

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 2, 1863.

CHAPTER 305.

[Published April 28, 1863.]

AN ACT concerning proceedings in court in certain cases.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

Actions to cancel mortgages.

SECTION 1. Actions may be brought in the circuit courts of the proper counties to quiet the title of real estate, or to cancel mortgages or other titles to real estate, or to discharge the same of record, and to declare the obligations which they they may purport to secure, illegal, invalid, inoperative, void or satisfied.

How brought.

Such actions may be brought by the maker of such mortgage or other title, or by his legal representatives having an interest in the premises covered by such mortgage or other title. And when any such mortgage

If holder not known, may proceed as against unknown persons.

or other title or obligation has been assigned or transferred, and the assignee or holder thereof shall be unknown to the plaintiff, such plaintiff may [may] proceed against the unknown assignee or holder of such mortgage or other title or obligation, as against "persons unknown;" and in all such cases, service of the summons shall be made on such unknown assignee or holder of such mortgage or other title or obligation, by publication, in the manner now provided by law, and on the mortgagee, assignee or other grantee or claimant of record, service of the summons shall be made in the manner now provided by law.

Service of summons.

SECTION 2. Such actions shall be commenced and prosecuted in the same manner as now provided by law for civil actions, except as herein otherwise prescribed.

How actions prosecuted.

SECTION 3. Whenever in any such action the plaintiff, [plaintiff,] or his agent or attorney, shall make and present to the judge of the circuit court in which such action is pending, or to a court commissioner, his affidavit, stating that he has good reason to believe that

Affidavit of assignment to unknown person, and service of summons by publication.

SECTION 3. Whenever in any such action the plaintiff, [plaintiff,] or his agent or attorney, shall make and present to the judge of the circuit court in which such action is pending, or to a court commissioner, his affidavit, stating that he has good reason to believe that

such mortgage or other title, or such obligation, has been assigned or transferred, and that the plaintiff [plaintiff] does not know, or that he has no information sufficient to form a belief to whom such mortgage or other title and such obligation was assigned or transferred, or who holds the same, such judge or court commissioner shall order service of the summons on such unknown assignee or holder to be made by publication, in the manner now provided by law, and shall be substantially in the form following :

“ In circuit [court,] state of Wisconsin, county of —. Form.

“ Name of plaintiff	}
against	
Name of known defendant, .	
and persons unknown, defendants.	

“ The state of Wisconsin to the unknown assignees or holders of a certain mortgage, (or other title,) and the obligation it professes to secure, (as the case may be,) on (or to) real estate, executed by ——— to ———, and bearing date the ——— day of ———, A. D. 18—.

“ You are hereby summoned to appear and answer the complaint in this action, which is on file in the office of the clerk of the circuit court in and for said county of ———, and serve a copy of your answer on the subscriber, at his office in the ———, (here insert the town, villiage [village] or city,) within ninety days after the service hereof ; and if you fail to answer the complaint within the time aforesaid, the plaintiff will apply to the court for the relief demanded in the complaint.

“ Dated this ——— day of ———, A. D. 18—.

“ ———, name of plaintiff.

“ ———, plaintiff’s attorney.”

SECTION 4. The publication of the summons, as required in this act, shall be equivalent [equivalent] to personal service of the same on such unknown defendants ; and on proof, by the affidavit of the printer or his foreman or principal bookkeeper, of such publication, being filed in the office of the clerk of the court in which such action is pending, and the time for answering having expired, and no appearance made for such defendants, the court shall proceed with the action in all respects as though the same had been against

How court to proceed.

the assignees or transferees and holders of the mortgage or other title, and the obligation purporting to have been thereby secured, by their proper names, and the summons personally served on them.

Action may be tried by jury.

SECTION 5. Upon the trial of any such action, and when demanded in writing by either party, a jury shall be summoned, empannelled [empaneled] and sworn to try the same. Such jury shall render a special verdict, and no such verdict shall be set aside for informality, but any defect or error of form in such verdict may be corrected by the judge before the jury are discharged.

If it appear by verdict that mortgage was obtained fraudulently, or under false pretenses, court shall order it void, and to be canceled.

SECTION 6. Whenever it shall appear on the trial of such action, or by the verdict of a jury, if tried by a jury, that the complaint is true, and that the mortgage or other title, or the obligation it may purport to secure, was obtained fraudulently, or by or under false pretenses, or that the plaintiff or the person through whom he claims was induced to execute such mortgage or other title, or such obligation, by false and fraudulent representations relative to the consideration for which the same was executed, or that such consideration has failed, or that such mortgage or other title, or such alleged obligation, has ceased to operate or has been satisfied, the court shall, by its judgment, order, decree and adjudge that such mortgage or other title be null and void, and that the same be canceled, released and discharged of record; and may also order, decree and adjudge the obligation such mortgage or other title purports to secure, illegal, invalid, inoperative or satisfied, and may grant such other further relief as may be deemed equitable. In case the unknown assignee or holder of such mortgage or other title or obligation shall not have appeared in the action, such judgment shall have the same force and effect as judgments against absent defendants, and shall be as effectual to bind and bar them as if the action had been against them by their proper names.

Judgment effectual, if defendant do not appear.

Cancellation of mortgage.

SECTION 7. Whenever a copy of the judgment of the court, duly certified by the clerk of the court, shall be deposited in the office of the register of deeds where such mortgage or other title is recorded, showing that such mortgage or other title is adjudged by the court to be null and void, and that the same be canceled, released and discharged of record, it shall be the duty

of such register of deeds to record such judgment in a book of deeds, and immediately cancel and discharge of record such mortgage or other title, by writing on the margin of the record thereof as follows: "Cancelled and discharged of record, by order of the court," and adding thereto the number of the volume in and page on which such judgment is recorded. And the register shall be entitled to receive such fees therefor as he is now by law allowed for similar services.

SECTION 8. Whenever judgment shall have been rendered in any action commenced under the provisions of this act, in any of the circuit courts of this state, and any party thereto desires to appeal there from, such appeal shall be taken and perfected in the manner provided by law, within six months from the date of the entry of such judgment, and not thereafter.

Appeal to be perfected within six months.

SECTION 9. In case of appeal under the provisions of this act, where the action was tried by the court and a jury, the supreme court may review all questions of law presented by the record or the bill of exceptions, but the verdict of the jury shall be conclusive as to the facts in the case.

The facts of the case, if tried by a jury, to be conclusive.

SECTION 10. Any evidence that might have been offered on the trial [trial] of such action by the maker of such mortgage or other title, or of the obligation purporting to be secured by the same, may be offered by any and all persons having any interest in the land or any part thereof, covered or affected by such mortgage or other title.

Evidence.

SECTION 11. Whenever the plaintiff, or his agent or attorney, shall present to the judge of the court in which such action is pending, or to a court commissioner, his affidavit, stating that certain written evidence necessary on the trial of such action is in the possession or under the control of any railroad company of this state, or of any person or persons managing, controlling, administering or operating the property of [or] franchises, or both, of such railroad company, specifying, in substance, the nature of such written evidence, and the facts intended to be proven thereby, such judge or court commissioner shall issue an order to such railroad company, or to such person or persons so managing, controlling, administering or operating the property or franchises, or both, of such railroad company, commanding the same to produce such written

Order for written evidence in possession of railroads.

How order to be served.

evidence on the trial of such action; and such order shall be served on such railroad company, or their proper representatives, in the manner now provided by law, at least ten days before the first day of the term at which such action is to be tried. On failure to produce such evidence on the trial, the complaint of the plaintiff in the action shall be taken and held to be true, and stand confessed as to such railroad company: *provided*, such railroad company is a party to the action, and have such evidence in their possession or under their control.

If evidence not produced, complaint to be deemed true.

Sale of mortgaged premises may be stayed until action shall be determined.

SECTION 12. If the holder of any such mortgage shall advertise the mortgaged premises for sale, by virtue of the power to sell contained in such mortgage, or by virtue of any law of this state authorizing the foreclosure of mortgages by advertisement, and the mortgagor or any person interested in the mortgaged premises, or any part thereof, shall have filed his complaint and commenced an action under the provisions of this act, against the holder thereof, and shall state in the complaint, verified by his affidavit, that such mortgaged premises are advertised for sale, the judge of the court in which such action is brought, or a court commissioner, shall issue an order enjoining such sale until the action so commenced shall have been tried, heard and determined in the manner prescribed in this act. And if the mortgaged premises shall have been sold before the commencement of such action, or before the issuing of such injunctive order, and the time to redeem shall not have expired, and the plaintiff in such action shall present to the judge or a court commissioner his affidavit, stating the fact of such sale, and that the time to redeem had not yet expired, such judge or court commissioner shall issue an order enjoining all further proceedings under such sale until the final determination of such action; and if such action be finally determined in favor of the plaintiff, the court shall adjudge such sale null and void, and if such action be finally determined in favor of the defendant, the unexpired term to redeem shall be deemed to commence from the day of the final determination of such action.

If premises shall have been sold, and time to redeem has not expired, further proceedings may be enjoined.

Final determination.

No criminal prosecution against witnesses.

SECTION 13. No witness called in any action authorized by this act, shall be excused from answering any question material to the issue, but his testimony

shall never be used against him in any criminal prosecution or trial.

SECTION 14. All costs and fees of any kind or nature whatever, necessarily incurred in the prosecution or defense of any action under the provisions of this act, except state tax and internal revenue dues, shall abide the event of the action, any law to the contrary notwithstanding. Costs and fees.

SECTION 15. All actions commenced under the provisions of this act, must be tried in the county where the real estate covered by such mortgage or other title, or a part thereof, is situated, or where the maker of the mortgage or other title, or of the obligation pretended to be thereby secured, or his or her legal representatives, reside: *provided*, that a change of venue may be granted in the manner and for the reasons now provided by law. Actions to be tried in counties where premises are situated.

SECTION 16. All provisions of law in this state inconsistent with the provisions of this act, are hereby declared inoperative for the purpose of this act. Change of venue.

SECTION 17. This act shall take effect and be in force from and after its passage and publication: *provided*, however, that the provisions of this act shall apply only to such mortgages and obligations given to railroad companies for subscriptions for their capital stock. Inoperative.

Approved April 2, 1863. Only applicable to railroad mortgages.

CHAPTER 306.

[Published May 11, 1863.]

AN ACT to incorporate the Penokee iron, mining and railroad company.

(See supplement to local laws.)