

GENERAL STATUTES

OF

MINNESOTA

1913

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to such lake, dam or embankment as may be necessary or convenient for public uses; to pay such damages as may be imposed upon adjacent lands by the over-flowing thereof; to pay the costs and expenses of such proceeding and for any other purpose incidental or necessary to such improvements. ('13 c. 287 § 1)

The provisions of R. L. 1905, c. 42, are included in chapter 42 hereof.

5450. Same—Dam, etc., where located—Any such dam, embankment, lands and highways may be located in either county in which such lake or any part thereof is located. The money so appropriated shall be expended under the direction of such county board. ('13 c. 287 § 2)

5451. Same—Power to appropriate—The county board of the county in which the smaller part of any such lake is located may likewise appropriate not exceeding in any one year the sum of three hundred (\$300) dollars for any of the above mentioned purposes in connection with such lake. ('13 c. 287 § 3)

5452. Same—Other powers not curtailed—This act shall in nowise curtail any of the powers or authority granted to such county board by the provisions of chapter 42 of the Revised Laws, 1905, and the amendments thereto. ('13 c. 287 § 4)

The provisions of R. L. 1905, c. 42, are included in chapter 42 hereof.

CHAPTER 43

LOGS AND LUMBER

5453. Lumber districts—There are hereby established, for the survey and measurement of logs and timber, seven districts, as follows:

1. The St. Croix lake and river and their tributaries;
2. The Mississippi river and its tributaries above the mouth of St. Croix lake;
3. The Mississippi river and its tributaries between the outlet of St. Croix lake and the outlet of Lake Pepin;
4. The Mississippi river and its tributaries below the outlet of Lake Pepin to the southern line of Wabasha county;
5. All the waters tributary to Lake Superior, all in the counties of St. Louis, Lake, and Cook, the Little Fork and Big Fork rivers and their tributaries, Rainy Lake, Rainy Lake river as far as the Lake of the Woods, and all the tributaries of said Rainy Lake and Rainy Lake river;
6. The Mississippi river and its tributaries from the southern line of Wabasha county to the northern line of Iowa;
7. The Red river, Red Lake, and Lake of the Woods and their tributaries, except Rainy Lake, Rainy Lake river, and their tributaries. (2563)

5454. Surveyors general—The governor, with the advice and consent of the senate, shall appoint a resident of each of said districts as surveyor general of logs therein, who shall enter upon his duties on the third Monday in April next following such appointment, and hold office for two years, and until his successor qualifies. The surveyor general whose term of office has expired, shall make the scale bills, and record them in the books of the surveyor general's office, of all logs scaled by him or deputies prior to the time he surrenders the same to his successor, and for that purpose he shall have access to the books of the office; and all bills so made and recorded shall have the same validity as if made and recorded during his term of office. Vacancies shall be filled by like appointment for the unexpired term. Each shall have a seal of office bearing the words, "Surveyor General, District," the blank being filled with the appropriate number. And each may appoint as many deputies as are necessary to transact the business of his office, who may perform any of his official duties, and for whose acts and doings he shall be responsible on his bond. (2564)

5455. Bond and oath—Each surveyor general shall give bond to the county in which his office is situated, to be approved by the county board, in the sum

of five thousand dollars, conditioned for the faithful performance of the duties of his office, and for the delivery to his successor of all records, papers, and effects appertaining thereto. Such bond, with his official oath, shall be filed with the auditor of said county before entering upon his duties. All persons aggrieved by failure to comply with the conditions of such bond may sue thereon until the whole penalty is recovered. (2565)

5456. Offices, where kept—The offices of the several surveyors general shall be kept at the following places: (1) At Stillwater; (2) at Minneapolis, and at St. Cloud, where a resident deputy shall be in charge; (3) at Red Wing; (4) at Wabasha; (5) at Duluth; (6) at Winona; and (7) at Crookston. (2566)

5457. Survey and scale bill—Evidence—The surveyor general, or his deputy, upon request of the owner of any logs, timber, lumber, cedar posts, farm poles, or cedar poles for supporting electric light, telegraph, or telephone wires, or of any person having written authority from the owner to deliver the same, or of any officer having possession thereof under judicial writ or process, shall survey the same, if within his district, and make and sign a true scale bill thereof, showing by and to whom, and at whose request, the scale was made, the time and place of the inspection, the number of pieces scaled, if so requested, the marks thereon, the scale marks placed thereon by him, and the number of feet. He shall record such scale bill in his office, and, upon payment of his fees, shall deliver the original to the person to whom the scale was made, if any; otherwise to the person requesting such survey. Such bill, or the record thereof, shall be prima facie evidence of the facts therein stated. (2567)

20-345, 298; 46-216, 48+911; 69-192, 71+935; 88+517, 93+661; 96-76, 104+833. See 34-289, 25+628; 37-220, 33+783; 77-206, 79+659; 56 Fed. 203, 5 C. C. A. 474; 115-96, 131+1059.

5458. Surveys out of the district, etc.—When any such logs or other timber have been removed from the district in which they were cut without being surveyed and scaled, the surveyor general of such district, upon request as in § 5457 described, may follow, inspect, and scale the same, and the scale bill and the record thereof made in his office shall have the same effect as in the case of surveys made within his district. No surveyor general or deputy shall scale lumber or timber owned by himself, but either may survey and scale that owned by the other. (2568)

See 84-79, 86+871.

5459. Allowance for defects—Record—In surveying and scaling logs or other timber, such allowance shall be made for defects therein as will make the same equal to sound, straight, and merchantable timber, and in the case of lumber a like reduction shall be made if any be decayed, waxy, or shaky. The figures showing the survey shall be entered, at the time of scaling, in passbooks kept for that purpose, which books shall be filed and kept in the surveyor general's office for the inspection of interested persons. (2569)

33-45, 21+844.

5460. Posting scales—Scribner's rule, etc.—The surveyor general shall keep posted in his office a written rule or scale of all sizes and lengths of logs, and be governed thereby in making surveys. Scribner's rule shall be the standard rule for all surveys, and every log shall be surveyed by the largest number of even feet in its length above ten and under twenty-four feet. All logs of twenty-four feet or more in length shall be surveyed as two logs or more. (2570)

5461. Scale for boom owners—Evidence—Each surveyor general shall survey all logs and other timber running out of any chartered boom in his district, and, at the end of each month in which such surveys are made, make, sign, and deliver to the owner or manager of such boom a true scale bill, stating the date of survey, the number of logs or pieces surveyed during the month, the marks thereon, respectively, and the number of feet of each mark; but he shall first record such scale bill in the proper book of his office, and may request his fees to be paid before such delivery. All boomage fees shall be collected in accordance with such scale bills, which bills, the record there-

of, and certified copies of such record, shall be prima facie evidence of the matters therein stated. (2571)

46-216, 48+911; 88-517, 93+661; 176 U. S. 126, 20 Sup. Ct. 325, 44 L. Ed. 400. See 38-517, 38+611; 53-176, 54+1053; 62-356, 64+916.

Fees chargeable to company operating boom; company having right to include such fees in tolls, costs, and expenses collectible by it (115-96, 131+1059).

5462. Survey of posts and poles—Rules—In scaling cedar posts, farm poles, and poles for carrying electric wires, the following rules shall be observed:

1. Cedar posts six feet ten inches and seven feet ten inches long shall be rated as seven and eight foot posts, respectively, shall be cut from growing timber and peeled, and may be a quarter inch less at the top than the diameter specified, unless green, freshly cut or water-soaked. Pipe rot, and other decay which does not impair the strength of the post, shall be disregarded; also four inches sweep one way. And, if cut from growing timber, discoloration shall not be deemed a defect.

2. Posts or poles from ten to twenty-five feet in length and four inches at top, known as large posts and small poles, may be two inches less than the length specified, and a quarter inch less in diameter at the top, unless green, freshly cut or water-soaked. In lengths not exceeding eighteen feet, a crook of four inches one way shall be disregarded, and in greater lengths five inches; also pipe holes in top. In other respects, the preceding subdivision shall govern.

3. Electric wire poles shall be twenty-five feet or more in length, with a diameter of five inches at the top, and reasonably proportioned throughout. They must be cut from growing timber, peeled, and reasonably sound at the top. For five-inch poles, if seasoned, the top circumference must be fifteen inches; for six-inch poles, eighteen and one-half inches; and seven-inch poles, twenty-two inches; if green, freshly cut or water-soaked, fifteen, nineteen and one-half, and twenty-two and three-fourths, respectively. In poles not more than twenty-five feet long, a sweep one way not exceeding one inch to each five feet shall be allowed; in greater lengths, one inch additional for each added five feet. The sweep shall be ascertained by stretching a line tightly from a point six feet above the butt to the top, on the side where the sweep is greatest, and measuring the widest space between the line and the pole. The total decay at the butt must not exceed ten per cent. of its area. Twists shall be disregarded unless very unsightly; also large knots, if sound and smoothly trimmed. (2572)

5463. Transfer of logs, etc.—Scale bill—Delivery—When logs or other timber are surveyed upon the transfer thereof from one party to another, the surveyor general, at the time of such survey, shall place upon each log or piece the scale mark of the transferee, which shall supersede all prior marks thereon. The transferee shall pay for the scaling and be entitled to receive the scale bill; and when a scale bill is delivered to any person by the surveyor general, he shall note upon the margin of the record thereof the name of the person to whom delivered, and the date of delivery. (2573)

34-289, 25+628; 46-216, 48+911.

5464. Fees for scaling, etc.—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, twenty cents for each one hundred pieces or fraction thereof;

2. Electric wire poles, ten cents per hundred feet, lineal measure;

3. Logs and other timber, five cents per thousand feet;

4. Lumber, twenty-five cents per thousand feet; and

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. (2574)

See §§ 5466, 5467.

34-245, 25+403; 75-343, 77+991.

5465. Same, for recording, etc.—He shall also receive, for recording each log mark, fifty cents; for recording any instrument entitled to record in his

office, other than a scale bill, ten cents per folio; for making and certifying a copy of any matter of record in his office, and for each duplicate scale bill, ten cents per folio, and twenty-five cents for each certificate. All such fees shall be payable in advance, and no instrument shall be deemed recorded until it is entered in the record index. (2575)

See §§ 5466, 5467.

5466. Fees, where logs from another state are intermingled—The fees and mileage of the surveyor general in lumber districts wherein logs or timber is received from the state of Minnesota, and any other state, intermingled and separated therein, for surveying and scaling logs, timber and lumber, shall be as follows:

First—Fence posts and farm poles, twenty cents for each one hundred pieces or fraction thereof;

Two—Electric wire poles, ten cents per hundred feet lineal measure;

Third—Logs and other timber, seven cents per thousand feet;

Fourth—Lumber twenty-five cents per 1,000 feet.

Fifth—Five cents for each mile in excess of four, necessarily traveled in going and returning between his office and place of survey.

Such compensation shall be in full for scale marking, making and recording scale bills and posting the same in the ledger. ('07 c. 185 § 1)

5467. Same—Laws repealed—All acts, or parts of acts, inconsistent with the provisions of this act are hereby repealed. 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. 185 § 2)

5468. Books of record—Evidence—Each surveyor general shall keep in his office the following books of record:

1. A record of log marks, in which he shall record all log marks filed for that purpose;

2. A record of transfers, in which shall be recorded all bills of sale, mortgages, orders, and other instruments for the sale, transfer, incumbrance, or delivery of lumber, logs, and other timber in his district;

3. A record of scale bills, in which he shall record the scale bills of lumber, logs, and timber by him surveyed;

4. A scale ledger, in which, as soon as any logs or timber are surveyed, he shall post and record the same to the several log marks found thereon, with the date of scaling, the number of logs or pieces of each mark, to whom scaled if to any one, and the number of feet; which books shall be posted up so as to show the record concerning each mark of logs scaled during each month. Upon demand of any authorized person, he shall deliver a certified transcript of such record as to any mark to which postings have been so made.

All of such books shall be public records, and none of them shall be removed from the surveyor general's office; but a duly certified copy of any record therein shall be prima facie evidence of such record and of the matters therein set forth. (2576)

64-108, 67+208; 72-135, 75+7. See 63-91, 65+135.

5469. Transfers—Record and effect—The surveyor general shall not be required, except upon request of an officer who has duly attached or levied upon lumber, logs, or timber, to scale any of the same to a person whose title thereto does not appear of record in his office, without a written order from the record owner. He shall record, in the order of their receipt for record, all orders drawn by the owner and directing him to scale to another any logs of such owner's mark; and the first logs scaled, of the mark specified and within the lot described shall be scaled to the person named in the order first received for record, and so on according to priority of record. Such orders shall have preference over subsequent sales, transfers, and incumbrances. (2577)

5470. Invalid without record—Certificates as evidence—The certificate of the surveyor general of the district in which logs or timber were cut, or into which the same have been removed, that any mark thereon has been recorded in his office, and that no transfer thereof has been so recorded, shall be prima

facie evidence that such logs or timber, having the unsuperseded mark aforesaid, are owned by the person in whose name such mark is recorded. And a like certificate of the surveyor general that such mark has been transferred on the books of his office, or has been superseded of record as to any designated logs or timber, naming the person to whom such transfer or supersession was last made as shown by such books, shall be prima facie evidence of title thereto in the person so named. No transfer of any log mark, nor any sale, transfer, or incumbrance of any logs or timber cut in this state, shall be binding upon persons not parties thereto, unless the same be in writing and duly filed for record with the proper surveyor general: Provided, that the surveyor general, in his discretion, may transfer to any person desiring the same any log mark that has been of record eight years or longer and is not in actual use. (2578)

23-475; 26-442, 4+1111; 64-108, 67+208; 72-135, 75+7. See 80-234, 83+143.

5471. Record of log marks—Effect—No log mark shall be placed upon logs or other timber cut in this state until a copy of such mark has been recorded in the office of the surveyor general of the district in which such logs or timber may be, and such mark shall plainly differ from any other log mark there recorded. The owner of logs cut in another state, who intends to bring the same into any district of this state, may have his log mark recorded in such district, with the same effect as though such logs were cut therein. Any log mark recorded pursuant to this chapter shall be deemed the property of the person in whose name such record is made, and such mark appearing upon logs or timber, and not superseded by another, shall be prima facie evidence of title thereto in the owner of such mark. And no logs shall be scaled by the surveyor general or his deputies unless the marks upon the said logs are properly recorded in accordance with the provisions of this chapter. (2579)

14-532, 403, 23-475; 35-429, 29+145; 43-41, 44+671; 72-135, 75+7.

5472. Proof before record—Before any surveyor general of logs and lumber within this state shall record any log mark, the parties in whose name such log mark is sought to be recorded, shall satisfy the surveyor general, by competent evidence, that such person owns timber which he intends to cut into logs and desires to identify with such mark, or is a legitimate dealer in logs, or that he owns unmarked logs already cut and desires to identify them by such mark. ('05 c. 207 § 1)

5473. False marking—Penalty—Any person who shall place a mark recorded in his name, or in the name of another, upon any log bearing no log mark, and which is the property of some person or party other than the recorded owner of the mark so placed upon said log, shall be guilty of larceny, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars and by imprisonment in the county jail not less than three months, and until said fine is paid. ('05 c. 207 § 2)

5474. Transfers—Logs, etc., when deemed abandoned—A sale, incumbrance, or other transfer of such recorded log mark may be made by bill of sale or other written evidence of intention to effect the same, and, when recorded, such instrument shall operate, according to its expressed intent, upon all logs and other timber bearing such mark and then owned by the maker thereof. All logs and timber found in the waters of any lumber district, not in the possession or under the control of any person, which have no distinctive mark, or marks which are not recorded in the proper district, shall be deemed abandoned, and shall not be recognized as property by the courts. (2580)

14-532, 403.

Unmarked logs floating in the St. Croix river, though within jurisdiction of boom company, become property of person who picks them up and causes them to be marked with his own mark before they reach boom or sorting works of company (110-61, 124+458).

Does not apply to logs not in water, or in the possession or under control of owner (115-484, 132+1126).

Where logs not marked were delivered to a lumber company under its agreement to drive them to its hoist, where they were to be scaled and paid for, as between the owner and the company, the logs were not "abandoned" (117-355, 135+1132).

5475. Stealing logs—Changing marks—Whoever shall wilfully take, carry away, or otherwise convert, without the consent of the owner, any log, pile, cant, or other timber, not his own, from the waters of any lumber district, or from any land upon which the same has been floated or cast by such waters, and whoever shall cut out or otherwise affect the marks upon any such timber with intent to destroy or conceal the evidence of the owner's title thereto, or with like intent places upon any such timber any mark other than that of the owner thereof, shall be guilty of larceny, and shall also be liable to the owner for twice the value of such timber, in a civil action therefor. In any prosecution under this section, if any property herein described, or any property manufactured therefrom, shall be found in the possession of the defendant, such possession shall be presumptive evidence of his guilt. The owner of any such property or manufactured product thereof, may at any time lawfully, by himself or his agent, enter in a peaceable manner into or upon any mill or mill boom, or any raft of such property in the waters of any lumber district, or on or near the banks thereof in search of any such property which he may have lost, and any person who shall wilfully prevent or obstruct such search shall upon conviction thereof be liable to a penalty of not less than twenty dollars nor more than fifty dollars for every such offence. (2581)

5476. Receiver likewise guilty—Whoever shall purchase, secrete, or receive any such timber, taken as in § 5475 described, shall likewise be deemed guilty of the larceny thereof, unless the same was duly scaled to him by a surveyor general of logs and the scale bill thereof be by him produced. (2582)

5477. Falsifying scale bill—Any surveyor general of logs or any deputy or other person employed or permitted by any such surveyor general to aid in the performance of his official duties, who shall knowingly do, or permit or cause to be done, any act or thing whatsoever, whereby any false or untrue scale bill of logs or other timber surveyed in the district or within the jurisdiction of such surveyor general shall be issued or made, or who, with knowledge, or with reason to believe, that any scale bill, or the scale represented thereby, is false or untrue, shall cause any person to part with money or property in the belief that the same is correct, shall be guilty of a gross misdemeanor. (2583)

5478. Side booms—The parties constructing and operating side booms upon any of the rivers or streams of this state, shall construct and operate the same so as to admit their own property and at the same time as far as practicable exclude the property of other parties. No person or party shall open or in any way injure such private boom, or otherwise interfere with the same, except so far as may be necessary to obtain any logs, timber or floatables which by accident or mistake have run or been driven therein, and then only when it can be done without injury to such private boom. When, however, in such case such release cannot be made without hazard to such private boom, such logs and timber shall, upon the request of the owner thereof, be scaled and other floatables counted, by the surveyor general of the district, and the value thereof fixed by him, or by consent of the parties, to be paid for by the owners of such pond or private boom, within thirty days from the time such scale is made: Provided, that the provisions of this section shall not apply to the first lumber district. (2584)

5479. Wilfully injuring booms, etc.—Any person who wilfully and maliciously opens, breaks, cuts, or otherwise destroys or injures any side or other boom or turns the whole, or any part, of the logs or timber contained therein loose or adrift (unless such boom materially obstructs the navigation of any navigable stream, or unlawfully intrudes upon the property of any such person) or who wilfully or maliciously cuts loose or turns adrift any boom, drill, string, or raft of logs, timber or lumber, is guilty of a felony, and shall be liable for all the damages sustained by reason of such wrongful act. (2585)