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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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C. S. p. 611, Sect. 73.

3 of habeas corpus, when necessary to bring before them any
 4 prisoner for trial, in any criminal case lawfully pending in
 5 the same court, or to bring any prisoner to be examined as
 6 a witness in any action or proceeding, civil or criminal,
 7 pending in such court, when they think the personal attend-
 8 ance and examination of the witness, necessary for the at-
 9 tainment of justice.

CHAPTER LXXXI.

OF THE FORECLOSURE OF MORTGAGES.

TITLE I.

FORECLOSURE BY ADVERTISEMENT.

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C. S. p. 643, Sect. 1.

1 SECTION 1. Every mortgage of real estate, containing
 2 therein a power of sale, upon default being made in any con-
 3 dition of such mortgage, may be foreclosed by advertise-
 4 ment, in the cases and in the manner hereinafter specified.

C. S. p. 643, Sect. 2.

1 SECT. 2. To entitle any party to give a notice as here-
 2 inafter prescribed, and to make such foreclosure, it is re-
 3 quisite :

4 *First.*—That some default in a condition of such mort-
 5 gage has occurred by which the power to sell has become
 6 operative ;

7 *Second.*—That no action or proceeding has been institu-
 8 ted at law, to recover the debt then remaining secured by
 9 such mortgage, or any part thereof ; or if any action or pro-
 10 ceeding has been instituted, that the same has been discon-
 11 tinued, or that an execution upon the judgment rendered
 12 therein, has been returned unsatisfied, in whole or in part ;
 13 and,

14 *Third.*—That the mortgage containing such power of
 15 sale has been duly recorded, and if it has been assigned,
 16 that all the assignments thereof have been recorded.

C. S. p. 644, Sect. 3.

1 SECT. 3. When a mortgage is given to secure the pay-
 2 ment of money by instalments, each of the instalments either
 3 of principal or interest, mentioned in such mortgage, may
 4 be taken and deemed to be a separate and independent
 5 mortgage ; and such mortgage for each of such instalments,
 6 may be foreclosed in the same manner, and with the like effect
 7 as if such separate mortgage as given for each of such sub-
 8 sequent instalments, and a redemption of any such sale by
 9 the mortgagor shall have the like effect, as if the sale for

10 such instalments had been made upon an independent prior
11 mortgage.

1 SECT. 4. In such case if the mortgaged premises con-
2 sist of separate and distinct farms or tracts, only such tract, ^{New.}
3 or tracts, shall be sold as are sufficient to satisfy the in-
4 stalment or instalments then due with interest and costs of
5 sale, but if said premises do not consist of such separate and
6 distinct farms or tracts the whole shall be sold, and in either
7 case the proceeds of such sale shall, after satisfying the in-
8 terest, portion, or instalment of the principal due with inter-
9 est and costs of sale, be applied towards the payment of the
10 residue of the sum secured by said mortgage, and not due
11 and payable at the time of such sale, and, if such residue
12 does not bear interest, such application shall be made with
13 a rebate of the legal interest for the time during which such
14 residue shall not be due and payable, and the surplus, if
15 any, shall be paid to the mortgagor, his legal representa-
16 tives or assigns.

1 SECT. 5. Notice that such mortgage will be foreclosed
2 by sale of the mortgaged premises, or some part of them, ^{C. S. p. 644, Sect. 4.}
3 shall be given by publishing the same for six successive ^{Amended.} c 75
4 weeks, at least, once in each week, in a newspaper printed
5 and published in the county where the premises intended to
6 be sold, or some part thereof, are situated, if there is one,
7 if not, then in a newspaper printed and published at the
8 capital of the state. In the latter case a copy of such notice
9 shall be served at least four weeks before the time of such
10 sale on the person in possession of the mortgaged premises,
11 if the same are occupied, but when they are not occupied,
12 and the mortgagor, his heirs or personal representatives re-
13 side in the county where such premises lie, then on such
14 mortgagor, his heirs or personal representatives, as the
15 case may be; proof of such service may be made, certified and
16 recorded, in the same manner and with like effect as proof
17 of the publication of a notice of sale under a mortgage.

1 SECT. 6. Every notice shall specify:
2 *First.*—The names of the mortgagor and of the mortga-
3 gee, and the assignee, if any;
4 *Second.*—The date of the mortgage, and when recorded; ^{C. S. p. 644, Sect. 5.}
5 *Third.*—The amount claimed to be due thereon, and ^{Amended.}
6 taxes, if any, paid by the mortgagee, at the date of the
7 notice;
8 *Fourth.*—A description of the mortgaged premises, con-
9 forming substantially to that contained in the mortgage;
10 and,
11 *Fifth.*—The time and place of sale.

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C. S. p. 644, Sect. 6.
Amended.

1 SECT. 7. The sale shall be at public vendue, between
2 the hours of nine o'clock in the forenoon, and the setting of
3 the sun, in the county in which the premises to be sold, or
4 some part thereof, are situated, and shall be made by the
5 sheriff of the county, or his deputy, to the highest bidder.

C. S. p. 644, Sect. 7.

1 SECT. 8. Such sale may be postponed from time to time,
2 by inserting a notice of such postponement, as soon as prac-
3 ticable, in the newspaper in which the original advertise-
4 ment was published, and continuing such publication until
5 the time to which the sale is postponed, at the expense of
6 the party requesting such postponement.

C. S. p. 644, Sect. 8.
Amended.

1 SECT. 9. If the mortgaged premises consist of separate
2 and distinct farms, or tracts, they shall be sold separately,
3 and no more farms or tracts, shall be sold, than are neces-
4 sary to satisfy the amount due on such mortgage at the date
5 of the notice of sale, with interest, taxes paid, and costs of
6 sale.

C. S. p. 644, Sect. 9.

1 SECT. 10. The mortgagee, his assigns, or his, or their
2 legal representatives, may fairly, and in good faith, pur-
3 chase the premises so advertised, or any part thereof, at such
4 sale.

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1862—p. 72, Sect. 3.
Amended.

1 SECT. 11. Whenever any sale of real property is made,
2 under a power of sale contained in any mortgage, the officer
3 shall make and deliver to the purchaser a certificate under
4 his hand and seal containing:
5 *First.*—A description of the mortgage under which such
6 sale is made;
7 *Second.*—A description of the real property sold;
8 *Third.*—The price paid for each parcel sold separately;
9 *Fourth.*—The date of the sale and name of the purchaser;
10 *Fifth.*—The time allowed by law for redemption.
11 Said certificate shall be executed, proved, or acknow-
12 ledged, and recorded as required by law for a conveyance
13 of real estate within twenty days after such sale.

1862—p. 73, Sect. 4.
Amended.

1 SECT. 12. Such certificate so proved, acknowledged and
2 recorded shall, upon the expiration of the time for redemp-
3 tion, operate as a conveyance to the purchaser or his assigns
4 of all the right title and interest of the mortgagor in and to
5 the premises named therein at the date of said mortgage
6 without any other conveyance whatever.

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C. S. p. 645, Sect. 11.
Amended.

1 SECT. 13. The mortgagor, his heirs, executors, adminis-
2 trators or assigns, whose real property is sold in conformity
3 to the provisions of this chapter, may within twelve months
4 after such sale, redeem such property as hereinafter provi-

5 ded, by paying the sum of money for which the same was
6 sold, together with interest on the same, at the rate of seven
7 per cent. per annum, from the time of such sale.

1 SECT. 14. Redemption shall be made as follows: The
2 person desiring to redeem, shall pay to the person holding
3 the right acquired under such sale, or for him to the sheriff,
4 who made the sale or his successor in office, the amount re-
5 quired by law for such redemption, and shall produce to
6 such person or officer—

7 *First.*—A certified copy of the docket of the judgment
8 or the deed of conveyance or mortgage, or of the record or
9 files evidencing any other lien under which he claims the
10 right to redeem, certified by the officer in whose custody
11 such docket, record, or files shall be;

12 *Second.*—Any assignment necessary to establish his
13 claim, verified by the affidavit of himself, or of a subscrib-
14 ing witness thereto, or of some person acquainted with the
15 signature of the assignor;

16 *Third.*—An affidavit of himself or his agent, showing the
17 amount then actually due on his lien.

1 SECT. 15. The person or officer from whom such re-
2 demption is made, shall make and deliver to the person re-
3 deeming a certificate under his hand and seal, containing—

4 *First.*—The name of the person redeeming, and the
5 amount paid by him on such redemption;

6 *Second.*—A description of the sale from which such re-
7 demption is made, and of the property redeemed;

8 *Third.*—Stating upon what claim such redemption is
9 made, and if upon a lien, the amount claimed to be due
10 thereon at the date of redemption.

11 Such certificate shall be executed and proved or acknowl-
12 edged and recorded, as provided by law for conveyance of
13 real estate, and if not so recorded within ten days after such
14 redemption, such redemption and certificate is void, as
15 against any person in good faith making redemption from
16 the same person or lien. If such redemption is made by
17 the owner of the property sold, his heirs or assigns, such re-
18 demption annuls the sale; if by a creditor holding a lien
19 upon the property or some part thereof, said certificate so
20 executed and proved or acknowledged and recorded, oper-
21 ates as an assignment to him of the right acquired under
22 such sale, subject to such right of any other person to re-
23 deem, as is, or may be provided by law.

1 SECT. 16. If no such redemption is made, the senior
2 creditor having a lien legal or equitable on the real estate ^{New.}
3 or some part thereof subsequent to the mortgage, may re-
4 deem within five days after the expiration of said twelve

1862—p. 73, Sect. 5.

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1862—p. 73, Sect. 6.
Amended.

5 months, and each subsequent creditor having such lien,
 6 within five days after the time allowed all prior lien hold-
 7 ers, as aforesaid, may redeem by paying the amount afore-
 8 said and all liens prior to his own held by the party from
 9 whom the redemption is made; *Provided*, that no creditor
 10 shall be entitled to redeem unless, within the year allowed
 11 for redemption, he files notice of his intention to redeem in
 12 the registry of deeds where the mortgage is recorded.

New.
 1 SECT. 17. The interest acquired upon any such sale is
 2 subject to the lien of any attachment or judgment, duly
 3 made or docketed, against the person holding the same, as
 4 in case of real property, and may be attached, or sold on
 5 execution, in the same manner.

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C. S. p. 645, Sect. 13.
 1 SECT. 18. If after sale of any real estate, made as herein
 2 prescribed, there remains in the hands of the officer making
 3 the sale, any surplus money, after satisfying the mortgage
 4 on which such real estate was sold, and payment of the
 5 taxes and costs of sale, the surplus shall be paid over
 6 by such officer on demand to the mortgagor, his legal rep-
 7 resentatives or assigns.

C. S. p. 645, Sect. 14.
 1 SECT. 19. Any party desiring to perpetuate the evidence
 2 of any sale made in pursuance of the provisions of this chap-
 3 ter, may procure:
 4 *First.*—An affidavit of the publication of the notice of
 5 sale, and of any notice of postponement, to be made by the
 6 printer of the newspaper in which the same was inserted,
 7 or by some person in his employ knowing the facts; and,
 8 *Second.*—An affidavit of the fact of any sale pursuant to
 9 such notice, to be made by the person who acted as auction-
 10 eer at the sale, stating the time and place at which the same
 11 took place, the sum bid, and the name of the purchaser.
 12 Which affidavits may be taken and certified by any officer
 13 authorized by law to administer oaths.

C. S. p. 645, Sect. 15.
 1 SECT. 20. Such affidavits shall be recorded at length by
 2 the register of deeds of the county in which the premises
 3 are situated, in a book kept for the record of mortgages;
 4 and such original affidavits, the record thereof, and certified
 5 copies of such record, shall be presumptive evidence of the
 6 facts therein contained.

C. S. p. 645, Sect. 16.
 1 SECT. 21. A note, referring to the page and book where
 2 the evidence of any sale having been made under a mort-
 3 gage is recorded, shall be made by the register recording
 4 such evidence, in the margin of the record of such mort-
 5 gage, if such record is in his office.

1 SECT. 22. A record of the affidavits aforesaid, and of
 2 the certificate executed on the sale of the premises, shall be
 3 sufficient to pass the title thereto; and the said conveyance C. S. p. 645, Sect. 17.
 Amended.
 4 shall be an entire bar of all claim or equity of redemption of the
 5 mortgagor, his heirs and representatives, and of all persons
 6 claiming under him or them, by virtue of any title subse-
 7 quent to such mortgage.

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TITLE II.

FORECLOSURE BY ACTION.

1 SECT. 23. There shall be but one method of foreclosing
 2 mortgages in court, and in every case the mortgaged premi- New.
 3 ses or some part thereof, shall be sold at public auction to
 4 the highest bidder, to satisfy the debt secured, with costs
 5 and disbursements.

1 SECT. 24. Actions for the foreclosure of mortgages, New.
 2 shall be governed by the same rules and provisions of stat-
 3 ute as civil actions, except as herein otherwise expressly
 4 prescribed.

1 SECT. 25. Service by publication, as provided in sec- New.
 2 tion five of title one, of this chapter, may be made upon all
 3 parties to the action against whom no personal judgment is
 4 sought, and in such case judgment may be taken without
 5 giving security as to these parties, at the expiration of
 6 twenty days after the completion of the period of publica-
 7 tion; but such parties or any of them shall be permitted to
 8 appear and defend, upon good cause shown, at any time be-
 9 fore final decree.

1 SECT. 26. Judgment shall be entered under the direc- New.
 2 tion of the court, adjudging the amount due, with costs and
 3 disbursements, and the sale of the mortgaged premises or
 4 some part thereof to satisfy said amount, and directing the
 5 sheriff to proceed and sell the same, according to the pro-
 6 visions of law relating to sales of real estate on execution,
 7 and make report to the court.

1 SECT. 27. A transcript of such judgment shall be made New.
 2 and signed by the judge, or certified by the clerk, and de-
 3 livered to the sheriff, and shall be his authority for making
 4 the sale.

1 SECT. 28. The mortgagee or any one claiming under C. S. p. 645, Sect. 9,
 in part. Amended.
 2 him may fairly and in good faith, bid off the premises at

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3 said sale, and in such case, the statement of such fact in the
4 the report of sale, shall have the same effect as a receipt for
5 money paid upon a sale for cash.

New. 1 SECT. 29. Upon the coming in of the report of sale, the
2 court shall grant an order, confirming the same, or if it ap-
3 pears upon due examination, that justice has not been done,
4 may order a re-sale on such terms as are just.

New. 1 SECT. 30. Upon confirmation of the report of sale the
2 clerk shall enter satisfaction of the judgment to the extent
3 of the sum bid for the premises, less expenses and costs,
5 and for any balance of said judgment execution may issue
6 as in other cases, but no execution shall issue on such judg-
7 ment until after a sale of the mortgaged premises and the
8 application of the amount realized as aforesaid.

New. 1 SECT. 31. The mortgagor or those claiming under him
2 shall have one year after the date of the order of confirma-
3 tion in which to redeem the premises sold or any separate
4 portion thereof, by paying the amount bid therefor with in-
5 terest thereon from the day of sale, and judgment creditors
6 may redeem in the order and manner specified in title one
7 of this chapter; *Provided*, That no creditor shall be entitled
8 to redeem, unless within the year allowed for redemption
9 he files notice of his intention to redeem in the office of the
10 district clerk where the judgment is entered.

New. 1 SECT. 32. The provisions of sections three, four, nine,
2 eleven, fourteen, fifteen and seventeen of title one aforesaid,
3 shall apply to and govern proceedings under this title.

New. 1 SECT. 33. At the expiration of the time allowed for re-
2 demption, and no one redeeming, the court upon the
3 application of the purchaser or his assigns shall grant
4 a final decree, which shall recite the judgment afore-
5 said, the fact of sale, the premises sold, the amount bid
6 therefor, and that no redemption has been made, and
7 shall adjudge and decree that the title to said premises
8 is in said purchaser or his assigns free and clear of all equity
9 of redemption on the part of any one who is a party to the
10 judgment. Such decree being recorded in the office of the
11 register of deeds of the county in which the premises lie,
12 shall be effectual to pass the title to the same as against the
13 parties aforesaid.

283 C. S. p. 672, Sect. 16.
Amended. 1 SECT. 34. Whenever there is a sale for cash under the
2 provisions of this title, and after satisfying the mortgage
3 debt with costs and expenses, there is a surplus, it shall be
4 brought into court for the benefit of the mortgagor or the
5 person entitled thereto, subject to the order of the court.

1 SECT. 35. If such surplus, or any part thereof, remains
2 in the said court, for the term of three months, without be-
3 ing applied for, the district judge may direct the same to be
4 put out at interest, subject to the order of the court for the
5 benefit of the defendant, his representatives or assigns, to
6 be paid to them by the order of the court.

C. S. p. 672, Sect. 17.

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1 SECT. 36. Whenever an action is brought for the fore-
2 closure of any mortgage upon which there is due any inter-
3 est, or any portion or instalment of the principal, and there
4 are other portions or instalments to become due subsequent-
5 ly, the action shall be dismissed upon the defendant's bring-
6 ing into court, at any time before the judgment of sale, the
7 principal and interest due, with costs.

C. S. p. 672, Sect. 18.
Amended.

1 SECT. 37. If, after a judgment of sale is entered against
2 a defendant in such case, he brings into court the principal
3 and interest due, with costs, the proceedings in the action
4 shall be stayed, but the court shall enter a judgment of fore-
5 closure and sale, to be enforced by a further order of the
6 court, upon a subsequent default in the payment of any por-
7 tion, or instalment of the principal, or of any interest there-
8 after to grow due.

C. S. p. 672, Sect. 19.
Amended.

1 SECT. 38. Nothing herein contained shall be so con-
2 strued as to prevent the court from adjudging that the
3 whole of the mortgaged premises shall be sold, notwithstand-
4 ing they consist of distinct farms or tracts, whenever it is
5 made to appear that a sale of the whole will be most bene-
6 ficial to the interests of the parties.

New.

1 SECT. 39. Whenever possession of lands foreclosed as
2 aforesaid is wrongfully withheld, after final decree, the court
3 may compel delivery of possession to the party entitled
4 thereto by order directing the sheiriff to effect such delivery.

New.

CHAPTER LXXXII.

CONFESSION OF JUDGMENT WITHOUT ACTION.

1 SECTION 1. A judgment by confession may be entered
2 without action, either for money due, or to become due, or
3 to secure any person against contingent liability on behalf
4 of the defendant, or both in the manner prescribed by this
5 chapter.

C. S. p. 642, Sect. 1.

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