

MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE

REVISED STATUTES

OF THE

STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT
DECEMBER 30, 1944

VOLUME II



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

as if the defendant had claimed the piece demanded, instead of an undivided part of the whole.

Sec. 25. Part owner, to whom no share was assigned, rights of. R. S. c. 102, § 26. When a person, not a party to the proceedings, to whom no share was assigned or left, claims to have been a part owner of the estate, he is concluded so far as it respects the partition, but not from maintaining an action against each person holding a share, for his proportion of each share as owned before partition was made.

Sec. 26. Person evicted of his share, to have new partition. R. S. c. 102, § 27. When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

Sec. 27. Mortgage, attachment, or lien on a share in common holds the share set out. R. S. c. 102, § 28. A person having a mortgage, attachment, or other lien on the share in common of a part owner shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien remains in force on the part assigned or left to such part owner.

111 Me. 194; *117 Me. 211.

Sec. 28. Lots reserved for public uses to be first set off. R. S. c. 102, § 29. When portions or lots are reserved for public uses in a tract of land to be divided, they shall first be set out, of an average quality and situation, and a return made thereof to the forest commissioner's office, with a description of its quality and location; and the commissioners' return of partition, accepted and recorded as before provided, shall be a valid location of such reserved lands.

See c. 32, § 44, re location on partition; c. 111, § 5, re joint tenants and tenants in common liable in treble damages for cutting trees and timber pending partition; 17 Me. 427; 61 Me. 411.

CHAPTER 163.

MORTGAGES OF REAL ESTATE.

See c. 157, § 29 et seq., re levies on equities of redemption.

Sec. 1. Forms of mortgages of real estate. R. S. c. 104, § 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.

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; 109 Me. 487; 119 Me. 581; 139 Me. 1.

Sec. 2. Mortgagee may enter before or after breach, unless otherwise agreed. R. S. c. 104, § 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 after-

wards 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.

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. 105, 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; 116 Me. 459; *125 Me. 114; 137 Me. 172.

Sec. 3. Modes of obtaining possession for foreclosure. R. S. c. 104, § 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.:

See c. 95, § 4, sub-§ I, re equity powers; 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.

I. He may obtain possession under a writ of possession issued on a conditional judgment as provided in section 10, 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 30 days after possession has been obtained.

See c. 100, § 156, re costs to be taxed for parties and attorneys; 27 Me. 241; 33 Me. 198; 35 Me. 551; 45 Me. 452; 51 Me. 395; 52 Me. 469; 55 Me. 522; 78 Me. 343; 139 Me. 1.

II. He may enter into possession, and hold the same by consent in writing of the mortgagor or the person holding under him; and such consent 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 30 days after the entry is made.

28 Me. 353; 29 Me. 57; 33 Me. 364; 38 Me. 551; 41 Me. 71; 74 Me. 312.

III. He may enter peaceably and openly, if not opposed, in the presence of 2 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 shall be recorded in each registry of deeds in which the mortgage is or by law ought to be recorded, within 30 days after the entry is made.

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; 135 Me. 349.

Sec. 4. Foreclosure in 1 year. R. S. c. 104, § 4. Possession obtained in either of these 3 modes and continued for 1 year forever forecloses the right of redemption.

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; 119 Me. 581; 135 Me. 349; 139 Me. 1.

Sec. 5. Modes of foreclosing without possession. R. S. c. 104, § 5. 1933, c. 163. 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. (1933, c. 163) 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, 3 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 30 days after such last publication.

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; 103 Me. 169.

II. He may cause an attested copy of such notice to be served on the mortgagor or mortgagors, or in case of any recorded transfer or transfers of the mortgaged property since the giving of the mortgage, on the record holder or holders of the title of the mortgaged property at the time of the service of said notice, if he lives in the state, by the sheriff of the county where the mortgagor or the record holder of the title resides, or his deputy, by delivering it to him in hand or leaving it at his last and usual place of abode; and cause the original notice and the sheriff's return thereon to be recorded within 30 days after such service as aforesaid; and in case different mortgagors or record holders reside in different counties, then service shall be made of such notice as above provided by any sheriff or his deputy upon the mortgagors or record holders residing in the same county as such sheriff or deputy, 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.

77 Me. 433; 127 Me. 218.

Sec. 6. Fees of attorneys for the foreclosure of a mortgage. R. S. c. 104, § 6. For the foreclosure of a mortgage by either method prescribed by the preceding section, or by subsections II and III of section 3, the mortgagee or the person claiming under him may charge an attorney's fee of \$5 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. Mortgagor may redeem within 1 year; exceptions; waiver. R. S. c. 104, § 7. The mortgagor or person claiming under him may redeem the mortgaged premises within 1 year after the first publication or the service of the notice mentioned in section 5, and if not so redeemed, his right of redemption is forever foreclosed.

The mortgagor and mortgagee may agree upon any period of time not less than 1 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, legal representatives, and assigns and shall apply to all the modes of foreclosure of mortgages on real estate.

The mortgagor or those claiming under him shall have the right to redeem the mortgaged premises from any or all sales thereof under and by virtue of authority and power contained in such mortgage or from any sale of the mortgaged premises under or by virtue of a separate instrument executed at or about the same time with the mortgage, and being a part of the same transaction, by paying or tendering to the mortgagee or to those claiming under him as appears by record at the registry of deeds where the mortgage is properly recorded, the debt, interest, costs of foreclosure, and other obligations provided in the mort-

gage, at any time within 1 year from the date of such sale. Nothing herein shall apply to railroad mortgages, so called, or to bond issues of corporations, or to bonds forming a part of a mortgage indebtedness of any corporation or corporations wherein the method of sale is provided in the deed of trust or any similar instrument.

The acceptance before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him shall constitute a waiver of such foreclosure unless an agreement to the contrary in writing be signed by the person from whom the same is accepted. Except, however, the receipt of income from the mortgaged premises, by the mortgagee or his assigns while in possession thereof, shall not constitute a waiver of the foreclosure proceedings of the mortgage on such premises.

20 Me. 271; 36 Me. 51; 76 Me. 281; *77 Me. 554; *103 Me. 413; 127 Me. 218; 131 Me. 441; 132 Me. 139; 135 Me. 260, 349; 137 Me. 53.

Sec. 8. Redemption in case of death of mortgagee; administrator may be appointed; notice. R. S. c. 104, § 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 30 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. Form of declaration in a suit to obtain possession. R. S. c. 104, § 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 5 and 7 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.

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; 103 Me. 169; 127 Me. 218; 136 Me. 330.

Sec. 10. Form of conditional judgment. R. S. c. 104, § 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 2 months from the time of judgment, and also pays such other sums as the court adjudges to be thereafter payable, within 2 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 3 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 2 months.

See § 39; 35 Me. 551, 562; 53 Me. 78; 64 Me. 446; 70 Me. 345; 79 Me. 570; 80 Me. 461; 81 Me. 285; 88 Me. 460; 93 Me. 439; *115 Me. 463.

Sec. 11. Judgment, if nothing is due. R. S. c. 104, § 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.

2 Me. 322, 332; 31 Me. 394; 67 Me. 548; 72 Me. 202; 112 Me. 148.

Sec. 12. Action by executor or administrator. R. S. c. 104, § 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.

78 Me. 343.

Sec. 13. Mortgages are assets in the hands of executors and administrators. R. S. c. 104, § 13. Lands mortgaged to secure the payment of debts or the performance of any collateral engagement, and the debts so secured are, on 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.

See c. 143, § 28, re distribution of lands held in mortgage or taken on execution; c. 150, § 1, sub-§ VIII, re license by court of probate to executors etc. to sell real estate held in mortgage or taken on execution; 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; *103 Me. 415.

Sec. 14. Against whom action on a mortgage to be brought. R. S. c. 104, § 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 cotenant, 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.

14 Me. 299; 17 Me. 439; 95 Me. 260.

Sec. 15. Proceedings in equity to redeem a mortgage. R. S. c. 104, § 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 7, 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 perform-

ance 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.

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. 199, *272, 470; 68 Me. 192; 69 Me. 192; 70 Me. 388; 74 Me. 314; 87 Me. 88; *95 Me. 264; *99 Me. 318; 111 Me. 140, 530; 113 Me. 81; 117 Me. 264, 468; 119 Me. 143; 134 Me. 475; 135 Me. 260, 444; 137 Me. 53.

Sec. 16. Proceedings when the amount due on a mortgage has been paid or tendered; and when not. R. S. c. 104, § 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, or of the superior 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.

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; 116 Me. 73; 134 Me. 475; 135 Me. 260, 444.

Sec. 17. When bill is brought before entry, notice to mortgagee if out of state; remedy for fraudulent mortgage. R. S. c. 104, § 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 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.

95 Me. 264.

Sec. 18. Provisions for redemption, when the mortgagee is out of the state. R. S. c. 104, § 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 the provisions of section 5, or when such mortgagee or claimant having no tenant, agent, or attorney in possession on whom service can be made has commenced proceedings under the provisions of section 3, in either case the party entitled to redeem may file his bill, as prescribed in section 15, 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.

95 Me. 264.

Sec. 19. Redemption after payment or tender, and before foreclosure, when mortgagee is out of the state; notice must be published; discharge. R. S. c. 104, § 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 undis-

charged 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 16, 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 3 weeks successively, the last publication being 30 days before the time of hearing, or in such other way as the supreme judicial court or the superior court or a justice of either of said courts in vacation orders, said court may decree a discharge of such mortgage; and the record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge.

Sec. 20. Limitation of such a bill in equity. R. S. c. 104, § 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 1 year after such tender.

60 Me. 233; 87 Me. 88; 116 Me. 73; 117 Me. 468; 135 Me. 260, 444.

Sec. 21. Court may order other persons to be joined as defendants and notified. R. S. c. 104, § 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. Award of execution on decree of court, jointly or severally. R. S. c. 104, § 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. Deduction of rents and profits from the sum brought into court for redemption; mortgagee upon request to render statement of amount due. R. S. c. 104, § 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 misrepresentation of the amount due, the assignee or trustee shall have a right of action on the case against such person to recover such loss.

37 Me. 310; 53 Me. 67; 90 Me. 209; 100 Me. 306; 135 Me. 444.

Sec. 24. Owner of subsequent mortgage may request assignment of prior mortgage under foreclosure; may bring bill in equity to compel assignment; proceedings; appeal. R. S. c. 104, § 24. When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from

such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure, and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem; if the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a bill in equity in the supreme judicial court or in the superior court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment as aforesaid. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured, shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment as aforesaid. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under the provisions of this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as provided by section 21 of chapter 95.

126 Me. 438.

Sec. 25. Treasurer of state may discharge or foreclose mortgages made to the state. R. S. c. 104, § 25. 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 3 and 5.

Sec. 26. Bill in equity for redemption may be filed against the state. R. S. c. 104, § 26. 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 or in the superior court.

Sec. 27. Notice and proceedings thereon. R. S. c. 104, § 27. 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. 28. On death of person entitled to redeem, his administrator or heir may redeem; tender in behalf of non-resident. R. S. c. 104, § 28. 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. 29. Tender to guardian of mortgagee; discharge of mortgage. R. S. c. 104, § 29. 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. 30. Claimant of mortgagor's interest may file bill in equity to have facts determined and damages, if any, assessed. R. S. c. 104, § 30. 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 or in the superior 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 right of redemption shall not expire by any attempted foreclosure of such mortgage.

81 Me. 458.

Sec. 31. Discharge of mortgages; penalty for neglect to discharge mortgage. R. S. c. 104, § 31. 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 7 days after being thereto requested to make such discharge or to execute and acknowledge a deed of release of the mortgage, he shall be punished by a fine of not less than \$10, nor more than \$50, to be recovered in an action on the case.

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 constitute a discharge; 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; 127 Me. 393.

Sec. 32. Discharge by attorney at law. R. S. c. 104, § 32. 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. 33. Redemption of estate from purchaser of equity. R. S. c. 104, § 33. 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 1 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.

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

Sec. 34. Writ of entry against mortgagee in possession, after mortgage has been paid. R. S. c. 104, § 34. 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.

67 Me. 361; 75 Me. 403; 79 Me. 448.

Sec. 35. Proceedings to bar action on undischarged mortgage. R. S. c. 104, § 35. 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 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 court 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.

117 Me. 468.

Sec. 36. Two or more persons owning in severalty may join in petition. R. S. c. 104, § 36. Any two or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in 1 petition. Two or more defects arising under different mortgages affecting 1 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.

Sec. 37. Proceedings to bar action on undischarged mortgage given to secure against some contingent liability. R. S. c. 104, § 37. 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 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 court 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. 38. Description of unknown mortgagees; service of petition. R. S. c. 104, § 38. 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; 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.

Sec. 39. Court has jurisdiction over all respondents. R. S. c. 104, § 39. 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.

Sec. 40. Decree effectual to bar claims. R. S. c. 104, § 40. 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.