

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 814

H. P. 582

House of Representatives, February 9, 1967

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Brennan of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT to Correct Errors and Inconsistencies in Uniform Commercial Code and to Amend Certain Statutes to Conform Thereto.

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

Sec. 1. R. S., T. 11, § 5-114, sub-§ (1), amended. The second sentence of subsection (1) of section 5-114 of Title 11 of the Revised Statutes is amended to read as follows:

The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified ~~particular~~ documents must be satisfactory to it.

Sec. 2. R. S., T. 11, § 8-203, sub-§ (1), amended. The first paragraph of subsection (1) of section 8-203 of Title 11 of the Revised Statutes is amended to read as follows:

After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after **which** the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer,

Sec. 3. R. S., T. 11, § 8-301, sub-§ (2), amended. Subsection (2) of section 8-301 of Title 11 of the Revised Statutes is amended to read as follows:

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim. "Adverse claim" includes a claim that a transfer was or would be ~~unauthorized or~~ wrongful or that a particular adverse person is the owner or has an interest in the security.

Sec. 4. R. S., T. 11, § 9-403, sub-§ (4), amended. Subsection (4) of section 9-403 of Title 11 of the Revised Statutes is amended by inserting before the last sentence a new sentence to read as follows :

In addition, if a financing statement covers collateral which is crops or goods which are or are to become fixtures, the filing officer shall also index the statement according to the name of the record owner of the real estate.

Sec. 5. R. S., T. 14, § 4251, amended. Section 4251 of Title 14 of the Revised Statutes is amended to read as follows :

§ 4251. Attachment of encumbered personal property

Personal property not exempt from attachment, which is subject to a security interest or which has been, 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 sections 4159 and 4252 to 4256.

Sec. 6. R. S., T. 14, § 4252, amended. Section 4252 of Title 14 of the Revised Statutes is amended to read as follows :

§ 4252. Liability of officer attaching encumbered property

When personal property, attached on a writ or seized on execution, is claimed by virtue of a security interest such mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor :

- 1. **Notice.** Until he has given him at least 48 hours' written notice of his claim and the true amount thereof ; or
- 2. **Payment.** If the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon ; or
- 3. **Property restored.** If the officer within that time restores the property ; or
- 4. **Claimant to answer.** Where the property was attached on a writ or seized on execution while in the hands or possession of the mortgagor claimant, 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 mortgage security interest, mortgage or lien.

Such summons may be in substantially the following form :

Summons to Claimant

State of Maine, SS.	Superior Court Civil Action, File Number
A.B. Plaintiff v. C.D., Defendant E.F., Claimant	} Summons

You are hereby summoned and required to appear at our Court, to be held at, on the day of

in an action between, plaintiff, and, defendant, in which the following described property, claimed by you as ~~mortgagee~~ **secured party**, was attached as the property of said defendant; viz.,, 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~~ **security**, and abide the judgment of the court thereon.

If you fail to appear and answer, you will thereby waive the right to hold said property under the claimed ~~mortgage~~ **security**.

(Signed)
Clerk of said Superior Court

(Seal of the Court)

Dated

Such summons, when property is attached on the writ, shall be returnable to the court to which the writ is returnable not less than 10 days nor more than 60 days after service thereof, and when property is seized on execution such summons shall be made returnable to the court issuing such execution on any day fixed by the court not less than 10 days nor more than 60 days thereafter. Service in either case shall be by copy of such summons. If in either case the ~~mortgagee~~ **secured party** or claimant fails to appear and answer, or after hearing fails to establish his claim under such ~~mortgage~~ **security interest**, pledge or lien, he thereby waives the right to hold the property thereon.

Sec. 7. R. S., T. 14, § 4253, amended. Section 4253 of Title 14 of the Revised Statutes is amended to read as follows:

§ 4253. Claimant to account within 10 days after notice; false account

The officer may give the claimant written notice of his attachment. If he does not within 10 days thereafter deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon **as against the attaching creditor**. If his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in a civil action.

Sec. 8. R. S., T. 14, § 4254, amended. Section 4254 of Title 14 of the Revised Statutes is amended to read as follows:

§ 4254. Validity of claim established

If, upon examination held under section 4252 ~~or upon the verdict of a jury as provided~~, it appears that the ~~mortgage~~ **security interest, mortgage, pledge or lien** is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the ~~mortgagee~~ **claimant** or his assigns within such time as it orders. If he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the ~~mortgagee~~ **claimant** or his assigns fail to immediately assign such ~~mortgage~~ **security interest, mortgage, pledge or lien** to the attaching creditor, the ~~mortgagee~~ **claimant** or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his ~~mortgage~~ **security interest, mortgage, pledge or lien**.

Sec. 9. R. S., T. 14, § 4255, repealed. Section 4255 of Title 14 of the Revised Statutes is repealed.

Sec. 10. R. S., T. 14, § 4256, amended. Section 4256 of Title 14 of the Revised Statutes is amended to read as follows:

§ 4256. Disposition of proceeds of sale

When the attaching creditor has paid to the ~~mortgagee~~ **claimant** or his assigns the amount ordered by the court, the sheriff after making the sale shall pay to the creditor, and the creditor may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt.