

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

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COMPLETE IN TWO VOLUMES.

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WITH

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CHAPTER 28.

AUCTIONEERS.

§ 7. Official sales excepted.

Nothing in this chapter shall extend to sales made by sheriffs, coroners, constables, collectors of taxes, or sales of personal property under and by virtue of chattel mortgages. (*As amended 1881, Ex. Sess. c. 36, § 1.*)

CHAPTER 29.

TOWN PLATS.

§ 4. Plat—Certifying and recording.

A town plat is not entitled to record, and will not operate as a statutory dedication without being acknowledged. *City of Winona v. Huff, 11 Minn. 119, (Gil. 75.)*

As to the sufficiency of the certificate, see *Baker v. City of St. Paul, 8 Minn. 491, (Gil. 456.)*

§ 5. Execution and recording plat—Effect.

A right to have lands entered as a town-site, under the act of congress, may be lost by abandonment of the occupancy, so that other persons may enter upon and occupy them, and become entitled to have them entered as a town-site for their benefit; and this is the case even where the prior occupants made and recorded a town plat of the lands. *Weisberger v. Tenny, 8 Minn. 456, (Gil. 405.)*

Where an owner of lands plats the same as a town, under the statute, the fee of the lands intended for streets or landings does not pass, but only such estate or interest vests in the corporate authorities as the purposes of the trust require. *Schurmeier v. St. Paul, etc., R. Co., 10 Minn. 82, (Gil. 59.)*

Where there is a discrepancy between a town plat and the certificate attached to it as to the block intended for a public square the block which the entire plat shows to have been intended will prevail over that indicated in the certificate. *City of Winona v. Huff, 11 Minn. 119, 120, 131, 135, (Gil. 75.)*

Where a town plat of lands, entered as a town-site under the act of congress, has been executed and recorded, dedicating lands to public use, the plat operates as a conveyance to the public, and no deed from the trustee is necessary. If the trustee convey the fee to a third party it is subject to the dedication. *Id.*

Where land is dedicated by town plat for public squares, streets, or levees, the corporate authorities may maintain ejectment for it. *Id.*

Upon the question of dedication, where town plats have been introduced, it is not error to refuse to charge "that the surveying, platting, and recording towns presupposes ownership in the persons, and the title must be in them perfected." *Village of Mankato v. Meagher, 17 Minn. 265, (Gil. 243.)*

Where several persons, owning different lands in severalty, join in making a town plat of them, no one of such owners acquires by the plat alone any easement or right of way, distinct from that granted to the public, in that part of the public streets marked on the plat, over lands of the other owners. *Patterson v. City of Duluth, 21 Minn. 493.*

Plat of Minneapolis does not dedicate block 62 to the county. *Commissioners of Hennepin Co. v. Dayton, 17 Minn. 260, (Gil. 237.)*

Plat of town of Pepin does not effect the dedication of any land to public use. *Downer v. St. Paul, etc., Ry. Co., 22 Minn. 251.*

See *Carson v. Smith, 12 Minn. 546, (Gil. 458.)*

§ 12. Towns and additions—Vacating and altering.

See *Weisberger v. Tenny, 8 Minn. 456, (Gil. 405.)*

***§ 15. Defective plats—Legalization.**

All plats, or purporting to be, of additions and subdivisions thereof, to any town or city in this state, or copies thereof, now on file in any register of deed's office in this state, which fail in any respect to comply with the law in force at the time of their making, execution, certification, or recording, with regard to either the making, execution, certification, or recording thereof, or any or all of said matters, are hereby legalized and confirmed, to the same extent and with the same effect as if the same had been in all respects properly made, executed, certified, and filed. (1881, *Ex. Sess. c. 57, § 1.**)

***§ 16. Defective description — Surveyor's certificate — Filing—Effect—Fees.**

In all cases where said plats or copies, or any of them, fail to identify or show upon their face the tract of land covered or intended to be covered thereby, the surveyors, or one of them, who laid out or surveyed the same, may, within one year from the passage of this act, make and file in the register's office of the proper county a certificate duly executed and acknowledged by him, as deeds are to be executed and acknowledged, wherein he shall set forth at length a full description of the real estate covered by the plat so made by him; which certificate, so executed, shall be filed, and thereafter remain on file, in said register's office, and shall by said register be recorded at length in a book to be by him provided for that purpose, entitled "Book of Plat Certificates." And said register shall thereupon note upon the plat and copy thereof so filed in his office, and referred to in such certificate, the fact of filing such certificate, and the book and page where the same is recorded. And said certificate, or the record thereof, shall, together with such plat, be *prima facie* evidence in all cases of the real estate covered by said plat, to the same extent as if originally indorsed thereon. And said register shall receive the same fees as now by law provided for filing and recording such certificate, to be paid by the person offering the same for record. (*Id.* § 2.)

***§ 17. Same—Proprietor's certificate—Filing—Effect.**

In all cases where the surveyor above referred to shall have died, or his place of abode be unknown, or he unable for any reason, or refuse, to make and execute said certificate, the same may be so made by any one or more of the proprietors who has signed any such plat; which certificate, so made by such proprietor, shall be sworn to by him as correct in all respects, and shall thereupon, together with such affidavit made thereon, be filed and recorded as above provided, with like effect in all respects. (*Id.* § 3.)

***§ 18. Same—Petition to court—Procedure—Judgment.**

In case the surveyor or proprietor above referred to, for any reason fails or neglects to certify to such plat, as above provided, or such certificate be not recorded and filed within three months after the passage of this act, it shall thereupon be lawful for any person, being the owner of or claiming any interest in any lot or tract of land included in, described or intended to be described in, or covered by any such plat, to apply to the district court of any county wherein said plat is filed, at any general or special term thereof, by petition in writing, duly verified as a complaint in a civil action, to have established by the judgment of said court the real estate covered or intended to be covered by said plat. Such petition shall set forth the lot or tract claimed by such petitioner, the name of the plat to be corrected or affected, and a full description of the real estate claimed to be covered or to have been intended

*"An act in relation to plats of additions, or subdivisions thereof, to any town or city now on file in any register of deeds' office in this state, or copies thereof, so on file, to legalize the same as if properly made, executed, certified to, and recorded; to provide for the identification of the real estate covered thereby, and to give effect to the same, together with such identification of the real estate covered thereby, as evidence." Approved November 18, 1881.

to be covered by such plat. Said court shall thereupon have jurisdiction of such proceeding, and shall thereupon make and enter an order therein, directing notice of the pendency thereof to be given to all persons having or claiming any estate, interest, or lien in or to the land mentioned in such petition, or covered or intended to be covered by the plat therein named, by publication of a certified copy of such order in a newspaper printed and published in said city, and named therein, for not less than six successive weeks, at least once in each week. Such order and notice shall set forth the filing of such petition, the name of the applicant, a description of the real estate by him claimed to be covered by such plat, the name of such plat, and the time and place of hearing of such petition, which shall not be less than twenty days after the last day of publication of such notice, and shall be at a general or special term of such court. Proof of the publication of such order and notice shall be made by the printer or publisher of such newspaper, as in cases of foreclosure of mortgages by advertisement, and filed in said court. And said publication shall be deemed and taken to be a personal service upon all persons having or claiming any right, title, estate, interest, or lien in or to the said real estate, or any part thereof. Any person having or claiming an interest in any lot or tract within the real estate so described, or in said real estate, or in the real estate covered by said plat, as claimed by him, may at any time before the hearing appear in said court, in person or by attorney, and file therein, in writing, objections to the granting of such petition, in whole or in part, and may further affirmatively set up a full description of the real estate claimed by said objector to be covered by said plat. And said court shall thereupon proceed to hear and determine the matter in the same manner, as nearly as may be, as in suits in equity in said court, and give judgment as the facts may appear. A certified copy of such judgment shall thereupon be filed and recorded in said register's office, as above provided for said certificate, with like force and effect in all respects. The said court shall have full power and control over such proceeding, and shall direct the course of practice therein, and may in its discretion award and apportion costs and disbursements therein as it shall see fit. (1881, *Ex. Sess. c. 57*, § 4.)

***§ 19. Legalized plats—Effect as evidence.**

Such plat or plats and copies thereof, together with such certificate, affidavit, or judgment pertaining thereto, or record thereof, or certified copies thereof, shall thereupon be received in evidence in all cases, with the same force and effect in all respects as if the same had particularly described thereon the real estate covered thereby, and complied in each particular with the law in force at the time of the making and filing thereof. (*Id.* § 5.)

***§ 20. Defective plats—How cured.**

In all cases where the plats, or what purport to be the plats, of any towns or cities in this state, or of additions to or subdivisions thereof, or copies thereof, fail to identify and show upon their face the tract of land covered, or intended to be covered thereby, the surveyor or surveyors, or any one of them, who laid out or surveyed the same, and, in case said surveyor or surveyors shall have died, or his or their place of abode be unknown, or he or they be unable or refuse to make and execute such certificate, one or more of the proprietors who has signed said plat may, within one year from the passage of this act, make and file in the office of the register of deeds of the county in which said lands are situate a certificate duly executed and acknowledged by him or them as deeds are to be executed and acknowledged, wherein shall be set forth a full description of the real estate covered and intended to be covered by said plat. If such certificate be made by a proprietor or by proprietors of such town or city, addition or subdivision, the same shall also be sworn to by him or them as being correct in all respects; and such certificate,

so executed and acknowledged and verified, shall be recorded at length by said register of deeds in a book, to be by him provided for that purpose, entitled "Book of Plat Certificates;" and said register of deeds shall thereupon note upon such plat and the copy thereof filed in his office as aforesaid, and referred to in such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded, and he shall receive, from the person offering said certificate for record, the fees provided by law for similar services; and said certificate or the record thereof shall, together with such plat, be *prima facie* evidence in all cases as to the real estate covered by said plat, to the same extent as if the description thereof was originally indorsed on said plat. (1885, c. 264.*)

*§ 21. Same.

That in all cases where the plats, or what purport to be plats, of any towns or cities in this state, or of additions to or subdivisions thereof, or copies thereof, fail to identify and show correctly, upon their face, the tract of land covered or intended to be covered thereby, the surveyors, or one of them, who laid out or surveyed the same, and, in case said surveyor or surveyors shall have died, or his or their place of abode be unknown, or he or they be unable or refuse to make or execute such certificate, one of the original proprietors may within one year from the passage of this act make and file in the office of the register of deeds of the county in which said lands are situate a certificate duly executed and acknowledged by him or them, as deeds are to be executed and acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat. If such certificate be made by a proprietor or proprietors of such town, city, addition, or subdivision, the same shall also be sworn to by him or them as being correct in all respects; and such certificate so executed, acknowledged, and verified, shall be recorded at length by said register of deeds in a book by him provided for that purpose, entitled "Book of Plat Certificates;" and said register of deeds shall thereupon note upon such plat and the copy thereof filed in his office as aforesaid, and referred to in such certificate and affidavit, the fact of filing such certificate and the book and page where recorded; and he shall receive from the person offering said certificate for record the fees provided by law for similar services; and such certificate, or the record thereof, shall, together with such plat, be *prima facie* evidence in all cases as to the lands covered by said plat. (1887, c. 167.†)

CHAPTER 30.

LIMITED PARTNERSHIP.

§ 2. General and special partners.

A check drawn by the special partner on a bank in which he has funds, and delivered to the general partner, is not an actual cash payment such as will entitle him to the protection of a special partner. *McGinnis v. Farrelly*, 27 Fed. Rep. 33.

*"An act relative to plats of towns and cities in this state, and of additions to and subdivisions thereof, and the correction and legalization of the same." Approved February 27, 1885.

†"An act relative to plats of towns and cities in this state, and of additions to and subdivisions thereof, and the correction and legalization of the same." Approved March 7, 1887.