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GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

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1918

8090. Trespass—Treble damages—

It is error to exclude evidence that the cutting of timber by defendant's servants was casual or involuntary, where there was a general denial in the answer, though the answer admitted that some timber was cut without lawful authority, there being no averment therein that such cutting was with defendant's knowledge or consent (127-360, 149+461). Trespass, *see* 45 (3), 61.

A willful trespass on land, committed by a servant within the scope of his employment, warrants treble damages under this section, though the act was without the master's knowledge or consent (127-360, 149+461). Master and Servant, *see* 302(4).

8095. Action to determine boundary lines—

125-258, 146+1106.

Order laying out cartway not evidence of boundary (121-468, 141+788). Boundaries, *see* 35(1).

Rule for location of lost corners (121-189, 141+102). Boundaries, *see* 7.

Evidence as to lost monuments (121-189, 141+102). Boundaries, *see* 37.

Correcting errors in government survey (121-189, 141+102). Boundaries, *see* 54.

Boundary line of land bordering on a meandered lake determined (126-214, 148+60). Waters and Water Courses, *see* 108, 111.

The maintenance of a fence for upwards of ten years held not to conclude adjoining owners as to the boundary line (126-206, 148+115). Boundaries, *see* 46(1).

In construing a deed with inconsistent description, preference is given to the part most likely to express the intention of the parties and as to which there is least likelihood of mistake. The reference to a county road as a boundary is held to prevail over courses and distances and figures as to the quantity of land conveyed (124-331, 144+1089). Boundaries, *see* 3(4); Deeds, *see* 93, 111.

If doubt exists as to the meaning of a deed, reference may be had to the circumstances connected with its execution, in determining the intent of the parties as to a boundary line (124-331, 144+1089). Deeds, *see* 100.

Evidence held to sustain findings of the trial court that there was a practical location of a boundary line (125-365, 147+241). Boundaries, *see* 37(3).

Evidence held to justify finding of a practical location of a boundary line (129-9, 151+273). Boundaries, *see* 37(3).

Evidence, in a boundary dispute, held insufficient to support verdict for plaintiff (124-233, 144+758). Adverse Possession, *see* 114(2); Boundaries, *see* 37(3).

8097. Judgment—Landmarks—

Evidence as to and establishment of lost government corner (125-258, 146+1106). Boundaries, *see* 6, 37(3).

CHAPTER 83

FORECLOSURE OF MORTGAGES

BY ADVERTISEMENT

8107. Limitation—

A mortgage not containing a power of sale cannot be foreclosed under this section (128-255, 150+899). Mortgages, *see* 331.

[8110—]1. **Defective assignments—Curative—**In every case where a mortgage heretofore made has been assigned in writing and said assignment is defective in that it incorrectly refers to the book or page or both book and page wherein said mortgage is recorded in the office of the register of deeds for the county wherein the land affected thereby is situated and where any said mortgage so assigned has been heretofore foreclosed according to law, by advertisement or otherwise, all said assignments and all said foreclosures of mortgages where so assigned, shall be and the same are hereby made valid and declared to be valid and sufficient for all purposes and of the same force and effect in all respects the same as if said assignment of said mortgage had correctly referred to the book or page or both book and page, wherein said mortgage was recorded in said register of deeds office. Provided, that this act shall not affect any proceeding now pending in any of the courts of this state. ('17 c. 250 § 1)

8111. Notice of sale—Service on occupant—

The occupancy requiring notice must be substantial and suited to an appropriate use of the property possessed. Notice should be served on the person in possession, though his occupancy is without authority or license (130-520, 153+997). Mortgages, *see* 353.

Evidence held to present a question for the jury where there was such occupancy of the mortgaged land at the time of foreclosure as to require service of notice of sale (130-520, 153+997). Mortgages, ~~§~~369(6).

[8118—]1. **Defective notice—Curative**—All mortgage foreclosures upon real estate situated in this state, heretofore made by advertisement where the notice of sale as published gives the month incorrectly in the dating of such notice, but the sale was duly and regularly made at the time and place specified and appointed in such notice, as shown by the sheriff's certificate of such sale, together with the record of such sale, shall be sufficient for all purposes as against such erroneous date and the foreclosure based thereon together with the record thereof shall not be affected by reason thereof. ('15 c. 123 § 1)

[8118—]2. **Same—Pending actions**—The provisions of this act shall not affect any action now pending in any court of this state. ('15 c. 123 § 2)

[8126—]1. **Defective power—Curative**—Where any real estate mortgage has heretofore been foreclosed by advertisement in this state, by a resident guardian, and all the requirements of law in relation to such foreclosure have been had and taken, pursuant to law, except that the power of attorney therein authorizing an attorney to foreclose such mortgage was executed by a resident guardian, such foreclosures are hereby validated and declared to be valid and sufficient for all purposes. Provided, however, that this act shall not affect any action at law or in equity now pending in any of the courts of this state, affecting any such foreclosure or foreclosure sale. ('15 c. 109 § 1)

[8135—]1. **Certain foreclosure sales legalized**—Every mortgage foreclosure sale by advertisement heretofore made in this state under a power of sale in the usual form contained in any mortgage executed under the laws of the State of Minnesota, and recorded in the office of the register of deeds of the proper county in this state, is together with the record of such sale, hereby legalized and made valid and effective to all intents and purposes as against the following objections, viz:

1. That the hour, book or page of the record of said mortgage or any assignment thereof in the office of the register of deeds is incorrectly stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

2. That the date of the mortgage or any assignment thereof, or the date of the filing for record or either, is incorrectly stated in the notice of sale or in any of the foreclosure papers, affidavits or instruments;

3. That the notice of sale was served upon the occupant of the mortgaged premises by leaving a copy thereof with a member of the family of said occupant of suitable age and discretion then resident upon said premises, but who at the time of such service was not upon said premises;

4. That the power of attorney to foreclose the same, provided for by Section 8119 of the General Statutes of Minnesota for 1913, had not been executed and recorded prior to such foreclosure sale, but has since been executed and recorded prior to the passage of this act;

5. That the acknowledgment upon the power of attorney to foreclose such mortgage was taken and certified by a notary public who was also one of the attorneys named in such power of attorney to foreclose such mortgage;

6. That the sheriff's certificate of sale and the affidavit of costs and disbursements of the foreclosure, were not filed in the office of the register of deeds of the proper county within the time required by law, but have been filed and recorded in said register of deeds' office before the passage of this act;

7. That the power of attorney authorizing an attorney to foreclose any such mortgage was made and executed by a person, persons, co-partnership or corporation, their successors or assigns, being at the time of the execution of said power of attorney the owner and holder of said mortgage, but not being at said time the record owner thereof;

8. That the foreclosure sale notice stated a sale day falling on a legal holiday, and said foreclosure sale was held by the sheriff or his deputy of the proper county on a legal holiday;

9. That the mortgage foreclosed or the record thereof is defective by reason of having no witnesses, or only one witness, or has no scroll for a seal, or has a defective certificate of acknowledgment, or has no certificate of acknowledgment;

10. That the power of attorney provided by Chapter 262, General Laws 1897, Section 4461, Revised Laws 1905, and Section 8119 General Statutes 1913, has not been executed and recorded as provided by law, and a written instrument of ratification signed and acknowledged by the party owning and foreclosing such mortgage, ratifying all acts done by the attorney or attorneys conducting such foreclosure, and stating therein that such foreclosure was authorized by such owner, and the same recorded prior to September 1, 1915, in the office of the register of deeds of the county in which such foreclosure was held. ('15 c. 306 § 1)

[8135—]2. **Same—Pending actions**—The provisions of this act shall not affect any action or proceeding now pending in any of the courts of this state. ('15 c. 306 § 2)

[8135—]3. **Certain foreclosure sales legalized**—Every mortgage foreclosure sale by advertisement heretofore made in this state, under power of sale in the usual form, contained in any mortgage duly executed and recorded in the office of the register of deeds of the proper county of this state, together with the record of such foreclosure sale, is hereby legalized, and made valid and effective to all intents and purposes, as against either or all of the following objections, viz.:

1. That the date of the mortgage, or of any assignment thereof, or the day, hour, book or page of the record of the mortgage, or of any assignment thereof, in the office of the register of deeds, is incorrectly stated in the notice of sale, or in any of the foreclosure papers, affidavits or instruments.

2. That the notice of sale was served upon the occupant of the mortgaged premises by leaving a copy thereof with a member of the family of said occupant, of suitable age and discretion, then residing upon said premises, but who, at the time of such service, was not upon said premises.

3. That the power of attorney to foreclose said mortgage provided for by section 8119, General Statutes of Minnesota, 1913, had not been executed and recorded prior to such foreclosure sale as provided by law, or had been executed prior to such foreclosure sale but not recorded until after such sale.

4. That the acknowledgment upon the power of attorney to foreclose such mortgage was taken and certified by a notary public who was also one of the attorneys named in such power of attorney to foreclose such mortgage.

5. That the sheriff's certificate of foreclosure sale and the affidavit of costs and disbursements of the foreclosure, or either, were not filed in the office of the register of deeds of the proper county within the time required by law, but have since been filed and recorded in such register of deeds office before the passage of this act.

6. That the foreclosure sale notice stated a date of sale falling on a legal holiday, and said foreclosure sale was held by the sheriff of the proper county on a legal holiday.

7. That the mortgage foreclosed, or the record thereof, is defective, by reason of having no witnesses, or only one witness, or has no scroll for a seal, or has a defective certificate of acknowledgment, or has no certificate of acknowledgment.

8. That the power of attorney provided for by section 8119 General Statutes of Minnesota, 1913, has not been executed and recorded as provided by law, and an original instrument of ratification, signed and acknowledged by the party owning and foreclosing such mortgage, ratifying all acts done by the attorney, or attorneys conducting such foreclosure, and stating therein that such foreclosure was authorized by such owner, and same shall be recorded in the office of the register of deeds of the proper county, prior to September 1, 1917.

9. That the notice of the mortgage foreclosure sale was published only five or more successive weeks. ('17 c. 186 § 1)

[8135—]4. **Same—Pending actions—**The provisions of this act shall not affect any action or proceeding now pending in any of the courts of this state. ('17 c. 186 § 2)

8143. Action to set aside for certain defects, etc.—

Cited (122-235, 142+198).

This section is not unconstitutional, as against one in possession prior to its enactment, on the ground that one in possession cannot constitutionally be required by an after-enacted statute to bring an action or interpose a defense against an adverse claimant, unless such one in possession claims under the chain of title affected by the foreclosure (130-520, 153+997). Mortgages, Ⓒ330.

8144. Action to set aside, etc.—Limitation—

A foreclosure sale, of record and fair on its face, is not open to attack upon any ground after 15 years (122-235, 142+198). Mortgages, Ⓒ369(5).

8146. Redemption by mortgagor—

Though a foreclosure by advertisement was void because the mortgage contained no power of sale, where the purchaser at the sale, and his grantees, went into possession, and were permitted to remain in possession for more than five years by the mortgagor who had notice of the invalidity of the foreclosure, such mortgagor was estopped to redeem (128-255, 150+899). Mortgages, Ⓒ597.

The mortgagor, during the period of redemption, is entitled to receive the rents and royalties from the land under a mining lease, and such right is not affected by a stipulation in the mortgage, or by the act of the sheriff in selling, under the advertisement, the rents and profits of the land (135-443, 161+165). Mortgages, Ⓒ199(1, 2).

Judgment in action to quiet title and determining validity of redemption held not an adjudication of the right of the mortgagor to rents and royalties under a mining lease during the period of redemption (135-443, 161+165). Judgment, Ⓒ721.

8147. Redemption by creditor—

A judgment creditor, whose judgment is irregular, has no right to redeem; but if the foreclosure purchaser receives and appropriates the redemption money, he cannot question the right of redemption. The certificate holder may rescind his acceptance of redemption money paid to him by a judgment creditor and assail the right of such creditor to redeem if the acceptance of the money was induced by fraud or mistake. Such certificate holder was not obliged to recognize the validity of the judgment, though he was not a party to the action from which it arose. But where such action was pending at the time of redemption, the certificate holder was chargeable with notice of facts affecting the validity of the judgment, and where he accepted the money without inquiry he could not assert that his acceptance was induced by fraud or mistake (129-312, 152+728). Mortgages, Ⓒ594(2), 624(4).

A widow, in her own right and as administratrix of her husband, and a first mortgagee, held entitled to maintain an action to restrain a second mortgagee, whose mortgage was given without consideration, from redeeming from a foreclosure sale under the first mortgage, made at the request of the widow, to cut out the second mortgagee, who refused to execute a release (124-176, 144+761). Mortgages, Ⓒ594(1, 6).

A second mortgage held, on the evidence, to be without consideration, so that the mortgagee had no right to redeem from the foreclosure of a prior mortgage (124-176, 144+761). Mortgages, Ⓒ25(1).

8150. Effect of redemption—

A judgment creditor, whose judgment is irregular, may, on redemption from a foreclosure sale, acquire the rights of an assignee under this section, where the foreclosure purchaser receives and appropriates the redemption money, and there is not present in the transaction fraud inducing the acceptance of the money affording a right to rescind such acceptance (129-312, 152+728). Mortgages, Ⓒ624(4).

BY ACTION

8152. By what rules governed—

An adverse title paramount to the mortgage cannot, over objection, be litigated in a foreclosure action (135-254, 160+776). Mortgages, Ⓒ476, 586.

8154. Judgment—Transcript to sheriff—

Conclusiveness and collateral attack on judgment adjudicating adverse title paramount to mortgage (see 135-254, 160+776). Judgment, Ⓒ479.

[8159—]1. **Certificate dated prior to order confirming sale—Curative—**In every foreclosure of mortgage heretofore made by action where the sheriff's certificate of sale was dated not more than ten days prior to the date of the order of the court confirming the report of such foreclosure sale, as provided by Section 4493 of the Revised Laws of Minnesota for 1905 [8159], such foreclosure sale if otherwise regular, shall be, and hereby is, declared to be valid and sufficient for all purposes and shall not be affected in any manner, by reason of the failure to have the order confirming the report of such fore-

closure sale made and issued prior to the execution of the sheriff's certificate of such foreclosure sale. ('15 c. 156 § 1)

[8159—]2. **Same—Pending actions—**This act shall not affect any action at law or at equity now pending. ('15 c. 156 § 2)

[8159—]3. **Failure to record within 20 days—Curative—**That in all mortgage foreclosure sales by action, wherein heretofore the report of sale has been confirmed by order filed in the action, and the certificate of sale was thereafter executed in proper form and recorded more than twenty days after such confirmation, such certificate, and the record thereof, are hereby legalized with the same effect as if such certificate had been executed, acknowledged and recorded within such twenty days, provided that the provisions of this act shall not apply to or affect any action now pending involving the validity of such sale. ('17 c. 33 § 1)

8167. **Redemption by mortgagor, creditor, etc.—**

A tender by a judgment debtor, before arrival of the time for redemption by a judgment creditor, though after filing of intention to redeem by such creditor, cuts off the creditor's right to redeem, though the debtor does not bring suit to redeem and deposit the money tendered into court. No one in the line of redemptioners, nor an intermeddler, may, by tender of payment of a judgment, impair or destroy a judgment creditor's right to use the judgment to effect redemption (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶596.

After the expiration of the year for redemption by the mortgagor, such mortgagor has no interest entitling him to question the right of redemption as between persons entitled to redeem thereafter. Such mortgagor's right to have the land applied to the payment of debts which were liens thereon depended entirely upon the lienholders making redemption in strict conformity with the statute (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶591(1).

A judgment creditor, whose right to redeem appears on the face of the record, but whose right has in fact been extinguished by a tender of the payment of the judgment, acquires title as against the purchaser at the mortgage foreclosure sale, where the latter accepts the redemption money with knowledge of the tender (127-37, 148+1066, Ann. Cas. 1916C, 527). Mortgages, ¶624(4).

The legal title, though not vesting in the purchaser at a mortgage foreclosure during the period of redemption, relates back as of the date of the mortgage, and after the title vests the rights of the purchaser against prior covenants are the same as if the premises had been conveyed to him at the date of mortgage (126-14, 147+670). Covenants, ¶80.

GENERAL PROVISIONS

8172. **Foreclosure or execution sale—Taxes, insurance and interest—**

An assignee of a mortgage, who purchased at foreclosure sale, and within the year for redemption paid taxes to avoid the penalty, but without filing the affidavit required by this section, were nevertheless, on the mortgagors' redeeming, subrogated to the lien of the taxes in equity; the failure to file the affidavit being through inadvertence, and the mortgage stipulating that the mortgagee might pay the taxes and charge the amount to the mortgagors (127-124, 149+16). Mortgages, ¶604; Taxation, ¶531(2).

[8173—]1. **Receiver on foreclosure of certain urban leaseholds—**On the commencement of proceedings to foreclose, either by action or advertisement, any mortgage on a leasehold estate of more than three years covering urban property, or at any time after such commencement until the expiration of the period of redemption, the owner of any such mortgage or the purchaser at the foreclosure sale (as the case may be) may apply to the district court for the appointment of a receiver to take immediate possession of the mortgaged premises and to hold, maintain and operate the same and collect the rents and income therefrom, and apply the same in the manner hereinafter specified. The application for such receiver may be included in an action to foreclose the mortgage or may be by separate action, and if by separate action the only necessary party defendant shall be the owner of the mortgaged leasehold at the time of the commencement of the action. ('15 c. 305 § 1)

[8173—]2. **Same—When and how appointed—**The court shall appoint the receiver on a showing that default has been made in any of the conditions of said mortgage, without any further evidence and without regard to the solvency or insolvency of the person liable for the debt secured by said mortgage. The appointment shall be made without notice on a showing to the court that the danger of termination or forfeiture of the leasehold estate covered by said mortgage is imminent or that waste of the same is being com-

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mitted, or that the owner of said leasehold cannot be found within the state. The mortgagee may be appointed receiver in the discretion of the court. ('15 c. 305 § 2)

[8173—]3. **Same—Bond**—Before entering upon his duties the receiver so appointed shall file in court a bond for the faithful performance of such duties on his part. Said bond shall run to the owner of the mortgaged leasehold and shall be in such sum as the court shall determine and with such surety or sureties as shall be approved by the court. ('15 c. 305 § 3)

[8173—]4. **Same—Powers of**—After filing the bond above mentioned the receiver shall enter into possession of the mortgaged premises and collect all the rents and income therefrom, and shall apply the same to the payment of the expenses of the receivership and to the payment of all sums of money necessary or proper to preserve and protect said leasehold estate, and to maintain and operate the mortgaged premises, and shall pay the surplus (if any) to the owner of the mortgaged leasehold at the termination of the receivership. The receiver may make any or all such payments on his own motion or may make the same in pursuance of an order of the court. Said expenses shall include reasonable attorneys' fees and receiver's fees to be fixed by the court. ('15 c. 305 § 4)

[8173—]5. **Same—Accounts, etc.**—At the termination of the receivership for any cause the receiver shall file his account in said court. On the approval and confirmation of such account the receiver shall dispose of the funds in his hands in accordance with the order of court, and shall thereupon be entitled to a discharge by order of court, freeing and releasing him from all further liability on account of such receivership. ('15 c. 305 § 5)

[8173—]6. **Same—Not to limit other remedies**—The provisions of this act shall in no manner detract from or limit the rights and remedies of the mortgagor or mortgagee respectively now or hereafter provided by law. ('15 c. 305 § 6)

CHAPTER 84

ACTIONS BY OR AGAINST PERSONAL REPRESENTATIVES AND HEIRS

8174. What causes of action survive—

131-365, 155+396; notes under § 7685.

Action on liquor dealer's bond is on contract and in tort and survives the death of the licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, Ⓒ53.

An action to restrain obstruction of a roadway, in which the issue was as to whether the road was a public one by virtue of an agreement relating to the opening of the way and acts done in pursuance of such agreement, affects interests in land and does not abate on the death of a party (133-128, 156+7). Abatement and Revival, Ⓒ58(2).

8175. Action for death by wrongful act—

Cited (132-344, 157+506).

Complaint—Allegations in an action for wrongful death held not to justify an inference that decedent was guilty of contributory negligence (126-133, 147+964). Master and Servant, Ⓒ256(1).

Complaint in an action for wrongful death held to show negligence on the part of defendant railroad company in leaving a car standing without brakes being set so that it was propelled against decedent without notice or warning (126-133, 147+964). Master and Servant, Ⓒ258(13).

Defenses—As to a deceased wife, for whose death recovery is sought for the benefit of the husband and children, the evidence held that intestate was not guilty of contributory negligence as matter of law, barring recovery for fatal injuries received in a collision of an automobile driven by her husband, in which she was riding, with defendant's automobile (161+715). Highways, Ⓒ213(4).

Contributory negligence of decedent (129-206, 152+137). Death, Ⓒ23.

Imputation to deceased wife of negligence of her husband in driving an automobile in which decedent was riding when she received fatal injuries in a collision with defendant's automobile (see 161+715). Negligence, Ⓒ93(2).