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to the interval between the times of payment; and, in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice in writing to quit, given by the landlord to the tenant, is sufficient to determine the lease. (5873)

1. **When no default in rent**—Duty to serve notice reciprocal. Notice must terminate with the month, quarter or year, according to the nature of the tenancy. A present demand or notice to quit is insufficient (50–116, 52+384; 50–139, 52+390; 47–1, 49+327; 57–230, 58+990; 57–164, 58+989; 81–445, 84+454; 82–244, 84+800; 83–336, 86+335; 88–116, 92+521. See 57–223, 58+981; 74–333, 77+231). Applicable where no term is fixed in the lease (24–172); and to tenancies from year to year (47–1, 49+327; 70–102, 72+841). Substantial not technical accuracy required in notice (81–445, 84+454. See 83–336, 86+335). Where, in a tenancy from month to month, the month begins on the first day, a notice served a month before the day named in it, requiring the tenant to quit on the last day of the month, is sufficient (31–392, 18+101). A notice to quit only a part of demised premises where the whole thereof are held under one lease is insufficient (81–445, 84+454). Statutory notice limits time to remove fixtures (37–459, 35+267).

2. **When default in rent**—Notice to quit not a condition precedent to action under § 4038 for possession for non-payment of rent (72–100, 75+114; 74–279, 77+3; 22–37; 21–398).

3. **Mode of service**—Should be personal when practicable. Service by mail sufficient if notice actually reaches tenant (81–445, 84+454). Service on agent of landlord held sufficient (81–291, 84+107).

3333. Urban real estate—Holding over—When the lessee or tenant of urban real estate, or any interest therein, holds over and retains possession thereof after expiration of the term of the lease without express contract with the owner, no tenancy for any other period than the shortest interval between the times of payment of rent under the terms of the expired lease shall be implied. ('01 c. 31)

89–348, 94+1084; 91–513, 98+648; 93–115, 100+660.

CHAPTER 63

CONVEYANCES OF REAL ESTATE

3334
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114-NW 746

3334. Terms defined—Mortgages, etc., included—The word "purchaser," as used in this chapter, shall 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, lease, or other conditional estate. The word "conveyance," as so used, shall include every instrument in writing whereby any interest in real estate is created, aliened, mortgaged, or assigned, or by which the title thereto may be affected in law or in equity, except wills, leases for a term not exceeding three years, and powers of attorney. (4184–4186; '01 c. 37)

Held "conveyances" and within recording act: a mortgage (18–232, 212; 22–137); an assignment of a mortgage (7–176, 120; 104+237); a party-wall agreement (23–34); a contract for sale of land (37–61, 33+216); a release of land from a mortgage (22–532; 27–396, 7+826); a release of a judgment lien (39–382, 40+368); an assignment of a certificate of sale on foreclosure (59–285, 61+144); a deed granting a permanent right of way (34–493, 26+732); a deed by an "occupant" under the federal town site act (3–119, 69); a grant of a right to cut and remove timber (81–15, 83+471; 93–505, 101+959); a deed from a husband to a wife (10–50, 32). Formerly executory contracts for the sale of land were excepted (15–59, 40; 39–420, 40+557; 70–467, 73+404). Leases excepted (8–524, 467). The term "purchaser" includes an assignee of a mortgage (7–176, 120; 18–232, 212) and an assignee of an executory contract for sale of land (70–467, 73+404). Cited (3–119, 69; 57–452, 59+533; 66–219, 68+1068).

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3335. Conveyances by husband and wife—Powers of attorney—A husband and wife, by their joint deed, may convey the real estate of either. The husband, by his separate deed, may convey any real estate owned by him, except the homestead, subject to the rights of his wife therein; and the wife, by her separate deed, may relinquish her rights therein when so conveyed, and without such conveyance she may, by separate deed or instrument, release her dower in lands of a former deceased husband. Real estate owned by the wife

shall be conveyed only by deed in which her husband joins; but either spouse may separately appoint an attorney to sell or convey any real estate owned by such spouse, or to join in any conveyance made by or for the other. The minority of the wife shall not invalidate any conveyance executed by her. (4161)

A deed by a wife of her separate property in which her husband does not join is void (G. S. 1894 § 5532; 20–219, 198; 26–429, 4+819; 34–272, 25+596, 26+121; 37–61, 33+216; 48–93, 50+1025; 40–441, 42+294; 57–18, 58+685; 43–242, 45+229; 48–18, 50+1018; 68–260, 71+22; 82–530, 85+548; 83–206, 86+11; 90–244, 95+1120. See 75–402, 78+110, 671). Section 3607 is seemingly inconsistent with this rule. A wife may join in the covenants of her husband's deed and render herself liable thereon, but she need not do so to bar her interest (48–408, 51+379). The minority of a wife does not invalidate a mortgage executed by her (43–517, 45+1100. See, under a former statute, 21–196).

3336. Separate deeds by husband and wife—Curative—Whenever either a husband or wife has heretofore separately executed a conveyance of real estate belonging to the grantor named therein, and the other spouse has afterwards separately executed a conveyance of the same real estate to the same grantee or to any of his assigns, the conveyances are hereby declared to be valid, and any record thereof heretofore made shall have the same effect as if the conveyance had been by a single instrument executed by the husband and wife: Provided, that this section shall not apply to any case in litigation at the time of the taking effect of the Revised Laws. (7583; '95 cc. 208, 209; '97 c. 77)

3337. Power of attorney by married woman—Curative—Whenever, pursuant to a power of attorney executed by a married woman, any conveyance has heretofore been executed in which her husband joined in person or by attorney, such conveyance is hereby declared to be valid, and any record thereof heretofore made shall have the same effect as if her husband had joined in the execution of the power: Provided, that this section shall not apply to any case in litigation at the time of the taking effect of the Revised Laws. (7558, 7568; '95 c. 213; '97 c. 268)

3338. Husband or wife of insane person—The husband or wife of any person who has been adjudged insane or incompetent to transact his or her business, or manage his or her estate, where such insanity or incompetency has continued for three years, may by separate deed convey any real estate, the title to which is in such husband or wife, as fully as he or she could do if unmarried: Provided, if the insane husband or wife be under guardianship the guardian's letter of authority or a duly certified copy thereof shall be recorded in the office of the register of deeds of the county in which said real estate shall be situated; and such guardian's approval of the conveyance shall be indorsed thereon, without which approval such conveyance shall not affect the rights of the insane husband or wife. But this section shall not authorize the conveyance of a homestead unless a guardian of such insane person has been appointed by the probate court of the proper county and such guardian shall consent in writing to such conveyance after being authorized to do so by order of such probate court. (4161, 4603, 5532, 5535)

3339. Conveyance by corporation—Resolution appointing attorney—A corporation may convey its real estate by an attorney appointed by resolution of its directors or governing board, a copy of which, certified by its clerk or secretary, may be filed for record with the register of deeds. (4161, 4162)

20–531, 474.

3340. Quitclaim—Words of inheritance unnecessary to pass fee—A deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale. The word "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple. Every conveyance by deed without words of inheritance therein, executed prior to March 2, 1875, shall be received as prima facie proof of an intention on the part of the parties thereto to convey an estate in fee simple. (4163)

Nature of quitclaim deeds (88–469, 93+656). On same footing as deeds of bargain and sale (38–315, 37+448). What passes by (88–284, 92+1117; 88–469, 93+656; 16–26, 14; 18–405, 365; 30–372, 15+665; 16–151, 135; 4–282, 201).

3341. Warranty and quitclaim deeds—Forms—Warranty and quitclaim deeds may be substantially in the following forms:

WARRANTY DEED

A. B., grantor, of (here insert the place of residence), for and in consideration of (here insert the consideration), conveys and warrants to C. D., grantee, of (here insert the place of residence), the following described real estate in the county of....., in the state of Minnesota: (Here describe the premises.)

Dated this.....day of....., 19....

[Signature] .....

Every such instrument, duly executed as required by law, shall be a conveyance in fee simple of the premises described to the grantee, his heirs and assigns, with covenants on the part of the grantor, his heirs and personal representatives, that he is lawfully seized of the premises in fee simple, and has good right to convey the same; that the premises are free from all incumbrances; that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof; and that he will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed.

QUITCLAIM DEED

A. B., grantor, of (here insert the place of residence), for the consideration of (here insert the consideration), conveys and quitclaims to C. D., the grantee, of (here insert the place of residence), all interest in the following described real estate in the county of....., in the state of Minnesota: (Here describe the premises.)

Dated this.....day of....., 19....

[Signature] .....

Every such instrument, duly executed, shall be a conveyance to the grantee, his heirs and assigns, of all right, title, and interest of the grantor in the premises described, but shall not extend to after acquired title, unless words expressing such intention be added. ('01 c. 197 ss. 1, 2)

3342. No covenants implied—Adverse holding—Except as provided in § 3341, no covenant shall be implied in any conveyance or mortgage, whether such conveyance contains special covenants or not. Nor shall any grant or conveyance of lands, or of any 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. (4165)

23-34; 28-285, 9+805; 31-536, 18+753; 34-118, 24+369; 42-91, 43+839.

3343. Conveyance by tenant for life, etc.—No forfeiture—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. (4164)

3344. Grantor to make known incumbrance—In all conveyances by deed or mortgage of real estate 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 authority 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 incumbrance, so far as he has knowledge thereof. (4194)

28-285, 9+805; 18-232, 212; 48-408, 51+379.

3345. 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, whether known to him or not, appears of record to exist thereon, but does not exist in fact, shall be liable

in an action of contract to the grantee, his heirs, executors, administrators, successors, or assigns, for all damages sustained in removing the same. (4195)

34–382, 26+4; 39–32, 38+755; 18–232, 212.

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3346. Conveyances, how executed—All conveyances made within the state of any interest in lands therein shall be executed in the presence of two witnesses, who shall subscribe their names thereto as such. Such conveyances, made out of the state, may be executed as above provided, or according to the laws of the place of execution. (4166; '97 c. 141; '01 c. 372)

A conveyance with only one witness or with none is valid as between the parties and as to third parties with notice (27–35, 6+378; 30–197, 14+889; 36–276, 30+880; 41–165, 42+870). A lease for a term not exceeding three years does not require witnesses (8–524, 467). Cited (5–323, 258).

3347. Conveyances not acknowledged—Death or removal of grantor—When any grantor dies, or departs from or resides out of the state, not having acknowledged his conveyance, the execution thereof may be proved by any competent subscribing witness thereto before any court of record; if all the subscribing witnesses are dead or out of the state, the execution may be proved before any such court by proving the handwriting of the grantor and of any subscribing witness. (4170, 4171)

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3348. Requisites to entitle to record—To entitle any conveyance, power of attorney, or other instrument affecting real estate to record, it shall be executed, acknowledged by the parties executing the same, and the acknowledgment certified, as required by law. All such instruments may be recorded in every county where any of the lands lie. (4179, 4191)

A deed appearing on its face to have been properly executed and acknowledged is entitled to record although it may be void or voidable by reason of extrinsic facts. The register has no authority to pass on the validity of deeds (42–371, 44+130). Two witnesses necessary (5–323, 258). Revision changes "party" to "parties" (See 103+889). Cited (6–89, 38; 9–230, 215; 18–232, 212).

3349. Copy of record—A 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 actually recorded therein in any county other than that in which the land described in or affected by the instrument was situated at the time of the record thereof, or authorized by law to be recorded in the office of the secretary of state or of the state auditor, certified by the proper custodian of such record to be a true copy thereof, may be recorded in any county, with the same force and effect that the original instrument would have if so recorded. (4192, 4193)

Copy of record in another state (9–230, 215).

3350. Judgments—A certified copy of any judgment, decree, or order made by any court of record within the state, affecting title to real estate or any interest therein, may be recorded in any county where any of the lands lie, in the same manner and with like effect as a conveyance. ('97 c. 76)

Kipp v. Clinger, Filed Jan. 19, 1906.

3351. Copy of will and probate—An authenticated copy of any will devising lands, or any interest therein, and of the probate thereof, shall be recorded in the office of the register of deeds of the county in which the lands lie. ('03 c. 59 s. 1)

3352. Deeds of pews—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. (4181)

3353. Action to test new county—Conveyances, where recorded—During the pendency of any action or proceeding to test the validity of the organization of a new county, all instruments affecting real estate within such county may be recorded in the original county with the same effect as if recorded in such new county. ('03 c. 193 s. 1)

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3354. Railroad lands—Lists—Every railroad company to whom lands have been or shall be conveyed by the state to aid in the construction of its road

shall prepare, at its own expense, separate lists of such lands lying within the several counties, according to the government surveys, which lists shall be compared by the auditor with the original lists in his office received from the interior department of the general government; and each list when corrected by him shall have appended thereto his certificate that the same is a correct and complete list of the lands in said county certified to the state and by it conveyed to such company. Such lists so certified shall be filed by the companies with the registers of deeds of the respective counties where such lands lie, who shall keep the same as public records, and they shall be prima facie evidence of the title of such companies. (4199–4202)

29–283, 13+127.

3355. Deeds, etc., affecting title to railroad lands—Copies—Whenever, under any law heretofore existing, any deed, mortgage, trust deed, foreclosure papers, or other instrument affecting the title to any lands heretofore owned by any railroad company has been recorded by the secretary of state, but not in the county where such lands lie, the secretary, upon application of any county board or of any person interested, shall furnish to the register of deeds certified copies of any such records affecting lands in such county, and the register shall index and record the same. Such copies and the record thereof shall have the same effect as the record of the original instruments. For services performed hereunder the secretary shall receive no fees; but the register shall receive the same fees as are allowed for other similar services, to be paid by the state. ('97 c. 274; '99 c. 255)

3356. Record deemed notice—Exception—The record as herein provided of any instrument properly recorded shall be taken and deemed notice to parties: Provided, that the record of an assignment of a mortgage shall not in itself be notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by either of them to the mortgagee. (4183, 4187)

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1. **Instrument must be "properly" recorded**—The record of an instrument not authorized to be recorded, either from the nature of its subject matter or a defect in its execution, is not constructive notice (5–323, 258; 22–137. See § 4458 Note 8). Such a record may be the source of actual notice (30–197, 14+889).

2. **Errors in recording**—Omission of seal (52–451, 55+46). Failure to index (51–421, 53+806). Misdescription of premises (21–336). Addition of false and impossible description (20–464, 419). Estoppel (61–178, 63+495).

3. **Description of premises**—If the premises are not described with reasonable certainty the record is not constructive notice and will not put third parties upon inquiry (16–126, 115; 17–485, 462; 40–319, 41–1054; 64–91, 66+131). No more can be required of a record than that it give the same information that would be furnished by inspection of the instrument recorded (20–464, 419).

4. **Conditions in deeds**—49–301, 51+905.

5. **General scope of notice**—16–126, 115; 17–485, 462; 40–319, 41+1054; 47–417, 50+528; 64–91, 66+131; 5–323, 258; 5–508, 401.

6. **Distinction between actual and constructive notice**—Constructive notice arises as an inference or presumption of law from the mere fact of record and is in law equivalent to actual notice, whether the record has been examined or not (40–319, 41+1054). If a party examines the record he has actual notice of everything appearing on its face (4–282, 201; 40–319, 41+1054).

7. **Notice of extrinsic facts**—The record is constructive notice not only of the facts appearing on its face but of all facts to which it directs attention—all facts that would be learned on such an examination as a man of ordinary prudence would be led to make by the facts appearing on its face (30–283, 15+247; 4–282, 201; 44–199, 46+332; 47–417, 50+528; 30–4, 13+907; 41–417, 43+91; 17–485, 462; 35–331, 28+923. See 40–319, 41+1054; 42–386, 44+129; 46–156, 48+677; 49–462, 52+45; 60–73, 61+1020; 47–62, 49+384; 54–56, 55+825, and cases under § 3357, Note 9).

8. **Notice to whom**—The record of an instrument is notice only to those who are bound to search for it. A purchaser is not charged with notice of all matters of record but only of such as the title deeds in his chain of title show on their face or direct him to. The record is notice to all the world only in the sense that it is open to all and is notice to interested parties (40–319, 41+1054. See 48–441, 51+382; 71–489, 74+133; 54–56, 55+825). It is not notice to a prior mortgagee (35–499, 29+194; 74–484, 77+298, 539. See 69–82, 72+52; 43–547, 46+135). A mortgage recorded by an owner whose deed is not recorded is not notice of such deed to a purchaser from his grantor (15–205, 160). The record of a mortgage executed and recorded before the mortgagor acquired title held

not notice to a party subsequently conveying to such mortgagor and taking back a purchase money mortgage (48–441, 51+382. See 71–489, 74+133).

9. Executory contracts for sale of land—39–420, 40+557; 42–386, 44+129; 70–467, 73+404.

10. Exception of assignments of mortgages—7–176, 120; 15–171, 131; 33–224, 22+381; 29–177, 12+517; 65–475, 68+100; 69–436, 72+456.

11. Entries in index—46–156, 48+677.

12. Destruction of record—59–274, 61+135.

3357. Recording act—Unrecorded conveyances void, when—Every conveyance of real estate 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 thereof whose conveyance is first duly recorded, and 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. The fact that such first recorded conveyance is in the form, or contains the terms, of a deed of quitclaim and release 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. (4180)

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1. Object and policy of recording act—27–396, 7+826; 73–467, 76+263; 38–315, 37+448; 43–541, 45+1136; 51–174, 53+458; 2–264, 226; 15–171, 131; 24–281; 40–319, 41+1054; 104+237.

2. Right to rely on record—80–516, 83+420; 40–319, 41+1054; 47–62, 49+384.

3. Between parties—An unrecorded conveyance is good as between the parties and their privies and as against all not protected by the statute (2–264, 226; 40–494, 42+398; 79–264, 82+581; 104+1).

4. What conveyances must be recorded—The term "conveyance" within the meaning of this section is defined in § 3334.

5. Where recorded—37–56, 33+213; 40–132, 41+156; 59–274, 61+135; 33–25, 21+841.

6. Presumption as to time—It will be presumed that a deed is recorded the day it is filed for that purpose (51–421, 53+806. See 72–287, 75+376; 80–76, 82+1103).

7. Who protected—The recording act protects only those who acquire rights by virtue of a deed or other instrument which may be and is recorded (54–285, 55+1131).

8. What is a valuable consideration—A conveyance in satisfaction of a pre-existing debt is not "for a valuable consideration" (6–220, 142).

9. Good faith—Notice—The statute does not define a bona fide purchaser but leaves the question to be determined by the rules of law applicable to the case (6–443, 304; 17–485, 462). The recording act should not be permitted to be used as an instrument of fraud (23–362). A person is not a purchaser in good faith although he paid a valuable consideration and did not have actual knowledge of the unrecorded conveyance, if he had knowledge of facts that ought to have put him on inquiry (82–523, 85+545; 4–282, 201; 90–430, 97+127; 90–304, 97+106; 28–31, 8+906; 42–524, 44+796; 30–4, 13+907; 54, 56, 55+825; 50–373, 52+963). Whatever is sufficient to put a person of ordinary prudence on inquiry is constructive notice of everything to which that inquiry would presumably have led (54–56, 55+825. See § 3356 Note 7). The statute does not change the rule that a purchaser is charged with notice of the rights of a person in possession, either personally or by tenant (3–225, 154; 4–141, 93; 4–422, 325; 16–126, 115; 19–44, 24; 24–155; 24–406; 26–194, 2+688; 43–213, 45+157; 44–90, 46+81; 44–199, 46+332; 53–560, 55+747; 81–15, 83+471; 90–209, 95+896. But see 22–532; 31–66, 16+468). The same rule applies to a grantor in possession after delivery of his deed (50–234, 52+651). A purchaser is charged with notice of all incumbrances, liens, equities and everything affecting his title, which appear in any instrument in his chain of title, whether such instrument is recorded or not (6–443, 304; 61–326, 63+736; 44–199, 46+332; 41–461, 43+469; 30–4, 13+907; 54–56, 55+825; 32–313, 20+241; 42–366, 44+256). Where a purchaser cannot make out a title but by a deed which leads him to another fact he is presumed to have knowledge of such fact (6–443, 304). Notice of a specific claim does not put one on inquiry as to other inconsistent claims (90–318, 96+788). Construction of finding as to notice (89–166, 94+552, 95+588).

10. Burden of proof as to good faith—Where a party claims title under a junior deed of record he is bound, as against one claiming under a senior unrecorded deed from the same grantor, to prove that he purchased in good faith and for a valuable consideration (46–308, 48+1122; 68–233, 71+31; 76–489, 79+520; 77–20, 79+587; 78–193, 80+968; 79–264, 82+581; 90–237, 95+903. See § 3461 Note 8); otherwise, as to a stranger to the title (78–193, 80+968). Proof that a valuable consideration was paid for the junior conveyance ordinarily makes out a prima facie case of good faith (68–233, 71+31. See § 3461 Note 10).

11. Subsequent purchasers—The statute makes unrecorded deeds void as to subsequent bona fide purchasers (40–434, 42+286; 48–241, 51+113; 38–315, 37+448; 47–62, 49+384;

54–486, 56+131; 44–260, 46+406; 15–205, 160; 87–1, 91+14). As between several purchasers or mortgagees from the same party it is a race of diligence to secure the protection of the recording act. Such conveyances take precedence in the order of their filing and not in the order of their execution (30–270, 15+243; 40–434, 42+286). The statute protects purchasers from heirs and devisees (48–241, 51+113; 40–434, 42+286).

12. Judgments and attachments—The statute is not limited to money judgments in favor of creditors but applies to any judgment affecting the title to real estate (59–285, 61+144; 72–420, 75+720). Judgments are given precedence to unrecorded conveyances only where the title appears of record in the name of the person against whom the judgment is recovered (5–409, 332; 20–453, 407; 29–322, 13+145; 37–56, 33+213; 59–285, 61+144; 72–420, 75+720; 74–122, 76+1126; 75–207, 77+828). Judgments are not given precedence to resulting trusts (74–122, 76+1126). The statute gives a judgment precedence over an unrecorded conveyance if the party obtaining it was without notice (11–104, 62; 21–167; 28–408, 10+427; 31–66, 16+468; 39–35, 38+757; 43–213, 45+157; 43–541, 45+1136; 64–91, 66+131; 73–467, 76+263; 74–122, 76+1126); otherwise, if he had notice, either actual or constructive (24–281; 35–534, 29+345; 36–314, 31+51; 43–213, 45+157; 50–234, 52+651; 58–359, 59+1085; 29–322, 13+145; 43–541, 45+1136; 23–362; 73–467, 76+263). A judgment is given precedence over equities against the judgment debtor, such as an equity to have a recorded deed reformed (43–541, 45+1136; 64–91, 66+131). A judgment does not give retroactive effect to a notice of lis pendens by virtue of this section (92–2, 99+209).

13. Assignees of insolvents—A conveyance made before but not recorded until after an assignment for the benefit of creditors may be avoided by the assignee (69–124, 71+924; 71–489, 74+133; 71–487, 74+135. See 73–513, 76+258).

14. Mechanic's liens—Mechanic's liens are not protected by this section (34–292, 25+629; 50–272, 52+895; 51–75, 52+1069. See § 3508).

15. Quitclaim deeds—The statute places quitclaim deeds on the same footing as other deeds (38–315, 37+448; 93–106, 100+636. See 51 Fed. 355; 58 Fed. 437).

16. Priority when filed at same time—75–249, 77+777; 72–287, 75+376; 80–76, 82+1103.

17. Not retroactive—33–271, 22+614; 8–34, 18.

18. Fraud on holder of unrecorded deed—33–341, 23+463.

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3358. Recorded conveyance, etc.—Curative—All conveyances, powers of attorney, and other instruments affecting real estate, including unsealed instruments purporting to convey or authorizing the conveyance of real estate, which were duly signed, and which have heretofore been actually recorded in the office of the proper register of deeds, with the records thereof, are hereby legalized, and shall have the same effect as if such instruments had been sealed, witnessed, acknowledged, certified, and recorded as required by law: Provided, that this section shall not apply to any case in litigation at the time of the taking effect of the Revised Laws. (7584; '03 c. 179)

3359. Instruments relating to timber, minerals, etc.—Every instrument heretofore or hereafter executed in the form of a conveyance, mortgage, lease, or in any other form, in any manner affecting standing timber, stone, ores, minerals, or other similar property in place in or upon the earth, when executed and acknowledged in the manner provided for the execution and acknowledgment of conveyances, may be recorded in the office of the register of deeds of any county in which such property is situated, and such record shall be notice of the contents thereof and of the rights of all parties thereunder, as well after as before the severance or separation of such property from the land: Provided, that this section shall not affect any action or proceeding pending prior to March 6, 1903. ('03 c. 32)

81–15, 83+471; 93–505, 101+959.

3360. Record of conveyance of land in unorganized county—The record of every conveyance or other instrument affecting real estate in any unorganized county, heretofore recorded in the county to which such unorganized county was then attached for judicial purposes, shall have the same force and effect as if recorded in the county where the real estate is situated. (4180)

33–25, 21+841; 59–274, 61+135.

3361. When deed not defeated by defeasance—When a deed purports to be an absolute conveyance, but is made or intended to be made defeasible by force of an instrument of defeasance, the original conveyance shall not thereby be 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, un-

less the instrument of defeasance is recorded in the county where the lands lie. (4182)

18-232, 212; 22-137; 25-448; 34-547, 27+66; 45-116, 120, 47+644.

3362. Recorded letter of attorney, how revoked—No instrument containing a power to convey lands, when 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. (4188)

3363. Mortgages, how discharged of record—A mortgage may be discharged by filing for record a certificate of its satisfaction executed and acknowledged by the mortgagee, his personal representative, or assignee, as in the case of a conveyance. The register shall enter the number of such certificate and the book and page of its record upon the record of the mortgage. A discharge may also be made by an entry in the margin of the record of the mortgage, acknowledging its satisfaction, signed by the mortgagee, his personal representative or assignee, without other formality. If such entry be made by a corporation, it shall be signed by its president or vice-president and attested by its secretary or treasurer. If a mortgage be recorded in more than one county, and discharged of record in one of them, a certified copy of such discharge may be recorded in another county with the same effect as the original. If the discharge be by marginal entry, such copy shall include the record of the mortgage. In all cases the discharge shall be entered in the reception book and indexes as conveyances are entered. (4196; '99 c. 182; '03 c. 342)

17-396, 7+826.

3364. Refusal of mortgagee to discharge—Action—Whenever any mortgagee, his personal representative or assignee, upon full performance of the conditions of the mortgage, shall fail to discharge the same within ten days after being thereto requested, and after tender of his reasonable charges therefor, he shall be liable to the mortgagor, his heirs or assigns, for all actual damages thereby occasioned; and a claim for such damages may be asserted in an action for discharge of the mortgage. If the defendant be not a resident of the state, such action may be maintained upon the expiration of sixty days after the conditions of the mortgage have been performed, without such previous request or tender. (4197)

27-396, 7+826; 39-32, 38+755.

CHAPTER 64

PLATS

3365. Platting of land—Donations—Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, every donation to the public or any person or corporation noted thereon shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same effect, upon the donor and his heirs, and in favor of the donee, as though such land were conveyed by warranty deed. Land donated for any public use in any municipality shall be held in the corporate name in trust for the purposes set forth or intended. (2303, 2308)

8-456, 405; 10-82, 59; 11-119, 75; 12-546, 458; 17-260, 237; 17-265, 243; 21-493; 22-251; 44-281, 46+358; 46-321, 48+1129; 50-551, 52+931.

3366. Survey and plat—Monument—The land shall be surveyed, and a plat made setting forth and naming all thoroughfares, showing all public grounds, and giving the dimensions of all lots, thoroughfares, and public grounds. Inlots shall be numbered progressively, or by the block in which they are situated, and outlots shall be numbered, and shall not exceed ten acres in size.

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