

MASON'S MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
CITER-DIGEST COMPANY

WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

Citer-Digest Company
St. Paul
1927

CHAPTER 41

EMINENT DOMAIN

Right of eminent domain	6537
Definitions	6538
Proceedings, by whom instituted	6539
Entry for surveys, etc.	6540
Petition and notice	6541
Notice of pendency	6542
Order made thereon—Commissioners	6543
Powers and duties of commissioners	6544
Report, etc.—Notice	6545
Payment—Tender—Deposit in court	6546
Failure to report	6547
Accruing taxes	6548
Appeal	6549
Trial—Costs	6550
Judgment—Possession	6551
Interest—Award, when payable—Disbar	6552
Record evidence, how perfected	6553
Property taken by state to be an est. without right or reversion	6554
Notice of condemnation proceedings—Certain cases to be filed with the records of the county	6555
Eminent domain proceedings—state or its agencies—Procedure	6557-1
Same—Pending proceedings	6557-2
Same—Laws repealed	6557-3
Sites for county buildings—Resolution	6558
Duty of county attorney—Appraisers	6559
Duty of appraisers—Notice—Award	6560
Appeal—Trial—Costs—Bond	6561
Power of county board—Payment of award	6562
Award and judgment—How payable	6563
Judgment roll	6564
Notice of his pendency	6565
Certificate of payment—Record	6566
Sanatorium commissions to have right of eminent domain	6567
Railroad built without—Action	6568
Answer—Ascertainment of damages	6569
Judgment and execution	6570
Procedure when no answer is made, etc.	6571
Validity of railroad condemnation—Action	6572
Procedure, etc.	6573
Acquisition of land for union depot purposes	6574
Proceedings to be had under the right of eminent domain	6575
Municipality may contest	6576
Conveyance to be made to certain governmental authorities	6577
Inconsistent acts repealed	6578
Award of compensation and damages in condemnation proceedings by cities of first class	6578-1
Same—Funds from which award payable	6578-2

6537. Right of eminent domain—Whenever 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. '05 § 2520; G. S. '13 § 5395, amended '21 c. 353 § 1) 124-271, 144+960; 192+188; 121-376, 141+801; 133-458, 165+279.

For act permitting certain cities to condemn under the laws relating to the right of eminent domain, flowage rights, lands and easements outside the corporate limits of such cities, for the purpose of constructing on said lands a dam and power house for the generation of electricity. See, '21 c. 321.

6538. Definitions—For all the purposes of this chapter, the word "taking," and all words and phrases of like import used herein, shall include every interference, under the right of eminent domain, with the ownership, possession, enjoyment, or value of private

property. And the word "owner," as so used, shall extend to all persons interested in such property as proprietors, tenants, incumbrancers, or otherwise. (2521) [5396]

6539. 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 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. (2522) [5397] 148-214, 181+341, 128-415, 151+198.

6540. Entry for surveys, etc.—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. (2523) [5398]

6541. 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 said 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 said 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: Provided, that 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, said 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. (2524) [5399]

1. Proceedings generally—Mode of exercising right of eminent domain subject to legislative control (16-271, 244; 16-375, 333; 18-155, 139; 18-384, 345; 42-262, 44+59; 83-464, 466, 86+455); 121-376, 141+801. Proceedings are special and quasi judicial (30-140, 143, 144+581; 39-65, 67, 38+926). They are in rem (35-141, 145, 27+500; 82-497, 503, 85+525). So far as they are in invitum statutory requirements must be strictly followed (30-140, 142, 144-581).

Chapter cited (101-197, 112+395).
Condemnation proceeding is in rem, and not in personam, and the award becomes a fund standing in place of the land. 212+8.

2. Petition—Jurisdictional (10-30, 15; 31-289, 17+623; 38-523, 525, 38+753; 67-339, 69+1085). General allegation of purposes for which land sought sufficient (16-271, 244; 67-339, 69+1085). Description of land sought (24-25; 43-104, 122, 42+596, 44+1144; 45-225, 47+786; 46-540, 49+325; 85-234, 239, 88+749). Effect of including several tracts in one petition (43-104, 122, 42+596, 44+1144).

Naming owners an admission of ownership (16-341, 303; 22-173; 35-439, 29+148). Petition held sufficient (10-30, 15; 76-334, 343, 79+315). Allowable amendment (24-25; 31-289, 293, 17+623; 67-339, 69+1085). Damages assessable not limited to lands described in petition (29-242, 13+39; 29-318, 13+134).

3. **Notice**—Statutory notice jurisdictional (31-289, 294, 17+623; 67-339, 342, 69+1085. See 18-174, 157; 24-25; 32-174, 19+975; 33-419, 23+854). Constitutional right to notice (16-375, 333; 42-262, 44+59). Constructive notice sufficient (35-141, 145, 27+500; 45-225, 47+786; 56-321, 326, 57+928). Service by publication (38-506, 38+698). Waiver of notice by appealing (31-289, 17+623).

6542. **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 a notice to that effect, describing with reasonable certainty the lands so abandoned. (2525) [5400]

6543. **Order made thereon—Commissioners**—Upon proof being filed of the service of such notice, the court, at the time and place therein fixed, or to which said hearing may be adjourned, shall hear all competent evidence offered for or against the granting of said 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 said county, to ascertain and report the amount of damages that will be sustained by the several owners on account of such taking. Said order shall fix the time and place of the first meeting of the commissioners and prescribe their compensation. It may also, 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 said lands may exercise therein in subordination to the public uses to which it is appropriated. In case any of said commissioners shall fail to act, the court, without further notice, may appoint another in his place. (2526) [5401]

Court must determine whether the use for which the lands are sought is a public use and whether they are reasonably required or necessary therefor (34-227, 25+345; 127-23, 148+561). When purposes stated in petition are part public and part private, right to proceed must be denied (97-429, 107+405. See also 101-197, 112+395). Duty of court to determine owners of land and specify them in order appointing commissioners (16-341, 303). Order appointing commissioners determines necessity of taking the land for public purposes (76-70, 74, 78+969). Statute does not impose legislative power on judiciary (84-472, 88+6). Burden of proof on petitioner (43-527, 531, 46+75; 85-76, 78, 88+423). Owner may consent to appraisement by two commissioners (30-140, 14+581). Irregularity as to place of hearing held waived (38-523, 525, 33+753). Disqualification of commissioners (50-114, 52+222; 87-268, 91+1111). Order held not to fix place of first meeting sufficiently (32-174, 19+975). Vacation of order (38-157, 36+105; 81-265, 83+1086, 84+101, 742). Order not appealable (81-62, 83+497). 121-376, 141+801.

6544. **Powers and duties of commissioners**—Said 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 apply-

ing 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. And 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 said land by reason of such taking, and within thirty days after making such assessment and award report the same to the court under their hands. (2527) [5402]

First meeting must be at time specified in order (31-289, 17+623). Cannot assess past damages (17-163, 136; 46-118, 48+558). Not restricted in assessing damages to lands described in petition (16-341, 303), but cannot enlarge tract to be acquired (28-326, 9+879; 86-218, 90+393, 1133). Proceedings before commissioners quasi judicial (30-140, 143, 14+581; 39-65, 67, 38+926). Damages to be assessed with reference to the value and condition of the land at the time of the award (21-122). Damages may be assessed in gross for taking several contiguous lots (21-122; 21-127). Under former statute questions of ownership might be determined by commissioners (23-114). Property is taken as of the date of the filing of the award and interest runs from such time (30-145, 15+668). Error as to tract to be taken (42-467, 44+529). Conclusiveness of award (22-198). Special benefits may be set off in proceedings to condemn railway right of way against value of land taken and damages shown to have accrued to remainder (101-488, 112+1033). If land without proposed railroad is enhanced in value by peculiar location or availability, for particular purpose, impairment of such value is element of damages (108-492, 122+451). Condition that railroad company construct and maintain cattle chute (108-494, 122+452).

121-233, 141+170.

The measure of damage for the taking of land by a school district for school purposes, is the value of the land at the time it is taken. 212+8.

The damages for the taking may be assessed in gross. 212+8.

6545. **Report, etc.—Notice**—The oath subscribed by the commissioners shall be filed with their report, and, whenever 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 the petition, notice of hearing thereon, proofs of service and publication of said notice, order appointing the commissioners, their oath and report, and all other documents filed in said matter modifying or affecting any of those hereinbefore named. Upon payment by the petitioner of the fees and disbursements of said 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 said report has been filed, which notice said petitioner shall cause to be served and published as provided in § 6541; but if any party shall have appeared in said proceeding by attorney, said notice may be served upon the attorney so appearing. (2528) [5403]

6546. **Payment—Tender—Deposit in court**—Payment of the damages awarded may be made or tendered at any time after the notice mentioned in § 6545 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, refuse 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 said award. (2529) [5404]

Tender (21-322). Conditional deposit held unavailing (30-423, 15+871). Cited as to deposit in court (36-188, 194, 90+371). Who entitled to receive damages (16-260, 234; 52-409, 54+370; 59-493, 61+554; 82-497, 85+525; 93-30, 100+650).

124-271, 144+960.

160-197, 199+906, note under § 6552.

6547. 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 said report for not more than six months. (2530) [5405]

6548. 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. (2531) [5406]

6549. Appeal—At any time within thirty days after service of the notice that the report has been filed, the owner of lands taken may appeal to said district court from any award of damages embraced in said 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. Said 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 also 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. (2532) [5407]

Who may appeal (16-260, 234; 16-506, 457; 22-173; 22-177). Form of notice of appeal (19-500, 433). Duty of prosecuting appeal (38-234, 36+345). Specification of land in notice of appeal does not limit damages (29-318, 13+134). Failure to file notice within thirty days fatal (30-451, 16+265. See 46-141, 48+686). Notice, served after notice of filing report, perfected appeal, though notice of appeal was served before notice of such filing (107-46, 119+507). Appealing gives jurisdiction over the person (31-289, 17+623; 38-523, 526, 38+753). Appeal not inconsistent with motion to vacate appointment of commissioners (38-157, 36+105). Dismissal of appeal (18-384, 345; 22-44; 22-173; 30-451, 16+265; 32-452, 21+476). 128-66, 150+222.

Order dismissing appeal appealable (18-384, 345). Order refusing to dismiss appeal not appealable (11-253, 168; 31-42, 16+456). Bond to permit progress of work (18-155, 139; 21-497; 22-44; 24-191; 32-452, 21+476; 35-404, 29+161; 35-439, 29+148). Appeal from portion of award (108-494, 122+452).

160-197, 199+906, note under § 6552.

6550. 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 may 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. And, except as hereinafter 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 costs and the disbursements of the appeal. (2533) [5408]

Issues to be tried in district court same as issues before commissioners (11-253, 168; 16-506, 457; 18-384; 345; 20-187, 166; 21-424; 22-198; 23-18; 24-311; 30-227, 15+239). No question as to regularity in proceedings anterior to award can be raised. Jurisdiction of court on appeal statutory. Objection may be raised that commissioners exceeded their authority (28-326, 9+879). Damages may be increased or diminished (19-500, 433). Proof of ownership unnecessary (16-341, 303; 22-173; 22-177; 35-439, 29+148). Admissibility of award (30-277, 15+239; 87-91, 91+271). Assessment must be made as of the time of the filing of the award (21-122; 21-424; 24-311). Damages for several lots may be assessed in gross (21-122; 21-127). Amendment on appeal of description of land (24-25). Effect of change of ownership pending appeal (22-198). Form of oath to be administered to jury (22-173; 22-177). Change of venue (18-184, 168; 19-464, 406; 20-28, 19). Court may limit number of witnesses to value (29-318, 13+134). View by jury (22-173, 176; 41-223, 43+2). Landowner has right to open and close (17-188, 162; 107-46, 119+507). Sufficiency of verdict (16-341, 303; 17-322, 299; 21-127, 24-311). Interest on verdict (21-424; 24-311). Costs (21-122). After trial of question of damages, order granting new trial held appealable (116-433, 133+1018).

Where an appeal is taken from the award of the commissioners in a proceeding to condemn the right for a trunk highway, the statute authorizes the court, in its discretion, to award or deny costs and disbursements to the prevailing party, but does not authorize it to award them to the losing party. 167-505, 209+326.

6551. 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 payment of said 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, said judgment shall be binding upon the petitioner and all other parties thereto, and upon their respective successors and assigns. (2534) [5409]

Judgment passes the title and determines the rights of the parties (16-341, 303; 21-127; 35-404, 29+161). Owner entitled to personal judgment (21-497; 24-191). Judgment for gross sum sufficient (21-127). Judgment to include interest from time of filing the report (21-424; 24-311). Remedy for defective judgment appeal, not certiorari (19-500, 433). Judgment appealable (35-404, 29+161). Abandonment of proceedings after judgment (35-404, 29+161; 35-439, 29+148). When title vests (16-260, 234; 21-424; 85-416, 89+1; 93-30, 100+650). 128-321, 150+180, 906; 136-423, 162+523.

6552. 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 sixty days after such filing, or, in case of an appeal within the like period, after 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. And 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. (2535) [5410]

Interest (21-424; 22-173; 24-311; 162 Fed. 81, 89 C. C. A. 81). Recovery of expenses, etc., on dismissal (21-533; 32-452, 21+476). 188+52.

Proceeding to condemn a right of way for a state highway. Held, that the statute intends that the petitioner shall have the same period of time as the landowner in which to appeal, subject to the right of the landowner to have the proceeding dismissed, where a dismissal is authorized by Gen. St. 1913, § 5410, and that the appeal was taken in due time. 160-197, 199+906.

6553. Record evidence, how perfected—Upon the determination of all appeals taken in said 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 thirty days have expired since the service upon all the parties to said proceeding of the notice referred to in § 6545, and payment has been made of all damages and interest allowed by said commissioners, the court, upon motion of the petitioner, shall enter a final decree establishing the rights of said petitioner in the whole or any part of the lands so taken. A certified copy of said decree may be filed for record with the register of deeds of said county, and such decree shall be evidence, and the record thereof notice, of the title and rights of the petitioner therein set forth. (2536) [5411]

6554. Property taken by state to be an estate without right or 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 said property proposed to be taken, if greater than an easement, shall be specifically described in said proceedings, and if the right, interest or estate so described shall be a fee simple absolute, said fee simple absolute shall be an estate without any right of reversion under any circumstances whatsoever. ('17 c. 419 § 1)

6555. Notice of condemnation proceedings in certain cases to be filed with the register of deeds of the county—Whenever any city, village, board of park commissioners or board of public works in this state shall hereafter take or acquire, by condemnation proceedings, any land or lands or any easement or interest therein for laying out, opening, widening, extending or establishing any public street, highway or alley, or for public parks, parkways or other public purposes, or shall vacate or abandon any public street, 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 vacation or abandonment of any public street, 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 vacated thereby are located. Such notice shall be prepared and filed by the clerk, recorder or other person charged with the duty of keeping the records of such city, village, board of park commissioners or board of public works so acquiring any such lands or vacating or abandoning any such street, highway, park or public grounds, and such notice shall contain a statement of the time of the completion of such condemnation proceedings or of such vacation or abandonment, as the case may be, and the name of the city, village or board by whom such proceedings are prosecuted or such vacation is made, and a description of the real estate and lands affected thereby. Any failure to file such notice shall not invalidate or make void any such condemnation proceeding for such vacation or abandonment of any public street, highway, park or public grounds or any portion thereof. ('17 c. 416 § 1)

'17 c. 416 § 2 repeals '15 c. 322.

6556, 6557. [Repealed.]

These sections (G. S. 1894, §§ 4086, 4089, as amended by Laws 1905, c. 43) are repealed by Laws 1927, c. 237, § 3. See § 6557-3, herein.

6557-1. Eminent domain proceedings by state or its agencies—Procedure—In eminent domain proceedings

instituted by the state or by any of its agencies or political subdivisions as petitioners under the provisions of Chapter 41, General Statutes 1923, the procedure shall be as follows:

(a) The report of commissioners shall be filed with the clerk of district court within 90 days from the date of the order appointing such commissioners.

(b) At any time within 30 days from the date of the filing of such report, any party to the proceeding may appeal from any award of damages embraced in said report, or from any omission to award damages, by filing with the clerk a notice of such appeal. Such notice of appeal 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. Upon appeal the prevailing party shall recover costs and disbursements.

(c) Payment of the damages awarded may be made or tendered at any time after the filing of said report. 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.

(d) The notice of filing of report provided for in Section 6545, General Statutes 1923, shall be dispensed with; as shall also the final decree provided for in Section 6553, General Statutes 1923, 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. Such 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.

(e) 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. ('27, c. 237, § 1)

6557-2. Same—Pending proceedings—The provisions of Section 1 hereof, as far as the notice of filing of report and final decree are concerned, shall apply to proceedings now pending and brought by the state or by any of its agencies or political subdivisions under Chapter 41, General Statutes 1923, and in which all awards or judgments in relation thereto have been paid. ('27, c. 237, § 2)

Explanatory note—For section 1, see § 6557-1, herein.

6557-3. Same—Laws repealed—Section 6556 and Section 6557, General Statutes 1923, are hereby repealed, except as to proceedings taken thereunder and now pending. ('27, c. 237, § 3)

6558. Sites for county buildings—Resolution—Whenever the board of county commissioners of any county in this state 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 said 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 said county, and said board of county commissioners is unable to purchase said lands at a reasonable price the title to any such land may be acquired by condemnation as hereinafter provided. ('05 c. 7 § 1) [5414]

6559. 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 said county, or to a judge thereof, a petition signed by himself on behalf of said county setting out said action of said board of county commissioners and describing and setting forth in said petition the lands proposed to be taken by said county and in a general way the purposes for which the same are desired and praying for the appointment of three appraisers to appraise said lands and the damage for the taking of the same and thereupon said court shall have jurisdiction therein for all purposes, and shall then and there, or at any time within fifteen days thereafter, by order filed in the office of the clerk of the district court of said county appoint three appraisers, who shall be residents of said county, fix their compensation, which shall be paid by the county, and who shall have cognizance of the subject matter of said petition and power to appraise the value of all such land and damages for the taking of the same. ('05 c. 7 § 2) [5415]

6560. Duty of appraisers—Notice—Award—Said 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 said district court. Thereupon said 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 said real estate, which said time shall not be less than ten nor more than twenty days after the date of the order appointing said appraisers. Said chairman shall preside at and said clerk shall keep minutes of the meetings of said appraisers. Said appraisers shall give or cause to be given to each owner or other person having an interest in said real estate, or their 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 said appraisers of the time and place when and where said 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 their 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 said county, of which fact the certificate on information and belief under the seal of his office of the auditor of said county, shall be prima facie evidence; then 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 said meeting. An affidavit of personal service or publication shall be prima facie evidence of the service of said notice. At the time and place named in such notice said appraisers shall, and a majority thereof may, proceed in the case of each parcel of real estate desire to be taken to an appraisal thereof and of the damage sustained by reason of the taking thereof by said county and shall

make and sign in duplicate within sixty days from the date of the filing of the order appointing them an award in writing of such damages, and within said last mentioned time shall deliver the same to the clerk of the said district court and to the county auditor, respectively, to be filed by them in their respective offices. ('05 c. 7 § 3) [5416]

6561. Appeal—Trial—Costs—Bond—Either party may appeal to the district court from such award at any time within thirty days from the date of the filing thereof in the office of the clerk of said court by filing with said 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 said appeal shall be tried as other causes in said 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 said property owner shall recover costs and disbursements from the county, otherwise, such property owner shall pay 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 then the property owner shall pay costs and disbursements to the county, otherwise said property owner shall recover 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 said court a bond to said county in the penal sum of one hundred dollars with sufficient sureties to be approved by the clerk of said court, conditioned that said 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. ('05 c. 7 § 4) [5417]

Upon an appeal to the district court from an award of the commissioners, the sole issue is the amount of damages to be awarded. 212+8.

Such an appeal raises no question as to the regularity or sufficiency of the proceedings prior to the appeal. 212+8.

6562. 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 of said county may set aside by resolution entered upon its minutes, from the general revenue fund of said county a sum equal to the total amount assessed as damages by said appraisers and make the same payable on demand to the persons entitled thereto, which action by the said 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 said county shall not be delayed or prevented by the prosecution of any appeal, and said county and its officers and agents may at once thereafter enter upon and take possession of said property and appropriate the same to the use of said county. ('05 c. 7 § 5) [5418]

6563. Award and judgment—How payable—The award of said appraisers if not appealed from, and the judgment rendered on appeal, shall be an absolute claim against said county and shall be 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. ('05 c. 7 § 6) [5419]

6564. Judgment roll—When judgment is rendered on appeal, the clerk of said court shall attach the application, all notices and proof of publication or service thereof, the oaths of said 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. ('05 c. 7 § 7) [5420]

6565. Notice of lis pendens—At any time after the adoption of the resolution mentioned in section 1 [6558] of this act, said county, by the county attorney or county auditor, is hereby authorized to file in the office of the register of deeds of said county a notice of lis pendens, which said 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 of real property between private individuals. ('05 c. 7 § 8) [5421]

6566. 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 may file the same in the office of the register of deeds of said county for record. Said 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 this act shall be absolute in fee simple in the county instituting proceedings thereunder. ('05 c. 7 § 9) [5422]

6567. Sanatorium commissions to have right of eminent domain—The county sanatorium commission of any county or group of counties operating under chapter 500, Laws 1913, as amended, may acquire land for a site for a building or buildings, for the enlargement of such site, or for other sanatorium purposes, by gift, purchase or condemnation, condemnation proceedings to be conducted as provided by chapter 41 of the General Statutes of Minnesota 1913. ('21 c. 254 § 1)

Explanatory note—For Laws 1913, c. 500, see §§ 705 to 719, herein.

For G. S. 1913, c. 41, see §§ 6537 to 6578, herein.

6568. Railroad built without right—Action—Whenever 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 said railroad, whether the road was constructed upon such land with the acquiescence of the owner or not. (2537) [5423]

28-503, 11+73; 33-419, 421, 23+854; 45-366, 48+191; 46-321, 329, 48+1129; 51-15, 52+977; 61-502, 506, 63+1035; 63-384, 65+652.

6569. Answer—Ascertainment of damages—The defendant in such action, 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. And, 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: Provided, that, if it 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 demand for compensation. (2538) [5424]

28-503, 11+73; 30-100, 14+460; 35-404, 407, 29+161; 40-132, 41+156; 42-170, 43+848; 42-246, 44+10; 54-157, 55+928; 84-179, 87+606.

6570. 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 § 6569, 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 thirty 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. (2539) [5425]

42-179, 43+966; 63-384, 65+652; 86-218, 90+393, 1133.

6571. Procedure when no answer is made, etc.—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 herein 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 §§ 4943, 4944, shall not apply thereto. (2540) [5426]

§§ 4943, 4944 should be R. L. 1905, §§ 4430, 4431, which were repealed '11, c. 139.

63-384, 65+652; 86-218, 90+393, 1133.

6572. 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 sixty days thereafter the plaintiff pay to the defendant, or into court, for the benefit of the parties thereto entitled, the compensation 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. (2541) [5427]

6573. Procedure, etc.—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, except that §§ 4943, 4944 shall not apply thereto, and the plaintiff cannot recover costs or disbursements. (2542) [5428]

§§ 4943, 4944, should be R. L. 1905, §§ 4430, 4431, which were repealed '11, c. 139.

6574. Acquisition of land for union depot purposes—Whenever the United States, the State of Minnesota, or other governmental authority, having jurisdiction so to do, has authorized or may hereafter authorize change of harbor lines or diversion of channel, or other change in any river, stream or water course 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. ('15 c. 45 § 1)

6575. Proceedings to be had under the 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 of 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. ('15 c. 45 § 2)

6576. 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 of the condemnation of its interest in the premises proposed to be taken. ('15 c. 45 § 3)

6577. Conveyance to be made to certain governmental authorities—Upon acquiring title to said 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 herein. Likewise, any municipal corporation, having any interest in said lands or premises may, upon such terms as to said municipality its interests may seem to require, make due conveyance thereof either to said company or to said governmental authority. ('15 c. 45 § 4)

6578. Inconsistent acts repealed—All acts and parts of acts inconsistent herewith are repealed. ('15 c. 45 § 5)

6578-1. Award of compensation and damages in condemnation proceedings by cities of first class—Sufficiency of condemnation—Payment of award to owner or claimant of property—Whenever an award of compensation and damages shall be confirmed by the city council of any city of the first class in the State of Minnesota, existing and governed under a charter adopted pursuant to Section 36, Article 4, of the State Constitution, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and whenever 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 damage 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, Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said 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 said clerk of the court, and take his receipt for the same; which deposit with said 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 said 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 said 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. ('21, c. 219, § 1)

6578-2. Same—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, this act 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. ('21, c. 219, § 2)

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special 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 digest
of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

CHAPTER 41

Eminent Domain

6537. Right of eminent domain.

177M146, 225NW86.
State cannot condemn allotted Indian lands for a highway without consent of Secretary of the Interior. U. S. v. Minnesota, (CCA8), 95F(2d)463. Affirmed, —US—, 59 SCR292.

Title to upland acquired by condemnation includes appurtenant riparian rights to the use of the bed of the stream adjacent to such land and to the use of the water flowing thereover. Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902.

Government held entitled to condemn state owned lands for an Indian reserve, notwithstanding that the state was proceeding to condemn substantially all of the land in the area for a game refuge, with due regard to protection of Indian rights. U. S. v. 4,450.72 Acres of Land, (DC-Minn), 27FSuppl167.

An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated route. It is the exercise of a legislative function constitutionally delegated to the commissioner by the Legislature and is conclusive on the courts as to the necessity of the taking. State v. Erickson, 185M60, 239NW908. See Dun. Dig. 4158(71).

Eminent domain is a right possessed by state in its sovereign capacity. It is not conferred by the constitution, but is restricted by it. Its exercise rests exclusively in legislature. Judicial power comes into play only to extent that constitution guarantees owner of property right to compensation. State v. Severson, 194M644, 261 NW469. See Dun. Dig. 3012, 3013, 3014, 3080.

General power granted to a municipality to lay out, open, and extend streets authorizes by implication an extension of a street across a railroad right of way when such extension does not essentially impair it for railroad purposes; and necessity for taking of easement is a legislative question not subject to judicial review. Village of Lamberton v. C., 196M597, 265NW801. See Dun. Dig. 6621.

Street railway does not have power of eminent domain. Bruer v. C., 201M40, 275NW368. See Dun. Dig. 3020, 3009.

Sanitary district in conducting a condemnation proceeding does so as an arm of state in discharge of a sovereign legislative function, and is not liable in tort for alleged malicious prosecution of such proceeding. Barmel v. M., 201M622, 277NW208. See Dun. Dig. 3091, 3122.

Where private property is not taken but is damaged for public use without compensation first paid or secured, the owner has his cause of action in tort. McCarthy v. C., 203M427, 281NW759. See Dun. Dig. 3128.

Exercise of right of eminent domain by condemnation proceedings is an exertion of legislative power, and judicial power comes into play only to extent that constitution guarantees to owner of property right to compensation. State v. May, 204M564, 285NW834. See Dun. Dig. 3014, 3079.

Village of North St. Paul has authority to condemn rights of way for an alley or to condemn an easement for water and sewer pipes across private property. Op. Atty. Gen., May 26, 1931.

School district is not entitled to reimbursement from state by reason of reduction of assessed valuation by taking of large amount of land by condemnation proceeding. Op. Atty. Gen. (817o), June 22, 1934.

School house on private land remains personal property and as such property of district, and district, though it did not appear and assert its title in condemnation proceedings, is entitled to compensation for such school house, if such building was not considered a part of the land in arriving at its value. Id.

City of Waseca under its home rule charter has power to condemn lands outside its limits for airport, and procedure to be followed is that provided by such charter. Op. Atty. Gen. (817f), Aug. 3, 1934.

Laws 1935, c. 52, is not applicable to proceedings for acquisition of land for Talcot Lake project for which federal government is providing money for construction purposes but not for acquisition of land. Op. Atty. Gen. (817h), Mar. 25, 1935.

Cities operating under Laws 1921, c. 462, may acquire land for street purposes pursuant to §1828-74. Op. Atty. Gen. (817p), Oct. 24, 1935.

Whether city could condemn part of public park for purpose of constructing a cooling tower in connection with nearby municipal utility plant depends on whether it would materially impair use of land as a park. Op. Atty. Gen. (59a-40), July 30, 1937.

General rule is that property already devoted to a public use cannot be taken for another public use, but

this rule does not apply where second use does not materially or seriously interfere with first use. Op. Atty. Gen. (700d-12), Aug. 26, 1937.

It is doubtful whether township may condemn road along edge of land used by state hospital without general or special legislative authority. Id.

Condemnation of land for improving and enlarging county fair grounds should proceed under this chapter. Op. Atty. Gen. (817d), Mar. 4, 1938.

County board desiring to establish road more than four rods wide should proceed under §2582 and not under §6537 et seq., no statute limiting roads to four rods in width. Op. Atty. Gen. (817N), May 29, 1939.

6538. Definitions.

Owner of lot abutting on a street has no right of action against a railroad which crosses the street upon an embankment and obstructs its use when the damage he suffers it not special. Locascio v. N., 185M281, 240NW 661. See Dun. Dig. 3049(14).

Property owners cannot recover for diminution in value of their property caused by the noise and vibration of street cars operating over bridge. Even though the street car tracks had been on the street in front of their property there would not have been an additional servitude. McCarthy v. C., 203M427, 281NW759. See Dun. Dig. 3017.

6541. Petition and notice.**1. Proceedings generally.**

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

2. Petition.

Court did not err in ordering corrected an apparent misuse of word "highway" instead of "playground" in petition filed Sackette v. C., 201M121, 275NW617. See Dun. Dig. 3093.

3. Notice.

One who has been duly served with notice of hearing may not have proceeding vacated on ground that other owners of part of land sought to be taken, had not been served with valid published notice. Sackette v. C., 201M 121, 275NW617. See Dun. Dig. 3085.

6543. Order made thereon—Commissioners.

Owner of land abutting on trunk highway on which easement for highway purposes has been taken may object to placing of mail box thereon by another person. Op. Atty. Gen., Sept 6, 1932.

6546. Payment—Tender—Deposit in court.

The United States seeking to condemn lands for a public building, has no further interest in the condemnation proceedings after it pays the award to the clerk of the court. St. Paul v. Certain Lands, (CCA8), 48F(2d)805. See Dun. Dig. 3100.

Boundary dispute between claimants of land condemned. Fitzpatrick v. B., 176M468, 223NW767.

Where an award is made to owner of land upon which mortgage is being foreclosed, the purchaser at the foreclosure sale is entitled to the award in the absence of redemption. Op. Atty. Gen., Apr. 2, 1931.

When a portion of a parcel of trust land sold by state under contract is taken by eminent domain, entire award must be applied on indebtedness due state up to amount of such indebtedness before any portion is applied on taxes or expenses of condemnation proceedings. Op. Atty. Gen. (700d-12), Sept. 19, 1936.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should not endorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

6548. Accruing taxes.

Delinquent taxes on land are a first lien and should be paid first out of an award made in condemnation proceedings by the highway department. Op. Atty. Gen., Aug. 8, 1930.

Where damages are awarded in condemnation proceedings by the highway department, and they are insufficient to cover taxes against the land, they should be distributed among the various funds the same as they would be if the taxes had been paid. Op. Atty. Gen., Aug. 8, 1930.

Where Government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Title 40, §258, title relates back to the date of the filing of the commissioner's award. Op. Atty. Gen., Jan. 26, 1931.

Where City of St. Paul acquired by condemnation portions of property for widening of street and property

owner gave City deed on December 26th, 1930, and award was ratified by City Council on December 30th, 1930, but proceedings of Council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930, constituted a lien on the property and should be paid by the City. Op. Atty. Gen., April 25, 1931.

6549. Appeal.

City intervening to recover special assessments, held not entitled to appeal from award. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3107.

Although condemnation proceedings may properly include in one petition numerous tracts of land which state desires to take for one highway, state cannot join in one appeal to district court or supreme court separate awards to two property owners, and such appeal must be dismissed for duplicity. *State v. May*, 204M564, 285NW 834. See Dun. Dig. 3107.

6550. Trial—Costs.

To the extent that traffic upon a trunk highway is beneficial to an abutting farm, as such, it is a benefit in common with the general public. 176M525, 223NW 923.

Special benefits may be shown in the reduction of damages. 176M525, 223NW923.

Gross damages are first to be determined and then award is to be apportioned as justice may require. 176M525, 223NW923.

Where such rule is ignored, and a different procedure is adopted without objection, in which the dissatisfied party has acquiesced, he cannot thereafter complain. 176M525, 223NW923.

Persons appointed by the court, and who serve as appraisers in a condemnation proceeding, are competent witnesses who may be called by either party on an appeal. *Northern States Power Co. v. B.*, 187M353, 245NW 609. See Dun. Dig. 3112.

In condemnation owner occupies position of ordinary plaintiff in action for recovery of damages, and as such has right to open and close case, and upon him rests burden of proof to establish his damages. *Minneapolis-St. Paul Sanitary Dist. v. F.*, 201M442, 277NW394. See Dun. Dig. 3111, 9788.

Landowner is not entitled to receive compensation for land actually taken, equal to its market value for a use or purpose wholly distinct and disconnected from use and purpose to which remainder of his land is applied, and at same time receive compensation for damages which he claims result to remainder by reason of taking. Id. See Dun. Dig. 3052, 3053.

Elements affecting value that depend upon events or combinations of occurrences which, while within realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration in fixing compensation. Id. See Dun. Dig. 3054, 3062.

Value of property taken by eminent domain proceedings for special purpose for which it is taken is not basis on which owner is entitled to be compensated, but its availability for that purpose, is an element to be considered. Id. See Dun. Dig. 3054.

Just compensation is market value at time of taking contemporaneously paid in money, to be arrived at upon just consideration of all uses for which land is suitable; and highest and most profitable use for which property is adaptable and needed, or likely to be needed, in reasonably near future, is to be considered to extent that prospects of demand for such use affect market value while property is privately held, but that value does not include any element resulting subsequently to or because of taking. Id. See Dun. Dig. 3054.

Market value of property is not measured by benefits to, or needs of, condemnor. Id. See Dun. Dig. 3055.

Knowledge on part of a witness of specific sales of property of similar character to that under consideration in a condemnation proceeding may be employed by him in forming an opinion of value of other lands equally circumstanced, but other specific sales of similar lands and prices paid therefor may not be introduced as substantive evidence of value of particular tract involved in condemnation. Id. See Dun. Dig. 3071.

Court erroneously refused to permit cross-examination of landowner to show that he had made verified application for reduction of taxes on claim that land had been assessed in amounts exceeding true and actual value. Id. See Dun. Dig. 3075.

6551. Judgment—Possession.

Where the United States condemned property on which special assessments had been levied for a street improvement, and title passed to the government by deposit of the condemnation money in court, the city had no equitable lien on the condemnation money where judgment confirming the assessment was reversed on appeal, and the lien of the assessment did not attach to the land prior to the transfer of the title to the government, especially where there was no presumption that the condemnation commissioners included in the award any increase in the value of the land arising from the improvement, though a reassessment was made after the government obtained title. *Drake v. C.*, (CC A8), 65F(2d)119. See Dun. Dig. 3076.

One obtaining market value of property was not entitled to an additional award for expense of removal from the premises. 176M389, 223NW458.

Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement in highway condemnation. *State v. Hall*, 195M79, 261NW 874. See Dun. Dig. 3078a.

Final judgment of court must be obtained before school district can take possession of premises in condemnation proceedings. Op. Atty. Gen. (817f), Oct. 8, 1935.

6552. Interest—Award, when payable—Dismissal.

Commercial Station Post Office v. U. S., (CCA8), 48F (2d)183.

In condemnation proceedings the charter provisions, in force at the time the order of the city council confirming the award is adopted, governs the right to interest thereon. *L. Realty Co. v. C.*, 183M499, 237NW192. See Dun. Dig. 3103.

Landowners as to whom proceedings have been discontinued properly proceeded to obtain costs in condemnation proceeding itself rather than by independent action. *State v. Lesslie*, 195M408, 263NW295. See Dun. Dig. 3091.

State is not in position to question amount of counsel fee allowed landowners in discontinued eminent domain proceeding, having presented no evidence in opposition to that of respondents, and having moved trial court to substitute for its findings proposed findings wherein value of counsel fee is same amount as allowed by court. Id.

This section applies to all eminent domain proceedings where instituted by state or its agencies or by others, and, on discontinuance by state, landowners are entitled to judgment for costs. Id. See Dun. Dig. 3118.

In proceeding to establish a judicial road award of damages by commissioners bears interest from entry of order of court confirming it, as in case of any other judgment. *Blue Earth County v. W.*, 196M501, 265NW 329. See Dun. Dig. 3103.

Petition may be amended to omit part of tract first described, and proceeding as to that tract dismissed, if there is no distinct and severable issue as to omitted area, without entitling landowner to allowance of costs and disbursements. *Minneapolis-St. Paul Sanitary Dist. v. F.*, 197M275, 266NW848. See Dun. Dig. 3118, 3121.

Section 6552, Mason's Minn. Stat. 1927, which creates a cause of action in favor of a landowner for his expenses incurred in a condemnation proceeding under Chapter 41 of those statutes, does not apply to expenses incurred under the provisions of §1552 et seq. *Barmel v. M.*, 201M 622, 277NW208. See Dun. Dig. 3121.

This section has no application to proceedings with reference to establishment of town and county roads under §§2582, 2583 and 2585. Op. Atty. Gen. (377b-10(d)), Sept. 7, 1934.

6554. Property taken by state to be an estate without right or reversion.

One who has been duly served with notice of hearing may not have proceeding vacated on ground that other owners of part of land sought to be taken, had not been served with valid published notice. *Sackette v. C.*, 201M121, 275NW617. See Dun. Dig. 3085.

Court did not err in ordering corrected an apparent misuse of word "highway" instead of "playground" in petition filed. Id. See Dun. Dig. 3093.

State highway department usually only acquires an easement for road purposes or to take out gravel from gravel pits, and ownership of trees or timber remains in original owner, in absence of agreement. Op. Atty. Gen., Oct. 30, 1933.

6557-1. Eminent domain proceedings by state or its agencies—Procedure.

State v. Stanley, 188M390, 247NW509; note under §2554. This section is constitutional. *State v. Severson*, 194M 644, 261NW469. See Dun. Dig. 1677.

This section is not special legislation because it limits time for appeal in condemnation proceedings brought by state to acquire rights of way for trunk highways without requiring notice to start running of 30-day limitations, as is required in other condemnation proceedings. Id.

A highway condemnation proceeding is in rem, and no question of jurisdiction is presented if, without formal intervention under statute, interested taxpayers are permitted to appear and to apply for and procure injunctive relief appropriate to proceeding. *State v. Werder*, 200M148, 273NW714. See Dun. Dig. 3177.

Although condemnation proceedings may properly include in one petition numerous tracts of land which state desires to take for one highway, state cannot join in one appeal to district court or supreme court separate awards to two property owners, and such appeal must be dismissed for duplicity. *State v. May*, 204M564, 285NW 834. See Dun. Dig. 3107.

Final judgment of court must be obtained before school district can take possession of premises in condemnation proceedings. Op. Atty. Gen. (817f), Oct. 8, 1935.

Where tax delinquent land was condemned for state highway and state warrants for damages were issued jointly to owner and county, and thereafter land became forfeited to state for taxes, county auditor should

not endorse warrants to private owners until ordered to do so by court. Op. Atty. Gen. (450f-6), Aug. 30, 1937.

In condemnation proceedings by state to acquire lands to be transferred to federal government, minimum price for which state trust fund lands may be taken is \$5 per acre, and this includes state swamp lands. Op. Atty. Gen. (700d-7), Jan. 20, 1938.

(b).

Section 6552 applies to all eminent domain proceedings where instituted by state or its agencies or by others, and is not repealed by this act. *State v. Lesslie*, 195M 408, 263NW295. See Dun. Dig. 3091.

(c).

Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement in highway condemnation. *State v. Hall*, 195M79, 261NW 874. See Dun. Dig. 3078a.

Final certificate was intended to and in fact took the place of the final decree applicable under Gen. St. 1923, §6553. *State v. Hall*, 195M79, 261NW874. See Dun. Dig. 3105.

Intervention was not available after closing of condemnation proceedings by approval of certificate in state highway establishment. *Id.* See Dun. Dig. 4897a.

(e).

Where commissioner of highways trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. *Nelson v. B.*, 188M584, 248NW49. See Dun. Dig. 3128.

6557-4. Easement for snow fences.—Whenever 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. (Act Apr. 26, 1929, c. 396, §1.)

6560. Answer—Ascertainment of damages.

Where in action by power company for trespass by railroad company upon its property in the construction of a bridge, the defendant railroad converted the action into one for condemnation under this section by answer praying for determination of amount of damages to which plaintiff was entitled by reason of defendant's taking of plaintiff's property, but not denying plaintiff's ownership nor claiming title in defendant or praying equitable relief, defendant's equitable title to the property was not within the issues. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Where in suit against railroad company to enjoin trespass and for damages, which was converted by defendant into condemnation proceedings, the court found that equitable title to land involved was in defendant though that question was not within the issues, the only issue on appeal from decree awarding defendant specific performance was whether the facts found supported the decree, in the absence of a settled case or bill of exceptions. *Id.*

6578-1. Award of compensation and damage in condemnation proceedings.—Whenever an award of compensation and damages shall be confirmed by the city council of any city of the first class in the State of Minnesota, existing and governed under a charter adopted pursuant to Section 36, Article 4, of the State Constitution, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and whenever 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 damage 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 damage 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 of expenses on account of such claim. Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said 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 said clerk of the same court, and take his receipt for the same; which deposit with said 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 said 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 said 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. Provided that whenever 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 be and hereby is authorized and empowered, by resolution enacted by affirmative vote of a majority of all of its members elected, to 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 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 or uses for which such condemnation was made. ('21, c. 219, §1; Apr. 25, 1931, c. 396.)

This section is not violative of the 14th amendment, in that it does not afford a fair tribunal to a property owner. *Uihlein v. St. Paul*, (CCA8), 32F(2d)748.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

This section sufficiently protects the landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Proceedings held to sufficiently show purpose for which land was taken and that it was taken for a public purpose. 177M146, 225NW86.

In street widening proceeding, landowner is entitled to damages at least to the extent of market value of the land taken in the condition and situation it then occupied, not an isolated tract, but as a part of the whole. *Improvement of Third St.*, 177M159, 225NW92.

Landowner cannot claim damages on theory that at some future time there may be a change of the grade of the street, his right to receive damages at any such

time not being affected. Improvement of Third St., 177 M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See Dun. Dig. 5412.

In action for conversion of personal property, question whether city's conduct in entering upon condemned property was in contravention of forcible entry and unlawful detainer statute, held not presented by record. *Dow-Arneson Co. v. C.*, 191M28, 253NW6. See Dun. Dig. 386.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. *Id.* See Dun. Dig. 728.

6578-3. 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 Chapter 52 of the Laws of 1935 [§§5620-29, 5620-30], 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. (Act Apr. 1, 1935, c. 105, §1.)

Preamble.

Whereas, the federal government has allocated \$75,000 for the improvement of Talcot Lake in Murray and Cottonwood Counties and the lands in the vicinity thereof as a public hunting ground and game refuge on condition that the state acquire title to the necessary land on great advantage to the state, and

Whereas, the acquisition of such lands and the improvement thereof for said public purposes will be of great advantage to the state, and

Whereas, other projects of a similar character are pending in which the federal government may provide funds for improvement in case the state promptly acquires title to the necessary land:

6578-4. Authority of commissioner.—Authority is likewise given to the Commissioner of Conservation to acquire and to use the procedure set forth in said 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. (Act Apr. 1, 1935, c. 105, §2.)

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

The common law riparian right to build a dam across a navigable stream was not abolished by the Rivers and Harbors Act of March 3, 1899 (Mason's U. S. C. A. title 33, §401), but merely suspended until consent of Congress was obtained and plans approved. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Rights and liabilities arising out of construction of dam under license issued by Federal Power Commission resulting in injuries to piers of railroad bridge constructed under authority of an Act of Congress are determined by the laws of the state, as the shores of navigable waters, the soil thereunder, and the rights appurtenant thereto were not granted to the United States by the constitution, but were reserved to the states. *Id.*

Power company constructing dam held liable for damages to those piers of railroad bridge which were constructed in the river bed on the west side where the railroad was the equitable owner of the abutting land on that side of the river, but it was not liable for damages to piers constructed in river bed on the east side where the power company owned the abutting land on that side and the railroad was a trespasser. *Id.*

Owner and operator of a dam for industrial purposes in a river or natural water course is not an insurer of its safety, but is bound to exercise a degree of care in its construction, maintenance, and operation proportionate to injuries likely to result to others; care commensurate with danger. *Willie v. M.*, 190M95, 250NW 809. See Dun. Dig. 10191, n. 78.

Doctrine of *res ipsa loquitur* applies where a dam is wholly within control of defendant and its failure or operation results in injury to others such as could reasonably be anticipated. *Id.* See Dun. Dig. 7044.

Negligence of owner and operator of dam in flooding river valley, held for jury, notwithstanding rainfall was unusually heavy and other flood water came into valley and contributed to flood and notwithstanding there were obstructions in river below dam. *Id.* See Dun. Dig. 10191.

Procedural effect of *res ipsa loquitur*. 20MinnLawRev 241.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

Section confers no authority upon a county board to fix levels or erect dams on lakes, major parts of which lie outside county, and, where there is no adoption or ratification by county of acts of board in fixing a level above high-water mark or furthering erection of a dam which so raises water in such a lake, defense of ultra vires is available to county. *Erickson v. C.*, 190M433, 252 NW219. See Dun. Dig. 10187-10189.

Right of riparian owners does not prevent raising of lake level to natural highwater mark, though lake is temporarily dry. *Op. Atty. Gen.*, Jan. 30, 1934.

Statute does not authorize county board to make an appropriation for a "dredging project" in connection with improvement of a lake, unless purpose of dredging is to establish or maintain the water level thereof. *Op. Atty. Gen.* (273a-6), Aug. 11, 1938.

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

Board has power to rescind resolution establishing water level if no vested rights are thereby interfered with and all parties concerned are stored to same position they were before adoption of resolution. *Op. Atty. Gen.* (273a-33), Feb. 23, 1937.

6594. Cost of maintenance, etc.—Management.

There cannot be a second assessment for benefit. *Op. Atty. Gen.* (408b), May 6, 1935

County board may appropriate money for purpose of maintaining and operating pumping plant and may maintain water level in a lake without payment of any damages to riparian owners of lake or stream as long as water level is not raised above natural high water mark. *Op. Atty. Gen.* (273a-14), Sept. 13, 1938.

6595. Lakes in two or more counties—water boards.—Whenever any such navigable lake lies partly within two or more counties having fewer than one hundred and fifty thousand inhabitants each, the chairman of the county boards thereof shall constitute a water board for said counties, and, as such, shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by Sections 6588-6594. And except as otherwise provided in Section 6596, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed. (R. L. '05, §2559; G. S. '13, §5445; Apr. 1, 1935, c. 99.)

6597. Council given right to acquire title to navigable lakes.

Cities of fourth class having population of 6,000 to 8,000 and valuation of \$2,000,000 to \$2,250,000, may dredge lakes within their boundaries. Laws 1939, c. 261.

State may legally delegate to village council authority to supervise operation of dam in connection with control of water level. *Op. Atty. Gen.* (4007), June 14, 1935.

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and