

GENERAL STATUTES
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a defective conveyance from an actual owner. (3323) [6784]

8165. Power of sale in mortgage deemed part of security—When a power to sell lands is given to the grantee in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in and may be executed by any person who, by assignment, or otherwise, shall become entitled to the money so secured to be paid. (3324) [6785]

8166. Power of attorney excepted—The provisions

of this chapter shall not extend to a simple power of attorney to convey lands in the name and for the benefit of the owner. (3325) [6786]

8167. Definition of terms—The term “grantor of power” is used in this chapter as designating the person by whom a power is created, whether by grant or devise; and the term “grantee of a power” is used as designating the person in whom a power is vested, whether by grant, devise, or reservation. (3326) [6787]

CHAPTER 61A

OFFICIAL TRUSTS

8168. Corporate authorities or judge to convey lands—That when the corporate authorities of any town or the judge of the district court for any county wherein such town is situated enter, at the proper land office, the land or any part thereof, settled and occupied as the site of such town, pursuant to an act of congress, entitled, “An act for the relief of the citizens of towns upon lands of the United States under certain circumstances,” passed May 23, 1854, and acts amendatory thereof, such authorities or judge shall dispose of and convey the title of such lands, or any part thereof, to the persons and in manner herein specified. ('07 c. 210 § 1) [6788]

8169. Conveyances, when and how executed—Any such judge or authorities, holding the title to any such lands in trust, as declared by said act of congress, shall, by a good and sufficient deed, grant and convey the title to said land, and each part thereof, to the person entitled thereto, according to his rights or interest therein, existing in law or equity, at the time of entry of such lands; and when any part of such lands is occupied or possessed by any one claiming by grant, lease or sale from any other person, the respective rights and interests of such persons shall not be changed or impaired by such conveyance. Every such conveyance shall be executed and acknowledged as to admit to record in the office of the register of deeds, and if made previous to the issuing of the patent of such lands, it shall contain a covenant that the grantor, shall, after issuing of the patent therefor, execute and deliver to the grantee, his heirs and assigns, such other deed as may be or become necessary to fully vest and perfect the title to such lands in such grantee, his heirs or assigns. ('07 c. 210 § 2) [6789]

8170. Entry of lands—Notice to be given—Within thirty days after the entry of such lands, or if heretofore entered, after the passage of this act, such judge or authorities so entering the same, shall give posted notice of such entry in such town and publish notice thereof for three consecutive weeks in the county where such land is situated. Such notice shall contain an accurate description of the lands so entered as stated in the certificate of entry or duplicate receipt for the purchase money thereof. ('07 c. 210 § 3) [6790]

8171. Claimants to file statement—Every person claiming to be entitled to such land or any part thereof, or his duly authorized agent or attorney, shall within sixty days after the first publication of such notice, sign a written statement containing an accurate description of the parcel or parts in which he claims to have an interest and the specific right, interest or

estate which he claims to be entitled to receive, and shall deliver the same to such judge or authorities; and any person failing to sign and deliver such statement within the time herein specified, shall as against adverse claimants, be forever barred from the right of claiming or recovering such lands, or any estate or interest therein in any court. ('07 c. 210 § 4) [6791]

8172. Adverse claims, how adjusted—Action—In case there are adverse claimants to such lands or any part thereof, and the controversy is not settled by written agreement, it may be determined by submission in writing by the parties to reference or arbitration and by the written award of the arbitrators. If it is not so settled or determined within three months from the time of entry of such land, either claimant may commence a new action against the other in the district court of the county wherein such lands are situated. ('07 c. 210 § 5) [6792]

8173. Evidence on trial of action—Upon the trial of such action, either party may give in evidence the statement deposited by the other, or the person under whom he claims, as provided for in section 4 [8171] of this act, and the person who made the first claim to any settlement, either in person or by agent, servant or tenant, or those claiming under him, upon such land, shall in such action be deemed to have the right to such land. ('07 c. 210 § 6) [6793]

8174. Summons to adverse claimants—Hearing—Evidence—Appeals—In case such controversy is not settled or determined by agreement or arbitration within the time hereinbefore specified, and is not prosecuted within one month after such time expires, if the title to such land is held by any such judge, he shall summon the claimants to appear before him at a specified time and place within the county wherein such lands are situated, and make allegations and proof of their respective claims. At such time and place if the parties appear, such judge shall proceed to hear their allegations and proof and shall thereupon determine, in writing, such controversy. Upon such hearing the deposited statements, required by section 4 [8171] of this act, shall stand for the pleadings and either party may use in evidence the statement of the other or of the person under whom he claims. Witnesses testifying at such hearing shall be sworn and the evidence reduced to writing. Such judge or any justice of the peace, may issue subpoenas to witnesses to attend such hearing, and any person so served who fails to appear in response to such subpoena shall be deemed guilty of contempt and may be attached to answer such contempt and to testify in the case. There shall be no postpone-

ment of such hearing except for cause. The summons and subpoenas issued in such cases shall be treated and served in the same manner as processes in civil actions, and the fees of officers and witnesses shall be the same as provided in such cases. Either party may appeal to the supreme court from the decision of the judge in such proceeding in the same manner as appeals in civil actions are taken from a judgment of the district court. Upon such appeal, the judge shall make a return to the supreme court consisting of the statements constituting the pleadings, the evidence, and the decision of such judge. If any person summoned to appear before such judge in such a proceeding fails to appear, he shall be deemed to have waived and relinquished all his right, title, interest and estate in the land in controversy, and every part thereof, and shall be forever barred from asserting or claiming any right, title, interest or estate therein. ('07 c. 210 § 7) [6794]

8175. Actions by corporate authorities—Pleadings— If such controversy is not settled or determined as mentioned and provided in section 7 [8174], and the title of such land is held by the corporate authorities of any town, such authorities may commence an action in the district court of the county wherein such land is situated against the adverse claimants to determine the same. The complaint shall be, in the nature of a bill of interpleader and shall set forth an accurate description of the lands in controversy and the character and extent of claimants' rights, interests or estates as shown by their respective statements deposited as provided by section 4 [8171] of this act, and shall pray that the claimants be required to appear in such court and prosecute their claims or be forever barred thereof. The summons shall be issued and served in like manner as required by section 7 [8174] and any party summoned who fails to appear and answer such complaint as required by said summons shall be forever barred of all right to assert any claim or title to such lands adverse to the other claimants in such action. Any claimant who appears shall make answer to such complaint and either disclaim any right, title, interest or estate in the lands therein described or set forth the character and extent of his right, title, interest or estate therein. ('07 c. 210 § 8) [6795]

8176. Statement of expense—Charge on lands— As soon as may be after the expiration of sixty days from the time of the first published notice, required by section 3 [8170] of this act, the judge or authorities holding the title to lands described in such notice shall make a written statement, containing a true account of moneys expended in the acquisition of the title and the administration of the trust, including moneys paid for the purchase of such lands, all necessary traveling expenses, posting and publishing notices, serving summons, subpoenas and other processes and all other necessary expenses incident to such trust, and also an account of charges for services rendered as such trustee. The whole amount of such statement of account shall be a charge in favor of the trustee upon the lands as held in trust and shall be paid pro rata by the claimants to such land, as their respective entitled shares thereof appear. ('07 c. 210 § 9) [6796]

8177. Person entitled to deed to pay charges— Before any such judge or authorities shall be required to execute, acknowledge or deliver any deed of conveyance of such land or any part thereof, as hereinbefore provided, to any person entitled to such deed, such person shall pay or tender to such judge or authorities the amount shown by the statement provided in section 9 [8176] of this act, chargeable upon the same or that part thereof to be conveyed, together with interest on each of the items of such account, at 6 per

cent per annum from the date of each item, and also such further amounts as are reasonable for preparing, executing and acknowledging such deed and acknowledgment fees therefor. ('07 c. 210 § 10) [6797]

8178. Conveyances, when to be executed— When not—After the expiration of sixty days from the time of the first published notice provided in section 3 [8170], such judge or corporate authorities shall, upon demand of the person entitled thereto, and upon payment or tender by such person to such judge or authorities of the amount provided in section 10 [8177], execute, acknowledge and deliver to such person a deed of conveyance, as provided in section 2 [8169] and in accordance with the statement required to be made and deposited by section 4 [8171] of this act; provided, that no such deed for any of such land, or any part thereof, shall be executed or delivered when there are adverse claimants thereto until such controversy is settled or determined as hereinbefore provided. In all cases where there is no such controversy, upon the application of any person claiming such land, the judge of the district court of the district where said land is situated shall by such notice as he shall prescribe, summon before him such claimant and cause proof to be made by oral testimony, affidavit, deposition or otherwise, as shall satisfy him who is the person entitled to such land, and when it shall thus be determined, the said judge or authorities upon like demand and payment, or tender of payment, shall execute and deliver to the person so determined to be entitled thereto a deed of conveyance, as provided in section 2 [8169]. ('07 c. 210 § 11) [6798]

8179. Judge shall be seized of title to lands, when— In case any judge of the district court who enters any such land under said act of congress and thereby becomes the sole trustee thereof, is possessed of or entitled to the same or any part thereof in accordance with the provisions of this act and his right or claim is not disputed or claimed adversely by any other person, he shall be seized of the title thereto and the estate therein in fee simple to his own use absolutely, free and discharged of such trust; and no conveyance, other than the patent of such land, shall be necessary to perfect his title thereto. If any such land is claimed by any person adversely to such judge, the conflicting claims between them shall be determined by settlement, arbitration or by action as hereinbefore provided for determining adverse claims; and in case such an action is necessary, the issues therein shall be tried before and determined by some other judge of the district court who is disinterested. ('07 c. 210 § 12) [6799]

8180. Title to lands, from what time held— For the purpose of determining the rights of adverse claimants to any such entered land, the judge or corporate authorities shall be deemed to possess and hold the title thereto in trust, from the time of entry thereof. ('07 c. 210 § 13) [6800]

8181. Costs, how regulated— The costs in actions and proceedings provided in this act shall be regulated and recoverable as in civil actions in this state. ('07 c. 210 § 14) [6801]

8182. Reconveyance pursuant to contracts— Every person in whom the title to any land shall be declared to be vested under this act shall reconvey, by good and sufficient deed, to any person claiming by, through or under him pursuant to a contract made by such persons, upon demand and upon payment of any money due or unpaid to him from the person making such demand; and in case of refusal so to convey, such contract may be enforced by action according to law. ('07 c. 210 § 15) [6802]

8183. Successor of judge to complete execution of trust— The successor in office of any judge entering

lands under this act, shall, if the trust has not been fully executed, succeed to such trust, and shall have authority to execute the same as fully and in the same manner as his predecessor. ('07 c. 210 § 16) [6803]

8184. Act to apply, to what lands—The provisions of this act shall apply to lands held in trust at the time of passage hereof when no previous disposition thereof under said trust has been made. ('07 c. 210 § 17) [6804]

8185. Certain acts validated—That all acts done by

any such corporate authorities or judge and all proceedings had and taken before any district court, in accordance with the provisions of chapter 42 of the General Statutes of 1866, and amendments thereto, between the first day of March, 1906, and the time this act takes effect are hereby legalized and validated in all respects, and shall have the same force and effect as if chapter 42 of the General Statutes of 1866, and amendments thereto, had not been repealed by the Revised Laws 1905. ('07 c. 210 § 18) [6805]

CHAPTER 62

LANDLORDS AND TENANTS

8186. Distress for rent—The remedy by distress for rent is abolished. (3327) [6806]

Prior to statute (24-584).

8187. Action by landlord—Re-entry—Tenant, when restored—In case of a lease of real property, when the landlord has a subsisting right of re-entry for the failure of the tenant to pay rent, he may bring an action to recover possession of the property, and such action is equivalent to a demand for the rent and a re-entry upon the property; but if, at any time before possession has been delivered to the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or any part of the property, pays to the plaintiff or brings into court the amount of the rent then in arrears, with interest and costs of the action, and an attorney's fee not exceeding five dollars, and performs the other covenants on the part of the lessee, he may be restored to the possession, and hold the property according to the terms of the original lease.

Provided, however, that if the lease under which the right of re-entry is claimed is a lease for a term of more than twenty years, re-entry cannot be made into said land or such action commenced by the landlord unless, after default, he shall serve upon the tenant, also upon all creditors having a lien of record legal or equitable upon the leased premises or any part thereof, a written notice that the lease will be cancelled and terminated unless the payment or payments in default shall be made and the covenant or covenants in default shall be performed within thirty days after the service of such notice, or within such greater period as the lessor shall specify in said notice, and if such default or defaults shall not be removed within the period specified within said notice, then said right of re-entry shall be complete at the expiration of said period and may be exercised as provided by law; provided further, that if any such lease shall provide that the landlord, after default, shall give more than thirty days' notice in writing to the tenant of his intention to terminate the tenancy by reason of default in terms thereof, then the length of the notice to terminate shall be the same as provided for and required by the lease.

And provided further, as to such leases for a term of more than twenty years, if at any time before the expiration of six months after possession obtained by the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or part of the property, or any creditor having a lien legal or equitable upon the leased premises or any part thereof, pays to the plaintiff, or brings into court, the amount of rent then in arrears, with interest and the costs of the action, and performs the other covenants on the

part of the lessee, he may be restored to the possession and hold the property according to the terms of the original lease; provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. (R. L. '05 § 3328; G. S. '13 § 6807, amended '17 c. 428 § 1; '23 c. 76 § 1)

Statute does not give right of re-entry but simply commencement of action equivalent to an actual re-entry (41-542, 43+479). Tender of rent (62-370, 64+911; 74-279, 77+3. See, prior to 1901 c. 72; 67-374, 378, 69+1099; 70-220, 73+7). Instrument a lease and not a contract of sale (123-270, 143+785; 147-150, 179+736).

8188. Tenant may not deny title—Exception—When any person enters into the possession of real property under a lawful lease, he shall not while so in possession deny the title of his landlord in an action brought by such landlord, or any person claiming under him, to recover possession of the property; but such estoppel shall not apply to any lessee who, at and prior to the lease, is in possession of the premises under a claim of title adverse or hostile to that of the lessor. (3329) [6808]

130-282, 153+756.
Lessee in prior possession is not estopped from setting up title adverse to his lessor (130-372, 153+756; 138-9, 163+757).

8189. Person in possession liable for rent—Evidence—Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases, or provided by law. (3330) [6809]

24-584, 589; 69-162, 164, 71+1030.
8190. Building destroyed, etc.—Rent—The lessee or occupant of any building which, without fault or neglect on his part, is destroyed, or is so injured by the elements or any other cause as to be untenable or unfit for occupancy, is not liable thereafter to pay rent to the lessor or owner thereof, unless otherwise expressly provided by written agreement; and the lessee or occupant may thereupon quit and surrender possession of such premises. (3331) [6810]

Tenant liable for rent unless he surrenders possession within reasonable time after premises become unfit (47-291, 50+80; 47-462, 50+601; 49-509, 52+136; 74-77, 76+960). Resuming possession after repairs held to continue lease

8187-88
197-NW 833
8190
198-NW 466
8187
68-M 315
8187
7 33
3-G.S. 215
10-NW 34
8187
167-M 399
209-NW 259
8187
240nw 459
See 9149

159-M 8190