

MAINE STATE LEGISLATURE

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PUBLIC ACTS

OF THE

STATE OF MAINE,

PASSED BY THE

FIFTEENTH LEGISLATURE,

AT ITS SESSION, HELD IN JANUARY, 1835.

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1835.

Proviso.

which they may be part or sole owners in such manner as they shall see fit:—*Provided nevertheless*, that nothing in this act shall be so construed as to affect the rights of owners of such houses for public worship as have been or shall hereafter be built by members of different religious denominations united.

[Approved by the Governor, March 24, 1835.]

Chapter 188.

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

Mortgagee of personal property may be summoned and required to disclose, and when property is disclosed subject to a lien for the payment of money.

Court may order property to be given up to plff. on his discharging the lien and in default thereof charge the mortgagee as trustee of debtor.

SECT. 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 thereto, as the trustee of the mortgagor, pledgor, or general owner, and if the mortgagee, pledgee, or holder shall be summoned as aforesaid, and upon his disclosure it shall appear that the property was mortgaged, pledged or subject to a lien as aforesaid, to secure the payment of any sum of money to the mortgagee, pledgee, or holder, and that the mortgagor pledgor or original owner has any subsisting right to redeem the same, by the payment of the money aforesaid, the Court or Justice before which the process may be pending may order and decree, that on payment, or tender of such money by the plaintiff, within such time as the Court or Justice shall order, not exceeding the time within which said debtor would have a right

to redeem said property, the person so summoned shall deliver over the property to the officer serving the process in said proceedings, to be holden and disposed of by him in the same manner as if it had been attached on mesne process, and in default thereof that he shall be charged as the trustee of the principal debtor, and the Court or Justice shall enter such decree and order upon the record. And the plaintiff may have his writ of scire facias against such trustee, in the manner provided in the ninth section of the first mentioned act aforesaid ; and if, upon the return thereof duly served, it shall appear that he has, on his part, complied with the order and decree of the Court or Justice, made as aforesaid, and that the trustee has neglected or refused to comply therewith, then the Court or Justice shall enter up judgment against him for the amount of the sum returned unsatisfied upon the execution against the principal debtor, if there appear to have been in his hands such an amount of the property mortgaged, pledged, or subject to any lien as aforesaid exceeding, or more than the money first aforesaid ; but if not, then for the amount of said property so exceeding or more than said money, if any ; and said Court or Justice shall, at the time of determining the issue upon said scire facias, also determine the amount of said excess ; and if, upon the disclosure of the trustee made as aforesaid, it appear that the property was mortgaged, pledged or subject to a lien as aforesaid to indemnify the mortgagee, pledgee, or holder, against any liability, or to secure the performance of any contract or condition, and that the mortgagor, pledgor, or general owner has any subsisting right to redeem the same, the Court or Justice may order and decree, that, upon the extinguishment and discharge by the plaintiff of such liability, or on the performance of said condition or contract by the plaintiff, within such time as the Court or Justice shall order, not exceeding the time within

Plaintiff may have his writ of scire facias and recover of person so charged as trustee the excess over the sum for which such property is pledged.

Proceedings where property is pledged to cover conditional liabilities.

which said debtor ought to perform said contract or condition, or extinguish or discharge said liability, the person so summoned shall deliver over the property to the officer aforesaid to be holden and disposed of by him in the same manner as if it had been attached ; and in default thereof shall be charged as the trustee of the principal debtor as aforesaid, and such decree or order shall be entered on record, and the same subsequent proceedings be had thereon, as are above provided for in the case of mortgages, pledges or liens created by law to secure the payment of any money as is aforesaid ; and it shall be the duty of the officer who shall sell on execution any personal property delivered to him by virtue of this act, to apply, in paying to the plaintiff the sum so by him paid or tendered to the mortgagee, pledgee or holder, or applied in performance of the contract or condition or discharge or extinguishment of the liability aforesaid, and the interest from the time of such payment, tender or application to the time of sale, so much of the proceeds of said sale as may be necessary to discharge the same, he having first deducted therefrom his fees and charges of sale, and so much of the residue of said proceeds as may be required therefor, he shall apply to the satisfaction of the plaintiff's judgment in the manner provided by law, and the balance, if any, he shall forthwith pay over to the debtor: *Provided always*, That the mortgagee, pledgee, or holder, summoned as aforesaid, shall be entitled to receive of said officer, costs, in the same manner as is provided in the "additional act concerning foreign attachments," passed February sixth, eighteen [hundred] and twenty-eight, being for fees accruing and due before the service of the scire facias upon him.

SECT. 2. *Be it further enacted*, That instead of summoning the mortgagee, pledgee, or holder as aforesaid, it shall be lawful to attach or take in execution any personal property mortgaged pledged,

Proceeds of property sold, how to be applied by officer.

Mortgagee entitled to costs.

Property mortgaged may be attached as property of mortgagor.

or subject to any lien as aforesaid, not exempt by law from attachment, unless the mortgagee or holder, thereto, shall have become absolute, as the property of the mortgagor, pledgor, or general owner; *Provided*, That the person for whose benefit the same attachment is made, or execution levied, shall first pay or tender to the mortgagee, pledgee or holder the full amount of the demand for which the said property is mortgaged, pledged, or subject to any lien as aforesaid—and it shall be the duty of the officer who shall sell any such personal property, or any personal property delivered to him by virtue of the provisions of the first section of this act on mesne process or execution, to apply the proceeds of such sale, after deducting his fees and charges of sale, to the payment of the sum so paid or tendered to the mortgagee, pledgee, or holder, and if the interest thereon from the time of such payment or tender to the time of sale; and the residue of such proceeds shall be applied to the satisfaction of the judgment of the Plaintiff in the manner provided by law, or the Plaintiff may attach the property so pledged, mortgaged or held and sell the same on execution as in other cases, subject however to the rights and interest of such mortgagee, pledgee or holder—and in any case of tender provided by this act, if such mortgagee, pledgee or holder shall receive more than his or her due, the Plaintiff or Creditor may after notice and demand compel the same to be refunded with interest in an action at law.

Proviso.

Proceeds of property sold, how to be applied by officer.

Mortgagee receiving more than is due may be compelled to refund.

SECT. 3. *Be it further enacted*, That every mortgagee, pledgee, or holder of personal property shall, upon demand in writing being made upon him by any person who is desirous of attaching or taking in execution such property for a debt or demand against the mortgagor, pledgor or general owner, render a just and true account of the debt or demand, secured by such mortgage, pledge, or lien, and any mortgagee, pledgee or holder, who shall after six

Mortgagee may be required to render an account of debt secured by such mortgage.

Mortgagee receiving more than is due liable to refund the same and interest.

hours after such demand made, unreasonably neglect to render such account, and shall receive from the person attaching the property, or taking it in execution, more than is justly due him on account of the demand secured by the mortgage, pledge, or lien, shall be liable to refund such excess, with the interest thereon, at the rate of ten per centum per annum, to the time of the recovery of judgment therefor, to be recovered by an action for money had and received—and any mortgagee, pledgee or holder who shall under this act, receive from any person desirous of attaching the property mortgaged, pledged, or subject to any lien as aforesaid, or of taking it in execution, more than is justly due to him on account of the demand secured by the mortgage, pledge or lien, shall be liable to refund the excess, in an action for money had and received.

[Approved by the Governor, March 24, 1835.]

Chapter 189.

AN ACT respecting Cities.

Aldermen and Assessors of cities to prepare ward lists of voters for State officers, &c.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That it shall be the duty of the Aldermen and Assessors of the Cities in this State, to prepare lists of the qualified voters for Governor, Senators and Representatives in the State Legislature, Register of Deeds, County Treasurer, Representatives in Congress, and Electors of President and Vice President, in and for the several wards in Cities, in the same manner Selectmen and Assessors are required to prepare them for towns; the Aldermen performing the duties of Selectmen. By which lists, so prepared, City Wardens shall be governed, at the election of the officers before mentioned.