

THE 79
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL
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CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
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Sections 1 to 4821 of the General Statutes

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CHAPTER 42.

OFFICIAL TRUSTS.

§ 4255. Corporate authorities or judge to convey lands.

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When the corporate authorities of any town, or the judge of the district court for any county in which any town is situated, enter, at the proper land-office, the land or any part of the land settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of congress, entitled "An act for the relief of the citizens of towns upon the lands of the United States under certain circumstances," passed May 23d, A. D. 1854, such corporate authorities, or judge (as the case may be), shall dispose of and convey the title to such lands, or to the several blocks, lots, parcels or shares thereof, to the persons hereinafter described, and in the manner hereinafter specified.

(G. S. 1866, c. 42, § 1; G. S. 1878, c. 42, § 1.)

A county or other municipal corporation, capable of acquiring and holding real estate, if in the actual occupancy of any part of a town-site, is capable of becoming a beneficiary under the provisions of the act of congress of May 23, 1844, commonly known as the "Town-Site Act." *County of Blue Earth v. St. Paul, etc., R. Co.*, 28 Minn. 503, 11 N. W. Rep. 73.

The entry of the town-site relates back to the date of the proof, and one settling upon the land after that date cannot thereby acquire the right of an occupant entitled to the benefit of the act. *Lech v. Rauch*, 3 Minn. 448, (Gil. 333.) See, also, *Foster v. Bailey*, 1 Minn. 436, (Gil. 310.)

See, also, *Taylor v. Winona & St. P. R. Co.*, cited in note to § 4256.

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

§ 4256. Conveyances, when and how executed.

Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in the said act of congress, shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same, to the person entitled thereto, according to his rights or interest in the same, as they existed, in law or equity, at the time of the entry of such lands; and when any parcel or share of such lands is occupied or possessed by one or more persons claiming the same by grant, lease or sale from one or more other persons, the respective rights and interests of such persons in relation to each other in the same shall not be changed or impaired by any such conveyance. Every deed of conveyance by such corporate authorities, or judge, pursuant to the provisions of this chapter, shall be so executed and acknowledged as to admit the same to be recorded; and if made previous to the issuing of the patent of such lands, it shall contain a covenant that the grantor shall, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further deed of conveyance as may be or become necessary to fully vest and perfect the title to the lands therein described, in the grantee, his heirs or assigns.

(G. S. 1866, c. 42, § 2; G. S. 1878, c. 42, § 2.)

When the judge, as trustee, executes an official deed, it is presumed that he complied with all statutory prerequisites, and conveyed to the proper party; and a stranger to the title cannot question the validity or regularity of the deed in these respects. *Taylor v. Winona & St. P. R. Co.*, 45 Minn. 66, 47 N. W. Rep. 453; *Lamm v. Chicago, St. P., M. & O. R. Co.*, 45 Minn. 71, 47 N. W. Rep. 455.

The trustee may make deeds after entry made and before patent issued, and the patent relates back to the date of the entry, and no further deed is necessary. *Taylor v. Winona & St. P. R. Co.*, supra.

It must appear that the judge was trustee—that is, had entered the land—when he made the deed; and a recital of that fact is not evidence against a stranger. *Id.*

§ 4257. Entry of lands—Notice to be given.

Within thirty days after the entry of such lands, the corporate authorities, or judge, entering the same, shall give public notice of such entry, by posting notice thereof in at least three public places in such town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or in case there is no such newspaper, then in some newspaper printed and published at the seat of government. Such notice shall be so published once in each week, for at least three successive weeks, and shall contain an accurate copy of the description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase-money thereof, given by the land-officers at the time of the entry.

(G. S. 1866, c. 42, § 3; G. S. 1878, c. 42, § 3.)

§ 4258. Claimants to file statement.

Every person, association or company, claiming to be entitled to such lands, or any block, lot, share or parcel thereof, shall, within sixty days after the first publication of such notice, in person, or by his duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specific right, interest or estate therein which he claims to be entitled to receive, and deliver the same to or into the office of such corporate authorities, or judge; and all persons failing to sign and deliver such statement, within the time specified in this section, shall, as against any adverse claimants, be forever barred the right of claiming or recovering such lands, or any interest or estate therein, in any court of law or equity.

(G. S. 1866, c. 42, § 4; G. S. 1878, c. 42, § 4.)

That this section does not include minors, so as to bar them in case of failure to file a statement, see *Coy v. Coy*, 15 Minn. 119, (Gil. 90.)

This section does not require that a claim for lands dedicated for streets, etc., in a town-site, should be filed on behalf of the public with the trustee. *Village of Mankato v. Willard*, 13 Minn. 13, (Gil. 1.)

§ 4259. Adverse claims, how adjusted—Action.

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In case there are adverse claimants to such lands, or to any part, parcel or share thereof, and the controversy is not settled by agreement in writing between the parties thereto, such controversy may be determined by voluntary submission thereof in writing, by the parties, to reference or arbitration, and by the written award of the arbitrators. In case any such controversy is not so settled or determined within three months from the time of the entry of the land, either of the claimants may bring a civil action against the adverse claimant, in the district court of the county in which the lands are situated.

(G. S. 1866, c. 42, § 5; G. S. 1878, c. 42, § 5.)

§ 4260. Evidence on trial of action.

Upon the trial in such action, either party may give in evidence, the statement mentioned in the fourth section of this chapter, deposited by the other, or by the person under whom he claims, with the corporate authorities, or judge, holding the title to the lands in controversy therein; and the person who made the first claim to and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, shall, in any such action, be deemed to have the right to such lands.

(G. S. 1866, c. 42, § 6; G. S. 1878, c. 42, § 6.)

§ 4261. Summons to adverse claimants—Hearing—Evidence—Appeals.

In case any controversy between adverse claimants to such lands is not settled or determined by agreement or arbitration, within the time allowed therefor as hereinbefore specified, and is not prosecuted within one month after the expiration of such time, if the title to such land is held by such judge, he shall summon the adverse claimants to appear before him, at a time and place mentioned in the summons, and which place shall be within the county in which such lands are situated, and make their proof and allegations in reference to such claims. At the time and place of the return of such

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summons, the judge shall, if the parties appear, proceed to hear their proof and allegations, and shall thereupon determine in writing the controversy between them. Upon such hearing the statements of the parties respectively, deposited with such judge, as required by the third section of this chapter, shall stand for their pleadings, and either party may use in evidence the statement made by the other, or by the person under whom he claims. The evidence of the witnesses sworn upon such trial shall be reduced to writing, and any witness who shall, upon such hearing, wilfully and knowingly testify falsely, shall be deemed guilty of perjury. Any such judge, or any justice of the peace; may issue subpoenas to compel the attendance of witnesses upon such hearing; and any person served with such subpoena, and failing to appear, shall be deemed guilty of contempt of the said judge, and may be attached to answer such contempt, and to testify in the case. There shall be no postponement in the hearing of such case except for cause. The summons issued by the judge, and all subpoenas issued in such cases, shall be directed and served in the same manner as in civil actions, and the fees of officers and witnesses in such cases shall be the same as for the like services in civil actions in courts of record. Either party in any such case may appeal from the determination of such judge therein, to the supreme court; in the same manner that a party may appeal from a judgment in a civil action in a district court. The judge shall make return to such appeal, and such return shall consist of the statements standing for the pleadings in the case, the evidence, and the determination of the judge in writing. In case any party lawfully summoned to appear before such judge fails to appear at the time and place mentioned in the summons, he shall be deemed to have waived and relinquished all right, title, and interest and estate in the land so in controversy, and each and every piece, parcel and share thereof, and shall be forever barred the right of asserting or claiming any right, title, interest or estate therein.

(G. S. 1866, c. 42, § 7; G. S. 1878, c. 42, § 7.)

§ 4262. Action by corporate authorities—Pleadings.

If in a case mentioned in the preceding section, the title to any such land is held by the corporate authorities of any town, such corporate authorities may bring an action in the district court of the county in which the lands in controversy are situated, against the adverse claimants thereto, to settle and determine such controversy. The complaint in such case shall be in the nature of a bill of interpleader, and shall set forth a description of the lands thus claimed by adverse claimants, and the character and extent of the right; interest or estate therein claimed by each, as the same appears by the statements deposited with such authorities, pursuant to section three of this chapter, and shall pray that the several adverse claimants may be required to appear in such court and prosecute their claims, or be forever barred thereof. Any party to such action who fails to appear and answer such complaint, and thus prosecute his claim to the land described therein, pursuant to the summons in such case and the practice of the district court, shall be forever barred of the right to assert any claim or title to such lands adverse to the other claimants, elsewhere or in any court whatsoever. If the adverse claimants to the lands described in the complaint appear, they shall respectively answer such complaint, and either disclaim any right, title, interest or estate in the land therein described, or set forth the nature, character and extent of the title, interest or estate which they respectively claim therein.

(G. S. 1866, c. 42, § 8; G. S. 1878, c. 42, § 8.)

§ 4263. Statement of expense—Charge on lands.

As soon as may be after the expiration of sixty days from the first publication of the notice mentioned in the third section of this chapter, the corporate authorities, or judge, holding the title to the lands described in such notice, shall make a true statement in writing, containing a true account of moneys by him or them expended in the acquisition of the title, and the administration or execution of the trust to that time, including all moneys paid by him or them for the purchase of such lands, all necessary travelling expenses, all moneys paid for posting and publishing such notices, and for proof thereof, and for

all other necessary and proper expenses incident to such trust, and also a true account of his or their charges for time and services employed in the business of such trust to that time. The whole amount of such account for moneys, and reasonable charges for compensation, shall be a charge upon the lands so held in trust in favor of the trustee, and shall be paid by the several claimants entitled to such lands, in proportion to the several quantities or shares thereof to which they are respectively entitled.

(G. S. 1866, c. 42, § 9; G. S. 1878, c. 42, § 9.)

§ 4264. Person entitled to deed to pay charges.

Before the corporate authorities, or judge, holding any such lands in trust as aforesaid, shall be required to execute, acknowledge, or deliver any deed of conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such deed, such person shall pay or tender to him or them the sum of money chargeable upon the part thereof to be conveyed by such deed, according to the statement or account mentioned in the ninth section of this chapter, the amount to be determined by the proportion which the quantity of the land to be described in such deed bears to the whole quantity of the land of which it is a part, compared with the whole amount thus charged upon the whole quantity of land, together with interest on each of the money items of such account at the rate of twelve per centum per annum from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such deed, and the fees of the officers taking the acknowledgment thereof.

(G. S. 1866, c. 42, § 10; G. S. 1878, c. 42, § 10.)

§ 4265. Conveyances, when to be executed—When not.

After the expiration of sixty days from the time of the first publication of the notice mentioned in the third section of this chapter, the corporate authorities, or judge, holding the title to the lands described therein, shall, upon a reasonable demand or request, and upon the payment or tender to him or them of the moneys mentioned in the preceding section, execute, acknowledge and deliver to each and every claimant, association or company of claimants of such lands, or of any lot, block, parcel or share thereof, a deed of conveyance thereof, as prescribed in the second section of this chapter, and according to the statement made and deposited by him or them pursuant to the third section: provided, however, that no such deed of conveyance shall be executed, acknowledged or delivered for any part, lot, block, or share of such lands to which there are adverse or contesting claimants, until the controversy thereon is settled or determined in the manner hereinbefore described; and whenever any such controversy is so settled or determined, the said corporate authorities, or judge, shall, upon the like demand or request, and the like payment or tender, and by the like deed of conveyance, convey the land, or interest or share therein, the right to which has been thus ascertained, to the person thereby determined to be entitled to the same. That in all cases when no such controversy has been had and when no such conveyance has been made of any lands so entered as a town site, or any certain lots, blocks, parcels or shares of said lands by such corporate authorities or the judge holding the title to the land, then upon the application of any person or persons claiming the same the judge of the district court in whose district said lands may be, shall on such notice as he shall prescribe, summon before him such claimant or claimants, and cause such proof to be adduced by oral testimony, affidavit, deposition or otherwise, as shall be satisfactory to him, as to the person or persons properly entitled to the land, and when it shall thus be determined to his satisfaction who are the person or persons thus entitled to such lands, lots, blocks, parcels or shares of said lands, then the said judge shall, upon like demand or request and like payment or tender, execute to such person or persons a deed of conveyance as prescribed in the second section of this chapter.

(G. S. 1866, c. 42, § 11; G. S. 1878, c. 42, § 11; as amended 1889, c. 132, § 1.)

Amended as to Blue Earth county by adding the following proviso: "And provided, further, that in case no such conveyance or controversy, of or concerning any certain lots, blocks, parcels, or shares of said lands has been made or had, then, upon the ap-

plication of any person or persons claiming the same, the judge of the district court shall, on such notice as he shall prescribe, summon before him such claimant or claimants, and all other claimants thereto, and cause such proofs to be adduced by oral testimony, affidavit, deposition, or otherwise, as shall be satisfactory to him, as to the person or persons properly entitled to the same; and whenever it shall be thus determined, to his satisfaction, who are the person or persons thus entitled to any such lots, blocks, parcels, or shares of said lands, then the said judge shall, upon like demand or request, and like payment or tender, execute to such person or persons a deed of conveyance thereof, as prescribed in the second section of this chapter." (1885, c. 24, § 1.)

§ 4266. Judge shall be seized of title to lands, when.

In case any judge who enters any such lands under the provisions of the said act of congress, and thus becomes the sole trustee thereof, is possessed of or entitled to the same, or any part, lot, block or share thereof, according to and by virtue of the provisions of this chapter, and his claim or right is not claimed adversely to him by any person, he shall be seized and possessed of the title thereto, and estate therein, to his own use in fee-simple absolute, free and discharged of such trust; and no conveyance, other than the patent of the lands including the same, shall be necessary to perfect his absolute title thereto. In case any such land, or interest or share in such land, so claimed by such judge, is claimed by any other person adversely to him, the conflicting claims between him and such other person shall be adjusted or determined by settlement, arbitration or action, as hereinbefore prescribed; and in case of action, the issues therein shall be tried before some other judge who is disinterested.

(G. S. 1866, c. 42, § 12; G. S. 1878, c. 42, § 12.)

§ 4267. Title to lands, from what time held.

For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities, or judge, hereinbefore mentioned, shall be deemed to possess and hold the title to said lands, in trust, from the time of the entry thereof.

(G. S. 1866, c. 42, § 13; G. S. 1878, c. 42, § 13.)

§ 4268. Costs, how regulated.

The costs in the actions mentioned in this chapter, and in proceedings before the judge as aforesaid, shall be regulated and recoverable as in other civil actions.

(G. S. 1866, c. 42, § 14; G. S. 1878, c. 42, § 14.)

§ 4269. Reconveyance pursuant to contracts.

Every person in whom the title to any lands shall be declared to be vested under and by the provisions of this chapter, shall reconvey, by good and sufficient conveyance, to any person claiming by, through or under him pursuant to any contract or agreement made with such person, upon a reasonable demand therefor, and upon the payment to said person of any moneys that may be due or unpaid to him from the person making such demand; and in case of refusal so to convey, said contract or agreement may be enforced by action against said person, according to law.

(G. S. 1866, c. 42, § 15; G. S. 1878, c. 42, § 15.)

§ 4270. Successor of judge to complete execution of trust.

The successor in office of any judge entering lands under the provisions of this chapter, shall, when the trust has not been fully executed, succeed to said trust, and have authority to execute the same as fully as his predecessor might have done while in office.

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(G. S. 1866, c. 42, § 16; G. S. 1878, c. 42, § 16.)

Amended as to Blue Earth, St. Louis, and Nicollet counties by adding the following: "Neither the corporate authorities nor the judge so entering said lands, nor their or his successors in office having fully executed such trust, the judge of the district court shall succeed to such trust, as to all such trust lands within his judicial district, and he shall have authority and it shall be his duty to execute the same and make all conveyances in this chapter prescribed, as fully as if he had originally entered such lands in trust; Provided, That these amendments shall apply only to the counties of Blue Earth, St. Louis and Nicollet; and provided, further, that nothing contained in these amendments shall be construed to apply to or in any manner affect that part or por-

tion of the townsite of Shelbyville, in said county of Blue Earth, to which J. S. Wallace has or claims some estate, right, title or interest, unless he consents thereto." (1889, c. 132, § 2.)

§ 4271. First district—Powers of judge.

That Hon. Francis M. Crosby, judge of the first judicial district of the state of Minnesota, be, and he hereby is authorized and fully empowered to execute and discharge within said judicial district all duties and trusts in like manner and subject to the same requirements as are required by the act entitled "An act prescribing rules and regulations for the execution of the trust arising under the act of congress entitled 'An act for the relief of citizens of towns upon lands of the United States under certain circumstances,'" approved March third, one thousand eight hundred and fifty-five, and the several acts amendatory thereof.

(1874, c. 82, § 1; G. S. 1878, c. 42, § 17.)

§ 4272. Same—Conveyances legalized.

That all deeds of lands heretofore made and executed by the said Francis M. Crosby, judge as aforesaid, under the trust by said several acts created, be and they hereby are declared to be as legal and valid conveyances of the lands therein described as if executed by the original trustee; and the record of any such deeds are hereby declared to be legal and competent evidence from the time of the record thereof, in like manner as the record of other deeds are or may be by law made evidence.

(1874, c. 82, § 2; G. S. 1878, c. 42, § 18.)

§ 4273. Eleventh district—Powers of first judge.

All powers, authority and official trusts heretofore at any time vested in the town council of the town of Duluth, or in the common council of the city of Duluth, under the act of congress "for the relief of citizens of towns upon lands of the United States, under certain circumstances," approved May twenty-third, A. D. one thousand eight hundred and fifty-four, and by or under legislation of this state passed in pursuance or aid of said act of congress, are hereby transferred to and vested in the first judge of the district court for the eleventh judicial district.

(1889, c. 159, § 1.)

¹An act to vest in the first judge of the district court for the eleventh judicial district certain powers, authority and official trusts heretofore vested in the town council of the town of Duluth, and in the common council of the city of Duluth. Approved April 24, 1889.