

Foreclosure of Mortgage.

CHAPTER 61.

COUNTER CLAIM.

AN ACT to Amend Section 597 of the Code of Civil Procedure.

Be it Enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. PROCEEDINGS WHERE MORTGAGOR HAS A COUNTER CLAIM.] That section 597 of the Code of Civil Procedure, be, and the same is, hereby amended by adding at the end of said section the words:

“ *Provided*, That when the mortgagee or his assignee has commenced procedure by advertisement, and it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of the Judge of the District Court of the county where the mortgaged property is situated, that the mortgagor has a legal counter claim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may by an order to that effect enjoin the mortgagee or his assignee from foreclosing such mortgage by advertisement, and direct that all further proceedings for the foreclosure be had in the District Court properly having jurisdiction of the subject matter ; and for the purpose of carrying out the provisions of this act, service may be made upon the attorney or agent of the mortgagee or assignee.”

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, March 6, 1883.

CHAPTER 62.

FORECLOSURE ON PERSONAL PROPERTY—COUNTER CLAIM.

AN ACT Entitled "An Act to Amend Section One Thousand Seven Hundred and Forty-three of the Civil Code of Dakota Territory."

Be it Enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. PROCEEDINGS WHERE MORTGAGOR HAS A COUNTER CLAIM.] That section 1743 of the Civil Code, be, and the same is, hereby amended by adding at the end of said section, the words :

" *Provided*, That when the mortgagee, his agent or assignee has commenced foreclosure by advertisement and it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of the Judge of the District Court of the county where the mortgaged property is situated, that the mortgagor has a legal counter claim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may, by an order to that effect, enjoin the mortgagee, his agent or assignee, from foreclosing such mortgage by advertisement and direct that all further proceedings for the foreclosure of such mortgage be had in the court properly having jurisdiction of the subject matter."

§ 2. This act shall take effect and be in force from and after its passage and approval.

Approved, February 27, 1883.