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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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5 contract between the parties, or the right of redemption is
6 foreclosed as hereinafter provided.

New.

1 SECT. 6. The person entitled to redeem, shall pay or
2 tender to the mortgagee, or person holding under him, the
3 sum due on the mortgage, or offer performance of the thing
4 to be done, and shall pay all reasonable and lawful charges
5 and expenses incurred in the care and custody of the prop-
6 erty, or otherwise arising from the mortgage; and if, upon
7 such payment or performance or tender thereof, the prop-
8 erty is not forthwith restored, the person entitled to re-
9 deem may recover it in a civil action, with such damages
10 as he may have sustained by the withholding thereof.

New.

1 SECT. 7. The mortgagee or his assigns, after condition
2 broken, may give to the mortgagor, or the person in pos-
3 session of the property claiming the same, written notice of
4 his intention to foreclose the mortgage for breach of the
5 condition thereof, which notice shall be served by leaving
6 a copy with the mortgagor or a person in possession of the
7 property claiming the same, or by publishing it at least
8 once a week for three successive weeks in a newspaper print-
9 ed and published in the county or city where the mortgage is
10 properly recorded, or where the property is situated, or if
11 there is no such paper, in a newspaper printed and pub-
12 lished at the capital of the state.

New.

1 SECT. 8. The notice with an affidavit of service shall be
2 filed wherever the mortgage is filed, and when so filed, the
3 same or a copy thereof shall be admitted as evidence of the
4 giving of such notice.

New.

1 SECT. 9. If the money to be paid, or other thing to be
2 done, is not paid or performed, or tender thereof made
3 within sixty days after such notice is so filed, the right to
4 redeem shall be foreclosed.

CHAPTER XL.

DEEDS, MORTGAGES AND OTHER CONVEYANCES.

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C. S. p. 397, Sect. 1.
Amended.

1 SECTION 1. Conveyances of lands or of any estate or
2 interest therein, may be made by deed, executed by any
3 person having authority to convey the same, or by his at-
4 torney, and acknowledged and recorded in the registry of
5 deeds for the county where the lands lie without any other
6 act or ceremony.

1 SECT. 2. A husband and wife may convey any real
 2 estate by their duly authorised agent or attorney, and may
 3 by their joint deed, convey the real estate of the wife in like
 4 manner as she might do by her separate deed if she was
 5 unmarried; but the wife shall not be bound by any coven-
 6 ant contained in such joint deed, nor shall the minority of
 7 the wife in any case affect the validity of such deed. Every
 8 corporation authorized to hold real estate, may convey the
 9 same by an agent appointed by vote for that purpose.

C. S. p. 397, Sect. 2;
 p. 402, Sect. 43;
 1865—p. 64, Sect. 1,
 combined.

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1 SECT. 3. Whenever the corporators, members, stock-
 2 holders, trustees or directors of any corporation, by a vote
 3 or resolution, appoint an agent to convey the real estate of
 4 such corporation, a copy of such vote or resolution certified
 5 by the clerk or secretary of such corporation, may be re-
 6 corded in the office of the register of deeds of the county in
 7 which the real estate to which such vote or resolution relates,
 8 is situated. And such vote or resolution, when so certified,
 9 or a transcript of such record duly certified, may be used in
 10 evidence in the same manner and with like effect as a con-
 11 veyance recorded in such county.

C. S. p. 406, Sect. 72.

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1 SECT. 4. A deed of quit claim and release of the form
 2 in common use, is sufficient to pass all the estate which the
 3 grantor could lawfully convey by deed of bargain and sale.

C. S. p. 397, Sect. 3.

1 SECT. 5. A conveyance made by a tenant for life or
 2 years, purporting to grant a greater estate than he possess-
 3 ed, or could lawfully convey, shall not work a forfeiture of
 4 his estate, but shall pass to the grantee all the estate which
 5 such tenant could lawfully convey.

C. S. p. 397, Sect. 4.

1 SECT. 6. No covenant shall be implied in any convey-
 2 ance or mortgage of real estate, whether such conveyance
 3 contains special covenants or not. Nor shall any grant or
 4 conveyance of lands, or interest therein, be void, for the
 5 reason that at the time of the execution thereof, such land
 6 was in the actual possession of another claiming adversely.

C. S. p. 397, Sect. 5;
 p. 398, Sects. 6 &
 7, combined &
 amended.

1 SECT. 7. Deeds executed within this state of lands or
 2 any interest in lands therein, shall be executed in the pres-
 3 ence of two witnesses, who shall subscribe their names to
 4 the same as such; and be acknowledged by the person exe-
 5 cuting the same before any officer authorized to take ac-
 6 knowledgments, who shall indorse thereon a certificate of the
 7 acknowledgment thereof, and the true date of making the
 8 same, under his hand.

C. S. p. 398, Sect. 8.
 Amended.

1 SECT. 8. If any such deed is executed in any other
 2 state, territory, or district of the United States, such deed

C. S. p. 398, Sect. 9.
 Amended.

3 may be executed according to the laws thereof, and its exe-
 4 cution may be acknowledged before any officer authorized
 5 by the laws of such state, territory or district, to take the
 6 acknowledgment of deeds therein, or before any commis-
 7 sioner appointed by the governor of this state for such
 8 purpose.

1861—p. 53, Sect. 1.

1 SECT. 9. In the cases provided for in the preceding
 2 section, unless the acknowledgment is taken before a com-
 3 missioner appointed by the governor of this state for that
 4 purpose, or before a notary public, or other officer having
 5 a seal of office, and the acknowledgment aforesaid certified
 6 upon such deed by such officer, and his seal of office at-
 7 tached to such certificate, such deed shall have attached
 8 thereto a certificate of the clerk or other proper certifying
 9 officer of a court of record of the county or district within
 10 which such acknowledgment was taken, under the seal of
 11 his office, that the person whose name is subscribed to the
 12 certificate of acknowledgment was, at the date thereof,
 13 such officer as he is therein represented to be; that he be-
 14 lieves the signature of such person subscribed thereto, to
 15 be genuine; and that the deed is executed and acknowl-
 16 edged according to the laws of such state, territory or
 17 district.

c 35 C. S. p. 398, Sect. 11.

1 SECT. 10. If such deed is executed in any foreign coun-
 2 try, it may be executed according to the laws of such coun-
 3 try, and acknowledged before any notary public therein, or
 4 before any minister plenipotentiary, minister extraordinary,
 5 minister resident, charge des affaires, commissioner, or con-
 6 sul of the United States appointed to reside therein; which
 7 acknowledgment shall be certified thereon by the officer
 8 taking the same under his hand; and if taken before a no-
 9 tary public, his seal of office shall be affixed to such certi-
 10 cate.

C. S. p. 399, Sect. 14.

1 SECT. 11. When any grantor dies, departs from, or
 2 resides out of this state, not having acknowledged his deed,
 3 the due execution thereof, may be proved by any compe-
 4 tent subscribing witness thereto, before any court of record
 5 in this state.

C. S. p. 399, Sect. 15.

1 SECT. 12. If all the subscribing witnesses to such deed
 2 are also dead or out of this state, the same may be proved
 3 before any court of record in this state, by proving the hand
 4 writing of the grantor, and of any subscribing witness
 5 thereto.

C. S. p. 399, Sect. 16.

1 SECT. 13. If any grantor residing in this state refuses
 2 to acknowledge his deed, the grantee or any person claim-

3 ing under him, may apply to any justice of the peace in the
 4 county where the land lies, or where the grantor or any
 5 subscribing witness to the deed resides, who shall there-
 6 upon issue a summons to the grantor to appear at a certain
 7 time and place before the said justice, to hear the testimony
 8 of the subscribing witnesses to the deed; and the said sum-
 9 mons, with a copy of the deed annexed, shall be served at
 10 least seven days before the time therein assigned for prov-
 11 ing the deed.

1 SECT. 14. At the time mentioned in such summons,
 2 or at any time to which the hearing may be adjourned, C. S. p. 399, Sect. 17.
 3 the due execution of the deed may be proved by the testi-
 4 mony of one or more of the subscribing witnesses, and if
 5 proved to the satisfaction of the justice, he shall certify the
 6 same thereon; and in such certificate he shall note the
 7 the presence or absence of the grantor, as the fact may be.

1 SECT. 15. If any grantor residing in this state refuses to
 2 acknowledge his deed, and the subscribing witnesses there-
 3 to are all dead or out of the state, it may be proved before C. S. p. 399, Sect. 18.
 4 any court of record in this state, by proving the hand-
 5 writing of the grantor or of any subscribing witness, the
 6 said court first summoning the grantor for the purpose in
 7 the manner before provided in this chapter.

1 SECT. 16. The court or justice before whom any deed
 2 is presented to be proved, as provided in the preceding C. S. p. 399, Sect. 19.
 3 sections, may issue subpoenas to the subscribing witnesses,
 4 or others, as the case may require, to appear and testify
 5 touching the execution of such deed, which subpoenas may
 6 be served in any part of this state.

1 SECT. 17. Every person, who being served with such
 2 subpoena, without reasonable cause refuses or neglects to C. S. p. 399, Sect. 20.
 3 appear, or appearing, refuses to answer on oath touching
 4 the matters aforesaid, shall be liable to the injured party in
 5 the sum of one hundred dollars, and for such further dama-
 6 ges as such party may sustain thereby; and may also be
 7 committed to prison, as for a contempt, by the court or jus-
 8 tice who issued such subpoena, there to remain until he sub-
 9 mits to answer upon oath as aforesaid.

1 SECT. 18. Any person interested in a deed that is not
 2 acknowledged, may at any time before or during such ap- C. S. p. 399, Sect. 21.
 3 plication to a court of record, or such proceedings before a
 4 justice, file in the office of the register of deeds of the coun-
 5 ty where the lands are situated, a copy of the deed com-
 6 pared with the original by the register, which shall, for the
 7 space of thirty days thereafter, in case of proceedings be-

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8 fore a justice, and in case of proceedings before a court of
9 record, for the space of ten days after the first day of the
10 next term of such court, have the same effect as the record-
11 ing of the deed, if such deed shall, within that time, be du-
13 ly proved and recorded.

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C. S. p. 399, Sect. 22.

1 SECT. 19. If at the expiration of the time mentioned in
2 the preceding section for that purpose, such proceedings for
3 proving the execution of the deed are pending before a jus-
4 tice of the peace, the effect of filing such copy shall contin-
5 ue until the expiration of seven days after the termination
6 of the proceedings, if such deed within that time is duly
7 proved and recorded.

C. S. p. 400, Sect. 23.

1 SECT. 20. A certificate of the acknowledgment of any
2 deed, or of the proof of the execution thereof before a court
3 of record, or justice of the peace, signed by the clerk of
4 such court, or by the justice before whom the same was tak-
5 en, as provided in this chapter, and in the cases where the
6 same is necessary, the certificate required by the ninth sec-
7 tion of this chapter shall entitle such deed, with the certifi-
8 cate aforesaid, to be recorded in the office of the register of
9 deeds of the county where the lands lie.

C. S. p. 402, Sect. 40.

1 SECT. 21. Every conveyance by deed, mortgage or oth-
2 erwise, of real estate within this state, shall be recorded in
3 the office of the register of deeds of the county where such
4 real estate is situated; and every such conveyance not so
5 recorded shall be void, as against any subsequent purcha-
6 ser in good faith and for a valuable consideration of the
7 same real estate, or any portion thereof, whose conveyance
8 is first duly recorded, or as against any attachment levied
9 thereon, or any judgment lawfully obtained at the suit of
10 any party against the person in whose name the title to
11 such land appears of record prior to the recording of such
12 conveyance.

C. S. p. 400, Sect. 25.

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

C. S. p. 400, Sect. 27.

1 SECT. 23. When a deed purports to be an absolute con-
2 veyance in terms, but is made or intended to be made de-
3 feasible by force of a deed of defeasance or other instrument
4 for that purpose, the original conveyance shall not be there-
5 by defeated or affected, as against any person other than
6 the maker of the defeasance, or his heirs or devisees, or per-

7 sons having actual notice thereof, unless the instrument of
8 defeasance is recorded in the registry of deeds of the coun-
9 ty where the lands lie.

1 SECT. 24. The recording of an assignment of a mort- C. S. p. 400, Sect. 28. e 35
2 gage shall not, in itself, be deemed notice of such assign-
3 ment to the mortgagor, his heirs or personal representa-
4 tives, so as to invalidate any payment made by them, or ei-
5 ther of them, to the mortgagee.

1 SECT. 25. The term "purchaser," as used in this chap-
2 ter, shall be construed to embrace every person to whom C. S. p. 400, Sect. 29.
3 any estate or interest in real estate is conveyed for a valua-
4 ble consideration; and also every assignee of a mortgage,
5 or lease, or other conditional estate.

1 SECT. 26. The term "conveyance," as used in this C. S. p. 400, Sect. 30.
2 chapter, shall be construed to embrace every instrument in
3 writing, by which any estate or interest in real estate is cre-
4 ated, aliened, mortgaged or assigned, or by which the title
5 to any real estate may be affected in law or equity, except
6 wills, leases for a term not exceeding three years, and exe-
7 cutory contracts for the sale or purchase of lands.

1 SECT. 27. The preceding section shall not be construed
2 to extend to a letter of attorney, or other instrument con- C. S. p. 400, Sect. 31.
3 taining a power to convey lands as agent or attorney for
4 the owner of such lands; but every such letter or instru-
5 ment, and every executory contract for the sale or purchase
6 of lands, when acknowledged or proved in the manner pre-
7 scribed in this chapter, may be recorded in the registry of
8 deeds of any county in which the lands to which such pow-
9 ers or contract relates, may be situated; and when so ac-
10 knowledged or proved, and the record thereof, when recor-
11 ded, or a transcript of such record duly certified, may be
12 read in evidence in the same manner and with the like ef-
13 fect, as a conveyance recorded in such county. 28

1 SECT. 28. No letter of attorney or other instrument so
2 recorded, shall be deemed to be revoked by any act of the C. S. p. 401, Sect. 32.
3 party by whom it was executed, unless the instrument con-
4 taining such revocation is also recorded in the same office in
5 which the instrument containing the power was recorded.

1 SECT. 29. ³⁰ When a new county is organized, in whole or
2 in part, from an organized county, or from territory attach- C. S. p. 401, Sect. 33.
3 ed to such organized county, for judicial purposes, all the
4 records of deeds or other instruments relating to real estate
5 in such new county, may be transcribed into the proper
6 books by the register of deeds of such new county; which

7 records so transcribed, shall have the same effect in all re-
8 spects as original records, and the register shall be paid for
9 transcribing the same, such sum as the board of commis-
10 sioners of his county may deem just and reasonable.

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C. S. p. 401, Sect. 34.

1 SECT. 30. A scroll or device used as a seal upon any
2 deed of conveyance or other instrument whatever, whether
3 intended to be recorded or not, shall have the same force
4 and effect as a seal attached thereto, or impressed thereon,
5 but this section shall not be construed to apply to official
6 seals.

C. S. p. 404, Sect. 57.

1 SECT. 31. To entitle any conveyance, mortgage, power
2 of attorney or other instrument affecting real estate within
3 this state to be recorded, it shall be executed and acknowl-
4 edged by the party executing the same as required by law.

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1865—p. 55-8, Sect.
1.

1 SECT. 32. A transcript of the record of any conveyance
2 or other instrument authorized by law to be recorded, cer-
3 tified by the register to be a true transcript, may be record-
4 ed in any other county, with the same force and effect that
5 the original conveyance or instrument would have, if so re-
6 corded.

New.

1 SECT. 33. In all conveyances of real estate by deed or
2 mortgage upon which any incumbrance exists, the grantor,
3 whether he executes the same in his own right or as exe-
4 cutor, administrator, assignee, trustee or otherwise, by or-
5 der of law, shall before the consideration is paid, by excep-
6 tion in the deed or otherwise, make known to the grantee
7 the existence and nature of such prior incumbrance so far as
8 he has knowledge thereof.

New.

1 SECT. 34. Whoever conveys real estate by deed or mort-
2 gage containing a covenant that it is free from all incum-
3 brances, when an encumbrance appears of record to exist
4 thereon, whether known or unknown to him, shall be liable
5 in an action of contract to the grantee, his heirs, executor,
6 administrator, successors or assigns for all damages sustain-
7 ed in removing the same.

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C. S. p. 401, Sect. 36;
C. S. p. 404, Sect.
54 combined &
amended.

1 SECT. 35. Mortgages may be discharged by an entry in
2 the margin of the record thereof, signed by the mortgagee,
3 or his executor, administrator or assignee, acknowledging
4 the satisfaction of the mortgage; and such entry shall have
5 the same effect as a deed of release, duly acknowledged and
6 recorded. They may also be discharged upon the record
7 thereof by the register of deeds, whenever there shall be
8 presented to him a certificate signed by the mortgagee or
9 grantee, his personal representatives or assigns, executed

10 and acknowledged, as hereinbefore prescribed, specifying
 11 that such mortgage has been paid, or otherwise satisfied or
 12 discharged. Every such certificate and the proof and ac-
 13 knowledgment thereof, shall be recorded at full length, and
 14 a reference made to the book and page containing such rec-
 15 ord, in the minute of the discharge of such mortgage made
 16 upon the record thereof, and said register shall endorse
 17 upon such certificate the time and place of recording the
 18 same.

CHAPTER XLI.

FRAUDS.

TITLE I.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

1 SECTION 1. Every conveyance of any estate or interest
 2 in lands, or the rents and profits of lands, and every charge C. S. p. 457, Sect. 1. *c49*
 3 upon lands, or upon the rents and profits thereof, made or
 4 created with the intent to defraud prior or subsequent pur-
 5 chasers for a valuable consideration of the same lands, rents
 6 or profits, as against such purchasers, shall be void.

1 SECT. 2. No such conveyance or charge shall be deemed
 2 fraudulent, in favor of a subsequent purchaser who had ac- C. S. p. 457, Sect. 2.
 3 tual or legal notice thereof at the time of his purchase, un-
 4 less it appears that the grantee in such conveyance, or
 5 person to be benefitted by such change, was privy to the
 6 fraud intended.

1 SECT. 3. Every conveyance or charge of or upon any C. S. p. 457, Sect. 3.
 2 estate or interest in lands, containing any provision for the
 3 revocation, determination or alteration of such estate or
 4 interest, or any part thereof, at the will of the grantor,
 5 shall be void, as against subsequent purchasers, from such
 6 grantor, for a valuable consideration, of any estate or in-
 7 terest, so liable to be revoked or determined, although the
 8 same is not expressly revoked, determined, or altered by
 9 such grantor, by virtue of the power reserved or expressed
 10 in such prior conveyance or charge.

1 SECT. 4. Where a power to revoke a conveyance of any C. S. p. 457, Sect. 4.
 2 lands or the rents and profits thereof, and to re-convey the
 3 same, is given to any person other than the grantor in such