

SENATE....No. 35.

Commonwealth of Massachusetts.

IN SENATE, February 12, 1859.

The Committee on the Judiciary, to whom was committed the Order relating to Power of Sale Mortgages, report the accompanying Bill.

Per Order,

BENJ. F. BUTLER.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-
Nine.

AN ACT

Relating to Power of Sale Mortgages.

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

1 SECT. 1. In all cases in which a power of sale is
2 contained in a mortgage deed of real estate, the mort-
3 gagee, or any person having his estate therein, or who
4 is, in or by such power, authorized to act in making
5 sale by virtue thereof, shall, if he desire to make sale
6 of the mortgaged property upon a breach of the con-
7 dition of the mortgage, petition the court of common
8 pleas within and for the county where the land is
9 situated, for leave to sell pursuant to said power,
10 setting forth the amount due and secured by said
11 mortgage after all just credits given, and the name of
12 the mortgagor or other person having his estate in

13 the premises with the residence of the parties, so far
14 as known to the petitioner; and the petitioner shall
15 annex to his petition copies of his mortgage, and the
16 instrument of evidence of debt or claim secured
17 thereby, and shall make a full disclosure of all matters
18 known to him affecting the rights of any other parties
19 in the mortgaged property, and shall thereupon sub-
20 mit himself to examination under oath, upon all
21 matters relating to said mortgage and claim.

1 SECT. 2. If upon such examination, the court shall
2 be satisfied that the allegations contained in said
3 petition are true, and that the petitioner has a right
4 to sell the mortgaged premises under said power, a
5 certificate thereof shall be made upon said petition,
6 and the court shall thereon order the petitioner to
7 give personal notice of the time and place of sale to
8 the mortgagor if within the state, and also to post a
9 notice thereof in some conspicuous place on the
10 mortgaged estate, and also to give such further notice
11 of the same as the court shall deem reasonable, and
12 that the petitioner otherwise comply with the requisi-
13 tions of said power of sale.

1 SECT. 3. The petitioner shall within thirty days
2 after the sale, file in the registry of deeds for the
3 county where the land lies, an affidavit, setting forth
4 copies of all notices given by him, and all his acts in
5 the premises fully and particularly. Such affidavit
6 shall be recorded by the register with a note of refer-
7 ence thereto, on the margin of the record of the
8 mortgage deed, and said affidavit, or a duly certified
9 copy thereof, shall be admitted as evidence of the acts

10 recited by it to have been done in the execution of the
11 power of sale.

1 SECT. 4. If the mortgage deed was executed by a
2 man having at that time no lawful wife, or if being
3 married, the wife of the mortgagor joined in such
4 deed, in token of release of dower, such sale, so made,
5 shall be effectual to bar all claim and possibility of
6 dower in such real estate.

1 SECT. 5. The petition provided for in this act may
2 be received, and the order passed thereon, in vacation
3 as well as during any term of the court.

1 SECT. 6. No sale under any power contained in
2 any mortgage deed, shall be made except in accord-
3 ance with the provisions of this act, or in accordance
4 with the provisions of the three hundred and seventy-
5 seventh chapter of the acts passed in the year one
6 thousand eight hundred and fifty-four.

1 SECT. 7. Whenever any lands shall be sold by
2 virtue of any power of sale contained in any mortgage
3 deed, the mortgagor, or those having any interest in
4 such lands, may have the same rights and remedies to
5 redeem the same within one year from date of sale,
6 as are now provided by law for the redemption of
7 lands set off to a creditor on execution, except that
8 the interest shall be at the rate of nine percentum per
9 annum, from the time of sale.

1 SECT. 8. The two hundred and twenty-ninth chap-
2 ter of the acts passed in the year one thousand eight
3 hundred and fifty-seven, is hereby repealed.