THE

STATUTES AT LARGE

OF THE

STATE OF MINNESOTA

COMPRISING

THE GENERAL STATUTES OF 1866

As amended by subsequent Legislation to the close of the Session of 1873

TOGETHER WITH

ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, *A.D.* 1873

WITH REFERENCES TO

JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY

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CHAPTER XXXIV.

OF DEEDS, MORTGAGES, AND OTHER CONVEYANCES.

(*This Chapter is Chapter XL. of the Statutes of* 1866.)

SECTION 1. *Conveyances of lands, how made.*—Conveyances of lands, or of any estate or interest therein, may be made by deed, executed by any person having authority to convey the same, or by his attorney, and acknowledged and recorded in the registry of deeds for the county where the lands lie without any other act or ceremony.

Davis *v.* Murphy, 3 Minn. 119; Minor *v.* Powers, 3 Minn. 225; Gardner *v.* McClure, 6 Minn. 250; Greve *v.* Coffin, 14 Minn. 345. *Vide* also 4 Wis. 537; 6 Wis. 453; 18 Wis. 485; 19 Wis. 472; 20 Wis. 360.

SEC. 2 (AS AMENDED BY ACT OF MARCH 5, 1869). *Husband and wife may convey real estate—minority of wife—conveyance by corporation.*—A husband and wife may convey any real estate by their duly authorized agent or attorney, and may by their joint deed convey the real estate of the wife in like manner as she might do by her separate deed if she was unmarried; nor shall the minority of the wife in any case affect the validity of such deed. Every corporation authorized to hold real estate, may convey the same by an agent appointed by vote for that purpose.

S. L. 1869, 69.

SEC. 3. *Corporation may record appointment of agent—evidence.*—Whenever the corporators, members, stockholders, trustees, or directors of any corporation, by a vote or resolution, appoint an agent to convey the real estate of such corporation, a copy of such vote or resolution certified by the clerk or secretary of such corporation, may be recorded in the office of the register of deeds of the county in

which the real estate, to which such vote or resolution relates, is situated. And such vote or resolution, when so certified, or a transcript of such record duly certified, may be used in evidence in the same manner and with like effect as a conveyance recorded in such county.

SEC. 4. *Deed of quitclaim shall pass whole estate.*—A deed of quitclaim and release of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.

Martin *v.* Brown, 4 Minn. 282; Hope *v.* Stone, 10 Minn. 141; Everest *v.* Ferris, 16 Minn. 26.

SEC. 5. *Conveyance by tenant for life or years, effect of.*—A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

SEC. 6. *No covenant to be implied in conveyances.*—No covenant shall be implied in any conveyance or mortgage of real estate, whether such conveyance contains special covenants or not. Nor shall any grant or conveyance of lands, or interests therein, be void, for the reason that at the time of the execution thereof, such land was in the actual possession of another claiming adversely.

SEC. 7 (AS AMENDED BY ACT OF MARCH 6, 1868). *How deeds to be executed —how acknowledged.*—Deeds of land or any interest in land within this state, shall be executed in the presence of two witnesses, who shall subscribe their names to the same, as such, and may be acknowledged by the person or persons executing the same, before any of the following officers:

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

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

S. L. 1868, 100. *Vide* title, Curative Acts, *infra*, part V. Parret *v.* Shaubhut, 5 Minn. 323; Meighen *v.* Strong, 6 Minn. 177; Baze *v.* Arper, 6 Minn. 221; Thompson *v.* Morgan, 6 Minn. 292; Chandler *v.* Kent, 8 Minn. 524; Ross *v.* Worthington, 11 Minn. 438.

SEC. 8 (AS AMENDED BY ACT OF MARCH 6, 1868). *Certificate to be appended.* —Any officer taking the acknowledgment of a deed as provided in the preceding section shall endorse upon, or append to such deed, a certificate of such acknowledgment thereof, and the true date of such acknowledgment, and shall date and sign such certificate.

S. L. 1868, 100. *Vide* title, Curative Acts, *infra*, pt. V.; Lowry *v.* Harris, 12 Minn. 255.

SEC. 9 (AS AMENDED BY ACTS OF MARCH 6, 1868, AND FEB. 8, 1869). *Before whom acknowledgments shall be taken.*—In the cases provided for in the second subdivision of section seven of this chapter, unless the acknowledgment is taken before a commissioner appointed by the governor of this state for that purpose, or before a notary public, or before a clerk of a court or some other officer having

a seal of office, and the certificate of acknowledgment upon such deed, with the seal of office of such officer affixed thereto, there shall also be attached or appended to or indorsed upon such deed a certificate of the clerk or other proper certifying officer of a court of record of the county, district, or place within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, that he is acquainted with the handwriting of such person, and that he verily believes the signature subscribed to the certificate of acknowledgment to be genuine: *provided*, that the certificate of the secretary of any state or territory, or his deputy, under the seal of such state or territory, attached or appended to or indorsed upon such deed to the effect that any justice of the peace, before whom the acknowledgment purports to have been taken, held at the date of such acknowledgment his office by appointment of the governor of such state or territory, shall be a sufficient authentication. All acknowledgments heretofore taken and authenticated as herein provided shall be deemed valid and sufficiently authenticated.

S. L. 1868, 100; S. L. 1869, 79. *Vide* title, Curative Acts, *infra*, pt. V.

SEC. 10 (AS AMENDED BY ACT OF FEB. 18, 1868). *Deeds, how executed in foreign country.*—If such deed is executed in any foreign country, it may be executed according to the laws of such country, and acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affairs, commissioner, or consul of the United States appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand; and if taken before a notary public, his seal of office shall be affixed to such certificate: *provided*, that any such deed duly signed and sealed with two witnesses, and acknowledged as aforesaid, shall be deemed good and sufficient whether in accordance with the laws of such foreign country or not.

S. L. 1868, 104. *Vide* title, Curative Acts, *infra*, pt. V.

SEC. 11. *Execution of deed, how proved.*—When any grantor dies, departs from, or resides out of this state, not having acknowledged his deed, the execution thereof may be proved by any competent witness thereto, before any court of record in this state.

SEC. 12. *If subscribing witness is dead, how proved.*—If all the subscribing witnesses to such deed are also dead or out of this state, the same may be proved before any court of record in this state, by proving the handwriting of the grantor, and of any subscribing witness thereto.

SEC. 13. *Grantor refusing to acknowledge deed may be summoned before justice.*—If any grantor residing in this state refuses to acknowledge his deed, the grantee or any person claiming under him may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

SEC. 14. *Proceedings on hearing.*—At the time mentioned in such summons, or at any time to which the hearing may be adjourned, the due execution of the

deed may be proved by the testimony of one or more of the subscribing witnesses, and if proved to the satisfaction of the justice, he shall certify the same thereon; and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

SEC. 15. *If subscribing witnesses are dead or absent, how proved.*—If any grantor residing in this state refuses to acknowledge his deed, and the subscribing witnesses thereto are all dead or out of the state, it may be proved before any court of record in this state, by proving the handwriting of the grantor or of any subscribing witness, the said court first summoning the grantor for the purpose in the manner before provided in this chapter.

SEC. 16. *Subscribing witness may be subpœnaed.*—The court or justice before whom any deed is presented to be proved, as provided in the preceding sections, may issue subpœnas to the subscribing witnesses, or others, as the case may require, to appear and testify touching the execution of such deed, which subpœnas may be served in any part of this state.

SEC. 17. *Penalty for not appearing.*—Every person, who being served with such subpœna, without reasonable cause refuses or neglects to appear, or appearing, refuses to answer an oath touching the matter aforesaid, shall be liable to the injured party in the sum of one hundred dollars, and for such further damages as such party may sustain thereby; and may also be committed to prison, as for a contempt, by the court or justice who issued such subpœna, there to remain until he submits to answer upon oath as aforesaid.

SEC. 18. *Copy of deed may be filed.*—Any person interested in a deed that is not acknowledged, may at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time, be duly proved and recorded.

SEC. 19. *Effect of filing to continue, when.*—If at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed are pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed within that time is duly proved and recorded.

SEC. 20. *Certificate to entitle deed to record.*—A certificate of the acknowledgment of any deed, or of the proof of the execution thereof before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and in the cases where the same is necessary, the certificate required by the ninth section of this chapter shall entitle such deed, with the certificate aforesaid, to be recorded in the office of the register of deeds of the county where the lands lie.

S. L. 1869, 99.

SEC. 21 (AS AMENDED BY ACT OF FEBRUARY 25, 1870). *Conveyances to be recorded.*—Every conveyance by deed, mortgage, or otherwise, of real estate within this state, shall be recorded in the office of the register of deeds of the county where such real estate is situated; and every such conveyance not so recorded shall

be void, as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance is first duly recorded, or as against any attachment levied thereon, or any judgment lawfully obtained at the suit of any party against the person in whose name the title to such land appears of record prior to the recording of such conveyance: *provided, however*, that all deeds, mortgages, and other instruments affecting real estate situate in any unorganized county, may be recorded in the county to which such unorganized county is attached for judicial purposes, and records of such instruments which have been, or shall be so made, shall have the same effect as if recorded in the county where the premises are situated.

S. L. 1870, 117. *Vide* also S. L. 1867, 97, 99. Greenleaf *v.* Edes, 2 Minn. 264; Levering *v.* Washington, 3 Minn. 323; Shaubhut *v.* Hilton, 7 Minn. 506; Dunwell *v.* Bidwell, 8 Minn. 40; Wilder *v.* Brooks, 10 Minn. 50; Ross *v.* Worthington, 11 Minn. 438; Marshall *v.* Roberts, 18 Minn. 405. 14 Wis. 468; 18 Wis. 510; 20 Wis. 520, 531.

SEC. 22. *Deeds of pews may be recorded.*—Deeds of pews and slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society, or proprietors, if incorporated or legally organized; and such clerk shall receive the same fees as the register of deeds is entitled to for similar services.

SEC. 23. *Deed not defeated by defeasance, when.*—When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance is recorded in the registry of deeds of the county where the lands lie.

SEC. 24. *Record of assignment of mortgage note notice to mortgagor.*—The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Johnson *v.* Carpenter, 7 Minn. 176.

SEC. 25. *Term "purchaser" defined.*—The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate is conveyed for a valuable consideration; and also every assignee of a mortgage, or lease, or other conditional estate.

SEC. 26. *Term "conveyance" defined.*—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands.

Davis *v.* Murphy, 3 Minn. 119; Dahl *v.* Pross, 6 Minn. 89; Gardner *v.* M'Clure, 6 Minn. 250; Chandler *v.* Kent, 8 Minn. 524; Wilder *v.* Brooks, 10 Minn. 250.

SEC. 27. *Construction of preceding section.*—The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may

be recorded in the registry of deeds of any county in which the lands to which such powers or contract relates, may be situated; and when so acknowledged or proved, and the record thereof, when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner and with the like effect as a conveyance recorded in such county.

SEC. 28. *Record of any instrument to be deemed notice.*—The record, as herein provided, of any instrument properly recorded, shall be taken and deemed notice to parties.

SEC. 29. *Letter of attorney, how revoked.*—No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

SEC. 30. *On division of county, records may be transcribed.*—When a new county is organized, in whole or in part, from an organized county, or from territory attached to such organized county, for judicial purposes, all the records of deeds or other instruments relating to real estate in such new county, may be transcribed into the proper books by the register of deeds of such new county; which records, so transcribed, shall have the same effect in all respects as original records, and the register shall be paid for transcribing the same, such sum as the board of commissioners of his county may deem just and reasonable.

SEC. 31. *Scroll or device, same effect as seal.*—A scroll or device used as a sea upon any deed or conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to official seals.

SEC. 32. *Instrument to be duly executed to be entitled to record.*—To entitle any conveyance, mortgage, power of attorney or other instrument affecting real estate within this state to be recorded, it shall be executed and acknowledged by the party executing the same as required by law.

Vide S. L. 1867, 99; Parret *v.* Shaubhut, 5 Minn. 323; Dahl *v.* Pross, 6 Minn. 89.

SEC. 33 (AS AMENDED BY ACT OF MARCH 6, 1868). *Where copy of record may be recorded.*—A certified copy of the record of any conveyance or other instrument authorized by law, to be recorded in the office of the register of deeds in any county, or in the office of the secretary of state, certified by the proper custodian of such record to be a true copy thereof, may be recorded in any county in this state, with the same force and effect that the original conveyance or instrument would have if so recorded.

S. L. 1868, 103.

SEC. 34. *Grantor to make known existence of incumbrance.*—In all conveyances of real estate by deed or mortgage upon which any incumbrance exists, the grantor, whether he executes the same in his own right or as executor, administrator, assignee, trustee, or otherwise, by order of law, shall, before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such prior incumbrance so far as he has knowledge thereof.

SEC. 35. *Grantor liable to an action of contract, when.*—Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all incumbrances, when an incumbrance appears of record to exist thereon, whether known

or unknown to him, shall be liable in an action of contract to the grantee, his heirs, executor, administrator, successors or assigns for all damages sustained in removing the same.

Faribault *v.* Sater, 13 Minn. 223.

SEC. 36. *Mortgages, how discharged.*—Mortgages may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his executor, administrator, or assignee, acknowledging the satisfaction of the mortgage; and such entry shall have the same effect as a deed of release, duly acknowledged and recorded. They may also be discharged upon the record thereof by the register of deeds, whenever there shall be presented to him a certificate signed by the mortgagee or grantee, his personal representatives or assigns, executed and acknowledged as hereinbefore prescribed, specifying that such mortgage has been paid, or otherwise satisfied or discharged. Every such certificate and the proof and acknowledgment thereof, shall be recorded at full length, and a reference made to the book and page containing such record, in the minute of the discharge of such mortgage made upon the record thereof, and said register shall indorse upon such certificate the time and place of recording the same.

S. L. 1867, 115; repealed by S. L. 1869, 77.

SEC. 37 (ADDED BY ACT OF FEBRUARY 27, 1873). *Neglect to discharge, mortgagee liable, how.*—If any mortgagee, or his personal representative or assignee, after a full performance of the conditions of the mortgage, shall, for the space of ten days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same, as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs, grantee, or assigns, for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action. And such mortgagor, his heirs, grantee, or assigns, may in such action unite with such claim for damages a claim for satisfaction and release of such mortgage, and if upon the trial of such action it appears that the conditions of such mortgage have been fully performed as aforesaid, then the court shall by its decree and judgment, release and satisfy such mortgage, and a certified copy of such decree shall be filed in the office of the register of deeds where such mortgage is recorded, and thereupon such decree shall operate as a full and complete discharge of such mortgage. If the mortgagee, his personal representative or assignee, is a non-resident of this state, such action may be maintained against him, at the expiration of sixty days after the conditions of said mortgage have been fully performed, without any previous request or demand to satisfy such mortgage.

S. L. 1873, 170.