided for irregularities on the part of the officers whose business it is to issue patents in such cases, though it may be defeated by want of title in the state or want of power in the officers. Except in such cases, the patent, when regular on its face, that is, when in proper form, and signed by the proper officers, and with the proper seal, is conclusive evidence of the legal title. *McKinney v. Bode*, 33 Minn. 450, 23 N. W. Rep. 851.

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§ 3972. School lands in St. Louis county—Patents—When issued.

Whenever the amount of five-dollars per acre for all the school lands sold by the state in section sixteen, township fifty, range fourteen west, in the county of St. Louis, shall have been paid into the state treasury by the holders of the certificates thereof, it shall be the duty of the commissioner of the state land-office to certify the same to the governor of the state, who shall thereupon sign and cause to be issued, in accordance with law, patents of the lands to the holders of said certificates, the same as if the price for which said lands were originally sold for had been fully paid.

(1879, c. 105; G. S. 1878, v. 2, c. 33, § 12a.)

§ 3973. Fee to remain in state until full payment.

The fee of each parcel of said land shall be and remain in the state until patents are issued for the same respectively, upon full payment as aforesaid; and in case of non-compliance by the purchaser, his heirs or assigns, with the terms of the certificate as aforesaid, or with the provisions of law applicable thereto, any and all persons being or continuing in possession of any such lands, after a failure to comply with the terms of the certificate as aforesaid, or with such provisions of law as aforesaid, without a written permission of the commissioner of the state land-office, shall be deemed and held to detain such land forcibly and without right, and to be trespassers thereon.

(G. S. 1866, c. 33, § 12; G. S. 1878, c. 33, § 13.)

By Laws 1867, c. 29, the widow of the holder of a school land certificate is given the same right of dower in such school land as in land of which he held the legal title.

The purchaser becomes the equitable owner, even before full payment. *Wildor v. Haughey*, 21 Minn. 106.

§ 3974. Security for purchase-money—Action.

In all cases where security is taken for the purchase-moneys, pursuant to the provisions of the tenth section of this title, the commissioner may sue for and recover all such sums as have become due and payable for which such security was given.

(G. S. 1866, c. 33, § 13; G. S. 1878, c. 33, § 14.)

§ 3975. Land may be laid out in lots.

Whenever the interest of the state will be promoted, in the opinion of the commissioner, by laying off any portion of the land under his control into small parcels or village lots, the said commissioner may cause the same to be done, and shall cause the same to be appraised as provided in the next section.

(G. S. 1866, c. 33, § 14; G. S. 1878, c. 33, § 15.)

§ 3976. Appraisalment of land laid out in lots.

The appraisers provided for in this title shall be appointed as follows, viz: one by the commissioner of the state land-office, and the other two by the county commissioners of each county in which lands are to be appraised or sold. Such appraisers shall, before entering upon their duties of office, take and subscribe an oath or affirmation, before some person qualified to administer oaths, that they will faithfully and impartially discharge their duties as appraisers, according to the best of their ability, and that they are not interested, directly, or indirectly, in any of the school lands or the improvements thereon, and have entered into no combination to purchase the same or any part thereof, which said oath or affirmation shall be attached to the report made of such appraisal as hereinafter provided. Said appraisers shall be allowed, as compensation for their services and expenses, three dollars per day, to be paid out of the state treasury.

(G. S. 1866, c. 33, § 15; G. S. 1878, c. 33, § 16.)

§ 3977. Sale of lots—Reappraisalment.

All parcels or lots so appraised shall be subject to sale in the same manner, and upon the same terms and conditions, and the certificate of purchase shall have the same effect, as in the case of other lands for which provision is made in this title, at the prices at which the same were severally appraised,

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until a new appraisal is made, which the commissioner may in his discretion cause to be had, in the manner aforesaid, and with the like effect; but no lots or parcels so appraised shall be sold for less than the minimum price of said lands, established in this title.

(G. S. 1866, c. 38, § 16; G. S. 1878, c. 38, § 17.)

### § 3978. Effect of certificate of purchase.

Certificates of purchase, issued pursuant to the provisions of law, entitle the purchaser to the possession of the lands therein described, and are sufficient evidence of title to enable the purchaser, his heirs or assigns, to maintain action for injuries done to the same, or any action or proceeding to recover possession thereof, unless such certificate has become void by forfeiture; and all certificates of purchase in force may be recorded in the same manner that deeds of conveyance are authorized to be recorded.

(G. S. 1866, c. 38, § 17; G. S. 1878, c. 38, § 18.)

See note to § 3968.

### § 3979. Delinquent purchasers—Redemption.

In all cases where the rights of a purchaser have become forfeited under the provisions of this chapter, by failing to pay the amount due upon his certificate of purchase, if such purchaser, his heirs or assigns, shall, before the resale at public auction of the lands described in such certificate, pay to the state treasurer the amount of interest then due and payable on such certificate, and all costs which have been incurred in addition thereto, together with interest at the rate of twelve per cent. per annum on the interest and costs so due from date of delinquency to date of payment, such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and said certificate, from the time of such payment, shall be in full force and effect as if no such forfeiture had occurred.

(G. S. 1866, c. 38, § 19, as amended 1877, c. 56, § 5; G. S. 1878, c. 38, § 19; 1885, c. 64.)

### § 3980. Islands—Survey—Sale.

That the state auditor of this state is authorized to cause to be surveyed and platted any island belonging to this state, in any river or lake, or within any of the waters of this state; and after such lands shall have been surveyed and platted, the state auditor shall be authorized to sell the same at such times and in such parcels as to him shall seem best for the interests of the state: *provided*, that no such sale shall be made without public notice thereof first having been given of the time and place thereof, as in case of sales of other public lands belonging to the state.

(1883, c. 98, § 1; G. S. 1878, v. 2, c. 38, § 77a.)

### § 3981. Surveys.

Whenever it appears to the commissioner necessary, in order to ascertain the true boundaries of any tract or portion of lands mentioned in this title, or to enable him to describe or dispose of the same in suitable and convenient lots, he may cause all such necessary surveys to be made; and the expenses thereof shall be paid out of the state treasury, as other incidental expenses of the land-office are paid.

(G. S. 1866, c. 38, § 22; G. S. 1878, c. 38, § 20.)

### § 3982. Taxation of land sold—Tax sales—Redemption.

The commissioner shall immediately transmit to the auditor of each county in which any lands mentioned in this title have been sold during the year, a detailed description of each parcel of the land so sold, the names of the purchasers; and the auditor shall extend the same upon his tax duplicate for the purpose of taxation, and the same shall thereupon become subject to taxation the same as other lands, and the taxes assessed thereon, collected and enforced in like manner as against other lands: *provided*, however, that the purchaser of any such lands sold for delinquent taxes, or as forfeited to the state, shall acquire, and shall only acquire, by virtue of such purchase, such rights and interests as belong to the holder and owner of the certificate

of sale heretofore issued by said commissioner under the provisions of this title, and the right to be substituted in the place of such holder and owner of such certificate of sale, as the assignee thereof; and upon the production to the proper officer of the tax certificate given upon said tax sale, in case said lands have not been redeemed, such tax purchaser shall have the right to make any payment of principal or interest then in default upon such school-land certificate of sale, as the assignee thereof, prior to the redemption of said lands; and in case such holder and owner of such school-land certificate shall fail to redeem said lands within the time allowed by law, and also to pay to said proper officer, for the use of the holder of such tax certificate, all payment of principal and interest, if any, by him made upon such school-land certificate, with interest from the time they were so made, at twelve per cent. per annum, then the holder and owner of such tax certificate, upon the receipt of his tax deed thereon duly given, and the filing of the same with the said commissioner, a special certificate of purchase of said land, embodying the same terms and conditions, and with the like force and effect, as the said original certificate of purchase, and in lieu thereof.

(G. S. 1866, c. 38, § 23, as amended 1870, c. 50, § 1; G. S. 1878, c. 38, § 21.)

A purchaser at a void tax sale, who paid the balance due on the certificate, and obtained a patent, held to have an equity equal to that of the original certificate holder, who for 10 years had failed to pay interest and taxes. *Murphy v. Burke*, 47 Minn. 99, 49 N. W. Rep. 387.

See *State v. Bruce*, 50 Minn. 491, 52 N. W. Rep. 970.

### § 3983. Map of lots to be recorded.

Whenever the commissioner shall lay off any tract of land into small parcels or village lots, as provided in this title, he shall cause a correct map of the same to be entered of record in the county where said lands are situated.

(G. S. 1866, c. 38, § 24; G. S. 1878, c. 38, § 22.)

### § 3984. Record of patents.

The registers of deeds of the several counties of this state are authorized to record all patents issued by the governor pursuant to the provisions of this title; and the record thereof shall have the same effect as the record of other conveyances executed according to the laws of the state.

(G. S. 1866, c. 38, § 25; G. S. 1878, c. 38, § 23.)

### § 3985. Expenses of land-office, how paid.

The necessary incidental expenses of the land-office shall be paid out of the state treasury, and, upon satisfactory vouchers therefor, the state auditor shall issue his warrant for the same.

(G. S. 1866, c. 38, § 26; G. S. 1878, c. 38, § 24.)

### § 3986. Illegal sales—Purchase money refunded.

In case of any sale made by mistake, or not in accordance with law, or obtained by fraud, the same shall be void, and the certificate of purchase issued thereon shall be of no effect; but the holder of such certificate shall be required to surrender the same to the commissioner, who shall, except in cases of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof.

(G. S. 1866, c. 38, § 27; G. S. 1878, c. 38, § 25.)

### § 3987. Rights of assignees of purchasers.

The legal assignees of all bona fide purchasers of any of the lands mentioned in this title, are subject to, and governed by, the provisions of law applicable to the respective purchasers of whom they are the assignees; and they shall have the same rights, in all respects, as original purchasers of the same class of lands.

(G. S. 1866, c. 38, § 29; G. S. 1878, c. 38, § 26.)

### § 3988. Sales to be made by legal subdivisions.

All sales of land by the commissioner shall be made according to the subdivisions thereof by the United States surveys, unless the same are laid off

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into smaller lots as provided in this title: provided, that no lands shall be sold in larger quantities than one-quarter section.

(G. S. 1866, c. 38, § 30; G. S. 1878, c. 38, § 27.)

## § 3989. Damages to be paid into state treasury.

All damages recovered for any trespass or other injury upon or to any of the lands mentioned in this title, shall be paid over to the state treasurer, for the benefit of the fund to which the same properly belongs.

(G. S. 1866, c. 38, § 31; G. S. 1878, c. 38, § 28.)

## § 3990. Wilful trespass on state lands—Penalty.

Whoever commits any wilful trespass upon any of the lands owned or held in trust or otherwise by this state, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or who injures or removes any buildings, fences, improvements, or other property belonging or appertaining to said lands, or aids, directs or countenances such trespass or other injury, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, in the discretion of the court.

(G. S. 1866, c. 38, § 32; G. S. 1878, c. 38, § 29.)

## § 3991. Court to give this title in charge to grand jury.

It is the duty of every court having jurisdiction of the same, especially to charge the grand jury, at each term of such court, to inquire into all offences against the provisions of this title, and present any person who may be guilty of any such offence, within their county.

(G. S. 1866, c. 38, § 33; G. S. 1878, c. 38, § 30.)

## § 3992. Trespass on state lands—Damages.

Whoever commits any trespass upon any of the lands owned or held in trust or otherwise, by this state, shall be liable in treble damages, in an action of trespass, to be brought in the name of the people of this state, if such trespass is adjudged to have been wilful; but single damages only shall be recovered in such action, if such trespass is adjudged to have been casual and involuntary.

(G. S. 1866, c. 38, § 34; G. S. 1878, c. 38, § 31.)

## § 3993. Recovery of lands from tenants, etc.

In case any person holds or continues in possession of any of the lands mentioned in this title, contrary to the conditions or covenants of any lease or written agreement, he shall be liable to an action of forcible entry and detainer, or any other proper action for the recovery of possession of such lands, and damages for the detention of the same.

(G. S. 1866, c. 38, § 35; G. S. 1878, c. 38, § 32.)

## § 3994. Trespass—Duties of county attorneys.

The county attorneys of the several counties shall promptly report to the commissioner all trespasses committed upon any of said lands, which may come to their knowledge, and shall, when directed by the attorney general, prosecute all actions for any trespass or injury thereto, or for the recovery of possession thereof, or otherwise.

(G. S. 1866, c. 38, § 36; G. S. 1878, c. 38, § 33.)

## § 3995. Duties of attorney general.

The attorney general, whenever requested by the commissioner, shall advise with and give his opinion upon all questions of law which are submitted to him by said commissioner, relating to the duties of his office, and prosecute, or cause to be prosecuted by the county attorneys whenever in his opinion the public interest requires it, any person who may be charged with any indictable offence under this title.

(G. S. 1866, c. 38, § 37; G. S. 1878, c. 38, § 34.)

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**§ 3996. Payments to county treasurer—Receipts.**

The purchasers of any of the lands mentioned in this title, or their assigns, may pay to the treasurer of the county in which such lands lie, any amount which may be due from time to time, on their several certificates, either for principal, interest or penalty; and for the amount so paid, the said county treasurer shall give to such person duplicate receipts, specifying the amount paid, date of payment, whether for principal, interest or penalty, and the fund to which it is applicable, the number of the certificate, the name of the original purchaser of the land, which receipts shall be countersigned by the auditor of said county, and have the same force and effect as if given by the state treasurer.

(G. S. 1866, c. 38, § 38, as amended 1877, c. 56, § 6; G. S. 1878, c. 38, § 35.)

See *Commissioners of Redwood County v. Tower*, 28 Minn. 45, 8 N. W. Rep. 907; *Gerken v. County of Sibley*, 39 Minn. 433, 40 N. W. Rep. 508.

**§ 3997. Same—Bond of county treasurer.**

Before any county treasurer receives any moneys under the preceding section, he shall execute and give to the state a bond, with sufficient sureties, in an amount to be fixed by the commissioner of the state land-office, not less than double the sum liable to come into his hands by virtue of this title; which bond shall be conditioned for the honest and faithful discharge of all trusts and responsibilities imposed by this chapter, and for the faithful payment of and accounting for all moneys received by him, under the provisions of this title, to the state treasurer or other person entitled to receive the same; the sureties to be approved by the judge of probate and register of deeds, and to justify in double the amount of the bond. County treasurers giving such bonds shall be entitled to a fee of one-half of one per cent. on each dollar collected or received by them in payment of principal or interest on state lands, which fee shall be payable from the interest fund of the class of lands on which payment is made to said treasurers, and said fee shall not be payable to the county under any provision requiring county treasurers to pay fees received into the treasuries of their respective counties, and the necessary sums for the payment of such fees are hereby annually appropriated from the several interest funds.

(G. S. 1866, c. 38, § 39, as amended 1877, c. 56, § 7; G. S. 1878, c. 38, § 36; 1885, c. 102, § 4.)

The sureties on a general bond of a county treasurer are not liable for deficiencies, or failure to pay over money collected on university or school lands. For such matters the sureties on his special bond, given under this section, are the ones liable. *State v. Young*, 23 Minn. 551, followed. *Commissioners of Redwood County v. Tower*, 28 Minn. 45, 8 N. W. Rep. 907.

See note to § 723.

On the trial of an indictment against defendant for an embezzlement of state moneys received by him as a county treasurer, under the provisions of this chapter, proof of the execution of the bond required by this section is not essential to maintain the charge. *State v. Mims*, 26 Minn. 183, 2 N. W. Rep. 683.

**§ 3998. County auditors—Duties and powers.**

The county auditor shall, at the time he is required by law to return abstracts of settlement to the state auditor, also forward all duplicate receipts of principal, interest or penalty on state lands, with a certified statement of such collections by the county treasurer, specifying the amount of each item; and he shall also make such return at any other time when required by the state auditor. The county auditor shall act as clerk of land sales made by the commissioner, and he may make such sales when authorized by the commissioner, in which case his deputy shall act as clerk; and immediately after the close of all sales of state lands, the county auditor shall report to the state auditor the number of acres of land sold, the amount for which the same were sold, the amount of principal and interest paid, and the amount of principal remaining unpaid; and for each and every day

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so engaged, the county auditor shall be allowed the sum of three dollars. to be paid out of any appropriation for the appraisal and sale of such lands.

(G. S. 1866, c. 38, § 41, as amended 1877, c. 56, § 8; G. S. 1878, c. 38, § 37.)

See State v. Mims, 26 Minn. 183, 2 N. W. Rep. 683.

## § 3999. Blank bond to be sent to county treasurer.

The commissioner of the state land-office shall transmit to each county treasurer to whom moneys may be paid under this title, a blank bond with the penal sum fixed as provided in the thirty-ninth section aforesaid, which the treasurer shall execute and procure to be approved, as hereinbefore provided, and return to the said commissioner, who shall file and carefully preserve the same in his office.

(G. S. 1866, c. 38, § 42; G. S. 1878, c. 38, § 38.)

## § 4000. Statement of lands sold.

On or before the first day of May in every year, the commissioner shall cause to be made out, and transmit to such county treasurers as have filed their bonds with him, properly executed and approved, a statement showing the classes of land sold in that county, the number of the certificates of purchase, the name of the person to whom each certificate was issued, and the amount of both principal and interest due on each on the first day of June, together with such directions, instructions and blanks as shall enable the county treasurer to carry out the provisions of this title.

(G. S. 1866, c. 38, § 43; G. S. 1878, c. 38, § 39.)

## § 4001. County treasurer to pay over moneys to state treasurer.

All moneys received by the county treasurer, under the provisions of this title, shall be held at all times subject to the order and direction of the state treasurer, for the benefit of the funds to which such moneys respectively belong; and during the months of March, June and October of each year, and at such other times as he may be requested so to do by the state treasurer, he shall pay into the state treasury all moneys received on account of such funds since the last payment he may have made.

(G. S. 1866, c. 38, § 44, as amended 1877, c. 56, § 9; G. S. 1878, c. 38, § 40.)

See Gerken v. County of Sibley, 39 Minn. 433, 40 N. W. Rep. 508.

## § 4002. School lands—Appraisal—Minimum price—Limit of sales.

Whenever, in the opinion of the commissioner, it will be for the interest of the people of this state that an appraisal of any of the school lands, or of the improvements thereon, should be made, he shall appoint an appraiser in the county in which the lands to be appraised are situated, and notify the county commissioners of said county to appoint two appraisers; and thereupon the said county commissioners shall, within ten days, appoint such appraisers; and said appraisers shall proceed to appraise such lands and the improvements thereon, if any, as the commissioner may direct, and the valuation of such lands and improvements shall be separately made and stated in the appraisal, and the minimum price established by such appraisal shall be the minimum for such lands, until changed by a subsequent appraisal; but no lands shall be sold for less than the minimum price established by this title, and not more than one hundred thousand acres of school lands shall be sold in any one year.

(G. S. 1866, c. 38, § 45; G. S. 1878, c. 38, § 41.)

## § 4003. Notice of sale of lands, how given.

Before any sale at auction of any of the lands mentioned in this title, the commissioner of the land-office shall cause notice of the time and place of such sale to be published in one or more newspapers before said sale, and in one newspaper in each county in which such lands are to be sold, if any; if there is no newspaper printed and published in the county, the same shall be published in some newspaper printed and published at the capital of the state, for six successive weeks before said sale.

(G. S. 1866, c. 38, § 46; G. S. 1878, c. 38, § 42.)

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**§ 4004. Proceeds of land sales—Distribution.**

The principal sums accruing from all sales of school, university, internal-improvement, or other state lands, or of pine timber upon the same, shall become a part of the several permanent funds to which they respectively belong, and shall not be reduced by any costs or charges of officers, by fees, or any other means whatever. All moneys received as interest or penalty on such funds shall become a part of the current or general funds to which they respectively belong, and shall be distributed as directed by law: provided, that all interest or penalty received on the internal-improvement-land fund shall be compounded with the permanent fund.  
(G. S. 1866, c. 38, §§ 49, 50, as amended 1877, c. 56, § 10; G. S. 1878, c. 38, § 43.)

**§ 4005. Proceeds of land sales—Investment.**

All moneys received from the sale of any of the lands mentioned in this title, or interest accruing from such sale, shall be paid into the state treasury, and the purchase money so received may be invested in Minnesota bonds (railroad bonds always excepted) or in United States bonds bearing not less than four per cent. interest, or in the bonds of either of the following states, viz., New York, Pennsylvania, Ohio, Illinois, Michigan, Wisconsin, Iowa, Missouri, Alabama, Georgia, and Tennessee, bearing not less than three per cent. interest: *provided, however*, that no investment of such funds shall ever be made in bonds which may have been issued to aid in the construction of any railroad; and the governor, treasurer, state auditor, president of the board of regents of the state university, and the chief justice of the state, are hereby constituted a board of commissioners, whose duty it shall be to invest said funds; and whenever there shall have accumulated in the treasury funds belonging to said permanent school fund, or the permanent university fund, or both, to the amount of ten thousand dollars, it shall be the duty of said board of commissioners to immediately invest the same according to the provisions of this section. And the state auditor shall be secretary of said board of commissioners. He shall keep a record of all the proceedings of said board, and shall cause the same to be published with his annual report. It shall be the duty of the state treasurer to place to the credit of the respective funds, when received, the interest accruing on said bonds, and pay over the same as directed by law. The bonds purchased in accordance with this section shall not be transferable, except upon the order of the governor; and on such bonds shall be written, "Minnesota School-Fund Bonds," or "Bonds of the University of Minnesota," as the case may require, "transferable only upon the order of the governor and state auditor." The state auditor shall keep a record of such bonds, stating the name of stock, when issued, when redeemable, rate of interest, when and where payable, number and amount of bond, by whom executed, when purchased, when withdrawn, and for what purpose; and he shall credit the state treasurer for such bonds when purchased, and charge the same to the proper fund.

(G. S. 1866, c. 38, § 51, as amended 1873, c. 33, § 1; G. S. 1878, c. 38, § 44; 1885, c. 102, § 5.)

§ 44 is further amended "by inserting after the word 'auditor,' in the twenty-eighth line of said section, the words 'and state treasurer.'" (1885, c. 102, § 5.) The word "auditor" occurs in the twenty-sixth and twenty-seventh lines, but not in the twenty-eighth.

**§ 4006. Appropriations for investment.**

There is hereby annually appropriated all moneys received into the state treasury to the credit of the permanent school fund, permanent university fund, internal improvement land fund, sinking fund, inebriate asylum fund, or other funds required to be invested in securities, to be invested in interest-bearing bonds of the United States, or of the state of Minnesota issued since the year eighteen hundred and sixty, or of the bonds, bearing not less than six per cent. interest, of the states of Massachusetts, New York, Pennsylvania-

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nia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri, Iowa, Alabama, Georgia, and Tennessee.

(1875, c. 105, § 1; G. S. 1878, c. 38, § 45; as amended 1885, c. 102, § 6.)

## § 4007. Appropriation for expenses of investment.

There is hereby annually appropriated such sums as shall be found necessary for expenses of purchase, and payment of accrued interest at time of purchase, of bonds for permanent school and university funds, payable from general school and university funds, and for expenses and accrued interest of bonds purchased for other funds named in the first section of this act, payable from the funds for which such purchases are made.

(1875, c. 105, § 2; G. S. 1878, c. 38, § 46.)

## § 4008. Timber lands—Investigation—Duty of commissioner.

It shall be the duty of the commissioner of the state land-office to make diligent and thorough inquiry and examination into the extent, character, and value of the timbered lands belonging to the state of Minnesota, and chiefly valuable for the pine timber thereon, belonging to the state of Minnesota, whether designated or set apart as school lands or for other purposes.

(1885, c. 269, § 1; G. S. 1878, v. 2, c. 38, § 54a.)

## § 4009. Same—Protection, sale, etc.

He shall take such measures as will protect the said timber from damage or loss by fire, trespass, or otherwise, and make such regulations for the care, control, sale, and disposition of the timber lands of the state, or the timber thereon, as will best protect the interests of the state.

(1885, c. 269, § 2; G. S. 1878, v. 2, c. 38, § 54b.)

## § 4010. Same—Employes.

In the prosecution of such measures the commissioner shall have power to employ persons necessary to make the examinations and estimates of timber on all lands held by the state, and to carry out the provisions of this act.

(1885, c. 269, § 3; G. S. 1878, v. 2, c. 38, § 54c.)

## § 4011. Timber lands—Sale—Appraisal.

Before any pine timber is sold from any of the lands of the state, the commissioner shall submit the appraisals and estimates of said timber, and statements regarding liabilities to loss or damage to said timber, to the governor, treasurer, and commissioner; and if a majority of them shall state that it is for the interest of the state that such timber shall be sold, and such statement shall be indorsed on the estimate of said timber, and signed by said officers officially, the commissioner may then advertise and sell the timber on said lands so authorized to be sold, in the manner provided by law: *provided*, that no pine timber on any state lands is to be sold under any conditions unless the officers herein named shall state that such sale is necessary to protect the state from loss.

(1885, c. 269, § 4; G. S. 1878, v. 2, c. 38, § 54d.)

## § 4012. Sale of timber on pine lands—Regulations.

The commissioner may sell the timber on the pine lands in this state, including tamarack and pine suitable for railroad ties, and cedar suitable for posts or telegraph poles, when the same is liable to waste, as provided in this section, and not otherwise. No such timber shall be sold or disposed of unless the same is liable to waste; and when lands have been cut over according to regular permits, or the timber upon any land may be subject to waste, destruction, or damage, by windfall, fire, or otherwise, he may grant permits to clear such lands, upon full payments of the amount for which the same

<sup>3</sup>An act to provide for the care and disposition of the timbered lands and the timber thereon belonging to the state. Approved March 7, 1885.

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may be sold. Before any permit shall be granted, the timber shall be estimated and appraised by the land commissioner, which estimate and appraisal shall show the amount and the value per thousand feet of all timber measuring not less than eight inches in diameter, twenty-four feet from the ground, and of other timber below this standard, on each tract or lot, with a statement of the situation of the timber relative to risk from fire or damage of any kind, and its distance from the nearest lake, stream, or [and] railroad.

(G. S. 1866, c. 38, § 52, as amended 1877, c. 56, § 11; G. S. 1878, c. 38, § 47; 1883, c. 6, § 1; 1885, c. 102, § 7.)

#### § 4013. Cutting timber—Permits—Regulations.

No permit for such cutting shall be granted to any person by the said commissioner, except upon sale of timber to the highest bidder, at public auction, held at his office at the state capitol, notice of which shall be given at least sixty days prior to [the] date of the same in one or more daily papers published in Saint Paul; and the minimum price of all timber at such sale shall be the appraised value of the same as fixed by the provisions of this chapter, and approved by the commissioner. Every person purchasing timber at such sale, before the execution of a permit for the same, shall execute a bond to the state of Minnesota for the payment of double the amount of the estimated value of the timber included in the permit, with sufficient surety, to be approved by the commissioner, conditioned upon the payment to the state treasurer of the amount that may be found due, under the terms of such permit, and according to the provisions of law: *provided*, that if for any reason any person or persons bid more than the estimated price per thousand feet of said timber, he shall, before having his bid accepted, deposit with the commissioner a certified check, payable to the order of the state treasurer, for one hundred dollars, as a guaranty that he will execute the necessary bonds and permits to complete the purchase under his bid; and in case he does not comply with the law, and execute such bonds and permits within thirty days after said bid, then said certified check shall be delivered to the state treasurer, and be by him placed to the credit of the proper permanent fund. If the person depositing such check shall complete the purchase within the specified time of thirty days, then he shall be entitled to have such check returned to him. If any person or persons bid at said sale, and purchase timber at the estimated price, and fails to execute within thirty days the necessary bonds and permits to entitle them to cut the timber on the land bid for, then said sale shall be cancelled by the commissioner: *and provided, further*, that whenever any person or persons shall cut, or cause to be cut, any log or logs upon any of the lands belonging to this state, such person or persons shall at the time any such log is cut, in addition to all other marks necessary to designate such log as the property of such person or persons, distinctly mark, or cause to be distinctly marked, upon each and every log the letters "M. I. N.," which mark shall be taken, deemed, and considered full and complete notice to all persons that the state has or may have the absolute ownership of such log or logs, or has or may have a lien thereto: *provided, however*, that where any person or persons shall have heretofore or shall hereafter purchase the right to clear any of the lands belonging to this state, and shall have paid for the same, such person or persons shall not be required to comply with the provisions of this section so far as the same relates to marking the logs cut from such lands: *and provided, further*, that any person or persons who shall cut, or cause to be cut, upon any lands belonging to this state, any log or logs, and who shall fail or neglect to mark, or cause to be marked, any such log or logs, as provided in this section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

(1877, c. 56, § 12; G. S. 1878, c. 38, § 48; as amended 1885, c. 102, § 8.)

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## § 4014. Form and contents of permits—Recording.

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All permits under the provisions of this act shall be made according to prescribed form by the attorney general, and shall be signed by the party applying for the same, and the said commissioner. Said permits shall contain a description of the land to be cut upon, the estimated amount of timber upon the same, the price per thousand feet, or the entire value of the timber if the right to clear the land has been sold, for which the same was bid in, the stipulated log-mark, and such other points and agreements as may be necessary to make all logs cut under its provisions the absolute property of the state, until the same are paid for; and such permits, when properly executed, shall be recorded in the office of the surveyor of logs and lumber of the proper district; and the log-mark described therein shall vest the ownership of all logs bearing the same in the estate.

(1877, c. 56, § 13; G. S. 1878, c. 38, § 49.)

## § 4015. Surveyors of logs and lumber—Duties—Reports.

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The provisions of chapter thirty-two of the General Statutes shall apply to all timber or logs cut upon state lands; and the several surveyors of logs and lumber shall scale all logs so cut, and make a detailed report of the same to the commissioner of the state land-office on or before the first day of May in each year, showing the name of the party cutting, the description of the land cut upon, the number of logs cut, and the mark thereon, the total number of feet, and the value thereof per thousand, as shown by the records of his office, stating whether such cutting has been according to the terms of the permit, and, if not properly cut, the consequent damage to the state; and such timber or logs shall not be sold, transferred, or manufactured into lumber until the amount due the state, according to the report of said surveyor, shall have been paid in full; and it shall be the duty of the surveyors of logs and lumber to report to the commissioner all trespass which has been, or which may hereafter be, made upon the state pine lands, and all the logs cut by such trespass shall be disposed of as hereinafter provided.

(1877, c. 56, § 14; G. S. 1878, c. 38, § 50; as amended 1885, c. 102, § 9.)

## § 4016. Collection of stumpage due the state.

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Upon receipt of such report from the surveyor of logs and lumber, the state auditor shall draw duplicate drafts for the amount found due; one of which shall be placed in the hands of the state treasurer, and the other forwarded to the party from which the stumpage is due, who shall immediately make payment of the required amount to the state treasurer, take duplicate receipts therefor, one of which he shall return to the state auditor, who shall thereupon execute a release of the logs, and a transfer of the mark thereon; but in no case shall such release or transfer be made until the lien of the state has been fully satisfied. If the party owning such stumpage shall not pay the amount of such draft within ten days after said draft has been placed in the hands of the state treasurer, it shall be the duty of the said treasurer to take possession of the logs in question, and sell the same at public auction to satisfy the claim due the state, paying the overplus, if any, after defraying the costs and expenses of such sale, to the party entitled thereto, and making return thereof to the state auditor: provided, that in lieu of taking possession of the logs upon which stumpage is due, the state treasurer may turn the account over to the attorney general, who shall immediately proceed to collect the same upon the bond hereinbefore provided for; but in no case shall the logs be released until the account is paid; and proceedings upon the bond shall not prevent the state treasurer from seizing the logs at any time before the claim of the state is satisfied.

(1877, c. 56, § 15; G. S. 1878, c. 38, § 51.)

## § 4017. Fraudulent log-marks—Penalties.

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If any person having a contract to cut timber under the provisions of this act, shall, with intent to defraud the state, place any other log-mark upon the logs cut by him under such contract than the one mentioned therein, [he] shall be

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deemed guilty of a misdemeanor, and shall forfeit to the state the logs upon which any other mark than that agreed upon has been placed. He shall also be liable to indictment for such misdemeanor, and, upon conviction thereof, shall be punished by fine and imprisonment, not less than five hundred dollars, nor more than five thousand dollars, or imprisonment in the penitentiary not less than one year, nor more than three years, or both.

(1877, c. 56, § 16; G. S. 1878, c. 38, § 52.)

**§ 4018. Seizure of logs, etc., of trespassers.**

That in addition to the penalties provided for in this title, against those committing trespass upon any of the lands owned or held in trust or otherwise by this state, the state auditor, by virtue of his office as commissioner of the land-office, is hereby authorized and empowered, without legal process, to seize and take, or cause to be seized and taken, any and all lumber [timber,] wood, grass, or other property unlawfully severed from the said lands, whether the same has been removed from said lands or not; and may dispose of the property so seized and taken either at public or private sale, in such manner as will be most conducive to the interests of the state; and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent school fund, and shall be invested in accordance with the provisions of this title.

(1874, c. 35, § 1; G. S. 1878, c. 38, § 53.)

As to the state auditor's power to settle with trespassers for stumpage, see *State v. Galusha*, 26 Minn. 238, 2 N. W. Rep. 939, 3 N. W. Rep. 350.

**§ 4019. Defense of suits for seizure of logs, etc.**

That for the purpose of determining the title to any property seized and taken under the provisions of the preceding section, the commissioner of the land-office is hereby authorized and empowered to defend any and all actions that may be brought for that purpose, and to do and perform those things necessary to protect the interests of the state.

(1874, c. 35, § 1; G. S. 1878, c. 38, § 54.)

**TITLE 2:**

**AGRICULTURAL COLLEGE LANDS.**

**§ 4020. Acceptance of United States grant—Act of August 30, 1890.**

The state of Minnesota hereby accepts the grants of money made to it by an act of the congress of the United States, approved August thirtieth, one thousand eight hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July second, one thousand eight hundred and sixty-two," and assents to the purpose of said grants as in said act set forth.

(1891, c. 57, § 1.<sup>4</sup>)

**§ 4021. Appraisal—Sale.**

All lands donated to the state of Minnesota for the purpose of providing colleges for the benefit of agriculture and the mechanic arts, under the act of congress approved July second, eighteen hundred and sixty-two, "An act

<sup>4</sup> An act to accept the grants of money made by the act of the congress of the United States, approved August thirty, one thousand eight hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July second, one thousand eight hundred and sixty-two," and assenting to the purpose of such grants. Approved April 20, 1891.

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donating lands to the several states and territories, which may provide colleges for the benefit of agriculture and the mechanic arts," shall be appraised and sold, and the moneys arising therefrom shall be invested, in the same manner as is provided by law for the appraisal and sale and investing the moneys of school lands, under the provisions of the foregoing title, except that there shall be written on the bonds, "bonds of the agricultural college of Minnesota, transferable only upon the order of the governor:" *provided*, that no such lands shall be sold for a less sum than five dollars per acre, nor for less than the appraised value thereof: *provided*, that all the provisions of law relating to the taxation of school lands, and the rights of purchasers at any forfeited tax sale of such lands, as contained in section twenty-one of title one of this act, shall apply to all sales of lands made under the provisions of this title.

(G. S. 1866, c. 28, § 53; G. S. 1878, c. 38, § 55; as amended 1881, Ex. S. c. 12, § 1.)

**§ 4022. Proceeds of sales—Investment—Appropriation of interest.**

All moneys derived from the sale of the lands aforesaid shall be invested in stocks of the United States, or of this state, yielding not less than four and one-half per centum upon the par value of said stock; and the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, and the interest of which shall be inviolably appropriated to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as may hereafter be prescribed, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life.

(G. S. 1866, c. 38, § 54; G. S. 1878, c. 38, § 56; as amended 1883, c. 15, § 1.)

See §§ 4005, 4006. See, also, § 3910.

**§ 4023. State to replace lost funds—Application of interest.**

If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be lost, it shall be replaced by the state, so that the capital of the fund shall forever remain undiminished; and the annual interest shall be regularly applied, without diminution, to the purposes mentioned in the preceding section, except that a sum not exceeding ten per centum upon the amount received, may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the legislature.

(G. S. 1866, c. 38, § 55; G. S. 1878, c. 38, § 57.)

**§ 4024. Fund not to be used for buildings.**

No portion of such fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretence whatever, to the purchase, erection, preservation or repair of any building.

(G. S. 1866, c. 38, § 56; G. S. 1878, c. 38, § 58.)

**§ 4025. Purchase of bonds legalized.**

The purchase of four and one-half per cent. bonds heretofore made with the proceeds of sales of agricultural college lands is hereby legalized.

(1883, c. 15, § 2; G. S. 1878, v. 2, c. 38, § 56a.)

**§ 4026. University lands—Sale, etc.—Investment of proceeds.**

All lands donated to the state of Minnesota by the United States, by act of congress, entitled "An act donating to the states of Minnesota and Oregon certain lands reserved by congress for the territories of Minnesota and Ore-

gon, for university purposes," approved March second, one thousand eight hundred and sixty-one, and an act of congress, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, one thousand eight hundred and sixty-two, and any part or portion of such lands, upon the written request of the board of regents of the university of Minnesota to the commissioner of the state land-office, shall be appraised and sold, and the minimum price thereof shall be the same, and permits for the cutting of timber thereon, and upon any part of the same, shall be granted, and the minimum price of such timber shall be fixed, and the right to cut grass and gather cranberries and make maple sugar thereon, or upon any part of the same, shall be sold, and all moneys arising therefrom, except as hereinafter provided, shall be invested, and a full record thereof shall be kept, and a report thereof shall be made annually to the legislature, and all trespassers upon said lands, or any of the same, shall be prosecuted, by the same officer or officers, respectively, and in the same manner in every respect, as is now provided by law respecting school lands; except that there shall be written on the bonds purchased, "bonds of the university of Minnesota, transferable only upon the order of the governor;" and such officers, respectively, shall have the same powers, and perform the same duties, as are provided by law respecting such school lands. And the proceeds of the sale of such lands above mentioned, when so invested, shall constitute a permanent fund, and the same shall be called the university fund; and there shall be and is hereby inviolably appropriated, and placed at the disposal of the board of regents of the university of Minnesota, to be drawn from the state treasury in the same manner as the interest and increase of the fund derived from the sales of lands granted to the state of Minnesota by act of congress, approved July second, one thousand eight hundred and sixty-two, as now provided by law, all of the interest and increase of such university fund; and also, all the proceeds of the sales of such timber and grass.

(1868, c. 55, § 1; G. S. 1878, c. 38, § 59.)

See §§ 4005, 4006.

### § 4027. Saving of powers conferred by act of 1868.

Nothing in this act contained shall in any way modify or affect the powers conferred by, or the provisions of section eight of an act to reorganize and provide for the government and regulation of the university of Minnesota, and to establish an agricultural college therein, approved February nineteen, one thousand eight hundred and sixty-eight.

(1868, c. 55, § 2; G. S. 1878, c. 38, § 60.)

## TITLE 3.

### SWAMP LANDS.<sup>5</sup>

### § 4028. State auditor to select lands for state institutions.

That as soon as the title to the swamp-lands donated by congress to the state of Minnesota shall become vested in this state, the commissioner of the state land-office shall, from the even-numbered sections of any such lands not otherwise disposed of prior to the passage of this act, proceed to select, or cause to be selected, and set apart, for the support of an insane asylum, one hundred thousand acres of swamp-lands; for the support of an institute [institution] for the education of the deaf, dumb and blind, at Faribault, one hundred thousand acres; for the support of each normal school now established or hereafter to be established in this state, not exceeding three,

<sup>5</sup> See Laws 1887, c. 19, for transfer to the Duluth, St. Cloud, Mankato & Southern Railroad Company of lands originally granted to the Minneapolis & St. Cloud Railroad Company, and subsequently to the St. Cloud, Mankato & Austin Railroad Company.

seventy-five thousand acres; for the support of a state prison, one hundred thousand acres.

(1865, c. 5, § 1,<sup>e</sup> as amended 1875, c. 95, § 1; G. S. 1878, c. 38, § 74.)

**§ 4029. Auditor to keep record—Provision in case of deficiency.**

The commissioner of the state land-office shall cause to be kept in his office a record of the quantity, description, and date of selection of all lands selected and appropriated pursuant to the provisions of section one of this act: provided, that if from any cause there shall not be a sufficient quantity of such swamp-lands, then and in that case said commissioner shall select from the amount of said lands pro rata, in the proportion of said subdivision in this act, for each institution.

(1865, c. 5, § 2, as amended 1875, c. 95, § 2; G. S. 1878, c. 38, § 75.)

**§ 4030. Irrevocable dedication—Appraisalment and sale—Disposition of proceeds.**

All lands so selected and set apart by the commissioner of the state land-office, shall, from and after said selection, be deemed to be reserved and irrevocably dedicated and set apart for the purposes for which the same were selected; and they shall be appraised and sold in the same, and by the same officers, and the minimum price shall be the same, as is provided by law for the appraisalment and sale of the school lands, under the provisions of title one of chapter thirty-eight of the General Statutes, with the modification[s] hereinafter mentioned. All moneys derived from the sale of said lands so set apart shall constitute the permanent funds of the several institutions to which the said funds are granted, the principal of which shall remain forever undiminished, and shall be invested in state or United States bonds, the same as the permanent school fund of the state is now required to be invested, and they shall be endorsed as bonds of the endowment fund of the institution to which they belong, transferable only upon the order of the governor. The interest received upon such bonds, and upon the unpaid principal due the several funds on land-contracts, shall be annually appropriated to the current funds of the institution entitled to receive the same, for their maintenance and support.

(1865, c. 5, § 3, as amended 1875, c. 95, § 3; G. S. 1878, c. 38, § 76.)

**§ 4031. Lands subject to control and disposal of state.**

All right and title to and interest in the land mentioned in section one of this act, that may have been conveyed or vested in the trustees of the several institutions named in said section one, by sections three and four of said chapter five, are hereby declared subject to the control and disposal of the state, according to the provisions of this act.

(1865, c. 5, § 4, as amended 1875, c. 95, § 4; G. S. 1878, c. 38, § 77.)

**§ 4032. Relinquishment when lands are occupied or claimed.**

That the governor of the state of Minnesota is hereby authorized and required to relinquish all the right, title, and interest of said state in and to all lands claimed by said state as swamp lands, now occupied or held by actual settlers, their heirs or assigns, or timber-culture claimants who hold the same by virtue of homestead or timber-culture entry, according to the laws of the United States relating thereto, whether patented to the said claimant or not: *provided*, that this section shall cover and apply to all such claims that have been filed on prior to January first, one thousand eight hundred and seventy-nine,

<sup>e</sup> An act to appropriate swamp-lands to certain educational and charitable institutions therein named, and for the purpose of erecting a state prison. Approved February 13, 1865 (Laws 1865, c. 5).

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§§ 4032-1035

PUBLIC LANDS.

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and that may have been canceled by reason of the state having claimed the same as swamp-lands.

(1879, c. 84, § 1; <sup>7</sup> G. S. 1878, v. 2, c. 38, § 105.)

As to the duty of the attorney general to provide for the defense of actions by railroad companies concerning indemnity lands embraced in § 10, c. 201, Sp. Laws 1877, authorizing their relinquishment to the United States, and as to the appropriation for the reimbursement of settlers for the expense of defending such actions, and the manner of obtaining the benefit of it, see Gen. Laws 1885, c. 176; 1887, c. 203.

## § 4033. Same—List—Deed.

It shall be the duty of the governor to procure from the commissioner of the general land-office a list of the lands described in section one of this act, with the names of the parties claiming them, and thereupon to execute to the United States a deed of relinquishment of the same; and the governor shall forward a copy of this act to each of our members in congress, and they are hereby requested to endeavor to secure indemnity in lands for the lands thus lost to the state.

(1879, c. 84, § 2; G. S. 1878, v. 2, c. 38, § 106.)

## § 4034. Same—Grantee of state—Indemnity.

If any grantee of the state to which the lands mentioned in this act would have inured, except for this act and said homestead or timber-culture filing, shall relinquish to the state of Minnesota all its right, title, and interest in and to the said lands to which it is entitled as aforesaid, then said grantee so relinquishing said lands shall have the right to and may select any lands granted by the congress of the United States, to indemnify the state of Minnesota for lands relinquished under the provisions of this act by said state; and the governor shall convey to said grantee the lands so granted and selected (when certified to the state by the general government) in the same manner, and upon the same terms and conditions, as if they were a part of the lands originally inuring to said grantee.

(1879, c. 84, § 3; G. S. 1878, v. 2, c. 38, § 107.)

## § 4035. Relinquishment when lands are occupied or claimed.

That the governor of the state of Minnesota is hereby authorized and empowered to relinquish to the United States all the right, title, and interest of said state in and to all lands claimed by the said state as swamp lands now occupied or held by actual settlers, their heirs or assigns, or claimants who hold the same by virtue of homestead, pre-emption, or timber-culture entry, according to the laws of the United States relating thereto, whether patented to the said claimants or not, or that may have been, or may be hereafter, canceled by reason of the state having claimed the same as swamp lands.

(1881, c. 154, § 1; <sup>8</sup> G. S. 1878, v. 2, c. 38, § 108.)

<sup>7</sup>The act is entitled "An act for the relief of homestead settlers and timber-culture claimants on lands now claimed by the state as swamp lands." The preamble recites that "whereas, certain settlers in this state have been allowed to take homesteads and timber-culture filings at the local land-offices of the United States on lands now claimed by the state as swamp lands; and whereas, said settlers have in good faith fulfilled all the requirements of the homestead and timber-culture laws, and in many cases have made final proof, and have sold and conveyed said lands by warranty deed: therefore, be it enacted," etc.

<sup>8</sup>The act is entitled, "An act for the relief of settlers on lands claimed by the state as swamp lands, and for the adjustment of land grants inuring to the state under the several acts of congress;" and the preamble recites that "whereas, certain settlers in this state have been allowed to make homesteads, timber-culture and other entries at the local land-offices of the United States, on lands now claimed by the state as swamp lands; and, whereas, said settlers have in good faith fulfilled all the requirements of the laws under which their entries were made, and in many cases have made final proof on said entries, and have sold and conveyed said lands by warranty deed: therefore," etc.

# MINNESOTA STATUTES 1894

Tit. 4]

STATE CAPITOL LANDS.

§§ 4036-4040

## § 4036. Other lands—Relinquishment.

If, in the adjustment of the state swamp-land grant, and other grants of land made by the United States to the state of Minnesota, it shall appear that the United States has reserved, sold, or otherwise disposed of any tract or tracts claimed by or inuring to the state under either of said grants, then it shall be lawful for, and the governor, if he shall deem it for the best interests of the state, may relinquish the claim of the state to any or all of such lands, to the end that new selections in lieu thereof may be made, or that indemnity may be secured in lands, or otherwise, for the lands so lost.

(1881, c. 154, § 2; G. S. 1878, v. 2, c. 38, § 109.)

## § 4037. List—Deed of relinquishment.

It shall be the duty of the governor to procure from the commissioner of the general land-office, or the United States land-offices in this state, lists of the lands described in sections one and two of this act, showing the disposition of the same by the United States, and thereupon to execute to the United States a deed of relinquishment of the title, or shadow of title, of the state of Minnesota to such of the lands described in said lists as in his judgment may be for the relief of settlers upon any of said lands, or necessary or proper for an adjustment of the grant under which the same are claimed; and the governor shall forward a copy of this act to each of our members in congress, and they are hereby requested to endeavor to secure indemnity in lands, or otherwise, for the lands thus lost to the state.

(1881, c. 154, § 3; G. S. 1878, v. 2, c. 38, § 110.)

## § 4038. Grantee of state—Indemnity.

If any grantee of this state to which the lands mentioned in this act would have inured, except for this act and said homestead, timber-culture, or other entry, shall relinquish to the state of Minnesota all its right, title, and interest in and to the said lands to which it is entitled as aforesaid, then said grantee so relinquishing said lands shall have the right to and may select any lands granted by the congress of the United States to indemnify the state of Minnesota for lands relinquished by the state under the provisions of this act; and the governor shall convey to said grantee the lands so granted and selected (when certified to the state by the general government) in the same manner and upon the same terms and conditions as if they were a part of the lands originally inuring to said grantee.

(1881, c. 154, § 4; G. S. 1878, v. 2, c. 38, § 111.)

## [TITLE 4.]

### [STATE CAPITOL LANDS.]

## § 4039. May be leased.

That the state land commissioner of the state of Minnesota be and is hereby authorized to lease the lands belonging to the state, situated in Kandiyohi county, known as the state capitol lands, upon the terms and subject to the conditions hereinafter stated.

(1891, c. 132, § 1.º)

## § 4040. Minimum rent—Settlers.

The said lands shall be leased, according to the government subdivisions thereof, to the highest bidder, in the same manner and under the same regulations, so far as applicable, prescribed by law for the sale of state school lands.

<sup>9</sup> An act to authorize the leasing, by the state land commissioner, of the lands belonging to the state situated in Kandiyohi county, known as the state capitol lands. Approved April 21, 1891.

No lands shall be rented at a less price than fifty cents per acre for each year. All persons who had in good faith settled upon said lands on the first day of January, A. D. one thousand eight hundred and ninety-one, shall be entitled to rent the same at the highest sum per acre bidden therefor; Provided, That no settler thereon shall be entitled to rent, by virtue of such settlement, more than one hundred and sixty acres.

(Id. § 2.)

**§ 4041. Term of lease—Renewal.**

Said lease shall be made for a term of not less than five nor more than ten years, in the discretion of said land commissioner, and any leaseholder shall have a right to a renewal of the same, at the expiration thereof, upon such terms as the legislature may hereafter prescribe, and if no such terms are hereafter provided, then upon the same terms as his original lease, and for such period as the said land commissioner shall prescribe, being not less than five or more than ten years.

(Id. § 3.)

**§ 4042. Provisions of lease—Distribution of rent.**

Said lease shall be executed by the said land commissioner on behalf of the state, and by said applicant on his own behalf, and shall provide for half a year's rental being payable when said lease is made, and the second half year's rental being payable six months thereafter, and the rental for the subsequent years being payable in semi-annual instalments in advance; a default in the payment of said rental at the time the same is due, and a continuance of such default in payment for thirty days thereafter, being sufficient ground for the termination of said lease by said land commissioner at his option. All payments of money for such rental shall be made to the state treasurer, and said treasurer shall annually transmit to the treasurer of the township in which any of such lands so leased may be situated, an amount equal to one-fourth of all sums collected as rental for such lands so situated, within said township, during the preceding year. Which said sum shall be by said treasurer of said township placed to the credit of the road and bridge fund of said township. And said state treasurer shall in like manner transmit an amount equal to one-fourth of all sums so collected to the treasurer of Kandiyohi county, to be by him placed to the credit of the revenue fund of said county. The balance of said rentals shall be placed by the state treasurer to the credit of the school fund of the state.

(Id. § 4.)

**§ 4043. Covenants against waste—Violation.**

The said lease shall contain covenants against waste, a violation of which shall be sufficient ground for the termination of said lease, at any time, by said state land commissioner at his option.

(Id. § 5.)

**§ 4044. Removal of buildings.**

Said leaseholders shall have the right, when their said leases are terminated, either by expiration of the term or by or through any other cause, to remove from said lands so leased by them any buildings or structures they may have erected during the term of their occupancy.

(Id. § 6.)

**§ 4045. Termination of lease—Notice.**

Any lease made of said lands pursuant to the provisions of this act, may be terminated by either party thereto at any time, upon one year's written notice. Any lessee desiring to terminate such lease shall serve such notice upon the state land commissioner. When the said commissioner shall desire to terminate any lease, he shall transmit a notice, as herein provided, to the sheriff of said county, who shall serve the same in the manner provided by law for the service of a summons in a civil action.

(Id. § 7.)

**§ 4046. Reservation of capitol site.**

Provided further, That at any time before this act goes into effect the legislature shall have the power to provide for setting aside a tract of said land.

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Tit. 5]

ITASCA STATE PARK.

§§ 4046-4051

not exceeding one section in extent, for the purpose of establishing a site for a state capitol, which said tract shall not be included or embraced within the terms of this act.

(Id. § 8.)

## [TITLE 5.]

[ITASCA STATE PARK.<sup>10</sup>]

### § 4047. Location.

That section six, township one hundred and forty-two, range thirty-five; sections six, seven, eighteen, nineteen, thirty, and thirty-one, township one hundred and forty-three, range thirty-five; sections one, two, three, four, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-three, thirty-four, thirty-five and thirty-six, township one hundred and forty-three, range thirty-six; and sections one, two, three and four, township one hundred and forty-two, range thirty-six, or so much thereof as the state is now or may hereafter become seized, shall be set apart and perpetually used as a public park.

(1891, c. 56, § 1.11)

### § 4048. Name.

The name of said park shall be the Itasca State Park, and the same is by this act dedicated to the perpetual use of the people of this state under the proper restrictions hereinafter provided, or which may be hereafter provided by law.

(Id. § 2.)

### § 4049. Supervision.

The general care and supervision of the Itasca State Park, until otherwise provided for, shall be vested in the state auditor acting as state land commissioner.

(Id. § 3.)

### § 4050. Unlawful acts—Penalty.

Any person who shall willfully cut, destroy or mutilate, or who shall willfully cause to be cut, destroyed or mutilated, any tree, timber or evergreen in said park, or who shall kill or cause to be killed any moose, bear, deer, fox, otter or other wild animal in said park, or who shall in any other manner than with a hook and line take any fish from the waters of said park, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for the first offense fifty dollars, for the second offense two hundred dollars, and for the third or further offenses he shall be fined and imprisoned not less than ninety days, nor more than one year, in the discretion of the judge presiding at the trial of the cause. All offenses charged for misdemeanors as hereinbefore provided shall be tried and determined under the general laws of this state applicable to the trial of criminal actions in like causes.

(Id. § 4.)

### § 4051. Transfer of school lands.

The state auditor shall take proper proceedings, under existing laws, relative to the appraisal and sale of school lands, to cause the transfer of the school lands in said park for park purposes, and at the sale thereof the same shall be bid in by the state for such park purposes.

(Id. § 5.)

<sup>10</sup> For act constituting commissioners of State Park at Minnehaha Falls, see Laws 1885, c. 129 (held constitutional, *Commissioners of State Park v. Henry*, 83 Minn. 266, 36 N. W. Rep. 374; and properly passed, *Lincoln v. Haugan*, 45 Minn. 451, 48 N. W. Rep. 196), as amended 1887, c. 83; for act authorizing conveyance of said park to city of Minneapolis, see 1889, c. 71.

<sup>11</sup> An act to establish and create a public park, to be known and designated as the Itasca State Park, and authorizing the condemnation of lands for park purposes. Approved April 20, 1891.

4052-4055  
97 - 206**§ 4052. Commissioner — Duties — Condemnation proceedings.**

The governor shall appoint a qualified resident of this state a commissioner, who shall file with the state auditor his oath to support the constitution of this state and to conscientiously perform the duties of his office. It shall be the duty of the commissioner to take all reasonable steps to procure for the state from landed property holders, railroad companies, corporations or individuals owning lands within the limits of said park, concessions to the state for park purposes by contract or deed, subject to the approval of the governor. In case any tract or parcel or parcels of land within the limits of said park cannot be satisfactorily secured, the governor may direct the said commissioner to institute, for and on behalf of the state, proceedings in condemnation, as now provided by law, for condemning and converting private property within this state to public use. In case of any proceedings in condemnation, the said commissioner, under the direction of the attorney general, may appear for the state in prosecuting to a final determination all causes and actions thereunder. Whenever any proceedings in condemnation are had and taken for the condemnation and conversion of any of said lands, all of the provisions of an act approved March nine, eighteen hundred and seventy-four, entitled "An act to provide for obtaining title to lands by the state of Minnesota for the use of the state," and all amendments thereto, shall be applicable in all proceedings for the condemnation herein provided for.

(Id. § 6.)

**§ 4053. Same—Compensation.**

The commissioner herein provided for shall receive a compensation of five dollars per day for the time he is actually employed and his reasonable traveling expenses necessarily incurred, a schedule of which time and expense he shall make under oath and file with the state auditor; Provided, that the number of days for which compensation shall be allowed shall not exceed sixty.

(Id. § 7.)

**§ 4054. Same—Chart—Report.**

The commissioner shall prepare a detailed chart of said park, and shall make and file a report to the governor of all action taken by him, which shall be transmitted to the next session of the legislature.

(Id. § 8.)

**§ 4055. Same—Powers and duties.**

The said commissioner shall have power to administer oaths and take acknowledgments, and to serve all necessary notices in the performance of his duties as a commissioner; and he shall examine the records in the offices of the registers of deeds for the counties of Becker, Hubbard, Cass and Beltrami in perfecting title to the state for said lands, and the registers of deeds for said counties are hereby required to permit of the examination of titles to any of said lands, without charge to the state.

(Id. § 9.)

**§ 4056. Acceptance of United States grant—Act of August 3, 1892.**

The state of Minnesota hereby accepts the grant of lands, together the conditions thereof, made to it by an act of the congress of the United States, approved August third, one thousand eight hundred and ninety-two, entitled "An act to grant certain public lands to the state of Minnesota for perpetual use as a public park," and assents to the purpose of said grant, as in said act set forth.

(1893, c. 15, § 1.12.)

<sup>12</sup>An act to accept the grant of lands made to the state of Minnesota by the congress of the United States by the act approved August third, one thousand eight hundred and ninety-two, entitled "An act to grant certain public lands to the state of Minnesota, for perpetual use as a public park," and to provide for the protection of timber thereon. Approved April 19, 1893.

**§ 4057. Unlawful acts—Penalty.**

All persons, companies and corporations are, by this act, prohibited from cutting, destroying, mutilating or injuring any timber, tree, or evergreen standing or growing upon any of the lands within the limits of the Itasca state park, granted to the state of Minnesota by the congress of the United States, as set forth in the first section of this act. Any person who shall willfully cut, destroy, mutilate or injure, or who shall cause to be cut, destroyed, mutilated or injured, any timber, tree or evergreen standing or growing upon any of the lands aforesaid within the limits of said park, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for the first offense fifty dollars, for the second offense two hundred dollars, and for the third or further offenses he shall be fined the sum of five hundred dollars and imprisonment not less than ninety days nor more than one year in the county jail. All offenses charged for misdemeanors as hereinbefore provided shall be tried and determined under the general laws of this state applicable to the trial of criminal actions.

(Id. § 2.)

**§ 4058. Certified copies of this act.**

The secretary of state shall file certified copies of this act, under seal, with the secretary of the interior and the commissioner of the general land office at the city of Washington.

(Id. § 3.)

[TITLE 6.]

[REGULATION OF MINING.]

**§ 4059. Mining district—Regulations—Recorder.**

The miners and inhabitants of any section of this state in which there may be mines of gold, silver, or other metals, upon the public lands of the United States for which patents have not been issued, may meet and form a mining district, not to exceed in extent five miles square,\* fix the boundaries, adopt a name, and pass such rules and regulations for such districts as may be deemed by them necessary for the location, holding, recording and working of mines or mining claims upon such public lands of the United States within such district. They may also elect a recorder for said district, and provide his qualifications, duties, fees and liabilities. Provided, that no such mining claim shall exceed in extent two hundred feet square. And provided further, That no such mining claim shall be made except by actual occupancy.

(1866, c. 36, § 1.13)

\* See § 4063.

**§ 4060. Same—Evidence in trial of actions.**

On the trial of any action in any court of this state involving the right to or the possession of any such mine or mining claim, or involving any right growing out of any such mine or mining claim, the rules and regulations so adopted in said district, or authenticated copies thereof, may be given in evidence, and so far as applicable shall govern the case.

(Id. § 2.)

**§ 4061. "Mines"—"Mining claims."**

The terms "mines" and "mining claims," as used in the preceding sections, shall be construed to embrace all water-rights, ditches, flumes, timber claimed, or other interest appurtenant, necessary or auxiliary to a mine or mining claim, or the working thereof.

(Id. § 3.)

**§ 4062. Regulations, how altered.**

The majority of the miners of such mining district, attending at a meeting, upon reasonable notice, may at any time change, alter, amend or repeal any of such rules and regulations previously adopted.

(Id. § 4.)

<sup>13</sup> An act to regulate mining upon the public lands of the United States, within the state of Minnesota. Approved March 2, 1866 (Laws 1866, c. 36).

**§ 4063. Size of mineral districts.**

That all mineral districts to be hereafter formed in this state shall conform to the township lines of six miles square.

(1867, c. 24, § 1; 14 G. S. 1878, c. 38, § 61.)

**§ 4064. Mineral claims, by whom to be made.**

That all mineral claims shall be made in person by the party claiming, and any claim not thus made is invalid.

(1867, c. 24, § 2; G. S. 1878, c. 38, § 62.)

**§ 4065. Rights of discoverer of mineral vein.**

That when a mineral vein or lode or lead, containing gold, silver, cinnabar or copper, is discovered, the party making the discovery shall be entitled to two hundred feet on said vein or lode or lead, as a discovery claim, with one hundred feet of land on either side of said vein or lode or lead, for its convenient working; and he shall also be entitled to an additional claim of two hundred feet on said vein or lode or lead, with one hundred feet of land on either side of said vein or lode or lead, for its convenient working, according to the act of congress, passed July 26, 1866.

(1867, c. 24, § 3; G. S. 1878, c. 38, § 63.)

**§ 4066. Measurement and notice of claim.**

That to secure mineral claims, the person making them shall measure off correctly the number of feet allowed by law, and shall post up a notice of said claim, of a substantial nature, upon a stake or tree, at the end of every two hundred feet, upon which shall be written the name of the vein, with date of taking, name of claimant, number of claim, and its general direction.

(1867, c. 24, § 4; G. S. 1878, c. 38, § 64.)

**§ 4067. Shaft to be sunk, etc.—Certificate of claim.**

That the claimant shall, within three months from the time of posting up a notice of his claim, in compliance with the law, sink a shaft on said claim, three feet deep by five feet square; and shall take from the bottom of the shaft so sunk specimens of the rock, properly labelled, with the name of vein, name of claim, and name of claimant thereon, number of claim, east or west, with a correct description of said claim, and file with the register of deeds of the county in which the mineral district is situated; and the register of deeds, after being satisfied that the said claimant has complied with the requirements of the law, and that he has not exceeded the two hundred feet, shall issue to said claimant, and record the same, a certificate, with description of claim, that said claim has been properly secured under the provisions of the law.

(1867, c. 24, § 5; G. S. 1878, c. 38, § 65.)

**§ 4068. Effect of failure to sink shaft.**

That in case the claimant fails to sink a shaft three feet deep by five feet square, within the three months specified, then he shall forfeit all right to the claim, and any other party can come in and take possession.

(1867, c. 24, § 6; G. S. 1878, c. 38, § 66.)

**§ 4069. Rights of claimholder, how lost.**

That whenever any citizen of the United States, or those who have declared their intentions to become citizens, shall have complied with the provisions heretofore set forth, then they shall have rightful possession of all claims made under and by virtue of this act, for the space of one year from the date of said claim; and unless a shaft ten feet deep by five feet square is sunk within a year from the date of the claim made, then all right and title to said claim shall be forfeited, and another claimant may come in and take possession, and secure a title under the law.

(1867, c. 24, § 7; G. S. 1878, c. 38, § 67.)

<sup>14</sup>An act to regulate mining upon the public lands of the United States within the state of Minnesota. Approved March 6, 1867 (Laws 1867, c. 24).

# MINNESOTA STATUTES 1894

Tit. 6]

REGULATION OF MINING.

§§ 4070-1077

## § 4070. Penalty for defacing notices of claims.

That any person found tearing or mutilating any notice posted on any mineral claim in this state, shall be subject to arrest and imprisonment, and, on conviction, shall be fined not less than \$50, nor more than \$500.

(1867, c. 24, § 8; G. S. 1878, c. 38, § 68.)

## § 4071. "Mineral claim" defined.

That the term "mineral claim," as used in the preceding section, shall be construed to embrace all water-rights, ditches, flumes, timber claimed, or other interest appurtenant, necessary or auxiliary to a mine or mining-claim, or the working thereon.

(1867, c. 24, § 9; G. S. 1878, c. 38, § 69.)

## § 4072. Fees of register.

That the fees of the register of deeds shall be as follows: recording claim, \$1.00; transfer of claim, 25 cents for each folio of one hundred words; and 25 cents for each certificate.

(1867, c. 24, § 10; G. S. 1878, c. 38, § 70.)

## § 4073. Description of claim to be recorded.

That it shall be necessary to place in the hands of the register of deeds a description of each claim, for record, within thirty days from the date of taking.

(1867, c. 24, § 11; G. S. 1878, c. 38, § 71.)

## § 4074. Claims in unorganized counties.

That in case any mineral district in this state is located in an unorganized county, the claim shall be recorded in the organized county to which such unorganized county has been attached for judicial purposes; and the register of deeds of said organized county shall perform the duties and receive the fees as provided by law.

(1867, c. 24, § 12; G. S. 1878, c. 38, § 72.)

## § 4075. Registers of deeds to report.

That it shall be the duty of all registers of deeds, in counties where mineral claims are filed, to make a report, every three months, to the secretary of state, of the number of claims taken, number of shafts sunk, and the general condition of the mines.

(1867, c. 24, § 13; G. S. 1878, c. 38, § 73.)

## § 4076. State lands—Mining iron ore—Leases.

The commissioner of the land office of the state of Minnesota is hereby authorized to execute leases and contracts for the mining and shipping of iron ore from any lands now belonging to the state, or from any lands to which the state may hereafter acquire title, subject to the conditions hereinafter provided.

(1889, c. 22, § 1.15)

This act is applicable only to lands "belonging to the state," and not to public lands of the United States which have been merely selected by the state to supply deficiencies in the school lands, which selections have not been approved by the secretary of the interior; hence applications for leases filed with the state land commissioner prior to the approval of the selection are premature, and of no legal effect, though recognized by the commissioner. *Baker v. Jamison*, 54 Minn. 17, 55 N. W. Rep. 749.

But where, after the state acquires such lands, the applicant directs the attention of the commissioner to the premature application, and the commissioner then recognizes it as valid, it becomes such. *Id.*

See *Whiteman v. Severance*, 46 Minn. 495, 49 N. W. Rep. 255; *Johnson v. Merritt*, 50 Minn. 303, 52 N. W. Rep. 863.

## § 4077. Same—Application for lease—Fees—Prior claim.

The application for a mineral lease as herein provided shall be in such form as the state land commissioner may prescribe. It shall correctly describe the land desired to be leased, and shall consist of contiguous descrip-

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<sup>15</sup> An act to regulate the sale and lease of mineral and other lands belonging to the state of Minnesota. Approved April 24, 1889.

tions, which, in the aggregate, shall not exceed one hundred and sixty acres in any one lease, unless some of the descriptions shall be fractional subdivisions, in which case the acreage may exceed the number above mentioned. Before any lease shall be granted, the applicant shall pay to the state treasurer the sum of twenty-five dollars, and in case two or more persons shall apply for a lease at the same time, then the one who will pay the largest sum of money therefor shall be entitled to receive the lease first provided for in this act. Provided further, that in case any person or persons, whether as owners, lessees or otherwise, shall have sunk, or shall hereafter sink mining shafts, or make other mineral developments, to the amount of not less than five thousand dollars in good faith under the presumption that the lands belonged to them, or that they had full legal right to operate thereon for iron ore or other minerals, which shall be ascertained to be upon lands belonging to the state or leased under the provisions of this act, such persons shall have a first or prior claim, on the terms above provided, to such developments and to a reasonable area [of] land to embrace and include such improvements. The holder of a mineral lease, secured as above provided, shall have the right to prospect for iron ore on the lands embraced therein, for a period of one year from the date thereof, at which time said right shall terminate. Provided that no iron ore shall be removed therefrom until a contract, as hereinafter provided shall have been executed.

(1889, c. 22, § 2.)

Duty of the commissioner as to prescribing rules. *Whiteman v. Severance*, 46 Minn. 495, 49 N. W. Rep. 255.

Duty of the commissioner where several applications for the same land are filed. The land should be leased to the highest bidder among the applicants. But an unauthorized preference by the commissioner of one of two applicants without competitive bidding does not justify an adjudication charging the successful applicant as trustee for the other. *Id.*; *Baker v. Jamison*, 54 Minn. 17, 55 N. W. Rep. 749.

Nor can the lease be set aside at the suit of the disappointed applicant when the state is not a party. *Baker v. Jamison*, *supra*.

When the commissioner is guilty of official misconduct by being a party in interest in a favored application, a lease granted thereon might be adjudged to be held in trust for the other applicant. *Id.*

### § 4078. Same—Contract.

At any time prior to the expiration of said lease, the lease-holder, or any assignee thereof, shall have the right to obtain from the said commissioner of the state land office a contract, which shall bind the state of Minnesota, as the party of the first part, and the person, persons or corporation to whom said contract shall issue, as the party of the second part, in a mutual observance of the obligations and conditions as specified therein.

(1889, c. 22, § 3.)

### § 4079. Form of contract.

The contract provided for in section three shall be as follows:

This indenture, made this \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand eight hundred and \_\_\_\_\_, by and between the state of Minnesota, party of the first part, and \_\_\_\_\_, party of the second part, Witnesseth, That the party of the first part, in consideration of the sum of one hundred dollars, to it in hand paid by the party of the second part, being the first annual payment hereinafter provided for, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and conditions herein contained, to be kept and performed by the part— of the second part, does hereby contract, lease and demise to the part— of the second part for a term of fifty years, from and after the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, the following described land, situated in the county of \_\_\_\_\_, in the state of Minnesota, viz.: \_\_\_\_\_, which premises are leased to the part— of the second part for the purposes of exploring for, mining, taking out and removing therefrom, the merchantable shipping iron ore, which is, or which hereafter may be found on, in or under said land, together with the right to construct all buildings, make all excavations, openings, ditches, drains, railroads, wagon roads and other improvements upon said premises, which are or may become necessary or suitable for the mining or removal of iron ore from said premises, with the right, during the existence of this lease, to cut

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§ 4079

and use the timber found upon said premises for fuel, other than for smelting purposes, and so far also as may be necessary for the construction of buildings required in the operation of any mine or mines, on the premises hereby leased, as also the timber necessary for drains, tramways and supports for such mine or mines. Provided, however, that the part— of the second part shall have the right at any time to terminate this agreement in so far as it requires the part— of the second part to mine ore on said lands, or to pay a royalty therefor, by giving written notice to the party of the first part, which shall be served by leaving the same with the commissioner of the state land office, who shall officially, in writing, acknowledge the receipt of said notice, and the foregoing lease shall terminate sixty days thereafter, and all arrearages and sums which may be due under the same up to the time of its termination, as set forth in such notice, shall be paid upon settlement and adjustment thereof. The party of the first part further agrees that the part— of the second part shall have the right under this agreement to contract with others to work such mine or mines, or any part thereof, or to sub-contract the same, and the use of said land, or any part thereof, for the purposes of mining for iron ore, with the same rights and privileges as are herein granted to the said part— of the second part. The part— of the second part, in consideration of the premises, hereby covenants and agrees to and with the party of the first part, that the part— of the second part will, on or before the twentieth day of April, July, October and January in each year, during the period hereinbefore stipulated, or during the period this contract continues in force, pay to the treasurer of the state of Minnesota, for all the iron ore mined and removed from said land during the three months preceding the first day of the month in which payment is to be made, as aforesaid, at the rate of twenty-five cents per ton, for all iron ore so taken out, mined and carried away, each ton to be reckoned at twenty-two hundred and forty pounds. The part— of the second part, at the time of such payment, shall transmit to the commissioner of the state land office an exact and truthful statement of the amount of iron ore removed during the three months for which such payment shall be made. The iron ore so taken by the part— of the second part from said land, shall be weighed by the railroad company transporting the same from said land; which weight shall determine the quantity as between the parties hereto. Said part— of the second part shall furnish the commissioner of the land office monthly statements showing the aforesaid weights; the right, however, is hereby conceded to the party of the first part, by its duly authorized agents, to inspect, review and test the correctness of said railroad company's scales and weights at any time, and in such manner as may seem proper to adopt, it being understood that any errors in these respects, when ascertained, shall be cognizable and corrected. The part— of the second part agrees to pay all taxes, general or specific upon the land so leased, which may be assessed either against said land and the improvements thereon, or the iron ore product thereof, or any personal property at said mines, during the continuance of this lease; just the same as though the lands herein leased were owned in fee by the said part— of the second part; and at the termination of this lease to quietly and peaceably surrender the possession of said land to the party of the first part. The part— of the second part further covenants that within five years from the completion of a railroad within one mile of said land there shall be mined and removed therefrom at least one thousand tons of iron ore, and at least five thousand tons shall be annually thereafter mined and removed therefrom, and in case the said part— of the second part shall not annually remove from said land the five thousand tons of ore as above stipulated, the part— of the second part shall pay into the treasury of the state of Minnesota a royalty of twenty-five cents per ton on five thousand tons, which payment shall be made quarterly as above specified. Provided, further, that up to the time when the first one thousand tons of iron ore is required to be mined and removed, as hereinbefore specified, there shall be annually paid into the treasury of the state of Minnesota by the part— of the second part the sum of one hundred dollars, which payment shall be made on or before the first day of August of each year. It is mutually understood and agreed that upon the termination of this agreement, whether by the acts of the parties, or

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either of them, or by limitation, the part— of the second part shall have ninety days in which to remove all engines, tools, machinery, railroad tracks and structures erected or placed by said part— on said land, but shall not remove or impair any supports placed in the mines, nor any timbers or frame work necessary to the use and maintenance of shafts or other approaches to the mines or tramways within the mines. The part— of the second part shall open, use and work the said mines in such manner only as is usual and customary in the skillful and proper mining operations of similar character when conducted by the proprietors themselves on their own lands, and so as not to do, cause or permit any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operating of the said mine, and in the working of said mine, the part— of the second part shall deposit all earth, rock and other useless material or rubbish at such places and in such manner as will not conflict with or embarrass the future operating of said mines. The party of the first part expressly reserves to itself (and the part— of the second part assents thereto) the right, by its duly authorized agents, to enter into and upon the above described premises and any part or parts thereof, at any time or times, to inspect and survey the same, and measure the quantity of ores that shall have been mined or removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of lessees. The covenants, terms and conditions of this lease shall run with the land and be in all respects binding and operative upon all sub-lessees and guarantees under the part— of the second part. It is further provided that the present lease is granted upon the express condition that if said royalty or any part thereof, be and remain unpaid after the days and times herein specified, and if the same remain in default for a period of sixty days, or in case the part— of the second part fail to keep and perform any of the covenants or conditions herein expressed to be kept and performed by said part— of the second part, then and from thenceforth and in either of those events, it shall be lawful for the party of the first part, at its own option, to take possession of the said leased premises, with or without any previous notice or process whatever, to re-enter, and the same to have and possess again as fully and completely as though no lease had been given to the said part— of the second part, and they and all parties claiming under them shall be wholly excluded therefrom. The part— of the first part reserves, and shall at all times have, possess and hold a lien upon all ore mined, and on all improvements made on said premises by the part— of the second part for any unpaid balances due on this contract. The part— of the first part reserves the right to grant to any person or corporation the right-of-way necessary for the construction and operation of one or more railroads over or across the land herein leased, without let or hindrance from the part— of the second part; but such railroad or railroads shall not manifestly or materially interfere with the mining operations carried on on said premises.

(Id. § 4.)

See *Whiteman v. Severance*, 46 Minn. 495, 49 N. W. Rep. 255.**§ 4080. Same—Payments.**

All payments under this act shall be made to the state treasurer on the order of the state auditor, and shall be credited to the permanent fund of the class of land to which it properly belongs.

(1889, c. 22, § 5.)

**§ 4081. Right of re-entry, when.**

The land commissioner is hereby authorized and empowered, in case the lessee under any lease heretofore provided for fails or neglects to fully comply with all the conditions and covenants of such lease, to at once enter upon the premises described in such lease and take possession of the same, any rule of law or equity to the contrary notwithstanding.

(Id. § 6.)

**§ 4082. Discovery of other minerals—Mining.**

Should copper or any other valuable mineral be discovered on land and leased as heretofore authorized, the terms and conditions on which the same

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may be mined, shall be agreed upon by the state land commissioner and the lessee, and in case they are unable to agree, then each shall choose a referee—the two persons thus selected shall choose a third. The decision of said board shall be final and binding on the parties in interest.

(Id. § 7.)

## § 4083. Lease of hay privilege.

The state land commissioner is hereby authorized to lease state lands for hay or grass privileges, subject to such restrictions as he may prescribe; provided that no such lease shall be for more than one calendar year.

(Id. § 8.)

## § 4084. Sale of lands in certain counties—Reservation.

Whenever state lands situated in the counties of St. Louis, Lake and Cook are sold, for which contracts or patents are issued, it shall be proper for the land commissioner of the state land office to indorse across the face of such contracts or patents the following words: "All mineral rights reserved to the state." The effect of such indorsement shall be to reserve to the state all mineral rights.

(Id. § 9.)

[TITLE 7.]

[CONDEMNATION OF LAND.]

(1) FOR THE USE OF THE STATE.

## § 4085. For what purpose.

Whenever it shall be determined by the officers in charge, or designed to be in charge, of any state institution, that it is necessary for the state to acquire, for the use of such institution, any real estate, whenever the same shall not be acquired by agreement, the title to the same may be acquired by the state as hereinafter provided.

(1874, c. 36, § 1; 1<sup>st</sup> G. S. 1878, c. 38, § 78.)

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## § 4086. Proceedings to condemn.

The attorney general may, on behalf of the state, and for the use of any institution requiring for its uses such lands, give notice of his intention to apply for the appointment of three commissioners to appraise said real estate and the damage for taking the same, to the district court in and for the county where such lands shall be situated, or to a judge of said court, giving a general description of the lands to be appraised or taken, and specify the time and place of such application; which said notice shall be published at least once in each week for three successive weeks, in a newspaper published in the county where the lands to be taken shall be situate, or if no newspaper shall be published in said county, then in a newspaper published in the city of St. Paul. At the time and place named in said notice, the attorney general, for and on behalf of the state, may present an application to said district court, or to a judge thereof, setting forth the name of the institution requiring said lands, and the general purposes for which the same are desired to be taken, and particularly describing said lands, for the appointment of such commissioners; and thereupon the court, or a judge thereof, may proceed to appoint three commissioners, who shall have cognizance of all cases named in such application, and shall have power to appraise the value of all such land, and the damages for the taking of the same; and said commissioners, before entering upon the duties of their office, shall severally take and subscribe an oath to the effect that they will faithfully perform their duty as such appraisers, without partiality, and to the best of their knowledge and ability, which oath shall be filed in the office of the clerk of the district court of the county in which the lands to be appraised shall be situate; and thereupon such commissioners shall proceed to examine the premises, in each lot or par-

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<sup>18</sup> An act to provide for obtaining title to lands by the state of Minnesota, for the use of the state. Approved March 9, 1874.

cel of land separately, having given such notice as they may deem reasonable to the owner, owners, or persons interested in said lands, and to the guardian of any minor or insane person, which notice shall be in writing, and shall be served on such owner, interested person or guardian, if such person shall be a resident of the county where such lands are situated; and if such person or persons shall not reside in said county, then by publishing such notice in such newspaper as such commissioners may select, and for such time as they may choose; and at the time and place named in notice, the commissioners shall proceed, or a majority of them shall proceed, in each case or parcel of land, to an appraisal thereof, and of the damages sustained or to be sustained by reason of the taking and use of such land, and shall make award, in writing, of such damages; and shall deliver one copy of such award, signed by the commissioners, or a majority of them, to the clerk of the district court in and for such county, to be by him filed in his office, and shall deliver another copy of such award to the attorney general, to be by him filed in his office.

(1874, c. 36, § 2; G. S. 1878, c. 38, § 79.)

### § 4087. Appeal.

Either party may appeal from such award at any time within thirty days from the filing said award in the office of the attorney general, by filing with the clerk of said court a notice of appeal, signed by the party claiming such damage, or by the attorney general on behalf of the state; and in case of appeal by either party, the clerk shall enter the appeal as an action in such court, naming the owner of such lands as plaintiff, and the officer or officers of the state representing the institution for the benefit of which such property is taken; and thereafter such appeal shall be tried as other causes in such court are tried, and a judgment rendered therein.

(1874, c. 36, § 3; G. S. 1878, c. 38, § 80.)

### § 4088. Costs of appeal.

In case such appeal shall be taken by the claimant of damages, and upon the trial the award of the commissioners shall be raised, then the appellant shall recover costs, otherwise such appellant shall pay costs; and if such appeal shall be taken on behalf of the state, and upon trial the award shall be decreased, then the said plaintiff shall pay costs; but if on trial such award shall be raised, then the plaintiff shall recover costs.

(1874, c. 36, § 4; G. S. 1878, c. 38, § 81.)

### § 4089. Payment of award or judgment, etc.

The award or the judgment rendered in case of appeal shall be and remain a claim against the state, and shall be paid out of any money in the treasury not otherwise appropriated, pursuant to special appropriation therefor; and in all cases such award, if not appealed from, or the judgment rendered thereon in case of appeal, shall be and the same is hereby declared sufficient security for value and damage by reason of taking such property for public use, within the true meaning and intent of the constitution; and if no appeal shall be taken within the time prescribed in this act, or where an appeal has been taken and judgment shall have been rendered therein, the state, by its proper officers, may thereafter enter upon and take possession of said property, and appropriate the same to the uses and purposes named in the application.

(1874, c. 36, § 5; G. S. 1878, c. 38, § 82.)

### § 4090. Judgment roll—Its contents.

In case judgment shall be rendered on appeal, the clerk shall attach the application, the award of the commissioners, and copies of all notices, and proof of publication or service thereof, together with the verdict and final judgment in the case, and the same shall constitute the judgment roll, to be filed in the office of the clerk of said court.

(1874, c. 36, § 5a; G. S. 1878, c. 38, § 83.)

### § 4091. Title in fee to be acquired by state.

Title to land acquired under this act shall be absolute, and vest in the state of Minnesota the absolute title in fee-simple to such land.

(1874, c. 36, § 6; G. S. 1878, c. 38, § 84.)

## (2) FOR THE USE OF THE UNITED STATES.

**§ 4092. Governor to act on application by United States.**4092-4126  
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The governor of the state of Minnesota is hereby authorized and empowered to seize and take possession of any lands, for the purpose of conveying the same to the United States, for use in river or harbor improvements, or for the erection and maintenance of light-houses thereon, not exceeding one hundred and sixty acres for any one light-house, whenever the general government shall signify its intention to use the land for the above-described purposes, by an application to the governor, accompanied by a plat and description of the land required, as near as the same can be platted and described without actual survey by the general government.

(1874, c. 37, § 1; 17 G. S. 1878, c. 38, § 85.)

**§ 4093. Commissioners—Powers and duties.**

Whenever any such application shall be made to the governor, he shall appoint three commissioners, whose duty it shall be, in the name of the state of Minnesota, to enter upon and take possession of any land so described and platted, for the purpose of conveying the same to the United States, and to cause the same to be surveyed, and a plat thereof to be made and filed in the office of the secretary of state, whenever an actual survey has not been made by the general government.

(1874, c. 37, § 2; G. S. 1878, c. 38, § 86.)

**§ 4094. Same—Appraisal—Notice.**

It shall be the duty of said commissioners to appraise the said land, and, for that purpose, they shall give notice to the claimant or owners of said land, or of any interest therein, of the time and place when and where said claimant or owner may appear before said commissioners to have their claims and interest adjusted, and the compensation to be paid by the state for such land fixed and determined.

(1874, c. 37, § 3; G. S. 1878, c. 38, § 87.)

**§ 4095. Service of notice—Publication.**

The notice required to be given to said claimants or owners shall be given personally to such claimant as can be found within this state, at least twenty days before the meeting of said commissioners, informing them of the time and place of meeting of said commissioners, and the object thereof. And in case any of the said claimants or owners cannot be found, after using due diligence for that purpose, the commissioners shall cause such notice to be published for four successive weeks in one paper published at St. Paul, and one paper published within the county where such lands seized as aforesaid are situate, should one be published therein.

(1874, c. 37, § 4; G. S. 1878, c. 38, § 88.)

**§ 4096. Powers of commissioners—Decision.**

The said commissioners, or a majority of them, shall have full power to do all acts necessary to be done for the purpose of carrying out the objects of this act, to hear, examine and determine of and concerning the rights, interests and title of all and any of the claimants of said land, and also to assess the value thereof, and fix the compensation to be paid by the state therefor, as fully and effectually as if all the power necessary for the purposes aforesaid were herein specifically enumerated in this act; and the decision of such commissioners shall be final and conclusive in the premises, unless an appeal from the decision of such commissioners shall be taken within sixty days after the filing thereof in the office of the clerk of the district court of the county within which the said land lies, and the office of the secretary of state, and the service of the notices of such filing, as hereinafter provided.

(1874, c. 37, § 5; G. S. 1878, c. 38, § 89.)

<sup>17</sup> An act to authorize the seizure and condemnation of lands to be used by the United States for river and harbor improvements, and for light-house purposes. Approved March 9, 1874 (Laws 1874, c. 37).

**§ 4097. Decision to be filed and notice thereof given.**

It shall be the duty of the commissioners appointed under the provisions of this act, within twenty days after their decision is made, to file the same in the office of the clerk of the district court within whose district the said land lies, and transmit a copy of such decision to the secretary of state, to be by him filed in his office; and notice of the filing of such decision shall be served by said commissioners on the parties interested, and on the governor of the state; and the time of taking the appeal hereinafter provided for shall commence to run, as against each party entitled to take the same, from the time of such service on him of the notice of such filing of the decision of said commissioners.

(1874, c. 37, § 6; G. S. 1878, c. 38, § 90.)

**§ 4098. Appeal, how taken—Trial.**

The owners or claimants of said land, or of any interest therein, or the state of Minnesota, shall be entitled to appeal from the decision of said commissioners to the district court of the judicial district in which the land lies within sixty days from the filing of the same as aforesaid, and the service of the notices hereinbefore provided for; and such appeal shall be heard and determined in like manner as appeals from the report of commissioners for condemning lands for the use of railroad corporations, so far as the same may be applicable: provided, that the appellant or appellants shall make and file in said court, at the time of such appeal, an oath or affirmation that injustice has been done them by such decision: and provided, that if such appeal is taken by any other party to such proceedings than the state of Minnesota, the party so appealing shall execute, and file with the clerk of the district court aforesaid, an undertaking, with sufficient sureties, to be approved by the county clerk, for the payment of all costs and disbursements incurred by the state arising from such appeal, which undertaking shall be in the name of the state of Minnesota.

(1874, c. 37, § 7; G. S. 1878, c. 38, § 91.)

**§ 4099. Costs of appeal.**

If, upon the trial of such appeal, in case the same shall be taken by any owner or claimant, and the appellant or appellants shall fail to recover a judgment for sum greater than the amount awarded to them by the decision of the commissioners aforesaid, not including interest, the said appellant or appellants shall pay all costs and disbursements arising on such appeal, and which shall be deducted from the sum awarded by the decision of the commissioners; and in case such sum is not less than the amount awarded by said commissioners, then the appellant or appellants shall recover costs as in like cases in the district court; and in case such appeal shall be taken by the state, and the amount of such award is not decreased by said trial, costs shall be recovered against the state as aforesaid. But if the amount of such award is decreased by said trial, the claimant or owner against whom such appeal was taken shall pay all costs and disbursements arising from such appeal, and which shall be deducted from the sum awarded by verdict of the jury.

(1874, c. 37, § 8; G. S. 1878, c. 38, § 92.)

**§ 4100. Payment of award or judgment.**

The sum awarded by the decision of said commissioners, or finally adjusted and awarded by an appeal, to be paid by this state to the owners and claimants of the lands aforesaid, shall be paid from the treasury of this state to such owners or claimants, in proportion to their rights and interests in such lands, subject, however, in case of an appeal, to the provisions of section seven of this act: provided, that such money shall in no case be paid till the United States has formally signified its acceptance of the lands so appraised, and desire to purchase the same at the price awarded therefor.

(1874, c. 37, § 9; G. S. 1878, c. 38, § 93.)

**§ 4101. Vesting of title in the state.**

Upon the filing of the final award under such proceedings in the office of the clerk of the district court aforesaid, and of the surety of the state, and

the formal acceptance of the same by the United States, provided for in section nine, the title to the lands so seized and appraised, and accepted by the United States, shall immediately thereupon become vested absolutely in this state, free and clear from all incumbrances, and adverse titles or claims of any kind or nature whatsoever.

(1874, c. 37, § 10; G. S. 1878, c. 38, § 94.)

**§ 4102. Compensation of commissioners, etc.**

The commissioners appointed under the provisions of this act shall each receive three dollars per day for each day actually engaged in the service required of them, and their actual expense of travel and subsistence while so engaged; and witnesses required to attend before them shall receive the same per diem and mileage as now allowed by law for witnesses attending the district courts of this state.

(1874, c. 37, § 11; G. S. 1878, c. 38, § 95.)

**§ 4103. Conveyance to United States.**

The governor of Minnesota is hereby authorized and empowered to convey to the United States any lands that may have been seized under the provisions of this act, upon the payment of the United States; to the state of Minnesota, the amount awarded, and all expenses incurred by this state in seizing the land.

(1874, c. 37, § 12; G. S. 1878, c. 38, § 96.)

**§ 4104. Exemption from taxation.**

The lands aforesaid, when so ceded, shall forever be exempt from all taxes and assessments, so long as the same shall remain the property of the United States.

(1874, c. 37, § 13; G. S. 1878, c. 38, § 97.)

**§ 4105. Jurisdiction ceded to the United States.**

The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land as shall be hereafter conveyed to the United States for the purpose of erecting light-house buildings thereon: provided, that this cession is upon the express condition that the state of Minnesota shall so far retain a concurrent jurisdiction with the United States, in and over the tracts of land aforesaid, that all civil and criminal process, issued under the authority of the state, or any officer thereof, may be executed on said lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid.

(1874, c. 37, § 14; G. S. 1878, c. 38, § 98.)

**§ 4106. Improvement of waters—Condemning private property.**

In case it shall be found necessary or proper to overflow, occupy, or take the lands of any person in the prosecution or maintenance by the United States government of any works of public improvement on any of the rivers, lakes, or harbors of this state, the United States are hereby authorized and empowered to take, overflow, use, or occupy any lands necessary, requisite, or proper for the carrying on the public works of improvement on said rivers, lakes, or harbors within this state, in the same manner and with like effect as is now provided by title one, chapter thirty-four, General Statutes A. D. one thousand eight hundred and seventy eight, relating to the taking of private property for public uses by corporations; and all the provisions of law in said title, so far as the same may be applicable, shall apply in relation to such overflow, use, occupation, or taking, and the assessment of damages therefor, as if the United States were a corporation duly organized under said title.

(1881, Ex. S. c. 67, § 1; G. S. 1878, v. 2, c. 36, § 98a.)

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[TITLE 8.]

[JURISDICTION CEDED TO THE UNITED STATES.]

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**§ 4107. Consent to purchase by United States—Record of papers.**

That the consent of the state of Minnesota be and the same is hereby given to the purchase, by the government of the United States, or under the authority of the same, of any tract, piece or parcel of land, from any individual, individuals, or bodies politic or corporate, within the boundaries or limits of the state, for the purpose of erecting thereon light-houses, signal stations, and other needful public buildings whatever pertaining to the light-house board; and all deeds, conveyances of like papers for the same shall be recorded, as in other cases, upon the land records of the county in which the land so conveyed may lie; and in like manner may be recorded a sufficient description, by metes and bounds, courses and distances, of any tract or tracts, legal division of any public lands belonging to the United States, which may be set apart by the general government for any or either of the purposes before mentioned, by an order, patent, or other official document or papers so describing such land; the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States, and with the acts of congress in such cases made and provided.

(1871, c. 36, § 1; 18 G. S. 1878, c. 38, § 99.)

**§ 4108. Exemption from taxation.**

The lots, parcels or tracts of lands so selected, together with the tenements and appurtenances for the purposes before mentioned, shall be held exempt from taxation by the state of Minnesota.

(1871, c. 36, § 2; G. S. 1878, c. 38, § 100.)

**§ 4109. Jurisdiction over site for custom house, etc.**

That jurisdiction is hereby ceded to the United States over so much land as may be necessary and appurtenant to a site for the erection, construction and maintenance of a United States custom-house and post-office in the city of Saint Paul, state of Minnesota, not to exceed ten acres, the same to be selected by an authorized agent of the United States, and the selection to be approved by the governor.

(1867, c. 79, § 1; G. S. 1878, c. 38, § 101.)

**§ 4110. Map to be filed.**

That upon such selection a map of the territory selected, definitely showing the boundaries thereof, with the approval of the governor required in section one of this act endorsed thereon, shall be filed in the office of the secretary of state of the state of Minnesota, and by him recorded.

(1867, c. 79, § 2; G. S. 1878, c. 38, § 102.)

**§ 4111. Conditions of cession.**

The cession of jurisdiction aforesaid is granted upon the following express conditions and restrictions, to wit: The state of Minnesota shall have and hereby does retain a concurrent jurisdiction with the United States in and over the tract aforesaid, so far as that all civil and such criminal process as may issue under authority of this state against any person or persons charged with crimes committed without the bounds of said tract, may be served and executed thereon, in the same manner and to the same extent as though the said cession of jurisdiction had not been made.

(1867, c. 79, § 3; G. S. 1878, c. 38, § 103.)

<sup>18</sup> An act giving the consent of the state of Minnesota to the purchase by the United States of land within the state for public purposes. Approved March 6, 1871 (Laws 1871, c. 36).

# MINNESOTA STATUTES 1894

Tit. 8] JURISDICTION CEDED TO THE UNITED STATES. §§ 4112-4117

## § 4112. Site for army depot—Jurisdiction ceded.

That the consent of the legislature of the state of Minnesota be and hereby is granted to the United States to purchase and hold in this state for the purpose of erecting a building thereon to be used as a depot for supplies for the army or other purposes, the following described tracts and parcels of land to wit: Commencing at the south-west corner of lot number four in block number thirty-one of St. Paul proper, thence running northerly along the west line of said lot four one hundred and seven thirty-one one hundredths feet to an alley, thence at right angles easterly along the southerly line of said alley to the easterly line of said lot four, thence southerly along said east line of said lot four to the south-east corner of said lot four, thence westerly along the northerly line of Second street to the place of beginning; all being a part of lot four in block thirty-one of the original town of St. Paul as surveyed by Ira Brunson; also lot number three in said block number thirty-one of St. Paul proper, according to the recorded plat thereof on file in the office of the Register of Deeds of said county of Ramsey; said lands being situated in said county of Ramsey, Minnesota. And jurisdiction over the same is hereby ceded to the United States from and after such date as the title thereto shall have been vested in the United States.

(1883, c. 94, § 1.)

## § 4113. Same—Map.

The Secretary of State shall, within one month after the title to said land is vested in the United States, cause a map of the same to be made showing definitely the boundaries thereof and shall file the same in his office and make a proper record thereof.

(Id. § 2.)

## § 4114. Same—Reservation.

From the cession of jurisdiction to the United States, hereby granted, the following reservation is hereby made, to-wit: The State of Minnesota shall have and hereby does reserve and retain a concurrent jurisdiction with the United States in and over the territory aforesaid so far as may be necessary for said state and its officers to serve any process or papers, civil or criminal, that may be lawfully issued under the authority of said state or of any of the department of the government thereof, and to arrest on said territory and punish any person or persons charged with crime against the laws of said state whether committed within or without the boundaries of said territory, in the same manner and to the same extent as though said cession of jurisdiction had not been made.

(Id. § 3.)

## § 4115. Fish-hatchery—Jurisdiction ceded.

That jurisdiction is hereby ceded to the United States over so much land as may be appurtenant and necessary to the construction of a fish-hatchery by the United States, and the maintenance thereof, at the mouth of Lester river, near Duluth, in the state of Minnesota, not to exceed ten acres, five acres of which have been heretofore donated to the United States for said purpose.

(1887, c. 162, § 1; G. S. 1878, v. 2, c. 38, § 103a.)

## § 4116. Same—Map.

The secretary of state shall, within one month after the title to said land is vested in the United States, cause a map of the same to be made showing definitely the boundaries thereof, and shall file the same in his office, and make a proper record thereof.

(1887, c. 162, § 2; G. S. 1878, v. 2, c. 38, § 103b.)

## § 4117. Same—Reservation.

From the cession of jurisdiction to the United States, hereby granted, the following reservation is hereby made, to-wit: The state of Minnesota shall have, and hereby does reserve and retain, a concurrent jurisdiction with the United States in and over the territory aforesaid, so far as may be necessary for said state and its officers to serve any process or papers, civil or criminal,

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that may be lawfully issued under the authority of said state, or of any of the departments of the government thereof, and to arrest on said territory and punish any person or persons charged with crime against the laws of said state whether committed within or without the boundaries of said territory, in the same manner and to the same extent as though said cession of jurisdiction had not been made.

(1887, c. 162, § 3; G. S. 1878, v. 2, c. 38, § 103c.)

**§ 4118. Fort Snelling reservation—Jurisdiction ceded.**

That jurisdiction is hereby ceded to the United States of America over the following described territory, to-wit: Beginning at a point where the south line of the northeast quarter of the northeast quarter of section thirty-two of township twenty-eight, north of range twenty-three, west of the fourth principal meridian, intersects the middle of the main channel of the Minnesota river; thence west to the southwest corner of the northwest quarter of the northwest quarter of section thirty-two, town and range aforesaid; thence north to the northwest corner of section twenty, town and range aforesaid; thence east to the middle of the main channel of the Mississippi river; thence along the main channel of the Mississippi river to the confluence of the Mississippi river at the head of Pike Island, and the middle of the Minnesota river to the place of beginning; provided the public highways across said reservation shall be kept open for public travel.

(1889, c. 57, § 1.19)

By § 2, there is the same reservation of concurrent jurisdiction over the territory described as in § 4117.

**§ 4119. Site for Duluth post office, etc.—Jurisdiction ceded.**

That the consent of the legislature of the state of Minnesota be, and hereby is granted to the United States to purchase and hold in this state, for the purpose of erecting a building thereon, to be used for and by the United States courts, post office, the collector of customs, internal revenue, land office, signal service, and other government purposes, the following described tracts and parcels of land, to-wit: The westerly thirty feet of lot seventy-three, and all of lots seventy-five, seventy-seven, and seventy-nine west First street, in Duluth proper, first division.

(1889, c. 59, § 1.20)

**§ 4120. Same—Map.**

The secretary of state shall, within one month after the title to said land is vested in the United States, cause a map of the same to be made, showing definitely the boundaries thereof, and shall file the same in his office and make a proper record thereof.

(Id. § 2.)

By § 3, there is the same reservation of concurrent jurisdiction over the territory described as in § 4117.

**§ 4121. Mississippi improvement—Overflow—Release of damages.**

That whereas, it is proposed by the United States to improve the navigation of the Mississippi river by the construction of dams and the creation of reservoirs upon the head-waters of said river and its tributaries, causing possible overflow and damage to the lands bordering upon such reservoirs, therefore, in consideration of such improvements, there is hereby ceded to the United States the right to overflow, so far as necessary in the construction of any such dams and reservoirs, any and all lands owned or held by the state, and

<sup>19</sup> An act to cede jurisdiction to the United States over the territory embraced within Fort Snelling reservation. Approved April 24, 1889.

<sup>20</sup> An act to cede to the United States jurisdiction over certain territory in the city of Duluth, Minnesota, and granting the consent of the legislature to the purchase of the same by the United States as provided by section three hundred and fifty-five of the Revised Statutes of the United States. Approved April 2, 1889.

# MINNESOTA STATUTES 1894

Tit. 9]

UNITED STATES SURVEY.

§§ 4121-4127.

that all right or claim of the state for damages occasioned by any such overflow, whether against the United States or any agent or employe thereof, be, and the same is hereby, fully released and satisfied.

(1881, Ex. S. c. 60, § 1; G. S. 1878, v. 2, c. 33, § 103d.)

## [TITLE 9.]

[UNITED STATES SURVEY.]

### § 4122. Government surveys—Entry on lands, etc., authorized.

Any person employed in the execution of any survey authorized by the congress of the United States may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the objects of then existing laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby.

(1889, c. 60, § 1.21)

### § 4123. Same—Assessment of damages.

If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either of them may petition the district court in the county in which the land is situated, which court shall appoint a time for a hearing as soon as may be, and order at least twenty days' notice to be given to all parties interested, and, with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages.

(Id. § 2.)

### § 4124. Same—Tender—Costs.

The person so entering upon land may tender to the injured party damages therefor, and if, in case of petition or complaint to the court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise, the prevailing party shall recover costs.

(Id. § 3.)

### § 4125. Costs.

The costs to be allowed in all such cases shall be the same as allowed according to the rules of the court, and provisions of law relating thereto.

(Id. § 4.)

### § 4126. Injury to signal, etc.—Penalty.

If any person shall wilfully deface, injure or remove any signal, monument, building or other property of the U. S. coast and geodetic survey, constructed or used under or by virtue of the act of congress aforesaid, he shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for damages sustained by the United States in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction.

(Id. § 5.)

## [TITLE 10.]

[MISCELLANEOUS PROVISIONS.]

### § 4127. Fort Ripley reservation—Relinquishment.

That the governor of the state of Minnesota is hereby authorized and requested to relinquish all the right, title, and interest of said state in and to

<sup>21</sup> An act to provide for surveys authorized by congress of the United States in the state of Minnesota. Approved April 2, 1889.

# MINNESOTA STATUTES 1894

§§ 4127-4128

PUBLIC LANDS.

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all lands lying within the limits of the said\* Fort Ripley military reservation to the United States, and he is hereby authorized to make, execute, and deliver a deed of relinquishment in accordance with the application of the commissioner of the general land-office dated October twenty-seventh, one thousand eight hundred and eighty.

(1881, c. 155; G. S. 1878, v. 2, c. 38, § 112.)

\*See preamble to act.

## § 4128. Reconveyance of lands erroneously certified to state.

That in all cases where lands have been erroneously or improperly certified or conveyed to the state of Minnesota, for school or railroad or other purposes, by the proper officers of the general government of the United States, the governor of this state is hereby authorized to reconvey or relinquish, by the execution, under his hand and seal of the state, of such conveyances as will be necessary to convey or relinquish the title or color of title which this state may have to such lands.

(1866, c. 24, § 1; G. S. 1878, c. 38, § 104.)

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