

or so much thereof as may be necessary to satisfy the amount secured thereby, by suit in any Court of competent jurisdiction in Upper Canada.

Judgment creditors of mortgagees may pay or cause to be paid, the prior mortgage, and then seize and sell so much of the mortgaged property as may be necessary to pay themselves.

XII. Any person having a Judgment in Execution against the goods and chattels of any person or persons who may have executed a Mortgage of goods and chattels, which Mortgage has been or may be registered in manner hereinbefore provided, may direct the Sheriff to whom such Execution is directed, to seize upon such or so much of the said goods and chattels as may be thought sufficient to satisfy such Mortgage and Execution, and may thereupon apply to the Court or a Judge of the Court out of which such Execution has been issued, upon an affidavit entitled in the Court and cause, out of which and wherein such Execution was issued, setting forth the fact of his being such Execution creditor and of the Registry of such Judgment, and of such Seizure, and that he believes the property mortgaged is of sufficient value to pay the amount of the money secured by such Mortgage and the whole or a considerable portion of the amount of such Judgment, and that he is willing to discharge the amount of such Mortgage and is apprehensive that he will otherwise lose his debt or a portion thereof, for a Rule or Summons calling upon the parties to the said Mortgage to shew cause why such creditor should not be allowed to pay off such Mortgage or such amount as may be found due thereon, and proceed to the sale of such goods and chattels or sufficient to pay and satisfy his said Mortgage and Execution and expenses, and requiring such parties to produce at the time and place mentioned therein, a statement under oath of the true amount due upon such Mortgage, and stating that in default thereof, the said Court or Judge will proceed to make an order to set aside such Mortgage and the Registry thereof, which Rule or Summons may be served upon the parties personally, or by leaving a copy thereof at the place of abode of the parties to whom it is directed, or if such Mortgage was or is taken by an agent, then at his place of abode, and shall be made returnable at such time as such Court or Judge may name therein, but not less than eight days after the service thereof.

Proceedings for that purpose.

Further proceedings for the said purpose.

XIII. Upon the return day mentioned in such Rule or Summons it shall be lawful for such Court or Judge, upon proof by affidavit of the due service of such summons, to proceed to hear the parties and determine the amount due upon such Mortgage, in case the parties attend, and to make an order that upon payment by the creditor of the amount thus found due upon such Mortgage with the costs of the Mortgagee to be settled by such Court or Judge, to the Clerk of the Court out of which such Execution may have been issued, to be paid over to the Mortgagee when demanded, and thereupon the Sheriff or other officer having the Execution, upon receiving the said Rule or Order and the receipt of such Clerk of the amount mentioned in such Rule or Order having been deposited with him, which such Clerk is hereby required to give to such Execution creditor upon payment of such amount, shall and may proceed to the sale of so much of the said goods and chattels as may be necessary in the first place to repay such Execution creditor, the amount so deposited by him as aforesaid and interest thereon from the time the same was deposited, and then to satisfy and discharge the amount of the said Execution and expenses allowed by Law for making such seizure and sale.

Former mortgage may be set aside by the Judge in certain cases.

XIV. Upon the return day mentioned in such Rule or Summons it shall be lawful for such Court or Judge, in case the parties named therein and to whom it was directed do not appear to answer thereto, or appearing, do not give satisfactory evidence of the amount due upon such Mortgage, upon proof by affidavit of the due service of such Summons in manner here-