

## CHAPTER 508

## CONVEYANCING AND REGISTRATION

## 508.01 REGISTRATION.

**HISTORY.** 1891 c. 153; 1905 c. 305 s. 1; R.L. 1905 s. 3370; 1909 c. 183 s. 2; G.S. 1913 s. 6868; G.S. 1923 s. 8247; M.S. 1927 s. 8247.

Laws 1901, Chapter 237, establishing the Torrens system is not unconstitutional in that it is special legislation; nor that it may deprive an owner of his land without due process; nor that it violates the constitutional provision as to the separation of powers; nor in that the examiners are appointed, and not elected as provided as to county officers under Minnesota Constitution, Article 11, Section 4. *Douglas v Westfall*, 85 M 437, 89 NW 175.

Tax liens held by the state of Minnesota are within the terms of section 508.13, providing that it shall be joined as a party defendant in proceedings under the Torrens law whenever it has an "interest in or lien upon" the land in suit. *National v Hopkins*, 96 M 119, 104 NW 678.

In an action to foreclose a mechanic's lien, the defense was a decree registering the title under the Torrens system, which did not recognize the lien, and the provision permitting the bringing of an action within six months does not apply in this case where the plaintiffs are bound by the decree. *Doyle v Wagner*, 108 M 443, 122 NW 316.

In proceedings to register a land title under the Torrens system, no appeal lies from a denial of a jury trial, nor from an order denying defendant's motion to dismiss the application. *Peters v Duluth*, 119 M 96, 137 NW 390.

Where the existence of a claimant does not appear on the judgment roll under the Torrens system, not in the proceedings, and where such proceedings are absolutely regular on their face, a bona fide purchaser takes the title free from all encumbrances and adverse claims except those noted on the certificate. *Henry v White*, 123 M 182, 143 NW 324.

Where an action was brought to determine adverse claims to real property, and the defendant pleaded an action pending to register title under the Torrens system, and service on the plaintiff, on motion the action was dismissed. *Seeger v Young*, 127 M 416, 149 NW 735.

In proceedings to register title, a party served with a summons is not entitled to a vacation of the final decree and leave to answer and defend on account of excusable neglect, the court not having authority to grant the relief. *Murphy v Borgen*, 148 M 375, 182 NW 449.

The owner of a tax title who cannot claim 15 years' adverse possession and whose tax title had not been adjudged valid, is not entitled under the Torrens act to apply for a certificate of registration, and the cancelation of an existing certificate of title. In re *Jamieson*, 169 M 472, 211 NW 686.

Where Louis Laroche declared his intentions to become a citizen and made declaration on land under the preemption act, and went no further and where an impersonator, Louis LaRoche, an alien, fraudulently obtained a patent and sold the land to the vendor of the plaintiff, the title is good in the impersonator's grantee who has applied for registration under the Torrens system because the right of a declarer under the preemption act is a privilege only, and he obtains no title, and five years after the issuance of a patent, the federal government loses the right to set aside a patent for fraud. *Minnesota Iron v Limoges*, 171 M 2, 213 NW 51.

Construction as to what constitutes adverse possession. *Skala v Lindbeck*, 171 M 410, 214 NW 271.

Deed and contract held to be equitable mortgage and defendant charged with knowledge of plaintiff's rights, and plaintiff has the right to redeem. *Dennis v Swanson*, 176 M 267, 233 NW 288.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.01 CONVEYANCING AND REGISTRATION

2824

The registered owner gave a contract for deed under which purchaser took possession, but the contract was not registered. Thereafter the owner gave a deed to the property, but the deed was not registered. A creditor attached and sold the land, all proceedings being registered, and acquired rights superior to unregistered deed and contract. In re Juran, 178 M 55, 226 NW 201.

Registrar's memorial on certificate of title conclusive evidence of matters stated, and one dealing with land may rely upon statements on the certificate. Horgan v Sargent, 182 M 100, 233 NW 866.

Where the title of the mortgagor is registered under the Torrens system, and the mortgage and an assignment of it are also memorialized, payment to the mortgagor discharges the mortgage, except when the mortgagee has actual notice of the assignment. Rea v Kelley, 183 M 194, 235 NW 910.

Where an appeal is taken from an order denying a motion for a new trial in a land title registration proceeding upon the ground, among others, that the trial court, after denial of a prior motion for a new trial upon other grounds, erred in refusing to allow applicant to dismiss without prejudice before entry of the final decree, the appeal will lie to bring up for review the propriety of the refusal to permit the dismissal; Barrett v Smith, 183 M 431, 237 NW 15, distinguished. Mitchell v Bazille, 216 M 368, 13 NW(2d) 20.

One holding registered title to real estate under the registration of title act, and in actual possession of the property has an insurable interest therein. Fuller v Mohawk Co. 187 M 447, 245 NW 617.

In proceedings to alter the registration certificate of a subsequent purchaser of land over which respondent's right of way passed, the court was not authorized to alter it further than describing the right of way in the exact language used in the deed conveying the right of way to respondent. Minnetonka Bank v Minnesota Society, 189 M 560, 250 NW 561.

An unregistered quitclaim of Torrens title property, though not affecting the title, nor creating any interest in land, was, as between the parties thereto, effective as a contract. Cook v Luettich, 191 M 6, 252 NW 649.

Where in a title registration proceeding under the Torrens act an answering defendant seeks to have the applicant's title decreed to be subject to defendant's rights as a contract vendee, the applicant may dismiss his application at any time during the proceedings, as section 546.39 has no application. Hiller v Smith, 191 M 272, 253 NW 773.

On application for issue of a new Torrens certificate as distinguished from an application to place land under the registration act, it is unnecessary for a non-resident to furnish a power of attorney as required by section 508.07. Hospital v Calhoun Beach, 191 M 354, 254 NW 466.

In an action to vacate a decree of registration of title, it was held the plaintiff was barred by laches and it was also held that under the doctrine of riparian rights, the fee owner of the lots had rights which extended to the river front subject to an easement of the city as to a street thereon. Lamprey v American Hoist, 197 M 112, 266 NW 434.

Plaintiff purchased a Torrens title to the land in good faith and was entitled to possession of the premises covered by the certificate, which was not subject to collateral attack for the purpose of showing that at the time of the registration decree, the land was held in adverse possession. Harrington v Linkert, 203 M 575, 282 NW 461.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to land as of the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered under the Torrens act. Armstrong v Lally, 209 M 373, 296 NW 405. See also: Enger v Northern Fin. Corp. 31 F(2d) 137; Vogt v State Bank, Madison, Wis. 81 F(2d) 701; Nitkey v McKnight Co. 87 F(2d) 916.

Use of declaratory judgment. 5 MLR 36.

Conclusiveness of final decree. 5 MLR 569.

Conclusiveness of Torrens certificate of title. 8 MLR 200.

Torrens system of land title registration. 19 MLR 519.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2825

CONVEYANCING AND REGISTRATION 508.04

Protection of an interest in real estate acquired by a purchaser in good faith at an execution sale. 24 MLR 815.

Contents of certificate of title. 26 MLR 237.

## **508.02 REGISTERED LAND SUBJECT TO SAME INCIDENTS AS UNREGISTERED; ADVERSE POSSESSION EXCEPTED.**

**HISTORY.** 1905 c. 305 s. 2; R.L. 1905 s. 3371; G.S. 1913 s. 6869; G.S. 1923 s. 8248; M.S. 1927 s. 8248.

The object and purpose of the Torrens act is to provide a speedy and summary method of determination of rights in real property and to authorize the court to determine controversies respecting title and by decree to definitely fix the interests of all parties, but the court has no power under the act to order foreclosure of a mechanic's lien. *Reed v Siddall*, 89 M 417, 95 NW 303; 94 M 216, 102 NW 453.

A mechanic's lien upon land, the title of which has been registered under the Torrens act, filed with the registrar, and duly foreclosed without making the parties in possession defendants, such parties having taken possession under a conveyance from a grantee of the registered owner, but neither conveyance having been filed with the registrar, passes an indefeasible title in fee to the party who, after expiration of the year for redemption, obtains by court order a new certificate upon the cancelation of the certificate of the registered owner at the time the lien was filed. *Abrahamson v Sundman*, 174 M 22, 218 NW 246.

Possession is not notice of rights held or claimed by occupant; and attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. *In re Juran*, 178 M 55, 226 NW 201.

Under the Torrens statute where the title of the mortgage is registered and the mortgage and assignment memorialized on the certificate, the equity rule yet applies so that payment to the named mortgagee was good and entitles to a discharge of the mortgage. *Rea v Kelley*, 183 M 194, 235 NW 910.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to the land as of the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered. *Armstrong v Lally*, 209 M 373, 296 NW 405.

Adverse possession. 8 MLR 215.

Possession not notice of unregistered interest. 12 MLR 551.

Torrens act, 1931 amendment adding sixth exception. 16 MLR 91.

## **508.03 APPLICATION.**

**HISTORY.** 1905 c. 305 s. 3; R.L. 1905 s. 3372; 1909 c. 110 s. 1; G.S. 1913 s. 6870; G.S. 1923 s. 8249; M.S. 1927 s. 8249; 1939 c. 100 s. 1; 1941 c. 378 s. 1.

Any person owning land, whether his title be of record in the office of register of deeds or not, maintains proceedings under the Torrens act for land transfers to register his title. *National v Alderson*, 99 M 137, 108 NW 861.

Credit unions may apply for registration. OAG May 7, 1935 (53b).

Additional persons who may apply for registration. Laws 1939, Chapters 100, 378.

## **508.04 TITLES WHICH MAY BE REGISTERED.**

**HISTORY.** 1905 c. 305 s. 4; R.L. 1905 s. 3373; G.S. 1913 s. 6871; 1915 c. 242 s. 1; G.S. 1923 s. 8250; 1927 c. 112 s. 1; M.S. 1927 s. 8250; 1939 c. 100 s. 1.

The state courts have no jurisdiction over the proprietary title of the United States to land within the state, and a decree of registration under the Torrens act, rendered before the United States parted with such proprietary title, is a nullity as against the United States, and its subsequent vendees. *Shevlin v Fogarty*, 130 M 456, 153 NW 871.

The owner of a tax title who cannot claim 15 years' adverse possession and whose tax title has not been declared valid is not entitled to apply for a certificate, or for the cancelation of an existing certificate. *In re Jamieson*, 169 M 472, 211 NW 686.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.05 CONVEYANCING AND REGISTRATION

2826

Application as to certain lands. 1938 OAG 455, March 23, 1938 (425i).

### 508.05 APPLICATION, HOW SIGNED AND VERIFIED.

HISTORY. 1905 c. 305 s. 5; R.L. 1905 s. 3374; G.S. 1913 s. 6872; G.S. 1923 s. 8251; M.S. 1927 s. 8251; 1935 c. 16 s. 1.

Where neither in the proceedings themselves nor by the records the existence of an unnamed claimant is shown, the want of jurisdiction does not appear from the judgment roll itself, and the judgment is not subject to collateral attack. *Dean v Rees*, 208 M 38, 292 NW 765.

### 508.06 CONTENTS OF APPLICATION; RIGHTS AND PRIVILEGES OF CLAIMANTS.

HISTORY. 1905 c. 305 s. 6; R.L. 1905 s. 3375; G.S. 1913 s. 6873; G.S. 1923 s. 8252; M.S. 1927 s. 8252.

After the expiration of the period fixed by statute, a title duly and regularly registered under the Torrens system is, unless such registration was obtained by fraud, indefeasible; and when secured by fraud, and the owner not notified, the decree issued thereunder may be vacated, unless an innocent purchaser has obtained rights on the good faith of the record. *Baart v Martin*, 99 M 197, 108 NW 945. See also *Nitkey v McKnight*, 87 F(2d) 916.

### 508.07 NON-RESIDENT APPLICANT; AGENT.

HISTORY. 1905 c. 305 s. 7; R.L. 1905 s. 3376; G.S. 1913 s. 6874; G.S. 1923 s. 8253; M.S. 1927 s. 8253.

On application for a new Torrens certificate, as distinguished from an application to place land under the registration act, it is unnecessary for a non-resident to furnish a power of attorney. *Rhode Island Trust v Calhoun Beach*, 191 M 354, 254 NW 466.

### 508.08 WHAT MAY BE INCLUDED IN APPLICATION.

HISTORY. 1905 c. 305 s. 8; R.L. 1905 s. 3377; G.S. 1913 s. 6875; G.S. 1923 s. 8254; M.S. 1927 s. 8254; 1941 c. 378 s. 2.

### 508.09 AMENDMENT.

HISTORY. 1905 c. 305 s. 9; R.L. 1905 s. 3378; G.S. 1913 s. 6876; G.S. 1923 s. 8255; M.S. 1927 s. 8255.

### 508.10 APPLICATION TO DISTRICT COURT; POWERS OF COURT.

HISTORY. 1905 c. 305 s. 10; R.L. 1905 s. 3379; G.S. 1913 s. 6877; G.S. 1923 s. 8256; M.S. 1927 s. 8256.

The court has no power under this act to order the foreclosure of mechanics' liens. The existence and validity of such liens may be determined and decreed, but not their foreclosure. Powers of courts defined. *Reed v Siddall*, 94 M 216, 102 NW 453.

### 508.11 APPLICATION FILED WITH CLERK; DOCKET; ABSTRACT.

HISTORY. 1905 c. 305 s. 11; R.L. 1905 s. 3380; G.S. 1913 s. 6878; G.S. 1923 s. 8257; M.S. 1927 s. 8257.

### 508.12 EXAMINERS OF TITLES; APPOINTMENT; TENURE; FEES.

HISTORY. 1905 c. 305 s. 12; R.L. 1905 s. 3381; 1909 c. 183 s. 3; G.S. 1913 s. 6879; G.S. 1923 s. 8258; 1927 c. 112 s. 2; M.S. 1927 s. 8258.

Law is constitutional. *Douglas v Westfall*, 85 M 437, 89 NW 175.

Law is constitutional. OAG August 13, 1934 (374j).

Conclusiveness of the Torrens certificate of title. '8 MLR 203.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2827

CONVEYANCING AND REGISTRATION 508.16

## 508.13 REFERENCES TO EXAMINERS; POWERS; REPORTS.

HISTORY. 1905 c. 305 s. 13; R.L. 1905 s. 3382; G.S. 1913 s. 6880; G.S. 1923 s. 8259; 1927 c. 112 s. 3; M.S. 1927 s. 8259.

Tax liens held by the state of Minnesota are within the terms of the statute, providing that it shall be joined as a party defendant in proceedings under the Torrens law wherever it has an "interest in or lien upon" the land in suit. *National v Hopkins*, 96 M 119, 104 NW 678, 816.

In proceedings to register title, to which the holder of tax certificates and the county were parties, the tax sales on which the certificates were issued were adjudged void for reasons that entitled to refundment. Held, that such judgment cannot be attacked collaterally for error or fraud and as against the county, is conclusive of the right of refundment. *Coburn v Ries*, 123 M 397, 143 NW 981.

The state courts have no jurisdiction over the proprietary title of the United States to and within the state, and a decree of registration under the Torrens act, rendered before the United States parted with the title, is a nullity as against the United States and its subsequent vendees, and one who purchases on the faith of the Torrens certificate is entitled to reimbursement out of the assurance fund. *Shevlin v Fogarty*, 130 M 456, 153 NW 871.

## 508.14 SURVEY IN CERTAIN COUNTIES.

HISTORY. 1909 c. 366 s. 1; G.S. 1913 s. 6881; G.S. 1923 s. 8260; M.S. 1927 s. 8260.

## 508.15 ORDER FOR SUMMONS; PARTIES DEFENDANT.

HISTORY. 1905 c. 305 s. 14; R.L. 1905 s. 3383; G.S. 1913 s. 6882; G.S. 1923 s. 8261; M.S. 1927 s. 8261; 1933 c. 164.

The provision of the statute in respect to who shall be and who shall be known as defendants is mandatory, and where the examiner suggests that a certain party be named as defendant, and the suggestion is not observed, the judgment thereon entered is invalid and void as to such party, and against all in privity with such party, not made defendants. *Dewey v Kimball*, 89 M 454, 95 NW 317, 895, 96 NW 704.

## 508.16 FORM OF SUMMONS; SERVICE.

HISTORY. 1905 c. 305 s. 15; R.L. 1905 s. 3384; G.S. 1913 s. 6883; G.S. 1923 s. 8262; 1927 c. 112 s. 4; M.S. 1927 s. 8262; 1939 c. 97 s. 1.

Constitutionality of law. *Douglas v Westfall*, 85 M 437, 89 NW 175.

Certain provisions mandatory. *Dewey v Kimball*, 89 M 454, 95 NW 317, 895, 96 NW 704.

In an action to foreclose a mechanic's lien, it was held that the registration proceedings were regular and the decree without fraud, and the plaintiffs are bound by the decree in which the lien was not established. *Doyle v Wagner*, 108 M 443, 122 NW 316.

Where the existence of an unnamed defendant is not shown by the proceedings or records, and the want of jurisdiction does not appear from the judgment roll, the judgment is not open to collateral attack, and the court may dismiss the complaint. *Dean v Rees*, 208 M 38, 292 NW 765.

Summons by publication binding on non-resident. *Nitky v Security*, 87 F(2d) 916.

Relating to depositors' credits under the bank reorganization act of 1933, chapter 55. 1924 OAG 39, April 11, 1933 (29b-12).

Section 508.16 contains complete procedure for publication of a summons in registration proceedings. OAG Nov. 8, 1944 (374h).

Conclusiveness of certificate. 8 MLR 203.

1929 amendment. 14 MLR 74.

**508.17 ANSWER.**

HISTORY. 1905 c. 305 s. 16; R.L. 1905 s. 3385; G.S. 1913 s. 6884; G.S. 1923 s. 8263; M.S. 1927 s. 8263.

Section 508.28 applies only to parties not bound by the decree, but in the instant case all proceedings are regular and the plaintiffs are bound by the decree. *Doyle v Wagner*, 108 M 443, 122 NW 316.

Under sections 508.27 and 508.28 the court did not abuse its discretion in denying the application of leave to answer. *Brown v Hagadorn*, 119 M 491, 138 NW 941.

**508.18 GUARDIAN AD LITEM; WHEN APPOINTED.**

HISTORY. 1905 c. 305 s. 17; R.L. 1905 s. 3386; G.S. 1913 s. 6885; G.S. 1923 s. 8264; M.S. 1927 s. 8264.

**508.19 DECREE ON DEFAULT.**

HISTORY. 1905 c. 305 s. 18; R.L. 1905 s. 3387; G.S. 1913 s. 6886; G.S. 1923 s. 8265; M.S. 1927 s. 8265.

The proposed "newly discovered evidence" as a basis for a new trial is in the nature of a collateral attack on a decree of registration of land. As there was no showing of lack of jurisdiction, and as a decree cannot be attacked collaterally for error, the motion for a new trial was denied. *Jones v Wellcome*, 141 M 352, 170 NW 224.

**508.20 TRIAL; REFERENCE.**

HISTORY. 1905 c. 305 s. 19; R.L. 1905 s. 3388; G.S. 1913 s. 6887; G.S. 1923 s. 8266; M.S. 1927 s. 8266.

The burden of proof is upon a party asserting a mechanic's lien to prove that at the time of the trial the lien was valid and existing. The court as to such lien, has the right to establish, but no right to order foreclosure nor to extend the time for the commencement of foreclosure. *Reed v Sidall*, 94 M 216, 102 NW 453; *Doyle v Wagner*, 108 M 443, 122 NW 316.

All rules and principles of law applicable to rights in real property, and rules of practice with reference to trial of actions at law or in equity, in so far appropriate and not provided against, apply under these proceedings, and where issue is joined, findings of fact and conclusions of law should be made as in ordinary actions. *Owsley v Johnson*, 95 M 168, 103 NW 903; *Kuby v Ryder*, 114 M 217, 130 NW 1100.

Right to apply for the registration of land is not affected by the availability or adequacy of other remedies. No appeal lies from a motion to dismiss and no appeal from denial of a jury trial. *Peters v Duluth*, 119 M 96, 137 NW 390.

In proceedings under the Torrens act, where an answering defendant seeks to establish a right, the applicant may dismiss under section 508.21 notwithstanding the provisions of section 546.39. *Hiller v Smith*, 191 M 272, 253 NW 773.

In proceedings to register, wherein the referee's report contained a recommendation that a stay of ten days be granted in which the applicant might file objections to entry of an order based on the findings, and a copy of the report was served upon applicant's counsel, and no objections were filed, the applicant is not entitled to a notice of an application for the entry of the decree made more than ten days after the service of the report. *Ferch v Hiller*, 209 M 124, 295 NW 504.

The rules governing the trial of ordinary civil actions apply to land title registration proceedings; hence, where a voluntary dismissal is taken, no findings are necessary. *Mitchell v Bazille*, 216 M 376, 13 NW(2d) 20.

**508.21 DISMISSAL.**

HISTORY. 1905 c. 305 s. 20; R.L. 1905 s. 3389; G.S. 1913 s. 6888; G.S. 1923 s. 8267; M.S. 1927 s. 8267.

Motion for dismissal by answering intervenor denied. *Peters v Duluth*, 119 M 96, 137 NW 390.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2829

CONVEYANCING AND REGISTRATION 508.22

Where an application for registration of property is pending, and during its pendency a separate action to determine adverse claims is instituted, the latter proceeding on motion may be abated. *Seeger v Young*, 127 M 416, 149 NW 735.

In an action to register land, and jurisdiction in the obtaining of a judgment is questioned, the plaintiff has the burden of showing actual service of the summons. *Brown v Reinke*, 159 M 458, 199 NW 236.

When in a title registration an answering defendant seeks to assert certain rights, the applicant may dismiss his application under section 508.21 rather than being subject to the provisions of section 546.39. *Hiller v Smith*, 191 M 272, 253 NW 733.

The first subdivision of this section relates to involuntary dismissals by the court; and subdivision two to voluntary dismissals by the applicant. *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20.

Under section 508.21 an applicant in a land title registration proceedings is entitled to dismiss without prejudice at any time before entry of the final decree, subject only to the imposition by the court of terms by way of pecuniary award, not limited to statutory costs, overruling *Seeger v Young*, 127 M 416, 149 NW 735. *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20; *Mitchell v Bazille*, 219 M 224, 17 NW(2d) 353.

## 508.22 DECREE OF REGISTRATION; EFFECT.

**HISTORY.** 1905 c. 305 s. 21; R.L. 1905 s. 3390; G.S. 1913 s. 6889; G.S. 1923 s. 8268; M.S. 1927 s. 8268.

Where the want of jurisdiction due to failure to serve appears from the judgment roll, the judgment is void as to claimant and may be attacked collaterally. Where such want of jurisdiction does not appear from the judgment roll, the judgment is not subject to collateral attack, a bona fide purchaser, when the proceedings are regular on their face, and when the existence of claimant does not appear from the judgment roll or the proceedings, takes title free from all encumbrances and adverse claims except those noted on the certificate. *Henry v White*, 123 M 182, 143 NW 324.

In proceedings to register title, tax certificates were adjudged void for reasons that entitled the purchaser to refundment. Such judgment cannot be attacked collaterally. *Coburn v Reis*, 123 M 397, 143 NW 981.

In proceedings to register title, one who is served with summons cannot obtain relief from the court or permission to appear and answer alleging excusable neglect. Section 544.32 does not apply in Torrens proceedings. *Murphy v Borgen*, 148 M 375, 182 NW 449.

When a question of service arises because of defective sheriff's return, the burden of proving legal service is on the plaintiff petitioner. Rule prescribed as to naming married women. *Brown v Reinke*, 159 M 458, 199 NW 235.

A judgment in an action between the owner in possession of real property and one claiming under a foreclosure, and when such judgment is registered and declares the foreclosure void and adjudges the title in such occupant, the judgment becomes a link in the chain of title and is evidence even against a stranger to the judgment. *Fuller v Mohawk*, 187 M 447, 245 NW 617.

Judgment as to riparian rights, adverse possession, laches, and street dedication. *Lamprey v American*, 197 M 112, 266 NW 434.

Plaintiff purchased relying on a Torrens title. Held, that the title is not subject to collateral attack for the purpose of showing adverse possession. *Harrington v Linkert*, 203 M 575, 282 NW 461.

Purchaser who made no attack on the Torrens judgment until after expiration of the limitation period was estopped from suing in equity to obtain title, or any accounting of rents. *Nitky v Security*, 87 F(2d) 916.

City right to repair and maintain sewer under registered property. OAG Sept. 6, 1934 (387b-11).

Conclusiveness of final decree. 5 MLR 569.

Conclusiveness of a Torrens certificate of title. 8 MLR 200.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.23 CONVEYANCING AND REGISTRATION

2830

### 508.23 CONTENTS OF DECREE; COPY FILED.

**HISTORY.** 1905 c. 305 s. 22; R.L. 1905 s. 3391; G.S. 1913 s. 6890; G.S. 1923 s. 8269; M.S. 1927 s. 8269.

The object and purpose of the "Torrens act" is to provide a speedy and summary method of determining rights and interest in real property, and to authorize the court to hear controversies and by proper decree to fix, establish, and declare the title, rights, and interests of all interested parties. *Reed v Siddall*, 94 M 216, 102 NW 453.

As to effect of a decree registering a title without recognizing or establishing claimants mechanic's lien. *Doyle v Wagner*, 108 M 443, 122 NW 316.

### 508.24 REGISTRATION RUNS WITH LAND.

**HISTORY.** 1905 c. 305 s. 23; R.L. 1905 s. 3392; G.S. 1913 s. 6891; G.S. 1923 s. 8270; M.S. 1927 s. 8270.

A mortgage upon registered land operates only as a contract between the parties and as authority to the registrar to make registration. It takes effect on the title only by registration. *Lee v Lee*, 171 M 182, 213 NW 736.

Plats of registered land must be filed with the register of titles. OAG Nov. 3, 1944 (373b-15).

### 508.25 RIGHTS OF PERSON HOLDING CERTIFICATE OF TITLE.

**HISTORY.** 1905 c. 305 s. 24; R.L. 1905 s. 3393; G.S. 1913 s. 6892; G.S. 1923 s. 8271; M.S. 1927 s. 8271.

Where the examiner suggests that a certain party be named defendant, and service proceeds without naming or serving the party named, a judgment rendered thereon is void against the party or those in privity with him. It is not the duty of the court to investigate and prescribe who are to be named as defendants. *Dewey v Kimball*, 89 M 454, 95 NW 317 (895); 96 NW 704.

Law was for the purpose of having the court to establish by decree the rights and interests of the respective parties. 94 M 216, 102 NW 453.

The boundaries of land conveyed by well-known descriptions, such as lots or blocks in a town plat, and "according to" such plat, are, as a general rule, limited to those designated by the plat. *Owsley v Johnson*, 95 M 168, 103 NW 903.

Decree did not establish or recognize a certain mechanic's lien. Held, as the decree is regular the plaintiffs are bound by same. *Doyle v Wagner*, 108 M 443, 122 NW 316.

If a want of jurisdiction due to lack of service on a known claimant appears on the judgment roll, the judgment is void as to the claimant and may be attacked collaterally, but where such lack of jurisdiction does not so appear the decree cannot be attacked. *Henry v White*, 123 M 182, 143 NW 324.

State courts have no jurisdiction over the proprietary title of the United States to land within the state and where there is a decree of registration under the Torrens act, rendered before the United States has parted with the title, the decree is a nullity as against the United States or its vendees. *Shevlin v Fogarty*, 130 M 456, 153 NW 871.

Mechanic's lien upon land, the title to which has been registered, filed with the registrar, and duly foreclosed without making the parties in possession defendants, such occupants being grantees from the registered owner, but the conveyance not having been filed passes an indefeasible title to the party who, after the expiration of the time for redemption, obtains a cancellation of the old, and the issuance of a new certificate. *Abrahamson v Sundman*, 174 M 22, 218 NW 246.

The act abrogates the doctrine of constructive notice except as to matters noted on the certificate; possession is not notice; and attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. *In re Juran*, 178 M 55, 226 NW 201.

Under the Torrens act where the mortgage and an assignment thereof is duly memorialized on the certificate, the statute does not disturb the equity rule that



# MINNESOTA STATUTES 1945 ANNOTATIONS

2831

## CONVEYANCING AND REGISTRATION 508.27

payment to the mortgagee is good payment where the mortgagor had no actual notice of the assignment. *Rea v Kelley*, 183 M 194, 235 NW 910.

An unregistered quitclaim deed of Torrens property, although not affecting the title or creating any interest in land, is good as between the parties as a contract and as such enforceable. *Cook v Luettich*, 191 M 6, 252 NW 649.

Where land is platted with a river as one of the boundaries and only a dedicated street intervenes, the conveyance of the lots fronting on the street carries the fee to the river, and the lots have full riparian rights subject to public easement in the street. *Lamprey v American*, 197 M 112, 266 NW 434.

Torrens title not subject to collateral attack for the purpose of showing that at the time of the registration decree the land was held in adverse possession. *Harrington v Linkert*, 203 M 575, 282 NW 461.

Mechanic's lien, in proper form, filed with the registrar of title, attaches to the land as at the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement on land not registered under the Torrens act. *Armstrong v Lally*, 209 M 373, 296 NW 405.

Purchasers of Torrens title not bound by record filed with register of deeds. 1940 OAG 250, Dec. 11, 1939 (521p-4).

Torrens certificate of title, 8 MLR 208.

Possession not notice of unregistered interest. 12 MLR 551.

Laws of 1927, Chapter 357. 16 MLR 91.

Purchase at execution sale. 24 MLR 815.

Laws 1941, Chapter 33. 26 MLR 237.

### 508.26 OPENING DECREE.

HISTORY. 1905 c. 305 s. 25; R.L. 1905 s. 3394; G.S. 1913 s. 6893; G.S. 1923 s. 8272; M.S. 1927 s. 8272.

A defendant named in the proceedings and served with a summons against whom judgment had been regularly entered, applied to come in and defend against lien claimants, could not demand relief as a matter of right and was refused in the exercise of the court's discretion. *Reed v Siddall*, 89 M 417, 95 NW 303.

As long as the title remains registered in the name of the person guilty of fraud, the decree and certificate of registration may be set aside, action being brought within a reasonable time, unless an innocent holder for value has obtained rights on the faith of the record. *Baart v Martin*, 99 M 197, 108 NW 945.

Decree regularly obtained, and as it did not establish the mechanic's lien, there could be no foreclosure. *Doyle v Wagner*, 108 M 443, 122 NW 316.

Persons acquiring an interest pendente lite, must appear and answer "at once," and persons who delay more than six month after actual notice of the proceedings are not entitled to answer as a matter of right. *Brown v Hagadorn*, 119 M 491, 138 NW 941.

Claimant barred by laches. *Lamprey v American*, 197 M 112, 266 NW 434.

Claimant claiming adverse possession at the time decree was entered denied the right of collateral attack. *Harrington v Linkert*, 203 M 575, 282 NW 462.

A judgment in an action to quiet title to land which has been registered under a judgment in proceeding to register the land is conclusive on parties in respect to title, so as to preclude the plaintiff in the action to quiet title from intervening in land registration proceedings to file a proposed answer containing some ground of relief as claimed in the action to quiet title. *Dean v Rees*, 211 M 105, 300 NW 396.

Purchaser who made no attack against a Torrens title until expiration of the limitation period is estopped from suing to obtain title or possession or an accounting of rents. *Nitky v Security*, 87 F(2d) 916.

Conclusiveness of final decree under Torrens act. 5 MLR 569.

### 508.27 TITLE ACQUIRED PENDING PROCEEDING.

HISTORY. 1905 c. 305 s. 26; R.L. 1905 s. 3395; G.S. 1913 s. 6894; G.S. 1923 s. 8273; M.S. 1927 s. 8273.

# MINNESOTA STATUTES 1945 ANNOTATIONS

Claimants who acquired rights pendente lite, and who delayed bringing proceedings more than six months after actual notice were not entitled to answer as a matter of right. *Brown v Hagadorn*, 119 M 491, 138 NW 941; *Henry v White*, 123 M 184, 143 NW 325; *Lamprey v American*, 197 M 121, 266 NW 435.

Title of one who in good faith purchased land and registered same, holds title against one who was in possession at the time of the granting of the decree, unless the purchaser had actual notice or occupant's rights were shown by the certificate. *Harrington v Linkert*, 203 M 577, 282 NW 462.

### 508.28 LIMITATION OF ACTIONS.

**HISTORY.** 1905 c. 305 s. 27; R.L. 1905 s. 3396; G.S. 1913 s. 6895; G.S. 1923 s. 8274; M.S. 1927 s. 8274.

Law is constitutional. *Douglas v Westfall*, 85 M 437, 89 NW 175.

After the expiration of the period fixed by statute, a title duly registered is indefeasible unless obtained by fraud; and as long as the title remains in the person guilty of fraud, the registration may be set aside, or it may be vacated unless an innocent purchaser acquires rights. *Baart v Martin*. 99 M 197, 108 NW 945; *Dean v Rees*, 211 M 103, 300 NW 396.

Proceedings were regular, and as the lien was not established, the person filing the lien was bound by the decree. *Doyle v Wagner*, 108 M 443, 122 NW 316.

Person on whom due service was made, is not entitled to a vacation of the decree, and will not be allowed to answer on grounds of excusable neglect to answer. *Murphy v Borgen*, 148 M 375, 182 NW 449.

Barred by laches. *Lamprey v American*, 197 M 112, 266 NW 434.

Appellant's application to intervene in the registration proceeding made more than a year after judgment therein was rendered was correctly denied. *Dean v Rees*, 211 M 103, 300 NW 396.

Purchaser in good faith of land covered by Torrens title is entitled to immediate possession and his title is not subject to collateral attack, and he may recover in trespass from the occupant. *Harrington v Linkert*, 203 M 575, 282 NW 461; *Nitky v Security*, 87 F(2d) 916.

### 508.29 APPEALS.

**HISTORY.** 1905 c. 305 s. 28; R.L. 1905 s. 3397; G.S. 1913 s. 6896; G.S. 1923 s. 8275; M.S. 1927 s. 8275.

Appeal dismissed. *Doyle v Wagner*, 108 M 443, 122 NW 316.

Appeal does not lie for refusal to grant jury trial or from motion to dismiss. *Peters v Duluth*, 119 M 96, 137 NW 390.

In the instant case the supreme court sustained the findings of the trial court in favor of the applicant, such findings being supported by the evidence. *St. Paul Mercury v Lyell*, 216 M 7, 11 NW(2d) 491.

See *Mitchell v Bazille*, 216 M 372, 13 NW(2d) 201, section 508.01.

The Torrens system. 19 MLR 519.

### 508.30 REGISTRAR OF TITLES.

**HISTORY.** 1905 c. 305 s. 29; R.L. 1905 s. 3398; G.S. 1913 s. 6897; G.S. 1923 s. 8276; M.S. 1927 s. 8276.

### 508.31 REGISTRAR'S BOND.

**HISTORY.** 1905 c. 305 s. 30; R.L. 1905 s. 3399; G.S. 1913 s. 6898; G.S. 1923 s. 8277; M.S. 1927 s. 8277.

### 508.32 CONTROL OF COURT; SEAL.

**HISTORY.** 1905 c. 305 s. 31; R.L. 1905 s. 3400; G.S. 1913 s. 6899; G.S. 1923 s. 8278; M.S. 1927 s. 8278.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2833.

CONVEYANCING AND REGISTRATION 508.38

## 508.33 DEPUTY REGISTRARS.

HISTORY. 1905 c. 305 s. 32; R.L. 1905 s. 3401; G.S. 1913 s. 6900; G.S. 1923 s. 8279; M.S. 1927 s. 8279.

Appointment of a deputy registrar in Hennepin county. 1934 OAG 256, March 20, 1933 (104b-9).

## 508.34 REGISTER OF TITLES.

HISTORY. 1905 c. 305 s. 33; R.L. 1905 s. 3402; G.S. 1913 s. 6901; G.S. 1923 s. 8280; M.S. 1927 s. 8280.

A memorial on a certificate of title is conclusive evidence of matters stated, and a purchaser who relies solely on the memorial is not negligent as a matter of law. *Horgan v Sargent*, 182 M 100, 233 NW 866.

A decree of the district court in registration proceedings, if regular, is conclusive as to the nature of the trust as against subsequent attaching creditors. *McWhinney v Gage*, 183 M 141, 235 NW 676.

## 508.35 FORM OF CERTIFICATE.

HISTORY. 1905 c. 305 s. 34; R.L. 1905 s. 3403; G.S. 1913 s. 6902; G.S. 1923 s. 8281; M.S. 1927 s. 8281; 1941 c. 33.

Object and purpose of act defined. *Reed v Siddall*, 94 M 216, 102 NW 453.

Where land is subject to the lien of a mortgage, it is not necessary in foreclosure by advertisement, that the assignments of same made before the decree of registration be registered or a memorial entered on the certificate. *Sander v Stenger*, 117 M 424, 136 NW 4.

A memorial on a mortgage, lien, or other charge against registered land, entered upon the original and upon the owner's duplicate, becomes a part of the certificate and is conclusive evidence of matters therein contained. One dealing with land may rely upon the statements on the certificate. *Horgan v Sargent*, 182 M 100, 233 NW 868.

Certificate of title. 26 MLR 237.

## 508.36 CERTIFICATES AND COPIES AS EVIDENCE.

HISTORY. 1905 c. 305 s. 35; R.L. 1905 s. 3404; G.S. 1913 s. 6903; G.S. 1923 s. 8282; M.S. 1927 s. 8282.

Memorial upon the original certificate and owner's duplicate is conclusive evidence of matters therein contained. *Horgan v Sargent*, 182 M 100, 233 NW 866.

A decree of the district court, in proceedings under the registration act, to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against subsequent attaching creditors. *McWhinney v Gage*, 183 M 141, 235 NW 676.

Where under the Torrens statute a mortgage and an assignment thereof are both memorialized on the certificate, the equity rule as to payment by the mortgagor without actual notice of the assignment, is not abolished. *Rea v Kelley*, 183 M 194, 235 NW 910.

Conclusiveness of a Torrens certificate of title. 8 MLR 201.

## 508.37 TRACT INDEXES; RECEPTION BOOKS.

HISTORY. 1905 c. 305 s. 36; R.L. 1905 s. 3405; G.S. 1913 s. 6904; G.S. 1923 s. 8283; M.S. 1927 s. 8283.

## 508.38 FORMS OF RECORDS ADOPTED.

HISTORY. 1905 c. 305 s. 37; R.L. 1905 s. 3406; G.S. 1913 s. 6905; G.S. 1923 s. 8284; M.S. 1927 s. 8284.

"Attestèd" does not refer to duplicate instruments, but to the act of endorsement by the registrar. OAG June 11, 1935 (373b-19).

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.39 CONVEYANCING AND REGISTRATION

2834

Torrens certificate of title: 8 MLR 210.

### 508.39 NOTICES AFTER REGISTRATION; SERVICE.

HISTORY. 1905 c. 305 s. 37a; R.L. 1905 s. 3407; G.S. 1913 s. 6906; G.S. 1923 s. 8285; M.S. 1927 s. 8285.

### 508.40 OWNER'S DUPLICATE; RECEIPT; PRIMA FACIE EVIDENCE.

HISTORY. 1905 c. 305 s. 38; R.L. 1905 s. 3408; G.S. 1913 s. 6907; G.S. 1923 s. 8286; M.S. 1927 s. 8286.

### 508.41 DUPLICATE, IF SEVERAL OWNERS.

HISTORY. 1905 c. 305 s. 39; R.L. 1905 s. 3409; G.S. 1913 s. 6908; G.S. 1923 s. 8287; M.S. 1927 s. 8287.

### 508.42 SURRENDER OF DUPLICATE; NEW DUPLICATE.

HISTORY. 1905 c. 305 s. 40; R.L. 1905 s. 3410; G.S. 1913 s. 6909; G.S. 1923 s. 8288; M.S. 1927 s. 8288.

### 508.43 . WHEN CERTIFICATE TAKES EFFECT.

HISTORY. 1905 c. 305 s. 41; R.L. 1905 s. 3411; G.S. 1913 s. 6910; G.S. 1923 s. 8289; M.S. 1927 s. 8289.

### 508.44 LOSS OF DUPLICATE.

HISTORY. 1905 c. 305 s. 42; R.L. 1905 s. 3412; G.S. 1913 s. 6911; G.S. 1923 s. 8290; M.S. 1927 s. 8290.

Court rules. Minnesota Statutes 1941, page 3982.

### 508.45 COURT MAY ORDER DUPLICATE CERTIFICATE PRODUCED.

HISTORY. 1905 c. 305 s. 43; R.L. 1905 s. 3413; G.S. 1913 s. 6912; G.S. 1923 s. 8291; M.S. 1927 s. 8291.

Court rules. Minnesota Statutes 1941, page 3982.

### 508.46 PLATS OF REGISTERED LAND.

HISTORY. 1905 c. 305 s. 44; R.L. 1905 s. 3414; G.S. 1913 s. 6913; G.S. 1923 s. 8292; M.S. 1927 s. 8292.

Plats of registered property must be filed with the registrar of titles. OAG Nov. 3, 1944 (373b-15).

### 508.47 TRANSFER OF REGISTERED LAND.

HISTORY. 1905 c. 305 s. 45; R.L. 1905 s. 3415; G.S. 1913 s. 6914; G.S. 1923 s. 8293; M.S. 1927 s. 8293.

A mortgage on registered lands operates only as a contract between the parties, and takes effect upon the title only by registration. Where an owner of registered land left a widow and minor child, the homestead descended immediately on the death of the owner. Application of Lee, 171 M 182, 213 NW 737.

A mechanic's lien upon registered land, filed with the registrar, and foreclosed without making parties in possession defendants, passes an indefeasible title to a purchaser who, after expiration of the period of redemption, obtained a new certificate. Abrahamson v Sundman, 174 M 22, 218 NW 246.

The Torrens law intends are registered titles to be free from unregistered rights or claims unless specifically named; the act abrogates the doctrine of constructive notice except as noted on the certificate. Possession by occupant is not of itself notice, and attachments properly registered take precedence over un-

# MINNESOTA STATUTES 1945 ANNOTATIONS

2835

CONVEYANCING AND REGISTRATION 508.51

registered conveyance of which the creditor had no actual notice. In re Juran, 178 M 55, 226 NW 201.

Where under the Torrens act a mortgage and assignment thereof are both memorialized on the certificate, the equity rule as to payment by the mortgagor, without actual notice of the assignment is not abolished. Rea v Kelley, 183 M 194, 235 NW 910.

An unregistered quitclaim deed of Torrens property though not affecting title nor creating any interest in the land, is effective, as between the parties as a land contract. Cook v Luettich, 191 M 6, 252 NW 649.

An instrument in the form of a mortgage or registered land does not create a lien until registered, but does give rise to certain equitable rights and duties. Finnegan v Gunn, 207 M 480, 292 NW 22.

Relating to vacancy in the office of register of deeds. 1940 OAG 209, April 11, 1939 (373a-4).

Torrens certificate of title. 8 MLR 214.

Registration of land titles. 12 MLR 552.

## **508.48 INSTRUMENTS AFFECTING TITLE FILED WITH REGISTRAR; NOTICE.**

HISTORY. 1905 c. 305 s. 46; R.L. 1905 s. 3416; G.S. 1913 s. 6915; G.S. 1923 s. 8294; M.S. 1927 s. 8294.

Torrens act abrogates the doctrine of constructive notice except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. In re Juran, 178 M 55, 226 NW 201.

Registrar's memorial on certificate of title is conclusive evidence of matters stated, and one dealing with land may rely upon the statements on the certificate. Horgan v Sargent, 182 M 100, 233 NW 866.

Payment to mortgagee, in face of a registered assignment. Rea v Kelley, 183 M 194, 235 NW 910.

Instruments containing recitals of unregistered interests in lands, and other than reservations, should not be registered except by court order. OAG Mar. 10, 1936 (374).

Torrens certificates of title. 8 MLR 214.

## **508.49 INTEREST LESS THAN FEE; NOTICED BY MEMORIAL.**

HISTORY. 1905 c. 305 s. 47; R.L. 1905 s. 3417; G.S. 1913 s. 6916; G.S. 1923 s. 8295; M.S. 1927 s. 8295.

Unless the instrument shows on its face that it is a homestead, a mortgage may be filed for registration without the spouse joining in the instrument. OAG Apr. 17, 1934 (374f).

## **508.50 INSTRUMENTS TO HAVE NAME AND ADDRESS.**

HISTORY. 1905 c. 305 s. 48; R.L. 1905 s. 3418; G.S. 1913 s. 6917; G.S. 1923 s. 8296; M.S. 1927 s. 8296.

The name and address should be in the body of the instrument, but the registrar would not be justified in refusing to file an instrument if the name and address were merely endorsed thereon. 1932 OAG 86, Aug. 4, 1932.

## **508.51 OWNER'S DUPLICATE PRESENTED; EXCEPTION.**

HISTORY. 1905 c. 305 s. 49; R.L. 1905 s. 3419; G.S. 1913 s. 6918; G.S. 1923 s. 8297; M.S. 1927 s. 8297.

Registration made with consent of silent partner and with the understanding it would not affect his rights, did not affect them, and if there was a partnership in the property before registration there was afterwards. Hammel v Feigh, 143 M 115, 173 NW 570.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.52 CONVEYANCING AND REGISTRATION

2836

There is no requirement that the owner's duplicate be produced when a mortgage assignment is memorialized. *Rea v Kelley*, 183 M 202, 235 NW 913.

Extension may be registered on production of mortgagee's duplicate. 1932 OAG 86, Aug. 4, 1932.

Conclusiveness of Torrens certificate. 8 MLR 202.

## 508.52 CONVEYANCE; CANCELATION OF OLD AND ISSUANCE OF NEW CERTIFICATE.

HISTORY. 1905 c. 305 s. 50; R.L. 1905 s. 3420; G.S. 1913 s. 6919; G.S. 1923 s. 8298; M.S. 1927 s. 8298.

Filing of deeds running to the city without prepayment of taxes. 1936 OAG 130, Aug. 21, 1935 (373b-9(e)).

Observing the necessary precautions and under due process the court may make the necessary order relating to disposal of the canceled owner's duplicate certificate. OAG Feb. 8, 1944 (851f).

## 508.53 TRANSFER AND PAYMENT OF TAXES.

HISTORY. 1905 c. 305 s. 51; R.L. 1905 s. 3421; G.S. 1913 s. 6920; G.S. 1923 s. 8299; M.S. 1927 s. 8299.

Where a deed is to a city, and it is desired to register without prepayment of taxes, it is the duty of the city to obtain certain certificates from the commissioner of taxation and from the county auditor. OAG Aug. 21, 1935 (373b-9(e)).

## 508.54 MORTGAGE.

HISTORY. 1905 c. 305 s. 52; R.L. 1905 s. 3422; G.S. 1913 s. 6921; G.S. 1923 s. 8300; M.S. 1927 s. 8300.

Of itself, a mortgage upon registered land operates only as a contract between the parties and as authority to the registrar to make registration. It takes effect upon the title only by registration. Application of Lee, 171 M 182, 213 NW 736.

There is nothing in the statute to charge the mortgagor with notice of the assignment memorialized on the original certificate, and no requirement that the owner's duplicate be produced when the assignment is memorialized. *Rea v Kelley*, 183 M 202, 235 NW 910.

An instrument in the form of a mortgage in which the owner's spouse does not join can be registered, and although it does not create a lien until registered, it does give rise to certain equitable rights and duties. *Finnegan v Gunn*, 207 M 480, 292 NW 22.

## 508.55 REGISTRATION OF MORTGAGE; MEMORIAL ENTERED ON CERTIFICATE.

HISTORY. 1905 c. 305 s. 53; R.L. 1905 s. 3423; G.S. 1913 s. 6922; G.S. 1923 s. 8301; M.S. 1927 s. 8301.

Registrar's memorial on certificate of title is conclusive of matters stated, and one dealing with land may rely on statements on the certificate. *Horgan v Sargent*, 182 M 100, 233 NW 866.

There is nothing in the statute to charge the mortgagor with notice of the assignment memorialized on the original certificate, and no requirement that the owner's duplicate be produced when the assignment is memorialized. *Rea v Kelley*, 183 M 202, 235 NW 910.

A mortgage does not create a lien until registered, but it does give rise to certain equitable rights and duties. *Finnegan v Gunn*, 207 M 484, 292 NW 22.

## 508.56 ASSIGNMENT AND DISCHARGE OF MORTGAGE.

HISTORY. 1905 c. 305 s. 54; R.L. 1905 s. 3424; G.S. 1913 s. 6923; G.S. 1923 s. 8302; M.S. 1927 s. 8302.

# MINNESOTA STATUTES 1945 ANNOTATIONS

2837

CONVEYANCING AND REGISTRATION 508.64

A mortgage, an assignment, and its discharge may be filed and registered and an appropriate memorial entered on the certificate. *Rea v Kelley*, 183 M 202, 235 NW 913.

An extension of a mortgage may be registered on the mortgagee's certificate alone. 1932 OAG 86, Aug. 4, 1932.

## 508.57 FORECLOSURE; NOTICE.

HISTORY. 1905 c. 305 s. 55; R.L. 1905 s. 3425; G.S. 1913 s. 6924; G.S. 1923 s. 8303; M.S. 1927 s. 8303.

Execution, assignment and discharge of mortgage. *Rea v Kelley*, 183 M 202, 235 NW 913.

## 508.58 REGISTRATION AFTER FORECLOSURE; NEW CERTIFICATE.

HISTORY. 1905 c. 305 s. 56; R.L. 1905 s. 3426; G.S. 1913 s. 6925; G.S. 1923 s. 8304; M.S. 1927 s. 8304.

Court rules. Minnesota Statutes 1941, page 3982.

On application for a new certificate as distinguished from an original application, it is unnecessary to furnish a power of attorney. *Rhode Island v Calhoun Beach*, 191 M 354, 254 NW 466.

Credit unions which have obtained land by foreclosure may legally register same. OAG May 7, 1935 (53b).

## 508.59 REGISTRATION OF JUDGMENT OR FINAL DECREE.

HISTORY. 1905 c. 305 s. 57; R.L. 1905 s. 3427; G.S. 1913 s. 6926; G.S. 1923 s. 8305; M.S. 1927 s. 8305.

## 508.60 LEASES.

HISTORY. 1905 c. 305 s. 58; R.L. 1905 s. 3428; G.S. 1913 s. 6927; G.S. 1923 s. 8306; M.S. 1927 s. 8306.

## 508.61 TRUST AND OTHER DEEDS OF LIMITATION.

HISTORY. 1905 c. 305 s. 59; R.L. 1905 s. 3429; G.S. 1913 s. 6928; G.S. 1923 s. 8307; M.S. 1927 s. 8307.

Upon proper record of transfer or sale of property under order of the court in bankruptcy proceedings the registrar may issue a new certificate OAG Dec. 6, 1944 (374).

## 508.62 NEW TRUSTEE.

HISTORY. 1905 c. 305 s. 60; R.L. 1905 s. 3430; G.S. 1913 s. 6929; G.S. 1923 s. 8308; M.S. 1927 s. 8308.

## 508.63 REGISTRATION OF INSTRUMENTS CREATING LIENS; JUDGMENTS.

HISTORY. 1905 c. 305 s. 61; R.L. 1905 s. 3431; G.S. 1913 s. 6930; G.S. 1923 s. 8309; M.S. 1927 s. 8309.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to the land as of the commencement of the improvement. *Armstrong v Lally*, 209 M 372, 296 NW 405.

## 508.64 ATTACHMENTS; LIENS.

HISTORY. 1905 c. 305 s. 62; R.L. 1905 s. 3432; G.S. 1913 s. 6931; G.S. 1923 s. 8310; M.S. 1927 s. 8310.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 508.65 CONVEYANCING AND REGISTRATION

2838

### 508.65 PLAINTIFF'S ATTORNEY; NAME AND ADDRESS ENDORSED; NOTICE.

HISTORY. 1905 c. 305 s. 63; R.L. 1905 s. 3433; G.S. 1913 s. 6932; G.S. 1923 s. 8311; M.S. 1927 s. 8311.

### 508.66 RELEASE OF COURT PROCEEDINGS; CLERK'S CERTIFICATE.

HISTORY. 1905 c. 305 s. 64; R.L. 1905 s. 3434; G.S. 1913 s. 6933; G.S. 1923 s. 8312; M.S. 1927 s. 8312.

### 508.67 ACQUIRING TITLE BY ACTION; NEW CERTIFICATE.

HISTORY. 1905 c. 305 s. 65; R.L. 1905 s. 3435; G.S. 1913 s. 6934; G.S. 1923 s. 8313; M.S. 1927 s. 8313.

Registered land forfeited to the state. OAG Aug. 8, 1938 (412a-23); OAG Aug. 14, 1938 (374j); OAG, Dec. 13, 1944 (374j).

New certificate of registration. 1938 OAG 444, Sept. 21, 1938.

### 508.68 ON DEATH OF OWNER.

HISTORY. 1905 c. 305 s. 66; R.L. 1905 s. 3436; G.S. 1913 s. 6935; G.S. 1923 s. 8314; M.S. 1927 s. 8314.

### 508.69 JURISDICTION OF PROBATE COURT NOT IMPAIRED.

HISTORY. 1905 c. 305 s. 67; R.L. 1905 s. 3437; G.S. 1913 s. 6936; G.S. 1923 s. 8315; M.S. 1927 s. 8315.

### 508.70 SUBSEQUENT ADVERSE CLAIM, HOW REGISTERED; COSTS.

HISTORY. 1905 c. 305 s. 68; R.L. 1905 s. 3438; G.S. 1913 s. 6937; G.S. 1923 s. 8316; M.S. 1927 s. 8316.

Owner of a tax title who cannot claim 15 years' adverse possession, and whose tax title has not been adjudged valid, cannot apply for registration and for a cancellation of the old certificate. Application of Jamieson, 169 M 472, 211 NW 686.

Registrar should not register instruments containing recitals of unregistered interests except by court order, or other than reservations. 1936 OAG 374, Mar. 10, 1936.

State tax-forfeited lands. OAG Aug. 8, 1938 (412a-23).

### 508.71 ALTERATIONS ON REGISTER; ORDER OF COURT.

HISTORY. 1905 c. 305 s. 69; R.L. 1905 s. 3439; G.S. 1913 s. 6938; G.S. 1923 s. 8317; M.S. 1927 s. 8317; 1933 c. 160 s. 1.

A decree of the district court, to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against subsequent attaching creditors. McWhinney v Gage, 183 M 141, 225 NW 676.

The court was not authorized to alter the registration certificate other than by describing the right of way in the exact language of the deed. Minnetonka v Minnesota Society, 189 M 560, 250 NW 561.

Correction of record; petition to court necessary, 1942 OAG 209, Sept. 3, 1942 (374-j).

### 508.72 AGENCY; POWER TO BE REGISTERED.

HISTORY. 1905 c. 305 s. 70; R.L. 1905 s. 3440; G.S. 1913 s. 6939; G.S. 1923 s. 8318; M.S. 1927 s. 8318.

### 508.73 EMINENT DOMAIN; REVERSION.

HISTORY. 1905 c. 305 s. 71; R.L. 1905 s. 3441; G.S. 1913 s. 6940; G.S. 1923 s. 8319; M.S. 1927 s. 8319.



# MINNESOTA STATUTES 1945 ANNOTATIONS

2839

CONVEYANCING AND REGISTRATION 508.83

## 508.74 CHARGES ON REGISTRATION.

HISTORY. 1905 c. 305 s. 72; R.L. 1905 s. 3442; G.S. 1913 s. 6941; G.S. 1923 s. 8320; M.S. 1927 s. 8320.

The Torrens system. 19 MLR 530.

## 508.75 ASSURANCE FUND; INVESTMENT.

HISTORY. 1905 c. 305 s. 73; R.L. 1905 s. 3443; G.S. 1913 s. 6942; G.S. 1923 s. 8321; M.S. 1927 s. 8321.

Conclusiveness of a Torrens certificate. 8 MLR 202.

## 508.76 DAMAGES THROUGH ERRONEOUS REGISTRATION; ACTION.

HISTORY. 1905 c. 305 s. 74; R.L. 1905 s. 3444; G.S. 1913 s. 6943; G.S. 1923 s. 8322; M.S. 1927 s. 8322.

A certificate of title is an assurance to subsequent purchasers that the court had jurisdiction of the subject matter, and if the order is in error because of failure of the examiner to report the lack of a federal patent, a purchaser is entitled to reimbursement. *Shevlin v Fogarty*, 130 M 456, 153 NW 872.

Purchaser of registered land may rely on the memorials entered on the certificate, and need not examine the original in the registrar's office. Material facts must be correctly stated. *Horgan v Sargent*, 182 M 100, 233 NW 866.

Liability of city because of sewer system under registered land. OAG Sept. 6, 1934 (387b-11).

Conclusiveness of Torrens certificate. 8 MLR 202.

## 508.77 PARTIES DEFENDANT; JUDGMENT; EXECUTION.

HISTORY. 1905 c. 305 s. 75; R.L. 1905 s. 3445; G.S. 1913 s. 6944; G.S. 1923 s. 8323; M.S. 1927 s. 8323.

To entitle land to registration it must be established that the United States has parted with its original title thereto, and where there is an erroneous registration and a party sustains damage, the county treasurer is the party defendant. *Shevlin v Fogarty*, 130 M 456, 153 NW 871.

## 508.78 LIABILITY OF ASSURANCE FUND.

HISTORY. 1905 c. 305 s. 76; R.L. 1905 s. 3446; G.S. 1913 s. 6945; G.S. 1923 s. 8324; M.S. 1927 s. 8324.

## 508.79 LIMITATION OF ACTION.

HISTORY. 1905 c. 305 s. 77; R.L. 1905 s. 3447; G.S. 1913 s. 6946; G.S. 1923 s. 8325; M.S. 1927 s. 8325.

## 508.80 FRAUDULENT INSTRUMENT OR ENTRY; PENALTY.

HISTORY. 1905 c. 305 s. 78; R.L. 1905 s. 3448; G.S. 1913 s. 6947; G.S. 1923 s. 8326; M.S. 1927 s. 8326.

## 508.81 CLERK'S FEES; NOTICES.

HISTORY. 1905 c. 305 s. 79; R.L. 1905 s. 3449; G.S. 1913 s. 6948; G.S. 1923 s. 8327; M.S. 1927 s. 8327.

Founded on the doctrine of *res judicata*, the trial court properly directed a verdict for defendants. *Herreid v Deaver*, 193 M 618, 259 NW 189.

## 508.82 REGISTRAR'S FEES.

HISTORY. 1905 c. 305 s. 80; R.L. 1905 s. 3450; 1911 c. 349 s. 1; G.S. 1913 s. 6949; G.S. 1923 s. 8328; M.S. 1927 s. 8328.

## 508.83 DISPOSITION OF FEES.

HISTORY. 1905 c. 305 s. 81; R.L. 1905 s. 3451; 1909 c. 183 s. 4; G.S. 1913 s. 6950; G.S. 1923 s. 8329; M.S. 1927 s. 8329.