

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 1041

H. P. 1457

House of Representatives, February 20, 1947.

Reported by Mr. Silsby from Committee on Judiciary and laid on table to be printed under joint rules.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT Relating to Proceedings to Bar Action on Undischarged Real Estate Mortgages.

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

Sec. 1. R. S., c. 163, § 35, amended. Section 35 of chapter 163 of the revised statutes is hereby amended to read as follows :

'Sec. 35. Proceedings 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, **or any justice of the superior court in vacation**, in the county where the whole or any part of the mortgaged premises is situated, by petition setting forth the facts, and asking for a decree as hereinafter provided ;

and if after notice to all persons interested as provided in section 38, 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 or any justice of the superior court in vacation** 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; and thereafter no action at law or proceeding in equity shall be brought by any person to enforce a title under said mortgage.'

Sec. 2. R. S., c. 163, § 37, amended. Section 37 of chapter 163 of the revised statutes is hereby amended to read as follows :

'**Sec. 37. Proceedings 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 35 may apply to the superior court, **or any justice of the superior court in vacation**, in the county where the whole or any part of the mortgaged premises is situated, by petition setting forth the facts and asking for a decree as hereinafter provided; and if after notice to all persons interested as provided in the following section, 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, or any justice of the superior court in vacation**, 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; and thereafter no action or proceeding in equity shall be brought to enforce a title under said mortgage.'

Sec. 3. R. S., c. 163, § 38, amended. Section 38 of chapter 163 of the revised statutes is hereby amended to read as follows :

'**Sec. 38. Description of unknown mortgagees; service of petition.** When it is alleged under oath in the petition that the mortgagees or persons claiming under them are unknown or that their names are unknown,

they may be described generally as claiming by, through, or under some person or persons named in the petition. Personal service by copy of the petition and order of notice shall be made upon all known respondents residing in the state, 14 days before the return day, **or if such petition is brought before a justice of the superior court in vacation, 14 days before the date of hearing**; and upon all other respondents, service may be made by personal service of copy of the petition and order of notice; by publication for such length of time, in such newspapers or by posting in such public places as the court may direct; or in any or all of these ways at the discretion of the court.'