

CHAPTER 117.

RELATING TO LEVIES ON MORTGAGED PERSONAL PROPERTY.

H. F. 77.

AN ACT to provide for the Levy of Attachment or Executions on Personal Property covered by Mortgage.

Be it enacted by the General Assembly of the State of Iowa:

Personal property not exempt from execution may be taken on attachment or execution.

Plaintiff must tender amount due on mortgage, or may deposit with clerk.

When mortgage not due.

Proviso.

Attaching creditor subrogated to rights of holder of mortgage.

Proviso.

Debtor may pay attachment debt and release the property.

Holder of mortgage shall only receive amount due.

Creditor may controvert.

SECTION 1. That personal property not exempt from execution hereafter mortgaged, or heretofore mortgaged when the debt secured thereby is due, may be taken on attachment or execution issued at the suit of a creditor of a mortgagor, but before the property is so taken the officer or plaintiff must pay or tender to the holder of the mortgage the amount of the mortgage debt and interest accrued, or must deposit the amount thereof with the clerk of the district court of the county wherein the mortgaged property is found payable to the order of the holder of the mortgage. When the debt secured by a mortgage hereafter made is not due, as shown by such chattel mortgage, he must also deposit with the clerk, interest on the principal sum at the agreed rate specified in the mortgage, for the term of sixty days from the date of deposit; *provided however*, if the debt secured fall due in less than sixty days from the date of deposit, then interest shall be deposited only for such shorter period; and when such sums are tendered to the holder of the mortgage, or deposited with the clerk, the attaching creditor shall be subrogated to all the rights of the holder of the mortgage; and the proceeds from the sale of the mortgaged property shall go, first to the discharge of such indebtedness and costs of execution; *provided however*, that if the judgment debtor shall pay the debt for which the attachment or execution was issued, the property shall be released, and the creditor shall be entitled to receive money deposited to pay the mortgage debt, and shall have no right or interest in the mortgage, or in the mortgaged property.

SEC. 2. The holder of the mortgage shall state over his signature and under oath on the back of said mortgage, the amount due, or to become thereon, and deliver the same to the person paying him said amount, and if the said sum has been deposited with the clerk of the district court, the holder of the mortgage shall only receive the amount so stated to be due, and shall surrender to the clerk the mortgage and other evidence of indebtedness, and the surplus, if any, shall be returned to the person who made the deposit; *provided however*, that the execution or attaching creditor shall have the right to controvert, in the court from which the process issued, such statement of indebtedness in the manner provided in other garnishment pro-

ceedings, if he give notice in writing to the clerk at the time of the deposit; and the clerk shall hold the deposit until such matter is determined. If the attaching or judgment creditor fail to sustain his claim against the mortgage, he shall pay to the holder of the mortgage interest upon the debt at the rate of ten per cent per annum, together with the costs of the proceeding, and an attorney's fee of ten per cent on the amount of the debt.

In failure of claim.

SEC. 3. At the sale of said property no bid shall be received for a less sum than the amount then due, on said mortgage, together with the costs made by virtue of such levy of attachments or executions, and the costs of said sale. And unless there shall be a bid of more than such amount, the execution or attachment creditor shall pay the costs made by such levy and sale. If said property shall sell for more than the amount due on said mortgage and the costs aforesaid, the officer shall immediately pay the sum due on said mortgage to the person who paid the same, and shall apply this surplus on the execution or attachment held by him.

Bid must cover amount of debt and costs

SEC. 4. But nothing contained in this act shall in any way effect the right of any creditor to contest for any reason the validity of such mortgage.

Validity of mortgage may be contested.

SEC. 5. Upon written demand of a creditor, his agent, or atorney, or of any mortgagor of personal property other than exempt property, the person entitled to receive said debt shall deliver to said creditor a statement in writing under oath, which statement shall show the nature and amount of the original debt secured by the mortgage, the date and amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid.

Mortgagee compelled to state amount of debt upon request.

SEC. 6. The refusal of the person entitled to receive said mortgage debt, or his failure within a reasonable time after demand to deliver to the attachment or execution creditor, or to his attorney or agent, or either of them, the statements required by the second and fifth sections of this act, is hereby declared to be a misdemeanor, and wilfully swearing to a greater amount of mortgage debt than is actually due, shall be deemed perjury. The person who fails or refuses to furnish the verified statements or either of them, required by the second and fifth sections of this act, shall also be liable to the attachment or execution creditor for all damages which shall result from such refusal or failure, and for reasonable attorney's fees and costs in any action brought to recover such damages, or to ascertain the amount of the mortgage debt.

Failure to comply

A misdemeanor.

Liable for damages.

Approved April 9, 1886.