

MAINE STATE LEGISLATURE

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OF THE
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THE MICHIE COMPANY
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cerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay. (R. S. c. 162, § 18. 1959, c. 317, § 369.)

Effect of amendment.—The 1959 amendment substituted the word “plaintiff” for “petitioner” near the beginning of the sec-

tion.

Effective date of 1959 amendment.—See note to § 1.

Sec. 21. Report; judgment; effect.

The court may confirm, recommit, or set aside, but may not alter or change the report. The final decision upon the partition must come from the commissioners. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Grounds for objection to confirmation.—The report is not final. Commissioners must follow the warrant, and failure so to do is good ground for objection to the confirmation of the report. There must be no irregularities in procedure. Examples are: lack of proper notice by the commissioners; the report not showing equal division as to value; and the appraisal of a building by commissioners when the duty to appraise was not included in the judgment

for partition. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Report set aside or recommitted for bias, prejudice or gross error.—If the commissioners reach their result through bias or prejudice, or gross error clearly and unmistakably shown, the report should be set aside or recommitted. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Unequal allotments. — The action of commissioners in partition will not be set aside on the ground of unequal allotments except in extreme cases. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Evidence to be considered by court in passing on objections.—See *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Sec. 22. When unequal share left to person out of state, new partition made.—When a person to whom a share was left was out of the state when the partition was made and was not notified in season to prevent it, he may, within 3 years after final judgment, apply to the same court for a new partition. If it appears that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, the court may order a new partition as provided in section 20. (R. S. c. 162, § 22. 1959, c. 317, § 370.)

Effect of amendment.—The 1959 amendment divided the section into two sentences and substituted “the partition was made and was not notified in season to prevent it” for “notice was served on him

and did not return in season to become a party to the proceedings” in the first sentence.

Effective date of 1959 amendment.—See note to § 1.

Sec. 24. Person not party claiming share assigned or left.—When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he is concluded so far as it respects the assignment of the share, but he is not prevented from maintaining an action within the time in which it might have been brought if no judgment for partition had been rendered, for the share claimed, against the tenant in possession, the same as if the plaintiff had claimed the piece demanded, instead of an undivided part of the whole. (R. S. c. 162, § 24. 1961, c. 317, § 585.)

Effect of amendment.—The 1961 amendment substituted “plaintiff” for “demand-

ant” near the end of this section and made a minor change in punctuation.

Chapter 177.

Mortgages of Real Estate.

Sec. 4. Foreclosure in 1 year of mortgages created before January 1, 1964.—Possession obtained in either of these 3 modes and continued for one year forever forecloses the right of redemption. This section shall apply to mort-

gages created on or before December 31, 1963. (R. S. c. 163, § 4. 1963, c. 418, § 1.)

Effect of amendment.—The 1963 amendment added the second sentence.

Sec. 4-A. Foreclosure in 6 months of mortgages created on or after January 1, 1964.—Possession obtained in either of these 3 modes and continued for 6 months forever forecloses the right of redemption. This section shall apply to mortgages created on or after January 1, 1964. (1963, c. 418, § 2.)

Sec. 5. Foreclosing without possession.

Cited in *McCarty v. Greenlawn Cemetery Ass'n*, 158 Me. 388, 185 A. (2d) 127.

Sec. 6. Fees of attorneys for foreclosure of mortgage.

Section does not preclude contract for payment of reasonable fee.—The provision of a fee of \$25 in certain types of mortgage foreclosure does not deny the right of the parties to contract for payment of a reasonable fee. *Pepperell Trust Co. v. Mehlman*, 155 Me. 318, 154 A. (2d) 161.

Sec. 7. Mortgagor may redeem within 1 year if mortgage created before January 1, 1964; waiver.

The acceptance before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him shall constitute a waiver of such foreclosure unless an agreement to the contrary in writing be signed by the person from whom the same is accepted. Except, however, the receipt of income from the mortgaged premises, by the mortgagee or his assigns while in possession thereof, shall not constitute a waiver of the foreclosure proceedings of the mortgage on such premises. This section shall apply to mortgages created on or before December 31, 1963. (R. S. c. 163, § 7. 1963, c. 418, § 3.)

Effect of amendment.—The 1963 amendment added the last sentence. paragraph is set out.

As the rest of the section was not affected by the amendment, only the last **Cited in** *McCarty v. Greenlawn Cemetery Ass'n*, 158 Me. 388, 185 A. (2d) 127.

Sec. 7-A. Mortgagor may redeem within 6 months if mortgage created on or after January 1, 1964; waiver.—The mortgagor or person claiming under him may redeem the mortgaged premises within 6 months after the first publication or the service of the notice mentioned in section 5, and if not so redeemed, his right of redemption is forever foreclosed.

The mortgagor and mortgagee may agree upon any period of time not less than 6 months in which the mortgage shall be forever foreclosed, which agreement shall be inserted in the mortgage and be binding on the parties, their heirs, legal representatives and assigns and shall apply to all the modes of foreclosure of mortgages on real estate.

The mortgagor or those claiming under him shall have the right to redeem the mortgaged premises from any or all sales thereof under and by virtue of authority and power contained in such mortgage or from any sale of the mortgaged premises under or by virtue of a separate instrument executed at or about the same time with the mortgage, and being a part of the same transaction, by paying or tendering to the mortgagee or to those claiming under him as appears by record at the registry of deeds where the mortgage is properly recorded, the debt, interest, costs of foreclosure and other obligations provided in the mortgage, at any time within 6 months from the date of such sale. Nothing herein shall apply to railroad mortgages, so called, or to bond issues of corporations, or to bonds forming a part of a mortgage indebtedness of any corporation or corporations wherein the method of sale is provided in the deed of trust or any similar instrument.

The acceptance before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him shall constitute a waiver of such foreclosure unless an agreement to the contrary in writing be signed by the person from whom the same is accepted. Except the receipt of income from the mortgaged premises, by the mortgagee or his assigns while in possession thereof, shall not constitute a waiver of the foreclosure proceedings of the mortgage on such premises. This section shall apply to mortgages created on or after January 1, 1964. (1963, c. 418, § 4.)

Sec. 7-B. Application of surplus from sale within 2 years after foreclosure; requiring sale.—If a mortgagee within 2 years after the completion of a foreclosure under this chapter sells the property and the sales price exceeds the balance of the principal due on the mortgage on said completion date, interest to the date of sale, taxes, insurance, costs of maintenance, repairs and improvements to said property, and expenses of foreclosure and sale, he shall pay over such surplus to the mortgagor within 30 days after written request therefor. This section shall apply to mortgages created on or after January 1, 1964.

During such two year period if the mortgagee has not sold nor contracted to sell such property, the mortgagor may require the mortgagee by notice in writing to him and filed in the registry of deeds of the county where the property is located to sell such property at public sale, at which sale the mortgagee may be a bidder and the surplus from said sale, if any, as defined in this section, shall be paid over to the mortgagor as aforesaid. Notice of the time and place of such sale shall be published by the mortgagee in a newspaper of general circulation in the county where the property is situated once a week for two successive weeks, the last publication to be at least seven days prior to the date of the sale. (1963, c. 418, § 5.)

Sec. 9. Form of complaint in action to obtain possession.—The mortgagee or person claiming under him in an action for possession may declare on his own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections 5 and 7 before the action was commenced, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment shall be entered as at common law. (R. S. c. 163, § 9. 1959, c. 317, § 371.)

Effect of amendment.—The 1959 amendment divided this section into three sentences, substituted "real action" for "writ of entry" in the first sentence, deleted "on default, demurrer, verdict or otherwise" near the beginning of the second sentence and substituted "action" for "suit" near the end of that sentence.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: "This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a

particular action pending on December 1, 1959 would not be feasible or would work prior to December 1, 1959 would prevail." injustice, in which event the laws in effect Statute contemplates, etc.

In accord with original. See *Pepperell Trust Co. v. Mehlman*, 155 Me. 318, 154 A. (2d) 161.

Conditional judgment is conclusive as to amount due.

In accord with 1st paragraph in original. See *Pepperell Trust Co. v. Mehlman*, 155 Me. 318, 154 A. (2d) 161.

The amount due is found in the light of equity and good conscience. *Pepperell Trust Co. v. Mehlman*, 155 Me. 318, 154 A. (2d) 161.

Design of former writ of entry with con-

ditional judgment.—The former writ of entry with conditional judgment was designed to foreclose a mortgage and establish the amount secured thereby. *Pepperell*

Trust Co. v. Mehlman, 155 Me. 318, 154 A. (2d) 161, decided prior to the 1959 amendment, which substituted “real action” for “writ of entry.”

Sec. 10. Form of conditional judgment.—The conditional judgment shall be that if the mortgagor, his heirs, executor or administrator pays the sum that the court adjudges to be due and payable, with interest, within 2 months from the time of judgment, and pays such other sums as the court adjudges to be thereafter payable, within 2 months from the time that they fall due, no writ of possession shall issue and the mortgage shall be void. Otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. If, after 3 years from the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on motion filed in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. 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. The writ of possession shall issue if the terms of the conditional judgment are not complied with within the 2 months. (R. S. c. 163, § 10. 1961, c. 317, § 586.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into three sentences and the former second sentence into two sentences and substituted “motion filed” for “scire

facias sued out” in the present third sentence.

Design of former writ of entry with conditional judgment.—See note to § 9.

Sec. 11. Judgment, if nothing due.

Design of former writ of entry with conditional judgment. See note to § 9.

Sec. 15. To redeem mortgage.—Any mortgagor 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. 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 a civil action for the redemption of the mortgaged premises within the time limited in section 7, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require. Such offer has the same force as a tender of payment or performance before the commencement of the action. The action shall be sustained without such tender, and thereupon he shall be entitled to judgment for redemption and costs. (R. S. c. 163, § 15. 1961, c. 317, § 587.)

Effect of amendment.—The 1961 amendment divided this section into four sentences, substituted “a civil action” for “his bill in equity” in the present second sentence, substituted “action” for “suit” at

the end of the present third sentence, and substituted “The action” for “the bill” at the beginning of the present fourth sentence.

Sec. 16. Amount due on mortgage paid or tendered; when not.—When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may bring a civil action for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the superior court, to release to him all his right and title therein; although 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 action, he may bring a civil action in

the manner prescribed in section 15, and the cause shall be tried in the same manner. (R. S. c. 163, § 16. 1961, c. 317, § 588.)

Effect of amendment.—The 1961 amendment substituted “bring a civil action” for “have a bill in equity” above the middle of this section, deleted “of the supreme judicial court or” preceding “of the superior court” near the middle of the section and substituted “action” for “suit”, “bring a civil action” for “have his bill” and “section 15” for “the preceding section” near the end of the section.

Sec. 17. Civil action brought before entry, notice to mortgagee if out of state; fraudulent mortgage.—When a civil action for redemption is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee or person claiming under him is out of the state and has not had actual notice, the court shall order proper notice to be given 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 mortgagor, for a valuable consideration, may bring his action within the time allowed to redeem and be allowed to redeem without a tender. (R. S. c. 163, § 17. 1961, c. 317, § 589.)

Effect of amendment.—The 1961 amendment substituted “civil action for redemption” for “bill to redeem” near the beginning of this section and “bring his action” for “file his bill” near the end thereof.

Sec. 18. Redemption, when mortgagee is out of state.—When a mortgagee or person claiming under him residing out of the state, or whose residence is unknown to the party entitled to redeem, has commenced proceedings under section 5, or when such mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made has commenced proceedings under section 3, in either case the party entitled to redeem may bring the civil action, as prescribed in section 15, and pay at the same time to the clerk of the court the sum due, which payment shall have the same effect as a tender before the action. The court shall order such notice to be given of the pendency of the action, as it judges proper. (R. S. c. 163, § 18. 1961, c. 317, § 590.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “bring the civil action” for “file his bill” in the present first sentence and “action” for “suit” at the end of the present first sentence and in the present second sentence.

Sec. 19. Redemption after payment or tender, and before foreclosure, when mortgagee is out of state; notice published; discharge.—When an amount due on a mortgage has been paid or tendered to the mortgagee or person claiming under him before foreclosure of the mortgage, and the mortgagee or his assignee is out of the state and the mortgage is undischarged on the record, the mortgagor or person claiming under him may maintain a civil action for the redemption of the mortgaged premises, as provided in section 16, or for the discharge of the mortgage. On notice of the pendency of the action, given by publication in some newspaper in the county where said premises are situated for 3 weeks successively, the last publication being 30 days before the time of hearing, or in such other way as the superior court orders, said court may decree a discharge of such mortgage. The record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge. (R. S. c. 163, § 19. 1961, c. 317, § 591.)

Effect of amendment.—The 1961 amendment divided this section into three sentences, substituted “maintain a civil action” for “have his bill in equity” in the present first sentence, substituted “action” for “bill” near the beginning of the present second sentence, and substituted “the superior court” for “the supreme judicial court or the superior court or a justice of either of said courts in vacation” near the end of the present second sentence.

Sec. 20. Limitation of civil action.—No civil action shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before commencement of the action, unless within one year after such tender. (R. S. c. 163, § 20. 1961, c. 317, § 592.)

Effect of amendment.—The 1961 amendment substituted “civil action” for “bill in equity” near the beginning of this section and “action” for “suit” near the end of the section.

Sec. 21. Court may order other persons joined as defendants and notified.—In an action 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, the court on motion may order him to be served with an attested copy of the complaint amended in such manner as its directs, and on his appearance, the cause shall proceed as though he had been originally joined. (R. S. c. 163, § 21. 1961, c. 317, § 593.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” near the beginning of this section and “complaint” for “bill” near the end of the section.

Sec. 23. Deduction of rents and profits from sum brought into court for redemption; statement of amount due.—When money is brought into court in an action 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. The person to whom money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a true statement to the assignee or trustee of the amount due on such mortgage. For any loss resulting to the insolvent estate from any misrepresentation of the amount due, the assignee or trustee shall have a right of action against such person to recover such loss. (R. S. c. 163, § 23. 1961, c. 317, § 594.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and the former second sentence of this section into two sentences, substituted “an action” for “a suit” in the present first sentence and deleted “on the case” formerly following “action” in the present last sentence.

Strict adherence.—The remedies and procedures provided in this section and § 24 of this chapter must be strictly adhered to. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

This section provides for an accounting in a suit for redemption of mortgaged premises. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Action may be maintained, etc.

If the amount tendered to redeem is a

larger sum than the person to whom it is tendered is entitled, then he must refund the excess. If he refuses so to do then an action at law is in order to recover the excess. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

The provisions of § 24 of this chapter cannot be read into those of this section. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

The remedies and procedures applying to redemption of mortgages cannot be applied to assignments, and the same is true where an assignment of a mortgage is concerned. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Sec. 24. Owner of subsequent mortgage may request assignment of prior mortgage under foreclosure; bill in equity to compel assignment; appeal.—When proceedings for the foreclosure of any prior mort-

gage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem. If the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a civil action in the superior court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured, shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment as aforesaid. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under the provisions of this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as in other civil actions. (R. S. c. 163, § 24. 1959, c. 317, § 372. 1961, c. 317, § 595.)

Effect of amendments. — The 1959 amendment substituted "in other civil actions" for "provided by section 21 of chapter 107" at the end of the section.

The 1961 amendment divided the former first sentence of this section into two sentences and substituted "civil action" for "bill in equity in the supreme judicial court or" in the present second sentence and deleted "as aforesaid" at the end of the present second sentence.

Effective date of 1959 amendment.—See note to § 9.

Section provides equitable procedure by which to seek assignment. — Under this section the legislature has made available a procedure in equity for one to seek an assignment, with the equity court determining the amount to be paid the mortgagee if the assignment is allowed. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Strict adherence.—See same catchline in note to § 23 of this chapter.

The provisions of § 23 of this chapter cannot be read into those of this section. *State Trailer Sales, Inc. v. First Nat.*

Bank of Pittsfield, 158 Me. 481, 186 A. (2d) 370.

The remedies and procedures applying to redemption of mortgages cannot be applied to assignments, and the same is true where an assignment of a mortgage is concerned. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Prior mortgagee is under no legal duty to assign mortgage. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

And he has the right to make his own terms of assignment. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Unless the subsequent mortgagee seeks relief under this section.—See *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Redress under section barred by acceptance of prior mortgagee's terms.—Where, because of the divergent views of the applicability of c. 59, § 19-H, subsection I, paragraph F, a prior and a subsequent mortgagee could not agree on the amount

due the prior mortgagee on a contemplated assignment of the mortgage, and as a result the prior mortgagee received more than the total amount stated in the mortgage, the subsequent mortgagee could not recover the amount paid over the stated amount of the mortgage. The sub-

sequent mortgagee's redress was through the mechanics of this section, but by accepting the prior mortgagee's terms he became bound by his contractual undertaking. *State Trailer Sales, Inc. v. First Nat. Bank of Pittsfield*, 158 Me. 481, 186 A. (2d) 370.

Sec. 26. Civil action for redemption filed against state.—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 civil action against the state for the redemption thereof in the superior court. (R. S. c. 163, § 26. 1961, c. 317, § 596.)

Effect of amendment.—The 1961 amendment substituted "civil action" for "bill in equity" and deleted "in the supreme judi-

cial court or" preceding "in the superior court" at the end of the section.

Sec. 28. On death of person entitled to redeem, administrator or heir may redeem; tender in behalf of nonresident.—If a person entitled to redeem a mortgaged estate, or 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 an action for redemption commenced and prosecuted by his executor or administrator, heirs or devisees. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by his heirs, devisees or his executor or administrator. When a mortgagor resides out of the state, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon. The tender shall be as effectual as if made by the mortgagor. (R. S. c. 163, § 28. 1961, c. 317, § 597.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and the former second sentence of the section into two sentences. It also substituted "an ac-

tion" for "a bill" in the present first sentence and "action dies pending the action" for "bill in equity dies pending the suit" in the present second sentence.

Sec. 30. Claimant of mortgagor's interest may file complaint to have facts determined and damages assessed.—In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim may file a complaint in the superior court in the county where such agreement has to be performed, where the owner of such mortgage resides or where the property mortgaged is situated, alleging such facts and praying for relief. Said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee for such time as the court deems just and equitable. Pending such proceedings, the right of redemption shall not expire by any attempted foreclosure of such mortgage. (R. S. c. 163, § 30. 1961, c. 317, § 598.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and substi-

tuted “complaint” for “bill in equity in the supreme judicial court or” in the present first sentence.

Sec. 31. Discharge of mortgages; neglect to discharge mortgage.—A mortgage may be discharged by an entry acknowledging the satisfaction thereof made on the margin of the record of the mortgage in the registry of deeds, and signed by the mortgagee or by his executor, administrator or assignee, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. If a mortgagee or his executor, administrator or assignee, after full performance of the condition of his mortgage whether before or after breach of such condition, refuses or neglects for 7 days after being thereto requested to make such discharge or to execute and acknowledge a deed of release of the mortgage, he shall be punished by a fine of not less than \$10 nor more than \$50, to be recovered in a civil action. (R. S. c. 163, § 31. 1961, c. 317, § 599.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an

action on the case” at the end of this section.

Sec. 35. Real action against mortgagee in possession, after mortgage paid.—When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a real action to recover possession of said premises, the same as if paid or released before condition broken. (R. S. c. 163, § 34. 1959, c. 317, § 373.)

Effect of amendment.—The 1959 amendment substituted the words “real action” for the words “writ of entry.”

Effective date of 1959 amendment.—See note to § 9.

Sec. 36. To bar action on undischarged mortgage.—When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to the superior court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts, and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 39, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the superior court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage. (R. S. c. 163, § 35. 1947, c. 64, § 1. 1959, c. 317, § 374.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, deleted “or any justice of the superior court in vacation” following “superior court” in the first and second sentences, substituted “complaint” for “peti-

tion” in the first sentence and deleted “at law or proceeding in equity” following “action” in the third sentence.

Effective date of 1959 amendment.—See note to § 9.

Sec. 37. Two or more persons owning in severalty may join in complaint.—Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different por-

tions thereof, may join in one complaint. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same complaint. In case of a contest the court shall make such order for separate issues as may be proper. (R. S. c. 163, § 36. 1959, c. 317, § 375.)

Effect of amendment.—The 1959 amendment divided the second sentence into two sentences, and substituted “complaint” for “petition” in the first and second sen-

tences.

Effective date of 1959 amendment.—See note to § 9.

Sec. 38. To bar action on undischarged mortgage given to secure against some contingent liability.—When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 36 may apply to the superior court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 39, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the superior court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought to enforce a title under said mortgage. (R. S. c. 163, § 37. 1947, c. 64, § 2. 1959, c. 317, § 376.)

Effect of amendment.—The 1959 amendment divided the section into three sentences, deleted “or any justice of the superior court in vacation” following “superior court” in both the first and second sentences, substituted “complaint” for “petition” in the first sentence, substituted

“section 39” for “the following section” in the second sentence and deleted “or proceeding in equity” following “action” in the third sentence.

Effective date of 1959 amendment.—See note to § 9.

Sec. 39. Description of unknown mortgagees; service of complaint.—When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, that may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the state or outside the state, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required. (R. S. c. 163, § 38. 1947, c. 64, § 3. 1959, c. 317, § 377.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 9.

Sec. 40. Court has jurisdiction over all defendants.—Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made defendants in the manner provided, and shall upon due hearing make such decree upon the complaint and as to costs as it shall deem proper. (R. S. c. 163, § 39. 1959, c. 317, § 378.)

Effect of amendment.—The 1959 amendment substituted “defendants” for “respondents” and “complaint” for “petition,” and deleted “above” following “manner”

in this section.

Effective date of 1959 amendment.—See note to § 9.

Sec. 41. Decree effectual to bar claims.—The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants (R. S. c. 163, § 40. 1959, c. 317, § 379.)

Effect of amendment.—The 1959 amendment substituted the word “defendants” for the word “respondents” throughout the section. **Effective date of 1959 amendment.**—See note to § 9.

Chapter 178.

Mortgages of Personal Property. Liens. Pledges.

Mortgages of Personal Property.

Sec. 1. Mortgages of personal property; record.—No mortgage of personal property shall be valid against a trustee in bankruptcy or an assignee in insolvency of the mortgagor, or against an assignee under a general assignment for the benefit of the creditors of the mortgagor, or against any person other than the mortgagor, unless and until possession of such property is delivered to the mortgagee within 20 days from the date written in said mortgage, or, when undated, then from the date of execution and delivery of the same, and unless such possession is retained by the mortgagee, or unless and until the mortgage or a memorandum thereof is recorded within the said period of 20 days in the office of the clerk of the city, town or plantation organized for any purpose, in which the mortgagor resides when the mortgage is given, or registry of deeds as hereinafter provided. When all mortgagors reside without the state, the mortgage or a memorandum thereof shall be so recorded in the office of the register of deeds in the registry district where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns or plantations so organized in which such mortgagors reside when the mortgage is given. If any mortgagor resides in an unorganized place, the mortgage or a memorandum thereof shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. A mortgage or a memorandum thereof made by a domestic corporation shall be so recorded in the municipality which the corporation has designated in its certificate of organization as the location of the corporation; and, that of a foreign corporation shall be recorded in the municipality designated by the corporation in its certificate of foreign corporation as its usual place of business in this state. If a municipality in this state is not designated by the corporation as its location, or the location designated is in an unorganized place in the state, then in the office of the register of deeds for the registry district in which such property is when the mortgage is made. Such chattel mortgages or the memorandums thereof need not be acknowledged for presentation for record. If possession is taken or said mortgage or a memorandum thereof is recorded subsequent to said period of 20 days, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the making of said record, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

(1961, c. 313.)

Effect of amendment.—The 1961 amendment rewrote the former fourth sentence of the first paragraph, dividing it into two sentences.