

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

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CHAPTER 55 (G. S. ch. 40).

DEEDS, MORTGAGES AND OTHER CONVEYANCES.

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TITLE 1.

CONVEYANCES REGULAR.

SEC. 4109. **Land conveyed by deed.**— 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.

G. S. ch. 40, § 1. 3 M. 119, 225; 6 M. 250. The intention of this statute was no doubt to abolish livery of seizin, and the distinction between conveyances at common law and conveyances under the statute of uses, so that whatever be the frame of the assurance, if the language imparts a conveyance, it is to have that effect. At common law, things not in possession passed by what was known as a grant, the operative words being "given and granted." Land only passed by feoffment with livery of seizin — delivery of possession. Deeds of bargain and sale, lease and release, covenants to stand seized to the use, and deeds operating by way of covenants to stand seized to the use, were used under the statute of uses to evade livery of seizin. 2 Co. Litt. 356; 2 Bl. Com. 315; 4 Kent, Com. 381. If this is the effect, then both modes of assurance will convey things in possession and not in possession, and a bargain and sale will operate as a grant. But the distinction that common-law assurances require no consideration, and those operating under statute of uses did, may still prevail. Jackson v. Caldwell, 1 Cowen, 622. Hence, if the operating words of the conveyance are those of a feoffment or grant, a consideration may not be necessary; but if the words of both modes are used — as is usual in bargain and sale — the words being "bargain and sold, given and granted," a consideration is necessary. 1 Cowen, 622; 5 Johns. 439; 1 Lomax, Dig. 219.

SEC. 4110. **By husband and wife.**— 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 not married, nor shall the minority of the wife in any manner affect the validity of such deed.

*The wife of any insane person, where the insanity has been continuous for the period of one year, may convey by her separate deed any real estate owned by her, in like manner and with the same effect, as if she were unmarried. *Provided*, that in all cases where such insane person shall have been put under guardianship by any court of competent authority in this state, the order appointing the guardian, or a duly certified copy thereof, shall be recorded in the office of the register of deeds of the county, in which the real estate to be conveyed shall be situated, and the guardian, to give effect to the conveyance, shall signify his approval thereof by uniting with the wife in the execution of the deed.*

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Every corporation authorized to hold real estate, may convey the same by an agent appointed by vote for that purpose.

G. S. ch. 40, § 2, as amended 1869, ch. 57; 1887, ch. 47. Approved February 18th. Amendment of 1869 struck out "but the wife shall not be bound by any covenant contained in such joint deed" after words "not married." Acts 1887 inserted matter between * *. 20 M. 531.

SEC. 4111. By corporations.—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.

G. S. ch. 40, § 3.

SEC. 4112. Quitclaim—Word heirs.—A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could convey by deed of bargain and sale.

Heirs defined.—The word "heir" or "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee-simple. Any conveyance by deed of land in this state, heretofore executed, without the word "heir" or "heirs," or other words of inheritance therein, shall be deemed and received as *prima facie* proof of an intention on the part of the parties to such conveyance to convey an estate in fee-simple.

G. S. ch. 40, § 4, as amended 1875, ch. 51, § 1. Approved March 2d. Amendment below *. 4 M. 282; 10 M. 141; 16 M. 26, 260; 18 M. 405; 30 M. 378; 38 M. 317. The effect is not to impregnate a quitclaim with the power of a bargain and sale, but to vest a quitclaim with power to divest the whole interest quitclaimed, because a bargain and sale operated under statute of uses to convey the freehold as existing or that may thereafter come to the bargainor. 2 Co. Litt. 356; 2 Bl. Com. 315; 4 Kent; Com. 381; 2 Lomax, Dig. 116, 130, 135. Dispensing with words of inheritance is substantially 7 Will. IV. and 1 Vict. ch. 26, §§ 28, 30, abrogating the common law that a conveyance without the word heirs passed a life estate only. 6 Rand. 77.

SEC. 4113. Conveyance by tenant for life or years.—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.

G. S. ch. 40, § 5. The statute of Gloucester covered this and all other cases, providing that when the writing purported to convey a greater estate than the grantor had it would carry whatever interest he had. 2 Lomax, Dig. 246.

SEC. 4114. Grantor to make known incumbrances.—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.

G. S. ch. 40, § 34. 28 M. 288.

SEC. 4115. Covenants against incumbrances.—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.

G. S. ch. 40, § 35. 34 M. 333; 38 N. W. 756.

SEC. 4116. No implied covenants—Adversely held.—No covenant shall be implied in any conveyance or mortgage of real estate, whether such

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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.

G. S. ch. 40, § 6. 34 M. 121; 31 M. 539. The usual covenants are: That grantor lawfully seized; that he has good right to convey; that land is free from incumbrances; that grantee shall quietly enjoy; that grantor will warrant and defend the title against all lawful claims. 4 Kent, Com. 459; 2 Lomax, Dig. 343. The first three are personal covenants and do not run with the land, nor pass to assignee; the other two are real covenants and run with the land, descend to heirs and pass to assignees. 4 Kent, Com. 459. The provision that conveyance of land adversely held is not void does not cover the covenant of warranty and quiet possession, because these can be broken only by eviction or ouster by title paramount, and do not take effect when possession does not pass. 21 Wend. 120; 2 Barb. 300; 6 Barb. 165.

SEC. 4117. Seal.—A scroll or device, used as a seal upon any deed or conveyance 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.

G. S. ch. 40, § 31.

SEC. 4118. Purchaser defined.—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.

G. S. ch. 40, § 25.

SEC. 4119. Conveyance defined.—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.

G. S. ch. 40, § 26. 3 M. 119; 6 M. 89, 250; 8 M. 524; 10 M. 50; 15 M. 59; 22 M. 532; 37 M. 62. The common-law conveyances were feoffment and grant. Under statute of uses these were bargain and sale, lease and release, and covenant to stand seized. 2 Co. Litt. 356; 2 Bl. Com. 315; 4 Kent, Com. 381. This statute, section 4109, converts these assurances into a deed, and above section enlarges this provision.

SEC. 4120. Same — Exception.—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 power 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.

G. S. ch. 40, § 27.

EXECUTION.

SEC. 4121. Witnesses — Acknowledgment.—Deeds of land or any interest in lands, within this state, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and may be acknowledged by the person or persons executing the same, before *any of the following officers:

First — If acknowledged within this state, any officer authorized by the laws of this state to take acknowledgments therein.

Second — If acknowledged out of this state, and within the United States, the chief justice and associate justices of the supreme court of the United States, judges of the district courts of the United States, the judges or jus-

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tices of the supreme, superior, circuit, or other court of record of any state, territory or district within the United States; the clerks of the several courts above mentioned; and notaries public, justices of the peace, and commissioners appointed by the governor of this state for such purpose; but no acknowledgments taken by any such officer shall be valid, unless taken within some place or territory for which he shall have been elected or appointed to such office, or to which the jurisdiction of the court to which he belongs shall extend.

G. S. ch. 40, § 7, as amended 1868, ch. 61. Amendment struck out after * "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," and inserted matter below *. 5 M. 323; 6 M. 177, 220, 292; 8 M. 524; 12 M. 255; 35 M. 302.

SEC. 4122. Certificate of acknowledgment.—Any officer taking the acknowledgment of a deed, as provided in the preceding section, shall endorse upon or append to such deed a certificate of such acknowledgment thereof, and the true date of such acknowledgment, and shall date and sign such certificate.

G. S. ch. 40, § 8, as amended 1868, ch. 61, § 2. Before amendment this section provided that deed executed in any other state, territory or district might be acknowledged before any officer authorized by the laws of such place to take acknowledgments, or by commissioner appointed by governor of this state.

SEC. 4123. In other states.—In the cases provided for in the second subdivision of section seven of this chapter, unless the acknowledgment is taken before a commissioner appointed by the governor of this state for that purpose, or before a notary public, or before a clerk of a court, or some other officer having a seal of office, and the certificate of acknowledgment upon such deed, with the seal of office of such officer affixed thereto, there shall also be attached or appended to or endorsed upon such deed a certificate of the clerk, or other proper certifying officer, of a court of record of the county, district or place 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 is acquainted with the handwriting of such person, and that he verily believes the signature subscribed to the certificate of acknowledgment to be genuine: *provided*, that the certificate of the secretary of any state or territory, or his deputy, under the seal of such state or territory, attached or appended to or endorsed upon such deed, to the effect that any justice of the peace before whom the acknowledgment purports to have been taken, held, at the date of such acknowledgment, his office by appointment of the governor of such state or territory, shall be a sufficient authentication. All acknowledgments heretofore taken and authenticated as herein provided shall be deemed valid and sufficiently authenticated.

G. S. ch. 40, § 9, as amended 1868, ch. 61, § 3; 1869, ch. 65, § 1.

SEC. 4124. In foreign countries.—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 d'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: *provided*, that any such deed, duly signed and sealed, with two witnesses, and acknowledged as aforesaid, shall be deemed good and sufficient, whether in accordance with the laws of such foreign country or not: *and provided further*, that any deed of land in this state, executed and acknowledged in any foreign country, which shall have endorsed thereon, or attached thereto, a certificate of any minister resident, charge d'affairs or consul of the United States, appointed to reside therein, that such deed is ex-

executed and acknowledged according to the laws of such country, shall be entitled to recover in the county in which such land is situated.

G. S. ch. 40, § 10, as amended 1868 ch. 64, § 1; 1875, ch. 52, § 1. Amendment 1868 added first proviso, and acts 1875 the second proviso.

SEC. 4125. **Refusal to acknowledge.**—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.

G. S. ch. 40, § 13.

SEC. 4126. **Same—Proceedings to compel.**—At the time mentioned in such summons, or at any time to 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.

G. S. ch. 40, § 14.

SEC. 4127. **Same—Filing copy.**—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.

G. S. ch. 40, § 18.

SEC. 4128. **Same—Effect of.**—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.

G. S. ch. 40, § 19.

RECORDING.

SEC. 4129. **Requisites for.**—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.

G. S. ch. 40, § 32. 5 M. 323; 6 M. 89.

SEC. 4130. **Certificate.**—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.

G. S. ch. 40, § 20.

SEC. 4131. Recording — Effect.— 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 part [portion] thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, deed of quitclaim and release, of the form in common use, or otherwise, 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 title to such land appears of record, prior to the recording of such conveyance. Every conveyance aforesaid heretofore executed, and not so recorded, and which shall not be so recorded within three months from the passage of this act, 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, claiming under or through a deed of quitclaim and release, of the form in common use, heretofore so recorded, or which may be recorded before such prior conveyance. The fact that such first-recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of quitclaim and release aforesaid, shall not affect the question of good faith of such subsequent purchaser, or be of itself notice [to him] of any unrecorded conveyance of the same real estate, or any part thereof: *provided*, however, that all deeds, mortgages, and other instruments affecting real estate situate in any unorganized county, may be recorded in the county to which such unorganized county is attached for judicial purposes; and records of such instruments which have been or shall be so made, shall have the same effect as if recorded in the county where the premises are situate.

G. S. ch. 40, § 21, as amended 1870, ch. 56; 1875, ch. 51, § 2. Approved March 2, 1875. 2 M. 264; 3 M. 323; 7 M. 506; 8 M. 34; 10 M. 50; 18 M. 405; 20 M. 453; 22 M. 532; 27 M. 398; 28 M. 289, 411; 29 M. 324; 30 M. 271; 31 M. 68; 33 M. 27, 279; 34 M. 294; 36 M. 314; 37 M. 57; 38 M. 317.

SEC. 4132. Notice.— The record, as herein provided, of any instrument, properly recorded, shall be taken and deemed notice to parties.

G. S. ch. 40, § 28. 17 M. 485; 22 M. 287.

SEC. 4133. Not notice to mortgagor, when.— 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.

G. S. ch. 40, § 24. 7 M. 176; 29 M. 179.

SEC. 4134. Recording copies.— A certified copy of the record of any conveyance or other instrument, authorized by law to be recorded in the office of the register of deeds in any county, or in the office of the secretary of state, certified by the proper custodian of such record to be a true copy thereof, may be recorded in any county in this state, with the same force and effect that the original conveyance or instrument would have, if so recorded.

G. S. ch. 40, § 33, as amended 1868, ch. 63. Amendment inserted "or in the office of the secretary of state."

SEC. 4135. Same.— That in every case where a deed or conveyance of real estate appears of record in the office of the register of deeds of any county in the territory or the state of Minnesota, other than the county in which lands described in or affected by said instrument were situated at the time such instrument was recorded, a copy of such record, certified by the register of deeds in whose office the same appears, may be recorded in the office of the register of deeds for the county in which any such land is situated, and the record of such certified copy so made, from the time the same is so filed for record, shall have the same force and effect as evidence and notice as the record of an original deed or conveyance; and a certified copy of such record so made

may be received in evidence with the same force and effect as a certified copy of the record of an original deed or conveyance. *Provided*, that the provisions of this act shall not apply to or affect any action now pending, nor to any action hereafter brought involving the same issues and property, or any part thereof, which are involved in any action now pending.

1889, ch. 39: "An act authorizing and declaring the effect of the record of certified copies of deeds and conveyances in certain cases." Approved March 15, 1889.

SEC. 4136. Unrecorded defeasance.—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.

G. S. ch. 40, § 23. 22 M. 137; 34 M. 549.

SEC. 4137. Revocation of power of attorney.—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.

G. S. ch. 40, § 29.

SEC. 4138. Deeds of pews.—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.

G. S. ch. 40, § 22.

SEC. 4139. Records of new county.—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.

G. S. ch. 40, § 30. 41 N. W. 656.

PROOF OF DEEDS.

SEC. 4140. When not acknowledged.—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.

G. S. ch. 40, § 11.

SEC. 4141. When subscribing witnesses dead or absent.—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.

G. S. ch. 40, § 12.

SEC. 4142. Same.—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.

G. S. ch. 40, § 15.

SEC. 4143. **Witnesses may be subpoenaed.**—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.

G. S. ch. 40, § 16.

SEC. 4144. **Disobeying subpoena.**—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.

G. S. ch. 40, § 17.

SEC. 4145. **Record of deeds—Evidence.**—That in all cases where deeds or other conveyances of real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds for the county where the real estate thereby affected was at the time of the making of such records, or is situate, whether such deeds, conveyances and letters of attorney were duly and properly admitted to record or otherwise, all such records may nevertheless be read in evidence in any court within this state, and shall be received as *prima facie* evidence of the contents of the original instruments of which they purport to be the records,* and all such records shall, in all respects have the same force and effect as they would have if such original instruments at the time they were so recorded had been legally entitled to record.*

Certified copies.—That duly authenticated copies of aforesaid record may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid.

1878, ch. 57, and 1866, ch. 23. 22 M. 137. An act relating to the records in the offices of the register of deeds. Both acts the same, except matter between **, which was not in acts 1866.

SEC. 4146. **Affidavit—Evidence.**—That in all cases of sales of real property heretofore made in pursuance of the decree of any court having jurisdiction in the premises, or under execution, or upon foreclosure of mortgage, when affidavits of publication of the notices in such cases required by law, or affidavits of sale pursuant to any such notice of foreclosure, shall have been heretofore recorded in the office of the register of deeds of the county wherein such real property is situated, or shall hereafter be so recorded within one year after this act shall have become a law, such affidavits or duly certified copies thereof, shall be received in evidence in the same manner and with the same effect as if the same had been filed or recorded in such office within the time by law prescribed as the time of making of such sales.

1873, ch. 63: "An act legalizing the recording of affidavits in certain cases and making them evidence." Approved March 10, 1873.

DISCHARGING MORTGAGES.

SEC. 4147. **Record.**—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

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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.

G. S. ch. 40, § 36. 27 M. 398.

SEC. 4148. Refusal of mortgagee.— If any mortgagee, or his personal representative or assignee, after a full performance of the conditions of the mortgage, shall, for the space of ten days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same, as provided in this chapter, or to execute and acknowledge a certificate of discharge, or release thereof, he shall be liable to the mortgagor, his heirs, grantee or assigns, for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action; and such mortgagor, his heirs, grantee or assigns, may in such action unite with such claim for damages a claim for satisfaction and release of such mortgage. And if, upon the trial of such action, it appears that the conditions of such mortgage have been fully performed as aforesaid, then the court shall, by its decree and judgment, release and satisfy such mortgage; and a certified copy of such decree shall be filed in the office of the register of deeds where such mortgage is recorded; and thereupon such decree shall operate as a full and complete discharge of such mortgage. If the mortgagee, his personal representatives or assignee, is a non-resident of this state, such action may be maintained against him, at the expiration of sixty days after the conditions of said mortgage have been fully performed, without any previous request or demand to satisfy such mortgage.

1873, ch. 50: "An act to amend chapter 40 of General Statutes, concerning deeds, mortgages and other conveyances." Approved February 27, 1873, by adding this section. 38 N. W. 756.

SEC. 4149. Same — When mortgage foreclosed.— In all cases where an action has been or may be hereafter brought, and the mortgage which is sought therein to have declared satisfied and discharged of record has been foreclosed prior to the final determination thereof, the mortgagor, his heirs, representatives or assigns, may, before the time of redemption expires, for the purpose of saving his right of redemption, in case he should fail in such action, deposit with the sheriff of the proper county the amount for which the mortgaged premises were sold, together with lawful interest thereon to the time of such deposit. In making such deposit with the sheriff, said mortgagor, his heirs, representatives or assigns, shall notify said sheriff in writing that he claims said mortgage to be satisfied, and is entitled to have the same discharged of record, and that he has commenced an action to have the same declared satisfied and discharged of record, and that said sheriff is to hold and retain said money as hereinafter provided; and he shall also execute a bond or undertaking to the purchaser at such mortgage sale, with one or more sureties, and in such reasonable sum as the sheriff may fix, conditioned that he will pay all interest that may accrue and become due to said purchaser, in case such action shall fail, and deposit said bond with said sheriff; and thereupon said sheriff shall hold and retain such redemption money and bond until the final determination of such action, and such deposit shall be deemed and held to be, and is, a redemption from such foreclosure. If, upon the final determination of such action, the plaintiff fails to have said mortgage declared satisfied, in whole or in part, such sheriff shall pay over said money so deposited with him, or so much thereof as he may have been adjudged to be entitled to, and deliver said bond to the mortgagee, or his representatives or assigns, who may be entitled to the same; but if the mortgagor or either of them shall in such action have succeeded, in whole or in part, the said sheriff shall repay said redemption money, or so much thereof as the purchaser or mortgagee is not entitled to, to said mortgagor or either of them, who may be entitled to the same, with said bond. The remedy herein provided for shall be deemed to be cumulative, and in addition to other remedies now existing.

1876, ch. 38: "An act to amend chapter 40 of General Statutes, relating to deeds, mortgages and other conveyances." Approved March 1, 1876, by this section.

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SECS. 4150-4155.]

CONVEYANCES DEFECTIVE.

RAILROAD LANDS, RECORD OF.

SEC. 4150. **To be furnished register of deeds.**— The different railroad companies in this state who have received lands from the state to aid in the construction of their respective lines of railroad, shall cause to be prepared at their own expense, and transmit to the register of deeds of the various counties within which their respective lands are situated, full and complete lists, according to government surveys, of the lands so conveyed to them, lying within such counties respectively.

1875, ch. 97, § 1: "An act providing for a registering of the title of lands situated in the different counties of this state which have been or are to be conveyed to railroad companies to aid in the construction of their lines of railroad." Approved March 4, 1875. 29 M. 285.

SEC. 4151. **Examined by auditor of state.**— Such lists, when so prepared, shall be carefully examined and compared by the state auditor with the original lists in his office, transmitted by the interior department of the general government, and, when corrected and revised by him, shall have appended thereto his certificate that the same is a full, correct and accurate list of the lands certified to the state, and by the state conveyed to said railroad companies respectively, situated within the limits of such county:

1875, ch. 97, § 2.

SEC. 4152. **Public record — Evidence of title.**— Such lists, when so prepared by said companies and certified by the said state auditor, and by said companies transmitted to the register of deeds of the different counties, shall be by such register kept as a part of the public records of said counties respectively, and shall be *prima facie* evidence of the title of such railroad companies to the lands therein described.

1875, ch. 97, § 3.

SEC. 4153. **Applies to all land grants.**— This act shall apply to all lands that have heretofore been conveyed to the different railroad companies of this state, or that may hereafter be conveyed to them, for the purpose of aiding in the construction of their different lines of road.

1875, ch. 97, § 4. 29 M. 285.

TITLE 2.

CONVEYANCES DEFECTIVE.

LEGALIZED.

SEC. 4154. **By sheriff's successor.**— When any judicial sale of real property has heretofore been made by any sheriff whose term of office has expired, without a deed to complete such sale having been executed as required by law, such deed may be executed by the sheriff of the county in which such real property is situated with the same force and effect as though executed by the sheriff making such sale.

All such deeds heretofore executed by such sheriff of the county in which such real property is situated, are hereby legalized and made valid and shall have the same force and effect as though executed by the sheriff making such sale.

1873, ch. 53, §§ 1, 2: "An act to regulate judicial sales of real property heretofore made." Approved February 28th.

SEC. 4155. **By probate judge.**— That all conveyances heretofore made of any real property in this state, or of any interest therein, under order and direction of a probate court having jurisdiction in the premises, pursuant to the statute relating to sales of lands by executors, administrators and guard-

ians, and all proceedings appearing otherwise substantially good and regular in relation to the same, be, and the same are, hereby legalized and confirmed, so far as they relate to any question of defect by reason of no record having been kept by the probate court of the letters appointing such executor, administrator or guardian, and such order, license, or direction shall be *prima facie* evidence that proper letters have been duly issued.

1881, Ex. S. ch. 56: "An act to legalize certain conveyances heretofore made and proceedings had in certain cases by executors, administrators and guardians." Approved November 22, 1881.

SEC. 4156. **Foreclosure sales.**—Every foreclosure sale heretofore made under a power of sale in the usual form, contained in a mortgage, heretofore made in good faith, of real property within the limits of this state, and previously actually recorded in the office of the proper register of deeds, is, together with such record thereof, hereby legalized and made valid and effectual to all intents and purposes, as against the following objections, namely: First—That the mortgage or any assignment thereof had but one witness. Second—That the mortgage, or any assignment thereof, was duly witnessed, but was recorded as if it had but one witness. Third—That the mortgage, or any assignment thereof, was not duly sealed. Fourth—That the mortgage, or any assignment thereof, was duly sealed, but was recorded as if not duly sealed. Fifth—That the original certificate of the acknowledgment of the mortgage was not sealed with the official seal of the officer taking such acknowledgment. Sixth—That the original certificate of the acknowledgment of the mortgage was duly sealed, but it was recorded as if not duly sealed.

Provided, however, that such mortgage was in other respects properly executed, witnessed, acknowledged, delivered and recorded, and such foreclosure was in other respects regular and according to the statute then in force.

Provided, further, that this act shall not affect or prejudice the rights of any bona fide purchaser, and shall not apply to any action now pending.

1889, ch. 37: "An act legalizing past foreclosures of mortgages heretofore made as against specified objections thereto." Approved March 7th.

SEC. 4157. **Same — Partnership mortgages.**—That all mortgages heretofore made of any real property in this state, or of any interest therein, to any partnership or firm in their partnership or firm name, and which said mortgages have been foreclosed by advertisement pursuant to the statute relating to foreclosing by advertisement in the name of said partnership or firm, be and the same are, together with all proceedings had in such foreclosure, hereby legalized and confirmed, so far as relates to any question of defect by reason of the mortgagees' names being stated in said mortgages by their partnership or firm name, instead of the individual names of the members of said partnership or firm.

1881, ch. 140: "An act to legalize certain conveyances heretofore made and proceedings had thereunder relating to partnerships." Approved February 21st.

SEC. 4158. **Evangelical association.**—In all cases when deeds or conveyances have heretofore been made of lands or interests in lands in this state, to any person or persons or to any church or congregation or to the trustees of any church or congregation of the evangelical association of North America in trust to be used, maintained, kept and disposed of as a place of divine worship or for the purpose of residence for the ministry for the use of the ministry and membership of any such church or congregation of the evangelical association of North America, such deeds or conveyances are hereby declared legal and valid and the legal title or interest in such land shall be deemed vested in such person or persons and trustees.

Provided, that when any of such lands have been occupied by any church organization of the evangelical association of North America for the term of five (5) years, such church organization under whatever name shall be deemed

the equitable owner thereof, and such lands shall not be disposed of without the consent of the board of trustees representing such church organization.

1889, ch. 23: "An act to validate certain conveyances heretofore made of lands in trust to be used, maintained, kept and disposed of as a place of divine worship, for the use of the ministry and membership or of residence for the ministry of any church of the evangelical association of North America." Approved April 24th. A similar law for M. E. church. 1887, ch. 169 (*ante*, § 2814).

DEFECTIVE POWERS OF ATTORNEY.

SEC. 4159. When blank.— That any power of attorney for the conveyance of real estate, heretofore executed in blank, or with the name of the grantee of the power omitted therefrom at the time of such execution, and delivered to some person with intention to have the same take effect, shall, if afterward filled out with the name of some person to execute such power, be deemed to be and be as valid and effectual, for all purposes, as if such name had been inserted therein before the execution thereof; and when any deed of real estate has heretofore been or shall hereafter be executed under or by virtue of any such power, the person or persons so executing such power of attorney, and all persons claiming by, through or under him or them, shall be forever barred and estopped from alleging in any pleading, or proving upon trial in any cause or proceeding, the fact that such power was so executed in blank.

1876, ch. 67, approved March 6th; and 1877, ch. 101, approved February 23d: "An act in relation to powers of attorney and their effect as evidence." 22 M. 417. These acts are identical.

SEC. 4160. Same.— Include conveyances.— All powers of attorney and conveyances affecting the title to real estate in this state, heretofore recorded in the office of any register of deeds in this state, which may have been unattested by witnesses or executed in blank, or with the name of the grantee of the power or description of the land to be conveyed omitted at the time of execution, which were delivered with intention to have the same take effect, if afterwards filled out, are together with the record thereof hereby legalized and made as valid and as admissible in evidence and as effectual for the purposes of notice, as against the persons executing the same and those claiming under them, after the passage of this act, as though the same had been duly attested by two (2) witnesses and filled out at the time of execution as required by law; but the provisions hereof shall not affect pending actions.

1889, ch. 189: "An act to legalize the execution and record of conveyances and powers of attorney unattested by witnesses." Approved April 24th.

SEC. 4161. In Canada.— That all powers of attorney authorizing the conveyance of real estate situate in this state, or any interest therein, which have been heretofore executed in Canada, according to the laws of that country, but without a seal opposite the names of the persons executing the same are hereby legalized and made valid for all purposes, and when a copy of such power of attorney certified by the officer in whose custody the original remains of record, as a true copy, and bearing the certificate of a consular officer of the United States in said country, under the seal of the consulate, that the same is executed according to the laws of said country, has been heretofore actually recorded in the office of the register of deeds for the county where the real estate affected is situated, such records may be read in evidence in any court and shall be *prima facie* evidence of the contents of the instrument of which they purport to be records, and shall have the same force and effect as though the original thereof was legally recorded, and as though such record had been legally made at the time the instrument was actually written in the record book; and all conveyances heretofore executed under such powers of attorney, and the record thereof are hereby legalized and made valid for all purposes.

Provided, that nothing contained herein shall affect the rights of any *bona*

vide purchaser, without notice, of any real estate, prior to the passage of this act.

1887, ch. 152: "An act to legalize certain instruments and the record thereof." Approved March 7th.

SEC. 4162. **With one witness.**—That all powers of attorney authorizing the conveyance of real estate situate within this state, or any interest therein, which have been heretofore executed with only one witness, are hereby declared as valid and effectual to all intents and for all purposes as if such powers of attorney had been attested by two witnesses, and all conveyances of said real estate situated within this state, or of any interest therein, which have been heretofore executed under such defective powers, and the records of such powers and conveyances, are hereby declared to be as valid and effectual to all intents and for all purposes as if such powers of attorney had been attested by two witnesses.

1877, ch. 115: "An act to legalize defective powers of attorney and the conveyances executed thereunder and the record thereof." Approved March 5th.

SEC. 4163. **Where husband did not join.**—When any married woman has heretofore executed any power of attorney in which her husband has not joined, and any deed or mortgage has been executed under or in pursuance of such power of attorney, any and every such deed or mortgage shall be taken, held and considered to be as valid, legal and binding to all intents and purposes as if the husband of such married woman had joined in the execution of such power of attorney.

Provided, that no conveyance or mortgage made under such power of attorney shall be held to be hereby validated or confirmed unless the husband of such married woman joined in such conveyance or mortgage.

1887, ch. 178, approved March 8th; and 1881, Ex. S. ch. 79, approved November 21st: "An act to validate and confirm deeds and mortgages made by any married woman, by her attorney, where her husband has not joined in the power of attorney under which the deed is executed." These acts are identical.

DEFECTIVE ACKNOWLEDGMENTS.

SEC. 4164. **Certain defects legalized.**—That all deeds or other conveyances of real estate within this state, whether such conveyances were made within this state or in any other state or territory of the United States, heretofore made and recorded in the office of the register of deeds wherein the real estate thereby affected was at the time of the making of such records or is situate, whether such deeds and conveyances were duly and properly admitted to record or otherwise, in which the following defects of acknowledgment exist, either in such conveyances or the records thereof, viz:

Where the name of the county or state is omitted in the certificate of acknowledgment.

Where the certificate of acknowledgment is not dated, or contains a date prior to the date of the conveyance or subsequent to the date of the record thereof.

Where the grantor's name is omitted in the certificate of acknowledgment, and the name of the officer taking the same is inserted instead.

Or where the grantor's name appears in the certificate in the place in which the name of the official character of the acknowledging officer should be stated.

Where a conveyance is executed in any other state or territory by husband and wife, and the wife's name alone appears in the certificate of acknowledgment, but the husband has signed at the end of the conveyance, in the presence of one or more witnesses, an acknowledgment of the receipt of the consideration expressed in such conveyance.

Where the name of one of the grantors in any such conveyance is incorrectly spelled or given in the certificate of acknowledgment.

All such conveyances, and the records thereof, are hereby legalized and made valid, and the records thereof effectual, to all intents and purposes, and of the same force and effect in all respects, for the purpose of notice, evidence, and otherwise, as if such deeds were legally and properly acknowledged in accordance with the laws of this state in force at the time of the making thereof.

Provided, that nothing herein contained shall in any manner affect the right or title of any *bona fide* purchaser, without notice of such instrument or record thereof, for a valuable consideration, of any such real estate prior to the passage of this act; and

Provided further, that a purchaser of any execution or foreclosure sale of any lands affected by this bill shall be considered a *bona fide* purchaser.

Provided, that this act shall not extend nor apply to any action or proceeding now pending in any court of this state.

1883, ch. 87: "An act legalizing conveyances of real estate defectively acknowledged, heretofore recorded in the office of register of deeds in the county where the land is situated." Approved March 3d.

SEC. 4165. **By officer whose term has expired.**—That all acknowledgments to any conveyances or other instruments, heretofore taken by any person previously appointed or elected, and then acting as, a notary public or other officer authorized to take such acknowledgments, be and the same are hereby legalized and made valid for all intents and purposes.

1877, ch. 118: "An act to legalize the acts of certain officers therein named." Approved February 24th.

SEC. 4166. **Same.**—That all acknowledgments to any conveyances or other instruments heretofore taken by any person previously appointed or elected and then acting as a notary public or other officer authorized to take such acknowledgments, be, and the same are hereby, legalized and made "of the same validity as though the term of office of such officer had not expired at the time of taking such acknowledgments;" and the record of such conveyances or other instruments is hereby declared to be legal and valid, and effectual for all purposes: *provided*, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state.

1889, ch. 28, approved February 26th; and 1883, ch. 91: "An act to legalize acknowledgments of conveyances and other instruments and the records thereof." These acts are identical.

SEC. 4167. **By territorial clerks and judge of probate.**—The acknowledgment of the execution of any grant or conveyance of lands, or of any estate or interest therein, by deed, mortgage or otherwise, heretofore made and taken before any clerk of either the supreme or district courts and judges of probate of this territory, and the certificate of every such acknowledgment made by any such clerk shall have the same force and effect as evidence and entitle such grant or conveyance to be recorded in the same manner and with the like effect in all respects as though the same had been duly acknowledged in pursuance of the laws of this territory. In all cases where any such grant or conveyance, acknowledged as aforesaid, shall have been recorded, the record thereof, or transcript of such record certified by the register of deeds in whose office the same may have been recorded, may be read in evidence in any court within this territory with the like force and effect in all respects as conveyances duly acknowledged and recorded.

1856, ch. 12: "An act to legalize acknowledgments of conveyances heretofore taken before either the supreme or district court clerks of the territory." Approved February 6, 1856.

SEC. 4168. **By territorial judges of probate.**—That the acknowledgment of the execution of any grant or conveyance of lands, or of any interest therein, by deed, mortgage or otherwise, heretofore made and taken before any of the judges of probate of the territory of Minnesota, and the certificate of any such acknowledgment made by any such probate judge, shall have the same force, effect and legal validity as though such judges of probate were, at

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CONVEYANCES DEFECTIVE.

[SECS. 4169-4172.]

the time of the making of such certificate expressly empowered by law to take and certify such acknowledgment; and all such deeds and instruments shall be admitted in evidence and entitled to record; and the record of all deeds so acknowledged shall have like force and validity as though the same had been duly acknowledged and recorded; and all such records now or hereafter made shall be notice of the contents of the instrument so recorded.

1866, ch. 38: "An act to legalize deeds acknowledged before judges of probate of the territory of Minnesota." Approved February 24, 1866.

SEC. 4169. By deputy clerks of courts.— All acknowledgments of deeds or other instruments or contracts, heretofore taken in this state, or in the territory of Minnesota, by any deputy clerk of any court of record in this state, or territory of Minnesota, are hereby legalized and made valid, and all such deeds, instruments and contracts are hereby legalized and made valid, and may be recorded, to the same extent and for the same purposes as though the same had been acknowledged before a notary public, or other officer duly authorized to take acknowledgments; and the record of such deeds and instruments where the same have been recorded or may be recorded, and copies thereof, are hereby legalized and made valid for all purposes as though such deeds and instruments had been acknowledged before a notary public, or other officer duly authorized to take acknowledgments.

1875, ch. 47, § 1: "An act to legalize acknowledgments of deeds, mortgages and other instruments taken before a deputy clerk of court, and to legalize deeds and mortgages without seals of grantors." Approved February 24, 1875.

SEC. 4170. By W. McTavish, governor of Assiniboine.— That all conveyances of land in this state, or letters of attorney to convey the same, heretofore made in the district of Assiniboine, in the territory of the Hudson's Bay Company, in British America, and acknowledged before W. McTavish, governor of said district, shall be, and are hereby declared to be, legal and valid instruments, and entitled to record in the county where said land is situated, and such conveyance shall be sufficient in law to convey the title to the same.

1864, ch. 49, § 3: "An act concerning the execution and acknowledgment of deeds and other instruments in the British provinces in North America." Approved February 6th. Sections 1 and 2 of this act authorized acknowledgments by any officer of said province.

SEC. 4171. Without certificate of character.— That powers of attorney, and all other instruments authorizing or relating to the conveyance of real estate, or any interest therein, within the limits of this state, heretofore made and executed out of this state, and acknowledged before an officer having an official seal, but not having a certificate of the official character of such officer, and of the due execution and acknowledgment thereof, according to the law of the place where executed, attached thereto by the proper certifying officer, as required by law, shall be entitled to record with the same effect from the time of the passage of this act as if such certificate in due form was attached.

Effect of record.— The records of all such powers of attorney, and other instruments heretofore recorded, shall, from the time of the passage of this act, have the same force and effect as if the same were recorded anew under the provisions of section one of this act.

1867, ch. 75, §§ 1, 2: "An act to legalize instruments and conveyances heretofore made, and to provide for the recording of the same." Approved February 21st.

SEC. 4172. In unorganized counties.— That the acts of persons, whether in the matter of acknowledgments of deeds or otherwise, who have been elected clerks of courts in any county or counties not organized for judicial purposes, or who have been appointed as clerks of courts by any board of county commissioners in such counties, and whose official bonds have been

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SECS. 4173, 4174.]

CONVEYANCES DEFECTIVE.

approved by their respective board of county commissioners, be and the same are hereby legalized.

1874, ch. 84: "An act to legalize the acts of persons acting as clerks of courts in counties not organized for judicial purposes." Approved February 19th.

SEC. 4173. Out of this state.—That all deeds, mortgages and other instruments affecting the title of real estate, heretofore executed out of this state, according to the laws of the country, state, territory or district where executed and acknowledged, before any officer authorized by the laws of such country, state, territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for that purpose, and if such acknowledgment was taken before such commissioner of this state, or before any notary public or other officer having a seal of office, and such acknowledgment was by such officer certified upon the deed, and his seal of office was attached to such certificate; or if such acknowledgment was taken and so certified by an officer who had no seal of office attached to his certificate, and such instrument had attached thereto the certificate of the clerk or other proper certifying officer of the county or district within which such acknowledgment was taken, certifying under his official seal, in substance, that the person subscribing the certificate of acknowledgment was, at the date thereof, such officer as he was therein represented to be; that he believes the signature of the person subscribing thereto to be genuine, and that the instrument was executed and acknowledged according to the laws of such country, state, territory or district, shall be and hereby are legalized and declared lawful and valid in all respects as though they had been originally executed and acknowledged in accordance with all the requirements of the statute on that subject.

Record.—All instruments of the description mentioned in the preceding section, shall be entitled to be recorded in the office of the register of deeds of the proper county, in the same manner and upon the same conditions as other deeds; and the records of all such instruments already recorded in the office of the register of deeds of the proper county, shall be taken and deemed in all respects as valid and legal; and such instruments and the records of the same shall have the same force and effect in all respects, for the purposes of notice, evidence and otherwise, as are or may be provided by laws in regard to deeds in other cases.

1889, ch. 43, §§ 1, 2, approved April 17th; and 1870, ch. 54, §§ 1, 2: "An act to legalize certain deeds, mortgages and other instruments affecting real estate in this state executed out of this state, and the records thereof, and making the same evidence." These two acts are identical.

SEC. 4174. Same—Certificate—Purchasers.—That all conveyances of real estate in this state, or of any interest in such real estate, heretofore executed in any other state or territory of the United States, if executed and acknowledged according to the laws of such other state or territory, are hereby legalized and made valid, and may be recorded to the same extent and for the same purposes, as though the same had been executed in accordance with the laws of this state: *provided* that before such conveyance shall be entitled to record, the party presenting such conveyance for record shall also present for record the 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, and that he believes the signature of such person, subscribed thereto, to be genuine, and that the conveyance is executed according to the laws of such state, territory or district. And all such conveyances are hereby declared to be legal and valid, and effectual to all intents and purposes, and the record thereof shall have the same effect as in other cases authorized by law: *provided however*, that nothing herein contained shall

in any manner affect the rights or title of any *bona fide* purchaser without notice, for a valuable consideration, of any such real estate, prior to the passage of this act.

1877, ch. 114: "An act to legalize conveyances of real estate in the state of Minnesota, heretofore executed in other states and territories of the United States in accordance with the laws of such other states and territories." Approved February 28th.

SEC. 4175. **Privy examination omitted.**— That all conveyances of real property within this state that have been heretofore executed by husband and wife in which the certificate of the acknowledgment thereof does not state that the wife was examined separate and apart from the [her] husband, shall be, and the same are declared to be as legal and valid as though such certificate of acknowledgment had recited the fact of such separate examination.

1875, ch. 45: "An act to legalize conveyances of real property executed by husband and wife in which the certificate of acknowledgment omits to state that the wife was examined separate and apart from her husband." Approved February 27, 1875.

SEC. 4176. **Privy examination before 1866.**— That all deeds and conveyances executed by husband and wife prior to the time when the general statutes went into effect, and which were properly signed, sealed and witnessed, and were acknowledged before any officer authorized by law to take the acknowledgment of deeds, when it appears by the certificate of acknowledgment attached to or endorsed upon such deed or conveyance, that the execution of the instrument was acknowledged both by the husband and wife, and that the wife, on a separate examination by the officer, acknowledged that she executed the instrument freely and without the compulsion of her husband, shall be legal, valid and effectual to all intents and purposes, and be entitled to record, and all records of such instruments heretofore made shall be legal and valid for all purposes.

Record.— Such certificate of acknowledgment attached to or endorsed upon such deed or conveyance or record thereof, or a certified copy of such record, shall be prima facie evidence that such deed or conveyance was properly acknowledged by husband and wife in the manner and form required by law at the date of such acknowledgment, so as fully to pass and release to the grantee in such deed or conveyance all the estate of such husband and wife, including the wife's right or claim of dower.

1873, ch. 64, §§ 1, 2: "An act to legalize certain conveyances and the records thereof, and providing for their effect as evidence." Approved March 7, 1873.

SEC. 4177. **Wife not described.**— That all conveyances of real property within this state made since March third (3rd), eighteen hundred and eighty-three (1883), in which a married woman unites with her husband as a grantor, where she has in fact acknowledged such conveyance, of which the certificate of the officer taking the acknowledgment shall be *prima facie* evidence, but who is not described in the certificate of the acknowledgment as the wife of the other grantor, shall be and the same are hereby declared to be as legal and valid as though the wife had been so described in such certificate of acknowledgment.

Record of.— All conveyances of the description mentioned in the preceding section shall be entitled to be recorded in the office of the register of deeds of the proper county in the same manner and upon the same conditions as other conveyances, and the records of all such conveyances heretofore actually recorded in the office of the proper county shall be in all respects valid and legal, and such conveyances and records thereof shall have the same force and effect in all respects, for the purpose of notice, evidence or otherwise, as are or may be provided by law in regard to conveyances in other cases.

Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state.

1889, ch. 29, §§ 1, 2: "An act legalizing conveyances of real property defectively acknowledged and the records of such conveyances." Approved February 26th.

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SECS. 4178-4181.]

CONVEYANCES DEFECTIVE.

WITHOUT WITNESSES.

SEC. 4178. **Executed before 1867.**—That no deed or conveyance of land within this state heretofore executed, either under the laws of the territory of Minnesota or under the laws of the state of Minnesota, shall be deemed invalid by reason of not having the signature of any subscribing witness thereto, but the same is hereby legalized and made valid as though executed in all respects in accordance with the laws of the said territory or of the said state; and the record thereof shall be as effectual for all purposes as though said deed or conveyance had been duly and properly executed.

1867, ch. 76: "An act to legalize certain conveyances of land within this state." Approved March 8th.

SEC. 4179. **Same — Before 1877.**—That all conveyances of real property in this state heretofore executed with no subscribing witness and recorded, are hereby declared to be legal and valid, and the record thereof effectual to all intents and purposes, as well as if such conveyances had been executed with two subscribing witnesses.

1877, ch. 117: "An act to legalize conveyances of real property and the record thereof which have been heretofore executed with no subscribing witnesses and recorded." Approved March 1st.

SEC. 4180. **Same — Before 1889.**—That no deed or conveyance of land within the state heretofore executed, either under the laws of the territory of Minnesota or under the laws of the state of Minnesota or under the laws of any state or territory, shall be deemed invalid by reason of not having the signature of any subscribing witness thereto, but the same is hereby legalized and made valid as though executed in all respects in accordance with the laws of said territories or states, and if otherwise properly acknowledged and executed, shall be entitled to be recorded in the office of the register of deeds of the county where said land is situated, the same as though it had the signatures of the subscribing witnesses, and the record thereof shall be as effectual for all purposes as though said deed or conveyance had been executed with two subscribing witnesses. *Provided*, that nothing herein contained shall in any manner affect the rights or title of any bona fide purchaser without notice for a valuable consideration of any such real estate prior to the passage of this act, and shall not apply to or affect any action or proceeding now pending in any court of this state.

1889, ch. 26: "An act to legalize certain conveyances of land within this state without any subscribing witnesses." Approved April 5th.

SEC. 4181. **Same — For more than twenty years.**—That no deed or conveyance of land within this state heretofore executed, either under the laws of the territory of Minnesota or under the laws of the state of Minnesota, or under the laws of any state or territory, shall be deemed invalid by reason of not having the signature of any subscribing witness thereto, and the power of attorney of the person or persons executing the same is not attached thereto and the same has been executed for more than twenty years, but they are hereby legalized and made valid, as though executed in all respects in accordance with the laws of said territories or states, and if otherwise properly acknowledged and executed, shall be entitled to be recorded in the office of the register of deeds of the county where said land is situated the same as though it had the signatures of two subscribing witnesses, and the record thereof shall be as effectual for all purposes as though said deed or conveyance had been executed with two subscribing witnesses and the power of attorney of the person executing the same or any part thereof was attached thereto.

Provided, that nothing herein contained shall in any manner affect the rights or title of any bona fide purchaser without notice for a valuable consideration of any such real estate prior to the passage of this act, and shall not apply to or affect any action or proceedings now pending in any court of this state.

Mower county.—The register of deeds of said Mower county is hereby authorized and directed to record said indenture or deed in the records of said county as fully and with the same effect as though duly witnessed and in all other respects duly executed.

1889, ch. 24: "An act to legalize certain conveyances of land within this state without any subscribing witnesses, and without the power of attorney of person executing the same or any part thereof being attached." Approved April 23d.

WITHOUT OR WITH ONE WITNESS.

SEC. 4182. Before 1879 legalized.—All conveyances of or affecting real estate heretofore recorded in the several counties of the state of Minnesota being without or having but one witness, and in all other respects executed according to the laws of this state, be and the same are hereby legalized and made good and valid: *provided, however,* that nothing herein contained shall in any manner affect the rights or title of any *bona fide* purchaser without notice for a valuable consideration.

1879, ch. 93: "An act to legalize conveyances of real estate in the several counties of the state of Minnesota heretofore executed in this and other states and territories of the United States." Approved March 4th.

WITH ONE WITNESS.

SEC. 4183. Legalized — Before 1858.—That all conveyances of real estate heretofore made within the limits of this state properly sealed and acknowledged, with one subscribing witness thereto, shall be legal and valid to all intents and purposes.

1858, ch. 42: "An act to legalize certain conveyances heretofore made." Approved July 26th.

SEC. 4184. Same — Before 1863.—That all instruments heretofore made relating to the conveyance of real estate, or any interest therein, within the limits of this state, having only one subscribing witness thereto, shall, if in other respects conformable to law, be entitled to record with the same effect, from the time of the passage of this act, as if attested by two subscribing witnesses.

Record.—The record of all such instruments heretofore recorded shall, from the time of the passage of this act, have the same force and effect as if the same were recorded anew under the provisions of section one of this act.

1863, ch. 41: "An act to legalize conveyances heretofore made and to provide for the recording of the same." Approved March 5th.

SEC. 4185. Same — Before 1872.—That all conveyances of real property in this state, whether conditional or otherwise, that have been heretofore executed with but one subscribing witness and recorded, are hereby declared to be legal and valid, and the record thereof effectual to all intents and purposes, as well as if such conveyances had been executed with two subscribing witnesses.

1872, ch. 39, approved March 1st: "An act to legalize conveyances of real property and the record thereof which have been heretofore executed with but one subscribing witness and recorded, and to dispense with the official certificate to certain instruments." Approved March 1st.

SEC. 4186. Same — Before 1877.—That all conveyances of real property in this state, heretofore executed with but one subscribing witness and recorded, are hereby declared to be legal and valid, and the record thereof effectual to all intents and purposes, as well as if such conveyances had been executed with two subscribing witnesses; but this act shall not be construed to divest or impair any rights already acquired in good faith by third parties.

1877, ch. 116: "An act to legalize conveyances of real property and the record thereof which have been heretofore executed with but one subscribing witness and recorded." Approved February 20th.

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SECS. 4187-4191.]

CONVEYANCES DEFECTIVE.

SEC. 4187. **Same — Before 1879.**— That all conveyances of or affecting real estate heretofore recorded in the several counties of the state of Minnesota being without or having but one witness, and in all other respects executed according to the laws of this state, be and the same are hereby legalized and made good and valid. *Provided, however,* that nothing herein contained shall in any manner affect the rights or title of any bona fide purchaser without notice for a valuable consideration.

1879, ch. 93: "An act to legalize conveyances of real estate in the several counties of the state of Minnesota heretofore executed in this and other states and territories of the United States."

SEC. 4188. **Same — Before 1881.**— That mortgages and all other instruments authorizing or relating to the conveyance of real estate or any interest therein in this state, that have been heretofore executed with but one subscribing witness, are hereby declared to be legal and valid, and the record thereof effectual to all intents and purposes, as if such conveyance had been executed with two subscribing witnesses: *Provided* this act shall not apply to or affect any suit or action now pending.

1881, Ex. S. ch. 77: "An act to legalize conveyances of real property and the record thereof which have been heretofore executed with but one subscribing witness and recorded." Approved November 22, 1881.

SEC. 4189. **Same — One acknowledgment.**— That all deeds or conveyances of real estate in this state, heretofore executed in any other state or territory of the United States, and which is recorded in the office of the register of deeds of the county wherein such land is situated, properly sealed and acknowledged, but with only one subscribing witness, or when executed by more than one person, properly signed and sealed, and witnessed and acknowledged by only one of the parties thereto, the other party or parties, however, having signed and executed a receipt at the end of such deed (as practiced in some states), acknowledging the receipt of the consideration expressed in such conveyance, are hereby legalized and made valid and effectual to all intents and purposes; and such instruments, and the record thereof, shall have the same force and effect in all respects as though they had been originally executed and acknowledged in accordance with all the requirements of the statutes of this state, in force at the time of the making or recording of such conveyances. *Provided,* however, that nothing herein contained shall in any manner affect any pending suit or proceeding, or the right or title of any bona fide purchaser, without notice, for a valuable consideration of any such lands so conveyed prior to the passage of this act.

1883, ch. 85: "An act to legalize certain conveyances, and the records thereof, of real estate in the state of Minnesota, heretofore executed in other states and territories of the United States." Approved March 2, 1883.

WITHOUT SEAL.

SEC. 4190. **Official omitted.**— That all deeds, conveyances and other instruments in writing executed within this state and required by law to be acknowledged, which have heretofore been acknowledged before any officer required to have and keep an official seal, and to affix the same to all documents requiring such officer's official signature, and to which such official seal has not been affixed, shall be legal and valid to all intents and purposes, and shall have the same effect, and be entitled to record with the same effect, as if such official seal had been affixed.

Record.— The records of all such instruments heretofore recorded shall be legal and valid, and have the same force and effect, as if such official seal had been affixed at the time the same were so recorded.

1870, ch. 55: "An act to legalize certain conveyances and the record thereof." Approved March 2d.

SEC. 4191. **Same.**— The record of all deeds of land or of any interest therein heretofore made and purporting to have been executed and acknowl-

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[SECS. 4192-4194.]

edged before a notary public outside of this state, wherein it appears by said record, that the notary before whom said acknowledgment was taken, has failed to attach his seal of office as required by section nine, chapter forty, of the statutes of Minnesota, is hereby legalized and made valid, and said record shall have the same force and effect as if it appeared by said record that the notary before whom the acknowledgment was taken, had attached his seal of office to the certificate of acknowledgment.

1871, ch. 60: "An act to legalize the records of certain deeds." Approved March 1, 1871. See *ante*, ch. 26.

SEC. 4192. In mortgages — One witness.— Mortgages, or assignments of mortgages, heretofore made in good faith of real property within the limits of this state, and actually recorded in the office of the proper register of deeds, but having, or having been recorded as having only one subscribing witness to such mortgage or assignment thereof, or not duly sealed, or having been recorded as if not duly sealed, or the certificate of acknowledgment to which has not been duly sealed, or has been recorded as if not duly sealed, are, together with said records thereof, hereby legalized and made valid to all intents and purposes as of, from and after such actual recording thereof; and foreclosure sales, under such mortgages, are hereby legalized and validated, provided all the proceedings in that behalf were in other respects according to the statute then in force. *Provided, further*, that this act shall not affect or prejudice the rights of any bona fide purchaser nor apply to any action now pending.

1889, ch. 36: "An act legalizing certain mortgages and assignments heretofore made, as well as the records and foreclosures thereof heretofore made, notwithstanding certain defects in the execution or record of such mortgages." Approved March 8th.

SEC. 4193. Same — Grantor's seal — One witness.— That all deeds, contracts and powers of attorney conveying or relating to the conveyance of real estate in this state, heretofore executed in this state or in any other state or territory of the United States and recorded in the office of the register of deeds of the proper county, whether duly or properly admitted to record or otherwise, in which any of the following defects of execution or acknowledgment exist either in such instrument or in the records thereof, viz.: Where there is no seal affixed to the signature of any person or persons executing the same; where there is but one (1) subscribing witness, where the instrument has been acknowledged before a notary public or other officer required to keep an official seal, to whose signature his official seal is not affixed, all such conveyances and the records thereof are hereby legalized and made as valid and effectual to all intents and purposes, and of the same force and effect in all respects, for the purpose of notice, evidence, and otherwise, as if such defects of execution, acknowledgment, or record had not existed: *provided*, that nothing herein contained shall in any manner affect the right of title of any bona fide purchaser without notice of such instrument or record thereof for a valuable consideration, of any such real estate prior to the passage of this act; and a purchaser without notice at any execution on mortgage foreclosure sale, shall be considered such bona fide purchaser: *and provided further*, that this act shall not extend nor apply to any action or proceeding now pending in any court of this state.

1885, ch. 266: "An act to legalize certain conveyances and other instruments and the records thereof heretofore defectively executed, acknowledged or made." Approved March 5, 1885.

SEC. 4194. Without grantor's seal.— All deeds and mortgages heretofore executed in this state, or territory of Minnesota, without a seal, scroll or device opposite the name of the grantor, are hereby legalized and made valid as though such deed or mortgage had been duly sealed with the seal of the grantor at the time of the execution of such deed or mortgage; and the record of such deed or mortgage are hereby legalized and made valid, and the same may be used to the same extent for all purposes as though such deed or mort-

gage had been properly executed: *provided*, such deed or mortgage was in other respects properly executed and acknowledged.

1875, ch. 47, § 2: "An act to legalize acknowledgments of deeds, mortgages and other instruments taken before a deputy clerk of court, and to legalize deeds and mortgages without seals of grantors." Approved February 24th.

SEC. 4195. **Grantor's seal omitted.**— All deeds, mortgages, powers of attorney, and other instruments heretofore executed without a seal, scroll or device, opposite the name of the grantor, are hereby legalized and made valid as though such deed, mortgage, power of attorney or other instrument had been duly sealed with the seal of the grantor, at the time of the execution thereof, and the record of such deeds, mortgages, powers of attorney and other instruments are hereby legalized and made valid and effectual to the same extent and for all purposes as though such deeds, mortgages, powers of attorney and other instruments had been properly executed.

1885, ch. 235: "An act to legalize certain instruments and the record thereof." Approved March 7, 1885.