

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1863, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

ST. PAUL.

PUBLISHED BY DAVIDSON & HALL,

STATE PRINTERS, 170 THIRD STREET.

1872.

1890 - 114 - 116

1893 - 170

1891 - 117

CHAPTER XL.

DEEDS, MORTGAGES AND OTHER CONVEYANCES.

SECTION

1. Conveyances of lands, how made.
2. Husband and wife may convey real estate—wife not bound by covenant—minority of wife not to affect deed—corporation may convey by agent.
3. Corporation may record appointment of agent—evidence.
4. Deed of quitclaim shall pass whole estate.
5. Conveyances by tenant for life or years.
6. No covenant implied in conveyances.
7. Deeds, how executed.
8. How executed in other states.
9. Acknowledgment, how authenticated.
10. Deeds, how executed in foreign country.
11. Execution of deeds, how proved.
12. How proved when subscribing witness is dead.
13. Grantor refusing to acknowledge deed may be summoned, how.
14. Proceedings on hearing.
15. Deed how proved, if witnesses are dead or absent.
16. Subscribing witnesses may be subpoenaed.
17. Penalty for not appearing.
18. Copy of deed may be filed—effect of.

SECTION

19. Effect of filing to continue, when.
20. Deed entitled to record, when.
21. Conveyances to be recorded—effect of record.
22. Deeds of pews may be recorded.
23. Deed not defeated by defeasance, when.
24. Record of assignment of mortgage, not notice to mortgagor.
25. Term "purchaser," defined.
26. Term "conveyance" defined.
27. Construction of preceding section.
28. Record of any instrument, notice to parties.
29. Letter of attorney, how revoked.
30. On division of county, records may be transcribed.
31. Scroll or device to have effect of seal.
32. Only instruments duly executed, entitled to record.
33. Transcript of record of conveyances may be recorded in other counties.
34. Grantor to make known existence of incumbances.
35. Grantor liable to action of contract, when.
36. Mortgages, how discharged.

Conveyances of
lands, how made.
3 Min. 119.
3 Min. 225.
6 Min. 250.

Husband and
wife may con-
vey real estate—
wife not bound
by covenant—
minority of wife
—conveyance by
corporation.

1869-71

Corporation may
record appoint-
ment of agent—
evidence.

Deed of quit-
claim shall pass
whole estate.

Conveyance by
tenant for life or
years—effect of.

SECTION 1. Conveyances of lands or of any estate or interest therein, may be made by deed, executed by any person having authority to convey the same, or by his attorney, and acknowledged and recorded in the registry of deeds for the county where the lands lie without any other act or ceremony.

SEC. 2. A husband and wife may convey any real estate by their duly authorized agent or attorney, and may by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she was unmarried; but the wife shall not be bound by any covenant contained in such joint deed, nor shall the minority of the wife in any case affect the validity of such deed. Every corporation authorized to hold real estate, may convey the same by an agent appointed by vote for that purpose.

SEC. 3. Whenever the corporators, members, stockholders, trustees or directors of any corporation, by a vote or resolution, appoint an agent to convey the real estate of such corporation, a copy of such vote or resolution certified by the clerk or secretary of such corporation, may be recorded in the office of the register of deeds of the county in which the real estate, to which such vote or resolution relates, is situated. And such vote or resolution, when so certified, or a transcript of such record duly certified, may be used in evidence in the same manner and with like effect as a conveyance recorded in such county.

SEC. 4. A deed of quitclaim and release of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.

SEC. 5. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

SEC. 6. No covenant shall be implied in any conveyance or mortgage of real estate, whether such conveyance contains special covenants or not. Nor shall any grant or conveyance of lands, or interest therein, be void, for the reason that at the time of the execution thereof, such land was in the actual possession of another claiming adversely.

No covenant to be implied in conveyances.

SEC. 7. Deeds executed within this state of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and be acknowledged by the person executing the same before any officer authorized to take acknowledgments, who shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

Deeds, how executed.
5 Min. 323.
6 Min. 177.
6 Min. 220.
6 Min. 292.
8 Min. 524.

1868

SEC. 8. If any such deed is executed in any other state, territory, or district of the United States, such deed may be executed according to the laws thereof, and its execution may be acknowledged before any officer authorized by the laws of such state, territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for such purpose.

How executed in other states.

SEC. 9. In the cases provided for in the preceding section, unless the acknowledgment is taken before a commissioner appointed by the governor of this state for that purpose, or before a notary public, or other officer having a seal of office, and the acknowledgment aforesaid-certified upon such deed by such officer, and his seal of office attached to such certificate, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he believes the signature of such person, subscribed thereto, to be genuine; and that the deed is executed and acknowledged according to the laws of such state, territory or district.

How acknowledgment authenticated.

1869-79

SEC. 10. If such deed is executed in any foreign country, it may be executed according to the laws of such country, and acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affairs, commissioner, or consul of the United States appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand; and if taken before a notary public, his seal of office shall be affixed to such certificate.

Deeds—how executed in foreign country.

1868-104

SEC. 11. When any grantor dies, departs from, or resides out of this state, not having acknowledged his deed, the execution thereof, may be proved by any competent witness thereto, before any court of record in this state.

Execution of deed—how proved.

SEC. 12. If all the subscribing witnesses to such deed are also dead or out of this state, the same may be proved before any court of record in this state, by proving the handwriting of the grantor, and of any subscribing witness thereto.

If subscribing witness is dead, how proved.

SEC. 13. If any grantor residing in this state refuses to acknowledge his deed, the grantee or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

Grantor refusing to acknowledge deed may be summoned before justice.

SEC. 14. At the time mentioned in such summons, or at any time to

Proceedings on hearing.

which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses, and if proved to the satisfaction of the justice, he shall certify the same thereon; and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

If subscribing witnesses are dead or absent, how proved.

SEC. 15. If any grantor residing in this state refuses to acknowledge his deed, and the subscribing witnesses thereto are all dead or out of the state, it may be proved before any court of record in this state, by proving the handwriting of the grantor or of any subscribing witness, the said court first summoning the grantor for the purpose in the manner before provided in this chapter.

Subscribing witness may be subpoenaed.

SEC. 16. The court or justice before whom any deed is presented to be proved, as provided in the preceding sections, may issue subpoenas to the subscribing witnesses, or others, as the case may require, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this state.

Penalty for not appearing.

SEC. 17. Every person, who being served with such subpoena, without reasonable cause refuses or neglects to appear, or appearing, refuses to answer on oath touching the matter aforesaid, shall be liable to the injured party in the sum of one hundred dollars, and for such further damages as such party may sustain thereby; and may also be committed to prison, as for a contempt, by the court or justice who issued such subpoena, there to remain until he submits to answer upon oath as aforesaid.

Copy of deed may be filed.

SEC. 18. Any person interested in a deed that is not acknowledged, may at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time, be duly proved and recorded.

Effect of filing to continue—when

SEC. 19. If at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed are pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed within that time is duly proved and recorded.

Certificate to entitle deed to record.

SEC. 20. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and in the cases where the same is necessary, the certificate required by the ninth section of this chapter shall entitle such deed, with the certificate aforesaid, to be recorded in the office of the register of deeds of the county where the lands lie.

Conveyances to be recorded

SEC. 21. Every conveyance by deed, mortgage or otherwise, of real estate within this state, shall be recorded in the office of the register of deeds of the county where such real estate is situated; and every such conveyance not so recorded shall be void, as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance is first duly recorded, or as against any attachment levied thereon, or any judgment lawfully obtained at the suit of any party against the person in whose name the

Effect of record

2 Min. 264.
3 Min. 323.
7 Min. 506.
8 Min. 40.
10 Min. 50.

*provides same may be recorded in county in which
municipal county is situated for judicial purposes*

title to such land appears of record prior to the recording of such conveyance.

SEC. 22. Deeds of pews and slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society, or proprietors, if incorporated or legally organized; and such clerk shall receive the same fees as the register of deeds is entitled to for similar services. Deeds of pews may be recorded.

SEC. 23. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance is recorded in the registry of deeds of the county where the lands lie. Deed not defeated by defeasance—when.

SEC. 24. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee. Record of assignment of mortgage note notice to mortgagor.
7 Min. 176.

SEC. 25. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate is conveyed for a valuable consideration; and also every assignee of a mortgage, or lease, or other conditional estate. Term "purchaser" defined.

SEC. 26. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. Term "conveyance" defined.
3 Min. 119.
6 Min. 89.
6 Min. 250.
8 Min. 524.
10 Min. 50.

SEC. 27. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded in the registry of deeds of any county in which the lands to which such powers or contract relates, may be situated; and when so acknowledged or proved, and the record thereof, when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner and with the like effect as a conveyance recorded in such county. Construction of preceding section.

SEC. 28. The record as herein provided, of any instrument, properly recorded, shall be taken and deemed notice to parties. Record of any instrument to be deemed notice.

SEC. 29. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. Letter of attorney—how revoked.

SEC. 30. When a new county is organized, in whole or in part, from an organized county, or from territory attached to such organized county, for judicial purposes, all the records of deeds or other instruments relating to real estate in such new county, may be transcribed into the proper books by the register of deeds of such new county; which records, so transcribed, shall have the same effect in all respects as original records, and the register shall be paid for transcribing the same, such sum as the board of commissioners of his county may deem just and reasonable. On division of county, records may be transcribed.

SEC. 31. A scroll or device used as a seal upon any deed or conveyance. Scroll or device,

same effect as
seal

ance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to official seals.

Instrument to be
duly executed to
be entitled to
record.
5 Min. 323.
6 Min. 89.

SEC. 32. To entitle any conveyance, mortgage, power of attorney or other instrument affecting real estate within this state to be recorded, it shall be executed and acknowledged by the party executing the same as required by law.

Transcript of
record of convey-
ance may be re-
corded in another
county.

SEC. 33. A transcript of the record of any conveyance or other instrument authorized by law to be recorded, certified by the register to be a true transcript, may be recorded in any other county, with the same force and effect that the original conveyance or instrument would have, if so recorded.

Grantor to make
known existence
of incumbrance.

SEC. 34. In all conveyances of real estate by deed or mortgage upon which any incumbrance exists, the grantor, whether he executes the same in his own right or as executor, administrator, assignee, trustee or otherwise, by order of law, shall, before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such prior incumbrance so far as he has knowledge thereof.

Grantor liable to
an action of con-
tract—when.

SEC. 35. Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all incumbrances, when an incumbrance appears of record to exist thereon, whether known or unknown to him, shall be liable in an action of contract to the grantee, his heirs, executor, administrator, successors or assigns for all damages sustained in removing the same.

Mortgages—how
discharged.

SEC. 36. Mortgages may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his executor, administrator or assignee, acknowledging the satisfaction of the mortgage; and such entry shall have the same effect as a deed of release, duly acknowledged and recorded. They may also be discharged upon the record thereof by the register of deeds, whenever there shall be presented to him a certificate signed by the mortgagee or grantee, his personal representatives or assigns, executed and acknowledged as hereinbefore prescribed, specifying that such mortgage has been paid, or otherwise satisfied or discharged. Every such certificate and the proof and acknowledgment thereof, shall be recorded at full length, and a reference made to the book and page containing such record, in the minute of the discharge of such mortgage made upon the record thereof, and said register shall indorse upon such certificate the time and place of recording the same.

1866 - 60

1867 - 121 - 122