89

THE GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY

HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY

FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787, THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

ST. PAUL, MINN.

WEST PUBLISHING CO.

1894

CHAPTER 40.

DEEDS, MORTGAGES, AND OTHER CONVEYANCES.

§ 4160. Conveyances of lands, how made.

4160
55-M . 249

4160-4161
57-M - 455

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. 1866, c. 40, § 1; G. S. 1878, c. 40, § 1.)

See § 4203 as to deeds under blank powers of attorney.

4160
01 - 64
01 - 197

A deed signed and sealed by two, only one of whom is described in it as grantor, is the deed of that one only. Merrill v. Nelson, 18 Minn. 366, (Gil. 335.)

The execution, delivery, and recording of a deed operate to pass the grantor's seizin without any other act or ceremony whatever; so that, if the grantor has seizin, the grantee becomes seized without an actual entry. Smith v. Dennett, 15 Minn. 87, (Gil. 65.)

Under the Revised Statutes of 1851 an unrecorded deed of real estate took precedence of an attachment levied after its execution. The attaching creditor was not a *bona fide* purchaser within the meaning of that statute. See Laws 1858, c. 52. Greenleaf v. Edes, 2 Minn. 264, (Gil. 226.)

A conveyance by one who is an "occupant," under the act of congress of May 23, 1844, in relation to town-sites, is within the recording acts, and, when recorded, takes precedence of a prior unrecorded conveyance of the same land. Davis v. Murphy, 3 Minn. 119, (Gil. 69.)

An agent, authorized to sell real estate by an instrument insufficient for want of a seal, to give him authority to convey, may bind his principal by an executory contract to convey. Minor v. Willoughby, 3 Minn. 225, (Gil. 154.)

A real-estate mortgage cannot be created by a deposit of title deeds, even though such deposit be accompanied by a writing stating its object. Gardner v. McClure, 6 Minn. 250, (Gil. 167.)

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212;) Ortman v. Chute (Minn.) 59 N. W. Rep. 533.

§ 4161. Conveyances by husband and wife—Corporations.

4161
95 . 330

4161-4162
97 - 238

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, nor shall the minority of the wife affect the validity of such deed. The husband or wife of any insane person, where the insanity has continued for three years, may by separate deed convey any real estate owned by such grantor in like manner and with the same effect as if unmarried. If the insane husband or wife be under guardianship, the guardian's letters of authority, or a duly certified copy thereof, shall be recorded in the office of the register of deeds of the county in which such real estate shall be situated; and such guardian's approval of the conveyance shall be indorsed thereon. Without such approval the conveyance shall not affect the rights of the insane husband or wife. Any corporation may convey its real estate by an agent appointed by resolution of its directors or governing board.

(G. S. 1866, c. 40, § 2, as amended 1869, c. 57, § 1; G. S. 1878, c. 40, § 2; 1887, c. 47; 1891, c. 75, § 1.)

See §§ 7558, 7568, 7573, 7580, 7582, 7583.

Under the former statute, a married woman's deed, unacknowledged by her, as therein required, was void. Dodge v. Hollinshead, 6 Minn. 25, (Gil. 1.)

A conveyance under section 2, c. 46, Rev. St., by a husband and wife, of the wife's real estate, she being an infant, is of no greater effect than a conveyance by her alone, she being sole, would be. Dixon v. Merritt, 21 Minn. 196.

A mortgage by an infant wife of her land, her husband joining, is valid. Daley v. Minnesota Loan & Inv. Co., 43 Minn. 517, 45 N. W. Rep. 1100.

Where a husband signs and seals his wife's deed of conveyance of her separate real

estate, though he is not named in it, it is a sufficient consent within section 105, *c.* 71, Rev. St. Merrill v. Nelson, 18 Minn. 366, (Gil. 335.)

A married woman's deed of her separate real estate need not be acknowledged by her separately and apart from her husband. Id.

The last sentence of this section does not exclude other modes of corporate conveyance, as through its regular officers. Morris v. Keil, 20 Minn. 531, (Gil. 474.)

See Sandwich Manuf'g Co. v. Zellmer, 48 Minn. 408, 414, 51 N. W. Rep. 379.

See note to § 5532.

§ 4162. Corporation may record appointment of agent—Evidence.

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. 1866, c. 40, § 3; G. S. 1878, c. 40, § 3.)

§ 4163. Quitclaim deeds—Word "heirs" unnecessary to pass fee.

4163
56-M . 126
61-NW . 672
59-NW 1044

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. 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.

4163 88-M . 286
88-M . 473

(G. S. 1866, c. 40, § 4, as amended 1875, c. 51, § 1; G. S. 1878, c. 40, § 4.)

A quitclaim deed passes only such estate as the grantor can lawfully convey. Everest v. Ferris, 16 Minn. 26, (Gil. 14.)

A quitclaim deed, recorded, does not affect the interest or estate passed by a prior unrecorded deed by the same grantor to another grantee. Marshall v. Roberts, 18 Minn. 405, (Gil. 365.)

A quitclaim deed, purporting to remise, release, and convey all the grantor's interest in and to the premises, and containing the following: "Intending hereby to convey only my title to said land acquired by the purchase of the same for taxes for the year 1864, and previous years,"—is sufficient to constitute "color of title in fee." The recital in the deed that the title conveyed is only a tax title, will not, of itself, charge the grantee with actual notice of the infirmities in such title, although appearing of record. Wheeler v. Merriman, 30 Minn. 372, 15 N. W. Rep. 665.

Plaintiff executed to the defendant a deed, void for uncertainty in the description, but which was intended to convey certain lands in Stillwater to be used for county buildings, the defendant to hold them so long as they should be used for the seat of justice; but, if the county-seat should be removed from Stillwater, the lands to revert to plaintiff. Afterwards plaintiff quitclaimed the lands, by a proper description, together with all reversion or remainder of plaintiff therein, to defendant. Held, that the second deed, it admitting the receipt of a valuable consideration, is not to be regarded as merely confirmatory of the first, but as intended to vest the absolute fee-simple in defendant, and no resulting trust could arise on it in favor of plaintiff. McKusick v. Commissioners of Washington County, 16 Minn. 151, (Gil. 135.)

See, also, Hope v. Stone, 10 Minn. 141, (Gil. 114;) Strong v. Lynn, 38 Minn. 315, 37 N. W. Rep. 448.

§ 4164. Conveyances by tenants for life, etc., do not work forfeitures.

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. 1866, c. 40, § 5; G. S. 1878, c. 40, § 5.)

4165
90 - 65

§ 4165. No covenants to be implied—Conveyance of land held adversely to grantor.

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.

(G. S. 1866, c. 40, § 6; G. S. 1878, c. 40, § 6.)

Representations of freedom from incumbrances, made without fraud, during the negotiations for the sale of real property, are merged in the deed of conveyance by which the sale is consummated. Fritz v. McGill, 31 Minn. 536, 18 N. W. Rep. 753.

It is not necessary, in order to constitute the vendee's assignment of a contract of sale a mortgage for money advanced, that he should promise to repay the amount advanced, or that the personal remedy be preserved. The mortgagee may rely wholly upon the security. Niggeler v. Maurin, 34 Minn. 118, 24 N. W. Rep. 369. The absence of a personal covenant or promise to repay is a material circumstance in determining whether a mortgage or conditional sale is intended, but is not controlling on the question. Id.

A purchaser with notice is bound by the grantor's agreement to pay one-half the cost of a party-wall, upon using it, notwithstanding there is no covenant respecting the party-wall in his deed. Warner v. Rogers, 23 Minn. 35, 38.

At common law, the words "grant, bargain, sell, convey, and warrant" do not imply a covenant of seisin. Aiken v. Franklin, 42 Minn. 91, 43 N. W. Rep. 839.

4166
97 - 238

4166
01 - 64

§ 4166. Execution and acknowledgment of deeds.

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 justices 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. 1866, c. 40, § 7, as amended 1868, c. 61, § 1; G. S. 1878, c. 40, § 7.)

A lease for a term not exceeding three years need not be attested by witnesses. Chandler v. Kent, 8 Minn. 524, (Gil. 467.)

A statute curing defects in the execution of deeds and mortgages cannot operate against rights acquired from the grantor or mortgagor after the deed or mortgage, and prior to the statute. Thompson v. Morgan, 6 Minn. 292 (Gil. 199); Meighen v. Strong, 6 Minn. 177 (Gil. 111).

A mortgage with only one witness is valid as against the mortgagor and persons taking with notice. Johnson v. Sandhoff, 30 Minn. 197, 14 N. W. Rep. 889.

See, also, Ross v. Worthington, 11 Minn. 438 (Gil. 323), distinguishing Thompson v. Morgan, 6 Minn. 292 (Gil. 199).

A deed is effectual as a conveyance, though unwitnessed. Morton v. Leland, 27 Minn. 35, 6 N. W. Rep. 378; Conlan v. Grace, 36 Minn. 276, 30 N. W. Rep. 880; Dobbin v. Cordiner, 41 Minn. 165, 42 N. W. Rep. 870.

See Lowry v. Harris, 12 Minn. 255 (Gil. 166).

A deed, though defectively acknowledged, passes the title as between the parties. Tidd v. Rines, 26 Minn. 201, 2 N. W. Rep. 497; Lydiard v. Chute, 45 Minn. 277, 47 N. W. Rep. 967.

In recording a mortgage, the register of deeds omitted the name of one of the witnesses, so that by the record the mortgage appeared to have but one. Held, that the record was not notice to a subsequent grantee or mortgagee. Parret v. Shaubhut, 5 Minn. 323, (Gil. 258.)

A power of attorney to convey land in this state, executed in Massachusetts, and acknowledged there before a justice of the peace, but with no certificate of the proper

officer that it was executed according to the laws of that state, is not entitled to record here, and the record of it is not evidence. Lowry v. Harris, 12 Minn. 255, (Gil. 166.)

The acknowledgment is not essential to the validity of a deed as between the parties. Bever v. North, (Ind.) 8 N. E. Rep. 576; Robinson v. Robinson, (Ill.) 5 N. E. Rep. 118.

A certificate of acknowledgment by the deputy of a clerk of a court of record of a sister state in the name of his principal, authenticated by the official seal of the latter, is sufficient. Such certificate in due form is presumptive evidence of the authority of the deputy and of the validity of his acts. Piper v. Chippewa Iron Co., 51 Minn. 495, 53 N. W. Rep. 870.

§ 4167. Certificate of acknowledgment—Its contents, etc.

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. 1866, c. 40, § 8, as amended 1868, c. 61, § 2; G. S. 1878, c. 40, § 8.)

§ 4168. Acknowledgments taken in other states—Certificate as to official character, etc.

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. 1866, c. 40, § 9, as amended 1868, c. 61, § 3; 1869, c. 65, § 1; G. S. 1878, c. 40, § 9.)

In reference to certificates of acknowledgment and authentication to deeds it is the policy of the law to uphold them, whenever substance is found, and not to suffer conveyances or proof of them to be defeated by technical or unsubstantial objections. In construing them resort may be had to the deed or instrument to which they are appended. Wells v. Atkinson, 24 Minn. 161.

See Piper v. Chippewa Iron Co., cited in note to § 4166.

§ 4169. Execution and acknowledgment of deeds in foreign countries.

4169
97 - 141

4169
01 - 64

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'affaires, 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'affaires or consul of the United

States, appointed to reside therein, that such deed is executed and acknowledged according to the laws of such country, shall be entitled to record in the county in which such land is situated.

(G. S. 1866, c. 40, § 10, as amended 1868, c. 64, § 1; 1875, c. 52, § 1; G. S. 1878, c. 40, § 10.)

A deed not made by a party to the suit, signed in a foreign country, and acknowledged before a justice of the peace, is inadmissible in evidence without proof of execution aliunde. Lydiard v. Chute, 45 Minn. 277, 47 N. W. Rep. 967.

§ 4170. Execution of deed, how proved.

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. 1866, c. 40, § 11; G. S. 1878, c. 40, § 11.)

§ 4171. Proof when subscribing witnesses are 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. 1866, c. 40, § 12; G. S. 1878, c. 40, § 12.)

§ 4172. Grantor refusing to acknowledge deed may be summoned before justice.

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. 1866, c. 40, § 13; G. S. 1878, c. 40, § 13.)

§ 4173. Proceedings on hearing before justice.

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. 1866, c. 40, § 14; G. S. 1878, c. 40, § 14.)

§ 4174. Proof when subscribing witnesses are dead or absent.

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. 1866, c. 40, § 15; G. S. 1878, c. 40, § 15.)

§ 4175. Subscribing witnesses may be subpœnaed.

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. 1866, c. 40, § 16; G. S. 1878, c. 40, § 16.)

§ 4176. Penalty for not obeying subpœna.

Every person who, being served with such subpoena, without reasonable cause refuses or neglects to appear, or, appearing, refuses to answer on oath touch-

ing 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. 1866, c. 40, § 17; G. S. 1878, c. 40, § 17.)

§ 4177. Copy of such deed may be filed—Effect of filing.

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. 1866, c. 40, § 18; G. S. 1878, c. 40, § 18.)

§ 4178. Same—Effect of filing continued.

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. 1866, c. 40, § 19; G. S. 1878, c. 40, § 19.)

§ 4179. Certificate to entitle deed to record.

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. 1866, c. 40, § 20; G. S. 1878, c. 40, § 20.)

A certified copy of the record of a deed in another state is not entitled to be recorded here. Lund v. Rice, 9 Minn. 230, (Gil. 215.)

§ 4180. Conveyances to be recorded—Failure to record—Quitclaim deeds—Deeds in unorganized counties.

4180
61-NW . 144

4180
59-M - 288

4180
69-M - 125
75-NW 720
76-NW 263
76-NW1128

4180
01 - 372
72-M - 420
73-M - 467
74-M - 123
75-M - 209
78-M - 196
79-M - 266
80-NW 969
82-NW 581

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 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

4180 87-M . 2
87-M . 351
4180 90-M . 237
92-M . 2

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. 1866, c. 40, § 21, as amended 1875, c. 51, § 2; G. S. 1878, c. 40, § 21.)

A party will not be permitted to make use of the registry act as an instrument of fraud. Gill v. Russell, 23 Minn. 362.

This section is a mere continuation of Laws 1858, c. 52, § 1, with the words "hereafter made" omitted, and hence stands from that date as if those words had never been in it. But with these words omitted the statute is not in terms retrospective; nor is it at all necessary, in order to give it effect, to construe it as having retrospective operation. Gaston v. Merriam, 33 Minn. 271, 22 N. W. Rep. 614.

The provision giving docketed judgments priority over unrecorded conveyances does not relate to conveyances made before its passage. Dunwell v. Bidwell, 8 Minn. 34, (Gil. 18.)

This section does not include mechanics' liens, but if the language were to be extended by construction so as to include them, and give them the same effect as judgments or attachment liens, yet, by the terms of the statute, such liens can only take preference where the debtor's title actually appears of record. Oliver v. Davy, 34 Minn. 294, 25 N. W. Rep. 629.

This section imposes no obligation upon a mortgagee to record his mortgage, as against mechanics' liens. Miller v. Stoddard, 50 Minn. 272, 52 N. W. Rep. 895.

A "release" of mortgaged premises is an instrument by which the title to real estate might be affected in law or equity, and a conveyance within the meaning of §§ 4180 and 4185. Palmer v. Bates, 22 Minn. 532.

To the validity of a foreclosure under the power, by an assignee, it is not necessary that the authority of the agent who executed the assignment should be recorded. Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212.)

Deed granting a permanent right of way must be recorded to operate against subsequent *bona fide* purchasers for value. Prescott v. Beyer, 34 Minn. 493, 26 N. W. Rep. 732.

It is only the purchaser of the same real estate, or any portion thereof, who, by his priority of record, cuts out the title of a prior purchaser; for, when the second purchaser obtains by his quitclaim deed only what his grantor had (his grantor's right, title, and interest) at the time when such deed was made, he is not a purchaser of the same real estate, or any part thereof, which his grantor had previously conveyed away, and therefore no longer has. Marshall v. Roberts, 18 Minn. 405, (Gil. 367.)

But, under the amendment of 1875, a recorded quitclaim deed stands on the same footing as other conveyances, and a *bona fide* grantee therein is entitled to the same preference over prior unrecorded deeds. Strong v. Lynn, 37 N. W. Rep. 448.

A husband may, when not prejudicial to creditors, convey real estate directly to his wife, for the purpose of making a settlement upon her, or a provision for her maintenance and support; and, where a conveyance is by an ordinary deed, the presumption is that it was made for such purpose, even where it conveys all the husband's estate. The record of such deed has the same force, as notice, as the record of any other deed. Wilder v. Brooks, 10 Minn. 50, (Gil. 32.)

As to the rights of a purchaser under an unrecorded deed from the ancestor as against a grantee of the heir, see Dodge v. Briggs, 27 Fed. Rep. 160.

As to the rights of a *bona fide* assignee of a second mortgage from one having notice of a prior unrecorded mortgage, see Morse v. Curtis, (Mass.) 2 N. E. Rep. 929.

A judgment takes precedence of an unrecorded mortgage, under § 54, c. 35, Comp. St., and this section only as to such titles as appear of record, and not as to such as do not appear of record as rights "by the curtesy." Golcher v. Brisbin, 20 Minn. 453, (Gil. 407.)

Where a judgment creditor, at the time of the entry of his judgment, has notice, actual or constructive, of the rights of a vendee in possession, under an unrecorded contract for the sale of real estate, the lien of the judgment is subordinate to the equitable title of the vendee. Baker v. Thompson, 36 Minn. 314, 31 N. W. Rep. 51.

An unrecorded conveyance is void against a judgment only when the judgment is against the person in whose name the title to the land appears of record (prior to the recording of such conveyance) in the county in which the land is situated. Coles v. Berryhill, 33 N. W. Rep. 213.

A judgment, docketed against one who had been seized of real estate, and in whom the title still appears of record, becomes a lien upon the property, notwithstanding a prior unrecorded conveyance of it by the debtor, the judgment creditor having no notice of such conveyance. Dutton v. McReynolds, 31 Minn. 66, 16 N. W. Rep. 468.

Where one gives notice to the world of his estate in land by a proper record of a conveyance to himself, a possession by him, which is justified by the record title, is presumptively referable to it, and is not notice of any other and unrecorded title which he may have subsequently acquired. Id.

An attaching or judgment creditor being placed on the same footing as a purchaser, a prior unrecorded assignment or transfer, by the obligor, in a bond for the conveyance of land, of his interest in the bond, or the land therein described, will be void as against a judgment duly docketed in the county where the land is situate, the judgment creditor having no notice of such unrecorded assignment or transfer at the time of docketing his judgment. Welles v. Baldwin, 28 Minn. 408, 10 N. W. Rep. 427.

In an action to reform and foreclose a defectively executed mortgage, a notice of *lis pendens*, duly filed prior to the record of a deed from the mortgagors to a grantee, against whom a judgment had been recovered, will save to the plaintiffs their prior lien as against such judgment, because such judgment, by the terms of this section, only takes precedence where the judgment debtor's title is of record. Lebanon Savings Bank v. Hollenbick, 29 Minn. 322, 13 N. W. Rep. 145.

A docketed judgment takes precedence of an equity to have a recorded deed reformed, of which the judgment creditor had no notice. Wilcox v. Leominster Nat. Bank, 43 Minn. 541, 45 N. W. Rep. 1136.

In an action to determine adverse claims, a judgment against the defendant does not bind one who conveyed the land before the suit, by deed not recorded till after the judgment. Windom v. Schuppel, 39 Minn. 35, 38 N. W. Rep. 757.

A recorded contract for the sale of land is notice to subsequent purchasers, but does not have preference over an unrecorded deed of prior execution. Thorsen v. Perkins, 39 Minn. 420, 40 N. W. Rep. 557.

A bona fide purchaser from a devisee or heir, who first records his deed, is preferred to the grantee in an unrecorded deed by the testator or intestate. Lyon v. Gleason, 40 Minn. 434, 42 N. W. Rep. 286; Welch v. Ketchum, 48 Minn. 241, 51 N. W. Rep. 113.

The right in her husband's real estate, which a wife acquires by marriage, does not come within the registry law. Snell v. Snell, 54 Minn. 285, 55 N. W. Rep. 1131.

The record of a mortgage by the vendee to a third person to raise part of the purchase money held not to be notice to the vendee, who subsequently executed the deed and took a mortgage back for the balance of the purchase money. Schoch v. Birdsall, 48 Minn. 441, 51 N. W. Rep. 382.

Where a paid-up mortgage, containing a power of sale duly recorded therewith, is allowed to remain undischarged of record, and to be regularly foreclosed by advertisement under the statute, without objection, a purchaser at the sale, without notice, and for value, upon duly recording his certificate of purchase, duly executed and acknowledged, together with the affidavits of publication and sale provided by statute, will acquire a valid title to the property upon the expiration of the year without redemption, as against the mortgagor and his assigns. Merchant v. Woods, 27 Minn. 396, 7 N. W. Rep. 826.

A person who takes a quitclaim deed of land in the possession of the tenants of one who has a prior, though unrecorded, conveyance from the other's grantor, is chargeable with notice of such adverse claim, and is not a bona fide purchaser. Wolf v. Zabel, 44 Minn. 90, 46 N. W. Rep. 81.

See, also, Wilkins v. Bevier, 43 Minn. 213, 45 N. W. Rep. 157.

Possession by the grantor after delivery of his deed is notice to creditors of, or subsequent purchasers from, the grantee of the grantor's interest in the land, or right to a reconveyance. Graff v. State Bank, 50 Minn. 234, 52 N. W. Rep. 651.

Possession under an unrecorded deed as notice, see Higgins v. White, (Ill.) 8 N. E. Rep. 808; Atwood v Bearss, (Mich.) 10 N. W. Rep. 112; Banner v. Ward, 21 Fed. Rep. 820; United States v. Sliney, Id. 894.

The burden of proof is on one claiming to be a bona fide purchaser. Roussain v. Patten, 46 Minn. 308, 48 N. W. Rep. 1122.

Recitals in a deed as notice. Singer v. Scheible, (Ind.) 10 N. E. Rep. 616; Central Trust Co. v. Railroad Co., 29 Fed. Rep. 546.

Rumors as notice, see Lakin v. Mining Co., 25 Fed. Rep. 337.

Under this statute, a record, in 1869, in Meeker county, of lands in Kandiyohi county, is good. Smith v. Anderson, 33 Minn. 25, 21 N. W. Rep. 841.

A deed once recorded need not be again recorded when a change of the county lines brings the land within another county. Koerper v. St. Paul & N. P. Ry. Co., 40 Minn. 132, 41 N. W. Rep. 656.

This section and § 5759 do not limit the effect of the record of a deed as evidence to the first record of it, but give at least equal weight as evidence to later records. Stinson v. Doolittle, 50 Fed. Rep. 12.

See Bank of Farmington v. Ellis, cited in note to § 4129. See, also, Shaubhut v. Hilton, 7 Minn. 506, (Gil. 412;) Russell v. Lowth, 21 Minn. 167; Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212;) Simmons v. Fuller, 17 Minn. 485, (Gil. 462;) Windom v. Schuppel, 39 Minn. 35, 38 N. W. Rep. 757; Prentice v. Duluth S. & F. Co., 7 C. C. A. 293, 58 Fed. Rep. 437.

§ 4181. Deeds of pews may be recorded.

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. 1866, c. 40, § 22; G. S. 1878, c. 40, § 22.)

§ 4182. Deed not defeated by 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. 1866, c. 40, § 23; G. S. 1878, c. 40, § 23.)

A bond for the reconveyance of land made at the same time, and bearing the same date as an absolute deed thereof, is, if so intended, an instrument of defeasance within the meaning of this section, and, if duly recorded, protects the right of defeasance, which it is intended to secure, against all persons, without any notice to them except such as is given by the record. Butman v. James, 34 Minn. 547, 27 N. W. Rep. 66.

A. executed to B. a deed of real estate absolute in terms, but intended only as a mortgage, and B. executed to A. an instrument of defeasance, by which B. agreed to quitclaim to A. upon being paid the debt which the deed was given to secure. This instrument was not acknowledged, but was placed on the record. Held, that the instrument was not entitled to be recorded, and that, the defeasance not being legally recorded, the deed from A. to B. could not be affected or defeated by it, as against a grantee, without actual notice of the defeasance of B.'s right, title, interest, claim, and demand in the land, and that such grantee took the title which B. appeared to have by the deed from A., notwithstanding such instrument of defeasance. Cogan v. Cook, 22 Minn. 138.

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212;) Meighen v. King, 31 Minn. 115, 16 N. W. Rep. 702.

A record of the deed, without the defeasance, is enough to protect the mortgagee. Marston v. Williams, 45 Minn. 116, 47 N. W. Rep. 644.

Where the deed is recorded without the defeasance, the lien of a judgment docketed against the mortgagor is good as to his equity of redemption as against a purchaser from the mortgagee with notice. Id.

§ 4183. Record of assignment of mortgage—Not notice to mortgagor.

4183
62-NW . 265
62-NW . 269

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.

4183
68-NW 101

(G. S. 1866, c. 40, § 24; G. S. 1878, c. 40, § 24.)

4183
65-M - 479
69-M - 436
72-NW 456

Independently of this statute, a debtor paying his debt (not evidenced by an immature negotiable instrument) to his creditor, at any time before knowledge or notice of an assignment by the latter, in effect discharges the debt, and a prior assignment gives no right of further recovery; but such payment, after notice of assignment, is no defense to an action by the assignee. Other parts of the recording law give to the record of certain instruments the effect of constructive notice of their execution. The effect of the statute is simply to provide that the record of the assignment of a mortgage shall not have that effect. It leaves unchanged the law as to the effect of payments. In case the debt is evidenced by a negotiable instrument, not yet mature, a payment to the payee will not prejudice the right of recovery by a *bona fide* holder at maturity. Such has always been the law, and the statute does not affect it. Blumenthal v. Jassoy, 29 Minn. 179, 12 N. W. Rep. 517.

It seems that a mortgagor may always pay his mortgage debt to the mortgagee, whether the mortgage has been assigned or not, if he pays in good faith, and without knowledge of the assignment; and also that an assignee, to be fully protected against such payments, must do more than simply place his assignments on record. He must bring home to the mortgagor actual notice of such recording. This provision of statute is general in its application to mortgages, making no exception in regard to such as are collateral to negotiable paper. Johnson v. Carpenter, 7 Minn. 181, (Gil. 125.)

Where an assignment was indorsed on a mortgage, describing it as "the within-described mortgage," and was afterwards recorded on a subsequent page of the same book as the mortgage, held, sufficient recording of the assignment for the assignee to foreclose under the power. Carli v. Taylor, 15 Minn. 171, (Gil. 131.)

§ 4184. Term "purchaser" defined.

4184
55-M . 338

4184
70-M - 469
73-NW 405

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. 1866, c. 40, § 25; G. S. 1878, c. 40, § 25.)

See Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 4185. Term "conveyance" defined.

4185
55-M . 269
62-NW . 111

4185
57-M - 455
68-NW1069

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. 1866, c. 40, § 26; G. S. 1878, c. 40, § 26.)

4185
66-M - 220
70-M - 469

A bond for title is not a "conveyance." Kingsley v. Gilman, 15 Minn. 59, (Gil. 40.) Compare Dahl v. Pross, 6 Minn. 89, (Gil. 38.)

A "release," as an instrument by which the title to real estate might be affected in law or equity, is under this section "a conveyance," within the meaning of § 4180, which declares that every conveyance of real estate, not recorded in the office of the proper register of deeds, shall be void as against any purchaser in good faith, and for a valuable consideration, of the same real estate whose conveyance is first duly recorded. Palmer v. Bates, 22 Minn. 532.

4185
01 - 37
01 - 372

A lease for a term not exceeding three years need not be attested by witnesses. Chandler v. Kent, 8 Minn. 524, (Gil. 467.)

A party-wall agreement, by which one acquires a right of support on an adjoining lot, is a conveyance, within the meaning of this section. Warner v. Rogers, 23 Minn. 34.

A release of judgment lien is entitled to record, and its record is notice to parties. Graham v. Evans, 39 Minn. 382, 40 N. W. Rep. 368.

See Davis v Murphy, cited in note to § 4160; Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223;) Gregg v. Owens, 37 Minn. 61, 33 N. W. Rep. 216, 217; Thorsen v. Perkins, cited in note to § 4180; Ortman v. Chute (Minn.) 59 N. W. Rep. 533.

§ 4186. Construction of preceding section—Letters of attorney and contracts.

4186
97 - 189

4186
70-M - 469
73-NW 405

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. 1866, c. 40, § 27; G. S. 1878, c. 40, § 27.)

§ 4187. Record of any instrument to be deemed notice.

4187
63 NW . 736

4187
70-M - 469
73-NW 405

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

(G. S. 1866, c. 40, § 28; G. S. 1878, c. 40, § 28.)

The record of a mortgage describing the property as "one undivided half of lots 3, 4, 5, and 6, in block numbered 21, in Rice & Irvine's addition to St. Paul, being the same premises described in a deed from Alpheus G. Fuller to Holmes Amidon, dated October 15, 1852, and recorded in the office of the register of deeds for Ramsey county, Book E of Deeds, page 10, there being a steam saw-mill on the premises," the description in the deed referred to being lots 6 and 7, in block 21, and lots 3, 4, 5, and 6, in block 44, same addition, is not notice to subsequent purchasers that the mortgage was intended to convey the undivided half of the lots described in the deed. Simmons v. Fuller, 17 Minn. 485. (Gil. 462.)

If the land is not so described as to identify it with reasonable certainty, the record is not notice. Bailey v. Galpin, 40 Minn. 319, 41 N. W Rep. 1054.

Distinction between actual and constructive notice. Id.

One may be chargeable with actual notice from inspecting a record which is not constructive notice. Cable v. Minneapolis S. & P. Co., 47 Minn. 417, 50 N. W Rep. 528.

In an action for relief on the ground of fraud, constructive notice alone of the facts constituting it, such as the record of a deed in the register's office, is insufficient to set in motion the statute of limitations. Berkey v. Judd, 22 Minn. 288.

A recorded mortgage, though dated a year later than its recording, is constructive notice to a second mortgagee. Jacobs v. Dennison, (Mass.) 5 N. E. Rep. 526.

The record of an instrument executed by one out of possession, and having no record

title or apparent interest in the premises, is not of itself notice to one claiming through the apparent owner. Traphagen v. Irwin, (Neb.) 24 N. W. Rep. 684.

Though the record of an instrument not entitled to be recorded is not constructive notice, yet, if a purchaser actually sees the instrument on record, he will be deemed to have actual notice of its contents. Walters v. Hartwig, (Ind.) 6 N. E. Rep. 5. See Girardin v. Lampe, (Wis.) 16 N. W. Rep. 614.

Unauthorized record as notice, see Brigham v. Brown, (Mich.) 6 N. W. Rep. 97.

Fraudulent record as notice, see Corer v. Alderman, (Mich.) 9 N. W. Rep. 844.

See Thorsen v Perkins, cited in note to § 4180.

When the record of a contract to convey ceases to be notice. Byers v. Orensstein, 42 Minn. 386, 44 N. W. Rep. 129.

The record of a void deed, properly executed and acknowledged, is evidence that it was in fact executed. Clague v. Washburn, 42 Minn. 371, 44 N. W. Rep. 130.

Purchasers are not charged with constructive notice of entries in the index or reception book not required by law to be made. Ahern v Freeman, 46 Minn. 156, 48 N. W. Rep. 677.

See Prentice v. Duluth S. & F. Co., 7 C. C. A. 293, 58 Fed. Rep. 437.

§ 4188. Letter of attorney, how revoked.

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. 1866, c. 40, § 29; G. S. 1878, c. 40, § 29.)

§ 4189. On organization of new county, records may be transcribed.

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. 1866, c. 40, § 30; G. S. 1878, c. 40, § 30.)

§ 4190. Scroll or device used as seal.

4190
59 NW . 543

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.

4190
99 - 3
99 - 86

(G. S. 1866, c. 40, § 31; G. S. 1878, c. 40, § 31.)

See Brown v. Jordhal, 32 Minn. 135, 19 N. W. Rep. 650; Williams v. Starr, 5 Wis. 534.

§ 4191. Requisites to entitle deed to be recorded.

4191
01 - 372

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. 1866, c. 40, § 32; G. S. 1878, c. 40, § 32.)

See Parret v. Shaubhut, 5 Minn. 323, (Gil. 258;) Dahl v. Pross, 6 Minn. 89, (Gil. 38;) Morrison v. Mendenhall, 18 Minn. 232, (Gil. 212, 223.)

§ 4192. Copy of record may be recorded.

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, or in the office of the state auditor, 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. 1866, c. 40, § 33, as amended 1868, c. 63, § 1; G. S. 1878, c. 40, § 33; 1891, c. 74, § 1.)

§ 4193. Same—Effect as evidence and notice.

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, c. 39, § 1.[1])

§ 4194. Grantor to make known existence of incumbrance.

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. 1866, c. 40, § 34; G. S. 1878, c. 40, § 34.)

This section does not apply to a conveyance which passes no title or interest in the real estate. McNaughton v. Carleton College, 28 Minn. 285, 9 N. W. Rep. 805.

See Morrison v. Mendenhall, 18 Minn. 232 (Gil. 212, 223); Sandwich Manuf'g Co. v. Zellmer, 48 Minn. 408, 419, 51 N. W. Rep. 379.

§ 4195. Liability of grantor who covenants against incumbrances.

4195
63-NW . 366

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. 1866, c. 40, § 35; G. S. 1878, c. 40, § 35.)

This section has reference solely to incumbrances *appearing* of record to exist, *but not existing in fact*, as in the case of a recorded mortgage which has been fully paid, but not discharged of record, the object of the statute being to give a right of action in such cases against the grantor in favor of the grantee, his assigns, etc., "for all damages in removing the same," as a cloud upon the title. Hawthorne v. City Bank of Minneapolis, 34 Minn. 382, 26 N. W. Rep. 4.

See Morrison v. Mendenhall, 18 Minn. 232 (Gil. 212, 223); Fasler v. Beard, 39 Minn. 32, 34, 38 N. W. Rep. 755.

§ 4196. Discharge of mortgages of record.

4196
99 - 182

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

[1] An act authorizing and declaring the effect of the record of certified copies of deeds and conveyances in certain cases. Approved March 15, 1889.

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. 1866, c. 40, § 36; G. S. 1878, c. 40, § 36.)

See Merchant v. Woods, 27 Minn. 396, 398, 7 N. W. Rep. 826.

§ 4197. Refusal of mortgagee to discharge mortgage when satisfied—Action by mortgagor, etc.

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, c. 50, § 1; G. S. 1878, c. 40, § 37.)

See Merchant v. Woods, 27 Minn. 396, 7 N. W. Rep. 826; Fasler v. Beard, 39 Minn. 32, 34, 38 N. W. Rep. 755.

§ 4198. Foreclosure—Right to redeem expiring—Deposit, bond, and notice, when.

In all cases where an action has been or may be hereafter brought wherein it is claimed that any mortgage as to the plaintiff or person for whose benefit the action is brought, is fraudulent or void or that it has been paid, satisfied, released or discharged in any manner, in whole or in part, and it shall appear that such mortgage has been or shall be foreclosed by advertisement, and the time for redemption from the foreclosure sale will expire before the final determination of such action, the plaintiff or plaintiffs or the person for whose benefit such action is brought, having a right to redeem the premises sold from such sale, may, before the time of redemption expires, for the purpose of saving such right, in case he or they fail in such action, deposit with the sheriff of the proper county the amount for which the mortgaged premises were sold together with the lawful interest thereon to the time of such deposit, together with a bond to the holder of the sheriff's certificate of such sale, duly executed in the amount and with the sureties to be prescribed and approved by such sheriff, conditioned to pay all interest that may accrue or be allowed in the judgment in such action to such purchaser on such deposit in case such action shall fail; and shall notify such sheriff in writing that he or they claim such mortgage to be fraudulent or void, or that it has been paid, satisfied, released or discharged in whole or in part, as the case may be, and that said action to have the same so adjudged is then pending, and directing such sheriff to retain such money and bond until the final determination of such action and judgment therein; and thereupon said sheriff shall receive, hold and retain such redemption money and bond until such action is finally determined and final judgment entered therein. Such deposit shall operate as and be a redemption of such premises from such foreclosure sale, and entitle the plaintiff to a certificate thereof. No such redemption so made shall in any case be held or construed to be a voluntary redemption, nor in any case be or construed to be a waiver of any of the grounds or causes of action in any case, nor shall the rights of the plaintiff or plaintiffs or those for whose benefit such action is brought, be in any way impaired or

prejudiced thereby. Upon such deposit being made and bond and notice given as herein provided such facts together with the fact that such foreclosure sale has been made shall be brought to the attention of the court by supplemental complaint in such action, and the judgment in such action shall, among other things, determine the rights of the parties in and to the moneys so deposited and the interest thereon, and the validity of said foreclosure sale and to such bond, and the said moneys and bond shall be paid over and delivered by such sheriff as directed by such judgment upon delivery to him of a certified copy thereof. The remedy herein provided shall be deemed cumulative and in addition to other remedies now existing.

(1876, c. 38, § 1; G. S. 1878, c. 40, § 38; as amended 1893, c. 82, § 1.)

§ 4199. Railroad lands—List for 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, c. 97, § 1; G. S. 1878, c. 40, § 39.)

See Winona, etc., R. Co. v. Randall, 29 Minn. 283, 13 N. W. Rep. 127.

§ 4200. Same to be certified by state auditor.

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, c. 97, § 2; G. S. 1878, c. 40, § 40.)

§ 4201. List to be a 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, c. 97, § 3; G. S. 1878, c. 40, § 41.)

See Winona, etc., R. Co. v. Randall, 29 Minn. 283, 13 N. W. Rep. 127.

§ 4202. Act 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, c. 97, § 4; G. S. 1878, c. 40, § 42.)

§ 4203. Deeds under blank powers of attorney.

4203
77-NW 554
4203
75-M - 16

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.

(1877, c. 101, § 1; G. S. 1878, c. 40, § 43.)