

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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CHAPTER 33.

OFFICIAL TRUSTS RELATING TO TOWN SITES.

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An Act prescribing rules and regulations for the execution of the trust arising under the Act of Congress entitled "An Act for the relief of citizens of towns upon lands of the United States under certain circumstances."

[Passed March 3, 1855.] c. 7

(1.) SEC. I. *Be it enacted by the legislative assembly of Minnesota territory:* When the corporate authorities of any town, or the judge or judges of the county court for any county in this territory, in which any town may be situated, shall have entered at the proper land office the land or any part of the land settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of congress entitled, "an act for the relief of the citizens of towns upon the lands of the United States under certain circumstances," passed May 23d, A. D. 1854, it shall be the duty of such corporate authorities, or judge or judges (as the case may be), and they are hereby directed and required to dispose of and convey the title to such lands or to the several blocks, lots, parcels or shares thereof to the persons hereinafter described, and in the manner hereinafter specified.

Corporate authorities shall convey lands.

(2.) SEC. II. Any such corporate authorities, or judge or judges holding the title to any such lands in trust, as declared in the said act of congress, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same, to the person or persons who shall have, possess or be entitled to the right of possession or occupancy thereof, according to his, her, or their several and respective rights or interest in the same, as they existed in law or equity at the time of such entry of such lands, or to his, her or their heirs or assigns; and when any parcel or share of such lands shall be occupied or possessed by one or more persons claiming the same by grant, lease or sale from one or more other persons, the respective rights and interest of such persons in relation to each other in the same, shall not be changed or impaired by any such conveyance. Every deed of conveyance to be made by such corporate authorities, or by such judge or judges, pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded; and if made previous to the issuing of the patent of such lands by the proper officers of the United States, it shall contain a covenant that the grantor or grantors shall, after the

How conveyed.

issuing of such patent, execute, acknowledge and deliver to the grantee, his, her or their heirs or assigns, such further deed of conveyance as shall or may be, or become necessary to fully vest and perfect the title to the lands therein described, in the grantee or grantees, his, her or their heirs or assigns.

Public notice given.

(3.) SEC. III. Within thirty days after any entry of such lands, the corporate authorities, or judge or judges entering the same, shall give public notice of such entry by posting notice thereof in at least three public places in such town, and by publishing such notice in a newspaper printed and published in the county in which such town shall be situated, or in case there shall not be any newspaper published in such county, then in some newspaper printed and published at the seat of government of this territory. Such notice shall be so published once in each week for at least three successive weeks, and shall contain an accurate copy of the description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase money thereof, given by the land officers at the time of the entry.

When claimants shall file.

(4.) SEC. IV. Each and every person or association, or company of persons, claiming to be an occupant or occupants, or to have, possess, or to be entitled to the right of occupancy or possession of such lands, or any block, lot, share or parcel thereof, shall within sixty days after the first publication of such notice, in person, or by his, her or their duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he, she or they claim to have any interest, and the specific right, interest or estate therein, which he, she or they claim to be entitled to receive, and deliver the same to or into the office of such corporate authorities, judge or judges; and all persons failing to sign and deliver such statement within the time specified in this section, shall be forever barred the right of claiming or recovering such lands, or any interest or estate therein, or in any part, parcel or share thereof, in any court of law or equity.

Adjustment of rights between adverse claimants.

(5.) SEC. V. [*As amended by general laws of 1858, page 294.*^{975/}] In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, and the controversy shall not be settled by agreement in writing, between the parties thereto, such controversy may be determined by voluntary submission thereof in writing, by the parties, to reference or arbitration, and by the written award or determination of the referees or arbitrators. In case any such controversy shall not be so settled or determined within three months from the time of the entry of the land, either of the claimants may bring a civil action against the adverse claimant or claimants, in the district court of the judicial district, and in the county in which the lands shall be situated: *provided always*, that no judge of the district court of this state, who has been or is an adverse claimant, directly or indirectly, of any portion of the lands embraced within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain or hear, or determine any proceeding, interlocutory or final, in any action brought to determine such adverse claims to any portion of such lands, by or between any parties whatsoever, but shall order such proceeding or trial to be taken and had before the judge of another judicial district, whose duty upon such order it shall be to appoint a term in the county and district where such proceedings originated, for such purpose: *provided also*, that the laws applicable to a change of venue shall apply to actions brought under this chapter: *and provided also*, that nothing in this act shall prevent the district judge of the district in which any such lands are situated, from executing any and all conveyances of such lands, pursuant to the determi-

nation of such action. The lots, parcels or shares, and the interest or estate therein, which a party to such action as is herein provided for, claims to be entitled to, shall be stated in the complaint therein, and the fact shall be alleged that the defendant claims some interest or estate in the said lands, or some portion thereof. The defendant shall answer the complaint within twenty days after the service of the summons and complaint upon him, and he may in such answer, disclaim any interest or estate in the lands described in the complaint, or any portion thereof; and in such cases the answer shall determine the action in favor of the plaintiff to the extent of such disclaimer. In case any defendant in such action shall deny the plaintiff's right or claim in the lands, or in any part, parcel or share of the lands described in the complaint, he or she shall specify his or her right, interest or estate which he or she claims therein, or the answer, to the extent of such denial, may be stricken out on motion of the plaintiff, and judgment rendered in his favor. The pleadings in such actions shall be verified by affidavit, in the same manner and to the same extent as in other civil actions, and they shall be construed with reference to the substance thereof, disregarding all technical or formal defects, not affecting the substance or merits of the matters in controversy therein.

(6.) SEC. II. (a) This act shall apply to all actions now pending in the courts of this state, and shall take effect from and after its passage.

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Act to apply to cases pending in courts of the state.
Evidence on trial.

(7.) SEC. VI. Upon the trial of any issue joined in such action, either party may give in evidence, the statement mentioned in the fourth section of this act, deposited by the other, or by the person under whom he or she claims, with the corporate authorities, or judge or judges holding the title to the lands in controversy therein, and the person or persons who shall have made the first claim to, and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, her or them, shall in any such action, be deemed to have the prior and permanent right to such lands, and any rule of law or equity which would prevent a determination in accordance with such prior right, shall be disregarded in such action. In case the parties in such action shall by person or by attorney, in writing, waive a trial by jury, the cause may be brought to a trial and hearing before the judge at any time in term or vacation upon ten days' notice thereof, to the adverse party, and no postponement of such trial shall be had except for or by consent of the parties. Upon the trial of any such action the evidence of the witnesses shall be reduced to writing and filed with the papers in the cause.

(8.) SEC. VII. Any party in such action deeming himself or herself aggrieved by the determination or judgment therein, may bring a writ of error or appeal thereon to the supreme court the same as in other cases. In case of an appeal from the judgment in such action, the return thereto from the district court shall include the evidence filed therein, and in such case the supreme court shall, if either party shall require it, review and pass upon the question and conclusions of fact as well as of law. If in such case the judgment of the district court shall be reversed upon a question of fact, and the cause shall have been tried by a jury, the cause shall be remitted for a new trial in the district court. In all other cases of appeal in such actions the judgment of the supreme court shall be final.

Writs of error.

(9.) SEC. VIII. In case any controversy between adverse claimants to any such lands shall not be settled or determined by agreement, reference or arbitration, within the time allowed therefor as hereinbefore specified, and shall not be prosecuted within one month after the expiration of such time, if the title to such land shall be held by any such judge or judges, it

Settlement by adverse claimants.

(a) This section is the 2d section of the act of 1858, which amends the section preceding, and refers to it.

shall be the duty of such judge or judges to summon the adverse claimant to appear before him or them at a time and place to be mentioned in the summons, and which place shall be within the county in which such lands shall be situated, and make their proof and allegations in reference to such adverse claims. At the time and place of the return of such summons, the judge or judges shall, if the parties appear, proceed to hear their proof and allegations, and shall thereupon determine in writing the controversy between them. Upon such hearing, the statements of the parties respectively, deposited with such judge or judges, as required by the third section of this act, shall stand for their pleadings, and either party may use in evidence the statement made by the other, or by the person under whom he or she claims. The evidence of witnesses sworn upon such trial shall be reduced to writing, and any witness who shall, upon such hearing, willfully and knowingly testify falsely, shall be deemed guilty of perjury. Any such judge, or any justice of the peace may issue subpoena to compel the attendance of witnesses upon such hearing, and any person served with such subpoena and failing to appear, shall be deemed guilty of contempt of the said judge or judges, and may be attached to answer such contempt and to testify in the case. There shall be no postponement in the hearing of such case except for cause. The summons issued by the judge or judges, and all subpoenas issued in such cases shall be directed and served in the same manner as in civil actions, and the fees of officers and witnesses in such cases shall be the same as for the like services in civil actions in courts of record. Either party in any such case may appeal from the determination of such judge or judges therein, to the supreme court in the same manner that a party may appeal from a judgment in a civil action in a district court. The judge or judges shall make return to such appeal, and such return shall consist of the statements standing for the pleadings in the case, the evidence, and the determination of the judge or judges, in writing, and the proceedings thereon in the supreme court shall be specified in the cases of appeal mentioned in the seventh section of this act. In case any party lawfully summoned to appear before such judge or judges as mentioned in this section, shall fail to appear at the time and place mentioned in the summons, he shall be deemed to have waived and relinquished all right, title and interest and estate in the lands so in controversy, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein.

Nature of complaint of corporate authorities.

(10.) SEC. IX. If in a case mentioned in section eight of this act, the title to any such land shall be held by the corporate authorities of any town, such corporate authorities may bring an action in the district court of the judicial district in the county in which the lands in controversy shall be situated, against the adverse claimants thereto, to settle and determine such controversy. The complaint in such case shall be in the nature of a bill of interpleader in a court of equity, and shall set forth a description of the lands thus claimed by adverse claimants, and the character and extent of the right of interest or estate therein, claimed by each, as the same shall appear by the statements deposited with such authorities pursuant to section three of this act, and shall pray that the several adverse claimants may be required to appear in such court and prosecute their claims or be forever barred thereof. Any party to such action who shall fail to appear and answer such complaint, and thus prosecute his claim to the land described in such complaint, pursuant to the summons in such case and the practice of the district court, shall be forever barred of the right to assert any claim or title to such lands adverse to the other claimants, elsewhere or in any court whatsoever. If the adverse claimants to

the lands described in the complaint in such case, shall appear, they shall respectively answer such complaint, and either disclaim any right, title, interest or estate in the land therein described, or set forth the nature, character and extent of the title, interest or estate which he or she or they respectively claim therein. Issues between such adverse claimants made by their answers to such complaint, may be brought to hearing, and shall be determined, and such determination may be reviewed by the supreme court in the same manner and by the same rules of law and evidence as issues in the cases mentioned in sections five, six and seven of this act.

(11.) SEC. X. As soon as may be, after the expiration of sixty days from the first publication of the notice mentioned in the third section of this act, the corporate authorities, judge or judges, holding the title to the lands described in such notice, shall make a true statement in writing containing a true account of all moneys by him or them expended in the acquisition of the title and the administration or execution of the trust to that time, including all moneys paid by him or them for the purchase of said such lands, all necessary traveling expenses, all moneys paid for posting and publishing such notices, and for proof thereof, and for all other necessary and proper expenses, incident to such trust, and also a true account of his or their charges for time and services employed in the business of such trust to that time. The whole amount of such account for moneys and reasonable charges for compensation, shall be a charge upon the lands so held in trust in favor of the trustee, and shall be paid by the several claimants entitled to such lands, in proportion to the several quantities or shares thereof to which they may be respectively entitled.

Statement of expense shall be made.

(12.) SEC. XI. Before the corporate authorities, or judge or judges holding any such lands in trust as aforesaid, shall be required to execute, acknowledge, or deliver any deed of conveyance thereof, or of any lot, block, parcel, or share thereof, as hereinbefore mentioned, to any person or persons claiming to be entitled to such deed, such person or persons shall pay or tender to him or them the sum of money chargeable upon the part thereof to be conveyed by such deed, according to the statement or account mentioned in the tenth section of this act, the amount to be determined by the proportion which the quantity of the land to be described in such deed shall bear to the whole quantity of the land of which it is a part, compared with the whole amount thus charged upon the whole quantity of land, together with interest on each of the money items of such account at the rate of twenty-five per centum per annum from the time when the same accrued, and also such further sums as shall be a reasonable compensation for preparing, executing, and acknowledging such deed, and the fees of the officers taking the acknowledgment thereof.

How conveyances shall be made.

(13.) SEC. XII. After the expiration of sixty days from the time of the first publication of the notice mentioned in the third section of this act, the corporate authorities, or judge or judges holding the title to the lands described therein, shall upon a reasonable demand or request, and upon the payment or tender to him or them of the moneys mentioned in the eleventh section of this act, execute, acknowledge and deliver to each and every claimant or association, or company of claimants of such lands, or of any lot, block, parcel or share thereof, a deed of conveyance thereof, as prescribed in the second section of this act, and according to the statement made and deposited by him or them pursuant to the third section of this act: *provided*, however, that no such deed of conveyance shall be executed, acknowledged or delivered for any part, lot, block, or share of such lands, to which there shall be adverse or contesting claimants, until the controversy thereon shall have been settled or determined in the manner hereinbefore prescribed; and whenever any such controversy shall have been so

When executed.

settled or determined, the said corporate authorities, or judge or judges shall, upon the like demand or request, and the like payment or tender, and by the like deed of conveyance, convey the land or interest, or share therein, the right to which shall have been thus ascertained, to the person or persons thereby determined to be entitled to the same.

How trust arising from old entries shall be executed.

(14.) SEC. XIII. In case any entries of land shall have been heretofore made by any town authorities, judge or judges in this territory, pursuant to the provisions of the said act of congress, the trust thereby created shall be executed in the manner prescribed in this act, and all the provisions of this act shall apply thereto, except that the notice required by the third section of this act, may and shall be posted and published in the manner therein prescribed, within thirty days after the passage thereof: *provided*, that the provisions of this act shall not be so construed as to impair or change the terms or effect of any act heretofore passed by the legislative assembly of this territory, prescribing the manner in which any specified town site shall be entered under the provisions of the said act of congress.

Title vest in a judge.

(15.) SEC. XIV. In case any judge who shall have entered any such lands under the provisions of the said act of congress, and thus become the sole trustees thereof, shall be possessed of, or entitled to the same, or any part, lot, block, or share thereof, according to, and by virtue of the provisions of this act, and his claim or right shall not be claimed adversely to him by any person. He shall be, and be deemed to be, seized and possessed of the title thereto, and estate therein, to his own use in fee simple, absolute, free, and discharged of such trust, and no conveyance other than the patent of the lands including the same, shall be necessary to perfect his absolute title thereto. In case any such land or interest or share in such land so claimed by such judge, shall be claimed by any other person or persons, adversely to him, the conflicting claims between him and such other person shall be adjusted or determined by settlement, reference, arbitration or action as hereinbefore prescribed, and in such case of action at law, the issues therein shall be tried before some other judge who shall be disinterested, and possessed of competent jurisdiction to hold the court for the trial of, and to render judgment in such action.

Rights of adverse claimants shall be determined.

(16.) SEC. XV. For all the purposes of determining the rights of adverse claimants to any land so entered, pursuant to the said act of congress, the corporate authorities, or judge or judges hereinbefore mentioned shall be deemed to possess and hold the title to the lands so entered in such trust, from the time of the entry thereof.

Of costs.

(17.) SEC. XVI. The costs in the actions mentioned in this act, and in proceedings before the judge as prescribed in the eighth section thereof, shall be regulated and recoverable as in other civil actions.

When act take effect.

(18.) SEC. XVII. This act shall take effect immediately, and shall be published within ten days after its passage, in two weekly newspapers printed at the seat of government of the territory.

Refusal to convey.

(19.) SEC. XVIII. Each and every person in whom the title to any lands shall be declared to be vested, under and by the provisions of this act, shall reconvey, by good and efficient conveyance, to any person or persons, claiming by, through or under him, or them pursuant to any contract or agreement made with such person or persons, upon a reasonable demand therefor, and upon the payment to said person or persons, of any moneys that may be due or unpaid to him or them from the person or persons making such demand, and in case of refusal so to convey, said contract or agreement may be enforced by action against said person or persons, according to law.

An Act additional to An Act prescribing Rules and Regulations for the execution of the trust arising under the Act of Congress, entitled An Act for the relief of citizens of towns upon lands of the United States, under certain circumstances, approved March 3d, 1855.

[Passed May 23, 1857.]

(20.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* A. J. Chatfield and Moses Sherburne, former judges of this territory, are hereby authorized and empowered to discharge and execute all trusts which they severally assumed, while acting as judges, by virtue of the above mentioned acts, in all respects, in the same manner and subject to the same duties and requirements as they might and would be if still holding their said offices. Execute all trusts.

(21.) SEC. II. This act shall take effect from and after its passage. Take effect.

CHAPTER 34.

POWERS.

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An Act relating to the Creation, Construction, and Execution of Powers.

✓ [Chapter 45, Revised Statutes.]

(1.) SEC. I. Powers, except as authorized and provided for in this chapter, are abolished; and from the time this chapter shall be in force, Powers except as provided for in this chapter, abolished.