

# MAINE STATE LEGISLATURE

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# SIXTIETH LEGISLATURE.

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HOUSE.

No. 160.

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
EIGHTY-ONE.

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AN ACT relating to mortgages of real estate and  
actions thereon.

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*Be it enacted by the Senate and House of Representatives  
in Legislature assembled, as follows :*

SECTION 1. Section two of chapter ninety of the  
2 revised statutes is hereby amended, by inserting  
3 after the word "before," in the second line, the  
4 words "or after;" by omitting the words "of the  
5 mortgage," in the third line; by striking out the  
6 words "debt is afterwards paid or the mortgage  
7 redeemed," in the fourth and fifth lines, and insert-  
8 ing in place thereof the words "mortgage is after-  
9 wards redeemed;" and by striking out the words  
10 "the entry," in the sixth line, and inserting in their  
11 place the words "taking possession," so that said  
12 section as amended shall read as follows:

13 *Sect. 2.* Any mortgagee, or person claiming under  
14 him, may enter on the premises, or recover posses-  
15 sion thereof, before or after breach of condition,  
16 when there is no agreement to the contrary; but in  
17 such case, if the mortgage is afterwards redeemed,  
18 the amount of the clear rents and profits from the  
19 time of taking possession, shall be accounted for  
20 and deducted from the sum due on the mortgage.

SECT. 2. The first specification in section three  
2 of the same chapter, is hereby amended by striking  
3 out the words "commence an action at law and,"  
4 in the first line; and by striking out the word "the,"  
5 in the second line, and inserting in place thereof  
6 the words "a conditional," and by striking out the  
7 words "in the action," in the second line, so that  
8 said specification as amended shall read as follows:  
9 *First*—He may obtain possession under a writ  
10 of possession issued on a conditional judgment, as  
11 provided in the eighth section, duly executed by  
12 an officer. An abstract of such writ, stating the  
13 time of obtaining possession, certified by the clerk,  
14 shall be recorded in the registry of deeds of the  
15 district in which the estate is, within thirty days  
16 after possession obtained.

SECT. 3. Section seven of the same chapter is  
2 hereby amended, by striking out the words "the

3 possession of the premises for breach of the con-  
4 dition of the mortgage," in the fifth and sixth lines  
5 and inserting instead thereof, the words, "posses-  
6 sion, and that the condition was broken when the  
7 action was commenced;" also by striking out the  
8 the words, "hereinafter mentioned," in the seventh  
9 line; also by striking out the last two lines and in-  
10 sserting instead thereof, the words, "or that the  
11 owner of the mortgage proceeded for foreclosure  
12 conformably to sections five and six, before the suit  
13 was commenced, the plaintiff not consenting to said  
14 judgment; and unless such judgment be awarded  
15 judgment shall be entered as at common law;" so  
16 that said section, as amended, shall read as fol-  
17 lows:

18 *Sect. 7.* The mortgagee, or person claiming  
19 under him, in an action for possession, may declare  
20 on his own seizin, in a writ of entry without nam-  
21 ing the mortgage or assignment; and if it appears  
22 on default, demurrer, verdict or otherwise, that the  
23 plaintiff is entitled to possession, and that the con-  
24 dition was broken when the action was commenced,  
25 the court shall, on motion of either party, award  
26 the conditional judgment, unless it appears that  
27 the tenant is not the mortgager or a person

28 claiming under him, or that the owner of the mort-  
29 gage proceeded for foreclosure conformably to sec-  
30 tions five and six before the suit was commenced,  
31 the plaintiff not consenting to such judgment; and  
32 unless such judgment be awarded, judgment shall  
33 be entered as at common law.

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## STATE OF MAINE.

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In HOUSE OF REPRESENTATIVES, }  
March 10, 1881. }

Reported by Mr. VERRILL, from Committee on Legal Affairs,  
and ordered printed under Joint Rule.

ORAMANDAL SMITH, *Clerk.*