CHAPTER 507

CONVEYANCING AND RECORDING

507.01 CONVEYANCE AND PURCHASER.

HISTORY. R.S. 1851 c. 46 ss. 29 to 31; P.S. 1858 c. 35 ss. 29 to 31; G.S. 1866 c. 40 ss. 25 to 27; G.S. 1878 c. 40 ss. 25 to 27; G.S. 1894 ss. 4184 to 4186; 1901 c. 37; R.L. 1905 s. 3334; G.S. 1913 s. 6813; G.S. 1923 s. 8195; M.S. 1927 s. 8195.

1. Generally

An easement is an interest in real estate, and an instrument evidencing its terms a conveyance, and subsequent purchasers of property to which the easement attaches take title subject to the covenants of the conveyance. Warner v Rogers, 23 M 34.

Leases for a term of less than three years excepted. Chandler v Kent, 8 M 524 (467).

A release of a judgment lien is an instrument "affecting title to real estate", is entitled to record, and when so recorded is "notice to parties". Graham v Evans, 39 M 382, 40 NW 368.

An instrument which granted the right to enter at any time within five years, and cut and remove standing pine, is a conveyance of an interest in land. Boland v O'Neal, 81 M 15, 83 NW 471.

An instrument authorizing the cutting of timber on lands, is a conveyance within the recording acts. Neil Lbr. Co. v Hines, 93 M 505, 101 NW 959.

An instrument in which the owner agrees for a term of years not to permit liquor to be sold on certain premises is not a conveyance, and the agreement is not a covenant that runs with the land, and though recorded, is not binding on grantees of the original owner. Sjoblom v Mark, 103 M 193, 114 NW 746.

The holder of a sale certificate of state land is the equitable owner of the land; an assignment of such certificate is a conveyance of real estate within the statutory definition; and a good faith purchaser who places his assignment on record is protected by the recording acts against a prior unrecorded assignment. Krelwitz v McDonald, 135 M 408, 161 NW 156.

Holder of a school land certificate is the owner of the equitable title to the land, and assignment of such certificates are conveyances of real estate within the statutory definition. Werntz v Bolen, 135 M 452, 161 NW 155.

A husband may lease a portion of homestead property for a period of six months, even if the wife does not join, if by so doing he does not interfere with the use of the property as a homestead. Bacon v Mirau, 148 M 268, 181 NW 579.

One person may own the surface of the land and another the growing timber. An owner's deed of the timber limiting the time for the removal thereof, conveys an interest in the land. The grantor has a contingent future estate in the timber, and an estate in reversion in the soil. La Cook F. L. Co. v Northern Co. 159 M 523, 200 NW 801.

Acceptance of a verbal gift of real estate, and entering into possession and making improvements in reliance on the gift, may pass title. Durand v Durand, 175 M 549, 221 NW 908.

Misrepresentation by one of three purchasers of property as to the price paid is fraud on the other two contributors, and recoverable by action. Hiller v Hage, 182 M 546, 235 NW 11.

A 30-year lease made by a promoter of a bank and followed by occupation by the bank, who made improvements and paid the rent, was not adopted by the bank because it was beyond their corporate powers to so adopt it. Veigel v O'Toole, 183 M 407, 236 NW 710.

An instrument in the nature of a party wall agreement held to apply only to the building presently erected, and not to carry through to additions subsequently erected by subsequent remote grantees. Ramy v Liedloff, 185 M 352, 241 NW 64.

An easement or temporary right of way though imperfectly described, may be rendered definite by locating the driveway then used by the grantor. Bank v Minn. Security, 189 M 560, 250 NW 561.

Transfer of a farm and of all personal property from husband to wife, and not fraudulent, deemed absolute rather than a mere security for indebtedness of husband to wife. Durgin v Stevenson, 192 M 526, 257 NW 338.

Plaintiff who had a prescriptive right to the use of a roadway over defendant's land, and where the parties mutually agreed upon a new location for the roadway, had an enforceable dominant estate over the new roadway. Schmidt v Koecher, 196 M 178, 265 NW 347.

Acts of vendee in persuading plaintiff's testatrix held not fraudulent and not grounds for setting aside the joint tenancy. Brennan v Holasek, 198 M 226, 269 NW 395.

The words "about", "approximately", and "more or less" in connection with corners and distances, may be disregarded if not controlled or explained by monuments, boundaries, or other expressions of intention, and may be given meaning and effect by a court of equity when so controlled and explained. Ingelson v Olson, 199 M 422, 272 NW 270.

Defendant leased a business property and covenanted for a specified time not to enter into a business competitive with that of the lessee. During the term of the lease he conveyed the property and assigned the reversion to the plaintiff. Thereafter, defendant breached his covenant with the lessee, who in consequence rescinded the lease, to plaintiff's damage. Held, that plaintiff has no cause of action either in tort for wrongful interference with his business or in contract for breach of defendant's covenant with the lease. Dewey v Kaplan, 200 M 289, 274 NW 161.

The rights and obligations of stockholders of a foreign corporation and the ultra vires character of the corporation's acts are determined by the laws of the foreign state. The question of preferential and fraudulent transfers of real estate by a corporation are determined by the laws of the state in which the real estate is situated. Erickson v Wells, 217 M 361, 15 NW(2d) 162.

Although the statute of frauds requires a writing when realty is concerned, a party may without writing so conduct himself with reference to it that he will be estopped from afterward asserting a claim thereto. The doctrine of estoppel is a flexible one founded in equity and good conscience and a favorite of the law. Roberts v Friedell, 218 M 88, 15 NW(2d) 496.

Action by plaintiff involving division of compensation award in condemnation proceedings. Even though the lease conveys no actual interest in the land itself, and in that sense is not real estate, it creates a right in the lessee to use and occupy the land which under the constitution and statutes is "property" for which, in condemnation, compensation must be paid. Seabloom v Krier, 219 M 362, 18 NW(2d) 91.

Female under 21 is a minor and to convey land, or to receive pension through veteran parent, a guardian must be appointed. OAG Nov. 4, 1937 (498c).

Leasehold interest as real estate. 19 MLR 712.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale. 24 MLR 806.

2. Contracts for sale

A contract for the sale of real estate is a "conveyance" within the meaning of the statute, and the spouse of the grantor must join in the instrument. A mere consent is not sufficient. Gregg v Owens, 37 M 61, 33 NW 216.

Formerly executory contracts for sale of land were excepted. Kingsley v Gilman, 15 M 59 (4); Thorsen v Perkins, 39 M 420, 40 NW 557; Klatt v Dummert, 70 M 467, 73 NW 404.

The term "purchaser" included the assignee of an executory contract. Klatt v Dummert, 70 M 467, 73 NW 404.

Vendee's interest in a contract for sale is alienable. Wellington v Railway, 123 M 483, 144 NW 222.

A purchaser in good faith of an assignment of a land contract of sale has an equitable interest in land and is protected under the recording act. Shrathey v Hanson, 138 M 80, 163 NW 1032.

Where the vendee in a contract quitclaimed to vendors, reliance could be placed on a provision of the contract providing against an assignment of the contract by vendee without the approval of the vendors, and knowledge of a written assignment by the vendee cannot be imputed to the vendor because the attorney for the vendor drew the assignment. Larson v Johnson, 175 M 502, 221 NW 871.

A contract for a deed is a non-negotiable instrument, and an assignee thereof takes it subject to the grantee's rights. Such grantee can assert the same rights against the assignee as were available against the grantor. Dennis v Swanson, 176 M 267, 223 NW 288.

On cancelation of a contract by the vendor, an assignee of the vendee's contract of purchase is not entitled, on the facts, to a lien for taxes bought in by it at a tax sale. Kloseman v Bank, 176 M 459, 223 NW 780.

Cancelation of defendant's land contract discharged their liability on a purchase money note. Moorhead v Carlson, 177 M 174, 224 NW 842.

A contract may be rescinded at the instance of a party who, without negligence, entered into it in ignorance of a material fact; and where a road laid out across the farm but not opened and the existence of which was known to the vendor but not to the vendee, the vendee may rescind. Becker v Bundy, 177 M 415, 225 NW 290.

A party to whom a fraudulent representation has been made and on which he relies, may rescind if that which he gets is not substantially that for which he contracts. It is not necessary that he be damaged. Magnuson v Bouck, 178 M 238, 226 NW 702.

Where there was fraud in a contract for the exchange of property, the injured party may adopt his choice of the remedies open to him, and the measure of damages as of the time the fraud was committed. Monroe v Thulin, 181 M 496, 233 NW 241.

No misrepresentation of material facts, and therefore no ground for rescission. Kendall v Laven, 181 M 570, 233 NW 243.

Joint vendees under a land contract are neither partners nor joint adventurers and neither are liable for the individual contract of the other. Pratt v Martig, 182 M 250, 234 NW 464.

Vendor, without knowledge of a fraud by his agent in collecting commission from both parties, is not responsible for the agent's acts. Olin v Taylor, 182 M 327, 234 NW 466.

Vendee who acquiesces in the statutory cancelation of a land contract, and surrenders possession, is estopped from thereafter questioning the validity of the notice on technical grounds. Olin v Taylor, 182 M 327, 234 NW 466.

A quitclaim deed, without any clause assuming payment thereof does not make the grantee personally liable for payments required under a contract of purchase of the land made by his grantor. Pratt v Martig, 182 M 250, 234 NW 464.

An assignment of an executory contract by the vendee creates a privity of estate between assignee and the original vendor, but not a privity of contract, and in the absence of an express contract by the assignee to pay the purchase price, he cannot be held personally liable. Hoyt v Bank, 184 M 159, 238 NW 40.

Evidence supports the finding that there was neither fraud nor conspiracy. Kallusch v Kaoli, 185 M 3, 240 NW 108.

Where vendees jointly contributed unequal amounts on a contract and where the contract is declared valid as far as the vendor is concerned, the court may reform the contract as between the vendees. Kallusch v Kaoli, 185 M 3, 240 NW 108.

Statement regarding water supply on a farm, held to be "trade talk" and not such misrepresentation on which to predicate grounds for rescission. McCaleb v Block, 186 M 170, 242 NW 723.

Vendor held entitled to proceeds of a fire policy, though it had mistakenly been assigned to husband of conditional vendee and contract was canceled, subsequent to the date when payment was due from the company. Burman v California Co. 186 M 28, 242 NW 387.

Vendee may rescind contract where misrepresentation has been made as to the number of houses being built in a new addition. Cloud v Realty Corp. 187 M 575, 246 NW 24.

False statements by vendor's agent promissory in character, made knowing they would not be kept, were fraudulent and ground for rescission of the contract. McDermott v Ralich, 188 M 501, 247 NW 683.

Contract for the sale of land to husband and wife passes to them an equitable title as tenants in common. Eostomeziak v Gostomezik, 191 M 119, 253 NW 376.

Action in detainer proceedings and judgment in favor of the vendor was res judicata in an action by the vendee to recover purchase money paid, and on the ground of breach by the vendor. Herreid v Deaver, 193 M 618, 259 NW 189.

Vendees under a land contract prevailed in an action to rescind on the ground of proven fraud. Held, the vendees are not liable for payment of moneys expended by the contract vendor in betterments on the property returned to the vendee. Gaetke v Ebarr, 195 M 393, 263 NW 448.

The commissioner of banks, when he makes a contract to convey land as authorized by the court, is bound thereby and where he contracts to show merchantable title, vendee was not bound to accept a title until the record was clear even where vendor's title depended on adverse possession. Benson v Bryson, 195 M 243, 262 NW 561.

Occupancy of the premises by a tenant of the vendors is an encroachment upon vendee's right of possession which he is under no obligation to assume or accept, and is ground on which the contract vendee may rescind the contract. Gaetke v Ebarr Co. 195 M 393, 263 NW 448.

A vendor, when he agrees to convey by warranty deed, must furnish the vendee a marketable title at the time of performance, but vendees are not entitled to rescind because of a mere doubt as to the validity of the title. Stacy v Taylor, 196 M 202, 264 NW 809.

Record sustains the trial court finding that a certain assignment to cover amounts due on the land contract were obsolete, not intended as an instrument of security. Killmer v Nelson, 196 M 420, 265 NW 293.

Regularity of certain transfers and court proceedings resolved under court order. Walsh v Kuechenmeister, 196 M 483, 265 NW 340.

In an action by vendee under a contract, for damages resulting from failure or delay to furnish a merchantable title, the answer unless avoided constituted a complete defense. A motion, based on affidavits was made and sustained to strike the reply of the plaintiff as sham. Berger v Bank, 198 M 513, 270 NW 589.

Vendee under contract for the purchase of real property, among other obligations agreed to assume and pay a certain mortgage, failed to do so, and title to the property passed to the mortgagee. Held, that the vendor had a right of action against the vendee for any part of the purchase price unpaid. Robetschek v Maetzold, 198 M 586, 270 NW 579.

In a contract of purchase, the contract vendee had knowledge of an option held by a tenant in possession, and is bound by that knowledge. McKercher v Vik, 199 M 263, 271 NW 489.

Action by contract vendee for specific performance dismissed on motion as evidence of payment or tender was insufficient. Martineau v Czajkowski, 201 M 342, 276 NW 232.

The rule regarding the manner of the exercise of an option under contract granting it is to discover from the language of the instrument the intent of the parties with reference thereto, and in this case the tenant is whose lease the option was incorporated, duly exercised his option, and is entitled to his deed. Gassert v Anderson, 201 M 515, 276 NW 808.

A contract for purchase of a farm was executed and vendee went into possession in 1933, made payments and otherwise performed under the contract until 1935 when the parties mutually agreed to rescind, and vendor went into possession. An action for damage brought by the vendee in 1937 was dismissed. Houchin v Braham Co. 202 M 540, 279 NW 370.

Record sustains the trial court in finding that the defendant entered into a contract of exchange of real property, and the court ordered specific performance. Karp v Salvation Army, 203 M 285, 281 NW 41.

A vendor has good title justifying his entering into a contract for deed when he holds a valid subsisting contract for deed from the fee owner. McKay v Ryan, 204 M 480, 284 NW 57.

Where land outside the state is taken for the construction of a project within the state and where the foreign landowner has submitted to the jurisdiction of the court within the state compensation must be allowed although the land is outside the state. The court may entertain a suit for specific performance to convey such land the action being basically in personam rather than in rem. State ex rel v Bentley, 216 M 146, 12 NW(2d) 347.

A court of equity looks at the substance and not merely the letter of the contract and when the agreement can be substantially carried out without changing the contract, and justice done between the parties, specific performance may be ordered; but not as in the instant case where a strip of less than two acres along one of the boundaries of a 160 acre tract is in possession of an adverse claimant, which strip stands in the way of access to market. Friede v Pool, 217 M 332, 14 NW(2d) 454.

For the purposes of taxation the purchaser in an executory contract for the sale of land is considered to be the owner even if he is not in possession. A deed upon condition subsequent conveys the fee. Village of Hibbing v Commissioner, 217 M 528, 14 NW(2d) 923.

An option is a privilege given by the owner of property to another to buy the property at his election upon certain terms and conditions, as distinguished from a contract of sale. In an action to compel specific performance of an option contract, it is incumbent upon the optionee to allege tender of performance within the time specified, or a waiver or refusal under certain conditions. Vogt v Ganlisle, 217 M 601, 15 NW(2d) 91.

A contract is sufficiently certain to be enforced if it can be made certain by reformation. Although its terms are stated according to the intention of both parties, a reformation may be had if the terms are in error in respect to the thing to which they apply. Under the facts herein, court was justified in reforming the contract, restraining defendants from taking steps to cancel it, and granting plaintiffs costs. Pettyjohn v Bowler, 219 M 55, 17 NW(2d) 83.

Contract must be reciprocal, and a contract by which grantor agreed to convey to grantees, or to persons designated by them, but which did not bind the grantees, conveys no title. Pike Rapids Power Co. v M, 99 F(2d) 902.

A contract by which the grantor covenanted to convey to grantees, or their nominees, certain lands, but which did not bind the grantees, passed no title to said grantees. Pike Rapids Co. v M, 99 F(2d) 902.

Vendor and purchaser of real estate. 17 MLR 110.

Effect of cancelation of contract for deed on judgment obtained for an unpaid instalment. 17 MLR 110.

3. Deeds

Of two conveyances by an occupant under the congressional town site act of 1844, both are within the recording acts, and the deed first on record is effective to convey title. Barnes v Murphy, 3 M 119 (69).

From husband to wife. Wilder v Brooks, 10 M 50 (32).

A deed granting a permanent right of way is a conveyance and subject to the recording act. Sloan v Becker, 34 M 491, 26 NW 732.

An unrecorded deed of a homestead is valid as against a judgment creditor who had notice thereof before the land became subject to his judgment. Oxborough v St. Martin, 142 M 34, 170 NW 707.

Validity of deed delivered by escrow agent. Smith v Burney, 173 M 616, 216 NW 783.

Cases evidencing mental incapacity of grantor. Bank v Hoban, 175 M 428, 221 NW 644; Clark v Quade, 175 M 522, 221 NW 907.

Where an owner executes a deed without naming the grantee and delivers it to an agent to enable him to make a sale of the land, the agent has implied authority to insert the name of the purchaser. Should the agent insert his own name, the principal may repudiate the transaction, or if he chooses he may ratify it and sue the agent for damages. Norby v Bank, 177 M 127, 224 NW 843.

Delivery of a deed to a third person is delivery to the grantee only when the grantor in some way evidences an intention presently and unconditionally to part with all control over it. Anderson v Larson, 177 M 606, 225 NW 903.

Where a covenant in a deed runs with the land and the covenantee without having been evicted or having suffered loss, and, without bringing action on the covenant, conveys the land to another, the covenant passes with the conveyance, and the original covenantee cannot thereafter sue thereon unless he has been required by his grantee or some subsequent grantee, to pay or make good. Anderson v Larson, 177 M 606, 225 NW 903.

Delivery of a deed to a third party is delivery to the grantee only when the grantor evidences an intention presently and unconditionally to part with all control over it and that it shall take effect according to its terms. Anderson v Larson, 177 M 606, 225 NW 903.

Title to premises conveyed by deed altered after delivery is not revested in the grantor by such alteration. Green v Lidberg, 181 M 361, 232 NW 511.

Grantor intended to deed to McGugan, but later found the deed was altered so that the conveyance was to a third party. Held, that as he received that for which he had bargained and had suffered no loss, he was estopped from claiming invalidity of deed as against innocent third party. Green v Lidberg, 181 M 361, 232 NW 511.

Term "playgrounds" is embraced within the word "parks," as regards construction of clause in deed to city exempting remaining lands from assessment for parkway purposes. Horn v City of Mpls. 182 M 172, 234 NW 289.

An escrow agreement between defendant and Kehrer was not attempted to be carried out by defendant, and he is not in position to make any claim thereunder. Kehrer v Seeman, 182 M 596, 235 NW 386.

If the defrauded real estate purchaser relies solely on his guaranty, he cannot recover on the ground of fraud; but if he did not place his sole reliance on the guaranty, he may use either remedy; and if he has partially performed his part of his contract, he need not rescind but may sue in damages. Osborn v Will, 183 M 205, 236 NW 197.

Where a fiduciary and confidential relationship existed between the plaintiff and the agent who induced plaintiff to purchase a building from defendant, misrepresentations as to the desirability of the purchase may constitute fraud. Hassman v Bank, 183 M 453, 236 NW 921.

A material misrepresentation by the vendor of the property, though innocently made, if relied upon, gives the purchaser a cause of action against the vendor for damages sustained. Moulton v Norton, 184 M 343, 238 NW 686.

Conditions subsequent in the way of life support of the grantor by the grantee, construed. Gamble v Mosloski, 187 M 640, 246 NW 368; Malicki v Malicki, 189 M 121, 248 NW 723; Johnston v Johnston, 195 M 236, 262 NW 566; Youngers v Schaefer, 196 M 147, 264 NW 794.

Cases holding deed was obtained by undue influence. Engelson v Equity Co. 188 M 322, 247 NW 223; Claggett v Claggett, 204 M 568, 284 NW 363.

Where deed placed in escrow is delivered by the escrow holder, either in violation of, or without compliance with the terms of the escrow agreement, no title passes by such delivery, but where the grantee has accepted and recorded the deed, the burden of showing wrongful delivery is on the grantee. Bank v Olson, 189 M 528, 250 NW 366.

Grantor or his successors in interest in a deed placed in escrow, may be estopped as against the grantee or his successors from setting up a wrongful delivery of the deed by the escrow agent. Bank v Olson, 189 M 528, 250 NW 366.

Provision in a real estate mortgage assigning rents to the mortgagee to reimburse him in case he is obliged to pay taxes, or similar, is valid; and a clause permitting mortgagee to collect rents extends to a right to attach mortgagor's share of the crop, and does not come within the limitation on the validity of crop mortgages. Insurance Co. v Canby Co. 190 M 144, 251 NW 129.

Furniture in hotel was personal property and did not pass with the deed of the hotel property. Stalp v Reiter, 190 M 382, 251 NW 903.

A finding by the jury that a deed was forged, not sustained by the supreme court. Craig v Walso, 190 M 499, 252 NW 332.

A mortgagor may not, at the time of, nor as part of the mortgage relationship, bargain away his equity of redemption; but he may subsequently bargain away or convey his equity of redemption provided the conveyance is not a part of a bargain contemporaneous with the original transaction, and no oppressive means is used to obtain it, and the mortgagee paid an adequate consideration for the conveyance. O'Connor v Schram, 190 M 177, 251 NW 180.

Deeds executed and delivered to banker, were held under the circumstances of this case to be presently effective as conveyances. Allen v Peterson, 192 M 459, 257 NW 84.

An agreement by grantee to support his parents is a lien on the property conveyed, superior to subsequent conveyances or encumbrances. Johnston v Johnston, 195 M 236, 262 NW 566.

Restriction on the power of sale, within a ten-year period, found valid. Youngers v Schaefer, 196 M 147, 264 NW 794.

When the legal and equitable estate meet in the same person, they do not merge if it is his intention to maintain them separate; and such intention is presumed when it is clearly his interest that they should be kept apart. Long v Insurance Co. 197 M 623, 268 NW 195; Losleben v Losleben, 199 M 227, 271 NW 463.

Plaintiff must produce evidence beyond a mere opportunity to exercise due influence. Brennan v Holasek, 198 M 226, 269 NW 395.

Aged widower deeded his property to his daughter and her husband in consideration of future support. Disagreements having arisen so that the grantor lost the confidence and happiness he had the right to expect from the arrangement, is entitled to rescind in equitable terms fixed by the court. Priebe v Sette, 197 M 453, 267 NW 376.

Evidence found insufficient upon which to predicate breach of seizure. Baker v Rodgers, 199 M 148, 271 NW 241.

Lessor covenanted with lessee that lessor would not engage in oil business during life of the lease. Thereafter lessor and lessee conveyed their interests to plaintiff. Held, that plaintiff has no right of action against lessor upon lessor's engaging in oil business. Dewey v Kapland, 200 M 289, 274 NW 161.

Conveyance held to create a contingent future estate in fee and not a joint tenancy. Papke v Pearson, 203 M 130, 280 NW 183.

Reformation of the instrument to conform with the intention of the testator held to be the remedy, rather than a cancelation of the instrument. Papke v Pearson, 203 M 130, 280 NW 183.

Mistake as to the form of conveyance, or where the parties by mistake fail to embody their intention in a written instrument, because they do not understand the meaning or legal effect of the words used, reformation of deed would be allowed. Papke v Pearson, 203 M 130, 280 NW 183.

Finding that no fraud or misrepresentation to warrant the canceling of the deed. Hughes v Hughes, 204 M 592, 284 NW 781.

Conveyances of property in consideration of agreements to furnish support are different from ordinary commercial contracts, and, where the grantee substantially fails to perform, cancelation and rescission is a proper remedy, and this even if it entails cancelation of a deed. Manemann v West, 216 M 516, 13 NW(2d) 474.

Consideration and weight is given to the practical construction placed upon a deed by the parties and their grantees in order to determine the intention of the grantor. Dittrich v Ubl, 216 M 397, 13 NW(2d) 384; Simms v Fagan, 216 M 283, 12 NW(2d) 783.

The evidence sustains the finding that the grantor in the deed in controversy lacked sufficient mental capacity to execute it. Two adjudications as to competency heard a month apart by two different probate judges, were competent evidence for the trial courts consideration. Rebne v Rebne, 216 M 379, 13 NW(2d) 18.

An easement created by grant may be lost by abandonment. Non-user alone will not establish such abandonment, but such non-user must be accompanied by acts clearly evidencing an intention to abandon. Simms v Fagan, 216 M 283, 12 NW(2d) 783.

"Prescription" is the term usually applied to incorporeal hereditaments; "adverse possession" to lands. Because of the close connection between them the terms are often used interchangeably. Courts construe the word "prescription," where the findings and judgment refer to title by prescription, to mean "adverse possession." There are five essentials of adverse possession. It must be hostile and under a claim of right, actual, open, continuous, and exclusive. Occasional and sporadic occupation does not satisfy these requirements. Romans v Nadler, 217 M 174, 14 NW(2d) 482.

Evidence sustained the finding that plaintiff had acquired no right of way over adjoining lot by adverse user or otherwise. Aldrich v Dunn, 217 M 255, 14 NW(2d) 489.

Deed set aside upon sufficient proof of fraud upon a person of limited business capacity. Yess v Ferch, 218 M 32, 15 NW(2d) 134.

Zoning ordinances, if less stringent, do not diminish the legal effect of private building restrictions. Strauss v Ginsberg, 218 M 57, 15 NW(2d) 130.

Deed conveying land on shore carries title to appurtenant riparian rights. Pike Rapids Co. v M, 99 F(2d) 902.

Reversionary interest in deed passes to heirs of grantor. OAG March 1, 1937 (622i-15).

Unauthorized delivery by escrow agent. 18 MLR 83.

A synthesis of the law of misrepresentation. 22 MLR 939.

Attempts to pass contingent future interests. 23 MLR 94.

4. Mortgages

A mortgage, or an assignment thereof, is deemed a conveyance, and an assignee of a mortgage a purchaser according to the statute. Johnson v Carpenter, 7 M 176 (120).

The term "purchaser" includes the assignee of a mortgage. Kingsley v Gilman, 15 M 59 (40).

A mortgage or an assignment thereof being in legal and proper form is held to be a conveyance and within the recording act. Noonan v Mendenhall, 18 M 232 (212).

A separate instrument of defeasance, supplementary to a deed absolute, is if properly executed, a conveyance and entitled to record, but not being so executed is ineffective. Cogan v Cook, 22 M 137.

An instrument evidencing a release by the mortgagee of part of a tract of land covered by a mortgage is a conveyance and subject to the recording acts. Palmer v Bates, 22 M 532.

A release by a mortgagee of his interest and estate in mortgaged premises is a conveyance, and where an assignee of the mortgage without knowledge of the

payment, and in default of any recording of the release forecloses and bids in the property, he obtains good title. Merchant v Woods, 27 M 396, 7 NW 826.

The certificate of sale under a mortgage foreclosure is a conveyance within the purview of the recording acts. Berryhill v Smith, 59 M 285, 61 NW 144.

An assignment of a real estate mortgage is a conveyance within the meaning of the statutes requiring instruments affecting title to real property to be recorded, and void as to third persons without notice, if not recorded. Huitink v Thompson, 95 M 392, 104 NW 237.

Husband or wife of an incompetent spouse may mortgage the homestead, the guardian of the incompetent consenting to or joining in the conveyance. Hayes-Lucas v Johnson, 172 M 504, 215 NW 857.

In an action in fraud, based on misrepresentation of a real estate mortgage, it is not necessary to allege or prove insolvency of the mortgagor. The damages recoverable are the difference between the value of what the plaintiff parted with and the value of that which he received. Nilsen v Bank, 173 M 174, 216 NW 943.

Ownership of a debt as evidenced by a note secured by a mortgagee, may be proven by facts and verbal evidence and title may pass without written endorsement. Watson v Goldstein, 176 M 18, 222 NW 509.

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. Watson v Goldstein, 176 M 18, 222 NW 509.

Embezzlement of the money placed by principal in agent's hands, and which did not reach the mortgagee, held grounds for restraining the foreclosure of the mortgage, the disbursing agent being the agent of the mortgagee. Madsen v Miller, 176 M 55, 222 NW 581.

Deed and contract held to constitute an equitable mortgage. Dunn v Swanson, 176 M 267, 223 NW 288.

The fact that notes secured by a mortgage are payable at the office of the mortgagee does not constitute the mortgagee the agent of one holding a duly recorded assignment of the mortgage to receive payments from the grantee of the mortgagor. Johnson v Howe, 176 M 287, 223 NW 148.

Since 1862 it has been the established law in Minnesota that a mortgage securing a negotiable instrument is a chose in action, and independent though collateral contract to the instrument it secures. Johnson v Howe, 176 M 287, 223 NW 148.

Evidence supports the finding that the agent who negotiated the loan and had always collected the interest payments, had authority to collect the principal. McCart v Schreiber, 176 M 496, 223 NW 779; Wittles v Howe, 177 M 119, 224 NW 696.

Marshalling the priorities as between mortgages, including the effect of payments made, and merger with the fee. Quevli Farms v Connor, 176 M 609, 224 NW 264.

Where the defendant advanced money to a broker, and the mortgagor executed a mortgage, and the broker recorded it, but embezzled the money, the loss falls on the mortgagee and the mortgage may be canceled. Sonner v Goetze, 177 M 108, 224 NW 697.

A mortgage given to a trustee for the benefit of four named creditors is valid and may be foreclosed even if all of the four creditors did not consent. DeWolf v Johnson, 177 M 612, 225 NW 908.

Purchaser took subject to mortgagee, but without specific words of assumption. Held, parol evidence was admissible to prove assumption of the debt, and the original mortgagor could bring action on grantee's agreement without having first paid the debt. Gustafson v Koehler, 177 M 115, 224 NW 699.

Mortgagee by releasing mortgagors from personal obligation did not subordinate its mortgage to one obtained from subsequent purchaser of the property. Mpls. Invest. Co. v Nat'l Security, 178 M 50, 226 NW 189.

The evidence sustains the findings that the person who had the proceeds of the loan in his hands was the agent of the lender, so that when he failed to pay off the first mortgage upon the premises as agreed, the loss falls upon the lender. Danielson v Tessman, 178 M 514, 227 NW 852.

There was no merger of plaintiff's mortgage and the title subsequently acquired, and the plaintiff, mortgagee, by releasing the mortgagors from their personal liability to pay the mortgage, did not subordinate its mortgage to appellant's obtained from a subsequent purchaser of the land. Mpls. Investment Co. v National Security, 178 M 50, 226 NW 189.

As between the lender and the borrower, the loss falls upon the one who comes nearer to responsibility for the wrong of the offender and the doctrine of estoppel does not apply. Danielson v Tessman, 178 M 514, 227 NW 852.

The rule that an extension of the time of payment of a debt releases an obligor not consenting thereto is limited to a release of a surety by such extension being granted to the principal debtor, and purchasers through the mortgagor who had assumed and agreed to pay the mortgage were not released by an extension of time of payment granted by the mortgagee to the mortgagor. Bursell v Morgan, 181 M 462, 233 NW 12.

The equity doctrine of subrogation and relief in equity applies where a party is compelled to pay the debt of a third person to protect his own rights. Bursell v Morgan, 181 M 462, 233 NW 12.

Misrepresentation as to the value of the buildings, and that the mortgagor resided on the farm, held ground for rescission and damages by one who purchased the mortgage from the mortgagee. Gunnerson v Bank, 182 M 480, 234 NW 676, 235 NW 909.

The transaction of giving a deed and taking back a contract of sale, or the making of an executory contract of sale to secure a loan, are mortgages, and can be extinguished only by foreclosure, and the expiration of the year for redemption. Sanderson v Engel, 182 M 256, 234 NW 450; Minn. Ass'n v Class, 182 M 452, 234 NW 872.

In respect to payment of taxes on mortgaged premises, successive mortgagees are in the same category as tenants in common. One of them purchasing at a delinquent tax sale cannot acquire a tax title to the exclusion of another. All he is entitled to is reimbursement. Bank v Eisenmenger, 183 M 46, 235 NW 390.

Under the real property law of the state, the payment of the mortgage debt by the mortgagor to the mortgagee, without notice of the prior assignment, though there is such an assignment to a good faith purchaser of record at the time, discharges the mortgage. Rea v Kelley, 183 M 194, 235 NW 910.

When the mortgagee executes a valid extension of time to the grantee of the mortgagor, without his knowledge or consent, the mortgagor is released, but the burden of proving lack of notice is on the mortgagor. Harris v Atchinson, 183 M 292, 236 NW 458.

Where there was no confidential or fiduciary relation and no misstatement of material facts, the contract was valid even though the mortgagor misunderstood his personal liability on the mortgage notes. Klemne v Long, 184 M 96, 237 NW 882.

Trustee, under a trust deed securing bonds, held liable for money actually received by it from a sale of part of the security. A trustee who made collections through an agent, the agent charging a commission, cannot charge another commission to take care of the trustee's overhead. Deposit Bank v St. Paul Trust, 185 M 25, 239 NW 766.

Unsuccessful attempt by plaintiff to show by parol evidence that a deed absolute on its face was in fact a mortgage. Stokke v Mikkelsen, 185 M 28, 239 NW 658.

A redemption by a junior mortgagee operates as an assignment of the rights of a purchaser at a real estate foreclosure sale by advertisements, and the redemptioner is subrogated to such rights. Bank v Danicourt, 185 M 435, 241 NW 393.

Where by an extension agreement a bank has agreed to pay a mortgage for the purpose of protecting other security, on payment of the mortgage note it is entitled to an assignment of the note and mortgage to enforce it against the land as against its debts. Nippolt v Bank, 186 M 325, 243 NW 136.

Lumber was obtained by fraudulent representations and a barn built on mortgaged premises. Held, the barn became part of the realty and part of security of the first mortgage. Botsford v State, 188 M 247, 246 NW 902.

Mortgagee is not estopped to assert the lien of their mortgage because of receipt of the proceeds of sales of lots upon which such mortgage is a lien, and the record supports the findings that no contract to give partial release was made by mortgagee. Peterson v Child, 188 M 309, 247 NW 1.

Mortgagors and makers of the notes, on conveyance of the land to persons who assumed and agreed to pay the notes, became sureties as to the mortgagee and when the mortgagee extended the notes and mortgage for five years without the consent of the mortgagor, the sureties were released from liability on the notes. Bank v Erickson, 188 M 354, 247 NW 245.

Grantee assuming and agreeing to pay a mortgage debt under a contract continuing "in full force and effect" all the provisions of the mortgage note is bound by an acceleration clause therein. Bank v Peck, 188 M 383, 247 NW 242.

Where the vendee in possession is granted a five-year extension on a mortgage debt, all prior mortgagors, not consenting to the extension, are released, as being sureties. Bank v Erickson, 188 M 354, 247 NW 245.

Irrevocable power of attorney authorizing the mortgagee to collect rents is superseded by a contract assigning the rents to the mortgagee. Flower v King, 189 M 461, 250 NW 43.

While a mortgagor may be estopped by his covenants from framing an issue against his mortgagee disputing the latter's title, yet he may testify in an issue between the mortgagees and others to facts which might support a finding hostile to the title of the mortgagee. Bank v Olson, 189 M 528, 250 NW 366.

Agreement to pay interest and payment thereof does not impose liability to pay the principal; and personal liability to pay a mortgage debt on the part of the grantee from the mortgagor is created only by a distinct assumption of the mortgage debt, contained either in the conveyance to the grantee or independent thereof. Allen v Hoopes, 189 M 391, 249 NW 570.

Extension agreements made without the knowledge and consent of the mortgagors, release them from personal liability. Allen v Hoopes, 189 M 391, 249 NW 570.

Where husband and wife deposited a note and mortgage running to a third party to be delivered to him upon payment by him of an agreed amount, and without consideration being paid, the mortgage was assigned to the bank and the bank foreclosed to secure payment of a prior debt, held no title passed to the bank. Stibel v Bank, 190 M 1, 250 NW 718.

Grantee of mortgaged property who assumes the mortgage and later reconveys the property to the original mortgagor, cannot be held liable for his assumption of the debt. Marstain v Kircher, 190 M 78, 250 NW 727.

Where the mortgagor deposits the money in a bank and the mortgagee for his own convenience accepts a cashier's check instead of the money, the debt is paid as far as the mortgagee is concerned, and the mortgagee becomes a creditor of the bank. Vogel v Zostrow, 191 M 20, 252 NW 664.

While ordinarily "townsite" means a portion of the public domain segregated by proper authority and procedure to be a town, in this case it applies to a platted addition within the townsite rather than to the townsite itself. Insurance Co. v Keating, 191 M 520, 254 NW 813.

Parties to a mortgage orally agreed that in consideration of the mortgagor's giving a crop mortgage to secure the payment of defaults in payments, an extension would be granted. Held, that a foreclosure had before the expiration of the exemption period might be set aside. Hawkins v Hayward, 191 M 543, 254 NW 809.

Where the mortgagor rented the property taking a chattel mortgage on the crop as security, and duly recorded same, and thereafter assigned the chattel mortgage to the mortgagee, held to be an absolute assignment and not under the chattel mortgage recording laws. Bank v Smaagaard, 192 M 21, 256 NW 102.

Liability of trustee under a trust deed. Sneve v Bank, 192 M 355, 256 NW 730.

A deed, absolute in form, followed some time later by an executory contract of sale from the grantee to one of the grantors, and given as security for a debt, is

a mortgage, and the statute providing for summary cancelation of an executory contract by notice does not apply. Stipe v Jefferson, 192 M 504, 257 NW 99.

Equity will grant relief where the holder of a mortgage takes a new one in renewal of or as a substitute for a former mortgage which he releases in ignorance of an intervening lien when such relief will not result prejudicially to third or innocent persons. Hirleman v Nickels, 193 M 51, 258 NW 13.

Valuable consideration is given for a mortgage taken to secure an existing debt. A life tenant's lien on the remainder, to secure contributions chargeable against the latter because of the life tenant's redemption from an earlier mortgage, passes to the mortgagee under the life tenant's mortgage of the whole estate. Faulkenberg v Windorf, 194 M 154, 259 NW 802.

Valuable consideration is given for a mortgage taken to secure an existing debt, particularly where the maturity of the latter is extended. Faulkenberg v Windorf, 194 M 154, 259 NW 802.

Bank in which mortgagor had a deposit could not appropriate the deposited money to pay unpaid delinquent taxes after the bank had bid in mortgaged premises for the full amount of the debt. Business Women's v Bank, 194 M 171, 259 NW 812.

A bondholder may sue to foreclose a mortgage if the trustee fails to do so, or if the trustee has rendered himself unfit to proceed, and an absolute guarantor may be joined as defendant in the same action with the principal obligor. Townsend v Milaca, 194 M 423, 260 NW 525.

The controlling finding, that a deed to a building contractor accompanied by an executory contract for reconveyance was not a mortgage, is sustained. Dodd v Investment Co. 195 M 254, 262 NW 683; Westberg v Wilson, 185 M 307, 241 NW 315.

A quitclaim deed of mortgaged real estate, given by the mortgagor to the mortgagee, was an absolute conveyance and did not constitute the giving of further security for the debt. Evans v Slagle, 197 M 310, 267 NW 220.

A deed absolute in form may be declared a mortgage if it was so intended wholly independent of the rule laid down by the statute of frauds. No particular form is necessary to constitute a mortgage. It must be in writing, must clearly indicate the creation of a lien, specify the debt to secure which it is given, and the property upon which it is to take effect. Hattlestad v Mut. Trust Co. 197 M 640, 268 NW 665.

Mortgagor holds title and possession while the mortgagee has a mere lien until the redemption has expired from sale under the mortgage, and after the expiration of the period of redemption, a tenant of the mortgagor becomes a tenant at will of the mortgagee. Geo. Benz & Sons v Willar, 198 M 311, 269 NW 840.

Modified agreement as between mortgagor and mortgagee is supported by sufficient consideration, and is enforceable. Insurance Co. v Schultz, 199 M 131, 271 NW 249.

Where a deed absolute in form is alleged to have been given for the purpose of securing a loan, the court will look through the form of the transaction to determine its character and will regard it merely as a mortgage if the parties so intended. The purpose intended is the controlling factor. Mitkey v Ward, 199 M 334, 271 NW 873.

When the subsequent encumbrancer demanded and received a statement of amount due on the prior encumbrance, and tendered the amount so demanded, it became subrogated to all the rights of the owner of the prior encumbrance and the court was justified in ordering an assignment of the mortgage to the redemptor on payment of the amount demanded. Bank v Shenk, 201 M 359, 276 NW 290.

Where a mortgagee turns over the entire amount of the mortgage loan to a broker through whom the loan has been negotiated, the mortgagee thereby constitutes the broker his agent for the purpose of taking up a prior mortgage. Dehnhoff v Heinen, 202 M 295, 278 NW 351.

A real estate mortgage is not deemed a conveyance so as to enable the mortgagee to recover the property without foreclosure, but the mortgagee may accept an assignment of rents and if placed in possession for the purpose of making

leases of the property and collecting the rents therefrom, he becomes the mortgagee in possession. Seifert v Insurance Co. 203 M 415, 281 NW 770.

The trial court's findings that the mortgage and assignment thereof to defendant were valid and that defendant had such interest therein as to justify foreclosure, warrants the dismissal of plaintiff's petition. Hammond v Flour City, 217 M 427, 14 NW(2d) 452.

Expert evidence as to the value of the premises involved related to the adequacy or inadequacy of the consideration, and was properly admitted to aid the court in determining the intent of the parties. The intent of the parties at the time of a conveyance determines whether such conveyance is absolute, or whether it is for security and the determination of such intent is a question of fact. St. Paul Mercury v Lyell, 216 M 7, 11 NW(2d) 491.

The right of redemption from a real estate mortgage foreclosure sale is given by statute and must be exercised in strict compliance. The manner of purchase of the third mortgage was not illegal, nor was it a conspiracy in defraud of creditors. Krahmer v Koch, 216 M 421, 13 NW(2d) 370.

Contract to discharge a debt upon the death of the payee, provided interest was paid, was not discharged, payments in part of the interest having been accepted. Absent manifestation of intention to abandon or to commit a breach, termination or rescission of a contract for an alleged but non-existent default of payment is without effect. Brack v Brack, 218 M 503, 16 NW(2d) 557.

Laws 1931, Chapters 204, 209, 272.

Right to accelerate for defaults. Phillips v Union Central Life Ins. Co. 88 F(2d) 188.

Grantee may be released from liability by contract. OAG Nov. 30, 1931.

507.02 CONVEYANCES BY HUSBAND AND WIFE; POWERS OF ATTORNEY.

HISTORY. R.S. 1851 c. 46 s. 2; 1857 c. 10 s. 1; P.S. 1858 c. 35 ss. 2, 43; G.S. 1866 c. 40 s. 2; G.S. 1866 c. 68 ss 1, 2, 7; 1869 c. 26; 1869 c. 57 s. 1; 1875 c. 65; 1875 c. 66; G.S. 1878 c. 40 s. 2; G.S. 1878 c. 68 ss. 1, 2, 7; 1887 c. 47; 1891 c. 75 s. 1; 1891 c. 81 s. 1; G.S. 1894 ss. 4161, 5521, 5522, 5527; R.L. 1905 ss. 3335, 3456; G.S. 1913 ss. 6814, 6961; G.S. 1923 ss. 8196, 8340; M.S. 1927 ss. 8196, 8340.

1. Property other than homestead

2. Homestead

1. Property other than homestead

Under the provisions of General Statutes 1894, Section 5532, and prior to the passage of Laws 1907, Chapter 123, a deed by a wife of her separate property in which her husband did not join, was void. Place v Johnson, 20 M 219 (198); Yeager v Merkle, 26 M 429, 4 NW 819; Tatge v Tatge, 34 M 272, 25 NW 596, 26 NW 121; Gregg v Owens, 37 M 61, 25 NW 121; Hill v Gill, 40 M 441, 42 NW 294; Steele v Anheuser, 57 M 18, 58 NW 685; Babbitt v Burnett, 68 M 260, 71 NW 22; Blew v Ritz, 82 M 530, 85 NW 548; Lowe v Lowe, 83 M 206, 86 NW 11; Dickman v Dryden, 90 M 244, 95 NW 1120.

The minority of a wife does not invalidate a mortgage executed by her. Daley v Minnesota Loan, 43 M 517, 45 NW 1100.

A wife may join in the covenants of her husband's deed, and obligate herself thereunder, but if she wishes to do so she may join so as to bar her interest without assuming the liabilities of the covenant. Sandwich v Zellmer, 48 M 408, 51 NW 379.

Recording of deed by the grantor, without the knowledge of the grantee, in the absence of other circumstances, will not, as a general rule, amount to a delivery. Babbitt v Bennett, 68 M 260, 71 NW 22.

Married woman, without her husband's consent, furnished money and entered into a written contract with agent to invest in and deal in real estate. The contract was held to be valid. Shanahan v Richardson, 75 M 402, 78 NW 110.

Leases executed by the wife, the husband joining, held not conditional sales of the ore, thus entitling the husband to his statutory one-third of the royalties accruing after wife's death. Boeing v Owsley, 122 M 190, 142 NW 129.

Effect of wife's separate deed subsequent to deed by husband alone. Ziemon v Diessner, 128 M 535, 150 NW 1103.

Subsequent to the enactment of Laws 1907, Chapter 123, in an action involving real estate not the homestead, the fact that the wife is a party to the action does not prohibit the husband from testifying in the case to a conversation with a deceased person. Thill v Freimuth, 132 M 242, 156 NW 260.

Notice of wife's title through a five-year lease. Oxborough v St. Martin, 142 M 34, 170 NW 707.

The refusal of defendant's wife to execute the contract of sale was not a defense to an action by the broker for services in procuring a purchaser. Eddy v Hinchman, 157 M 402, 196 NW 479.

Legislative modification of the common law doctrine of the sanctity of the family contract. Albrecht v Potthoff, 192 M 563, 257 NW 379.

A separation agreement between husband and wife in terms obligated each to join with the other in the execution of future conveyances or encumbrances of real property belonging to either, is illegal because of the statute declaring "no contract between husband and wife relative to the real estate of either, or any interest therein, shall be valid." Simmer v Simmer, 195 M 1, 261 NW 481.

Father deeded land to William in oral trust to Charles. At the request of Charles, William deeded the property to a creditor of Charles, and the creditor paid taxes thereon. The insane wife of Charles did not consent in writing to the conveyance. On her death her undivided one-third interest descended to her children. Peterson v Anderson, 218 M 383, 16 NW(2d) 185.

Infant married woman's conveyance not voidable in Minnesota. 2 MLR 448.

Protection of the inchoate right of dower. 11 MLR 354.

What constitutes joinder by the husband in deed of wife's separate estate. 11 MLR 377.

Conveyances under the probate code. 20 MLR 106.

2. Homestead

An agreement made before the proofs securing the price of a land warrant is in the nature of a purchase money mortgage and as such takes precedence of the widow's dower and homestead rights. Jones v Tainter, 15 M. 512 (423).

A conveyance of his homestead by a married man, without his wife's signature, is void; and a contract to convey his homestead, made by the husband alone, without his wife's signature, does not bind the land and cannot be specifically enforced. Barton v Drake, 21 M 299.

Equitable owner of purchaser's interest in a school land contract has a homestead right if he resides thereon, and any conveyance is void without the wife's signature. Wilder v Haughey, 21 M 101; Hartman v Munch, 21 M 107.

A conveyance does not become valid upon the premises ceasing to be a homestead, nor by reason of subsequent divorce. Barton v Drake, 21 M 299; Alt v Banholze, 36 M 57, 29 NW 674, 39 M 511, 40 NW 830; Law v Butler, 44 M 482, 47 NW 53.

Property occupied as a homestead is protected against any mortgage, except for purchase money, given by the owner without the signature of the wife. Lumber furnished to build a house thereon not construed to be included in term "purchase money." Smith v Lockor, 23 M 454.

A husband cannot waive exemption without his wife joining. Ferguson v Kirmler, 25 M 183.

A mortgage on a homestead duly executed by husband and wife, was modified with consent of the husband only, and as the modification was material the mortgage as to her was void. Coles v York, 28 M 464, 10 NW 775.

The wife may be estopped, under certain circumstances and conduct, from asserting her non-consent to a conveyance. Coles v York, 28 M 464, 10 NW 775;

Law v Butler, 44 M 482, 47 NW 53; Knight v Schwandt, 67 M 71, 69 NW 626; Esty v Cummings, 75 M 549, 78 NW 242; Osman v Wisted, 78 M 295, 80 NW 1127.

Owner and wife executed a mortgage on a block of 12 city lots on which was an unascertained homestead. A material modification having been made without the wife's consent, held, that the holder of the mortgage may foreclose, have the homestead limits ascertained, and set off, and the remainder of the block sold to satisfy the mortgage. Coles v York, 31 M 213, 17 NW 341.

A conveyance of lands of which the homestead is a part, and without the signature of the wife, is not void as to lands other than the homestead. Coles v York, 31 M 213, 17 NW 341; Weitzmer v Thigstad, 55 M 244, 56 NW 817.

A husband, a part of whose homestead is taken under the law of eminent domain, may dispose of the compensation award without the consent of the wife. Canty v Latherner, 31 M 239, 17 NW 385.

The husband as head of the family fixes the domicile of the family, including the wife, so that when he and his wife remove from the homestead he having no intention of returning, that is an abandonment and terminates the homestead exemption. Williams v Moody, 35 M 280, 28 NW 510.

Where the signature of one of the spouses is obtained by fraud, the conveyance may be set aside unless the grantee is innocent. Farr v Dunsmoor, 36 M 437, 31 NW 858; Bank v Flynn, 75 M 279, 77 NW 961.

Husband executed a mortgage on his homestead, the wife not joining. Thereafter, husband and wife were divorced. Later the property was sold subject to the mortgage. Held, that the grantee is estopped from questioning the validity of the mortgage. Alt v Banholzer, 36 M 57, 29 NW 674.

Where grantor's wife joined in the execution of a deed, placed in escrow awaiting conditional delivery, she waived her homestead rights. Knopf v Hansen, 37 M 215, 33 NW 781; Esty v Cummings, 75 M 549, 48 NW 242.

A mortgage of the homestead by the husband without the wife's signature, is wholly void. Conway v Elgin, 38 M 469, 38 NW 370; Alt v Banholzer, 39 M 511, 40 NW 830; Jelinek v Stepan, 41 M 412, 43 NW 90.

Where the husband held a certificate of sale of school lands, and occupied the premises as a homestead, an assignment of the certificate without the wife not affixing her signature, is void. Law v Butler, 44 M 482, 47 NW 53.

Contract of the husband, the wife not joining, to convey his homestead is void for all purposes, and the husband is not liable in damages for its nonperformance. Weitzner v Thingstad, 55 M 244, 56 NW 817.

It is not necessary for the wife to join in the covenants of her husband's deed in order to bar her homestead interest. Sandwich v Zellmer, 48 M 408, 51 NW 379.

Where an unmarried man mortgages land and afterwards marries and occupies the land as a homestead, the consent of the wife is not necessary to the assignment of the mortgage and the mortgage remains valid. Spalte v Blimer, 63 M 269, 65 NW 454.

The consent of both husband and wife is essential to the conveyance of a homestead. Grace v Grace, 96 M 294, 104 NW 969.

Husband and wife under terms of decree of divorce each became owner of an undivided one-half of the homestead. Held, the wife cannot have partition thereof against her husband. Grace v Grace, 96 M 294, 104 NW 969.

An attempted conveyance, by deed, mortgage or otherwise, of his homestead by a married man without his wife's signature, is void, although she may have abandoned him and her home. 99 M 348, 109 NW 593.

A contract by a married man granting a perpetual easement for a railway right of way over land occupied as a homestead, is void, without the signature of the wife. Delisha v Elec. Traction Co. 110 M 518, 126 NW 276.

Wife joining her husband in conveyance of homestead, to secure a present loan and future advances, binds her homestead rights for such advances, and the deed and collateral defeasance instrument may be reformed to facilitate foreclosure. Staples v Bank, 122 M 419, 142 NW 721.

Grantor by warranty deed conveyed homestead and other property, reserving a life estate in all, and continued in possession. The wife did not sign. Held, to be void as to the homestead. Ekblom v Nelson, 124 M 335, 144 NW 1094.

In an action to set aside the foreclosure of a mortgage on the homestead, and to which the wife had not affixed her signature, it was error to admit evidence of a judgment in a prior action relating to the validity of the marriage. Lamont v Lamont, 128 M 525, 151 NW 416.

Where husband and wife join in conveying perpetual easement, a misdescription due to mutual mistake may be reformed. Lindell v Peters, 129 M 288, 152 NW 648.

Agreement by a husband, without wife's consent, to give the town a right of way across the homestead of the parties, is void. Warsaw v Bakken, 133 M 128, 156 NW 7, 157 NW 1089.

In an action brought against the husband alone, judgment was obtained ordering partition of the homestead unless an undivided interest was conveyed. Held, judgment void both as to husband and wife. Brokl v Brokl, 133 M 218, 158 NW 250.

A conveyance of the homestead not executed as required by statute is void; but where both intended to convey the homestead, and each executed a formal deed of the premises, a subsequent purchaser in good faith may invoke the doctrine of estoppel. Bullock v Miley, 133 M 261, 158 NW 244.

A contract for the sale of a homestead held in joint tenancy, made by the wife alone, and thereafter confirmed by the husband, is not invalid. Lennartz v Montgomery, 138 M 170, 164 NW 899.

Unrecorded deed of a homestead is valid as against a judgment creditor who had notice thereof before the land became subject to his judgment. Oxborough v St. Martin, 142 M 34, 170 NW 707.

Land owned by married man who had left his wife, and for years occupied by him together with another woman, is his homestead, and a deed in which his lawful wife did not join was void as to such homestead. Rux v Adam, 143 M 38, 172 NW 914; St. Denis v Mullen, 157 M 266, 196 NW 258.

A husband may lease a portion of the homestead for a six-month period if it does not interfere with the use of the property as a homestead. Bacon v Mirau, 148 M 268, 181 NW 579.

Where the husband falsely represents himself as unmarried, and thus obtains a mortgage on his homestead, the mortgage is void; but the husband after the death of his wife is estopped from asserting a defense. Bozich v Bank, 150 M 241, 184 NW 1021.

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. Wade v Bank, 158 M 231, 197 NW 277.

Where the wife has been wrongfully induced by fraud to release her homestead rights, either by her husband or by a third party, she is entitled, in a court of equity, to have such conveyance set aside and be restored to her legal rights. Tomlinson v Bank, 162 M 230, 202 NW 494.

Facts sustain the finding that there was consideration for the mortgage and there was no duress. Hines v Byers, 162 M 349, 202 NW 733.

A wife having executed papers and intrusted them to her husband without restrictions on their use, cannot resist foreclosure by denying her husband's authority. Bank v Giller, 162 M 391, 203 NW 227.

In an action to set aside a contract for the sale of 160 acres, of which 80 acres was plaintiff's homestead, and where the wife refused to join in the contract or deed, and where the facts were all known to the defendant, held, the contract was entire and the defendant was not entitled to specific performance as to the unexempt 80, nor to damages. Horseth v Fuglesteen, 165 M 38, 205 NW 607.

Since the amendment to the constitution in 1888, homesteads are subject to mechanic's liens. Gale v Hopkins, 165 M 177, 200 NW 164.

The doctrine of estoppel did not apply to a wife whose promise to execute a mortgage on her homestead was indefinite and uncertain. Butler v Levine, 166 M 158, 207 NW 315.

Cotenancy does not prevent the existence of homestead rights, and where two brothers occupied the farm as joint tenants, the death of one of them does not destroy the homestead exemption. Eberhart v Bank, 172 M 200, 214 NW 793.

Irregularities in the procedure under the orders of the probate court are not such departure from the prescriptions of the statute as to cause fatal defects in a mortgage. Hayes-Lucas v Johnson, 172 M 504, 215 NW 857.

An oral agreement by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable but is wholly void. Kingery v Kingery, 185 M 467, 241 NW 583.

The equitable interest of a vendee under a contract for deed cannot be alienated without the signature of the other spouse where the land covered by the contract is occupied by the vendee as a homestead. Craig v Bamgartner, 191 M 42, 254 NW 440.

A separation agreement between husband and wife in terms obligated each to join with the other in the execution of future conveyances or encumbrances of real property belonging to the other. Held, to be illegal under the statute. Simmer v Simmer, 195 M 4, 261 NW 481.

The provision of the constitution subjecting homesteads to labor liens, does not include the claim of a salesman for unpaid wages. Fletcher v Scott, 201 M 609, 277 NW 270.

An instrument in mortgage form in which the spouse did not join may be registered under a district court order. Application of Finnegan, 207 M 480, 292 NW 22.

The statute requiring a lien on all real property of a recipient of old age pension assistance is a valid enactment even though it allows imposition of a lien on the homestead without the wife's consent. Dimke v Finke, 209 M 29, 295 NW 75.

Where plaintiff's parents, by accepting benefits of agreement whereby plaintiff was to receive homestead of his parents upon death of survivor of them provided he had maintained them throughout their lives, were estopped during their lifetimes from invoking statute relating to alienation of homestead property. For purpose of having agreement declared invalid, children of plaintiff's deceased sister, claiming title through their grandparents are estopped from invoking homestead statute. Seitz v Sitze, 215 M 452, 10 NW(2d) 426.

The trial court was justified in refusing to set aside a deed whereby plaintiff and his wife, now deceased, conveyed their homestead to her daughters by a former marriage. Martin v Tucker, 217 M 108, 14 NW(2d) 107.

Parol evidence is admissible where there was latent ambiguity in a trust deed including homestead executed by husband and wife. Graham v Nat'l Surety, 244 F. 914.

Brothers held not partners in ownership of land and one married could claim homestead exemption. Citizens L. & T. Co. v Eberhart, 298 F. 291.

Conveyance of homestead by husband or wife. 2 MLR 63.

Fraudulent conveyance; homestead in wife's name. 2 MLR 392.

Necessity of consent of insane spouse to alienation of homestead. 10 MLR 350.

Right of one spouse to recover for negligent tort of another. 10 MLR 439.

Effect of conveyance by owner of homestead. 25 MLR 71.

Validity of old age pension homestead lien law. 25 MLR 520.

507.021 CONVEYANCES RECORDED 15 YEARS VALIDATED.

HISTORY. 1923 c. 208 s. 1; M.S. 1927 s. 8197.

507.03 PURCHASE-MONEY MORTGAGE; NON-JOINDER OF SPOUSE.

HISTORY. 1909 c. 29 s. 1; 1909 c. 465 s. 1; G.S. 1913 s. 6816; G.S. 1923 s. 8198; M.S. 1927 s. 8198.

507.04 CONVEYANCE BY HUSBAND OR WIFE OF INSANE OR INCOMPETENT.

HISTORY. R.S. 1851 c. 46 s. 2; P.S. 1858 c. 35 s. 2; G.S. 1866 c. 40 s. 2; 1869 c. 56 ss. 2, 15; 1869 c. 57 s. 1; 1874 c. 66 s. 1; 1878 c. 25 s. 1; G.S. 1878 c. 40 s. 2; G.S. 1878 c. 69 ss. 2, 5; 1887 c. 47; 1889 c. 25 s. 1; 1889 c. 46 s. 193; 1889 c. 90 s. 1; 1889 c. 103 s. 1; 1891 c. 82 s. 1; G.S. 1894 ss. 4161, 4603, 5532, 5535; R.L. 1905 s. 3338; G.S. 1913 s. 6825; 1915 c. 131 s. 1; 1919 c. 395 s. 1; G.S. 1923 s. 8201; M.S. 1927 s. 8201.

Father, without joining his insane wife, deeded the homestead to a son, abandoned the homestead, and by action had the deed reformed in certain particulars, later deeded the property to another son. Held, that while the deed was void, the father was estopped from raising the issue of invalidity and that estoppel extended to the son to whom the second deed was given. Lucy v Lucy, 107 M 432, 120 NW 754; Boeing v Owsley, 122 M 191, 142 NW 129.

A mortgage is a conveyance under the purview of the law permitting the sane spouse to convey property, and where the probate court authorizes the guardian of the insane person to join in the making of the mortgage that is not a fatal defect, although the law says "consent to." Hayes-Lucas v Johnson, 172 M 504, 215 NW 857.

507.05 CONVEYANCE BY CORPORATION; RESOLUTION APPOINTING ATTORNEY.

HISTORY. R.S. 1851 c. 46 ss. 2, 3; P.S. 1858 c. 35 ss. 2, 3; G.S. 1866 c. 40 ss. 2, 3; 1869 c. 57 s. 1; G.S. 1878 c. 40 ss. 2, 3; 1887 c. 47; 1891 c. 75 s. 1; G.S. 1894 ss. 4161, 4162; R.L. 1905 s. 3339; G.S. 1913 s. 6826; G.S. 1923 s. 8202; M.S. 1927 s. 8202.

The statute providing that a corporation may convey real estate by an agent appointed by vote for that purpose, does not exclude other modes of conveyances. Morris v Keil, 20 M 531 (474).

507.06 QUITCLAIM DEED PASSES ALL ESTATE OF GRANTOR.

HISTORY. R.S. 1851 c. 46 s. 4; P.S. 1858 c. 35 s. 4; G.S. 1866 c. 40 s. 4; 1875 c. 51 s. 1; G.S. 1878 c. 40. s 4; G.S. 1894 s. 4163; R.L. 1905 s. 3340; G.S. 1913 s. 6827; G.S. 1923 s. 8203; M.S. 1927 s. 8203.

What passes by a quitclaim deed. Martin v Brown, 4 M 282 (201).

A quitclaim deed passes only such estate as the grantor can lawfully convey. Everest v Ferris, 16 M 26 (14).

A first deed was void for uncertainty in description and retained a reversionary interest; the later quitclaim deed had a proper description but also conveyed all reversion or remainder of the plaintiff. Held, the second deed was not confirmatory only, but was in itself a deed of conveyance of any interest the grantor at that time had in the property. McKusick v County Commsrs., 16 M 151 (135).

Roberts quitclaimed to Marshall who failed to record his deed. Five years later Roberts by quitclaim deeded the same property to Lampreys, who recorded the deed. Held, Marshall cannot recover damages from Roberts because Roberts, at the time he quitclaimed to Lampreys, had no deed to convey and Marshall has not been damaged. Marshall v Roberts, 18 M 405 (365).

Estate conveyed by quitclaim of tax title. Wheeler v Merriman, 30 M 372, 15 NW 665.

A quitclaim deed, if placed on record, stands on the same footing as other conveyances, and a bona fide grantee therein is entitled to the same preference over prior unrecorded deeds. Strong v Lynn, 38 M 315, 37 NW 448.

The interest in real property acquired by a purchaser at a mortgage foreclosure sale, will pass by quitclaim deed during the year of redemption, and there being no redemption, the title passes to the grantee. Tuttle v Boshart, 88 M 284, 92 NW 1117.

Estopped from asserting subsequent conveyances as against a prior grantee. Bradley v Bradley, 97 M 161, 106 NW 110.

An executory contract for the sale of land stipulated that on payment, the grantor would convey and assure the grantee by a quitclaim deed. Held, that the

grantor was required to quitclaim only, as there was no provision for anything more. McNellis v Hilkowski, 98 M 127, 107 NW 965.

Holder of school land certificates is the owner of the equitable title to the land, and assignments of such certificates are conveyances of real estate, and when made in blank become effective when the name of a grantee is inserted. Werntz v Bolen, 135 M 449, 161 NW 155.

The recording statutes place deeds of quitclaim on the same footing as warranty deeds as far as effect of recording is concerned. Akerberg v McCrary, 141 M 230, 169 NW 802.

A quitclaim deed to land, given after a grain crop thereon has been harvested and severed from the land, conveys no title to such crop. Schurchard v Elevator Co. 176 M 37, 222 NW 292.

Form of deed from the state to the federal government. 1938 OAG 389, April 17, 1937 (700e).

History of a title; comment. 22 MLR 129, 135.

507.061 WORDS OF INHERITANCE.

HISTORY. R.S. 1851 c. 46 s. 4; P.S. 1858 c. 35 s. 4; G.S. 1866 c. 40 s. 4; 1875 c. 51 s. 1; G.S. 1878 c. 40 s. 4; G.S. 1894 s. 4163; R.L. 1905 s. 3340; G.S. 1913 s. 6827; G.S. 1923 s. 8203; M.S. 1927 s. 8203.

507.07 WARRANTY AND QUITCLAIM DEEDS; FORMS.

HISTORY. 1901 c. 197 ss. 1, 2; R.L. 1905 s. 3341; G.S. 1913 s. 6828; G.S. 1923 s. 8204; M.S. 1927 s. 8204.

A warranty deed of a definite quantity of land, no boundaries or monuments being given, on a designated side of a larger tract, which is duly described, conveys and warrants the full quantity named. Larson v Goettl, 103 M 272, 114 NW 840.

Covenants are in praesenti and are broken immediately, if at all. They are broken if the covenantor has not the right of possession and complete legal title. Calloway v Seaton, 156 M 224, 194 NW 622.

The description of a crop is sufficient if it be such that a prudent disinterested person, aided and directed by such inquiry as the instrument suggests, is able to identify the property. Helgeson v Farmer's Coop. 160 M 109, 199 NW 821.

Where a grantor has acquired a right of way affording the only egress and ingress from a public road to the land conveyed, the same is an appurtenance to the land and passes by the deed without any reference thereto. Stopf v Wobbrock, 171 M 358, 214 NW 49.

Where an owner executes a deed without naming the grantee and delivers it to an agent to enable him to make a sale of the land, the agent has implied authority to insert the name of the purchaser; and should the agent insert his own name as grantee, the principal may repudiate the transaction, or accept the situation and recover damages. Norby v Bank, 177 M 127, 224 NW 843.

The inveterate use of certain words of limitation has given such meaning that the legislature, for want of better language, has adopted their use in declaring its own meaning by providing that the short forms of conveyances without words of inheritance or express covenants, under section 507.07, should be the same as if there was a grant and the usual covenant "to the grantee, his heirs and assigns." Bank v Higgins, 208 M 310, 293 NW 585.

If land is conveyed by deed of general warranty, any superior outstanding title subsequently acquired by the grantor will inure to the benefit of the grantee and his assigns. Simms v Fagan, 216 M 283, 12 NW(2d) 783.

507.08 UNIFORM CONVEYANCING BLANKS COMMISSION AUTHORIZED.

HISTORY. 1929 c. 135; 1931 c. 34; M. Supp. s. 8204-1.

While the short form conveyancy form dispenses with the phrase "to the grantee, his heirs and assigns," the words if used are deemed to have their old established meaning. Bank v Higgins, 208 M 310, 293 NW 593.

Register of deeds has no right to charge less than schedule of fees set forth in the statute. OAG Feb. 23, 1932.

507.09 FORMS APPROVED.

HISTORY. 1931 c. 272 s. 1; M. Supp. s. 8204-2.
Double hazard of a note and mortgage. 16 MLR 123.

507.10 CERTIFIED COPIES OF FORMS TO BE PRESERVED.

HISTORY. 1931 c. 272 s. 2; M. Supp. s. 8204-3.

507.11 FEES FOR RECORDING.

HISTORY. 1931 c. 272 s. 3; M. Supp. s. 8204-4.

507.12 UNIFORM FEES.

HISTORY. 1931 c. 272 s. 4; M. Supp. s. 8204-5.

507.13 STANDARD FORMS ESTABLISHED.

HISTORY. 1931 c. 272 s. 5; M. Supp. s. 8204-6.

507.14 MINNESOTA UNIFORM CONVEYANCING BLANKS.

HISTORY. 1931 c. 272 s. 6; M. Supp. s. 8204-7.

507.15 UNIFORM SHORT FORM MORTGAGE.

HISTORY. 1931 c. 204 ss. 1 to 3; M. Supp. ss. 8204-9, 8204-10, 8204-11.

507.16 NO COVENANTS IMPLIED.

HISTORY. R.S. 1851 c. 46 ss. 5 to 7; P.S. 1858 c. 35 ss. 5 to 7; G.S. 1866 c. 40 s. 6; G.S. 1878 c. 40 s. 6; G.S. 1894 s. 4165; R.L. 1905 s. 3342; G.S. 1913 s. 6829; G.S. 1923 s. 8205; M.S. 1927 s. 8205.

Construed as to party wall. Warner v Rogers, 23 M 34.

Construed as to assignment of mortgage. McNaughton v Carleton College, 28 M 285, 9 NW 805.

Construed as to liability of administrator of estate. Fritz v McGill, 34 M 118, 24 NW 369.

At common law a covenant of seizure is not implied in a deed of real property by the use of the operative words "grant, bargain, sell, convey, and warrant." Aitkin v Franklin, 42 M 91, 43 NW 839.

Construed as to highway right of way. Sandum v Johnson, 122 M 368, 142 NW 878.

Defendant leased property and in another instrument covenanted not to operate a filling station during the life of the lease. He then sold the property and assigned the lease to plaintiff. Later the defendant breached the contract by operating a filling station, whereupon the lessee moved out, and the plaintiff brought suit for the resulting damage. Held, no privity of contract between parties and the plaintiff cannot recover. Dewey v Kapland, 200 M 291, 274 NW 161.

507.161 CONVEYANCE BY DISSEIZEE.

HISTORY. R.S. 1851 c. 46 ss. 5 to 7; P.S. 1858 c. 35 ss. 5 to 7; G.S. 1866 c. 40 s. 6; G.S. 1878 c. 40 s. 6; G.S. 1894 s. 4165; R.L. 1905 s. 3342; G.S. 1913 s. 6829; G.S. 1923 s. 8205; M.S 1927 s. 8205.

Averments in the answer that the assignment of the vendor's contract to defendant had been purloined by the assignor after its execution and before it could be recorded, cannot be considered as an admission that defendant had not acquired title to the contract. Calloway v Seaton, 156 M 224, 194 NW 622.

507.17 CONVEYANCE INCLUDES ABUTTING VACATED PUBLIC RIGHT OF WAY.

HISTORY. 1939 c. 386; M. Supp. s. 8208-1.

The section provides a rule of evidence to be applied in construing certain conveyances of real estate. 24 MLR 243.

City council of Fergus Falls cannot impose a "tapping fee" as condition precedent to water connection. 1940 OAG 216, March 11, 1940 (62c).

507.18 CERTAIN RESTRICTIONS PROHIBITED.

HISTORY. 1919 c. 188 ss. 1 to 4; G.S. 1923 ss. 8206 to 8209; M.S. 1927 ss. 8206 to 8209.

The section prohibits discrimination in written instruments relating to real estate, against persons or classes of persons because of their religious faith. 3 MLR 443.

507.19 CONVEYANCE BY TENANT FOR LIFE OR YEARS; NO FORFEITURE.

HISTORY. R.S. 1851 c. 46 s. 4; P.S. 1858 c. 35 s. 4; G.S. 1866 c. 40 s. 5; G.S. 1878 c. 40 s. 5; G.S. 1894 s. 4164; R.L. 1905 s. 3343; G.S. 1913 s. 6830; G.S. 1923 s. 8210; M.S. 1927 s. 8210.

The will creating the life estate took effect in 1864. The life tenancy closed upon the conveyance of the estate in 1872 by the life tenant and the remainderman became entitled to immediate possession, and the grantees under the conveyance of 1872 became owners by adverse possession for a sufficient time prior to the date of the commencement of this action. Barnes v Gunter, 111 M 383, 127 NW 398.

A deed conveying real estate to a tenant for life, remainder to children living at the time of his death, creates a vested remainder in the children living at the date of the death of the tenant, and a power of sale on the arising of a contingency does not destroy the rights of a remainderman. Where the life tenant conveys or mortgages the premises, possession of the life tenant's grantee does not become adverse until the death of the life tenant. Ashbaugh v Wright, 152 M 57, 188 NW 158.

507.20 GRANTOR TO MAKE KNOWN ENCUMBRANCE.

HISTORY. G.S. 1866 c. 40 s. 34; G.S. 1878 c. 40 s. 34; G.S. 1894 s. 4194; R.L. 1905 s. 3344; G.S. 1913 s. 6831; G.S. 1923 s. 8211; M.S. 1927 s. 8211.

It is not ncessary to the validity of the foreclosure that the authority to execute an assignment of mortgage be recorded. Morrison v Mendenhall, 18 M 232 (212).

This section does not apply to a conveyance which passes no title or interest in the real estate. McNaughton v Carleton College, 28 M 285, 9 NW 805.

A covenant of warranty is not restricted by an exception in a preceding covenant against encumbrances. Sandwich Mfg. v Zellmer, 48 M 408, 51 NW 379.

507.21 LIABILITY OF GRANTOR WHO COVENANTS AGAINST ENCUMBRANCES.

HISTORY. R.S. 1851 c. 46 s. 36; 1858 c. 52 s. 1; P.S. 1858 c. 35 ss. 36, 54; G.S. 1866 c. 40 s. 35; G.S. 1878 c. 40 s. 35; G.S. 1894 s. 4195; R.L. 1905 s. 3345; G.S. 1913 s. 6832; G.S. 1923 s. 8212; M.S. 1927 s. 8212.

This section has reference solely to encumbrances appearing of record to exist, but not existing in fact and for damages in removing same. Hawthorne v Bank, 34 M 382, 26 NW 4.

Covenant by grantor to remove an encumbrance by a certain date, and in default of removal to pay a stated sum as liquidated damages, is valid and enforceable according to its terms. Stipulated damages distinguished from penalties. Foster v Beard, 39 M 32, 38 NW 755.

Reassessment due to under-valuation held in this case not to be an encumbrance. Davidson v Franklin Ave. 129 M 88, 158 NW 538.

507.22 EXECUTION OF CONVEYANCES.

HISTORY. R.S. 1851 c. 46 s. 8; P.S. 1858 c. 35 s. 8; G.S. 1866 c. 40 s. 7; 1868 c. 61 s. 1; G.S. 1878 c. 40 s. 7; G.S. 1894 s. 4166; 1897 c. 141; 1901 c. 372; R.L. 1905 s. 3346; G.S. 1913 s. 6833; G.S. 1923 s. 8213; M.S. 1927 s. 8213.

The record of the mortgage disclosed only one witness, and was therefore no notice to a subsequent grantee or mortgagee. Parret v Shaubhut, 5 M 323 (258).

A lease for a term not exceeding three years, need not be attested by witnesses. Chandler v Kent, 8 M 524 (467).

To pass the title of a grantor of land to a grantee, nothing more is necessary than the execution and delivery of the grantor's deed purporting to pass the title. It is not necessary, for this purpose, that the deed be witnessed or acknowledged. Morton v Leland, 27 M 35, 6 NW 378.

Recorded mortgage with but one witness is valid as against those having actual notice. The mortgage instrument being defective in form, a foreclosure by advertisement was abortive, and the mortgage title after foreclosure was that of mortgagee in possession. Johnson v Sandhoff, 30 M 197, 14 NW 889.

To pass title it is not necessary that a grantor should actually write his signature to a deed with his own hand. It is sufficient if written by the grantor's authority, or adopted by him as his signature. It is the signing and sealing that constitutes an instrument a deed. Conland v Grace, 36 M 276, 30 NW 880.

A deed is effectual as a conveyance, although only one subscribing witness. The capacity of a married woman to be bound and estopped by her conduct is incident to their enlarged power to deal with others, and in this instance where she executed and delivered a deed where the name of the grantee was blank, she is estopped from contesting the validity of her act. Doffin v Cordiner, 41 M 165, 42 NW 870.

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

Relating to execution of conveyance by members of the armed forces. OAG Dec. 6, 1944 (373b-17-1).

Cannot legally record assignments of mortgage not properly witnessed unless execution thereof is authorized by laws of state of execution. 1934 OAG 254, June 1, 1934 (373b-11).

Transferring title. 4 MLR 318.

507.23 INCOMPLETE CONVEYANCE, HOW PROVEN.

HISTORY. R.S. 1851 c. 46 ss. 14, 15; P.S. 1858 c. 35 ss. 14, 15; G.S. 1866 c. 40 ss. 11, 12; G.S. 1878 c. 40 ss. 11, 12; G.S. 1894 ss. 4170, 4171; R.L. 1905 s. 3347; G.S. 1913 s. 6834; G.S. 1923 s. 8216; M.S. 1927 s. 8216.

507.24 RECORDABLE, WHEN.

HISTORY. R.S. 1851 c. 46 s. 23; P.S. 1858 c. 35 s. 23; 1865 cc. 17, 18; G.S. 1866 c. 40 ss. 20, 32; G.S. 1878 c. 40 ss. 20, 32; G.S. 1894 ss. 4179, 4191; R.L. 1905 s. 3348; G.S. 1913 s. 6835; G.S. 1923 s. 8217; M.S. 1927 s. 8217.

Record of a deed is notice of its contents only so far as the record discloses it. Parrett v Shaubhut, 5 M 323 (258).

Grantor may bring an action to have a bond for a deed canceled when the grantee is in default on payments. Dahl v Pross, 6 M 89 (38).

A certified copy of the record of a deed in another state is not entitled to record here. Lund v Rice, 9 M 230 (215).

Relating to execution of an assignment of a mortgage. Morrison v Mendenhall, 18 M 232 (212).

The record of a deed, appearing on its face to have been properly executed and acknowledged, is evidence that the deed was in fact executed as it purports to have been, even if by reason of extrinsic facts the deed is void or voidable.

This justifies a finding of the husband's consent to the deed. Clague v Washburn, 42 M 371, 44 NW 130.

The record of a contract for the purchase of land which was duly signed and acknowledged, by the vendor, is constructive notice to all subsequent purchasers and assignees. McPheeters v Ronning, 95 M 164, 103 NW 889.

In broker's action for commission, there was no error in admitting oral evidence that a written assignment of commission by plaintiff was for collection only. Alton v Hecht, 184 M 271, 238 NW 482.

In an action against notary for malfeasance in not affixing seal or expiration date, a demurrer was sustained and the appellate court refused to reverse the lower court, based on the doctrine of de minimis. Smith v Altier, 184 M 299; 238 NW 479.

When recordable. OAG April 21, 1935 (373b-17d); OAG Jan. 7, 1937 (73b-9a); OAG Feb. 11, 1937 (373b-9); OAG Dec. 22, 1937 (373b-5).

Transfer of title. 4 MLR 318.

Application of de minimis rule. 16 MLR 440.

507.25 CERTIFIED COPY OF RECORD MAY BE RECORDED.

HISTORY. G.S. 1866 c. 40 s. 33; 1868 c. 63 s. 1; G.S. 1878 c. 40 s. 33; 1889 c. 39 s. 1; 1891 c. 74 s. 1; G.S. 1894 ss. 4192, 4193; R.L. 1905 s. 3349; G.S. 1913 s. 6836; G.S. 1923 s. 8218; M.S. 1927 s. 8218.

Certified copy of the record of a deed in another state is not entitled to be recorded here. Lund v Rice, 9 M 230 (215).

To entitle a photostatic copy of a certificate on file in the office of the secretary of state (and relating to change of name of a corporation) to record, the secretary must certify that it is a copy of a document on file in his office. OAG July 13, 1944 (373b-8).

507.26 JUDGMENTS.

HISTORY. 1897 c. 76; R.L. 1905 s. 3350; G.S. 1913 s. 6837; G.S. 1923 s. 8219; M.S. 1927 s. 8219.

The grantee of a defendant in an action to determine adverse claims to real property, wherein judgment has been rendered by default, may, upon a showing of due diligence, move the court to vacate the judgment, and defend therein, but his relief depends on whether on the facts disclosed the defendant would be entitled to such an order. Kipp v Clinger, 97 M 135, 106 NW 108.

This section is a recording act, and does not make the record of such judgment notice of the entry thereof, within the meaning of that part of the statute which limits the time within which applications for relief from judgments may be made to one year from notice thereof. Foster v Coughran, 113 M 433, 129 NW 853.

507.27 COPY OF WILL AND PROBATE.

HISTORY. 1903 c. 59 s. 1; R.L. 1905 s. 3351; G.S. 1913 s. 6838; G.S. 1923 s. 8220; M.S. 1927 s. 8220.

Belated will; title acquired from heir of testatrix supposed to have died intestate. 10 MLR 168.

507.28 DEEDS OF PEWS.

HISTORY. R.S. 1851 c. 46 s. 25; P.S. 1858 c. 35 s. 25; G.S. 1866 c. 40 s. 22; G.S. 1878 c. 40 s. 22; G.S. 1894 s. 4181; R.L. 1905 s. 3352; G.S. 1913 s. 6839; G.S. 1923 s. 8221; M.S. 1927 s. 8221.

507.29 AFFIDAVITS AS EVIDENCE.

HISTORY. 1931 c. 209 ss. 1, 2; M. Supp. s. 8221-1, 8221-2.

Affidavits of ownership of land not recordable. 1936 OAG 123, Aug. 29, 1935 (373b-17(a)).

507.30 ACTION TO TEST NEW COUNTY; CONVEYANCES, WHERE RECORDED.

HISTORY. 1903 c. 193 s. 1; R.L. 1905 s. 3353; G.S. 1913 s. 6840; G.S. 1923 s. 8222; M.S. 1927 s. 8222.

507.31 RAILROAD LANDS.

HISTORY. 1875 c. 97 ss. 1 to 4; G.S. 1878 c. 40 ss. 39 to 42; G.S. 1894 ss. 4199 to 4202; 1897 c. 274; 1899 c. 255; R.L. 1905 ss. 3354, 3355; 1913 c. 393 s. 1; G.S. 1913 ss. 6841, 6842; G.S. 1923 ss. 8223, 8224; M.S. 1927 ss. 8223, 8224.

Railroad companies title was superior to that of the preemptor. The list filed with the register of deeds is under the statute prima facie evidence of a title to the land in controversy, which passed out of the United States as of March 3, 1865, and to which company has succeeded under the governor's deed. Railroad Co. v Randall, 29 M 283, 13 NW 127.

Record of railroad mortgage not applicable to after-acquired property. Guaranty Trust v M. & St. L. Ry. 33 F(2d) 512.

507.32 RECORD, WHEN NOTICE TO PARTIES; ASSIGNMENT OF MORTGAGE.

HISTORY. R.S. 1851 c. 46 ss. 28, 32; P.S. 1858 c. 35 ss. 28, 32; G.S. 1866 c. 40 ss. 24, 28; G.S. 1878 c. 40 ss. 24, 28; G.S. 1894 ss. 4183, 4187; R.L. 1905 s. 3356; G.S. 1913 s. 6843; G.S. 1923 s. 8225; M.S. 1927 s. 8225.

1. **Proper recording of instruments**
2. **Description of premises**
3. **Conditions in conveyances**
4. **Notice**
5. **Executory contracts**
6. **Assignment of mortgages**
7. **Federal land patents**

1. Proper recording of instruments

The record of a mortgage showing only one witness held not to be notice to subsequent mortgagees. Parret v Shaubhut, 5 M 323 (258).

Where a mortgage contained a proper description, and the register in recording added words containing false and impossible particulars, the mortgage was held to be properly recorded. Thorworth v Armstrong, 20 M 464 (419).

Where the record of a mortgage contained a wrong description, a foreclosure by advertisement was invalid. Thorp v Merrill, 21 M 336.

Where a deed absolute in form was executed and recorded, and a separate instrument of defeasance was also recorded, held that as the instrument of defeasance was not acknowledged, it was improperly recorded and was not notice to subsequent purchasers of mortgages. Cogan v Cook, 22 M 137.

A mortgage with but one witness was recorded. Held, that as to purchaser of the property with actual notice of the mortgage the mortgage is effective; that a foreclosure by advertisement was abortive; that the owner of the mortgage became, in effect, a mortgagee in possession. Johnson v Sandhoff, 30 M 197, 14 NW 889.

Where the record shows a mortgage properly satisfied, a subsequent purchaser may rely on the record as against the rights of one who paid the mortgage debt and who has the right of subrogation. Purchasers are not chargeable with constructive notice of entries in index or reception books not required by law. Ahern v Freeman, 46 M 186, 48 NW 697.

Entries made in reception books are competent evidence as of the date of the recording, and it is immaterial if in recording the instrument the year of the recording was omitted; the description need only follow the requirements of the statute; and where a judgment decree was properly indexed as to one of the parties, he cannot take advantage of the failure to index as to the other party. Whitacre v Martin, 51 M 421, 53 NW 806.

Where an instrument which the law requires to be sealed is correctly recorded, except that the record does not show a copy of the seal, or by device that it was sealed, the record will be sufficient if the instrument did in fact carry a seal, and the fact was indicated by recital or otherwise. Beardsley v Day, 52 M 451, 55 NW 46.

Public records do not cease to be constructive notice though burned. The certificate of the register is sufficient evidence without proof that he was legally elected or appointed. Thomas v Hanson, 59 M 59, 61 NW 135.

In this case where there was an invalid foreclosure due to an error in copying in the register's office, the mortgagor was estopped through laches from taking advantage of the error. Dimond v Manheim, 61 M 178, 63 NW 495.

The recording of a mortgage of the vendee in a contract for deed is constructive notice to the vendor, and requires the vendor to serve notice of cancelation upon the mortgagee. Stannard v Marboe, 159 M 119, 198 NW 127.

A real estate mortgage, filed (like a chattel mortgage) but not recorded, is not notice to those who do not have actual knowledge. St. Paul Elec. Co. v Baldwin Engine Co. 159 M 221, 199 NW 9.

The recording of an assignment of a mortgage by the mortgagee is not notice of the assignment to the mortgagor. Kukkuk v Bank, 166 M 511, 208 NW 138.

Double hazard of note and mortgage. 16 MLR 123.

2. Description of premises

Description in deed held not sufficient so that the record became notice to subsequent grantee, and the occupation was not sufficient to give actual notice. Roberts v Grace, 16 M 126 (115).

Because of faulty description, a record of a mortgage held not to be sufficient to be actual notice to subsequent purchaser. Simmons v Fuller, 17 M 485 (462).

Additional but impossible words of description erroneously inserted in the legal description in recording, is not a false description so as to invalidate a foreclosure under power of sale. Thorworth v Armstrong, 20 M 464 (419).

Registration is constructive notice only of what appears on the face of the deed and of the description of the premises therein, and if in the deed as registered the particular land in controversy is not so described as to identify it with reasonable certainty, the record is not notice to subsequent bona fide purchasers. Bailey v Galpin, 40 M 319, 41 NW 1054; Bank v Gullickson, 64 M 91, 66 NW 131.

Recording of a deed referring to an unrecorded plat does not show good title of record. OAG Sept. 11, 1939 (373B-15).

3. Conditions in conveyances

The conveyance being recorded, succeeding purchasers are charged with notice of the condition contained therein covenanting against the sale of intoxicating liquors. Railway v Singer, 49 M 301, 51 NW 905.

4. Notice

Estoppel in pais. Combs v Cooper, 4 M 254 (200).

Recording requirements for incorporation of a body corporate. Becht v Harris, 5 M 508 (401).

A mortgage duly recorded by an owner whose deed is not recorded, is not notice of such deed to a purchaser from his grantor. Burke v Beveridge, 15 M 205 (160).

Insufficient description in record is not notice. Roberts v Grace, 16 M 126 (115); Simmons v Fuller, 17 M 485 (462).

The mortgagee having assigned one of the notes secured by a mortgage, subsequently assigned the other note and mortgage to another. Held, the mortgage was notice to the second note purchaser of the existence of the other note, and the proceeds of sale under the mortgage should be applied pro rata. Wilson v Eigenbrodt, 30 M 4, 13 NW 907.

It is competent to identify a description by parol evidence and when so identified the recording of the challenged deed is notice. Ames v Lowry, 30 M 383, 15 NW 247.

The record of an unsatisfied mortgage is constructive notice of all rights and the equities of the mortgagee under it, and the possession of the original note and mortgage by the mortgagee, does not warrant an assumption of payment. Geib v Reynolds, 35 M 331, 28 NW 923.

Registration is constructive notice only of what appears on the face of the deed, and of the description of the premises therein, and if the property is not described with reasonable certainty, the record is not notice to subsequent bona fide purchasers. Bailey v Galpin, 40 M 319, 41 NW 1054; Bank v Gullickson, 64 M 91, 66 NW 131.

Subrogation will not be made where the rights of innocent purchasers have intervened, but the record may be sufficient to put the purchaser on inquiry as to his equitable rights. Gerdine v Menage, 41 M 417, 43 NW 91.

The holder of a mortgage who executes a release to one who is therein described as grantee of the mortgagor is charged with notice of the fact of a conveyance from the mortgagor to such releasee, and acts at his own peril and with full notice of the provision of the terms of the conveyance. Groesbeck v Mattison, 43 M 547, 46 NW 135.

A party claiming to be the owner of premises is chargeable with notice of any equities or rights of otner parties, as disclosed by the record of his own title, and after a reasonable time with actual notice of open and continuous possession of a mortgagee in possession. Jellison v Halloran, 44 M 199, 46 NW 332.

Purchasers are not charged with constructive notice of entries in the index or reception book in the register's office, not required by law to be made. Ahern v Freeman, 46 M 156, 48 NW 677.

Junior mortgagee was justified in acting upon a recorded disavowal of the existence of any other mortgage than a senior mortgage discharged, and was not required to make further inquiry. Lindauer v Younglove, 47 M 62, 49 NW 384.

Although a record is not constructive notice of any fact not appearing in it, an inspection of the record will be actual notice, and may suggest inquiries which will charge a purchaser with notice. Cable v Stockyards Co. 47 M 417, 50 NW 528.

A mortgage made and recorded by a person proposing to purchase land, the money to be used for that purchase does not take precedence over a mortgage given by the vendee for the remainder of the purchase price made at the time of the execution of the deed, and the record of the former mortgage is not notice to such vendor under the recording act. Schoch v Birdsall, 48 M 441, 51 NW 382.

Application of rule that where one of two innocent persons must suffer by the fraudulent act of a third, he by whose act the third person was enabled to perpetrate the fraud must bear the loss. Burgess v Brogaw, 49 M 462, 52 NW 45.

The fact that a grantee in a deed is described as "trustee" is notice to one who takes title under the deed that the property is or may be held under trust of some description, and puts him upon inquiry as to the nature of the trust. Bank v Parsons, 54 M 56, 55 NW 825.

Where a deed was unquestioned for 20 years or more, and interests of bona fide purchaser had intervened, the fact that the consideration was stated as nominal was sufficient for a reasonable time to put the purchaser on guard, but in this case the reasonable time had elapsed. Babcock v Collins, 60 M 73, 61 NW 1020.

A share-cropping contract was executed and filed. Later a crop mortgage was executed by the tenant. Held, the mortgagee under the crop mortgage had notice of the terms of the contract of tenancy and his chattel mortgage was junior to the leasing contract. Audum v Liston, 69 M 82, 72 NW 52.

Lawton intrusted money to Kelly to loan on first mortgage security. Kelly procured Rentz who gave a first mortgage on property in which he had no interest. Later, Kelly acquired the property. Then Kelly made a general assignment. The record of Rentz' mortgage was not notice to the creditors of Kelly, and Lawton cannot enforce his lien against the assignees. Robertson v Rentz, 71 M 489, 74 NW 133.

Record of subsequent deeds or mortgages, as applied to an extension of time and not notice to or binding on the mortgagee in the first mortgage. Norton v Insurance Co. 74 M 484, 77 NW 298, 539.

Where the original mortgagee assigned the mortgage and the mortgagee had notice, and thereafter an officer of the original mortgagee formed a new company which acted as agent for the assignee, it was held that the mortgagee is not protected on payments made to the agent. Rutherford v Morgan, 172 M 433, 215 NW 842.

The fact that one taking a mortgage on land and giving full consideration therefor has notice and knowledge from the abstract of title and records in the register's office that a prior owner of the land, after he parted with the title thereto, had given a mortgage thereon to a third party, does not cast upon the one so taking a mortgage the burden of making inquiry as to equities in the land in favor of said former owner, where the mortgagor is occupying the land as a homestead. Krant v Moe, 172 M 578, 215 NW 940.

Possession as notice. Bank v Cunningham, 182 M 244, 234 NW 320.

The uniform negotiable instruments act does not control the rights of principals and sureties arising from conveyance of mortgaged premises wherein the vendees assume and agree to pay the mortgage debt. In such cases the mortgagee, or holder of the debt, with knowledge of the conveyance, must deal with the debt and security mindful of the fact that the makers of the notes have become sureties. Bank v Erickson, 188 M 354, 247 NW 245.

Placing with a bank in escrow held not to be delivery to the bank. Stibal v Bank, 190 M 1, 250 NW 718.

Remaindermen are not charged by the record with notice of conveyances subsequently made and recorded by the life tenant. Faukenberg v Windorf, 194 M 154, 259 NW 802.

Since the Declaration of Independence, the law of Great Britain and its dependencies is the law of a foreign country and, like any other foreign law, is a matter of fact with which the courts of this country cannot be presumed to be acquainted or to take judicial notice of but which must be pleaded and proved. Greear v Paust, 202 M 633, 279 NW 568.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to the land as of the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds. Armstrong v Lally, 209 M 373, 296 NW 405.

Constructive trust and analagous remedies. 25 MLR 667.

5. Executory contracts

A note, even if secured by a mortgage, is a contract complete in itself, and is nonetheless negotiable paper even if secured by an independent collateral contract of security. Blumenthal v Jassay, 29 M 177, 12 NW 517.

A mortgagee holding several notes secured by a mortgage may assign the security to an assignee of one of the notes so as to give him a preference in the application of the proceeds. Solberg v Wright, 33 M 224, 72 NW 381.

The record of an executory contract for the sale of land is constructive notice to a subsequent purchaser of the same lands; but the prior record of such contract does not entitle the holder thereof to a preference over the grantee in a deed given before the execution of such contract. Thorsen v Perkins, 39 M 420, 40 NW 557.

The record of a contract to convey real estate, there being nothing to show that it has been enforced or performed, or the right to enforce it extended, ceases to be notice of the vendee's rights under it, when according to the record the

statute of limitations has barred the right to enforce it. Byers v Orensstein, 42 M 386, 44 NW 129.

Payment of the amount due upon a mortgage to the mortgagee by the mortgagor, after the mortgage has been assigned but without notice to the mortgagor, will extinguish the mortgage, and there is no inference of bad faith if the payment is made before the due date. Olson v Loan Co. 65 M 475, 68 NW 100.

The record for an assignment of a mortgage is constructive notice to all persons of the rights of the assignee, as against any subsequent rights of the mortgagee, save only as excepted by the statute. Robbins v Larson, 69 M 436, 72 NW 456.

A written contract in which there was a mutual mistake, and which did not state the real intent of the parties was recorded, and thereafter the vendee assigned same to an innocent assignee for value. Held, the assignee is not protected from the claim of the vendor to have the contract reformed. Klatt v Dummert, 70 M 467, 73 NW 404.

Under the real property law of the state, the payment of the mortgage debt by the mortgagor to the mortgagee, without notice of its prior assignment, though there is such an assignment to a good faith purchaser of record at the time, discharges the mortgage. Rea v Kelley, 183 M 194, 235 NW 910.

Negotiability of note imparted to mortgage security. 8 MLR 337.

Payment by mortgagor without actual knowledge of the assignment. 13 MLR 622.

Double hazard of a note and mortgage. 16 MLR 123.

6. Assignment of mortgages

Where an assignment was endorsed on a mortgage, describing it as "the within-described mortgage", and was recorded on a subsequent page of the same book, the recording of the assignment was sufficient for the assignee to foreclose. Carli v Taylor, 15 M 171 (131).

Since 1862 it has been the established law in Minnesota that a mortgage securing a negotiable instrument is a chose in action, an independent though collateral contract to the note it secures; and payment by the mortgagor to the mortgagee in good faith, without notice or knowledge of the recorded assignment of the mortgage, reduces the lien of the mortgage in the amount of the payment. Johnson v Carpenter, 7 M 176 (120); Johnson v Howe, 176 M 287, 223 NW 148; Kukkuk v Bank, 166 M 511, 208 NW 138.

7. Patents

The recording of a patent in the general land office of the United States is not a recording within the meaning of the registry law. Coles v Berryhill, 37 M 56, 33 NW 213.

One who purchases from a patentee is chargeable with notice of junior recorded patents. United States v Wesley, 189 F. 276.

507.33 CERTAIN RECITALS NOT TO CONSTITUTE NOTICE OF MORTGAGE.

HISTORY. 1939 c. 390 s. 1; M. Supp. s. 8225-1.

507.331 CERTAIN RECITALS DISREGARDED.

HISTORY. 1941 c. 192 s. 1.

507.332 RECITALS IN CERTAIN CASES NOT TO CONSTITUTE NOTICE.

HISTORY. 1943 c. 180 ss. 1, 2.

507.34 UNRECORDED CONVEYANCES VOID IN CERTAIN CASES.

HISTORY. 1854 c. 32 s. 1; P.S. 1858 c. 35 s. 40; G.S. 1866 c. 40 s. 21; 1875 c. 51 s. 2; G.S. 1878 c. 40 s. 21; G.S. 1894 s. 4180; R.L. 1905 s. 3357; G.S. 1913 s. 6844; G.S. 1923 s. 8226; M.S. 1927 s. 8226.

1. **Generally**
2. **Protection accorded**
3. **Good faith**
4. **Subsequent purchasers**
5. **Judgments and attachments**
6. **Assignees of insolvents**
7. **Mechanic's liens**
8. **Effect; procedure; construction**

1. Generally

An attaching creditor was not a bona fide purchaser within the meaning of the recording act of 1851. Greenleaf v Edes, 2 M 264 (226).

Endorsement of an assignment on a mortgage and thereafter recorded is sufficient recording to permit the assignee to foreclose under power. Carli v Taylor, 15 M 171 (131).

An attachment or judgment does not take precedence of a prior unrecorded conveyance where the creditors have notice of the conveyance. Lamberton v Bank, 24 M 281.

A bona fide purchaser at a mortgage foreclosure sale who duly recorded his certificate, is a valid owner of the property against a mortgagor who had paid the mortgage but had neglected to file the satisfaction. Merchant v Woods, 27 M 396, 7 NW 826.

A purchaser of land from an assignee under a general deed of assignment takes title over the holder of an earlier unrecorded deed. Strong v Lynn, 38 M 315, 37 NW 448.

Registration is constructive notice only of what appears on the face of the conveyance and of the description of the premises therein, and any description must be such as to identify the premises with reasonable certainty. Bailey v Galpin, 40 M 319, 41 NW 1054.

A docketed judgment takes precedence of an unrecorded deed, and also of equitable rights and remedies such as the reformation of the deed. Wilcox v Bank, 43 M 541, 45 NW 1136.

Failure to record an assignment of a mortgage renders void a foreclosure by advertisement by the assignee. Burke v Backus, 51 M 174, 53 NW 458.

Judgment duly docketed takes precedence of an unrecorded deed, provided the judgment creditor was without notice. Clark v Greene, 73 M 467, 76 NW 263.

An assignment of a real estate mortgage is a conveyance, within the meaning of the statutes requiring instruments affecting title to real property to be recorded, and void as to persons without notice if not recorded. Huitink v Thompson, 95 M 392, 104 NW 237.

A mortgage given to the record owner of the property by one who is a stranger to the title is not notice of an unrecorded deed from the record owner to the mortgagor. Crowley v Norton, 131 M 99, 154 NW 743.

In the statutes requiring the registration of automobiles there is nothing to exempt conditional sales contracts covering motor cars from the ordinary effect of the recording acts. Amick v Bank, 164 M 136, 204 NW 639; Drew v Fener, 185 M 133, 240 NW 114.

Priority defined as to various kinds of conveyances. Landers v Ambassador, 171 M 445, 214 NW 503.

Torrens certificate of title. 8 MLR 207.

Double hazard of note and mortgage. 16 MLR 128.

Fraudulent conveyances in bankruptcy. 16 MLR 307.

Priorities; circuity of lien. 19 MLR 139.

Leasehold interest on real estate. 19 MLR 713.

Judgments; priorities; diligence of junior judgment creditor. 23 MLR 98.

Rights under recording acts of subsequent purchaser who records with notice. 24 MLR 597.

2. Protection accorded

Good as between parties and an unrecorded deed takes preference over an attaching creditor. Greenleaf v Edes, 2 M 264 (226).

A grantee of land who pays no new consideration, takes subject to all equities that could have been urged against his grantor, and the relinquishment of a precedent debt is not a new consideration. Boze v Arper, 6 M 220 (142).

Deeds of lands in counties established, but not organized, were properly recordable in the counties to which such courts are attached for judicial purposes. Smith v Anderson, 33 M 25, 21 NW 841.

An unrecorded conveyance is void as to a judgment creditor, and the filing of a patent must be made with the register of deeds in order to comply with the registry act. Coles v Berryhill, 37 M 56, 33 NW 213.

Where a party has recorded a conveyance in the county where the land is situated, a subsequent change in the county boundaries does not impose upon him the duty of again recording. Koerper v Railway, 40 M 132, 41 NW 156.

Purchaser has a right to rely on the records, but the legal title does not pass unless it is so described as to be identifiable. Bailey v Galpin, 40 M 319, 41 NW 1054.

The statute declaring assignments for the benefit of creditors invalid as to real estate until properly recorded is a registry law only, and as between the parties, or others having actual knowledge it is valid. Paulson v Clough, 40 M 494, 42 NW 398.

The mortgagee was justified in acting on the recorded disavowal of the existence of any other mortgage than the one scheduled in the mortgage. Lindauer v Younglove, 47 M 62, 49 NW 384.

Entries made in reception books as to the time an instrument was received for record are competent evidence and, nothing appearing to the contrary, the presumption is that the instrument was recorded at length on the day of its reception. Whitacre v Martin, 51 M 421, 53 NW 806.

Except for certain exceptions such as the right a wife acquires in her husband's real estate by marriage, or estoppel, or fraud, or similar, rights and interests in real estate take effect according to priority. Snell v Snell, 54 M 285, 55 NW 431.

The failure of the register to keep his records at the county seat does not render them void. Public records do not cease to be constructive notice though burned. Thomas v Hanson, 59 M 274, 61 NW 135.

When several mortgages executed on the same day on the same land were recorded at the same hour, in the absence of any showing to the contrary, they have priority in their order of numbering. Insurance Co. v King, 72 M 287, 75 NW 376.

An unrecorded deed of real property is valid against all the world except subsequqent purchasers in good faith and creditors. Fifield v Norton, 79 M 264, 82 NW 581.

Where an owner of property deeded land to the owner of a third mortgage so that he could borrow money to retire the first and second mortgages, and mortgaged said property without informing the mortgagee of an unrecorded defeasance contract, the original owner is estopped from contesting the validity of a foreclosure under the mortgage. Esty v Cummings, 80 M 516, 83 NW 420.

As to what constitutes a preference under the federal bankruptcy act must be determined by the facts existing at its inception, and not at the time of recording. Seager v Lamm, 95 M 325, 104 NW 1.

An agreement by an owner of land with an adjoining owner not to sell liquor on his premises is a personal covenant only, and does not run with the land, and where such covenant is not contained in a deed in the chain of title, subsequent owners are not bound. Sjoblom v Mark, 103 M 193, 114 NW 746.

An attachment did not merge in a lien, where the attaching creditor relied on the probate court records for notice. Reliance as to notice is confined to filings in the office of the register of deeds. Kelly v Byers, 115 M 489, 132 NW 919.

A trustee in bankruptcy cannot avoid a conveyance executed and delivered by the bankrupt more than four months prior to the filing of the petition, though such conveyance is filed for record within the four-months period. Underleak v Scott, 117 M 136, 134 NW 731.

Unrecorded conveyances, or rights in land, of which an attaching creditor has actual notice or knowledge at the time his attachment is levied, are not invalidated by the recording laws; and an attachment against one who has no record title in the land is not profited or benefited by that law. Scott v Bank, 173 M 225, 217 NW 136.

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. Watson v Goldstein, 176 M 18, 222 NW 509.

The Torrens law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. The Torrens law abrogates the doctrine of constructive notice except to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. Juran v Kroening, 178 M 55, 226 NW 201.

Possession of real estate is prima facie evidence of title and is notice of whatever rights the possesser has which would be disclosed upon reasonable inquiry. Bank v Cunningham, 182 M 244, 234 NW 320.

Assignment of farm lease whereby lessor assigned all his rights and interest thereunder considered and held not to constitute a chattel mortgage so as to require filing in order to be valid against creditor attaching lessor's interest subsequent to the assignment. Bank v Smaadgaard, 192 M 21, 206 NW 102.

Defendant took a deed from her brother. The plaintiff was then in possession and defendant knew that plaintiff claimed title. She was charged with notice and was not an innocent purchaser. Ritchie v Jennings, 181 M 458, 233 NW 20.

3. Good faith; notice

One claiming to be a bona fide purchaser as against a prior interest or equity, must be without notice not only when he acquired the interest, but at the time he actually paid for it. Cancelation of a prior indebtedness is not a valuable consideration. Minor v Willoughby, 3 M 225 (154).

The legal disabilities of married women are intended for their benefit and not so others may profit by them. Prior to passage of the registry act of 1858 possession of real estate under a verbal contract of sale from the owner of the legal title was sufficient notice to put a purchaser on notice as to the interest of the party in possession. Seager v Burns, 4 M 141 (93).

When a purchaser buys land, or takes an encumbrance on it when it is in the actual possession of one other than the vendor, he is required to communicate with the occupants and inquire as to their interests and from whom they hold. Morrison v March, 4 M 422 (325).

Purchaser, not having made proper inquiries of those in possession, cannot be deemed a bona fide purchaser without notice. Martin v Brown, 4 M 282 (201).

A purchaser is charged with notice of an encumbrance, recited in any deed occurring in the claim through which he claims title. Daughaday v Paine, 6 M 443 (304).

That notice to put a man on inquiry is good notice, means that where a man has sufficient information to lead him to a fact, he shall be deemed cognizant of it. Roberts v Grace, 16 M 126 (115).

Record of a mortgage with faulty description was not notice to a subsequent purchaser of what was intended to be conveyed by the mortgage. Simmons v Fuller, 17 M 485 (462).

A conveyance of land by a purchaser for a valuable consideration, made by an agent whose power was not under seal, although inoperative as a transfer of the legal title, vests in the grantee an equitable title superior to the legal title of a subsequent grantee who had notice. Graff v Ramsey, 19 M 44 (24).

A corporation gave a mortgage to plaintiff, and it was duly recorded. Held, that a direction of the contractor who later obtained a judgment against the corporation, is estopped from taking advantage of an error in misdescription of the mortgage. Gill v Russell, 23 M 362.

Error caused by loss of plat, and consequent misnumbering of lots in a deed, did not cause loss of title in the plaintiff because her actual occupancy of the premises was notice. Siebert v Rosser, 24 M 155.

Plaintiff deeded premises to Farrell to secure him from loss on a bail bond. The deed was intended as security only. Farrell mortgaged the property to defendant. Held, that although the record clearly showed ownership in Farrell, the fact that plaintiff occupied the premises at the time the mortgage was executed was notice to the defendant of plaintiff's rights. New v Wheaton, 24 M 406.

Purchaser is charged with notice of title of occupant. Carleton College v McNaughton, 26 M 194; O'Mulcahy v Halley, 28 M 31, 8 NW 906.

Where several notes maturing at different dates are secured by one mortgage, are assigned to different parties at different times, and the proceeds of the mortgaged property is insufficient to pay all in full, such proceeds should be applied pro rata; but, where the mortgagee, having assigned one of the notes to one person, and afterwards assigned the other note and the whole mortgage to another who placed the assignment on record, the latter was not protected against the rights of the first noteholder because due notice was furnished by the mortgage recitations. Wilson v Eigenbrodt, 30 M 4, 13 NW 907.

A judgment, docketed against one who had been seized of real estate, and in whom the title still appears of record, becomes a lien upon the property, notwithstanding a prior unrecorded conveyance of it by the debtor, the judgment creditor having no notice of such conveyance. Dutton v McReynolds, 31 M 66, 16 NW 468.

A party is bound by whatever affecting his title is contained in an instrument through which he must trace his title, even though it be not recorded, and he have no actual notice of its provisions. Stees v Kranz, 32 M 313, 20 NW 241.

A purchaser is bound to inquire into the title of his vendor, and is affected with notice of any equities which appear upon the same. Equities may be enforced which do not in strict legal contemplation, run with the land. Kettle River Ry. Co. v Eastern Ry. Co. 41 M 461, 43 NW 469.

The owner of three several blocks of land sold one of the blocks to a purchaser who assumed and agreed to pay the entire mortgage. Later, the purchaser placed a second mortgage on the block. Held, that the block purchased is charged with payment of the entire mortgage, and the owner of the second mortgage cannot acquire any title to the other blocks under redemption of the first mortgage sale under foreclosure. Miller v Foster, 42 M 366, 44 NW 256.

Filing of plat of the addition, deeds of record and other circumstances deemed sufficient to put purchaser on inquiry as to an unrecorded deed. Cummings v Finnegan, 42 M 524, 44 NW 796.

Where real property upon which a judgment creditor asserts a lien is actually occupied by a third party at the time the judgment is docketed, the creditor is charged with constructive notice of the occupant's rights, and if the occupant is in possession under a lease, the creditor is charged with constructive notice of the rights of one from whom the tenant leases. Kilkins v Bevier, 43 M 213, 45 NW 157; Wolf v Zabel, 44 M 90, 46 NW 81.

A party claiming to be the owner of premises is chargeable with notice of any equities of other parties, as is disclosed by the record of his own title, and after a reasonable time, with actual notice of the open and continuous possession of a mortgagee in possession. Jellison v Halloran, 44 M 199, 46 NW 322.

Notice by occupancy. Roussian v Patten, 46 M 308, 48 NW 1122; Roussian v Norton, 53 M 560, 55 NW 742.

Possession of the granted premises by the grantor after delivery of his deed is as effectual as notice of the interest of the occupant, and as possession by a stranger to the record title. Groff v Bank, 50 M 234, 52 NW 651.

Where an agent lawfully authorized to contract to sell real estate has attempted to convey same by deed under a defective power of attorney, the deed will be treated in equity as a contract for sale thereof within the statute of frauds. In this case the court held the purchaser had not acted in good faith. Hershey v Lambert, 50 M 373, 52 NW 963.

One purchasing real estate from one appearing to be the owner by the records in the register's office is not chargeable with notice that the land is assessed for taxation to another person. Roussain v Norton, 53 M 560, 55 NW 742.

The fact that a grantee in a deed is described as "trustee" is notice to one who takes title under the deed that the property is or may be held under a trust, and puts him on his inquiry as to its nature. Bank v Parsons, 54 M 56, 55 NW 825.

The record of deed containing a provision in the nature of a yearly payment to the grantor was not a condition subsequent, but a lien by reservation, and notice to subsequent purchasers or encumbrances. Duescher v Spratt, 61 M 326, 63 NW 736.

Where a party as an assignee under a general assignment claiming under a title junior in point of time, in resisting a prior unrecorded title from the same source, the burden is upon him, at least where he is a party to the original instrument creating such junior title, to prove that he purchased or acquired such title in good faith. Mead v Randall, 68 M 233, 71 NW 31.

Divorced wife's rights upon redemption from mortgage foreclosure of landowner in common. Fritz v Ramspott, 76 M 489, 79 NW 520.

If an equity action to remove a cloud from the title cannot be sustained as such, it may still be maintained as an action to determine adverse claims under the statute, if the complaint is sufficient for that purpose. This overrules Morgan v Carter, and Maloney v Finnegan. Palmer v York, 77 M 20, 79 NW 587.

One who without color of title enters upon unoccupied real property and takes visible open and notorious possession of a part thereof, cannot extend his possession so as to embrace the whole tract, merely by obtaining color of title subsequent to his entry. Barber v Robinson, 78 M 193, 80 NW 968.

A judgment by default having been obtained in an action to determine adverse claims to real estate, an application to reopen the judgment is not addressed to the discretion of the court. If the proposed answer contains a good defense to the action, and the defendant be not guilty of laches, sufficient cause for reopening the judgment is shown. Fifield v Norton, 79 M 264, 82 NW 581.

An instrument granting for a period of five years the right of entry to cut standing pine is a conveyance of an interest in land and not a license revocable at will, and entry and operation under the conveyance is open and adverse possession sufficient to constitute notice. Ballard v O'Neil, 81 M 15, 83 NW 471.

When a purchaser of land for a valuable consideration has notice of facts and circumstances which would put a reasonably prudent man on inquiry of a prior unrecorded conveyance to a third party, he is not a purchaser in good faith. McAlpine v Resch, 82 M 523, 85 NW 545.

Facts as to conveyance, and mortgages construed to relieve trust company mortgagee from a charge of bad faith. Gray Cloud v Clay, 89 M 166, 94 NW 552, 95 NW 588.

Actual possession of land, whether in person or by a tenant, is notice of the right, title and equity of the possession therein; and a party is estopped to deny that a division line is the true boundary against a purchaser of adjoining land, if he induces him, by representations as to the boundary line, to purchase with reference to such line. Thompson v Borg, 90 M 209, 95 NW 896.

Testimony as to lost deed. Lloyd v Simons, 90 M 237, 95 NW 903.

Notice of a specific title or interest in real property is operative as to a purchaser charged therewith in respect to the particular title only, and is in-

sufficient to put such purchaser upon inquiry as to some other inconsistent right. Thompson v Lapsley, 90 M 318, 96 NW 788.

Actual possession of real property is notice to all the world of the title and rights of the person in possession, also of all the facts connected therewith which a reasonable inquiry would disclose; and a purchaser, or one redeeming from a mortgage foreclosure, knowing the possession to be in a third person, is chargeable of such facts. Niles v Cooper, 48 M 39, 107 NW 744.

Construction as to good faith of purchaser. Scott v Hay, 90 M 304, 97 NW 106; Beckfelt v Donohue, 90 M 430, 97 NW 127.

A mere verbal promise by a grantee to hold the legal title to land in trust for the benefit of the grantor and to reconvey it on demand, where there is no bad faith except that which arises from a mere refusal to carry out the promise, is void. Henderson v Murray, 108 M 76, 121 NW 214.

Where under proceedings under the Torrens act, to register title a judgment is procured by fraud on the part of the applicant in failing to name as parties or serve claimants known to him, it is not binding on such omitted claimants; but when the existence of such claimant does not appear from the judgment roll, or the proceedings, purchaser in good faith and for value takes title free from adverse claims not noted on the certificate. Henry v White, 123 M 182, 143 NW 324.

Finding of facts do not show good faith on the part of the plaintiff in an action for specific performance. Stranberg v Hanson, 138 M 80, 163 NW 1032.

Actual possession of land by the vendee after the performance of a contract is notice to a subsequent judgment creditor of his equitable rights. Butterwick v Fuller, 140 M 327, 168 NW 18.

The trustee in bankruptcy is not protected by the recording act, nor by rules of equity. He represents all the creditors of the bankrupt. The only rights he acquires is the right of the bankrupt and his judgment creditors. He does not acquire the rights or remedies possessed by a judgment creditor whose judgment has been docketed. Brooks v American, 162 M 220, 202 NW 818.

A trustee in bankruptcy cannot avoid a conveyance executed and delivered by the bankrupt more than four months prior to filing of the petition, although such conveyance is filed for record within the four-months period. A trustee in bankruptcy may avoid any transfer which any creditor might have avoided irrespective of the date of the transfer in reference to the filing of the petition. Underleak v Scott, 117 M 136, 134 NW 731.

The Torrens act abrogates the doctrine of constructive notice except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. Possession is not notice of rights held or claimed by the occupant. In re Application of Juran, 178 M 55, 226 NW 201.

Possession of real estate is notice of possessor's rights, and under the circumstances in the instant case the question as to who had possession was for the jury. Bank v Cunningham, 182 M 244, 234 NW 320.

Where one conveys real estate, thereby enabling the grantee forthwith to borrow money from a third person on the faith of the mortgage on the fee, which is promptly recorded, held, that although the grantor continues to occupy the premises, he is estopped to claim, as against the mortgagee, a lien under an unrecorded instrument executed contemporaneously with the original deed to the grantee. Olson v Olson, 203 M 199, 280 NW 640, 281 NW 367.

4. Subsequent purchasers

The right of action for breach of covenants of seizure, right to convey, and warranty, in a deed of real estate is not affected by the grantor subsequently acquiring the title, if his title is defeated by his neglect to record the deed. Burke v Beveridge, 15 M 205 (160).

Where possession is not delivered, a prior chattel mortgage will be postponed to a subsequent bona fide mortgage if not duly filed when the latter is executed, even though the former may be filed prior to the filing of the second mortgage. Bank v Ellis, 30 M 270, 15 NW 243.

A quitclaim deed, or an instrument of general assignment, if placed upon record, stands on the same footing as other conveyances, and a bona fide grantee therein is entitled to the same preference over prior unrecorded deeds. Strong v Lynn, 38 M 315, 37 NW 448.

Where the title to real estate appears of record to be in a testator, at the time of his death, and his will is subsequently duly probated, and the lands are thereafter conveyed by a devisee to a bona fide purchaser for value whose deed is duly recorded, the title of such grantee will be preferred to that of the grantee of the same lands executed by the testator before his death, but recorded subsequently to the deed by the devisee. Lyon v Gleason, 40 M 434, 42 NW 286; Welch v Ketchum, 48 M 241, 51 NW 113.

Rights subsequently acquired, and right of action allowable against agent for wrongful disposal of rights in real estate, where there is no showing of record of said rights. Smith v Glover, 44 M 260, 46 NW 406.

Plaintiff had a renewal mortgage for $670.00 which was senior; defendant had a junior mortgage, which was recorded and was accepted in good faith. The record showed a conveyance of land subject to a mortgage for $670.00. The record also indicated a discharge of the first $670.00 mortgage. Held, the defendant was justitfied in acting upon the recorded disavowal. Lindauer v Younglove, 47 M 62, 49 NW 384.

The senior mortgage is the superior lien, except in so far as it has lost its privity by neglect to record the same, and where the mortgage withheld filing until after numerous mechanic's liens were recorded, and a second mortgage given and recorded, the senior mortgage became subject to the said liens and second mortgage. Miller v Stoddard, 54 M 486, 56 NW 131.

In an action of ejectment by the administrator to recover possession of land from an occupant, said occupant is not estopped from asserting such adverse and actual title as a defense. McLaughlin v Betcher, 87 M 1, 91 NW 14.

A subsequent purchaser in good faith for a valuable consideration, whose conveyance is first duly recorded, has the title as against a prior unrecorded conveyance, notwithstanding the fact that he purchased from the holder of an unrecorded deed from the record owner, and files for record this deed with that to himself. Quinn v Johnson, 117 M 378, 135 NW 1000.

Where register of deeds is instructed to file a contract for deed on a crop mortgage plan as a chattel mortgage, it is his duty to do so, not to file it as a real estate transfer or index it as such. OAG March 15, 1937 (373b-17(d)).

5. Judgments and attachments

A sale of real estate on execution passes at once to the purchaser all title of the execution debtor, subject to be defeated by redemption. The title so acquired will pass by quitclaim deed of the purchaser. Dickinson v Kinney, 5 M 409 (332).

A docketed judgment takes precedence of a prior unrecorded conveyance of real estate. Ferguson v Kumler, 11 M 104 (62).

Almira Brisbin, her husband consenting, mortgaged premises to her husband's father, Oliver Brisbin. After her death, her husband, John B. Brisbin, continued to occupy the premises. The mortgage was foreclosed and bought in at foreclosure sale by Margaret, the second wife of John B. Brisbin. Held, the title is good in Margaret, and judgments against John B. Brisbin do not attach. Golcher v Brisbin, 20 M 453 (407).

The Constitution of the United States, Article 4, Section 3, and the Constitution of the State of Minnesota, Article 2, Section 3, supplemented by an act of Congress, approved May 20, 1862, support the holding that a federal homestead is exempt from debts of the homesteader incurred prior to the issuance to him of his patent, nor do judgments against the patentee follow the land when conveyed by him. Russell v Laroth, 21 M 167.

A director in a corporation by obtaining a judgment against his corporation cannot take advantage of an error in description in a deed of corporate real estate in which he as a director participated. Gill v Russell, 23 M 362.

An attachment or judgment does not take precedence of a prior unrecorded conveyance of real estate, if the creditor has notice of such conveyance at the time of levying. Lamberton v Bank, 24 M 281.

When the owner of land executes a bond for the conveyance of real estate he continues to be the owner so long as any part of th purchase money is unpaid, and the grantor's interest subject to the equitable right of the grantee, is bound by the lien of a judgment duly docketed in the county where the land is situated. Welles v Baldwin, 28 M 408, 10 NW 427.

Notwithstanding the defect in a mortgage, the filing of lis pendens on foreclosure, and the actual notice of the attorney for the judgment creditor were sufficient on which to base a holding that the title acquired through the mortgage foreclosure was superior to that of the judgment creditor. Bank v Hollenbeck, 29 M 322, 13 NW 145.

A judgment docketed against the record owner of real estate, becomes a lien on the property, notwithstanding a prior unrecorded conveyance of it by the debtor, the judgment creditor having no notice of such conveyance. Dutton v McReynolds, 31 M 66, 16 NW 468; Clark v Greene, 73 M 467, 76 NW 263.

Notwithstanding the statute relative to the filing of conditional sales contracts, and in case where the contract is not filed, the vendor under the contract may show actual notice of the contract to defend an attaching judgment creditor. Dyer v Thorstad, 35 M 534, 29 NW 345.

Where a judgment creditor has notice, actual or constructive, of the rights of a vendee in possession of real estate under an unrecorded contract for the sale thereof, at the time of the entry of his judgment, the lien of the judgment will be held subordinate to the equitable title of such vendee. Baker v Thompson, 36 M 34, 31 NW 51.

An unrecorded conveyance is void as against a judgment only where the judgment is against the person in whose name the title to the land appears of record, prior to the recording of such conveyance, in the office of register of deeds of the county in which the land is situate. The recording of a patent in the general land office of the United States is not a recording within the meaning of the registry law. Coles v Berryhill, 37 M 56, 33 NW 213; Lyman v Scott, 75 M 267, 77 NW 828.

The holders of a tax title brought action against the record owner of land, and obtained a judgment by default. The said record owner had previously conveyed the land to Windom, but Windom did not record his deed until after the judgment was docketed. Held, the judgment is not within the recording act and Windom is not bound by the judgment. Windom v Schuppel, 39 M 35, 38 NW 257.

Where real property upon which a judgment creditor asserts a lien is actually occupied by a third party at the time the judgment is docketed, the creditor is charged with constructive notice of the occupant's rights, and if the occupant is a tenant, the creditor is chargeable with notice of the rights of the occupant's lessor. The judgment creditor is not chargeable with notice that the record owner has deeded the property to the owner, though the tenant may have notice of the unrecorded deed. Wilkins v Bevier, 43 M 213, 45 NW 157.

A docketed judgment takes precedence not only of an unrecorded deed by the judgment debtor in whom the title appears of record, but of an equity against him, of which the creditor has no notice. Wilson v Bank, 43 M 541, 45 NW 1136.

Possession of the granted premises by the grantor after delivery of his deed is as effectual as notice of the interest of the occupant, as possession by a stranger to the record title. Groff v Bank, 50 M 234, 52 NW 651.

When real property on which a judgment creditor asserts a lien is actually occupied by a third party as tenant at the time the judgment is docketed, the creditor is charged with constructive notice of the rights of occupant's lessor. Northwestern v Dewey, 58 M 359, 59 NW 1085.

Judgments under the recording act are not limited to money judgments in favor of creditors, but apply to any judgment affecting title to real estate, where such title appears of record in the name of the person against whom the judgment is rendered. Berryhill v Smith, 59 M 285, 61 NW 144; Hall v Sanntry, 72 M 420, 75 NW 720.

Constructive notice imparted by record of an instrument is strictly limited to that which is set forth on its face; and if in a conveyance the land is not so described as to identify it with reasonable certainty, the record is not notice to subsequent judgment creditors. Bank v Gullickson, 64 M 91, 66 NW 131.

The registry act places creditors on the same footing as bona fide purchasers, as against unrecorded conveyances, but not as against resulting trusts, which cannot be made a matter of record. School District v Peterson, 74 M 122, 76 NW 1126.

Under the provisions of the recording act, a judgment has no retroactive power in favor of a notice of lis pendens previously filed in the action, and where a notice of lis pendens has been filed by either party to an action to determine adverse claims to real estate such notice does not affect the rights of a holder of prior unrecorded conveyance until judgment thereon. West Missabe v Berg, 92 M 2, 99 NW 209.

A duly docketed judgment attaches as a lien only upon such real property as may stand of record in the office of the register of deeds in the name of the judgment debtor. It does not attach to unrecorded titles, nor upon interests of the judgment debtor which appear only from a will on file in the office of the probate court. Butterworth v Fuller, 140 M 327, 168 NW 18.

A judgment creditor, when the recording act does not apply, and in the absence of an estoppel or 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. Bank v Stageberg, 161 M 413, 201 NW 612.

The return by the vendee to the vendor of a delivered but unrecorded deed does not revest the title; but the return and acceptance of such deed has the effect of an estoppel. As to a judgment creditor of the vendee, a judgment is a lien upon the title of the judgment debtor under an unrecorded deed, though by the recording act, a judgment does not take precedence of an unrecorded deed where the title to the land is not of record in the name of the judgment debtor. Emerson v Cook, 165 M 198, 206 NW 170.

A purchaser of real estate may be a purchaser in good faith without examining the records. Watts v Lundeen, 165 M 300, 206 NW 444.

Lien of levy attaches only to actual interest of debtor, and where the attaching creditor has actual notice of the interest in land of the debtor, his attachment is neither invalidated nor benefited by the recording act. Scott v Bank, 173 M 225, 217 NW 136.

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. Watson v Goldstein, 176 M 19, 222 NW 509.

Under the real property law of the state the payment of the mortgage debt by the mortgagor to the mortgagee, without notice of a prior assignment to a good faith purchaser of record at the time, discharges the mortgage. The same rule holds true when the mortgage and the assignment are memorialized upon a Torrens certificate. Rea v Kelley, 183 M 194, 235 NW 910.

Two mortgages on the same property executed and delivered simultaneously, both mortgages having the same mortgagors and the same mortgagee, and each containing a warranty against encumbrances, were without directions, recorded on the same day, one given a registry number prior to the other. Held, any statutory presumption of priority of lien in favor of one numbered first was overcome by evidence showing a contrary intention of the parties. Fender v Appel, 187 M 281, 245 NW 148.

A judgment for the recovery of money, when docketed, becomes by virtue of statute a lien within the county upon the non-exempt real estate of the judgment debtor owned or acquired by him within the statutory lifetime of the judgment. Under our recording act, a docketed judgment is placed upon the same footing as a recorded conveyance. Lowe v Reierson, 201 M 280, 276 NW 224.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale. 24 MLR 806.

6. Assignees of insolvents

A real estate mortgage, executed before, but not recorded until after, the mortgagor has made an assignment for the benefit of his creditors, under the

insolvency law of this state, is void as to the assignee in so far as he represents such creditors. The assignee has the same rights as a judgment creditor. Kellogg v Kelley, 69 M 124, 71 NW 924; Frank v Perkins, 71 M 487, 74 NW 135; Robertson v Rentz, 71 M 489, 74 NW 133.

A satisfaction of a real estate mortgage was never delivered, and was filed by mistake. Later the owner of the equity of redemption made a general assignment, the creditors having no knowledge of such filing and there was no evidence of relying on the filing. Held, that the mortgagee might have the satisfaction annulled and canceled and the mortgage foreclosed. Woolson v Kelley, 73 M 513, 76 NW 258.

7. Mechanic's lien

Where the vendee, subsequent to a contract for materials to be furnished for a house to be built on the land purchased, received a deed, and at the same time executed a purchase money mortgage to the vendor, both of which remained unrecorded until after the delivery of the materials, and the filing of the account and the lien therefor, held, that the lien of the mortgage is superior, and the failure to record the mortgage is not to be construed as a waiver or estoppel so as to subordinate his lien to that of the material man. Oliver v Davy, 34 M 292, 25 NW 135.

The recording act imposes no obligation upon a mortgagee to record his mortgage as against mechanics' liens. Miller v Stoddard, 50 M 272, 52 NW 895; Noerenberg v Johnson, 51 M 75, 52 NW 1069.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to the land as of the commencement of the improvement, the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered under the Torrens act. Armstrong v Lally, 209 M 373, 296 NW 405.

Possession by vendor who occupied land jointly with vendee as notice to purchaser from vendee. 23 MLR 397.

8. Effect; procedure; construction

Parol evidence may be introduced, the original instrument being lost, to show error in the record, and in such a case, where it is claimed the original deed was incorrectly transcribed in the full record, it is competent to introduce the record in the register's reception book, and to show the grantor owned the property described in the reception book, but had no title to that described in the full record. Gaston v Merriam, 33 M 271, 22 NW 614.

If one procure a conveyance of property, knowing at the time that the title is in another under an unrecorded deed, it is fraud in him to take advantage of the want of registration to defeat the unrecorded title; and if he subsequently convey the property or cause it to be conveyed, to an innocent purchaser for value, he will be liable in damages to the grantee in the unrecorded deed or his successors. Scott v Reed, 33 M 341, 23 NW 463.

Where the title to certain lands appears of record to be in the assignees under a deed of assignment, a bona fide purchaser thereof from them, whose deed is first recorded, will be preferred to a previous grantee of the assignor in an unrecorded outstanding conveyance of the same land, executed before the assignment. Strong v Lynn, 38 M 315, 37 NW 448.

Where several mortgages, executed on the same day on the same land, were recorded at the same hour, and each received document numbers in the register's office, it must be presumed, in the absence of a contrary showing, that they take priority in the order in which they are numbered. Insurance v King, 72 M 287, 75 NW 376.

Two mortgages on the same land, but each to a different mortgagee, dated, executed and recorded at the same time, and both mortgages represented by the same agent, held, the mortgages were coordinate, even if there was evidence that the agent promised one should have priority over the other. Terry v Moran, 75 M 249, 77 NW 777.

The statute in reference to the time within which subsequent creditors may redeem with respect to prior lienholders was enacted for the benefit of parties seeking to redeem, and the party holding rights acquired at the foreclosure sale can take no advantage of the fact that a subsequent creditor redeems within the time open to a prior lienholder. Connecticut v King, 80 M 76, 82 NW 1103.

Where a party under color of title, and in good faith, peaceably enters upon land, for which he gave a valuable consideration, and made improvements thereon, he is entitled to pay for permanent improvements but not for mere ordinary repairs. Northern v Barquist, 93 M 106, 100 NW 636.

In proceedings under the Torrens act, if the want of jurisdiction due to failure to serve known claimants appears from the judgment roll itself, the judgment is void as against such claimants and may be attacked collaterally. Henry v White, 123 M 182, 143 NW 324.

In equity a mortgage on after-acquired property is effective between the parties, and the record in one county of a mortgage containing an after-acquired property provision, is not constructive notice to a subsequent encumbrancer of property afterward acquired by the mortgagor in another county. Minnesota v Peteler, 132 M 277, 156 NW 255.

A subsequent deed, first recorded, does not take precedence of a prior unrecorded deed unless the grantee is a purchaser for a valuable consideration. Nichols v Crocker, 133 M 153, 157 NW 1072.

A holder of a certificate of sale of state land is the equitable owner of the land; an assignment of such certificate is a conveyance of real estate; and a good faith purchaser who places his assignment on record is protected by the recording acts against a prior unrecorded assignment. A quitclaim deed conveys such equitable title. Krelwitz v McDonald, 135 M 408, 161 NW 156.

The court will not enforce specifically every written contract for sale of land. Delay until others have in good faith acquired rights in the land is usually a bar. Specific performance will not be decreed in favor of one who has himself once refused to perform. Enkema v McIntyre, 136 M 293, 161 NW 587.

As between two deeds, there being no fraud, the one of earliest date and first of record, takes preference. German v McKay, 136 M 433, 162 NW 527.

Record owner of real estate entered into an agreement to sell and convey the same to a grantee therein named, which was never recorded. Subsequent to the death of the grantee, the grantor conveyed the land to the grantee's widow. Held, that a purchaser in good faith from the widow obtained a good title to the premises as against the heirs of the deceased. Akerberg v McCraney, 141 M 230, 169 NW 802.

Judgment creditor's title under execution sale was lost by its failure to redeem from foreclosure of a valid mortgage. McCabe v Farmer's, 172 M 444, 216 NW 243.

The Torrens law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. In re Application of Juran, 178 M 55, 226 NW 201.

Successive judgments take effect in the order in which docketed. Judgment creditors who have docketed judgments against one who has no real estate in the county when judgments are so docketed, but who later acquires such, stand in the same relative position to each other as would they if such property were his when the docket entries were made. Lowe v Reierson, 201 M 280, 276 NW 224.

507.35 DEED TO TRUSTEE INEFFECTIVE IN CERTAIN CASES; DEFECT, HOW CURED.

HISTORY. 1929 c. 318 s. 1; M. Supp. s. 8226-1.

507.36 INSTRUMENTS RELATING TO TIMBER, MINERALS.

HISTORY. 1903 c. 32; R.L. 1905 s. 3559; G.S. 1913 s. 6849; G.S. 1923 s. 8230; M.S. 1927 s. 8230.

An instrument which granted the right to enter upon premises any time within five years, and cut and remove standing pine, is a conveyance of an in-

terest in land and not a license revocable at will. Establishing logging camps is an evidence of occupancy. Ballard v O'Neil, 81 M 15, 83 NW 471.

A purchaser of standing timber acquires a vested interest in land, and the same rules as to recording apply as to other conveyances of interest. Neils Co. v Hines, 93 M 505, 101 NW 959.

The purchaser of standing timber acquires an interest in land, and a restriction against alienation without the landowner's permission does not reduce the contract of sale to a mere license to cut. Gulledge v Wenatchee, 126 M 176, 148 NW 43.

Notice of termination of state mineral contract should be acknowledged in order to be recorded. OAG March 6, 1933.

507.37 RECORD OF CONVEYANCE OF LAND IN UNORGANIZED COUNTY.

HISTORY. 1854 c. 32 s. 1; P.S. 1858 c. 35 s. 40; G.S. 1866 c. 40 s. 21; 1875 c. 51 s. 2; G.S. 1878 c. 40 s. 21; G.S. 1894 s. 4180; R.L. 1905 s. 3360; G.S. 1913 s. 6850; G.S. 1923 s. 8231; M.S. 1927 s. 8231.

Deeds to lands in counties that have been established, but are not yet organized, are properly recordable in the counties to which they are attached for judicial purposes. Smith v Anderson, 33 M 25, 21 NW 841.

Toombs county was not only established, but duly organized. The register kept his office in his home, and not in the county seat. The records were burned. The evidence of filing was an endorsement on the back of the original deed signed by the register of deeds, and was held sufficient proof of filing on the date set forth in the certificate. Thomas v Hanson, 59 M 274, 61 NW 135.

507.38 WHEN DEED NOT DEFEATED BY DEFEASANCE.

HISTORY. R.S. 1851 c. 46 s. 27; P.S. 1858 c. 35 s. 27; G.S. 1866 c. 40 s. 23; G.S. 1878 c. 40 s. 23; G.S. 1894 s. 4182; R.L. 1905 s. 3361; G.S. 1913 s. 6851; G.S. 1923 s. 8232; M.S. 1927 s. 8232.

Where the owner executed a deed absolute in terms but intended as a mortgage, and the grantee executed an instrument of defeasance promising recovery when a certain debt was paid, and both instruments were filed for record, held, that though recorded the instrument of defeasance not being acknowledged, was wrongfully recorded, and the deed could not be affected by it, and a grantee from the owner, without actual notice, would take free of the terms of the defeasance. Cogan v Cook, 22 M 137.

A deed absolute in form but supplemented by an instrument containing a defeasance clause and a declaration of trust, the deed only being recorded, created in fact a mortgage; but any interest the cestui que trust might have is postponed to the lien of a judgment obtained against the original grantor. Blakely v Le Duc, 25 M 448.

Where a bond for a deed for reconveyance was made at the same time as an absolute deed of the premises, it is if recorded, in effect a mortgage, and the grantee in the deed has no interest in the land subject to the lien of a judgment docketed against him. Bertman v James, 34 M 547, 27 NW 66.

Where a mortgagee of real property takes and properly records an absolute conveyance to himself from the mortgagor, his rights are fully protected, without the recording of an instrument of defeasance. Judgments properly docketed against such mortgagor are liens upon his equity of redemption in the premises, and a proper action against a subsequent purchaser, with notice, may be effective. Marston v Williams, 45 M 116, 47 NW 644.

The statute requiring a written defeasance to be recorded, is a recording statute, and serves merely to protect persons dealing in land on the faith of the title. Where the plaintiff conveyed by absolute deed, but under an agreement of reconveyance, and a trespasser cut and removed poles from the land, and sold them to the defendant, plaintiff may recover in an action for conversion. Jones v Bradley, 114 M 415, 131 NW 494.

A deed takes effect at the time of its delivery and not at the time of its date. Where the owner of a city lot conveyed the same as security by deed duly re-

corded, a judgment docketed thereafter against the grantor is not constructive notice of the lien thereof to a subsequent purchaser from the vendee. Goswitz v Jefferson, 123 M 293, 143 NW 720.

Four instruments were executed to express and fulfil the terms of the initial agreement between the parties. They should be considered together and given contemporaneous operation to promote the intent of the parties. The entire transaction was, in effect, a mortgage. The fact that the deed contains no statement of the amount; that no registry tax was paid; and that one of the instruments was dated at a later date, does not effect the finding that the entire transaction constituted a mortgage. Lundeen v Nyberg, 161 M 391, 201 NW 623.

507.39 RECORDED LETTER OF ATTORNEY, HOW REVOKED.

HISTORY. R. S. 1851 c. 46 s. 32; P.S. 1858 c. 35 s. 33; G.S. 1866 c. 40 s. 29; G.S. 1878 c. 40 s. 29; G.S. 1894 s. 4188; R.L. 1905 s. 3362; G.S. 1913 s. 6852; G.S. 1923 s. 8233; M.S. 1927 s. 8233.

507.40 MORTGAGES, HOW DISCHARGED OF RECORD.

HISTORY. R.S. 1851 c. 46 s. 36; P.S. 1858 c. 35 s. 36; G.S. 1866 c. 40 s. 36; G.S. 1878 c. 40 s. 36; G.S. 1894 s. 4196; 1899 c. 182; R.L. 1905 s. 3363; G.S. 1913 s. 6853; G.S. 1923 s. 8234; M.S. 1927 s. 8234.

Where a paid-up mortgage, containing a power of sale, is allowed to remain undischarged of record, and to be regularly foreclosed, a purchaser at the sale, without notice and for value, upon recording his certificate acquires valid title. Merchant v Woods, 27 M 396, 7 NW 826.

Satisfaction by attorney without authority. 3 MLR 267.

507.41 PENALTY FOR FAILURE TO DISCHARGE.

HISTORY. 1873 c. 50 s. 1; G.S. 1878 c. 40 s. 37; G.S. 1894 s. 4197; R.L. 1905 s. 3364; G.S. 1913 s. 6854; G.S. 1923 s. 8235; M.S. 1927 s. 8235.

Where one covenanted to have a certain mortgage discharged of record within a year, and in default of doing so, to pay a certain amount as liquidated damages, it was held a proper subject for special agreement, and the indemnity was separate and distitnct from the general covenants of the deed. Foster v Beard, 39 M 32, 38 NW 755.

Before an assignee of a real estate mortgage can foreclose by advertisement, his title to the mortgage must appear of record to the extent that evidence outside the record is not needed to put it beyond a reasonable question. Sanfal v Griffith, 159 M 252, 198 NW 807.