

HOUSE.....No, 44.

[Reported by the Committee on the Judiciary.]

Commonwealth of Massachusetts.

In the year One Thousand Eight Hundred and Forty-four.

AN ACT

In addition to an Act entitled "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 SECTION 1. The time within which any creditor,
2 who shall hereafter attach any personal property, sub-
3 ject to a mortgage, pledge, or lien, shall pay the sum
4 due upon the mortgage, pledge, or lien, after the same
5 shall have been demanded of him by the mortgagee,
6 pledgee, or holder of such lien, prescribed in the
7 seventy-eighth and seventy-ninth section of the nine-

8 tieth chapter of the Revised Statutes, is hereby ex-
9 tended to ten days.

1 SECT. 2. Any personal property of a debtor, sub-
2 ject to a mortgage, and being in the possession of the
3 mortgagor, may be attached, in like manner, as if the
4 same were unincumbered and the mortgagee, or his
5 assigns, may be summoned in the same action in
6 which the property is attached, as the trustee of the
7 mortgagor, or his assigns, to answer such questions as
8 may be put to him, or them, by the court, or their
9 order, touching the consideration of the mortgage and
10 the amount due thereon.

1 SECT. 3. If, upon such examination, it shall appear
2 to the court, before whom the action, on which the
3 attachment is made, is brought, that the mortgage
4 is bona fide, the court, having first ascertained the
5 amount that is justly due upon the mortgage, may
6 direct the attaching creditor to pay the same to the
7 mortgagee, or his assigns, within such time as they
8 shall order; and if the attaching creditor shall not pay
9 or tender to the mortgagee, or his assigns, the sum so
10 directed by the court to be paid within the time pre-
11 scribed, the attachment shall be void and the property
12 be restored to the mortgagee, or his assigns.

1 SECT. 4. If the court, upon the examination afore-
2 said, shall determine the mortgage to be valid in the
3 whole or in part, the mortgagee, or his assigns, shall
4 recover his costs; and the attaching creditor, or offi-
5 cer, in case the sum ordered to be paid, as aforesaid,
6 shall not be paid, as directed, shall be liable for the
7 damages which the mortgagee, or his assigns, may
8 have sustained by the attachment, in an action on the
9 case.

1 SECT. 5. When the creditor shall have paid to the
2 mortgagee, or his assigns, the sum directed by the
3 court, as aforesaid, he shall be entitled to retain out
4 of the proceeds of the property attached, when sold,
5 the sum so paid with interest, and the balance, if any,
6 shall be applied to the payment of his debt.

1 SECT. 6. If the attaching creditor, after having
2 paid the sum directed by the court, as aforesaid, shall
3 not recover judgment in the suit; he shall, neverthe-
4 less, be entitled to hold the property until the debtor
5 shall have repaid the sum so paid by order of court
6 with interest.

1 SECT. 7. The third section of the seventy-second
2 chapter of the acts of the year eighteen hundred and
3 forty-three, is hereby repealed.

