CHAPTER 358

SEALS, OATHS, AND ACKNOWLEDGMENTS

358.01 PRIVATE SEALS ABOLISHED.

HISTORY. 1899 c. 86; R.L. 1905 s. 2652; G.S. 1913 s. 5704; G.S. 1923 s. 6933; M.S. 1927 s. 6933.

The instrument in question is a good conveyance having been executed after the passage of Laws 1899, Chapter 86, abolishing seals. Noyes v French, 80 M 397, 83 NW 385. Streeter v Janu, 90 M 393, 96 NW 1128.

An undisclosed principal is bound by covenants of warranty in a deed made by his agent with authority. Efta v Swanson, 115 M 373, 132 NW 335.

An undisclosed prinicpal may sue for specific performance on a contract under seal made by his agent. Davidson v Hurty, 116 M 280, 133 NW 863.

Statute provides that the notice of expiration of redemption required to be served shall be prepared and issue by the county auditor "under his hand and official seal." This statute like all similar enactments is mandatory and must be strictly complied with. Downing v Lucy, 121 M 304, 141 NW 183.

A seal is not essential to a deed. Schaubel v Hedding, 138 M 190, 164 NW 808.

The recital of the receipt of a certain sum by the grantor in a deed creates a strong presumption that such sum was actually paid, but it is a presumption only and not conclusive. The true consideration may be shown. This rule has been applied to sealed instruments prior to the abolishment of private seals even though want of consideration could destroy such instruments. Trost v Brey, 156 M 244, 194 NW 617.

Conditional delivery of deeds direct to the grantee. 5 MLR 293.

Gifts causa mortis; symbolical delivery. 6 MLR 596.

Specific performance of contract under seal against undisclosed prinicpal. 9 MLR 581.

Statute of frauds, formalities required. 14 MLR 758.

Master and servant; personal injury; release of claim. 15 MLR 810.

Validity of mortgages and deeds when executed without corporate seal. 17 MLR 543.

Joint tort-feasors; release; satisfaction. 22 MLR 694.

358.02 GREAT SEAL; DESCRIPTION, WHERE DEPOSITED.

HISTORY. 1849 c. 17 s. 2; R.S. 1851 c. 33 s. 1; P.S. 1858 c. 28 s. 1; 1861 c. 43; G.S. 1866 c. 22 s. 1; G.S. 1878 c. 22 s. 1; G.S. 1894 s. 2208; R.L. 1905 s. 2653; G.S. 1913 s. 5705; G.S. 1923 s. 6934; M.S. 1927 s. 6934.

It is not necessary to impress the great seal of the state on a tax deed. OAG Sept. 1, 1939 (410).

358.03 FORM OF OFFICIAL SEALS.

HISTORY. 1849 c. 17 s. 3; R.S. 1851 c. 33 s. 5; P.S. 1858 c. 28 s. 4; G.S. 1866 c. 22 s. 2; G.S. 1878 c. 22 s 2; G.S. 1894 s. 2209; R.L. 1905 s. 2654; G.S. 1913 s. 5706; G.S. 1923 s. 6935; M.S. 1927 s. 6935.

The clerk of the district court is not one of the officers who are by law required to have a seal. The court itself must have one; and in the attestation of papers, and upon all writs and process, the seal of the court, not that of the clerk, must be impressed. State v Barrett, 40 M 70, 41 NW 459.

358.04 TEMPORARY SEAL, WHEN USED.

HISTORY. 1849 c. 17 s. 5; R.S. 1851 c. 33 s. 3; 1858 c. 51 s. 1; G.S. 1866 c. 22 s. 4; G.S. 1878 c. 22 s. 3; G.S. 1894 s. 2210; R.L. 1905 s. 2655; G.S. 1913 s. 5707; G.S. 1923 s. 6936; M.S. 1927 s. 6936.

358.05 OATH OF OFFICE.

HISTORY. G.S. 1866 c. 72 s. 1; G.S. 1878 c. 72 s. 1; G.S. 1894 s. 5634; R.L. 1905 s. 2677; G.S. 1913 s. 5733; G.S. 1923 s. 6936; M.S. 1927 s. 6963.

A village marshal is a public official and must qualify by executing his oath prescribed by law. State ex rel v Schram, 82 M 420, 85 NW 155.

It is sufficient if the person elected clerk of common school district takes and files his oath within a reasonable time after his election, if in the meantime no action has been taken toward filling the office by another. Webb v Stratte, 83 M 194, 86 NW 20.

The action taken by the state board of medical examiners was opposed in that "the ethics of the medical profession are vague and shadowy; that they do not act under oath, and that their action is wholly unrestrained either by law, judgment, or conscience". The court upheld the action of the board as they were within their statutory powers. Wolf v State Board, 109 M 360, 123 NW 1074.

The oath of office to be taken by a person elected to public office prescribed by Minnesota Constitution, Article 5, Section 8, is valid and sufficient, even though the particular office be not specifically designated therein. State ex rel v Ladeen, 104 M 252, 116 NW 486.

A director of an independent school district who has taken an oath of office need not take a second oath when members of the school board chose him as treasurer. The filing of bond was sufficient to qualify him. Independent School District v Integrity Mutual, 171 M 376, 214 NW 238.

Failure of village treasurer to qualify by filing bond does not ipso facto create a vacancy. 1938 OAG 58, Sept. 18, 1937 (456g).

358.06 TRUSTEES, REFEREES.

HISTORY. G.S. 1866 c. 72 ss. 1, 5; G.S. 1878 c. 72 ss. 1, 8; G.S. 1894 ss. 5634, 5641; R.L. 1905 s. 2678; G.S. 1913 s. 5734; G.S. 1923 s. 6964; M.S. 1927 s. 6964.

The presumption is that the clerk being a public official acted within his jurisdiction in administering the oath and he administered same in Ramsey County, although the jurat read "State of Minnesota, St. Louis county." Young v Young, 18 M 90 (72).

Conveyances under the probate code. 20 MLR 110.

Guardianships and committments under the probate code. 20 MLR 336.

358.07 FORMS OF OATH IN VARIOUS CASES.

HISTORY. G.S. 1866 c. 72 s. 5; G.S. 1878 c. 72 s. 8; G.S. 1894 s. 5641; R.L. 1905 s. 2679; G.S. 1913 s. 5735; G.S. 1923 s. 6965; M.S. 1927 s. 6965.

The court will presume that the grand juror Grant was one of the regular jury and duly sworn and the fact that he was not present when the judge charged the grand jury, but thereafter heard the examination and voted on the indictment, does not render the indictment invalid. State v Froiseth, 16 M 313 (277).

It is error to allow jury in a criminal case to separate without being in charge of an official after the case is finally submitted to them. State v Parrant, 16 M 178 (157).

The oath prescribed by this section is the proper oath to be administered to a jury and impanelled to try the issue on an appeal from an assessment of damages made by commissioner appointed in condemnation proceedings. Knauft v St. Paul, Stillwater, and Taylors Falls, 22 M 173; Wilkin v St. Paul, Stillwater, and Taylors Falls, 22 M 177.

The form prescribed by this section being the form in any civil action or proceedings, prescribes the proper oath to be administered to the petit jury in proceedings relating to an illegitimate child. State v Worthingham, 23 M 538.

An indictment for perjury in making a false affidavit charges that the accused "did wrongfully, unlawfully, knowingly, wilfully, falsely, corruptly, and feloniously swear and make oath" before a notary public that the affidavit (subscribed by him and set out in the indictment) is true. The indictment sufficiently charges that accused was sworn to the affidavit. State v Scott, 78 M 311, 81 NW 3.

The attorney violated his oath of office when his comment upon the supreme court was sufficiently base and vile as to establish clearly his unfitness to remain a member of an honorable profession. State v Hart, 104 M 88, 116 NW 212.

An attorney may be disbarred for wilful violation of his oath of office. Disbarment of Henry G. Young, 177 M 203, 225 NW 97.

Attorney and client; rules governing attorneys in the practice of their profession; rule I (c). 20 MLR 274.

358.08 AFFIRMATION IN LIEU OF OATH.

HISTORY. G.S. 1866 c. 72 ss. 6, 7; G.S. 1878 c. 72 ss. 9, 10; G.S. 1894 ss. 5642, 5643; R.L. 1905 s. 2680; G.S. 1913 s. 5736; G.S. 1923 s. 6966; M.S. 1927 s. 6966.

358.09 BY WHOM AND HOW ADMINISTERED.

HISTORY. 1856 c. 12 s. 1; P.S. 1858 c. 35 s. 75; 1865 c. 63 s. 2; G.S. 1866 c. 72 ss. 3, 4; 1871 c. 91 s. 1; 1877 c. 93 s. 1; 1878 c. 49 s. 1; G.S. 1878 c. 72 ss. 3 to 7; G.S. 1894 ss. 5636 to 5640; R.L. 1905 s. 2681; G.S. 1913 s. 5737; G.S. 1923 s. 6967; M.S. 1927 s. 6967.

In the absence of a statutory form of oath to be administered to an alleged illiterate or physically disabled elector, the form used by the judge at the election in controversey was of binding force and effect. State ex rel v Gay, 59 M 6, 60 NW 676.

The record showed the existence of the village of Morris; that in said village there was an office designated as "village recorder"; that there was in fact such an officer therein acting as village recorder; that the affidavit was in fact filed in said office where the original mortgage was filed; that Cooley certified upon said affidavit with proper venue thereon endorsed, that said affidavit was filed in his office, and affixed to his signature thereto, the word "Recorder." Based on these facts there was a sufficient designation and the affidavit was valid. Camp v Murphy, 68 M 378, 71 NW 1.

The original affidavit of a declaration to become a citizen, or a copy thereof, properly certified to by clerk or deputy clerk of a district court of this state, attested by its seal, is competent evidence of a declaration of intention to become a citizen. State v Barrett, 40 M 65, 41 NW 459.

The fact that neither the defendant, nor the clerk administering the oath, held up his hand while the oath was being administered is a mere irregularity, and is immaterial. State v Day, 108 M 121, 121 NW 611.

When the signatures are proved it is presumed that an affidavit was actually sworn to by the person who signed as affiant and if the proof does not embrace a fact necessary to negative the taking of the affidavit, the presumption will save it. Siewert v O'Brien, 202 M 314, 278 NW 162.

Who may take acknowledgements and administer oaths. 1934 OAG 646, March 23, 1933 (834a).

A person absent from the place of registration may fill out the form and subscribe to it before, and be sworn by, a notary public, and file it with the commissioner of registration, and thus qualify as a registered voter. 1936 OAG 219, Oct. 10, 1936 (639i).

358.10 OFFICIALS MAY ADMINISTER, WHEN.

HISTORY. 1856 c. 12 s. 1; P.S. 1858 c. 35 s. 75; 1865 c. 63 s. 2; G.S. 1866 c. 72 s. 3; G.S. 1878 c. 72 s. 3; G.S. 1894 s. 5636; R.L. 1905 s. 2682; G.S. 1913 s. 5738; G.S. 1923 s. 6968; M.S. 1927 s. 6968.

In an appeal by a landowner to the district court, from the action of the city council confirming the award of his damages, it is competent for him to stipulate that his damages may be reassessed by only two of the three commissioners appointed by the court and in such cases the report of the two will be valid. Minneapolis v Wilkin, 30 M 140, 14 NW 581.

Laws 1909, Chapter 474, regarding the duties of a board of medical examiners is constitutional and their action in this case does not deprive the petitioner of his property without due process of law. Although the members of the board did not act under oath, they acted withtin their powers granted by statute. Wolf v State Board, 109 M 360, 123 NW 1074.

358.11 OATHS, WHERE FILED.

HISTORY. R.L. 1905 s. 2683; G.S. 1913 s. 5739; G.S. 1923 s. 6969; M.S. 1927 s. 6969.

358.12 ACKNOWLEDGEMENTS; FORM OF CERTIFICATE.

HISTORY. 1883 c. 99 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 72 s. 17; 1889 c. 118 s. 1; G.S. 1894 s. 5650; R.L. 1905 s. 2684; G.S. 1913 s. 5740; G.S. 1923 s. 6970; M.S. 1927 s. 6970.

A deed of assignment for the benefit of creditors can only be made by some official who has authority to execute it for the corporation; and the certificate must either substantially follow form prescribed by statue or, if some other form is used, it must appear prima facie from such certificate, when read in connection with the deed of assignment, that the person making the acknowledgment was authorized to execute deed for corporation. Bennett v Knowles, 66 M 4, 68 NW 111.

The provisions of Laws 1883, Chapter 99, as to forms of acknowledgment are merely permissible and not mandatory; and any form previously good is still sufficient. Cone v Nimocks, 78 M 249, 80 NW 1058.

If it appears with reasonable certainty from the face of the certificate that the party executing the instrument came before the notary and acknowledged its execution and the certificate being in substantial compliance with the statute, it is sufficient. Larson v Ellsner, 93 M 303, 104 NW 307.

The evidence sustains the finding that the note was executed by authority of the board of directors of the corporate mortgagor. The acknowledgment of the instrument by its president and secretary in the form prescribed by statute is prima facie proof of execution. Park v Hudson, 154 M 471, 192 NW 112.

An assignment defectively acknowledged but otherwise regular on its face, gives the assignee the right to have an execution to enforce the judgment. Brown v Reinke, 159 M 458, 199 NW 235.

While the bond contained no provision "for the use of all persons interested" and was executed for the surety company by its "attorney" instead of "attorney in fact", it was sufficinent bond which the council was bound to accept. State ex rel v Eveleth, 196 M 307, 265 NW 30.

On acknowledgments taken by a court reporter serving a probate court it is not necessary that his seal be attached. 1936 OAG 162, May 22, 1935 (346g).

A deed written in the English language, but acknowledged in a foreign language, is not entitled to record. OAG Jan. 7, 1937 (373b-9 (a)).

358.13 CORPORATE ACKNOWLEDGMENT; EVIDENCE.

HISTORY. 1883 c. 99 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 72 s. 17; 1889 c. 118 s. 1; G.S. 1894 s. 5650; R.L. 1905 s. 2685; G.S. 1913 s. 5741; G.S. 1923 s. 6971; M.S. 1927 s. 6971.

A certificate of acknowledgment of an instrument executed by a corporation is good, being in substantial compliance with Laws 1883, Chapter 99, as amended by Laws 1889, Chapter 118, Bowers v Hetchman, 45 M 238, 47 NW 792.

An acknowledgment by a corporation must be made by some official or representative who has authority to execute it and the certificate must be substantially in the form prescribed by statute, and if some other form is used it must

appear prima facie from the certificate when read in connection with the deed that the person making the acknowledgment had authority from the corporation to do so. Bennett v Knowles, 66 M 4, 68 NW 111; Park v Hudson, 154 M 471, 192 NW 112; State ex rel v Eveleth, 196 M 307, 265 NW 30.

358.14 MARRIED PERSONS.

HISTORY. 1883 c. 99 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 72 s. 18; G.S. 1894 s. 5651; R.L. 1905 s. 2686; G.S. 1913 s. 5742; G.S. 1923 s. 6972; M.S. 1927 s. 6972.

Forms of acknowledgment prescribed by sections 358.13 and 358.14 are permissible, not mandatory, and any form previously good is still sufficient. Cone v Nimocks, 78 M 249, 80 NW 1056.

358.15 BY WHOM TAKEN IN THIS STATE.

HISTORY. 1851 c. 8 art. 2; 1851 c. 46 s. 8; 1856 c. 12 ss. 1, 2; 1858 c. 26 s. 4; 1858 c. 35 s. 8; P.S. 1858 c. 5 s. 94; P.S. 1858 c. 7 ss. 31, 124; P.S. 1858 c. 35 s. 8; G.S. 1866 c. 8 ss. 162, 227; G.S. 1866 c. 26 s. 4; G.S. 1866 c. 40 s. 7; G.S. 1866 c. 72 s. 8; 1868 c. 61 s. 1; 1876 c. 40 s. 1; 1877 c. 93 s. 1; 1878 c. 49 s. 1; G.S. 1878 c. 8 ss. 185, 259; G.S. 1878 c. 26 s. 4; G.S. 1878 c. 40 s. 7; G.S. 1878 c. 72 ss. 5, 6, 11; G.S. 1894 ss. 775, 859, 2271, 4166, 5638, 5639, 5644; 1897 c. 311 s. 2; 1899 c. 55; 1903 cc. 44, 67; R.L. 1905 s. 2687; G.S. 1913 s. 5743; G.S. 1923 s. 6973; M.S. 1927 s. 6973.

A notary's certificate of acknowledgment without his offical seal attached thereto is a nullity. Hartkopf v First State Bank, 191 M 595, 256 NW 169.

Who may take acknowledgments and administer oaths. 1934 OAG 646, March 23, 1933 (834a).

Various officers, including a reporter serving the probate court, have no seal, and acknowledgments taken by such reporter may be accepted without a seal. 1936 OAG 162, May 22, 1935 (346g).

A postmaster has no authority to administer an oath on a claim for a gasoline tax refund. OAG Jan. 16, 1939 (834).

Wheat inspectors have no authority to take acknowledgments of verified claims under the weed eradication act. OAG Nov. 1, 1937 (322a-1).

358.16 ACKNOWLEDGMENTS BY LEGISLATIVE MEMBERS LEGALIZED.

HISTORY. 1919 c. 409 s. 1.

358.17 ACKNOWLEDGMENTS AND AFFIDAVITS LEGALIZED.

HISTORY. 1921 c. 139 s. 1; G.S. 1923 s. 6951; M.S. 1927 s. 6951.

358.18 ACKNOWLEDGMENTS BY MEMBERS OF LEGISLATURE AS NOTARIES PUBLIC LEGALIZED; INSTRUMENTS AND RECORDS LEGALIZED.

HISTORY. 1925 c. 3 s. 1; M.S. 1927 s. 6951-1.

358.19 INSTRUMENTS LEGALIZED.

HISTORY. 1919 c. 409 s. 2; G.S. 1923 s. 6974; M.S. 1927 s. 6974.

358.20 RECORDS LEGALIZED.

HISTORY. 1919 c. 409 s. 3; G.S. 1923 s. 6975; M.S. 1927 s. 6975.

358.21 CERTAIN ACKNOWLEDGMENTS LEGALIZED.

HISTORY. 1921 c. 97 s. 1; G.S. 1923 s. 6976; M.S. 1927 s. 6976.

358.22 IN OTHER STATES; BY WHOM TAKEN.

HISTORY. R.S. 1851 c. 48 s. 8; P.S. 1858 c. 35 s. 8; G.S. 1866 c. 40 s. 7; G.S. 1878 c. 40 s. 7; G.S. 1894 s. 4166; R.L. 1905 s. 2688; G.S. 1913 s. 5744; G.S. 1923 s. 6977; M.S. 1927 s. 6977.

The fact of residence of the notary need not be specifically stated in the acknowledgment OAG Sept. 1, 1939 (410).

When a deed was executed in Michigan in every way in accordance to Minnesota laws except there was no notarial seal. In Michigan a seal is not required. The usual declaration by the secretary of state qualifying the notary was attached. Under the provisions of section 358.23, a seal was not required. 1942 OAG 207, July 30, 1942 (373B-9a).

358.23 CERTIFICATE, HOW AUTHENTICATED.

HISTORY. R.S. 1851 c. 46 s. 10; P.S. 1858 c. 35 s. 10; 1861 c. 10; G.S. 1866 c. 40 s. 9; 1868 c. 61 s. 3; 1869 c. 65 s. 1; G.S. 1878 c. 40 s. 9; G.S. 1894 s. 4168; R.L. 1905 s. 2689; G.S. 1913 s. 5745; G.S. 1923 s. 6978; M.S. 1927 s. 6978.

The acts of the deputy clerk of court of a sister state certifying the validity of an acknowledgment in the name of his principal, and duly authenticated by official seal of office, is sufficient to entitle such deed to be recorded in this state. Piper v Chippewa, 51 M 495, 53 NW 870.

It is the policy of the law to uphold certificates of acknowledgment and authentication of deeds whenever substance is found, and the acknowledgment taken by a justice of the peace of a sister state may be accepted as sufficient in the instant case. Wells v Atkinson, 24 M 161.

358.24 IN FOREIGN COUNTRIES.

HISTORY. R.S. 1851 c. 46 s. 11; P.S. 1858 c. 35 s. 11; G.S. 1866 c. 40 s. 10; 1868 c. 64 s. 1; 1875 c. 52 s. 1; G.S. 1878 c. 40 s. 10; G.S. 1894 s. 4169; 1897 c. 141; R.L. 1905 s. 2690; G.S. 1913 s. 5746; G.S. 1923 s. 6979; M.S. 1927 s. 6979.

An acknowledgment taken in Halifax, Nova Scotia, before a justice of the peace and authenticated under seal by a deputy provincial secretary was sufficient to pass title to the real property therein described. Lydiard v Chute, 45 M 277, 47 NW 967.

A deed written in the English language but acknowledged in a foreign language is not entitled to record. OAG Jan. 7, 1937 (373b-9(a)).

358.25 POWER GIVEN FOR TAKING ACKNOWLEDGMENTS FOR PROTESTING BILLS OF EXCHANGE.

HISTORY. 1907 c. 406 s. 1; G.S. 1913 s. 5747; 1915 c. 20 s. 1; G.S. 1923 s. 6980; M.S. 1927 s. 6980.

358.26 EXECUTION ACCORDING TO FOREIGN LAW.

HISTORY. R.S. 1851 c. 46 s. 11; P.S. 1858 c. 35 s. 11; G.S. 1866 c. 40 s. 10; 1868 c. 64 s. 1; 1875 c. 52 s. 1; G.S. 1878 c. 40 s. 10; G.S. 1894 s. 4169; 1897 c. 141; 1901 c. 372; R.L. 1905 s. 2691; G.S. 1913 s. 5748; G.S. 1923 s. 6981; M.S. 1927 s. 6981; 1931 c. 201.

If the vendor tenders a deed which does not comply with our laws, but executed in accordance with the laws of a foreign state, the exclusive method of proving that it was so executed is by the certificate prescribed by section 358.26. Lloyd v Mickelson, 168 M 441, 210 NW 586.

358.27 SOLDIERS AND SAILORS ABROAD.

HISTORY. 1901 c. 64; R.L. 1905 s. 2692; G.S. 1913 s. 5749; G.S. 1923 s. 6982; M.S. 1927 s. 6982; 1943 c. 95 s. 1.

358.271 COMMISSIONED OFFICERS TO TAKE ACKNOWLEDGMENTS.

HISTORY. 1943 c. 445; 1945 c. 116 s. 1; 1945 c. 488 s. 1.

358.28 ACKNOWLEDGMENTS AFTER EXPIRATION OF COMMISSION; CURATIVE.

HISTORY. 1905 c. 50 s. 1; G.S. 1913 s. 5750; G.S. 1923 s. 6983; M.S. 1927 s. 6983.

358.29 ACKNOWLEDGMENTS BEFORE NOTARY OF DETACHED COUNTY; CURATIVE.

HISTORY. 1905 c. 275 s. 1; G.S. 1913 s. 5751; G.S. 1923 s. 6984; M.S. 1927 s. 6984.

358.30 ACKNOWLEDGMENTS BEFORE OFFICER OF CORPORATION; CURATIVE.

HISTORY. 1907 c. 89 s. 1; G.S. 1913 s. 5752; G.S. 1923 s. 6985; M.S. 1927 s. 6985.

358.31 CONVEYANCES WHERE ACKNOWLEDGMENTS THERETO WERE TAKEN BY GRANTEES LEGALIZED.

HISTORY. 1925 c. 312 s. 1; M.S. 1927 s. 6985-1.