

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 523

H. P. 1488 House of Representatives, February 28, 1929.

Referred to Committee on Revision of Statutes and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Stone of Biddeford.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN ACT Relative to Attachment of Property Mortgaged or
Pledged.

Be it enacted by the People of the State of Maine, as follows:

Section 1. Section forty-four of chapter eighty-six of
2 the revised statutes is hereby amended by striking out the
3 words "if the attaching creditor first tenders or pays to
4 the mortgagee, pledgee or holder, the full amount unpaid
5 on the demand so secured thereon" in the fourth and fifth
6 lines thereof and by inserting in place thereof the follow-
7 ing words 'subject to the provisions of the following six
8 sections,' so that said section as amended shall read as fol-
9 lows:

'Sect. 44. *Attachment of personal property mortgaged, pledged or under lien.* Personal property not exempt from attachment, mortgaged, pledged or subject to any lien created by law, and of which the debtor has the right of redemption, may be attached, held and sold as if unencumbered, subject to the provisions of the following six sections.'

Sect. 2. Section forty-five of chapter eighty-six of the revised statutes, as amended by section one of chapter one hundred sixty-two of the public laws of nineteen hundred seventeen is hereby amended by striking out all of said section and by substituting in place thereof the following:

'Sect. 45. *When officer attaching mortgaged property is exempt from suit.* When personal property, attached on a writ, or seized on execution, is claimed by virtue of such mortgage, pledge, or lien, the claimant shall not bring an action against the attaching officer therefor; (a) until he has given him at least forty-eight hours' written notice of his claim and the true amount thereof; (b) if the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; (c) within that time restores the property; (d) or where the property was attached on a writ or seized on execution while in the hands or possession of the mortgagor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity, and amount due secured by such

16 mortgage. Such summons may be in substantially the fol-
17 lowing form:

STATE OF MAINE

....., ss. To

..... Greeting:

WE COMMAND YOU, that you appear at our
Court, to be held at, within and for the
county of aforesaid, on the, day
of, A. D. 19...., then and there to answer
unto in a plea of the
case as in our writ of at-
tachment, dated the day of, A. D.
19...., and made returnable to said court on the day
of, A. D. 19...., is fully set forth,
in which of
is named defendant and on which writ the following described
property, claimed by you as mortgagee, was attached as the
property of said defendant; viz,
.....
.....
then and there to answer in such action, such questions as may
be put to you relative to the consideration, validity, and amount
justly due secured by such mortgage, and abide the judgment
of court thereon.

FAIL NOT OF APPEARANCE AT YOUR PERIL.

Witness, the HONORABLE
Justice of the Supreme Judicial Court (Superior Court)

(Judge of said Court) at, the day of in the year of our Lord one thousand nine hundred and

Clerk.

From the office of

.....
.....

‘Such summons shall be made returnable on any day, after 2 ten days and within ninety days, of its date and served by 3 copy, attested by the officer making such service. If said 4 mortgagee fails to appear and answer, as therein directed, 5 the court may estop him from claiming any interest in such 6 attached goods by virtue of such mortgage.’

Sect. 3. Section forty-seven of chapter eighty-six of the 2 revised statutes as amended by section two of chapter one 3 hundred sixty-two of the public laws of nineteen hundred 4 seventeen is hereby amended by striking out the word 5 “such” in the first line of said section as amended and by 6 inserting after the word “examination” in the second line 7 of said section as amended the words ‘held under the pro- 8 visions of section forty-five’ and by striking out the word 9 “void” in the sixth line of said section as amended and by 10 inserting in place thereof the word ‘vacated’ and by add- 11 ing at the end of said section as amended the following 12 sentence ‘If the attaching creditor pays or tenders the 13 amount directed to be paid within such time and the mort- 14 gagee fails to immediately assign such mortgage to the at-

15 taching creditor, the mortgagee shall be estopped from
16 claiming any interest in such attached goods by virtue of
17 his mortgage,' so that said section as amended shall read
18 as follows:

'Sect. 47. *Proceedings when validity of mortgage is estab-*
2 *lished.* If upon examination held under the provisions of
3 section forty-five, or upon the verdict of a jury as herein-
4 after provided, it appears that the mortgage is valid, the
5 court, having first ascertained the amount justly due upon
6 it, may direct the attaching creditor to pay the same to the
7 mortgagee or his assigns within such time as it orders; and
8 if he does not pay or tender the amount within the time
9 prescribed, the attachment shall be vacated and the property
10 shall be restored. If the attaching creditor pays or ten-
11 ders the amount directed to be paid within such time and
12 the mortgagee fails to immediately assign such mortgage
13 to the attaching creditor, the mortgagee shall be estopped
14 from claiming any interest in such attached goods by virtue
15 of his mortgage.'

Sect. 4. Section four of chapter one hundred sixty-two
2 of the public laws of nineteen hundred seventeen is hereby
3 amended by inserting after the word "the" in the first line
4 of said section as amended the word 'attaching' so that said
5 section as amended shall read as follows:

'Sect. 4. *Proceedings if creditor redeems or officer sells.*
2 When the attaching creditor has paid to the mortgagee or
3 his assigns the amount ordered by the court, he may retain

4 out of the proceeds of the property attached, when sold,
5 the amount so paid with interest, and the balance shall be
6 applied to the payment of his debt.'