

HOUSE.....No. 29.

Commonwealth of Massachusetts.

IN HOUSE OF REPRESENTATIVES, *Jan. 26, 1842.*

Ordered, That the Committee on the Judiciary inquire into the expediency of making any alterations of the law concerning Mortgages of Personal Property.

L. S. CUSHING, *Clerk.*

Commonwealth of Massachusetts.HOUSE OF REPRESENTATIVES, *Feb. 15, 1842.*

The Committee on the Judiciary, to whom was referred an order to inquire into the expediency of making any alterations in the law respecting Mortgages of Personal Property, have considered this subject, and ask leave to

R E P O R T :

That the law, as at present constituted, is capable of being perverted to bad purposes and fraudulent ends; they have reason to apprehend that mortgages of this kind are made not unfrequently and kept in existence, merely to prevent the creditors of the mortgager from obtaining their dues; that frauds have been practised by the mortgagee's claiming the mortgaged property from a vendee to whom the mortgager has sold the same, the vendee being ignorant of, and having no reason to suspect or inquire if there was any lien or incumbrance on the property;—that through the inadequacy of the provisions of law for the redemption of personal property mortgaged, many persons have found that the mortgage was foreclosed and the property forfeited to the mortgagee, before

the mortgager was aware of it;—and for these and other reasons, your committee have prepared a bill for the purpose of remedying some of the existing defects in the law.

Submitted by order of the committee,

CHARLES P. CURTIS, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Forty-Two.

AN ACT

Concerning Mortgages of Personal Property.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

1 SEC. 1. No mortgage of personal property shall be
2 valid, against any other person than the parties thereto,
3 unless actual possession of the mortgaged property is
4 taken and retained by the mortgagee; or unless, *firstly*,
5 that the time be expressed in the mortgage, within
6 which the condition of the mortgage is to be perform-
7 ed, which shall not exceed one year; and *secondly*,
8 that the mortgage be recorded as well by the clerk of
9 the town where the mortgager resides as by the clerk
10 of the town in which he principally transacts his busi-
11 ness, or follows his trade or calling, if his dwelling is
12 not in the same town.

1 SEC. 2. Every mortgagee, pawnee, or holder of

2 personal property, as collateral security, shall, when
3 demanding payment of the money due to him, pursuant
4 to the seventy-ninth section of chapter ninetieth of
5 the Revised Statutes, make oath that the statement
6 made by him is true.

1 SEC. 3. One day for every twenty miles distance
2 from the dwelling-place of the creditor, by whose
3 orders any mortgaged personal property shall be at-
4 tached, to the place where such attachment shall be
5 made, shall be allowed in addition to the twenty-four
6 hours now allowed by law, for the officer or creditor
7 to pay or tender to the mortgagee the amount due to
8 him.

1 SEC. 4. All sales of mortgaged property by the
2 mortgager made in the usual course of his business,
3 where the property is left in his possession by the
4 mortgagee, shall be valid to pass the same to the ven-
5 dee, unless it shall be proved that the vendee had pre-
6 vious actual notice of the mortgage.

1 SEC. 5. In case any of the particulars concerning
2 the description of the property transferred, or the debt
3 or duty to be secured, by any mortgage of personal
4 property, shall be found to be untrue, the mortgage
5 shall be void, unless the mortgagee shall prove that the
6 same was erroneous, through accident or mistake, and
7 without any intentional concealment.

1 SEC. 6. Whenever any payments are made on ac-
2 count of a debt or duty secured by a mortgage of per-
3 sonal property, amounting in the aggregate to one
4 hundred dollars or upwards, the mortgagee shall cause
5 a memorandum thereof to be written in the margin of
6 the leaf of the records in which the mortgage is regis-
7 tered ; and if he shall neglect so to do for the space of

6 MORTGAGES OF PERS'L PROPERTY. [Feb.

8 thirty days, the mortgage shall be void as against any
9 person but the parties thereto, and persons having
10 actual notice of the sums due thereby.

1 SEC. 7. When the condition of any mortgage of
2 personal property has been broken, the mortgager or
3 any person lawfully claiming or holding under him,
4 may at any time afterwards redeem the same in the
5 manner prescribed by the forty-first section of the one
6 hundred and seventh chapter of the Revised Statutes,
7 unless the property shall, in the mean time, have been
8 sold, in pursuance of the contract between the parties,
9 or unless the mortgagee or some person lawfully claim-
10 ing or holding under him, shall, not less than sixty days
11 before the making of the tender for the purpose of re-
12 demption as aforesaid, have given written notice to
13 the mortgager or his assignee, of his intention to hold
14 said property for the purpose of foreclosure, and shall
15 have caused a copy of said notice to be entered in the
16 records where the said mortgage is recorded, with a
17 note of reference from each record to the other.

1 SEC. 8. The mortgagee of personal property, re-
2 maining in the possession of the mortgager or his agent,
3 shall be liable to the trustee process, in like manner as
4 if he were in the actual possession of the same.

1 SEC. 9. The fortieth section of the one hundred
2 and seventh chapter of the Revised Statutes is hereby
3 repealed.

1 SEC. 10. When a mortgager of personal property
2 shall remove his dwelling out of the town where the
3 said mortgage has been recorded, into any other place
4 in this Commonwealth, the said mortgage shall become
5 void as against any person but the parties thereto and
6 persons having actual notice thereof, unless the same

7 shall within three months after such removal, be re-
8 corded in the city or town to which the mortgager has
9 removed.

1 SEC. 11. This act shall go into operation sixty
2 days after it shall have been approved by the gov-
3 ernor.

It shall within three months after such removal be re-
 moved to the city in town in which the mortgage has
 been removed.
 Sec. 11. [Illegible] after the expiration sixty
 days after it shall have been approved by the gov-
 ernor.

Commissioners of the State

[Illegible text]

REPORT

[Illegible text]