

MAINE STATE LEGISLATURE

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EIGHTY-THIRD LEGISLATURE

House Document

No. 308

H. P. 973 House of Representatives, March 2, 1927.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Bartlett of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-SEVEN

AN ACT to Amend Sections Thirty-five, Thirty-seven and
Thirty-eight of Chapter Ninety-five of the Revised Statutes
Relating to Proceedings to Bar Actions on Undischarged
Mortgages.

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

Section 1. Section thirty-five of chapter ninety-five of the
2 revised statutes is hereby amended by striking out the words
3 "undivided or any aliquot part thereof" in the seventh and
4 eighth lines thereof and inserting in the place thereof the
5 words 'part thereof, undivided or otherwise,' and by insert-
6 ing after the word "or" in the tenth line thereof the words
7 'any part thereof or,' and by inserting after the word "court"
8 in the eleventh line thereof the words 'either at law or in

9 equity,' so that said section, as amended, shall read as fol-
10 lows:

'Sect. 35. When the record title of real estate is encum-
2 bered by an undischarged mortgage, and the mortgagor and
3 those having his estate in the premises have been in uninter-
4 rupted possession of such real estate for twenty years after
5 the expiration of the time limited in the mortgage for the
6 full performance of the conditions thereof; he or they, or
7 any person having a freehold estate, vested or contingent
8 in possession, reversion or remainder, in the land originally
9 subject to the mortgage or in any part thereof, undivided
10 or otherwise, or any interest therein which may eventually
11 become a freehold estate, or any person who has conveyed
12 such land or any part thereof or any such interest therein
13 with covenants of title or warranty, may apply to the su-
14 preme judicial court, either at law or in equity, in the coun-
15 ty where the whole or any part of the mortgaged premises
16 is situated, by petition setting forth the facts, and asking
17 for a decree as hereinafter provided; and if after notice
18 to all persons interested as provided in section thirty-eight,
19 no evidence is offered of any payment within said twenty
20 years or of any other act within said time, in recognition
21 of its existence as a valid mortgage, the court upon hear-
22 ing may enter a decree setting forth such facts and its find-
23 ings in relation thereto, which decree shall within thirty
24 days be recorded in the registry of deeds where the mort-
25 gage is recorded; and thereafter no action at law or pro-

26 ceeding in equity shall be brought by any person to enforce
27 a title under said mortgage.'

Sect. 2. Section thirty-seven of said chapter ninety-five
2 of the revised statutes is hereby amended by inserting after
3 the word "court" in the eleventh line thereof the words
4 'either at law or in equity,' and by inserting after the word
5 "action" in the twentieth line thereof the words 'at law,'
6 so that said section, as amended, shall read as follows:

'Sect. 37. When the mortgagor of such an undischarged
2 mortgage and those having his estate in the premises have
3 been in uninterrupted possession of such real estate for
4 twenty years from the date thereof, and it shall appear
5 that such mortgage was not given to secure the payment
6 of a sum of money or a debt, but to secure the mortgagee
7 against some contingent liability assumed or undertaken by
8 him, and that such conditional liability has ceased to exist
9 and that the interests of no person will be prejudiced by
10 the discharge of such mortgage, the mortgagor or those
11 having his estate in the premises, or any of the persons to
12 whom a similar remedy is granted in section thirty-five
13 may apply to the supreme judicial court, either at law or
14 in equity, in the county where the whole or any part of the
15 mortgaged premises is situated, by petition setting forth
16 the facts and asking for a decree as hereinafter provided;
17 and if after notice to all persons interested as provided in
18 the following section, and upon hearing it shall appear that
19 the liability on account of which such mortgage was given

20 has ceased to exist and that such mortgage ought to be
21 discharged, the court may enter a decree setting forth the
22 facts proved and its findings in relation thereto, which de-
23 cree shall within thirty days be recorded in the registry of
24 deeds where the mortgage is recorded; and thereafter no
25 action at law or proceeding in equity shall be brought to
26 enforce a title under said mortgage.'

Sect. 3. Section thirty-eight of said chapter ninety-five
2 of the revised statutes is hereby amended by inserting after
3 the word "petition" in the fourth line thereof the follow-
4 ing words: 'Such oath, when taken out of the state of
5 Maine, may be taken before any notary public, any justice
6 of the peace, or any officer of the state, territory, nation,
7 kingdom, or country in which the same shall be taken who
8 is authorized by the laws of such state, territory, nation,
9 kingdom, or country to administer oaths; and a recital, in
10 the jurat or certificate of such oath, that he is such notary
11 public or justice of the peace, or officer authorized as afore-
12 said to administer oaths, and his official designation an-
13 nexed to his signature and attested under his official seal
14 is sufficient proof that the person taking such oath is such
15 notary public, justice of the peace, or officer. But if such
16 oath is taken outside the state of Maine before any such
17 notary public, justice of the peace or officer, not having a
18 seal, a certificate under seal from the secretary of state, or
19 clerk of a court of record in the county where the notary
20 public, justice of the peace or officer resides or took said

21 oath, authenticating the authority of the notary public, jus-
22 tice of the peace or officer taking said oath, and the genu-
23 ineness of his signature, must be annexed thereto; and such
24 certificate shall be sufficient proof that the person taking
25 such oath is such notary public, justice of the peace or offi-
26 cer'; so that said section, as amended, shall read as follows:

'Sect. 38. When it is alleged under oath in the petition
2 that the mortgagees or persons claiming under them are
3 unknown or that their names are unknown, they may be
4 described generally as claiming by, through or under some
5 person or persons named in the petition. Such oath, when
6 taken out of the state of Maine, may be taken before any
7 notary public, any justice of the peace, or any officer of
8 the state, territory, nation, kingdom, or country in which
9 the same shall be taken who is authorized by the laws of
10 such state, territory, nation, kingdom, or country to ad-
11 minister oaths; and a recital, in the jurat or certificate of
12 such oath, that he is such notary public or justice of the
13 peace, or officer authorized as aforesaid to administer oaths,
14 and his official designation annexed to his signature and
15 attested under his official seal is sufficient proof that the
16 person taking such oath is such notary public, justice of
17 the peace, or officer. But if such oath is taken outside the
18 state of Maine before any such notary public, justice of the
19 peace or officer, not having a seal, a certificate under seal
20 from the secretary of state, or clerk of a court of record
21 in the county where the notary public, justice of the peace

22 or officer resides or took said oath, authenticating the au-
23 thority of the notary public, justice of the peace or officer
24 taking said oath, and the genuineness of his signature, must
25 be annexed thereto; and such certificate shall be sufficient
26 proof that the person taking such oath is such notary pub-
27 lic, justice of the peace or officer. Personal service by copy
28 of the petition and order of notice shall be made upon all
29 known respondents residing in the state fourteen days be-
30 fore the return day; and upon all other respondents, serv-
31 ice may be made by personal service of copy of the petition
32 and order of notice; by publication for such length of time,
33 in such newspapers or by posting in such public places as
34 the court may direct; or in any or all of these ways at the
35 discretion of the court.'