MASON'S

MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES 1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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present demand or notice to quit is insufficient (47–1, 49+327; 50–116, 52+384; 50–139, 52+390; 57–164, 58+989; 57–230, 58+990; 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 for possession for non-payment of rent (22–37; 21–398; 72–100, 75+114; 74–279, 77+3).

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).

4. **Waiver of notice**—Where landlord, after notice to tenant to quit, agrees that he may remain in possession, notice is waived (99–277, 109+250). Cited 101–253, 112+220).

121–198, 140+1031; 126–452, 148+297.

8192. Notice of cancellation of leases—Whenever a notice of the cancellation of termination of a lease of real property, or a copy of said notice, with proof of service thereof, and the affidavit of the lessor, his agent or attorney, showing that the lessee has not complied with the terms of the notice, shall be presented for recording at the office of the register of deeds in which said lease has been duly recorded, it shall be the duty of the register of deeds to record said notice, proof of service thereof and affidavit, and the record thereof shall be prima facie evidence of the facts therein stated. ('21 c. 394 § 1)

8193. 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. (3333) [6812]

89–348, 94+1084; 91–513, 98+648; 93–115, 100+660. 212+18.

Verbal agreement to make improvements, in consideration of which lease was executed, remained obligatory on lessor during term, and if the lessee remained in possession and becomes a tenant from month to month, agreement was presumed to remain in force (97–291, 106+308). Where lessee has option to rent for additional time, but written lease is silent as to terms and conditions of optional tenancy, terms and conditions of original letting apply, with exception of option provision, and in case of urban property exercise of option constitutes express contract (140+1031). Tenancy not rendered one for single month (126–452, 148+297).

8194. Notice to be given of vacation of building—Every person who shall, between the 15th day of November and the 15th day of April following, remove from, abandon or vacate any building or part thereof, occupied by him, or in his possession, as tenant, except upon the termination of his tenancy, and which contains any plumbing, water, steam or other pipe liable to injury from freezing, without first giving to the landlord, owner, or agent in charge, of such building three days' notice of his intention so to remove, shall be guilty of a misdemeanor. ('15 c. 213 § 1)

142–100, 170+917; 145–402, 177+632.

CHAPTER 63

CONVEYANCES OF REAL ESTATE

8195. 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. (3334) [6813]

In General.

Held "conveyances" and within recording act: a mortgage (18–232, 212; 22–137); an assignment of a mortgage (7–176, 120; 95–392, 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). Agreement with adjoining owner not to permit liquor to be sold on premises not conveyance (103–193, 114+746). Cited (3–119, 69; 57–452, 59+533; 66–219, 68+1068). Vendee's interest in contract of sale is *alienable (123–483, 144+222)*. *Assignment of school land* certificates is a conveyance (135–410, 161+156). Assignment of certificate of state land is a conveyance. (135–452, 161+157; 138–83, 163+1033; 142–36, 170+708). Lease of homestead for six-month period is not a conveyance (148–269, 181+580).

Contracts of Sale.

A supposed contract for the sale of real estate provided as to the payment of a part of the purchase price as follows:

"A mortgage to be taken out by the parties of the first part in favor of J. Gruesner in the amount of seven thousand dollars ($7,000) and the balance of the purchase price, namely, three thousand dollars ($3,000) to *be paid on a contract for deed, the terms of payment* of which are to be arranged between all parties on or before June 21, 1922, with interest on all deferred payments not to exceed seven per cent."

Held, that the failure of the parties to agree upon definite terms of payment of all of the purchase price renders the agreement void and unenforceable as a contract. 158–470, 197+968.

A vendor has "good title" justifying his entering into a contract for deed when he holds a valid subsisting contract for deed from one who also holds such contract with the fee owner; and, where these parties are willing to carry out their contracts, the vendee cannot rescind because the vendor is not the record owner in fee. 160–414, 200+481.

Under such circumstances vendor may discharge his *final payment from the purchase price which he receives* —Id.

Where the time to perform an executory contract for the sale and conveyance of land is fixed and definite, the vendor is not entitled to additional time in which to perfect his title, but may discharge incumbrances out of the purchase money then to be paid. 161–336, 201+540.

The vendee of land under an executory contract of sale, who had leased to a tenant who was in possession when the time to close the contract came, was entitled to rescind because of the failure of the vendor to give the title agreed, but he could not rescind and recover what he had given without restoring what he had received. 209+623.

Assignment.

An assignment by the vendee of a contract for the purchase of real estate does not impose upon the assignee any personal liability for the unpaid purchase price, unless he assumed and agreed to pay it. 165–245, 206+391.

Rescission.

Action to rescind the *purchase of a tract of real* estate and recover the money paid therefor. 164–307, 204+950.

Rescission of contract to purchase. 165–490, 206+727.

Deeds.

The court was justified by the facts in holding that July 15, 1901, was the date of the instrument in controversy. 195+772.

Where the grantee in a timber deed cuts the timber within the time allowed therefor, he does not forfeit his title to the timber by failing to remove it from the land within the stipulated time. 157–157, 195+772

The accepted rules for the construction of contract are applicable to deeds. They should not be disregarded in an attempt to discover what the parties had *in* mind when the deed was executed. The legal effect of the language of a deed should not be restricted to carry out the intention of the parties as surmised by the court. 159–523, 200+801.

A deed contained a provision to effect that, if the land conveyed should be permanently abandoned as a site for a creamery, the title of the association should be divested and restored to the grantor or his heirs. *In* a suit to enjoin the removal of buildings erected on the land, brought against purchasers from the association, it was held that the association had not abandoned the land as a site for a creamery. 160–173, 199+745.

Blank Spaces.

The blank space for the name of the grantee in a deed may be filled in the lifetime of the grantor under his parol authority, and when so filled the deed is a legal conveyance. 164–154, 204+642.

Condition Subsequent.

Deed from plaintiff and wife to son providing, in case of son's failure to pay certain sum, land should revert to plaintiff and wife, created a condition subsequent on breach of which title to land reverted to grantor, free from lien of mortgage executed by son to bank having knowledge of default. 211+675.

Consideration.

Where the statement in a deed as to the consideration is more than a mere acknowledgement of the payment of money, and is of a contractual nature, the general rule, permitting the true consideration of a written contract to be inquired into by parol testimony, does not apply. 163–85, 203+445.

When the recital in a partition deed concerning consideration is contractual, it cannot be varied by parol evidence. 165–379, 206+721.

Delivery of Deeds.

Delivery of deed. 157–418, 196+488.

Return Without Record.

The return by the vendee to the vendor of a delivered but unrecorded deed does not revest title; but the return and acceptance of such deed, in connection with other circumstances, may have the effect of an estoppel. 165–198, 206+170.

Undue Influence.

There was no evidence tending to establish that undue influence induced the grantor to execute the deed herein sought to be set aside by the heirs. 163–15, 203+430.

The consideration recited in the deed is adequate, but the grantor could lawfully convey as a gift. 163–15, *203+430*.

Duress.

Duress. 163–320, 204+156.

False Representations.

Action by vendee for damages for false representations concerning the character of a farm and the quality of its soil. The evidence is sufficient to sustain the *verdict in* his favor. 160–330, 200+297.

Fraud.

The evidence considered, and held sufficient to justify the findings of fraud, and that the conclusions of law are justified by the findings of fact. 165–181, 206+390.

Mortgages.

Where a mortgagee neglects to make proper inquiry to ascertain the state of the title of the person in possession, he is not a mortgagee in good faith. 156–45, 194+95.

The evidence does not sustain a finding that the two deeds were mortgages. Nor were the vendors ready at the time fixed for closing the sale with deeds back from their grantees in the deeds. 156–260, 194+882.

The evidence sustains the finding that the defendant did not agree to give the plaintiff security for the money, and the plaintiff acquired no equitable mortgage lien by contract. 163–365, 204+35.

Evidence considered, and held, to sustain the findings that defendant is not a bona fide owner of the note and mortgage in question; that they were obtained by fraud. 164–86, 204+926.

Assumption.

Record examined, and held sufficient to justify the findings of the trial court to the effect that a grantee, in a deed containing clause assuming and agreeing to pay an existing mortgage, did in fact assume and agree to pay such mortgage as a part of the consideration of an exchange of properties. 163–139, 203+594.

Consideration.

The evidence sustains a finding that there was a consideration for a mortgage of their homestead made by the plaintiffs to one of the defendants 162–349, 202+733.

The evidence sustains a finding that the execution of the mortgage was not induced by duress. 162–349, 202+733.

Estoppel.

A mortgagor is estopped from asserting that the mortgage does not convey the rights which it purports to convey. 162–418, 203+209.

Where the mortgagee is not at fault, the mortgagor cannot maintain an action to cancel the mortgage unless he returns what he received under it. 162–418, 203+209.

Mistake.

Setting aside mortgage for mistake. 162–369, 203+53.

Purchase Money Mortgage.

The evidence sustains the finding that the mortgage to plaintiff was given as a purchase-money mortgage. 167–443, 209+271.

Timber and Surface Ownership.

One person may own the surface of the land and another the growing timber. A landowner's deed of the timber, limiting the time for the removal thereof, conveys an interest in the land. The grantor in such a deed has a contingent future estate in the timber and an estate in reversion in the soil. 159–523, 200+801.

The words, "reserving all timber," following the description of the land in a quitclaim deed subsequently executed by the landowner, should be construed as excepting from the grant his contingent future estate in the timber. 159–523, 200+801.

8196. 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 convey any real estate owned by her, except the homestead, subject to the rights of her husband therein; and either husband or wife may by separate conveyance relinquish his or her rights in the real estate so conveyed by the other. Subject to the foregoing provisions, either husband or wife may separately appoint an attorney to sell or convey any real estate owned by such husband or wife, or join in any conveyance made by or for the other. The minority of the wife shall not invalidate any conveyance executed by her. (R. L. § 3335, amended '07 c. 123 § 1) [6814]

Laws 1907 c. 123 § 2 repeals inconsistent acts, etc. Formerly deed by wife of her separate property in which her husband does not join was void (G. S. 1894 § 5532; 20–219, 198; 26–429, 4+819; 34–272, 25+596; 26+121; 37–61, 33+216; 40–441, 42+294; 43–242, 45+229; 48–18, 50+1018; 48–93, 50+1025; 57–18, 58+685; 68–260, 71+22; 82–530, 85+548; 83–206, 86+11; 90–244, 95+1120. See 75–402, 78+110, 671). 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). Wife joining in deed, husband owning homestead, binds her homestead right for future advances to him (122–422, 142+721). Delivery of wife's separate deed subsequent to deed by husband alone (128–535, 150+1103). In action as to real estate other than homestead husband may testify to a conversation with deceased person (132–242, 156+260). Separate deeds executed by husband and wife to homestead afterwards abandoned, plea of invalidity is barred by estoppel in favor of bona fide purchaser (133–261, 158+244). Five year lease (142–36, 170+708).

162–391, 203+227, note under § 8340.

The refusal of defendant's wife to execute the contract of sale was not a defense to an action to recover for services rendered in procuring the purchaser. 157–402, 196+479.

A wife's inchoate interest in her husband's property cannot be subjected to the husband's indebtedness beyond the amount to which she joins in the mortgage, although it may be reached by execution or judicial sale. 158–231, 197+277.

8197. Conveyances recorded 15 years validated—That whenever a deed, assignment, or other instrument affecting the title to real estate shall have been filed or recorded in the office of the register of deeds of any county, or in any public office authorized to receive such instrument for filing or recording, and shall have continued on record for fifteen years and such instrument does not affirmatively show whether the grantor or assignor or person who executed the instrument was married such filing or recording and continuance thereof for such fifteen-year period shall be prima facie evidence that such grantor or assignor or person who executed the instrument was an unmarried person at the time of the making and delivery of such instrument, unless prior to January 1, 1924, any person claiming any estate in the land affected by such instrument, by, through or under such person or his or her spouse, heirs or devisees, shall commence an action to recover such estate and shall file a notice of lis pendens at the time of the commencement of the action in the office of the register of deeds in the county where such land is situated. ('23 c. 208 § 1)

For further curative acts, see:

'05, c. 112, § 1, curing conveyances between husband and wife made between Jan. 1, 1888 and Jan. 1, 1903; '07, c. 432, § 1, curing conveyances between husband and wife made between Apr. 2, 1906 and Apr. 4, 1906; '09, c. 55, § 1, curing conveyances between husband and wife, made June 26, 1907 and June 28, 1907; '11, c. 25, § 1, curing conveyances between husband and wife made prior to Jan. 1, 1911; '13, c. 412, § 1, curing conveyances between husband and wife made prior to Feb. 24, 1889.

'13 c. 84, curing defective acknowledgments where deeds were executed separately by husband and wife.

'13 c. 296, validating deeds prior to January 1, 1899, executed by husband under power from his wife.

'15 c. 218, legalizing conveyances prior to January 1, 1915, from husband direct to wife (193+305).

'15 c. 314, legalizing conveyances prior to January 1, 1915, by husband acting under power of attorney from wife.

'17 c. 450, abolishing inchoate estates in dower and curtesy in lands conveyed prior to January 1, 1902.

'19 c. 456, legalizing conveyances by one or more attorneys in fact which were recorded prior to 1904.

'21 c. 67, legalizing deed to real property made prior to 1896, given by receiver appointed by court of another state.

'21 c. 87, legalizing records of deeds, mortgages and satisfactions actually recorded, which have been made by corporations on which the corporation seal does not appear.

'21 c. 145, legalizes conveyances prior to July, 1916, by parents to children with restrictive conditions against conveyances by grantees within ten years.

'21 c. 267, legalizes conveyances prior to April 13, 1921, made in a foreign country between June 1st and June 20, 1920, where the acknowledgment of deed before foreign magistrate was without certificate of United States officer.

'21 c. 301, legalizes conveyances by one spouse to another, but requires recordation on or prior to September 1, 1921.

8198. Purchase-money mortgage—Non-joinder of spouse—When a husband or wife purchases land during coverture, and mortgages his or her estate in such land to secure the payment of the purchase price or any portion thereof, the surviving spouse shall not be entitled to any inchoate or contingent right in such land as against the mortgagee or those claiming under the mortgagee although such survivor did not join in such mortgage. ('09 c. 29 § 1, amended '09 c. 465 § 1) [6816]

8199. 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. (3336) [6817]

Explanatory note—See, also, note to § 8197, herein.

8199-1. Conveyances between husband and wife, etc., validated—That all conveyances of real property heretofore made in which a married man or married woman

has conveyed real property directly to his or her spouse, or that the husband has conveyed to his spouse and children and the children in turn have re-conveyed an interest to said spouse and mother, or that a husband executed and acknowledged a deed in this state, and his wife executed such deed in a foreign country but did not acknowledge such deed or have the acknowledgement certified, shall be, and the same are hereby declared legal and valid, and the records of such conveyances heretofore actually recorded, and if not recorded, that the register of deeds is hereby authorized to record the same in the proper county on or before September 1, 1925, shall be in all respects valid and legal; such conveyances and records thereof shall have the same force and effect in all respects as conveyances of title and for the purpose of notice, evidence or otherwise, as may be provided by law in regard to conveyances and their records in other cases. Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. ('25, c. 342)

8200. **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. (3337) [6824]

8201. **Conveyance by husband or wife of insane or incompetent**—The husband or wife of any person who has been or may be adjudged, by a court of competent jurisdiction, to be insane or incompetent to transact his or her business or manage his or her estate, and whose person or estate, or both, a guardian has been or may be appointed by a probate court of this state, may with such guardian's approval, by separate deed convey any real estate, the title to which is or may be in such husband or wife, as fully as he or she could do if unmarried; provided, that in any such case, a duly certified copy of the letters of guardianship of such guardian shall be recorded in the office of the register of deeds of the county in which such real estate is situated and the approval of such conveyance by such guardian shall be in writing, after being first authorized to do so by an order of such probate court, and shall be endorsed on the instrument of such conveyance. Without such approval of such guardian, a conveyance by such husband or wife shall not affect the rights of the insane or incompetent spouse.

Provided further, that in any case where no guardian has been appointed of the person or estate of such insane or incompetent spouse and such insanity or incompetency has existed or may exist for three years subsequent to the adjudication of the insanity or incompetency of such insane or incompetent spouse, then and in such event, the husband or wife of such insane or incompetent person may 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 further, that this section shall not authorize the conveyance of a homestead unless the guardian of the person or estate of such insane or incompetent person has been or shall be appointed by the probate court of the proper county, and such guardian shall consent in writing to such conveyance, by endorsement thereon, after being first authorized so to do, by order of such probate court.

Provided further, that the provisions of the foregoing provisos shall not apply to a non-resident insane or incompetent person. (R. L. '05 § 3338; G. S. '13 § 6825, amended '15 c. 131 § 1; '19 c. 395 § 1)

107–432, 120+754; 122–203, 142+129.

8202. **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. (3339) [6826]

20–531, 474.

8203. **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. (3340) [6827]

Nature of quitclaim deeds (88–469, 93+656). On same footing as deeds of bargain and sale (38–315, 37+448; 115–280, 132+210). What passes by (4–282, 201; 16–26, 14; 16–151, 135; 18–405, 365; 30–372, 15+665; 88–284, 92+1117; 88–469, 93+656; 98–127, 107+965). Estoppel from asserting subsequent conveyance against grantee (97–161, 106+110).

141–233, 169+804; 135–452, 161+156.

8204. **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. (3341) [6828]

Warranty deed (103–272, 114+840).
194+623.
156–224, 194+622; 160–109, 199+821.

8205. No covenants implied—Adverse holding—Except as provided in § 8204, 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. (3342) [6829]

23–34; 28–285, 9+805; 31–536, 18+753; 34–118, 24+369; 42–91, 43+839; 122–369, 142+878.
156–224, 194+622.

8206. Restricting provisions against conveyances—No written instrument hereafter made, relating to or affecting real estate, shall contain any provision against conveying, mortgaging, encumbering or leasing any real estate to any person or persons of a specified religious faith or creed, nor shall any such written instrument contain any provision of any kind or character discriminating against any class of persons because of their religious faith or creed. In every such provision any form of expression or description which is commonly understood as designating or describing a religious faith or creed shall have the same effect as if its ordinary name were used therein. ('19 c. 188 § 1)

8207. Provisions declared void—Every provision referred to in section 1 hereof shall be void, but the instrument shall have full force in all other respects and shall be construed as if no such provision were contained therein. ('19 c. 188 § 2)

8208. Interpretation—As used in this act, the phrase "written instruments relating to or affecting real estate," embraces every writing relating to or affecting any right, title or interest in real estate, and includes, among other things, plats and wills; and the word "provision" embraces all clauses, stipulations, restrictions, covenants and conditions of the kind or character referred to in section 1. ('19 c. 188 § 3)

8209. Liable in civil action—Every person who violates section 1 of this act, or aids or incites another to do so, shall be liable in a civil action to the person aggrieved in damages not exceeding five hundred dollars. ('19 c. 188 § 4)

8210. 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. (3343) [6830]

Cited (111–383, 127+398; 152–61, 188+158).

8211. 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. (3344) [6831]

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

8212. 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. (3345) [6832]

18–232, 212; 34–382, 26+4; 39–32, 38+755. Reassessment due to undervaluation was not an incumbrance (129–88, 151+538).

8213. 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. (3346) [6833]

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).

8214. Certain trust deeds legalized—Every trust deed heretofore executed for the purpose of securing the payment of first mortgage bonds and recorded in the office of the register of deeds of the proper county of this state prior to February 1st, 1922, together with the record thereof, is hereby legalized and made valid and effective to all intents and purposes as against the objection that such trust deed bore no witnesses to the execution thereof. ('23 c. 220 § 1)

8215. Application—This act shall not apply to any action or proceeding wherein the validity of any such trust deed is questioned. ('23 c. 220 § 2)

8216. 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. (3347) [6834]

8217. 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. (3348) [6835]

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 95–164, 103+889). Cited (6–89, 38; 9–230, 215; 18–232, 212).

8218. 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. (3349) [6836]

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

8219. 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. (3350) [6837]

1897 c. 76 cited (97–135, 106+108). Is a recording act, and does not make record of judgment "notice" of entry thereof, within § 9283 (113–433, 129+853).

8220. 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. (3351) [6838]

8221. 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. (3352) [6839]

8222. 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. (3353) [6840]

8223. Railroad lands—Lists, etc.—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; provided, however, that in all cases where any railroad company has failed to comply with the provisions of this act the board of county commissioners of any county in this state is hereby authorized to direct the register of deeds of said county to transcribe directly from the original patents or approved lists from the United States government to the state of Minnesota and the record of deeds from the state of Minnesota to the railroad company receiving such lands. Such original patents and record of deeds being on file in the state auditor's office, the state auditor shall offer the needed conveniences to any register of deeds who desires to make a transcript as herein provided. The county board shall furnish the register of deeds with the necessary books and records. It shall be the duty of the state auditor to carefully compare such transcribed copies of patents, approved lists or deeds with the original instruments and records on file in his office, and when compared he shall so duly certify to each instrument. Such transcribed records duly certified by the state auditor when deposited with the register of deeds of any county shall be prima facie evidence of the facts therein set forth and of the original instruments so recorded; and an official transcript therefrom shall be admissible as evidence in all the courts of the state. The state auditor shall receive no fees for his services. The register of deeds shall receive the same fees as allowed by law for recording original instruments in his office, which sum shall be paid by the county upon the approval of the board of county commissioners. (R. L. § 3354, amended '13 c. 393 § 1) [6841]

29–283, 13+127.

8224. 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. (3355) [6842]

8225. 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. (3356) [6843]

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). Such a record may be the source of actual notice (30–197, 14+889).

166–511, 208+138.

The recording of such mortgage is constructive notice to the vendor, and, like actual knowledge requires the vendor to serve notice of cancellation upon such mortgagee in order to terminate his rights in the interest of the vendee under his contract. 159–119, 198+127.

A real estate mortgage filed (like a chattel mortgage) in the office of the register of deeds, but not recorded, is not notice to those who do not have actual knowledge. 159–221, 199+9.

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

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 (4–282, 201; 17–485, 462; 30–4, 13+907; 30–283, 15+247; 35–331, 28+923; 41–417, 43+91; 44–199, 46+332; 47–417, 50+528. See 40–319, 41+1054; 42–386, 44+129; 46–156, 48+677; 47–62, 49+384; 49–462, 52+45; 54–56, 55+825; 60–73, 61+1020; and cases under § 8226, 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; 54–56, 55+825; 71–489,

74+133). It is not notice to a prior mortgagee (35–499, 29+194; 74–484, 77+298, 539. See 43–547, 46+135; 69–82, 72+52). 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; 29–177, 12+517; 33–224, 22+381; 65–475, 68+100; 69–436, 72+456.

11. Entries in index—46–156, 48+677.

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

13. Patents—Purchasers from prior patentee are chargeable with notice of junior recorded patent (189 Fed. 276).

8226. 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. (3357) [6844]

1. Object and policy of recording act—2–264, 226; 15–171, 131; 24–281; 27–396, 7+826; 38–315, 37+448; 40–319, 41+1054; 43–541, 45+1136; 51–174, 53+458; 73–467, 76+263; 95–392, 104+237.

164–136, 204+639.

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

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; 95–325, 104+1; 117–136, 134+731).

4. What conveyances must be recorded—The term "conveyance" within the meaning of this section is defined in § 8195.

5. Where recorded—33–25, 21+841; 37–56, 33+213; 40–132, 41+156; 59–274, 61+135; 115–489, 132+919.

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). Personal covenant not running with land, though recorded, not contained in deed or indenture in chain of title does not bind subsequent purchasers (103–193, 114+746).

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 (4–282, 201; 28–31, 8+906; 30–4, 13+907; 42–524, 44+796; 50–373, 52+963; 54–56, 55+825; 82–523, 85+545; 90–430, 97+127; 90–304, 97+106). 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). 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; 98–39, 107+744; 108–76, 121+214. 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; 30–4, 13+907; 32–313, 20+241; 41–461, 43+469; 42–366, 44+256; 44–199, 46+332; 54–56, 55+825; 61–326, 63+736). 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).

A purchaser of real estate may be a purchaser in good faith without having examined the records. 165–300, 206+444.

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; 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.

11. Subsequent purchasers—The statute makes unrecorded deeds void as to subsequent bona fide purchasers (15–205, 160; 38–315, 37+448; 40–434, 42+286; 44–260, 46+406; 47–62, 49+384; 48–241, 51+113; 54–486, 56+131; 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). Purchaser protected, notwithstanding he purchases from holder of unrecorded deed from record owner, and files for record this deed with that to himself, and thus completes chain of title of record (117–378, 135+1000).

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 (23–362; 24–281; 29–322, 13+145; 35–534, 29+345; 36–314, 31+51; 43–213, 45+157; 43–541, 45+1136; 50–234, 52+651; 58–359, 59+1085; 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).

The plaintiff was the owner of the legal title, and the defendant of the equitable title under a contract of purchase. The intervener docketed a judgment against the defendant which became a lien upon his equitable title. To enable the defendant to obtain a loan, pay the amount due on the contract of purchase, and acquire the legal title, the plaintiff made and recorded a deed to the defendant, without consideration. The intervener's judgment became an apparent lien upon the legal title in the defendant. The loan failing the defendant had no greater interest in the land than he had before. 161–413, 201+612.

A judgment creditor, when the recording act does not apply, and in the absence of an estoppel or a controlling equity, is not in the position of a bona fide purchaser or lienor but takes a lien on such interest as his judgment debtor has. 161–413, 201+612.

A judgment is a lien upon the title of the judgment debtor holding under an unrecorded deed, though, by the recording act, a judgment does not take precedence of an unrecorded deed when the title to the land is not of record in the name of the judgment debtor. 165–198, 206+170.

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; 71–487, 74+135; 71–489, 74+133. See 73–513, 76+258).

14. Mechanics' liens—Mechanics' liens are not protected by this section (34–292, 25+629; 50–272, 52+895; 51–75, 52+1069.

15. Quitclaim deeds—The statute places quitclaim deeds on the same footing as other deeds (33–315, 37+448; 93–106, 100+636).

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

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

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

Registration—A bona fide purchaser without notice of fraudulent omission, same not apparent from judgment roll, in registration proceedings, takes title free from such claim (123–182, 143+324).

Mortgage as Notice—A mortgage to record owner by a stranger to title is not notice of an unrecorded deed from record owner to mortgagor nor is mortgage recorded in one county as to after-acquired property notice to such in another county (132–278, 156+256).

Rights of Subsequent Purchasers—There is no precedence by a subsequent recorded deed without valuable consideration over prior unrecorded deed for value (133–153, 157+1072; 135–411, 161+156).

See (136–295, 161+588; 136–434, 162+528).

Burden of Proof—Burden of proof as to being a bona fide purchaser within recording act (138–83, 163+1033; 140–330, 168+20). Record owner made contract of sale, unrecorded and after grantee's death, he by quitclaim deed conveyed to grantee's widow, such deed conveyed good title in her grantee as against heirs of deceased (141–233, 169+804).

Satisfaction of Mortgage Through Mistake.

A mortgagee, holding a valid mortgage upon several parcels of real estate owned by an insolvent debtor, who, through mutual mistake, satisfies his mortgage of record as to certain of said parcels, does not subrogate his interest therein to those of a trustee in bankruptcy. 162–220, 202+818.

Under the federal Bankruptcy Act (Mason's Code, 11:1 to 112) and the decisions in this state, the trustee's claim to title herein is not protected by the recording act or by the rules of equity. The rights which he acquired are no greater or less than those of the bankrupt and his creditors combined. 162–220, 202+818.

Record of Deed as Evidence of Value.

Record of deed as evidence of value. 164–522, 204+640.

8227. *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. (3358) [6845]

8228. Certain instruments legalized—That in all cases where deeds, mortgages or other instruments affecting real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds of the county where the real estate thereby affected was, at the time of making of such records, or is situate, whether such deeds or other instruments were duly or properly admitted to record or otherwise, all such instruments and the record thereof are hereby legalized and confirmed; and all such records may nevertheless be read in evidence in any court within this state, and shall be reecived as prima facie evidence of the contents of the original instruments of which they purport to be records.

And all such records shall in all respects have the same force and effect as they would have if such original instruments at the time that they were so recorded had been legally entitled to record and were legally recorded. ('23 c. 206 § 1)

Explanatory note—This section and the section following (8229) supersede G. S. '13, §§ 6847, 6848 (Laws '13 c. 56, §§ 1, 2). And see §§ 8229-1, 8229-2 herein, and note thereunder.

G. S. '13, § 6846 (Laws '11, c. 277, § 1) reads as follows: "That all deeds, mortgages, or other instruments conveying lands or creating liens thereon, and all satisfactions and releases and all other liens upon any lands, and all powers of attorney, and all other instruments *affecting the title to, interest in, or lien upon any lands* in this state, heretofore executed in this state or in any other state or territory of the United States and recorded in the office of the register of deeds of the proper county in this state, whether duly or properly admitted to record or otherwise in which any of the following defects of execution or acknowledgment exist, either in such instrument or in the records thereof viz.: Where there is no seal affixed to the signature of any person or persons executing the same; where there is no subscribing witness; where there is but one subscribing witness; where the instrument has been acknowledged before a notary public or other officer required to keep an official seal, to whose signature his official seal has not been affixed; all such instruments and the records thereof hereby are legalized and made as valid and effectual to all intents and purposes, and of the same force and effect in all respects, for the purpose of notice, evidence and otherwise, as if such defects of execution, acknowledgment, or record had not existed; provided that nothing herein contained shall in any manner affect the right of or title of any bona fide *purchaser without notice of such instrument* or record thereof for a valuable consideration, of any such real estate prior to the passage of this act; and a purchaser without notice, at any execution or mortgage foreclosure sale, shall be considered such bona fide purchaser; and provided, further, that this act shall not extend nor apply to any action or proceeding now pending."

8229. Application—That duly authenticated copies of such record may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid.

Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts in this state nor to any deed, mortgage or other instrument or the record thereof, on which any mortgage registry tax provided by law has not been paid. ('23 c. 206 § 2)

8229-1. **Recorded deeds, mortgages and other instruments legalized**—That in all cases where deeds, mortgages or other instruments affecting real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds of the county where the real estate thereby affected was, at the time of making of such records, or is situate, whether such deeds or other instruments were duly or properly admitted to record or otherwise, all such instruments and the record thereof are hereby legalized and confirmed; and all such records may nevertheless be read in evidence in any court within this state, and shall be received as prima facie evidence of the contents of the original instruments of which they purport to be records:

And all such records shall in all respects have the same force and effect as they would have if such original instruments at the time that they were so recorded had been legally entitled to record and were legally recorded. ('27, c. 367, § 1)

Prior Laws—Laws 1925, c. 159, reads as follows: "Section 1. That in all cases where deeds, mortgages or other instruments affecting real estate within this state, or letters of attorney authorizing the same, have heretofore been actually recorded in the office of the register of deeds of the county where the real estate thereby affected was, at the time of making of such records, or is, situate, whether such deeds or other instruments were duly or properly admitted to record or otherwise, all such instruments and the record thereof are hereby legalized and confirmed; and all such records may nevertheless be read in evidence in any court within this state, and shall be received as prima facie evidence of the contents of the original instruments of which they purport to be records;

And all such records shall in all respects have the *same force and effect as they would have if such original* instruments at the time that they were so recorded had been legally entitled to record and were legally recorded.

"Sec. 2. That duly authenticated copies of such records may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid.

"Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pend-

ing in any of the courts in this state nor to any deed, mortgage or other instrument or the record thereof, on which any mortgage registry tax provided by law has not been paid."

See, also, §§ 8228, 8229, herein, and notes thereunder.

8229-2. Same—Copies as evidence—That duly authenticated copies of such records may be read in evidence in any court within this state, with the same effect as the records themselves aforesaid. Provided, that nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts in this state nor to any deed, mortgage or other instrument or the record thereof, on which any mortgages registry tax provided by law has not been paid. ('27, c. 367, § 2)

8229-3. Record of conveyances affecting title to real property in counties created from other counties legalized—That the records of all conveyances or other instruments affecting the title to real property in any county of this state heretofore created from territory formerly lying wholly within another county where such conveyances and instruments have been recorded in the office of the register of deeds of the parent county after the issuance of the governor's proclamation creating such new county are hereby declared to be in all respects valid and legal, and shall have the same force and effect as conveyances of title and for purpose of notice evidence or otherwise as though recorded in such new county, and shall be forthwith transcribed to the records of the new county in the manner provided by law for the transcribing of other records in the office of the Register of Deeds of the parent county *affecting real estate in the new county. Provided, that* this act shall not apply to any actions or proceeding now pending in any of the courts of this state, nor shall it affect the rights of persons in good faith acquiring interests in real estate prior to the passage of this act, in reliance upon the records of the new county. ('25, c. 275, § 1)

8230. 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. (3359) [6849]

81–15, 83+471; 93–505, 101+959.

Equitable owner's written contract construed a sale and not a mere license to cut timber (126–176, 148+43).

8231. 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. (3360) [6850]

33–25, 21+841; 59–274, 61+135.

8232. 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, unless the instrument of defeasance is recorded in the county where the lands lie. (3361) [6851]

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

A recording statute, and serves merely to protect persons dealing in land on faith of record title (114–415, 131+494). Status of purchasor from grantor in an absolute deed, without notice that same was given as security (123–293, 143+720).

Four instruments were executed to express and fulfill the terms of the initial agreement between the parties. They should be read together and given contemporaneous operation to promote the intent of the parties. From a consideration of them the conclusion follows that the parties intended the deed to be a mortgage. 161–391, 201+623.

8233. 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. (3362) [6852]

8234. 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. (3363) [6853]

27–396, 7+826.

8235. Refusal of mortagee 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. (3364) [6854]

27–396, 7+826; 39–32, 38+755.

Under the circumstances of this case, certain conditions accompanying the tender of the amount due on a mortgage debt held improper, to-wit: (1) A demand that the creditor procure the revocation of record of a recorded power of attorney from a former holder of the mortgage to a third person purporting to authorize him to recover possession of the mortgage; (2) a demand that the creditor procure another assignment signed by the personally written signature of a former holder of the mortgage, from whom the creditors already had an assignment signed "by mark." 159–252, 198+807.