

MASON'S MINNESOTA STATUTES

1927

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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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED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.

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and if, in the judgment of the court, the same would be damaged, the court may determine the amount of such damage and direct its payment by the applicant before the vacation or alteration shall take effect. A certified copy of the order of the court shall be filed with the county auditor, and recorded by the register of deeds; provided, however, that the district court shall not vacate or alter any street, alley or public ground dedicated to the public use in or by any such plat in any city, town or village organized under a charter or special law which provides a method of procedure for the vacation of streets and public grounds by the municipal authorities of such city, town or village. (R. L. '05 § 3369, '09 c. 503 § 1; '17 c. 38 § 1) [6863]

8-456, 405; 42-511, 44+535; 65-491, 67+1031; 84-392, 87+1021; 91-242, 97+977; 91-404, 98+98.

Provision as to publication in amended section, how construed. Right of county to be heard (114-230, 130+1000).

Conveyance of lot abutting on vacated street, whether title to middle of street passes to grantee (110-276, 124+373, 125+262).

Public streets and grounds are within the control of the legislature and it may confer the power to alter or vacate the same (129-307, 152+643). Judgment vacating portion of plat wherein certain property thereby damaged was not included (135-175, 160+771).

Valid. 163-439, 204+534.

In order to sustain a judgment for the vacation of a part of a street, it was permissible for the district court to receive evidence extraneous to the record that notice of the application for the judgment had been given by posting; the judgment roll containing proof of notice by publication only. 163-206, 203+593.

The word "damaged," refers to damage which could have been recovered at common law, had the acts which caused the damage been done without constitutional or statutory authority. 163-439, 204+534.

The amendment of section 3369, Rev. Laws 1905, by chapter 503, Laws 1909, did not deprive the district court of jurisdiction to vacate streets in villages organized under chapter 145, Laws 1885. The word "charter" in the first proviso, does not refer to the entire body of existing laws which provide for the organization and government of cities or villages, but is used as a synonym for "home rule charter." 163-439, 204+534.

8245. **Certain plats validated**—That in all cases where the record owner of real estate in this state has heretofore conveyed the same or any part thereof, by express reference in the instrument of such convey-

ance to a plat of such real estate on file in the office of the register of deeds in the county in which such real estate is situated, and a plat so referred to in said conveyance is actually of record in such register's office at the time when such conveyance is made, such record owner and all persons claiming under such record owner, shall be forever estopped from questioning the validity of such plat, notwithstanding that at the time of the execution and record thereof, title to the premises covered thereby, appears of record to have been in the name of a person or persons other than the person who executed such plat as proprietor of the premises covered thereby, and notwithstanding any irregularity or informality in the execution, acceptance or record of such plat, and in all such cases such plat shall be deemed and taken to be valid, confirmed and legalized in all respects as if actually executed and recorded by the person or persons who appear of record to have been the owners of the premises covered thereby at the time of the execution and record thereof. ('05 c. 129 § 1) [6864]

8246. **To what plats applicable**—This act shall apply to all plats heretofore recorded of any townsite and to any addition to any townsite and to any addition to any town, village or city within the state. ('05 c. 129 § 2) [6865]

Explanatory note—Laws '05, c. 129, § 3 (G. S. '13, § 6866) provides that "nothing herein contained shall be construed to affect the subject matter of any action or proceeding now pending in any of the courts of this state."

8246-1. **Certain plats and certificates prima facie evidence**—That all certificates heretofore made and recorded under the provisions of chapter twenty-five General Laws of Minnesota for the year 1891, the same being "An act relative to plats of towns and cities in this state and of additions to, and subdivisions thereof and the correction and legalization of the same," or the record of such certificates, together with the plats to which they respectively refer, shall be prima facie evidence in all cases as to the lands covered by said plats. ('07, c. 53, § 1) [6867]

CHAPTER 65

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REGISTRATION

8247. Real estate in this state may be registered under the provisions of this act in the manner herein provided. ('05 c. 305 § 1, amended '09 c. 183 § 2) [6868]

Act constitutional (85-437, 89+175; 96-119, 104+678; 119-96, 137+390). Effect of registration proceedings (108-443, 122+316). The right to apply for registration is not affected by the availability or adequacy of other remedies (119-96, 137+390). Abatement affecting registration proceeding (127-418, 149+736). No vacation of final decree with leave to answer (148-375, 182+449). 213+51.

8248. Registered land subject to same incidents as unregistered, except adverse possession—Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land. This chapter shall not operate to relieve registered land or the owners thereof from any rights, duties or obligations incident to or growing out of the marriage relation, or from liability to attachment on mesne process, or levy on execution, or from liability to any lien or charge of any description whatever, created or established by law upon the land or the buildings situated thereon, or the interest of the owner in such land or buildings. It shall not operate to change the laws of descent or the rights of partition between cotenants, or the right to take the land by eminent domain. It shall not operate to relieve such land from liability to be taken or recovered by any assignee or receiver under any provision of law relative thereto, and shall not operate to change or affect any other rights, burdens, liabilities or obligations created by law and applicable to unregistered land except as otherwise expressly provided herein. No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession. (3371) [6869]
94-216, 102+453.

8249. Application, who may make—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collec-

tively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing. ('05 c. 305 § 3, amended '09 c. 110 § 1) [6870]

Any person owning land whether his title be of record or not, may maintain proceedings to register his title (99-137, 108+861).

8250. Titles which may be registered—No land, the title to which is derived from any tax or local assessment sale shall be first registered until such title has been adjudged to be valid by a court of competent jurisdiction, and a certified copy of the decree duly recorded with the Register of Deeds; provided, however, that any person may make application when for at least fifteen years the land has been in the adverse possession of the applicant or those through whom he claims title. No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration, and whenever a dock or harbor line has been established by Federal authority, the interest and estate of a riparian proprietor in the submerged lands lying between the original shore line and such established dock line may be registered under this act, subject, however, to the rights of the state of Minnesota in its sovereign capacity in the same, and such registration shall not in any manner affect or change the rights of the state with respect to such lands. (R. L. '05, § 3373; G. S. '13, § 6871; amended '15, c. 242, § 1; '27, c. 112, § 1)

211+686.
Judgment adjudicating validity of tax title, rendered in action against holder of legal title, is sufficient compliance, even though judgment does not conclude all persons claiming interest in property. Persons not concluded may contest validity of tax title in registration proceedings (112-252, 127+995). Title in U. S. cannot be registered (130-456, 153+871).

8251. Application, how signed and verified—The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer of a corporation, the authority of such agent shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant shall assent thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application. (3374) [6872]

8252. Application, contents, assent of other claimants—The application shall set forth substantially:

1. The full name, age and residence of the applicant. If the application is made by any person acting in behalf of another, the application shall likewise state the full name and residence of the person so acting, and the capacity in which he acts.

2. Whether the applicant is or is not married, and if married the full name and residence of the husband or wife. It shall also state that the applicant is under no disability and whether the applicant has ever been divorced, and if so, when, where and by what court the divorce was granted.

3. A correct description of the land, together with the assessed value thereof, exclusive of improvements, according to the last official assessment.

4. The estate or interest of the applicant in the land, and whether or not it is subject to an estate of homestead.

5. The names of all persons or parties, except the applicant, who appear of record, or who are known to the applicant to have or to claim any right, title, estate, lien or interest in the land.

6. Whether the land is occupied or unoccupied. If occupied by any other person than the applicant, it shall state the full name and address of each occupant, and the nature of the estate, interest, lien or charge which such occupant or occupants have, or claim to have, in the land.

7. Whether the land is subject to any lien or incumbrance, recorded or unrecorded, together with the character and amount of the same, and the name and postoffice address of each holder thereof. If recorded, it shall state the place, book and page of record.

8. Whether any person, other than the applicant, has or claims to have any estate or interest in the land, either in law or equity, in possession, remainder, reversion or expectancy, together with the full name and address of every such person, and the nature and character of such estate or interest.

9. If the application is on behalf of a minor, it shall state the age of such minor, and that a duly certified copy of the letters of guardianship has been recorded with the register of deeds, in the county wherein the land is situated.

10. When the place of residence of any person whose residence is required to be given in unknown to the applicant, it may be so stated in the application, and also that after due and diligent search the applicant has been unable to ascertain the same.

11. If it is desired to fix and establish the boundary lines of the land, the full names and postoffice addresses of all owners of adjoining lands which are in any manner affected thereby shall be fully stated; otherwise the decree shall not have the effect to fix or determine the boundary lines.

Any person having or claiming any right, title, interest or estate in land or any lien or charge upon or against the same may assent in writing to the registration thereof, and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant therein, need not be served with the summons therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgment of a deed and shall be filed with the clerk of the court. (3375) [6873]

Cited (99-197, 108+945).

8253. Non-resident applicant—Agent—If the applicant is not a resident of the state of Minnesota, he

shall file for record with the register of deeds a written agreement, duly executed and acknowledged, appointing an agent residing in the state. He shall state therein the full name and postoffice address of such agent, and shall therein agree that the service of any legal process in proceedings under or growing out of any application shall be of the same legal effect when made on said agent as if made on the applicant within the state. If the agent so appointed dies, or removes from the state, the applicant shall at once appoint another agent in like manner, and, if he fails so to do, the court may in its discretion dismiss the application. In any subsequent application made by the same applicant, he may refer to such written authority so recorded, provided the same is sufficiently comprehensive to include such subsequent application. (3376) [6874]

8254. May include several pieces—Any number of adjoining tracts of land in the same county and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application. (3377) [6875]

8255. Amendment—Amendments to the application, including joinder, substitution or discontinuance as to parties, may be allowed by the court at any time upon terms that are just and reasonable, but all amendments shall be in writing and signed and verified like the original application. (3378) [6876]

8256. Application to what court—Power of court—An application for registration shall be addressed to the district court in and for the county wherein the land described therein is situated. The district court shall have original exclusive jurisdiction thereof, and of all proceedings thereunder, and shall have full power to inquire into the title of said land, and any right, title, interest or estate therein, and any lien, charge or incumbrance thereon. By its decree, it shall adjudicate and determine the title to said land, the nature, character, extent and amount of all liens and incumbrances thereon, the priority as between the same, and shall remove all clouds from the title. The district court shall have full power and authority to make all necessary orders, judgments and decrees, and for these purposes the court shall be always open. (3379) [6877]

94-216, 102+453.

8257. Application to be filed with clerk—Docket—Abstract—The application shall be filed with the clerk, who shall docket the same in a book to be known as the "Land Registration Docket." The application shall be entitled (here insert name of applicant), applicant to have registered the title to (here insert description of land), applicant, against (here insert the names of all persons named in the application and in the order of the court directing the issuance of a summons as being in possession of the land, or having any lien, incumbrance, right, title, interest or estate therein), also "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," defendants. All orders, judgments and decrees of the court in said proceeding shall be minuted in such docket. All final orders or decrees shall be recorded by the clerk and proper reference made thereto in such docket. At the time of the filing of the application with the clerk, a copy thereof, duly certified by him, shall be filed for record with the register of deeds, and shall have the force and effect of a *lis pendens*. The applicant shall file with the clerk, as soon after the filing of the application as is practicable, an abstract of title to the

land described in the application, satisfactory to the examiner. If required so to do by the examiner, the applicant shall likewise cause the land to be surveyed by some competent surveyor, and file with the clerk a plat of the land duly certified by such surveyor. (3380) [6878]

8258. Examiners of titles—The Judges of the District Court shall appoint a competent attorney in each County within their respective Districts to be an Examiner of Titles and legal adviser to the Registrar in said County, and may appoint one deputy Examiner, who shall act in the name of the Examiner and under his supervision and control, and his acts shall be the acts of the Examiners. The Examiner of Titles shall hold office subject to the will and discretion of the District Court by which he is appointed. His compensation and that of his Deputy or Deputies shall be fixed and determined by the said Court, and shall be paid in the same manner as the compensation of other County employes is paid; provided, however, that in all counties having a population of less than 75,000 inhabitants, the fees and compensations of the Examiners shall be determined by the Judge of the District Court, and shall in every instance be paid by the person applying to have his title registered. ('05, c. 305, § 12; amended '09, c. 183, § 3; '27, c. 112, § 2) [6879]

8259. References to examiners—Powers—Reports—Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title of the land described in the application, and into the truth of all matters set forth therein. He shall ascertain whether or not the land is occupied, and, if occupied, he shall ascertain the nature thereof, and by what right the occupation is held. He shall also ascertain whether or not any judgments exist which may be a lien upon the land. He shall search all public records, and fully investigate all facts pertaining to the title which may be brought to his notice, and shall file in the case a full report thereof, together with his opinion upon the title. The court shall not be bound by any report of the examiner of titles, but may require further or other proof. An examiner of titles shall have full power to administer oaths and examine witnesses concerning any matter involved in his investigation of titles. In such matters he shall possess the same authority as is vested by law in referees appointed by the district court. Whenever, in the opinion of the examiner, the state has any interest in, or lien upon, the land, he shall state the nature and character thereof in his report, and in such cases, the state shall be joined as a party, and named in the summons as a party thereto, in order that its interest, estate or lien may be defined and preserved. The clerk shall give notice to the applicant of the filing of such report. If the report of the examiner is adverse to the applicant, he shall have a reasonable time in which to proceed further, or to withdraw his application. This election shall be made in writing and filed with the clerk. Examiners shall, upon the request of the registrar, advise him upon any act or duty pertaining to the conduct of his office, or prepare the form of any memorial to be made or entered by the registrar.

In all cases where under the provisions of this act application is made to the Court for any order or decree, the Court may refer the matter to the Examiner of Titles for hearing and report in like manner as herein provided for the reference of the initial application for registration. (3382) [6880] (Amended '27, c. 112, § 3, by adding last par.)

Tax liens held by the state render it a necessary party, (96-119, 104+678, 680, 816). Costs held not taxable in supreme court against the state when made a party under this section (96-119, 104+678, 680, 816). State as party to proceedings (123-401, 143+983). Reliability of entry man's receipt of U. S. parting with title and examiner's duty (130-456, 153+871).

8260. Survey in certain counties—In any county of this state having more than two hundred thousand inhabitants, the county surveyor thereof shall, at the request of the examiner of titles for such county, make a survey of the plat described in any application for registration under chapter 65, Revised Laws Minnesota, 1905, and file with the clerk of the district court of such county a plat of such land, duly certified, showing the dimensions of the land, the location of all structures, fences and other improvements thereon and such other facts as may be required by the examiner. The surveyor shall also at the request of the registrar of titles of such county, make a survey of any registered land designated by him and file with such registrar a plat of such land, duly certified showing its dimensions and such other facts as the registrar may require. Such plat shall be numbered and entered as a memorial on the original owner's duplicate certificate of such land and transferred with each subsequent certificate affecting such land. In any county in which the county surveyor receives fees in lieu of a salary, he shall be paid such compensation for his services as the county board may determine; in all other counties, he shall receive no other compensation than the salary paid him for other county work. ('09 c. 366 § 1) [6881]

The provisions of R. L. c. 65 are included in this chapter.

8261. Order for summons—Parties defendant—If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued therein. This order shall contain the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application, or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be, and shall be known as, defendants. (3383) [6882]

89-454, 95+317, 895, 96+704.

8262. Form of summons—Service—The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state and upon "all other persons or

parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," by publishing the same in a newspaper printed and published in the county wherein the application is filed, once each week, for three consecutive weeks. The clerk shall also, at least twenty (20) days before the entry of the decree which shall be entered in said matter, send a copy of the summons by mail to all defendants who are not residents of the state, and whose place of address is known to applicant, or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND.

State of Minnesota, }
County of } ss.

District Court, Judicial District.

In the matter of the application of (name of applicant) to register the title to the following described real estate situated in county, Minnesota, namely: (description of land). Applicant,

vs.

(Names of defendants), and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," Defendants.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after service of this summons upon you exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the applicant in this proceeding will apply to the court for the relief demanded therein.

Witness clerk of said court, and the seal thereof, at in said county, this day of, 19....

(Seal)

.....,
Clerk.

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same. By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree. (3384) [6883] (Amended '27, c. 112, § 4)

This section is exclusive. Summons need not be published in accordance with ch. 77 (89-454, 95+317, 895, 96+

704). It is only on non-residents and unknown parties that service by publication can be made (85-437, 89+175). Cited (108-443, 122+316).

8263. Answer—Any person claiming any right, title, estate or interest in or lien upon the land, whether named in the summons or not, may file an answer therein, within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the right, title, estate, interest or lien claimed by the party filing the same, and shall be signed and verified by the defendant, or by some person in his behalf. (3385) [6884]
Cited (108-443, 122+316; 119-491, 138+941).

8264. Guardian ad litem for minors, etc.—Upon the petition of the applicant, or of any person interested in the proceeding, the court shall appoint a disinterested person to act as guardian ad litem for minors, and other persons under disability, and for all persons not in being who may appear to have any interest or lien upon the land. The compensation of the guardian shall be determined by the court, and paid by the applicant as part of the expenses of the proceeding. (3386) [6885]

8265. Decree on default—If no person appears and answers within the time named in the summons, or allowed by the court, the court may, at once, upon the motion of the applicant, no reason to the contrary appearing, and upon satisfactory proof of the applicant's right thereto, make and file its order and decree confirming the title of the applicant and ordering the registration thereof. (3387) [6886]

Decree not open to collateral attack unless want of jurisdiction appears affirmatively on face of record (141-353, 170+225).

8266. Trial—Reference—When an answer is filed, the case shall be tried by the court in like manner as an ordinary civil action. The court may refer the case, or any part thereof, to one of the examiners, as referee, to hear the parties and their evidence, and make report thereon to the court. Any report of an examiner shall have the same weight as that of a referee appointed by the district court. After the filing of such report, the court may order such other or further hearing of the cause before the court, or before the examiner, and may require such other or further proof by either or any of the parties to the cause as it shall deem proper. (3388) [6887]

Practice in ordinary civil actions to be followed. Findings and conclusions to be made when issues joined (95-163, 103+903; 114-217, 130+1100). All rules of law applicable to rights in realty to be applied. Rule that a party must recover on the strength of his own title is applicable (95-163, 103+903). Court cannot order foreclosure of liens (94-216, 102+453. See 108-443, 122+316). Court may permit amended answer (114-217, 130+1100). Neither the registration act nor the general law confers any absolute right to a jury trial upon any of the issues that may arise in registration proceedings. Const. art. 1 § 4 does not apply. No appeal lies from denial of application for jury trial, nor from order denying motion to dismiss (119-96, 137+390).
135-413, 161+159.

8267. Dismissal—If the court shall find after hearing that the applicant has not a title proper for registration, an order shall be entered dismissing the application which may be without prejudice. The applicant may upon motion dismiss the application at any time before the final decree is entered upon such terms as shall be fixed by the court. (3389) [6888]

This section does not render the act invalid as in violation of Const. art. 1 § 8 (119-96, 137+390). Applicability of abatement (127-421, 149+735). Trust during minority of grandchildren (135-413, 161+159).

8268. Decree of registration—Effect—If, after hear-

ing, the court finds the applicant has a title proper for registration, whether as stated in his application or otherwise, it shall make and file its decree therein, confirming the title of the applicant and ordering the registration thereof. Except as herein otherwise provided, every decree of registration shall bind the land described therein, and shall forever quiet the title thereto, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the summons, or included in the phrase, "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," and such decree shall not be opened, vacated or set aside by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for opening, vacating, setting aside or reversing judgments and decrees, except as herein especially provided. The decree shall forever determine, bind and conclude all the right, title, interest, estate or lien in the land described therein of the husband or wife of any defendant acquired or growing out of the marriage relation in like manner as if such husband or wife had been expressly named in said decree. (3390) [6889]

Fraudulent omission of known claimants and effect when appearing on face of judgment roll and when not (123-183, 143+325). Collateral attack (123-387, 143+981). Power to vacate final decree and permit answer withheld (148-376, 182+499).

In law, a married woman's name consists of her Christian name and her husband's surname, the prefix "Mrs." being a mere title. If ignorant of her name, the plaintiff in an action against a married woman should allege that fact, and, when her true name is ascertained, it should be substituted for the name by which she was sued. 159-458, 199+235.

8269. Contents of decree—Copy filed—Every decree of registration shall bear the date, hour and minute of its entry and shall be signed by one of the judges of the district court. It shall state the age of the owner of the land, and whether married, or unmarried, and, if married, the name of the husband or wife; if the owner of the land is under disability, it shall state the nature thereof. It shall contain an accurate description of the land as finally determined by the court, and shall set forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other facts properly to be determined by the court. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof with the registrar. (3391) [6890]

94-216, 102+453.
Cited (108-443, 122+316).

8270. Registration runs with land—The obtaining of a decree of registration, and the receiving of a certificate of title, shall be deemed as an agreement running with the land, and binding upon the applicant, and his successors in the title, that the land shall be and forever remain registered land, and subject to the provisions of this chapter, and to all acts amendatory thereof. All dealings with the land, or any estate or interest therein, and all liens, incumbrances and charges upon the same, after the land has been registered, shall be expressly subject to the terms and provisions of this chapter. (3392) [6891]

8271. Certificate of title—What survives—Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration, shall hold

the same free from all incumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights arising or existing under the laws or the constitution of the United States, which this state cannot require to appear of record.

2. The lien of any tax or special assessment for which the land has not been sold at the date of the certificate of title.

3. Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder.

4. All rights in public highways upon the land.

5. Such right of appeal, or right to appear and contest the application as is allowed by this chapter. (3393) [6892]

Subd. 4 (95-168, 103+903). Subd. 5 (89-454, 462, 95+317, 895, 96+704). Cited generally (94-216, 102+453; 108-443, 122+316). Basic principle is creation of title by decree (123-184, 143+325; 130-461, 153+873).

8272. Opening decree—Any person having any right, title, or interest in or lien upon the land upon whom the summons has not been actually served, and who had no notice or knowledge of the filing of the application or of the pendency of such proceeding prior to the entry of the decree therein, may at any time within sixty days after the entry of such decree, and not afterwards, file his duly verified petition setting forth such facts and praying for leave to file his answer therein. If the court is satisfied of the truth of the matters set forth in such verified petition, it shall make an order permitting such petitioner to answer the application. Upon the filing of such answer, and upon not less than ten days' notice to the applicant, and to such other persons or parties as the court may order, and in such manner as it may direct, the court shall proceed to review the case, and, if satisfied that its decision or decree ought to be opened, it shall so order. Thereupon the court shall proceed to hear and try the case de novo, and to make such further order, decision or decree therein as shall be according to equity. (3394) [6893]

89-417, 95+303.
Cited (99-197, 108+945; 108-443, 122+316; 119-491, 138+941).

8273. Title acquired pending proceeding—Any person who shall acquire any right, title, interest or estate in the land subsequent to the filing of the copy of the application for registration with the register of deeds, and prior to the entry of the decree in the registration proceeding, shall at once appear and answer as a party defendant in such proceeding, and the right, title, interest, estate or lien of such person shall be subject to the order or decree of the court. (3395) [6894]

Persons, who delayed more than six months after actual notice of proceedings before making application for permission to answer, in order to assert interests alleged to have been acquired pendente lite, were not entitled to answer as a matter of right; § 8274 having no application to such a case (119-491, 138+941)
123-184, 143+325.

8274. Limitation of actions—No decree of registration heretofore entered, and no original certificate of title heretofore issued pursuant thereto, shall be adjudged invalid or set aside unless the action in which the validity of such decree of registration, or original certificate of title issued pursuant thereto, is called in question, be commenced, or the defence alleging the invalidity thereof be interposed within six months from

the date when this law takes effect. No decree of registration hereafter entered, and no original certificate of title hereafter issued pursuant thereto, shall be adjudged invalid or set aside, unless the action in which the validity of such decree, or of the original certificate of title issued pursuant thereto, is called in question, be commenced, or the defence alleging the invalidity thereof be interposed, within six months from the date of such decree. No action or proceeding either at law or in equity for the recovery of any right, title, interest or estate in registered land adverse to the title established and adjudicated by any original decree of registration heretofore entered shall be maintained unless such action is commenced within six months from the date when this law takes effect, and no action or proceeding for the recovery of any right, title, interest or estate in registered land adverse to the title established by any original decree of registration hereafter entered shall be maintained, unless such action is commenced within six months from the date of such original decree. No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, which existed at the date when any original decree of registration was heretofore entered and which was not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date when this law takes effect. No action or proceeding for the enforcement or foreclosure of any lien or charge upon or against registered land, in existence at the date of any original decree of registration hereafter entered, and which is not recognized and established by such decree, shall be maintained, unless such action or proceeding is commenced within six months from the date of such original decree. No such action or proceeding shall be commenced by any person who is bound by the decree. Nothing herein shall apply to any action or proceeding now pending in the courts of this state or affect any rights already barred when this law takes effect. (3396) [6895]

Statute does not run against adverse claimant in possession not served. So construed limitation constitutional (85-437, 89+175). After expiration of the period duly registered title is indefeasible, unless registration was obtained by fraud. When registration is secured by fraud, and owner is not notified, decree and certificate may be vacated, unless innocent purchaser has obtained rights on faith of record. As long as title remains registered in name of person guilty of fraud, decree and certificate may be set aside, in action brought by defrauded party within reasonable time after notice of fraud. That statute does not in express words except fraud, does not deprive court of equity of general jurisdiction to protect parties from consequences of fraud (99-197, 108+345). Provision for foreclosure of liens not recognized and established by decree applies only to parties not bound by decree (108-443, 122+316). See note under preceding section. 148-377, 182+450.

8275. Appeals—An appeal may be taken to the supreme court from any order or judgment of the district court under this chapter as follows:

1. From any final decree within six months from the date thereof. Upon appeal from such decree, the supreme court may review any intermediate order involving the merits or necessarily affecting the decree.

2. From any order granting or denying an application to open, vacate or set aside such decree, within thirty days from the date of the filing of such order.

3. From any order granting or refusing a new trial, or from any order involving the merits of the proceeding, or some part thereof, within thirty days from the filing of such order.

All appeals from any order or decree in any proceeding under this chapter shall be taken upon such notice, terms and conditions as are now provided by law for

the taking of appeals in civil actions. (3397) [6896]

No appeal lies from denial of defendant's application for jury trial, nor from order denying defendant's motion to dismiss application (119-96, 137+390). Cited (108-443, 122+316).

8276. Registrar of titles—Registers of deeds shall be the registrars of titles in their respective counties. (3398) [6897]

8277. Registrar's bond—Before entering upon the duties of his office, the registrar of titles shall execute a bond to the state for such amount and with such sureties as may be determined by the county board. Such bond shall be approved by the district court, and filed in the office of the secretary of state, and shall be conditioned for the faithful discharge of his duties. A copy of said bond shall be filed and entered upon the records of the court. (3399) [6898]

8278. Control of court—Seal—The registrar of titles shall be at all times under the control of the court, which may adopt such rules governing the conduct of his office as it may deem wise. Every registrar of titles shall have an official seal, and affix the same to all documents requiring his official signature. (3400) [6899]

8279. Deputy registrars—The registrar of titles may, in his discretion, appoint one or more deputy registrars of titles, who may also be deputy registers of deeds, to act in his stead. Deputy registrars shall act in the name of the registrar, and their acts shall be his acts. The registrar shall be liable for any neglect or omission of a deputy, to the same extent as for his own neglect or omission. The registrar may, with the consent of the county board, employ such clerks as may be required to properly perform the duties of his office. In all counties in which the registrar of deeds does not receive the fees of the office in lieu of a salary, the county board shall fix the compensation of all deputy registrars and clerks appointed or employed by the registrar which shall be paid out of any county funds not otherwise appropriated. (3401) [6900]

8280. Title, how registered—Register of titles—Immediately upon the filing of the decree of registration with the registrar, he shall proceed to register the title pursuant to the terms of the decree in the manner herein provided. He shall keep a book known as the "Register of Titles," wherein he shall enter all first and subsequent certificates of title by binding or entering them therein in the order of their numbers, beginning with number one. The entering of the certificate of title in the register of titles shall constitute the act of registration. The term "certificate of title" shall be deemed to include all memorials and notations thereon, and each certificate of title shall contain proper blanks for the entry of the memorials and notations thereon. Each certificate shall constitute a separate page of such book, and all memorials and notations that may be entered by the registrar shall be entered by him upon the page whereon the latest certificate of title is entered. (3402) [6901]

8281. Certificate of title—Form—Contents—The certificate of title shall contain the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description of all incumbrances, liens and interests to which the estate of the owner is subject. It shall state his age, and if under disability the nature thereof. It shall also state whether or not the owner is married, and, if married, the name of the husband or wife. In case the land is held in trust or subject to any condition or limitation, it shall state the

nature and character thereof. It shall be substantially in the following form:

CERTIFICATE OF TITLE

NO....

First certificate of title, pursuant to the order of the district court,.....judicial district, county ofand state of Minnesota, dated 19....

REGISTRATION

State of Minnesota, County of ss.

This is to certify thatof theof.....county ofand state of..... is now the owner of an estate, to wit, of and in the following described land situated in the county ofand state of Minnesota, to wit,

Subject to the incumbrances, liens and interest noted by the memorial underwritten or indorsed hereon; and subject to the following rights or incumbrances subsisting, as provided in the twenty-fourth section of "An act concerning the registration of land and the title thereto" of the General Laws of the state of Minnesota for the year 1905, namely:

1. Liens, claims or rights arising under the laws or the constitution of the United States, which the statutes of this state cannot require to appear of record.

2. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

4. All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded.

5. Such right of appeal or right to appear and contest the application as is allowed by law.

That the saidis of the age ofyears, is.....married....., and is underdisability.

In witness whereof, I have hereunto subscribed my name and affixed the seal of my office, this.....day of, 19....

Registrar of Titles,

In and for the County of..... and State of Minnesota.

All certificates issued subsequent to the first certificate of title shall be in like form except that they shall be entitled "Transfer from number (here give the number of the next previous certificate relating to the same land)," and shall also contain the words "Originally registered (date, volume and page of registration)." (3403) [6902]

94-216, 102+453. Sufficiency of memorial of incumbrances (117-424, 136+4).

8282. Certificates, etc., as evidence—The original certificate of title in the register of titles, any copy thereof duly certified by the registrar, or by his deputy, and authenticated by his seal, and likewise the owner's duplicate certificate of title shall be received in evidence in all the courts of this state, and shall be conclusive evidence of all matters and things contained therein. In case of variance between the owner's duplicate certificate and the original certificate of title, the original certificate shall prevail. Deeds, mortgages,

leases, or other conveyances of real estate, or letters of attorney authorizing the same, and all instruments in any manner affecting the title to registered land, together with any notations, indorsements or memorials upon the same made by the registrar of titles, as required by law, heretofore or hereafter filed with the registrar, shall be received in evidence in all the courts of this state, without further or other proof, and shall be prima facie evidence of the contents thereof. Duly authenticated copies of said instruments, or any of them, may likewise be received in evidence in any court in this state with like force and effect as the original instruments. (3404) [6903]

8283. Tract indexes—Reception books—The registrar shall likewise keep tract indexes, in which he shall enter an accurate description of all registered land, together with the names of the respective owners thereof, and a reference to the volume and page of the register of titles in which the same is registered. He shall also keep alphabetical indexes, in which he shall enter in alphabetical order the names of all owners of registered land, and the names of all persons having any interest in or lien upon the same, with reference to the volume and page of the register of titles in which the certificate of title is entered. The registrar shall keep two books, to be known as the grantors' and grantees' reception books respectively. These books shall be in the following form:

Table with two main sections: GRANTORS' INDEX OF INSTRUMENTS and GRANTEES' INDEX OF INSTRUMENTS. Each section has columns for Grantor/Grantee (Surname, Given Name), Date of Registration (Month, Day, Year, Hour A.M., Hour P.M.), Number of Instrument, Register (Book, Page), Instrument, and Description of Property (Lot or Sec., Block or Trp., Range, Addition Etc.).

The registrar shall enter in each of said books in the order and manner aforesaid, and as soon as the same are received, all instruments affecting the title to land which are filed with him, and shall enter as far as may be the particulars of said instruments in the appropriate column of said books. The pages of each of the said reception books shall be lettered in alphabetical order, a convenient number of consecutive pages being allotted to each letter of the alphabet, and each entry shall be made in the grantors' reception book under the initial letter of the grantor's surname, and in the grantees' reception book, under the initial letter of the grantee's surname, and all the entries under each letter shall appear in the order as to time in which the instruments were filed. (3405) [6904]

8284. *Indexes, etc.—Court to adopt forms*—Every instrument affecting the title to land, filed with the registrar, shall be numbered by him consecutively, and he shall indorse upon the same the number thereof, together with the date, hour and minute when the same is filed, and a reference to its proper certificate of title. Every such instrument shall be retained by him and shall be regarded as registered from the time of filing. When the memorial of any instrument is made upon any certificate, the date, number and time of filing thereof shall likewise be indorsed upon such certificate. All records and papers relating to registered land in the office of the registrar, shall be open to the inspection of the public at such times and under such conditions as the court may prescribe. Duplicates of all instruments, voluntary or involuntary, filed and registered with the registrar, may be presented with the originals, and shall thereupon be attested and sealed by him, and indorsed with the file number, and other memoranda on the originals, and returned to the person presenting the same. The registrar shall furnish certified copies of the instruments filed and registered in his office, upon payment of a fee of ten cents per folio for each folio contained in such instrument. The court shall adopt general forms of memorials and notations to be used by the registrars in registering the common forms of conveyance and other instruments. (3406) [6905]

8285. *Notices after registration—Service of*—All notices required by this law, after the original registration, either by the registrar or by the court, shall be served on the persons to be notified in the following manner: The notice shall be served upon a resident of the state in the manner now provided by law for the service of a summons in a civil action, and the same proof of such service shall be made. It shall be served upon a person who is not a resident of the state by sending the same by mail to such person at his post-office address, as stated in the certificate or in any registered instrument on file with the registrar. The certificate of the registrar or clerk that any notice has been mailed as aforesaid shall be conclusive proof of the service of such notice, but the court may, in any case, order different or other service thereof by publication or otherwise. (3407) [6906]

8286. *Owner's duplicate—Receipt*—At the time the original certificate of title is entered, the registrar shall make a duplicate thereof, indorsing across the face of such duplicate the words "Owner's Duplicate Certificate" and shall deliver the same to the owner or his authorized attorney. The registrar shall, in every case, whenever it is practicable so to do, take from such owner a receipt for such duplicate certificate, which shall be signed by the owner in person. Such receipt, when signed and delivered in the office of

the registrar, shall be witnessed by him or his deputy. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as a deed. Such receipt shall be prima facie evidence of the genuineness of such signature. (3408) [6907]

8287. *Duplicate, if several owners*—Where two or more persons are owners of registered land, either as tenants in common or otherwise, one owner's duplicate certificate may be issued for the entire interest in the land or separate duplicate certificates may be issued to each owner for his undivided interest therein. (3409) [6908]

8288. *Surrender of duplicate—New duplicate*—The owner of registered land holding one duplicate certificate for two or more distinct parcels of land may surrender the same, and thereupon the registrar may issue to him one or more duplicate certificates therefor. An owner of registered land holding separate duplicate certificates for several parcels of land may surrender the same, and thereupon the registrar may issue to such owner a single duplicate certificate for all of said parcels, or may issue two or more certificates including in each certificate as many parcels as such owner may desire. (3410) [6909]

8289. *When certificate takes effect*—The certificate of title, when entered in the register of titles, shall relate back to and take effect as of the date of the decree of registration. (3411) [6910]

8290. *Loss of duplicate*—If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate. (3412) [6911]

8291. *Court may order duplicate certificate produced*—If the registrar of titles is requested to enter a new certificate in pursuance of an instrument which purports to be executed by the registered owner, or by reason of any instrument or proceeding which divests the title of the registered owner against his consent, and the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the registrar of titles shall not enter a new certificate, until authorized so to do by order of the district court. The person who claims to be entitled thereto may make application therefor to the district court, and after due notice and hearing, the court may order the registered owner or any person withholding the duplicate certificate to surrender it, and direct the entry of a new certificate upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the court may by decree annul it, and order a new certificate of title to be entered. If an outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when the mortgage or lease is discharged, assigned or extinguished, the same proceedings may be had to obtain registration as in the case of the non-production of an owner's duplicate. (3413) [6912]

8292. *Plats of registered land*—The owner of registered land may plat the same and subdivide it into lots and blocks in like manner as in case of unregistered land. All laws with reference to the subdivision and platting of unregistered land shall apply with like

force and effect to registered land excepting only that the surveyor's plat thereof shall be filed with the registrar. (3414) [6913]

8293. Transfer of registered land—An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same as fully as if it had not been registered. He may use any form of deed, mortgage, lease or other voluntary instrument sufficient in law for the purpose intended. No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land. (3415) [6914]

8294. Conveyances, etc., filed with registrar—Notice—Every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding, which would affect the title to unregistered land under existing laws, if recorded, or filed with the register of deeds, shall, in like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing. (3416) [6915]

8295. New certificate—Interest less than fee—No new certificate shall be issued upon any transfer of registered land which does not divest the title in fee simple of said land, or some part thereof. All interests in registered land, less than an estate in fee simple, shall be registered by filing with the registrar the instrument which creates, transfers or claims such interest, and by brief memorandum or memorial thereof made and signed by the registrar upon the certificate of title. A similar memorandum shall also be made on the owner's duplicate. The cancellation of such interests shall be registered in the same manner. (3417) [6916]

8296. Instruments to have name and address—Every deed or other voluntary instrument which is presented for registration shall contain or have indorsed upon it the full name and postoffice address of the grantee, or other person, who acquires or claims an interest under such instrument. Any change in the postoffice address of such person shall be indorsed by the registrar upon the original instrument upon receiving a duly verified statement of such change. All names and addresses shall also be entered upon the certificates of title. (3418) [6917]

8297. Owner's duplicate must be presented, when—No new certificate of title shall be entered or issued, and no memorial shall be made upon any certificate of title in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate is presented therewith, except in cases provided for in this law or upon the order of the court. Whenever such order is made, a memorial thereof shall be entered, or a new certificate issued as directed thereby. Whenever any voluntary instrument is presented for registration the production of the owner's duplicate certificate shall authorize the registrar to enter a new certificate, or to make a memorial of registration in accordance with such instrument, and the new certificate or memorial shall be binding upon the registered owner, and upon all persons claiming under him in favor of every purchaser for value and in good faith. In all cases of registration which are procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to

the rights of any innocent holder for value of a certificate of title. (3419) [6918]

Acquiescence between partners to registering title in the name of one; the interest of the other not thereby defeated (143-124, 173+573).

8298. Conveyance—Cancellation of certificate—New certificate—An owner of registered land who desires to convey the same, or any portion thereof, in fee, shall execute a deed of conveyance, and file the same, together with his owner's duplicate certificate, with the registrar. The registrar shall require an affidavit by the grantee, or some person in his behalf, which affidavit shall set forth the name, age and residence of the grantee, and whether the grantee is or is not married, and, if married, the name of the husband or wife. The owner's duplicate certificate and the original certificate of title shall be marked "Canceled" by the registrar, who shall thereupon enter in the register a new certificate of title to the grantee, and shall prepare and deliver to such grantee a new owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate, except so far as they may be simultaneously released or discharged. The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate. If a deed in fee is for a part only of the land described in a certificate of title, the registrar shall enter a new certificate of title and issue an owner's duplicate certificate to the grantor for that portion of the land not conveyed. (3420) [6919]

8299. Transfer and payment of taxes—All laws requiring deeds, plats or other instruments affecting unregistered land to bear the indorsement of the proper city or county officials showing that all taxes or assessments upon the same have been paid, shall be operative as to registered land, and all such laws shall be complied with before any deed, plat or other instrument affecting registered land shall be filed with the registrar. Whenever, by the terms of any decree of registration, any tax or local assessment lien, or the title based upon the same, is either subordinated to the title adjudicated thereby or merged therein, all such liens and titles shall be described in detail in the decree, and from and after the entry thereof such titles and liens shall be considered as having in law been paid. A certified copy of the decree shall be filed with the county auditor and shall also be filed with the city treasurer in all counties where local assessments are paid to such official. The county auditor and city treasurer shall thereafter treat the liens and titles described in such decree as having in law been paid, and shall make upon the books and records of their respective offices proper entries to that effect. If any deed, plat or other instrument affecting such land is thereafter presented to the county auditor or to the city treasurer upon which it is the duty of such officers to make any official indorsements, they shall regard all the titles and liens described in such decree as having been legally paid and satisfied and shall make their official indorsement upon such deed, plat or other instrument without reference or regard thereto. (3421) [6920]

8300. Mortgage—The owner of registered land may mortgage the same by deed or other instrument sufficient in law for that purpose, and such mortgage or other instrument may be assigned, extended, discharged or released, either in whole or in part, or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient in law for the purpose.

But such deed, mortgage or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the same, shall be registered, and shall take effect upon the title only from the time of registration. (3422) [6921]

8301. Registration of mortgage—The registration of a mortgage shall be made in the following manner: The owner's duplicate certificate shall be presented to the registrar, together with the mortgage deed, or other instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorial of the purport of the instrument registered, the exact time of filing, and the file number of same. He shall also note upon the registered instrument the time of filing and a reference to the volume and page where it is registered. The registrar shall also, at the request of the mortgagee, make and deliver to him a duplicate certificate of title like the owner's duplicate certificate, except that the words "Mortgagee's Duplicate" shall be written or printed diagonally across its face in large letters. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the original certificate of title. (3423) [6922]

8302. Assignment and discharge of mortgage—When a mortgage, upon which a mortgagee's duplicate has been issued, is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented to the registrar, together with the instrument dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate and upon the original certificate of title. When the mortgage is discharged or otherwise extinguished the mortgagee's duplicate shall be surrendered and stamped "Canceled." In case only a part of the mortgage upon the land is intended to be released or discharged a memorial of such partial release shall be entered. The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. (3424) [6923]

8303. Foreclosure, etc.—Notice of pendency—Mortgages upon registered land may be foreclosed in the same manner as mortgages upon unregistered land: Provided, however, that where the mortgage is upon registered land it shall be sufficient to authorize the foreclosure thereof by advertisement, if such mortgage and all assignments thereof shall have been registered, and a memorial thereof duly entered upon the certificate of title: Provided further, that when a mortgage upon registered land is foreclosed by advertisement, the notice of foreclosure shall state the date of the mortgage, when and where registered, and the fact of registration. All laws relating to the foreclosure of mortgages upon unregistered land shall apply to mortgages upon registered land, or any estate or interest therein, except as herein provided, and except that a notice of the pendency of any suit or proceeding to enforce or foreclose the mortgage or other charge upon the land shall be filed with the registrar, and a memorial thereof entered on the register at the time of or prior to the commencement of such action or proceeding. A notice so filed and registered shall be notice to the registrar and to all persons thereafter dealing with the land or any part thereof. When a mortgagee's duplicate certificate has been issued it shall be presented to the registrar at the time of filing, and a memorial thereof entered therein. In all such foreclosures all certificates and affidavits permitted or required by law to be recorded with the register of deeds shall be filed with the registrar and registered by him. (3425) [6924]

94-216, 102-453.

When land is registered subject to lien of a mortgage, it is not necessary to foreclosure by advertisement that assignments made before decree be registered, or memorial thereof be entered on certificate. This section applies only to mortgages and assignments made after decree (117-424, 136-4).

8303-1. Certain foreclosures legalized—That every mortgage foreclosure by advertisement and every sale in such foreclosure heretofore had or made in this State, under power of sale in the usual form, contained in any mortgage duly executed and recorder in this Office of the Register of Deeds or of the Registrar of Titles of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized, and made valid and effective to all intents and purposes as against the objection that the notice of the pendency of any suit or proceeding to enforce or foreclose the mortgage, as provided in Section 6924 of the General Statutes of Minnesota 1913, has not been filed with the Registrar of Titles and a memorial thereof entered on the Register at the time or prior to the commencement of such action or proceeding. ('25, c. 62, § 1)

Explanatory note—For G. S. '13, § 6924, see § 8303. herein.

8303-2. Same—Pending proceedings not affected—The provisions of this act shall not affect any action or proceeding now pending in any of the courts in this state. ('25, c. 62, § 2)

8304. Registration after foreclosure—New certificate—Any person who has, by an action or other proceeding to enforce or foreclose a mortgage, lien or other charge upon registered land, become the owner in fee of the land or any part thereof may have his title registered. He shall apply by duly verified petition to the court for a new certificate of title to such land, and the court shall thereupon, after due notice to all parties in interest and upon such hearing as the court may direct, make an order or decree for the issuance of a new certificate of title to the person entitled thereto, and the registrar shall thereupon enter a new certificate of title to the land, or of the part thereof to which the applicant is entitled, and issue an owner's duplicate as in the case of a voluntary conveyance. (3426) [6925]

8305. Registration of judgment or final decree—A judgment or decree affecting registered land shall be registered upon the presentation of a certified copy thereof to the registrar, who shall enter a memorial thereof upon the original certificate of title, and upon the owner's duplicate, and upon any outstanding mortgagee's or lessee's duplicate, if practicable so to do. When the registered owner of such land is by such judgment or decree divested of his estate in fee therein, or of any part thereof, the prevailing party shall be entitled to a new certificate of title for the land, or so much thereof as may be described in the judgment and decree, and the registrar shall enter such new certificate of title and issue a new owner's duplicate certificate as in the case of a voluntary conveyance: Provided, however, that no such new certificate shall be entered except upon application to the court and upon filing with the registrar of an order of the court directing the entry of such new certificate. (3427) [6926]

8306. Leases—Leases of registered land for a term of three years or more shall be registered in lieu of recording the same. All the provisions of this chapter relating to the registration of mortgages shall apply to the registration of leases so far as the same are applicable thereto. (3428) [6927]

8307. Trust deed, etc.—If a deed or other instrument is filed with the registrar for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest therein without the transfer thereof, the particulars of the trust, condition, limitation or other equitable interest need not be entered upon the certificate of title, but a memorial thereof may be entered by the words “in trust” or “upon condition,” or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate. If the instrument which creates or declares a trust or other equitable interest has already been recorded in any public office of this state, a certified copy thereof may be filed with the registrar and registered by him in lieu of the original. If the instrument which creates or declares a trust or other equitable interest contains an express power to sell, mortgage or otherwise deal with the land, such power shall be stated in the certificate of title by the words “with power to sell” or “power to mortgage” and by apt words of description in case of other powers. No instrument which transfers, mortgages, or in any manner purports to deal with registered land held in trust shall be registered unless the power thereto enabling is expressly conferred in the instrument of trust and the court has construed the instrument in favor of the power. In such case a certified copy of such decree may be filed with the registrar, who shall make registration in accordance therewith. No transfer of registered land held in trust, or of any estate or interest therein, or of any charge or lien upon the same, shall be registered except upon the order of the district court, filed with the registrar, adjudging and determining the true intent of the trust, condition or limitation, and directing such transfer, charge or dealing in accordance therewith. Such registration shall be conclusive evidence that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation. (3429) [6928]

8308. New trustee—When a new trustee of registered land is appointed a new certificate of title shall be entered in his name upon presentation to the registrar of a certified copy of the decree or other instrument appointing him and the surrender of the duplicate certificate. (3430) [6929]

8309. Judgments a lien, when—Registration of instruments creating liens—No judgment requiring the payment of money shall be a lien upon registered land, except as herein provided. Any person claiming such lien shall file with the registrar a certified copy of the judgment, together with a written statement containing a description of each parcel of land upon which the lien is claimed, and a proper reference to the certificate or certificates of title to such land. Upon filing such copy and statement, the registrar shall enter a memorial of such judgment upon each certificate designated in such statement, and the judgment shall thereupon be and become a lien upon the land described in such certificate or certificates. At any time after filing the certified copy of such judgment, any person claiming the lien may, by filing a written statement as herein provided, cause a memorial of such judgment to be entered upon any certificate of title to land not described in any previous statement and the judgment shall thereupon be and become a lien upon such land. The judgment shall survive and the lien thereof shall continue for a period of ten years from the date of said judgment and no longer. In every case where an in-

strument of any description, or a copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, writ or attachment upon unregistered land, such instrument or copy, if intended to affect registered land, shall, in lieu of recording, be filed and registered with the registrar. In addition to any facts required by law to be stated in such instruments to entitle them to be filed or recorded they shall also contain a reference to the number of the certificate of title of the land to be affected, and, if the attachment, charge or lien is not claimed on all the land described in any certificate of title, such instrument shall contain a description sufficient to identify the land. (3431) [6930]

8310. Attachments, liens, etc.—Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient therefor in the case of unregistered land. All certificates, writings or other instruments permitted or required by law to be filed or recorded to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments or other liens upon unregistered land or to give notice of the same, shall in the case of like liens upon registered land be filed with the registrar. (3432) [6931]

94-216. 102+453.

8311. Plaintiff's attorney—The name and address of the plaintiff's attorney shall in all cases be indorsed upon the instrument which is registered, and he shall be deemed to be the attorney of the plaintiff until a written notice that he has ceased to be such attorney shall have been filed for registration by the plaintiff. (3433) [6932]

8312. Release of judgment, execution, etc.—A certificate of the clerk of court in which any action or proceeding shall have been pending or in which any judgment or decree is of record, that such action has been dismissed, or otherwise disposed of, or that the judgment, decree or order has been assigned, satisfied, released or reversed, or the certificate of any sheriff, or other officer, that the levy of any execution, attachment or other process has been released, discharged or otherwise disposed of being duly filed and noted upon the register, shall be sufficient to authorize the registrar to cancel, or otherwise treat the memorial thereof according to the purport of such certificate. (3434) [6933]

8313. Acquiring title by action—New certificate—Upon the expiration of the time allowed by law for redemption of registered land, after it has been set off, or sold on execution, or taken or sold for the enforcement of any lien, or charge of any nature, the person who claims under such execution, or under any certificate, deed or other instrument made in the course of proceedings to enforce such execution or lien, may apply to the court for an order directing the entry of a new certificate to him, and upon such notice, as the court may require, the petition shall be heard, and a proper order or decree rendered therein. Provided, however, that in case the claim of title is based upon a tax certificate, tax or assessment deed, the petition or application shall be filed with the Clerk of the Court, who shall docket the same in the “Land Registration Docket,” and a copy thereof certified by the clerk shall by the petitioner be filed with the registrar who shall enter upon the register a memorial thereof, which shall have the force and effect of a Lis Pendens. Such an application of the petitioner shall be referred to the Examiner of Titles for examination and report in like manner as herein provided for the reference of

initial applications for registration. The summons shall be issued in the form and served in the manner as in initial applications. It shall contain a statement that the action is brought to register a title based upon a tax or assessment sale made subsequent to the initial registration. Such an application shall be heard by the Court and the applicant shall be required to show affirmatively that all the requirements of the statute to entitle him to register his title have been complied with. The decree shall show the condition of the title to such land, and who is the owner thereof. It shall provide, if the applicant is found to be the owner, for the cancellation of the outstanding certificate and the Registrar shall issue a new certificate for said land in lieu and in place of the outstanding certificate upon presentation to him of a duly certified copy of such decree, according to its terms. If the applicant is not adjudged to be the owner then the decree shall provide for the cancellation of the memorial of the registration of the certified copy of the application. (3435) [6934] (Amended '27, c. 112, § 5)

8314. On death of owner—When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the persons entitled thereto may file with the registrar a certified copy of such will, together with a certified copy of the order of the probate court admitting it to probate, and of the final decree of the probate court assigning the same, together with the duplicate certificate issued to the testator, and thereupon the registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to the persons designated in such final decree. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law may file with the registrar a certified copy of the final decree of the probate court assigning the same, together with the duplicate certificate issued to the intestate, and thereupon the registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to the persons named in said final decree as being entitled thereto. If any executor or administrator with the will annexed is authorized by the terms of any will to grant, bargain, sell, convey or mortgage registered land, he may do so in the same manner as if the land were registered in his name as such executor or administrator: Provided, however, that such executor or administrator shall first file with the registrar a certified copy of such will, together with a certified copy of the order of the probate court admitting the same to probate, and of the letters testamentary, or with the will annexed issued to him thereon. (3436) [6935]

8315. Jurisdiction of probate court not impaired—Nothing contained in this chapter shall impair or affect the jurisdiction of the probate court to license any executor, administrator or guardian to sell or mortgage registered land. A purchaser or mortgagee receiving a deed or mortgage executed pursuant to such license shall be entitled to register his title and to the entry of a new certificate of title or memorial of registration in the same manner as upon any similar voluntary transfer of registered land: Provided, that no certificate shall be issued pursuant to the provisions of this section or of § 8314 except upon the order of the district court directing the issuance thereof. (3437) [6936]

8316. Subsequent adverse claim, how registered—Costs—Any person claiming any right, title, or interest

in registered land adverse to the registered owner thereof arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, file with the registrar his verified statement in writing setting forth fully his alleged right or interest, and how or from whom it was acquired, and a reference to the volume and page of the certificate of title of the registered owner, together with a description of the land, the adverse claimant's residence, and designating a place at which all notices may be served upon him. Such statement shall be entitled to registration as an adverse claim, and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the validity of such adverse claim, and shall enter such decision and decree therein as justice and equity may require. If the adverse claim is adjudged to be invalid, the registration thereof shall be canceled. The court may, in any case, award such costs and damages, including a reasonable attorney's fee, as it may deem just. (3438) [6937]

The owner of a tax title who cannot claim 15 years' adverse possession, and whose tax title has not been adjudged valid, is not entitled to apply for a certificate of registration and the cancellation of an existing certificate of title. 211-686.

8317. Alterations on register—Order of court—No erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of any memorial thereon, and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time, apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns without his or their written consent. (3439) [6938]

8318. Agency—Power to be registered—Any act which may legally be done or performed by any person under this chapter may be done and performed by his agent thereto duly authorized in writing. Such instrument or power of attorney shall be executed and acknowledged as now required by law in the case of a deed, and shall be filed with the registrar and registered by him. Any instrument revoking such power of attorney shall be executed, acknowledged and registered in like manner. (3440) [6939]

8319. Eminent domain—Reversion—If the land of a registered owner, or any right, title, interest or es-

tate therein is taken by eminent domain, the state or body politic, or other authority which exercises such right, shall file for registration a written instrument containing a description of the land so taken, together with the name of each owner thereof, and referring to each certificate of title by its number and place of registration in the register of titles, and stating what estate or interest in the land is taken, and for what purpose. A memorial of the right, title, interest or estate thus taken shall be made upon each certificate of title by the registrar, and if the fee is taken, a new certificate shall be entered in the name of the owner for the land remaining to him after such taking. If the owner has a lien upon the land thus taken for his damages, this fact shall be stated in the memorial of registration. All fees on account of any memorial of registration or entry of new certificates for land thus taken shall be paid by the state or body politic or other authority which takes the land. If land which was taken for public use reverts, by operation of law, to the owner or to his heirs or assigns, the district court, upon the application of the person entitled to the benefit of such reversion, and after due notice and hearing, may order the entry of a new certificate of title to the person or persons entitled thereto. (3441) [6940]

8320. Charges on registration—Upon the original registration of land, and also upon the registration of any land by the heirs or devisees of any deceased person, there shall be paid to the registrar one-tenth of one per cent of the assessed value of the land, exclusive of improvements, as determined by the last official assessment for general taxation. (3442) [6941]

8321. Assurance fund—Investment—All money received by the registrar under the provisions of § 8320 shall immediately be paid by him to the county treasurer as an assurance fund. The county treasurer shall invest the same upon the order of the district court, and subject to its approval. The assurance fund shall only be invested in bonds of the United States or of the state of Minnesota or of any county or municipality thereof. The county treasurer shall render to the district court, at least once each year, a full and detailed report, showing all receipts, disbursements and investments on account of such fund. (3443) [6942]

8322. Damages through erroneous registration—Action—Any person who, without negligence on his part, sustains any loss or damage by reason of any omission, mistake or misfeasance of the registrar or his deputy, or of any examiner or of any clerk of court, or of his deputy, in the performance of their respective duties under this law, and any person who, without negligence on his part, is wrongfully deprived of any land or of any interest therein by the registration thereof, or by reason of the registration of any other person, as the owner of such land, or by reason of any mistake, omission or misdescription in any certificate of title, or in any entry or memorial, or by any cancellation, in the register of titles, and who, by the provisions of this law, is precluded from bringing an action for the recovery of such land, or of any interest therein, or from enforcing any claim or lien upon the same, may institute an action in the district court to recover compensation out of the assurance fund for such loss or damage. (3444) [6943]

130-458, 153-872.

8323. Parties defendant—Judgment—Execution—If such action is brought to recover any loss or damage occasioned solely by the registration of such land, or solely by the registration of any other person as the

owner thereof, or if such action be brought for the recovery of any loss or damage occasioned solely by the omission, mistake or misfeasance of the registrar or his deputy, or of any examiner or of any clerk of court, or his deputy, in the performance of their respective duties, the county treasurer, in his official capacity, shall be the sole defendant. If such action be brought to recover for any loss or damage occasioned either wholly, or in part, by the fraud or wrongful act of some person or persons other than the officers herein named, or to recover for any loss or damage caused jointly by the fraud or wrongful act, and by the omission, mistake or misfeasance of the officers above named, or any of them, and of some other person or persons, the county treasurer, in his official capacity, and such other person or persons shall be joined as defendants therein. In any action where there are defendants other than the county treasurer, no execution shall issue against such treasurer until execution against all other defendants against whom judgment has been recovered has been returned unsatisfied, either in whole or in part. An officer returning such execution shall certify thereon that the amount still due upon the execution cannot be collected from them. Thereupon the court, being satisfied as to the truth of said return, shall order the county treasurer to pay the amount due upon such execution out of the assurance fund. If the assurance fund is insufficient to pay the amount of any judgment in full, the unpaid balance thereof shall bear interest at the legal rate, and shall be paid out of the first moneys coming into said assurance fund. The county attorney shall defend the county treasurer in all such actions. (3445) [6944]

8324. Liability of assurance fund—No person shall recover from the assurance fund any sum whatsoever by reason of any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who is trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any person recover from the assurance fund any greater sum than the fair market value of the real estate at the time of the last payment into such fund, on account thereof. (3446) [6945]

8325. Limitation of action—Any action or proceeding to recover damages out of the assurance fund, shall be commenced within six years from the time when the right to commence the same accrued, and not afterwards: Provided, that if, at the time the right accrued, the person entitled to bring such action or proceeding is a minor, or insane, or imprisoned, or absent from the United States in its service or the service of the state, such person or anyone claiming under him may commence such action or proceeding within two years after such disability is removed. (3447) [6946]

8326. Fraudulent entry, etc.—Penalty—Whoever fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of, any certificate of title or other instrument or of any entry in the register of titles, or other book kept in the office of any registrar, or of any erasure or alteration in any entry in any of said books, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit affecting registered land, shall be guilty of a felony punishable by a fine not exceeding five thousand dollars or by imprisonment not exceeding five years, or by both. (3448) [6947]

8327. Clerk's fees—Notices—On the filing of any application for registration, the applicant shall pay the clerk of the court the sum of three dollars, which shall

be in full of all clerk's fees and charges in such proceeding on his behalf. Any defendant on entering his appearance shall pay a like sum, which shall be in full of all clerk's fees on his behalf. When any number of defendants enter their appearance jointly but one fee shall be paid. Every publication in a newspaper required by this law shall be paid for by the party on whose application the publication is made. The party at whose request any notice is issued shall pay for the service of the same, except when sent by mail by the clerk or by the registrar. (3449) [6948]

8328. Registrar's fees—The fees to be paid to the registrar shall be as follows:

1. At or before the time of filing the certified copy of the application for registration the applicant shall pay, if the land have an assessed value of one thousand dollars, or less, the sum of three dollars; if assessed for more, the further sum of one dollar on each additional one thousand dollars of assessed valuation, or major fraction thereof.

2. For registering each original certificate of title, and issuing a duplicate thereof, two dollars.

3. For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the new certificate of title, three dollars.

4. For the entry of each memorial on the register, or the cancellation thereof, including the filing of all instruments and papers connected therewith and endorsements upon duplicate certificates, one dollar; provided, that when the entry of the same memorial, or cancellation thereof, is required to be made on more than two certificates held by the same owner, the fee for such entry, on each certificate in excess of two, shall be twenty-five cents.

5. For issuing each additional mortgagee's or lessee's duplicate, one dollar.

6. For issuing each residue certificate, two dollars.

7. For filing copy of will, with letters testamentary, or copy of letters of administration, and entering memorial thereof, two dollars.

8. For issuing separate certificates and duplicates thereof, in exchange for one certificate for two or more distinct parcels, for each exchange certificate, one dollar.

9. For each certificate showing condition of the register, one dollar.

10. For any certified copy of any instrument or writing on file in his office, the same fees allowed by law to registers of deeds for like services.

11. For any other service under this chapter, such fee as the court shall determine. (R. L. § 3450, amended '11 c. 349 § 1) [6949]

122-203, 142+129.

8329. Disposition of fees—In all counties in which the register of deeds receives fees in lieu of a salary, all fees mentioned in section 80 [8328] shall belong to him, except one-half of those provided for in subdivision A, which shall be paid to the county treasurer. In all other counties all of such fees shall be paid to the county treasurer for the use of the county; provided, that in all counties containing a population of less than seventy-five thousand inhabitants, the register of deeds shall in no case retain more than \$3.00 of the moneys received under the provisions of subdivision A, and that the balance collected by him shall in all cases be paid to the county treasurer for the use of the county. ('05 c. 305 § 81, amended '09 c. 183 § 4) [6950]

Explanatory note—The reference in this section to section 80 [8328] is to '05. c. 305, § 80, which was printed as R. L. '05, § 3450, which now is section 8328 of this compilation.

CHAPTER 65A

REGISTRATION OF CERTAIN TRADE-NAMES

Record of name, mark, etc.—Duty of secretary of state—Certificate	8330
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8330. Record of name, mark, etc.—Duty of secretary of state—Certificate—Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages, milk, cream, ice cream or butter in any kind of receptacle having the name of such person or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the secretary of state for record a description of the name, mark or device so used and cause such description to be printed once in each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person is located, or if the principal place of business of such person is located in another

state, then in the county wherein the principal office or depot within the state of Minnesota is located. It shall be the duty of the secretary of state to issue to the person so filing for record a description of such name, mark, or device in his office a duly attested certificate of the record of the same for which he shall receive a fee of one dollar. Such certificate in all prosecutions under this act shall be prima facie evidence of the adoption of such name, mark or device, and of the right of the person named therein to adopt and use the same. ('05 c. 340 § 1) [6951]

By section 7 1895 cc. 143, 144, and 1899 c. 306 are repealed.

8331. Use of receptacles without consent prohibited—Obliterating name, etc.—Penalty—It shall be unlawful for any person other than the one named in the certificate issued by the secretary of state as provided in section one [8330] of this act, without the written consent of the person named in such certificate to fill any receptacle bearing a name, mark or device recorded as provided in section one [8330] of this act with soda water, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages,

milk, cream, ice cream or butter, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device on any such receptacle, or to buy, sell, give, take, dispose of in any way, or traffic in any receptacle bearing any such name, mark or device. Any person offending against any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars or more than one hundred dollars, and each such receptacle so unlawfully dealt with as herein set out shall be deemed and held to be a separate offense. ('05 c. 340 § 2) [6952]

8332. Receptacles to be delivered on demand—Penalty—Any person having in possession or under control any receptacle bearing any name, mark or device recorded as provided in section one [8330] of this act, and not holding a written transfer or bill of sale therefor from the person named in the certificate issued by the secretary of state as provided in section one [8330] of this act or other authority in writing from such person, upon demand shall deliver such receptacle to the person named in such certificate or to the authorized agent of such person; and any person failing or refusing to so deliver the same when demanded shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars nor more than one hundred dollars. ('05 c. 340 § 3) [6953]

8333. Recovery of receptacles—Search warrant—Whenever any person who has filed for record any such name, mark or device or who has acquired from such person in writing the ownership of such name, mark or device or the right to the exclusive use thereof, or anyone representing such person, shall make

oath before any magistrate that he has reason to believe and does believe that any receptacle bearing such name, mark or device is being unlawfully used or filled or had in possession by any person such magistrate shall thereupon issue a search warrant to discover and obtain such receptacle; and may also cause the person in whose possession such receptacle shall be found to be brought before him and shall then inquire into the circumstances of such possession, and if it shall be found that such person is guilty of violation of any section of this act he shall be punished as herein prescribed and the possession of the property taken upon such warrant shall be awarded to the owner thereof; but the remedy given by this section shall not be held to be exclusive, and offenders against any provision of this act may also be prosecuted as in case of other misdemeanors. ('05 c. 340 § 4) [6954]

8334. Receptacle and other terms defined—As used in this act, the term receptacle shall include not only bottles, siphons, tins, kegs, one-eighth barrels, quarter barrels, half barrels, barrels, boxes, cans and tubs, but all other receptacles used for holding any of the commodities in this act mentioned; the singular may include the plural and the plural may include the singular; the term person may include corporation; and the requirement for a written transfer, bill of sale, authority or consent means that it shall be signed by the person named in the certificate issued by the secretary of state as provided by section one [8330] of this act, or by a transferee claiming under a written transfer signed by such person or by an agent whose authority is in writing signed by such person or such transferee. ('05 c. 340 § 5) [6955]

8335. Taking deposit—The requiring or taking of any deposit for any purpose upon such receptacle shall not be deemed nor held to be a sale either optional or otherwise in any proceeding under this act. ('05 c. 340 § 6) [6956]

CHAPTER 66

HOMESTEAD EXEMPTION

Dwelling place exempt—Exceptions	8336
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8336. Dwelling place exempt—Exceptions—The house owned and occupied by a debtor as his dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and his family, and shall be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants. (3452) [6957]

1. Nature—A homestead is the place of residence or dwelling of its owner. It includes the house in which the owner lives and the customary appurtenances of a

house (10-154, 124; 15-116, 87; 21-101; 27-156, C1318; 27-406, 7+824; 29-18, 11+119; 51-360, 53+805). It is not the interest or title of the claimant (27-406, 7+824).

The general rule is that homestead laws are to be liberally construed so as to advance the beneficial object and carry out the manifest purpose of the Legislature. 202+494.

Under our statute the homestead exemption is not alone for the husband and his protection but for the benefit of the wife and children as well. It is not only a privilege but an absolute right. 162-230, 202+494.

The homestead law is liberally construed for the benefit of the debtor. 165-295, 206+461.

Evidence showing that husband and wife had lived on land, although frequently absent, and had retained home there, leaving household goods and furniture, held to sustain order setting apart homestead to surviving widow. 166-492, 206+929.

Where a husband embezzles funds and appropriates to payment for labor and materials for the construction of a dwelling upon land owned by himself and his wife, as tenants in common, and claimed by them as their homestead, a constructive trust arises in favor of the injured party as to the dwelling. 210+889.

The fact that the husband and wife were owners of the land, as tenants in common, does not subject the wife's interest therein to levy on account of such trust. 210+889.

2. Object and policy of statute—2-90, 72; 7-513, 419; 21-101; 27-156, 6+618; 89-247, 94+677.

3. Actual occupancy as home essential—5-333, 264; 7-513, 419; 8-309, 272; 10-154, 124; 15-116, 87; 21-299; 23-435; 25-183; 28-13, 8+830; 47-13, 49+390; 71-108, 73+639.

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.



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street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 20, 1933, c. 93, §9.)

8246-11. Building restrictions.—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 20, 1933, c. 93, §10.)

8246-12. Inconsistent acts repealed.—Platting control by the planning commission, as provided in this act, shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivision of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 20, 1933, c. 93, §11.)

8246-13. May appeal to District Court.—Any person or persons jointly or severally aggrieved by any decision of the planning commission concerning such

plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.

CHAPTER 65

Registration of Title

REGISTRATION

8247. Registration.

Adverse possession. 171M410, 314NW271.
Torrens' system of land title registration. 19MinnLaw Rev519.

8248. Registered land—Adverse possession.

One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 213NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

8249. Application—Who may make.—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title. (As amended Mar. 31, 1939, c. 100, §1.)

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

8250. Titles which may be registered.—No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration, and whenever a dock or harbor line has been established by Federal authority, the estate and interest of a riparian proprietor in the submerged lands lying between the original shore line and such established dock line may be registered under this act, subject, however, to the rights of the state of Minnesota in its sovereign capacity in the same, and such registration shall not in any manner affect or change the rights of the state with respect to such lands. (As amended Mar. 31, 1939, c. 100, §2.)

First sentence of section applies to land purchased under Laws 1935, c. 386. Op. Atty. Gen. (4251), Mar. 23, 1938.

8251. Application, how signed and verified.—The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer of a corporation, the authority of such agent shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant may assent thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application, but otherwise the spouse shall be made a defendant and served with summons. (R. L. '05, §3374; G. S. '13, §6872; Feb. 20, 1935, c. 16, §1.)

Sec. 2 of Act Feb. 20, 1935, cited, provides that the act shall take effect from its passage.

8253. Non-resident applicant—Agent.

On application for issue of a new Torrens certificate, as distinguished from an application to place land under the Registration Act, it is unnecessary for a nonresident to furnish a power of attorney. Rhode Island Hospital Trust Co. v. C., 191M354, 254NW466. See Dun. Dig. 3353.

8258. Examiner of titles.

Constitutional. 85M437, 446, 89NW175.
Provision authorizing district court to appoint examiner of titles and deputy examiner of titles is constitutional. Op. Atty. Gen. (374j), Aug. 13, 1934.

8261. Order for summons—parties defendant.—If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued therein. This order shall contain the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application, or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be, and shall be known as, defendants.

Whenever the description in the application includes land which, according to the plat of the United States Government Survey, forms part or all of the bed of a meandered stream or lake, the State of Minnesota shall be made a party defendant; provided, however, that in all cases where decree of registration has been

heretofore entered for any such land without the State of Minnesota having been joined and served with summons, it shall be deemed that title had heretofore passed to the applicant by reliction or accretion. (R. L. '05, §3383; G. S. '13, §6882; Apr. 8, 1933, c. 164.)

8262. Form of summons—service.—The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state or who cannot be found therein and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein" by publishing the same in a newspaper printed and published in the county herein the application is filed, once each week for three consecutive weeks; provided if the order for summons or a supplemental order of the court, filed before, during or after the publication of the summons, shall so direct, the summons may be personally served without the state upon any one or more of the defendants who are non-residents of the state or who cannot be found therein, in like manner and with like effect as such service in a summons in a civil action in the district court. The clerk shall also at least twenty days before the entry of the decree which shall be entered in said matter, send a copy of the summons by mail to all defendants who are not residents of the state, and whose place of address is known to applicant or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND

State of Minnesota,
County of ss.
District Court, Judicial District.
In the matter of the application of (name of applicant) to register the title to the following described real estate situated in County, Minnesota, namely: (description of land.)
Applicant.
vs.
(names of defendants) and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein."
Defendants.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after service of this summons upon you exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the applicant in this proceeding will apply to the court for the relief demanded therein.

Witness clerk
of said court, and the seal thereof, at.....
in said county, this.....day of..... 19.....

Clerk

(Seal)

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same. By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree. (R. L. '05, §3384; G. S. '13, §6883; '27, c. 112, §4; Mar. 28, 1929, c. 97, §1.)

Service by publication upon a nonresident in a Torrens title registration suit, and the decree held binding upon such nonresident. *Nitkey v. S.* (USCCA8), 87F(2d) 916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

City maintaining sewer under private land could not have its rights cut off by summons issued to "all other persons or parties unknown," since city should have been made a party defendant as an occupant of part of the land. *Op. Atty. Gen.* (387b-11), Sept. 6, 1934.

8266. Trial—Reference.

Applicant in title registration proceeding may dismiss at any time, even though defendant is seeking to enforce rights as contract vendee and even after filing of adverse report of referee. *Hiller v. S.*, 191M272, 253NW773. See *Dun. Dig.* 2741, 8358.

8267. Dismissal.

Where, in a title registration proceeding under Torrens Act, an answering defendant seeks to have applicant's title decreed to be subject to defendant's rights as a contract vendee, applicant may dismiss his application at any time during proceedings. *Hiller v. S.*, 191M272, 253NW773. See *Dun. Dig.* 8362.

8268. Decree of registration—Effect.

Purchaser under a contract for a lease who acquiesced in Torrens registration of vendor and made no attack against it until expiration of limitation period, was estopped from suing in equity to obtain title to or possession of the property, or an accounting of the rents and profits thereof. *Nitkey v. S.* (USCCA8), 87F(2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

Bill attacking a Torrens registration proceeding, held lacking in equity so far as it alleged defect in the service of process, where service by publication was attempted and plaintiff, apparently, acquiesced in the Torrens decree. *Id.*

Bill of purchaser under a contract for a lease claiming title to the property, alleging vendor did not exhibit the contract to the court in Torrens registration proceeding, held a mere collateral attack and to suggest no fraud. *Id.*

Equitable bill of purchaser under a contract for lease, in which he claimed title to the property and attacked a Torrens registration of the vendor, held to show no facts that would justify plaintiff's conclusion defendants were guilty of fraud in the Torrens registration suit. *Id.*

In suit for cancellation of Torrens decree, laches held apparent on the face of the bill. *Id.*

One holding registered title to real estate and in actual possession has an insurable interest therein. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 4641.

A judgment in action between owner in possession of real property and one claiming rights therein under a void foreclosure sale, when such judgment is properly registered and declares foreclosure void and adjudges title in such owner, becomes a link in owner's chain of title, and is admissible in evidence even against a stranger to judgment. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 5171, 5191.

Judgment, entered long after date when title is in issue, does not bar a stranger thereto from showing, if he can, that, on prior material date, adjudged owner had no title. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 5171, 5191.

A decree registering title is somewhat more conclusive and better protected from attack or opening up than an ordinary judgment. *Lamprey v. A.*, 197M112, 266NW434. See *Dun. Dig.* 8363.

Person not made party to registration proceedings held guilty of laches barring vacation or modification of decree. *Id.* See *Dun. Dig.* 5114, 8364.

City having sewer under private property did not lose its right to maintain and repair the same by reason of registration of title in proceeding in which city was not made party. *Op. Atty. Gen.* (387b-11), Sept. 6, 1934.

8270. Registration runs with land.

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

8271. Rights of person holding certificate of title.

—Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration, shall hold the same free from all encumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights arising or existing under the laws or the constitution of the United States, which this state cannot require to appear of record.

2. The lien of any tax or special assessment for which the land has not been sold at the date of the certificate of title.

3. Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder.

4. All rights in public highways upon the land.

5. Such right of appeal, or right to appear and contest the application as is allowed by this chapter.

6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title. (R. L. '05, §3393; G. S. '13, §6892; Apr. 25, 1931, c. 357.)

Cook v. L., 191M6, 252NW649; note under §8293.

One obtaining new certificates under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

Mason's Stat. 1927, §9405, giving right to bring action within three years after discovery of fraud, had no application to a decree in land registration proceedings. *Lamprey v. A.*, 197M112, 266NW434. See *Dun. Dig.* 8364.

One purchasing a Torrens title to land in good faith and for a valuable consideration was as a matter of law entitled to immediate possession of premises which was not subject to collateral attack for purpose of showing that at time of registration decree land was held in adverse possession. *Harrington v. L.*, 203M575, 282NW461. See *Dun. Dig.* 8361.

8279. Deputy registrars.

Only two deputies could be employed in the office of the registrar of titles in Hennepin County. *Op. Atty. Gen.*, Jan. 29, 1932.

8280. Title, how registered—Register of titles.

Duties of registrar of titles as to entries on certificate from complicated instruments and their effect. 181M615, 233NW866. See *Dun. Dig.* 8361.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See *Dun. Dig.* 8361.

A decree of the district court in proceedings under the Registration Act to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against subsequent attaching creditors. *McWhinney v. G.*, 183M141, 235NW676. See *Dun. Dig.* 8361a(6).

8282. Certificates, etc., as evidence.

McWhinney v. G., 183M141, 235NW676; note under §8280.

Fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of the

title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8361.

8284. Indexes, etc.—Court to adopt forms.

"Attested" refers to endorsements of registrar of titles and not to duplicate instruments. Op. Atty. Gen. (373b-19), June 11, 1935.

8203. Transfer of registered land.

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

An unregistered quitclaim deed of Torrens title property although not affecting title nor creating any interest in land, was, as between parties thereto, effective as a contract. Cook v. L., 191M6, 252NW649. See Dun. Dig. 8361.

8204. Conveyances, etc., filed with registrar—Etc.

Intended for protection of grantees, mortgagees, whose deeds, mortgages, liens or judgments have been properly registered. 181M615, 233NW866. See Dun. Dig. 8362a.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in lands other than reservations. Op. Atty. Gen. (374), Mar. 10, 1936.

8205. New certificate—Interest less than fee.

Registrar of titles must file mortgage even though spouse does not join therein unless certificate shows real estate covered thereby is a homestead. Op. Atty. Gen. (374f), April 17, 1934.

8206. Instruments to have name and address.

Registrar would not be justified in refusing to accept an instrument that contained full name and address endorsed thereon, even though it did not contain such information in body thereof. Op. Atty. Gen., Aug. 4, 1932.

8207. Owner's duplicate must be presented, when.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

8208-1. Unregistered contract of sale—validation of later conveyance.—In any case where a vendor of land shall have sold the same under an unregistered contract for deed followed immediately by actual possession thereunder by the vendee, and shall have thereafter conveyed the same by deed of conveyance and surrender of his owner's duplicate certificate of title to a grantee to whom a new certificate was thereupon issued, without mention, however, in said deed or in said certificates, of the previous contract for deed, and more than fifteen years have elapsed since said conveyance during which period said vendee has remained continuously in undisturbed possession of the premises and has paid the whole of the contract price therefor, and more than ten years have elapsed since the making of the last payment thereunder, then and in all such cases no action shall be brought or maintained by said vendor and said grantee, or either of them, for the recovery of the possession of said premises, unless commenced within six months after the passage of this act. (July 24, 1937, Sp. Ses. c. 94.)

8209. Transfer and payment of taxes.

It is duty of registrar of titles to file deeds to city without endorsement of certificates showing payment of taxes, but city should first secure an order from tax commission cancelling and abating all taxes, and also present a certificate of county auditor showing all unredeemed tax sales, and new certificate of title should

show all unredeemed tax sales. Op. Atty. Gen. (373b-9(e)), Aug. 21, 1935.

8300. Mortgage.

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

8302. Assignment and discharge of mortgage.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

8304. Registration after foreclosure—New certificate.

Rhode Island Hospital Trust Co. v. C., 191M354, 254NW 466; note under §8253.

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

8313. Acquiring title by action—New certificate.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8, should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

Where registered land is forfeited to state for taxes pursuant to Laws 1935, c. 386, application for a new certificate should be made pursuant to this section. Op. Atty. Gen. (374j), Sept. 14, 1938.

New certificates of registration may be issued upon presentation of duplicate certificate of former owner, state deed, and quitclaim deed from original owner. Op. Atty. Gen. (409), Sept. 21, 1938.

8316. Subsequent adverse claim, how registered.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in lands other than reservations. Op. Atty. Gen. (374), Mar. 10, 1936.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8, should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

8317. Alterations on register—order of court.—No

erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of any memorial thereon, and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time, apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns without his or their written consent. Provided, however, that, without order of court in counties in which a rule of the district court so provides, the registrar of titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments; receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax

described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to said memorials. Provided, further, that in case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity as hereinbefore described, and upon the surrender of the owner's duplicate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be. Provided, further, when instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the

original instrument, if the registrar of titles shall first be satisfied that the signatures to the original are genuine. (R. L. '05, §3439; G. S. '13, §6938; Apr. 5, 1933, c. 160, §1.)

Sec. 2 of Act Apr. 5, 1933, provides that the act shall take effect from its passage.

In proceeding to alter registration certificate of a subsequent purchaser of land over which right of way passed, court was not authorized to alter it further than describing right of way in exact language used in deed conveying it. *Minnetonka State Bank v. M.*, 189M 560, 250NW561. See Dun. Dig. 8361a.

In special proceeding to alter a certificate of registration of title to land, injunction against trespassing on land involved in certificate is improper. *Id.*

8322. Damages through erroneous registration.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8362a.

City held not liable to damages resulting from registration of title by reason of fact that part of sewer system was maintained under such land. *Op. Atty. Gen.* (37b-11), Sept. 6, 1934.

CHAPTER 65A

Registration of Certain Trade-Names

8330. Record of name, mark, etc.—Duty of secretary of state—Certificate.—Any person engaged in or any corporation or association whose members are engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages, milk, cream, ice cream or butter in any kind of receptacle having the name of such person, corporation or association, or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the secretary of state for record a description of the name, mark or device so used and cause such description to be printed once in each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person, corporation or association is located, or if the principal place of business of such person, corporation or association is located in another state, then in the county wherein the principal office or depot within the state of Minnesota is located. It shall be the duty of the secretary of state to issue to the person, corporation or association so filing for record a description of such name, mark, or device in his office a duly attested certificate of the record of the same for which he shall receive a fee of one dollar. Such certificate in all prosecutions under this act shall be prima facie evidence of the adoption of such name, mark or device, and of the right of the person, corporation or association named therein to adopt and use the same. (As amended Mar. 31, 1939, c. 118.)

Words "Stearns County No. 13" and "Minnesota Thirteen" are not in conflict. *Op. Atty. Gen.*, Mar. 20, 1934.

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

8335-1. Definitions.—The word person or persons as used in this act shall mean persons, firms, corporations, co-partnerships, associations or agents of any of them. (Act Apr. 25, 1931, c. 366, §1.)

8335-2. Brands to be registered.—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles

shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production of such on the farm, in a clean and sanitary condition, and shall not consign for transportation by common carrier empty cans or ice cream containers in an unsanitary condition. That all persons, companies and corporations engaged in the purchase of milk or cream, or in the manufacture of ice cream shall adopt a mark or marks of ownership to be stamped or marked on any can, cask, keg, barrel or other receptacles, used in the handling and transportation of any said products, and shall file in the office of the agriculture, dairy and food commissioner, without charge, upon a suitable blank to be furnished by the commissioner of agriculture, dairy and food, a description of the name or mark so used by them or either of them and the use to be made of any such can, cask, barrel or other receptacle. The brand or mark so selected and adopted as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel or other receptacle, or any part thereof. It shall be unlawful for any person, company or corporation to adopt or use any brand or mark, which has already been designated, appropriated or obtained under the provisions of this act. It shall be unlawful for any persons other than the rightful owner thereof, or his lawful agent, to use any can, cask, keg, barrel or other receptacle marked or branded as herein provided. Any person other than the owner, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as herein provided shall be deemed guilty of having violated the provisions of this law. Provided: Nothing in the section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle marked or branded as herein provided is being transported to and from the owner or his lawful agent. It shall be unlawful for any other person than the rightful owner, or his lawful agent, to deface or remove any such brand, mark or stamp put upon any such can, cask, keg, barrel or other receptacle as herein provided. (Act Apr. 25, 1931, c. 366, §2.)

The title of the act: "An act providing for the registration of brands on containers for dairy products:

providing for the registration thereof; and providing penalties for violation thereof," may not be sufficient to cover the opening sentence of this section with respect to sanitation.

Department may require registration of dairy containers from other states found in milk plants in this state. Op. Atty. Gen., Oct. 2, 1933.

8335-3. Violations—penalties.—Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases, shall be fined for each and every offense in the sum of not less than fifteen dollars nor more than one hundred dollars. (Act Apr. 25, 1931, c. 366, §3.)

Where inspector of department of agriculture, dairy and food filed complaint under this act, fine imposed was properly remitted to county treasurer. Op. Atty. Gen., July 9, 1932.

Fines collected for violation of this act should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

8335-4. Commissioner of agriculture to enforce act.—The agriculture, dairy and food commissioner of the state is charged with the proper enforcement of all of the provisions of this act. (Act Apr. 25, 1931, c. 366, §4.)

8335-5. Effective June 1, 1931.—This act shall take effect and be in force from and after June 1, 1931. (Act Apr. 25, 1931, c. 366, §5.)

COMMON LAW
DECISIONS RELATING TO TRADE-MARKS AND
TRADE-NAMES IN GENERAL

1. In general.

Evidence held to sustain holding that name "De Guile" was a trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

A trade-name is not strictly a trade-mark, but is generally governed as to its use and transfer by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

2. Unfair competition.

Evidence held not to show any unfair competition in use of trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

Unfair competition—radio broadcast of dispatches taken from newspapers. 19MinnLawRev322.

Extension of doctrine of unfair competition in broadcasting of sporting events. 23MinnLawRev395.

False and misleading advertising as unfair competition. 22MinnLawRev522.

3. Sale and transfer.

The sale or transfer of the property and good will of an established and going business includes trade-names and trade-marks used in that business, unless the contrary is shown. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

In the absence of restrictive covenants, the vendor of an interest in a partnership business and good will may engage in a rival business and solicit trade by lawful and fair means, but may not privately solicit the customers of the former partnership. Gibbons v. H., 185M290, 240NW901. See Dun. Dig. 4046.

Provision in partnership agreement between medical men not to engage in practice in limited territory for 5 years after withdrawal from partnership is valid. Shaleen v. S., 188M290, 246NW744. See Dun. Dig. 4046, 8436.

On sale of good will of a business establishment limitation as to both time and place is unnecessary, if agreement in other respects is reasonable, and not in conflict with public policy or general welfare. Peterson v. J., 204M300, 283NW561. See Dun. Dig. 4046, 8436.

Covenant not to compete in business entered into for mutual business advantages of parties thereto adds to good will of business and may be transferred with it and as a part thereof. Id. See Dun. Dig. 4046, 8436.

Where an established business has been sold with its good will and there is a valid covenant not to compete in certain territory, breach is regarded as controlling factor and injunctive relief follows almost as a matter of course. Id. See Dun. Dig. 4046, 8436.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

Overvoid v. N., 186M359, 243NW439; notes under §8719.

1. Nature.

Judgment for an amount loaned for the purchase of a homestead upon husband's fraudulent promise to give a mortgage on the homestead after acquired, cannot be declared a lien on the homestead. 171M431, 214NW467.

There was a violation of a promise of future action rather than of an existing duty and so is not one for the imposition of a lien to enforce a trust ex maleficio. 171M431, 214NW467.

Use by brothers, joint tenants, of a farm for partnership farming did not destroy their homestead rights therein. 172M200, 214NW793.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the homestead law. 173M576, 218NW108.

A summer cottage, fully furnished for housekeeping and living and having heating and kitchen coal stoves so that it may be lived in during winter, may be claimed and held as a homestead. Gussman v. R., 190M153, 251NW18. See Dun. Dig. 4207.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. Rusch v. L., 194M469, 261NW186. See Dun. Dig. 4196.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to owners. Smith v. W., 195M589, 263NW903. See Dun. Dig. 4201.

"Homestead" in tax classification statute means abode of owner without limit as to acreage or lots. Op. Atty. Gen., Nov. 7, 1933. Opinion of Oct. 18, 1933, is withdrawn.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. Op. Atty. Gen. (421a-9), Sept. 14, 1934.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. Op. Atty. Gen. (521-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. Op. Atty. Gen. (521g), Apr. 16, 1936.

Homestead of old age assistance recipient is exempt after his death, though he leaves only adult children. Op. Atty. Gen. (521p-3), July 28, 1938.

3. Actual occupancy as home essential.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

5. No limitation on use.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, 241NW388. See Dun. Dig. 4207.

8. Debts due laborers or servants.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

"Any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commissions earned while an employee of the homestead owner. Fletcher v. S., 201M609, 277NW270. See Dun. Dig. 4209.

12. Mortgage foreclosures.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v. A., 204M432, 283NW753. See Dun. Dig. 4205.

13. Selection by bankruptcy court.

Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. Landy v. M., 193M252, 258NW573. See Dun. Dig. 741.

14. Alienation.

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our