

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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CHAPTER XL.

DEEDS, MORTGAGES AND OTHER CONVEYANCES.

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§ 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.

3 M. 69 (119); 154 (225); 6 M. 167 (250). See § 43, *post*, as to deeds under blank powers of attorney.

§ 2. **Conveyances by husband and wife—by corporations.** 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. (*As amended 1869, c. 57, § 1.*)

20 M. 531.

§ 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.

§ 4. **Quitclaim deeds—word "heirs" unnecessary to pass fee.** A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could convey by deed of bargain and sale. The word "heir" or "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee-simple. Any conveyance by deed of land in this state, heretofore executed, without the word "heir" or "heirs," or other words of inheritance therein, shall be deemed and received as *prima facie* proof of an intention on the part of the parties to such conveyance to convey an estate in fee-simple. (*As amended 1875, c. 51, § 1.*)

4 M. 201 (282); 10 M. 114 (141); 16 M. 26; 260; 18 M. 403.

§ 5. **Conveyances by tenants for life, etc., do not work forfeitures.** 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.

§ 6. **No covenants to be implied—conveyance of land held adversely to grantor.** 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 interest 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.

§ 7. **Execution and acknowledgment of deeds.** Deeds of land or any interest in lands, 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 court 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 acknowledgments 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. (*As amended 1868, c. 61, § 1.*)

5 M. 258 (323); 6 M. 111 (177); 142 (220); 199 (292). 8 M. 467 (524); 12 M. 255.

§ 8. **Certificate of acknowledgment—its contents, etc.** 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. (*As amended 1868, c. 61, § 2.*)

§ 9. **Acknowledgments taken in other states—certificate as to official character, etc.** 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 endorsed 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 endorsed 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. (*As amended 1868, c. 61, § 3, and 1869, c. 65, § 1.*)

§ 10. **Execution and acknowledgment of deeds in foreign countries.** If such deed is exe-

cuted 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 d' affaires, 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: *and, provided further*, that any deed of land in this state, executed and acknowledged in any foreign country, which shall have endorsed thereon, or attached thereto, a certificate of any minister resident, charge d' affaires or consul of the United States, appointed to reside therein, that such deed is executed and acknowledged according to the laws of such country, shall be entitled to record in the county in which such land is situated. (*As amended 1868, c. 64, § 1, and 1875, c. 52, § 1.*)

§ 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.

§ 12. **Proof when subscribing witnesses are dead or absent.** 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.

§ 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.

§ 14. **Proceedings on hearing before justice.** 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.

§ 15. **Proof when subscribing witnesses are dead or absent.** 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.

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

§ 17. **Penalty for not obeying subpoena.** Every person who, being served with such subpoena, without reasonable cause refuses or neglects to appear, or, appearing, refuses to answer on 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 subpoena, there to remain until he submits to answer upon oath as aforesaid.

§ 18. **Copy of such deed may be filed—effect of filing.** 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.

§ 19. **Same—effect of filing continued.** 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.

§ 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.

§ 21. **Conveyances to be recorded—failure to record—quitclaim deeds—deeds in unorganized counties.** 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 part [portion] thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, deed of quitclaim and release, of the form in common use, or otherwise, 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. Every conveyance aforesaid heretofore executed, and not so recorded, and which shall not be so recorded within three months from the passage of this act, shall be void against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, claiming under or through a deed of quitclaim and release, of the form in common use, heretofore so recorded, or which may be recorded before such prior conveyance. The fact that such first-recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of quitclaim and release aforesaid, shall not affect the question of good faith of such subsequent purchaser, or be of itself notice [to him] of any unrecorded conveyance of the same real estate, or any part thereof: *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 situate. (*As amended 1875, c. 51, § 2.*)

2 M. 226 (264); 3 M. 227 (323); 7 M. 412 (506); 8 M. 18 (34); 10 M. 32 (50); 18 M. 405; 20 M. 453; 22 M. 532.

§ 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.

§ 23. **Deed not defeated by unrecorded defeasance.** 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.

22 M. 137.

§ 24. **Record of assignment of mortgage—not 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.

7 M. 120 (176).

§ 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.

§ 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.

3 M. 69 (119); 6 M. 38, (89); 167 (250); 8 M. 467 (524); 10 M. 32 (50); 15 M. 59; 22 M. 532.

§ 27. **Construction of preceding section—letters of attorney and contracts.** 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 power 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.

§ 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.

17 M. 485; 22 M. 287.

§ 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.

§ 30. **On organization of new 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.

§ 31. **Scroll or device used as seal.** A scroll or device, used as a seal 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 im-

pressed thereon ; but this section shall not be construed to apply to official seals.

§ 32. **Requisites to entitle deed to be recorded.** 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.

5 M. 258 (323) ; 6 M. 38 (89).

§ 33. **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. (*As amended 1868, c. 63, § 1.*)

§ 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.

§ 35. **Liability of grantor who covenants against incumbrances.** 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.

§ 36. **Discharge of mortgages of record.** 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.

*§ 37. **Refusal of mortgagee to discharge mortgage, when satisfied—action by mortgagor, etc.** 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 representatives 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. (1873, c. 50, § 1.)

*§ 38. Same—proceedings when mortgage is foreclosed pending action by mortgagor—redemption. In all cases where an action has been or may be hereafter brought, and the mortgage which is sought therein to have declared satisfied and discharged of record has been foreclosed prior to the final determination thereof, the mortgagor, his heirs, representatives or assigns, may, before the time of redemption expires, for the purpose of saving his right of redemption, in case he should fail in such action, deposit with the sheriff of the proper county the amount for which the mortgaged premises were sold, together with lawful interest thereon to the time of such deposit. In making such deposit with the sheriff, said mortgagor, his heirs, representatives or assigns, shall notify said sheriff in writing that he claims said mortgage to be satisfied, and is entitled to have the same discharged of record, and that he has commenced an action to have the same declared satisfied and discharged of record, and that said sheriff is to hold and retain said money as hereinafter provided; and he shall also execute a bond or undertaking to the purchaser at such mortgage sale, with one or more sureties, and in such reasonable sum as the sheriff may fix, conditioned that he will pay all interest that may accrue and become due to said purchaser, in case such action shall fail, and deposit said bond with said sheriff; and thereupon said sheriff shall hold and retain such redemption money and bond until the final determination of such action, and such deposit shall be deemed and held to be, and is, a redemption from such foreclosure. If, upon the final determination of such action, the plaintiff fails to have said mortgage declared satisfied, in whole or in part, such sheriff shall pay over said money so deposited with him, or so much thereof as he may have been adjudged to be entitled to, and deliver said bond to the mortgagee, or his representatives or assigns, who may be entitled to the same; but if the mortgagor or either of them shall in such action have succeeded, in whole or in part, the said sheriff shall repay said redemption money, or so much thereof as the purchaser or mortgagee is not entitled to, to said mortgagor or either of them, who may be entitled to the same, with said bond. The remedy herein provided for shall be deemed to be cumulative, and in addition to other remedies now existing, (1876, c. 38, § 1.)

RECORD OF LISTS OF RAILROAD LANDS.

*§ 39. List of lands to be furnished register of deeds. The different railroad companies in this state who have received lands from the state to aid in the construction of their respective lines of railroad, shall cause to be prepared at their own expense, and transmit to the register of deeds of the various counties within which their respective lands are situated, full and complete lists, according to government surveys, of the lands so conveyed to them, lying within such counties respectively. (1875, c. 97, § 1.)

*§ 40. List to be examined and certified by auditor of state. Such lists, when so prepared, shall be carefully examined and compared by the state auditor with the original lists in his office, transmitted by the interior department of the general government, and, when corrected and revised by him, shall have appended thereto his certificate that the same is a full, correct and accurate list of the lands certified to the state, and by the state conveyed to said railroad companies respectively, situated within the limits of such county. (*Id.* § 2.)

*§ 41. List to be a public record—evidence of title. Such lists, when so prepared by said companies and certified by the said state auditor, and by said companies transmitted to the register of deeds of the different counties, shall be by such register kept as a part of the public records of said counties respectively, and shall be

prima facie evidence of the title of such railroad companies to the lands therein described. (1875, c. 97, § 3.)

*§ 42. Act applies to all land grants. This act shall apply to all lands that have heretofore been conveyed to the different railroad companies of this state, or that may hereafter be conveyed to them, for the purpose of aiding in the construction of their different lines of road. (*Id.* § 4.)

*§ 43. Deeds under blank powers of attorney. That any power of attorney for the conveyance of real estate, heretofore executed in blank, or with the name of the grantee of the power omitted therefrom at the time of such execution, and delivered to some person with intention to have the same take effect, shall, if afterward filled out with the name of some person to execute such power, be deemed to be and be as valid and effectual, for all purposes, as if such name had been inserted therein before the execution thereof; and when any deed of real estate has heretofore been or shall hereafter be executed under or by virtue of any such power, the person or persons so executing such power of attorney, and all persons claiming by, through or under him or them, shall be forever barred and estopped from alleging in any pleading, or proving upon trial in any cause or proceeding, the fact that such power was so executed in blank. (1877, c. 101, § 1.)

22 M. 417.

CHAPTER XLI.

FRAUDS.

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TITLE 1.

CONVEYANCES OF LANDS FRAUDULENT AS AGAINST PURCHASERS.

§ 1. Conveyances made to defraud purchasers to be void. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon