

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1835.

AUGUSTA:
WILLIAM J. CONDON,.....PRINTER.

1835.

FIFTEENTH LEGISLATURE.

NO. 5.

HOUSE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND THIRTY-FIVE.

AN ACT concerning Mortgages and Pledges of personal property, and property subject to any lien created by law.

SECTION 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That whenever any personal property, not exempt by law from attachment, shall hereafter be mortgaged, pledged, or subject to any lien created by law, the mortgagee, pledgee, or holder, may be summoned to appear in Court, or before a Justice of the Peace, in the manner and by the process provided by a law of this State, entitled "An Act" concerning "Foreign Attachment" and the several Acts in addition

12 thereto, as the Trustee of the Mortgagor, pledg-
13 or, or general owner ; or the property so mort-
14 gaged, pledged, or subject to any lien as aforesaid,
15 may be attached by the creditor of the mortgagor,
16 pledgor, or general owner, in the manner and on
17 the conditions hereinafter provided. And if the
18 mortgagee, pledgee, or holder, shall be summoned
19 as aforesaid, and if, upon his disclosure, it shall
20 appear that the property was mortgaged, pledged,
21 or subject to a lien as aforesaid, to secure the
22 payment of a debt to the mortgagee, pledgee, or
23 holder, and that the mortgagor, pledgor, or
24 general owner, has any subsisting right, in law
25 or equity, to redeem the same by the payment
26 of such debt, the Court or Justice before which
27 the process may be pending, may order and de-
28 cree, that on payment or tender of such debt by
29 the Plaintiff, within such time as the Court or
30 Justice shall order, the person so summoned shall
31 deliver over the property to the attaching officer,
32 to be holden by him in the same manner as if it
33 had been attached, on mesne process, and in
34 default thereof, that he shall be charged as the
35 trustee of the principal debtor, and the Court or
36 Justice shall enter such decree and order upon

37 record. And the Plaintiff may have his writ of
38 Scire facias against such trustee in the manner
39 provided in the ninth section of the first men-
40 tioned act aforesaid ; and if upon the return
41 thereof duly served, it shall appear that he has
42 on his part complied with the order and decree
43 of the Court or Justice made as aforesaid, and
44 that the trustee has neglected or refused to com-
45 ply therewith, then the Court or Justice shall
46 enter up Judgment against him, for the amount
47 of the sums returned unsatisfied upon the exe-
48 cution against the principal debtor, if there
49 appear to have been in his hands property mort-
50 gaged, pledged, or subject to any lien as afore-
51 said, to that amount ; but if not, then the Court
52 or Justice shall enter up judgment against him
53 to the amount of the property mortgaged, pledg-
54 ed, or subject to lien as aforesaid, and may
55 ascertain the amount or value thereof, in such
56 manner as said Court or Justice may deem
57 proper ; and if upon the disclosure of the trus-
58 tee made as aforesaid, it appear that the property
59 was mortgaged, pledged, or subject to lien as
60 aforesaid, to indemnify the mortgagee, pledgee,
61 or holder, against any liability, or to secure the

62 performance of any contract or condition, and
63 that the mortgagor, pledgor, or general owner,
64 has any subsisting right in law or equity to re-
65 deem the same, the Court or Justice may order
66 and decree that upon the extinguishment and
67 discharge by the plaintiff of such liability, or on
68 the performance of said condition or contract
69 by the plaintiff, within such time as the Court
70 or Justice shall order, the person so summoned
71 shall deliver over the property to the attaching
72 officer, to be holden as if it had been attached ;
73 and in default thereof shall be charged as the
74 trustee of the principal debtor as aforesaid, and
75 such decree or order, shall be entered on record,
76 and the same subsequent proceedings be had
77 thereon, as are above provided for the case of
78 mortgages, pledges, or liens created by law to
79 secure payment of debts. Provided, always,
80 that the mortgagee, pledgee, or holder, summon-
81 ed as aforesaid, shall be entitled to receive of the
82 attaching officer, costs, in the same manner as
83 is provided in the "additional Act concern-
84 ing Foreign Attachment," passed February
85 sixth, eighteen hundred and twenty eight, being
86 for fees accruing and due before the service of
87 the scire facias upon him.

SEC. 2. *Be it further enacted,* That instead
2 of summoning the mortgagee, pledgee, or holder
3 as aforesaid, it shall be lawful to attach or take
4 in execution any personal property mortgaged,
5 pledged, or subject to any lien as aforesaid, not
6 exempt by law from attachment, unless the title
7 of the mortgagee, or holder, thereto, shall have
8 become absolute, as the property of the mort-
9 gator, pledgor, or general owner ; **Provided,**
10 that the person for whose benefit the same at-
11 tachment is made, or execution levied, shall first
12 pay or tender to the mortgagee, pledgee, or hol-
13 der, the full amount of the demand for which
14 the said property is mortgaged, pledged, or sub-
15 ject to any lien as aforesaid. And it shall be
16 the duty of the officer who shall sell any such
17 personal property, or any personal property de-
18 livered to him by virtue of the provisions of the
19 first section of this act, on mesne process or
20 execution, to apply the proceeds of such sale,
21 after deducting his fees and charges of sale, to
22 the payment of the sum so paid or tendered to
23 the mortgagee, pledgee, or holder, and of the
24 interest thereon from the time of such payment
25 or tender to the time of sale ; and the residue

26 of such proceeds shall be applied to the satis-
27 faction of the judgment of the Plaintiff in the
28 manner provided by law.

SEC. 3. *Be it further enacted,* That every
2 mortgagee, pledgee, or holder of personal prop-
3 erty, shall, upon demand in writing being made
4 upon him by any person who is desirous of at-
5 taching or taking in execution such property for
6 a debt or demand against the mortgagor, pledg-
7 or, or general owner, render a just and true ac-
8 count of the debt or demand, secured by such
9 mortgage, pledge or lien ; and any mortgagee,
10 pledgee or holder, who shall after hours
11 after such demand made, unreasonably neglect
12 to render such account, and shall receive from
13 the person attaching the property, or taking it
14 in execution, more than is justly due him on
15 account of the demand secured by the mort-
16 gage, pledge, or lien, shall be liable to refund
17 such excess, with the interest thereon, at the
18 rate of per centum per annum, to the
19 time of the recovery of judgment therefor, to be
20 recovered by an action for money had and re-
21 ceived. And any mortgagee, pledgee, or holder
22 who shall under this act, receive from any per-

23 son desirous of attaching the property mortgaged,
24 pledged, or subject to any lien as aforesaid, or
25 of taking it in execution, more than is justly due
26 him on account of the demand secured by the
27 mortgage, pledge or lien, shall be liable to refund
28 the excess, in an action for money had and re-
29 ceived.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 24, 1835. }

Bill entitled "An Act concerning Mortgages and Pledges of personal property, and property subject to any lien created by law," reported by Mr. McCrate from the Committee on the Judiciary, was read once, laid upon the table, and three hundred copies ordered to be printed for the use of the members.

[Extract from the Journal of the House.]

(Attest:)

JAMES L. CHILD, CLERK.