

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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1872.

SEC. 49. It can only be served by an elector of this state, and the service thereof shall not be deemed complete unless the party serving the same tenders to the person in whose custody the prisoner is, if such person is a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner. The officer granting the writ may in his discretion require a bond in a penalty not exceeding one thousand dollars, with sufficient sureties, conditioned that the obligors will pay all costs and expenses of the proceeding and the reasonable charges of restoring the prisoner to the person from whose custody he was taken, if he is remanded. Such bond shall run to the sheriff of the county and be filed in the office of the clerk of the court from which the writ issues.

By whom served—service complete, when.

Bond may be required.

SEC. 50. Every writ of habeas corpus issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; if he cannot be found it may be served by being left at the jail, or other place in which the prisoner is confined, with any under officer or other person of proper age having charge, for the time, of such prisoner.

Writ, how served.

SEC. 51. If the person on whom the writ ought to be served conceals himself, or refuses admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined.

How served if person conceals himself.

SEC. 52. If the writ is returnable at a certain day, such return shall be made, and such prisoner produced at the time and place specified therein; if it is returnable forthwith, and the place is within twenty miles of the place of service, such return shall be made, and such prisoner produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Return to be made, when.

SEC. 53. Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court, or to bring any prisoner to be examined as a witness in any action or proceeding, civil or criminal, pending in such court, when they think the personal attendance and examination of the witness necessary for the attainment of justice.

Court may issue writ to bring up prisoner to testify

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TITLE I.

FORECLOSURE BY ADVERTISEMENT.

SECTION 1. Every mortgage of real estate, containing therein a power of sale; upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified.

Mortgage foreclosed by advertisement, when. 6 Min. 168.

SEC. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it is requisite:

Conditions precedent to giving notice.

First. That some default in a condition of such mortgage has occurred by which the power to sell has become operative;

Second. That no action or proceeding has been instituted at law, to recover the debt then remaining secured by such mortgage, or any part thereof; or if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part; and,

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

SEC. 3. When a mortgage is given to secure the payment of money by installments, each of the installments, either of principal or interest, mentioned in such mortgage, may be taken and deemed to be a separate and independent mortgage; and such mortgage for each of such installments, may be foreclosed in the same manner, and with the like effect, as if such separate mortgage was given for each of such subsequent installments, and a redemption of any such sale by the mortgagor shall have the like effect as if the sale for such installments had been made upon an independent prior mortgage.

Mortgage may be foreclosed for each installment. 4 Min. 172. 8 Min. 69.

SEC. 4. In such case if the mortgaged premises consist of separate and distinct farms or tracts, only such tract, or tracts, shall be sold as are sufficient to satisfy the installment or installments then due, with interest and costs of sale, but if said premises do not consist of such separate and distinct farms or tracts, the whole shall be sold, and in either case the proceeds of such sale shall, after satisfying the interest, portion or installment of the principal due, with interest and costs of sale, be applied toward the payment of the residue of the sum secured by said mortgage, and not due and payable at the time of such sale, and, if such residue does not bear interest, such application shall be made with a rebate of the legal interest for the time during which such residue shall not be due and payable, and the surplus, if any, shall be paid to the mortgagor, his legal representatives or assigns.

Mortgaged premises, how sold—proceeds of sale, how applied.

Repealed 1877 ch 121

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SEC. 5. Notice that such mortgage will be foreclosed by sale of the mortgaged premises, or some part of them, shall be given by publishing the same for six successive weeks, at least once in each week, in a newspaper printed and published in the county where the premises intended to be sold, or some part thereof, are situated, if there is one, if not, then in a newspaper printed and published at the capital of the state. In the latter case, a copy of such notice shall be served, at least four weeks before the time of such sale, on the person in possession of the mortgaged premises, if the same are occupied, but when they are not occupied, and the mortgagor, his heirs or personal representatives reside in the county where such premises lie, then on such mortgagor, his heirs or personal representatives, as the case may be; proof of such service may be made, certified and recorded, in the same manner and with like effect as proof of the publication of a notice of sale under a mortgage.

Notice of foreclosure, how given.
4 Min. 32.
6 Min. 200.
7 Min. 46.
7 Min. 49.

1867-12

SEC. 6. Every notice shall specify:

First. The names of the mortgagor and of the mortgagee, and the assignee, if any;

Second. The date of the mortgage, and when recorded;

Third. The amount claimed to be due thereon, and taxes, if any, paid by the mortgagee, at the date of the notice;

Fourth. A description of the mortgaged premises, conforming substantially to that contained in the mortgage; and,

Fifth. The time and place of sale.

Notice shall specify, what.
4 Min. 25.
4 Min. 542.
6 Min. 168.
7 Min. 159.

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

Sale, how and by whom made.
6 Min. 175.
10 Min. 379.

SEC. 8. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed, at the expense of the party requesting such postponement.

Sale may be adjourned.
4 Min. 433.
8 Min. 432.

SEC. 9. If the mortgaged premises consist of separate and distinct farms, or tracts, they shall be sold separately, and no more farms or tracts, shall be sold, than are necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest, taxes paid, and costs of sale.

Separate farms or tracts to be sold separately.
4 Min. 260.
6 Min. 172.
10 Min. 379.

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SEC. 10. The mortgagee, his assigns, or his, or their legal representatives, may fairly, and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Who may purchase.
6 Min. 195.
8 Min. 435.

SEC. 11. Whenever any sale of real property is made, under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser a certificate under his hand and seal containing:

Officer to give purchaser certificate.

First. A description of the mortgage under which such sale is made;

Second. A description of the real property sold;

Third. The price paid for each parcel sold separately;

Fourth. The date of the sale and name of the purchaser;

Fifth. The time allowed by law for redemption.

1873-17A
1874-229

Said certificate shall be executed, proved, or acknowledged, and recorded as required by law for a conveyance of real estate within twenty days after such sale.

1891-106

SEC. 12. Such certificate so proved, acknowledged and recorded shall, upon the expiration of the time for redemption, operate as a conveyance to the purchaser, or his assigns, of all the right, title and interest of the mortgagor in and to the premises, named therein, at the date of said mortgage without any other conveyance whatever.

Effect of certificate.

Who may redeem, and when.
4 Min. 172.
4 Min. 483.
7 Min. 167.
8 Min. 387.
10 Min. 184.

SEC. 13. The mortgagor, his heirs, executors, administrators or assigns, whose real property is sold in conformity to the provisions of this chapter, may within twelve months after such sale, redeem such property as hereinafter provided, by paying the sum of money for which the same was sold, together with interest on the same, at the rate of seven per cent. per annum, from the time of such sale.

Redemption, how made.

SEC. 14. Redemption shall be made as follows: The person desiring to redeem, shall pay to the person holding the right acquired under such sale, or for him to the sheriff, who made the sale or his successor in office, the amount required by law for such redemption, and shall produce to such person or officer:

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

Second. Any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto, or of some person acquainted with the signature of the assignor;

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

Certificate of redemption to be given—certificate void, when—effect of redemption.

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SEC. 15. The person or officer from whom such redemption is made, shall make and deliver to the person redeeming a certificate under his hand and seal, containing:

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

Second. A description of the sale from which such redemption is made, and of the property redeemed;

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

1869-80

Such certificate shall be executed and proved or acknowledged and recorded, as provided by law for conveyance of real estate, and if not so recorded within ten days after such redemption, such redemption and certificate is void, as against any person in good faith making redemption from the same person or lien. If such redemption is made by the owner of the property sold, his heirs or assigns, such redemption annuls the sale; if by a creditor holding a lien upon the property or some part thereof, said certificate so executed and proved or acknowledged and recorded, operates as an assignment to him of the right acquired under such sale, subject to such right of any other person to redeem, as is, or may be provided by law.

1869-

Creditors may redeem, when and in what order.

SEC. 16. If no such redemption is made, the senior creditor having a lien, legal or equitable, on the real estate or some part thereof, subsequent to the mortgage, may redeem within five days after the expiration of said twelve months; and each subsequent creditor having such lien, within five days after the time allowed all prior lien holders, as aforesaid, may redeem by paying the amount aforesaid and all liens prior to his own held by the party from whom the redemption is made: *provided*, that no creditor shall be entitled to redeem unless, within the year allowed for redemption, he files notice of his intention to redeem in the registry of deeds where the mortgage is recorded.

Interest acquired on sale, subject to attachment or judgment.

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

Surplus on sale, how disposed of.

SEC. 18. If after sale of any real estate, made as herein prescribed, there remains in the hands of the officer making the sale, any surplus

money, after satisfying the mortgage on which such real estate was sold, and payment of the taxes and costs of sale, the surplus shall be paid over by such officer, on demand, to the mortgagor, his legal representatives or assigns.

SEC. 19. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure:

Evidence of sale, how perpetuated. 8 Min. 342.

First. An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the printer of the newspaper in which the same was inserted, or by some person in his employ knowing the facts; and,

1874-230

Second. An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid, and the name of the purchaser. Which affidavits may be taken and certified by any officer authorized by law to administer oaths.

SEC. 20. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages; and such original affidavits, the record thereof, and certified copies of such record, shall be presumptive evidence of the facts therein contained.

1869-80

Affidavits shall be recorded—evidence.

1874-230

SEC. 21. A note, referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the register recording such evidence, in the margin of the record of such mortgage, if such record is in his office.

Register to make note of record of affidavits.

SEC. 22. A record of the affidavits aforesaid, and of the certificate executed on the sale of the premises, shall be sufficient to pass the title thereto; and the said conveyance shall be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage.

Effect of record of affidavits and certificate. 6 Min. 240.

TITLE II.

FORECLOSURE BY ACTION.

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SEC. 23. There shall be but one method of foreclosing mortgages in court, and in every case the mortgaged premises or some part thereof, shall be sold at public auction to the highest bidder, to satisfy the debt secured, with costs and disbursements.

Mortgages, how foreclosed by action.

SEC. 24. Actions for the foreclosure of mortgages, shall be governed by the same rules and provisions of statute as civil actions, except as herein otherwise expressly prescribed.

Action, how governed.

SEC. 25. Service by publication, as provided in section five of title one, of this chapter, may be made upon all parties to the action against whom no personal judgment is sought, and in such case judgment may be taken without giving security as to these parties, at the expiration of twenty days after the completion of the period of publication; but such parties or any of them shall be permitted to appear and defend, upon good cause shown, at any time before final decree.

Service by publication, on what parties allowed—judgment taken without giving security.

1868-113

SEC. 26. Judgment shall be entered under the direction of the court, adjudging the amount due, with costs and disbursements, and the sale of the mortgaged premises or some part thereof to satisfy said amount, and directing the sheriff to proceed and sell the same, according to the pro-

Judgment how entered in first instance.

visions of law relating to sales of real estate on execution, and make report to the court.

Transcript of judgment to be furnished sheriff.

SEC. 27. A transcript of such judgment shall be made and signed by the judge, or certified by the clerk, and delivered to the sheriff, and shall be his authority for making the sale.

Who may bid off premises—sheriff may take receipt as cash, when.

SEC. 28. The mortgagee or any one claiming under him may fairly and in good faith, bid off the premises at said sale, and in such case, the statement of such fact in the report of sale, shall have the same effect as a receipt for money paid upon a sale for cash.

6 Min. 175.
8 Min. 435.
Report of sale shall be confirmed, or re-sale ordered.

SEC. 29. Upon the coming in of the report of sale, the court shall grant an order, confirming the same, or if it appears upon due examination, that justice has not been done, may order a re-sale, on such terms as are just.

Clerk to enter satisfaction of judgment, when.

SEC. 30. Upon confirmation of the report of sale the clerk shall enter satisfaction of the judgment, to the extent of the sum bid for the premises less expenses and costs, and for any balance of said judgment execution may issue as in other cases, but no such execution shall issue on such judgment until after a sale of the mortgaged premises and the application of the amount realized as aforesaid.

Who may redeem—time and manner of redemption.

SEC. 31. The mortgagor or those claiming under him shall have one year after the date of the order of confirmation, in which to redeem the premises sold or any separate portion thereof, by paying the amount bid therefor with interest thereon from the day of sale, and judgment creditors may redeem in the order and manner specified in title one of this chapter: *provided*, that no creditor shall be entitled to redeem, unless within the year allowed for redemption he files notice of his intention to redeem in the office of the district court where the judgment is entered.

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Provisions of title one to apply.

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

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Final decree granted, when form and effect of such decree.

SEC. 33. At the expiration of the time allowed for redemption, and no one redeeming, the court upon the application of the purchaser or his assigns shall grant a final decree, which shall recite the judgment aforesaid, the fact of sale, the premises sold, and the amount bid therefor, and that no redemption has been made, and shall adjudge and decree that the title to said premises is in said purchaser or his assigns free and clear of all equity of redemption on the part of any one who is a party to the judgment. Such decree being recorded in the office of the register of deeds of the county in which the premises lie, shall be effectual to pass the title to the same as against the parties aforesaid.

Surplus on sale, how disposed of.

SEC. 34. Whenever there is a sale for cash under the provisions of this title, and after satisfying the mortgage debt with costs and expenses, there is a surplus, it shall be brought into court for the benefit of the mortgagor or the person entitled thereto, subject to the order of the court.

Surplus to be invested, when.

SEC. 35. If such surplus, or any part thereof, remains 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.

Action to foreclose mortgage for installment, dismissed, when.

SEC. 36. Whenever an action is brought for the foreclosure of any mortgage upon which there is due any interest, or any portion or installment of the principal, and there are other portions or installments to become due subsequently, the action shall be dismissed upon the defendant's bringing into court, at any time before the judgment of sale, the principal and interest due, with costs.

SEC. 37. If, after a judgment of sale is entered against a defendant in such case, he brings into court the principal and interest due, with costs, the proceedings in the action shall be stayed, but the court shall enter a judgment 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.

Proceedings stayed, when.

SEC. 38. Nothing herein contained shall be so construed as to prevent the court from adjudging that the whole of the mortgaged premises shall be sold, notwithstanding they consist of distinct farms or tracts, whenever it is made to appear that a sale of the whole will be most beneficial to the interests of the parties.

Court may order sale of whole of mortgaged premises, when.

SEC. 39. Whenever possession of lands foreclosed as aforesaid is wrongfully withheld after final decree, the court may compel delivery of possession to the party entitled thereto by order directing the sheriff to effect such delivery.

May compel delivery of possession by order.

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CHAPTER LXXXII.

CONFESSION OF JUDGMENT WITHOUT ACTION.

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2. Statement shall be made—shall contain, what.
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SUBMITTING CONTROVERSY WITHOUT ACTION.

7. Matter in dispute may be submitted to court, when and how.
8. Judgment, how entered—what constitutes judgment roll.

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

Judgment by confession, in what cases allowed.

SEC. 2. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect:

Statement shall be made—shall contain what. 7 Min. 487.

First. It shall authorize the entry of judgment for a specified sum;

Second. If it is for money due or to become due, it shall state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due, or to become due.

Third. If it is for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor, does not exceed the same.

SEC. 3. The statement may be filed with the clerk of the district court, who shall indorse upon it, and enter in a judgment book a judgment of the district court for the amount computed. The statement and verification, with the judgment indorsed thereon, become the judgment roll.

Shall be filed with clerk who shall enter judgment—judgment roll, what.