

Money.

An act regulating the money of account in this state.

Passed February 21, 1799. R. S. 796.

1. That from and after the fourth day of July next, the money of account of this state shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar; and that all accounts in the treasury of this state, all accounts in the treasuries of the different counties of this state, all assessment rolls and duplicates, and all decrees, verdicts, judgments and executions, in the courts of justice of this state, from and after the said fourth day of July next, shall be made, kept, entered and expressed in conformity to this act, and not otherwise. (See INTEREST).

Money of account to be expressed in dollars, &c.

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 controverted 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. Proceedings when mortgagor has absconded, is unknown or has died.
 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 cancelling mortgage may be filed in county clerk's office.
 25. May be cancelled on certificate of mortgagee.
 26. Certificate recorded.
 27. Fee.
 28. Proceedings for cancellation of lost mortgages.
 29. Undue preferences prohibited.
 30. Fees.
 31. Mortgages, how assignable.
- VI. ASSIGNMENTS AND REGISTRATION THEREOF.
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. CHATTEL MORTGAGES.
36. Mortgage to vest the right of possession in mortgagee for certain purposes.
 37. On suit court to regulate the possession.
 38. Not to apply to vessels, &c.
 39. Void as to creditors unless filed.
 40. When chattel mortgages to be filed.
 41. When to be refiled or cease to be valid.
 42. When evidence, and of what only.
 43. Duty of clerk and register.
 44. Fees.
 45. Fees for registering mortgages.

R. S. 97, 99, 657.

An act concerning mortgages.

Revision—Approved March 27, 1874.

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

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 com-

P. L. 1851, p. 342.
 " 1853, p. 241.
 " 1858, p. 90.
 " 1864, p. 493.
 " 1866, p. 879.
 " 1869, p. 572.
 " 1870, p. 57.
 " 1873, p. 41, 161.

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 mortgagee shall be compelled to re-convey 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.

mence 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 interests 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)

2. 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 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

(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 him-

self the actor, *Ibid.* 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. *33; *Den v. Kimble*, 4 Hal. 235; *Hamilton v. Dobbs*, 4 C. E. Gr. 227, 228.

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 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.

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.

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.

Title of purchasers.
Ib. § 2.

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

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

P. L. 1873, p. 161.

Chancellor to make decree.

Chancellor to be governed by rules and practice of court of chancery. *Ib.* § 2. Amended.

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

6. 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, concealed 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 abuttals 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 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 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 encumbrances as may have been established and ordered paid by the chancellor in such foreclosure proceeding, 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.

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 in case of sales under proceedings for partition.

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.

9. 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.
10. The fees of the solicitor, for drawing and engrossing a bill in such suits, shall be five dollars, and no more.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

Foreclosure may be in circuit in certain cases.

P. L. 1851, p. 312.

Fees.
Ib. § 2.

Fees of clerk and court.
Ib. § 3.

Duties of clerk.
Ib. § 4.

Of masters and examiners.
Ib. § 5.

Appeal.
Ib. § 6.

Court always open for certain purposes.
P. L. 1858, p. 463.
§ 1.

What orders may be made in vacation.
Ib. § 2.

V. The registration of mortgages.

17. 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 description 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)
18. It shall and may be lawful to record in full, in the books provided for the registry of mortgages, all mortgages authorized to be registered by this act, upon the request of the mortgagee, and upon his paying

Mortgages to be registered by clerk of common pleas.

R. S. 637, § 1.

What entries to be made.

May be recorded in full at request of mortgagee.
P. L. 1858, p. 90.

(a) The registry is not a copy but a mere abstract. No copy of the acknowledgments or proofs, or entry, or note thereof is made. Nor are they evidence, *N. J. E. Co. v. Suydam*, 2 Harr. 25, 60; *Harker v. Gustin*, 7 Hal. 42. 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*, 3 C. E. Gr. 405. Nor will a subsequent mortgagee by reg-

istry gain priority over a former unregistered mortgage of which he had notice, *Mathews v. Everitt*, 8 C. E. Gr. 473; *Den v. Roberts*, 1 South. *315, note(a). See *Shotwell v. Shotwell*, 9 C. E. Gr. 378. "The fees allowed by law," means fees for searches as well as transcripts, *Fleming v. Clerk of Hudson Co.*, 1 Vr. 280.

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.

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. 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. 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. 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. 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, *Ibid.* See *Harker v. Gustin*, 7 Hal. 42; *Den v. Wade*, *Spen.* 291. *Ante* p. 155, 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.

(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. Dunal*, 11 C. E. Gr. 445. Formerly unrecorded mortgages were subordinated not to mortgagees, but to subsequent purchasers, *Den*, *Low v. Goldtrap*, *Coxe* 272. Mortgage held valid as against a mortgagee 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. 563. *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 unregistered mortgage, *Den v. Roberts*, 1 South. *315, note(a). *Chance v. Teeple*, 3 Gr. Ch. 173. *Willink 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 mortgage recorded, but held by the mortgagor ready for delivery

as soon as he should obtain a loan, *Held* not to be notice as against lien claimants until the day when the loan was made and the mortgage delivered, *Mutual Life Ins. Co. v. Rowand*, 11 C. E. Gr. 388. 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. Wack*, *Sax.* 204. *Pierson v. Ryerson*, 1 Hal. Ch. 196. *Nicholls v. Peak*, 1 Beas. 69. *Van Doren v. Robinson*, 1 C. E. Gr. 256. A defect in the registry will not affect the notice, *Lee v. Woodworth*, 2 Gr. Ch. 35. *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, can not be reformed so as to cover the fee, to the prejudice of a subsequent judgment creditor, *Wheeler v. Kirkland*, 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 mortgagor, is notice, *Neligh v. Michenor*, 3 Stock. 539. See *Stinclair v. Armitage*, 1 Beas. 174. A mortgage of a leasehold interest is within the act, *Decker v. Clarke*, 11 C. E. Gr. 163. 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 encumbrance, *Ward v. Cooke*, 2 C. E. Gr. 93. *Farnum v. Burnett*, 6 C. E. Gr. 87. So, a mortgage to secure an endorser or surety, *Uther v. Sempie*, 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.

23. 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 cancelled, 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.

Effect of entry.

24. Whenever a decree shall be made by the chancellor that any mortgage is satisfied and shall be cancelled 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 cancelled by decree in chancery, filed in his office, entering the date of said decree and filing. (b)

Copy of a decree cancelling mortgages may be filed in county clerk's office.

P. L. 1866, p. 879.

Cancellation.

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.

May be cancelled on certificate of mortgagee.

P. L. 1869, p. 1861, § 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 cancelled of record while it still remains unpaid; therefore, it shall be lawful for any 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 cancelled," 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.

Proceedings for cancellation of lost mortgages.

P. L. 1873, p. 41.

Duty of the clerk or register.
Amended.

29. 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 offence, 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.

Undue preferences prohibited.

R. S. 637, § 8.

(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. *Frazee v. Inslee*, 1 Gr. Ch. 289. *Miller v. Wack*, Sax. 204. *Benley 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. See *Lilly v. Quick*, 1 Gr. Ch. 97. *Stover v. Wood*, 11 C. E. Gr. 417.

(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. 240.

Fees.
Ib. § 9.

30. 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.

Mortgages, how
assignable.

P. L. 1863, p. 267.
Amended.

31. 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 defences 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)

VI. Assignments, and registration thereof.

Assignments to
be recorded.

P. L. 1853, p. 241,
§ 1.

To be noted.

32. 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 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.

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

33. 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.

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

34. 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.

Assignments of
mortgage, how
proved when not
acknowledged.

P. L. 1870, p. 57.
Amended.

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 endorsed 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.

VII. Chattel mortgages.

Mortgage to vest
the right of pos-
session in mort-
gagee for certain
purposes.
P. L. 1869, p. 572,
§ 1.

36. That every chattel mortgage shall vest in the mortgagee, or owner thereof, the right to the possession of 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.

(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*, Sax. 413. *Bolles v. Wade*, 3 Gr. Ch. 458. *Jacques v. Estler*, 3 Gr. Ch. 461. *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. Gluchrist*, 10 C. E. Gr. 487. *Union Bank v. Penner*, 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.

37. 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.

On suit court to regulate the possession.
Ib. § 2.

38. 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.

Not to apply to vessels, &c.
Ib. § 3.

39. 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 subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the succeeding section of this act.(a)

Void as to creditors, &c., unless filed.

P. L. 1864, p. 493, § 1.

40. The instruments mentioned in the preceding section shall be filed 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, 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 may hereafter be created, such instruments shall be filed in the office of such register; and such clerks and registers are hereby required to file all such instruments presented to them respectively for that purpose, and to endorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested.(b)

When chattel mortgages to be filed.
Ib. § 2.

41. Every chattel mortgage filed in pursuance of this act shall cease to be valid as against the creditors of the person making the same, or against purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property therein claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid, of the county where the mortgagor shall then reside, or in case of non-residence, of the county where the things mortgaged shall then be.(c)

When to be re-filed or cease to be valid.
Ib. § 3.

42. A copy of any such original instrument, or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the clerk or register in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy and statement was received and filed according to the endorsement of the clerk or register thereon, and of no other fact; and in all cases the original endorsement by the clerk or register, made in pursuance of this act upon such instrument or copy, shall be received in evidence of the facts stated in such endorsement.

When evidence, and of what only.
Ib. § 4.

(a) A mortgage of chattels, whether accompanied with possession or not, is valid and effectual as between the parties and against all persons except creditors. *Hall v. Snowhill*, 2 Gr. 8. See *Chumar v. Wood*, 1 Hal. 155. The mortgagee is entitled to the control and custody of chattels after the debt is due and unpaid; nor will any agreement for the temporary possession of the chattels affect his rights, *Ibid.* If a merchant or manufacturer mortgage his stock of goods, and the mortgagor remains in possession and sells the goods in the ordinary course of trade, he will be considered as acting as the agent of the mortgagee; but it would be otherwise if the whole stock should be sold together or in any other than the ordinary manner. *Miller ads. Pancoast*, 5 *Dutch*. 250. A symbolical delivery, is not an actual and continued change of possession, *Nat. Bank of Metropolis v. Sprague*, 5 C. E. Gr. 13; 6 C. E. Gr. 530. A mortgage upon a railroad, &c., held to have covered the rolling stock, without filing as a chattel mortgage. *Williamson v. N. J. Southern R. E. Co.*, 11 C. E. Gr. 398. The capital stock of a corporation is not goods and chattels within the meaning of the act—hence a mortgage of such stock need not be filed, *Ibid.* And whether filed or not, is good between the parties thereto, or even subsequent purchasers or mortgagees with notice, *Ibid.* So, as to fixtures treated as part of the realty

by the parties in the mortgage, *Potts v. N. J. Arms Co.*, 2 C. E. Gr. 395.

(b) A mortgage upon chattels situate in a county where the mortgagor does not reside, and recorded there, has priority over another mortgage on the same chattels of a prior date, but recorded subsequently in such county and also in the county where the mortgagor lives, the second mortgagee having no notice thereof at the time his mortgage was given, *De Courcey v. Little*, 4 C. E. Gr. 115, 574; 6 C. E. Gr. 357. If some of the mortgagors live in, and others out of the state, the mortgage must be recorded in the county where those live who are residents, and also in the county where the chattels are situate, *Ibid.* A first chattel mortgage unregistered is absolutely void against a second mortgage taken in good faith, and the latter need not be recorded at all to give it priority, *Ibid.*

(c) The statement of the amount due must be filed, as well as a true copy of the mortgage, and to retain its priority they cannot be re-filed before the thirty days preceding the expiration of the year, *Heinsell v. Smith*, 5 Vr. 215. But it will not by want of re-filing lose its priority over a subsequent mortgage taken before the time arrives for re-filing, *Nat. Bank of Metropolis v. Sprague*, 6 C. E. Gr. 530. See *Herrick v. King*, 4 C. E. Gr. 80.

Duty of clerk and register. 43. The said clerks and registers shall, respectively, number every such instrument which shall be filed in their offices, and shall enter in books to be provided by them, alphabetically, the names of all the parties to such instruments, with the number endorsed thereon opposite to each name, which entry shall be repeated alphabetically under the name of every party thereto.

Fees. 44. For services under this division of this act, the clerks and registers shall be entitled to receive the following fees: for filing each instrument or copy, six cents; for entering the same in a book as aforesaid, six cents for every party to such instrument; for searching for each paper, six cents, and for certified copies of such instruments or copies, the like fees as are allowed by law to clerks of counties for copies and certificates of records kept by them.

P. L. 1875, p. 32.

Supplement.

Approved, March 17, 1875.

Fees for registering mortgages. 45. 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.

Municipal Corporations.

I. ASSESSMENTS FOR IMPROVEMENTS, TAXES, &C.

1. Rate of interest on unpaid taxes. Redemption of land sold.
2. Notices of filing reports of assessments to state character of work for which assessment made.
3. Notices heretofore published in conformity with act declared sufficient.
4. Farm lands in cities, not laid out in lots, to be assessed by the acre.
5. Rate of interest on unpaid assessments may be reduced. Redemption of land sold.
6. Proceedings for the apportionment of assessments and water rents on application by person interested.
7. Upon approval of apportionment, map and report to be filed by city clerk.
8. Power to apportion, in whom vested.
9. Proceedings when any owners of land to be affected do not join in the application.
10. Assessments for streets and sewers to be made in proportion to benefit received.
11. Proceedings for making reassessments when assessments for benefits have been set aside.

II. BONDED INDEBTEDNESS.

12. Bonds authorized to pay floating debts of cities—Limitation as to amount.
13. Construction of word debt or indebtedness in charter.
14. Certificate of guarantee to be placed on certain bonds, for payment of which, city is liable.
15. Commissioners of sinking funds, having funds to pay bonds, payable out of said money, authorized to redeem same before maturity.
16. Appropriation of surplus.
17. Payment of unpaid indebtedness in excess of appropriations, how provided for.
18. Additional issue of water bonds authorized in certain cities.
19. Cities may borrow money and issue bonds in anticipation of collection of taxes in arrears.
20. Moneys received on account of said taxes pledged for the payment of such bonds.
21. Interest, how paid; surplus, how applied.
22. Act not to apply to cities whose bonded debt is limited by charter.

23. Cities may issue bonds not exceeding amount of tax liens purchased.
24. Moneys received on account of redemption of real estate, pledged to payment of such bonds.
25. Interest to be paid; surplus, how applied.
26. Act not to apply to certain cities.
27. When assessment has been made for an amount less than the total cost of an improvement, bonds may be issued for amount of cost assessed.
28. Bonds authorized for amounts expended in excess of appropriation.
29. When bonds have been authorized for erection of school house, location may be changed and additional bonds issued.
30. Ordinance may be passed authorizing the taking of bonds of owners of land for payment of assessments for benefits.
31. Where an award of damages has been paid, bond to be given for difference between award and assessment.
32. City may issue bonds to pay costs, &c., of improvements for which persons assessed have given bonds.
33. Not to affect any law heretofore passed relating to bonds.

III. OFFICERS.

34. Term of office of recorders in certain towns.
35. Office of street commissioner abolished in certain towns.
36. In certain cities common council may appoint collector of taxes for each ward.

IV. WATER WORKS.

37. Authority and power to purchase and own water works, etc.
38. Proceedings in case of disagreement between city and owners as to purchase.
39. Proceedings in case of appeal.
40. Appointment of engineer, surveyors, officers, agents, &c.
41. Advertisement for proposals to be made, when expenditure exceeds a certain sum.
42. Contracts to be in writing.
43. May borrow money and issue bonds.
44. Treasurer to keep books of account.