

c. 94 ss. 60, 61; R. S. 1878 s. 3918; Stats. 1898 s. 3918; 1925 c. 4; Stats. 1925 s. 316.45; 1931 c. 51 s. 42; 1931 c. 79 s. 31; 1969 c. 339 s. 20; Stats. 1969 s. 296.50.

Editor's Note: This section and following sections of ch. 296 will become effective April 1, 1971, under the terms of sec. 20, ch. 339, Laws 1969.

296.52 History: R. S. 1849 c. 64 s. 23; R. S. 1849 c. 65 s. 52; R. S. 1858 c. 93 s. 23; R. S. 1858 c. 94 s. 62; R. S. 1878 s. 3919; Stats. 1898 s. 3919; 1925 c. 4; Stats. 1925 s. 316.46; 1931 c. 51 s. 43; 1969 c. 339 s. 20; Stats. 1969 s. 296.52.

296.54 History: R. S. 1849 c. 64 s. 24; R. S. 1849 c. 65 s. 53; R. S. 1858 c. 93 s. 24; R. S. 1858 c. 94 s. 63; R. S. 1878 s. 3920; Stats. 1898 s. 3920; 1925 c. 4; Stats. 1925 s. 316.48; 1931 c. 51 s. 45; 1969 c. 339 s. 20; Stats. 1969 s. 296.54.

296.56 History: R. S. 1849 c. 64 s. 25; R. S. 1849 c. 65 s. 54; R. S. 1858 c. 93 s. 25; R. S. 1858 c. 94 s. 64; R. S. 1878 s. 3921; Stats. 1898 s. 3921; 1925 c. 4; Stats. 1925 s. 316.49; 1931 c. 51 s. 46; 1969 c. 339 s. 20; Stats. 1969 s. 296.56.

296.58 History: R. S. 1849 c. 65 s. 55; R. S. 1858 c. 94 s. 65; R. S. 1878 s. 3922; Stats. 1898 s. 3922; 1925 c. 4; Stats. 1925 s. 316.50; 1931 c. 51 s. 47; 1931 c. 79 s. 32; 1969 c. 339 s. 20; Stats. 1969 s. 296.58.

CHAPTER 297.

Foreclosure of Mortgages by Advertisement.

297.01 History: R. S. 1849 c. 121 s. 1; R. S. 1858 c. 154 s. 1; R. S. 1878 s. 3523; Stats. 1898 s. 3523; 1925 c. 4; Stats. 1925 s. 297.01.

Revisers' Note, 1898: The limitation is suggested in analogy to the twenty-year statute of limitations in actions upon sealed instruments. It seems clear that the mortgagee should not be permitted to foreclose by advertisement after he is barred from so doing by action.

Sec. 1, ch. 154, R. S. 1858, applies to insane mortgagees. *Encking v. Simmons*, 28 W 272.

Where a mortgagee is about to foreclose for an amount which includes usurious interest the mortgagor may maintain an action to restrain the sale for any greater amount than is equitably due without tendering that amount. *Haggerson v. Phillips*, 37 W 364.

A statutory foreclosure which is void because made by a person without authority to act for a mortgagee cannot operate as an assignment of the mortgage. *Hayes v. Lienlokken*, 48 W 509, 4 NW 584.

The proceedings must be in substantial compliance with the statute. A sale is not affected by the fact that the statute of limitations had run upon the note secured by the mortgage. *Hayes v. Frey*, 54 W 503, 11 NW 695.

A mortgage and sale thereunder will not be set aside in equity, though the instrument and the proceedings are irregular or defective, except upon payment of the amount due the mortgagee. *Welsh v. Blackburn*, 92 W 562, 66 NW 528.

A statutory form of mortgage does not have

imported into it by sec. 2209, Stats. 1898, a power of sale so it can be foreclosed by advertisement. *Dawson v. Bauch*, 149 W 144, 135 NW 535.

See note to sec. 1, art. I, on inherent rights, citing *De Young v. Koehler*, 181 W 415, 194 NW 490.

A foreclosure by advertisement will be reviewed by the courts only to determine whether the sale was justified by default, was in strict conformity with the mortgage, and was free from fraud. A junior mortgagee, who had notice of the foreclosure and opportunity to redeem, was concluded by his failure so to do. *De Young v. Koehler*, 181 W 415, 194 NW 490.

Foreclosure by advertisement. *Bliss*, 1949 WLR 341.

297.02 History: R. S. 1849 c. 121 s. 2; R. S. 1858 c. 154 s. 2; R. S. 1878 s. 3524; Stats. 1898 s. 3524; 1925 c. 4; Stats. 1925 s. 297.02.

297.03 History: R. S. 1849 c. 121 s. 3; R. S. 1858 c. 154 s. 3; R. S. 1878 s. 3525; Stats. 1898 s. 3525; 1925 c. 4; Stats. 1925 s. 297.03.

297.04 History: R. S. 1849 c. 121 s. 4; R. S. 1858 c. 154 s. 4; R. S. 1878 s. 3526; Stats. 1898 s. 3526; 1899 c. 351 s. 40; Supl. 1906 s. 3526; 1907 c. 178; 1925 c. 4; Stats. 1925 s. 297.04.

Revisers' Note, 1898: The foregoing is written, in substance, from sections 2388, 2389, New York code. The desirability of incorporating such provisions is shown by the practice adopted in *Newman v. Ogden*, 82 W 53.

In the absence of bad faith on plaintiff's part the place of sale and mode of publication are left to his discretion. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

If the notice contains all that the statute prescribes it will be sufficient. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

The notice is good if the language used in it unmistakably implies that a sale will be made. *Nau v. Brunette*, 79 W 664, 48 NW 649.

297.05 History: R. S. 1849 c. 121 s. 5; R. S. 1858 c. 154 s. 5; R. S. 1878 s. 3527; Stats. 1898 s. 3527; 1925 c. 4; Stats. 1925 s. 297.05.

297.06 History: R. S. 1849 c. 121 s. 6; R. S. 1858 c. 154 s. 6; R. S. 1878 s. 3528; Stats. 1898 s. 3528; 1925 c. 4; Stats. 1925 s. 297.06.

The statute enters into and becomes a part of every mortgage containing a power of sale, and where there is a designation in the mortgage of the then sheriff such designation is subject to the statute, and a sale made by the undersheriff is good. Where the sale was adjourned from the place designated in the notice to a place less than 600 feet therefrom and in view thereof the sale was valid. *Morrissey v. Dean*, 97 W 302, 72 NW 873.

297.07 History: R. S. 1849 c. 121 s. 7; R. S. 1858 c. 154 s. 7; R. S. 1878 s. 3529; Stats. 1898 s. 3529; 1925 c. 4; Stats. 1925 s. 297.07; 1965 c. 252.

A sheriff has discretion as to whether to postpone a sale under 297.07. *Hales Corners S. & L. Asso. v. Kohlmetz*, 36 W (2d) 627, 154 NW (2d) 329.

297.08 History: R. S. 1849 c. 121 s. 8; R. S. 1858 c. 154 s. 8; R. S. 1878 s. 3530; Stats. 1898 s. 3530; 1925 c. 4; Stats. 1925 s. 297.08.

Where the mortgaged premises consist of several government subdivisions which have been used together as one farm and which cannot be sold separately without injury to the parties interested, they may be sold as a single tract. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

297.09 History: R. S. 1849 c. 121 s. 9; R. S. 1858 c. 154 s. 8; R. S. 1878 s. 3531; Stats. 1898 s. 3531; 1925 c. 4; Stats. 1925 s. 297.09.

The mortgagee or his assigns may purchase the premises if they act in good faith. The sale is not shown to be unfair because the land sold for less than its real value, especially if the mortgagor is given an opportunity to redeem by paying his debt. *Maxwell v. Newton* 65 W 261, 27 NW 31.

The facts showed that the mortgagee did not act fairly and in good faith in making the sale. *Newman v. Ogden*, 82 W 53, 51 NW 1091.

297.10 History: R. S. 1849 c. 121 s. 10; R. S. 1858 c. 154 s. 10; R. S. 1878 s. 3532; Stats. 1898 s. 3532; 1925 c. 4; Stats. 1925 s. 297.10.

The sheriff may make the certificate though the sale was made by the undersheriff of his predecessor. *Morrissey v. Dean*, 97 W 302, 72 NW 873.

297.11 History: R. S. 1849 c. 121 s. 11; R. S. 1858 c. 154 s. 11; R. S. 1878 s. 3533; 1891 c. 303 s. 2; Stats. 1898 s. 3533; 1925 c. 4; Stats. 1925 s. 297.11.

Recital in the certificate of sale that a deed would not be issued until 2 years after the sale does not invalidate a deed issued after expiration of that time. Failure to attach a seal to the certificate is not a fatal defect. *Hayes v. Frey*, 54 W 503, 11 NW 695.

The court cannot abrogate the provisions of secs. 3533 and 3534, R. S. 1878, by allowing redemption on the payment of a less sum. *Schroeder v. Richardson*, 101 W 529, 78 NW 178.

A bona fide holder of a mortgage given after foreclosure sale who redeems therefrom is entitled to a deed to complete the sale, and the deed will vest in the grantee all the title of the mortgagor at the time of making the first mortgage, and will cut off all further claim under such first mortgage. *McLean v. Hoehle*, 98 W 359, 74 NW 120.

297.12 History: R. S. 1849 c. 121 s. 19; R. S. 1858 c. 154 s. 19; R. S. 1878 s. 3540; Stats. 1898 s. 3540; 1915 c. 153; Stats. 1915 s. 3533—1; 1925 c. 4; Stats. 1925 s. 297.12.

A bona fide holder of a mortgage given after sale on foreclosure who redeems from such sale is entitled to a deed which will vest in him all the title of the mortgagor at the time the first mortgage was executed and cut off all further claim to such first mortgage. *McLean v. Hoehle*, 98 W 359, 74 NW 120.

297.13 History: Stats. 1898 s. 3533a; 1925 c. 4; Stats. 1925 s. 297.13; 1965 c. 126.

Revisers' Note, 1898: This is taken from section 16, chapter 81, Revised Statutes of Minnesota of 1878, and is proposed as a wise provision for the protection of lien creditors.

297.14 History: R. S. 1849 c. 121 s. 12; R. S. 1858 c. 154 s. 12; R. S. 1878 s. 3534; Stats.

1898 s. 3534; 1915 c. 153; 1925 c. 4; Stats. 1925 s. 297.14.

A deed may be made by the officer who made the sale and whose term had expired or by his successor. *Hayes v. Frey*, 54 W 503, 11 NW 695.

A deed made by the successor in office of the sheriff who was designated by name and title of office in the mortgage as the person to make the sale is good. *Morrissey v. Dean*, 97 W 302, 72 NW 873.

297.15 History: R. S. 1849 c. 121 s. 13; R. S. 1858 c. 154 s. 13; R. S. 1878 s. 3535; Stats. 1898 s. 3535; 1913 c. 150; 1925 c. 4; Stats. 1925 s. 297.15.

297.16 History: R. S. 1849 c. 121 s. 14; R. S. 1858 c. 154 s. 14; R. S. 1878 s. 3536; 1887 c. 267; Ann. Stats. 1889 s. 3536; Stats. 1898 s. 3536; 1925 c. 4; Stats. 1925 s. 297.16.

297.17 History: R. S. 1849 c. 121 s. 16; R. S. 1858 c. 154 s. 16; R. S. 1878 s. 3537; Stats. 1898 s. 3537; 1925 c. 4; Stats. 1925 s. 297.17.

Unless there is sufficient testimony to overcome the presumption created by sec. 3537, R. S. 1878, the sale will not be disturbed because the affidavit thereof was not made by the person who actually made the sale. *Maxwell v. Newton*, 65 W 261, 27 NW 31.

The evidence, consisting of the printer's affidavit, the affidavit of the deputy sheriff who made the sale, and the sheriff's deed, was sufficient to prove that the mortgage contained a power and that the proceedings by which it was foreclosed were regular. *Bond v. Carroll*, 71 W 347, 37 NW 91.

297.18 History: R. S. 1849 c. 121 s. 17; R. S. 1858 c. 154 s. 17; R. S. 1878 s. 3538; Stats. 1898 s. 3538; 1925 c. 4; Stats. 1925 s. 297.18.

297.19 History: R. S. 1849 c. 121 s. 18; R. S. 1858 c. 154 s. 18; R. S. 1878 s. 3539; Stats. 1898 s. 3539; 1925 c. 4; Stats. 1925 s. 297.19.

297.21 History: R. S. 1849 c. 131 s. 38; R. S. 1858 c. 154 s. 21; R. S. 1878 s. 3542; Stats. 1898 s. 3542; 1925 c. 4; Stats. 1925 s. 297.21.

297.22 History: R. S. 1849 c. 130 s. 45; R. S. 1858 c. 133 s. 81; R. S. 1878 s. 3543; Stats. 1898 s. 3543; 1925 c. 4; Stats. 1925 s. 297.22.

Where a person is charged with unreasonable solicitor's fees or other costs on foreclosure of a mortgage by advertisement, he may be protected by sec. 3543, R. S. 1878. *Schroeder v. Richardson*, 101 W 529, 78 NW 178.

297.23 History: Stats. 1898 s. 3543a; 1925 c. 4; Stats. 1925 s. 297.23.

Irregularities in a foreclosure proceeding are cured by sec. 3543a, Stats. 1898, where 5 years have elapsed after sale. *Coe v. Rockman*, 126 W 515, 106 NW 290.

CHAPTER 298.

Arbitration.

Editor's Note: Ch. 274, Laws 1931, repealed chapter 298, Stats. 1929. For cases which had relevance to that chapter, consult Wis. Annotations, 1930, pp. 1381-1384.