

May remove  
deputy.

to be taken by the clerk of the district court, which oath or affirmation, together with the appointment of such deputy clerk, shall be filed with the treasurer of the proper county; and any clerk of the district court may, at any time, remove any deputy appointed by him, under the provisions of this act.

In absence of  
clerk, deputy  
may perform  
duties.

SECT. 8. In the absence of the clerk of the district court from his office or from the court, the deputy, appointed under and in pursuance of the provisions of this act, may perform all the duties pertaining to the office of clerk of the district court.

Take effect,  
when.

SECT. 9. This act shall take effect on and after its passage.

Approved April 24, 1862.

W. JAYNE, *Governor.*

## DEEDS, MORTGAGES, & C.

### CHAPTER 30.

AN ACT TO PROVIDE FOR THE RECORDING OF DEEDS,  
MORTGAGES, BONDS, CONTRACTS, AGREEMENTS, &C.

*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*

To be recorded  
within three  
months, where.

SECTION 1. All deeds, mortgages, bonds, contracts, agreements, or other instrument concerning any interest in lands in this territory, made in writing under seal, attested by one or more witnesses, and acknowledged before some person authorized by law to take acknowledgments of deeds, shall be recorded in the office of the register of deeds of the county where the land lies, within three months of the date of such instrument.

Duty of register  
to record all  
such.

SECT. 2. It shall be the duty of the register of deeds of each county within this territory, to receive and record at

length all such deeds, bonds, mortgages, contracts, and agreements, as shall be left with him for the purpose.

SECT. 3. Each and every instrument touching interest in lands made and recorded according to the provisions of the first section of this act, shall be notice to, and take precedence of, any subsequent purchaser or purchasers, from the time of delivering said instrument at the office of the register of deeds for record, and shall operate as a lien upon the lands therein described, according to its import and meaning.

To take precedence after time of delivery to register.

SECT. 4. The said register of deeds shall receive as compensation for recording all papers contemplated by this act, the sum of twelve and one half cents per hundred words.

Compensation of register.

SECT. 5. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect, when.

Approved May 2, 1862.

W. JAYNE, *Governor.*

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## CHAPTER 31.

### AN ACT CONCERNING ALIENATION BY DEED, OF THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

*Be it enacted by the Legislative Assembly of the Territory of Dakota :*

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever.

Conveyances of lands, &c., may be made by deed, how.

SECT. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

Wife convey by joint deed with husband.

SECT. 3. A deed of quitclaim and release of the form in common use, shall be sufficient to pass all the estate

Deed of quitclaim, force of.

which the grantor could lawfully convey by deed of bargain and sale.

Conveyance granting more than grantor could lawfully convey.

SECT. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

No covenant shall be implied.

SECT. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

No mortgage construed as implying covenant, &c.

SECT. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall be given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

No conveyance deemed void, when.

SECT. 7. No grant or conveyance of lands or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another claiming adversely.

Deeds, how executed and acknowledged.

SECT. 8. Deeds executed within this territory of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the person executing such deeds may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public or justice of the peace within the territory; and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

If executed in another state or territory.

SECT. 9. If any such deed shall be executed in any other state, territory, or district of the United States, such deed may be executed according to the laws of such state, territory, or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory, or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this territory, for such purpose.

SECT. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he believes the signature of such person subscribed thereto, to be genuine; and that the deed is executed and acknowledged according to the laws of such state, territory, or district.

If not taken before officer authorized by governor of this territory.

SECT. 11. When any married woman, residing in this territory, shall join with her husband in deed of conveyance of real estate, situate within this territory, the acknowledgment of the wife shall be taken separately apart from her husband, and she shall acknowledge that she executed such deed freely and without any fear or compulsion from any one.

When married woman joins, separate acknowledgment to be taken.

SECT. 12. When any married woman, not residing in this territory, shall join with her husband in any conveyance of real estate, situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

When married woman not residing in territory.

SECT. 13. When any grantor shall die, or depart from or reside out of this territory, not having acknowledged his deed, the due execution thereof may be proved by any competent subscribing witness thereto, before any court of record in this territory.

When grantor shall die without acknowledging.

SECT. 14. If all the subscribing witnesses to such deed shall also be dead or out of this territory, the same may be proved before any court of record in this territory by proving the handwriting of the grantor, and of any subscribing witness thereto.

If subscribing witnesses die or live out of territory.

SECT. 15. If any grantor, residing in this territory, shall refuse to acknowledge his deed, the [grantor] or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall there-

If grantor refuses to acknowledge deed.

upon issue a summons to the grantor to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served at least seven days before the time therein assigned for proving the deed.

Execution of deed, how proved.

SECT. 16. At the time mentioned in such summons, or at any time to which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of one or more of the subscribing witnesses, and if proved to the satisfaction of the justice, he shall certify the same thereon; and in such certificate he shall note the presence or absence of the grantor, as the fact may be.

Deed may be proved before court of record, how.

SECT. 17. If any grantor, residing in this territory, shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead or out of the territory, it may be proved before any court of record in this territory, by proving the handwriting of the grantor or of any subscribing witness, the said court first summoning the grantor for the purpose in the manner before provided in this chapter.

Court or justice may issue subpoenas for witnesses and others.

SECT. 18. The court or justice before whom any deed may be presented to be proved, as provided in the preceding sections, may issue subpoenas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this territory.

Persons not appearing without excuse. Penalty.

SECT. 19. Every person who, being served with such subpoena shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer on oath touching the matters aforesaid, shall be liable to the injured party in the sum of one hundred dollars damage, and for such further damages as such party may sustain thereby; and may also be committed to prison, as for a contempt, by the court or justice who issued such subpoena, there to remain until he shall submit to answer upon oath as aforesaid.

If deed not acknowledged, how to make it effective.

SECT. 20. Any person interested in a deed that is not acknowledged may, at any time before or during such application to a court of record, or such proceedings before a justice, file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall, for the space of

thirty days thereafter, in case of proceedings before a justice, and in case of proceedings before a court of record, for the space of ten days after the first day of the next term of such court, have the same effect as the recording of the deed, if such deed shall, within that time, be duly proved and recorded.

SECT. 21. If at the expiration of the time mentioned in the preceding section for that purpose, such proceedings for proving the execution of the deed shall be pending before a justice of the peace, the effect of filing such copy shall continue until the expiration of seven days after the termination of the proceedings, if such deed shall within that time be duly proved and recorded. Same.

SECT. 22. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof, before a court of record, or justice of the peace, signed by the clerk of such court, or by the justice before whom the same was taken, as provided in this chapter, and in the cases where the same is necessary, the certificate required by the tenth section of this chapter shall entitle such deed, certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the land lies. Certificate of acknowledgment by court of justice entitles deed to be recorded.

SECT. 23. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided by law, shall be void, as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded. Conveyance not recorded considered void.

SECT. 24. Deeds of pews and slips in any church may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized; and such clerks shall receive the same fees as the register of deeds is entitled to for similar services. Deeds of pews and slips in church, how recorded.

SECT. 25. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved, as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this territory without further proof thereof; but the effect of Conveyances, &c., recorded, evidence in court.

such evidence may be rebutted by other competent testimony.

When deed is made defeasible.

SECT. 26. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office registry of deeds of the county where the lands lie.

Of recording of assignment.

SECT. 27. The recording of assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

The term "purchaser."

SECT. 28. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate.

The term "conveyance."

SECT. 29. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding three years, and executing contracts for the sale or purchase of lands.

Same.

SECT. 30. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded by the registry of deeds of any county in which the lands to which such powers or contract relates may be situated; and where so acknowledged or proved, and the record thereof, when recorded, or a transcript of such record duly certified, may be read in evidence, in the same manner, and with like effect, as a conveyance recorded in such county.

SECT. 31. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

No letter of attorney deemed revoked, unless.

SECT. 32. A scroll or device used as a seal upon any deed of conveyance, or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon; but this section shall not be construed to apply to such official seals, as are or may be provided for by law.

Scroll or device used as seal of same force as seal.

SECT. 33. All conveyances of real estate, heretofore made and acknowledged, or proved in accordance with the laws of this territory, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Conveyances heretofore made.

SECT. 34. Any mortgage that has been, or hereafter may be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative, or assignee, acknowledging the satisfaction of the mortgage in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release, duly acknowledged and recorded.

Mortgage, how discharged.

SECT. 35. Any mortgage shall be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Same.

SECT. 36. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage made by the register upon the record thereof.

Certificate of discharge to be recorded.

SECT. 37. If any mortgagee, or his personal representative or assignee, as the case may be, after a full performance

If mortgagee refuses to discharge mortgage. Penalty.

of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same, as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in a civil action.

SECT. 38. Where the word "chapter" occurs in this act, it shall be construed to mean act.

Take effect,  
when.

SECT. 39. This act shall take effect from and after its passage, and approval by the governor.

Approved May 7, 1862.

W. JAYNE, *Governor.*

## ELECTIONS.

### CHAPTER 32.

AN ACT PRESCRIBING THE MANNER OF CONDUCTING ELECTIONS; OF THE CANVASS AND RETURN OF THE SAME.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

#### GENERAL ELECTIONS.

General election, when held, and for what purposes.

SECTION 1. That a general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which there shall be chosen so many of the following officers as are by law to be elected in each year; that is to say, a delegate to congress and other territorial officers, members of the territorial council and house of representatives, judges of probate, district attorney, and the following county and precinct officers, to wit: county commissioners, sheriffs, registers of deeds, coroners, justices of the