

31700

THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

.....
1851

- 3. The case mentioned in the last section :
- 4. A copy of the entries upon the minutes of the court, relating to the accusation and the proceedings thereon, including the order of suspension or removal.

SEC. 31. Any court except a justice's court, may suspend an attorney and counsellor from practicing therein, for any of the causes mentioned in section nineteen, for a period not beyond the adjournment of the next general term of the supreme court in the territory ; the order of suspension must state the cause thereof, and must be entered upon the minutes, and a certified copy thereof transmitted by the court by which it is made, to the next general term of the supreme court in the territory, which may proceed thereon against the person suspended, in the manner provided in this chapter.

In what cases other courts may suspend and their duties thereon.

CHAPTER 94.

OF THE COURT OF CHANCERY.

SECTION

- 1. District courts to have chancery jurisdiction.
- 2. Jurisdiction of the court in suits in chancery.
- 3. Jurisdiction of the court in suits in chancery.
- 4. Regular and special terms of courts of chancery.
- 5. Application to court of chancery how made.
- 6. Complainant may insert any number of defendants.
- 7. Set off allowed.
- 8. Costs allowed when pleadings are prolix.
- 9. When bills of discovery may be filed.
- 10. Answer not to be used against defendant on indictment.
- 11. Process how tested.
- 12. Subpœna how served.
- 13. Order for defendant to plead, answer or demur.
- 14. Who deemed absent defendants; order to appear how made.
- 15. When complainant may reply to plea.
- 16. Proceedings in case of demurrer.
- 17. When plea or demurrer is overruled defendant must answer.
- 18. When plea allowed complainant to pay costs.
- 19. Proceedings where exceptions are taken to answer.
- 20. Complainant to pay costs if exceptions are overruled.
- 21. Proceedings when cross bill is filed.
- 22. Bill before whom sworn to.
- 23. Rules by consent how entered.

SECTION

- 24. Amendments how made.
- 25. Cause when at issue.
- 26. Defendant may interrogate complainant.
- 27. Issues of fact how tried.
- 28. Bill when to be dismissed.
- 29. Proceedings if defendant do not appear.
- 30. In what cases complainant required to give bond after decree.
- 31. Force and effect of decree in chancery.
- 32. Decree need not be enrolled, papers how filed.
- 33. Decree to transfer real estate, effect of.
- 34. Receiver not appointed until after notice.
- 35. Supreme court may make rules of practice.
- 36. Supreme court may make rules of practice.
- 37. Judge may make order of reference.
- 38. Courts may have power to enforce decrees and orders by attachment, &c.
- 39. Writs of ne exeat when to be issued.
- 40. When writ not to be granted.
- 41. When the writ may be discharged.
- 42. Injunction when to be granted.
- 43. Writ of, when made returnable.
- 44. When writ not to be granted.
- 45. When writ not to be granted.
- 46. When not granted after judgment.
- 47. Money paid into court, how and when paid out.
- 48. When injunction to stay proceedings, may be renewed.
- 49. When injunction may issue to stay proceedings at law.
- 50. Damages how ascertained.

SECTION

- 51. Judge may dispense with a deposit of money in court.
- 52. Judge may dispense with a deposit of money in court.
- 53. Complainant to give bond to defendant before injunction issues in certain cases.
- 54. Sufficiency of sureties how ascertained.
- 55. Bond and affidavit to be filed with clerk before injunction issues.
- 56. Judge may direct the delivery of the person entitled thereto.
- 57. When bills may be filed for the foreclosure of mortgages.
- 58. Court may decree a sale of mortgaged premises; may compel the delivery of the possession of premises.
- 59. No proceedings can be had at law during pendency of suit.
- 60. When other person than the mortgagor may be made party.
- 61. Complainant to state in bill whether proceedings have been had at law.
- 62. When judgment has been had at law, no proceedings to be had.

SECTION

- 63. Sales of mortgaged premises by whom made.
- 64. Deeds how executed, and the effects of.
- 65. The proceeds of sale, how to be applied.
- 66. Surplus when not called for, to be put out at interest.
- 67. Bill to be dismissed if defendant pay amount due.
- 68. Proceedings in suit shall be stayed in certain cases.
- 69. Court may direct a reference to a master in certain cases.
- 70. When court to make further order founded on decree.
- 71. When decree shall direct sale of the whole premises.
- 72. Proceeds in such case, how applied.
- 73. When court may appoint special master.
- 74. Appeals when and by whom taken.
- 75. Party appealing to give bond.
- 76. Proceedings in supreme court upon appeal.
- 77. When supreme court may award damages in certain cases.

District courts to have chancery jurisdiction.

SEC. 1. The several district courts in this territory, shall have original jurisdiction in all matters in chancery, in which a plain, adequate, and complete remedy cannot be had at law.

Jurisdiction of the court in suits in chancery.

SEC. 2. No suit can be brought in chancery, when a remedy is given by civil action; the term civil action, whenever it is used in the statute, is not intended to include suits in chancery.

Jurisdiction of the court in suits in chancery.

SEC. 3. The court shall dismiss every suit in chancery concerning property, where the matter in dispute, exclusive of costs, does not exceed the value of five dollars, with costs in favor of the defendant.

Regular and special terms of courts of chancery.

SEC. 4. The stated terms of the courts of chancery shall be the same as those of the courts sitting as courts of law jurisdiction, and each of said courts shall have power to appoint as many special terms as they may deem proper.

Application to court of chancery how made.

SEC. 5. All applications to the chancery side of said court, shall be by bill, stating the nature and ground of the complainant's claim, and shall be filed in the office of the clerk of such court.

Complainant may insert any number of defendants.

SEC. 6. The complainant may insert in his bill as many defendants as he may think proper, though they claim under different titles, but if any of the defendants disclaim, the complainant shall pay costs, except the court shall for special reasons decree otherwise.

Set off allowed.

SEC. 7. In suits for the payment or recovery of money, set offs shall be allowed in the same manner, and with the like effect, as in civil actions.

Costs allowed when pleading are prolix.

SEC. 8. Whenever any bill, answer, or other proceeding filed in the court of chancery, shall satisfactorily appear to the judge to have been made unnecessarily prolix, for the purpose of increasing the costs, it shall be the duty of the judge to order the solicitor or counsel by whom such bill, answer, or other proceeding shall have been drawn, to pay the costs occasioned by such unnecessary prolixity, to the party injured thereby.

When bills of discovery may be filed.

SEC. 9. A bill of discovery may be filed, and the defendant shall be compelled to answer such bill, where the defendant is charged of having given to another person a warrant of attorney to enter up a judgment, or with having confessed or suffered any judgment, purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such warrant of attorney or judgment, is due,

with intent to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same on some secret trust or confidence, or for the benefit of such defendant.

SEC. 10. No answer made to any bill filed under the last section, shall be read in evidence against the defendant, on the trial of any indictment for the fraud charged in the bill.

Answer not to be used against defendant on indictment.

SEC. 11. All process issuing from the district court in proceedings in chancery, shall be tested in the name of the judge of the court from which it shall issue, or some one of the judges of the supreme court, and shall bear test on the same day on which the same shall be issued, and shall be made returnable on a day certain, therein to be mentioned, either in term time or vacation; and it shall be the duty of the sheriff, or other officer, to whom any subpoena, order, attachment, process of sequestration, writ of execution, or other process in chancery shall be directed or delivered, to serve and execute the same, and to make return thereof at the time and place therein mentioned.

Process how tested.

SEC. 12. Every subpoena or process for appearance shall be served on the person to whom it is directed, at least ten days before the return day thereof, by giving him a copy thereof, or by leaving a copy thereof at the dwelling house or usual place of abode of the defendant, with some person of the age of ten years or upwards, to whom the nature of such process shall be explained.

Subpoena how served.

SEC. 13. On the return of a subpoena served by the sheriff or other proper officer, the complainant may enter an order with the clerk of the proper court, requiring the defendant, if a resident of the county, to file his plea, answer, or demurrer, by a day certain, to be not less than thirty days from the date of such order; and if not a resident, by a day certain; to be not less than ninety days from the date of such order; and if the defendant shall not file his plea, answer, or demurrer within the time limited by such order, then the complainant may enter an order with the clerk, that the bill of the complainant may be taken as confessed against the defendant in such order named: *Provided, however,* That the court, or judge in vacation, may upon good cause shown by the affidavit of the defendant or his solicitor, enlarge the time for answering, to a period not exceeding ninety days from the entry of the original order. If the defendant shall not file his plea, answer, or demurrer, within the time limited by the court, or judge at his chambers, then said court or judge, may, at their discretion, render a decree thereon, or order the complainant to prove the allegations of his bill, or examine the complainant on oath, touching the allegations of such bill, and such decree shall then be made as the court or judge shall think fit.

Order for defendant to plead answer or demur.

SEC. 14. In case of a bill filed against any defendant against whom a subpoena or process to appear shall issue, and such defendant shall not cause his appearance to be entered in such suit, as according to the rules of such court, the same ought to be entered in case such process had been duly served, and it shall be made to appear by affidavit or otherwise, to the satisfaction of the judge, that such defendant is out of the territory, or cannot, upon inquiry be found therein, or that he conceals himself within this territory, every such defendant shall be deemed and taken to be an absent defendant; and thereupon the judge may by order, direct such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be named, not less than three nor more than six months from the date of such order; which order shall, within twenty days thereafter, be personally served on such defendant, by a delivery of a copy thereof to him, or be published in one or more of the newspapers printed in this territory,

Who deemed absent defendants.

Order to appear how made.

for six weeks successively, at least once in each week, and which said order shall also be published or served in any other manner that the judge may see proper in said order to direct; and in case such absent defendant shall not appear, plead, answer, or demur, within the time limited, or within some future time to be allowed by the judge, if he shall think proper, and on proof of personal service, or of the publication of such order or orders, as aforesaid, and of the performance of the directions contained in said order or orders, to the satisfaction of the judge, the judge may order and direct that the complainant's bill be taken as confessed against such absent defendant, so failing to plead, answer, or demur; or the court may proceed as directed in the thirteenth section of this chapter.

When complainant may reply to plea.

SEC. 15. When the complainant conceives the plea of the defendant to be good, though not true, he may reply to and take issue thereon, and proceed as in case of an answer.

Proceedings in case of demurrer.

SEC. 16. If the defendant file a demurrer and answer, the complainant shall not proceed on the answer till the demurrer has been argued or disposed of.

When plea of demurrer is overruled defendant must answer.

SEC. 17. If the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; but in such case the defendant shall file his answer to complainant's bill, in such time as the court, or judge at his chambers may direct, and if he fail to do so, the said bill shall be taken as confessed, and the said court shall thereupon proceed as directed in the thirteenth section of this chapter.

When plea allowed complainant to pay costs.

SEC. 18. If the plea or demurrer of the defendant be allowed, the complainant shall pay costs; and if overruled the defendant shall pay costs.

Proceedings where exceptions are taken to answer.

SEC. 19. When exceptions shall be filed to answer, a rule may be entered of course with the clerk, either in term time or vacation, to refer the same to a proper officer of court, who shall decide and report upon them within thirty days after they are filed; but an appeal from such report may be allowed to the court, who shall hear and determine the same at the next term.

Complainant to pay costs if exceptions are overruled.

SEC. 20. The complainant, if his exceptions are overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay costs to the complainant.

Proceedings when cross bill is filed.

SEC. 21. If a cross bill be filed by the defendant, he shall answer to the bill of complaint before the complainant shall be required to put in his answer to such cross bill.

Bill before whom sworn to.

SEC. 22. The defendant may swear to his answer before any person authorized to administer oaths.

Rules by consent how entered.

SEC. 23. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time, or vacation.

Amendments how made.

SEC. 24. All proper amendments shall be made with or without costs, and on such equitable terms as the court may direct.

Cause when at issue.

SEC. 25. Every cause in a court of chancery, shall be deemed to be at issue on filing a replication; and it shall not be necessary to issue a subpoena or enter a rule to rejoin.

Defendant may interrogate complainant.

SEC. 26. The defendant in chancery, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him upon oath; and if the complainant shall not answer such interrogatories within the time appointed by the court, he shall be in contempt, and his bill shall be dismissed with costs.

Issues of fact how tried.

SEC. 27. If there be an issue of fact which shall render the introduction of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause.

SEC. 28. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill shall be dismissed with costs.

Bill when to be dismissed.

SEC. 29. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents and proofs shall be read, the witnesses examined, and the court shall thereupon make such decree as they shall think equitable and just, or dismiss the complainant's bill.

Proceedings if defendant do not appear.

SEC. 30. In cases where a decree shall be made upon any bill in equity, against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond, with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the repayment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear, as hereinafter provided, not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same. In case any such absent defendant against whom a decree shall be made as aforesaid, his heirs, devisees, executors, administrators, or assigns, as the case may require, shall, within six months after notice be given to him of such decree, or within three years after such decree shall have been made; if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay or secure, or cause to be paid, such costs as the court may think reasonable to order and direct; then and in such case, the person aforesaid so petitioning, may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had as if such absent defendant had appeared in due season, and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of complaint in the said court for an account and settlement of the amount which was really due, and owing to the complainant at the time of the decree, and to compel the said complainant to refund and repay what he may have wrongfully recovered and received, together with the interest from the time of the receipt thereof, with costs of suit; the former decree against such absent defendant notwithstanding; but in case no petition shall be presented, or bill filed as before provided for, within six months from the time notice as aforesaid shall be given, due proof thereof being made, or within three years from the decree, the decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed, as in cases where the defendant had duly appeared.

In what cases complainant required to give bond after decree.

SEC. 31. A final decree of a court of chancery, shall have the same operation, force, and effect, from the time of signing the same, as a judgment at law.

Force and effect of decree in chancery.

SEC. 32. It shall not be necessary to enroll any decree or dismissal in a court of chancery, but immediately after any decree shall have been pronounced, the bill, answer and all other proceeding in the cause in which such decree shall be had, shall be attached together by the clerk of the court, and filed in his office, together with a fair and engrossed copy of such decree or admission, and also the report and decretal order therein, but without any recital of the bill, answer, or pleading, and after the same is signed by the court, shall annex it to the bill, answer, and pleadings, which shall be of like effect as if the same had been enrolled.

Decree must not be enrolled, papers how filed.

Decree to transfer real estate effect of.

SEC. 33. A court of chancery shall have power to pass the title to real estate by a decree, without any other act to be done on the part of the defendant, when in their judgment it shall be the proper mode to carry their decrees into effect; and such decree being recorded in the records of the register of deeds of the county where such real estate is situated, shall, while in force, be as effectual to transfer the same, as the deed of the defendant.

Receiver not appointed until after notice.

SEC. 34. No receiver shall ever be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party, nor until after answer filed in any case, except in cases coming strictly within the rule of chancery proceedings.

Supreme court may make rules of practice.

SEC. 35. The supreme court aforesaid may, from time to time, make rules for proceeding in taking a bill as confessed, in every case not otherwise provided for by law; and also for the proceedings necessary to entitle either party to a decree or order of such court, against the opposite party by default.

Supreme court may make rules of practice.

SEC. 36. It shall be lawful for the court, from time to time, to make, alter, or amend, or revoke any rule or practice, so as to obviate doubts, advance justice and expedite suits in the said court, so that the same be not contrary to the provisions of this chapter.

Judge may make order of reference.

SEC. 37. It shall be in the power of any judge in vacation, to make orders of reference to a proper officer, in any cause depending in chancery, which is ready for a reference before the final hearing of the same: *Provided*, That the party applying for such reference, shall give ten days notice to the opposite party, or his solicitor, of the time and place and the judge before whom he means to make a motion for such reference.

Courts may have power to enforce decrees and orders by attachment, &c.

SEC. 38. Either of the courts aforesaid, sitting as a court of chancery, shall have power to enforce their decree and orders by attachment, sequestration or by such final process against the goods, chattels, lands and tenements, or against the person of any defendant, as may be had on a judgment at law; and such process shall be obeyed, executed and returned by the sheriff or other officer to whom the same shall be directed, in like manner and under the same penalties as is provided in cases of process issuing from a court of law.

WRITS OF NE EXEAT.

Writs of ne exeat when to be issued.

SEC. 39. The court aforesaid, or any judge thereof in vacation, may grant writs of ne exeat to prevent any person from going out of the territory until he shall give security.

When writ not to be granted.

SEC. 40. No writ of ne exeat shall be granted but upon bill or petition filed, and affidavit of the complainant, or some indifferent witness, of the truth thereof; and the court or judge granting such writ, shall direct to be indorsed thereon the penalty of the bond and security to be given to the defendant.

When the writ may be discharged.

SEC. 41. If the defendant shall by answer or otherwise, satisfy the court or judge granting such writ of ne exeat, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged.

THE GRANTING OF INJUNCTIONS, STAYING PROCEEDINGS AT LAW, ETC.

Injunction when to be granted.

SEC. 42. The courts aforesaid, or any judge thereof in vacation, shall have power to grant writs of injunction to stay waste, or to stay proceedings at law; but no writ of injunction shall issue but upon bill filed, and an affidavit of the truth of the grounds of the application, either by the party applying for the injunction or some indifferent witness.

SEC. 43. All writs of injunction granted by a judge in vacation, shall be made returnable to the next term of the court to which the same is properly returnable, and the court shall proceed therein according to the course of proceedings in courts of equity.

Writ of, when made returnable.

SEC. 44. No injunction shall be issued to stay the trial of any personal action at issue in a court of law, until the party applying therefor, shall execute a bond with one or more sufficient sureties to the plaintiff in such action at law, in such sum as the judge or master allowing the injunction shall direct, conditioned for the payment to the said plaintiff, and his legal representatives, of all moneys which may be recovered by such plaintiff or his representatives, or the collection of which may be stayed by such injunction, in such action at law, for debt or damages, and for costs therein, and also for the payment of such costs as may be awarded to them in the court of chancery in the suit in which the injunction shall issue.

When writ not to be granted.

SEC. 45. No injunction shall be issued to stay proceedings at law, in any personal action after the verdict and before judgment thereupon, unless a sum of money, equal to the amount for which the verdict was given, and the costs of suit shall, be first deposited with the court of chancery, by the party applying for such injunction, or a bond for the payment thereof shall be given as hereinafter directed.

When writ not to be granted.

SEC. 46. No injunction shall issue to stay the proceedings at law, in any personal action after judgment, unless:

When not granted after judgment.

1. A sum of money equal to the full amount of such judgment, including costs, shall be first deposited by the party applying for such injunction, or a bond in lieu thereof, to be given as hereinafter directed; and,

2. Unless such party, in addition to such deposit, shall also execute a bond, with one or more sufficient sureties to the plaintiff in the said judgment, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff and his legal representatives, of all such damages and costs as may be awarded to them by the court at the final hearing of the cause.

SEC. 47. If after a verdict or judgment in a civil action any moneys shall be deposited in the court of chancery, pursuant to either of the last two sections, the same may be paid on the order of the court, to the plaintiff in such civil action, upon his executing a bond to the United States, in a penalty double the amount so deposited, with such sureties as the court shall approve, conditioned that such plaintiff will pay to the clerk of the court in which such order shall be made, the moneys which he shall so receive, and the interest thereon, or any part thereof, according to any order or decree of the court of chancery that may be made in relation to the same.

Money paid into court, how and when paid out.

SEC. 48. Whenever the moneys so deposited shall be paid to the plaintiff in a civil action, if the final decision of the cause in chancery be against the party obtaining the injunction, the judge may order any bond that may have been given by such plaintiff, to be cancelled, and shall continue the injunction to stay the collection of the judgment at law, or shall compel the plaintiff therein to cause such judgment to be satisfied and discharged of record.

When injunction to stay proceedings, may be renewed.

SEC. 49. No injunction shall issue to stay proceedings in any civil action for the recovery of lands, or of the possession thereof, after verdict, unless the party applying therefor shall execute a bond, with one or more sureties, to the plaintiff in such civil action, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the plaintiff in such action and his legal representatives, of all such damages and costs as may be awarded to them in case of a decision against the party obtaining such injunction.

When injunction may issue to stay proceedings at law.

SEC. 50. The damages to be paid upon the dissolution of such in-

Damages how ascertained.

junction shall be ascertained by reference to a proper officer, and shall include not only the reasonable rents and profits of the land recovered by such verdict, but all waste committed thereon after the granting of the injunction.

Judge may dispense with a deposit of money in court.

SEC. 51. The judge shall have power to dispense with any deposit of moneys, required by either of the preceding sections, and in lieu thereof, to direct the execution of a bond with sureties, conditioned to pay the amount so required to be deposited, whenever ordered by the court; or if a bond is already required in addition to such deposit, then to direct the enlargement of the penalty and condition of such bond as may be requisite. But whenever such deposit shall be dispensed with, the bond so substituted or enlarged shall be executed by at least two sufficient sureties.

Judge may dispense with a deposit of money in court.

SEC. 52. Whenever an injunction shall be applied for to stay proceedings in any civil action after judgment or verdict, on the ground that such judgment or verdict was obtained by actual fraud, the judge shall have power to dispense with the deposit of any moneys or the execution of any bond.

Complainant to give bond to defendant before injunction issues in certain cases.

SEC. 53. Whenever a judgment in a civil action shall be enjoined, before any writ of injunction shall be issued, the complainant shall give a bond to the defendant in a penalty of double the amount of the judgment in a civil action to be enjoined, with good and sufficient security conditioned as required by law, and particularly to pay the defendant the amount of such judgment, in case the injunction shall be dissolved; and in all cases where a judgment in a civil action has been enjoined, and the injunction shall be dissolved, the court shall award, upon the dissolution of such injunction, ten per cent damages, to the defendant, upon the sum enjoined, exclusive of interest and costs. No injunction shall be granted to stay any proceedings in a civil action until the complainant shall release all errors at law in the proceedings prayed to be enjoined, and in all cases a confession of judgment shall amount to a release of errors.

Sufficiency of sureties how ascertained.

SEC. 54. The sufficiency of the sureties in any bond executed under the provisions of this chapter, shall be ascertained by the affidavit of each surety, stating that he is a householder, resident within this territory, and that he is worth a sum equal to the amount in which the bond shall have been required, over and above all debts and demands against him. Every such affidavit shall be annexed to or indorsed on the bond.

Bond and affidavit to be filed with clerk before injunction issues.

SEC. 55. Whenever a bond shall be required to be executed, pursuant to the provisions of this chapter, prior to the issuing of an injunction, the same with the affidavit above required, shall be filed with the clerk of the court before the sealing and delivery of the injunction.

Judge may direct the delivery of the person entitled thereto.

SEC. 56. The judge shall direct the delivery of any bond executed under the provisions of this chapter, to the person entitled to the benefit thereof, for prosecution, whenever the condition of such bond shall be broken, or the circumstances of the case shall require such delivery.

THE POWERS AND PROCEEDINGS OF THE COURT OF CHANCERY TOUCHING THE FORECLOSURE OR SATISFACTION OF MORTGAGES.

When bills may be filed for the foreclosure of mortgages.

SEC. 57. Bills for the foreclosure or satisfaction of mortgages may be filed in the district court of the county where the mortgaged premises, or some portion thereof are situated, and in case any defendant is not a resident of the county, process may be served on him in any other county within the territory; or if he be absent or concealed, an order for his appearance may be made, and proceedings thereon be had as are provided for in the case of absent or concealed defendants.

SEC. 58. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and the costs of suit; but the district judge shall not by such decree order any lands to be sold within nine months after the filing of the bill of foreclosure.

Court may decree a sale of mortgaged premises.

When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied, after a sale of the mortgaged premises in the cases in which such balance is recoverable at law; and for that purpose, may issue the necessary executions as in other cases against other property of the mortgagor.

May compel the delivery of the possession of premises

SEC. 59. After such bill shall be filed, while the same is pending, and after a decree is rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

No proceedings can be had at law during pendency of suit.

SEC. 60. If the mortgage debt be secured by the obligation, or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

When other person than the mortgagor may be made party.

SEC. 61. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof has been collected or paid.

Complainant to state in bill whether proceedings have been had at law.

SEC. 62. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff, or other proper officer, shall have returned that the execution is unsatisfied, in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

When judgment has been had at law no proceedings to be had.

SEC. 63. All sales of mortgaged premises under a decree of chancery, shall be made by a master in chancery, or other person appointed by the court, in the county where the premises or some part of them are situated.

Sales of mortgaged premises by whom made.

SEC. 64. Deeds shall thereupon be executed by such master or other person appointed as aforesaid, which shall vest in the purchaser the same estate that would have vested in the mortgagee, if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Deeds how executed, and the effects of.

SEC. 65. The proceeds of every sale made under a decree in chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto; subject to the order of the court.

The proceeds of sale how to be applied.

SEC. 66. If such surplus, or any part thereof, shall remain in the said court, for the term of three months, without being applied for, the district judge may direct the same to be put out at interest, subject to

Surplus when not called for, to be put out at interest.

the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

Bill to be dismissed if defendant pay amount due.

SEC. 67. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the bill shall be dismissed upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

Proceedings in suit shall be stayed in certain cases.

SEC. 58. If, after a decree for sale entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion, or installment of the principal, or of any interest thereafter to grow due.

Court may direct a reference to a master in certain cases.

SEC. 69. If the defendant shall not bring into court the amount due, with costs, or if, for any other cause, a decree shall pass for the complainant, the court may direct a reference to a master, to ascertain and report the situation of the mortgaged premises, or may determine the same, on oral or other testimony; and if it shall appear that the same can be sold in parcels, without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold, as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default.

When court to make further order founded on decree.

SEC. 70. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion, or installment of the principal, or of any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon; and the same proceedings may be had as often as a default shall happen.

When decree shall direct sale of the whole premises.

SEC. 71. If, in any of the foregoing cases it shall appear to the court that the mortgaged premises are so situated, that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

Proceeds in such case how applied.

SEC. 72. In such case, the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a rebate of the legal interest for the time during which such residue shall not be due and payable; or, the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the installments or portions of the principal, or the interest, may become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

When court may appoint special master.

SEC. 73. Whenever it shall be deemed necessary, pending any suit or proceeding, the court may appoint a special master in chancery; such master to be sworn, and to give bond, if required, for the faithful performance of the duties assigned him, to have power to administer oaths in any proceedings before him, and to receive for his services, such reasonable compensation as the court may allow.

OF APPEALS TO THE SUPREME COURT.

SEC. 74. When any person, being complainant or defendant, shall

think himself aggrieved by the final order or decree of a judge of a district court, sitting as a court of chancery, such person may enter an appeal within two months, to the supreme court, from such decree or final order; and when any person, being complainant or defendant shall think himself aggrieved by any interlocutory decree, or any order previous to a final order or decree, he may enter an appeal therefrom to the supreme court within fifteen days from the time of entering such decree or making such order.

Appeals when and by whom taken.

SEC. 75. The party appealing in either of the above specified cases, shall give bond to the adverse party with good security, in such sum as the judge of the district court shall order, conditioned to pay, satisfy, and perform the order or decree of the supreme court, and all costs, in case the decree or final order, or interlocutory decree or previous order, as the case may be, of the district court, shall be affirmed; and if the final order or decree of the district court shall be affirmed, the supreme court may award such damages against the appellant as they may think proper, not exceeding twenty-five per cent, on the amount of the money or other subject matter of such decree.

Party appealing to give bond.

SEC. 76. On the hearing of any such appeal, the supreme court shall annul, affirm, modify, or alter, the order or decree appealed from, or make any other order in the cause as justice under the law and rules of chancery proceedings may require; and may remit the cause to the district court, wherein the order or decree appealed from was made, for further proceedings, or may give any other direction in the cause as the circumstances of the case may require.

Proceedings in supreme court upon appeal.

SEC. 77. The supreme court shall have power, in any case in which they are satisfied that an appeal has been taken from an interlocutory, or any other order or decree, except a final one, for the purpose of delay or on any frivolous pretence, to award such damages to the adverse party, as they may under the circumstances deem proper; the criterion for which damages shall be prescribed by rule.

When supreme court may award damages in certain cases.

CHAPTER 95.

OF EVIDENCE.

SECTION

1. Who may issue subpoenas.
2. Subpoena by whom served.
3. Persons when obliged to attend as a witness.
4. Witness refusing to attend, how liable.
5. Failure to attend, a contempt of court.
6. In such case attachment may issue.
7. Depositions of witnesses may be taken.
8. When witnesses deposition may be taken.
9. Party may apply to justice of the peace, duty of justice.
10. Notice served on adverse party by agent or attorney.

SECTION

11. Service on one of several persons who are party to suit, sufficient.
12. Notice how served.
13. Party may waive right to notice.
14. Deponent how sworn and examined.
15. Examination how conducted.
16. Deposition to be written by justice.
17. Certificate to be annexed to deposition; form of certificate.
18. Deposition shall be delivered to the court by justice.
19. Deposition when not to be used.