

276.55 History: 1905 c. 234 s. 1; Supl. 1906 s. 3153a; 1925 c. 4; Stats. 1925 s. 276.55; 1935 c. 541 s. 354; 1961 c. 495.

276.57 History: 1905 c. 234 s. 1; Supl. 1906 s. 3153c; 1925 c. 4; Stats. 1925 s. 276.57; 1935 c. 541 s. 356.

276.58 History: 1905 c. 234 s. 1; Supl. 1906 s. 3153d; 1925 c. 4; Stats. 1925 s. 276.58; 1935 c. 541 s. 357.

276.59 History: 1905 c. 234 s. 1; Supl. 1906 s. 3153e; 1925 c. 4; Stats. 1925 s. 276.59; 1935 c. 541 s. 358.

CHAPTER 277.

Partition of Personal Property.

277.01 History: 1887 c. 189 s. 1; Ann. Stats. 1889 s. 2327a; Stats. 1898 s. 2327a; Stats. 1923 s. 3153f; 1925 c. 4; Stats. 1925 s. 277.01; 1935 c. 541 s. 359.

In a suit for the partition of personal property the court has general equity jurisdiction. It may appoint a receiver, enter an interlocutory decree, and by decree provide every possible relief made necessary by the exigencies of the case in order to do final and complete justice. *Laing v. Williams*, 135 W 253, 115 NW 821.

A cheese factory building erected upon a permanent foundation by a voluntary association upon land donated orally for that purpose, but with the condition that the land should revert to the donor whenever the building ceased to be used as a cheese factory, was a proper subject for partition where it appeared that the intent was to give the building the character of personal property. *Brobst v. Marty*, 162 W 296, 156 NW 195.

A livestock association leaving cattle with defendants under an agreement to divide the increase cannot maintain replevin to recover the increase until after division. *Wisconsin L. S. Asso. v. Bowerman*, 198 W 447, 224 NW 729.

277.02 History: 1887 c. 189 s. 2; Ann. Stats. 1889 s. 2327b; Stats. 1898 s. 2327b; Stats. 1923 s. 3153g; 1925 c. 4; Stats. 1925 s. 277.02; 1935 c. 541 s. 360.

277.03 History: 1887 c. 189 s. 3; Ann. Stats. 1889 s. 2327c; Stats. 1898 s. 2327c; Stats. 1923 s. 3153h; 1925 c. 4; Stats. 1925 s. 277.03; 1935 c. 541 s. 361.

CHAPTER 278.

Foreclosure of Mortgages.

278.01 History: R. S. 1849 c. 84 s. 76; R. S. 1858 c. 145 s. 1; R. S. 1878 s. 3154; Stats. 1898 s. 3154; 1925 c. 4; Stats. 1925 s. 278.01; 1931 c. 79 s. 28.

Revisor's Note, 1931: The addition repeats the substance of part of 281.03 (the lis pendens section) and is made to obviate the mistake of entering foreclosure judgment in disregard of the requirement that the notice of the pendency of the action must be filed twenty days before judgment. [Bill 51-S, s. 28]

The mortgagee is not precluded from foreclosing in equity because the power of fore-

closure by advertisement is given in the mortgage. That remedy is merely cumulative. *Walton v. Cody*, 1 W 420.

The statute has reference to ordinary mortgages which leave the fee of the mortgaged premises in the mortgagors. A sale is necessary to divest the mortgagor of the fee. *Church v. Smith*, 39 W 492.

The requirement that the premises be sold is for the benefit of the owner of the equity of redemption and those interested under or through him. *Bresnahan v. Bresnahan*, 46 W 385, 1 NW 39.

In foreclosure, where it is doubtful whether plaintiff's rights are those of a mortgagee or legal owner under a contract to convey, the court inclines to the former construction by the parties. In such case judgment of foreclosure and sale should be rendered. *Rogers v. Burrus*, 53 W 530, 9 NW 736.

The object of foreclosure is to bar the mortgagor and those claiming subject to the mortgage. Plaintiff will not be compelled to litigate questions of paramount title. *Hekla Fire Ins. Co. v. Morrison*, 56 W 133, 14 NW 12.

A mortgage may be foreclosed though the statute of limitations has barred suit on the note which it was given to secure. *Cerney v. Pawlot*, 66 W 262, 28 NW 183.

A personal judgment is erroneous; this can only be contained in a deficiency judgment. *Duecker v. Goeres*, 104 W 29, 80 NW 91.

The suit is wholly regulated by statute, leaving nothing to the ordinary discretionary power. *Sands v. Kaukauna W. P. Co.* 115 W 229, 91 NW 679.

Where the legal title to mortgaged premises remains in the mortgagor, a receiver can be appointed in foreclosure proceedings, but only for the purpose of preventing waste; but delinquent taxes and unpaid interest depreciate the value of the mortgage security and amount to waste. *Grether v. Nick*, 193 W 503, 215 NW 571.

On grounds for employment of a receiver in foreclosure proceedings, see note to 268.16, citing *Crosby v. Keilman*, 206 W 252, 239 NW 431.

Where a land contract required the purchaser to pay the purchase price to children of the vendor and to execute a new contract and mortgage when a deed should be given, but a deed was given without the execution of a new contract or mortgage, the debt was not thereby extinguished, and the vendor and the beneficiaries under the land contract were equitable mortgagees having a specifically enforceable right to the execution of a mortgage and new contract, and to subject the premises to the payment of the debt. *Knutson v. Anderson*, 216 W 69, 255 NW 907.

A holder of a negotiable mortgage note, who had purchased the same after maturity from the agent of parties who had previously assumed the mortgage debt and who through the agent had previously paid the original mortgagee, could not foreclose the mortgage, since the note had been discharged by such payment and was no longer a subsisting obligation. *Michalak v. Nowinski*, 220 W 1, 264 NW 498.

A lessee of premises involved in an action to foreclose a mortgage, who had not been joined as a party, but who, pursuant to an