
CHAPTER 158

H. B. No. 54—(Nellie C. Olson by request)

MARRIAGE OF MINORS

An Act prohibiting the marriage of minors under the supervision of the Juvenile Court of State Training School, without order of the Juvenile Court or Superintendent of the State Training School; for the annulment of such marriage; and prescribing penalties.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. MARRIAGE OF CERTAIN MINORS PROHIBITED.] It shall be unlawful for any minor, while under the supervision or custody of the Juvenile Court or the Superintendent of the State Training School, to marry without the order of the Juvenile Court or of the Superintendent of the State Training School, as the case may be; and any such marriage made without such order shall be subject to annulment in a proceeding brought in District Court by the State's Attorney or by any person authorized by law to bring such annulment action. Any person knowingly aiding, abetting or encouraging such marriage shall be guilty of misdemeanor.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 1, 1937.

MORTGAGES

CHAPTER 159

S. B. No. 72—(Olson)

DEFICIENCY JUDGMENTS IN FORECLOSURES PROHIBITED

An Act relating to the foreclosure of real estate mortgages and land contracts, providing what the judgment and decree shall contain, and prohibit any deficiency judgments.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. WHAT JUDGMENTS SHALL CONTAIN.] In any action hereafter brought for the foreclosure or satisfaction of a real estate mortgage or the cancellation or foreclosure of land contract entered into after this law take effect, the Courts shall have power to render judgment against the mortgagor or purchaser for the amount found to be due at the time of the rendition of said judgment, and the costs of the action, and to order and decree a sale of

the premises in such mortgage or contract described, or such part thereto as may be sufficient, in full and complete satisfaction of said judgment so entered, and shall have power to order and compel delivery of the possession of the premises to the purchaser; but in no case under this Article shall the possession of the premises so sold be delivered to the purchaser or purchasers entitled thereto until after the expiration of one year from such sale, and the Court shall direct and the judgment shall provide, that during said one year period the debtor or owner of said premises shall be entitled to the possession, rents, use and benefit of the real property sold, and the Court shall under no circumstance have power to render a deficiency judgment for any sum whatever. Nothing herein contained shall be construed to postpone or effect any remedies the creditor may have against any party personally liable for the debt other than the contractor or purchaser and their successors in interest.

§ 2. OTHER SUITS PROHIBITED.] That neither before nor after the rendition of the judgment and decree herein provided for, shall the mortgagee or contract holder, or their successors interest, be authorized or permitted to bring any action in any Court in this State for the recovery of any part of the debt secured by said mortgage or contract so foreclosed.

§ 3. INTENT. INTERPRETATION.] It is the intent of the legislature to provide by this Act that hereafter there shall be no deficiency judgments rendered upon notes, mortgages, or contracts given to secure the payment of money loaned upon real estate or given to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall only be entitled to a foreclosure or a cancellation of the mortgage or contract and no Court shall place any other construction upon this Act.

§ 4. SAVING CLAUSE.] If the Courts declare this Act unconstitutional in so far as it relates to mortgages or contracts in existence at the time of taking effect of the Act, they shall never consider its constitutionality with reference to mortgages or contracts entered into after the date when this Act becomes effective.

§ 5. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 1, 1937.

CHAPTER 160
S. B. No. 106—(Cain and Coffey)

FORECLOSURE COSTS

An Act to amend and re-enact Section 7792 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 154 of the Session Laws of North Dakota, for 1933, relating to the amount of costs on foreclosure of liens, who entitled thereto, prohibiting the division of attorneys fees, prescribing penalty for violation, and repealing all Acts, or parts of Acts in conflict herewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That Section 7792 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 154 of the Session Laws of North Dakota for 1933, be, and the same is hereby amended and re-enacted to read as follows:

§ 7792. COSTS ON FORECLOSURE OF LIENS.] In all actions or proceedings for the foreclosure of mortgage upon personal property, or a mortgage or other lien upon real property, the plaintiff, or the person commencing such action or proceeding, shall be entitled to tax as a part of his costs the sum of Twenty-five Dollars; provided that no fee shall be allowed unless the foreclosure proceedings shall be conducted under the supervision of a resident attorney, duly authorized to practice in the Courts of this State; provided, further, that it shall be unlawful for any such attorney to pay, or agree to pay, to the party foreclosing said mortgage, or other lien, any part of such attorney's fees, and any attorney violating the provisions of this Section shall be guilty of a misdemeanor.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in force from and after its passage and approval.

Approved February 23, 1937.

CHAPTER 161

S. B. No. 83—(Cain, Young, Thatcher and Coffey)

MORATORIUM FROM FORECLOSURES AND EVICTIONS

An Act providing for relief in certain cases during the emergency declared to exist, from foreclosure of mortgages or other liens on real estate, and execution sales of real estate, and cancellation of contracts for the sale of real property, eviction of tenants from real estate, and for postponing certain sales and extending the period of redemption from certain sales, and relating to the jurisdiction and procedure for such relief, and for the right to possession during the extended period, and limiting the right to emergency actions for deficiency judgment, and for extending the expiration of certain periods of redemption to thirty days after the passage of this Act; repealing all Acts inconsistent herewith and declaring an emergency.

Be It Enacted by the Legislative Assembly, of the State of North Dakota:

§ 1. In view of the severe financial and economic distress prevailing throughout the State and Nation, and the extreme drought of the past two or three years, the legislature of the State of North Dakota hereby declares that a public economic emergency exists in the State of North Dakota.

§ 2. (a) In any proceeding for the foreclosure of any mortgage or other lien upon real property, or the cancellation of any contract for the sale of real estate by advertisement or publication of notice, the mortgagor, lienor or assignee of either, or the owner in possession of such property, or any one claiming under said mortgage or lienor, or any one liable for the mortgage debt, or the vendee or his assignee of such contract for the sale of said premises, may, at any time after the publication of notice for the foreclosure of such mortgage or other lien, or the cancellation of a contract, apply to the Court of the County wherein such proceedings are being had, or are pending, by filing with the Court his affidavit, setting forth such reasons, consistent with the provisions of this Act, as the party applying for such order may have for postponement thereof, with a prayer that the foreclosure or cancellation, if any, shall be had by action in the Court. If it appears to the Court that granting of the relief, as prayed for in such affidavit, would be equitable and just, then and in that event the foreclosure or cancellation proceedings by advertisement or publication of notice may be postponed by the Court by ex parte order, which may be served upon the attorney or agent of the mortgagee or assignee, or vendor or assignee, or upon the party foreclosing or cancelling said contract, and the party seeking to foreclose such mortgage or other lien, or cancel such contract, shall proceed, if at all, to foreclose such mortgage or other lien, or cancel said contract, by action in the Court of the County having jurisdiction thereof and shall tax as a part of the costs in said action the expense incurred in publishing such notice.

(b) When any mortgagee or lienor, vendor or the assignee of either desires to foreclose any mortgage or lien or cancel any contract for the sale of land, he shall first make application to the District Court of the County where the property is situated, or if situated in more than one County, then in the County in which the instrument creating the obligation was first filed, for permission to foreclose such mortgage or lien or cancel such contract, as the case may be. Upon the filing of the application, as aforesaid, the Court shall by letter addressed to the mortgagor, lienee or vendee, as shown by the instrument of record, and if no address is shown, then to the post office nearest to the property in question, notifying such party to appear before the Court at a time fixed by the Court, which shall not be more than fifteen days after the date of the notice to show cause if any he has why the application should not be granted. The hearing on the application shall be informal, the Court shall inquire into the equities existing between the parties, the ability of the mortgagor, lienee, or vendee to pay the amount due or any part thereof at the present time, the question of taxes and all facts and circumstances in the particular case; and after such hearing the Court shall issue its order permitting the foreclosure of the mortgage or lien or the cancellation of the contract, or delaying for such time as in the judgment of the Court is fair and just the foreclosure of the mortgage or lien or the cancellation of the contract, and fixing the time when, pursuant to the provisions of this Act, such mortgagee, lienor or vendor shall be permitted to institute such action.

§ 3. When any mortgage or other lien has been foreclosed by action, the Court shall, on the coming in of the report of sale, on the request of any party who has been personally served with a summons or who has appeared, cause notice of hearing thereon to be served on the parties to the action, who have appeared, and fix the time and place for hearing on said report. Before granting an order confirming said sale, the Court shall, if it appears upon due examination that the sale price is unreasonable and unfairly inadequate, or that justice has otherwise not been done, order a re-sale. If the sale is confirmed, the Sheriff or his deputy shall forthwith execute and deliver the proper certificate of sale, which shall be recorded within twenty days after such confirmation. Upon the hearing of the motion for an order confirming the sale of the premises involved in the foreclosure of mortgages or other liens by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the Court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved in such mortgage foreclosure proceedings for the purpose or purposes for which said property is or can be used. The Court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time, or prior to such sale.

§ 4. When any judgment has been entered for the cancellation of a contract for the sale of real estate, or eviction or ejectment of any tenant from the possession of real estate, the Court having jurisdiction thereof shall, at the request of any party to the action, cause notice of hearing to be served upon the parties thereto, who have appeared therein, to show cause, if any they have, why a stay of execution should not be granted. Before granting such request on the part of any party to said action, the Court having jurisdiction thereof shall receive any competent evidence of the reasonable rental value of said property, taxes levied and assessed against the same, the interest on the indebtedness, if any, due thereon, and the purpose or purposes for which said property is or can be used.

§ 5. (a) In case the parties to any such foreclosure action, or other action heretofore set forth in this Act, shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage or other indebtedness, or both, the Court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

(b) The Court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale, or to order re-sale, or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by real estate mortgage or other lien, the foreclosure of which might be effected under the terms of this Act, as is conferred by this Act, with regard to the mortgage or other lien, or the cancellation of a contract, or the enforcement of an obligation for rent.

§ 6. Where any mortgage or other lien upon real estate has been foreclosed and the period of redemption has not yet expired, or where sale is hereafter had in the case of real estate mortgage or other lien foreclosure proceedings, now pending, or which may hereafter be instituted, prior to the expiration of two years from and after the passage and approval of this Act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage and approval of this Act, the period of redemption may be extended for such additional time as the Court may deem just and equitable, but in no event beyond July 1, 1939; or where stay of execution has been granted against the cancellation of a contract or the ejectment of a tenant from premises, for such additional time as the Court may deem just and equitable, but in no event beyond July 1, 1939. Provided, that the mortgagor or the owner in possession of said property in the case of mortgage foreclosure proceedings, or the lienor or person in possession of said property in the case of foreclosure of such a lien, or the judgment debtor in the case of sale under judgment or execution, or the tenant in case of judgment of eviction, or the vendee in case of a contract of sale of real property, shall, prior to

the expiration of the period of redemption, or in case of judgment or eviction or cancellation of land contract within the period of time described in Section 4 hereof, apply to the Court having jurisdiction of the matter, on not less than ten days written notice to the mortgagee, the lienee, judgment creditor or plaintiff, or the attorney of either as the case may be, for an order determining the reasonable value of the income of said property, or if the property has no income then the reasonable rental value of the property involved in such sale, cancellation or eviction, and directing and requiring such mortgagor, lienor, vendee, tenant or other judgment debtor to pay all or a reasonable part of such income or rental value in or toward the payment of taxes, insurance, interest, mortgage, or judgment indebtedness, at such time and in such manner as shall be fixed and determined and ordered by the Court; provided, however, that in fixing the rental value of farm lands, the rental value of any buildings thereon shall not be included or considered; and the Court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, lienor, vendee, tenant or judgment debtor of such an amount, at such times and in such manner as to the Court shall, under all circumstances, appear just and equitable, and provided that upon the service of notice or demand aforesaid, that the running of the period of redemption shall be tolled until the Court shall make its order upon such application. Provided, further, however, that if such mortgagor, lienor, vendee, tenant, or judgment debtor or personal representative shall default in the payments, or any of them, in such order required on his part to be done, or commits waste, his right of redemption from said sale shall terminate thirty days after such default, and holders of subsequent liens may redeem in the order and manner now provided by law beginning thirty days after the filing of notice of such default with the Clerk of Court, and his right to possession shall cease, and the party acquiring title to such real estate shall then be entitled to immediate possession of said premises. If default is claimed by allowance of waste, such thirty day period shall not begin to run until the filing of an order of the Court finding such waste. Provided, further, that the time of redemption from any real estate mortgage or other lien foreclosure, or judgment, or execution sale heretofore made, which otherwise cannot expire less than thirty days after the passage and approval of this Act, shall be, and the same hereby is extended to a date thirty days after the passage and approval of this Act, and in such case the mortgagor, lienor, vendee, tenant or judgment debtor, or the assignee or personal representatives of either, as the case may be, or the owner in possession of the real property may, prior to said date, apply to said Court for, and the Court may thereupon grant, the relief as hereinbefore and in this Section provided. Provided, further, that prior to July 1, 1939, no action shall be maintained in this state for a deficiency judgment until the period of redemption, as allowed by

existing laws or as extended under the provisions of this Act, has expired; provided, however, that the provisions of the Act shall not be construed as a repeal of Chapter 155 of the Session Laws of 1933 or any other similar enactment.

§ 7. Upon application of either party, prior to the expiration of the extended period of redemption as provided for in this Act, and upon the presentation of evidence that the terms fixed by the Court are no longer just and reasonable, the Court may revise and alter said terms in such manner as the changed circumstances and conditions may require.

§ 8. The trial of any action, hearing or proceedings mentioned in this Act shall be held within twenty days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the Court, and the order of the Court shall be filed within five days after trial or hearing. No more than five days' stay shall be granted, and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within 15 days after notice of such order, and such writ shall be returnable within 20 days after the filing of such order.

§ 9. Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this Act, are hereby suspended until July 1, 1939. No extension of the period for redemption, nor any postponement of sale judgment on execution shall be ordered or allowed under this Act which would have the effect of extending the period of redemption or enforcement of judgment beyond July 1, 1939.

§ 10. This Act as to mortgage or other lien foreclosures shall apply only to mortgages or contracts or liens made prior to the passage and approval of this Act, but shall not apply to mortgages, liens, contracts or leases made prior to the passage of this Act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this Act. Neither shall this Act apply in any way which would allow a re-sale, stay, postponement, or extension to such time that any right might be adversely affected by the statute of limitations.

§ 11. The provisions of this Act shall not apply to any mortgage, lien, contract or lease while such mortgage or other instrument is held by the United States or any agency, department, bureau, board, instrumentality or commission thereof, as security or pledge of the maker, its executors or assigns, nor shall the provisions of this Act apply to any mortgage holder as security or pledge to secure payment of a public debt, or to secure payment of the deposit of public funds, nor shall the provisions of this Act apply to notes and obligations incurred under Title I and to insured mortgages

issued under Title II of the National Housing Act, including the Land Bank Commissioner, a Federal Land Bank, a Federal Intermediate Credit Bank, a Production Credit Association, a Bank for Co-operatives, and a Regional Agricultural Credit Corporation.

§ 12. It is hereby declared that if any of the provisions of this Act in any manner contravenes the provisions of the Constitution, the remaining provisions would have been enacted by this Legislative Assembly even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the Constitution, the remaining provisions shall not be affected by such invalidity, but shall remain in full force and effect.

§ 13. This Act is declared to be an emergency measure and shall take effect from and after its passage and approval.

Approved February 15, 1937.

CHAPTER 162

S. B. No. 160—(Trout)

RESTRICTIONS PERSONAL PROPERTY MORTGAGES

An Act prohibiting Chattel Mortgages on personal property when the property designated therein is described such as "all other property owned by the mortgagor" or language of like effect; repealing all Acts or parts of Acts in conflict herewith; and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Any chattel mortgage containing a printed or written description or designation of property, such as "all other property owned by the mortgagor" or language of like effect as a part of the printed or written form, shall be void and of no effect as to the property covered by such language.

§ 2. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

Approved March 3, 1937.

CHAPTER 163

H. B. No. 264—(Frey and Wolf)

RELEASE OF MORTGAGE JAMESTOWN TRAINING SCHOOL

An Act authorizing, directing and empowering the proper officers of the State of North Dakota to release any interest which the State of North Dakota has against lot fifteen (15) and the north half (N½) of lot fourteen (14) in block thirty-nine (39) of the original plat of the City of Jamestown, North Dakota, by virtue of a loan of \$5,000.00 made by the State of North Dakota to said Training School in the year 1911, and declaring an emergency.

WHEREAS, on or about March 20th, 1906, Company H 1st Regiment, North Dakota National Guard Training School, with its principal place of business at Jamestown, North Dakota, was incorporated as a perpetual corporation under Section 1788 of the 1905 Revised Codes of the State of North Dakota; and

Said Corporation in its corporate name acquired title to Lot Fifteen (15) and the North Half (N½) of Lot Fourteen (14) in Block Thirty-nine (39) of the Original Plat of the City of Jamestown, North Dakota, on which it erected an armory and mortgaged said property to secure a loan of \$8,000.00, which mortgage was dated June 15th, 1911 and recorded June 21st, 1911, in Book 39 of Mortgages on page 55, which mortgage has never been paid, and on which there is past due \$7,000.00 and accrued interest, a new mortgage for \$7,000.00 having been executed under date of April 11th, 1932 to take its place; and

WHEREAS, the minute book of the said Training School corporation shows that on or about August 8th, 1911 a Resolution was passed authorizing the officers of said corporation to execute a second mortgage in the sum of \$5,000.00 to the State of North Dakota, under Section 2416 of the 1913 North Dakota Code, and it would appear that such sum was borrowed but that a mortgage to secure said sum was never recorded; and

WHEREAS, Said Training School Corporation is unable to pay said first mortgage, and it appears likely that the title to said property will be lost by foreclosure of said first mortgage; and

WHEREAS, It is contemplated that if said second mortgage to the State of North Dakota can be released without payment, and said property can be deeded, subject to said first mortgage to the City of Jamestown, to be used for public purposes, that the City of Jamestown, either through Federal Aid or otherwise, can borrow sufficient funds to pay up said first mortgage and acquire title to said property free from encumbrances and thus save said property for public purposes.

NOW THEREFORE,

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. That the proper officials of the State of North Dakota

be, and they are, hereby directed, authorized and empowered to execute a release of all its interest to the above described property, for the purpose of releasing any claim it might have against the same by virtue of said \$5,000.00 loan, provided, however, that said Company H. 1st Regiment North Dakota, National Guard Training School, a corporation, execute and deliver to the City of Jamestown, North Dakota, a deed to said premises, subject to the same being used for public purposes.

§ 2. EMERGENCY.] It being necessary to act immediately in the event Federal Aid can be obtained, an emergency is hereby declared to exist, and this Bill shall be in full force and effect from and after its passage and approval.

Approved March 9, 1937.

CHAPTER 164

H. B. No. 311—(Bjornson)

AUTHORIZING SATISFACTION OF MORTGAGE NATIONAL GUARD ARMORIES

An Act authorizing the State Treasurer to execute on behalf of the State Satisfactions of Mortgages on National Guard Armories in the State of North Dakota given in accordance with the Provisions of Chapter 174 of the Session Laws of North Dakota for 1907 and Amendments thereto, and declaring an emergency:

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The State Treasurer is hereby authorized and directed to execute and deliver to the mortgagors therein named, or their successors or assigns, satisfactions of mortgages given pursuant to Section 5 of Chapter 174 of the Session Laws of the State of North Dakota for 1907, either with or without payment of the mortgage debt, when requested in writing so to do by such mortgagors or their successors or assigns provided such request is approved by the Board of Armory Supervisors of the State of North Dakota by endorsement upon such request.

§ 2. This Act is hereby declared to be an emergency measure and shall be in full force and effect upon its passage and approval.

Approved March 9, 1937.