

[Published March 13, 1877.]

CHAPTER 142.

AN ACT to legalize the acts of Frank Higgins, a justice of the peace in the county of La Fayette.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. All the official acts heretofore done by Frank Higgins, as justice of the peace of the town of Wiota, in La Fayette county, are hereby declared to be as valid and binding in all respects, as though the said Frank Higgins had not moved his family out of said town. Acts legalized.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 1, 1877.

[Published March 7, 1877.]

CHAPTER 143.

AN ACT relating to the foreclosure of mortgages, and amendment of chapter 145 of the revised statutes, entitled "Of actions for the foreclosure of a mortgage," and the acts amendatory thereof.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. In all actions for the foreclosure of mortgages, heretofore or hereafter executed, in all such actions now pending, or hereafter commenced, if the plaintiff recover, judgment shall be rendered in his favor and against the defendant or defendants personally liable for the indebtedness which the mortgage was given to secure, with interest and costs, and the court shall, by its judgment, order a sale of the mortgaged premises or such part thereof as may be sufficient to discharge the amount due on the mortgage and the installments of principal and interest, if any, as they shall become due thereafter, with costs, and if any defendant shall appear and answer that any portion of the mortgaged premises is a homestead, it shall be the duty of the court to determine whether any portion of said premises is a homestead, and if the court shall so

When judgment to be rendered in favor of plaintiff.

Sale of premises.

Homestead not to be sold when judgment can otherwise be discharged.

find, it shall, in such manner as the court may direct, ascertain whether the part of the mortgaged premises, not included in the homestead, can be sold separately without injury to the parties interested, and if the court shall so find, then, and in that case, the judgment rendered shall provide that the homestead shall not be sold, or offered for sale, until all the other lands described in the judgment shall have been offered and sold.

Sheriff to execute deed.

SECTION 2. In all sales of mortgaged premises under and by virtue of any judgment hereafter made or rendered for the foreclosure of any mortgage heretofore or hereafter executed, the sheriff, deputy sheriff, referee or other officer or person making such sale, shall, on compliance with the terms of the sale, make, execute and deliver to the purchaser a deed of the premises so sold, setting forth each parcel of the lands or lots so sold, and the sum paid therefor, which shall vest in the said purchaser the same estate, and shall be as valid as if the same were executed by the mortgager and mortgagee to the same person, and shall constitute an entire bar against all parties to such action, and against their heirs respectively, and all persons claiming under them, and the purchaser, his heirs or assigns shall be let into possession of the premises so sold on production of such deed, or a duly authenticated copy thereof.

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Premises not to be sold until one year from date of judgment.

SECTION 3. In sales of mortgaged premises, made upon judgments rendered under the provisions of this act, the mortgaged premises shall not be sold until one year from the date of the judgment rendered in such action, unless all the parties to the action consent to an earlier sale.

Court shall enjoin defendants from committing waste.

SECTION 4. The court, in rendering judgment in such cases, shall, on motion, enjoin the defendants and all persons claiming under them, from committing waste or doing any other act that may impair the value of the mortgaged premises at any time between the date of the judgment and the date of sale of the mortgaged premises. In all such actions now pending, the plaintiff may, on eight days' notice, when an appearance has been entered, and without notice when no appearance has been entered, amend his complaint without costs, so as to demand the relief provided for by this act.

Amendment of complaint.

Interest on judgment.

SECTION 5. The judgment in such cases shall draw interest at the rate of ten per centum per annum from the date of judgment until the day of sale of mortgaged premises.

SECTION 6. It shall be lawful for the mortgager, his heirs, assigns or personal representatives, or any subsequent incumbrancer of the mortgaged premises, to redeem such judgment at any time before sale on paying to the clerk of the court in which such judgment is rendered, or to the holder or owner of said judgment or his attorney, the amount of such judgment and costs, and all subsequent costs and interest thereon and any subsequent incumbrancer redeeming said premises as aforesaid, shall be entitled to a lien on the mortgaged premises for the amount so paid to redeem said mortgaged premises, and shall be subrogated to all the rights of the plaintiff in said judgment.

Redemption of judgment.

Subsequent incumbrancer entitled to lien on premises.

SECTION 7. The officer or person making any such sale shall within ten days after making the sale file with the clerk of the court in which such judgment shall be entered, a report of the sale, and immediately after the sale pay over to the parties entitled thereto or their attorneys, unless otherwise ordered by the court, the proceeds of such sale over and above his lawful fees and disbursements. Upon the filing of said report the clerk of said court shall credit the amount realized from such sale, over and above the legal costs of said sale, upon the judgment rendered in said action, and if the proceeds of such sale are insufficient to pay the amount due on the judgment, the plaintiff shall have execution for the balance remaining unpaid, and the judgment originally rendered shall not be a lien upon real estate until after the sale of the mortgaged premises.

Officer making sale to file report thereof and pay over receipts.

Clerk of court to credit amount realized from sale upon judgment.

Plaintiff to have execution for balance.

SECTION 8. Sales of mortgaged premises by virtue of any judgment, obtained before this act takes effect, may be made in accordance with the provisions of this act, or in accordance with the provisions of the law in force at the time such judgment was obtained. If a sale is made under the provisions of this act upon a judgment of foreclosure rendered before the passage of this act, said sale shall not be made until one year after the rendition of the judgment, and judgment for the deficiency, if any, shall be entered in accordance with the provisions of law in force at the time the original judgment of foreclosure was rendered.

Sales may be made under this act or under previous law.

SECTION 9. Sections one and two, of chapter one hundred and forty-five, of the revised statutes, entitled "Of actions for the foreclosure of a mortgage," and chapter one hundred and ninety-five, of the general laws of 1859, entitled "An act authorizing the redemption of lands sold under foreclosure of mortgages, here-

Repealed.

after executed, by judgment or decree of court," and chapter 133 of the general laws of 1870, entitled "An act relating to homesteads, and amendatory of section 1, chapter 145, revised statutes," and all acts, or parts of acts, conflicting or inconsistent with this act, are hereby repealed.

SECTION 2. This act shall take effect from and after its passage and publication.

Approved March 3, 1877.

[Published March 21, 1877.]

CHAPTER 144.

AN ACT to amend sub-division ten, of section eleven, of chapter 119 of the general laws of 1872, entitled "An act in relation to railroads, and the organization of railroad companies."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Amended.

May borrow money and execute trust deed or mortgage.

May make provisions for transfer of railroad.

SECTION 1. Sub-division 10, of section eleven, of chapter 119, of the general laws of 1872, entitled "An act in relation to railroads and the organization of railroad companies," approved March 22, 1872, is hereby amended so as to read as follows: "To borrow such sum or sums of money at such rates of interest and upon such terms as said company or its board of directors shall authorize and agree upon, and may deem necessary or expedient, and to execute one or more trust deeds or mortgages, or both, as occasion may require, on any railroad or railroads constructed or in process of construction by said company, for the amount or amounts borrowed or owing by such company, upon such terms and in such manner as such company or its board of directors shall deem expedient; and such company may make such provisions in such deed or mortgage for pledging or transferring their railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, machine houses, rolling stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroad or railroads in any manner whatever then belonging to said company, or which shall thereafter belong to it, as security for any bonds, debts, or sums of money that may be secured by such trust deed or mortgage as they shall