

## CHAPTER 91

## DIVISION OF FORESTRY; LOGS AND LUMBER

**91.01 STATE SURVEYOR GENERALLY; SALARY.**

HISTORY. 1919 c. 440 s. 1; G.S. 1923 s. 6630; M.S. 1927 s. 6603.

**91.02 DUTY OF SURVEYOR GENERAL.**

HISTORY. 1919 c. 440 s. 2; G.S. 1923 s. 6604; M.S. 1927 s. 6604.

Laws 1919, Chapter 440, Section 2, has not been repealed. The surveyor general of logs and lumber is now, in scaling state timber, no longer subject to the supervision of the state auditor but subject to the supervision of the commissioner of conservation and the director of the division of forestry. 1934 OAG 175, June 27, 1933 (429-e).

**91.03 DEPARTMENT TO CHECK SCALING OF TIMBER.**

HISTORY. 1919 c. 440 s. 3; G.S. 1923 s. 6605; M.S. 1927 s. 6605.

**SUPERVISION OVER SURVEYOR GENERAL.** The surveyor general in scaling state timber is subject to the supervision of the commissioner of conservation and the director of the division of forestry. 1934 OAG 175.

**91.04 SURVEYS TO BE MADE BY SURVEYOR GENERAL.**

HISTORY. 1919 c. 440 s. 4; G.S. 1923 s. 6606; M.S. 1927 s. 6606.

**SURVEY; WHAT IS.** A survey by the surveyor general does not mean the scale bill or the record thereof or any other written document or record; it means the act of counting and measuring the logs and ascertaining how many feet they contain. *Antill v Potter*, 69 M 192, 71 NW 935.

**AVERAGING; WHAT IS.** Use of the word "averaged" in a scale bill in the absence of explanation or further evidence shows that the number of feet indicated was ascertained not by actual measurement but by averaging. *Pratt v Ducey*, 38 M 517, 38 NW 611.

**AVERAGING UNAUTHORIZED.** The statute contemplates actual inspection and measurement by officers and mere estimates from uncertain data or information are not authorized unless there is some need for it. *Douglas v Leighton*, 53 M 176, 54 NW 1053.

"Cord" defined. See 1934 OAG 164.

**ON SALE, SCALE NOT REQUIRED.** The law does not require logs to be scaled by the surveyor general in order to make a valid sale of them, but the parties may so stipulate. *Leighton v Grant*, 20 M 345 (298).

**CORRECTING THE SCALE.** The surveyor general's scale is not final and conclusive where it has not been made so by a stipulation in the contract, and such scale is subject to correction for mistake and it is unnecessary to show fraud or inaccuracy amounting to bad faith. *Nelson v Betcher Lbr. Co.* 88 M 517, 93 NW 661. And *Owen v J. Neils Lbr. Co.* 125 M 15, 145 NW 402; *Fortier v Skibo Timber Co.* 111 M 518, 127 NW 414.

**SCALE MADE CONCLUSIVE BY AGREEMENT.** A stipulation in a contract that the decision of the surveyor general as to the measurement of logs should be final does not conflict with this section and his scale will be conclusive upon the parties except as to fraud or gross mistake. *Leighton v Grant*, 20 M 345; *Boyle v*

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Musser-Sauntry L. L. & Mfg. Co. 77 M 206, 79 NW 659; State v Equitable Sur. Co. 140 M 48, 167 NW 292.

**ESTIMATES, AVERAGES.** Where the contract provided that the scale should be conclusive but the scale itself showed that part of the timber had been averaged the scale did not conclude the parties. *Douglas v Leighton*, 53 M 176, 54 NW 1053.

Distinguish *Hayday v Hammermill Paper Co.* 176 M 315, 223 NW 614, 63 ALR 210.

**WAIVER OF STIPULATION MAKING SCALE CONCLUSIVE.** The contract involved in *Porteous v Commonwealth Lbr. Co.* 80 M 234, 83 NW 143, contained a provision making final the original scale. Later the parties agreed to waive the original scale and to cause a re-scale to be made. On the facts the court, finding sufficient consideration, upheld the new agreement.

**FORMALITIES OF BILL; COMMENT.** In *Glaspie v Keator*, 5 CCA 474, 56 F 203, the court observed that these documents were not drawn by persons of whom great precision in the use of language could be expected.

**DATE.** The date of the scale bill is presumptively that the completion of the scale. *Clark v Nelson Lbr. Co.* 34 M 289, 25 NW 628.

**SEAL, AUTHENTICITY.** The official seal of the surveyor general's office is not required to be attached to the scale bill, nor need it appear on the face of the bill that the scaler was the deputy of the surveyor general. *Glaspie v Keator*, 5 CCA 474, 56 F 203.

**SCALE MARK.** No scale mark need be placed on the bill by the surveyor general where the scaling is done not for the purpose of transfer and delivery but at the request of the parties. *Clark v Nelson Lbr. Co.* 34 M 289, 25 NW 628.

**SCALE BILL AS EVIDENCE.** As prima facie evidence, *Clark v Nelson Lbr. Co.* 34 M 289, 25 NW 628.

The bill and the record thereof are not the exclusive or the conclusive evidence of the survey. *Antill v Potter*, 69 M 192, 71 NW 935.

**ADMISSIBILITY, WHERE BILL SHOWS AVERAGING.** A scale under which part of the logs were averaged and part scaled cannot be considered evidence as to the part averaged. *Pratt v Ducey*, 38 M 517, 38 NW 611. See *Douglas v Leighton*, 53 M 176; 54 NW 1053.

**COSTS OF SCALING; WHERE BOOM COMPANY LIABLE.** See *Boyle v Musser-Sauntry L. L. & Mfg. Co.* 77 M 206, 79 NW 659.

## **91.05 ACTUAL EXPENSE TO BE PAID BEFORE SURVEY OR SCALING.**

**HISTORY.** 1919 c. 440 s. 5; G.S. 1923 s. 6607; M.S. 1927 s. 6607.

## **91.06 QUALIFICATIONS NECESSARY AND BOND TO BE GIVEN.**

**HISTORY.** 1919 c. 440 s. 6; G.S. 1923 s. 6608; M.S. 1927 s. 6608.

## **91.07 ACCEPTANCE OF COMPENSATION OR GRATUITY A FELONY.**

**HISTORY.** 1919 c. 440 s. 7; G.S. 1923 s. 6609; M.S. 1927 s. 6609.

## **91.08 ALLOWANCE FOR DEFECTS; RECORD.**

**HISTORY.** August 9, 1858; P.S. 1858 c. 122 s. 35; G.S. 1866 c. 32 s. 12; 1878 c. 19 s. 1; G.S. 1878 c. 32 s. 12; G.S. 1894 s. 2398; R.L. 1905 s. 2569; G.S. 1913 s. 5459; G.S. 1923 s. 6612; M.S. 1927 s. 6612.

## **91.09 POSTING SCALES; SCRIBNER'S RULE.**

**HISTORY.** August 9, 1858; P.S. 1858 c. 122 s. 36; G.S. 1866 c. 32 s. 13; G.S. 1878 c. 32 s. 13; G.S. 1894 s. 2399; R.L. 1905 s. 2570; G.S. 1913 s. 5460; G.S. 1923 s. 6613; M.S. 1927 s. 6613. 1934 OAG 164.

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### 91.10 SURVEY OF POSTS AND POLES; RULES.

HISTORY. 1903 c. 346 s 1; R.L. 1905 s. 2572; G.S. 1913 s. 5462; G.S. 1923 s. 6615; M.S. 1927 s. 6615.

### 91.11 TRANSFER OF LOGS; SCALE BILL; DELIVERY.

HISTORY. August 9, 1858; P.S. 1858 c. 122 s. 38; G.S. 1866 c. 32 s. 15; G.S. 1878 c. 32 s. 15; G.S. 1894 s. 2401; R.L. 1905 s. 2573; G.S. 1913 s. 5453; G.S. 1923 s. 6616; M.S. 1927 s. 6616.

PROVISION FOR SURVEY CONSTRUED AS PERMISSIVE. This section prescribes what the officer shall do in such cases if he surveys the logs. *Lovejoy v Itasca Lbr. Co.* 46 M 216, 48 NW 911.

### 91.12 RECORDING.

HISTORY. August 9, 1858; P.S. 1858 c. 122 ss. 39, 40; G.S. 1866 c. 32 ss. 16, 17; 1877 c. 18 s. 3; G.S. 1878 c. 32 ss. 16, 17; G.S. 1894 ss. 2402, 2403; 1903 c. 346 s. 3; R.L. 1905 s. 2575; G.S. 1913 s. 5465; G.S. 1923 s. 6618; M.S. 1927 s. 6618.

TIMBER PERMITS; FEES. 1920 OAG 774.

### 91.13. BOOKS OF RECORD; EVIDENCE.

HISTORY. G.S. 1866 c. 32 ss. 17, 22; G.S. 1878 c. 32 ss. 17, 22; G.S. 1894 ss. 2403, 2408; R.L. 1905 s. 2576; G.S. 1913 s. 5468; G.S. 1923 s. 6621; M.S. 1927 s. 6621.

PRIMA FACIE. *Lindsay & Phelps Co. v Mullin*, 176 US 126 (142), 20 SC 325, 44 L. Ed. 400.

### 91.14 TRANSFERS; RECORD AND EFFECT.

HISTORY. August 9, 1858; P.S. 1858 c. 122 s. 41; G.S. 1866 c. 32 s. 18; G.S. 1878 c. 32 s. 18; G.S. 1894 s. 2404; R.L. 1905 s. 2577; G.S. 1913 s. 5469; G.S. 1923 s. 6622; M.S. 1927 s. 6622.

### 91.15 INVALID WITHOUT RECORD; CERTIFICATES AS EVIDENCE.

HISTORY. August 9, 1858; P.S. 1858 c. 122 s. 42; G.S. 1866 c. 32 ss. 19, 22; 1871 c. 28 s. 4; G.S. 1878 c. 32 ss. 19, 22; G.S. 1894 ss. 2405, 2408; R.L. 1905 s. 2578; G.S. 1913 s. 5470; G.S. 1923 s. 6623; M.S. 1927 s. 6623.

UNRECORDED TRANSFERS; MEANING OF PROVISION ON. The meaning of the statute is that no unwritten and unrecorded transfer, etc., of any log mark or logs shall be valid or binding, except between the parties thereto, as respects a party who has acquired some right thereto from the person who upon the record appears to be the owner of the same. *Gaslin v Bridgman*, 26 M 442, 4 NW 1111.

LIEN AS ENCUMBRANCE. Actual possession of logs held sufficient notice of claim of lien for boomage as against the innocent purchaser from the owner, and the statute was held not to apply. *Akeley v Miss & Rum River Boom Co.* 64 M 108, 67 NW 208.

GARNISHMENT AS ENCUMBRANCE. If a garnishment is in any sense an encumbrance it is not one within the meaning of this section, which evidently refers to an encumbrance evidenced by a written contract between the parties. *Farmers & Mechanics Bank v Welles*, 23 M 475.

### 91.16 RECORD OF LOG MARKS; EFFECT.

HISTORY. G.S. 1866 c. 32 s. 23; 1875 c. 82 s. 1; G.S. 1878 c. 32 s. 27; G.S. 1894 s. 2413; R.L. 1905 s. 2579; G.S. 1913 s. 5471; G.S. 1923 s. 6624; M.S. 1927 s. 6624.

As prima facie evidence, *Fox v Ellison*, 43 M 41, 44 NW 671.

**91.17 PROOF BEFORE RECORD.**

HISTORY. 1905 c. 207 s. 1; G.S. 1913 s. 5472; G.S. 1923 s. 6625; M.S. 1927 s. 6625.

**91.18 FALSE MARKING; PENALTY.**

HISTORY. 1905 c. 207 s. 2; G.S. 1913 s. 5473; G.S. 1923 s. 6626; M.S. 1927 s. 6626.

**91.19 TRANSFERS; LOGS, WHEN DEEMED ABANDONED.**

HISTORY. G.S. 1866 c. 32 s. 23; 1875 c. 82 s. 1; G.S. 1878 c. 32 s. 27; G.S. 1894 s. 2413; R.L. 1905 s. 2580; G.S. 1913 s. 5474; G.S. 1923 s. 6627; M.S. 1927 s. 6627.

**ABANDONMENT; CONSTRUCTION OF ORIGINAL STATUTE ON ABANDONMENT.** The original of the present law on abandonment of timber has been construed to apply only to logs afloat on a public highway and not to logs on land, or in the actual possession of the owner. *Plummer v Mold*, 14 M 403 (532). Nor did the act apply to logs which though in water were confined in a bight or inlet on the owner's land or enclosed by booms or otherwise so situated that they could not float into the stream or become intermingled. *Stanchfield v Sartell*, 35 M 429, 29 NW 145.

**PRESENT LAW; APPLICATION.** The statute has reference to all unmarked logs floating in the river and justifies any person in taking possession thereof and claiming them as his own. *Astell v McCuish*, 110 M 61, 124 NW 458. The statute does not apply to logs in the possession or control of the original owner or of those to whom he has entrusted them. *Somers v Kane*, 162 M 40, 202 NW 27.

**WHEN DEFENDANT MAY NOT URGE APPLICATION OF STATUTE.** The statute does not apply in behalf of the defendant whose negligent act was responsible for the owner's loss of possession or control. *Cotton Lbr. & M. Co. v St. Louis River D. & I. Co.* 115 M 484, 132 NW 1126.

The statute does not apply in behalf of the defendant whose failure to perform his agreement was responsible for the abandonment. *Sheldon-Mather Timber Co. v Itasca Lbr. Co.* 117 M 355, 135 NW 1132.

**RECOGNITION OF OWNERSHIP AS INCONSISTENT WITH CLAIM OF ABANDONMENT.** There would be questionable support for abandonment where the plaintiff asserted his ownership at the time defendant took the logs which he now claims were abandoned and the defendant recognized plaintiff's title and promised to settle with him. *Niska v International Lbr. Co.* 160 M 433, 200 NW 467.

**ABANDONMENT; CONFUSION OF GOODS.** In *Somers v Kane*, 168 M 420, 210 NW 287, the defendant had taken logs left by the plaintiff, only part of which were later held to have been abandoned. Plaintiff now claimed that there had been a wrongful intermingling of the abandoned and the unabandoned logs and that by applying the doctrine of confusion of goods he was entitled to all the logs. Held, that the doctrine should not be applied, since it was reasonably possible to put plaintiff in as good a position as if there had been no intermingling. Discussed in 11 MLR 274.

**ABANDONMENT; WHERE LOGS ARE MARKED AND THE MARK IS OF RECORD.** See 6 MLR 149.

**CONSTITUTIONALITY.** The abandonment statute is a constitutional exercise of the state's police power. *Somers v Kane*, 162 M 40, 202 NW 27.

**91.20 STEALING LOGS; CHANGING MARKS.**

HISTORY. G.S. 1866 c. 32 s. 24; G.S. 1878 c. 32 s. 31; G.S. 1894 s. 2419; 1895 cc. 35, 36; R.L. 1905 s. 2581; G.S. 1913 s. 5475; G.S. 1923 s. 6628; M.S. 1927 s. 6628.

**91.21 RECEIVER LIKEWISE GUILTY.**

HISTORY. G.S. 1866 c. 32 s. 25; G.S. 1878 c. 32 s. 32; G.S. 1894 s. 2420; R.L. 1905 s. 2582; G.S. 1913 s. 5476; G.S. 1923 s. 6629; M.S. 1927 s. 6629.

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### 91.22 FALSIFYING SCALE BILL.

HISTORY. 1895 c. 344; R.L. 1905 s. 2583; G.S. 1913 s. 5477; G.S. 1923 s. 6630; M.S. 1927 s. 6630.

### 91.23 SIDE BOOMS.

HISTORY. G.S. 1866 c. 32 s. 27; G.S. 1878 c. 32 s. 34; 1885 c. 104 s. 1; G.S. 1894 s. 2422; R.L. 1905 s. 2584; R.S. 1913 s. 5478; G.S. 1923 s. 6631; M.S. 1927 s. 6631.

### 91.24 WILFULLY INJURING BOOMS.

HISTORY. G.S. 1866 c. 32 s. 28; G.S. 1878 c. 32 s. 35; 1885 c. 104 s. 2; G.S. 1894 s. 2423; R.L. 1905 s. 2585; G.S. 1913 s. 5479; G.S. 1923 s. 6632; M.S. 1927 s. 6632.

OBSTRUCTING NAVIGATION. The boom company had no right to unreasonably obstruct the passage of logs of other owners down the river; being thus an unauthorized obstruction to navigation the boom was not lawfully maintained and hence the statute is not violated. *Price v Minn. D. & W. Ry. Co.* 130 M 229, 153 NW 532, 16 Ann. Cas. c. 267.

OBSTRUCTING NAVIGATION; CIVIL DAMAGES. Page v Mille Lacs Lbr. Co. 53 M 492, 55 NW 608, 1119, overruled a line of earlier cases in allowing civil damages for the wanton or unreasonable obstruction of navigable streams. See note in 2 MLR 210.