

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,  
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and  
amendatory, and notes showing repeals, together with annotations from the  
various courts, state and federal, and the opinions of the Attorney  
General, construing the constitution, statutes, charters  
and court rules of Minnesota together with digest  
of all common law decisions.



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and interest, if any, made and paid for valuable improvements upon the premises, or paid upon the leasehold price or rental of the premises whether to the lessor or to the owner of any incumbrance subject to which the lease was made, or which the lease provides that the lessee, his successors or assigns shall pay, or to both, a sum or sums equal to a substantial part of the original leasehold price or rental, and that the lessor's interest is reasonably secure, the court may, on taking into consideration the reasonable value of the income of such property, or, if the property has no income, then the reasonable rental value thereof, the efforts and ability of the lessee to pay, and all the facts and circumstances of the case, by order and upon such terms and conditions as to make it appear just and equitable, extend the time in which the lessee may perform the conditions of the lease in default, not to exceed one year from the date of the service of notice of termination on the lessee, and in no event beyond March 1, 1941.

If the lessee shall fail to perform the conditions in default, or any of them, as required and directed by the court to be performed, said lease shall forthwith be and become terminated, and the lessor may thereupon apply to the Court for an order adjudging said lease terminated, on giving at least ten days' written notice of such application to the lessee, served in the manner herein provided for the service of the notice of application for an order terminating the lease. If it shall be made to appear to the court, upon a hearing on said application, that the lessee has defaulted in performing such conditions, the court shall make an order declaring said lease terminated and said lease shall thereupon forthwith be and become finally terminated.

Every law and all the provisions thereof inconsistent with the provisions of this Act are hereby suspended until March 1st, 1941; provided, however, that proceedings heretofore begun and now pending for the cancellation and termination of any lease of real estate for a term of 20 years or more and all notices of cancellation of such leases served on the lessee more than 30 days prior to the 1st day of March, 1939, where the lessee shall have served upon the lessor as provided in Section 2, Chapter 46, Laws of 1937, and within the time therein limited, written objections to the making of any order adjudging the lease terminated and any legal or equitable defenses claimed by him, shall be governed by the provisions of this Act, otherwise such proceedings and such notices shall be governed by and become effective under the provisions of Sections 8187 as amended, and 9149 to 9163 of Mason's Minnesota Statutes 1927. (Act Apr. 11, 1935, c. 157, §2; Mar. 2, 1937, c. 46, §2; Feb. 25, 1939, c. 34, §2.)

**8192-3. Copy of the order to be recorded.**—A copy of any order of the court made pursuant to this act may be recorded with the register of deeds of the county wherein the real estate is situated. (Act Apr. 11, 1935, c. 157, §3; Mar. 2, 1937, c. 46, §3; Feb. 25, 1939, c. 34, §3.)

**8192-4. Application of act.**—The provisions of this act shall apply only to leases for terms of 20 years or more made prior to the passage and approval of this act, but shall not apply to leases made prior to the passage of this act which are hereafter renewed or

extended for a period ending more than one year after the passage of this act; neither shall this act apply in any way which would allow an extension to such time that any right might be adversely affected by a statute of limitation. Upon the application of either party prior to the expiration of the extended period, as provided in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms, in such manner as the changed circumstances and conditions may require. (Act Apr. 11, 1935, c. 157, §4; Mar. 2, 1937, c. 46, §4; Feb. 25, 1939, c. 34, §4.)

**8192-5. Trial.**—The trial of any action, hearing or proceeding mentioned in this act shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during the vacation of the court. (Act Apr. 11, 1935, c. 157, §5; Mar. 2, 1937, c. 46, §5; Feb. 25, 1939, c. 34, §5.)

**8192-6. Emergency shall be terminated by proclamation of governor.**—The emergency herein declared to exist shall be deemed to be terminated whenever the governor of this state shall by proclamation declare that the emergency is at an end or whenever in fact the emergency shall have terminated, and this act shall remain in effect no longer than March 1, 1941. (Act Apr. 11, 1935, c. 157, §6; Mar. 2, 1937, c. 46, §6; Feb. 25, 1939, c. 34, §6.)

**8192-7. Limitation of act.**—Nothing herein shall be construed to modify or give the court power to modify the provisions of Mason's Minnesota Statutes of 1927, section 8187, as amended, with regard to the right of the lessee or his successor in interest or any creditor having a lien upon the leased premises or any parts thereof, at any time before the expiration of six months after possession is obtained by the plaintiff on recovery in any action, to be restored to the possession and to hold the property according to the terms of the original lease on the conditions set forth in said section. (Act Apr. 11, 1935, c. 157, §7; Mar. 2, 1937, c. 46, §7; Feb. 25, 1939, c. 34, §7.)

**8192-8. Definitions.**—The terms 'lessor' and 'lessee' shall be construed to include the plural and the survivor or survivors, the heirs, executors, administrators, assigns or successors thereof. (Act Apr. 11, 1935, c. 157, §8; Mar. 2, 1937, c. 46, §8; Feb. 25, 1939, c. 34, §8.)

**8192-9. Provisions severable.**—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act. (Act Apr. 11, 1935, c. 157, §9; Mar. 2, 1937, c. 46, §9; Feb. 25, 1939, c. 34, §9.)

**8193. Urban real estate—Holding over.**  
Provision in lease for purchase of fixtures from the lessor by the lessee in the extent the lease is "extended," did not intend a statutory extension from month to month but an extension as a result of an agreement between the parties. 174M87, 218NW242.  
Holding over by tenant pursuant to an extension or renewal clause in a lease works a renewal of lease upon all terms of old lease except clause for renewal or extension. Hildebrandt v. N., 199M124, 272NW257. See Dun. Dig. 5413.

## CHAPTER 63

### Conveyances of Real Estate

#### 8195. Terms defined—Mortgages, etc., included.

##### 1. In general.

In view of this section the husband or wife may mortgage the homestead in case of the incompetency of the other spouse. 172M504, 215NW357.

Evidence held not to require finding that grantor was mentally incompetent, or that deed was induced by undue influence. 174M131, 218NW455.

There may be a valid transfer of land by verbal gift where there is an acceptance and a taking of possession. 175M549, 221NW908.

Vendee repudiating contract held not entitled to recover earnest money. 176M50, 222NW288.

Vendor's lien. 176M188, 222NW916.  
A construction should not be adopted which will render nugatory a grant of lands where a reasonable con-

struction, which will give effect, is possible. Metropolitan Life Ins. Co. v. K., 191M520, 254NW813. See Dun. Dig. 2686.

To constitute a valid transfer of land by verbal gift, there must be a gift completely executed by delivery of possession and performance of some acts sufficient to take case out of statute of frauds, and there must be an acceptance, a taking of possession under and in reliance upon gift, and doing of such acts in reliance thereon that it would work a substantial injustice to hold gift void. Hanslin v. W., 203M166, 280NW281. See Dun. Dig. 8876.

Though a vendor's lien is not favored, it is still recognized and enforced where clearly applicable. Hecht v. A., 204M432, 283NW753. See Dun. Dig. 10054.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Id. See Dun. Dig. 10054.

Female under 21 is a minor, and a guardian must be appointed to minor receiving monthly compensation as a child of a deceased world war veteran, and conveyances of land must be by guardian. Op. Atty. Gen. (498c), Nov. 4, 1937.

## 2. Contracts of sale.

Contract by which grantor agreed to convey to grantees or to persons designated by them, but which was not binding upon the grantees, passed no title to them. Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902.

There was a breach of an agreement to furnish a certified Torrens certificate though seller furnished a certificate showing title in another of an undivided one-half interest, and though such other person was ready and willing to join in the contract for a deed. 175M144, 220NW415.

A contract for a deed is a nonnegotiable instrument and an assignee thereof takes it subject to the grantee's rights. 176M267, 223NW288.

Where vendees under contract were to pay all taxes and they assigned contract to defendant which bought in the land at tax sale, vendor who refrained from cancelling contract in reliance on representation of defendant that it had paid taxes should have the land free from any lien for such taxes. Klostermann v. F., 176M459, 223NW780.

Cancellation of contract for sale of land discharged liability on note. 177M174, 224NW842.

Evidence unrelated to the land or contract in question, and evidence as to taxes due after the action was commenced should not have been received. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 9998.

A vendor cannot recover the purchase price of land before it is due, on default in payment of interest and taxes, where there is no clause in the contract giving the vendor the right to declare the principal due on default in such payments. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 10084.

Evidence held not to sustain finding that purchasers had repudiated land contract. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 10043.

The contract in question was properly construed as requiring interest to be paid annually. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 10008.

In action for purchase price of land, claimed defects in title considered and found unimportant and waived by defendant. Kehrer v. S., 182M596, 235NW386. See Dun. Dig. 10022(61).

Vendor under land contract held entitled to proceeds of fire policy above mortgage, though policy had been mistakenly assigned to husband of conditional vendee, and contract was cancelled subsequent to date payment was due from insured. Burman v. C., 186M28, 242NW387. See Dun. Dig. 10046b.

Whether plaintiffs had paid certain sum to entitle them to deed of land free from mortgage held by defendants, held for jury. Lilenthal v. Y., 189M526, 250NW361. See Dun. Dig. 6247.

Failure to pay certain bonds upon hotel property in accordance with a contract between defendant and plaintiff, upon performance of which he was to have one-half of property, did not result in forfeiting his interest in furniture nor require him to refund one-half of selling price. Stolp v. R., 190M382, 251NW903. See Dun. Dig. 7381.

A contract for the sale of land to two grantees, husband and wife, passes to them an equitable title as tenants in common. Gostomezik v. G., 191M119, 253NW376. See Dun. Dig. 10045.

Where husband and wife were vendees in an executory contract for sale of farm and upon payment of installments deed was given to husband, heirs of husband were not entitled to legal title as against widow in absence of showing of abandonment by her of her title, or an estoppel. Id. See Dun. Dig. 3185-3194, 3209, 10019, 10045.

An action by vendee to reform land contract was not a defense to an action by vendor in equity to cancel land contract for default in payment of installments, admitted

to be due. Madsen v. P., 194M418, 260NW510. See Dun. Dig. 5005.

Under contract that abstract should show merchantable title, purchaser was not bound to accept title until it was cleared up of record, vendor's title depending upon adverse possession. State Bank of Good Thunder v. B., 195M243, 262NW561. See Dun. Dig. 10024.

Occupancy of premises by a tenant of vendors is an encroachment upon vendee's right of possession which he is under no obligation to assume or accept, and vendee was within his legal rights in treating vendor's failure to give possession as a basis for rescission of contract. Gaetke v. E., 195M393, 263NW448. See Dun. Dig. 10037b.

A vendor, when he agreed to convey by a warranty deed, must furnish vendee a marketable title at time of performance. Stacey v. T., 196M202, 264NW809. See Dun. Dig. 10034.

Vendees of land were not entitled to rescind on ground that there was a reasonable doubt as to whether title of vendor was good, although it depended upon construction of testamentary trust. Id. See Dun. Dig. 10082a.

Evidence held to sustain finding that assignment to cover amounts due on contract for deed was absolute and not intended to be merely a security transaction in nature of a chattel mortgage. Killmer v. N., 196M420, 265NW293. See Dun. Dig. 571.

In action by vendors against vendees to be adjudged owners in fee free and clear of any claim of interest by defendants, evidence held insufficient to require finding of collusion between vendees and parent of one of them who had purchased and taken an assignment of a mortgage on property. Walsh v. K., 196M483, 265NW340. See Dun. Dig. 10006.

Grantee in contract limiting improvements that might be constructed could not recover damages because agreement for deed contained no building limitations. Berger v. F., 198M513, 270NW539. See Dun. Dig. 10020.

Tender of deed by vendor in land contract before suing for balance of purchase price was unnecessary where title was destroyed by defendant's failure to pay mortgage, and its subsequent foreclosure. Robitshek v. M., 198M586, 270NW579. See Dun. Dig. 10036.

Where title to land was lost to grantee of vendor in land contract by reason of failure of purchaser to pay mortgage, grantee may recover balance of purchase money. Id. See Dun. Dig. 10084.

Finding of no estoppel against plaintiff's assertion of his rights under option held sustained by evidence. McKercher v. V., 199M263, 271NW489. See Dun. Dig. 10016.

Action for specific performance was properly dismissed when plaintiff rested without showing payment or tender of sum stipulated in contract to be paid for a conveyance of premises by defendants. Martineau v. C., 201M342, 276NW232. See Dun. Dig. 8807.

Under option to purchase, deed and purchase money should be delivered simultaneously. Gassert v. A., 201M515, 276NW808. See Dun. Dig. 10032.

Rule regarding manner of exercise of option of lessee to purchase is to discover from language of instrument intent of parties with reference thereto. Id. See Dun. Dig. 5404, 10008.

Evidence held to sustain decree of specific performance against Salvation Army under contract for exchange of property. Karp v. S., 203M285, 281NW41. See Dun. Dig. 9998.

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. I., 204M480, 284NW57. See Dun. Dig. 10024.

Under earnest money contract which provides that if title cannot be made good within sixty days agreement shall be void and initial payment refunded, objection by vendee that vendor holds title only by contract for deed must be made within such reasonable time as will afford vendor an opportunity to correct defect within time limited by contract. Id. See Dun. Dig. 10034.

Effect of cancellation of contract for deed on a judgment obtained for an unpaid installment. 17MinnLaw Rev110.

## 2½. Easements in general.

Temporary right of way granted over land of grantor, though imperfectly described, may be ascertained and rendered definite by locating driveway then used by grantor. Minnetonka State Bank v. M., 189M560, 250NW561. See Dun. Dig. 2857, n. 87.

Possession is not essential to action to enjoin obstruction of prescriptive right of way over land. Schmidt v. K., 196M178, 265NW347. See Dun. Dig. 2862a.

An agreement relocating an easement is within statute of frauds, but if oral agreement has been executed or so far carried out that one of parties is estopped, law may regard new easement as substituted for old. Id. See Dun. Dig. 2862b.

An easement whether by grant or prescription may be modified or relocated by agreement between owners of dominant and servient estates. Id.

Words "about," "approximately," and "more or less," in connection with courses and distances, may be disregarded if not controlled or explained by monuments, boundaries, and other expressions of intention, and may be given meaning and effect when so controlled and explained. Ingelson v. O., 199M422, 272NW270. See Dun. Dig. 2659a.

In case of an indefinite location of an easement of way upon land definitely described, grantor may in first instance locate a convenient and suitable way: if he fails to do so, grantee may locate it in a reasonable manner; or, if the parties fail to locate it and cannot agree, a court of equity has power to affirmatively and specifically determine its location. *Id.* See Dun. Dig. 2861.

**2½. Party wall agreements.**

Party wall agreement held to apply only to building being constructed and not to a wall subsequently erected by a remote subsequent grantee. *Rany v. L.*, 185M 352, 241NW64. See Dun. Dig. 7416.

**3. Assignment.**

Where vendee in contract quitclaimed to vendors, the latter were entitled to rely on provision of contract that there could be no assignment by the vendee without the approval of the vendors. 175M502, 221NW871.

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. 175M18, 222NW509.

In action to determine adverse claims against one who had received deed absolute, findings held supported by evidence. 177M252, 225NW14.

On assignment of vendee's interest in land assignee assumes no personal liability in the absence of an assumption or agreement to pay the unpaid purchase price. *Hoyt v. K.*, 184M154, 238NW41. See Dun. Dig. 10013(15).

An assignment of an executory land contract by the vendor creates a privity of estate between the assignee and original vendor, but not a privity of contract. *Hoyt v. K.*, 184M154, 238NW41. See Dun. Dig. 10013(15).

Where vendor in contract transferred his interest and gave plaintiff quitclaim deed which was not recorded, and later sold the property to an innocent purchaser, plaintiff was entitled to a decree effectuating a transfer to plaintiff of the vendor's interest as vendor in the later contract. *D. H. Evans Co. v. N.*, 184M363, 238NW 694. See Dun. Dig. 10013(20).

A clause in a mortgage giving the mortgagee right to "have, demand, receive, and receipt for any rents due," held to be a valid assignment of rents, since contingent interests, expectancies, and things resting in mere possibility only are assignable in equity. Such assignment operates by way of present contract to attach to rent when it comes into esse. *Mutual Ben. Life Ins. Co. v. C.*, 190M144, 251NW129. See Dun. Dig. 555.

**4. Rescission.**

Vendee may rescind on learning that road has been laid out across farm. 177M415, 225NW290.

An innocent misrepresentation may be basis for rescission. 178M233, 226NW702.

One not getting substantially that which he was to get may rescind, though there is no actual damage. 178 M233, 226NW702.

Evidence held to support finding that there was no conspiracy warranting rescission of a real estate transaction. *Kallusch v. K.*, 185M3, 240NW108. See Dun. Dig. 1815a.

Judgment for vendor in unlawful detainer was res judicata in action to recover purchase money paid on theory that vendor repudiated contract for deed. *Herreid v. D.*, 193M618, 259NW189. See Dun. Dig. 5161, 5162, 5163.

If a wrongdoer who has obtained property by fraud has made expenditures upon it enhancing its value, he has no claim for these expenditures against one who, by reason of fraud practiced upon him, is entitled to demand its restitution, and who himself restores all which he has received, or tenders restoration of it, when he rescinds contract. *Gaetke v. E.*, 195M393, 263NW448. See Dun. Dig. 10097.

Where old widowed father conveys valuable property to daughter and son-in-law, consideration being to a substantial amount an agreement to furnish support by a way of board, room and washing during his lifetime, there is an element of confidence and expectation which will entitle the grantor to equitable relief for value of loss of board, room and washing, together with lien on property, where such differences have arisen between the parties that it would be unsafe to continue to be a member of the family, and it is no bar to such relief that prior action of the father for cancellation of the contract has been dismissed. *Priebe v. S.*, 197M453, 267 NW376. See Dun. Dig. 2677.

Parties may by mutual consent rescind a contract for deed even though it has been partly performed. *Houchin v. B.*, 202M540, 279NW370. See Dun. Dig. 1807.

Rescission of a contract for deed even after part performance nullifies contract so that an action in deceit for damages for fraud in its procurement will not lie. *Id.* See Dun. Dig. 10092.

**5. Deeds.**

Rule of evidence where conveyance is of lands abutting upon vacated streets, alleys or highways. *Laws* 1939, c. 386.

A deed conveying the fast land on shore carries title to appurtenant riparian rights. *Pike Rapids Power Co. v. M.*, (CCA8), 99F(2d)902.

Evidence held to show mental incapacity. 175M428, 221NW644.

Evidence sustains finding that father who deeded farm to son was mentally incompetent and was unduly influenced by his son. 175M520, 221NW907.

Where owner executes deed in blank and delivers it to agent, the latter has implied authority to insert the name of the purchaser. 177M127, 224NW843.

Where covenant runs with land and covenantee, without having been evicted or having suffered any 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 to pay or make good on account of a breach of the covenant. 177M606, 225NW902.

Title conveyed by deed altered after delivery is not revealed in grantor. 181M361, 232NW511. See Dun. Dig. 259(87).

The word "parks" in a deed to a city included playgrounds. 182M243, 234NW289. See Dun. Dig. 2686.

A deed which by its terms exempted lands from assessments to the extent of \$48,000 construed as having reference to assessments, not only for parkway purposes, but also for parks and park improvements. 182M 243, 234NW289. See Dun. Dig. 6877(64), (65), (66).

Blank deed upon which grantors' names were signed by third person and marks inserted, held insufficient to transfer title. *Arntson v. A.*, 184M59, 237NW820. See Dun. Dig. 2660.

The furniture in a hotel operated by plaintiff and defendant as partners was personal property and did not pass by a deed by defendant to plaintiff of his one-half of land upon which hotel was built. *Stolp v. R.*, 190M 382, 251NW903. See Dun. Dig. 2681.

Evidence held not to sustain finding of a jury, to which a special issue was submitted, that a deed was a forgery. *Craig v. W.*, 190M499, 252NW332. See Dun. Dig. 2661a.

Evidence supports finding that there was no breach of agreement to support parents contained in a deed of land. *Johnston v. J.*, 195M236, 262NW566. See Dun. Dig. 2677.

A provision in a deed of general warranty that property could not be sold or mortgaged for at least 10 years after death of grantor, and should grantee die before 10 years, property should go to his sisters and brother, share and share alike, was not repugnant to the general grant, but a limitation thereon. *Youngers v. S.*, 196M147, 264 NW794. See Dun. Dig. 2675a.

In action for breach of covenant of seizin in a deed, findings for defendant of fact held sustained by evidence. *Baker v. R.*, 199M148, 271NW241. See Dun. Dig. 2360.

Words "about," "approximately," and "more or less," in connection with courses and distances, may be disregarded if not controlled or explained by monuments, boundaries, and other expressions of intention, and may be given meaning and effect when so controlled and explained. *Ingelson v. O.*, 199M422, 272NW270. See Dun. Dig. 2659a.

Where lessor covenanted for a specified time not to enter into a business competitive with that of lessee, and during term of lease conveyed property and assigned reversion to plaintiff, and thereafter breached his covenant with the lessee, who rescinded lease, to plaintiff's damage, 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 lessee. *Dewey v. K.*, 200M289, 274NW161. See Dun. Dig. 2353, 5362.

Question whether grantor may constitute himself a joint tenant with his grantee discussed. *Papke v. P.*, 203M130, 280NW183. See Dun. Dig. 2657.

Mistake as to form of conveyance justifies reformation but not cancellation of instrument. *Id.* See Dun. Dig. 1192, 8338.

**5½. Merger.**

It being plainly against both interest and expressed intention of holder of two titles that there should be a merger when by quitclaim deed fee was conveyed to a mortgagee, decision that there was no merger was right. *Long v. M.*, 197M623, 268NW195. See Dun. Dig. 6117, 6272, 6273.

Presumption is against a merger, where it is to interest of person in whom mortgage and title unite that they be held separately, if no injustice results to another. *Losleben v. L.*, 199M227, 271NW463. See Dun. Dig. 6272.

Finding that, in taking a quitclaim deed from mortgagors, holder of mortgage intended to merge mortgage in title conveyed by deed, held contrary to evidence. *Id.* See Dun. Dig. 6273.

**7. Condition subsequent.**

Condition in conveyance from parents to son that grantee would pay annuity to grantors and survivor for life, held personal to grantors and administrator could not sue to enforce same. *Gamble v. M.*, 187M640, 246NW 368. See Dun. Dig. 2677.

In a life support contract, obligation on part of grantees in a conveyance made by parents, as consideration for contract, to live with and personally care for parents is of such a personal nature that as a matter of law its breach cannot be invoked, after parents' death, as a ground for setting aside conveyance. *Mallicki v. M.*, 189M121, 248NW723. See Dun. Dig. 2677.

Agreement in deed of land to support grantor parents is a lien on property conveyed, superior to all subsequent conveyances or encumbrances and may be enforced as such in case of failure of grantee to perform. *Johnston v. J.*, 195M236, 262NW566. See Dun. Dig. 2677.

Grantee held to take a conditional fee dependent upon his survival during ten years next following grantor's death. Having died within that period, fee, therefore contingent, vested immediately upon his death according to provisions of deed. *Youngers v. S.*, 196M147, 264NW794. See Dun. Dig. 2693.

Reversionary interest in deed passes to heirs of grantor, though only "party of first part" was named in deed as party entitled to reversion on payment of \$10. *Op. Atty. Gen.* (6221-15), Mar. 1, 1937.

#### 8. Consideration.

In determining whether mortgagee paid mortgagor an adequate consideration for a deed of mortgagor's equity of redemption, court did not err in taking evidence of value of land as of time of transaction. *O'Connor v. S.*, 190M177, 251NW180. See Dun. Dig. 6146.

Where vendor agreed to accept a lesser sum in bonds if respondents managed to obtain federal loan, payment to be completed long before payments were to be completed under original contract, modified agreement was supported by sufficient consideration and enforceable. *Schultz v. U.*, 199M131, 271NW249. See Dun. Dig. 10009.

A deed is valid, as between parties, without any consideration. *Bowen v. W.*, 203M599, 281NW256. See Dun. Dig. 2659.

#### 9. Delivery of deeds.

Evidence held to sustain verdict to effect that escrow agent had authority to deliver deed. 173M616, 216NW783.

Delivery of a deed to a third person is delivery to the grantee only when the grantor evidences an intention to presently and unconditionally part with all control over it and that it shall take effect according to its terms. 177M606, 225NW902.

In action by administrator to recover purchase price of land, an escrow agreement between defendant and husband of deceased not attempted to be carried out by defendant should not be considered. *Kehrer v. S.*, 182M596, 235NW386. See Dun. Dig. 10084.

Where a deed is delivered by escrow holder either in violation of or without compliance with terms of agreement, no title passes. *Merchants' & Farmers' State Bank v. O.*, 189M528, 250NW366. See Dun. Dig. 3153.

It was error to exclude evidence of nonperformance, abandonment, and abrogation of a contract by terms of which a deed, claimed to have been wrongfully delivered was placed in escrow. *Id.*

Where a party pleads full performance of contract under which grantee in a deed placed in escrow would be entitled to delivery thereof, no question of waiver of performance of conditions by grantor is raised thereby. *Id.*

Possession by grantee of an acknowledged and recorded deed which had been in escrow placed burden upon grantor of going forward with proof of wrongful delivery. *Id.* Dun. Dig. 3153.

Where a grantor, two days before her death, executed deeds which amounted to voluntary settlements and placed them with her banker for safe-keeping, and on following day, when convinced that she was about to die, announced that she had made deeds and that they were all right and that she was sorry that she had not had time to dispose of her personal property, deeds were presently effective as conveyances. *Allen v. P.*, 192M459, 257NW84. See Dun. Dig. 2666.

As to parties to a deed, transfer of interest it purports to convey takes place at time of delivery. *Exsted v. F.*, 202M521, 279NW554. See Dun. Dig. 2689.

Essential elements of delivery are surrender of control by grantor, together with an intent to convey thereby, and whether or not there has been a delivery is a question of fact. *Id.* See Dun. Dig. 2662.

Fact that parties to a deed believed that recordation was necessary to pass title does not nullify an otherwise effective delivery of deed. *Id.* See Dun. Dig. 2662, 2689.

Return of deed to grantor prior to recordation under misapprehension that title had not passed does not estop grantee from asserting that title was not thereby re-vested in grantor, latter not having suffered any detriment as a result of his mistake as to law. *Id.* See Dun. Dig. 2662, 2689.

Unauthorized delivery by escrow agent—rights of bona fide purchaser from grantee. 18MinnLawRev83.

Attempts to pass contingent future interests. 23Minn LawRev94.

#### 11. Undue influence.

Evidence held to sustain finding that deed was obtained by undue influence. *Engelson v. E.*, 188M322, 247NW223. See Dun. Dig. 2661b, 9949-9952, 10238-10243.

To set aside conveyances of decedent plaintiff must prove more than opportunity to exercise undue influence. *Brennan v. H.*, 198M226, 269NW395. See Dun. Dig. 2661b.

Fact of undue influence having been established, it should be deemed to void conveyance not merely as to grantee who has procured it by such means but also, in absence of valuable consideration paid, as to innocent grantees not chargeable with such fault. *Claggett v. C.*, 204M568, 284NW363. See Dun. Dig. 1191.

#### 14. Fraud.

In action for fraud and deceit based upon misrepresentation as to the character and value of security in the sale of real estate mortgage, it is not necessary to allege insolvency of mortgagor. Damages recoverable are the difference between the value of what the purchaser parted with and the value of that which he received. 173M174, 617, 216NW943, 944.

Obligation to pay more than was agreed furnishes legal basis for damages as of the time the fraud was committed. 181M496, 233NW241. See Dun. Dig. 3828.

The testimony justified the jury in finding that defendants fraudulently and surreptitiously inserted figures in contracts for the exchange of real estate obligating plaintiff to pay \$5,700 more to boot than if such deception had not been practiced. 181M496, 233NW241. See Dun. Dig. 3479, 10065b.

That there was no misrepresentation as to the two material matters upon which plaintiff grounded his right of rescission of a land purchase, held sustained by sufficient evidence. 181M570, 233NW243. See Dun. Dig. 10068.

A vendor not a party to or in any way responsible for the dual agency of a broker, and even innocent of knowledge thereof, is not chargeable with constructive fraud because of the fact that the broker has collected commissions from both parties. *Olive v. T.*, 182M327, 234NW466. See Dun. Dig. 3833.

In an action for the rescission of the purchase of a real property mortgage, held that evidence sustains the jury's finding of fraud. *Gunnerson v. M.*, 182M480, 234NW676. See Dun. Dig. 1815a, 6230.

Evidence held to sustain finding that defendant purchasing land for plaintiffs and himself misrepresented the amount paid. *Hiller v. H.*, 182M546, 236NW11. See Dun. Dig. 4949(31).

A representation in a sale of a mortgage that the mortgagor lives in the buildings or occupies the premises is a material one. *Gunnerson v. M.*, 182M480, 234NW676. See Dun. Dig. 3820.

A reliance in part on a guaranty and in part on untrue oral representations will sustain recovery for deceit in action by purchaser of land. *Osborn v. W.*, 183M205, 236NW197. See Dun. Dig. 10100(55).

The fact that a party defrauded has also a remedy on a warranty or guaranty, not sued upon, does not prevent suit for the fraud. *Osborn v. W.*, 183M205, 236NW197. See Dun. Dig. 10100.

The fact that defrauded vendees of land accepted a second guaranty from one of the defendants did not constitute a novation. *Osborn v. W.*, 183M205, 236NW197. See Dun. Dig. 7238.

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 desirability of the purchase as an investment and as to the value of the property may constitute fraud. *Hassman v. F.*, 183M453, 236NW921. See Dun. Dig. 3833.

Evidence held not to establish a fiduciary relationship or fraud in the negotiation of a sale of land. *Klemme v. L.*, 184M97, 237NW882. See Dun. Dig. 3833.

A material misrepresentation of the seller of property, though innocently made, if relied upon, gives the purchaser a cause of action against the seller for the damages sustained. *Moulton v. N.*, 184M343, 238NW686. See Dun. Dig. 10100.

The plaintiff may recover for a misrepresentation made, if he relied upon it in a substantial way and it was an inducing cause of his purchase, though he made other inquiry in his own behalf. *Moulton v. N.*, 184M343, 238NW686. See Dun. Dig. 10067.

Evidence held to sustain finding that there was no fraud warranting rescission of real estate contract. *Kallusch v. K.*, 185M3, 240NW108. See Dun. Dig. 1815a.

Representations on sale of farm concerning water supply held not fraudulent. *McCaleb v. B.*, 186M170, 242NW723. See Dun. Dig. 10062.

Evidence held sufficient to sustain verdict for rescission of a contract to convey real estate, on ground of fraudulent representations. *Cloud v. R.*, 187M575, 246NW24. See Dun. Dig. 10068.

Evidence held to sustain finding of fraud in sale of lot. *McDermott v. R.*, 188M501, 247NW683. See Dun. Dig. 10097(21).

Evidence held not to present a question for jury as to fraud and undue influence practiced upon plaintiff's testatrix in getting her to place her property in joint ownership with defendant. *Brennan v. H.*, 198M226, 269NW395. See Dun. Dig. 2661b.

Rescission of a contract for deed even after part performance nullifies contract so that an action in deceit for damages for fraud in its procurement will not lie. *Houchin v. B.*, 202M507, 279NW370. See Dun. Dig. 10092.

Evidence of fraud in procuring a signature to a paper at one time, even if true, is not proof that signature to other papers at other times were procured by fraud. *Bowen v. W.*, 203M599, 281NW256. See Dun. Dig. 2661b.

Evidence held to support finding that there was no fraud or misrepresentation inducing plaintiff to execute deed. *Hughes v. H.*, 204M592, 284NW781. See Dun. Dig. 2661b.

A synthesis of the law of misrepresentation. 22Minn LawRev939.

#### 15. Mortgages.

Agent negotiating loan, held an agent of mortgagee and not mortgagor, and mortgagee must stand the loss of such agent's failure to pay off prior mortgage. 176M55, 222NW581.

Since 1862 it has been the established law that a mortgage securing a negotiable instrument is a chose in action, an independent though collateral contract to the instrument it secures. 176M287, 223NW148.

Deed and contract for a deed held to constitute an equitable mortgage. 176M267, 223NW238.

Finding that agent had authority from defendant to collect the principal of a mortgage loan supported by evidence. 176M496, 223NW779.

Priority as between mortgages and effect of payment of prior mortgages. 176M609, 224NW264.

Facts held to warrant finding of actual authority of broker to collect mortgage loans. 177M119, 224NW696.

Evidence held to sustain finding that broker lending money but failing to pay over the money upon obtaining the mortgage was the agent of the mortgagee in the transaction. 177M108, 224NW697.

Mortgage given to an individual upon agreement that he would hold it as security for debts of mortgagors to four creditors whose consent was intended to be procured, was enforceable as far as two creditors who consented were concerned. 177M612, 225NW908.

Plaintiff, mortgagee, by releasing the mortgagors from their personal obligation to pay the mortgage, did not subordinate its mortgage to another mortgage obtained from a subsequent purchaser of the premises. 178M50, 226NW189.

Loss from failure of agent to pay off prior mortgage as agreed fell upon lender and not borrower. 178M514, 227NW852.

One borrowing money and giving deed and taking back contract of sale enters into a "mortgage" which cannot be canceled by notice. Sanderson v. E., 182M256, 234NW450. See Dun. Dig. 6154, 10091.

A contract in the form of an executory contract of sale, if made to secure a loan, is a mortgage. If a mortgage, the vendee's title can be extinguished only by foreclosure and the lapse of the statutory period of redemption. Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872. See Dun. Dig. 6152, 10091.

In respect to payment of taxes on the 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, a right to be protected by an equitable lien. Des Moines Sav. Bk. & Trust Co. v. E., 183M36, 235NW390.2 See Dun. Dig. 6236.

Payment of the mortgage debt by the mortgagor to the mortgagee, without notice of its prior assignment, though there is such assignment to a good faith purchaser of record at the time, discharges the mortgagee. Rea v. K., 183M194, 235NW1910. See Dun. Dig. 6243(94), 7231, 8298.

Evidence held not to sustain finding that release of mortgagor was inserted in extension agreement after its execution in favor of grantee of mortgagor. Harris v. A., 183M292, 236NW458. See Dun. Dig. 6266.

When a mortgagee executes a valid extension of time to the grantee of a mortgagor without his knowledge or consent, the mortgagor is released. The burden is upon the mortgagor to prove lack of knowledge and consent. Harris v. A., 183M292, 236NW458. See Dun. Dig. 6266(80), (81).

Evidence held not to show that a deed was a mortgage. Stokke v. M., 185M28, 239NW658. See Dun. Dig. 6154-6167.

Trustee under a trust deed securing bonds held liable for money actually received from a sale of part of the security. Deposit Bank & Trust Co. v. S., 185M25, 239NW766. See Dun. Dig. 6233.

Where trustee under a trust deed intrusted collection of rents to a corporation related to it, and the latter delegated it to still another agent who made the collection and charged a commission, it was proper to deny any additional compensation for making the collections. Deposit Bank & Trust Co. v. S., 185M25, 239NW766. See Dun. Dig. 6233.

Where junior mortgagee redeemed from foreclosure by advertisement because of default in payment of installment, notice being given of amount thereof, principal debt had priority over redemptioner. Des Moines Joint Stock Land Bank v. D., 185M435, 241NW393. See Dun. Dig. 6423.

Bank held to have taken contract for deed from husband and to have given contract for deed to wife as security for debt owed by husband and assumed by wife. Nippolt v. F., 186M325, 243NW136. See Dun. Dig. 6156.

Substantial barn constructed on farm on which state held mortgage was part of real estate subject to mortgage, and not personal property merely because materials were obtained by mortgagor through fraudulent representations. Botsford Lumber Co. v. S., 188M247, 246NW902. See Dun. Dig. 3772.

Evidence held to support finding that deceased gave no partial release of mortgage. Peterson v. C., 188M309, 247NW1. See Dun. Dig. 6247.

Endorsement of note carries mortgage. Jefferson County Bank v. E., 188M354, 247NW245. See Dun. Dig. 6276.

Where bondholder failed without justification to comply with terms of trust deed by demand upon trustee before bringing an injunction suit against materialman threatening to remove fixtures sold under title retaining contract, court properly sustained demurrer on ground it did not state cause of action. North Shore Co. v. B., 188M433, 247NW505. See Dun. Dig. 4469.

Evidence held to sustain finding that power of attorney to mortgagee to collect rents was abandoned and was superseded by assignment of rents. Flower v. K., 185M461, 250NW43. See Dun. Dig. 6230.

Power of attorney to mortgagee to collect rents and apply on mortgage did not authorize mortgagee to collect rent after its revocation and during period of redemption. Id.

Where a mortgagee, knowing that mortgagors have made a special deposit of money in bank where mortgage is payable to pay and satisfy it in full, delivers satisfaction, and for his own convenience accepts cashier's check instead of money, debt is paid, and bank is substituted as debtor of mortgagee instead of mortgagors. Vogel v. Z., 191M20, 252NW664. See Dun. Dig. 7445.

Evidence held to sustain finding that mortgagee orally agreed, in consideration of chattel mortgage on crops to secure payment of taxes due on farm, to extend time of payment on real estate mortgage. Hawkins v. H., 191M543, 254NW809. See Dun. Dig. 6266.

Ordinarily, "townsite" means a portion of the public domain segregated by proper authority and procedure as the site for a town. Metropolitan Life Ins. Co. v. K., 191M520, 254NW813. See Dun. Dig. 7938.

Word "townsite" as used to except certain lands from mortgage held to apply to a platted addition within the townsite rather than to the townsite itself. Id. See Dun. Dig. 6173.

A mortgage is to be construed as a whole. Id. See Dun. Dig. 6145.

No particular words are necessary to create a mortgage, but an instrument, absolute on its face, clearly must be shown to have been executed merely as security before the court will declare the same to be a mortgage. Federal Land Bank v. S., 192M21, 256NW102. See Dun. Dig. 1431, 6157.

Trustee in trust deed was not liable to bondholders for discharging guarantor and foreclosing and purchasing property, if bondholders were paid interest up to date of sale and property was worth amount for which it was bid in by trustee. Sneve v. F., 192M355, 256NW730. See Dun. Dig. 9931.

A deed, absolute in form, followed by an executory contract of sale from grantee in deed, as vendor, to one of grantors, as vendee, being security for a debt, was a mortgage, and lapse of time between deed and contract was immaterial so long as they were part of same transaction. Stipe v. J., 192M504, 257NW99. See Dun. Dig. 6154.

Vendor receiving back contract for deed is not estopped from claiming that deed was a mortgage as against lumber dealer who knew as much or more than he did concerning status of property. Id. See Dun. Dig. 6271.

A transfer of a farm and all owner's personal property from husband to wife, having been found not fraudulent, considered absolute rather than mere security for indebtedness from husband to wife. Murgin v. S., 192M526, 257NW338. See Dun. Dig. 6154.

There can be no mortgage unless there is a debt to be secured. Id. See Dun. Dig. 6145.

In action to have deed declared mortgage burden of proof is upon plaintiff. Id. See Dun. Dig. 6159.

Evidence must be clear, strong and convincing to support a decree that a deed is a mortgage. Id. See Dun. Dig. 6157.

A promissory note given for an antecedent debt does not discharge debt unless expressly given and received as absolute payment; and burden of proof is upon party asserting such fact to show that it was so given and received; presumption being to contrary. The same rule applies where a third party joins in execution of new note. Taking a new mortgage does not discharge old debt unless such was intention of parties. Hirlleman v. N., 193M51, 268NW18. See Dun. Dig. 6264, 7444.

Life tenant's lien on remainder, to secure contributions chargeable against latter because of life tenant's redemption from an earlier mortgage, passes to mortgagee under life tenant's mortgage of whole estate. Faulkenburg v. W., 194M154, 259NW802. See Dun. Dig. 6180a.

Evidence held conclusive that mortgagee bank had no contract under which money deposited by mortgagor in bank could be appropriated to payment of unpaid delinquent taxes after defendant bid in mortgaged premises for full amount of debt. Business Women's Holding Co. v. F., 194M171, 259NW812. See Dun. Dig. 6368.

A bondholder, usually by derivative action, may sue to foreclose mortgage if trustee fails or refuses to do so, or if for any reason trustee has rendered himself unfit to proceed. Townsend v. M., 194M423, 260NW525. See Dun. Dig. 6434.

Mortgagee did not lose or waive right to accelerate for prior defaults by delaying for over eight months before suing on notes secured by mortgage where mortgagor was not prejudiced by the delay. Phillips v. U. (USCCA8), 88F(2d)188.

Finding that a deed to a building contractor accompanied by an executory contract for reconveyance was not a mortgage, is sustained by evidence under rule of Westberg v. Wilson, 185M307, 251NW315; Dod v. I., 195M254, 262NW683. See Dun. Dig. 6156.

In action to cancel a contract for deed, evidence is held to support finding that a quitclaim deed of mortgaged real estate, given by mortgagor to mortgagee, was an absolute conveyance and did not constitute giving of

further security for mortgage debt. *Evans v. S.*, 197M 310, 267NW220. See Dun. Dig. 6146.

In order to prove incompetency at time of a particular transaction, it is proper to show a subsequent adjudication of incompetency. *Johnson v. H.*, 197M496, 267NW486. See Dun. Dig. 3438, 3440.

Inflexible rule "once a mortgage always a mortgage" and doctrine whereunder a deed absolute in form may be declared a mortgage, if it was so intended, are in operation wholly independent of statute of frauds. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 6155.

Mortgagor holds title and possession, while mortgagee has a mere lien until redemption has expired from a foreclosure sale under mortgage. *Geo. Benz & Sons v. W.*, 198M311, 269NW840. See Dun. Dig. 6215.

Before court will hold a deed absolute on its face to be an equitable mortgage, it must appear that both parties so intended. *Nitkey v. W.*, 199M334, 271NW873. Cert. den., 58SCR25. Reh. den., 58SCR134. See Dun. Dig. 6154.

A deed will not be regarded as a mortgage where property was leased to a third party with privilege of purchase if grantee believed it was a bona fide transfer. *Id.*

A deed will not be regarded as a mortgage even if property was leased back to grantor for his privilege of purchase if circumstances surrounding transaction indicate belief on part of grantee that it was a bona fide transfer. *Id.* See Dun. Dig. 6156.

In order to justify a decree that a deed absolute on its face is a mortgage, there must be something more than a mere preponderance of evidence to support that view, and proof must be clear, strong and convincing. *Id.* See Dun. Dig. 6157.

Whether deed absolute is mortgage will be ascertained from written memorials of transaction and all attendant facts and circumstances, although documents evidencing transaction make a prima facie case for what they purport to be. *Id.*

Presumption is that an absolute deed was intended as an absolute conveyance of fee and burden is on party asserting otherwise to prove it, but a finding that a deed absolute is an equitable mortgage will not be disturbed even where there is strong evidence to contrary. *Id.*

When defendant was owner of a mortgage covering three tracts of land, one constituting mortgagor's homestead, and plaintiff was owner of one of tracts and had an interest in another as a purchaser upon execution sale, and had no interest in tract constituting homestead, upon request by plaintiff for a statement of amount due and tender of full amount, plaintiff became subrogated to all of rights of defendant in prior encumbrance and trial court was justified in ordering an assignment of mortgage to plaintiff upon payment of amount so tendered. *First Nat. Bank v. S.*, 201M359, 276NW290. See Dun. Dig. 9048.

Relationship between loan broker and borrower held that of principal and agent. *Dehnhoff v. H.*, 202M295, 278NW351. See Dun. Dig. 6262.

Where a mortgagee turns over entire amount of mortgage loan to a broker through whom loan has been negotiated, mortgagee thereby constitutes broker his agent for purpose of taking up a prior mortgage, as affecting right between different mortgagees and borrower on embezzlement by broker. *Id.*

A real estate mortgage is not a conveyance so as to enable mortgagee to recover possession without foreclosure, but subsequent to execution of mortgage, mortgagor may assign rents to mortgagee, to be applied on mortgage debt, and incidentally authorize mortgagee to take possession for purpose of leasing property and collecting rents. *Seifert v. M.*, 203M415, 281NW770. See Dun. Dig. 6230, 6237, 6238, 6240, 6242.

Town board may pay mortgagor for gravel where mortgage does not prohibit removal. *Op. Atty. Gen.*, Mar. 20, 1934.

Covenants of title in junior mortgages. 12MinnLaw Rev34.

Double hazard of a note and mortgage. 16MinnLaw Rev123.

#### 16. Assumption.

Mortgage debt assumed being past due and unpaid, grantor could maintain an action on grantee's agreement to pay the mortgage without having first paid such mortgage. 177M115, 224NW99.

Parol evidence was admissible to prove that grantee assumed and agreed to pay mortgage referred to in deed. 177M115, 224NW99.

Defendants, who had purchased land from a mortgagor, and had assumed and agreed to pay the mortgage, were not released by an extension of time of payment granted by mortgagee to mortgagor without their consent. 181M462, 233NW12. See Dun. Dig. 6294, 6295.

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 or save his own property. 181M462, 233NW12. See Dun. Dig. 9036.

The rule that an extension of 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 principal debtor. 181M462, 233NW12. See Dun. Dig. 9036.

A quitclaim deed, without any clause assuming payment thereof, does not make the grantee therein personally liable for payments required under a contract of

purchase of the land made by his grantor. *Pratt v. M.*, 182M250, 234NW464. See Dun. Dig. 2695, 10048a.

One assuming and agreeing to pay a mortgage debt under a contract continuing "in full force and effect" all provisions of mortgage note held bound by an acceleration clause therein. *Southern Minn. Joint Stock Land Bank v. P.*, 188M383, 247NW242. See Dun. Dig. 6294.

Evidence sustained finding that plaintiff, with knowledge of conveyance by mortgagors of mortgaged land wherein vendees assumed and agreed to pay mortgage debt, and without consent of mortgagors, extended time of payment five years. *Jefferson County Bank v. E.*, 188M354, 247NW245. See Dun. Dig. 6295.

Mortgagors conveying land to vendees assuming mortgage became sureties, who were relieved of liability by extension of time for payment without their consent. *Id.*

Personal liability to pay a mortgage debt, on part of a grantee, is created only by a distinct assumption of mortgage debt, either in conveyance or independent thereof. *Allen v. H.*, 189M391, 249NW570. See Dun. Dig. 6289, 6294, 6296.

Agreement of grantee in deed to pay interest on mortgage and payment thereof does not impose liability to pay principal of mortgage. *Id.*

Mortgage extension agreement providing that mortgage be paid in gold held not to constitute assumption of mortgage debt by grantee of land. *Id.*

Mortgage extension agreements made to grantee of land without knowledge or consent of mortgagors released mortgagors from personal liability to extent of value of property mortgage. *Id.*

Mortgagee extending time for payment to grantee of land was presumed to have known effect of such agreement as affecting personal liability of original mortgagors. *Id.*

Where grantee assumed payment of mortgage but reconveyed to grantor subject to mortgage, mortgagee could not recover from grantee under assumption clause unless he placed himself in a prejudicial position on account of such assumption clause. *Morstain v. K.*, 190M78, 250NW727. See Dun. Dig. 6294.

Where bank acquires title under deed under which it assumes to pay a first mortgage, the grantor can enter into a written agreement with bank and relieve it from liability to pay the mortgage. *Op. Atty. Gen.*, Nov. 30, 1931.

#### 17. Consideration.

Administrator held entitled to recover purchase price of land conveyed to sister of defendant. *Kehrer v. S.*, 182M596, 235NW386. See Dun. Dig. 10084.

A promissory note payable to husband of decedent, but never delivered or paid, did not operate as any payment for land conveyed by decedent to defendant. *Kehrer v. S.*, 182M596, 235NW386. See Dun. Dig. 7444(15).

Where plaintiffs deposited note and mortgage upon their homestead running to a third party, to be delivered by bank upon receipt of consideration, but no consideration was paid, assignment by mortgagee named to bank passed no title and plaintiffs are entitled to cancellation of note and mortgage and vacation of foreclosure sale. *Stibal v. F.*, 190M1, 250NW718. See Dun. Dig. 3153.

Valuable consideration is given for a mortgage taken to secure an existing debt, particularly where maturity of latter is extended. *Faulkenburg v. W.*, 194M154, 259NW802. See Dun. Dig. 1750, 6201.

#### 18. Estoppel.

Mortgage covenant that premises were unencumbered did not estop borrower from showing that broker agreed to pay off prior mortgage. 178M514, 227NW852.

One who conveys land in exchange for other lands, and loses the land received by foreclosure of a mortgage, held estopped to assert that the deed executed by himself was altered after delivery. 181M361, 232NW511. See Dun. Dig. 265.

Grantor in a deed placed in escrow or his successors in interest may be estopped from setting up a wrongful delivery of deed by escrow holder. *Merchants' & Farmers' State Bank v. O.*, 189M528, 250NW366. See Dun. Dig. 3153.

While mortgagor may be estopped by his covenants from framing an issue against his mortgagee disputing latter's title, nevertheless he may testify in an issue between the mortgagee and others to facts which might support a finding hostile to title of mortgagee. *Id.* See Dun. Dig. 3176.

Evidence held to sustain finding that mortgagors were not estopped to question delivery of note and mortgage to mortgagee named. *Stibal v. F.*, 190M1, 250NW718. See Dun. Dig. 3153.

#### 19. Mistake.

Mistake as to form of conveyance justifies reformation but not cancellation of instrument. *Papke v. P.*, 203M 130, 280NW183. See Dun. Dig. 1192, 8338.

Where parties by mistake fail to embody their intention in a written instrument either because they do not understand meaning of words used or their legal effect, reformation will be allowed. *Id.* See Dun. Dig. 8328.

#### 22. Torrens law.

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 to not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matter noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

**23. Lease.**

Register of Deeds is required to accept for record a lease to real estate for a term of less than three years, if properly witnessed and acknowledged. Op. Atty. Gen., May 6, 1931.

**8196. Conveyances by husband and wife.**

One who knows or is given reason to believe in dealing with a husband that the latter will resort to misrepresentations or concealment in order to procure from wife an assignment of a mortgage cannot claim from the assignment alone an ostensible authority in the husband to apply the mortgage to the satisfaction of his own contract. *Smith v. C.*, 177M87, 224NW468.

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Simmer v. S.*, 195M1, 261NW481. See *Dun. Dig.* 4282.

**8201. Conveyance by husband or wife of insane or incompetent.**

It is immaterial that the guardian of an insane spouse was authorized to join in a mortgage of the homestead instead of merely giving his or her consent thereto or that the mortgage showed an actual joinder rather than the consent as indicated by the statute, such departure being a procedural irregularity not affecting the mortgage, in a collateral proceeding. 172M504, 215NW857.

Under this section the husband has power to mortgage the homestead in case of the incompetency of the wife, in view of §8195. 172M504, 215NW857.

**8203. Quitclaims—etc.**

Quitclaim deed to land given after a grain crop thereon has been harvested and severed from the land conveys no title to such crop. 176M37, 222NW292.

Quitclaim deed was given to the government of land for which state received a swamp land patent from the government, and which had previously been deeded by the government to an Indian allottee. Op. Atty. Gen. (700e), Apr. 17, 1937.

**8204. Warranty and quitclaim deeds—Forms.**

Right of way acquired by prescription passes as an appurtenance without reference thereto. 171M358, 214 NW49.

Where owner executes deed in blank and delivers it to agent, the latter has implied authority to insert the name of the purchaser. 177M127, 224NW843.

**8204-1. Uniform conveyancing blanks commission authorized.**—That the governor is hereby authorized and directed to appoint a commission of nine members to be known as the "Uniform Conveyancing Blanks Commission," to prepare and present to the Legislature proposed uniform conveyancing blanks for use in this state. The members of said Commission shall serve without compensation or allowance for expenses or disbursements. The said Commission shall file with the Secretary of State proposed uniform conveyancing blanks and the Secretary of State shall accept the same for filing without charge upon their being certified to by such Commission. Amendments thereto may be similarly prepared and filed by such Commission at any time prior to the adjournment of this Session. (Act Apr. 4, 1929, c. 135; Feb. 27, 1931, c. 34.)

A register of deeds has no right to charge less than schedule of fees set forth in Laws 1931, c. 272. Op. Atty. Gen., Feb. 23, 1932.

**8204-2. Forms approved.**—The several forms of deeds, mortgages, land contracts, assignments, satisfactions and other conveyancing instruments heretofore prepared by the uniform conveyancing blank commission and filed by said commission with the secretary of state pursuant to Chapter 34, Laws 1931 [§8204-1], are hereby approved and recommended for use in the State of Minnesota. Such forms shall be kept on file with and be preserved by the secretary of state as a public record. (Act Apr. 20, 1931, c. 272, §1.)

Conveyancing forms are set forth in Appendix 1, preceding the index in this volume.

**8204-3. Board to provide copies of forms.**—The board of county commissioners of each county in this state shall provide the register of deeds and the judge of probate of their respective counties with one copy of each form so approved, a copy of chapter 34, laws 1931, a copy of this act, a copy of the certificate of the Minnesota uniform conveyancing blank commission contained in the book of forms filed in the office of the secretary of state, and a copy of his filing certificate, to be certified as herein provided. Upon presentation to him of sufficient number of true copies of such forms, laws and certificates, in book form, to carry out this provision, the secretary of state shall, without charge, certify the same to be true copies thereof. Each register of deeds and each judge of probate shall thereafter preserve one such certified copy on file in their respective offices for the convenient use of the public. (Act Apr. 20, 1931, c. 272, §2.)

**8204-4. Fees for recording.**—Whenever, after March 1, 1933, except in counties using a photographic method of recording, there shall be offered for record to any register of deeds any instrument of a kind for which a printed form is hereby approved, which is not upon such printed form or which varies therefrom as hereafter provided, the fees for recording such instrument shall be as fixed by existing laws applicable thereto, except that in addition to the regular recording fee an extra charge equal to twenty-five per cent (25%) thereof shall be made. The writing or typing in blank spaces of more than two folios of written or typewritten matter shall be construed a variation from such forms, but any change in mechanical make-up of such printed forms such as variations of type-style, space between printed lines, or the omission of or change in length of leader lines; the addition of one or more certificates of acknowledgments or certificates pertaining thereto shall not constitute a variation from such approved forms but shall be charged for at the rate fixed by law; and provided further that forms approved by the 1929 uniform conveyancing blank commission shall not be construed a variation from such approved forms. (Act Apr. 20, 1931, c. 272, §3.)

Mortgages upon printed form approved by Uniform Conveyancing Blank Commission should be recorded for fees provided for in §8204-5, but if mortgage is not upon such approved form, fee is that specified by §7002 plus 25% or fee fixed by special act plus 25%. Op. Atty. Gen., Oct. 12, 1933.

**8204-5. Uniform fees.**—In order to promote uniformity in fees throughout the state for recording instruments on such approved printed forms, the fees set forth in the following schedule are hereby fixed as the maximum fees to be charged for recording any such instrument on such printed form without variation therefrom:

**SCHEDULE OF FEES**

Form No.	Nature of Instrument	Fee
1.	Warranty Deed, Individual to Individual..	\$1.00
2.	Warranty Deed, (Except Assessments) Individual to Individual .....	1.00
3.	Warranty Deed, Individual to Corporation.	1.00
4.	Warranty Deed, (Except Assessments) Individual to Corporation .....	1.00
5.	Warranty Deed, Individual to Joint Tenants	1.25
6.	Warranty Deed, (Except Assessments) Individual to Joint Tenants.....	1.25
7.	Warranty Deed, Corporation to Individual.	1.25
8.	Warranty Deed, (Except Assessments) Corporation to Individual .....	1.25
9.	Warranty Deed, Corporation to Corporation	1.25
10.	Warranty Deed, (Except Assessments) Corporation to Corporation .....	1.25
11.	Warranty Deed, Corporation to Joint Tenants .....	1.25

12. Warranty Deed, (Except Assessments) Corporation to Joint Tenants .....	1.50	59. Assignment of Contract for Deed, by Corporation Vendor, Vendee or Assignee .....	.75
13. Warranty Deed, (Statutory Short Form) by Individual .....	.75	60. Cancellation of Contract for Deed, Notice and Affidavits .....	1.50
14. Warranty Deed, (Statutory Short Form) by Corporation .....	1.00	61. Partial Payment Certificate, (Mortgage or Contract) by Individual .....	.75
15. Limited Warranty Deed, Individual to Individual .....	1.00	62. Partial Payment Certificate, (Mortgage or Contract) by Corporation .....	.75
16. Limited Warranty Deed, (Except Assessments) Individual to Individual .....	1.00	63. Power of Attorney, (General Form) .....	.75
17. Limited Warranty Deed, Individual to Corporation .....	1.00	64. Power of Attorney to Foreclose Mortgage, by Individual .....	.75
18. Limited Warranty Deed, (Except Assessments) Individual to Corporation .....	1.00	65. Power of Attorney to Foreclose Mortgage, by Corporation .....	.75
19. Limited Warranty Deed, Individual to Joint Tenants .....	1.25	66. Notice of Mortgage Foreclosure Sale Under Power of Sale (included in No. 67)	
20. Limited Warranty Deed, (Except Assessments) Individual to Joint Tenants .....	1.25	67. Sheriff's Certificate and Foreclosure Record, Under Power of Sale in Mortgage .....	4.50
21. Limited Warranty Deed, Corporation to Individual .....	1.25	68. Sheriff's Certificate Sale under Decree of Mortgage Foreclosure .....	1.25
22. Limited Warranty Deed, (Except Assessments) Corporation to Individual .....	1.25	69. Sheriff's Certificate, Sale under Decree of Mechanic's Lien Foreclosure .....	1.25
23. Limited Warranty Deed, Corporation to Corporation .....	1.25	70. Sheriff's Certificate, Sale under Execution ..	1.25
24. Limited Warranty Deed, (Except Assessments) Corporation to Corporation .....	1.25	71. Assignment of Sheriff's Certificate by Individual .....	.75
25. Limited Warranty Deed, Corporation to Joint Tenants .....	1.25	72. Assignment of Sheriff's Certificate, by Corporation .....	1.00
26. Limited Warranty Deed, (Except Assessments) Corporation to Joint Tenants .....	1.50	73. Affidavit of Additional Amount on Redemption .....	1.00
27. Quit Claim Deed, Individual to Individual ..	.75	74. Notice of Intention to Redeem, by Individual ..	.75
28. Quit Claim Deed, Individual to Corporation ..	.75	75. Notice of Intention to Redeem, by Corporation .....	1.00
29. Quit Claim Deed, Individual to Joint Tenants .....	.75	76. Certificate of Redemption, by Individual ...	.75
30. Quit Claim Deed, Corporation to Individual ..	1.00	77. Certificate of Redemption, by Corporation ..	1.00
31. Quit Claim Deed, Corporation to Corporation ..	1.00	78. Certificate of Redemption, by Sheriff .....	1.00
32. Quit Claim Deed, Corporation to Joint Tenants .....	1.00	79. Mechanic's Lien Statement, by Individual ..	1.00
33. Quit Claim Deed, (Statutory Short Form) by Individual .....	.75	80. Mechanic's Lien Statement, by Corporation ..	1.00
34. Quit Claim Deed, (Statutory Short Form) by Corporation .....	1.00	81. Assignment of Mechanic's Lien, by Individual ..	.75
35. Probate Deed, (Private Sale under license) by Individual Representative or Guardian ..	1.25	82. Assignment of Mechanic's Lien, by Corporation .....	.75
36. Probate Deed, (Private Sale under license) by Corporate Representative or Guardian ..	1.50	83. Satisfaction of Mechanic's Lien, by Individual .....	.75
37. Probate Deed, (per Decree for Conveyance) by Individual Representative .....	1.25	84. Satisfaction of Mechanic's Lien, by Corporation .....	.75
38. Probate Deed, (per Decree for Conveyance) by Corporate Representative .....	1.50	85. Notice of Lis Pendens .....	.75
39. Probate Deed, (under Power in Will) by Individual Representative .....	1.25	86. Notice of Lis Pendens, Foreclosure of Mechanic's Lien .....	1.00
40. Probate Deed, (under Power in Will) by Corporate Representative .....	1.50	87. Discharge of Notice of Lis Pendens, (Partial or Complete) .....	.75
41. Mortgage Deed, Individual to Individual ...	1.75	88. Decree of Distribution .....	1.50
42. Mortgage Deed, Individual to Corporation ..	1.75	89. Decree of Distribution of exempt Estate ...	1.50
43. Mortgage Deed, Corporation to Corporation ..	2.00	90. Decree of Descent .....	1.25
44. Mortgage Deed, (Assignment of Rent Clause) Individual to Individual .....	3.00	91. Decree of Conveyance, Pursuant to Decedent's Contract .....	1.25
45. Mortgage Deed, (Assignment of Rent Clause) Individual to Corporation .....	3.00	92. Order of License to Sell Land at Private Sale .....	1.25
46. Assignment of Mortgage, by Individual ...	.75	93. Order Confirming Sale made Pursuant to License .....	1.50
47. Assignment of Mortgage, by Corporation ..	1.00		
48. Extension of Mortgage, by Individual .....	1.25		
49. Extension of Mortgage, by Corporation and Individual .....	1.50		
50. Satisfaction of Mortgage, by Individual ...	.75		
51. Satisfaction of Mortgage, by Corporation ..	.75		
52. Partial Release of Mortgage, by Individual ..	.75		
53. Partial Release of Mortgage, by Corporation ..	1.00		
54. Contract for Deed, Individual Vendor .....	1.50		
55. Contract for Deed, Individual to Joint Tenants .....	1.50		
56. Contract for Deed, Corporation Vendor .....	1.75		
57. Contract for Deed, Corporation to Joint Tenants .....	1.75		
58. Assignment of Contract for Deed, by Individual Vendor, Vendee, or Assignee .....	.75		

In the event that such instrument shall affect more than three lots or parcels of land and the register of deeds of the county to which it is presented for record maintains a tract index, there shall be made an additional charge for indexing such descriptions in excess of three in accordance with the provisions of Section 877, General Statutes 1923, or any act amendatory thereof. In calculating such additional charge the provisions of such law fixing additional charges for indexing the first and subsequent descriptions contained in any instrument shall apply to the fourth and subsequent descriptions contained in any instrument on a form approved hereby; the intent hereof being that no additional charge shall be made for indexing the first three lots or parcels of land described in such instrument. (Act Apr. 20, 1931, c. 272, §4.)

The register of deeds has no right to charge less than the schedule of fees set forth in this section. Op. Atty. Gen., Feb. 23, 1932.

**8204-6. Standard forms established.**—The intent of this act is to establish a standard set of printed forms which may be used in the State of Minnesota for real estate conveyancing and to fix and make uni-

form the fee for recording instruments drawn on such forms and for other instruments which do not conform thereto, but passage of this act shall not in any way change present rules of construction applicable to any of said instruments or to the contents thereof. (Act Apr. 20, 1931, c. 272, §5.)

See Appendix 1, preceding index, for conveyancing forms.

**8204-7. Minnesota Uniform Conveyancing Blanks.**—The forms herein approved and recommended for use may be referred to as "Minnesota Uniform Conveyancing Blanks (1931)." (Act Apr. 20, 1931, c. 272, §6.)

**8204-8. Effective January 1, 1932.**—This act shall be in effect from and after January 1, 1932. (Act Apr. 20, 1931, c. 272, §7.)

**8204-9. Uniform short form mortgage.**—(1) In the form of this act, the blank spaces indicate where appropriate matter is to be supplied to complete the form. The words in parenthesis are no part of the form, but indicate what matter is to be supplied to complete it or indicate changes or additions that may be made in or to it. The words in parenthesis in the statutory equivalents of the form indicate what matter, used to complete the form, is to be included in such equivalents to complete them.

The use of the following short form mortgage of real property is lawful, but the use of other forms is not forbidden or invalidated:

#### UNIFORM SHORT FORM MORTGAGE

This statutory mortgage, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between (give name and address) mortgagor, and (give name and address) mortgagee, Witnesseth, that to secure the payment of (give description of indebtedness and instruments evidencing same), the mortgagor, hereby mortgages to the mortgagee (give description of premises "subject to" any incumbrances thereon).

And (\_\_\_\_\_, one of) the mortgagor covenants with the mortgagee the following statutory covenants:

1. To warrant the title to the premises.
2. To pay the indebtedness as herein provided.
3. To pay all taxes.
4. To keep the buildings insured against fire for \$\_\_\_\_\_, and against (give other hazards insured against and amount of such other insurance) for the protection of the mortgagee.
5. That the premises shall be kept in repair and no waste shall be committed.
6. That the whole of the principal sum shall become due after default, in the payment of any installment of principal or interest, or of any tax, or in the performance of any other covenant, at the option of the mortgagee.

If default be made in any payment or covenant herein, the mortgagee shall have the statutory power of sale, and on foreclosure may retain statutory costs and attorney's fees.

In witness whereof the mortgagor has duly executed this mortgage. (Or use other testimonium clause. Add signatures and other formalities of execution.)

(2) Any of the covenants or the power of sale in the short form mortgage may be omitted. Additional clauses, conditions, covenants and provisions may be added.

The language of the short form mortgage shall have the meaning and effect stated in the following subdivisions of this section.

#### MEANING OF COVENANTS IN SHORT FORM MORTGAGE

(3) The expression contained in the short form mortgage "the mortgagor hereby mortgages to the mortgagee," shall be equivalent to the following:

"The mortgagor also in consideration of one dollar, paid by the mortgagee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, release and convey unto the mortgagee, his heirs, suc-

cessors, and assigns forever (premises 'subject to' any incumbrances thereon as described in the mortgage) together with the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, rights and interests, of the mortgagor, including all homestead and dower rights and all inchoate and contingent rights, in and to said premises; to have and to hold the above granted premises unto the mortgagee, his heirs, successors, and assigns forever; Provided, that if the mortgagor, his heirs, executors or administrators, shall pay unto the mortgagee, his executors, administrators or assigns, the said sum of money mentioned in said (instruments evidencing indebtedness) and the interest thereon, at the time and in the manner aforesaid, and shall keep and perform each and every covenant herein contained on the part of the mortgagor to be kept and performed, that then this mortgage, and the estate hereby granted, shall cease, determine and become void."

(4) The respective statutory covenants contained in said mortgage shall have the following equivalents:

I. Covenant 1 is equivalent to:—"That the mortgagor is lawfully seized of the premises; that he has good right to mortgage the same; that the same are free from all encumbrances except as above stated; and that the mortgagor will warrant and defend the title to the same against all lawful claims."

II. Covenant 2 is equivalent to:—"That the mortgagor will pay the principal sum of money secured by this mortgage, and also the interest thereon as herein provided, and also, in case the mortgage is foreclosed by suit the costs and expenses of the foreclosure, including maximum statutory attorney's fees, which shall be allowed out of the proceeds of the sale."

III. Covenant 3 is equivalent to:—"That until the indebtedness hereby secured is fully paid the mortgagor will pay all taxes, assessments, and other governmental levies which may be assessed against or become liens on the premises, before any penalty, interest or other charge accrues, and in default thereof the mortgagee may pay the same, and the mortgagor will repay the same forthwith with interest at the mortgage rate, and the same shall become a part of the debt secured by the mortgage."

IV. Covenant 4 is equivalent to:—"That the mortgagor will, during all the time until the indebtedness secured by the mortgage is fully paid, keep the buildings on the premises insured against loss or damage by fire, to the amount of (the sum specified in mortgage), and against loss or damage by (any other hazard specified) to the amount of (sums specified therefore), and in a company to be approved by the mortgagee, and will assign and deliver the policies of such insurance to the mortgagee so and in such manner and form that he shall at all times, until the full payment of said indebtedness, have and hold the said policies as a collateral and further security for the payment of said indebtedness, or at the option of the mortgagee will make such policies payable in case of loss to the mortgagee as his interest may appear and will deposit them with the mortgagee, and in default of so doing, that the mortgagee may make such insurance from year to year, or for one or more years at a time, and pay the premiums therefor, and that the mortgagor will forthwith repay to the mortgagee the same, with interest at the mortgage rate, and that the same shall become a part of the debt secured by the mortgage in like manner as the principal sum. The mortgagee may retain any moneys received by him on the policies, but the same shall apply in part payment of the mortgage."

V. Covenant 5 is equivalent to:—"That the mortgagor will at all times keep the premises in good repair and suffer and commit no waste thereon, and that no buildings shall be removed or demolished without the consent of the mortgagee."

VI. Covenant 6 is equivalent to:—"That should any default be made in the payment of any installments of principal or any part thereof, or in the pay-

ment of any interest or any part thereof, on any day whereon the same is made payable, or in the payment of any tax, assessment, or other governmental levy, as herein provided, or should any other default be made in any of the covenants of this mortgage, then at any time thereafter while any such default continues, the mortgagee may, at his option and without notice, declare the whole sum secured by the mortgage immediately due and payable, and thereupon the whole sum including accrued interest, secured by the mortgage, shall immediately become and be due and payable."

(5) The statutory power of sale clause contained in said mortgage immediately following covenant 6, shall be equivalent to the following:

"If default be made in the payment of the principal or interest or any part thereof, or of taxes, assessments, insurance premiums, or any other sum, when the same becomes due as herein provided, the mortgagor hereby authorizes and empowers the mortgagee forthwith to foreclose this mortgage, and to sell the mortgaged premises at public auction according to the statute in such case provided, and to apply the proceeds of the sale to pay all amounts then due on the mortgage, including principal, interest, and the amount of any taxes, assessments and insurance premiums and any other sum which may then be due to the mortgagee, and also to pay all costs and expenses of such foreclosure sale, including maximum statutory attorney's fees, which costs, expenses and fees the mortgagor agrees to pay."

(6) All the obligations of the mortgagor as set forth in this section shall be construed as applying to his heirs, executors and administrators or successors; and all the rights and powers of the mortgagee shall inure for the benefit of and may be exercised by his executors, administrators, successors or assigns.

(7) The following covenant may be added to the covenants of the short form mortgage:—"7. To pay principal and interest on prior mortgages." When so added it is equivalent to:—"That until the indebtedness hereby secured is fully paid, the mortgagor will pay when due, whether by acceleration or otherwise all interest and principal and other sums owing to the mortgagee therein on any mortgage which is a lien on the premises prior to this mortgage, and in default of so paying all such interest and principal and other sums, the mortgagee herein may pay the same, and the mortgagor will forthwith repay the same with interest at the rate of this mortgage, and the same shall become a part of the debt secured by this mortgage in like manner as the principal sum." (Act Apr. 18, 1931, c. 204, §1.)

See Conveyancing Forms, in Appendix 1, preceding index in this volume.

**8204-10. Interpretation and construction.**—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Act Apr. 18, 1931, c. 204, §2.)

**8204-11. May be cited as the Uniform Short Form Mortgage Act.**—This act may be cited as the Uniform Short Form Mortgage Act. (Act Apr. 18, 1931, c. 204, §3.)

**8205. No covenants implied—Adverse holding.**

Where lessor covenanted for a specified time not to enter into a business competitive with that of lessee, and during term of lease conveyed property and assigned reversion to plaintiff, and thereafter breached his covenant with the lessee, who rescinded lease, to plaintiff's damage 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 lessee. *Dewey v. K.*, 200M289, 274NW161. See *Dun. Dig.* 2353, 5362.

**8208-1. Conveyance deemed to include vacated street or right of way.**—That every conveyance of real estate which abuts upon a vacated street, alley or other public right-of-way shall be construed to include that part of such right-of-way or street which either by operation or presumption of law attaches

thereto upon such vacation, unless such conveyance expresses a contrary intention. (Act Apr. 21, 1939, c. 386.)

**8213. Conveyances, how executed.**

*Lloyd v. M.*, 168M441, 210NW586.

If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. *Op. Atty. Gen.*, Aug. 7, 1931.

Register of deeds cannot legally record assignments of mortgage not properly witnessed unless execution thereof is authorized by laws of state of execution. *Op. Atty. Gen.*, Oct. 12, 1933.

**8217. Requisites to entitle to record.**

Act Jan. 18, 1936, Sp. Ses., 1935-36, c. 52, and Act Jan. 27, 1936, Sp. Ses., 1935-36, c. 109, legalize conveyances theretofore executed where notary failed to impress seal or state date of expiration of term on certificate of acknowledgment.

*Smith v. A.*, 184M299, 238NW479.

*Op. Atty. Gen.*, Aug. 7, 1931; note under §8213.

Register of Deeds is required to accept for record a lease to real estate for a term of less than three years, if properly witnessed and acknowledged. *Op. Atty. Gen.*, May 6, 1931.

Register of deeds should not record option contracts which are not acknowledged. *Op. Atty. Gen.* (373b-17 (d)), Apr. 2, 1935.

A deed written in English language except as to acknowledgment which is in a foreign language, is not entitled to record. *Op. Atty. Gen.* (73b-9(a)), Jan. 7, 1937.

Deed containing description of land in several counties must be recorded in its entirety. *Op. Atty. Gen.* (373b-9), Feb. 11, 1937.

This section may not be complied with where instrument is presented for filing as a chattel mortgage. *Op. Atty. Gen.* (373b-5), Dec. 22, 1937.

**8221-1. Affidavits as evidence.**—That any affidavit heretofore or hereafter duly sworn to before any officer or person authorized to administer an oath under the laws of this state, relating to the identification, the marital status or relation, the death or the time of death, of any person who is a party to any recorded deed of conveyance, mortgage, satisfaction of mortgage, or other instrument affecting the title to real estate, shall be recordable in the office of the register of deeds where such deed, mortgage, satisfaction, or other instrument is recorded. (Act Apr. 18, 1931, c. 209, §1.)

Affidavits of ownership of land are not recordable. *Op. Atty. Gen.* (373b-17(a)), Aug. 29, 1935.

**8221-2. Must be recorded.**—Any such affidavit so recorded, or a certified copy of the record thereof, shall be admissible as evidence in court in any action involving the deed, mortgage, satisfaction, or other instrument to which it relates, or the title to the real estate affected by such instrument, and shall be prima facie evidence of the facts stated therein in reference to such identity, marital status or relation, death or time of death. (Act Apr. 18, 1931, c. 209, §2.)

**8224. Deeds, etc., affecting title to railroad lands.**

*Gen. St.* 1878, c. 34, §§71-73, held not to render the record of a railroad mortgage applicable to after-acquired property. 33F(2d)512.

**8225. Record deemed notice—Exception.**

Double hazard of a note and mortgage. 16MinnLaw Rev123.

**3. Description of premises.**

Though register of deeds may not refuse to record a deed referring to a private unrecorded plat, the recording of such a deed does not show a good title of record. *Op. Atty. Gen.* (373B-15), Sept. 11, 1939.

**6. Distinction between actual and constructive notice.**

Constructive notice arising out of recording of instruments affecting title to real estate is a creature of statute. *Greear v. P.*, 202M633, 279NW568. See *Dun. Dig.* 8292.

**7. Notice of extrinsic facts.**

*Stibal v. F.*, 190M1, 250NW718; note under §195, note 17. One taking a mortgage from the record title owner in possession has not the burden of making inquiries as to the equities of one owning a recorded mortgage executed by a former owner after he has parted with title. 172M578, 215NW940.

Where a dwelling was occupied by a life tenant, a mortgagee from her held not a purchaser without notice, where latter knew of life tenant's possession, and that she was mother of two children, plaintiffs herein, who had remainder; acquisition of mortgage being not in

usual course and circumstances being such as to put party on inquiry. *Faulkenburg v. W.*, 194M154, 259NW 802. See Dun. Dig. 8291.

**8. Notice to whom.**

This section is not applicable where payment is made to a person other than the original mortgagee, and who is not the owner of the mortgage, and the mortgagor does not understand just what person is the owner of the mortgage. 172M433, 215NW842.

Purchaser of mortgage cannot be charged with constructive knowledge of assumption agreement in deed by virtue of recording of conveyance after purchase. *Jefferson County Bank v. E.*, 188M354, 247NW245. See Dun. Dig. 7230, 7231, 8291.

Remaindermen are not charged by record with notice of conveyances subsequently made and recorded by life tenant. *Faulkenburg v. W.*, 194M154, 259NW802. See Dun. Dig. 8291.

Purchaser was not chargeable with constructive notice of a title deed recorded or registered in province of Saskatchewan. *Greear v. P.*, 202M633, 279NW568. See Dun. Dig. 8291.

While ordinarily record of an instrument not entitled to record does not operate as constructive notice, such record may afford actual notice where a party examines it or otherwise learns of its existence. *Normania Tp. v. Y.*, 286NW881. See Dun. Dig. 8288(38).

**10. Exception of assignments of mortgages.**

A payment by mortgagor to mortgagee upon the principal in good faith without notice or knowledge of a recorded assignment of the mortgage, reduces the lien of the mortgage by the amount so paid, following *Johnson v. Carpenter*, 7 Minn. 176. 176M287, 223NW148.

Grantee or assignee of mortgagor subsequent to recording of assignment of the mortgage has constructive notice of a previously recorded assignment of the mortgage. 176M287, 223NW148.

Payment of mortgage debt by the mortgagor to mortgagee, without notice of its prior assignment, though there is such assignment to a good faith purchaser of record at the time, discharges the mortgage. *Rea v. K.*, 183M194, 235NW910. See Dun. Dig. 6243(94), 8298.

**8225-1. Certain recitals not to constitute notice of mortgage.**—Where an instrument affecting the title to real property in this State recites the existence of a mortgage against said real property or some part thereof, where the instrument containing such recital either was recorded prior to 1900 in the office of the register of deeds of the county where said real property or some part thereof is situated or was filed prior to said date in a judicial proceeding affecting said real property or some part thereof in the district court or probate court of such county, and where the time of the maturity of the whole of the debt secured by said mortgage is not clearly stated in said recital, then such recital may be disregarded and shall not constitute notice of said mortgage, either actual or constructive, to any subsequent purchaser or encumbrancer of said real property or any part thereof. (Act Apr. 21, 1939, c. 390, §1.)

**8225-2. Same—Not to affect pending actions.**—Nothing contained in this Act shall affect actions now pending or commenced within six months after the passage of this Act, in any court of this State. (Act Apr. 21, 1939, c. 390, §2.)

**8226. Recording act—Unrecorded conveyance void.**

**1. In general.**

Priority as between mortgages, trust deeds, mechanics' liens, etc. 171M445, 214NW503. See also note under §8494.

In the statutes requiring the registration of automobiles, there is nothing to exempt conditional sales contracts covering motorcars from the ordinary effect of the recording acts. *Drew v. F.*, 185M133, 240NW114. See Dun. Dig. 8268-8308.

Circuitry of lien. 19MinnLawRev139.

**4. What conveyances must be recorded.**

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. 176M18, 222NW509.

Assignments of real estate mortgages must be recorded to constitute notice. *Federal Land Bank v. S.*, 192M21, 256NW102. See Dun. Dig. 6285.

Where contract for deed upon a crop payment plan, giving chattel mortgage upon crop, is offered with request to file only as chattel mortgage, it is duty of register of deeds to file it only as a chattel mortgage and not to file it as a real estate transfer, or index it as such. *Op. Atty. Gen.* (373b-17(d)), Mar. 15, 1937.

**7. Who protected.**

An attachment against one who has no record title or interest in the land is not preferred or benefited by this law. 173M225, 217NW136.

Unrecorded conveyances of which an attaching creditor has actual notice or knowledge at the time his at-

tachment is levied are not invalidated by the recording law. 173M225, 217NW136.

Independent of the recording law the rights of attachment and judgment creditors are precisely as they were at common law. 173M225, 217NW136.

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. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, but as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

Possession of real estate is prima facie evidence of title and is notice of whatever rights the possessor has which would be disclosed upon reasonable inquiry. *Farmers' State Bk. of Eyota v. C.*, 182M268, 234NW320. See Dun. Dig. 7232.

Possession by vendor who occupied land jointly with vendee as notice to purchaser from vendee. 23MinnLaw Rev397.

**9. Good faith—Notice.**

One taking deed with knowledge of dispute as to ownership was not an innocent purchaser. 181M458, 233NW 20. See Dun. Dig. 10073.

It was competent as characterizing the father's possession and plaintiff's good faith to receive in evidence a writing made by the father transferring contract to secure a debt at a time subsequent to the date of the contract held by the sons. *Farmers' State Bk. of Eyota v. C.*, 182M268, 234NW320. See Dun. Dig. 7232.

Rule of evidence as to recitals in conveyance as to mortgage being notice of such mortgage. *Laws 1939, c. 390.*

Possession of real estate, in order to be notice, as against an innocent purchaser for value from possessor's grantee of record, of possessor's right under an unrecorded mortgage from his grantee, must be unequivocal, and such as in circumstances is naturally provocative of inquiry, and where father and son jointly operated and occupied a farm as their home, father conveying his interest to son by a promptly recorded deed, but taking back a contract for support in nature of a mortgage which was not recorded, and eleven days after this conveyance, son mortgaged to F, who took without actual notice, in good faith, and for value, father's continued possession was not constructive notice of former's right under his unrecorded lien. *Olson v. O.*, 203M199, 281NW 367. See Dun. Dig. 8302.

**12. Judgments and attachments.**

A garnishment is not an attachment within the meaning of §8226, which has reference to real estate only. 176M18, 222NW509.

A docketed judgment is placed upon same footing as recorded conveyance. *Lowe v. R.*, 201M280, 276NW224. See Dun. Dig. 8307.

**16. Priority when filed at same time.**

Presumption of priority of lien in favor of mortgage numbered first in records held overcome by evidence showing contrary intention of parties, both mortgages being executed and recorded same day between same parties. *Fender v. A.*, 187M281, 245NW148. See Dun. Dig. 6210.

**18. Fraud on holder of unrecorded deed.**

The holder of a prior unrecorded mortgage held not liable in damages for loss to a subsequent execution purchaser resulting from an assignment of the mortgage to a bona fide purchaser. 172M444, 216NW243.

**8226-1. Certain instruments must be recorded.**—Whenever any instrument, otherwise legal, affecting the title to real estate situate in this state, granting any interest therein to or evidencing any lien thereon in favor of any person, as trustee, shall be recorded in the office of the register of deeds, or filed in the office of the registrar of titles, of the county in which such real estate is situate, and the powers of such trustee and the beneficiary of such trust are not set forth in said instrument, expressly, or by reference to an instrument so recorded or filed, such designation of such grantee, as trustee, may be disregarded, and shall not be deemed to give notice to any person whatsoever, of the rights of any beneficiary under such trust in said real estate unless and until an instrument defining, or conferring such powers of such trustee and designating the beneficiary thereunder, with a certificate attached executed by the trustee in the same manner as deeds are required to be executed by the laws of this state describing such instrument so granting an interest or evidencing a lien and stating that the same is held subject to the provisions of such trust, shall be so recorded or

filed after such recording or filing of such instrument granting said interest in or evidencing such lien on said real estate. (Act Apr. 24, 1929, c. 318, §1.)

#### 8220. Record of conveyances, etc.

Act Ex. Ses., Dec. 23, 1933, c. 8, legalizes conveyances made in 1928, in which acknowledgment of grantors was taken before the grantee who was a proper officer to take acknowledgments. Omitted as special and temporary.

#### 8220-1. Recorded deeds, mortgages and other instruments legalized.

Act Apr. 22, 1937, c. 350, validates powers of attorney executed between June 20 and July 26 of 1929, and not duly authenticated.

8220-4. Certain deeds validated.—All deeds for the conveyance of real estate made and executed by a husband to wife, or by a wife to husband, during the past six years, where the execution thereof was otherwise valid, and where such instrument has been acknowledged as provided by law, and where such deeds would have been valid under the laws of the state where they were in fact executed, and where the grantors in such deeds are dead, the same are hereby validated and legalized, and such conveyances are hereby made valid as to the extent of the interest described in and conveyed by such instrument. (Act Apr. 18, 1935, c. 215, §1.)

8220-5. Not to affect pending actions.—Nothing herein contained shall affect any action now pending to determine the validity of any instrument validated hereby. (Act Apr. 18, 1935, c. 215, §2.)

Laws 1937, c. 311, legalizes conveyances between spouses made May 18th to 22nd, 1908.

8220-6. Certain instruments legalized and validated.—That in all cases where instruments affecting real estate within this state, or letters of attorney authorizing the same, have for six years been actually recorded in the office of the Register of Deeds or filed in the office of the Registrar of Titles of the county where the real estate thereby affected was, at the time of such record or filing, or is, situate, whether such instruments were duly or properly admitted to record or filed, all such instruments and the record of all such instruments may nevertheless be read in evidence in any court within this state and such records shall be received as prima facie evidence of the contents of the original instruments of which they purport to be records;

And all such records and instruments shall have the same force and effect as they would have if such original instruments, at the time they were so recorded, or filed, had been legally entitled to record or filing. (Apr. 17, 1937, c. 241, §1.)

8220-7. Copies to be admitted as evidence.—That duly authenticated copies of such records and instruments may be read in evidence in any court within this state with the same effect as the records or instruments themselves aforesaid. (Apr. 17, 1937, c. 241, §2.)

8220-8. Not to apply to pending actions.—Nothing in this act shall be held to apply to any action heretofore commenced or now pending in any of the courts in this state, nor to relieve any such instrument or the record thereof from the effect of the failure to pay any mortgage or registry tax thereon as provided by law. (Apr. 17, 1937, c. 241, §3.)

8220-9. Conveyances legalized.—Every conveyance heretofore made of land in this state which is now of record in the county in which said land is situated is, with the record thereof, validated and legalized as against any or all of the following objections:

1. That conveyance of a homestead was by separate deeds of husband and wife to the same grantee, rather than by the joint deed prescribed by Mason's Minnesota Statutes of 1927, Section 8340.

2. That the conveyance of a corporation does not bear the corporate seal. (Apr. 26, 1937, c. 429, §1.)

8220-10. Not to affect pending litigation.—The provisions of this act shall not affect any action or proceeding now pending in the courts of this state. (Apr. 26, 1937, c. 429, §2.)

#### 8230. Instruments relating to timber, minerals, etc.

Notice of termination of state mineral contract should be acknowledged in order that it may be recorded. Op. Atty. Gen., Mar. 6, 1933.

8234-1. Validation of satisfaction of mortgages by partnership mortgage.—All mortgages of real estate satisfied by the mortgagee or the assignee of such mortgagee, where the mortgagee or the assignee of the mortgagee was a co-partnership and where the satisfaction of the mortgage was made by one of the co-partners for and on behalf of such co-partnership, and where such mortgage has outlawed, are hereby validated and legalized, and such satisfactions are hereby made valid to the extent of the interest described in and satisfied by such instrument. (Jan. 24, 1936, Ex. Ses., c. 73, §1.)

8234-2. Same; pending actions not affected.—Nothing herein contained shall affect any action now pending to determine the validity of any instrument validated hereby. (Jan. 24, 1936, Ex. Ses., c. 73, §2.)

### COMMON LAW DECISIONS RELATING TO REAL ESTATE BROKERS IN GENERAL

#### 1. Representation of principal in general—misrepresentations and fraud of broker.

A party to a real estate deal is not bound by misrepresentations of a volunteer broker without authority. *Poppe v. B.*, 184M415, 238NW890. See Dun. Dig. 1145.

#### 2. Compensation.

Verdict for broker on issue of fraud in obtaining signature to commission contract for sale of land sustained. *Stead v. E.*, 182M469, 234NW678. See Dun. Dig. 3839.

Although plaintiff did not have the exclusive right to sell the farm, his exclusive agency contract made defendant liable to pay commission to plaintiff, if a sale was made by defendant or any other person. *Stead v. E.*, 182M469, 234NW678. See Dun. Dig. 1141.

Money lender agreeing to pay broker when loan is closed and funds are placed to the credit of a borrower may refuse to make loan upon any ground whatsoever though arbitrary and capricious. *Chapman v. M.*, 184M467, 239NW231. See Dun. Dig. 1132.

Real estate broker has earned agreed commission when purchaser and seller execute earnest money contract proposed by latter. *Horrigan v. S.*, 187M115, 244NW545. See Dun. Dig. 1147.

Evidence held to sustain finding that broker found purchasers ready, able and willing and notified principal who wrongfully withdrew authority and refused to sell. *Kaercher v. S.*, 189M272, 249NW180. See Dun. Dig. 1147(51).

Where broker advises owner that he has found a purchaser and the owner then, without good reason or excuse, refuses to contract or sell, his agreement with broker is breached and further production of purchaser to owner is dispensed with. *Id.*

Where owner authorizes brokers to sell real property at a net cash price to owner, owner, in absence of fraud, is not interested in agreement between brokers and purchaser as to compensation. *Id.*

Under brokerage contract providing that real estate agent would receive certain commission for execution of a contract for a deed and a certain amount as commission in event monthly payments specified were made and a large payment on a certain date, agent was entitled to full compensation where monthly payments were not made as specified and large payment was not made on date provided, being later paid by assignee of vendee, vendors making no attempt to cancel contract on account of default. *Stevens v. D.*, 193M146, 258NW147. See Dun. Dig. 1147, 1827.

A defense that commission was not due until owner had received a net of \$45 per acre for land was untenable, where owner at time of giving purchaser a contract for deed, made a substantial payment to broker out of proceeds received from purchaser. *Fisher v. R.*, 196M409, 265NW43. See Dun. Dig. 1147.

Where a broker produces a purchaser and principal accepts purchaser and enters into an enforceable contract with him, commission is earned. *Id.* See Dun. Dig. 1147(55).

Where plaintiff and defendant's agent made an oral agreement relating to payment of commissions for sale of a farm and thereafter agent wrote to plaintiff confirming agreement, plaintiff's failure to object to terms contained in letter constituted acquiescence to agent's version of agreement. *Murphy v. J.*, 198M459, 270NW136. See Dun. Dig. 1137.

Where defendant company conducted arrangements for sale of its real estate in such a manner as to permit of no other conclusion than that agent who dealt with plaintiff could make no agreement binding upon it without its approval, and the only approved agreement to pay plaintiff commissions for finding of a purchaser for a certain farm was a conditional one, plaintiff could not recover balance of commission agreed upon in absence of a showing that such condition was fulfilled. *Id.* See Dun. Dig. 1147.

Evidence sustains finding that defendant agreed to pay plaintiff real estate broker part of commission due plaintiff in connection with sale of a house to defendant, balance being paid by seller. *Markert v. M.*, 200M292, 274NW174. See Dun. Dig. 1146.

Where owner of property entered into non-exclusive contract with real estate agent and prospective purchaser became interested in property through agent's efforts and then induced third person to purchase property from owner for his benefit and to save payment of commission, there was a fraudulent and collusive interference with contract right, entitling agent to recovery of damages from purchaser and his dummy. *Johnson v. G.*, 201M629, 277NW252. See Dun. Dig. 9637.

In action to recover commission for negotiating purchase of farm, offer of deed held not to show plaintiff was entitled to recovery in absence of showing that grantors in deed were owners of property in question. *Fisher v. W.*, 202M507, 279NW270. See Dun. Dig. 1147.

Necessity of a purchaser who is ready, able, and willing to perform. 16MinnLawRev684.

### 3.—Unlicensed broker.

Statute of Montana, requiring that real estate brokers be licensed, held no bar to recovery for property plaintiff claims was by him sold directly to defendants. *Hopkins v. H.*, 189M322, 249NW584. See Dun. Dig. 1135, 1530.

### 4.—Procuring cause of contract.

A real estate broker, having no exclusive agency to sell or find a purchaser for real property, in order to be entitled to a commission, must show that he was the procuring or efficient cause of a sale for which he claims commission. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

Evidence held to sustain finding that defendant agreed to compensate plaintiff for procuring a sale of real estate and that plaintiff did so procure it. *Johnson v. M.*, 183M477, 237NW22. See Dun. Dig. 1161(27).

In an action to recover a commission for finding a purchaser for real estate, the evidence held to support verdict for plaintiff. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(27).

A broker who merely finds a purchaser, without producing him to his principal, held not procuring cause of a sale. *Carney v. J.*, 187M293, 245NW367. See Dun. Dig. 1149.

### 5.—Transaction completed by principal.

Where a broker abandoned negotiations for sale of land, he was not entitled to a commission where principal afterwards sold to his prospect. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

### 6.—Actions.

There was no error in admitting oral evidence that a written assignment of commission by broker was for collection only. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(26).

Whether broker agreed to reduction of agreed amount of his compensation before completion of purchase held for jury. *Forward v. B.*, 184M474, 239NW228. See Dun. Dig. 1161.

Evidence did not justify submission to jury of defense that broker, without knowledge of seller, was agent of purchaser. *Horrigan v. S.*, 187M115, 244NW545. See Dun. Dig. 1146.

## CHAPTER 64

### Plats

#### 8236. Platting of land—Donations.

After revocation and abandonment, a conveyance by the plat of blocks or lots abutting the street conveyed the land to the center thereof. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 1059, 2653.

A statutory dedication is effective without acceptance by public. *Schaller v. T.*, 193M604, 259NW529. See Dun. Dig. 2628.

Where owner of land by suitable plat dedicates streets, alleys, and other public places to be devoted to public use, and where such dedicated street or other public place is shown by plat to have as a boundary thereto a navigable body of water, there being no indication of a contrary intention, conclusion follows that dedication was intended to enable public to have access to water for all proper public purposes. *Id.* See Dun. Dig. 2641.

Where land is platted with a river as one of boundaries and only a dedicated street intervening between platted lots fronting on said street and river, conveyance by proprietors of lots carries fee title to entire street in front of lots, and riparian rights attach to lots, subject to public easement in street. *Lamprey v. A.*, 197M112, 266NW434. See Dun. Dig. 2629.

Where there are lots of land owned by dedicator on only one side of street and he owns lots or land only up to and including street, so that street extends to boundary of his land, and he owns nothing on other side thereof, dedicator, after parting with lots bordering street, retains no further fee or interest in street, and upon vacation of street by city, fee to street reverts to lot owners who obtain title from plat or dedicator. *Id.*

If county auditor orders platting under §2219, owner must proceed in accordance with provisions of §§8236 to 8246, and if owner fails, county auditor may require county surveyor to make a plat, though he cannot dedicate streets or make certificate required of an owner. *Op. Atty. Gen.* (373B-15), Sept. 11, 1939.

#### 8237. Survey and plat—Monument—Rivers, etc.

The finding that the plat of a town site, which contained no designation of a monument from which future surveys could be made, conformed to the statute, is not sustained. *Doyle v. B.*, 183M265, 236NW236. See Dun. Dig. 2634(82).

#### 8238. Dedication—Certification—Approval—Etc.

Even though the plat did not conform to c. 29, Gen. Stat. 1866, it effected a common-law dedication to the public of the streets and alleys thereon designated. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 2646(16), 2652(33).

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. *Op. Atty. Gen.*, Nov. 21, 1931.

**8239-4. Plats corrected and legalized.—**That in all cases where the plats or what purport to be plats of

any towns or cities in this state of additions to or subdivisions thereof, and plats or parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify or show correctly, upon their face, the tract of land covered or intended to be covered thereby and the said property so platted was owned by and platted by a municipality, the surveyors, or one of them, who laid out or surveyed the same, may make or execute such certificate or the governing body of said municipality may, by resolution, authorize the Mayor and the City Clerk, together with the engineer or surveyor of said municipality, if there be one, within one year from the passage of this act to make and file in the office of the register of deeds of the county in which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat.

And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for the purpose, entitled "Book of Plat Certificates," and said register of deeds shall, thereupon, note upon such plat and the copy thereof filed in his office as aforesaid, such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record, the fee provided by law for similar services. And such certificates, or the record thereof, shall, together with such plat, be prima facie evidence in all cases as to lands covered by said plat. (Act Apr. 26, 1929, c. 395.)

**8239-5. Certain plats may be corrected.—**That in all cases where the plats, or what purport to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon