

[That it shall be lawful for the judges of the court of common pleas of the several counties of this state, when they shall by a majority vote so determine, to designate a place or places of proper character, and furnished with sufficient accommodation and appliances, as a public morgue or morgues for said county not to exceed three in number in any county; in designating such place or places they shall first select the city or cities within the county and afterwards such other place or places as in their opinion may be necessary; *provided*, that this act shall apply only to such counties as have within their limits a city or cities of more than four thousand inhabitants by the last state census.]

Common pleas  
judges may  
designate public  
morgues.

Proviso.

## Mortgages.

### I. THE MONEY DUE ON BOND AND MORTGAGE MAY BE PAID AFTER SUIT BROUGHT THEREON, OR DECREE MAY BE TAKEN BY CONSENT.

1. Effect of tender of sum due on suit at law.
2. When decree made before hearing.
3. Subsequent mortgages not affected. Not to extend to converted cases.

### II. WHEN PREMISES SUBJECT TO BUT ONE MORTGAGE, SALE MAY BE BY SCIRE FACIAS.

4. When mortgagee may sue forth scire facias.
5. Title of purchaser.

### III. PROCEEDINGS ON FORECLOSURE WHERE THE MORTGAGOR HAS ABSCONDED, CONCEALS HIMSELF, IS UNKNOWN, OR HAS DIED AND HIS HEIRS ARE UNKNOWN.

6. Amended by section 40.
7. Chancellor to be governed by rules and practice of court of chancery.
8. Decree against absent defendant shall cut off equity of redemption.

### IV. FORECLOSURE IN THE CIRCUIT COURT.

9. Foreclosure may be in circuit in certain cases.
10. Fees of solicitor.
11. Fees of clerk and court.
12. Duties of clerk.
13. Of masters and examiners.
14. Appeal.
15. Court always open for certain purposes.
16. What orders may be made in vacation.

### V. THE REGISTRATION OF MORTGAGES.

17. Mortgages to be registered by clerk of common pleas.
18. May be recorded in full at request of mortgagee.
19. Clerk's certificate and receipt.
20. Not registered unless acknowledged or proved.
21. Writing operating as defeasance to be registered.
22. Operation of unregistered mortgage.
23. Payment and discharge, when and how to be entered.
24. Copy of a decree canceling mortgage may be filed in county clerk's office.
25. May be canceled on certificate of mortgagee.
26. Certificate recorded.
27. Fee.
28. Proceedings for cancellation of lost mortgages.
29. Undue preferences prohibited.
30. Fees.

### VI. ASSIGNMENTS AND REGISTRATION THEREOF.

31. Mortgages, how assignable.
32. Assignments to be recorded.
33. To be indexed, and records and copies evidence.
34. If not recorded, payments made in good faith valid.

35. Assignments of mortgage, how proved when not acknowledged.

### VII. SUPPLEMENTS.

36. Fees for registering mortgages.
37. Owners of lands in certain counties and cities may agree not to apply for any deduction from the taxable value, by reason of such mortgage.
38. In case deduction is claimed in violation of agreement, mortgage to become immediately due.
39. Abstract of mortgage to be received as evidence.
40. Proceedings when mortgagor has absconded, is unknown or has died.
41. Chattel mortgages upon household goods, &c., to be signed and executed by husband and wife and recorded.

### VIII. MISCELLANEOUS ACTS.

42. No decree for deficiency in foreclosure suits to be hereafter made.
43. Amended by section 47.
44. Amended by section 43.
45. Report of sale by sheriff or other officer.
46. Repealer.
47. If debt not satisfied by foreclosure sale, lawful to proceed on bond.
48. If judgment obtained on bond, foreclosure sale opened and property may be redeemed.
49. Chattel mortgage to vest right of possession to chattels in mortgagee so as to prevent removal.
50. Regulation of disposition of chattels after removal and recovery.
51. Not to apply to certain chattels.
52. Mortgage void unless affidavit of mortgagee annexed and recorded.
53. Where to be recorded.
54. Not to be recorded unless duly acknowledged or proved.
55. Clerk to provide books for recording.
56. Mortgages to be properly indexed.
57. Mortgage recorded valid until canceled.
58. Mortgages heretofore recorded valid until canceled.
59. Fees for recording, copies, &c.
60. Making false affidavit to mortgage, perjury.
61. Amended by section 64.
62. Repealer.
63. Act, how to be known and cited.
64. Removal of property without consent of mortgagee a misdemeanor.
65. Circuit court judge or law judge may order mortgages to be canceled of record upon proof, &c.
66. Record to be marked "canceled by order."
67. Actions, commenced to foreclose a mortgage, may proceed against person claiming any right, title, &c., or his heirs, devisees, &c.
68. All such defendants to be bound by the orders and decrees as if they had been duly named, &c.
69. Proofs, costs and proceedings, how allowed.

**I. The money due on bond and mortgage may be paid after suit brought thereon, or decree may be taken by consent.**

**An act concerning mortgages.**

R. S. 97, 99, 657.

Revision—Approved March 27, 1874.

P. L. 1851, p. 842.  
 " 1855, p. 241.  
 " 1858, p. 90.  
 " 1864, p. 493.  
 " 1866, p. 879.  
 " 1869, p. 872.  
 " 1870, p. 57.  
 " 1873, p. 41.  
 161.

**1. WHEREAS,** Mortgagees frequently bring actions of ejectment for the recovery of lands and estates to them mortgaged, and bring actions on bonds given by mortgagors to pay the money secured by such mortgages, and for performing the covenants therein contained, and likewise commence suits in equity to foreclose their mortgagors from redeeming their estates; and the courts of law, where such ejectments are brought, have not power to compel such mortgagees to accept the principal moneys and interest due on such mortgages and costs, or to stay such mortgagees from proceeding to judgment and execution in such actions; but such mortgagors must have recourse to a court of equity for that purpose, in which case likewise such court does not give relief until the hearing of the cause; for remedy thereof, and to obviate all objections relating to the same, that from henceforth where any action shall be brought on any bond for payment of the money secured by such mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought by any mortgagee or mortgagees, his, her or their heirs, executors, administrators or assigns, for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in the court of equity, for or touching the foreclosing or redeeming of such mortgaged lands, tenements or hereditaments, if the person or persons having right to redeem such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant or defendants in such action, shall, at any time pending such action, pay unto such mortgagee or mortgagees, and in case of his, her or their refusal, shall bring into court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law, or in equity, upon such mortgage (such money for principal, interest and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer, by such court to be appointed for that purpose), the moneys so paid by such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage; and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the cost and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences and writings in his, her, or their custody, relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such moneys into the court, his, her, or their heirs, executors or administrators, or to such other person or persons, as he, she, or they shall for that purpose nominate or appoint. (a)

In actions of law on mortgages, and no suit thereon in equity, a tender of the sum due, with costs, in court, shall be full satisfaction and discharge; and thereupon the mortgages shall be compelled to reconvey and surrender the premises.  
 R. S. 97, § 1.

On bills filed to foreclose the equity of redemption, the court may, at the request of the defendant, proceed to a decree.  
 Ib., § 2.

**2.** That from henceforth where any bill or bills, suit or suits, shall be filed, commenced or brought in the court of equity of this state by any person or persons having or claiming any estate, right or interest in any lands, tenements or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff

(a) This section was designed to apply only to certain cases mentioned in its preamble, and in the introductory words of the statute, and was not intended to supplant bills of redemption in courts of equity, where the remedy is complete. *Shields v. Lozear*, 5 Vr. 496, 530. *S. C.*, 7 C. E. Gr. 57, 447. It does not apply to a case in which the mortgagor is himself the actor. *Ib.* Where a suit on the bond was pending at law, and also a foreclosure of the accompanying mortgage in equity, a rule to pay the money into the court of law was refused. *Leake v. Chambers*, 1 South. \*83. *Den v. Kimble*, 4 Hal. 235. *Hamilton v.*

*Dobbs*, 4 C. E. Gr. 227, 223. A defendant in an action of ejectment brought by a mortgagee, is not in a position to pay the amount due upon the mortgage and costs, and stay further proceedings after judgment has been entered. *Tichenor v. Collins*, 16 Vr. 123. The court, upon special facts, may open the judgment and let in a defendant to redeem. *Ib.* Although notice in writing, insisting that the defendant has no right to redeem, has been given, pursuant to section 3, yet if it appear from the deposition that the right of the defendant to redeem is one of grave doubt, the court may refuse the application. *Ib.*

or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage or mortgages, together with any sum or sums of money due on any incumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements or hereditaments; such court of equity, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements or hereditaments, and upon his, her, or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall, at any time or times before such suit or cause shall be brought to hearing, make such order or decree therein, as such court might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made by such court, at or subsequent to the hearing of such cause or suit.

3. *Provided always*, this act, or anything herein contained, shall not extend to any case where the person or persons against whom the redemption is or shall be prayed, shall, by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side, insist, either that the party praying a redemption has a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent incumbrancer; anything in this act to the contrary thereof in anywise notwithstanding.

This act not to affect a subsequent mortgage, nor to extend to cases when the equity of redemption is controverted, or the money due is not adjusted.  
Ib., § 3.

## II. When premises subject to but one mortgage, sale may be by scire facias.

4. That where default or defaults have been or shall be made, of or in payment of the mortgage money of any lands, tenements or hereditaments, within this state, whereto no other person or persons are necessarily interested than the mortgagor or mortgagors, and the mortgagee; and where the said lands, tenements and hereditaments are subject to one mortgage only, it shall and may be lawful to, and for, the mortgagee at any time after the payment of the said mortgage money ought to have been made, to sue forth a writ or writs of scire facias, which the clerk of the supreme court, or the clerk of the court of common pleas of the county where the said mortgaged lands or hereditaments lie, who is hereby empowered and required to grant the same, directed to the proper officer requiring him to make known to the mortgagor or mortgagors that he, she, or they be and appear before the court out of which the said writ shall issue, to show cause, if any there be, why the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage money, with interest and costs; and if the defendant or defendants in such scire facias appears, he, she, or they may plead satisfaction or payment of part or all of the mortgage money, or any other lawful plea in avoidance of the deed or debt, as the case may require; but if the defendants in such scire facias will not appear in person or by attorney, on the day whereon the writ shall be made returnable, then judgment, to be given upon such scire facias, shall be entered, and the plaintiff or plaintiffs shall have execution, directed to the proper officer, by virtue whereof the said mortgaged premises shall be taken in execution, exposed to sale and sold in like manner as under other executions for the sale of real estate, issued out of the said courts, respectively; and upon sale conveyed to the buyer

When mortgagee may sue forth scire facias.  
R. S. 99, § 1.

Defendant may plead.

Proceedings when defendant does not appear.

Mortgaged premises may be sold.

Manner in which proceeds of sale are disposed of.

or buyers thereof, and the money or price of the same, after satisfying the demands of the mortgagee or creditor, and reasonable costs, if any surplus there be, shall be paid into court by the sheriff or other officer making the sale, and the court shall thereupon order such surplus to be applied towards discharging any judgments or other lawful lien on said mortgaged premises ; and in case no such judgment or lien appears, then the court shall order the same to be paid over to the debtor or defendant in such action.

Title of purchasers.  
Ib., § 2.

5. That when lands, tenements or hereditaments shall be so sold, the person or persons to whom they shall be so sold, shall and may hold and enjoy the same with their appurtenances, for such estate or estates as they were sold, clearly discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagor or mortgagors, their heirs or assigns, and such sales shall be available in law, and the respective vendees, mortgagees, or creditors, their heirs and assigns, shall hold or enjoy the same, freed and discharged as aforesaid, in as good and perfect an estate as the mortgagor or mortgagors, at the time of executing the said mortgage deed, were invested with. (a)

### III. Proceedings on foreclosure where the mortgagor has absconded, conceals himself, is unknown, or has died, and his heirs are unknown.

#### 6. [Amended by Sec. 40, *post.*]

Chancellor to be governed by rules and practice of court of chancery. P. L. 1873, p. 161, § 3. Amended.

7. That in the proceedings aforesaid, the chancellor shall be governed by the rules and practice of said court, and by the provisions of law in the foreclosure and sale of mortgaged premises in said court, except only as the same may be inconsistent with this act ; and all estates by curtesy and dower in said real estate may be sold by the decree of said court, and the equity of redemption foreclosed and cut off, and out of the surplus money a certain sum may be ordered to be paid in lieu thereof, or a certain share of the surplus money may be invested for the benefit of the person or persons entitled to such estate, in the same manner as is case of sales under proceedings for partition.

Decree against absent defendant shall cut off the equity of redemption of such defendant. Ib., § 3. Amended.

8. That any decree heretofore made in a foreclosure of any mortgage in a suit against an absent defendant, shall cut off the equity of redemption of said absent defendant, or of any person acquiring any right or interest under him, which did not appear upon the records of the county where said mortgaged premises are situated, at the time of the filing of the foreclosure bill in the court of chancery, and any such person holding or acquiring any such right as purchaser or heir, shall have their right and interest in the surplus money only ; *provided*, that said absent defendant shall be entitled to the benefit of all the provisions in favor of absent defendants against whom a decree is taken by virtue of the act relating to the court of chancery.

### IV. Foreclosure in the circuit court.

Foreclosure may be in circuit in certain cases. P. L. 1851, p. 342.

9. That in all suits for the foreclosure and sale of mortgaged premises, where all the mortgaged premises are situate in the same county, the circuit court of said county shall have the same jurisdiction and powers as the court of chancery has, or may have in like cases ; and such circuit court shall proceed in the same manner as the court of chancery is or may be authorized to do, and shall be governed by the rules of the court of chancery, so far as the same are applicable ; and said circuit court may issue subpoenas and all other lawful process into any of the counties of this state, and enforce obedience thereto.

(a) The purchaser at a foreclosure sale of mortgaged premises takes the place of the mortgagee in strict foreclosure at common law. His title relates back to the time of the execution of the mortgage. He succeeds as well to the title and estate

acquired by the mortgagee, by the delivery of the mortgage deed, as to the estate of the mortgagor, had at the time of the execution of the mortgage. *Champion v. Hinkle*, 18 *Stew.* 162.

10. That the fees of the solicitor, for drawing and engrossing a bill in such suits, shall be five dollars, and no more. (1) Fees.  
Ib., § 2.
11. That the fees and costs in suits relating to mortgages in the circuit courts shall be the same as are allowed for similar services in the court of chancery, except that the fees of the court and clerk shall be two-thirds the sum allowed for like services in the court of chancery. Fees of clerk and court.  
Ib., § 3.
12. That the clerks of the circuit courts shall perform the same duties in mortgage cases as are required to be performed by the clerk of the court of chancery in similar cases; and the judges of the said circuit courts shall sign the decrees in such cases, as the chancellor is required to do. Duties of clerk.  
Ib., § 4.
13. That the masters and examiners of the court of chancery shall be ex-officio masters and examiners of all the circuit courts in this state, and shall have the same powers and perform the same duties, in cases commenced in the circuit courts by virtue of this act, as they have and do in like cases in the court of chancery. Of masters and examiners.  
Ib., § 5.
14. That all persons aggrieved by any order or decree of any circuit court, in mortgage cases, may appeal from the same, or any part thereof, to the court of errors and appeals, within the same time and in the same manner as appeals are now authorized from orders or decrees of the court of chancery. Appeal.  
Ib., § 6.
15. That in all cases where the circuit courts have jurisdiction in suits for the foreclosure and sale of mortgaged premises, the said circuit courts shall be always open, for the return of writs of subpoena to answer, and for making orders for the appearance of absent or concealed defendants, and that such orders may be, to appear and plead, answer or demur, upon any day either in term or vacation; and in default of such plea, answer or demurrer, a decree pro confesso may be taken on any day. Court always open for certain purposes.  
P. L. 1858, p. 463, § 1.
16. That in all cases where a decree pro confesso may be taken in vacation, it shall be lawful to make all orders of reference, and other proceedings, to perfect a final decree, and to make a final decree in vacation. What orders may be made in vacation.  
Ib., § 2.

### V. The registration of mortgages.

17. That the clerk of the court of common pleas of every county of this state shall, from time to time, provide fit books, well bound and lettered, for registering all mortgages and defeasible deeds in the nature of mortgages, of lands, tenements and hereditaments, lying and being within his county, in which shall be entered the names of the mortgagor and mortgagee, the date of the mortgage, the mortgage money and when payable, and the descriptions and boundaries of the lands, tenements and hereditaments mortgaged; that the said clerk shall, immediately on receiving the said mortgage, make the said entry or abstract in the register, and shall note in the margin, or at the foot of such abstract, the day of the month and the year, when the said mortgage was delivered to him or brought to his office to be recorded; to which books every person shall have access at proper seasons, and may search the same, paying the fees allowed by law. (a) Mortgages to be registered by clerk of common pleas.  
R. S. 657, § 1.  
What entries to be made.
18. That it shall and may be lawful to record in full, in the books provided for the registry of mortgages, all mortgages authorized to be regis-

(a) The registry is not a copy but mere abstract. No copy of the acknowledgments or proofs, or entry or note thereof, is made. Nor are they evidence. *N. J. R. Co. v. Suydam*, 2 *Har.* 25, 60. *Harker v. Gustin*, 7 *Hal.* 42. See *Chase v. Curyl*, 28 *Vr.* 558. Priority of record will not give preference to one mortgage over another given at the same time and to the same person. *Gausen v. Tomlinson*, 8 *C. E. Gr.* 405. Nor will a subsequent mortgagee by registry gain priority over a former unregistered mortgage of which he had notice. *Matthews v. Everitt*, 8 *C. E. Gr.* 473. *Den v. Roberts*, 1 *South.* \*315, note (a). See *Sho-well v. Shouwell*, 9 *C. E. Gr.* 378. If merely an abstract of a mortgage is recorded, the record would not show what estate was granted, the statutory direction being simply that the "names of the mortgagor, the mortgage money and when payable, and the description and boundaries of the land" shall be entered. *Gale's Executors v. Morris*, 2 *Stew.* 226. Mere constructive notice of the existence of a mortgage, with no notice

of the estate conveyed by it, will not be notice that the mortgage embraces a fee, when, by its terms, it conveys only a life estate. *Ib.* Constructive notice, flowing from matters of record, can never be construed to be more extensive or broader than the facts stated on the record. *Ib.* The mortgage registry act does not apply to mortgages of leases for years. *Hutchinson v. Bramhall*, 15 *Stew.* 372. County clerks are not entitled to demand fees for searches, not made by themselves, of the records of deeds, mortgages, &c., in their office. *Lum v. McCarty*, 10 *Vr.* 287, overruling *Flemming v. Clerk of Hudson Co.*, 1 *Vr.* 280. The fact that a mortgage has been lodged for record is not sufficient notice of its contents unless it is afterwards recorded correctly. A person who makes a search is justified in relying on the records as he finds them. *Crosby v. Vleet*, 3 *N. J. L. J.* 86. The indices, however, are no part of the records; the records themselves must be examined. *Ib.*

(1) This section was amended by P. L. 1879, p. 55, but the amendatory act was amended by P. L. 1879, p. 182, to read as it is above.

May be recorded in full at request of mortgagee. P. L. 1853, p. 90.

The record and transcript evidence.

Clerk's certificate and receipt. R. S. 657, § 2.

Not registered unless acknowledged or proved. *Ib.*, § 3.

Writing operating as defeasance to be registered. *Ib.*, § 4.

Operation of unregistered mortgage. *Ib.*, § 5.

tered by this act, upon the request of the mortgagee, and upon his paying therefor the same fees as are allowed by law for recording deeds; and when any mortgage is so recorded in full, the record of such mortgage, and a transcript of such record, duly certified by the clerk in whose office the record is kept, shall be received in evidence in any court of this state, in the same manner, and to the same effect, as the record, or a transcript of the record of deeds is now received.

19. That the said clerk shall certify, on or under the said mortgage, the time when such mortgage was delivered to him or brought to his office to be registered, and the name or number of the book and page or pages in which it is registered, and shall, if required by the party, give a receipt for the said mortgage, stating therein the time when he received it, and shall, when registered, deliver it to the party entitled to it, or his order.

20. That no mortgage, defeasible deed or other conveyance in nature of a mortgage, which has been made and not already acknowledged or proved according to law, or which shall be made, shall be entered in such register, unless the execution thereof shall be first acknowledged or proved and certified in the manner prescribed by the act entitled "An act respecting conveyances." (a)

21. That if any deed or conveyance, which shall be made, of lands, tenements and hereditaments lying and being in this state, be expressed in absolute and unconditional terms, and it shall appear, by any other writing, to have been intended by way or in nature of a mortgage, then such deed or conveyance shall be considered as a mortgage, and be liable to be registered by virtue of this act; and that the grantee in the said deed or conveyance shall not be entitled to or enjoy the benefits and advantages hereby given to a mortgagee, unless an abstract of the writing, operating as a defeasance of it, or explanatory of the intention of the parties, that it should have the effect of a mortgage or conditional deed, be also therewith registered, as in case of a mortgage. (b)

22. That every deed of mortgage, or conveyance in nature of a mortgage, of or for any lands, tenements or hereditaments, which shall have been made and executed after the first day of January, in the year of our Lord one thousand eight hundred and twenty-one, or shall hereafter be made and executed, shall be void and of no effect against a subsequent judgment creditor, or bona fide purchaser, or mortgagee for a valuable consideration, not having notice thereof, unless such mortgage shall be acknowledged or proved according to law, and recorded or lodged for that purpose with the clerk of the court of common pleas of the county in which such lands, tenements or hereditaments are situated, at or before the time of entering such judgment, or of recording or lodging with the clerk as aforesaid, the said mortgage or conveyance to such subsequent purchaser or mortgagee; provided, nevertheless, that such mortgage, as between the parties and their heirs be valid and operative. (c)

(a) An entry by the clerk in a book in his office, of an instrument not previously acknowledged or proved, does not stand in the place of the instrument, and dispense with its production and proof, or with legally accounting for its non-production. *Fox v. Lambson*, 3 Hal. 375. Therefore the clerk's book containing a certificate of manumission, not previously acknowledged or proved, is not evidence. *Ib.* See *Harker v. Gustin*, 7 Hal. 42. *Den v. Wade*, *Spen*, 291. *Ante*, p. 838, note (d).  
(b) This section does not apply where the defeasance is verbal. *Kline v. McGuckin*, 9 C. E. Gr. 411. *Clark v. Condit*, 3 C. E. Gr. 358. A complainant claiming to have a judgment lien on land cannot question the position, in order of priority, of a lien by way of mortgage, without making the owner of the equity a party, and establishing his judgment lien as against such owner. *Tichenor v. Tichenor*, 18 *Stew.* 684.

(c) A grantee of land alleged to have been conveyed in payment of a pre-existing debt is not a *bona fide* purchaser, or a purchaser for a valuable consideration, as against a mortgagee who claims under a mortgage given before but unrecorded at the time of such conveyance. *Pancoast v. Duval*, 11 C. E. Gr. 445. Formerly unrecorded mortgages were subordinated not to mortgages, but to subsequent purchasers. *Den, Lou v. Goldtrap*, *Coze* 272. Mortgage held valid as against a mortgage subsequently recorded, although the first mortgage was not recorded within the thirty days required by the act of 1799. *Plume v. Bone*, 1 Gr. 63. The mortgage first actually recorded has preference. *Taylor v. Thomas*, 1 Hal. Ch. 331. Recording a second deed or mortgage is not notice to a prior mortgagee. *Hoy v. Bramhall*, 4 C. E. Gr. 558. *Vanorden v. Johnson*, 1 *McCart.* 376. *Ward v. Hague*, 10 C. E. Gr. 397. An unrecorded mortgage is good as against a subsequent attachment. *Campion v. Kille*, 1 *McCart.* 229, 2 *McCart.* 476, 500. Priority of registry will not avail against actual previous notice of an unreg-

istered mortgage. *Den v. Roberts*, 1 *South.* \*315, note (a). *Chance v. Teeple*, 3 Gr. Ch. 173. *Wilink v. Morris Canal Co.*, 3 Gr. Ch. 379. *Van Wagenen v. Hopper*, 4 Hal. Ch. 684. *Blair v. Ward*, 2 *Stock.* 119. *Conover v. Van Mater*, 3 C. E. Gr. 481. A second mortgagee and those holding under him are to be charged with constructive notice of a prior mortgage on record and undischarged at the time of executing and recording such second mortgage. *Miller v. Wash*, *Sax*, 304. *Pierson v. Eversen*, 1 Hal. Ch. 198. *Nicholls v. Feak*, 1 *Beas.* 69. *Van Doren v. Robinson*, 1 C. E. Gr. 258. A defect in the registry will not affect the notice. *Lee v. Woodworth*, 2 Gr. Ch. 36. *Hall v. Lambert*, 3 Hal. Ch. 651. *Smallwood v. Lewin*, 2 *McCart.* 60. *Smith v. Vreeland*, 1 C. E. Gr. 199. *Van Doren v. Robinson*, 1 C. E. Gr. 257. *Armstrong v. Ross*, 5 C. E. Gr. 110. But a mortgage upon a life estate as shown by the record, cannot be reformed so as to cover the fee, to the prejudice of a subsequent judgment creditor. *Wheeler v. Kirtland*, 8 C. E. Gr. 13, 9 C. E. Gr. 552. *Query*—Whether the record of a mortgage on lands which A, by written agreement, has bound himself to convey to the mortgagee, is notice. *Neligh v. Michenor*, 3 *Stock.* 539. See *Sinclair v. Armistage*, 1 *Beas.* 174. The registry is not intended as notice of the amount due on the mortgage. *Bell v. Fleming*, 1 *Beas.* 13, 491. A judgment has priority over all advances upon an open mortgage made after the date of its recovery. *Griffin v. N. J. Oil Co.*, 3 *Stock.* 49. A mortgage to secure future advances is good, for all advances made before actual notice of a subsequent incumbrance. *Ward v. Cooke*, 2 C. E. Gr. 93. *Furnum v. Burnett*, 6 C. E. Gr. 87. So, a mortgage to secure an indorser or surety. *Uhler v. Semple*, 5 C. E. Gr. 289. See *McCurdy v. Agnew*, 4 Hal. Ch. 9, 733. The clerk's certificate that A's mortgage was the first and only mortgage on record, will not give it priority. *Lovett v. Demarest*, 1 Hal. Ch. 113. A mortgage executed and acknowledged and put upon record

23. That when any mortgage, registered as aforesaid, shall be redeemed, paid and discharged, it shall be the duty of the said clerk, on application to him, made by the mortgagor or person redeeming, paying and discharging the said mortgage, and producing to him the said mortgage canceled, or a receipt thereon, signed by the mortgagee or his executors, administrators or assigns, to enter in a margin to be left for that purpose, opposite to the said abstract, a minute of the said redemption, payment and discharge; which minute shall be a full and absolute bar to and discharge of the said entry, registry and mortgage. (a)

Payment and discharge, when and how to be entered. *Ib.*, § 6.

24. That whenever a decree shall be made by the chancellor that any mortgage is satisfied and shall be canceled of record, it shall be lawful to file in the office of the county clerk or register where such mortgage is registered or recorded, a copy of such decree certified under the seal of the court; and thereupon such clerk or register shall enter in the margin of the record of such mortgage and opposite thereto, that the same was canceled by decree in chancery, filed in his office, entering the date of said decree and filing. (b)

Effect of entry.

Copy of a decree cancelling mortgages may be filed in county clerk's office. P. L. 1866, p. 879.

25. That any mortgage which has been recorded or registered, or that may hereafter be recorded or registered, shall be discharged upon the record thereof by the officer in whose custody it shall be, whenever there shall be presented to him a certificate signed by the mortgagee, his heirs, executors, administrators or assigns, acknowledged or proved and certified in the manner prescribed by the act entitled "An act respecting conveyances," specifying that such mortgage has been paid, or otherwise satisfied and discharged. (c)

Cancellation.

May be canceled on certificate of mortgagee. P. L. 1869, p. 1361, § 1.

26. That every such certificate and the proof or acknowledgment thereof shall be recorded at full length, and a reference made in the book and page containing such record in the minutes of the discharge of such mortgage, made by the officer upon the record thereof.

Certificate recorded. *Ib.*, § 2.

27. That the said clerk or register shall be allowed for services done by virtue of the two preceding sections, the sum of fifty cents, and no more.

Fee. *Ib.*, § 3.

28. Whereas, mortgages of real estate are frequently lost or mislaid, and whereas, there is danger under the existing laws that the mortgagor or some other unauthorized person may cause such a mortgage to be canceled of record while it still remains unpaid; therefore, it shall be lawful for any

Proceedings for cancellation of lost mortgages. P. L. 1873, p. 41.

by the mortgagor, in pursuance of a prior contract for a loan on such security, and afterwards delivered to the mortgagee when the mortgage money is advanced, will have priority in equity over liens of mechanics and materialmen for work and materials furnished after the mortgage is recorded, for the erection of a building on the mortgaged premises, built by the mortgagor, which was commenced between the recording of the mortgage and its delivery; the mortgagee having no knowledge of the commencement of the building when he parted with his money. In equity, the mortgage, when delivered, will have relation to the agreement for the loan. *Jacobus v. Mutual Benefit Life Ins. Co.*, 12 C. E. Gr. 804, reversing *Mutual Life Ins. Co. v. Rowand*, 11 C. E. Gr. 388. An instrument in form of a mortgage does not become a mortgage by the mere fact of its being recorded if it has not been delivered between the parties. *Per Dixon, J. Ib.* Priority of record will not give a right of preference in payment to one of two concurrent mortgages, if both are held by the same person. *Vredenburgh v. Burnet*, 4 *Stew.* 229. If one of the two is assigned by the mortgagee upon the representation that it is the first lien upon the premises, such representation will make it so as against the assignor. *Ib.* But as against a subsequent assignee of the other, without notice, such representation is a secret equity by which he will not be bound. *Ib.* A purchaser of lands at a sheriff's sale under a judgment against a debtor who had given a prior mortgage on such lands, which had never been registered and of which the judgment creditor had no notice, but of which such purchaser had actual notice, takes the title free of the lien of such mortgage. *Sharp v. Shea*, 5 *Stew.* 65. A statute requiring mortgages to be registered, or to lose their priority against subsequent judgment creditors, or *bona fide* purchasers or mortgagees of the same premises, without notice, applies to a mortgage given to the state. *Clement's Executors v. Bartlett*, 6 *Stew.* 43. Where one who has no title makes a mortgage, which is recorded, and subsequently acquires title, a subsequent purchaser is not chargeable, under our registry acts, with constructive notice of the mortgage. *Bingham v. Kirkland*, 7 *Stew.* 229. If a judgment creditor have notice of the execution of a prior unregistered mortgage, it is of the same effect, as to him, as if it were registered. *Morris v. White*, 9 *Stew.* 324. Where there is no fraud shown, the fact that a judgment creditor knew that a mortgage was intended and being prepared, will not deprive him of the right which a creditor has to secure a just debt by greater vigilance and promptness. *Ib.* The doctrine of notice of an unrecorded mortgage giving priority of lien is based on fraud. *Ib.* A mere vague, general statement by a mortgagor to his creditor before suit brought, that his property was mortgaged for all it was worth, is not notice of an unregistered or unre-

corded mortgage on his land. *Condit v. Wilson*, 9 *Stew.* 370. Notice of an unregistered or unrecorded mortgage on lands, at the time of selling the lands under a judgment, is invalid if the creditor had not notice when he recovered his judgment. *Ib.* An unrecorded mortgage given by an ancestor retains its priority over a judgment recovered against the heir-at-law during the lifetime of the ancestor, although the judgment creditor had no notice of the mortgage when he recovered his judgment. *Voorhis v. Westervelt*, 16 *Stew.* 612. The registry law applies only in cases where the interest of the subsequent judgment creditor, mortgagee or purchaser can, at the time he acts, be affected by want of notice of the unrecorded mortgage. *Ib.* If, after the death of the ancestor, a sale of the heir's estate in the ancestor's lands is made under such judgment, a *bona fide* purchaser, without notice of the unrecorded mortgage, will take free from the lien of such mortgage. *Ib.* A judgment against the heir-at-law, recovered after the ancestor's death, will displace the unrecorded mortgage. *Ib.*

(a) A cancellation of record is an absolute bar and discharge of the mortgage, unless effected through fraud, accident or mistake. *Garwood v. Eldridge*, 1 *Gr. Ch.* 145. *Trenton Banking Co. v. Woodruff*, 1 *Gr. Ch.* 117. *Frasse v. Inslee*, 1 *Gr. Ch.* 233. *Muller v. Wack*, *Sax.* 201. *Bentley v. Whittemore*, 3 *C. E. Gr.* 366. *Harrison v. Johnson*, 3 *C. E. Gr.* 420. 4 *C. E. Gr.* 488. *Freeholders of Middlesex v. Thomas*, 5 *C. E. Gr.* 42. *Dudley v. Bergen*, 8 *C. E. Gr.* 397. *Dubois v. Schaffer*, 8 *C. E. Gr.* 401. *Hampton v. Nicholson*, 8 *C. E. Gr.* 423. *Banta v. Vreeland*, 2 *McCart.* 103. *Tradesmen's Building, &c., Ass'n v. Thompson*, 4 *Stew.* 588. See *Lilly v. Quick*, 1 *Gr. Ch.* 97. *Stover v. Wood*, 11 *C. E. Gr.* 417. The entry of a satisfaction of a mortgage upon the registry was part of the official duties of the clerk, and the sureties on his official bond are liable for his misfeasance as well as non-feasance in the performance of that duty. *Appleby v. State*, 18 *Vr.* 161. The clerk is not authorized to cancel a mortgage at the simple request of a stranger, though the seals be off. *Baldwin v. Howell*, 18 *Stew.* 519.

(b) If the decree gives such mortgagee his costs, he will not be required to cancel his mortgage of record until they are paid. *Lewis v. Conover*, 6 *C. E. Gr.* 230.

(c) The duty of the clerk under this section is ministerial, not judicial; it consists in receiving and recording certificates of the class mentioned and making the prescribed note on the margin of the record. That the certificate so received is not, in point of law, efficient to discharge the mortgage does not make the action of the clerk unlawful, if he follows the literal direction of the statute. *State v. Parker*, 17 *N. J. L. J.* 172; affirmed, 28 *Vr.*

mortgagee or assignee or owner of any mortgage upon which any money remains unpaid, if such mortgage has been lost or mislaid, to make affidavit that he is the owner of a mortgage (specifying the parties, date or record, or such other facts in relation thereto as may be necessary to identify the mortgage), which has been lost or mislaid or fallen into the possession of the mortgagor or his agent, and to present such affidavit to the clerk or register of the county wherein such mortgage is registered or recorded, whose duty it shall be forthwith to file it in his office, and to write a memorandum in the margin of the record or registry of said mortgage where the minute of payment is usually entered, in the following words: "this mortgage not to be canceled," or in other words of similar import; and thereafter it shall not be lawful to cancel such mortgage in any other manner than is authorized in the twenty-fourth and twenty-fifth sections of this act.

Duty of the clerk  
or register.  
Amended.

Undue preferences  
prohibited.  
R. S., 657, § 8.

**29.** That if any clerk shall give an undue preference to a mortgage, or shall register a mortgage last when it ought to be registered first, or shall neglect or refuse to perform any service or duty required of him by this act, he shall, for every such offense, forfeit and pay two hundred dollars, to be recovered, with costs, by action of debt, by the county collector, and paid to the treasurer of this state, for the use of the state; and shall also be liable for all damages which the party aggrieved may have sustained by reason thereof.

Fees.  
Ib., § 9.

**30.** That the said clerk shall be allowed, for services done by virtue of this act, the following, and no other fees, except those before specified:

- For registering abstract of a mortgage, forty cents;
- For every receipt for a mortgage, ten cents;
- For every search, seven cents;
- For entering the minute of a discharge, thirteen cents.

## VI. Assignments, and registration thereof.

Mortgages, how  
assignable.  
P. L. 1863, p. 267.  
Amended.

**31.** That all mortgages on land in this state, and all covenants and stipulations therein contained, shall be assignable at law by writing, whether sealed or not, and such assignments shall pass and convey the estate of such assignor in the mortgaged premises, and the assignee may sue thereon in his own name; but in such suit there shall be allowed all just set-offs and other defenses against the assignor that would have been allowed in any action brought by him and existing before notice of such assignment; all assignments made under this section by a married woman in her own right and without her husband shall be valid. (a)

Assignments to be  
recorded.  
P. L. 1863, p. 241, § 1.

**32.** That the clerks of the several counties of this state be and they are hereby authorized to record, in suitable books to be provided for that purpose, any assignment of any mortgage upon lands within their respective counties, the same having thereon such certificate of the acknowledgment or of the proof of execution thereof, as is or may be by law required for recording of deeds, which certificate shall be recorded therewith; and such

(a) An assignment in writing but not under seal is good. *Mulford v. Peterson*, 6 Vr. 127. *Kamena v. Huelbig*, 8 C. E. Gr. 78. That the assignee takes the mortgage subject to all equities, see *Shannon v. Marselis*, 322. *Bolles v. Wade*, 3 Gr. Ch. 458. *Jacques v. Ester*, 3 Gr. Ch. 481. *Van Hook v. Somerville Co.*, 1 Hal. Ch. 137, 633. *Garroch v. Sherman*, 2 Hal. Ch. 219. *Cornish v. Bryan*, 2 Stock 146. *Dunn v. Seymour*, 3 Stock. 278. *Woodruff v. Depue*, 1 McCart. 168. *Andrews v. Torrey*, 1 McCart. 355. *Conover v. Van Mater*, 3 C. E. Gr. 481. *Coursen v. Canfield*, 6 C. E. Gr. 92. *Atwater v. Underhill*, 7 C. E. Gr. 599. *Kamena v. Huelbig*, 8 C. E. Gr. 78. *Wilson v. King*, 8 C. E. Gr. 150. *Bennett v. Hadsell*, 8 C. E. Gr. 174. *McFarland v. Gilchrist*, 10 C. E. Gr. 487. *Union Bank v. Pinner*, 10 C. E. Gr. 495. That the maker of the note pledging the mortgage as security for its payment was a married woman does not affect the validity of the assignment. Her husband was present when she gave it, and approved it. *Kamena v. Huelbig*, 8 C. E. Gr. 78. Where a mortgagee in possession assigns the mortgage, the mortgagor, who has no actual notice of the assignment, is entitled, as against the assignee, to an account of the rents and profits up to the time of recording the assignment (but not afterwards), and to have them applied on the mortgage debt. *Ackerson v. Lodi Branch E. R. Co.*, 4 Stew. 42. If one of two concurrent mortgages is assigned by the mortgagee, upon a representation that it is the first lien upon the premises, such representation will make it so as against the assignor. *Vredenburg v. Burnet*, 4 Stew. 229. But as against a subsequent assignee of the other, without notice, such representation is a

secret equity by which he will not be bound. *Ib.* An assignee of a mortgage takes it subject to all the defenses which the mortgagor, or those who have succeeded to his rights, may urge against it, but free from secret equities created by the mortgagor in favor of third persons. *Ib.* The title of the assignee of a mortgage, whose assignment had been duly recorded, is not affected by a subsequent assignment of the same mortgage by his assignor, who had obtained possession thereof under pretense of collecting the interest on it, to a third party. The record of such assignment was notice to the latter. *Stein v. Sullivan*, 4 Stew. 409. Payments of the principal made to the mortgagee after an assignment, and while the instruments remained in his possession, as agent for the assignee for the collection of interest, must be credited on the mortgage; *aliter* as to such payments, after they had been withdrawn from him by the assignee. *Emery v. Gordon*, 6 Stew. 447. In a suit by an assignee of a mortgage, all just set-offs and other defenses shall be allowed against him which would have been allowed if his assignor had brought the action. *Woodruff v. Morristown Inst. for Savings*, 7 Stew. 174. An assignee for value, of a mortgage, by deed of assignment, in form a conveyance of land, does not thereby attain the position of a purchaser for value without notice, but takes subject to all defenses which the mortgagor or his grantor has to the debt which the mortgage is given to secure. *Magie v. Reynolds*, 6 Dick. 113. It is the duty of a person about to take the assignment of a bond and mortgage to inquire of the obligor and mortgagor as to his liability thereon. *Ib.* See *ante*, title CONVEYANCES, p. 864, note (b).

recording shall be notice from the time such assignment is left for that purpose, to all persons concerned, that said mortgage is so assigned; and the assignee of any mortgage by an assignment or assignments not recorded, shall be bound by the proceedings and sale in any foreclosure suit against any previous holder. (a)

To be noted.

**33.** That such assignments shall be properly indexed, and the records and certified copies thereof shall be evidence, in the same manner and in like cases as the record of deeds; and the clerk shall be entitled to the same fees for recording such assignments and for copying such records, as for recording and copying deeds, and for every search, five cents for each book.

To be indexed, and records and copies evidence. *Ib.*, § 2.

**34.** That when any assignment hereafter made is not recorded, as in this act provided, any payments made to the assignor in good faith, and without actual notice of such assignment, and any release of said mortgaged premises, or any part thereof, to a person not having actual notice of such assignment, shall be as valid as if said mortgage had not been assigned. (b)

If not recorded, payments made in good faith valid. *Ib.*, § 3.

**35.** That if the assignor of any mortgage upon lands in this state, heretofore made and executed and not acknowledged or proved according to law, or hereafter to be made and executed and not acknowledged or proved according to law, and the subscribing witnesses thereto be dead, or of unsound mind, or reside out of or are not to be found in the state, it shall be lawful to prove such deed of assignment before one of the justices of the supreme court, by proving the handwriting of such witnesses to the satisfaction of such justice, and upon his certificate indorsed on, or annexed to such assignment that such proof has been made before him, such assignment may be recorded the same as if such mortgage were acknowledged according to law.

Assignments of mortgage, how proved when not acknowledged. P. L. 1870, p. 57. Amended.

[Secs. 36 to 44 inclusive, being subdivision VII. of the above act, relating to chattel mortgages, are repealed by Sec. 62, *post*.]

## VII. Supplements.

### Supplement.

Approved March 17, 1875.

P. L. 1875, p. 32.

**36. SEC. 1.** That from and after the passage of this act, the clerks and registers of the several counties of this state shall charge the sum of seventy-five cents for the registration of each and every mortgage by them registered.

Fees for registering mortgages.

### Supplement.

Approved April 17, 1876.

P. L. 1876, p. 159.

**37. SEC. 1.** That hereafter it shall be lawful for the owners of lands situated in the counties of Hudson, Essex, Union, Bergen and Passaic, and in the cities of Trenton, New Brunswick and Camden, to agree for themselves and their heirs and assigns with the holder of any mortgage now in existence or hereafter to be made, which binds or may bind lands in said counties or cities, not to apply for any deduction, by reason of any mortgage, from the taxable value of such lands embraced in such mortgage. (c)

Owners of lands in certain counties and cities may agree not to apply for any tax deduction by reason of such mortgage.

**38. SEC. 2.** That in case any mortgagor or owner of lands, or the heirs or assigns of any mortgagor or owner of land situate in said counties and cities mentioned in section one, who shall have agreed not to claim any deduction from the taxable value of lands described in any mortgage, shall claim a deduction therefrom in violation of such agreement, that then and in that case said mortgage in said agreement described shall

In case deduction is claimed in violation of agreement, mortgage to become immediately due.

(a) A mortgage on lands in the city of Rahway, assigned to the trustees for the support of public schools, is prior in lien to assessments for improvements on the premises afterwards imposed by the city, although the assignment was never recorded. *Trustees of Public Schools v. Showell*, 18 *Stew.* 108. The owner of a mortgage by an unrecorded assignment is bound by proceedings in foreclosure of a prior mortgage, to which his assignor was a party, although he was not a party to the proceedings. *Cannon v. Wright*, 4 *Dick.* 17.

(b) A mortgagee cannot convey to a third person the premises mortgaged, himself retaining the debt intended to be

secured. Such a conveyance is a nullity. *Devlin v. Collier*, 24 *Vr.* 422. A release of mortgaged premises to a person having no actual notice of the assignment of a mortgage is, by statute, valid if such assignment has not been recorded. *Tradesmen's Building, &c., Ass'n v. Thompson*, 4 *Stew.* 536. The owner of the equity of redemption cannot be deprived of his right to redeem the mortgage by means of secret assignments. *Fritz v. Simpson*, 7 *Stew.* 488.

(c) See *State, Montgomery v. Trenton*, 11 *Vr.* 89. *Murphy v. Trenton*, 18 *Vr.* 79.

become immediately due and payable, and the amount of tax paid by the mortgagee shall be added to the principal of the debt secured thereby and recoverable therewith with interest thereon from the time of payment.

**Supplement.**

Approved April 28, 1886.

P. L. 1886, p. 818.

Certified copy of entry or abstract of mortgages to be received as secondary evidence.

**39. SEC. 1.** That in every case where an entry or abstract of any mortgage has been or shall be made in the books provided for that purpose, as authorized in the seventeenth section of the act to which this is a supplement, such entry or abstract and a transcript of such entry or abstract, duly certified by the clerk or register in whose office the same is kept, shall be received as secondary evidence in any court of this state, in the same manner as the record of deeds is now received, and shall be proof of the facts therein stated.

**Amendatory act.**

Approved March 9, 1891.

P. L. 1891, p. 107.

**40. SEC. 1.** That section six of the act entitled "An act concerning mortgages" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended so as to read as follows :

Proceedings when mortgagor has absconded, is unknown or has died.

[That where any person holds a mortgage against any lands or real estate situate in this state, and the mortgagor, or those holding under him, has absconded, conceals himself, is unknown to the holder of said mortgage, or is dead, and his heirs or devisees are wholly unknown, or some part of them are unknown, it shall be lawful for the holder of any such mortgage to file a bill in the court of chancery, setting up any of the facts above stated, and naming in said bill the mortgagor, or person holding under him, and said suit may proceed in the same manner as if all the owners of such real estate were known, making such absent or unknown owner or owners of said real estate a party or parties thereto, by a publication, according to the law and practice of said court, in case of absent defendants, and, in the order of said publication, describing such real estate in such manner and terms as will identify the same (by abutments and boundaries, or otherwise) and naming the mortgagor or other person last owning the said real estate ; which order of the chancellor may be published in one or more of the newspapers of this state or elsewhere, directing such absent or unknown owner or owners to appear, plead, answer or demur to the said bill, within such time as the chancellor shall direct, not less than two nor more than six months from the date of such order ; which order shall be published, as aforesaid, within twenty days from the date thereof, and continued in said newspaper or newspapers at least once a week, to within ten days of the expiration of the time limited to appear, plead, answer or demur ; and at the expiration of the time limited in said order, the chancellor shall make such decree against said absent or unknown owner or owners, as if they were known to the court, and as may be equitable and just, and shall have power to decree a sale of said mortgaged premises ; and that the equity of redemption be foreclosed and cut off, in the same manner as if all the owners or persons in interest were known, and by name had been made parties to said suit ; and the chancellor shall further decree that the proceeds of sale, after the payment of the complainant's mortgage, with the costs of foreclosure and sale, and such other liens and incumbrances as may have been established and ordered paid by the chancellor in such foreclosure proceedings, shall be deposited with the clerk of the court, and by him deposited, by order of the court, in any designated depository of moneys paid into the court of chancery, for the benefit of such absent or unknown owners, and the chancellor shall order the payment thereof from time to time to those who are entitled to receive the same, and as they shall be ascertained by the court.]

Chancellor to make decree.

## Supplement.

Passed March 7, 1893.

P. L. 1893, p. 97.

**41. SEC. 1.** That every mortgage, bill of conditional sale or conveyance hereafter made upon, or for any household goods and furniture in the use and possession of any family in this state, not given to secure the purchase-money for such goods and chattels thus in use and possession, shall be absolutely void and of no effect or validity, unless such mortgage, bill of conditional sale, conveyance or instrument in writing intended to affect such household goods and furniture, shall be first duly signed, sealed, executed and acknowledged, according to law, by the husband and wife of the family, and be duly recorded as provided by law, in the county where such household goods and furniture may be situate at the time of the execution of any such instrument intended as a lien or conveyance of or upon such goods and chattels as herein above specified.

Chattel mortgages upon household goods, &c., to be signed and executed by husband and wife, and recorded.

## VIII. Miscellaneous acts.

An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder.

Approved March 12, 1880.

P. L. 1880, p. 255.

**42. SEC. 1.** That in all proceedings to foreclose mortgages hereafter commenced, no decree shall be rendered therein for any balance of money which may be due complainant over and above proceeds of the sale or sales of the mortgaged property, and no execution shall issue for the collection of such balance under such foreclosure proceedings. [See *ante*, p. 386, Sec. 76.](a)

No decree to be rendered in foreclosure suits for balance of money due over and above proceeds of sale.

**43. SEC. 2.** [Amended by Sec. 47, *post*.]

**44. SEC. 3.** [Amended by Sec. 48, *post*.]

**45. SEC. 4.** That in all foreclosure proceedings hereafter commenced, the sheriff or other officer who may be directed to sell any mortgaged premises shall, after making such sale, report the same within five days thereafter to the court out of which an execution or order to sell is issued, stating the name of the purchaser or purchasers and the price obtained, and if the said court, or a judge thereof, shall approve of such sale, they shall confirm the same as valid, effectual in law, and shall, by rule of court allowed in open court, or by a judge thereof at chambers, direct the said sheriff or other officer to execute good and sufficient conveyance in law to the purchaser or purchasers for the mortgaged premises so sold; *provided*, that no sale of mortgaged premises shall be confirmed by the court or further proceedings had until the court, or such judge, is satisfied by evidence that the property has been sold at the highest and best price the same would then bring in cash, and such evidence may be in the form of affidavits.(b)

Sheriff or other officer to report sale to court, with name of purchaser and price, &c.

Proviso.

**46. SEC. 5.** That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and that this act shall take effect immediately.

Repealer.

(a) The provision that in all foreclosure proceedings thereafter commenced no personal decree for foreclosure shall be taken, applies to mortgages given before the date of the passage of the act, and is not, so far as cases in which there is a remedy at law are concerned, unconstitutional as depriving a party of any remedy for enforcing a contract which existed when the contract was made. *Newark Savings Institution v. Forman*, 6 *Stew.* 436. *Naar v. Union and Essex Land Co.*, 7 *Stew.* 111. *Allen v. Allen*, 7 *Stew.* 493. *Firemen's Ins. Co. v. Wilkinson*, 8 *Stew.* 160. *Chancellor v. Traphagen*, 14 *Stew.* 369. *Toffey v. Acheson*, 15 *Stew.* 182. *Champion v. Hinkle*, 18 *Stew.* 162.

(b) The act of 1880 requiring that foreclosure sales shall not be confirmed, unless the property has been sold at the best price it would bring, applies to all foreclosure sales, and not merely to those in which a decree for deficiency is sought. *Mutual Benefit Life Ins. Co. v. Gould*, 7 *Stew.* 417. The design of the legislature in requiring judicial action on every such sale, was not

that, through the setting aside of sales, mortgaged property might be saved from effectual sale until an adequate price for it should have been obtained, but that those interested in having the property well sold might have opportunity to object to the sale; and if it should appear that the property had not brought the highest price it would bring at sheriff's sale, for cash, the sale might be set aside. *Del., L. and W. R. R. Co. v. Scranton*, 7 *Stew.* 429. Where it is plain that the premises were sold for the highest and best price they would then bring, and the proceedings having been regular and free from fraud, every presumption is in favor of the application to confirm the sale on the ground that the statute has been complied with. *Guarantee Trust Co. v. Jenkins*, 13 *Stew.* 451. Mere inadequacy in the price bid at a fairly and regularly-conducted public sale, pursuant to the order of the chancellor, will not justify refusal to confirm the sale. *Bethlehem Iron Co. v. Phila. and Seashore Ry. Co.*, 4 *Dick.* 356. *Morrise v. Inglis*, 1 *Dick.* 306.

## Amendatory act.

P. L. 1881, p. 184.

Passed March 23, 1881.

**47. SEC. 1.** That the second section of the act entitled "An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder," approved March twelfth, one thousand eight hundred and eighty, be and the same is hereby amended so as to read as follows :

If debt not satisfied by foreclosure sale, lawful to proceed on bond.

[That in all cases where a bond and mortgage has or may hereafter be given for the same debt, all proceedings to collect said debt shall be, first, to foreclose the mortgage, and if at the sale of the mortgaged premises under said foreclosure proceedings the said premises should not sell for a sum sufficient to satisfy said debt, interest and costs, then and in such case it shall be lawful to proceed on the bond for the deficiency, and that all suits on said bond shall be commenced within six months from the date of the sale of said mortgaged premises, and judgment shall be rendered and execution issue only for the balance of debt and costs of suit.] (a)

Limitation.

**48. SEC. 2.** That section three of said act be and the same is hereby amended so as to read as follows :

If judgment obtained on bond, foreclosure sale opened and property may be redeemed.

[That if after the foreclosure and sale of any mortgaged premises the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance of debt, such recovery shall open the foreclosure and sale of said premises, and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was rendered, with interest to be computed from the date of said decree and all cost of proceedings on the bond ; *provided*, that a suit for redemption is brought within six months after the entry of such judgment for the balance of the debt.]

Proviso.

An act to revise and consolidate certain acts concerning chattel mortgages and to repeal the supplement on this subject, approved March twenty-fourth, one thousand eight hundred and eighty-one.

P. L. 1885, p. 318.

Approved May 2, 1885.

Mortgage to vest right of possession of chattels in mortgagee so far as to prevent removal, &c.

**49. SEC. 1.** That every chattel mortgage shall vest in the mortgagee or owner thereof the right to the possession to the chattels therein described, so far as may be necessary for the purpose of preventing the removal thereof out of the county wherein they did lie at the time of the execution or delivery of such mortgage, and of recovering such chattels in case the same shall have been removed out of such county.

When chattels removed and recovered by legal proceedings, court may regulate disposition thereof.

**50. SEC. 2.** That when such chattels shall be so removed by any party and recovered by the mortgagee or owner of the mortgage by means of legal proceedings, or when the removal thereof shall be prevented by like proceedings, the court in which such proceedings are had may regulate the disposition of such chattels and prescribe such terms for the possession thereof by the mortgagee or other person interested therein as will protect the rights of such mortgagee or owner of such mortgage.

Not to apply to certain chattels.

**51. SEC. 3.** That the above provisions shall not apply to any vessel, rolling stock of railroads, or to any chattels which, in the ordinary use thereof at the time of the execution of the mortgage, are taken from time to time out of the county wherein they did lie when so mortgaged.

(a) The limitation in this act that suits on bonds should be commenced within six months from the date of the sale of the mortgaged premises, is so connected with other parts of the act as to be inseparable, and, as to antecedent obligations, is unconstitutional. *Baldwin v. Flagg*, 14 Vr. 495. *Morris v. Carter*, 17 Vr. 260. *Wilkinson v. Butherford*, 20 Vr. 241. *Coddington v. Bispham*, 9 Stew. 574. *Randolph v. Wilson*, 11 Stew. 28. The right of action upon a bond secured by mortgage will not be barred by the lapse of six months after sale of the mortgaged premises in proceedings instituted to foreclose a prior mortgage. *Wheeler v. Ellis*, 27 Vr. 28. The terms of the act are not waived by giving with the bond a warrant to confess judgment, and a judgment entered upon such bond before the foreclosure of the accompanying mortgage is irregular. *Hellyer v. Baldwin*, 24 Vr. 141. Suit will not lie on overdue interest coupons on coupon bonds secured by mortgage until after foreclosure and

sale of mortgaged premises. *Holmes v. Seashore Elec. Ry. Co.*, 28 Vr. 18. A mortgagee may maintain ejectment, notwithstanding the statute requiring a foreclosure as the first proceeding in the collection of the debt. *Mershon v. Custree*, 28 Vr. 484. The provision requiring an action on the bond for deficiency, to be brought within six months after the foreclosure sale, is in derogation of the creditor's common-law remedy, and must be strictly construed, and does not prevent his presenting his full claim to the representatives of the deceased mortgagor before such foreclosure sale and obtaining his dividends on the amount of such deficiency, if the estate be insolvent, more than six months after such sale, although no action has been brought on the bond. *Crater v. Smith*, 15 Stew. 348; affirmed, 16 Stew. 336. Where mortgaged premises have been sold on a prior lien claim, it is not necessary to foreclose the mortgage before suing on the bond. *Waters ads. Dey*, 7 N. J. L. J. 353.

**52. SEC. 4.** That every mortgage or conveyance intended to operate as a mortgage of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against the subsequent purchasers and mortgagees in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by the holder or holders of said mortgage, his, her or their agent or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, be recorded as directed in the succeeding section of this act; *provided*, that nothing contained in this act shall be taken, construed or held to apply to any mortgage of personal property included in a mortgage of franchises and real estate heretofore or hereafter made by any railroad company, and which hath been or shall be recorded or registered as a mortgage of real estate in every county in which such railroad or any part of it is or shall be located, and it shall not be necessary to record as a chattel mortgage any such mortgage as is in this proviso described. (a)

Mortgage void unless affidavit of mortgagee annexed and recorded.

**53. SEC. 5.** That the instruments mentioned in the preceding section and not excepted in the proviso, shall be recorded in the clerk's office of the county wherein the mortgagor, if a resident of this state, shall reside at the time of the execution thereof, and if not a resident of this state, then in the clerk's office of the county where the property so mortgaged shall be at the time of the execution of such instrument; *provided*, that in any county where the office of register of deeds exists, or hereafter may be created, such instruments shall be recorded in the office of such register. (b)

Proviso.

Where to be recorded.

**54. SEC. 6.** That no chattel mortgage or conveyance intended to operate as a mortgage of goods and chattels shall be recorded unless the execution thereof shall be first acknowledged or proved, and such acknowledgment or proof certified thereon in the manner prescribed by the act entitled "An act respecting conveyances."

Mortgage not to be recorded unless execution acknowledged or proved.

**55. SEC. 7.** That the clerks and registers of the several counties of this state are hereby authorized to provide suitable books, at the expense of their respective counties, in which to record the instruments by this act directed to be recorded; and it shall be the duty of the said clerks and registers to record such instruments in accordance with the provisions of this act; and the said clerks and registers shall respectively enter, at the foot of the record of each mortgage and instrument so recorded, the time when such mortgage or instrument was received by him in his office to be recorded, and shall indorse on each mortgage and instrument, when recorded as aforesaid, the time when the same was delivered to him at his office to be recorded, and the book and page in which the same has been recorded, and shall thereupon deliver the same to the party entitled to it or to his order.

Clerks to provide books for recording instruments.

How recorded.

(a) A mortgage of chattels not accompanied by an immediate delivery and continued change of possession of the things mortgaged, shall be absolutely void as against creditors of the mortgagors, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof shall be filed in the clerk's office (Rev., p. 709), and recorded also (P. L. 1880, p. 268). *Penn Ins. Co. v. Semple*, 11 *Stew.* 577. See, also, *Williamson v. N. J. Southern R. R. Co.*, 2 *Stew.* 320. *Sayre v. Hewes*, 5 *Stew.* 652. *Currie v. Knight*, 7 *Stew.* 485. (It will be noted that by the chattel mortgage act of 1885 (see Sec. 63, *post*) it is no longer necessary to file the mortgage.) Simply affirming under oath that the consideration of a chattel mortgage is the sum for which it is given, without disclosing how the debt on which it is founded arose or was incurred, is neither a literal nor a substantial compliance with the statute requiring the mortgagee to file an affidavit showing the consideration of his mortgage. *Zhier v. Turner*, 8 *Stew.* 68. A second mortgagee of chattels, in whose mortgage there is a recognition of a previous-existing mortgage upon the same chattels, cannot attack the former mortgage by setting up that it was made in fraud of the mortgagor's creditors. *Perrine v. First National Bank*, 26 *Vt.* 402. An unrecorded mortgage upon chattels, unaccompanied by any change of possession, will prevail over a subsequent mortgage given to secure a prior indebtedness without change of its form or the surrender of any security, provided the earlier mortgage was not kept from the record or the chattels left in the possession of the mortgagor for any improper or fraudulent purpose. *Milton v. Boyd*, 4 *Dick.* 142. To render a chattel mortgage valid against the creditors of the mortgagor, the affidavit stating the con-

sideration must show particularly how the debt on which it is founded arose. *Graham Button Co. v. Spielmann*, 5 *Dick.* 120. A creditor of a mortgagor, to be in position to contest the validity of a chattel mortgage, must have his debt fastened on the mortgagor's property. *Id.* In order to successfully contest the validity of a chattel mortgage, a subsequent purchaser or mortgagee must have made his purchase or taken his mortgage without notice of a prior mortgage, but a creditor is subject to no such condition. He may know of the existence of the mortgage when he becomes a creditor and still have a right to contest it. *Id.* If a chattel mortgage be made and delivered to a trustee for creditors, he, as holder, is competent to make the affidavit required by the statute to give the mortgage full effect. *Fletcher v. Bennet*, 6 *Dick.* 615, reversing *S. C.*, 6 *Dick.* 162. If the affidavit annexed to a chattel mortgage expressly refers to matters stated in the mortgage, those matters must be regarded as part of the affidavit. *Id.* If a chattel mortgage, reciting the debts it was given to secure, be recorded in pursuance to the provisions of the statute, its recital becomes evidence of the existence of the debts against subsequent creditors of the mortgagor, notwithstanding the mortgagor has retained possession of the chattels. *Id.* See *Knowles Loom Works v. Vacher*, 28 *Vt.* 498.

(b) An assignee for the benefit of creditors cannot take exception to the validity of a chattel mortgage given by his assignor on the ground that it was not recorded in the county where the assignor actually resided. He took his title to the property subject to the equities to which it was subject in the hands of his assignor. *Shaw v. Glen*, 10 *Stew.* 32.

Mortgage to be indexed, &c.

Fees.

Mortgage hereafter recorded valid until canceled.

Mortgage heretofore recorded valid until canceled.

Fees of clerks and register for recording copies, &c.

Persons making false affidavit guilty of perjury.

Acts repealed.

Proviso.

Act, how to be known and cited.

**56. SEC. 8.** That such chattel mortgages shall be properly indexed, and the records and certified copies thereof shall be evidence in the same manner and in like cases as the record of deeds, and the said clerks and registers shall be entitled to the same fees for recording and indexing such chattel mortgages, and for copying such records, as they are entitled to for the recording, indexing and copying deeds.

**57. SEC. 9.** That every chattel mortgage hereafter recorded pursuant to the provisions of this act shall be valid against the creditors of the mortgagor, and against subsequent purchasers and mortgagees, from the time of the recording thereof until the same be canceled of record in the manner now provided by law for canceling of mortgages of real estate.

**58. SEC. 10.** That every chattel mortgage heretofore recorded according to the provisions of the act entitled "A further supplement to the act entitled 'An act respecting mortgages,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which said further supplements were approved March the twelfth, one thousand eight hundred and eighty [P. L. 1880, p. 266], and March twenty-fifth, one thousand eight hundred and eighty-one [P. L. 1881, p. 226], respectively, shall be valid as against the maker thereof and his creditors, and as against subsequent purchasers and mortgagees until the same be canceled of record in the manner now provided by law for the canceling of mortgages of real estate.

**59. SEC. 11.** That the said clerks and registers shall be entitled to receive the same fees for recording said copies and statements and for indexing the same, and for copies of such records, as they are entitled to for the same services in the recording, indexing and copying of deeds.

**60. SEC. 12.** That if anyone shall falsely swear or affirm in the making of any affidavit or affirmation provided for by this act, he or she shall be deemed guilty of perjury, and on conviction thereof shall be liable to all the penalties provided by law therefor.

**61. SEC. 13.** [Amended by Sec. 64, *post.*]

**62. SEC. 14.** That sections thirty-six to forty-four, inclusive, being subdivision VII., entitled "chattel mortgages," in the act entitled "An act concerning mortgages" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four [Rev., p. 708], and the following supplements to said acts, namely, the supplement approved March nineteenth, one thousand eight hundred and seventy-eight [P. L. 1878, p. 139], the supplement approved April fifth, one thousand eight hundred and seventy-eight [P. L. 1878, p. 347], the supplement approved March twelfth, one thousand eight hundred and eighty [P. L. 1880, p. 266], the supplement approved March twenty-fourth, one thousand eight hundred and eighty-one [P. L. 1881, p. 207], and the supplement approved March twenty-fifth, one thousand eight hundred and eighty-one [P. L. 1881, p. 226], and the act entitled "A supplement to an act entitled 'An act concerning crimes,' approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved March nineteenth, eighteen hundred and seventy-eight [see P. L. 1878, pp. 137, 168], and that all acts and parts of acts inconsistent with this act be and the same are hereby repealed; *provided*, that this repealer shall not affect any suit already begun nor affect or impair the lien or estate created by any chattel mortgage made in pursuance of any act hereby repealed. (a)

**63. SEC. 15.** That this act shall be known and cited as the "chattel mortgage act, 1885."

#### Amendatory act.

Approved April 1, 1887.

P. L. 1887, p. 115.

**64. SEC. 1.** That the thirteenth section of the act to which this is a supplement be and the same is hereby amended so that the same shall read as follows:

(a) See 9 *New Jersey Law Journal*, p. 189.

[That any mortgagor of personal property in possession of the same who, without consent of the owner of the claim secured by mortgage and with intent to defraud, removes any of the property mortgaged out of the county where it was situated at the time it was mortgaged, or secretes, destroys, sells or exchanges the same without such consent, shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine not to exceed one thousand dollars or imprisonment at hard labor not exceeding six months, or both at the discretion of the court.]

Mortgagor removing property, &c., without consent of owner of claim guilty of a misdemeanor

An act providing for the canceling of record of mortgages by order of a circuit judge or law judge of a county.

Approved March 10, 1891.

P. L. 1891, p. 128.

**65. SEC. 1.** That any circuit judge or law judge of any county may, by order, direct the county clerk of said county, or the register, when there is such officer in said county, to cancel of record any mortgage on real estate or chattels, or both, whenever he shall be satisfied by proof that the mortgagee therein has been fully paid the principal and interest due on said mortgage, or the mortgagor shall deposit with the county clerk any balance of principal and interest, if any, still due thereon according to the terms of the said mortgage; and any one or more of the mortgagors or party in interest may make application for such order, and the judge shall order notice of such application to be served on the mortgagee or mortgagees, if residents of this state, the same as a summons should be served; and if the mortgagee or mortgagees are non-residents of this state, then such notice shall be served by publication once a week for four weeks in a newspaper published in said county, to be designated by said judge; if the record shows assignment of such mortgage, then notice as above shall be served on such assignee instead of the mortgagee.

Circuit court judge or law judge may order mortgages to be canceled of record, upon proof, &c.

**66. SEC. 2.** That when such order is filed with the clerk or register of such county, and the money deposited with him as required by said order, if such order so directs, then the clerk shall discharge and cancel of record such mortgage, and the said clerk or register shall enter on the margin of the registry or record of such mortgage, and opposite thereto, the words "canceled by order," entering the date of such order and filing it.

Record to be marked "canceled by order."

An act in relation to the foreclosure of mortgages, where it is unknown whether any person who has or might have an interest or a lien upon the land covered by the mortgage or any part thereof, is dead or alive, and his heirs and devisees or legal representatives are unknown in whole or in part

Approved March 28, 1892.

P. L. 1892, p. 192.

**67. SEC. 1.** That in all proceedings hereafter commenced in the court of chancery of the state of New Jersey for the foreclosure of any mortgage upon lands situated in the state of New Jersey, mentioned and described in the bill of complaint, whenever it shall appear by the allegations in said bill that the complainant, after diligent inquiry therefor, has been unable to ascertain whether any person or persons having or having had, or claiming or having claimed, or believed by the complainant to claim or to have claimed any right, title, interest or estate in or to the said lands, or any part thereof, or any lien upon the same, is alive or dead, and that he has been unable to ascertain the names or residences of his heirs and devisees or personal representatives or such of them as are proper parties defendant as aforesaid, in case such person or persons are dead, such bill may be filed against and such action may proceed against such person or persons by name, and his heirs, devisees and personal representatives as in the case of absent defendants whose names are known; *provided, nevertheless,* that such notice as is now required by law to be published against absent defendants in default of personal service, addressed to such person by name, and to "his heirs, devisees and personal representatives," and containing such further statements, and giving such further time as the chancellor may by

Actions commenced to foreclose a mortgage, may proceed against persons claiming any right, title, &c., or his heirs, devisees, &c.

Proviso.

his order direct, be first published and mailed in such manner as the chancellor may by his order in said action direct; and in case such person, or his heirs, devisees or personal representatives, shall not appear, plead, answer or demur within the time limited in said notice, or further allowed by the chancellor, if he shall think proper, on proof to the satisfaction of the chancellor of mailing and publication of said notice as directed, such action may proceed in all respects as though such person, or his heirs, devisees or personal representatives, had been duly named and described and served with process of subpoena in said action, and had failed to appear, plead, answer or demur to the complainant's bill of complaint within the time thereto allowed by law. (1)

All such defendants bound by orders and decrees.

**68. SEC. 2.** That all such defendants and all persons falling within the description of "heirs, devisees or personal representatives" of the defendant supposed to be dead, as aforesaid, shall thereupon be bound by all orders and decrees in said cause, as if they had been duly named and described and served with process within this state.

Proofs, costs and proceedings, how allowed.

**69. SEC. 3.** That proofs may be made, costs allowed, security ordered, and proceedings for restitution or other relief from said decrees and orders had, in like manner as the same are now allowed by law in case of absent defendants.

(1) See title CHANCERY, page 403, *ante*, Sec. 165.

## Municipal Corporations.

### I. OFFICERS.

1. Term of recorders in towns.
2. Office of street commissioner abolished in towns.
3. Amended by section 4.
4. Vacancy in municipal office, how created and filled.
5. Repealer.
6. County clerks to record official bonds of county and municipal officers.
7. Certificate of examination of accounts of officers may be filed with the county clerk.
8. Officers of cities and townships may contract to perform duties at less than legal salary.
9. After such contract officer not entitled to further compensation.
10. Clerks and treasurers of villages and boroughs to give bonds.
11. Repealer.
12. Member of common council, &c., not eligible to office filled by such body.
13. Members of governing body of any municipality to be elected by legal voters and not appointed by supreme court justice.
14. Repealer.
15. Salary of town treasurer to be fixed by governing body in counties of first class.
16. Act not to apply to cities.
17. Repealer.
18. Street commissioner to be appointed in towns and other municipalities.
19. Commissioner to give bond.
20. Commissioner's duties and compensation.
21. Act not to affect cities.
22. Repealer.
23. Supplied by section 25.
24. Repealer.
25. Treasurer of town, borough or township may be appointed or elected from legal voters.
26. Amended by section 29.
27. Police justice, solicitor or attorney for certain townships and municipalities in counties of second class may be removed for cause.
28. Repealer.
29. Term of police justice, solicitor or attorney in certain municipalities in counties of second class. Their salary.
30. Annual election for members of boards of commissioners and improvement commissions in towns, villages and townships.

31. Repealer.
32. Chosen freeholder to be elected from each ward in certain cities and towns.
33. Repealer.

### II. ASSESSMENTS FOR LOCAL IMPROVEMENTS.

34. Notices of filing reports to state character of improvements for which assessments have been made. Notice, how given.
35. Past notices validated.
36. Amended by section 56.
37. Notice of application to circuit court for appointment of commissioners to re-assess benefits for local improvements in townships and villages. Appointment of commissioners.
38. Commissioners to ascertain total costs, damages and expenses, &c.
39. Commissioners to make assessment.
40. Commissioners to give notice of time and place of making assessments and hear parties.
41. Map of lots assessed to be made, &c.
42. Report by commissioners to circuit court. Proceedings thereon. Assessments a lien.
43. Notice of assessment to be given to each owner.
44. Assessments may be paid in yearly installments.
45. Proceedings when owners fail to pay assessments. Lands may be sold.
46. Redemption of lands after sale.
47. Proceedings where owner has paid an illegal assessment before the same has been set aside.
48. Amended by section 54.
49. Cost of improvement over benefits assessed to be raised by general tax.
50. Commissioners may employ engineer, clerk and counsel. Fees.
51. Court may make rules of procedure.
52. To what cases act shall not apply.
53. Amended by section 57.
54. Board of commissioners may issue bonds.
55. What fees to be allowed to commissioners in townships.
56. When circuit court may vacate assessment for street or sewer improvement and appoint commissioners to make new assessment.
57. Act to apply to all boards having charge of public improvements.
58. Board of commissioners authorized to issue bonds for redemption of other bonds coming due.