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FORECLOSURE OF MORTGAGES.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Parties may submit controversy without action.

SEC. 7. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same, to any court which would have jurisdiction if an action had been brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties; and the court must thereupon hear and determine the case at a general term, and render judgment thereon, as if an action were depending.

Judgment same as in other cases, but without costs.

SEC. 8. Judgment must be entered in the judgment book, as in other cases, but without costs for any proceeding prior to notice of trial. The case, the submission, and a copy of the judgment, constitute the judgment roll.

Judgment may be enforced or appealed from as in an action.

SEC. 9. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to an appeal.

CHAPTER 85.

OF THE FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

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2. What requisite to entitle party to foreclose.
3. Mortgage may be foreclosed for each instalment.
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5. Notice what to contain.
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9. Mortgagee may purchase premises.
10. Officer to give purchaser a certificate of sale.

SECTION

11. Mortgage may redeem in one year.
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15. Affidavit shall be recorded by register of deeds.
16. Note to be made by register in margin of the record.
17. Record sufficient to pass the title.
18. Subsequent mortgagee entitled to redeem.
19. What shall be deemed evidence of the sale and foreclosure of the equity of redemption.

Mortgage of real estate may be foreclosed in certain cases by advertisement.

SEC. 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.

What requisite to entitle party to foreclose.

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

1. That some default in a condition of such mortgage shall have accrued, by which the power to sell become operative:

2. That no suit or proceeding shall have been instituted at law, to recover the debt then remaining secured by such mortgage, or any part thereof; or if any suit 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,

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

SEC. 3. In cases of mortgages given to secure the payment of money by installments, each of the installments mentioned in such mortgage, after the first, shall 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 were 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.

SEC. 4. Notice that such mortgage will be foreclosed by a 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 in the county where the premises intended to be sold, or some part of them, are situated, if there be one, and if no newspaper be printed in such county, then such notice shall be published in a paper published at the seat of government.

Notice to be given by publication.

SEC. 5. Every notice shall specify:

1. The names of the mortgagor and of the mortgagee, and the assignee, if any;
2. The date of the mortgage, and when recorded;
3. The amount claimed to be due thereon, at the date of the notice;
4. A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and
5. The time and place of sale.

Notice what to contain.

SEC. 6. 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 of them, are situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, under sheriff, or deputy sheriff of the county, to the highest bidder.

Sale, how, when, and by whom made.

SEC. 7. 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 shall be postponed, at the expense of the party requesting such postponement.

Sale how may be postponed.

SEC. 8. If the mortgaged premises consist of distinct farms, tracts, or lots, they shall be sold separately, and no more farms, tracts, or lots, shall be sold, than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest, and the costs and expenses allowed by law.

Separate tract of land how sold.

SEC. 9. 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.

Mortgagee may purchase premises.

SEC. 10. Whenever any lands and tenements shall be sold, by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer, or other person making the sale, to give to the purchaser or purchasers, a certificate in writing, under seal, setting forth a description of each tract, or parcel of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed as provided in this chapter; and such officer shall, within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate, signed by him, and such duplicate, certificate, or a copy

Officer to give purchaser a certificate of sale.

FORECLOSURE OF MORTGAGES.

certified by the register, shall be taken and deemed evidence of the facts therein contained.

Mortgagor may redeem in one year.

SEC. 11. It shall be lawful for the mortgagor, his heirs, executors, administrators or assigns, whose lands or tenements shall be sold in conformity with the provisions of this chapter, within twelve months after such sale, to redeem such lands or tenements, by paying to the purchaser, his executors, administrators or assigns, or to the officer who sold the same, the sum of money for which the same was sold, together with interest on the same, at the rate of ten per cent. per annum, from the time of such sale; and such payment being made as aforesaid, the said sale and the certificate granted thereon as aforesaid, shall be null and void; anything in this chapter, to the contrary notwithstanding; and the bail of the sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all moneys received by him, or any of his deputies aforesaid. But no mortgagor shall be entitled to retain the possession of the mortgaged premises, after the sale thereof, as provided in this chapter.

If premises not redeemed purchaser entitled to deed.

SEC. 12. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, it shall be the duty of the officer or his successor in office, or other person who shall have sold the same or his executors, or administrators, or some other person appointed by the district court for that purpose to complete such sale, by executing a deed of the premises so sold to the original purchaser, or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other purchaser, or to the assignee as the case may be of the certificate of sale.

Surplus money to be paid to mortgagor.

SEC. 13. If after sale of any real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on which such real estate was sold, and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer, or other person on demand to the mortgagor, his legal representatives or assigns.

Evidence of sale how perpetuated.

SEC. 14. Any party desiring to perpetuate the evidence of any sale made in pursuance of the provisions of this chapter, may procure:

1. 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,

2. 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:

3. The affidavit specified in the last preceding section, may be taken and certified by an officer authorized by law to administer oaths.

Affidavit shall be recorded by register of deeds.

SEC. 15. 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.

Note to be made by register in margin of the record.

SEC. 16. 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 be in his office.

Record sufficient to pass the title.

SEC. 17. A record of the affidavits aforesaid, and of the deed 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,

COLLECTION OF DEMANDS AGAINST BOATS.

and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage; but no title accruing prior to the execution of such mortgage, shall be affected thereby.

SEC. 18. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage; and shall by such satisfaction acquire all the benefits to which such prior mortgagee, was or might have been entitled.

Subsequent mortgagee entitled to redeem.

SEC. 19. When the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representative, or his or their assigns, as herein before provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale, shall be evidence of the sale, and of the foreclosure of the equity of redemption, as herein specified, without any conveyance being executed, in the same manner, and with the like effect, as a conveyance executed by a mortgagee upon such sale to a third person.

What shall be deemed evidence of the sale and foreclosure of the equity of redemption.

CHAPTER 86.

OF PROCEEDINGS FOR THE COLLECTION OF DEMANDS AGAINST BOATS AND VESSELS.

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15. Warrant issued by a justice how returned.
16. Part of boat, &c., may be sold.
17. Continuance how granted.
18. Continuance when refused.
19. Fees of officers.
20. Appeal allowed.
21. Limitation of action.

SEC. 1. Every boat or vessel, used in navigating the waters of this territory shall be liable:

Boats &c., for what debts liable.

1. For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel, on account of work done or services rendered on board of such boat or vessel, or on account of labor done or materials furnished by mechanics, tradesmen, or others in and for building, repairing, fitting out, furnishing, or equipping such boat or vessel:

2. For all sums due for wharfage or anchorage of such boat or vessel within this territory:

3. For all demands or damages, accruing from the non-performance, or mal-performance of any contract of affreightment, or any contract touching the transportation of persons or property, entered into by the