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CHAPTER 713
**FORECLOSURE OF REAL PROPERTY
 MORTGAGES**

Subch.	Sec.
I. General Provisions	6101
II. State Mortgages	6151
III. Foreclosure Proceeding	6201
IV. Action for Possession	6251
V. Redemption	6301

SUBCHAPTER I

GENERAL PROVISIONS

Sec.
6101. Attorney's fees.
6102. Mortgage as asset of decedent's estate.
6103. Judicial determination of breach of condition.
6104. Limitation of action on undischarged mortgage.
6105. Owners in severalty may join in complaint.
6106. Limitation on undischarged mortgage to secure contingent liability.
6107. Description of unknown mortgagees; service of complaint.
6108. Court has jurisdiction over all defendants.
6109. Decree bars claims.
6110. Tender to guardian of mortgagee; discharge.

§ 6101. Attorney's fees

For the foreclosure of a mortgage by either method prescribed by section 6201, subsections 2 and 3, or by section 6203, the mortgagee or the person claiming under him may charge an attorney's fee of \$25 which shall be a lien on the mortgaged estate, and shall be included with the expense of publication, service and recording in making up the sum to be tendered by the mortgagor or the person claiming under him in order to be entitled to redeem, provided said sum has actually been paid in full or partial discharge of an attorney's fee.

R.S.1954, c. 177, § 6.

§ 6102. Mortgage as asset of decedent's estate

Lands mortgaged to secure the payment of debts or the performance of any collateral engagement, and the debts so secured are, on the death of the mortgagee or person claiming under him, assets in the hands of his executors or administrators. They shall have the control of them as of a personal pledge. When they recover seizin and possession thereof, it shall be for the use of the widow and heirs, or devisees or creditors of the deceased, as the case may be. When redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

R.S.1954, c. 177, § 13.

§ 6103. Judicial determination of breach of condition

In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim may file a complaint in the Superior Court in the county where such agreement has to be performed, where the owner of such mortgage resides or where the property mortgaged is situated, alleging such facts and praying for relief. Said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee for such time as the court deems just and equitable. Pending such proceedings, the right of redemption shall not expire by any attempted foreclosure of such mortgage.

R.S.1954, c. 177, § 30; 1961, c. 317, § 598.

§ 6104. Limitation of action on undischarged mortgage

When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his

estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts, and asking for a decree as herein-after provided. If after notice to all persons interested as provided in section 6107, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the Superior Court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage.

R.S.1954, c. 177, § 36; 1959, c. 317, § 374.

§ 6105. Owners in severalty may join in complaint

Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one complaint. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same complaint. In case of a contest the court shall make such order for separate issues as may be proper.

R.S.1954, c. 177, § 37; 1959, c. 317, § 375.

§ 6106. Limitation on undischarged mortgage to secure contingent liability

When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to ex-

ist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 6104, may apply to the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 6107, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the Superior Court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought to enforce a title under said mortgage.

R.S.1954, c. 177, § 38; 1959, c. 317, § 376.

§ 6107. Description of unknown mortgagees; service of complaint

When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, they may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the State or outside the State, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.

R.S.1954, c. 177, § 39; 1959, c. 317, § 377.

§ 6108. Court has jurisdiction over all defendants

Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made defendants in the manner provided, and shall upon due hearing make such decree upon the complaint and as to costs as it shall deem proper.

R.S.1954, c. 177, § 40; 1959, c. 317, § 378.

§ 6109. Decree bars claims

The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the

land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants.

R.S.1954, c. 177, § 41; 1959, c. 317, § 379.

§ 6110. Tender to guardian of mortgagee; discharge

When the mortgagee or person holding under him is under guardianship, a tender may be made to the guardian and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition as the case requires, he shall execute a discharge of the mortgage.

R.S.1954, c. 177, § 29.

SUBCHAPTER II**STATE MORTGAGES**

Sec.

- 6151. Discharge or foreclosure by treasurer.
- 6152. Civil action for redemption filed against State.
- 6153. Notice and proceedings.

§ 6151. Discharge or foreclosure by treasurer

When a mortgage is made or assigned to the State, the Treasurer of State may demand and receive the money due thereon and discharge it by his deed of release. After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in sections 6201 and 6203.

All mortgages in the name of the State and made under the Revised Statutes of 1944, chapter 30 shall be collected, discharged or foreclosed in accordance with this section.

R.S.1954, c. 177, § 25.

§ 6152. Civil action for redemption filed against State

If the Treasurer of State and the person applying to redeem any lands mortgaged to the State disagree as to the sum due

thereon, such person may bring a civil action against the State for the redemption thereof in the Superior Court.

R.S.1954, c. 177, § 26; 1961, c. 317, § 596.

§ 6153. Notice and proceedings

The court shall order notice to be served on the Treasurer of State in the usual form, and shall hear the cause and decide what sum is due to the State on said mortgage, and award costs as it deems equitable. The treasurer shall accept the sum adjudged by the court to be due and discharge the mortgage.

R.S.1954, c. 177, § 27.

SUBCHAPTER III

FORECLOSURE PROCEEDING

Sec.

- 6201. Foreclosure by possession.
- 6202. —Redemption in one year.
- 6203. Foreclosure without possession.
- 6204. —Redemption in one year.
- 6205. Rights of junior mortgagee.
- 6206. Judgment where nothing due.
- 6207. Action by executor or administrator.
- 6208. Proper party defendant.
- 6209. Real action against mortgagee in possession after mortgage paid.

§ 6201. Foreclosure by possession

After breach of the condition, if the mortgagee or anyone claiming under him desires to obtain possession of the premises for the purpose of foreclosure, he may proceed in either of the following ways:

1. Writ of possession. He may obtain possession under a writ of possession issued on a conditional judgment as provided in section 6252, duly executed by an officer. An abstract of such writ stating the time of obtaining possession, certified by the clerk, shall be recorded in the registry of deeds of the district in which the estate is, within 30 days after possession has been obtained.

2. Consent. He may enter into possession and hold the same by consent in writing of the mortgagor or the person hold-

ing under him. Such consent with the affidavit of the mortgagee or his assignee to the fact and time of entry indorsed thereon shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within 30 days after the entry is made.

3. Entry, if not opposed. He may enter peaceably and openly, if not opposed, in the presence of 2 witnesses and take possession of the premises. A certificate of the fact and time of such entry shall be made, signed and sworn to by such witnesses before a justice of the peace. Such certificate shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within 30 days after the entry is made.

R.S.1954, c. 177, § 3.

§ 6202. —Redemption in one year

Possession obtained in either of these 3 modes and continued for one year forever forecloses the right of redemption.

R.S.1954, c. 177, § 4; 1963, c. 418, § 1; c. 434, § 1.

§ 6203. Foreclosure without possession

If, after breach of the condition, the mortgagee or any person claiming under him is not desirous of taking and holding possession of the premises, he may proceed for the purpose of foreclosure in either of the following modes:

1. Public notice. He may give public notice in a newspaper published and printed in whole or in part in the county where the premises are situated, if any, or if not, in the state paper, 3 weeks successively, of his claim by mortgage on such real estate, describing the premises intelligibly and naming the date of the mortgage and that the condition in it is broken, by reason whereof he claims a foreclosure; and cause a copy of such printed notice, and the name and date of the newspaper in which it was last published, to be recorded in each registry in which the mortgage deed is or by law ought to be recorded, within 30 days after such last publication.

2. Service of notice. He may cause an attested copy of such notice to be served on the mortgagor or mortgagors, or in case of any recorded transfer or transfers of the mortgaged property since the giving of the mortgage, on the record holder or holders of the title of the mortgaged property at the time of the service of said notice, if he lives in the State, by the sheriff of the

county where the mortgagor or the record holder of the title resides, or his deputy, by delivering it to him in hand or leaving it at his last and usual place of abode; and cause the original notice and the sheriff's return thereon to be recorded within 30 days after such service. In case different mortgagors or record holders reside in different counties, then service shall be made of such notice by any sheriff or his deputy upon the mortgagors or record holders residing in the same county as such sheriff or deputy. In all cases the certificate of the register of deeds is prima facie evidence of the fact of such entry, notice, publication of foreclosure and of the sheriff's return.

R.S.1954, c. 177, § 5.

§ 6204. —Redemption in one year

The mortgagor or person claiming under him may redeem the mortgaged premises within one year after the first publication or the service of the notice mentioned in section 6203, and if not so redeemed, his right of redemption is forever foreclosed.

The mortgagor and mortgagee may agree upon any period of time not less than one year in which the mortgage shall be forever foreclosed, which agreement shall be inserted in the mortgage and be binding on the parties, their heirs, legal representatives and assigns and shall apply to all the modes of foreclosure of mortgages on real estate.

The mortgagor or those claiming under him shall have the right to redeem the mortgaged premises from any or all sales thereof under and by virtue of authority and power contained in such mortgage or from any sale of the mortgaged premises under or by virtue of a separate instrument executed at or about the same time with the mortgage, and being a part of the same transaction, by paying or tendering to the mortgagee or to those claiming under him as appears by record at the registry of deeds where the mortgage is properly recorded, the debt, interest, costs of foreclosure and other obligations provided in the mortgage, at any time within one year from the date of such sale. Nothing herein shall apply to railroad mortgages, so called, or to bond issues of corporations, or to bonds forming a part of a mortgage indebtedness of any corporation or corporations wherein the method of sale is provided in the deed of trust or any similar instrument.

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceed-

ings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him shall constitute a waiver of such foreclosure, unless an agreement to the contrary in writing be signed by the person from whom the same is accepted. Except the receipt of income from the mortgaged premises, by the mortgagee or his assigns while in possession thereof, shall not constitute a waiver of the foreclosure proceedings of the mortgage on such premises.

R.S.1954, c. 177, § 7; 1963, c. 418, § 3; c. 434, § 3.

§ 6205. Rights of junior mortgagee

When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem. If the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a civil action in the Superior Court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured, shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under

this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as in other civil actions.

R.S.1954, c. 177, § 24; 1959, c. 317, § 372; 1961, c. 317, § 595.

§ 6206. Judgment where nothing due

If it appears that nothing is due on the mortgage, judgment shall be rendered for the defendant and for his costs, and he shall hold the land discharged of the mortgage.

R.S.1954, c. 177, § 11.

§ 6207. Action by executor or administrator

When a mortgagee or person claiming under him is dead, the same proceedings to foreclose the mortgage may be had by his executor or administrator, declaring on the seizin of the deceased, as he might have had if living.

R.S.1954, c. 177, § 12.

§ 6208. Proper party defendant

An action on a mortgage deed may be brought against a person in possession of the mortgaged premises. The mortgagor or person claiming under him may, in all cases, be joined with him as a cotenant, whether he then has any interest or not in the premises, but he is not liable for costs when he has no such interest and makes his disclaimer thereto upon the records of the court.

R.S.1954, c. 177, § 14.

§ 6209. Real action against mortgagee in possession after mortgage paid

When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a real action to recover possession of said premises, the same as if paid or released before condition broken.

R.S.1954, c. 177, § 35; 1959, c. 317, § 373.

SUBCHAPTER IV

ACTION FOR POSSESSION

Sec.

6251. Form of complaint.

6252. Form of conditional judgment.

§ 6251. Form of complaint

The mortgagee or person claiming under him in an action for possession may declare on his own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections 6203 and 6204 before the action was commenced, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment shall be entered as at common law.

R.S.1954, c. 177, § 9; 1959, c. 317, § 371.

§ 6252. Form of conditional judgment

The conditional judgment shall be that if the mortgagor, his heirs, executor or administrator pays the sum that the court adjudges to be due and payable, with interest, within 2 months from the time of judgment, and pays such other sums as the court adjudges to be thereafter payable, within 2 months from the time that they fall due, no writ of possession shall issue and the mortgage shall be void. Otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. If, after 3 years from the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on motion filed in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. When the condition is for doing some other act than the payment of money, the court may vary the conditional judgment as the circumstances require. The writ of possession shall issue if the terms of the conditional judgment are not complied with within the 2 months.

R.S.1954, c. 177, § 10; 1961, c. 317, § 586.

SUBCHAPTER V

REDEMPTION

Sec.

- 6301. Accounting required.
- 6302. Death of mortgagee or successor.
- 6303. Death of mortgagor or successor.
- 6304. Effect of payment or tender.
- 6305. Mortgagee out of State.
- 6306. —Payment to clerk of court.
- 6307. Fraudulent mortgage.
- 6308. Notice by publication.
- 6309. Limitation of civil action.
- 6310. Joinder of others as defendants; notice.
- 6311. Joint or several execution.
- 6312. Deduction of rents and profits; statement of amount due.
- 6313. Redemption of estate from purchaser of equity.

§ 6301. Accounting required

Any mortgagor or other person having a right to redeem lands mortgaged may demand of the mortgagee or person claiming under him a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any. If he unreasonably refuses or neglects to render such account in writing, or in any other way by his default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, he may bring a civil action for the redemption of the mortgaged premises within the time limited in section 6204, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require. Such offer has the same force as a tender of payment or performance before the commencement of the action. The action shall be sustained without such tender, and thereupon he shall be entitled to judgment for redemption and costs.

R.S.1954, c. 177, § 15; 1961, c. 317, § 587.

§ 6302. Death of mortgagee or successor

Whenever a mortgagee or his assignee dies and there is no executor or administrator to receive the mortgage money, the mortgagor or person claiming under him having a right to redeem may apply to the judge of probate of the county where the estate mortgaged is situated for the appointment of an administrator upon such estate, and if, after due notice to all parties interested

therein, they neglect or refuse to take out administration for 30 days, then the judge may commit administration to such person as he deems suitable, who may act as administrator with reference to said mortgage, as provided by law. In all such cases personal notice shall first be given to the widow and heirs of the deceased known to be living in the State, either by service on them in person or by leaving such notice at their last and usual place of abode.

R.S.1954, c. 177, § 8.

§ 6303. Death of mortgagor or successor

If a person entitled to redeem a mortgaged estate, or an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and an action for redemption commenced and prosecuted by his executor or administrator, heirs or devisees. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by his heirs, devisees or his executor or administrator. When a mortgagor resides out of the State, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon. The tender shall be as effectual as if made by the mortgagor.

R.S.1954, c. 177, § 28; 1961, c. 317, § 597.

§ 6304. Effect of payment or tender

When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may bring a civil action for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the Superior Court, to release to him all his right and title therein; although such mortgagee or his assignee has never had actual possession of the premises for breach of the condition; or, without having made a tender before the commencement of the action, he may bring a civil action in the manner prescribed in section 6301, and the cause shall be tried in the same manner.

R.S.1954, c. 177, § 16; 1961, c. 317, § 588.

§ 6305. Mortgagee out of State

When a civil action for redemption is brought before an actual entry for breach of the condition, and before payment or

tender, if the mortgagee or person claiming under him is out of the State and has not had actual notice, the court shall order proper notice to be given him and continue the cause as long as necessary.

R.S.1954, c. 177, § 17; 1961, c. 317, § 589.

§ 6306. —Payment to clerk of court

When a mortgagee or person claiming under him residing out of the State, or whose residence is unknown to the party entitled to redeem, has commenced proceedings under section 6203, or when such mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made has commenced proceedings under section 6201, in either case the party entitled to redeem may bring the civil action, as prescribed in section 6301, and pay at the same time to the clerk of the court the sum due, which payment shall have the same effect as a tender before the action. The court shall order such notice to be given of the pendency of the action, as it judges proper.

R.S.1954, c. 177, § 18; 1961, c. 317, § 590.

§ 6307. Fraudulent mortgage

When a mortgage is alleged and proved to be fraudulent, in whole or in part, an innocent assignee of the mortgagor, for a valuable consideration, may bring his action within the time allowed to redeem and be allowed to redeem without a tender.

R.S.1954, c. 177, § 17; 1961, c. 317, § 589.

§ 6308. Notice by publication

When an amount due on a mortgage has been paid or tendered to the mortgagee or person claiming under him before foreclosure of the mortgage, and the mortgagee or his assignee is out of the State and the mortgage is undischarged on the record, the mortgagor or person claiming under him may maintain a civil action for the redemption of the mortgaged premises, as provided in section 6304, or for the discharge of the mortgage. On notice of the pendency of the action, given by publication in some newspaper in the county where said premises are situated for 3 weeks successively, the last publication being 30 days before the time of hearing, or in such other way as the Superior Court orders, said court may decree a discharge of such mortgage. The record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge.

R.S.1954, c. 177, § 19; 1961, c. 317, § 591.

§ 6309. Limitation of civil action

No civil action shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before commencement of the action, unless within one year after such tender.

R.S.1954, c. 177, § 20; 1961, c. 317, § 592.

§ 6310. Joinder of others as defendants; notice

In any action brought for the redemption of mortgaged premises, when it is necessary to the attainment of justice that any other person besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, the court on motion may order him to be served with an attested copy of the complaint amended in such manner as it directs, and on his appearance, the cause shall proceed as though he had been originally joined.

R.S.1954, c. 177, § 21; 1961, c. 317, § 593.

§ 6311. Joint or several execution

The court, when a decree is made for the redemption of mortgaged lands, may award execution jointly or severally as the case requires, and for sums found due for rents and profits over and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

R.S.1954, c. 177, § 22.

§ 6312. Deduction of rents and profits; statement of amount due

When money is brought into court in an action for redemption of mortgaged premises, the court may deduct therefrom such sum as the defendant is chargeable with on account of rents and profits by him received or costs awarded against him. The person to whom money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a true statement to the assignee or trustee of the amount due on such mortgage. For any loss resulting to the insolvent estate from any misrepresentation of the amount due, the as-

signee or trustee shall have a right of action against such person to recover such loss.

R.S.1954, c. 177, § 23; 1961, c. 317, § 594.

§ 6313. Redemption of estate from purchaser of equity

If the purchaser of an equity of redemption, sold on execution, has satisfied and paid to the mortgagee or those claiming under him the sum due on the mortgage, the mortgagor or those claiming under him, having redeemed the equity of redemption within one year after such sale, may redeem such mortgaged estate from such purchaser or any person claiming under him within the time and in the manner that he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

R.S.1954, c. 177, § 34.