

MAINE STATE LEGISLATURE

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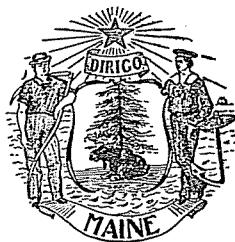
FIFTH REVISION.

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAPTER 92.

MORTGAGES OF REAL ESTATE.

How mortgages of real estate are made. R. S., c. 90, § 1.

SEC. 1. Mortgages of real estate, mentioned in this chapter, include those made in the usual form, in which the condition is set forth in the deed, and those made by a conveyance appearing on its face to be absolute, with a separate instrument of defeasance executed at the same time or as part of the same transaction. (a)

Mortgagee may enter before or after breach, unless otherwise agreed. R. S., c. 90, § 2.

SEC. 2. A mortgagee, or person claiming under him, may enter on the premises, or recover possession thereof, before or after breach of condition, when there is no agreement to the contrary; but in such case, if the mortgage is afterwards redeemed, the amount of the clear rents and profits from the time of taking possession, shall be accounted for and deducted from the sum due on the mortgage. (b)

Modes of obtaining possession for foreclosure. R. S., c. 90, § 3.

SEC. 3. After breach of the condition, if the mortgagee, or any one claiming under him, desires to obtain possession of the premises for the purpose of foreclosure, he may proceed in either of the following ways, viz.: (c)

By writ of possession. See c. 117, § 14.

I. He may obtain possession under a writ of possession issued on a conditional judgment, as provided in section ten, duly executed by an officer. An abstract of such writ, stating the time of obtaining possession, certified by the clerk, shall be recorded in the registry of deeds of the district in which the estate is, within thirty days after possession has been obtained. (d)

By entry with consent.

II. He may enter into possession, and hold the same by consent in writing of the mortgagor, or the person holding under him. (e)

By peaceable entry.

III. He may enter peaceably and openly, if not opposed, in the presence of two witnesses, and take possession of the premises; and a certificate of the fact and time of such entry shall be made, signed and sworn to by such witnesses before a justice of the peace; and such certificate, or con-

(a) What constitutes a mortgage; 2 Me., 136; 5 Me., 88; 8 Me., 250; 10 Me., 199; 12 Me., 349; 18 Me., 105; 21 Me., 197; 23 Me., 241; 24 Me., 189; 27 Me., 533; 32 Me., 145; 36 Me., 123; 38 Me., 448; 40 Me., 382; 43 Me., 372, 566; 44 Me., 299; 47 Me., 236; 49 Me., 363, 479; 50 Me., 98, 175; 52 Me., 98; 53 Me., 11, 464; 55 Me., 388, 407; 68 Me., 488; 70 Me., 209; 71 Me., 553, 570; 75 Me., 268; 77 Me., 554; 82 Me., 556; 93 Me., 87.

(b) Rights of parties; 2 Me., 136, 175, 340; 5 Me., 92; 14 Me., 132; 15 Me., 307; 18 Me., 105; 19 Me., 55, 99, 433; 20 Me., 114; 21 Me., 249, 467, 500; 24 Me., 404; 25 Me., 218, 248, 345; 27 Me., 533; 29 Me., 116, 160; 30 Me., 367; 33 Me., 42; 34 Me., 90, 189; 35 Me., 40, 220, 551; 36 Me., 123, 284, 438; 40 Me., 255; 41 Me., 116, 252; 42 Me., 188; 44 Me., 120; 45 Me., 97, 388, 414; 47 Me., 513; 49 Me., 428; 50 Me., 165, 447, 463; 51 Me., 49; 52 Me., 98, 116, 130, 185, 406; 55 Me., 495, 522; 58 Me., 367; 66 Me., 275; 67 Me., 547; 72 Me., 281; 80 Me., 460; 82 Me., 424, 457; 84 Me., 311; 92 Me., 242.

Transfers of mortgages; 2 Me., 331; 5 Me., 276; 8 Me., 283; 23 Me., 346; 24 Me., 189; 27 Me., 240; 31 Me., 313; 32 Me., 202; 41 Me., 223; 44 Me., 302; 46 Me., 447; 50 Me., 177; 51 Me., 123; 52 Me., 185; 71 Me., 377.

(c) See c. 79, § 6, ¶ i; 18 Me., 199; 21 Me., 128; 23 Me., 25; 24 Me., 156; 35 Me., 557; 40 Me., 523; 42 Me., 39; 48 Me., 62; 49 Me., 266, 378; 51 Me., 381.

(d) 27 Me., 241; 33 Me., 198; 35 Me., 551; 45 Me., 452; 51 Me., 395; 52 Me., 469; 55 Me., 522; 78 Me., 343.

(e) 28 Me., 353; 29 Me., 57; 33 Me., 364; 38 Me., 551; 41 Me., 71; 74 Me., 312.

sent, with the affidavit of the mortgagee or his assignee to the fact and time of entry indorsed thereon, shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within thirty days after the entry is made. (a)

SEC. 4. Possession obtained in either of these three modes, and continued for the three following years, forever forecloses the right of redemption. (b)

SEC. 5. If after breach of the condition, the mortgagee, or any person claiming under him, is not desirous of taking and holding possession of the premises, he may proceed for the purpose of foreclosure in either of the following modes:

I. He may give public notice in a newspaper published and printed in whole or in part in the county where the premises are situated, if any, or if not, in the state paper, three weeks successively, of his claim by mortgage on such real estate, describing the premises intelligibly, and naming the date of the mortgage, and that the condition in it is broken, by reason whereof he claims a foreclosure; and cause a copy of such printed notice, and the name and date of the newspaper in which it was last published to be recorded in each registry in which the mortgage deed is or by law ought to be recorded, within thirty days after such last publication. (c)

II. He may cause an attested copy of such notice to be served on the mortgagor or his assignee, if he lives in the state, by the sheriff of the same county or his deputy, by delivering it to him in hand or leaving it at his place of last and usual abode; and cause the original notice and the sheriff's return thereon to be recorded within thirty days after such service as aforesaid; and in all cases the certificate of the register of deeds is prima facie evidence of the fact of such entry, notice, publication of foreclosure, and of the sheriff's return.

SEC. 6. For the foreclosure of a mortgage by either method prescribed by the preceding section, or by paragraphs two and three of section three, the mortgagee or the person claiming under him may charge an attorney's fee of five dollars which shall be a lien on the mortgaged estate, and shall be included, with the expense of publication, service and recording, in making up the sum to be tendered by the mortgagor or the person claiming under him in order to be entitled to redeem; *provided*, said sum has actually been paid in full or partial discharge of an attorney's fee.

SEC. 7. The mortgagor, or person claiming under him, may redeem the mortgaged premises within three years after the first publication, or the service of the notice mentioned in section five, and if not so redeemed his right of redemption is forever foreclosed; *provided*, that the mortgagor and mortgagee may agree upon a shorter time, not less than one year, in which the mortgage shall be forever foreclosed, which agreement shall be inserted in the mortgage and be binding on the parties, their heirs and assigns, and shall apply to all the modes prescribed for the foreclosure of mortgages on real estate.

(a) 4 Me., 495; 37 Me., 388; 47 Me., 296; 50 Me., 473; 52 Me., 135; 58 Me., 368; 64 Me., 161; 66 Me., 272; 82 Me., 557.

(b) 3 Me., 263; 7 Me., 33; 23 Me., 25; 24 Me., 156; 37 Me., 388; 42 Me., 190; 58 Me., 368; 64 Me., 162; 66 Me., 273; 67 Me., 312.

(c) 25 Me., 392; 38 Me., 258; 45 Me., 99, 452; 46 Me., 274, 497; 49 Me., 103, 376; 53 Me., 73; 55 Me., 544; 58 Me., 367; 61 Me., 54; 63 Me., 544; 66 Me., 170; 71 Me., 444; 74 Me., 75; 77 Me., 554; 84 Me., 97; 94 Me., 305; 97 Me., 223.

Foreclosure within three years.
R. S., c. 90, § 4.
See § 7.

Modes of foreclosing without possession.
R. S., c. 90, § 5.

By publishing notice.
1893, c. 168.

By serving notice.
77 Me., 433

Fees of attorneys for the foreclosure of a mortgage.
1899, c. 77.
1903, c. 117.

—shall constitute lien on estate.

Mortgagor may redeem within three years.
R. S., c. 90, § 6.
20 Me., 271.
36 Me., 51.
76 Me., 281.
77 Me., 554.
—parties may agree upon a shorter time, not less than one year.

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Mortgages, redemption of, in case of death of mortgagee.
R. S., c. 90, § 7.

—administrator may be appointed.

—notice shall be given.

Form of declaration in a suit to obtain possession on mortgage.
R. S., c. 90, § 8.

Form of conditional judgment, and when it must be paid.
R. S., c. 90, § 9.
55 Me., 551, 562.
53 Me., 78.
64 Me., 446.
70 Me., 345.
79 Me., 570.
80 Me., 451.
81 Me., 285.
88 Me., 460.
93 Me., 439.

See § 29.

Judgment, if nothing is due.
R. S., c. 90, § 10.

Action for foreclosure by executor or administrator.
R. S., c. 90, § 11.
78 Me., 343.

Mortgages are assets in the hands of

SEC. 8. Whenever a mortgagee or his assignee dies, and there is no executor or administrator to receive the mortgage money, the mortgagor or person claiming under him having a right to redeem, may apply to the judge of probate of the county where the estate mortgaged is situated, for the appointment of an administrator upon such estate, and if, after due notice to all parties interested therein, they neglect or refuse to take out administration for thirty days, then the judge may commit administration to such person as he deems suitable, who may act as administrator with reference to said mortgage, as provided by law. In all such cases, however, personal notice shall first be given to the widow and heirs of the deceased known to be living in the state, either by service on them in person or by leaving such notice at their last and usual place of abode.

SEC. 9. The mortgagee, or person claiming under him, in an action for possession, may declare on his own seizin, in a writ of entry, without naming the mortgage or assignment; and if it appears on default, demurrer, verdict or otherwise, that the plaintiff is entitled to possession, and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him, or that the owner of the mortgage proceeded for foreclosure conformably to sections five and seven before the suit was commenced, the plaintiff not consenting to such judgment; and unless such judgment is awarded, judgment shall be entered as at common law. (a)

SEC. 10. The conditional judgment shall be, that if the mortgagor, his heirs, executor or administrator, pays the sum that the court adjudges to be due and payable, with interest, within two months from the time of judgment, and also pays such other sums as the court adjudges to be thereafter payable, within two months from the time that they fall due, no writ of possession shall issue and the mortgage shall be void; otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. And if, after three years from the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on scire facias sued out in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. When the condition is for doing some other act than the payment of money, the court may vary the conditional judgment as the circumstances require; and the writ of possession shall issue, if the terms of the conditional judgment are not complied with within the two months.

SEC. 11. If it appears that nothing is due on the mortgage, judgment shall be rendered for the defendant and for his costs, and he shall hold the land discharged of the mortgage. (b)

SEC. 12. When a mortgagee, or person claiming under him, is dead, the same proceedings to foreclose the mortgage may be had by his executor or administrator, declaring on the seizin of the deceased, as he might have had if living.

SEC. 13. Lands mortgaged to secure the payment of debts, or the performance of any collateral engagement, and the debts so secured, are on

(a) 2 Me., 332; 13 Me., 186; 14 Me., 299; 17 Me., 439; 19 Me., 276, 366; 28 Me., 135; 42 Me., 188; 53 Me., 77; 56 Me., 10; 63 Me., 545; 64 Me., 445; 79 Me., 570; 80 Me., 460; 81 Me., 285; 95 Me., 33.

(b) 2 Me., 322, 332; 31 Me., 394; 67 Me., 548; 72 Me., 202.

the death of the mortgagee, or person claiming under him, assets in the hands of his executors or administrators; they shall have the control of them as of a personal pledge; and when they recover seizin and possession thereof, it shall be for the use of the widow and heirs, or devisees, or creditors of the deceased, as the case may be; and when redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises. (a)

SEC. 14. An action on a mortgage deed may be brought against a person in possession of the mortgaged premises; and the mortgagor, or person claiming under him, may, in all cases, be joined with him as a co-tenant, whether he then has any interest or not in the premises; but he is not liable for costs, when he has no such interest, and makes his disclaimer thereto upon the records of the court.

SEC. 15. Any mortgagor, or other person having a right to redeem lands mortgaged, may demand of the mortgagee or person claiming under him a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any; and if he unreasonably refuses or neglects to render such account in writing, or, in any other way by his default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, he may bring his bill in equity for the redemption of the mortgaged premises within the time limited in section seven, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require; and such offer has the same force as a tender of payment or performance before the commencement of the suit; and the bill shall be sustained without such tender, and thereupon he shall be entitled to judgment for redemption and costs. (b)

SEC. 16. When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may have a bill in equity for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the supreme judicial court, to release to him all his right and title therein; although such mortgagee or his assignee has never had actual possession of the premises for breach of the condition; or, without having made a tender before the commencement of the suit, he may have his bill in the manner prescribed in the preceding section, and the cause shall be tried in the same manner. (c)

SEC. 17. When a bill to redeem is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee, or person claiming under him, is out of the state and has not had actual notice, the court shall order proper notice to be given him, and continue the cause as long as necessary. When a mortgage is alleged and proved

(a) 20 Me., 163; 31 Me., 313; 51 Me., 124; 56 Me., 210; 78 Me., 343; 79 Me., 301; 80 Me., 138; 84 Me., 311; 92 Me., 490.

(b) 8 Me., 250, 282; 18 Me., 210; 19 Me., 366; 20 Me., 271; 21 Me., 129; 23 Me., 48, 178; 24 Me., 298; 25 Me., 387; 28 Me., 352; 34 Me., 271; 35 Me., 220; 36 Me., 123; 38 Me., 329; 39 Me., 112; 41 Me., 223; 42 Me., 246; 44 Me., 300; 46 Me., 299, 443, 448, 494; 48 Me., 61; 49 Me., 564; 50 Me., 174, 240; 51 Me., 348; 52 Me., 135, 408, 544; 53 Me., 142, 246, 353, 441; 54 Me., 180, 406; 55 Me., 157; 56 Me., 159; 62 Me., 577; 65 Me., 198, 288; 66 Me., 190, 272, 470; 68 Me., 192; 69 Me., 192; 70 Me., 388; 74 Me., 314; 87 Me., 88; 95 Me., 264.

(c) 7 Me., 33; 27 Me., 241; 30 Me., 360; 36 Me., 51; 40 Me., 117; 47 Me., 54; 52 Me., 408, 561; 78 Me., 445; 87 Me., 88; 95 Me., 264; 96 Me., 360.

executors and administrators.
R. S., c. 90, § 12.
See c. 67, § 25;
c. 73, § 1, ¶ viii.

Against whom, action on a mortgage shall be brought.
R. S., c. 90, § 13.
14 Me., 299.
17 Me., 439.
95 Me., 260.

Proceedings in equity to redeem a mortgage.
R. S., c. 90, § 14.

When the amount due on a mortgage has been paid or tendered; and when not.
R. S., c. 90, § 15.

When bill is brought before entry, notice to mortgagee if out of state; remedy for fraudulent

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mortgage.
R. S., c. 90, § 16.
95 Me., 264.

Provisions
for redemption,
when the mortgag-
gee is out of
the state.
R. S., c. 90, § 17.
95 Me., 264.

Mortgages,
redemption
of, after
payment or
tender, and
before fore-
closure, when
mortgagee is
out of the
state.
R. S., c. 90, § 18.

—notice must
be published.

—discharge.

Limitation of
such a bill
in equity.
R. S., c. 90, § 19.
60 Me., 233.
87 Me., 88.

Court may
order other
persons to be
joined as
defendants,
and notified.
R. S., c. 90, § 20.

Award of
execution on
decree of
court, jointly
or severally.
R. S., c. 90, § 21.

Deduction of
rents and
profits from
the sum
brought into
court for
redemption.
R. S., c. 90, § 22.
1893, c. 225.
37 Me., 310.
53 Me., 67.
90 Me., 209.

—mortgagee
when request-
ed by as-
signee, shall
render state-
ment of
amount due
on mortgage.

to be fraudulent, in whole or in part, an innocent assignee of the mortgagor, for a valuable consideration, may file his bill within the time allowed to redeem, and be allowed to redeem without a tender.

SEC. 18. When a mortgagee, or person claiming under him, residing out of the state, or whose residence is unknown to the party entitled to redeem, has commenced proceedings under section five, or when such mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made, has commenced proceedings under section three, in either case the party entitled to redeem may file his bill, as prescribed in section fifteen, and pay at the same time to the clerk of the court the sum due, which payment shall have the same effect as a tender before the suit; and the court shall order such notice to be given of the pendency of the suit, as it judges proper.

SEC. 19. When an amount due on a mortgage has been paid, or tendered to the mortgagee, or person claiming under him, before foreclosure of the mortgage, and the mortgagee or his assignee is out of the state, and the mortgage is undischarged on the record, the mortgagor or person claiming under him, may have his bill in equity for the redemption of the mortgaged premises, as provided in section sixteen, or for the discharge of the mortgage; and on notice of the pendency of the bill, given by publication in some newspaper in the county where said premises are situated, for three weeks successively, the last publication being thirty days before the time of hearing, or in such other way as the supreme judicial court or a justice thereof, in vacation, orders, said court may decree a discharge of such mortgage; and the record of such decree in the registry of deeds in said county is evidence of such discharge.

SEC. 20. No bill in equity shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before commencement of the suit, unless within one year after such tender.

SEC. 21. In any suit brought for the redemption of mortgaged premises, when it is necessary to the attainment of justice that any other person, besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, the court on motion, may order him to be served with an attested copy of the bill amended in such manner as it directs, and on his appearance, the cause shall proceed as though he had been originally joined.

SEC. 22. The court, when a decree is made for the redemption of mortgaged lands, may award execution jointly or severally, as the case requires; and for sums found due for rents and profits over and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

SEC. 23. When money is brought into court in a suit for redemption of mortgaged premises, the court may deduct therefrom such sum as the defendant is chargeable with on account of rents and profits by him received, or costs awarded against him; and the person to whom money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a true statement to the assignee or trustee of the amount due on such mortgage and for any loss resulting to the insolvent estate from any misrepresenten-

tation of the amount due, the assignee or trustee shall have a right of action on the case against such person to recover such loss.

SEC. 24. When a mortgage is made or assigned to the state, the treasurer may demand and receive the money due thereon, and discharge it by his deed of release. After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in sections three and five.

SEC. 25. If the treasurer of state, and the person applying to redeem any lands mortgaged to the state, disagree as to the sum due thereon, such person may bring a bill in equity against the state for the redemption thereof, in the supreme judicial court.

SEC. 26. The court shall order notice to be served on the treasurer of state in the usual form, and shall hear the cause, and decide what sum is due to the state on said mortgage, and award costs as it deems equitable; and the treasurer shall accept the sum adjudged by the court to be due, and discharge the mortgage.

SEC. 27. If a person, entitled to redeem a mortgaged estate, or an equity of redemption which has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and a bill for redemption commenced and prosecuted by his executor or administrator, heirs or devisees; and if the plaintiff in such bill in equity dies pending the suit, it may be prosecuted to final judgment by his heirs, devisees, or his executor or administrator. When a mortgagor resides out of the state, any person may, in his behalf, tender to the holder of the mortgage the amount due thereon; and the tender shall be as effectual as if made by the mortgagor.

SEC. 28. When the mortgagee, or person holding under him, is under guardianship, a tender may be made to the guardian, and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition as the case requires, he shall execute a discharge of the mortgage.

SEC. 29. In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim, may file a bill in equity in the supreme judicial court in the county where such agreement has to be performed, where the owner of such mortgage resides, or where the property mortgaged is situated, alleging such facts and praying for relief; and said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee, for such time as the court deems just and equitable. Pending such proceedings, the

Treasurer of state may discharge or foreclose mortgages made to the state.
R. S., c. 90, § 23.

Bill in equity for redemption may be filed against the state.
R. S., c. 90, § 24.

Notice and proceedings thereon.
R. S., c. 90, § 25.

On death of person entitled to redeem, his administrator or heir may redeem.
R. S., c. 90, § 26.

—if residing out of the state, any one may tender for him.

Tender to guardian of mortgagee, who may discharge mortgage.
R. S., c. 90, § 27.

Claimant of mortgagor's interest, may file bill in equity to have facts determined and damages, if any, assessed by the court.
1887, c. 129.
81 Me., 458.

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right of redemption shall not expire by any attempted foreclosure of such mortgage.

How mortgages may be discharged.
R. S., c. 90, § 28.
1899, c. 113.

—penalty for neglect to discharge mortgage.

How mortgage may be discharged by attorney at law.
R. S., c. 90, § 29.

—proviso.

Redemption of estate from purchaser of equity.
R. S., c. 90, § 30.

Writ of entry against mortgagee in possession, after mortgage has been paid and before foreclosure is perfected.
R. S., c. 90, § 31.

When a mortgage remains undischarged, with mortgagor in possession of real estate for twenty years, it may be discharged by decree of court.
1895, c. 80, § 1.

SEC. 30. A mortgage may be discharged by an entry acknowledging the satisfaction thereof, made on the margin of the record of the mortgage in the registry of deeds, and signed by the mortgagee or by his executor, administrator or assignee, and such entry shall have the same effect as a deed of release duly acknowledged and recorded. If a mortgagee or his executor, administrator or assignee after full performance of the condition of his mortgage, whether before or after breach of such condition, refuses or neglects for seven days after being thereto requested to make such discharge or to execute and acknowledge a deed of release of the mortgage, he shall be liable to a fine of not less than ten, nor more than fifty dollars, to be recovered in an action on the case. (a)

SEC. 31. A mortgage may be discharged on the record thereof in the office of the registry of deeds by an attorney at law, authorized in writing by the mortgagee or person claiming under him; *provided, however*, that said writing is first recorded or filed in said office and a minute of the same is made by the register on the margin of the page in connection with said discharge.

SEC. 32. If the purchaser of an equity of redemption, sold on execution, has satisfied and paid to the mortgagee, or those claiming under him, the sum due on the mortgage, the mortgagor, or those claiming under him, having redeemed the equity of redemption within one year after such sale, may redeem such mortgaged estate from such purchaser, or any person claiming under him, within the time and in the manner that he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only. (b)

SEC. 33. When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a writ of entry to recover possession of said premises, the same as if paid or released before condition broken. (c)

SEC. 34. 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 twenty 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 supreme judicial court 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 thirty-seven, no evidence is

(a) What constitutes a discharge; 5 Me., 275; 6 Me., 260; 17 Me., 371; 18 Me., 11; 24 Me., 335; 25 Me., 346, 462; 27 Me., 219; 31 Me., 394; 33 Me., 451; 39 Me., 22; 44 Me., 115; 45 Me., 103; 54 Me., 466.

What does not; 17 Me., 371; 22 Me., 87; 23 Me., 390; 24 Me., 437; 29 Me., 451; 31 Me., 313; 34 Me., 51, 302; 37 Me., 13; 48 Me., 111; 49 Me., 416; 50 Me., 131, 176; 52 Me., 186; 56 Me., 159.

(b) 2 Me., 343; 6 Me., 237; 7 Me., 103; 21 Me., 105; 46 Me., 437; 49 Me., 266; 52 Me., 407; 55 Me., 253.

(c) 67 Me., 361; 75 Me., 403; 79 Me., 448.

offered of any payment within said twenty years or of any other act within said time, in recognition of its existence as a valid mortgage, the court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within thirty days be recorded in the proper registry of deeds and thereafter no action at law or proceeding in equity shall be brought by any person to enforce a title under said mortgage.

SEC. 35. Any two or more persons owning in severally different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one petition. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same petition; and in case of a contest the court shall make such order for separate issues as may be proper.

Two or more persons owning in severally may join in petition.
1895, c. 80, § 2.

SEC. 36. 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 twenty 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 thirty-four may apply to the supreme judicial court 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 court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within thirty days be recorded in the proper registry of deeds and thereafter no action or proceeding in equity shall be brought to enforce a title under said mortgage.

Mortgage given to secure against some contingent liability, may, after twenty years, and when liability has ceased, be discharged, by order of court.
1895, c. 80, § 3.

SEC. 37. 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 fourteen days before the return day; 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.

When mortgagees are unknown, they may be described generally, as claiming under some persons named in the petition.
1895, c. 80, § 4.

—how service shall be made.

SEC. 38. Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made respondents in the manner above provided, and shall upon due hearing make such decree upon the petition and as to costs as it shall deem proper.

Court has jurisdiction over all respondents.
1895, c. 80, § 5.

SEC. 39. The decree of the court, determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the respondents from any claim thereunder contrary to such determination, and such decree so barring said respondents shall have the same force and effect as a release of such claims, executed by the respondents in due form of law. The court may, in its discretion, appoint agents or guardians ad litem, to represent minors or other respondents.

Decree shall be effectual, to bar claims.
1895, c. 80, § 6.