

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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**The Publisher's Editorial Staff**

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street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 20, 1933, c. 93, §9.)

**8246-11. Building restrictions.**—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 20, 1933, c. 93, §10.)

**8246-12. Inconsistent acts repealed.**—Platting control by the planning commission, as provided in this act, shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivision of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 20, 1933, c. 93, §11.)

**8246-13. May appeal to District Court.**—Any person or persons jointly or severally aggrieved by any decision of the planning commission concerning such

plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.

## CHAPTER 65

### Registration of Title

#### REGISTRATION

##### 8247. Registration.

Adverse possession. 171M410, 314NW271.  
Torrens' system of land title registration. 19MinnLaw Rev519.

##### 8248. Registered land—Adverse possession.

One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 213NW246.

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, except 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.

**8249. Application—Who may make.**—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title. (As amended Mar. 31, 1939, c. 100, §1.)

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

**8250. Titles which may be registered.**—No lesser estate than a fee simple, and no mortgage, lien or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, or other charge or lien, shall not prevent its registration, and whenever a dock or harbor line has been established by Federal authority, the estate and interest of a riparian proprietor in the submerged lands lying between the original shore line and such established dock line may be registered under this act, subject, however, to the rights of the state of Minnesota in its sovereign capacity in the same, and such registration shall not in any manner affect or change the rights of the state with respect to such lands. (As amended Mar. 31, 1939, c. 100, §2.)

First sentence of section applies to land purchased under Laws 1935, c. 386. Op. Atty. Gen. (4251), Mar. 23, 1938.

**8251. Application, how signed and verified.**—The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer of a corporation, the authority of such agent shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant may assent thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application, but otherwise the spouse shall be made a defendant and served with summons. (R. L. '05, §3374; G. S. '13, §6872; Feb. 20, 1935, c. 16, §1.)

Sec. 2 of Act Feb. 20, 1935, cited, provides that the act shall take effect from its passage.

**8253. Non-resident applicant—Agent.**

On application for issue of a new Torrens certificate, as distinguished from an application to place land under the Registration Act, it is unnecessary for a nonresident to furnish a power of attorney. Rhode Island Hospital Trust Co. v. C., 191M354, 254NW466. See Dun. Dig. 3353.

**8258. Examiner of titles.**

Constitutional. 85M437, 446, 89NW175. Provision authorizing district court to appoint examiner of titles and deputy examiner of titles is constitutional. Op. Atty. Gen. (374j), Aug. 13, 1934.

**8261. Order for summons—parties defendant.**—If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued therein. This order shall contain the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application, or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be, and shall be known as, defendants.

Whenever the description in the application includes land which, according to the plat of the United States Government Survey, forms part or all of the bed of a meandered stream or lake, the State of Minnesota shall be made a party defendant; provided, however, that in all cases where decree of registration has been

heretofore entered for any such land without the State of Minnesota having been joined and served with summons, it shall be deemed that title had heretofore passed to the applicant by reliction or accretion. (R. L. '05, §3383; G. S. '13, §6882; Apr. 8, 1933, c. 164.)

**8262. Form of summons—service.**—The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state or who cannot be found therein and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein" by publishing the same in a newspaper printed and published in the county herein the application is filed, once each week for three consecutive weeks; provided if the order for summons or a supplemental order of the court, filed before, during or after the publication of the summons, shall so direct, the summons may be personally served without the state upon any one or more of the defendants who are non-residents of the state or who cannot be found therein, in like manner and with like effect as such service in a summons in a civil action in the district court. The clerk shall also at least twenty days before the entry of the decree which shall be entered in said matter, send a copy of the summons by mail to all defendants who are not residents of the state, and whose place of address is known to applicant or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

**SUMMONS IN APPLICATION FOR REGISTRATION OF LAND**

State of Minnesota,  
County of . . . . . ss.  
District Court, . . . . . Judicial District.  
In the matter of the application of (name of applicant) to register the title to the following described real estate situated in . . . . . County, Minnesota, namely: (description of land.)  
Applicant.  
vs.  
(names of defendants) and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein."  
Defendants.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after service of this summons upon you exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the applicant in this proceeding will apply to the court for the relief demanded therein.

Witness ..... clerk  
of said court, and the seal thereof, at.....  
in said county, this.....day of..... 19.....

Clerk

(Seal)

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same. By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree. (R. L. '05, §3384; G. S. '13, §6883; '27, c. 112, §4; Mar. 28, 1929, c. 97, §1.)

Service by publication upon a nonresident in a Torrens title registration suit, and the decree held binding upon such nonresident. *Nitkey v. S.* (USCCA8), 87F(2d) 916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

City maintaining sewer under private land could not have its rights cut off by summons issued to "all other persons or parties unknown," since city should have been made a party defendant as an occupant of part of the land. *Op. Atty. Gen.* (387b-11), Sept. 6, 1934.

**8266. Trial—Reference.**

Applicant in title registration proceeding may dismiss at any time, even though defendant is seeking to enforce rights as contract vendee and even after filing of adverse report of referee. *Hiller v. S.*, 191M272, 253NW773. See *Dun. Dig.* 2741, 8358.

**8267. Dismissal.**

Where, in a title registration proceeding under Torrens Act, an answering defendant seeks to have applicant's title decreed to be subject to defendant's rights as a contract vendee, applicant may dismiss his application at any time during proceedings. *Hiller v. S.*, 191M272, 253NW773. See *Dun. Dig.* 8362.

**8268. Decree of registration—Effect.**

Purchaser under a contract for a lease who acquiesced in Torrens registration of vendor and made no attack against it until expiration of limitation period, was estopped from suing in equity to obtain title to or possession of the property, or an accounting of the rents and profits thereof. *Nitkey v. S.* (USCCA8), 87F(2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

Bill attacking a Torrens registration proceeding, held lacking in equity so far as it alleged defect in the service of process, where service by publication was attempted and plaintiff, apparently, acquiesced in the Torrens decree. *Id.*

Bill of purchaser under a contract for a lease claiming title to the property, alleging vendor did not exhibit the contract to the court in Torrens registration proceeding, held a mere collateral attack and to suggest no fraud. *Id.*

Equitable bill of purchaser under a contract for lease, in which he claimed title to the property and attacked a Torrens registration of the vendor, held to show no facts that would justify plaintiff's conclusion defendants were guilty of fraud in the Torrens registration suit. *Id.*

In suit for cancellation of Torrens decree, laches held apparent on the face of the bill. *Id.*

One holding registered title to real estate and in actual possession has an insurable interest therein. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 4641.

A judgment in action between owner in possession of real property and one claiming rights therein under a void foreclosure sale, when such judgment is properly registered and declares foreclosure void and adjudges title in such owner, becomes a link in owner's chain of title, and is admissible in evidence even against a stranger to judgment. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 5171, 5191.

Judgment, entered long after date when title is in issue, does not bar a stranger thereto from showing, if he can, that, on prior material date, adjudged owner had no title. *Fuller v. M.*, 187M447, 245NW617. See *Dun. Dig.* 5171, 5191.

A decree registering title is somewhat more conclusive and better protected from attack or opening up than an ordinary judgment. *Lamprey v. A.*, 197M112, 266NW434. See *Dun. Dig.* 8363.

Person not made party to registration proceedings held guilty of laches barring vacation or modification of decree. *Id.* See *Dun. Dig.* 5114, 8364.

City having sewer under private property did not lose its right to maintain and repair the same by reason of registration of title in proceeding in which city was not made party. *Op. Atty. Gen.* (387b-11), Sept. 6, 1934.

**8270. Registration runs with land.**

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

**8271. Rights of person holding certificate of title.**

—Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration, shall hold the same free from all encumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights arising or existing under the laws or the constitution of the United States, which this state cannot require to appear of record.

2. The lien of any tax or special assessment for which the land has not been sold at the date of the certificate of title.

3. Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder.

4. All rights in public highways upon the land.

5. Such right of appeal, or right to appear and contest the application as is allowed by this chapter.

6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title. (R. L. '05, §3393; G. S. '13, §6892; Apr. 25, 1931, c. 357.)

*Cook v. L.*, 191M6, 252NW649; note under §8293.

One obtaining new certificates under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

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, except 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.

Mason's Stat. 1927, §9405, giving right to bring action within three years after discovery of fraud, had no application to a decree in land registration proceedings. *Lamprey v. A.*, 197M112, 266NW434. See *Dun. Dig.* 8364.

One purchasing a Torrens title to land in good faith and for a valuable consideration was as a matter of law entitled to immediate possession of premises which was not subject to collateral attack for purpose of showing that at time of registration decree land was held in adverse possession. *Harrington v. L.*, 203M575, 282NW461. See *Dun. Dig.* 8361.

**8279. Deputy registrars.**

Only two deputies could be employed in the office of the registrar of titles in Hennepin County. *Op. Atty. Gen.*, Jan. 29, 1932.

**8280. Title, how registered—Register of titles.**

Duties of registrar of titles as to entries on certificate from complicated instruments and their effect. 181M615, 233NW866. See *Dun. Dig.* 8361.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See *Dun. Dig.* 8361.

A decree of the district court in proceedings under the Registration Act to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against subsequent attaching creditors. *McWhinney v. G.*, 183M141, 235NW676. See *Dun. Dig.* 8361a(6).

**8282. Certificates, etc., as evidence.**

*McWhinney v. G.*, 183M141, 235NW676; note under §8280.

Fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of the

title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8361.

#### 8284. Indexes, etc.—Court to adopt forms.

"Attested" refers to endorsements of registrar of titles and not to duplicate instruments. Op. Atty. Gen. (373b-19), June 11, 1935.

#### 8203. Transfer of registered land.

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

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, except 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.

An unregistered quitclaim deed of Torrens title property although not affecting title nor creating any interest in land, was, as between parties thereto, effective as a contract. Cook v. L., 191M6, 252NW649. See Dun. Dig. 8361.

#### 8204. Conveyances, etc., filed with registrar—Etc.

Intended for protection of grantees, mortgagees, whose deeds, mortgages, liens or judgments have been properly registered. 181M615, 233NW866. See Dun. Dig. 8362a.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in lands other than reservations. Op. Atty. Gen. (374), Mar. 10, 1936.

#### 8205. New certificate—Interest less than fee.

Registrar of titles must file mortgage even though spouse does not join therein unless certificate shows real estate covered thereby is a homestead. Op. Atty. Gen. (374f), April 17, 1934.

#### 8206. Instruments to have name and address.

Registrar would not be justified in refusing to accept an instrument that contained full name and address endorsed thereon, even though it did not contain such information in body thereof. Op. Atty. Gen., Aug. 4, 1932.

#### 8207. Owner's duplicate must be presented, when.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

**8208-1. Unregistered contract of sale—validation of later conveyance.**—In any case where a vendor of land shall have sold the same under an unregistered contract for deed followed immediately by actual possession thereunder by the vendee, and shall have thereafter conveyed the same by deed of conveyance and surrender of his owner's duplicate certificate of title to a grantee to whom a new certificate was thereupon issued, without mention, however, in said deed or in said certificates, of the previous contract for deed, and more than fifteen years have elapsed since said conveyance during which period said vendee has remained continuously in undisturbed possession of the premises and has paid the whole of the contract price therefor, and more than ten years have elapsed since the making of the last payment thereunder, then and in all such cases no action shall be brought or maintained by said vendor and said grantee, or either of them, for the recovery of the possession of said premises, unless commenced within six months after the passage of this act. (July 24, 1937, Sp. Ses. c. 94.)

#### 8209. Transfer and payment of taxes.

It is duty of registrar of titles to file deeds to city without endorsement of certificates showing payment of taxes, but city should first secure an order from tax commission cancelling and abating all taxes, and also present a certificate of county auditor showing all unredeemed tax sales, and new certificate of title should

show all unredeemed tax sales. Op. Atty. Gen. (373b-9(e)), Aug. 21, 1935.

#### 8300. Mortgage.

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

#### 8302. Assignment and discharge of mortgage.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

#### 8304. Registration after foreclosure—New certificate.

Rhode Island Hospital Trust Co. v. C., 191M354, 254NW 466; note under §8253.

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

#### 8313. Acquiring title by action—New certificate.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8, should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

Where registered land is forfeited to state for taxes pursuant to Laws 1935, c. 386, application for a new certificate should be made pursuant to this section. Op. Atty. Gen. (374j), Sept. 14, 1938.

New certificates of registration may be issued upon presentation of duplicate certificate of former owner, state deed, and quitclaim deed from original owner. Op. Atty. Gen. (409), Sept. 21, 1938.

#### 8316. Subsequent adverse claim, how registered.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in lands other than reservations. Op. Atty. Gen. (374), Mar. 10, 1936.

Where registered land forfeits to state certificate referred to in Laws 1935, c. 278, §8, should be entered by registrar of titles on memorial, but when former owner purchased land under Laws 1937, Ex. Sess., c. 88, it is not necessary that a new certificate be issued or that provisions of §§8813 or 8316 be complied with. Op. Atty. Gen. (412a-23), Aug. 8, 1938.

#### 8317. Alterations on register—order of court.—No

erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of any memorial thereon, and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time, apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns without his or their written consent. Provided, however, that, without order of court in counties in which a rule of the district court so provides, the registrar of titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments; receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax

described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to said memorials. Provided, further, that in case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity as hereinbefore described, and upon the surrender of the owner's duplicate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be. Provided, further, when instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the

original instrument, if the registrar of titles shall first be satisfied that the signatures to the original are genuine. (R. L. '05, §3439; G. S. '13, §6938; Apr. 5, 1933, c. 160, §1.)

Sec. 2 of Act Apr. 5, 1933, provides that the act shall take effect from its passage.

In proceeding to alter registration certificate of a subsequent purchaser of land over which right of way passed, court was not authorized to alter it further than describing right of way in exact language used in deed conveying it. *Minnetonka State Bank v. M.*, 189M 560, 250NW561. See Dun. Dig. 8361a.

In special proceeding to alter a certificate of registration of title to land, injunction against trespassing on land involved in certificate is improper. *Id.*

#### 8322. Damages through erroneous registration.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8362a.

City held not liable to damages resulting from registration of title by reason of fact that part of sewer system was maintained under such land. *Op. Atty. Gen.* (37b-11), Sept. 6, 1934.

## CHAPTER 65A

### Registration of Certain Trade-Names

**8330. Record of name, mark, etc.—Duty of secretary of state—Certificate.**—Any person engaged in or any corporation or association whose members are engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages, milk, cream, ice cream or butter in any kind of receptacle having the name of such person, corporation or association, or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the secretary of state for record a description of the name, mark or device so used and cause such description to be printed once in each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person, corporation or association is located, or if the principal place of business of such person, corporation or association is located in another state, then in the county wherein the principal office or depot within the state of Minnesota is located. It shall be the duty of the secretary of state to issue to the person, corporation or association so filing for record a description of such name, mark, or device in his office a duly attested certificate of the record of the same for which he shall receive a fee of one dollar. Such certificate in all prosecutions under this act shall be prima facie evidence of the adoption of such name, mark or device, and of the right of the person, corporation or association named therein to adopt and use the same. (As amended Mar. 31, 1939, c. 118.)

Words "Stearns County No. 13" and "Minnesota Thirteen" are not in conflict. *Op. Atty. Gen.*, Mar. 20, 1934.

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

**8335-1. Definitions.**—The word person or persons as used in this act shall mean persons, firms, corporations, co-partnerships, associations or agents of any of them. (Act Apr. 25, 1931, c. 366, §1.)

**8335-2. Brands to be registered.**—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles

shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production of such on the farm, in a clean and sanitary condition, and shall not consign for transportation by common carrier empty cans or ice cream containers in an unsanitary condition. That all persons, companies and corporations engaged in the purchase of milk or cream, or in the manufacture of ice cream shall adopt a mark or marks of ownership to be stamped or marked on any can, cask, keg, barrel or other receptacles, used in the handling and transportation of any said products, and shall file in the office of the agriculture, dairy and food commissioner, without charge, upon a suitable blank to be furnished by the commissioner of agriculture, dairy and food, a description of the name or mark so used by them or either of them and the use to be made of any such can, cask, barrel or other receptacle. The brand or mark so selected and adopted as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel or other receptacle, or any part thereof. It shall be unlawful for any person, company or corporation to adopt or use any brand or mark, which has already been designated, appropriated or obtained under the provisions of this act. It shall be unlawful for any persons other than the rightful owner thereof, or his lawful agent, to use any can, cask, keg, barrel or other receptacle marked or branded as herein provided. Any person other than the owner, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as herein provided shall be deemed guilty of having violated the provisions of this law. Provided: Nothing in the section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle marked or branded as herein provided is being transported to and from the owner or his lawful agent. It shall be unlawful for any other person than the rightful owner, or his lawful agent, to deface or remove any such brand, mark or stamp put upon any such can, cask, keg, barrel or other receptacle as herein provided. (Act Apr. 25, 1931, c. 366, §2.)

The title of the act: "An act providing for the registration of brands on containers for dairy products: