

C. H. A. P.
LXXII.

for the chancellor, upon the petition of the mortgagee or mortgagees, or any person claiming under the mortgage, after summoning the infant, and his appearance by guardian, to be appointed by the chancellor for that purpose, and to answer and defend on the part of such infant, or after the appearance of such person being idiot, lunatic, or *non compos mentis*, by the trustee or trustees, or committee of such person being idiot, lunatic, or *non compos mentis*, to be appointed by the chancellor on behalf of such person for the purposes aforesaid, and hearing all parties, and being well satisfied of the execution of the deed of mortgage, and that the sum claimed by the person making such application is justly due, to order and decree a sale of such mortgaged premises, or such part thereof as may be necessary to discharge the debt or debts due on such mortgage, or the chancellor may decree a foreclosure of the whole or such part of the mortgaged premises as may be necessary and sufficient to discharge, pay and satisfy, the debt or debts due upon and secured by such mortgage, in such manner as the chancellor shall judge most proper; but if a part only is foreclosed, and such part shall be esteemed by the mortgagee, or person praying a foreclosure, insufficient to pay the money secured by such mortgage, then a sale thereof shall be made in such manner as the chancellor shall direct; and the money raised by such sale, or so much thereof as is necessary, shall be applied to discharge the debt secured by such mortgage; and if money sufficient to pay the debt secured by the mortgage is not raised by a sale of the part foreclosed and sold as aforesaid, then the chancellor shall decree a sale of such other part of the mortgaged premises as will be sufficient for that purpose.

Persons applying, &c. to give bond, &c.

II. AND BE IT ENACTED, That in all cases where a foreclosure of any mortgage, or sale of any land, shall be applied for, in which any infant shall be interested, the person or persons applying for such foreclosure or sale, before any decree of foreclosure or sale is made, shall give bond, with good and sufficient security, approved by the chancellor, to the infant, his heirs, executors and administrators, in such penalty as the chancellor shall direct, with condition, that in case the infant, within one year after arrival to age, shall make appear to the satisfaction of the chancellor, that there was fraud in obtaining the mortgage deed, or that no deed was really executed, or that the debt claimed, or so much as decreed to be paid, was not really due, that then the obligor, his heirs, executors or administrators, will reconvey the mortgaged premises to the infant, in case of decree for foreclosure, or in case of sale, to pay to the infant either the whole or such part of the money raised by such sale as the chancellor shall determine to be just, and also stand to, or abide by, such order and decree as the chancellor shall make in the cause; which bond shall be filed and safely kept by the register in chancery, and also recorded with the decree in the case; and suit may be maintained either upon the original or a copy of the record by the infant, his heirs, executors or administrators, upon breach of the condition, and in such suit the plea of *non est factum* shall not be received unless verified by the affidavit of the defendant or defendants.

On application, &c. chancellor may direct a sale, &c.

III. AND BE IT ENACTED, That in all cases of application to the chancellor to foreclose any mortgage, he shall have full power and authority, in case the party against whom the bill shall be filed does not pay the sum due upon the mortgage by the time limited in the decree for paying the same, to order and direct that the mortgaged premises, or so much thereof as may be necessary to discharge the money due and costs, be sold for ready money, (unless the plaintiff shall consent to a sale on credit,) by a proper person to be appointed by the chancellor, and to order that the money raised by such sale be brought into court to be paid to the plaintiff; and the person empowered to make such sale shall give bond, with good security, to be approved by the chancellor, for the faithful execution of the trust, and full compliance with the order of the chancellor, and upon failure to execute such trust, the party grieved shall have a right to bring suit on such bond, or a copy thereof, against principal and security or securities, and shall recover the money for which the mortgaged premises shall have sold, and the plea of *non est factum* shall not be received, unless verified as aforesaid; and the chancellor may also issue attachment of contempt against the person empowered to sell as aforesaid, and his security or securities, and may thereupon commit both principal and securities until his order shall be fully complied with, and contempts cleared.

By 1794, ch. 60, when a mortgagor has removed, and his situation cannot be ascertained, or that of his representatives, the chancellor, on evidence thereof, may decree a foreclosure or sale, on giving such public notice as he shall deem necessary.

And appoint a trustee to sell, &c.

IV. AND BE IT ENACTED, That if any person hath died, or shall die, leaving real or personal estate to be sold for the payment of debts, or other purposes, and shall not, by will, or other instrument in writing, appoint a person or persons to sell or convey the same property, or if the person or persons appointed for the purpose aforesaid shall neglect, or refuse to execute such trust, or if such person or persons, or any of them, shall die before the execution of such trust, so that the sale cannot be made for the purposes intended, in every such case the chancellor shall have full power and authority, upon application or petition from any person or persons interested in the sale of such property,