

Public Domain

CHAPTER 117

EMINENT DOMAIN

Sec.

117.01 Right of eminent domain

117.02 Definitions

117.03 Proceedings, by whom instituted

117.04 Entry for surveys

117.05 Petition and notice

117.06 Notice of pendency

117.07 Court to appoint commissioners of appraisal

117.08 Appraisers, powers and duties

117.09 Report; notice

117.10 Payment; tender; deposit in court

117.11 Failure to report

117.12 Accruing taxes

117.13 Appeal

117.14 Trial; costs

117.15 Judgment; possession

117.16 Interest; award, when payable; dismissal

117.17 Record, evidence, how perfected

117.18 Property taken by state is estate without right of reversion

117.19 Proceedings in certain cases, notice filed

117.20 Proceedings by state or its agencies

117.21 Easement to include snow fences

117.22 Sites for county buildings

117.23 Duty of county attorney; appraisers

117.24 Duty of appraisers; notice; award

Sec.

117.25 Appeal; trial, costs; bond

117.26 Power of county board; payment of award

117.27 Award and judgment; how payable

117.28 Judgment roll

117.29 Notice of lis pendens

117.30 Certificate of payment; record

117.31 Sanitarium commissions to have right of eminent domain

117.32 Railroad built without right; action

117.33 Answer; ascertainment of damages

117.34 Judgment and execution

117.35 Procedure when no answer is made

117.36 Validity of railroad condemnation; action

117.37 Procedure

117.38 Acquisition of land for certain purposes

117.39 Proceedings under right of eminent domain

117.40 Municipality may contest

117.41 Conveyance, to whom made

117.42 Award in condemnation proceedings in cities of first class

117.43 Funds from which award payable

117.44 Commissioner of conservation to acquire certain lands

117.45 Authority of commissioner of conservation

**117.01 RIGHT OF EMINENT DOMAIN.** When 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 laws relating to roads and drainage when such laws themselves expressly provide for such taking and specifically prescribe the procedure connected therewith.

[R. L. s. 2520; 1921 c. 353 s. 1] (6537)

**117.02 DEFINITIONS.** Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings hereinafter subjoined to them.

Subdivision 2. **Taking.** The word "taking" and all words and phrases of like import include every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private property.

Subdivision 3. **Owner.** The word "owner" extends to all persons interested in such property as proprietors, tenants, encumbrancers, or otherwise.

[R. L. s. 2521] (6538)

**117.03 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.

[R. L. s. 2522] (6539)

**117.04 ENTRY FOR SURVEYS.** 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.

[R. L. s. 2523] (6540)

**117.05 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 the 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 the 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. 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, the 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.

[R. L. s. 2524] (6541)

**117.06 NOTICE OF PENDENCY.** At the time of filing the petition the petitioner may file for record with the register of deeds a notice of the pendency of the proceeding, describing with reasonable certainty the lands affected and for what purpose they are to be taken. If the proceeding be abandoned in whole or in part the petitioner shall within ten days thereafter file with the register of deeds a notice to that effect, describing with reasonable certainty the lands so abandoned.

[R. L. s. 2525] (6542)

**117.07 COURT TO APPOINT COMMISSIONERS OF APPRAISAL.** Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for or against the granting of the petition, regulating the order of proof as it may deem best. If the proposed taking shall appear to be necessary and such as is authorized by law, the court by an order shall appoint three disinterested commissioners, residents of the county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking. The order shall fix the time and place of the first meeting of the commissioners and prescribe their compensation. It may, in the discretion of the court, limit the title or easement to be acquired by the petitioner by defining the rights and privileges which the owner of any of the lands may exercise therein in subordination to the public uses to which it is appropriated. In case any of the commissioners fail to act, the court without further notice may appoint another in his place.

[R. L. s. 2526] (6543)

**117.08 APPRAISERS, POWERS AND DUTIES.** The commissioners, having qualified according to law, shall meet as directed by the order of appointment and hear the allegations and proofs of all persons interested touching the matters to them committed. They may adjourn from time to time and from place to place within the county, giving oral notice to those present of the time and place of their next meeting. All testimony taken by them shall be given publicly, under oath, and in their presence. They shall view the premises, and any of them may issue subpoenas for witnesses, which shall be served as subpoenas in civil actions are served, and at the cost of the parties applying therefor. If deemed necessary, they may require the petitioner to furnish for their use maps or plats showing the character and extent of the proposed undertaking and the situation of lands desired therefor. In proper cases they may reserve to the owner a right of way or other privilege in or over the land taken, or attach reasonable conditions to such taking in addition to the damages given, or they may make an alternative award, conditioned upon the granting or withholding of the right specified. Without unreasonable delay they shall make a separate assessment and award of the damages which in their judgment will result to each of the owners of the land by reason of such taking and within 30 days after making such assessment and award report the same to the court under their hands.

[R. L. s. 2527] (6544)

**117.09 REPORT; NOTICE.** - The oath subscribed by the commissioners shall be filed with their report and when necessary to the proper understanding of such report it shall be accompanied by a map, showing the route or location of the intended improvement, and the situation of the lands within their county proposed to be taken therefor. The clerk shall attach together with the petition, notice of hearing thereon, proofs of service and publication of the notice, order appointing the commissioners, their oath and report, and all other documents filed in the matter modifying or affecting any of those hereinbefore named. Upon payment by the petitioner of the fees and disbursements of the commissioners, which may be taxed by the court in case of failure to agree upon the amount thereof, they shall sign and deliver to the petitioner a notice that the report has been filed, which notice the petitioner shall cause to be served and published as provided in section 117.05; but if any party shall have appeared in the proceeding by attorney, the notice may be served upon the attorney so appearing.

[R. L. s. 2528] (6545)

**117.10 PAYMENT; TENDER; DEPOSIT IN COURT.** Payment of the damages awarded may be made or tendered at any time after the notice mentioned in section 117.09 is delivered, and acceptance of such payment shall be taken as a waiver of all objections to the award and to the proceedings leading thereto on the part of the payee and of all persons for whom he is lawfully empowered to act. In case any party to whom an award of damages is made be not a resident of the state, or his place of residence be unknown, or he be an infant or other person under legal disability, or, being legally capable, refuses to accept payment, or if for any reason it be doubtful to whom any award should be paid, the petitioner may pay the same to the clerk, to be paid out under the direction of the court; and, unless an appeal be taken, as hereinafter provided, such deposit with the clerk shall be deemed a payment of the award.

[R. L. s. 2529] (6546)

**117.11 FAILURE TO REPORT.** If the commissioners fail to file their report within six months after their appointment, upon motion of any owner, the proceedings shall be set aside as to him; but, for cause shown, the court may extend the time for making their report for not more than six months.

[R. L. s. 2530] (6547)

**117.12 ACCRUING TAXES.** All taxes and assessments imposed upon the property after the filing of the petition and paid by the owner before payment of the award shall be added to the amount of such award, and with interest thereon shall be paid therewith; and the receipt of the proper officer for such taxes and assessments shall be conclusive, as between the owner and petitioner, of the amount and validity thereof.

[R. L. s. 2531] (6548)

**117.13 APPEAL.** At any time within 30 days after service of the notice that the report has been filed, the owner of lands taken may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages to the appellant for the taking of lands claimed by him, by filing with the clerk a notice of such appeal. The notice shall specify the particular award or failure to award appealed from, the nature and amount of his claim, the land to which it relates, and the grounds of his appeal. The petitioner may in like manner appeal; but no appeal shall delay the prosecution of the proposed improvement, if the petitioner shall give bond, in amount and with sureties to be fixed and approved by the court, conditioned for the payment of all damages finally awarded and to abide the orders and judgments of the court entered thereon.

[R. L. s. 2532] (6549)

**117.14 TRIAL, COSTS.** Such appeal may be noticed for trial as in the case of a civil action, and the court may direct that issues be framed, and require other parties to be joined and to plead therein when necessary for the proper determination of the questions involved. The cause shall be tried by a jury, unless the parties otherwise agree, and the court or jury trying the same shall reassess the damages and apportion the same as justice may require. Except as herein otherwise provided, the trial shall be conducted and the cause disposed of according to the rules applicable to ordinary civil actions in the district court. The court in its discretion may award to the prevailing party the costs and disbursements of the appeal.

[R. L. s. 2533] (6550)

**117.15 JUDGMENT; POSSESSION.** Judgment shall be entered upon the verdict or decision, fixing the amount of damages payable to the several parties concerned and the terms and conditions of the taking. Upon the payment of the damages with costs and interest, if any, the petitioner shall be permitted to take possession of the premises and appropriate the same to the public uses for which they were taken, subject to the provisions of such judgment; and, until reversed or modified in a direct proceeding begun for that purpose, the judgment shall be binding upon the petitioner and all other parties thereto and upon their respective successors and assigns.

[R. L. s. 2534] (6551)

**117.16 INTEREST; AWARD, WHEN PAYABLE; DISMISSAL.** All damages allowed under this chapter, whether by the commissioners or upon appeal, shall bear interest from the time of the filing of the commissioners' report. If the award be not paid within 60 days after such filing, or, in case of an appeal, within the like period after the final judgment thereon, the court, on motion of the owner of the land, shall vacate the award and dismiss the proceeding as against such land. When the proceeding is so dismissed or the same is discontinued by the petitioner the owner may recover from the petitioner reasonable costs and expenses including fees of counsel.

[R. L. s. 2535] (6552)

**117.17 RECORD, EVIDENCE, HOW PERFECTED.** Upon the determination of all appeals taken in the proceeding, and the payment of all damages, interest, and costs awarded or recovered therein, and when there has been no appeal from the report of the commissioners, and more than 30 days have expired since the service upon all the parties to the proceeding of the notice referred to in section 117.09, and payment has been made of all damages and interest allowed by the commissioners, the court, upon motion of the petitioner, shall enter a final decree establishing the rights of the petitioner in the whole or any part of the lands so taken. A certified copy of the decree may be filed for record with the register of deeds of the county, and such decree shall be evidence, and the record thereof notice, of the title and rights of the petitioner therein set forth.

[R. L. s. 2536] (6553)

**117.18 PROPERTY TAKEN BY STATE IS ESTATE WITHOUT RIGHT OF REVERSION.** In all cases where proceedings shall hereafter be instituted for the condemnation of property for public use by the State of Minnesota or by any political subdivision thereof, the right, interest, or estate in the property proposed to be taken, if greater than an easement, shall be specifically described in the proceedings, and, if the right, interest, or estate so described shall be a fee simple absolute, the fee simple absolute shall be an estate without any right of reversion under any circumstances.

[1917 c. 419 s. 1] (6554)

**117.19 PROCEEDINGS IN CERTAIN CASES, NOTICE FILED.** When the State of Minnesota or any city, county, village, town, board of park commissioners, or board of public works in this state shall take or acquire, by condemnation proceedings or dedication, any land, or any easement or interest therein, for laying out, opening, widening, extending, or establishing any public street, road, highway, or alley or for public parks, parkways, or other public purposes or shall vacate or abandon any public street, road, highway, alley, park, or public grounds, or any portion thereof, or any easement or interest therein, a notice in writing of the completion of every such condemnation proceeding and of every such dedication, vacation, or abandonment of any public street, road, highway, alley, park, or public grounds, or any portion thereof, shall be forthwith filed for record with the register of deeds of the county within which the lands and premises are located. This notice shall first be presented to the county auditor who shall enter the same in his transfer records and note upon the instrument, over his official signature, the words "entered in the transfer record." This notice shall be prepared and filed by the state department administrator, clerk, auditor, recorder, or other person charged with the duty of keeping the records of the state or such city, county, village, town, board of park commissioners, or board of public works so acquiring any such lands or vacating or abandoning any such street, road, highway, park, or public grounds, and this notice shall contain a statement of the time of the completion of the condemnation proceedings or of the vacation or abandonment, as the case may be, and the

name of the state, city, county, village, town, or board by whom the proceedings are prosecuted or the vacation is made, or to whom the dedication is made, and a description of the real estate and lands affected thereby. Any failure to file this notice shall not invalidate or make void any such condemnation proceeding for the vacation or abandonment of any public street, road, highway, park, or public grounds, or any portion thereof.

[1917 c. 416 s. 1; 1941 c. 252] (6555)

**117.20 PROCEEDINGS BY STATE OR ITS AGENCIES.** In eminent domain proceedings instituted by the state or by any of its agencies or political subdivisions as petitioners under the provisions of this chapter the procedure shall be as follows:

(1) The report of the commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing the commissioners, but for cause shown the court, upon such notice as the court may determine, may extend the time for making and filing the report;

(2) At any time within 30 days from the date of the filing of the report, any party to the proceeding may appeal from any award of damages embraced in the report, or from any omission to award damages, by filing with the clerk a notice of such appeal; which shall specify the particular award or failure to award appealed from, the nature and amount of the claim, the land to which it relates, and the grounds of the appeal; and upon appeal the prevailing party shall recover costs and disbursements;

(3) Payment of the damages awarded may be made or tendered at any time after the filing of the report; and the duty of the public officials to pay the amount of any award or final judgment upon appeal shall, for all purposes, be held and construed to be full and just compensation to the respective owners or the persons interested in the lands;

(4) The notice of filing of report provided for in section 117.09 shall be dispensed with; as shall also the final decree provided for in section 117.17, provided the attorney for the petitioner make a certificate describing the land taken and the purpose or purposes for which taken, and reciting the fact of payment of all awards or judgments in relation thereto, which certificate upon approval thereof by the court shall establish the rights of the petitioner in the lands taken and shall be filed with the clerk and a certified copy thereof filed for record with the register of deeds; which record shall be notice to all parties of the title of the state or of its agency or political subdivision to the lands therein described;

(5) The commissioner of highways may, except as to lands already devoted to a public use, at any time after the filing of a petition for the condemnation of any land for a trunk highway, or for material for the construction or improvement thereof, take possession of such land; and may at any time enter upon any lands and make surveys and examinations thereof in the location of trunk highways or in the acquisition of material for the construction or improvement thereof.

[1927 c. 237 s. 1; 1941 c. 307] (6557-1)

**117.21 EASEMENT TO INCLUDE SNOW FENCES.** When the right to establish a public road is acquired by the state, or by any of its agencies or political subdivisions, there shall be included in the easement so acquired the power to erect and maintain temporary snow fences as required upon lands adjoining the highway part of which lands have been taken for road purposes. The right to erect and maintain such fences shall be considered in awarding damages, and any award shall be conclusively presumed to include the damages, if any, caused by the right to erect and maintain such fences; provided, that, if the state, or agency or political subdivision thereof, shall file with its petition, or at any time before the question of damages is submitted to a jury, a written disclaimer of its desire and intention to acquire a right to erect and maintain snow fences as to any particular tract of land involved, then no such right shall be acquired in such proceeding and no consideration given to such fences as an element of damage.

[1929 c. 396 s. 1] (6557-4)

**117.22 SITES FOR COUNTY BUILDINGS.** If the board of county commissioners of any county at any regular or extra meeting shall adopt and enter in the minutes of its proceedings a resolution declaring that it is necessary to acquire for the use of the county any land, describing it, to be used as a site for a court-house or other public building or for the purpose of enlarging the site of any such building

already owned by the county, and the board of county commissioners is unable to purchase the land at a reasonable price, the title to any such land may be acquired by condemnation as provided in this chapter.

[1905 c. 7 s. 1] (6558)

**117.23 DUTY OF COUNTY ATTORNEY; APPRAISERS.** Forthwith upon the adoption of such resolution the county auditor shall deliver a certified copy thereof to the county attorney, whose duty it shall be within ten days from the receipt thereof by him to present to the district court of the county or to a judge thereof a petition signed by himself on behalf of the county setting out the action of the board of county commissioners and describing and setting forth in the petition the lands proposed to be taken by the county and in a general way the purposes for which the same are desired, and praying for the appointment of three appraisers to appraise the lands and the damage for the taking of the same; and thereupon the court shall have jurisdiction therein for all purposes and shall then and there or at any time within 15 days thereafter by order filed in the office of the clerk of the district court of the county appoint three appraisers, who shall be residents of the county, fix their compensation, which shall be paid by the county, and who shall have cognizance of the subject-matter of the petition and power to appraise the value of all such land and damages for the taking of the same.

[1905 c. 7 s. 2] (6559)

**117.24 DUTY OF APPRAISERS; NOTICE; AWARD.** These appraisers, before entering upon the duties of their office, shall severally take and subscribe an oath to the effect that they will faithfully and impartially and to the best of their knowledge and ability perform their duty as such appraisers, which oath shall then and there be filed in the office of the clerk of the district court. Thereupon the appraisers shall organize by electing a chairman and clerk and fix a time and place when and where they will meet and proceed to examine the real estate, which time shall not be less than ten, nor more than 20, days after the date of the order appointing the appraisers. The chairman shall preside at, and the clerk shall keep minutes of, the meetings of the appraisers. The appraisers shall give, or cause to be given, to each owner or other person having an interest in the real estate, or his guardian or custodian, as the case may be, at least five days prior to the day of meeting named therein, a notice in writing signed by the appraisers of the time and place when and where the appraisers will meet and a general statement of the purposes thereof. Such notice shall be served personally on such owner, guardian, or custodian, if found at his usual place of abode, otherwise by delivering to and leaving with a person of suitable age and discretion at the usual place of abode of such owner, guardian, or custodian, a copy thereof. If such owner, guardian, or custodian shall not reside in the county, of which fact the certificate on information and belief under the seal of his office of the auditor of the county shall be prima facie evidence; then, and in such case, service thereof shall be made by publishing such notice once in the official newspaper of such county at least seven days before the time fixed therein for the meeting. An affidavit of personal service or publication shall be prima facie evidence of the service of the notice. At the time and place named in the notice the appraisers shall, and a majority thereof may, proceed in the case of each parcel of real estate desired to be taken to an appraisal thereof and of the damage sustained by reason of the taking thereof by the county, and shall make and sign in duplicate within 60 days from the date of the filing of the order appointing them an award in writing of such damages and within the last mentioned time shall deliver the same to the clerk of the district court and to the county auditor, respectively, to be filed by them in their respective offices.

[1905 c. 7 s. 3] (6560)

**117.25 APPEAL; TRIAL; COSTS; BOND.** Either party may appeal to the district court from such award at any time within 30 days from the date of the filing thereof in the office of the clerk of the court by filing with the clerk a notice of appeal signed by the party claiming the damage or by the county auditor on behalf of the county and, in case of appeal by either party, the clerk shall enter the appeal as an action in such court, naming the owner of such land as plaintiff and the county auditor as defendant, and thereafter the appeal shall be tried as other causes in the court are tried and judgment rendered thereon; except that the only question to be submitted to the jury, if the parties do not agree to try the whole

cause to the court alone, shall be the question of damages. In case such an appeal shall be taken by the property owner and upon trial the award of the appraisers shall be raised, then the property owner shall recover costs and disbursements from the county, otherwise, such property owner shall pay the costs and disbursements to the county. If such appeal shall be taken on behalf of the county and upon trial the award shall be decreased, the property owner shall pay the costs and disbursements to the county, otherwise the property owner shall recover the costs and disbursements from the county. As a condition precedent to an appeal by a property owner such property owner shall make, execute, and file in the office of the clerk of court a bond to the county in the penal sum of \$100, with sufficient sureties, to be approved by the clerk of court, conditioned that the property owner shall prosecute his appeal with effect, pay all costs and disbursements adjudged against him, and abide the order of the court therein, but no bond shall be required of any county on any appeal by it hereunder.

[1905 c. 7 s. 4] (6561)

**117.26 POWER OF COUNTY BOARD; PAYMENT OF AWARD.** At any time after the filing of the award of the appraisers, as hereinbefore provided, the board of county commissioners may set aside, by resolution entered upon its minutes, from the general revenue fund of the county, a sum equal to the total amount assessed as damages by the appraisers and make the same payable on demand to the persons entitled thereto, which action by the board of county commissioners is hereby declared to be sufficient security for the taking of such property for public use within the meaning of the constitution and thereupon the taking of such land and the erection thereon of any building by the county shall not be delayed or prevented by the prosecution of any appeal, and the county and its officers and agents may at once thereafter enter upon and take possession of the property and appropriate the same to the use of the county.

[1905 c. 7 s. 5] (6562)

**117.27 AWARD AND JUDGMENT; HOW PAYABLE.** The award of the appraisers, if not appealed from, and the judgment rendered on appeal shall be an absolute claim against the county and paid from the general revenue fund thereof on the warrant of the county auditor without further action by the board of county commissioners and, upon such payment, the land involved shall become the absolute property of the county.

[1905 c. 7 s. 6] (6563)

**117.28 JUDGMENT ROLL.** When judgment is rendered on appeal the clerk of court shall attach the application, all notices and proof of publication or service thereof, the oaths of the appraisers and the award, the notice of appeal, and the final judgments in the case; and the same shall constitute the judgment roll to be filed in the office of the clerk.

[1905 c. 7 s. 7] (6564)

**117.29 NOTICE OF LIS PENDENS.** At any time after the adoption of the resolution mentioned in section 117.22, the county, by the county attorney or county auditor, is hereby authorized to file in the office of the register of deeds of the county a notice of lis pendens, which notice shall contain the names of the parties, the object of the proceeding, and a description of the land involved; and it shall have the same effect and may be released in the same manner as is now provided by statute for the filing and relief of lis pendens in actions affecting the title to real property between private individuals.

[1905 c. 7 s. 8] (6565)

**117.30 CERTIFICATE OF PAYMENT; RECORD.** Upon the payment of any award or judgment, the county attorney may make a certificate under the seal of his office as to such fact, expressly describing the land and reciting the fact of payment of the award or judgment in relation thereto and file the same in the office of the register of deeds of the county for record. The register of deeds shall record the same at the expense of the county and such record shall be notice to all parties of the title of the county thereto and may be read as evidence of such title in all the courts of this state, and the title to land acquired under sections 117.22 to 117.30 shall be absolute in fee simple in the county instituting proceedings thereunder.

[1905 c. 7 s. 9] (6566)

**117.31 SANITARIUM COMMISSIONS TO HAVE RIGHT OF EMINENT DOMAIN.** The county sanitarium commission of any county or group of counties operating under sections 376.28 to 376.42, may acquire land for a site for a building or buildings, for the enlargement of such site, or for other sanitarium purposes, by gift, purchase, or condemnation, the condemnation proceedings to be conducted as provided by this chapter.

[1921 c. 254 s. 1] (6567)

**117.32 RAILROAD BUILT WITHOUT RIGHT; ACTION.** When a railroad shall have been built across any tract of land no action shall be commenced for the recovery of such land while proceedings are pending under the law to ascertain and assess the damages. Otherwise, any person damaged by such taking and not already compensated may bring an action to recover the land, with or without damages for withholding the same, against the corporation or individual operating or maintaining the railroad, whether the road was constructed upon such land with the acquiescence of the owner or not.

[R. L. s. 2537] (6568)

**117.33 ANSWER; ASCERTAINMENT OF DAMAGES.** The defendant, in the action brought under the provisions of section 117.32, by answer may admit and allege the taking of such land for railroad purposes, that compensation has not been made to plaintiff therefor, and that defendant is ready and willing to pay such compensation and to have the amount thereof assessed by the jury trying such action, if plaintiff's right to recover the land be established. When such answer is made the jury shall find whether the plaintiff is entitled to recover the land; and, if so, the amount of compensation due him for the taking and perpetual use thereof for railroad purposes. If it shall appear that the land was so taken and appropriated with the consent and acquiescence of the owner, such owner shall recover no rents or profits which accrued prior to the demand for compensation.

[R. L. s. 2538] (6569)

**117.34 JUDGMENT AND EXECUTION.** Upon a verdict that plaintiff is entitled to recover the land, and for the amount of compensation due him, as provided in section 117.33, judgment shall be rendered in substance that plaintiff have and recover from the defendant the land in suit or in lieu thereof the compensation fixed by the jury, with costs and disbursements and reasonable attorney's fees as determined by the court. If such amounts be not paid within 30 days after entry of the judgment, execution shall issue for delivery of the possession of such land to plaintiff, and for the costs, disbursements, and attorney's fees aforesaid out of any property of the defendant.

[R. L. s. 2539] (6570)

**117.35 PROCEDURE WHEN NO ANSWER IS MADE.** If no answer be interposed or if no offer be made by answer to pay the compensation to be so ascertained, the plaintiff, if he establish his right to the land, shall have judgment for the immediate possession thereof and for such damages, rents, and profits as may be alleged and found, with costs and disbursements and reasonable attorney's fees to be allowed by the court, upon which judgment execution shall issue as in the case of other judgments for the possession of real estate. Except as otherwise provided, such action shall be governed by the same rules as to practice, procedure, new trials, and appeals as are other actions for the recovery of land; but sections 217.18 and 217.19 shall not apply thereto.

[R. L. s. 2540] (6571)

**117.36 VALIDITY OF RAILROAD CONDEMNATION; ACTION.** When an owner refuses or neglects to receive an award made in a proceeding to condemn land for railroad purposes on the ground that any of the proceedings are illegal and no appeal from the award has been taken, the railroad company or its receiver may bring an action to determine the validity of such proceedings. If such validity be denied by the answer and that issue be determined against the defendant, judgment shall be entered accordingly, but he shall not thereby be debarred from his right to such award. If it be determined that such proceedings are invalid and that the defendant is an owner, the present value of his interest in the land shall be ascertained. Thereupon judgment shall be entered that such interest be appropriated for such railroad purposes, if within 60 days thereafter the plaintiff pay to the defendant or into court for the benefit of the parties thereto entitled, the compen-



sation adjudged, with interest, costs, and disbursements, and that in default of such payment the action be dismissed. Such payment shall vest in the company or in the receiver for its benefit all the right, title, and interest of the defendant in such land as fully as if the same had been acquired by the condemnation proceedings; and upon such payment the court may enter final judgment to that effect.

[R. L. s. 2541] (6572)

**117.37 PROCEDURE.** In such action the plaintiff may join as defendants all persons having or claiming any interest in the land and may in the same complaint include several tracts of land owned or claimed by different persons, but the owners of different tracts may demand separate trials. Upon all issues of fact either party shall be entitled to a jury trial and the action shall be governed by the rules applicable to an action to determine adverse claims to real estate, and the plaintiff cannot recover costs or disbursements.

[R. L. s. 2542] (6573)

**117.38 ACQUISITION OF LAND FOR CERTAIN PURPOSES.** When the United States, the State of Minnesota, or other governmental authority having jurisdiction so to do, authorizes change of harbor lines or diversion of channel, or other change in any river, stream, or watercourse in the State of Minnesota, any railway company, terminal company, or depot company incorporated or licensed to engage in the business of transportation of freight or passengers in this state interested in such change by reason of the improvement and enlargement of its property, or otherwise, may acquire the lands and premises needed therefor. Such company may in its own name, either by purchase or by condemnation, obtain the title to such lands and premises or any interest therein, including the lands or any interest therein belonging to any municipal corporation in this state.

[1915 c. 45 s. 1] (6574)

**117.39 PROCEEDINGS UNDER RIGHT OF EMINENT DOMAIN.** Proceedings to condemn lands needed for such change may be commenced and prosecuted by such corporation to final judgment under the statutes of this state in respect to the taking of property by right of eminent domain; and all of the general laws of this state in respect of condemnation of property shall apply thereto and govern and control such proceedings.

[1915 c. 45 s. 2] (6575)

**117.40 MUNICIPALITY MAY CONTEST.** Any municipality interested in the land proposed to be taken in such proceedings may, if its interest seems to so require, contest the necessity for the condemnation of its interest in the premises proposed to be taken.

[1915 c. 45 s. 3] (6576)

**117.41 CONVEYANCE, TO WHOM MADE.** Upon acquiring title to these lands and premises, whether by purchase or condemnation, such corporation shall make due conveyance thereof to the United States, the State of Minnesota, or other governmental authority mentioned in section 117.38. Likewise, any municipal corporation having any interest in the lands or premises may, upon such terms, as to that municipality, its interests may seem to require, make due conveyance thereof either to the company or to the governmental authority.

[1915 c. 45 s. 4] (6577)

**117.42 AWARD IN CONDEMNATION PROCEEDINGS IN CITIES OF FIRST CLASS.** When an award of compensation and damages shall be confirmed by the city council of any city of the first class in the state existing and governed under a charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and when the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city to the owner of such property the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damages claimed. In case of neglect to furnish such abstract or if there shall be any doubt as to who is entitled to such compensation or damages

or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond, with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded, and all loss, costs, or expenses on account of such claim. When the city attorney shall certify in writing to the city council that he is in doubt as to whom the award shall be paid to the city council may order a warrant to be drawn for the same payable to the clerk of the district court and the city clerk shall deliver the same to the clerk of the district court and take his receipt for the same; which deposit with the clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the district court setting up the facts entitling them thereto and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of the award or appropriation or the setting apart of the money in the city treasury to pay the same, as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same and may forthwith enter upon and use the same. When any such award shall be confirmed by the city council of any such city and an appeal shall be taken therefrom the city council shall by resolution enacted by affirmative vote of a majority of all of its members elected appropriate and set aside in the treasury of the city, in a fund therein to be known as the condemnation and award fund, a sum of money equal in amount to such award, providing for the retention thereof therein during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then and in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use for which such condemnation was made.

[1921 c. 219 s. 1; 1931 c. 396] (6578-1)

**117.43 FUNDS FROM WHICH AWARD PAYABLE.** If any city of the first class shall in and by its charter have provided for the payment of awards of compensation and damages out of a particular fund, section 117.42 shall not apply thereto so as to change the fund out of which such awards shall be paid, as designated by the charter of any city of the first class.

[1921 c. 219 s. 2] (6578-2)

**117.44 COMMISSIONER OF CONSERVATION TO ACQUIRE CERTAIN LANDS.** Authority is given to the commissioner of conservation to acquire and to use the procedure set forth in Laws 1935, Chapter 52 as far as applicable in acquiring the land necessary for the Talcot lake project in Murray and Cottonwood counties, such land to be paid for from any available funds of the department of conservation or from money provided by the United States government.

[1935 c. 105 s. 1] (6578-3)

**117.45 AUTHORITY OF COMMISSIONER OF CONSERVATION.** Authority is likewise given to the commissioner of conservation to acquire and to use the procedure set forth in Laws 1935, Chapter 52, so far as applicable in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements.

[1935 c. 105 s. 2] (6578-4)