

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

IN FORCE

JANUARY 1. 1889.

COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 7. Effect of repeal on limitations.

This section and *c. 66*, §§ 254, 262, have the effect to preserve both the lien of a judgment rendered and docketed on August 22, 1862, and the right to issue execution thereon, for a period of ten years. *Davidson v. Gaston*, 16 Minn. 230, (Gil. 202,) and *Lamprey v. Davidson*, 16 Minn. 480, (Gil. 435,) followed. *Erickson v. Johnson*, 22 Minn. 380.

§ 9. Construed as continuation of former laws.

See *Gaston v. Merriam*, 33 Minn. 271, 279, 22 N. W. Rep. 614.

CHAPTER 122.

OF THE EXPRESS REPEAL OF EXISTING LAWS.**§ 1. Repeal.**

The rules of the district courts which derived their force from Laws 1862, *c. 16*, are repealed by this chapter, and no longer effective. *Jordan v. White*, 20 Minn. 91, (Gil. 77.)

The repeal by this chapter of chapter 45, Laws 1864, did not revive the former limitation laws relating to actions in regard to administrators' sales. *Streeter v. Wilkinson*, 24 Minn. 288. Section 2, *c. 45*, Laws 1864, limiting the time within which a sale by an administrator or executor might be attacked for failure to file the bond required by statute, or other irregularity, is a valid and binding exercise of legislative power. *Id.*

See, also, *State v. Foley*, 30 Minn. 350, 352, 15 N. W. Rep. 375; *Erickson v. Johnson*, 22 Minn. 380; *Davidson v. Gaston*, 16 Minn. 230, (Gil. 202, 203;) *Stine v. Bennett*, 13 Minn. 153, (Gil. 138, 144.)

CHAPTER 123.

CURATIVE ACTS.*

See, as to curative legislation, *Spaulding v. Nourse*, (Mass.) 10 N. E. Rep. 179; *Johnson v. Board of Commissioners*, (Ind.) 8 N. E. Rep. 1; *Independent School-Dist. v. City of Burlington*, (Iowa), 15 N. W. Rep. 295; *Stange v. City of Dubuque*, (Iowa), 17 N. W. Rep. 518.

The legislature cannot legalize acts void for jurisdictional defects. *Houseman v. Kent Circuit Judge*, (Mich.) 25 N. W. Rep. 369. Nor can it, by curative legislation, interfere with vested rights. *Daniells v. Watertown Tp.*, (Mich.) 28 N. W. Rep. 673. The legislature cannot give validity to a decree of divorce void for want of jurisdiction in the court rendering it. *Israel v. Arthur*, (Colo.) 1 Pac. Rep. 438.

The legislature cannot legalize the taking of property for public use, where the proceedings therefor were had without notice to the owner. *Burns v. Railroad Co.*, 15 Fed. Rep. 177.

* As to legalization of conveyances in trust for Methodist Episcopal Churches, see *ante*, *c. 34*, *§ 228a. For provisions legalizing religious corporations, and change of name thereof, see *ante*, *c. 34*, *§§ 231b, 238a-238c.

For provisions legalizing civil corporations, see *ante*, *c. 34*, *§§ 421-421n. As to legalization of proceedings for incorporation under tit. 3, *c. 34*, and of corporate acts, see *ante*, *c. 34*, *§ 203j. Legalization of bonds of independent school-districts, see *ante*, *c. 36*, *§ 115c.

For provisions legalizing the purchase of bonds with the proceeds of sales of agricultural college lands, see *ante*, *c. 38*, *§ 56a.

As to legalization of probate proceedings in case of defective notice, see *ante*, *c. 47*, *§§ 37, 38.

TITLE I.

CONVEYANCES DEFECTIVELY EXECUTED, ACKNOWLEDGED, OR RECORDED.

[The following acts are arranged in the order of the sessions at which they were passed, and not according to the subject-matter.]

***§ 2. Conveyances with one witness.**

This section, legalizing conveyances executed with but one witness, is constitutional and retrospective, and makes valid a prior mortgage executed with but one witness. *Ross v. Worthington*, 11 Minn. 488, (Gil. 323.)

***§ 7. Recorded conveyances as evidence.**

See *Cogan v. Cook*, 23 Minn. 137; *Bigelow v. Livingston*, 28 Minn. 57, 59, 9 N. W. Rep. 31.

***§§ 10, 11. Record of instruments without certificate of official character.**

See *Bigelow v. Livingston*, 28 Minn. 57, 59, 9 N. W. Rep. 31.

***§§ 15, 16. Record of instruments not officially sealed.**

The want of a seal to a notary's certificate of acknowledgment of a deed taken in 1868 is cured by *§§ 15, 16. *Tidd v. Rines*, 26 Minn. 202, 2 N. W. Rep. 497.

***§ 29. Effect of records as evidence.**

Where the certificate of the clerk of a court, in reference to the acknowledgment of a letter of attorney, required to be attached to said letter to entitle it to record, is defective for want of a seal, and for failing to state that the power was executed and acknowledged according to the laws of the state where executed, such certificate, as respects the record, is made good by *§§ 7, 10, 11, 29. *Bigelow v. Livingston*, 28 Minn. 57; 9 N. W. Rep. 31.

***§ 30a. Conveyances defectively witnessed.**

That all conveyances of or affecting real estate heretofore recorded in the several counties of the state of Minnesota being without or having but one witness, and in all other respects executed according to the laws of this state, be, and the same are hereby, legalized and made good and valid: *provided, however*, that nothing herein contained shall in any manner affect the rights or title of any *bona fide* purchaser without notice for a valuable consideration. (1879, c. 93, § 1.)

***§ 30b. Mortgages to partnership in firm name—Legalization of foreclosure.**

That all mortgages heretofore made of any real property in this state, or of any interest therein, to any partnership or firm in their partnership or firm name, and which said mortgages have been foreclosed by advertisement pursuant to the statute relating to foreclosure by advertisement in the name of said partnership or firm, be, and the same are, together with all proceedings had in such foreclosure, hereby legalized and confirmed, so far as relates to any question of defect by reason of the mortgagees' names being stated in said mortgages by their partnership or firm name, instead of the individual names of the members of said partnership or firm. (1881, c. 140, § 1.)

***§ 30c. Acts of notaries public valid without seal.**

That no official act of any notary public heretofore done shall be held, deemed, or taken to be invalid because, or on the ground that, such notary failed or neglected to affix to such act, or to any certificate, or to any verification or attestation of such acts, his official seal. But all the official acts of such notary public shall, notwithstanding the absence of such official seal, be

held as valid to all intents and purposes as if such were or had been properly affixed thereto: *provided*, that the provisions of this act shall not apply to actions now pending: *and provided, further*, that this act shall not apply to powers of attorney executed more than five years prior to the passage of this act. (1881, *Ex. Sess.*, c. 55, § 1.)

***§ 30d. Conveyances by order of probate court legalized.**

That all conveyances heretofore made of any real property in this state, or of any interest therein, under order and direction of a probate court having jurisdiction in the premises, pursuant to the statute relating to sales of lands by executors, administrators, and guardians, and all proceedings appearing otherwise substantially good and regular in relation to the same, be, and the same are hereby, legalized and confirmed, so far as they relate to any question of defect by reason of no record having been kept by the probate court of the letters appointing such executor, administrator, or guardian, and such order, license, or direction shall be *prima facie* evidence that proper letters have been duly issued. (1881, *Ex. Sess.*, c. 56, § 1.)

***§ 30e. Conveyances with but one witness.**

That mortgages and all other instruments authorizing or relating to the conveyance of real estate or any interest therein in this state, that have been heretofore executed, with but one subscribing witness, are hereby declared to be legal and valid, and the record thereof effectual to all intents and purposes, as if such conveyance had been executed with two subscribing witnesses: *provided*, this act shall not apply to or affect any suit or action now pending. (1881, *Ex. Sess.*, c. 77, § 1.)

***§ 30f. Powers of attorney by married women.**

When any married woman has heretofore executed any power of attorney in which her husband has not joined, and any deed or mortgage has been executed under or in pursuance of such power of attorney, any and every such deed or mortgage shall be taken, held, and considered to be as valid, legal, and binding, to all intents or purposes, as if the husband of such married woman had joined in the execution of such power of attorney: *provided*, that no conveyance or mortgage made under such power of attorney shall be held to be hereby validated or confirmed unless the husband of such married woman joined in such conveyance or mortgage. (1881, *Ex. Sess.*, c. 79, § 1.)

***§ 30g. Conveyances defectively executed in other states.**

That all deeds or conveyances of real estate in this state, heretofore executed in any other state or territory of the United States, and which is recorded in the office of the register of deeds of the county wherein such land is situated, properly sealed and acknowledged, but with only one subscribing witness, or, when executed by more than one person, properly signed and sealed, and witnessed and acknowledged by only one of the parties thereto, the other party or parties, however, having signed and executed a receipt at the end of such deed, (as practiced in some states,) acknowledging the receipt of the consideration expressed in such conveyance, are hereby legalized and made valid and effectual to all intents and purposes; and such instruments, and the record thereof, shall have the same force and effect in all respects as though they had been originally executed and acknowledged in accordance with all the requirements of the statutes of this state in force at the time of the making or recording of such conveyances: *provided, however*, that nothing herein contained shall in any manner affect any pending suit or proceeding, or the right or title of any *bona fide* purchaser, without notice, for a valuable consideration, of any such lands so conveyed prior to the passage of this act. (1883, c. 85, § 1.)

***§ 30h. Conveyances bearing defective certificate of acknowledgment.**

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

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

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

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

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

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

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

All such conveyances, and the records thereof, are hereby legalized and made valid, and the records thereof effectual, to all intents and purposes, and of the same force and effect in all respects, for the purpose of notice, evidence, and otherwise, as if such deeds were legally and properly acknowledged, in accordance with the laws of this state in force at the time of the making thereof: *provided*, that nothing herein contained shall in any manner affect the right or title of any *bona fide* purchaser, without notice of such instrument or record thereof, for a valuable consideration, of any such real estate prior to the passage of this act: *and provided, further*, that a purchaser of any execution or foreclosure sale of any lands affected by this bill shall be considered a *bona fide* purchaser: *provided*, that this act shall not extend nor apply to any action or proceeding now pending in any court of this state. (1883, c. 87, § 1.)

Such statutes are valid where they do not impair vested rights. *Ferguson v. Williams*, (Iowa,) 13 N. W. Rep. 49. And see *Id.* as to curing defective acknowledgments.

As to the execution of a second conveyance before the passage of the curative act, see *Fogg v. Holcomb*, (Iowa,) 21 N. W. Rep. 111.

***§ 30i. Acknowledgments after expiration of officer's term.**

That all acknowledgments to any conveyances or other instruments heretofore taken by any person previously appointed or elected and then acting as a notary public or other officer authorized to take such acknowledgments, be, and the same are hereby, legalized and made "of the same validity as though the term of office of such officer had not expired at the time of taking such acknowledgments;" and the record of such conveyances or other instruments is hereby declared to be legal and valid, and effectual for all purposes: *provided*, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state. (1883, c. 91, § 1.)

***§ 30j. Acknowledgments after expiration of officer's term.**

That all acknowledgments to any conveyances or other instruments taken by any person previously appointed or elected, and then acting as a notary

public or other officer authorized to take such acknowledgments, be, and the same are, legalized and made "of the same validity as though the term of office of such officer had not expired at the time of taking such acknowledgments," and the record of such conveyances or other instruments is hereby declared to be legal and valid and effectual for all purposes: *provided*, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state. (1885, c. 239.)

***§ 30k. Acknowledgments before deputy register of deeds.**

That all acknowledgments to any conveyance or other instruments heretofore taken by any deputy register of deeds of any county in this state be, and the same are hereby, so legalized and the records of such conveyances and other instruments so legalized and made valid, for all purposes of notice, evidence, or otherwise, that the same shall be of the same force and effect as though such acknowledgments had been taken by the register of deeds of such county instead of by his deputy: *provided*, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state. (1885, c. 232.)

***§ 30l. Recorded instruments defectively executed, etc.**

That all deeds, contracts, and powers of attorney conveying or relating to the conveyance of real estate in this state, heretofore executed in this state or in any other state or territory of the United States and recorded in the office of the register of deeds of the proper county, whether duly or properly admitted to record or otherwise, in which any of the following defects of execution or acknowledgment exist, either in such instrument or in the records thereof, viz.: Where there is no seal affixed to the signature of any person or persons executing the same; where there is but one subscribing witness; where the instrument has been acknowledged before a notary public or other officer required to keep an official seal, to whose signature his official seal is not affixed,—all such conveyances and the records thereof are hereby legalized and made as valid and effectual to all intents and purposes, and of the same force and effect in all respects, for the purpose of notice, evidence, and otherwise, as if such defects of execution, acknowledgment, or record had not existed: *provided*, that nothing herein contained shall in any manner affect the right of title of any *bona fide* purchaser without notice of such instrument or record thereof, for a valuable consideration, of any such real estate prior to the passage of this act; and a purchaser without notice, at any execution on mortgage foreclosure sale, shall be considered such *bona fide* purchaser: *and provided further*, that this act shall not extend nor apply to any action or proceeding now pending in any court of this state. (1885, c. 266.)

Omission to record notarial seal affixed to certificate of acknowledgment. *German-American Bank v. White*, 38 N. W. Rep. 361.

***§ 30m. Records as evidence.**

That in all cases where deeds or other conveyances of real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds, for the county where the real estate thereby affected was at the time of the making of such records, or is situate, whether such deeds, conveyances, and letters of attorney were duly and properly admitted to record or otherwise, all such records may nevertheless be read in evidence in any court within this state, and shall be received as *prima facie* evidence of the contents of the original instruments of which they purport to be the records, and all such records shall in all respects have the same force and effect as they would have if such original instruments, at the time they were so recorded, had been legally entitled to record. (1885, c. 179, § 1.)

***§ 30n. Same—Copies.**

That duly-authenticated copies of aforesaid record may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid: *provided*, that nothing in this act shall be held to affect any vested rights nor apply to any action commenced or now pending in any of the courts of this state. (1885, c. 179, § 2.)

***§ 30o. Instruments not sealed.**

All deeds, mortgages, powers of attorney, and other instruments heretofore executed without a seal, scroll, or device, opposite the name of the grantor, are hereby legalized and made valid as though such deed, mortgage, power of attorney, or other instrument had been duly sealed with the seal of the grantor at the time of the execution thereof, and the record of such deeds, mortgages, powers of attorney, and other instruments are hereby legalized and made valid and effectual to the same extent and for all purposes as though such deeds, mortgages, powers of attorney, and other instruments had been properly executed. (1885, c. 235.)

***§ 30p. Power of attorney by married woman.**

When any married woman has heretofore executed any power of attorney in which her husband has not joined, and any deed or mortgage has been executed under or in pursuance of such power of attorney, any and every such deed or mortgage shall be taken, held, and considered to be as valid, legal, and binding to all intents and purposes as if the husband of such married woman had joined in the execution of such power of attorney: *provided*, that no conveyance or mortgage made under such power of attorney shall be held to be hereby validated or confirmed unless the husband of such married woman joined in such conveyance or mortgage. (1887, c. 178.)

***§ 30q. Powers of attorney executed in Canada.**

That all powers of attorney authorizing the conveyance of real estate situated in this state, or any interest therein, which have been heretofore executed in Canada, according to the laws of that country, but without a seal opposite the names of the persons executing the same, are hereby legalized and made valid for all purposes, and when a copy of such power of attorney certified by the officer in whose custody the original remains of record, as a true copy, and bearing the certificate of a consular officer of the United States in said country, under the seal of the consulate, that the same, is executed according to the laws of said country, has been heretofore actually recorded in the office of the register of deeds for the county where the real estate affected is situated, such records may be read in evidence in any court, and shall be *prima facie* evidence of the contents of the instrument of which they purport to be records, and shall have the same force and effect as though the original thereof was legally recorded, and as though such record had been legally made at the time the instrument was actually written in the record-book; and all conveyances heretofore executed under such powers of attorney, and the record thereof, are hereby legalized and made valid for all purposes: *provided*, that nothing contained herein shall affect the rights of any *bona fide* purchaser, without notice, of any real estate, prior to the passage of this act. (1887, c. 152.)

***§ 30r. Foreclosure of mortgages to partnerships.**

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

said mortgage by their partnership or firm name instead of the individual names of the members of said partnership or firm. (1887 c. 154.)

TITLE 2.

AFFIDAVITS AND CERTIFICATES ON FORECLOSURE AND EXECUTION SALES.

*§ 54a. Certificates under *§ 11, c. 81.

That no certificate executed under and by virtue of section eleven, chapter eighty-one, title one, General Statutes One Thousand Eight Hundred and Seventy-Eight, shall be deemed invalid by reason of the same not having been made, executed, proved, acknowledged, or recorded within twenty days mentioned in said section; and the record of all such certificates heretofore executed, proved, or acknowledged and recorded after the expiration of the said twenty days, is hereby legalized and made valid, and the said record shall have the same force and effect as if said certificate had been executed, proved, and acknowledged and recorded within the said twenty days: *provided*, that nothing herein contained shall be construed to apply to cases now pending which involve the legality or validity of such certificate of sale. (1883, c. 90, § 1.)

*§ 54b. Affidavits under §§ 61, 62, c. 73, and *§§ 19, 20, 23, c. 81.

That in all cases where affidavits authorized by sections sixty-one and sixty-two of chapter seventy-three, and sections nineteen, twenty, and twenty-three of chapter eighty-one, of the General Statutes of One Thousand Eight Hundred and Seventy-Eight, have been heretofore filed and recorded, or which shall be hereafter filed and recorded within one year after the passage of this act, such affidavits or duly-certified copies thereof shall be received in evidence in the same manner and with the same effect as if the same had been filed and recorded within the time in said sections limited. (1883, c. 89, § 1, *approved March 3, 1883.*)

*§ 54c. Same—Proceedings valid.

No proceeding in which such affidavits might have been heretofore filed and recorded shall be deemed invalid in consequence of the failure to file and record the same within the time specified by said sections: *provided*, that nothing herein contained shall be held to affect any vested rights of any person or persons not parties to such proceedings. (*Id.* § 2.)

*§ 54d. Affidavits under c. 73, §§ 61, 62, and c. 81, *§§ 5, 19, 20, 23.

That in all cases where affidavits and proof of service authorized by sections sixty-one and sixty-two of chapter seventy-three, and sections five, nineteen, twenty, and twenty-three, of chapter eighty-one of the General Statutes of One Thousand Eight Hundred and Seventy-Eight, have been heretofore filed and recorded, or which shall be hereafter filed and recorded, within one year after the passage of this act, such affidavits and proofs, or duly-certified copies thereof, shall be received in evidence in the same manner and with same effect as if the same had been filed and recorded within the time in said sections limited. (1885, c. 234, § 1, *approved February 26, 1885.*)

*§ 54e. Same—Proceedings legalized.

No proceedings in which such affidavits might have been heretofore filed and recorded shall be deemed invalid in consequence of the failure to file and record the same within the time specified by said sections: *provided*, that nothing herein contained shall be held to affect any vested right of any person or persons not parties to such proceedings. (*Id.* § 2.)

***§ 54f. Certificates under c. 81, *§ 11.**

That no certificate executed under and by virtue of section eleven, chapter eighty-one, title one, General Statutes One Thousand Eight Hundred and Seventy-Eight, shall be deemed invalid by reason of the same not having been made, executed, proved, acknowledged, or recorded within twenty days mentioned in said section, and the record of all such certificates heretofore executed, proved, or acknowledged and recorded after the expiration of the said twenty days is hereby legalized and made valid, and the said record shall have the same force and effect as if said certificates had been executed, proved, and acknowledged and recorded within the said twenty days: *provided*, that nothing herein contained shall be construed to apply to cases now pending which involves the legality or validity of such certificates of sale. (1885, c. 237, approved March 3, 1885.)

TITLE 3.

MISCELLANEOUS.

***§ 56. Sales by foreign executors, etc.**

See *Smith v. Callaghan*, (Iowa,) 24 N. W. Rep. 50.

***§ 58. Municipal bonds, etc., for soldiers' bounties.**

It is competent for the legislature to make valid bonds previously issued by a town without authority. *Kunkle v. Town of Franklin*, 13 Minn. 127, (Gil. 119.)

Towns have no power to raise or appropriate money or issue bonds, unless such power is given by some statute. There is none authorizing towns to levy taxes or issue bonds to indemnify persons for money paid by them as bounties to volunteers. *Cover v. Town of Bagtown*, 12 Minn. 124, (Gil. 71.)

***§ 61. Foreclosures by foreign executors, etc.**

In all cases where mortgages have been foreclosed by foreign executors or administrators, without having filed for record in the office of the register of deeds in the county where such foreclosure was had, an authenticated copy of his appointment as such executor or administrator before the commencement of such foreclosure, such foreclosure shall not for that reason be invalid: *provided*, that since such foreclosure was commenced such authenticated copy has been so filed, showing that he had been duly appointed such executor or administrator in some other state or county before the commencement of such foreclosure. (1885, c. 238, approved March 3, 1885.)

***§ 62. Same.**

That all foreclosures heretofore made under section twenty-five of chapter eighty-one of the General Statutes of A. D. one thousand eight hundred and seventy-eight, and the executor and administrator was at the commencement of such foreclosure authorized so to do by said section twenty-five, except that he had filed the authenticated copy of his appointment required by said section twenty-five with the probate court of the proper county, instead of filing such authenticated copy for record in the office of the register of deeds of the proper county, be, and the same are hereby, legalized and made valid from and after the filing and recording thereof in the office of the register of deeds: *provided*, that the time to redeem from such foreclosure is hereby extended one year from and after the filing and recording of said authenticated copy: *provided further*, that this act shall not be construed as to impair or in any way effect any vested right, nor actions now pending. (1885, c. 192, approved March 7, 1885.)

***§ 63. Canvass of vote on constitutional amendment.**

That the canvass of the vote cast upon the submission of the proposed amendment to article eight of the Constitution of the state of Minnesota, pur-

suant to the provisions of chapter one of the General Laws of the state of Minnesota for the year eighteen hundred and eighty-five be, and the same is, in all things legalized. (1887, c. 151.)

CHAPTER 124.

MISCELLANEOUS LAWS.*

[Gen. Laws 1879, c. 99, providing for the Farmers' Board of Trade, repealed 1885, c. 144, § 45. See *post*, *§ 20¹ *et seq.*]

*§ 1. Legal holiday—February 22.

A trial was commenced before, and proceeded with and closed on, Washington's birthday. Held, that it was for the trial court to determine at the time upon the necessity of continuing the trial on that day, and its action in that behalf was final. *State v. Sorenson*, 32 Minn. 118, 19 N. W. Rep. 738.

*§ 3. Bonds in lieu of recognizances.

Cited *Schoregge v. Gordon*, 29 Minn. 369, 13 N. W. Rep. 194. *Hayden v. Keith*, 32 Minn. 278, 20 N. W. Rep. 195.

The word "bond" is used in this section as a general term, including recognizances as well as common bonds, and on appeal from the probate to the district court under Gen. St. c. 49, § 15, an undertaking may be filed in lieu of a recognizance. In *re Brown*, 35 Minn. 307, 29 N. W. Rep. 131.

STORAGE AND TRANSPORTATION OF GRAIN.

See *State v. Loomis*, 27 Minn. 527, 8 N. W. Rep. 758; *Greenleaf v. Dows*, 8 Fed. Rep. 550; *National Ex. Bank v. Wilder*, 34 Minn. 149, 24 N. W. Rep. 699.

*§ 8. Erection of elevators adjoining railroads.

If a railroad company itself furnished at one of its stations suitable warehouse facilities for receiving, handling, storing and delivering, at the rates fixed by law, all grain designed for transportation over its road, it might designate such warehouse or elevator as the exclusive place at such station at which it would receive grain for shipment, and might refuse to receive it, or to furnish cars for its shipment, at any other place. *Rhodes v. Northern Pac. R. Co.*, 34 Minn. 87, 24 N. W. Rep. 347.

*§ 13. Grain in store a bailment.

*§§ 13-20, apply only to cases where there has been a delivery of grain by an actual depositor, and not to a case where a party issues to his creditor an instrument in the form of a warehouse receipt, for the purpose of pledging or mortgaging his own property in his own possession to secure his own debt. *Fishback v. Van Dusen*, 33 Minn. 112, 22 N. W. Rep. 244.

See *Leuthold v. Fairchild*, 35 Minn. 99, 27 N. W. Rep. 503; 28 N. W. Rep. 218; *Greenleaf v. Dows*, 8 Fed. Rep. 550.

*§ 15. Redelivery of grain.

A bailee may waive tender of charges and receipts; and where he places his refusal to deliver grain solely on the ground that it is claimed by a third party, he cannot subsequently change his position and justify on the ground of non-payment of charges. *Wallace v. Elevator Co.*, (Minn.) 35 N. W. Rep. 268.

See *Greenleaf v. Dows*, 8 Fed. Rep. 550.

*As to bonds, etc., with Fidelity companies as sureties, see *ante*, c. 34, *§ 445.