

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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6563. Award and judgment—How payable.

Where state condemned land and damages were awarded under a misapprehension that house was part of real estate and belonged to owner thereof, land being of value of \$375 and house more than \$4,000, disparity between award and value of property was so gross as to amount to a fraud upon the state and to justify court's setting aside award in excess of amount reflecting value of land alone. *State v. Riley*, 213M448, 7NW(2d)770. See Dun. Dig. 3131.

In a proceeding by the state to determine right to money paid into court under an award in a highway condemnation proceeding, a party who is not entitled to claim any part of the award is in no position to contend that the state, not having appealed, cannot be awarded any part of the fund on appeal. *Id.*

6569. Answer—Ascertainment of damages.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

6573. Procedure, etc.

City condemning property for an airport outside its

boundary must proceed under its charter and not under general law. *Op. Atty. Gen.* (234b, 817f), Oct. 6, 1943.

6578-5. Clerk to mail notices in condemnation proceedings in certain cases.—In any city of the first class which, under its charter, is authorized to condemn property for public use and to appoint commissioners to assess damages or benefits upon property to be taken for such use, which charter provides for notices of the filing of the commissioners' report in such proceedings, the clerk of such city shall mail to the person whose name appears on the records of the auditor of the county in which such city is located as the person who last paid the taxes on the property proposed to be taken, within 48 hours after the filing of the commissioners' report in such proceedings, a notice of such filing. (Act Apr. 1, 1943, c. 249, §1.) [430.023]

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

UNIFORM STAGE OF WATER IN
LAKES AND STREAMS**6588. County board may establish—Eminent domain.**

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

County board may appropriate funds for digging of well and maintenance of pumping station to pump water into a lake, and may receive donations or gifts to be used toward the expensive work. *Id.*

County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Id.*

6589. Resolution—Filing of copy, map, etc.

County board may not sell pipe which is a part of installation of water level control project, though pumping unit has not been used for several years and plant is partially dismantled and pipe lying idle, in view of benefited owners who paid for equipment. *Op. Atty. Gen.* (983D), Jan. 22, 1942.

6602-12. Commissioner may construct dams; etc.

Property owner damaged by flooding caused by construction of dam and receiving satisfaction from the state and executing a release of damages could not recover damages for the same injury from another property owner who constructed the dam. *Driessen v. M.*, 208M356, 294NW206. See Dun. Dig. 10187.

6602-13. Owners may initiate proceedings.

County board should not appropriate money for digging of a well to pump large quantities of water into a lake lying wholly in the county until they have adopted a resolution for maintenance of lake level pursuant to §6588, and if this is done it is not necessary to adopt a more complicated proceeding of §6602-13. *Op. Atty. Gen.* (125a-59), Aug. 8, 1940.

TRI-STATE AREA

6602-41. Tri-state waters commission created.

Members of tri-state waters commission who served intermittently and are paid on a per diem basis are not "state employees", but persons who are regularly employed and whose salaries are paid by warrants of state auditor and who serve continuously are entitled to membership in retirement association. *Op. Atty. Gen.*, (331a-7), Jan. 30, 1940.

WATER CONSERVATION

6602-51. Declaration of purpose.

Whether a lake may be "lowered" or "drained" in any given case depends for its validity upon statutory authority properly invoked and exercised. *Lake Elysian*

High Water Level, 208M158, 293NW140. See Dun. Dig. 10187.

Long delay occurring between establishment of ditch and institution of proceedings to restore lake level does not limit right of state so to proceed since no prescriptive right can be obtained against sovereign, absent any statutory time limit within which to act. *Id.*

County board may make appropriation for digging of well to maintain water level in a lake without consent of commission of conservation. *Op. Atty. Gen.* (125a-59) Aug. 8, 1940.

6602-53. Shall develop water conservation program for state.

Act Apr. 28, 1941, c. 518, authorizes sale, lease or other disposition to United States of certain lands acquired for the Lac Qui Parle river water conservation project.

An act relating to the Lac qui Parle and Big Stone Lake water control projects and appropriating money therefor. *Laws 1943, c. 476.*

6602-54. Must have written permission from commissioner.

Joint consent of federal and state governments is required to permit a change of the cross section of a navigable river such as the Minnesota over which both have concurrent jurisdiction. *Op. Atty. Gen.* (370), June 26, 1942.

6602-55. Permission necessary to build dams.—

Subdivision 1. It shall be unlawful for the state or any agency thereof or any person, partnership, association, private or public corporation, county, municipality, or other political subdivision of the state to construct, reconstruct, remove or abandon any reservoir, dam, or waterway obstruction, or to make or construct or permit to be made or constructed any change therein or addition thereto, or to make or permit to be made any change in or addition to or to remove or abandon any existing dam, reservoir, or waterway obstruction, or in any manner other than in the course of usual operation of dams beneficially using water to change or diminish the course, current, or cross-section of any stream or body of water wholly or partly within this state, without a written permit from the commissioner previously obtained upon written application as provided in Mason's Supplement 1940, Sections 6602-56 to 6602-58, inclusive, and other applicable provisions of law.

Subd. 2. **Application of act.**—Nothing in this section shall be construed to apply to any dam or obstruction in a stream or other body of water which has less than one square mile of drainage area or a normal flow of less than two cubic feet per second or to the erection, use or control of structures operated or to be operated for the production of water power.

Subd. 3. **Exceptions.**—Nothing in this section shall be construed to apply to the construction of any highway, public road, bridge or culvert thereon by the

State Highway Department, or by any county, town, city or village; provided, that where any future construction affects waters regulated by dams, spillways, drains, or other structures built or which may be built, supervised, or controlled by the commissioner of conservation or that will affect any stream or watercourse having a watershed area upstream from such construction greater than 25 square miles, the authority in charge of such construction shall at least 20 days before letting any contract therefor or before beginning work by day labor thereon transmit to the commissioner of conservation a copy of the plan, design, or description of the proposed construction so far as any such waters, stream, or watercourse may be affected thereby, showing the measured or estimated flow and volume of water and the design and capacity of the proposed works or devices pertaining thereto. (As amended Apr. 7, 1943, c. 344, §1.)

Where commissioner authorizes construction of a dam separating waters of a lake from a bay, designed to restore natural ordinary water levels, and then to discharge surplus water into bay, owners of land abutting upon bay are not entitled to compensation. Op. Atty. Gen., (273c-4), May 20, 1941. See Dun. Dig. 6939.

City has no right to engage in project of deepening and lowering bed of Sleepy Eye Lake without effective consent of the States and interested property owners. Op. Atty. Gen. (273a-6), Sept. 25, 1942.

Lease of a lake bed for mining purposes should obtain a permit from the Commissioner of Conservation before using the bed of the lake as a stripping dump. Op. Atty. Gen. (311d-5), May 26, 1943.

6602-58. Shall investigate evidence.

Upon facts stated commissioner of conservation was justified in ordering restoration of lake level to the height stated in his order. Lake Elysian High Water Level, 208M158, 293NW140. See Dun. Dig. 10187.

6602-62. Appeals to district court.—Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partially located or to the district court of Ramsey County. Appeals may likewise be taken from the judgments of the district court to the supreme court of the state. Such appeal may be taken and the rules of pleading and procedure on such appeal shall be the same as now provided by law for appeals from orders of the railroad and warehouse commission of this state as provided in Mason's Minnesota Statutes of 1927, Section 5308, and on the trial or appeal the judge of the district court having jurisdiction, or the supreme court, may set aside, modify or confirm such determination as the evidence or law may require. The pendency of any such appeal shall not of itself stay or suspend the operation of the order or determination of the commissioner, but the district court, or the supreme court, in their discretion may restrain or suspend, in whole or in part, the operation of the commissioner's determination pending the final hearing and determination of the appeal by requiring the filing of an appropriate bond or other undertaking by the appellant conditioned that the appellant shall answer for all damages caused by the delay in the enforcement of the determination of the commission. The court may, in lieu of such bond, require or permit of such other security as it may deem proper. (As amended Mar. 28, 1941, c. 86.)

Court does not try matter anew as an administrative body, substituting its findings for those of the commissioner. Lake Elysian High Water Level, 208M158, 293NW 140. See Dun. Dig. 10187.

6602-63. Violation a misdemeanor.—Any person or persons, partnership, association or corporation, public or private, that shall do or cause to be done, any act or thing contrary to or required by the provisions of this act, or that shall fail, neglect or refuse to do or cause to be done any act required by the provisions of this act; or that shall violate or fail to comply with any order of the commissioner of which due notice shall be given; or that shall violate any of the provisions of this act, shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000.00, or, in the discretion of the court, such

person or persons, or the members of such partnership or association, or the officers and directors of such corporation, public or private, may be sentenced to imprisonment for a period not exceeding one year, either or both, in the discretion of the court. In the case of the state or any agency thereof, counties, municipalities, and other political subdivisions of the state, the officials responsible for the violation shall, after hearing, be subject to removal from office by the governor of the state. (As amended Act Mar. 17, 1941, c. 71, §1.)

6602-66. Dams to be maintained by state.—All dams owned by the state or erected upon lands owned by the state or for which the state has acquired permanent easement, shall be maintained by the state from funds appropriated by the legislature directly for such purpose or from such other sources as may be provided by law. Whenever in the interest of public health or welfare, it may be necessary to acquire dam sites, flowage rights or rights-of-way for the construction, operation and maintenance of water control works and other appurtenant construction for the development of water conservation program of the state, the commissioner of conservation, subject to the provisions of Section 6602-67, Mason's Minnesota Statutes, 1940 Supplement, is authorized to acquire such lands or any necessary interest therein by purchase, gift or condemnation whenever the necessary funds have been provided by legislative appropriation or from such other sources as may be provided or authorized by law. The commissioner is authorized to accept from local governments and civic agencies, or persons, funds for the purpose of maintaining or constructing such dams and appurtenant or control structures, or the lands required therefor. (As amended Mar. 28, 1941, c. 88, §1.)

COMMON LAW DECISIONS RELATING TO WATERS AND WATER COURSES IN GENERAL

2. Riparian rights.
Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

Private ownership of property on banks and beds of navigable streams is subject to the public right of navigation and government control and regulation, and hence, federal government was not liable for damages to riparian owner for flooding of embankment built by latter below high water mark. U. S. v. Chicago, M. St. P. & P. R. Co., 312US592, 61SCR772, 85LED1064, rev'g (CCA8), 113F(2d)919. See Dun. Dig. 3038a, 6962.

Where lake is navigable in fact, its waters and bed belong to state in its sovereign capacity, and riparian owner takes fee only to high-water mark, but with all rights incident to riparian ownership, including right to accretions or relictions formed or produced in front of his land by the accession or recession of waters. Schmidt v. Marschel, 211M539, 2NW(2d)121. See Dun. Dig. 6953, 6954.

Rule to effect that state could not cut off riparian rights of an abutting owner by asserting its sovereign dominion over relictions was designed to protect a riparian owner's fundamental right of access to water, and reasons supporting it can have no application in a case involving adverse possession of relicted land. Id. See Dun. Dig. 6954, 6961.

Title to accretions and relictions may be transferred separately from the upland to which they are attached. Id. See Dun. Dig. 6953, 6954.

Title to the shores or flats of tidewaters where privately held may be acquired by adverse possession. Id. See Dun. Dig. 107, 110, 6961.

Title of a riparian owner to an island in a nonnavigable stream may be obtained by adverse possession. Id. See Dun. Dig. 1067.

Title to relicted lands may be acquired by adverse possession. Id. See Dun. Dig. 6954.

Owners of land bordering on shore of a meandered nonnavigable lake own bed of lake in severalty. Id. See Dun. Dig. 1070.

Under Laws 1885, c. 145, §21, subds. 8th, 11th, 26th, and 28th, granting to villages governed thereby power to control and protect village property, to establish and improve public parks, to establish harbor and dock limits, regulate the location, construction and use of all piers, docks, wharves, and boathouses on any navigable waters, and fix rates of wharfage, and to establish police regulations for good order of village, a village was authorized to establish and maintain a public dock on park property adjacent to a navigable lake, to require all

watercraft using waters adjacent to park to use public dock to exclusion of other shore lands of the park, notwithstanding fact that owners of such watercraft may have riparian rights in such shore lands, to charge a fee for a permit to use a space on dock, and to set apart for bathing purposes a part of such waters to the exclusion of all other uses of which waters are susceptible. *Nelson v. De Long*, 213M425, 7NW(2d)342. See Dun. Dig. 6950.

A riparian owner's rights on a body of navigable water are qualified, restricted, and subordinate to paramount rights of public to public use of waters for purposes of navigation, which include not only navigation by watercraft for commercial purposes, but also use for ordinary purposes of life such as boating, fishing, fowling, skating, bathing, taking water for domestic and agricultural purposes, and cutting ice. *Id.*

Power of Congress to regulate navigable waters is paramount to that of the state. *Id.* See Dun. Dig. 6931.

Absent exercise of state's paramount rights, a riparian owner not only may build and maintain, for his own use and that of others claiming under him wharves, docks, piers, and landing places on and in front of his land and extend the same to point of navigability, even though beyond low-water mark, but he also may transfer such rights, including those pertaining to particular areas of submerged lands. *Id.* See Dun. Dig. 6933, 6950, 6961, 6965.

As against the state, a riparian owner can exercise no dominion or make a valid grant of rights in waters adjacent to riparian lands or in submerged lands under such waters. *Id.* See Dun. Dig. 6950, 6965.

Title, points and lines in lakes and streams. 24Minn LawRev305.

3. Surface waters.

Rule of *Sheehan v. Flynn*, 59 Minn. 436, 61 N. W. 462, 26 L. R. A. 632, that by reasonable drainage works on his own premises, a landowner may dispose of surface waters as best he can, so long as he does not unreasonably injure his neighbor, applies only to private rights

and exercise thereof, and has no application to a public drainage proceeding wherein statute requires compensation to all who suffer damages. *Town Ditch No. 1 v. B.*, 208M566, 295NW47. See Dun. Dig. 2841a, 10165.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands and one of them later constructs a dam and fills ditch by plowing, the test of liability is reasonable use, not reasonable care or negligence. *Will v. Boler*, 212M525, 4NW(2d)345. See Dun. Dig. 10157a, 10165.

In action to enjoin adjoining owner from damming and obstructing a ditch, evidence sustained finding that plaintiff's predecessor in title and interest contributed to expense of construction of ditch in a natural water-course. *Id.* See Dun. Dig. 10157a.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands, each is thereafter estopped from closing the ditch in such a way as to deprive the others of the drainage afforded thereby. *Id.* See Dun. Dig. 10157a.

Where neighboring landowners united in construction of a ditch to drain or improve their several lands and one of the landowners later filled the ditch and deprived another landowner of benefits from its construction, a court of equity may grant injunctive relief. *Id.* See Dun. Dig. 10157a.

Common-law rule that surface water is a common enemy, which each owner may get rid of as best he can, is in force in this state, except that it is modified by rule that he must so use his own as not unnecessarily or unreasonably to injure his neighbor. *Id.* See Dun. Dig. 10165.

Where surface water is conveyed through natural channels from property of one landowner to that of another, lower owner, in absence of any means of natural drainage of the water, may not fill the depression so as to interfere with flowage of water therein even though natural depression may not amount to a swale. *Id.* See Dun. Dig. 10167.

Interference with surface waters. 24MinnLawRev991.

CHAPTER 43

Logs and Lumber

6603. Consolidation of offices of surveyor general, etc.

Appropriation provision of Laws 1943, c. 660, §40, does not prohibit the director of the Division of Forestry from also holding the position of Surveyor General. *Op. Atty. Gen.* (403), May 7, 1943.

6618. Recording; etc.

Logs, posts, and certain other lumber products in transportation must be marked with description of land from which cut. Laws 1941, c. 83.

6627-1. Identification of timber being transported—Nature of marks used.—Within the forest areas of this state, all loads of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging shall, while being transported from the place where such products were cut, be conspicuously marked on each side with the legal description of the land from which said products were cut, provided, however, that where timber is being cut from more than one 40-acre tract in a single logging operation, the loads of products from such operation may be marked with the legal description of all the lands being cut upon such operation, or the operation may register with the department of conservation, division of forestry, a list of the legal descriptions of lands to be cut over in such single operation, and the director of the division of forestry shall then assign to the operator a number covering the registered descriptions; such assignment to be for the period of one year and such number may be used to mark products being transported, in lieu of the legal descriptions. (Act Mar. 28, 1941, c. 83, §1.) [89.163]

No identification marks are necessary while products are being skidded or drayed from one point on operation to another. *Op. Atty. Gen.*, (983e), May 23, 1941.

6627-2. Same—Timber products manufactured on land where cut.—Any load of lumber or timber products which have been manufactured on the land where cut shall, while being transported from said land, be conspicuously marked on each side as provided hereinbefore. (Act Mar. 28, 1941, c. 83, §2.) [89.164]

6627-3. Same—Stored timber.—Any load of logs, square timbers, piling, pulpwood, bolts, ties, poles, posts, mining timber, and lagging being transported from a point of temporary storage other than the land from which said products were cut, shall be conspicuously marked on each side with the name of the person, firm or corporation sending such products and the location of the point of storage from which said load is being hauled. (Act Mar. 28, 1941, c. 83, §3.) [89.165]

6627-4. Same—False marks.—No person, firm or corporation shall affix or use for identification purposes any legal description of land other than that from which the timber or timber products were cut or removed. (Act Mar. 28, 1941, c. 83, §4.) [89.166]

6627-5. Same—Violations of law—Inspection of loads.—Any forest officer or any officer with police authority shall have the authority

(a) to arrest, with or without warrant, any person violating any provision of this act.

(b) to stop any truck or vehicle and to inspect any such load wherever found and to make such investigation with reference thereto as may be necessary for the purpose of determining whether the provisions of this act have been complied with. (Act Mar. 28, 1941, c. 83, §5.) [89.167]

6627-6. Same—Offenses and punishment.—Any person who shall violate any of the provisions of this act shall upon first conviction be guilty of a misdemeanor and shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or by imprisonment in the county jail for not less than ten days nor more than ninety days, and in case of a subsequent conviction of the same or any other offense under this act shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100.00 or by imprisonment in the county jail for not