

in a note or other contract, seven per cent per annum, shall be the legal rate.

Interest on judgments.

Sec. 5. All judgments that may be hereafter recovered in any court of this territory, shall, from and after the rendition of the same, draw interest at the rate of ten per cent per annum.

Interest on balanced accounts.

Sec. 6. All balanced accounts shall draw interest at the rate of ten per cent per annum on such balance until paid.

When to take effect.

Sec. 7. This act shall take effect and be in force from and after its passage and approval by the Governor.

APPROVED, Jan. 9th, 1865.

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## MORTGAGES

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### CHAPTER XV.

#### AN ACT PROVIDING FOR THE FORECLOSURE OF MORTGAGES.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

How mortgage may be foreclosed.

Section 1. Every mortgage of real estate, containing there in a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and manner hereinafter specified.

What is requisite.

Sec. 2. To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure it shall be requisite:

First, That some default in a condition of such mortgage shall have accrued, by which the power to sell has become operative.

Second, That no suit or proceedings shall have been institu-

ted at law, to recover the debt then remaining secured by such mortgage or any part thereof, or if any suit or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein, has been returned unsatisfied in whole or in part; and

Third, That the mortgage containing such power of sale has been duly recorded, and if it shall have been assigned, that all the assignments thereon, shall have been recorded.

Sec. 3. In cases of mortgages given to secure the payment of money by installments, each of the enstallments mentioned in such mortgage, after the first shall be taken and deemed to be a separate and independent mortgage, and such mortgage for each of such instalments may be foreclosed in same manner and with the like effect, as if such separate mortgage were given for each of such subsequent instalment, and a redemption of any such sale, by the mortgagor, shall have the like effect as if the sale for such instalments has been made upon an independent prior mortgage. How to be construed.

Sec. 4. Notice that such mortgage will be foreclosed by sale of the mortgaged premises, or some part of them, shall be given, by publishing the same for six successive weeks, at least one in each week, in a newspaper of the county where premises intended to be sold, or some of them, are situated, if there be one; if not, then in the nearest paper published in the Territory. Notice

Sec. 5. Every notice shall specify :

First, The names of the mortgagor and mortgagee, and the assignee, if any; What notice shall specify.

Second, The date of the mortgage, and when recorded;

Third, The amount claimed to be due thereon at the date of the notice;

Fourth, A description of the mortgaged premises, conforming substantially with that contained in the mortgage; and,

Fifth, The time and place of sale.

Sec. 6. The sale shall be at public vendue, between the hours of nine o'clock in the forenoon and the setting of the sun, in the county in which the premises to be sold, or some part of them, are situated, and shall be made by the person Manner and time of sale.

appointed for that purpose in the mortgage, or by the sheriff, [or] deputy sheriff of the county, to the highest bidder.

Postponed.

Sec. 7. Such sale may be postponed from time to time, by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until such time to which the sale shall be postponed, at the expense of the party requesting such postponement.

Sold separately.

Sec. 8. If the mortgaged premises consist of distinct farms, tracts or lots, they shall be sold separately, and no more farms, tracts or lots shall be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the notice of sale, with interest and the cost and expenses allowed by law.

Mortgagee may purchase.

Sec. 9. The mortgagee, his assigns, or his or their legal representatives, may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale.

Duty of officer.

Sec. 10. Whenever any lands or tenements shall be sold by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer, or other person making the sale, to give to the purchaser, or purchasers, a certificate in writing, under seal, setting forth a description of each tract or parcel of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed, as provided in this act; and such officer, shall, within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate, signed by him; and such duplicate, certificate, or any copy certified by the register shall be taken and deemed evidence of the facts therein contained.

Right to redeem

Sec. 11. It shall be lawful for the mortgagor, his heirs, executors, administrators and assigns, whose lands or tenements shall be sold in conformity with the provisions of this act, within twelve months after such sale, to redeem such lands or tenements, by paying to the purchaser, his executors, administrators or assigns, if either of them reside in the county in which such sale took place, and if not, then to the officer who sold the same, together with the interest on the same, at the rate of ten per

cent. per annum, from the time of such sale, and such payment being made as aforesaid, the said sale and the certificate granted thereon, as aforesaid, shall be null and void, anything in this act contrary notwithstanding; and the bail of the sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all moneys received by him, or any of his deputies aforesaid. But no mortgagor shall be entitled to retain the possession of the mortgaged premises, after the sale thereof, as provided in this act.

Sec. 12. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, <sup>When not re-  
deemed.</sup> it shall be the duty of the officer, or his successor in office, or other person who shall have sold the same, or his executors, administrators, or some other persons appointed by the district court for that purpose, to complete such sales, by executing a deed of the premises so sold to the original purchaser, or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other purchaser, or to the assignee, as the case may be, of the certificate of sale.

Sec. 13. If after sale of any real estate, made as herein pre- <sup>Surplus.</sup> scribed, there shall remain in the hands of the officer or other person making the sale, any surplus money, after satisfying the mortgage on which such real estate was sold, and payment of the cost and expenses of such foreclosure and sale, the surplus shall be paid over by such officer, or other person, on demand, to the mortgagor, his legal representatives or assigns.

Sec. 14. Any party desiring to perpetuate the evidence of <sup>How evidence  
of sale may be  
perpetuated.</sup> any sale made in pursuance of the provisions of this act may procure:

First, An affidavit of the publication of the notice of sale, and of any notice of postponement, to be made by the printer of the news paper in which the same was inserted, or by some person in his employ knowing the facts; and

Second, An affidavit of the fact of any sale pursuant to such notice, to be made by the person who acted as auctioneer at the sale, stating the time and place at which the same took place, the sum bid and the name of the purchaser;

Third, The affidavit specified in the last preceding section,

may be taken and certified by any officer authorized to administer oaths.

**Affidavit to be recorded.** Sec. 15. Such affidavits shall be recorded at length by the register of deeds of the county in which the premises are situated, in a book kept for the record of mortgages, and such original affidavits, the record thereof, and verified copies of such record, shall be presumptive evidence of the facts therein contained.

**Note to be made by register of deeds.** Sec. 16. A note referring to the page and book where the evidence of any sale having been made under a mortgage is recorded, shall be made by the register recording such evidence in the margin of the record of each mortgage, if such record be in his office.

**Effect of record** Sec. 17. A record of the affidavits aforesaid, and of the deed executed, on the sale of the premises, shall be sufficient to pass the title thereto, and the conveyance shall be an entire bar of all claim or equity or redemption of the mortgagor, his heirs and representatives, and all persons claiming under him or them, by virtue of any title subsequent to such mortgage, but no title accruing prior to the execution of such mortgage, shall be affected thereby.

**Rights of subsequent mortgagor.** Sec. 18. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage and shall by such satisfaction acquire all the benefits to which such prior mortgage, was or might have been entitled.

**When mortgaged premises are purchased by mortgagee.** Sec. 19. When the mortgaged premises, or any part of them, shall have been purchased at such sale by the mortgagee, his legal representative, or his or their assigns, as herein before provided, the affidavits of the publication and affixing notice of sale, and of the circumstances of such sale shall be evidence of the sale, and of the foreclosure of the equity of redemption, as herein specified, without any conveyance being executed, in the same manner, and with the like effect, as a conveyance executed by the mortgagee upon such sale to a third person.

**Fees of** Sec. 20. The party foreclosing a mortgage by advertisement, shall be entitled to ten dollars costs besides fees of officers and disbursements out of the proceeds of sale.

Sec. 21. Real estate hereafter to be sold upon the execution, judgment, order or decree of any court of the Territory or upon the foreclosure by advertisement or otherwise of a mortgage, contract or liability, shall be held by the party purchasing the same subject to right of judgment, debtor or mortgagor, or any one claiming through or under him, or them, to redeem the same at any time within one year or such other time as may be prescribed by law from the day of such sale, upon paying to the purchaser, mortgage or judgment creditor, the sum or amount for which the same was sold or foreclosed, and interest thereon at the rate of ten per cent per annum. Other creditors of the original judgment, debtor, or mortgagor, may at any time within one year after such sale, redeem such premises, upon the same terms as the judgment debtor or mortgagor, by paying to the first or previous purchaser the amount of his debt and interest as aforesaid, and so on as one purchaser, mortgagee or creditor, shall purchase or redeem from another, provided that, the original debtor, his heirs or assigns shall have the period of one year for redemption upon each and every such sale, foreclosure, advance, or redemption after the same shall have been made, and notice thereof filed in the office of register of deeds in the county where such real estate shall be situated.

Real estate sold on execution, how held

Sec. 22. And further provided, that such judgment creditor, purchaser or mortgagee, may at any time, upon eight days notice, move the court or a judge thereof, in vacation for an order or injunction, to stay waste, and upon satisfactory proof, that the mortgagor or party in possession, is committing waste upon such premises, the court may enjoin or restrain such debtor, mortgagor or party in possession from committing the same.

Injunction.

Sec. 23. Bills for the foreclosure or satisfaction of mortgages, may be filed in the district court of the county, where the mortgaged premises, or some portion thereof are situated, and in case any defendant is not a resident of the county, process may be served on him in any other county within the territory; or if he be absent or concealed, an order for his appearance may be made, and proceedings thereon be had as are provided for in the case of absent or concealed defendants.

Bills for foreclosure to be filed.

Sec. 24. Whenever a bill shall be filed for the foreclosure or

**After bill filed,  
power of court.** satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit, but the district judge shall not by such decree order any lands to be sold within nine months after the filing of the bill of foreclosure. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied, after a sale of the mortgaged premises in the case in which such balance is recoverable, at law, and for that purpose, may issue the necessary execution as in other cases against other property, of the mortgagor.

**No proceedings  
after filing bill.** Sec. 25. After such bill be filed, while the same is pending, and after a decree is rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt, secured by the mortgage, or any part thereof, unless authorized by the court.

**When other  
persons become  
a party.** Sec. 26. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person, as the mortgagor, and may enforce such decree as in other cases.

**What complain-  
ant shall state.** Sec. 27. Upon filing a bill for the foreclosure or satisfaction of the mortgage, the complainant shall state therein whether any proceedings have been had at law, for the recovery of the debt secured thereby, or any part thereof, has been collected or paid.

**No proceedings.** Sec. 28. If it appears that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such a case unless an execution against the property of the defendant in such judgment, the sheriff or other proper officer, shall have returned that the execution is unsatisfied in whole or in part, and that

the defendant has no property whereon to satisfy such execution, except the mortgaged premises.

Sec. 29. All sales of mortgaged premises under a decree of Sale by a master in chancery chancery, shall be made by a master in chancery, or other person appointed by the court, in the county where the premises or some part of them are situated.

Sec. 30. Deeds shall thereupon be executed by such master Deeds to be executed, or other person appointed as aforesaid, which shall vest in the purchaser the same estate that would have vested in the mortgagee, if the equity of redemption had been foreclosed and no other or greater, and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit, in which the decree for such sale was made, and against their heirs respectively and all persons claiming under such heirs.

Sec. 31. The proceeds of every sale made under a decree in Proceeds of sale chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Sec. 32. If such surplus or any part thereof, shall remain Disposition of surplus. in the said court, for the term of three months, without being applied for, the district Judge may direct the same to be put out at interest, subject to the order of the court for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

Sec. 33. Whenever a bill shall be filed for the satisfaction Other installments. or foreclosure of any mortgage upon which there shall be due any interest, or any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the bill shall be dismissed upon the defendants bringing into court, at any time before the decree of sale, the principal and interest due, with cost.

Sec. 34. If after a decree for sale entered against a defend- After a decree for sale. ant in such case, he shall bring into court the principal and interest due, with cost, the proceedings in the suit shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of

any portion or installment of the principal, or of any interest thereafter to grow due.

When court  
may direct ref-  
erence

Sec. 35. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same, on oral or other testimony and if it shall appear that the same can be sold in parcels, without injury to the interest of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain as security for any subsequent default.

Further power  
of court.

Sec. 36. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or installment of the principal, or of any interest due upon such mortgage, the court may upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

When sale of  
the whole shall  
be ordered.

Sec. 37. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

How sale to be  
applied.

Sec. 38. In such case, the proceeds of such sale, shall be applied as well to the interest, portion or installment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sales, and if such residue do not bear interest, then the court may direct the same to be paid, with a rebate of the legal interest for the time during which such residue shall not be due and payable or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the installments or portions of the principal, or the interest, may become due, and the surplus for the benefit of the

defendant, his representatives, or assigns to be paid to them by the order of the court.

Sec. 39. Whenever it shall be deemed necessary, pending any suit or proceedings, the court may appoint a special master in chancery, such master to be sworn, and to give bond, if required, for the faithful performance of the duties assigned him, to have power to administer oaths in any proceedings before him, and to receive for his services such reasonable compensation as the court may allow.

When court may appoint a special master in chancery.

#### OF APPEALS TO THE SUPREME COURT.

Sec. 40. When any person being complainant or defendant, shall think himself aggrieved by the final order or decree of a judge of a district court, sitting as a court of chancery, such person may enter an appeal within two months, to the supreme court, from such decree or final order, and when any person being complainant or defendant shall think himself aggrieved by any interlocutory decree, or any order previous to a final order or decree, he may enter an appeal therefrom to the Supreme court within fifteen days from the time of entering such decree or making such order.

Appeal may be taken.

Sec. 41. The party appealing in either of the above specified cases, shall give bond to the adverse party, with good security, in such sum as the judge of the district court shall order, conditioned to pay, satisfy and perform the order or decree of the Supreme court, and all costs, in case the decree or final order or interlocutory decree or previous order as the case may be, of the district court, shall be affirmed, and if the final order or decree of the district court shall be affirmed the supreme court may award such damages against the applicant as they may think proper, not exceeding twenty-five per cent. on the amount of the money or other subject matter of such decree.

Party appealing to give bonds.

Sec. 42. If on the hearing of any such appeal, the supreme court shall annul, affirm, modify, or alter the order or decree appealed from, or make any other order in the cause as in justice under the law and rules of chancery proceedings may require, and may remit the cause to the district court, wherein the order or decree appealed from was made, for further pro-

Supreme court may remit cause to district court.

ceedings, or may give any other directions in the cause as the circumstances of the case may require.

Supreme court  
may award  
damages.

Sec. 43. The supreme court shall have power, in any case in which they are satisfied that an appeal has been taken from an interlocutory, or any other order or decree, except a final one, for the purpose of delay or any frivolous pretence, toward such damages to the adverse party, as they may under the circumstances deem proper, the criterion for which damages shall be prescribed by rule.

Conflicting acts  
repealed.

Sec. 44. All acts and parts of acts conflicting with this act are hereby repealed:

When to take  
effect.

Sec. 45. This act shall take effect from and after the passage.

APPROVED, Jan. 11, 1865.

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## PENAL CODE.

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### CHAPTER XVII:

#### AN ACT TO ESTABLISH A PENAL CODE.

*Be it enacted by the Legislative Assembly of the Territory of  
Dakota:*

#### PRELIMINARY PROVISIONS.

- Section 1. Title of Code.  
 2. Its effect.  
 3. "Crime," and "Public offense," defined.  
 4. Crimes, how divided.  
 5. Felony defined.  
 6. Misdemeanor.