

CHAPTER 281.

PROVISIONS RELATING TO LAND.

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281.01 Action to quiet title; practice. (1) Any person having the title to land may institute an action against any person setting up a claim thereto. The defendant may, by answer, disclaim all title to such land and give a release thereof to the plaintiff and shall recover costs unless the court shall otherwise order. The complaint shall allege the nature and extent of the plaintiff's estate in such land and that the defendant makes some claim thereto, and shall demand judgment that the plaintiff's claim be established against any claim of the defendant, and that he be forever barred against having any right or title to the land adverse to the plaintiff.

(2) The introduction in evidence of any recorded instrument or of the record thereof or of a certified copy of such record, purporting to convey to or otherwise in any way to affect in favor of the defendant, or any grantor, devisor, ancestor or assignor of the defendant said land or any interest therein adversely to the plaintiff, under or through which the plaintiff does not trace his claim of title, shall be sufficient proof of claim of title on the part of the defendant; and the court may receive any other competent evidence. The owner of any lien or incumbrance on land has the same right of action as the owner in fee to test the validity of any other claim, lien or incumbrance on such land or any part thereof. [1935 c. 541 s. 381]

Note: In an action to quiet its title the state is not entitled to judgment against nonappearing defendant if the state fails to substantiate its title. *State v. Gether Co.*, 203 W 311, 234 NW 331.

Liens for services and materials date from the commencement of the first work and are prior to any other lien which originates subsequent to the commencement of construction. The mechanics' liens were prior to the lien of the mortgage which was executed subsequent to the commencement of construction, notwithstanding the lienors with notice of the fact received partial payments on account from funds obtained from the mortgage loan. *Interior W. Co. v. Buhler*, 207 W 1, 233 NW 822.

The circuit court has jurisdiction of an action to quiet title begun by the widow of the testator's son, who elected to retain land as authorized by the will on his payment of legacies to testator's other children, although no final decree in the matter of the testator's estate had been entered by the county court, but the probate thereof was inactive. *Mitchell v. Mitchell*, 230 W 461, 233 NW 448.

Closing of the testator's estate in county court was unnecessary to establish the testator's title to a farm devised to his son and to give the circuit court jurisdiction of the latter's action to quiet title thereto. *Sundermann v. Heinrich*, 230 W 538, 284 NW 532.

While "quia timet" actions under general equity practice can only be brought by claimants of land in possession, claimants not in possession can bring such action under 281.01. *Doherty v. Rice*, 240 W 389, 3 NW (2d) 734.

Where a senior mortgage has been foreclosed without making a subordinate lienor

a party, the proceedings leave the subordinate lienor with the rights he would have had he been a party to the foreclosure proceedings. This implies that his rights are not improved, or the rank of his judgment lien advanced. The rights of the subordinate lien claimant served with process in the foreclosure of a senior mortgage are to pay the mortgage or to redeem the property. These rights are unimpaired and unchanged by the defective foreclosure. Nor is the purchaser at the foreclosure sale or his successor in interest without remedy. The purchaser at the foreclosure sale of a senior mortgage, where the holder of a junior incumbrance has inadvertently been omitted, may bring an action in equity to compel the junior claimant to exercise his right of redemption or have his redemption barred. If no such action is brought, the junior lienor may bring an action to redeem provided he does not lose his rights by laches. *Buchner v. Gether Trust*, 241 W 148, 5 NW (2d) 806; *Winter v. O'Neill*, 241 W 280, 5 NW (2d) 809.

On the petition of a third person claiming to be the owner of real estate about to be sold on execution sale as having been fraudulently conveyed by the judgment debtor, where it appeared from the petition and affidavits that the petitioner was the unconditional owner of the property, and that it had constituted the homestead of the alleged fraudulent grantor, and the execution levy created a lien constituting a cloud on the petitioner's title, the issuance of an order restraining the execution sale pending a determination on the merits was proper. *Spellbrink v. Bramberg*, 245 W 322, 14 NW (2d) 38.

281.02 Action to establish title by adverse possession. (1) Any person who in connection with his predecessor in title has been in the uninterrupted adverse possession of any land for ten years under a conveyance recorded in the office of the register of deeds of the county where land lies, or who has been in such possession for twenty years, otherwise than under such conveyance, may commence and maintain an action to establish his title against

any defects claimed to exist. He may make all persons deemed to be connected with or involved in such defects defendants by name if known, and otherwise generally all persons whom it may concern, by that specification.

(2) As to all persons not contesting, judgment may be rendered on application to the court without other proof than the complaint, duly verified, proof of service of the summons and the facts as to possession as alleged. The judgment shall establish the title according to the facts, which judgment, or a certified copy thereof, may be recorded in the office of the register of deeds in the county where the land lies, and, when so recorded shall be conclusive evidence of the status of the title to the lands according to the facts therein adjudged. No costs shall be taxed against a defendant who does not contest the claim of the plaintiff. [1935 c. 541 s. 382]

Revisor's Note, 1935: Service of summons summons is made 262.02 (4). (Bill No. 50 S. is provided in chapter 262, (262.12 and s. 382) 262.13). The provision for a note to the

281.03 Lis pendens; who may file; effect; when void; discharge. (1) In an action affecting the title to land after the filing of the complaint, the plaintiff may file in the office of the register of deeds of each county where any part thereof is situated, a lis pendens containing the names of the parties, the object of the action and a description of the land in that county affected thereby. In any action if the defendant asks relief on a counterclaim or cross-complaint affecting the title to land after the filing of the counterclaim or cross-complaint, he may file a lis pendens. From the time of such filing every purchaser or incumbrancer whose conveyance or incumbrance is not recorded or filed shall be deemed a subsequent purchaser or incumbrancer and shall be bound by the proceedings in the action to the same extent and in the same manner as if he were a party thereto. In any such action in which a lis pendens has been filed, if the party filing the same shall fail for one year after the filing thereof to serve and file proof of service of the summons or the counterclaim or cross-complaint on one or more of the adverse parties, said notice shall be void, and upon motion and proof the court may order such notice struck from the files.

(2) Proceedings for acquiring land by right of eminent domain shall be held to be actions within the provisions of this section and notice of the pendency thereof may be filed at any time.

(3) The lis pendens may be discharged upon the conditions and in the manner provided by section 266.22 for discharging an attachment. [1935 c. 541 s. 383; Supreme Court Order, effective July 1, 1945]

Comment of Advisory Committee: The amendment makes the rule apply to the defendant if he assumes the role of a plaintiff by counterclaim or cross-complaint. The complaint may not affect the title to land but, under the very liberal rule as to counterclaims, the defendant may bring into the controversy the title to land. The action might be on a note and the defendant might counterclaim for ejectment or to quiet title or to foreclose a lien or mortgage. This extension of 281.03 is to cover such contingencies. The filing of a lis pendens remains optional.

Attention is called to other statutes on the subject of lis pendens:

In the foreclosure of a real estate mortgage the lis pendens must be filed 20 days before entry of judgment, 278.01.

In the foreclosure of liens mentioned in 289.01 and 289.02 the procedure follows the "provisions of chapter 278 for the foreclosure of real estate mortgages," 289.09.

In proceedings to lay out, alter or discontinue streets and highways in cities and villages the filing of a lis pendens is compulsory, 281.04.

The filing of a lis pendens is compulsory under the farm drainage act, 38.03 (5), and under the drainage district act, 89.11.

The filing of a lis pendens is optional in an action to abate a nuisance, 280.14. [Re Order effective July 1, 1945]

Note: A lis pendens in a foreclosure action is constructive notice to all tenants to whom the mortgaged premises are subsequently leased of an order of receivership previously entered, and such tenants take the premises subject to whatever order the court may make affecting the title or possession thereof, and under the order of receivership involved in this case, tenants were bound to pay rent to the receiver. The mortgagor was not entitled to recover the rent from them. *Nowakowski v. Novotny*, 245 W 161, 13 NW (2d) 523.

281.04 Highways; parks; record of order. (1) Every person who makes an application to any court, county board, common council, or village board for laying out, widening, vacating or extending any street, alley, water channel, park, highway or other public place shall, at or prior to the time of filing the same with the proper officer, file a notice of the pendency of such application, containing his name and a brief statement of the object thereof and a map and description of the land to be affected thereby in the office of the register of deeds of each county in which any such land is situated. Neglect to comply with these provisions shall render all proceedings based upon such application void, but no order vacating, or proceedings for the vacation of, any street, alley, water channel, park, highway or other public place, heretofore made or had, shall be void solely by reason of the failure to file such notice of the pendency of such application, map and description.

(2) No final order, judgment or decree or final resolution or order taking or affecting such land, based upon any application therefor, shall have any effect or be notice to any subsequent purchaser or incumbrancer unless a certified copy thereof, giving a full and accurate description of the land affected thereby, and accompanied with a map showing

the location thereof, be recorded in the office of the register of deeds of the county in which the land is situated. A resolution or order made by any such body, whereby any land shall be taken or affected without an application having been made therefor, shall have no effect and shall not be notice to any subsequent purchaser or incumbrancer unless such resolution or order be recorded.

Note: Failure to file notice of pendency of application to condemn land to widen street did not render condemnation proceeding void against owners appearing and consenting thereto. The lis pendens doctrine does not apply to parties to action. *Pennefeather v. Kenosha*, 210 W 695, 247 NW 440.

281.05 [Repealed by 1933 c. 436 s. 11]

281.06 **Land sold, where; effect of deed.** Real property adjudged to be sold must be sold in the county where the premises or some part thereof are situated by the sheriff of that county or a referee appointed by the court for that purpose, and deeds executed upon such sales shall be effectual to pass the title, rights and interest of the parties in the premises adjudged to be sold and of all purchasers or incumbrancers thereof whose conveyance or incumbrance is made, executed, recorded, perfected or obtained subsequent to the filing of the notice of the pendency of the action in which such real property is adjudged to be sold unless the judgment shall otherwise direct.

281.07 **Report of land sale and deed, who to make; second referee.** If the sheriff or referee who made the sale of land dies, departs from the state or becomes otherwise incapacitated to make the report or to execute the deed, such report may be made by the undersheriff, a deputy sheriff, the plaintiff, or any other party to the action interested in having it made, his agent or attorney, upon oath; and such deed may be made by a referee appointed for that purpose and shall have the same effect as if made by such sheriff or original referee. And where a referee appointed by the judgment to make such sale shall die, remove from the state or become incapacitated, the court may, upon petition of any interested party appoint some other referee to make such sale and carry out any other provisions of such judgment. [1935 c. 541 s. 384]

281.08 [Repealed by 1935 c. 541 s. 385]

281.09 **Remainderman; fraudulent recoveries void.** All recoveries against any tenant for life, or by the curtesy of any lands, shall be void as against all persons to whom any reversion or remainder of such lands shall appertain and as against their heirs, unless the reversioner or remainderman is a party to the action. [1935 c. 541 s. 386]

281.10 [Repealed by 1935 c. 541 s. 387]

281.11 **Survey may be ordered.** In all actions relating to real property the court may by order give any party thereto leave to make any survey of any premises affected by such action, or of any boundary line of such premises, or between the lands of any of the parties and the lands of other persons, when satisfied that such survey is necessary or expedient to enable either party to prepare his pleadings in the action. The order for such survey shall specify the premises or boundary lines to be surveyed, and a copy thereof shall be served upon the owner or occupant before any entry is made to make such survey. After such service the party obtaining such order may, with the necessary surveyors and assistants, enter the premises specified in such order and make such survey without being liable to any action therefor except for injury or damages unnecessarily caused thereby.

281.12 **Effect of conveyance.** Whenever any action for the recovery of lands or tenements or for the recovery of the possession thereof shall be commenced against any person in possession of the premises in question or in the receipt of the profits thereof such action shall not be barred or delayed by reason of any alienation or conveyance made by such person to any other, either before or after the commencement of such action.

281.13 [Renumbered section 275.33 by 1935 c. 541 s. 388]

281.14 [Renumbered section 260.21 by 1935 c. 541 s. 12]

281.15 [Renumbered section 275.02 (2) by 1935 c. 541 s. 389]

281.16 [Repealed by 1935 c. 541 s. 390]

281.17 [Renumbered section 275.02 (2) (b) by 1939 c. 513 s. 53]

281.20 to 281.21 [Omitted because expired]

281.22 [Repealed by 1941 c. 31]

281.23 and 281.24 [Repealed by 1935 c. 319]

281.25 [Omitted because expired]

281.26 [Repealed by 1941 c. 31]

281.28 **Foreclosure of land contract, writ of assistance.** In an action to foreclose the rights of the purchaser under a land contract the plaintiff is entitled to a writ of execution or assistance upon application to the clerk in accordance with the provisions of the judgment. [Supreme Court Order, effective July 1, 1942]

Comment of Advisory Committee: 281.28 procedure for foreclosure of land contracts. is a companion to 272.11. It rounds out the [Re Order effective July 1, 1942]