

## CHAPTER 90

## DIVISION OF FORESTRY; TIMBER LANDS

**90.01 DEFINITIONS.**

HISTORY. 1917 c. 162 s. 1; G.S. 1923 s. 6353; 1925 c. 276 s. 2; M.S. 1927 ss. 6353, 6394-2.

**90.02 CITATION.**

HISTORY. 1925 c. 276 s. 1; M.S. 1927 s. 6394-1.

**90.03 LAWS REVISED, EXPANDED, AND SUPERSEDED; RIGHTS AND OBLIGATIONS NOT AFFECTED.**

HISTORY. 1925 c. 276 s. 1; M.S. 1927 s. 6394-1.

**90.04 DUTIES OF STATE APPRAISER; OATH OF OFFICE.**

HISTORY. 1917 c. 162 ss. 2, 3; G.S. 1923 s. 6354, 6355; M.S. 1927 ss. 6354, 6355.

**90.05 STATE APPRAISERS.**

HISTORY. 1917 c. 162 s. 4; G.S. 1923 s. 6356; M.S. 1927 s. 6356; 1937 c. 369 s. 1.

**90.06 FALSE REPORTS A FELONY.**

HISTORY. 1917 c. 162 s. 5; G.S. 1923 s. 6357; M.S. 1927 s. 6357.

Riparian rights are valuable property rights of which an owner may not be deprived without just compensation in the manner provided by law. See also section 117.01. *Petraborg v Zontelli*. 217 M 536, 15 NW(2d)179.

**90.07 TRESPASS ON STATE LANDS.**

HISTORY. 1925 c. 276 s. 3; M.S. 1927 s. 6394-3; 1937 c. 368 s. 1.

**CUTTING; WHEN RIGHTFUL.** The only rightful cutting is with a permit; without a permit the cutting is wrongful. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

**CUTTING IN EXCESS OF THE PERMIT'S TERMS.** Although a permit has been issued and the defendant is rightfully in possession thereunder, if he cuts the timber in excess of that allowed by the terms of the permit, that cutting will be a trespass. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

**PROPRIETY OF ATTACKING VALIDITY OF PERMITS IN AN ACTION FOR TRESPASS BASED ON THIS SECTION.** See annotations on collateral attack in section 90.21 herein.

**WILFUL TRESPASS; MEANING.** Whether it is wilful is not determined by the mere fact that the defendant knowingly and purposely entered on the land and cut and removed the timber therefrom. The question is whether he intended to commit a wrong against the state by his act. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

**CASUAL AND INVOLUNTARY; MEANING.** The words "casual" and "involuntary" are intended to convey the idea that when an illegal cutting of timber lacks the elements of wilfulness and intention, then the damages shall be double

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the value only; those words should not be strictly construed. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

In *Lawrenz v Langford Elec. Co.* 206 M 315, 288 NW 727, wherein section 561.04 was involved, the court stated that a charge to the jury was appropriate that defined a casual trespass as meaning one that was thoughtless or accidental or unintentional.

**HOW NOTICE AFFECTS CHARACTER OF THE TRESPASS; ACTUAL NOTICE.** Actual notice of the adverse claim of the true owner is not inconsistent with good faith on the part of the trespasser. *Whitney v Huntington*, 37 M 197, 33 NW 561.

**CONSTRUCTIVE NOTICE.** It is not wilful trespass simply because the trespasser is charged with a knowledge of the law. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

**GOOD FAITH; WHAT IS.** The term "good faith" is used to characterize the acts of one who while legally a wrongdoer yet acted in the honest belief that his conduct was rightful. *Whitney v Huntington*, 37 M 197, 33 NW 561.

**GOOD FAITH AS A DEFENSE.** Although the parties are mistaken as to their rights and proceed in good faith, honesty of purpose cannot constitute a complete defense where the taking is unlawful. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

**EVIDENCE OF GOOD FAITH; ADMISSIBILITY.** Evidence of defendant's good faith is material and competent on the question of the character of the trespass. *State v Shevlin-Carpenter Co.* 62 M 99, 64 NW 81.

Under the particular facts it was held that the trespass conclusively appeared to be committed in good faith and it was ordered that the judgment be reduced to double damages. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

**MEASURE OF DAMAGES; COMMON LAW RULE.** If the defendant is a wilful trespasser the measure of damages is the full value at the time and place of demand, but if he is an unintentional or mistaken trespasser the measure is the value of the property at the time and place and in the condition it was taken. This was the Minnesota rule in trespass, trover, (and replevin). *State v Shevlin-Carpenter Co.* 62 M 99, 64 NW 81; *King v Merriman*, 38 M 47, 35 NW 570.

**MEASURE OF DAMAGES; COMMON LAW RULE ABROGATED, WHERE.** The provisions for multiple damages wholly abrogate the common law rule in cases of trespass. *State v Shevlin-Carpenter Co.* 99 M 158, 108 NW 935.

**MEASURE OF DAMAGES IN CONVERSION.** When the state brings an action for simple conversion not based on section 90.07 then the common law rule of the *Shevlin-Carpenter* case, 62 M 99, 64 NW 81, is the proper measure of damages rather than the multiple damages of section 90.07. *State v Clark*, 109 M 123, 123 NW 54.

**COMMON LAW RULE RECENTLY APPROVED; IN WHAT SITUATION.** Where the trespasser should be sued by the state as part of the remedy provided by what is now section 90.34 the Minnesota rule was stated to be that of the *Shevlin-Carpenter* case. *Martin v Federal Surety Co.* 58 F(2d) 79 (decided in 1932 under General Statutes 1923).

**ASSESSING TREBLE DAMAGES; INSTRUCTIONS.** There are two ways in which the amount to be recovered under the statute allowing treble damages for certain trespasses may be ascertained: first, the court may instruct the jury to assess the actual damages and render its verdict for treble the amount; second, it may instruct the jury to return the single damage and the fact whether it was wilful or involuntary and the court may then treble the damages so found. *Tait v Thomas*, 22 M 537.

**MULTIPLE DAMAGES ARE PENALTIES.** Where the state sues for enhanced damages the action is for a penalty. *State v Buckman*, 95 M 272, 104 NW 240, 289.

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**DENIAL OF RIGHT TO REMUNERATION OR ALLOWANCE AS PART OF THAT PENALTY.** The prohibition in section 90.07 of any deduction from the amount of the actual damages is part of the penalty. *State v Clark*, 109 M 123, 123 NW 54.

**STATUTE OF LIMITATIONS NO BAR.** The three-year statute of limitations on actions for the recovery of a penalty formerly held applicable to actions under this section abrogated by statute. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

**CIVIL ACTION PROPER TO RECOVER PENALTY.** Damages in the nature of a penalty can be recovered by the state in civil actions. *State v Shevlin-Carpenter Co.* 99 M 158, 108 NW 935.

**COSTS AND DISBURSEMENTS; STATE'S LIABILITY FOR.** Costs and disbursements are taxable against the state in civil action to recover penal damages. *State v Buckman*, 95 M 272, 104 NW 240, 289.

**TREATMENT OF TRESPASSERS; DISCRETION IN THE DEPARTMENT.** The conservation department must in all instances where the trespass was casual and involuntary charge double damages and under section 90.07 there appears to be no opportunity for discretion, regardless of the facts involved, as far as the department is concerned. 1936 OAG 73.

**COMPLAINT; INCONSISTENT ALLEGATIONS.** Complaint sustained as one in trespass notwithstanding inconsistent allegations in breach of contract. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

**JOINER OF TRESPASS ACTIONS.** In *State v Buckman*, 95 M 272, 104 NW 240, 289, the state sued on three causes of actions in trespass, in two of them asking for triple damages and in the other double damages. There was a demurrer on the ground of improper joinder. The demurrer was sustained and the lower court's action was affirmed on appeal.

**RECOVERY IN THE ALTERNATIVE.** If the state should fail to prove the allegations of wilfulness and the trespass should turn out to be casual and involuntary, recovery could be had in double damages. *State v Shevlin-Carpenter Co.* 99 M 158, 108 NW 935.

**ACT CONSTITUTIONAL.** *State v Shevlin-Carpenter Co.* 99 M 158, 108 NW 935; *Shevlin-Carpenter Co. v State*, 218 US 57, 30 SC 603, 54 L.Ed. 930.

**STATUTORY CONSTRUCTION.** This statute contains remedial and penal features and as respects the former is entitled to a liberal construction but as to the latter must be strictly construed. *State v Shevlin-Carpenter Co.* 99 M 158, 108 NW 935.

## **90.08 FORCIBLE ENTRY AND DETAINER; RESTRAINTS.**

**HISTORY.** 1925 c. 276 s. 4; M.S. 1927 s. 6394-4.

## **90.09 PROSECUTIONS.**

**HISTORY.** 1925 c. 276 s. 5; M.S. 1927 s. 6394-5.

## **90.10 PROCEEDS OF SALES OF TIMBER SEIZED AND DAMAGES RECOVERED.**

**HISTORY.** 1925 c. 276 s. 6; M.S. 1927 s. 6394-6.

## **90.11 POWERS OF EXECUTIVE COUNCIL.**

**HISTORY.** 1925 c. 276 s. 8; M.S. 1927 s. 6394-8; 1933 c. 375 s. 1; 1937 c. 368 s. 2; 1939 c. 32.

**90.12 TIMBER RESOURCES.**

HISTORY. 1925 c. 276 s. 9; M.S. 1927 s. 6394-9.

**90.13 SALES OF STATE TIMBER.**

HISTORY. 1925 c. 276 s. 10; M.S. 1927 s. 6394-10.

**EFFECT OF SALE ON CREDIT.** Where under the law of Wisconsin certain sales of timber were required to be made for cash and the state's officer made a credit sale, the purchaser some time later delivering over a note for the price, it was held that the state was not bound by the sale and did not lose its right of property in the timber, but neither could the state recover on the note, since it was rendered null by reason of the consideration for it being the unauthorized and void sale. *State of Wisconsin v Torinus*, 24 M 332.

**90.15 STATE APPRAISERS; SUPERINTENDENT OF STATE TIMBER.**

HISTORY. 1925 c. 276 s. 11; M.S. 1927 s. 6394-11.

**METHODS OF ASCERTAINING; VOLUME TABLES.** Use of volume tables in rescaling where the usual top and stump scale cannot be made discussed in *State v Horr*, 163 M 141, 203 NW 979.

Laws 1931, Chapter 186, creating a department of conservation and transferring to the conservation commissioner all functions of the state auditor in respect to state lands, as land commissioner or otherwise, is constitutional. *State v Finnegan*, 188 M 54, 246 NW 521.

**90.16 RE-SCALES, RECOUNTS, AND RE-ESTIMATES OF TIMBER.**

HISTORY. 1925 c. 276 s. 12; M.S. 1927 s. 6394-12.  
See annotations to section 90.28 following.

**90.17 TIMBER SOLD AT PUBLIC AUCTION.**

HISTORY. 1925 c. 276 s. 13; M. S. 1927 s. 6394-13.

**ADVERTISING AND SELLING ARE MINISTERIAL DUTIES.** Where the officer proceeds to advertise and sell to the highest bidder he is acting in a ministerial capacity. *State v Shevlin-Carpenter Co.* 62 M 79, 64 NW 81.

**90.18 STUMPAGE; SALES, NOTICES.**

HISTORY. 1925 c. 276 s. 14; M.S. 1927 s. 6394-14.

Under a permit to cut and remove timber from state land, issued under sections 90.18 to 90.42, the holder thereof may be considered a general contractor of the state, so as to be liable to pay workmen's compensation to an accidentally injured employee of a subcontractor who cuts and removes the timber without carrying workmen's compensation insurance. *Nylund v Thornberg*, 209 M 79, 295 NW 411.

**90.19 NUMBER OF SALES OF TIMBER IN EACH YEAR.**

HISTORY. 1925 c. 276 s. 15; M.S. 1927 s. 6394-15.

**90.20 SALE OF TIMBER; MANNER, PAYMENTS; RE-SALES.**

HISTORY. 1925 c. 276 s. 16; M.S. 1927 s. 6394-16.

**RE-SALES; TERMS, POWER OF LEGISLATURE TO PROVIDE.** The legislature has the power to prescribe the terms upon which it would permit timber on state-owned lands to be sold. *State v Rat Portage Lbr Co.* 106 M 1, 115 NW 162, 117 NW 922.

**90.21 PERMITS TO CUT AND REMOVE TIMBER.**

**HISTORY.** 1925 c. 276 s. 17; M.S. 1927 s. 6394-17; 1937 c. 368 s. 3.

**WHAT RIGHTS ACQUIRED.** The holder acquired only such rights as the permit conferred and no others. *State v Rat Portage Lbr. Co.* 106 M 1, 115 NW 162, 117 NW 922.

**PERMITS AS EVIDENCE OF VALID SALE.** Permits reciting on their face facts showing a compliance with the provisions of the statute are prima facie evidence of a valid sale of the timber therein described. *State v Akeley Lbr. Co.* 107 M 54, 119 NW 387.

**COLLATERAL ATTACK, WHEN.** When there has been an absolute want of authority in the official to issue the permit collateral attack on it will be allowed, although it recites on its face facts showing that the law has been complied with. *State v Shevlin-Carpenter Co.* 62 M 99, 64 NW 81. When it can be said that it was not a case of want of power or jurisdiction, the courts will not allow collateral attack. *State v Red River Lbr. Co.* 109 M 185, 123 NW 412; *White and Street Townsite Co. v J. Neils Lbr. Co.* 100 M 16, 110 NW 371 (cases involved land sale certificates rather than timber sale permits). See, though, *St ate v Red River Lbr. Co.* 157 M 7, 195 NW 495.

**PERMIT HOLDER; LIABILITY IN TRESPASS.** Where the permit holder cuts timber in an amount or size greater than the permit allows, he becomes liable in trespass but not in an action in contract on the permit. *State v Brooks-Scanlon Lbr. Co.* 122 M 400, 142 NW 717.

**PERMIT HOLDER; LIABILITY FOR WORKMEN'S COMPENSATION.** The holder of a valid timber permit is a general contractor of the state in cutting and removing timber and hence liable for workmen's compensation. *Nylund v Thornberg*, 209 M 79, 295 NW 411.

**90.215 LOGGING OPERATIONS; CUTTING PRACTICES.**

**HISTORY.** 1943 c. 290; 1945 c. 149 ss. 1 to 3.

**90.22 SURETY BONDS BY TIMBER PURCHASERS.**

**HISTORY.** 1925 c. 276 s. 18; M.S. 1927 s. 6394-18; 1939 c. 120.

**SURETIES; SUBROGATION.** The right of subrogation was available to the surety even before the passage of the present law expressly providing for it. *Nat. Surety Co. v Webster Lbr. Co.* 187 M 50, 244 NW 290; *Martin v Federal Surety Co.* 58 F(2d) 79.

**AVAILABLE TO WHAT SURETIES.** The right to subrogate is not made to depend on the surety being an accommodation rather than a compensation surety. *Martin v Federal Surety Co.* 58 F(2d) 79.

**REMEDY UNDER SUBROGATION.** Surety as subrogee could pursue whatever remedy it found in the state. *Nat. Surety Co. v Webster Lbr. Co.* 187 M 50, 244 NW 290.

**RIGHT OF INDEMNITY; REMEDIES.** The surety has two remedies to enforce its right of indemnity: it could take an assignment of the judgment from the state and enforce it against any one liable over for contribution or indemnity; or it could sue the permit holder on the original express contract. *Maryland Casualty Co. v Baune*, 184 M 550, 239 NW 598.

**SUBROGATION AGAINST THIRD PARTY.** Where subrogation is sought against a third party there must have been participation in the original wrongful act or negligence on the part of the third party but it is not necessary that such negligence be culpable or gross. *Martin v Fed. Surety Co.* 58 F(2d) 79.

Performance guarantee by a bank does not meet requirements of surety bond. OAG Dec. 2, 1944 (27h).

### 90.23 PERMITS ASSIGNABLE; BONDS AND RIGHTS OF ASSIGNEES.

HISTORY. 1925 c. 276 s. 19; M.S. 1927 s. 6394-19.

APPROVAL AND BOND. The statutory requirements of approval and bond of assignee before assignment are for the protection of the state and are not designed to regulate the rights as between the original permit holder, his assignee and their bondsmen. *Aetna Cas. & Sur. Co. v Equitable Sur. Co.* 14 M 326, 177 NW 137.

SURETIES; ORDER OF LIABILITY TO STATE. Where the sureties are liable on separate bonds the state may sue each separately and it is not required to exhaust its remedy on the second bond before resorting to the first. *State v Aetna Cas. & Sur. Co.* 140 M 70, 167 NW 294.

SURETIES; LIABILITY INTER SE. In *Aetna Cas. & Sur. Co. v Equitable Sur. Co.* 145 M 326, 177 NW 137, the surety of the assignor sued the surety of the assignee, held that under the facts the latter surety was primarily liable as between themselves.

### 90.24 SALES VOID, WHEN; REFUNDS.

HISTORY. 1925 c. 276 s. 20; M.S. 1927 s. 6394-20.

EVERY DEFECT NOT JURISDICTIONAL. Every failure to comply with the statute is not a jurisdictional defect which renders a sale void. *State v Akeley Lbr. Co.* 107 M 54, 119 NW 387.

COLLATERAL ATTACK ON VOID SALE. In *State v Red River Lbr. Co.* 109 M 185, 123 NW 412, a statute similar to this section, which declared all sales void when not in conformity with the statutory requirements was held not to change the rule against collateral attack.

### 90.25 PURCHASE MONEY FORFEITED, WHEN.

HISTORY. 1925 c. 276 s. 21; M.S. 1927 s. 6394-21.

WHO IS THE PROPERTY IN WHEN PERMIT EXPIRES; COMMON LAW RULE. The common law rule was to the effect that title did not revert in the land owner on failure to remove timber before the time limited. *Alexander v Bauer*, 94 M 174, 102 NW 387.

COMMON LAW RULE CHANGED. This section changed the common law rules. Now, after the permit expires timber not removed is the absolute property of the state. *State v Rat Portage Lbr. Co.* 106 M 1, 115 NW 162, 117 NW 922.

CONVERSION BY PERMIT HOLDER. In the *Rat Portage* case, supra, the state recovered in conversion where the defendant, the holder of the expired permit, had removed timber after the permit's expiration which he had cut while the permit was in force. That rule was applied to a situation where the timber was not removed until after the expiry of an extension period. *State v Le Sure Lbr. Co.* 106 M 534, 115 NW 167, 117 NW 923. And where the defendant both cut and removed after the permit expired he was likewise held liable in conversion. *State v Clark*, 109 M 123, 123 NW 54.

MEASURE OF DAMAGES IN CONVERSION. Where the state brings a simple action in conversion not based on section 90.07 only actual damages will be assessed against the converter, and according to the common law rule of *State v Shevlin-Carpenter Co.* 66 M 99, 64 NW 81, that will be the stumpage value of the timber where the act of conversion is the cutting and removing of standing timber (*State v Clark*, 109 M 123, 123 NW 54); it will be the value of logs where the act of conversion is merely that of removing timber whose cutting was not a conversion. *State v Rat Portage Lbr. Co.* 106 M 1, 117 NW 922.

STATUTORY CONSTRUCTION. The rule of construing so as to avoid a forfeiture does not apply to the provision which forbids cutting and removing for there is no forfeiture involved. *State v Rat Portage Lbr. Co.* 106 M 1, 115 NW 162, 117 NW 922.

**90.26 SCALING OF TIMBER; REPORTS; EXAMINATIONS OF LAND AND TIMBER COVERED BY PERMITS.**

HISTORY. 1925 c. 276 s. 22; M.S. 1927 s. 6394-22.

TIMBER COVERED BY PERMIT. Determining price on timber remaining after permit expires.

The amount of timber uncut or unremoved under the permit is to be ascertained by scale or estimate. 1916 OAG 563.

**90.27 DEPUTY SURVEYORS GENERAL.**

HISTORY. 192 c. 276 s. 23; M.S. 1927 s. 6394-23.

**90.28 RE-SCALES ON DEMAND OF DIRECTOR.**

HISTORY. 1925 c. 276 s. 24; M.S. 1927 s. 6394-24.

TERMS OF STATUTE READ INTO PURCHASER'S CONTRACT. The provisions of the statute authorizing the re-scale and making it final as to the amount of timber cut must be read into and considered part of the contract. State v Equitable Sur. Co. 140 M 48, 167 NW 292.

RE-SCALE MADE FINAL; AS RULE OF EVIDENCE. The statute does not fix rules of evidence. State v Equitable Sur. Co. 140 M 48, 167 NW 292.

IMPEACHING RE-SCALES. A re-scale is subject to impeachment for fraud or mistake. State v Equitable Sur. Co. 140 M 48, 167 NW 292.

LACHES. The doctrine of laches probably has no application to the rights to demand a re-scale. State v Brooks-Scanlon Lbr. Co. 122 M 400, 142 NW 717.

NOTICE AND HEARING. Neither notice to the permit holder nor an opportunity to be heard is necessary. State v Equitable Sur. Co. 140 M 48, 167 NW 292; State v Brooks-Scanlon Lbr. Co. 122 M 400, 142 NW 717.

DEMAND; ON WHOM PROPER. Immaterial that a new surveyor general had been appointed between the time of the original and the re-scale; the demand was properly made on the new surveyor general. State v Brooks-Scanlon Lbr. Co. 122 M 400, 142 NW 717.

RE-SCALES MUST BE JOINTLY MADE. Where the re-scaling is done by two or more jointly the labors of each should cover the entire work. State v Brooks-Scanlon Lbr. Co. 122 M 400, 142 NW 717.

**90.29 SCALING STATE TIMBER; FEES, CHARGES.**

HISTORY. 1925 c. 276 s. 25; M.S. 1927 s. 6394-25.

**90.30 SCALING TIMBER FOR STATE; SETTLEMENT OR COMPROMISE OF STATE CLAIMS FOR TIMBER FROM STATE LANDS; OFFENSES; PENALTIES.**

HISTORY. 1925 c. 276 s. 26; M.S. 1927 s. 6394-26.

**90.31 RECORD OF TIMBER SALES.**

HISTORY. 1925 c. 276 s. 28; M.S. 1927 s. 6394-28.

**90.32 STUMPAGE BOOK.**

HISTORY. 1925 c. 276 s. 29; M.S. 1927 s. 6394-29.

**90.33 STATEMENTS OF TIMBER CUT UNDER PERMITS; TITLE PASSES, WHEN.**

HISTORY. 1925 c. 276 s. 30; M.S. 1927 s. 6394-30.

### 90.34 DEFERRED PAYMENTS.

HISTORY. 1925 c. 276 s. 31; M.S. 1927 s. 6394-31; 1933 c. 375 s. 2.

REMEDY NOT EXCLUSIVE. Because the legislature saw fit to prescribe the procedure for enforcing the remedy of taking possession of its property is not reason to say that it has abandoned all other remedies it might have. *Martin v Federal Sur. Co.* 58 F(2d) 79.

ESTOPPEL MAY NOT BE ASSERTED AGAINST THE STATE. The state is not estopped by the unauthorized acts of its officers. *State v Shevlin-Carpenter Co.* 62 M 99, 64 NW 81; *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738. Acquiescence by state officials or a failure to object neither works an estoppel against the state nor is equivalent to a permit. *State v Rat Portage Lbr. Co.* 106 M 1, 115 NW 162, 117 NW 922.

STATUTE'S PROVISION. The provision in the act against estoppel is intended to remove any doubt as to whether it can be asserted against the state. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738. (The provision referred to is that of section 90.34 which speaks of precluding the state from afterwards claiming, etc., the word "preclude" being now substituted for the word "estop" found in the earlier act.)

EVIDENCE WHICH CAN NOT CONSTITUTE AN ESTOPPEL MAY YET BE PERTINENT TO SECTION 90.01. Acts of its officers not amounting to an estoppel against the state do bear on the question of good faith and affect the character of the trespass. *State v Shevlin-Carpenter Co.* 102 M 470, 113 NW 634, 114 NW 738.

RATIFICATION OF VOID SALE. Only an act of the legislature could ratify the void sale resulting from the officer's unauthorized act. *State of Wisconsin v Torinus*, 24 M 332.

### 90.35 TIMBER UNLAWFULLY CUT OR REMOVED FROM STATE LANDS; POSSESSION AND SALE.

HISTORY. 1925 c. 276 s. 32; M.S. 1927 s. 6394-32.

CONVERSION BY PURCHASER FROM PERMIT HOLDER. One who purchases timber from a third party while the state has title is a converter. *Martin v Federal Sur. Co.* 58 F(2d) 79.

Where from the evidence it appeared that the purchaser was familiar with logging operations and the sale of ties, he was held as a matter of law to have had notice that title to the timber was in the state. *National Sur. Co. v Webster Lbr. Co.* 187 M 50, 244 NW 290.

FOLLOWING TIMBER WHEN INTERMINGLED. It is not necessary to prove the identity of each stick or type of timber where it has been intermingled so that it cannot be identified or plainly separated. 1940 OAG 7.

Timber on tax-forfeited lands taken by trespass and seized by the conservation department, cannot be legally released to the trespasser. 1942 OAG 6, Oct. 10, 1941 (27-G).

### 90.36 TRESPASSES.

HISTORY. 1925 c. 276 s. 33; M.S. 1927 s. 6394-33.

### 90.37 APPREHENSION OF TRESPASSERS, REWARD FOR.

HISTORY. 1925 c. 276 s. 34; M.S. 1927 s. 6394-34.

### 90.38 LOGGERS' NOTICES.

HISTORY. 1925 c. 276 s. 35; M.S. 1927 s. 6394-35.



**90.39 RECORDS AS NOTICE.**

HISTORY. 1925 c. 276 s. 36; M.S. 1927 s. 6394-36.

CONSTRUCTIVE NOTICE. *Martin v Federal Sur. Co.* 58 F(2d) 79.

**90.40 STATUTES OF LIMITATION NOT APPLICABLE; VENUE OF PROCEEDINGS.**

HISTORY. 1925 c. 276 s. 37; M.S. 1927 s. 6394-37.

LIMITATIONS; ACTION FOR PENALTY. Prior to the enactment of this section it had been held that an action brought by the state for enhanced damages for trespass was an action for a penalty and hence must be commenced within three years or else the right to recover anything above actual damages would be barred. *State v Buckman*, 95 M 272, 104 NW 240, 289.

ACTION FOR CONVERSION. But the three-year limitation had not been held applicable to suits by the state in simple conversion rather than for the penalty. *State v Rat Portage Lbr. Co.* 106 M 1, 115 NW 162, 117 NW 922.

LIMITATIONS; PURPOSE OF STATUTE. The purpose of the statute was to render inapplicable the three-year limitation to actions under section 90.07 and remove all limitations. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

EFFECT OF STATUTE. The statute removes all limitations upon the time for bringing suit for trespass on state lands and prevents any limitation as to bringing an action to recover the amount due for timber taken. *State v Iowa Bonding & Cas. Co.* 180 M 160, 230 NW 484.

RETROACTIVE EFFECT. The statute doing away with limitations is applicable though the trespass was prior to the enactment of the legislation. *State v Brooks-Scanlon Lbr. Co.* 128 M 300, 150 NW 912.

APPLICATION TO SURETIES. Since the statute does not run in favor of the purchaser it does not run in favor of the surety while the former's liability continues. *State v Iowa Bonding & Cas. Co.* 180 M 160, 230 NW 484.

VENUE, IN TIMBER TRESPASS CASES, WHERE TITLE TO LAND IS INVOLVED. In the case of *State v Miles* the district court of Ramsey county, in a memorandum opinion dated February 10, 1942, held that the action to recover treble damages is transitory even though the title to the land may be involved and that the venue may be laid at the election of the attorney general, according to section 90.40.

**90.41 VIOLATIONS; PENALTIES.**

HISTORY. 1925 c. 276 ss. 26, 27; M.S. 1927 ss. 6394-26, 6394-27.

**90.42 LAWS NOT AFFECTED.**

HISTORY. 1925 c. 276 s. 38; M.S. 1927 s. 6394-38.