

## CHAPTER 30.

[H. F. No. 1318.]

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PREVENT DEBTORS FROM GIVING PREFERENCE TO CREDITORS, AND TO SECURE THE EQUAL DISTRIBUTION OF THE PROPERTY OF DEBTORS AMONG THEIR CREDITORS, AND FOR THE RELEASE OF DEBTS AGAINST DEBTORS."

*Be it enacted by the Legislature of the State of Minnesota.*

Insolvent  
debtors.

SECTION 1. That section one (1) of the act entitled, "An act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of debtors among their creditors, and for the release of debts against debtors," be, and the same is hereby amended so as to read as follows: Section 1. Whenever any debtor shall have become insolvent, or garnishment shall have been made against any debtor, or property of any debtor shall have been levied upon by virtue of an attachment, execution or legal process issued against him for collection of money, he may make an assignment of all his unexempt property, for the equal benefit of all his *bona fide* creditors, who shall file releases of their demands against such debtor, as herein provided; such an assignment shall be made, acknowledged and filed, in accordance with and be governed by the laws of this state relating to assignments by debtors for the benefit of creditors, except as herein otherwise provided; and such assignment, if made within ten days after garnishment shall have been made against the assignor, or within ten (10) days after property of such assignor shall have been levied upon by virtue of an attachment, execution or other legal process against him for collection of money, as aforesaid, shall operate to vacate every garnishment and levy then pending, and to discharge all property therefrom, upon qualification of the assignee, or his successor, as provided by law, unless he shall, within five days thereafter, file in the office of the clerk of the court, where such assignment was filed, notice of his intention to retain all pending garnishments and levies; in which case the same shall inure to the benefit of the creditors under such assignment, and may be prosecuted by such assignee and his successors; provided, however, that such assignment shall not vacate or affect any levy made by virtue of an execution issued on a money judgment entered against such debtor on a complaint which was on file during at least twenty (20) days next prior to entry of such judgment in the court in the county where the defendant resided meanwhile; and provided further, that the release of any debtor under this act shall not operate to

Assignments.

discharge any other party liable as surety, guarantor or otherwise for the same debt.

SEC. 2. That the second (2nd) section of said act be and the same is hereby amended so as to read as follows, viz: "Whenever any insolvent debtor shall confess judgment, or do anything whereby any of his creditors shall obtain preference over any other of his creditors, or shall omit to do anything which he might lawfully do to prevent any of his creditors from obtaining preference over any other of his creditors, or shall not make an assignment under the first (1st) section of this act, within ten (10) days after garnishment made against him or within ten (10) days after levy made on any of his property by virtue of an attachment, execution or other legal process against him for collection of money, or shall conceal, remove, or dispose of any of his unexempt property with intent thereby to delay or defraud his creditors, then, or within sixty (60) days thereafter, any one (1) or more of his creditors having claims against him to the aggregate amount of at least two hundred dollars (\$200), may petition the district court, or a judge thereof, setting forth facts constituting one (1) or more of said cases, and asking that a receiver be appointed of all the unexempt property of such debtor, and for such other and further relief as may be proper; and said petition may be heard in any county designated by the judge; and upon notice of the time and place of such hearing given as the court or judge shall direct, to the debtor and any creditor about to be preferred, the court in term time, or the judge thereof, in vacation, shall proceed to hear and determine such petition summarily, and shall receive such evidence as may be pertinent, and if it shall appear to the court, or judge, that such insolvent debtor has confessed judgment, or has done anything whereby any of his creditors have obtained preference over any other of his creditors, or has omitted to do anything which he might have lawfully done to prevent any of his creditors obtaining preference over any other of his creditors, or that he has not made an assignment under the first section of this act, within ten (10) days after garnishment made against him, or within ten (10) days after levy made on any of his property by virtue of an attachment, execution, or other legal process against him for collection of money, or that he has concealed, removed, or disposed of any of his unexempt property with intent thereby to delay or defraud his creditors, then the court or judge shall appoint a receiver, who shall have power and authority to, and who shall take possession of all the property of such debtor, not exempt by law, including all property concealed, removed or otherwise disposed of by such debtor in violation of any provision of this act, and also all property then under garnishment, attachment or levy, except such as was levied upon under an execution issued upon a judgment against such

Creditors may call for receiver.

Mode of procedure.

Powers of  
receiver.

debtor entered on a complaint which was on file in the court in the county where the debtor then resided during the period of at least twenty (20) days next before entry of such judgment; and such receiver shall have power and authority to, and he shall, within four (4) months from his appointment, unless the court or judge shall otherwise direct and shall allow further time, convert said property into money and distribute the net proceeds thereof ratably and in proportion to the amount of their several demands among the creditors of such debtor who shall come in and make due proof of their respective demands within such time and in such manner as the court or judge shall direct, and who shall, in consideration of the benefit of the provisions of this act, execute and file releases of their respective demands against such debtor as herein provided; and the court or judge shall order the debtor to make, verify and file in the court a schedule of all his debts, showing to whom due, when payable, and the consideration of each, and a schedule of all his property. The court in term time, and the judge thereof during vacation, may also make such further and other orders as may be necessary or proper to carry into full effect the provisions of this act, and such orders and applications therefor may be made, served and enforced on Sunday when necessary to protect the rights of creditors or others hereunder."

Amends Sec. 4. SEC. 3. That section four (4) of said act be and the same is hereby amended by striking out the words "four months" wherever they appear in said section, and by inserting in lieu thereof the words "ninety days."

Amends Sec. 5. SEC. 4. That section five (5) of said act be and the same is hereby amended by striking out all after the words "joined in such petition," and inserting in lieu thereof the following, namely: "No such petition shall be dismissed except on order to show cause, duly served upon all the creditors either personally or by mail, or by publication, as the court shall direct."

Amends Sec. 6. SEC. 5. That section six (6) of said act be and the same is hereby amended by inserting after the word "court" therein the words "and disbursements."

Amends Sec. 9. SEC. 6. That section nine (9) of said act be and the same is hereby amended by striking out all after the words "in his stead," and by inserting in lieu thereof the following, namely: "And upon petition of a majority in number and amount of the creditors, it shall be the duty of the court to remove any assignee or receiver appointed hereunder, and if he is shown, and the court believes him to be a proper person, the court shall appoint the party specified in the petition, otherwise the court shall appoint some other suitable person as assignee or receiver."

Amends Sec 10 SEC. 7. That section ten (10) of said act be and the same is hereby amended by striking out all thereof after the words "filed such releases," being all of the proviso of said

section, and by inserting in lieu thereof the following, namely: "Provided, however, that when any creditor of such insolvent debtor who has made an assignment of his property hereunder, or of whose property a receiver has been appointed hereunder, shall petition to the court or judge, before entry of the final order for distribution of the insolvent's estate among his creditors as herein provided, setting forth that such debtor has willfully sworn falsely in relation to any specified material fact, in any affidavit or upon any examination under this act, or that he has concealed from the assignee or receiver any of his property, or evidence thereof, or that he has destroyed or falsified any of his account books, or other evidences of his property, or has been privy to any such doings, with intent to delay or defraud his creditors, or that he has removed or has connived at the removal of any of his property, or evidences thereof, from this state, with intent to defeat or delay the operation of this act, or that he has given, or permitted, any preference, contrary to the provisions of this act, or that having knowledge that any person has presented a false or fictitious demand against his estate, he has not disclosed the same to the assignee or receiver within thirty (30) days thereafter, or that he has not kept books of account or records from which his true condition can be ascertained, or that he has, within six (6) months prior to his assignment or to the appointment of the receiver, concealed, removed or disposed of all or some part of his property with intent thereby to delay or defraud his creditors, then the court or judge shall require the insolvent debtor to appear before him at a time and place designated for that purpose, and, after notice to such complaining creditor of the time and place of such hearing in such manner as the court or judge may direct, the court, or judge shall proceed upon such petition summarily, and if the allegations thereof shall be controverted or denied, shall hear such evidence as may be pertinent, and after said hearing the court or judge may, in his discretion, order and direct that all of the debtor's property not exempt by law, be distributed among his creditors, as hereinbefore provided, without their filing releases as aforesaid; and creditors may in like manner be examined with respect to the validity of their demands."

Procedure in case of false representations.

SEC. 8. That there be, and is, hereby, added to said act the following sections, namely: Section 12. That the fees to be allowed to the assignees or receivers hereunder shall not, in ordinary cases, exceed ten (10) per cent. upon the amount received by them up to one thousand (\$1,000.00) dollars; five (5) per cent. upon the amount in excess of one thousand (\$1,000.00) dollars up to five thousand (\$5,000.00) dollars; and two (2) per cent. upon the amount in excess of five thousand (\$5,000.00) dollars; and the allowance for at-

Fees of assignees or receivers.

torneys' fees shall not exceed one hundred and fifty (\$150.00) dollars, where the gross proceeds of the estate do not exceed three thousand (\$3,000.00) dollars, and where they do exceed three thousand (\$3,000.00) dollars, or in extraordinary cases, involving unusual litigation, the fees of the assignees or receivers, as well as of the attorneys, shall be fixed by the court at the reasonable value of their services. Section 13. All assignments under the provisions of this act made by any copartnership of which a minor is a member, or of which there shall be a special partner or partners shall be valid if executed by the adult or general partner or partners, and such assignment shall pass to the assignee all the unexempt individual property of the adult or general partner or partners and all of the co-partnership property of such firm, and the court may appoint receivers of such co-partnerships in the manner herein provided, and all the property of such co-partnership and the individual property of the adult or general partner or partners shall pass to such receiver in like manner as to an assignee provided for in this act.

Amends Sec. 12

SEC. 9. That section twelve (12) of said act shall be and the same is hereby amended by adding after the word "costs" in the first line of said section the following words, namely: "disbursements and expenses."

When act to take effect.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved April 23d, 1889.

## CHAPTER 31.

[H. F. No. 285.]

### AN ACT LIMITING THE TIME WITHIN WHICH MORTGAGE FORECLOSURE SALES MAY BE CALLED IN QUESTION.

*Be it enacted by the Legislature of the State of Minnesota:*

Mortgage foreclosures, time limited when sales may be called in question.

SECTION 1. That no foreclosure heretofore or hereafter made by the mortgagee, his legal representatives, or assigns, of any mortgage on real property within the limits of this state, shall be adjudged invalid or be set aside, unless the action in which the validity of such foreclosure is called in question be commenced or the defence alleging its invalidity be interposed within twenty (20) years from date of the foreclosure sale: *Provided*, That persons who, at the time of such foreclosure sale, were under disability to sue by reason of being minors, insane persons, idiots or in captivity, may commence such action or interpose such