

GENERAL STATUTES

OF

MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE
LEGISLATURE BY VIRTUE OF AN ACT
APPROVED APRIL 20, 1911
(LAWS 1911, CH. 299)

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ST. PAUL
WEST PUBLISHING CO.
1913

and ten cents for each crow killed between May 15 and June 15, and between August 15 and September 15. (R. L. § 2402, amended '09 c. 48 § 1)

5203. Method of payment—Additional bounties by towns—The heads of such animals and the bodies of such reptiles and birds shall be produced to the chairman of the town board of the town where they were killed, and if he shall be satisfied that they were killed within the designated territory, and by the person producing them, he shall certify to the county auditor the number of each kind so killed; and the auditor shall issue thereon a warrant on the county treasurer for the amount the claimant is entitled to receive under the resolution; or the claimant may produce such heads, bodies and evidence to the auditor direct.

The official to whom such heads and bodies are produced shall immediately cause such heads to be destroyed and shall cause the removal of one foot from each bird and the rattlers from the rattlesnake.

Any town board may also offer a bounty for the destruction of blackbirds and adopt rules for the payment thereof.

Any board of township supervisors may also offer a bounty for the destruction of the animals, birds and reptiles described in the title of this act, and adopt rules for the payment thereof, which bounty so offered by a township may be in addition to any bounty which may be offered by the board of county commissioners. (R. L. § 2403, amended '09 c. 48 § 2; '11 c. 220 § 1)

CHAPTER 40

PUBLIC LANDS

SALES BY AUDITOR

5204. School lands—Minimum price—Pine lands—The minimum price of school lands shall be five dollars per acre, and all sales thereof 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 sold according to the provisions of this chapter; and, when such timber has been sold and removed, the land may be appraised and sold as in this chapter provided. Not more than one hundred thousand acres of school lands shall be sold in one year. (2404)

G. S. 1894 § 3965 cited (100-16, 110+371).

See § 5209 and note under § 5264.

5205. University lands—Minimum price—The minimum price of all lands donated to the state 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 Oregon, for university purposes," approved March 2, 1861, and by 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 mechanic arts," approved July 2, 1862, shall be five dollars per acre. The auditor shall cause said lands, or any part of them, to be appraised and sold in accordance with the provisions of this chapter. (2405)

See § 5209.

5206. Salt and indemnity lands—University may sell—The board of regents of the state university shall have the charge and supervision of the state salt lands donated by the United States to aid in the development of the brines in the state, and of the lands granted by congress to the state by an act entitled "An act granting lands to the state of Minnesota in lieu of certain lands heretofore granted to said state," approved March 3, 1879. Said board may sell said lands in such manner and amounts as it may deem expedient, and shall hold the proceeds thereof in trust, and shall only disburse the same in accordance with the law providing for a geological and natural history survey. The university may execute in its name deeds of conveyance of said lands. The proceeds of the sale of such lands, when

invested, shall constitute a permanent fund, called the "University Fund." (2406)

5207. Swamp lands—Minimum price—The minimum price of all swamp lands held by the state shall be the same as the minimum price of school lands, less one-third, and they shall be appraised and sold in the manner provided by sec. 2 of art. 8 of the constitution. (2407)

See § 5209.

104-123, 116+210.

5208. Internal improvement lands—Minimum price—All lands donated to the state under the eighth section of an act of congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4, 1841, shall be appraised and sold, and the minimum price shall be the same, and the moneys derived from the sale thereof shall be invested, as provided by sec. 32b of art. 4 of the constitution. (2408)

See § 5209.

5209. State institutions and capitol lands—Minimum price of certain state lands—Advertisement of sale—Cost of drainage—All lands selected for state institutions under an act of the legislature entitled: "An act to appropriate swamp lands to certain educational and charitable institutions and for the purpose of creating a state prison," approved Feb. 13, 1865, and all lands known as state capitol lands, shall be appraised and sold as school lands are sold. Provided, that all lands belonging to the state by virtue of the various congressional acts set forth in sections 2404, 2405, 2407, 2408 and 2409, of the Revised Laws of Minnesota for 1905 [5204, 5205, 5207-5209], the minimum price thereof shall be \$5.00 per acre, and the terms of payment and conditions of sale shall be the same as is now provided by law. Provided, however, that where state lands have been benefited by and assessments paid for drainage, such drainage improvements shall be duly considered by the state land examiner in making appraisals. Provided further, that when such drained lands are sold the principal and interest paid thereon shall be credited by the state auditor to the proper fund to which the land belongs. (R. L. § 2409, amended '07 c. 366 § 1; '09 c. 118 § 1)

100-16, 110+371.

5210. Terms of payment—Interest—The terms of payment on the sale of all state lands other than pine lands shall be as follows: On those which are chiefly valuable for the timber thereon, the purchaser shall pay at the time of sale the value of such timber, and on other lands fifteen per cent. of the purchase price. In all cases, including pine lands from which the timber has been sold, the balance of the purchase price shall be payable at any time within forty years, at the option of the purchaser, with interest at the annual rate of four per cent., payable in advance on June 1 in each year: Provided that, if any part of the balance be paid within ten years from the date of sale, it shall bear interest at the annual rate of five per cent. from the date of sale, which interest shall be then paid, credit being given for interest already paid thereon at the four per cent. rate: Provided, that in case of sale made prior to June 1, 1901, if any portion of the unpaid principal be paid before due and within ten years from June 1, 1901, the interest shall be at the rate of five per cent. per annum from said date to the date of payment. (2410)

32-228, 20+94; 50-491, 494, 52+970.

5211. Further security—Action—The auditor, whenever, in his opinion, the interests of the state will not be secured by the terms of payment so provided for, shall require of the purchaser such further security for the payment of the deferred instalments as he may deem necessary; and, in all cases where security is taken, the auditor may recover the money and enforce such security by action brought in his name. (2411)

5212. Sales by subdivisions—All sales of land by the auditor shall be made according to the subdivisions thereof by the United States surveys, unless the same have been subdivided into smaller parcels or lots as pro-

vided in this chapter; but no land shall be sold in larger quantity than one quarter section. (2412)

5213. Subdivision into lots—Whenever the interest of the state will be promoted, in the opinion of the auditor, by subdividing any of the land under his control into small parcels or village lots, he shall cause the same to be done, and the land to be appraised: Provided, that whenever a petition, signed by at least ten legal voters of the county in which the land therein described is situated, is presented to the auditor, requesting him to have such land so subdivided, he shall submit such petition to the board of timber commissioners, which shall meet for the consideration thereof, and, if the subdivision be recommended by the governor and at least one other member of the board, the petition shall be granted. The action of the board shall be indorsed upon such petition and signed by the board, and, whether the request be granted or refused, the petition so indorsed shall be filed with the auditor. If the request be granted, the auditor shall subdivide said land accordingly, and cause the same to be appraised. (2413)

5214. Appraisement of lots—For the purpose of making the appraisement required by § 5213, appraisers shall be appointed as follows: One by the governor, one by the auditor, and one by the county board of the county in which the lands are situated. Each appraiser, before entering upon the duties of his office, shall take and subscribe an oath that he will faithfully and impartially discharge his duties as appraiser according to the best of his ability, and that he is not interested, directly or indirectly, in any of the lands or improvements thereon, and has entered into no combination to purchase the same or any part thereof, which oath shall be attached to their report. They shall then appraise the lands and make report thereof to the auditor as hereinafter provided. Each appraiser shall be allowed as compensation for his services and expenses three dollars per day, to be paid by the state. (2414)

5215. Same—Sale—Reappraisement—All parcels or lots so appraised shall be subject to sale in the same manner as other lands in charge of the auditor, and shall be sold at not less than the prices at which they were severally appraised, until a new appraisal is made, which the auditor, in his discretion, may cause to be made in the manner aforesaid, and with like effect; but no parcels or lots so appraised shall be sold for less than the minimum price of said lands established by this chapter. (2415)

5216. Map to be recorded—Whenever the auditor shall subdivide any land into small parcels or village lots, he shall cause a map of the same to be filed for record with the register of deeds of the county in which said land is situated. (2416)

5217. Surveys—Whenever it appears to the auditor necessary, in order to ascertain the boundaries of any tract of land in his charge, or to enable him to describe or dispose of the same in convenient parcels, he may cause surveys to be made. (2417)

5218. School lands—Appraisal—Price—Whenever, in the opinion of the auditor, it shall be for the interest of the state that any of the lands in his charge, or the improvements thereon, be appraised, appraisers shall be appointed, who shall qualify, report, and be paid as in the case of lands subdivided into lots. The appraisers shall report the value of lands and the improvements thereon, if any, separately; and if any of such lands, other than pine lands, are chiefly valuable for the timber thereon, the value of such timber shall also be separately stated. The appraised value shall be the minimum price for such lands until changed by a subsequent appraisal, but no land shall be sold upon an appraisal made more than four years prior to the date of sale. (2418)

See following section.

5219. State lands—Appraisers, how appointed—Oath—Duties—Valuation—Price—Compensation—Notice of sale—Agricultural lands containing timber—Drainage—Bona fide settlers—Whenever in the opinion of the land commissioner of the state of Minnesota it will be for the public interest that an

appraisal of any of the school or other state lands should be made, he shall appoint one appraiser, who shall be one of the regularly employed state cruisers, and who shall not be a resident of the county in which the lands to be appraised are situated, and notify the governor, who shall appoint one appraiser who may be a resident of such county. The land commissioner shall also notify the commissioners of such county, who shall appoint a third appraiser; such appointments by the governor and county commissioners shall be made within thirty (30) days after such notice. Each appraiser shall, before entering upon the duties of his office, take and subscribe an oath, before such person qualified to administer oaths that he will faithfully and impartially discharge his duties as appraiser, according to the best of his ability, and that he is not interested directly or indirectly in any of the school or other state lands or improvements thereon, and has entered into no combination to purchase the same or any part thereof, which said oath shall be attached to the report made of such appraisal, said appraisers after taking oath of office shall proceed to view and appraise such lands and the improvements thereon and make a report thereof to the land commissioner as he may direct. The valuation of such lands and the timber shall each be made and stated separately in the appraisal, and the minimum price established by such appraisal shall be the minimum price for such lands until changed by subsequent appraisal. No school or other state lands shall be sold until so appraised, nor for a less price than five (\$5.00) dollars per acre. Such appraisers shall receive as compensation for their work the sum of five (\$5.00) dollars per day for each day actually employed, which shall include all expenses, except railroad fare, actually expended. The land commissioner shall hold frequent sales of school and other state lands, the time and place of such sales to be publicly posted on the front door of the court house in the county in which the sale is to take place, at least three months in advance of such sale, in addition to the regular notice of sale provided by law. At said sales the land commissioner shall sell such lands as he considers for the public interest. Where land mainly valuable for agricultural purposes, as shown by the appraisal and other reports in the office of the land commissioner contain only small quantities of pine, tamarack, or other timber, the land commissioner may in his discretion, either sell the timber separately in the manner provided by law for state timber sales, or he may sell the land as agricultural land, requiring the purchaser to pay down as first payment an amount equal to the value of the timber, in addition to the fifteen per cent first payment required on the land. It shall be the duty of the appraisers to report to the land commissioner such lands as in their opinion should be drained. After the state has constructed or has been assessed for any public ditch or drain, the lands hereby assessed or improved shall thereafter be re-appraised before being offered for sale. Provided, that if the improvements upon said land were made by one who in the opinion of the state land commissioner settled upon said land in good faith, believing it to be land subject to homestead entry under the laws of the United States, and such settlement was made before the land was certified to this state, then the value of such improvements shall be appraised separately, and if at the sale of such land the settler who made the improvements shall be the purchaser, he shall not be required to pay for such improvements; but if a person other than such bona fide settler purchased said land and the improvements at such sale, such purchaser shall pay to the state within thirty days, the full amount for which improvements are appraised and the amount so received by the state for such improvements shall be paid over to such settler, his heirs, or assigns by warrant drawn by the state auditor upon the state treasury, and the amount necessary to make such refundment is hereby annually appropriated.

Provided further, that in order to be permitted to purchase such land and improvements from the state without paying for the improvements, the bona fide settler must make such purchase at the first sale held by such state auditor in which the land in question is offered for sale, and

Provided further, that prior to such sale by the state auditor any and all contest proceedings or actions involving the land in question, which had

been instituted or are pending relative to the land in question, must have been finally determined. ('11 c. 196 § 1)

Historical—"An act to amend chapter 162 of the Laws of 1905, entitled 'An act to provide for the appraisal and sale of school lands and other state lands, and fixing the minimum price therefor, and relating to the rights of settlers thereon.'"

Section 2 repeals inconsistent acts, etc.

See preceding section.

5220. Notice of sale—Before any sale is made, the auditor shall cause four weeks' published notice of the time and place of sale to be given at St. Paul and in each county in which land to be sold is situated. Such notice shall contain a description of each parcel of land to be sold. If there be no newspaper published in any such county, four weeks' posted notice shall also be given therein. The auditor, on or before the day of sale, may withdraw any lands which may have been so advertised. (2419)

See §§ 5209, 5219, 5222.

5221. Monthly sales in certain counties—Other counties—It shall be the duty of the state auditor to hold monthly public sales of school and other state lands in each year during the months of March, April, May, June, July, August, September, October and November in each of the counties herein enumerated as follows:

In Koochiching county, at International Falls, at 10 o'clock a. m. on the second Monday in each of the months named.

In Beltrami county, at Bemidji, at 10 o'clock a. m. on the second Wednesday in each of the months named.

In Cass county, at Walker, at 10 o'clock a. m. on the second Friday in each of the months named.

In Itasca county, at Grand Rapids, at 10 o'clock a. m. on the third Monday in each of the months named.

In St. Louis county, at Duluth, at 10 o'clock a. m. on the third Wednesday in each of the months named.

In Aitkin county, at Aitkin, at 10 o'clock a. m. on the third Friday in each of the months named.

In Roseau county, at Roseau, at 2 o'clock p. m. on the fourth Monday in each of the months named.

It shall further be the duty of the state auditor to hold public sales as frequently in all other counties where school and other state lands are situated, as would be advantageous to the state and to intending buyers and settlers. ('11 c. 123 § 1, amended '13 c. 8 § 1)

5222. Same—Notice of sale—It shall be the duty of the state auditor to give public notice of each of said sales by four (4) publications in a weekly paper printed and published at the county seat wherein the lands are situated, and also by four (4) weekly publications in a daily paper published and printed in the capital city of the state. Said published notice shall contain the following information:

1st. The time and place for the holding of said sales.

2nd. The limitations and requirements provided by law as to purchasers of such lands.

3rd. The terms and conditions of payments as required by law.

4th. The place where lists of lands to be offered for sale may be obtained. ('11 c. 123 § 2)

5223. Same—Acts repealed—What provisions applicable—All acts or parts of acts inconsistent with this act are hereby repealed. All other requirements and provisions relating to the sale of school and other state lands shall apply with full force to sales made under this act. ('11 c. 123 § 3)

5224. Same—Sales, how conducted—Manager of land sales department—Bond—Salary—All sales made pursuant to this act shall be conducted by the state auditor in person, his deputy, or by a competent person appointed by him for that purpose, to be called "Manager Land Sales Department" and who shall before assuming his duties give a bond in the sum of ten thousand dollars (\$10,000) to the state of Minnesota, conditioned upon the faithful performance of his duties, and subscribe to the usual oath of office. The said manager of the land

sales department, shall receive a salary of not to exceed two thousand five hundred dollars (\$2,500) per year and his necessary traveling expenses. ('11 c. 123 § 4)

5225. Same—Maps and plats—It shall be the duty of the state auditor to prepare suitable maps or plats, having designated thereon those school, or other state lands, owned by the state which have been duly appraised and subject to sale, which maps or plats shall be printed and distributed with other printed matter in sufficient quantities to properly advertise the sales provided by this act. ('11 c. 123 § 5)

5226. Certain sales validated—That in all cases where sales of state school lands, made October 17th, 1902, have been canceled by the state auditor, for the reason that notice of such sale was published in a newspaper at St. Paul, Minnesota, three times instead of four successive weeks, as required by law, and said lands have not been resold to any person, such sales are hereby reinstated and validated, and in all things confirmed in the purchaser, and the state auditor is authorized and directed in all of such cases to complete such sale, by issuing to the purchaser, upon his complying with the terms of payment, a certificate of sale of such lands duly executed, acknowledged and delivered as provided by law. ('05 c. 99 § 1)

5227. Certificate of sale—Default—Resale—At the time of the sale the auditor shall execute, acknowledge, and deliver to the purchaser a certificate of sale, in which he shall certify the description of the land sold, the quantity thereof, the price per acre, the consideration paid and to be paid, and the time and terms of payment, and which shall be numbered and made assignable. No certificate shall be delivered until the sum required by law to be paid at the time of the sale is paid to the treasurer of the county where such sale takes place, and, in case the purchaser fails to pay such sum, the auditor may immediately re-offer the land for sale, but no bid shall be received from the person so failing. (2420)

60-313, 62+110.

5228. Certificate—Default in interest—Resale—The certificate of sale shall further set forth that in case of the non-payment of the annual interest by June 1, or within six days thereafter, by the purchaser or by any person claiming under him, then the auditor may, during the continuance of such default, declare the certificate void, and may take possession of the lands therein described, and resell the same at public auction in the same manner and under the same rules as provided for the first sale. When the auditor shall have reappraised and advertised and publicly offered for sale such land, a re-entry shall be deemed to have been made on the part of the state, without any other act or deed whatsoever. The purchaser at such sale shall be entitled to immediate possession. If the land is not again sold, it shall be deemed to be unsold land of the state, and the original purchaser in default, or any person claiming under him, who shall remain in possession or enter thereon without first paying all delinquent interest, costs, and penalties, shall be deemed a wilful trespasser, and shall be punished as such. (2421)

32-228, 20+94; 50-491, 494, 52+970.

5229. Assignment—Extensions of payment—Whenever any certificate is assigned, the assignment shall be executed in the same manner as a deed of land, and shall be acknowledged by the assignor. And whenever any extension of the time of payment is agreed upon, such agreement shall be in writing, executed in like manner and a record thereof preserved in the office of the state auditor. (2422)

Cited (109-185, 123+412).

5230. Effect of certificate—Record—A certificate of sale entitles the holder to the possession of the land therein described, but the fee shall remain in the state until a patent is issued therefor. Such certificates, assignments, and patents may be filed for record with the register of deeds. (2423)

21-101, 106; 32-228, 20+94; 33-450, 453, 23+851.

5231. Certain certificates validated—That all certificates issued by the commissioner of state land office between the 30th day of November A. D., 1890,

and the second day of December A. D., 1890, for the sale of school lands in accordance with the provisions of the laws of the state of Minnesota, where said lands have been sold for a less amount than the appraised valuation thereof, and where all moneys have been paid as provided by the terms of said certificate, the holder of said certificate, his heirs or assigns, shall be entitled to receive a patent for the lands therein described, subject to all the conditions in said certificate contained, upon payment to the county treasurer of the county in which said lands are situate, of an amount equal to the difference between the appraised valuation at the time of the sale and the amount stated in said certificate, and all said certificates are hereby declared legal and valid, provided this act shall not affect any action at law or suit in equity now pending. ('13 c. 471 § 1)

5232. Division of certificates—Whenever the holder of any certificate shall surrender the same to the auditor, with a request to have the land therein described divided, and two or more certificates issued therefor, it shall be lawful for the auditor so to do: Provided, that no new certificate shall issue while any interest is delinquent, or if the auditor shall be of opinion that the security of the state would be impaired or endangered thereby. If the applicant shall desire a division by boundaries other than regular government or state subdivisions, he shall file with his application a plat and survey showing the lines of, and the quantity of land in, each subdivision. (2424)

5233. Conditional sales of certain swamp lands validated—That in all cases where sales of state swamp lands made June 29, 1908, have been made in accordance with law, except that the appraised value of the improvements on said lands have not been included in the consideration of the sale, the said lands have not been resold to any person, such sales are hereby reinstated and validated and in all things confirmed in the purchaser, and the state auditor is authorized and directed in all of such cases to complete such sale, by issuing to the purchaser, upon its complying with the terms of payment, a certificate of sale of such lands duly executed, acknowledged and delivered as provided by law. ('09 c. 119 § 1)

5234. Sales by mistake, etc.—Refund—Any sale made by mistake, or not in accordance with law, or obtained by fraud, shall be void, and the certificate issued thereon shall be of no effect; and the holder of such certificate shall be required to surrender the same to the auditor, who, except in cases of fraud on the part of the purchaser, shall cause the money paid on such sale to be refunded to the holder. (2425)

State auditor's determination of character of lands and his certificate of sale not subject to collateral attack (109-185, 123+412).

5235. Delinquent purchasers—Redemption—When the rights of a purchaser have become forfeited by a failure to pay the amount due, if such purchaser, his heirs or assigns, before resale at public auction of the lands described in the certificate, shall pay to the state treasurer the amount of interest then due and payable on such certificate, and all costs incurred, together with interest at the rate of twelve per cent. per annum on such interest and costs, such payment shall operate as a redemption of the rights of the purchaser, his heirs or assigns. (2426)

50-491, 494, 52+970.

5236. Refundment of tax certificates upon certain reform school lands—Any holder of a tax certificate of sale or state assignment certificate, who became the owner thereof prior to the adoption of chapter 2, General Laws 1902, and which describes reform school lands, so-called, or any tract, lot or subdivision thereof and which was sold by the state upon contract prior to the year 1902, to a purchaser, who has since defaulted in the performance of the conditions thereof, so that the land is now owned in fee simple by the state, may petition the board of county commissioners of the county wherein such lands are situated, setting forth fully and fairly all the facts pertaining thereto and said board of county commissioners shall thereupon inquire into the truth of the facts alleged in said petition, and if they are satisfied that the facts are fully and fairly stated therein, they shall so certify to the state auditor of the state of Minnesota. The state auditor, if he is satisfied that a refundment should be made to the holder of said certificate or certificates, or any of them, for the amount thereof, with-

out interest, shall authorize the refundment of the amount paid therefor together with the amount of other subsequent taxes upon said property paid by the holder thereof, but without interest upon any of said amounts, and upon the surrender or proper assignment of said certificates the county auditor shall draw an order upon the treasurer of said county, for the sum so authorized to be refunded, the same to be countersigned and paid like other county orders. The several funds,—state, county, town, city, village, school and other funds—shall be charged with their several proportions of the amount thus refunded. ('09 c. 491 § 1)

5237. Patents—The governor shall sign and issue, under the seal of the state, attested by the auditor, a patent for the land described in any certificate of sale, whenever the same is presented to him, with the certificate of the auditor indorsed thereon that the principal and interest specified therein, and all taxes due on said land, have been paid, and that the holder is entitled to a patent; and the governor shall in like manner issue a patent for such land to any purchaser at execution, judicial, mortgage, or tax sale of the right, title, and interest of the holder of any such certificate of sale, upon presentation to him of the certificate of the auditor that the principal, interest, and taxes have been paid, and that such purchaser is entitled to a patent. (2427)

See joint resolution authorizing the state to receive payments on sales of school and other state lands where the time limit for payment has expired or will expire before December 31, 1914, and to issue patents therefor ('13 J. Res. No. 3).

33-450, 23+851.

Plaintiff, to whom certificate had issued, was entitled to recover for logs subsequently removed though patent was not issued until after commencement of action (100-16, 110+371).

One who has prior equitable right to receive patent superior to that of patentee may enforce his equity (107-380, 120+527).

5238. Payments—Receipts—The holder of any certificate of sale may pay to the treasurer of the county in which the land therein described is situated any amount which may be due from time to time on such certificate, either for principal, interest, or penalty; and for the amount so paid such treasurer shall issue duplicate receipts, specifying the date and amount of payment, whether for principal, interest, or penalty, and the fund to which it is applicable, the number of the certificate, which receipt shall be countersigned by the auditor of such county, and shall have the same force as if given by the state treasurer. The county treasurer shall deliver one of such receipts to the holder of the certificate, and the other to the county auditor. (2428)

28-45, 8+907; 39-433, 40+508.

5239. Bond of treasurer—Before any county treasurer shall receive any moneys under § 5238, he shall give bond to the state, prepared upon a blank form furnished by the state auditor, and approved by the judge of probate and the register of deeds, in an amount to be fixed by such auditor, not less than double the sum likely to come into his hands by virtue of this chapter, which bond shall be conditioned for the faithful discharge of all duties imposed by this chapter. Such bond, when approved, shall be filed with the auditor. (2429)

26-183, 186, 2+494, 683; 28-45, 8+907; 71-461, 74+158; 82-151, 84+657.

5240. Moneys paid to state treasurer—Each county treasurer shall hold all moneys received by him on account of such certificates of sale subject to the order of the state treasurer, and during March, June, and October of each year, and at other times when requested by the state treasurer, he shall pay into the state treasury all such moneys received since the last payment made. (2430)

39-433, 40+508; 71-461, 463, 74+158.

5241. Fees of treasurer—Standing appropriation—County treasurers shall be entitled to fees of one-half of one per cent. on each dollar received by them in payment of principal or interest on account of such certificates of sale, which fees shall be paid by the state from the current fund of the class of lands on which such payment is made, and shall not be payable to the county under any provision requiring county treasurers to pay fees 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. (2431)

As to standing appropriations, see §§ 48, 49.

5242. Statement of sales—On or before May 1 in every year, the auditor shall transmit to each county treasurer who has executed and returned his bond as hereinbefore provided a statement showing the lands sold in that county, and the classes to which the same belong, the numbers of the certificates of sale, the names of the persons to whom they were respectively issued, and the amount of principal and interest due on each certificate on June 1, together with such instructions and blanks as shall enable the treasurer to carry out the provisions of this chapter. (2432)

5243. County auditors—Duties and powers—Each county auditor, at the time he is required by law to return abstracts of settlement to the state auditor, shall also forward all duplicate receipts of principal, interest, or penalties delivered to him as hereinbefore provided, with a certified statement of such collections by the county treasurer, specifying the amount of each item, and shall also make such return at any other time when requested by the state auditor. The county auditor shall act as clerk of land sales made by the state auditor, and may make such sales when authorized by him, in which case his deputy shall act as clerk. Immediately after the close of all sales, the county auditor shall report to the state auditor the description of each tract sold, the amount for which it was sold, and the amount paid. For each day while 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 said lands. (2433)

26-183, 187, 2+494, 683.

5244. Proceeds of sales—Distribution—The principal sums accruing from all sales by the auditor 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 on such funds, or as penalties, or as rents of such lands, shall become part of the current or general funds to which they respectively belong: Provided, that all interest and penalties on the internal improvement land fund, and rents of such land, shall be compounded with the permanent fund. (2434)

See § 5209.

5245. Investment of permanent trust funds—Board of investment—The permanent school, the permanent university and other permanent trust funds of the state of Minnesota shall be invested in the bonds of the United States or any bonds of this or any other state, or any bonds of any school district, county, city, town or village of this state, bearing not less than four (4) per cent interest, but no investment shall be made in bonds issued to aid in the construction of any railroad. The governor, treasurer, auditor, attorney general and president of the board of regents of the state university are hereby constituted a board of investment, whose duty it shall be to invest all funds derived from the sale of public lands, except as otherwise herein provided. The first three officers hereinbefore named as members of said board are hereby authorized to act independently of the other two members of said board in all matters pertaining to loans of said funds to counties, townships, cities, villages and school districts under the provisions of chapter 10, Revised Laws of Minnesota for 1905 and amendments thereto. But for the purchase or sale of any other securities than those last hereinbefore mentioned, a majority vote of the entire board of investment as hereinbefore first constituted shall be required. The governor shall be ex-officio president of said board and the state auditor shall be secretary thereof and keep a record of its proceedings and publish the same in his annual report. The treasurer shall place on credit of the respective funds the interest received on said bonds. They shall not be transferable except upon the order of the governor and auditor, and on each shall be written "Minnesota school fund bond" or "bond of the University of Minnesota" as the case may require. The auditor shall keep a record showing the name and amount of each bond, when issued, when redeemable, the rate of interest, when and where payable, by whom

executed, when purchased, when withdrawn and for what purpose. ('13 c. 515 § 1)

The provisions of R. L. 1905, c. 10, are included in chapter 10 hereof.

By section 2, all inconsistent acts or parts of acts, and particularly 1907 cc. 340, 348, are repealed. This section supersedes R. L. § 2435. See 1913 c. 50.

5246. Standing appropriation for investment—There are hereby annually appropriated for the purposes of investment all moneys received into the state treasury to the credit of the permanent school fund, permanent university fund, internal improvement land fund, and all other funds required to be invested in securities, or which may be loaned as provided by law. (2436)

As to standing appropriations, see §§ 48, 49.

5247. Standing appropriation for expenses of investment—There are hereby annually appropriated such sums as shall be found necessary for the incidental expenses of purchase, including the payment of interest accrued at the time of purchase, of bonds for the permanent school and university funds, payable from the current or general school or university funds, respectively, and for like expenses of the purchase of bonds for the other permanent funds referred to in § 5246, payable from the respective current or general funds. (2437)

As to standing appropriations, see §§ 48, 49.

5248. Swamp land fund—Transfer of state institutions funds—That the credit balances and securities in the state treasury, and all land contracts arising from the proceeds of the sale of a portion of the state swamp lands, and which is designated in the state records as belonging to the "state institutions fund," be and the same are hereby transferred to the "swamp land fund, and the state institutions interest fund," being the accrued interest on said "state institutions fund," be and the same is hereby transferred to the "swamp land interest fund." ('07 c. 385 § 1)

See preamble to act.

5249. Swamp land interest fund—At the close of each fiscal year it shall be the duty of the state auditor and state treasurer to transfer the amount then standing to the credit of the "swamp land interest fund" to the several funds entitled thereto, as follows, to-wit: The general school fund one-half, the revenue fund, one-half. ('07 c. 385 § 2)

5250. Revenue fund—The amount credited to the revenue fund as herein provided, shall at the end of each fiscal year be credited to the appropriations for the support of the several state educational and charitable institutions in the relative ratio of cost of support of such institutions, reckoned on the cost for the fiscal year next preceding the one in which such distribution is made. ('07 c. 385 § 3)

5251. Expenses—How paid—The necessary expenses of the auditor under the provisions of this chapter shall be paid out of the state treasury, and, upon satisfactory vouchers, the auditor shall issue his warrant therefor. (2438)

5252. Taxation—Sales—Redemption—Special certificate—State lands sold by the state auditor shall thereupon become taxable, and a description of each tract so sold, with the names of the purchaser, shall be transmitted to the proper county auditor, who shall extend the same for taxation like other land. Provided, that the interest in said land to be sold for the enforcement of delinquent taxes shall be such only as is vested by the land sale certificate in the holder and owner thereof. Upon production to the county treasurer of the tax certificate given upon tax sale, in case said lands have not been redeemed, such tax purchaser shall have the right to make any payment of principal and interest then in default upon such land sale certificate as the assignee thereof. In order to redeem from any such tax sale, the person redeeming must pay the county treasurer, for the holder and owner of the tax sale certificate, in addition to all sums required to be paid in other cases, all amounts paid by such holder and owner for interest and principal upon such land sale certificate, with interest at twelve per cent per annum. The state auditor upon receipt of said tax certificate to which is attached the certificate of the county auditor of the expiration of the time for redemption, and

the receipt of the county treasurer for all delinquent interest and penalty on said land sale certificate, shall issue to the holder and owner of the tax certificate, a special certificate, embodying the same terms and conditions, and with like force and effect, as the said original land sale certificate, and in lieu thereof. (R. L. § 2439, amended '09 c. 114 § 1)

5253. Lease of hay privilege.—The auditor is authorized to lease any state lands in his charge for hay or grass privileges, upon such terms as he may prescribe, but no such lease shall be for more than one calendar year. (2440)

See §§ 5254-5256.

Cited (99-220, 108+958, 9 Ann. Cas. 520).

5254. Lease for grazing and pasturing.—After any land belonging to the state has been offered at public sale and no one offers the appraised price, the state auditor may lease the same for a period for not more than five years for grazing and pasturing purposes. The annual rental shall not be less than ten cents per acre and at the end of the term, the lessee may remove all fences or temporary structures thereon. ('09 c. 191 § 1)

See § 5253.

5255. Same—How leased—Termination—Proceeds.—On the second Tuesday of April of each year the several county auditors shall receive bids for the leasing of state lands in their counties and the lands shall be leased to the highest bidder. The rent shall be paid annually in advance and whenever any lessee fails to so pay his rent before the second Tuesday in April of each year, the county auditor shall declare the lease terminated and again offer the land for rent. The county auditor shall retain ten per cent of the gross amount received for the use of the land and remit the balance to the state auditor, who shall turn it in to the several funds of the state to which the land belongs. ('09 c. 191 § 2)

5256. Same—Subject to sale.—Any lease made under the provisions of this act shall be made subject to a sale of the land at any time as provided by law. ('09 c. 191 § 3)

5257. Escheat subject to incumbrance.—When any land has become the property of the state by escheat, and is subject to any incumbrance arising from taxes, assessments, or otherwise, the auditor, with the approval of the governor and the attorney general, and for a consideration to be determined by them, may execute in the name of the state a deed of such land to the holder of such incumbrance. (2441)

TRESPASS ON STATE LANDS

5258. Damages—Penalty—Presumption.—Whoever, without valid permit, shall cut any timber upon the lands owned by this state, or remove or carry away any such timber, or any other property belonging or appertaining to said lands, or shall commit any other trespass upon said lands, or shall induce or assist another so to do, shall be liable, in an action brought by the state, in treble damages, if such trespass is adjudged to have been willful, but in double damages, only, if such trespass is adjudged to have been casual and involuntary. But no trespass shall be adjudged casual or involuntary unless some good and sufficient reason shall be shown why the person committing such trespass did not know that the lands on which such timber was unlawfully cut were owned by the state. And any person or corporation found to have acquired possession in any manner whatsoever of any logs unlawfully cut on lands owned by this state, shall be conclusively presumed to have acquired the same with knowledge that they were so unlawfully cut; and shall be liable to the state in a civil action for twice the value of such logs and it shall be no defense in any action to plead or claim a purchase of such logs from anyone other than the state land commissioner, nor shall such defendant be allowed to claim that any other person should be joined as defendant; and he shall have no right whatsoever to any remuneration or allowance for labor or expenses incurred in preparing the same for market or transporting the same to or towards market. And every such trespass willfully committed shall be deemed a felony. ('05 c. 204 § 1)

Section 44 repeals inconsistent acts and parts of acts.

So far as the provisions of this act differ from the Revised Laws, they are to be construed, by virtue of § 9398, as amendatory or supplementary. Their effect is to supersede R. L. §§

2442 to 2481, although some of the sections of the act do not differ from certain of said sections of the Revised Laws.

Prior laws—1895 c. 163 was constitutional (99-158, 108+935, 9 Ann. Cas. 634; 102-470, 113+634, 114+738).

1895 c. 163 § 7 cited (106-1, 115+162).

Finding that trespass was willful was not sustained by evidence (102-470, 113+634, 114+738).

In action under 1895 c. 163 § 7 to recover treble damages, time limit was three years (99-392, 109+703. See 95-272, 104+240).

Rule of damages, under 1905 c. 163, in action by state for conversion of timber cut and removed, commenced more than three years after trespass (109-123, 123+54).

5259. Recovery from tenant, etc.—If any person holds or continues in possession of any lands mentioned in this chapter, contrary to the conditions or covenants of any lease, certificate of sale, permit or other 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. ('05 c. 204 § 2)

5260. Duties of attorney general—The attorney general shall prosecute, or cause to be prosecuted by the county attorney whenever in his opinion, the public interest so requires, any person who may be charged with any indictable offense under this chapter. ('05 c. 204 § 3)

5261. Same—County attorneys—The county attorneys of the several counties shall promptly report to the state auditor all trespasses committed upon the lands mentioned in this chapter which may come to their knowledge, and, when directed by the attorney general, shall prosecute all actions for any trespass or injury thereto, and for the recovery of the possession thereof, or otherwise. ('05 c. 204 § 4)

5262. Damages to state—All damages recovered on behalf of the state for any trespass or other injury upon or to any of the lands in charge of the auditor shall be paid over to the state treasurer, for the benefit of the fund to which the same properly belongs. ('05 c. 204 § 5)

5263. Court to charge grand jury—Every court having jurisdiction thereof shall charge the grand jury, at each term of such court, to inquire into all offenses against the provisions of this act, and to present any person who may be guilty of any such offense within their county. ('05 c. 204 § 6)

TIMBER LANDS

5264. Duties of state auditor—The auditor shall make thorough inquiry into the extent, character and value of the lands belonging to the state which are chiefly valuable for the timber thereon. He shall take such measures as will protect such timber from damage or loss by fire, trespass or otherwise; and he shall make such regulations, in conformity with the other provisions of this act, for the care and control of such lands, and for the sale of the timber thereon, as will best protect the interests of the state. ('05 c. 204 § 7)

See note under § 5258. See, also, § 5204.

Decision of commissioner determining whether land chiefly valuable for timber cannot be reviewed in collateral action after patent (100-16, 110+371); or after certificate of sale (109-185, 123+411).

5265. Sale of timber—The auditor may sell the timber on the pine lands in his charge, including tamarack and cedar timber thereon suitable for posts, telegraph poles, or railroad ties, when authorized to do so by the board of timber commissioners, and not otherwise. When such sale is made, the auditor shall issue to the purchaser a permit to cut and remove the same. Before any sale is made, the timber shall be estimated and appraised, but no sale shall be made on any estimate or appraisal made more than one year prior thereto. ('05 c. 204 § 8)

62-99, 64+81.

1895 c. 163 § 11 cited (102-470, 113+634, 114+738).

5266. State estimators—The auditor may appoint such state estimators as may be necessary to examine the lands in his charge, and to estimate and appraise the timber thereon; and he may discharge such estimators from time to time, as he deems best. Each estimator shall be a citizen of the state, an experienced land surveyor, or cruiser, and acquainted with the value of pine

lands and stumpage, and shall have at least five years' practice in surveying or cruising and estimating such lands and the timber thereon. Before any person is so appointed he shall file with the auditor an affidavit showing that he possesses all the qualifications aforesaid. At the time of his appointment he shall give a bond to the state in at least the sum of \$5,000.00, conditioned for the faithful performance of his duties, which bond shall be approved by the auditor, and, with the required oath, filed in his office. The state estimators are hereby authorized to arrest any person found trespassing upon state lands and deliver him to the sheriff of the county, and such estimator shall immediately enter a complaint before a justice of the peace in said county, charging the person so arrested with such trespass, and the person so in custody shall be arraigned and given a hearing on such complaint. Such state estimators shall wear when on duty a badge of office to be designed and provided by the state land commissioner. And it is hereby declared a misdemeanor for any person not a duly appointed and acting state estimator to wear such a badge or to personate or claim to be a state timber estimator. The board of timber commissioners, created by section 13 [5270] of this act, are hereby authorized to dispose of and settle for, at stumpage value, timber cut by railroad companies upon right of way of land acquired from the state of Minnesota, or cut upon state lands and actually used in the construction of a railroad, also for the timber used in the construction of dams, lumber camps or public improvements of a permanent nature. Provided however, that no such settlements shall be made until the timber has been scaled or counted and appraised by a duly appointed state land examiner or timber estimator. ('05 c. 204 § 9)

5267. Same—Appraisal—Report—Whenever the auditor shall call upon any estimator so to do, he shall examine any lands designated, and estimate and appraise the timber thereon, and make report thereof. Such report shall be made from his field notes made on the lands, and be by him entered in his own hand in a book kept in the auditor's office, and known as the record of appraisals. Such entry shall be dated when made, and subscribed and sworn to upon the record. At the same time the estimator shall file in said office all plats and field notes made by him, and affix his signature to each plat and to each page of the field notes. ('05 c. 204 § 10)

5268. Contents of report—No such report shall embrace more than one section, or fractional section of land, according to the government survey, and shall show the amount of timber upon each 40 acre tract or lot. The report shall state the amount of each kind of timber subject to sale which measures not less than eight inches in diameter twenty-four feet from the ground; the value per thousand feet of all such timber; the amount and value of all timber below such standard, including pine, tamarack, and cedar posts, telegraph poles, and railroad ties; the distance of the timber from the nearest lake, stream or railroad, and the character of the land; what amount, if any, of the timber has been burned, and the extent and character of the burning; the situation of the timber, relative to risk from fire or damage of any kind; the date of examination; the number of hours spent and the expense necessarily incurred in making the same and in going to and returning from the land; and that estimator was actually upon the land when he made his estimate. ('05 c. 204 § 11)

5269. False report—Penalty—Every state estimator or appraiser who shall make a false report or insert in any such report any false statement, date, estimate, or appraisal, or who shall make any such report without having examined the land embraced therein, or who, in making any affidavit as to his qualifications for appointment, shall insert therein any false statement, shall be deemed guilty of a felony. ('05 c. 204 § 12)

5270. Board of timber commissioners—The governor, treasurer, auditor, state forester and attorney general shall constitute a board of timber commissioners, of which the governor shall be chairman. The auditor shall be ex-officio secretary of the board, and he or his deputy shall attend each meeting and make full minutes of the proceedings, which shall be signed at the close of each meeting by the commissioners present, and shall be kept sub-

ject to public inspection in the office of the auditor. The governor and two other members shall be a quorum for the transaction of business. Before any timber is sold the auditor shall submit to the board, which shall meet from time to time, upon the call of the governor, the question of such sale, and shall produce the record of appraisal of such timber, and the board shall examine the same, together with other documents and records and such witnesses as it may require. If the governor and at least two other members of the board shall so determine, they shall enter upon the record of appraisals a statement, dated and signed by them, that such timber is in danger of being injured, and that a sale thereof is necessary to protect the state from loss. Thereafter, and not before, the auditor may make such sale. Whenever any member of the board becomes satisfied, before the issuance of a permit, that, by reason of fraud or misstatement on the part of any estimator, witness or officer, or by reason of any combination or irregularity, the interests of the state so demand, he shall withdraw his approval of any sale, by an entry signed by him upon the record of the appraisals. No sale of timber shall be made until not less than two independent estimates have been made. ('05 c. 204 § 13, amended '13 c. 383 § 1)

Under 1895 c. 163 § 18 indorsement on appraisal that sale was necessary to protect state from loss held jurisdictional to valid sale (107-54, 119+387).

1895 c. 163 § 18 cited (102-470, 113+634, 114+738).

5271. Special agent—The timber board may appoint one or more agents or cruisers to gather evidence in any action brought by the state or to investigate the correctness of any estimator's report, or to ascertain whether any timber proposed to be sold is subject to sale, or whether any trespass has been committed on state lands, and may send such agent to examine such timber or lands. The employes of said timber board, independently of the state auditor and estimators shall report in writing to the governor, and the money necessary to defray expenses and the rewards provided for in this act, is hereby annually appropriated out of any money in the state treasury not otherwise appropriated, the sum of ten thousand dollars or so much thereof as may be necessary and shall be paid upon verified accounts audited by said board. The auditor shall forthwith advise the timber board of any information acquired by him concerning any trespass on state lands, giving all details and names of witnesses. ('05 c. 204 § 14)

5272. Public auction—Notice—No timber shall be sold, except to the highest bidder at public auction, and the minimum price shall be the appraised value as fixed by the record of appraisals. All sales, except as provided in the following sections, shall be held at the capitol. The auditor shall give eight weeks' notice thereof published in two daily newspapers, one of which is published in the city of St. Paul and the other in the city of Minneapolis and such notice shall appear in each issue consecutively of each of such papers during said eight weeks of publication, in the following form:

“NOTICE OF SALE OF STUMPAGE ON STATE LANDS.

“Notice is hereby given that I will offer for sale at public auction at the state capitol, in St. Paul, on the _____ day of _____ A. D. _____, at _____ o'clock in the _____noon, certain timber belonging to the state and liable to waste.

“An official copy of the list of lands upon which said timber is situated will be furnished by me to all applicants on and after the _____ day of _____, A. D. _____. Said list will be published, in connection with this notice, once a week for three weeks next prior to said sale.

“Dated, St. Paul, Minn., this _____ day of _____, A. D. _____.

“State Auditor.”

At least thirty days before the date of sale, the auditor shall compile a list containing a description of each tract of land upon which any timber to be offered is situated, and a statement of the quantity of timber thereon, as shown by the official estimate. No description shall be added after the first publication of the list, and no timber shall be sold from land not described

therein. Copies of the list shall be furnished to all applicants. Such list, with a statement that it is the list referred to, shall be published in accordance with said notice. A copy of such list and notice shall be conspicuously posted in the office of the auditor of each county in which any of said lands are situated at least fifteen days prior to the date of sale. ('05 c. 204 § 15)

5273. Stumpage in small parcels—Conduct of sale, etc.—The board of timber commissioners may authorize the auditor to sell the stumpage of pine, spruce, tamarack, cedar, balsam, balm of gilead, birch or poplar, on any tract of state land not exceeding one section in area, where the estimated quantity of log timber thereon does not exceed 100 M. feet, at public auction to the highest bidder, at the county seat of the county in which such tract is located. He shall give three weeks' published notice of any such sale in a paper published at the county seat of the county where such land is situated, instead of eight weeks' notice in papers at St. Paul and Minneapolis, as provided for in section 15 for the sale to be held at the capitol building. Such notice of sale shall contain a description of each tract of land upon which is situated any timber that is to be offered, and a statement of the estimated quantity of each kind of timber thereon, and of the appraised price of each kind of such timber, per M. feet, or per piece, or per cord, as the case may be. Timber estimated and appraised as log timber shall be offered and sold by the M. feet; timber estimated and appraised as tie, or pole or post timber shall be offered and sold by the tie, or pole, or post, as the case may be; timber estimated and appraised as pulp wood, or lath bolts, or mine lagging, or wood for fuel purposes, shall be offered and sold by the cord, all cords to be single cords. The sale shall be made to the party who shall bid the highest price for all the several kinds of timber as advertised. The purchaser of any such timber at any such sale shall immediately pay to the auditor, or the person conducting the sale for him, for delivery by such official to the state treasurer, 50 per cent of the appraised value of such timber, and shall thereupon be entitled to receive from the auditor a permit to enter upon such land and cut and remove such timber. Before receiving such permit, however, he shall execute a bond to the state of Minnesota, with sureties to be approved by the auditor, in an amount at least double the appraised value of such timber, conditioned upon cutting of all of said kinds of timber that there may be upon said land, clean, acre by acre, and paying the state the balance that may be due therefor, and for the faithful performance of all the terms and conditions of the law governing such matters. All timber cut on any of the state lands under any such sale and permit is to be scaled, or counted, as the case may be, by a regularly appointed state land examiner, instead of by a deputy surveyor general. In no case shall any such timber be removed from the land where it was cut, until it has been so scaled or counted by a regular state land examiner. Any person removing any such timber from the land where it was cut before it has been so scaled or counted by a regular state land examiner shall be deemed guilty of a felony, and may be prosecuted criminally therefor. The purchaser of any such timber shall pay the state for all timber that may be cut upon or removed from such land during the life of his permit, at his purchase price per M. feet, or per piece, or per cord, as the case may be. In all other respects such sale shall be subject to all the restrictions and conditions applicable to the sale of other state timber. ('05 c. 204 § 16, amended '09 c. 476 § 1)

5274. Annual and emergency sales—Except as provided in this and the preceding section, there shall be only one sale of timber in each year, which shall be held not later than November 1st, and may be adjourned from day to day, but no longer, until completed: Provided, that in case of emergency, if the board of timber commissioners shall unanimously determine that it is for the best interests of the state that a second sale shall take place before the next regular sale, it shall be held under the same regulations, so far as practicable, as are provided for regular sales, except that the notice of sale shall contain the description of the tracts on which the timber to be sold is situated, and shall state that the sale is to be held pursuant to the recommendation of the said board, and shall be published daily for at least three

weeks next prior to the date of sale under rules prescribed in section 15 [5272]. ('05 c. 204 § 17)

5275. Cash payment—The purchaser at any sale of timber, except in the cases provided by section 16 [5273], shall immediately upon the approval of his bid pay to the state treasurer 25 per cent of the appraised value, and the treasurer shall issue duplicate receipts therefor, one of which shall be delivered to the purchaser, and the other filed with the auditor. In case any purchaser fails to make such payment, the auditor may immediately reoffer said timber for sale, but no bid shall be received from the person so failing. ('05 c. 204 § 18)

5276. Permit—Upon the delivery and filing of the duplicate receipts mentioned in the preceding section, the auditor shall issue a permit to such purchaser in a form approved by the attorney general, by the terms of which he shall be authorized to enter upon the land, and to cut and remove the timber, therein described, according to the provisions of this chapter. Such permit shall be correctly dated and executed by the auditor, and signed by the purchaser. No permit shall cover more than two logging seasons, and the timber shall be cut and removed within the time specified therein. Not more than one section, or fractional section of land, according to the government survey, shall be described in any one permit, and no permit shall be issued to any person other than the purchaser in whose name the bid was made. The permit shall state the amount of timber estimated to be thereon, the estimated value thereof, and the price at which it is sold, or the price per thousand feet, in case it is sold by the thousand feet, and shall specify the bark mark to be used. A separate bark mark shall be used on the timber cut under each permit, and, if the permit covers more than one season, it shall specify a separate mark to be used in each season. It shall provide that the purchaser shall place the specified bark mark upon every piece of timber cut, and also plainly upon the end thereof the stamp mark MIN. and that, in case of any failure to place both bark and stump mark upon any such piece, the state shall have the right to take possession of the same wherever found. It shall contain such other provisions as may be necessary to secure to the state the title of all timber cut thereunder, wherever found until full payment thereof, and until all provisions of the permits have been fully complied with. It shall also provide that all the timber standing on the land and sold shall be cut; that the same shall be cut clean, acre by acre, without damage to other timber; that the purchaser shall pay to the state the permit price for all timber, including timber which he fails to cut and remove, and the amount of fees of the surveyor general; and that he shall, in writing, notify the surveyor general for the district, and also the auditor, at least fifteen days before any cutting is done, at what time such cutting will begin, at least fifteen days before any timber is removed from the land, at what date such removal will begin. Any permit failing to conform to the requirements of this section shall be void on its face. All permits shall be filed for record with such surveyor general. ('05 c. 204 § 19)

102-470, 113+634, 114+738; 106-1, 115+162; 107-54, 119+387.

5277. Bond of purchaser—The purchaser, before execution of any permit, shall give bonds to the state, in double the value of timber covered by the permit, as shown by the amount of the bid and the record of appraisals as to quantity, conditioned upon the faithful performance of the terms of said permit and all requirements of law in respect to such sales, which bonds shall be approved in writing by the auditor and filed for record in his office. No member of any firm or corporation which is the purchaser of such timber shall be accepted as a surety. ('05 c. 204 § 20)

5278. Extension of permit—No permit shall be extended, except for good and sufficient reasons, and by unanimous consent of the board of timber commissioners, and in no event shall more than two extensions be granted for one year each. A condition of any extension shall be that the purchaser shall be liable to the state for interest on the entire unpaid purchase price at the rate of eight (8) per cent per annum during the whole time of such extension and the destruction of the timber by any cause during the period

of such extension shall not relieve the purchaser for payment of same, and said purchaser shall be liable to the state therefor. When any extension is granted a bark mark shall be agreed upon for each season. ('05 c. 204 § 21, amended '13 c. 530 § 1)

102-470, 113+634, 114+738.

See note under § 5294.

5279. Assignment—The assignment of any permit shall be executed in the same manner as a deed of land, and shall be acknowledged. No assignment shall be operative without the approval of the auditor, who, if he shall approve the same, shall endorse his approval thereon, and record the assignment in his office. Before any such approval, the assignee shall give to the state a bond, which shall be substantially in the form and subject to the rules provided for the bond to be given by an original purchaser; but the original bond given by the purchaser and any bond given by any prior assignee shall remain in full force. ('05 c. 204 § 22)

5280. Void sales—Any sale of timber made by fraud or mistake, or in violation of the provisions of this chapter, shall be void, the permit issued thereon shall be of no effect, and the holder shall be required to surrender the same. In case of mistake the amount so paid shall be refunded to the purchaser, the sum necessary for such refund is hereby appropriated. ('05 c. 204 § 23)

5281. Failure to cut—If the purchaser of any timber, or his assignee, fails to cut and remove any part thereof before the expiration of the permit, he shall nevertheless pay the price therefor; but under no circumstances shall he cut or remove any such timber after the expiration of the permit or extension thereof. ('05 c. 204 § 24)

106-1, 115+162; 106-534, 115+167.

See note under § 7702.

5282. Surveyor general—Duties—Reports—The surveyor general of each district shall scale all timber cut on pine lands in charge of the auditor. All scaling shall be done upon the land from which the timber was cut, and all logs scaled shall be numbered consecutively, and the number of each entered upon the minutes of the scaler. On or before May 15th in each year each surveyor general shall make to the auditor separate reports of all such timber by him scaled, covering the different tracts of land embraced in the respective permits. Each report shall describe the land on which the timber was cut, and state the names, of the person cutting, the person for whom the cutting was done, and the person hauling the timber, the kind, character, the amount of the timber, the bark and the stamp marks used thereon, the number of logs or pieces, and the total number of feet. Each report shall also state specifically whether the scaling was done upon the land from which such timber was cut; whether such timber was cut according to the provisions of the permit; whether the land has been cut clean acre by acre, so far as the cutting has been made; whether the cutting was done without unnecessary waste or damage and, if not, the amount of the consequent damage to the state; whether the timber has all been cut, and, if not, how much has been left standing; whether all timber has been scaled and reported; and whether the bark and stamp marks specified in the permit have been plainly placed upon each piece of timber. Each surveyor general shall also report to the auditor every trespass committed upon the state pine lands in his district; and the auditor shall immediately cause such report to be investigated, and, if found true, shall cause such trespass to be estimated, scaled, appraised, and report the same to the attorney general for prosecution. ('05 c. 204 § 25)

See following section.

5283. Duty of surveyor general—Merchantable timber—The surveyor general of each district shall scale all timber cut on any of the state lands in charge of the auditor. All such scaling shall be done upon the land from which the timber was cut, and all the pieces scaled shall be numbered consecutively, and the number of each entered upon the minutes of the scaler. In the making of such scale such allowance shall be made for defects therein

as will make the same equal to "merchantable" timber, and the term "merchantable" timber is hereby defined to mean and include all logs or pieces from which lumber of value can be manufactured. ('09 c. 342 § 1)

Section 2 repeals inconsistent acts, etc. See preceding section.

5284. Rescale—If the auditor shall question the scale reported by the surveyor general he may demand a rescale and in such case shall serve upon such surveyor general a written notice containing a description of the tract on which a rescale is demanded. The surveyor general shall thereupon appoint one of his deputies, who, together with a state estimator appointed by the auditor for that purpose, shall make a correct scale of all timber embraced in the permit covering such tract, whether the same has been cut and removed, or remains cut or standing on such land; and a report of such scale shall be made and signed by them, and filed for record with the auditor. Such report, if both such deputy and such estimator agree upon the scale, shall be final and binding upon the state and the purchaser. If it shall appear by said rescale that the first scale was practically correct the state shall pay the said surveyor general the sum of \$5.00 for each day necessarily spent by his deputy in making such rescale, in addition to all necessary expenses incurred by him in traveling to and from such land; but, in case of a material difference in the two scales the surveyor general shall not be entitled to compensation for such rescale. A scale made under this section may be a top and stump scale. ('05 c. 204 § 26)

5285. Violation of duty—Any surveyor general who shall fail to scale all the timber cut on state pine lands in his district as required by this chapter, or who shall scale any such timber on land other than that on which the same was cut, or who shall fail to make the complete report of timber scaled by him on each tract of land covered by any permit, or who shall in any such report include timber cut on tracts covered by different permits, or who shall neglect to report any case of trespass or who shall appoint any deputy otherwise than as provided by law, or who shall not comply with any of the provisions of this chapter, shall be guilty of a gross misdemeanor. ('05 c. 204 § 27)

5286. Fees—Scaling timber, etc.—The fees of the surveyor general for scaling timber on state lands shall be paid by the state and shall be fifteen cents per thousand feet on all timber scaled under the permit during any one season up to five hundred thousand feet, and ten cents for each thousand feet in excess thereof, and also five cents for each mile necessarily traveled in going and returning between his office and the place of survey. ('07 c. 314 § 1)

Section 3 repeals inconsistent acts, etc. See 1905 c. 204 § 28.

5287. Surveying and scaling logs, timber, and lumber—The fees and mileage of the surveyor general for surveying and scaling logs, timber, and lumber shall be as follows:

1. Fence posts and farm poles, 20 cents for each hundred pieces, or fraction thereof.
2. Electric wire poles, 10 cents per hundred feet, lineal measure.
3. Logs and other timber, 7 cents per thousand feet.
4. Lumber, 25 cents per thousand feet.
5. Five cents for each mile in excess of four necessarily traveled in going and returning between his office and the place of survey.

Such compensation shall be in full for scale-marking, making and recording scale bills, and posting the same in the ledger. Provided, however, that the fees herein fixed shall not apply in any case where such fees are fixed in any special law of the state of Minnesota heretofore enacted. ('07 c. 314 § 2)

5288. Failure to mark—Sale before payment—Penalty—Every person who shall cut timber on state lands, and fail to mark the same as provided by the permit, or shall place any other mark thereon, and every person who shall sell, transfer, or manufacture any timber cut on state lands, before the amount due to the state therefor shall have been paid, shall be guilty of a gross misdemeanor. ('05 c. 204 § 29)

5289. Deputy surveyors general—Compensation—For the purpose of carrying out the provisions of this chapter, the surveyor general of each district may appoint as many deputies as he deems necessary, and he may discharge such deputies at any time, in case of such discharge, shall immediately give written notice thereof to the auditor. No person in the employ of any person transacting a lumbering or logging business shall be so appointed. Each deputy shall be a man of experience and capable of determining, from the description according to the government survey, the location of the land described. Each deputy shall give a bond to the state, in at least the sum of \$1,000, conditioned for the faithful performance of his duties, which bond shall be approved by such surveyor general, and, with the required oath and a duplicate of the appointment, shall be filed with the auditor within thirty days after the appointment is made. Such deputies shall receive compensation for their services directly from the surveyors general, and in no other manner. ('05 c. 204 § 30)

5290. Discharge of deputy—If the auditor shall be of the opinion that any such deputy has violated any provision of this chapter or is incompetent or unfaithful, he may present the matter to the board of timber commissioners, and, if the board shall determine that such opinion is well founded, it shall give to the surveyor general written notice of such determination, and he shall forthwith discharge such deputy, who shall not be reappointed. ('05 c. 204 § 31)

5291. Violation of duty—Every deputy surveyor general appointed under the provisions of this chapter, who shall accept any compensation for his services as such or any gratuity, directly or indirectly, from any other person than the surveyor general of the district in which he is appointed or who shall knowingly make any false report of timber scaled or insert in any such report any false statement, or omit from any such report any statement required by law to be made therein, or who shall fail to report to such surveyor general any trespass committed upon the state pine lands in such district which has come to his knowledge, shall be guilty of a felony. ('05 c. 204 § 32)

5292. Timber sales book—The auditor shall keep a record of all sales of timber in a book to be known as the timber sales book, and shall enter therein at the time each tract of timber is sold, and before selling another tract, the name of the purchaser, the price, and a description of the tract on which the timber is situated. ('05 c. 204 § 33)

5293. Stumpage book—The auditor shall keep a stumpage book in which he shall enter a description of each tract of land in his charge on which timber is located; the name and date of the report of the estimator; the kind, amount, and value of the timber as shown by such report; the date of approval of the sale of the timber; the date of the sale; the price for which the timber was sold; the name of the purchaser; the number, date and date of expiration of each permit; the bark and stamp marks specified therein; the date of any assignment of the permit; the name of the assignee; the dates of the filing and the amounts of the respective bonds given by the purchaser and the assignee; the names of the sureties thereon; the amount of timber taken from the land; the date of the report of the surveyor general; the marks used upon the timber as reported; the name of the deputy who scaled the timber; the amount paid and the date of payment, together with a specific reference to all correspondence relating to the land covered by the permit. ('05 c. 204 § 34)

106-1, 115+162.

5294. Payments—Bill of sale, etc.—Upon receipt of the surveyors general's report of the amount of timber cut under any permit, the auditor shall prepare a statement of the amount due therefor by the terms of the permit, including the fees of the surveyor general, and shall place in the hands of the state treasury a duplicate thereof. Payment of such amount shall be made by the purchaser or assignee, as the case may be, to the treasurer, who shall give duplicate receipts therefor, one of which shall be filed with the auditor, whereupon he shall execute a bill of sale of such timber, and a transfer of the

mark thereon, to the purchaser or assignee. The bill of sale and transfer shall describe the timber, its quantity and character, and the land from which it was cut, and shall be by such purchaser or assignee filed for record with the auditor and with the surveyor general of the district in which such timber was cut. ('05 c. 204 § 35)

1895 c. 163 § 37 cited (106-1, 115+162).

The state not estopped in an action to recover double value of timber taken, because commissioner gave defendant to understand that further extension of permit would be granted, and who proceeded in good faith, and state received payment (102-470, 113+634, 114+738).

5295. Same—How enforced—If the amount of such statement be not paid immediately, it shall bear interest at the rate of eight per cent per annum from date; and, if not paid within thirty days, the treasurer shall place the account in the hands of the attorney general, who shall proceed forthwith to collect the same. Whenever the auditor shall deem it for the best interests of the state, he shall take possession of the timber for which such amount is due, wherever the same may be found, and sell the same at public auction. The proceeds of such sale shall be applied, first, to the payment of the expenses of seizure and sale; and second, to the payment of the amount due for such timber, with interest; and the surplus, if any, shall belong to the state; and, in case a sufficient amount is not realized to pay such amounts in full, the balance shall be collected by the attorney general. Neither payment of such amount, nor the recovery of judgment therefor, nor satisfaction of such judgment, nor the seizure and sale of such timber, shall release the sureties on any bond given pursuant to this chapter, or preclude the state from afterwards claiming that such timber was cut or removed contrary to law, and recovering damages for the trespass thereby committed, or from prosecuting the offender criminally. ('05 c. 204 § 36)

5296. Settlement for trespass—The timber board may settle the civil claim for trespass on lands of this state whenever it is for the best interests of the state so to do, but no such settlement shall be made until the timber taken under such trespass has been estimated and appraised or scaled by a state estimator, whose report shall be filed in the office of the land commissioner, and no settlement shall be made for an amount less than double the value of the timber as shown by such report. Provided, that if the board be satisfied that such timber has been cut by one who settled upon the land from which the timber was cut, and built a house and lived thereon before such land was certified to the state, and that such settler is upon such land in good faith, believing it to be land subject to the homestead entry, the timber board may settle for such timber cut thereon at the estimated and appraised value of such timber. ('05 c. 204 § 37, amended '11 c. 194 § 1)

5297. Record of trespasses—The auditor shall keep a book in which he shall enter all trespasses reported, with the minutes of all estimates and appraisals and settlements thereof, together with references to any correspondence relating thereto. ('05 c. 204 § 38)

5298. Seizure of timber, etc.—The state auditor shall take possession of any timber heretofore or hereafter unlawfully cut upon, or taken from, any land owned by the state, wherever found, and may sell the same at public auction after giving such notice as he deems reasonable, and after deducting all the expenses of such sale the proceeds thereof shall be paid into the state treasury to the credit of the proper fund; and whenever any timber so unlawfully cut has been intermingled with any other timber or property so that it cannot be identified or plainly separated therefrom the auditor may so seize and sell the whole quantity so intermingled, and in such case the whole quantity of such timber shall be conclusively presumed to have been unlawfully taken from state land. But when the timber unlawfully cut or removed from state land is so seized and sold such seizure shall not in any manner relieve the trespasser who cut or removed, or caused the cutting or removal of any such timber, from the full liability imposed by this act for the trespass so committed, but the net amount realized from such sale shall be credited on whatever judgment is recovered against such trespasser, and in addition to any other penalty provided by law, any person who shall remove, transport, carry away, conceal or convert to his own use any timber unlawfully

cut on state lands, knowing the same to have been so cut, shall be guilty of larceny of the same and may be prosecuted and punished accordingly in the county where said property was cut or in any county into or through which said property or any part thereof may be removed, and when any corporation is guilty of the acts herein declared to be larceny each officer of such corporation shall individually and severally be deemed guilty of such larceny. ('05 c. 204 § 39)

1895 c. 163 § 40 cited (109-123, 123+54).

5299. Rewards—The following rewards shall be paid to any person or persons giving to the proper authorities any information which shall lead to the detection and conviction of any persons violating any of the provisions of this act, to wit: \$25.00 reward if the value of the timber so unlawfully cut or removed shall not exceed the sum of \$25.00; \$50.00 reward if the value of timber shall not exceed \$50.00; and \$100.00 reward if the value of such timber shall exceed the sum of \$100.00; and the court before whom such person or persons so violating the provisions of this act shall have been tried shall, upon application of any person claiming to be entitled to such reward, examine such claim in a summary manner, and determine whether or not such person claiming said reward is entitled to the same, and if it should appear to the satisfaction of said court that such person claiming such reward is entitled to the same, then and in that case a certificate of such fact shall be made by such court and delivered to said person and the treasurer of the state of Minnesota is hereby directed and required to pay such person such reward upon presentation of such certificate duly authenticated. ('05 c. 204 § 40)

5300. Posted notice before cutting—Copy to state forester—Penalty—Reward—Every person, firm or corporation engaged in the cutting of timber of any kind, telegraph poles or fence posts, upon any of the land belonging to the state, or upon any land whatsoever within this state, shall before cutting any such timber, post in a conspicuous place in any camp building or house occupied by his employees engaged in such cutting a notice which shall contain a full description of the lands proposed by him to be cut, the period during which the cutting is proposed to be done, and which said description shall contain the precise description of said land by forty-acre tracts, or fractions thereof, of governmental sub-divisions, and shall include the section, town and range, and such person or persons so engaged in cutting timber as aforesaid shall be required to keep said notice conspicuously posted in such camp building or house during the entire time that he is engaged in cutting such timber: and he shall, before cutting any such timber, forward a copy of such notice with his post-office address to the state forester at the state capitol, St. Paul. Any person, persons, firms or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not less than twenty-five dollars (\$25.00) and not exceeding one hundred dollars (\$100.00) or be imprisoned in the county jail for a period not less than twenty days and not exceeding ninety days.

Any person or persons giving to the proper authorities information which shall lead to the conviction of any person, persons, firm or corporation guilty of a violation of this section shall receive the sum of twenty-five dollars (\$25.00) reward, to be ascertained and paid in the manner provided herein for the payment of the reward provided for in section 40. [5299] of this act. Provided, however, that the provisions of this section shall not apply to any person who shall be engaged in cutting cordwood upon his own land or engaged in cutting timber for clearing any land actually owned or occupied by him. ('05 c. 204 § 41, amended '13 c. 114 § 1)

5301. Timber defined—"Timber," as used in this chapter, shall be construed to mean trees, whether standing or cut, logs, posts, poles, ties, paving blocks, laths, shingles and lumber of every description. ('05 c. 204 § 42)

5302. Limitation of actions—The statutes of this state limiting the time for bringing either civil or criminal actions shall not apply to any action brought by the state for trespass upon any of its lands, or to any criminal prosecution instituted under this chapter, and any civil action brought under

this chapter may, at the election of the attorney general, be brought in any county in this state. ('05 c. 204 § 43)

5303. Records as notice—The records kept by the auditor, pursuant to this chapter, shall be deemed notice of the facts therein set forth. (2482)

Cited (106-58, 118+63).

MINERAL LANDS

5304. Reservation of minerals and water powers—The state hereby reserves for its own use all the iron, coal, copper, gold and other valuable minerals, and all water powers in or upon all lands which now, or hereafter may, belong to it by virtue of any act of congress. Provided, that this reservation shall not apply to lands granted or contracted to be conveyed by the United States or by this state to aid in the construction of any railroad. (R. L. § 2483, amended '09 c. 109 § 1)

See § 5306.

1889 c. 22 and amendments, substantially re-enacted by R. L. §§ 2483-2495 [5304-5319], were constitutional (99-220, 108+958, 9 Ann. Cas. 520).

Private contracts excepting ores and minerals from grants are valid (115-239, 132+205).

5305. Certificate of sale, patents, etc.—Reservation—When any such land is sold, granted, conveyed, or transferred in any way, the certificate of sale, patent, or other instrument of transfer shall state that such sale, grant, conveyance, or transfer does not include any right, title, or interest in or to any iron, coal, copper, gold, or other valuable minerals which may be in or upon such land, and that all such minerals are reserved by the state for its own use; but no instrument shall be effective to transfer any right, title, or interest in or to any such minerals, notwithstanding the failure of the proper officer to insert such statement. (2484)

5306. Patent, etc., under land grant to railroad—Reservation—In all cases where the state of Minnesota shall execute any patent or conveyance of lands under any land grant heretofore made to any railroad company to aid in the construction of any railroad there shall be expressly reserved to and retained in the state of Minnesota all the iron, coal, copper, gold and other valuable minerals in or upon all such lands and the state auditor is hereby prohibited from executing or delivering any patent or instrument of conveyance which shall not contain the reservations aforesaid. ('13 c. 6 § 1)

5307. Disposition of minerals reserved—All minerals in or upon lands which have been or may be sold, granted, conveyed, or in any way transferred by the state shall remain subject to sale, lease, or contract by the state, upon the same terms and conditions as are minerals upon lands belonging to the state; and the state, and all persons claiming under it, shall have the right to enter upon such lands, and to prospect for, mine, and remove such minerals, and for such purpose to construct all necessary roads, buildings, and improvements thereon, including machinery for mining or removing such minerals. All such minerals shall be disposed of by the auditor in the same manner and on the same terms as minerals on lands belonging to the state. (2485)

5308. Holder of permit or lease—In all cases where state lands have been heretofore, or may hereafter be sold pursuant to the provisions of law, upon which minerals have been reserved, the holder of any mineral permit or lease, subsequently issued thereon, may nevertheless enter upon the same and prospect thereon thereunder. ('07 c. 411 § 1)

See 46-495, 49+255; 54-17, 55+749; 92-355, 100+91.

5309. Same—Security for damages—Condemnation—Before entering upon the same he shall pay or secure to the owner of such lands all damages which may arise therefrom, and the same may be determined either by mutual agreement or, if the interested parties cannot agree, then the holder of such mineral permit or lease may, in the name of the state of Minnesota, institute proceedings to condemn the same, in accordance with the general provisions of chapter 41, Revised Laws 1905, or amendments thereto; provided, that the state of Minnesota shall bear no part of the cost of such pro-

ceedings, nor pay any part of the damages awarded therein. ('07 c. 411 § 2)

The provisions of R. L. 1905 c. 41 are included in chapter 41 hereof.

5310. Reservation of minerals under meandered lakes, etc.—That all iron ores and other minerals on, in or under lands within this state, which lie beneath the waters of meandered public lakes and rivers, belong to the state, together with the right to enter upon such lands and explore for and mine and remove such iron ore and other minerals and that the state now has and since its organization has had the right to sell, lease or otherwise use or dispose of such mineral lands and such iron ores and other minerals in the same manner as any other mineral lands, ores or minerals belonging to the state, and that the title of the state to such iron ore or other minerals, together with the right to explore for, mine or remove the same, shall not be affected by the subsequent drying up of such lakes or rivers. ('09 c. 49 § 1)

5311. Same—Pending applications—Applications for mineral leases and contracts now pending and on file in the land department of the state auditor's office shall not be recognized as valid or existing by reason of anything contained in this act. ('09 c. 49 § 2)

5312. Same—Funds, how disposed of—The principal of all funds derived from the sale or other disposition of such minerals and lands so situate shall forever be preserved inviolate and undiminished, but the same may be invested as the Swamp Land fund of the state is now invested, and the proceeds arising therefrom shall be paid into the state road and bridge fund. ('09 c. 49 § 3)

R. L. §§ 2486-2488 were repealed by 1907 c. 14.

5313. Rights under permit—The holder of any such permit shall have the right to prospect for iron ore on the land described therein for one year from the date thereof, and no longer; but no ore shall be removed therefrom until a lease has been executed. No permit for the same land shall be issued to the same person for two years in succession. (2489)

5314. Mining lease—At any time prior to the expiration of any prospecting permit, the original holder, or any assignee thereof, shall have the right to receive from the auditor a mining lease, which shall bind the state and the person to whom it shall issue to the mutual observance of the obligations and conditions thereof. (2490)

5315. Form of lease—The lease provided for in § 5314 shall be as follows: This indenture, made this day of, 19...., by and between the state of Minnesota, party of the first part, and, part... of the second part,

Witnesseth, That the party of the first part, for and in consideration of the sum of one hundred dollars to it in hand paid by the part... 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 hereof, to be kept and performed by the part... of the second part, does hereby lease and demise unto the part... of the second part, for the term of fifty years from and after the day of, 19...., the following described land, situated in the county of, in the state of Minnesota, to wit:; which premises are leased to the part... of the second part for the purposes of exploring for, mining, taking out, and removing the merchantable shipping iron ore found on or in said land, together with the right to construct or make such buildings, excavations, openings, ditches, drains, railroads, wagon roads, and other improvements upon said premises as may be necessary or suitable for such purposes. The party of the first part reserves the right to sell and dispose of, under the provisions of law now or hereafter governing the sale of timber on state lands, all the timber upon the land hereby leased, and reserves to the purchaser of such timber, his agents and servants, the right at all times to enter thereon, and to cut and remove any and all such timber therefrom, according to the terms of the purchaser's contract with the state, and without let or hindrance from the part... of the second part; but

such purchaser shall not unnecessarily or materially interfere with the mining operations carried on thereon. And the party of the first part further 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 hereby leased, without let or hindrance from the part... of the second part; but such railroads shall not unnecessarily or materially interfere with the mining operations carried on thereon. And the party of the first part agrees that the part... of the second part shall have the right to contract with others for the working of such mines, or any part thereof, or for the use of such land, or any part thereof, for the purpose of mining iron ore, with the same rights and privileges as are hereby granted to the part... of the second part.

The part... of the second part hereby covenants and agrees 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 said term, or during the period this lease continues in force, pay to the treasurer of said state, for all the iron ore mined and removed from said land during the three months preceding the first day of the month in which such payment is to be made, a royalty of twenty-five cents per ton; 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 auditor of said state an exact and truthful statement of the amount of iron ore removed during the three months for which such payment is 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; and the part... of the second part shall transmit to said auditor monthly statements showing the aforesaid weights. Such weights shall prima facie determine the quantity as between the parties, but the party of the first part shall have the right at any time, and in such manner as it may see fit, to inspect, review, and test the correctness of the railroad company's scales and of the aforesaid weights; it being understood that any errors in these respects, when ascertained, shall be corrected. The party of the first part shall have the right to enter upon and into said premises at any time, and to inspect and survey the same, and to measure the quantity of ore which shall have been mined or removed therefrom, not unreasonably hindering or interrupting the operations of the part... of the second part. And the part... of the second part further covenants and agrees that within five years after the completion of a railroad within one mile from said land there shall be mined and removed therefrom at least one thousand tons of iron ore, and that thereafter there shall be mined and removed therefrom at least five thousand tons annually, and that in case the part... of the second part shall not annually remove from said land five thousand tons, as above provided, the part... of the second part shall pay to the said state treasurer annually a royalty of twenty-five cents per ton on five thousand tons, which payment shall be made quarterly as hereinbefore specified. And the part... of the second part further covenants and agrees that up to the time when the first one thousand tons is required to be mined and removed, as hereinbefore provided, the part... of the second part shall on the first day of August in each year pay to the state treasurer the sum of one hundred dollars. And the part... of the second part further covenants and agrees as follows: That during said term the part... of the second part will pay all taxes, general and specific, which may be assessed against said land, and the improvements thereon, and the iron ore product thereof, and any personal property at said mines, in all respects as if said land were owned in fee by the part... of the second part; that the part... of the second part will open, use, and work said mines in such manner only as is usual and customary in skillful and proper mining operations of similar character when conducted by the proprietors on their own lands, and in such manner as not to cause any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operation of the same, and will deposit all earth, rock, and other useless materials or rubbish at such places and in such manner as will not embarrass such subsequent operation, and that upon the termination of this

lease the part.... of the second part will quietly and peaceably surrender the possession of said land to the party of the first part.

Provided, however, that the part.... of the second part shall have the right at any time to terminate this lease in so far as it requires the part.... of the second part to mine ore on said land, or to pay a royalty therefor, by delivering written notice of such termination to the state auditor, who shall, in writing, acknowledge receipt of such notice, and this lease shall terminate sixty days thereafter; and all arrearages and sums which shall be due under this lease up to the time of such termination shall be paid upon settlement and adjustment thereof by the part.... of the second part.

Provided, further, and this lease is granted upon the express condition, that if any annual payment, or any payment for royalties, or any part of any such payment, shall remain unpaid after the expiration of sixty days from the time when the same was payable as herein provided, or in case the part.... of the second part shall fail to perform any of the covenants or conditions herein expressed to be performed by said part.... of the second part, then it shall be the duty of the state auditor to cancel this lease, first having given to the part.... of the second part at least twenty days' notice in writing thereof, whereupon the party of the first part shall re-enter and again possess said premises as fully as if no lease had been given to the part.... of the second part, and the part.... of the second part and all persons claiming under such part.... shall be wholly excluded therefrom.

It is mutually agreed that upon the termination of this lease, whether by act of either party 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 placed or erected by the part.... of the second part upon said land; but the part.... of the second part shall not remove or impair any supports placed in said mines, or any timber or frame work necessary to the use or maintenance of shafts or other approaches to the mines, or tramways within the mines. The party of the first part reserves, and shall at all times have, a lien upon all ore mined, and upon all improvements made by the part.... of the second part upon the premises, for any unpaid balances due under this lease.

The covenants, terms, and conditions of this lease shall run with the land, and be in all respects binding upon all sublessees and grantees under the part.... of the second part. (2491)

5316. Re-entry on default—The state auditor is hereby empowered in case of default or failure on the part of the person obligated thereby, to fully comply with the covenants and conditions of the lease described in § 5315, to at once enter upon the premises described therein and take possession of the same. (2492)

5317. Permits, leases, and assignments—Filing—Copies—The assignment of any prospecting permit or mining lease shall be signed by both parties, executed in the presence of two witnesses, and acknowledged, and the approval of the auditor shall be indorsed thereon. All such permits, leases, and assignments shall be filed with the auditor, and the date and hour of filing shall be indorsed thereon. On tender of his reasonable fees, he shall furnish a certified copy of any such instrument, with the indorsements thereon, which copy may be filed for record with any register of deeds. (2493)

5318. Payments—All payments under or on account of prospecting permits and mining leases shall be made to the state treasurer on the order of the auditor, and shall be credited to the permanent fund of the class of lands to which it properly belongs. (2494)

5319. Discovery of other minerals—Should copper or other valuable minerals be discovered on land leased for mining iron ore, the terms and conditions on which such other minerals may be mined shall be agreed upon by the auditor and the lessee; and, in case they are unable to agree, each shall choose a referee, and the two referees so chosen shall choose a third. The decision of such board of referees shall be binding on the parties in interest. (2495)

OTHER LANDS

5320. Lands granted by United States—Hereafter whenever any lands granted to the state by the congress of the United States shall be sold by this state, the purchaser shall in the first instance be given a contract or certificate of sale, which instrument shall contain, among other things, the provisions herein set forth. ('11 c. 90 § 1)

Historical—"An act to amend chapter 299, General Laws of Minnesota for 1905, prescribing terms, limitations and conditions on which lands granted to the state by the congress of the United States shall be sold, as amended by chapter 106, General Laws of 1909, so as to read as follows."

See note under § 5326.

5321. Same—Contract or certificate of sale—Requirements—The state auditor shall insert in every such contract or certificate of sale, a clause providing that the vendee, his heirs, administrators or assigns, shall within seven (7) years from the date of such instrument, perform at least one of the following requirements:

1. Fence at least twenty-five (25) per cent of said tract for pasture and convert such portion into pasture land.

2. Cultivate at least five (5) per cent of said tract, or

3. Build a house and actually reside upon said tract for a period of twelve (12) months.

Provided, however, that the fencing for pasture of twenty-five (25) per cent of any contiguous tract sold such vendee by the state under the provisions of this chapter and the conversion of such portion into pasture land, or the cultivation of at least five per cent of such contiguous tract, or the building of a house and actual residence upon any portion of such contiguous tract for a period of twelve months shall be deemed a sufficient performance of such requirements with reference to the whole of such contiguous tract whether heretofore or hereafter sold by the state. ('11 c. 90 § 2)

5322. Same—Proof of compliance—Deed—Sales in and after 1905—Within seven (7) years after the date of such contract or certificate of sale, the vendee, his heirs, administrators or assigns, shall furnish to the state auditor, satisfactory proof that at least one of said provisions has been complied with, said proof shall be attested by two members of the school board in the district wherein the land is located. And upon such proof, and the fulfillment of all the conditions of such contract or certificate of sale, a deed shall issue to the purchaser, his heirs or assigns, to the land in such contract or certificate described.

Provided, that the foregoing provisions shall apply to all sales of land made in the year 1905 and subsequent years. ('11 c. 90 § 3)

5323. Same—Failure to make proof—Reverter—Upon failure to make and furnish the proof mentioned, in the foregoing section, within seven (7) years after the date of such contract or certificate, the state auditor shall cancel said contract or certificate and the land covered thereby shall revert to and become the property of the state, free and clear of any incumbrance or cloud arising out of said transaction or contract or attempted to be contracted by said vendee, and all moneys paid on account of the purchase price, shall be forfeited to the state. ('11 c. 90 § 4)

5324. Same—Not over 320 acres—Not more than three hundred and twenty (320) acres of such land shall be sold or contracted to be sold to any one purchaser. ('11 c. 90 § 5)

5325. Same—Owners of contiguous tracts—This act shall take effect and be in force from and after its passage, and, provided further, that if the purchaser is already the owner of a contiguous tract of land, the state auditor upon a proper showing by affidavit, and in furtherance of justice, may in his discretion dispense with a strict compliance with the foregoing provisions of this section in respect to sales whether heretofore or hereafter made by the state. ('11 c. 90 § 6)

5326. Purchasers released from compliance with certain laws—Any and all persons who have heretofore purchased from the state of Minnesota any of the lands granted to the state by the congress of the United States are here-

by released from compliance with the provisions of sections 1, 2, 3 and 4 of chapter 299, General Laws of 1905, and of chapter 106, General Laws of 1909, and from the terms, limitations and conditions inserted or implied in their contracts or certificates of sale pursuant to said statutory provisions. ('11 c. 135 § 1)

Section 3 repeals 1905 c. 299 §§ 1-4 and 1909 c. 106. See note under § 5320.
1905 c. 299 § 5 is identical with § 5324, above set forth.

5327. Same—Effect of contracts and certificates—Any and all such contracts and certificates of sale shall be and remain of the same force and effect as if not containing, either expressly or by implication, any of the terms, limitations or conditions prescribed by the statutory provisions aforesaid; provided nothing herein contained shall be construed to release such purchasers from fulfillment of any of the other provisions or conditions of said contracts or certificates of sale, or of other statutes applicable thereto. ('11 c. 135 § 2)

5328. Certain other lands—How sold—Appraisal—All tracts or lots of real property belonging to the state of Minnesota, or that may hereafter accrue to the state, including tracts or lots which have escheated to the state may be disposed of in the following manner, provided, this act shall not apply to school or other trust fund lands, belonging to the state, or that may hereafter accrue to the state, under and by virtue of any act of congress. The sale or disposition of such real estate shall be under the supervision of the governor, attorney general and state auditor, who may authorize and direct a sale, when, in their judgment, it would be advantageous to do so. They shall appoint three appraisers, who shall appraise the real property to be sold. As compensation for their services the said appraisers shall receive five dollars per day. The sale shall be at public auction and shall be made by the state auditor, or such person or persons as he may direct for that purpose. ('09 c. 452 § 1)

5329. Same—Notice of sale, etc.—Before any sale shall be made the state auditor shall publish a notice thereof at least once in each week for four successive weeks in a newspaper published in the city or county in which the real property to be sold is situated, and he is also authorized to give such other and additional publicity of such notice as he may deem proper, which notice shall specify the time and place in said county at which such sale will commence, a description of the lots or tracts to be offered, and a general statement of the terms of sale. Each tract or lot shall be sold separately, and no lot shall be sold for less than the price thereof as specified in the report of said appraisers. ('09 c. 452 § 2)

5330. Same—Terms of payment—The terms of payment for all lots or tracts so sold shall be not less than ten per cent of the purchase price thereof at the time of sale, and interest on the unpaid balance, as herein stated, to June 1st, of the following year, and the balance of such purchase price at any time within twenty years, at the option of the purchaser, with interest annually in advance, at the rate of not less than five per cent per annum on such unpaid balance, payable to the state treasury on or before June 1st, in each year. ('09 c. 452 § 3)

5331. Same—Certificate of sale—The state auditor shall make out and deliver to the respective purchaser thereof a certificate of purchase in which he shall certify the description of the real property sold, and the price thereof, the consideration paid, and to be paid therefor, the rate of interest and time and terms of payment. Such certificate shall be numbered and made assignable. Such purchase certificate shall further set forth that in case of the non-payment of the annual interest due by the purchaser, or any person claiming under him, then the said certificate from the time of such failure will be entirely void, and of no effect, and the said state auditor may take possession of said lot or tract and resell the same, as herein provided. ('09 c. 452 § 4)

5332. Same—Record of certificates and assignments—Effect—Certificate of purchase issued pursuant to this act or any assignment thereof executed and acknowledged, as provided by law, for the execution and acknowledg-

ment of deeds may be recorded in the office of the register of deeds of any county in the state, in the same manner and in like effect as deeds are therein recorded. Such certificate shall entitle the purchaser thereof, his heirs and assigns to the exclusive possession of the land therein described, provided the terms of said certificate have been in all respects complied with, and the said certificate and the record thereof shall be conclusive evidence of title in such purchaser, his heirs and assigns, for all purposes and against all persons, except the state of Minnesota in case of forfeiture as aforesaid. ('09 c. 452 § 5)

5333. Same—Reservation of minerals—The state hereby reserves for its own use all the iron, coal, copper and other valuable minerals in or upon all lands which may be sold under the provisions of this act, and the sale certificate and patent herein provided for shall contain a clause reserving all such minerals for the use of the state. ('09 c. 452 § 6)

5334. Same—Patents—The governor shall sign and cause to be issued under the seal and attestation of the state auditor patents for the lands described in such certificate of purchase whenever the same are presented to him, with the further certificate of said state auditor endorsed thereon, certifying that the amount of principal and interest specified therein, all taxes due on said lands have been paid, and that the holder of such certificate is entitled to such patent. ('09 c. 452 § 7)

5335. Same—Funds, how disposed of—Duty of auditor—All money received from the sale of such lands or lots shall be credited to the general revenue fund of the state, and it shall be the duty of the state auditor to keep the proper and necessary records pertaining to the sale of such lands or lots that have been made, and provide the necessary blanks. ('09 c. 452 § 8)

5336. Gifts to state for capitol or institutions—Acceptance—Whenever any real property or rights or estates therein may be or may have been granted or conveyed or assigned or turned over as a gift by any person or municipality to the state of Minnesota, to be owned, held, occupied or used by the state in connection with the capitol, or any state institution, or the grounds of the same, or any of them, the governor shall issue in duplicate under the great seal of the state a certificate of acceptance, and shall cause all the conditions of such gift to be performed, and the property so given to be improved, maintained and ornamented in the method and so far as the legislature may appropriate money therefor. ('09 c. 464 § 1)

5337. Same—Lands obtained by condemnation—Whenever any corporation, municipal or otherwise, shall convey, assign or turn over to the state any rights it may have obtained by condemnation, the use of the land in which such rights were obtained by the state in any of the ways, or for any of the purposes hereinbefore mentioned, shall not be deemed an abandonment of nor work a forfeiture of the rights obtained by condemnation, but shall be considered a use incidental to and within the purposes of such condemnation. ('09 c. 464 § 2)

5338. Same—Certificate of acceptance—Record—The certificate of acceptance shall be executed in duplicate and one filed in the office of the secretary of state, and the other filed for record in the office of the register of deeds of the county in which the land is situated, and after being recorded, kept with the records of the institution in connection with which the land is used. Upon said certificates of acceptance being so filed the conveyance and transfer of the rights, interests and estates involved shall be deemed complete. ('09 c. 464 § 3)

STATE PARKS

5339. Itasca state park—All the lands hereinafter described, or so much thereof as the state is or shall become seized of, shall be a public park, to wit: Section 6 in township 142 north, of range 35 west; sections 6, 7, 18, 19, 30, and 31, and the west half of the west half of the west half of sections 20, 29, and 32, in township 143 north, of range 35 west; sections 1, 2, 3, and 4 in township 142 north, of range 36 west; sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 in township 143 north, of range 36 west; and all of the southwest fractional quarter of section 35 in

township 144 north, of range 36 west, containing 152.80 acres, situated at the outlet of Itasca Lake. The name of the park shall be the "Itasca State Park," and it shall remain dedicated to the perpetual use of the people of the state under such restrictions as may be provided by law. (2496)

See § 5343.

5340. Lands, how acquired—Standing appropriation—The attorney general, when requested by the governor, shall procure from persons owning land within the park limits concessions to the state for park purposes by contract or deed, subject to the approval of the governor. If satisfactory concessions cannot be so secured, the governor may direct the attorney general to acquire the title thereto by condemnation. The sum of five thousand dollars is hereby appropriated annually out of the treasury, or so much thereof as may be necessary, to pay for such lands. (2498)

See § 5344.

As to standing appropriations, see §§ 48, 49.

5341. Same—School lands—The auditor shall take proper proceedings, under the provisions of this chapter relative to the appraisal and sale of school lands, to cause the sale of the school lands in the park, and at the sale thereof the same shall be bid in by the state for park purposes. (2499)

See § 5344.

5342. Trespasses—Every person, including Indians, who shall wilfully cut, injure, or take any tree, shrub, timber, or plant in said park, or who shall kill, cause to be killed, or pursue with intent to kill any wild animal, or, except with the consent of the park commissioner, take any fish from the waters thereof, raise or lower any of the lakes or streams within said park, or set any fire therein, or who shall wilfully injure any building, improvement, or property of the state therein, shall be guilty of a misdemeanor, the minimum punishment whereof shall be a fine of fifty dollars. (2500)

See §§ 5347, 5384, 5385.

Cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

5343. Certain lands added—The west one-half ($W\frac{1}{2}$) of the west one-half ($W\frac{1}{2}$) of section twenty (20), and the west one-half ($W\frac{1}{2}$) of the north-west one-quarter ($NW\frac{1}{4}$) of section twenty-nine (29), all in township one hundred forty-three (143) north of range thirty-five (35) west, situated in Hubbard county, is hereby added to and made a part of Itasca State Park. ('05 c. 277 § 1)

Historical—By section 2, 1903 c. 218 (adding to said park the $W\frac{1}{2}$ of the $W\frac{1}{2}$ of the $W\frac{1}{2}$ of sections 20, 29, and 32 in said township 143), is repealed. 1903 c. 218 was repealed by § 9456; its provisions being incorporated in R. L. § 2496 [5339]. So far as the provisions of 1905 c. 277 differ from the Revised Laws, they are to be construed, by virtue of § 9398, as amendatory or supplementary.

5344. Forest reserve—Powers of forestry board—Itasca State Park is hereby made a forest reserve, and its management placed under the state forestry board, to be cared for in the same manner as other forest reserves, as provided for in the act establishing said board except as hereinafter provided. The standing appropriations for said park shall be expended under direction of the state forestry board, and said state forestry board is hereby vested with all the powers with reference to said park heretofore exercised by any other board or state officer. ('07 c. 90 § 1)

Section 5 repeals inconsistent acts, etc. This act supersedes R. L. § 2497. See, also, § 5377.

5345. Same—Duty of board—The state forestry board shall preserve intact the primeval pine forest now growing in Itasca State Park, and shall cut no part thereof except weak, diseased or insect infested trees, or dead and down timber. The net returns from the sales of timber of any description from said park shall be turned into the state treasury. ('07 c. 90 § 2)

5346. Same—Power of regents of university—Forest demonstration—The board of regents of the state university may, in their discretion, use for their forest demonstrations work in connection with the forestry course in the state university, any suitable tracts of land in Itasca State Park that may be assigned to them for this purpose by the state forestry board, or may

undertake forestry work in the said park or elsewhere in conjunction with the state forestry board. ('07 c. 90 § 3)

5347. Same—Game preserves—Itasca State Park shall be maintained by the state forestry board as a game preserve, and nothing in this act shall be construed as repealing the existing statutes in regard to trespass in Itasca State Park. ('07 c. 90 § 4)

5348. Authority to accept donations of land—Reservation of right to cut timber—The state forestry board is hereby authorized to accept for the state of Minnesota donations of the hereinafter described land within the limits of the Itasca State Park, and such donors may reserve to themselves the right to cut and remove from the said lands all the white pine, Norway pine, Jack pine, spruce, cedar, tamarack and balsam timber eight inches in diameter and over and four feet and six inches from the ground at the time of cutting; and that the donors of the said land may reserve the right to cut and remove the timber growing on said land for a period not exceeding ten years from the date of such donation. ('09 c. 220 § 1)

Section 3, made an annual appropriation. See §§ 48, 49.

5349. Same—Taxes—Driving logs—Selection of groves—All the taxes levied on such timber which the donors may reserve to themselves under this act shall be paid by the state of Minnesota for a period not exceeding ten years and the said donors shall have the right to drive their logs through Itasca Lake with two foot head of water during such period of ten years for the purpose of getting the timber cut on such lands to market. In addition to the right given to the state forestry board under this act, they shall reserve to the state and it shall be part of the agreement under which such donation is made that the said state of Minnesota by its said forestry board shall have the right to select such groves of timber as it may wish to preserve, to mark such groves and the trees therein with copper nails or white paint at the expense of the donors, and to pay the purchase price for the stumpage selected, which price shall be the same as that awarded the Red River Lumber Company according to size. Provided, that the state forestry board shall have the right to make partial payments for any standing timber which the forestry board may purchase from said donors. ('09 c. 220 § 2)

5350. Same—Lands described—The lands referred to in section one [5348] of this act are situated in Itasca Park in Becker, Hubbard and Clearwater counties in this state and are described as follows:

Becker county—Lots numbered one (1), two (2) and three (3) and the south half of northeast quarter ($S\frac{1}{2}$, $NE\frac{1}{4}$), the northwest quarter of southwest quarter ($NW\frac{1}{4}$, $SW\frac{1}{4}$), the west half of southeast quarter ($W\frac{1}{2}$, $SE\frac{1}{4}$) and the southeast quarter of southeast quarter ($SE\frac{1}{4}$, $SE\frac{1}{4}$) of section one (1) and lots numbered two (2), three (3), nine (9) and ten (10) of section three (3), all in township one hundred forty-two (142) north of range thirty-six (36) west.

Hubbard county—Lots numbered one (1), two (2), three (3) and four (4) and the southeast quarter ($SE\frac{1}{4}$) of section thirty-one (31), township one hundred forty-three (143) north of range thirty-five (35) west.

Clearwater county—The northwest quarter ($NW\frac{1}{4}$) and south half ($S\frac{1}{2}$) of section nine (9); west half of northwest quarter ($W\frac{1}{2}$, $NW\frac{1}{4}$) and lots numbered five (5), eight (8) and nine (9) of section fifteen (15); west half of northeast quarter ($W\frac{1}{2}$, $NE\frac{1}{4}$), north half of northwest quarter ($N\frac{1}{2}$, $NW\frac{1}{4}$) southeast quarter of northwest quarter ($SE\frac{1}{4}$, $NW\frac{1}{4}$), southeast quarter of southwest quarter ($SE\frac{1}{4}$, $SW\frac{1}{4}$), northwest quarter of southeast quarter ($NW\frac{1}{4}$, $SE\frac{1}{4}$) and the south half of southeast quarter ($S\frac{1}{2}$, $SE\frac{1}{4}$) of section twenty-one (21); lots numbered one (1), two (2) and three (3) and the east half of southwest quarter ($E\frac{1}{2}$, $SW\frac{1}{4}$), southwest quarter of southeast quarter ($SW\frac{1}{4}$, $SE\frac{1}{4}$) of section twenty-three (23); north half of northwest quarter ($N\frac{1}{2}$, $NW\frac{1}{4}$), southwest quarter of northwest quarter ($SW\frac{1}{4}$, $NW\frac{1}{4}$) and southeast quarter ($SE\frac{1}{4}$) of section twenty-five (25); southeast quarter of northeast quarter ($SE\frac{1}{4}$, $NE\frac{1}{4}$), north half of southeast quarter ($N\frac{1}{2}$, $SE\frac{1}{4}$), southeast quarter of southeast quarter ($SE\frac{1}{4}$, $SE\frac{1}{4}$) and west half ($W\frac{1}{2}$) of section twenty-seven (27); lot numbered one (1) of section thirty-three (33) and the north half of

northeast quarter (N $\frac{1}{2}$, NE $\frac{1}{4}$), north half of northwest quarter (N $\frac{1}{2}$, NW $\frac{1}{4}$), southwest quarter of northwest quarter (SW $\frac{1}{4}$, NW $\frac{1}{4}$), northeast quarter of southwest quarter (NE $\frac{1}{4}$, SW $\frac{1}{4}$) and northeast quarter of southeast quarter (NE $\frac{1}{4}$, SE $\frac{1}{4}$) of section thirty-five (35), all in township one hundred forty-three (143) north of range thirty-six (36) west, together with such other lands in Itasca Park in addition to those above named as may be donated to the state by the Pine Tree Lumber Company under the provisions of this act. ('09 c. 220 § 4)

5351. Donors to reserve minerals—The state forestry board is hereby authorized in its contract with any donors of lands specified in the above mentioned act approved April 17, 1909, in addition to the other stipulations in said act, to allow any donor to reserve the minerals there may be in said lands. ('11 c. 275 § 1)

The preamble refers by title to 1909 c. 220. See § 5348.

5352. Authority to secure certain lands—In addition to the powers now conferred by law upon the state forestry board, said board is hereby authorized to secure for the state of Minnesota, by gift, purchase or condemnation, any lands and the timber thereon in Itasca State Park not now owned by the state of Minnesota. ('13 c. 531 § 1)

5353. Same—Tax levy and certificates—The money for the purchase and condemnation of such lands and the timber thereon shall be obtained by the levy and collection of a state tax of an amount equal to the interest on \$250,000.00 each year for five (5) years and of \$25,000.00 a year and the amount of interest on outstanding and unpaid Itasca park certificates of indebtedness each year after said five (5) years until all such certificates and interest thereon are paid. The state auditor is hereby directed to levy and collect such tax. The proceeds of such tax are hereby appropriated, so far as necessary to do so, to the payment for such lands and the timber thereon, and said certificates of indebtedness with interest, and the incidental expenses hereafter referred to. ('13 c. 531 § 2)

5354. Same—Certificates of indebtedness—The state forestry board may issue against said taxes to be levied, collected and appropriated pursuant to the preceding section, certificates of indebtedness which shall be known as "Itasca Park certificates of indebtedness." They shall be in the aggregate of not more than \$250,000.00 and shall be issued in denominations of \$500.00 and shall be due in the aggregate of not more than \$25,000.00 a year beginning with 1918 and shall bear interest at not to exceed five (5) per centum per annum, and shall be sold as money is needed for the purchase or condemnation of land and timber thereon for said park as hereinbefore indicated, and the proceeds of such sales shall be used for such purchases or condemnations and interest as aforesaid, and the incidental expenses connected with such gifts, purchases or condemnations and not otherwise. ('13 c. 531 § 3)

5355. Powers and duties of board—Custodian of lodge, etc.—Superintendent of park—Salary and powers—To extend the authority conferred upon the forestry board by chapter 90 of the General Laws of 1907 [5344–5347] and other provisions applicable thereto in respect to the management of Itasca State Park, said board may appoint a custodian of Douglas lodge and any or all of the cottages and other buildings owned by the state situated in the park, (excepting the buildings used for forest school purposes) and permit him to use the same upon such terms and conditions as shall be mutually agreed upon between them, conditioned however, that such party shall serve as custodian only during the pleasure of the board; the revenue derived by the state pursuant to the terms of any such agreement shall be paid into the state treasury, credited to the Itasca State Park support fund and used in maintaining and improving the park. Said lodge and all cottages shall as heretofore be used solely for the accommodation of the public visiting the park. The forestry board may prescribe rules and regulations for the management of the lodge and rates to be charged by such manager for the accommodation of the public. The board may appoint any competent person superintendent of the park who shall serve during the pleasure of the board; locate his place of residence and define his duties. His compensation as such superintendent shall be fifty (\$50.00) dollars per month and it shall be his duty

to give personal attention to the preservation of the park; prevent and put out fires; protect the game and fish therein, and perform such other duties as shall be prescribed by the state forestry board. The powers of a deputy game warden are hereby vested in him. He may act as district forest ranger or other forest officer and receive such compensation for such services as may be determined by the board of officers appointing him, not however, in excess of fifty (\$50.00) dollars per month in addition to his said salary as superintendent. The said board is also authorized and directed to take necessary steps to protect all game and fish in the park and is hereby given general supervision and control of the subject. ('13 c. 559 § 1)

5356. Same—Certain improvements—The forestry board is hereby authorized to enlarge the dining room of Douglas lodge by the construction of a kitchen; the same to be built of logs as near as may be in conformity with the general appearance of the lodge. To make such improvement the sum of two hundred and fifty (\$250.00) dollars is hereby appropriated out of any money now in the state treasury not otherwise appropriated. ('13 c. 559 § 2)

5357. Dalles of the St. Croix Park—All land hereinafter described, or so much thereof as the state is or shall become seized of, shall be a public park, to wit: Block 11; the east half of River street; block 13; all that strip of land between block 13 and the St. Croix river; block 14; lots 16, 17, 18, 19 and 20 of block 15; block 16; block 18; block 35, except the right of way of the Northern Pacific Railway Company; blocks 36, 37 and 38; lots 1, 2, 20, 21 and 22 of block 39; lots 1, 8, 9, 10, 11, 12, 13, 14 and 15 of block 40; islands Nos. 1 and 2 in the St. Croix river; blocks 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126 and 127, except the right of way of said railway company; and all of School Land addition of Taylors Falls, all in the town of Taylors Falls, in the county of Chisago, according to the recorded plats of said town and addition, together with all the streets, alleys, levees and parks abutting on said property, containing 150 acres, more or less. The name of said park shall be the "Interstate Park of the Dalles of St. Croix," and it shall remain dedicated to the perpetual use of the people, under such regulations as may be provided by law; and in carrying such regulations into effect, the governor of this state is authorized to confer and co-operate with the governor of Wisconsin, either personally or by joint commission, and such conference and co-operation may extend to all matters pertaining to acquiring, improving and preserving such park, and connecting such portions of the Interstate Park of the Dalles of the St. Croix as may lie in the different states by such bridges or other means as to them shall seem suitable and necessary. (2501)

See 1909 c. 60.

5358. Commissioner—Standing appropriation—The governor may appoint a park commissioner, who shall have the general care and supervision of said park, under such rules and regulations as the governor may prescribe. The compensation of the commissioner shall be three hundred dollars per annum, which is hereby annually appropriated from the treasury for that purpose. (2502)

As to standing appropriations, see §§ 48, 49.

5359. Trespasses—Every person who shall wilfully cut or injure any tree, shrub, or plant in said park, or deface or injure any structure or improvement therein, or disturb or disfigure any rock or other object therein, or post or paint any bill, name or advertisement therein, or deposit anything in the natural wells therein, shall be guilty of a misdemeanor. (2503)

5360. Minneopa state park—That the northeast quarter of the northeast quarter of section twenty, township one hundred and eight, range twenty-seven in the county of Blue Earth and state of Minnesota, and the north fourteen acres of the southeast quarter of the northeast quarter of said section twenty, township one hundred and eight, range twenty-seven, or so much thereof as the state of Minnesota is now or (may) hereafter become seized, shall be and hereby is set apart and perpetually used as a public park. ('05 c. 297 § 1)

Section 4 authorizes and directs the attorney general to procure concessions or conveyances or to condemn.

Section 6 makes an appropriation.

5361. Same—Certain lands added—That the boundaries of the Minneopa State Park as established and created by chapter two hundred and ninety-seven of the General Laws of the state of Minnesota for 1905 [5360, 5362-5364], be and the same are hereby enlarged by adding to said park the following territory, to-wit: The north fourteen acres of the southwest quarter of the northwest quarter and the northwest quarter of the northwest quarter all in section twenty-one in township one hundred and eight, of range twenty-seven, except a tract five hundred and forty-five feet square in the northwest corner thereof known and designated as "Minneopa Cemetery" according to the plat of said cemetery on file and of record in the office of the register of deeds of said Blue Earth county, and the said territory shall be, and hereby is set apart perpetually as a public park and is made a part of said Minneopa State Park. ('09 c. 409 § 1)

Other sections authorize the attorney general to procure the additional lands, etc.

5362. Same—Name and dedication—The name of said park shall be the Minneopa State Park, and the same is by this act dedicated to the perpetual use of the people of the state of Minnesota under the proper restrictions herein provided, or which may be hereafter provided by law. ('05 c. 297 § 2)

5363. Same—Care and supervision—The general care and supervision of the Minneopa State Park, until otherwise provided for, shall be vested in the state auditor, acting as state land commissioner. ('05 c. 297 § 3)

5364. Same—Trespasses—Any person who shall willfully cut, destroy or mutilate, or cause to be willfully cut, destroyed or mutilated, any tree, shrub, timber, evergreen or plants of any kind, shall be guilty of a misdemeanor, and upon conviction thereof by any court having competent jurisdiction, shall be punished by a fine of not less than ten dollars, and not more than one hundred dollars for each offense, or be imprisoned in the county jail of Blue Earth county, Minnesota, for not less than ten days or more than ninety days for each and every such offense. ('05 c. 297 § 5)

5365. Alexander Ramsey State Park—That the northwest quarter of the southeast quarter and the south half of the northeast quarter of the southeast quarter of section thirty-six (36), in township one hundred thirteen (113), north of range thirty-six (36), in the county of Redwood and state of Minnesota, is now or (may) hereafter become seized, shall be and hereby is set apart and perpetually used as a public park. ('11 c. 259 § 1)

Section 4 authorizes and directs the attorney general to procure concessions or conveyances or to condemn.

Section 6 makes an appropriation.

5366. Same—Name and dedication—The name of said park shall be "the Alexander Ramsey State Park" and the same is by this act dedicated to the perpetual use of the people of the state of Minnesota under the restrictions herein provided or which may hereafter be provided by law. ('11 c. 259 § 2)

5367. Same—Care and supervision—The general care and supervision of the Alexander Ramsey State Park, until otherwise provided for, shall be vested in the state auditor acting as state land commissioner. ('11 c. 259 § 3)

5368. Same—Trespasses—Any person who shall wilfully cut, destroy or mutilate, or cause to be wilfully cut, destroyed or mutilated, any tree, shrub, timber, evergreen or plants of any kind, shall be guilty of a misdemeanor, and upon conviction thereof by any court having competent jurisdiction, shall be punished by a fine of not less than ten dollars, and not more than one hundred dollars for each offense, or be imprisoned in the county jail of Redwood county, Minnesota, for not less than ten days or more than ninety days for each and every such offense. ('11 c. 259 § 5)

5369. Fort Ridgely State Park—That the west half of the northeast quarter of section six, township one hundred eleven, north, range thirty-two, west, in the county of Nicollet and state of Minnesota, except a tract of land described as follows: Beginning at the southeast corner of the northwest quarter of the northeast quarter of said section six, township one hundred eleven, north, range thirty-two west, Nicollet county, Minnesota, thence south six and fifty one-hundredths (6.50) chains; thence north seventy-nine degrees and thirty minutes (79 30') west, one and twenty-five hundredths (1.25) chains; thence north eight (8) chains; thence south seventy-nine degrees

and thirty minutes (79 30') one and twenty hundredths (1.20) chains; thence south one and fifty-one hundredths (1.50) chains to place of beginning, containing one acre of land.

Also the east half of the northeast quarter of section six, township one hundred eleven, north, range thirty-two, west, in county of Nicollet and state of Minnesota, except a tract of land therein known and designated as the Fort Ridgely cemetery association cemetery according to the plat of said cemetery on file and of record in the office of the register of deeds in and for Nicollet county, Minnesota, or so much thereof as the state of Minnesota is now or may hereafter become seized, shall be and hereby is set apart perpetually as a public park. ('11 c. 355 § 1)

Section 4 authorizes and directs the attorney general to procure concessions or conveyances or to condemn.

Section 6 makes an appropriation.

5370. Same—Name and dedication—The name of said park shall be Fort Ridgely State Park and the same is by this act dedicated to the perpetual use of the people of the state of Minnesota, under the proper restrictions herein provided or which may hereafter be provided by law. ('11 c. 355 § 2)

5371. Same—Care and supervision—The general care, improvement and supervision of the Fort Ridgely State Park, until otherwise provided for, shall be vested in the state auditor, acting as state land commissioner. ('11 c. 355 § 3)

5372. Same—Trespasses—Any person who shall wilfully cut, destroy or mutilate or cause to be cut, destroyed or mutilated, any tree; shrub, timber, evergreen, or ornamental plant of any kind in said park, shall be guilty of a misdemeanor, and upon conviction thereof by any court having competent jurisdiction, shall be punished by a fine of not less than ten dollars and not more than one hundred dollars for each offense or be imprisoned in the county jail of Nicollet county, Minnesota, for not less than ten days or more than ninety days for each and every such offense. ('11 c. 355 § 5)

5373. Horace Austin State Park—That the following described premises situated in the county of Mower and state of Minnesota, shall be and hereby are set apart to be used perpetually as a public park, to-wit: All that part of the northeast quarter (N. E. $\frac{1}{4}$) of section three (3), township one hundred two (102) north of range eighteen (18) west; north of a line running east and west 182 feet north of the north boundary of Water street in the city of Austin, Minnesota, as per the recorded plat thereof, except that portion east of the extension of the west line of lot eight (8), block thirty-three (33) in the original village of Austin, Minnesota; also except a piece of land described as follows: Commencing at the northwest corner of lot twenty-five (25), block thirty-three (33) of the original village of Austin, Minnesota, running thence north on a continuation of the west line of said lot twenty-five (25) above described 260 feet, thence southeasterly to a point fifty (50) feet north of the northeast corner of lot nineteen (19) of said block thirty-three (33) thence south fifty (50) feet to the north line of block thirty-three (33) of the original village of Austin, Minnesota, thence west along the north line of block thirty-three (33) to the place of beginning. Also all that portion of the northwest quarter (N. W. $\frac{1}{4}$) of the northeast quarter (N. E. $\frac{1}{4}$) of section three (3), township one hundred two (102) north of range eighteen (18) west, lying north of a line drawn from the southeast corner of lot one (1), block fourteen (14) Morgan's addition to Austin, Minnesota, to a point 260 feet north of the northwest corner of lot twenty-five (25), block thirty-three (33) of the original village of Austin, Minnesota, and east of the easterly line of block fourteen (14) Morgan's addition to Austin, Minnesota, except a piece of land 132 feet wide east of and adjoining lots seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) of block fourteen (14) of Morgan's addition to Austin, Minnesota, as per the recorded plat thereof. Also all of the south half (S. $\frac{1}{2}$) of the southeast quarter (S. E. $\frac{1}{4}$) of section thirty-four (34), township one hundred three (103) north of range eighteen (18) west, south of the main channel of the Cedar river as it flows southwesterly, except the

easterly 200 feet thereof. Also all that part of the northeast quarter (N. E. $\frac{1}{4}$) of the northeast quarter (N. E. $\frac{1}{4}$) of section three (3), township one hundred two (102) north of range eighteen (18) west, lying north of the main channel of the Cedar river except the easterly 200 feet thereof. ('13 c. 361 § 1)

Section 4 authorizes and directs the attorney general to procure concessions or conveyances or to condemn.

Section 6 makes an appropriation.

5374. Same—Name and dedication—The name of said park shall be "the Horace Austin State Park," and the same is by this act dedicated to the perpetual use of the people of the state of Minnesota, under the restrictions herein provided or which may hereafter be provided by law. ('13 c. 361 § 2)

5375. Same—Care and supervision—The general care and supervision of the Horace Austin State Park, until otherwise provided for, shall be vested in the state auditor acting as state land commissioner. ('13 c. 361 § 3)

5376. Same—Trespasses—Any person who shall willfully cut, destroy or mutilate, or cause to be willfully cut, destroyed or mutilated, any tree, shrub, timber, evergreen or plants of any kind, shall be guilty of a misdemeanor and upon conviction thereof by any court having competent jurisdiction, shall be punished by a fine of not less than ten dollars, and not more than one hundred dollars for each offense, or be imprisoned in the county jail of Mower county, Minnesota, for not less than ten days or more than ninety days for each and every offense. ('13 c. 361 § 5)

STATE FORESTS

5377. Term "forest reserve" changed to "state forest"—The term "forest reserve," as now used and contained in the laws of the state of Minnesota, shall be and the same is hereby changed to read "state forest." ('13 c. 86 § 1)

5378. Lands included—The forest reserves of the state shall consist of all state lands which have been or may be set apart by the legislature, or granted by the United States and accepted by the legislature, for forestry purposes, and of all lands which have been or shall be acquired by the state therefor. (2504)

5379. Power of board—Quorum—The board may enter into contracts in the name of the state; may adopt a seal; may make all reasonable rules and by-laws for its own government, and for the care, management, and preservation of the forest reserves; may cause actions to be brought in the name of the state to protect the state's interests in matters confided to its care; may lease, for income or for protection, meadow and pasture lands, where such use will not interfere with the growth of forest trees; may sell dead and down and mature timber, and other timber where the public interests will be subserved thereby; and may alienate any tract of land, when such alienation is demanded by the growth of towns, the building of railroads, or water power or other public improvements. A majority of the board shall be a quorum for the transaction of business. (2509)

R. L. §§ 2505-2508, 2510, 2515, relating to the state forestry board, are expressly repealed (§ 3810). See § 3783 et seq.

5380. Expenses of members—The members of the board shall receive no compensation for their services as such, but they shall be repaid their reasonable expenses incurred in attending meetings of the board or executive committee, or in performing services at the request of either. (2511)

See § 3783 et seq.

5381. Lands given for reserves—When the owner of any lands suitable for the forest reserves shall offer, in writing, to convey the same to the state for forestry purposes, the board shall refer the question of accepting such offer to the town and county boards where the land is situated, for their advice thereon, and shall consider all objections and recommendations submitted upon such question. The decision of the state board thereon shall be final. No conveyance of such lands shall be accepted unless the board shall be advised by the attorney general that the same are clear of liens except the liens of the state for taxes. If any land shall be devised to the state for forestry

purposes, the question of the acceptance thereof shall be determined, as nearly as may be, in the same manner. (2512)

5382. Tax title lands, how set apart—All lands not included in the corporate limits of any city or village, or any platted town site, which were offered for sale for the payment of taxes which became delinquent prior to the year 1891, under Laws 1881 c. 135, or Laws 1893, c. 150, or Laws 1899 c. 322, and which became the property of the state under any of said acts, and remain undisposed of, and which are totally unfit for agricultural purposes, may become part of the forest reserves in the following manner: When the board shall desire to have any such lands so set apart, it shall submit the question whether such lands are totally unfit for agriculture to the county board, which shall report its determination thereon. Upon request of the forestry board, embodied in a resolution describing such lands so found to be unfit, the attorney general, in all cases in which a right to redeem exists, shall cause notice of the time when the redemption period will expire to be given, in the same manner as is required of the holder of a tax certificate; and each notice shall have the same effect to bar the right of redemption as notice given by such holder. The attorney general shall also bring any action in the name of the state necessary to quiet its title. The county attorney, when requested by the attorney general, shall prosecute such actions, for each of which he shall receive five dollars, and the attorney general shall furnish blank forms therefor. When the state's title to any such tract has been quieted, the attorney general shall so certify, and thereupon it shall become a part of the forest reserves. There is hereby appropriated annually one thousand dollars for paying the expenses incurred in bringing such actions, but no such expenses shall be paid except on vouchers of the forestry board, approved by the attorney general. (2513)

As to standing appropriations, see §§ 48, 49.
See, also, 1909 c. 87.

5383. Lands purchased for reserves—The board is authorized to purchase for the forest reserves, at a price not exceeding two dollars and fifty cents per acre, any land, preferably at the sources of rivers, which is adapted for forestry, but not to exceed in any one township one-eighth of the area thereof; and no money shall be paid therefor until the attorney general certifies that the deed thereof conveys a clear title to the state. (2514)

5384. Animals and birds in forest reserves, parks, etc.—No person shall kill, or pursue with intent to kill, take, snare, or have in possession, by any means upon any Minnesota state forest reserve lands or parks, or upon any lands that may be designated by the state game and fish commission as game propagating and breeding grounds, any wild animals or birds protected at any time by law. The killing or having in possession of each of such protected animal or bird shall constitute a separate offense.

Provided, that this act shall not prohibit the killing or destroying of wolves or other noxious animals by or under the supervision of the state game and fish commission. ('07 c. 45 § 1, amended '09 c. 171; '13 c. 95 § 1)

1907 c. 45 § 1 was also amended by 1909 c. 320.

5385. Penalty—Any person violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days or more than ninety days or both. ('07 c. 45 § 2)

RECLAMATION BOARD

5386. How appointed—To select from swamp, stump or cut-over lands—The governor is hereby authorized, empowered and instructed to appoint a reclamation board of three members to serve without payment for service, whose duty it shall be select from swamp, stump or cut-over lands belonging to the state of Minnesota ten separate forty-acre government sub-divisions thereof to be appraised, improved and sold as hereinafter provided. ('11 c. 367 § 1)

Section 6 made an appropriation.

5387. Appraisal—Duties and powers of board—Such selection when made by such board shall be certified to the state auditor and such auditor shall thereupon forthwith proceed to cause the said selections of state land to be appraised in the manner provided by law. After such appraisal the said board shall cause one-half of each tract so selected to be cleared of trees, brush or stumps or otherwise improved and prepared for cultivation as shall be deemed advisable by such board, and for such purpose the said board is authorized and empowered to enter into such contracts or agreements as are necessary in carrying into effect the provisions of this act. ('11 c. 367 § 2)

5388. Report—Duty of auditor—Immediately after the clearing and preparation of each such tract the said board shall make detailed report thereof and of the cost of clearing and improving the same, showing the nature and extent of such improvement, and shall file such report in the office of the state auditor. It shall thereupon be the duty of the state auditor as early as may be, to make special public sale of such tract or tracts so reported upon in the manner and upon like notice as is required by law, and like certificate or certificates shall be issued and delivered as in other cases of sale of state lands of like character. ('11 c. 367 § 3)

5389. Lands, how sold, etc.—No such tract of land shall be sold for less than its appraised value, ascertained as herein provided, plus the cost of the improvement of such tract as certified by such board. The terms of such sale, rate of interest on the purchase price, and other details of such sale or the disposition of the proceeds shall be as is provided by law in case of sale of other state lands of like character, and the proceeds of such sale and the interest thereon as the same is paid, shall go to and be credited respectively to the fund or funds to which the purchase price of such lands or to which the interest thereon would be credited under existing law if such sale were made without such improvement. ('11 c. 367 § 4)

5390. Expenses, how paid, etc.—Payment for the clearing or improvement of the said lands and of all other costs and expenses incurred in carrying this act into effect shall be made upon certificate of such reclamation board filed with the state auditor. Actual traveling and other expenses shall be allowed to the members of said board in performance of their duties hereunder. ('11 c. 367 § 5)

UNITED STATES LANDS

5391. Relinquishment—Whenever any land has been erroneously certified or conveyed to the state by the United States, the governor may execute, under the seal of the state, a relinquishment or reconveyance thereof. (2516)

5392. Grant by municipal corporation—Whenever the United States shall desire land for any purpose of the government, which is owned by any city, town, county, or other municipal or quasi municipal corporation, or in which such corporation has any right, it shall be lawful for the governing body of such corporation to grant and convey the same to the United States. (2517)

5393. United States survey—Damages—Any person employed, pursuant to the laws of the United States, in the execution of a survey, may enter upon any land in the state for the purpose of doing any act which may be necessary thereto, and may establish permanent station marks, and erect the necessary signals and temporary observatories. If the parties interested cannot agree upon the amount to be paid for damages caused thereby, either may petition the district court for the county in which the land is situated to assess the damages. The court shall appoint a time for a hearing as soon as may be, and order at least twenty days' notice thereof to be given to all parties interested, and shall, with or without view of the premises, as the court may determine, hear the parties and assess the damages. The person so entering upon the land may tender to the injured party damages, and if, in case of a petition, the damages assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise the other party shall recover costs. (2518)

5394. Injury to signal, etc.—Whoever willfully defaces, injures, or removes any signal, monument, building, or other property of the United States erected or used in the coast and geodetic survey, pursuant to the laws of the United

States, shall forfeit not exceeding fifty dollars for each offence, and shall be liable to the United States for all damages sustained by it in consequence thereof, to be recovered in a civil action. (2519)

CHAPTER 41

EMINENT DOMAIN

5395. Scope of chapter—Whenever the taking of private property for any public use shall be authorized by law, it may be acquired, under the right of eminent domain, in the manner prescribed by this chapter; but nothing herein shall apply to the condemnation of property by any incorporated place whose charter provides a different mode of exercising the rights of eminent domain by it possessed, or to the taking of property under the chapters relating to roads and drainage. (2520)

5396. Definitions—For all the purposes of this chapter, the word "taking," and all words and phrases of like import used herein, shall include every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private property. And the word "owner," as so used, shall extend to all persons interested in such property as proprietors, tenants, incumbrancers, or otherwise. (2521)

5397. Proceedings, by whom instituted—If such property be required for any authorized purpose of the state, the proceeding shall be taken in the name of the state, by the attorney general, upon request of the officer, board, or other body charged by law with the execution of such purpose; if by a corporation or other body authorized by law to exercise the right of eminent domain, in its corporate or official name and by the governing body thereof; and if by an individual so authorized, in his own name. (2522)

5398. Entry for surveys, etc.—For the purpose of making surveys and examinations relative to any proceedings under this chapter, it shall be lawful to enter upon any land, doing no unnecessary damage. (2523)

5399. Petition and notice—In all cases a petition, describing the desired land, stating by whom and for what purposes it is proposed to be taken, and giving the names of all persons appearing of record or known to the petitioner to be the owners thereof, shall be presented to the district court of the county in which said land is situated, praying for the appointment of commissioners to appraise the damages which may be occasioned by such taking. Notice of the objects of said petition, and of the time and place of presenting the same, shall be served, at least ten days before such time of presentation, upon all persons named in the petition as owners, and upon all occupants of such land, in the same manner as a summons in a civil action: Provided, that if any such owner be not a resident of the state, or his place of residence be unknown to the petitioner, upon the filing of an affidavit of the petitioner, his agent or attorney, stating that he believes that such owner is not a resident of the state, and that he has mailed a copy of the notice to him at his place of residence, or that after diligent inquiry his place of residence cannot be ascertained by the affiant, then service may be made upon such owner by three weeks' published notice. If the state be an owner, said notice shall be served upon the attorney general. No owner not served as herein provided shall be bound by such proceeding unless he voluntarily appears therein. (2524)

See § 5412, and note.

1. Proceedings generally—Mode of exercising right of eminent domain subject to legislative control (16-271, 244; 16-375, 333; 18-155, 139; 18-384, 345; 42-262, 44+59; 83-464, 406, 86+455). Proceedings are special and quasi judicial (30-140, 143, 14+581; 39-65, 67, 38+926). They are in rem (35-141, 145, 27+500; 82-497, 503, 85+525). So far as they are in invitum statutory requirements must be strictly followed (30-140, 142, 14+581). Chapter cited (101-197, 112+395, 11 L. R. A. [N. S.] 105).

2. Petition—Jurisdictional (10-30, 15; 31-289, 17+623; 38-523, 525, 38+753; 67-339, 69+1085). General allegation of purposes for which land sought sufficient (16-271, 244; 67-339, 69+1085). Description of land sought (24-25; 43-104, 122, 42+596, 44+1144; 45-225, 47+786; 46-540, 49+325; 85-234, 239, 88+749). Effect of including several tracts in one