

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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COMPILED BY  
MOSES SHERBURNE and WILLIAM HOLLINSHEAD, Esqrs.,  
COMMISSIONERS.

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## CHAPTER 83.

## THE COURT OF CHANCERY. (a)

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✓ [Chapter 94, Revised Statutes.]

Decree to transfer real estate, effect of.

(1.) SEC. XXXIII. 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, how appointed, and when.

(2.) SEC. XXXIV. [*As amended on page 20 of the amendments of 1852 to the revised statutes:*] No receiver shall be appointed in any cause commenced or pending in chancery, until after notice is given to the adverse party, if he appear or answer; nor until after answer filed, if he appear, unless he is in default for not answering.

SEC. XXXV TO XLI. [*Both inclusive, are abrogated by act of March 5, 1853.*]

Writ of injunction when to issue.

(3.) SEC. XLII. [*Sections 42 and 43, as amended on page 20 of the amendments of 1852 to the revised statutes:*] No writ of injunction shall issue in any case, but upon bill or petition filed, or motion after filing the same, and affidavit of the truth of the grounds of the application, either by the party applying for the injunction, or some competent witness or other proof.

Writs of injunction may be granted in vacation.

(4.) SEC. XLIII. Writs of injunction may be granted by the court or a judge in vacation, and the court shall proceed thereon, according to the course of the proceedings in courts of equity.

(a) The court of chancery as a separate tribunal is abolished by the act of March 5, 1853, on page 19 of the laws of 1853, which is published under "district courts." The provisions of the act of 1853 render inoperative a large portion of the chapter of the revised statutes of 1851, which applied to the court of chancery. We publish such sections as are in force.

Sections 1 to 32, both inclusive, are abrogated by section 14 of chapter 9 of the laws of 1853, page 19.

SEC. XLIV TO LIII. [*Both inclusive, are abrogated by the act of March 5, 1853.*]

(5.) SEC. LIV. 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.

Sufficiency of sureties how ascertained.

(6.) SEC. LV. 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.

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

(7.) SEC. LVI. 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.

Judge may direct the delivery of the person entitled thereto.

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

(8.) SEC. LVII. 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.

When bills may be filed for the foreclosure of mortgages.

(9.) SEC. LVIII. (a) 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.

(10.) SEC. LIX. 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.

(11.) SEC. LX. 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.

(12.) SEC. LXI. Upon filing a bill for the foreclosure or satisfaction

Complainant to

(a) See with this section, section 2 of chapter 61 laws of 1858 on page 141, published under head "Foreclosure of mortgages by advertisement."

state in bill whether proceedings have been had at law.

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.

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

(13.) SEC. LXII. 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.

Sales of mortgaged premises by whom made.

(14.) SEC. LXIII. 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.

Deeds how executed, and the effects of.

(15.) SEC. LXIV. 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.

The proceeds of sale how to be applied.

(16.) SEC. LXV. 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.

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

(17.) SEC. LXVI. 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 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.

(18.) SEC. LXVII. 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.

(19.) SEC. LXVIII. 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.

(20.) SEC. LXIX. 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.

(21.) SEC. LXX. 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 court to make further order founded on decree.

(22.) SEC. LXXI. 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.

When decree shall direct sale of the whole premises.

(23.) SEC. LXXII. 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.

Proceeds in such case how applied.

(24.) SEC. LXXIII. 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.

When court may appoint special master.

#### OF APPEALS TO THE SUPREME COURT. (a)

(25.) SEC. LXXIV. 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.

(26.) SEC. LXXV. 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.

(a) The following four sections on the subject of appeal from decrees in chancery are inserted as there is doubt of their being repealed, if not they are applicable to judgments at law in similar cases where not elsewhere regulated.

Proceedings in  
supreme court  
upon appeal.

(27.) SEC. LXXVI. 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.

When supreme  
court may award  
damages in cer-  
tain cases.

(28.) SEC. LXXVII. 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 pretense, 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.

## CHAPTER 84.

### EVIDENCE.

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