

# MAINE STATE LEGISLATURE

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THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

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PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

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BANGOR:  
WHEELER & LYNDE.

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1857.

## CHAP. 89.

Writ to describe former action, &c.  
R. S., c. 124,  
§ 2, 3.

When original plaintiff is plaintiff in review, property may be attached, &c.  
R. S., c. 124,  
§ 4, 11.

When pleadings had been made, cause tried on that issue, if not on new pleadings, &c.  
R. S., c. 124,  
§ 6, 7, 8.

When plaintiff recovers greater sum, judgment, how rendered.  
38 Maine, 112.  
R. S., c. 124,  
§ 9, 13.

When sum first recovered is reduced, how judgment is rendered.  
R. S., c. 124,  
§ 12.

In actions of replevin, &c.  
R. S., c. 124,  
§ 14.

Party prevailing has costs, &c.  
1 Greenl. 155.  
2 Greenl. 397.  
R. S., c. 124,  
§ 10.

SEC. 6. In the writ of review, it shall be sufficient to describe the former action and judgment so as to identify it. The writ shall contain a summons to appear and answer to the plaintiff in review, and it may be served as other writs, and when the party is not an inhabitant of or found within the state, it may be served on his attorney in the original suit.

SEC. 7. When the original plaintiff is plaintiff in review, the property of the defendant may be attached, as it might have been in the original suit, and the form of the writ be varied accordingly; but no attachment made, or bail taken in the original action, shall be holden to satisfy the judgment on review.

SEC. 8. The proper pleadings shall be made on review, when no issue had been joined before judgment in the original action; when issue has been so joined, the cause shall be tried thereon; but amendments, brief statements, and other issues, may be made by leave of court, and the cause may be tried and disposed of as if it were an original suit.

SEC. 9. Judgment in the suit reviewed, shall be given without regard to the former judgment, except as follows. When the original plaintiff recovers a greater sum than he did by the first judgment as debt or damage, he shall have judgment therefor, or for so much thereof as remains unsatisfied, and for costs on review.

SEC. 10. When the sum first recovered is reduced, the original defendant shall have judgment for the difference, with costs, on the review; and if the former judgment has not been satisfied, one judgment may be set off against the other, and execution be issued for the balance.

SEC. 11. When actions of replevin, and actions in which a claim in set-off was filed, are reviewed, the defendant shall be regarded as in the position of a plaintiff, so far as it respects the damages awarded to him.

SEC. 12. The party prevailing in the action recovers costs, but this shall not prevent the court, granting a review, from imposing terms respecting costs.

## CHAPTER 90.

## MORTGAGES OF REAL ESTATE.

- SEC. 1. How mortgages of real estate are made.
2. Mortgagee may enter before breach, unless otherwise agreed.
3. Modes of obtaining possession for foreclosure.
4. Foreclosed in three years.
5. Mode of foreclosing without taking possession.
6. Mortgager may redeem within three years.
7. Form of declaring in a suit to obtain possession on mortgage. Conditional judgment, and judgment as at common law, in certain cases.
8. Form of conditional judgment; form of judgment when condition is for some act other than payment of money.
9. Judgment for defendant, if nothing be due.

## SEC. 10. Action for foreclosure by executor or administrator.

CHAP. 90.

11. Mortgages to be assets in the hands of administrators, who are to be seized to the use of heirs.
12. Against whom action on a mortgage shall be brought.
13. Proceedings in equity to redeem a mortgage.
14. Proceedings when the amount due on a mortgage has been paid or tendered.
15. Courts to order notice, if mortgagee be out of the state. Remedy of innocent assignee, in case of fraudulent mortgage.
16. Provisions for redemption when the mortgagee is out of the state.
17. Limitation of such bill in equity.
18. Court may allow other persons joined as defendants, and notified.
19. Award of execution on decree of court.
20. Deduction of rents and profits from the sum brought into court for redemption.
21. State treasurer may discharge or foreclose mortgages made or assigned to the state.
22. Bill in equity for redemption may be filed against the state.
23. Where to be filed, and proceedings thereon.
24. On decease of a person entitled to redeem, his administrator or heir may redeem.
25. Tender may be made to guardian of mortgagee, if under guardianship.
26. How mortgages may be discharged.
27. Redemption of mortgaged estate from purchaser of the equity of redemption.

SEC. 1. Mortgages of real estate, mentioned in this chapter, include those made in the usual form, in which the condition is set forth in the deed, and those made by a conveyance appearing on its face to be absolute, with a separate instrument of defeasance executed at the same time or as part of the same transaction.

How mortgages of real estate are made.

10 Maine, 197.  
23 Maine, 234.  
R. S., c. 125,  
§ 1.

SEC. 2. Any mortgagee, or person claiming under him, may enter on the premises, or recover possession thereof before a breach of the condition of the mortgage, when there is no agreement to the contrary; but in such case, if the debt is afterwards paid or the mortgage redeemed, the amount of the clear rents and profits, from the time of the entry, shall be accounted for, and deducted from the amount due on the mortgage.

Mortgagee may enter before breach, unless otherwise agreed.  
2 Greenl. 322.  
27 Maine, 531.  
34 Maine, 187.  
R. S., c. 125,  
§ 2.

SEC. 3. After breach of the condition, if the mortgagee, or any one claiming under him, desires to obtain possession of the premises for the purpose of foreclosure, he may proceed in either of the following ways, viz.:

Modes of obtaining possession for foreclosure.

*First.*—He may commence an action at law and obtain possession under a writ of possession issued on the judgment in the action, as provided in the eighth section, 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 thirty days after possession obtained.

34 Maine, 166.

*Second.*—He may enter into possession, and hold the same by consent in writing of the mortgager, or the person holding under him.

33 Maine, 363

*Third.*—He may enter peaceably and openly, if not opposed, in the presence of two witnesses and take possession of the premises; and a certificate of the fact and time of such entry shall be made, signed, and sworn to by such witnesses before a

29 Maine, 56.  
R. S., c. 125,  
§ 3.  
1849, c. 105.

## CHAP. 90.

justice of the peace; and such written consent and certificate shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within thirty days next after the entry is made.

Foreclosed in three years.  
R. S., c. 125, § 4.

Mode of foreclosing without taking possession.

25 Maine, 383.

38 Maine, 256, 548.  
R. S., c. 125, § 5.  
1849, c. 105.

Mortgager may redeem within three years.  
R. S., c. 125, § 6.

Form of declaring in a suit to obtain possession on mortgage, &c.  
2 Greenl. 322.  
17 Maine, 437.  
R. S., c. 125, § 7, 8.

Form of conditional judgment, &c.

SEC. 4. Possession obtained in either of these three modes, and continued for the three following years, shall forever foreclose the right of redemption. (a)

SEC. 5. 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:

*First.*—He may give public notice in a newspaper printed in the county where the premises are situated, if any, or if not, in the state paper, three 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 of deeds in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication.

*Second.*—He may cause an attested copy of such notice to be served on the mortgager or his assignee, if he lives in this state, by the sheriff or his deputy of the same county, by delivering it to him in hand or leaving it at his place of last and usual abode; and cause the original notice and the sheriff's return thereon to be recorded within thirty days after such service as aforesaid; and in all cases the certificate of the register of deeds shall be prima facie evidence of the fact of such entry, notice, publication of foreclosure, and of the sheriff's return.

SEC. 6. The mortgager, or person claiming under him, may redeem the mortgaged premises within three years next after the first publication, or the service of the notice mentioned in the preceding section, and if not so redeemed his right of redemption shall be forever foreclosed. (b)

SEC. 7. The mortgagee, or person claiming under him, in an action for possession, may declare on his own seizin, in a writ of entry, without naming the mortgage or assignment; and if it appears on default, demurrer, verdict or otherwise, that the plaintiff is entitled to the possession of the premises for breach of the condition of the mortgage, the court shall, on the motion of either party, award the conditional judgment hereinafter mentioned, unless it appears that the tenant is not the mortgager, or a person claiming under him, and in that case, judgment may be entered as at common law, unless the plaintiff consents to the entry of a conditional judgment.

SEC. 8. The conditional judgment shall be that, if the mortgager, his heirs, executor or administrator, pay to the mortgagee, his executor or administrator, the sum the court adjudges to be

(a) 7 Greenl. 31; 23 Maine, 25; 24 Maine, 155; 37 Maine, 386.

(b) 7 Greenl. 31; 21 Maine, 126; 36 Maine, 50; 20 Maine, 269.

due, with interest, within two months from the time of entering up judgment, no writ of possession shall issue and the mortgage shall be void; otherwise, it shall issue in due form of law. 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; and the writ of possession shall issue, if the terms of the conditional judgment are not complied with within the two months.

CHAP. 90.

R. S., c. 125,  
§ 9, 15.  
1844, c. 10.

SEC. 9. 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.

Judgment if nothing due.  
2 Greenl. 322.  
R. S., c. 125,  
§ 10.

SEC. 10. 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.

Action for foreclosure by ex'r or adm'r.  
R. S., c. 125,  
§ 11.

SEC. 11. Lands mortgaged to secure the payment of debts, or the performance of any collateral engagement, and the debts so secured, on the decease of the mortgagee, or person claiming under him, shall be assets in the hands of his executors or administrators; and they shall have the control of them as of a personal pledge; and when they recover seizin and possession thereof, it shall be to the use of the widow and heirs, or devisees, or creditors of the deceased, as the case may be; and when redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

Mortgages to be assets in the hands of administrators, &c.  
R. S., c. 125,  
§ 13.

SEC. 12. An action on a mortgage deed may be brought against a person in possession of the mortgaged premises; and the mortgager, 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 shall not be liable for costs, when he has no such interest, and makes his disclaimer thereto upon the records of the court.

Against whom action on a mortgage shall be brought.  
R. S., c. 125,  
§ 14.

SEC. 13. Any mortgager, 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; and 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 his bill in equity for the redemption of the mortgaged premises within the time limited in section six, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require; and such offer shall have the same force as a tender of payment or performance before the commencement of the suit; and the bill shall be sustained without such tender, and thereupon he shall be entitled to judgment for redemption and costs.

Proceedings in equity to redeem a mortgage.  
8 Greenl. 246.  
24 Maine, 297.  
25 Maine, 383.  
28 Maine, 336.  
34 Maine, 270.  
35 Maine, 218.  
R. S., c. 125,  
§ 16.

SEC. 14. When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgager or the person claiming under him, within the time so limited, he may have a bill in equity for the redemption

When the amount due on a mortgage has been paid or tendered, &c.

## CHAP. 90.

7 Greenl. 31.  
27 Maine, 237.  
R. S., c. 125,  
§ 17, 18.

of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the supreme judicial court, to release to him all his right and title therein; though 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 suit, he may have his bill in the manner prescribed in section sixteen, and the cause shall be tried in the same manner.

Courts to order notice if mortgagee be out of the state, &c.  
R. S., c. 125,  
§ 19.

SEC. 15. When the bill to redeem is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee, or the person claiming under him, is out of the state and has not had actual notice, the court shall order proper notice to be given to him, and continue the cause as long as necessary. When a mortgage is alleged and proved to be fraudulent, in whole or in part, an innocent assignee of the mortgager, for a valuable consideration, may file his bill within the time allowed to redeem, and be allowed to redeem without a tender.

Provisions for redemption when the mortgagee is out of the state.  
1841, c. 1, § 23.

SEC. 16. When the mortgagee, or person claiming under him, has commenced proceedings for foreclosure under the fifth section, if he resides out of the state, or if his residence is unknown to the party having the right to redeem, he may file his bill, as prescribed in section thirteen, and pay at the same time to the clerk of the courts the sum due, which payment shall have the same effect as a tender before the suit; and the court shall order such notice to be given of the pendency of the suit, as they judge proper.

Limitation of such a bill in equity.  
R. S., c. 125,  
§ 20.

SEC. 17. No bill in equity shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before the commencement of the suit, unless within three years next after making such tender.

Court may allow other persons joined as defendants, and notified.  
R. S., c. 125,  
§ 21.

SEC. 18. In any suit 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, on motion, the court may order him to be served with an attested copy of the bill amended in such manner as they may direct, and on his appearance, the cause shall proceed as though he had been originally joined.

Award of execution on decree of court.  
R. S., c. 125,  
§ 22.

SEC. 19. 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.

Deduction of rents and profits from the sum brought into court for redemption.  
R. S., c. 125,  
§ 23.

SEC. 20. When any sum of money is brought into court in a suit 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; and the person, to whom a sum of money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess.

SEC. 21. When a mortgage is made or assigned to the state, the treasurer 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 the third and fifth sections.

SEC. 22. 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 bill in equity against the state for the redemption thereof, in the supreme judicial court.

SEC. 23. 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 on said mortgage to the state, and award costs as they may deem equitable; and it shall be the duty of the treasurer to accept the sum adjudged by the court to be due, and discharge the mortgage.

SEC. 24. If a person entitled to redeem a mortgaged estate, or to redeem 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 a bill for redemption commenced and prosecuted by his executor or administrator, heirs or devisees; and if the plaintiff in any such bill in equity dies pending the suit, it may be prosecuted to final judgment by his heirs, devisees, or his executor or administrator.

SEC. 25. 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, shall execute a discharge of the mortgage.

SEC. 26. In all cases, the mortgage may be discharged by the deed of release from the person authorized to discharge it, or by causing satisfaction and payment under his hand to be entered in the margin of the record of such mortgage in the register's office. (a)

SEC. 27. 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 mortgager, or those claiming under him, having redeemed the equity of redemption within one year after such sale, shall have a right to redeem such mortgaged estate of such purchaser, or any person claiming under him, within the time and in the manner he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

## CHAP. 90.

State treasurer may discharge or foreclose mortgages made to state. R. S., c. 125, § 12.

Bill in equity for redemption may be filed against the state. R. S., c. 125, § 24.

Where to be filed, and proceedings thereon. R. S., c. 125, § 25.

On decease of person entitled to redeem, &c. R. S., c. 125, § 26.

Tender to guardian of mortgagee. R. S., c. 125, § 27.

How mortgages may be discharged. R. S., c. 125, § 28.

Redemption of mortgaged estate from purchaser of the equity of redemption. R. S., c. 125, § 29.