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THE  
REVISED STATUTES,  
OF THE  
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE  
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

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tions may be de-  
ferred in equity.

defective execution of any power, shall be entitled to the same relief in equity as similar purchasers claiming under a defective conveyance from an actual owner.

Powers to sell con-  
tained in mortga-  
ges.

SEC. 60. When a power to sell lands, shall be given to the grantee in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person who by assignment or otherwise, shall become entitled to the money so secured to be paid.

Application of this  
chapter.

SEC. 61. The provisions of this chapter shall not extend to a simple power of attorney, to convey lands in the name and for the benefit of the owner.

Terms "grantor of  
a power," and  
"grantee of a pow-  
er," defined.

SEC. 62. The term "grantor of a power" is used in this chapter as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant, devise, or reservation.

CHAPTER 46.

OF ALIENATION BY DEED, OF THE PROOF AND RE-  
CORDING OF CONVEYANCES, AND THE CANCELING  
OF MORTGAGES.

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2. Conveyance by husband and wife.
3. Deed of quit claim, &c., effect of conveyance by.
4. Conveyance by tenant for life or years, &c.
5. No covenant to be implied in conveyances.
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17. Proceedings on refusal of grantor residing in this territory to acknowledge deed.
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SECTION

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36. How mortgage may be discharged.
37. How mortgage may be discharged.
38. Certificate and acknowledgment to be recorded.
39. Liability of mortgagee, &c., for neglect to discharge mortgage.

SEC. 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

Conveyance of land may be made by deed.

SEC. 2. A husband and wife 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 were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

Conveyance by husband and wife.

SEC. 3. A deed of quit claim and release of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.

Deed of quit claim, &c., effect of conveyance by.

SEC. 4. 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.

Conveyance by tenant for life or years, &c.

SEC. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

No covenant to be implied in conveyances.

SEC. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall be given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Same of mortgages, &c.

SEC. 7. No grant or conveyance of lands, or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another claiming adversely.

Conveyance of land adversely possessed.

SEC. 8. Deeds executed within this territory, of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the person executing such deeds may acknowledge the execution thereof, before any judge or commissioner of a court of record, or before any notary public or justice of the peace within the territory; and the officer taking such acknowledgment, shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

Execution and acknowledgment of deed.

SEC. 9. If any such deed shall be executed in any other state, territory, or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this territory, for such purpose.

Deeds, how executed and acknowledged in other states.

SEC. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district 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 believes the signature of such person subscribed thereto, to be genuine; and that the deed is executed and acknowledged according to the laws of such state, territory or district.

How acknowledgment authenticated.

SEC. 11. If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or be-

Deeds executed in foreign country.

fore any minister plenipotentiary, minister extraordinary, minister resident, charge des 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.

Acknowledgment by married women residing in this territory.

SEC. 12. When any married woman residing in this territory, shall join with her husband in a deed of conveyance of real estate, situate within this territory, the acknowledgment of the wife shall be taken separately apart from her husband, and she shall acknowledge that she executed such deed freely and without any fear or compulsion from any one.

Conveyance by married women residing out of this territory.

SEC. 13. When any married woman not residing in this territory, shall join with her husband in any conveyance of real estate, situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

Proof of execution by subscribing witness, when and how to be made.

SEC. 14. When any grantor shall die, or depart from, or reside out of this territory, not having acknowledged his deed, the due execution thereof, may be proved by any competent subscribing witness thereto, before any court of record in this territory.

In case of death of subscribing witnesses.

SEC. 15. If all the subscribing witnesses to such deed shall also be dead or out of this territory, the same may be proved before any court of record in this territory, by proving the hand writing of the grantor, and of any subscribing witness thereto.

Proceedings on refusal of grantor residing in this territory to acknowledge deed.

SEC. 16. If any grantor residing in this territory, shall refuse 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.

Proceedings on refusal of grantor residing in this territory to acknowledge deed.

SEC. 17. 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 presence or absence of the grantor, as the fact may be.

When execution may be proved before court of record, in case of death of witnesses, &c.

SEC. 18. If any grantor residing in this territory, shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead or out of the territory, it may be proved before any court of record in this territory, by proving the hand writing 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.

Subpœnas for witnesses.

SEC. 19. The court or justice before whom any deed may be 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 territory.

Punishment for refusing to appear or to answer, &c.

SEC. 20. Every person who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer on oath touching the matters aforesaid, shall be liable to the injured party in the sum of one hundred dollars damage, 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 shall submit to answer upon oath as aforesaid.

SEC. 21. 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.

Filing copy of deed with register, effect of &c.

SEC. 22. If, at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed shall be 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 shall within that time be duly proved and recorded.

When effect of filing to continue.

SEC. 23. 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 tenth section of this chapter shall entitle such deed, with the certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the lands lie.

Certificate to entitle deed to be recorded.

SEC. 24. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided by law, 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 shall be first duly recorded.

Conveyance not recorded, void as against subsequent purchasers in good faith, &c.

SEC. 25. Deeds of pews or 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 clerks shall receive the same fees as the register of deeds is entitled to for similar services.

Recording deeds of pews and slips in churches.

SEC. 26. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this territory without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

Effect of conveyances and other instruments and transcripts thereof as evidence.

SEC. 27. 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 shall have been recorded in the registry of deeds of the county where the lands lie.

When deed not defeated by defeasance.

SEC. 28. 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.

Recording assignment of mortgage not deemed notice to mortgagor.

SEC. 29. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration; and also every assignee of a mortgage, or lease, or other conditional estate.

Definition of term "purchaser," as used in this chapter.

SEC. 30. The term "conveyance," as used in this chapter, shall be

Definition of term

"conveyance," as used in this chapter.

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.

Construction of preceding section; letters of attorney, &c.

SEC. 31. 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.

How letters of attorney revoked.

SEC. 32. 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 be also recorded in the same office in which the instrument containing the power was recorded.

Transcribing records on division, &c., of county.

SEC. 33. When a new county shall be 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.

Scroll or device used as a seal.

SEC. 34. A scroll or device used as a seal upon any deed of 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 such official seals, as are or may be provided for by law.

Effect of deeds, &c. acknowledged according to law in force.

SEC. 35. All conveyances of real estate, heretofore made and acknowledged, or proved in accordance with the laws of this territory, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

How mortgage may be discharged.

SEC. 36. Any mortgage that has been, or hereafter may be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release, duly acknowledged and recorded.

How mortgage may be discharged.

SEC. 37. Any mortgage shall be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Certificate and acknowledgment to be recorded.

SEC. 38. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the dis-

charge of such mortgage made by the register upon the record thereof.

SEC. 39. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance of the condition of the mortgage, whether before or after a breach thereof, shall for the space of seven 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 or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action.

Liability of mortgagee, &c., for neglect to discharge mortgage.

CHAPTER 47.

OF RECORDING CONTRACTS RELATING TO LAND.

SECTION

- 1. When bonds and contracts concerning lands may be recorded.
- 2. Duty of register of deeds.

SECTION

- 3. Effect of recorded bonds and contracts.
- 3. Registers' fees for recording same.

SEC. 1. All bonds, contracts, or agreements concerning any interest in lands in this territory, made in writing under seal, attested by one or more witnesses, and acknowledged before some person authorized by law to take acknowledgments of deeds, may be recorded in the office of register of deeds of the county where the lands lie.

When bonds and contracts concerning lands may be recorded.

SEC. 2. It shall be the duty of the register of deeds in each county within this territory, to receive and record at length, all such bonds, contracts, or agreements, as shall be left with him for that purpose.

Duty of register of deeds.

SEC. 3. Each an every bond, contract, or agreement, made and recorded according to the provisions of the first section of this chapter, shall be notice to, and take precedence of any subsequent purchaser or purchasers, and shall operate as a lien upon the lands therein described, according to its import and meaning.

Effect of recorded bonds and contracts.

SEC. 4. The said register shall receive the same compensation for recording all papers contemplated by this chapter, as is now allowed by law, for recording deeds and mortgages.

Registers' fees for recording same.