

MAINE STATE LEGISLATURE

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SIXTY-FIRST LEGISLATURE.

HOUSE.

No. 31.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
EIGHTY-THREE.

AN ACT to abolish imprisonment for debt, except in cases
of fraud.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows :*

SECTION 1. No person shall be arrested in any civil
2 action except as hereinafter provided, but these provis-
3 ions shall not apply to proceedings for contempt, in law or
4 equity.

SECT. 2. No person shall be arrested on mesne process
2 in any civil (Mass.c.162,§ 1; R.S.,c.113,§ 1,2; Id.§ 43)
3 action, unless the plaintiff or some person in his behalf,
4 makes affidavit and proves to the satisfaction of some jus-
5 tice of a court of record, or of a police or municipal
6 court, master in chancery, judge of a court of probate,
7 commissioner to enforce judgments, bail commissioner or
8 trial justice .

9 (Mass.c.162,§ 1.) *First*, That he has a good cause of
10 action and reasonable expectation of recovering a sum

(2)

11 amounting to twenty dollars, exclusive of all costs which
12 accrued in any former action ;

13 (Mass.c.162,§ 1.) *Second*, That he believes and has
14 reason to believe that the defendant intends to leave the
15 state, so that execution, if obtained, cannot be served upon
16 him ; and

17 (Mass.c.162,§ 1.) *Third*, That he believes and has
18 reason to believe that the defendant has property, not
19 exempt from being taken in execution which he does not
20 intend to apply to the payment of plaintiff's claim. Or,
21 instead of second and third, one or more of the following
22 particulars :

23 (Mass.c.162,§ 1.) *Fourth*, That the defendant is an
24 attorney-at-law, that the debt sought to be recovered is
25 for money collected by the defendant for the plaintiff and
26 that the defendant unreasonably neglects to pay the same
27 to the plaintiff ; or

28 *Fifth*, That the defendant has removed, or begun to
29 remove, any of his property out of the jurisdiction of the
30 court, with intent to prevent the collection of the plain-
31 tiff's claim ; or

32 *Sixth*, That the defendant has property, rights in action,
33 evidences of debt, or interest in stock in a corporation or
34 company, which he fraudulently conceals with intent to
35 prevent the collection of the plaintiff's claim ; or

36 *Seventh*, That the defendant has assigned or disposed of all
37 or part of his property, rights in action, or evidences of debt,
38 or has converted the same into money with intent to defraud
39 his creditors or with intent to prevent the same from being
40 applied to the plaintiff's claim.

41 (Mass.c.162,§ 1.) And such affidavit and the certificate
42 of the magistrate that he is satisfied the same is true shall
43 be annexed to the writ.

SECT. 3. The officer who serves an original writ shall
2 not be liable for not having arrested the (Mass.c.162,§ 4)
3 defendant, unless he has been expressly required by the
4 plaintiff or his attorney to make such arrest.

SECT. 4. No affidavit shall be required to authorize
2 arrest upon an execution for costs only ; (Mass.c.162,§ 5)
3 nor upon an execution issued upon scire facias or other
4 suit upon a recognizance against bail or sureties in crim-
5 inal cases, when the debtor neglects upon demand to
6 deliver to the officer having such precept, property not
7 exempt from attachment sufficient to satisfy such execu-
8 tion. A debtor so arrested shall be committed on the
9 execution, unless he requires the officer to take him before
10 some magistrate named in section two.

SECT. 5. After entry and before judgment, on motion
2 and after hearing by the court, when it is made to appear
3 that one or more of the following particulars is true :
4 *First*, That the action is for a fine or penalty ; or
5 *Second*, That the defendant fraudulently contracted the
6 debt or incurred the obligation, upon which the action
7 is brought ; or
8 *Third*, That the action is brought for the conversion of
9 personal property, which the defendant has fraudulently
10 concealed or disposed of ; or
11 *Fourth*, That the action is brought to recover damages
12 for fraud or deceit ; or
13 *Fifth*, That the action is for seduction or criminal con-
14 versation ; or

15 *Sixth*, That the action is for money or other property
 16 embezzled or fraudulently misapplied or converted to his
 17 own use by a public officer, or by an attorney, or by an
 18 officer or agent of a corporation or banking association in
 19 the course of his employment as such, or by any factor,
 20 agent, broker, clerk, or other person in a fiduciary capac-
 21 ity ;

22 then the court shall order the execution to run against
 23 the body of the judgment debtor ; and he may be arrested
 24 and imprisoned thereon for the purpose of obtaining a
 25 discovery of his property wherewith to satisfy it, as here-
 26 inafter stated.

SECT. 6. No person shall be arrested on an execution
 2 in a civil action, (Mass.c.162,§ 17 ;R.S.c.113,§ 19,20)
 3 except in cases where it is otherwise provided by this act,
 4 unless the judgment creditor or some person in his behalf,
 5 after execution is issued amounting to twenty dollars, ex-
 6 clusive of all costs which make part of said judgment,
 7 whether the same have accrued in the last action or in any
 8 former action on the same original cause of action, and
 9 while so much as that amount remains uncollected, makes
 10 affidavit and proves to the satisfaction of some magistrate
 11 named in section two, that he believes and has good reason
 12 to believe,—

13 (Mass.c.162,§ 17.) *First*, That the debtor has prop-
 14 erty not exempt from being taken in execution, which he
 15 does not intend to apply to the payment of plaintiff's
 16 claim ; and that the debtor intends to leave the state ; or

17 (Id.) *Second*, That since the debt was contracted or the
 18 cause of action accrued, the debtor has fraudulently

19 conveyed, concealed, or otherwise disposed of, some part
20 of his estate, with a design to secure the same to his own
21 use or to defraud his creditors ; or

22 (Id.) *Third*, That since the debt was contracted, or
23 the cause of action accrued, the debtor has hazarded and
24 paid money or other property to the value of one hundred
25 dollars, or more, in some kind of gaming prohibited by the
26 laws of this state ; or

27 (Id.) *Fourth*, That since the debt was contracted, the
28 debtor has wilfully expended and misused his goods and
29 estate, or some part thereof, for the purpose of enabling
30 himself to swear that he has not any estate, except such
31 as is exempt from being taken on execution ; or

32 (Id.) *Fifth*, If the action was founded on contract,
33 that the debtor contracted the debt with an intention not
34 to pay the same ; or

35 (Id.) *Sixth*, That the defendant has removed, or be-
36 gun to remove, any of his property out of the jurisdiction
37 of the court, with intent to prevent the collection of the
38 plaintiff's claim ; or

39 *Seventh*, That the defendant has property, rights in
40 action, evidences of debt, or interest in stock in a corpor-
41 ation or company, which he fraudulently conceals with
42 intent to prevent the collection of plaintiff's claim ; or

43 *Eighth*, That the defendant has assigned or disposed of
44 all or part of his property, rights in action, or evidences
45 of debt, or has converted the same into money with intent
46 to defraud his creditors or with intent to prevent the same
47 from being applied to the plaintiff's claim.

48 And such affidavit and the certificate of the magistrate
49 that he is satisfied there is reasonable (Mass.c.162,§17)

50 cause to believe the charges therein contained, or some one
 51 of them, are true, shall be annexed to the execution. If the
 52 judgment debtor lives or has his usual place of business in
 53 any county in this state, the application for a certificate
 54 authorizing his arrest shall be made in that county ; other-
 55 wise, it may be made in any county.

SECT. 7. No arrest shall be made after sunset unless
 2 specially authorized by the magistrate (Mass.c.162, § 26)
 3 making the certificate, upon satisfactory cause shown.

DISCHARGE OF PERSONS ARRESTED ON MESNE PROCESS AND EXECUTION.

SECT. 8. When arrested on mesne process, the defendant
 2 shall be allowed (Mass.c.162, § 27 ; R.S.c.113, § 3 ; Id. § 15)
 3 a reasonable time to procure bail, and when arrested on
 4 such process, or on execution, he shall be allowed reason-
 5 able time to procure sureties for his recognizance herein-
 6 after mentioned. When arrested on mesne process, if he
 7 does not give bail, and when arrested on (R.S.c.113, § 24)
 8 execution in any case, he shall be taken before some judge
 9 of a court of record, or of a police or municipal court,
 10 judge of probate, master in chancery, commissioner to
 11 enforce judgments, bail commissioner or trial justice.

SECT. 9. When taken before the magistrate, if the
 2 defendant or (Mass.c.162, § 28 ; R.S.c.113, § 15. Id. § 24)
 3 debtor desires to take an oath as hereinafter mentioned,
 4 but does not desire a time fixed for his examination, the
 5 magistrate may take his recognizance with surety or sure-
 6 ties in a sum not less than double the amount of the exe-
 7 cution, or of the ad damnum in the writ if he is arrested
 8 on mesne process, that within thirty days from the day of

9 his arrest he will deliver himself up for examination before
 10 some magistrate authorized to act, giving notice of the
 11 time and place thereof, as herein provided, and appear at
 12 the time fixed for his examination, and from time to time
 13 until the same is concluded, and not depart without leave
 14 of the magistrate, making no default at any time fixed for
 15 his examination, and abide the final order of the magis-
 16 trate thereon; but if he is arrested on mesne process and
 17 the writ is returnable within thirty days, the number of
 18 days within which he shall deliver himself up shall be
 19 limited by the magistrate so as not to extend beyond the
 20 return day of the writ.

SECT. 10. A person taken on execution and recognizing,
 2 if surrendered by his surety, may (Mass.c.162,§ 29,)
 3 recognize anew for such appearance at the time, place, and
 4 upon the conditions expressed in the first recognizance.

SECT. 11. A person arrested on mesne process who has
 2 recognized or given bail may, without (Mass.c.162,§ 30)
 3 a surrender by his surety or sureties, take the oath for
 4 the relief of poor debtors, and the taking of such oath by
 5 such person shall be a discharge of his surety or sureties.

SECT. 12 If the defendant or debtor, when taken before
 2 the magistrate, or (Mass.c.162,§ 31 ;R.S.c.113,§ 16,21,26)
 3 at any time when entitled thereto, desires to take the oath
 4 as hereinafter provided, and to have a time fixed therefor,
 5 the magistrate shall appoint a time and place for his
 6 examination, and shall issue a notice thereof to the plain-
 7 tiff or creditor, signed by him and designating his official
 8 capacity, substantially in the following form :

9 To A. B. :— C. D., arrested on mesne process (or
 10 execution) in your favor, desires to take the oath for the

11 relief of poor debtors, at (naming the day and hour and
12 place). E——. F——. (*Magistrate.*)

SECT. 13. The notice shall be served by an officer
2 qualified to serve civil (Mass.c.162, § 32 ; R.S.c.113, § 4,27)
3 process, by giving to the plaintiff or creditor, his agent
4 or attorney, an attested copy thereof, or by leaving such
5 copy at his last and usual place of abode, not less than
6 one day before the time appointed for the examination,
7 and there shall be allowed in addition at the rate of not
8 less than one day, exclusive of Sundays, for every twenty
9 miles travel, when there is more than one person plaintiff
10 or creditor, or more than one agent or attorney, service
11 on one shall be sufficient. When the plaintiff or creditor
12 is dead, or not a resident of the county where the arrest
13 is made, the notice shall be served upon the agent or
14 attorney if he lives in the county or has his usual place of
15 business therein ; but if no such agent or attorney is found
16 within the county, the notice may be served on the officer
17 who made the arrest. The person who made the writ
18 may always be regarded as the attorney of the plaintiff or
19 creditor, when an arrest is made on the writ or on an
20 execution issued thereon.

SECT. 14. When a defendant or debtor has given notice
2 of his desire to take the oath for the (Mass.c.162, § 33)
3 relief of poor debtors, no new notice of the same shall be
4 given until the expiration of seven days from the service
5 of the former notice, unless the former notice was insuffi-
6 cient in form or service.

SECT. 15. When the notice mentioned in section twelve
2 has been duly served, the magistrate (Mass.c.162, § 34)
3 who issued it, or any other magistrate named in section

4 two, shall attend at the time and place therein specified,
5 and examine the debtor as herein provided.

SECT. 16. The magistrate may adjourn the case from
2 time to time, and shall (Mass.c.162,§ 35 ; R.S.c.113,§ 5)
3 have the same powers with respect to all other incidents
4 thereto as trial justices or other courts have in civil
5 actions ; and witnesses duly summoned shall attend as re-
6 quired in civil cases. In any examination, after the exam-
7 ination of the defendant or debtor, other competent
8 evidence may be introduced, and the (R.S.c.113,§ 47)
9 debtor may then be further examined by either party.
10 Depositions may be used in such examination ; and in any
11 subsequent examination on that or another arrest or im-
12 prisonment for the same cause of action, the same deposi-
13 tions may be used.

SECT. 17. Pending the examination, and at any time
2 after the defendant is carried before a (Mass.c.162,§ 36)
3 magistrate, the magistrate may accept his recognizance
4 with surety or sureties in a sum not less than double the
5 amount of the execution, or of the ad damnum in the
6 writ if he is arrested on mesne process, that he will
7 appear at the time fixed for his examination, and from
8 time to time until the same is concluded, and not depart
9 without leave of the magistrate, making no default at any
10 time fixed for his examination, and abide the final order
11 of the magistrate thereon. No recognizance under this
12 chapter, except in case of appeal under section thirty-six,
13 shall be accepted at any time after the oath has been once
14 refused to the debtor.

SECT. 18. The magistrate, at said examination, shall ex-
2 amine said defendant or debtor concerning (R.S.c.113,§ 28)

3 his estate and effects, the disposal thereof, and his ability
4 to pay the debt or satisfy the cause of action for which he
5 is arrested, and shall hear any legal and pertinent evi-
6 dence that may be introduced by either party. The
7 plaintiff or creditor may upon such examination propose
8 to the defendant or debtor any interrogatories pertinent to
9 the inquiry, and the examination shall, (R.S.c.113,§ 29)
10 if required by either party, be in writing, in which case
11 it shall be signed and sworn to by the defendant or debtor,
12 and preserved by the magistrate; and either party may
13 have a copy thereof certified by the magistrate on paying
14 therefor twelve cents a page.

SECT. 19. If said examination takes place before judg-
2 ment, all attachable property disclosed by (R.S.c.113,§ 7)
3 the examination, or so much thereof as the plaintiff desig-
4 nates to satisfy his demand, shall be held as attached from
5 the time of the examination until thirty days after final
6 judgment, like other attachments; the officer that served
7 the writ or process, shall make return thereof on said
8 writ or process, certifying the fact that the property was
9 so disclosed; and if the plaintiff requires it, at any time
10 before final judgment, he shall take into (R.S.c.113,§ 11)
11 his custody any part of said personal property, sufficient
12 to secure the demand and hold it as in other cases; if it
13 is real estate, the magistrate shall deliver to the plaintiff
14 a certificate thereof stating the names of (R.S.c.113,§ 10)
15 the parties, and the amount of the claim in the writ, which
16 the plaintiff shall file with the register of deeds for the
17 county or district where the estate lies, within five days
18 after its date; and the register shall enter, file, and record

19 it as returns of officers making attachments on real estate,
20 and shall be entitled to the same fees from the plaintiff.

SECT. 20. If, on any examination before judgment, it
2 appears that the defendant possesses, has (R.S.,c.113,§ 14)
3 in his power, or, with intent to protect the same from his
4 creditors, has assigned, secreted, or otherwise disposed of
5 any bank bills, coin, United States or national bank note
6 currency, notes, accounts, bonds, other contracts, or prop-
7 erty not exempted from attachment, but which cannot be
8 reached to be attached from its nature or otherwise, the
9 defendant shall not be released from arrest unless he
10 assigns and delivers to such person as the magistrate
11 appoints, all such property, or so much of it as the mag-
12 istrate adjudges sufficient security for the plaintiff, to be
13 held by him, under the direction of the court or justice
14 before which the suit is pending, in trust for the parties
15 that it may be applied and appropriated as provided in
16 sections twenty-one and twenty-two.

SECT. 21. When, from any examination after judg-
2 ment, it appears that the debtor possesses (R.S.c.113,§ 31)
3 or has under his control any bank bills, coin, United
4 States or National bank note currency, notes, accounts, or
5 other contracts, or property, not exempted by statute from
6 attachment, which cannot be come at to be attached, or,
7 with intent to protect the same from his creditors, has
8 assigned, secreted or otherwise disposed of any such
9 personal property; and the creditor and debtor cannot
10 agree to apply the same towards the debt, the magistrate
11 shall appraise and set off enough of such property to satisfy
12 the debt, costs, and charges; and the creditor or his attor-
13 ney, if present, may select the property to be appraised.

14 If the creditor accepts it, it may be assigned and delivered
15 by the debtor to him, and applied towards the satisfaction
16 of his demand. If any particular article of such property,
17 necessary or convenient to be applied in satisfaction of
18 the execution, exceeds the amount due thereon, and is not
19 divisible in its nature, the creditor may take it, by paying
20 the overplus to the debtor, or securing it to the satisfac-
21 tion of the magistrate.

SECT. 22. If the creditor is absent, or does not accept
2 it, the debtor shall deposit with the (R.S.c.113, § 32)
3 magistrate a written assignment to the creditor of all the
4 property thus appraised and set off; and the magistrate
5 shall make a record of such proceedings and cause such
6 property to be safely kept and secured for thirty days
7 thereafter, to be delivered to the creditor with the assign-
8 ment, on demand, within that time. If not so demanded,
9 they shall be returned to the debtor.

SECT. 23. The creditor may refuse to accept any trans-
2 fer or assignment whatever, and his (Mass.c.162, § 23)
3 acceptance of the same shall not destroy or impair his
4 right to have his execution satisfied in whole or in part
5 by a levy on other property in the manner provided by
6 law. In case the execution, at any time after such trans-
7 fer or assignment is made, and before the sale of the
8 property conveyed thereby, is satisfied in full by levy or
9 otherwise, the creditor shall forthwith reconvey said prop-
10 erty to the debtor.

SECT. 24. When an execution debtor discloses any real
2 estate liable to be seized on execution, the (R.S.113, § 37)
3 magistrate shall give the creditor a certificate thereof,
4 stating the names of the parties, and the amount of the

5 execution ; and the creditor shall have a lien thereon for
6 thirty days thereafter, if he files the certificate with the
7 register of deeds of the county or district where the real
8 estate lies, within five days after its date ; and the register
9 shall enter, file and record it like officers' returns of attach-
10 ments, and shall be entitled to the same fees from the
11 creditor.

SECT. 25. If he discloses personal estate liable to be
2 seized on execution, the creditor (R.S.c.113, § 38, 17, 18)
3 shall have a lien on it, or so much of it as the magistrate,
4 in his record judges necessary, for thirty days ; and if the
5 debtor transfers, conceals, or otherwise disposes of it
6 within said time, or suffers it to be done, or refuses to
7 surrender it, on demand, to any proper officer having an
8 execution on the same judgment, the debtor shall have no
9 benefit from the certificate described in section twenty-
10 seven ; and the creditor may recover, in an action on the
11 case against him, or any person fraudulently aiding in
12 such transfer, concealment, or disposal, double the amount
13 due on said execution ; and any execution on a judgment
14 in such action shall run against the bodies of the debtor
15 and other persons so aiding ; but the payment thereof shall
16 be a satisfaction of the original debt.

SECT. 26. If, on examination and hearing, the magis-
2 trate is satisfied that the (R.S.c.113, § 30 ; R.S.c.113, § 6)
3 defendant or debtor's disclosure is true, and he does not
4 discover anything therein inconsistent with his taking the
5 oath, he may administer it to him as follows :
6 "I, — — —, solemnly swear" (or affirm) "that I have
7 no real or personal estate, or interest in any, except what
8 is exempted by statute from attachment and execution,

9 and what I have now disclosed ; and that since any part of
 10 this debt or cause of action accrued, I have not directly
 11 or indirectly sold, conveyed, or disposed of, or entrusted
 12 to any person, any of my real or personal property, to
 13 secure it or to receive any benefit from it to myself or
 14 others, with intent to defraud any of my creditors. So
 15 help me God ;" (or, "this I do under the pains and penal-
 16 ties of perjury").

SECT. 27. After the oath is administered, and the prop-
 2 erty disclosed is duly secured, the magistrate shall make
 3 out and deliver to the defendant or debtor a certificate
 4 under his hand in the form following :

5 STATE OF MAINE.

6 ——— ss. I hereby certify that A—— B——, a poor
 7 prisoner arrested upon (R.S.c.113, § 33 ; Mass.c.162, § 40)
 8 execution issued by [here insert the name and style of the
 9 court, the amount of the judgment, and date of judgment
 10 and execution] (or on mesne process) has caused E——
 11 F——, the creditor (or plaintiff), at whose suit he is
 12 arrested, to be notified, according to law, of his desire to
 13 take the benefit of the one hundred and thirteenth chapter
 14 of the revised statutes ; that in my opinion he is clearly
 15 entitled to the benefit of the oath prescribed in section
 16 twenty-six thereof. And I have, after due examination of
 17 said A—— B——, administered to him the said oath.

18 Witness my hand, this ——— day of ———, A. D. 18——.

19 A—— B—— [*Magistrate*].

20 A like certificate shall be by said magistrate indorsed on
 21 the writ, process or execution, upon (R.S.c.113, §§ 6, 23, 28)

22 which the defendant or debtor has been arrested or im-
23 prisoned.

SECT. 28. Upon taking the oath, the defendant or
2 debtor shall be discharged from arrest (R.S.c.113,§§ 34,23)
3 or imprisonment, and shall be forever exempt from arrest
4 on the same execution, or any process founded on the
5 judgment, or on the same cause of action, except as
6 provided in section twenty-five and section fifty of the
7 revised statutes. If he is arrested or committed on ex-
8 ecution, the judgment shall remain in full force against
9 his estate, and the creditor (Mass.c.162,§40 ; R.S.c.113,§6)
10 may take out a new execution against his goods and
11 estate as if he had not been committed ; and if he is com-
12 mitted on mesne process, any execution which may
13 afterwards issue on a judgment for the same cause of
14 action shall issue against his goods and estate, and not
15 against his body. The death of the execution creditor
16 shall not affect any proceedings instituted under this
17 chapter.

SECT. 29. When a person is arrested or has given bail
2 or is imprisoned on mesne process, or (Mass.c.162,§ 41)
3 is arrested or imprisoned on any execution, he may be
4 discharged in the same manner and subject to the same
5 provisions of law, as a person arrested on an execution
6 mentioned in section six.

SECT. 30. A plaintiff or creditor may discharge the
2 defendant or debtor from arrest, or (R.S.c.113,§ 35)
3 imprisonment on execution, by giving to the officer or
4 jailer having him in custody a written permission to go at
5 large ; and it shall have the same effect as a discharge or
6 disclosure.

SECT. 31. No debtor shall be entitled to the benefit of
2 the oath for the relief of poor debtors, (Mass.c.162, § 42)
3 after a writ on the bail bond given by him in the original
4 action has been served on his bail, unless he pays all costs
5 which have accrued on such writ.

IMPRISONMENT.

SECT. 32. If the defendant, when arrested on mesne
2 process and carried before the magistrate, (Mass.c.162, § 43)
3 does not desire to take the oath, or fails to recognize to
4 the satisfaction of the magistrate as before provided, and
5 does not give bail, or if on his examination the oath for
6 the relief of poor debtors is refused him and he does not
7 give bail, the magistrate shall make a certificate thereof,
8 and the defendant shall be carried to jail, and there kept
9 until final judgment in the suit in which he is arrested.
10 If the final judgment is against him, he shall be held for
11 thirty days thereafter, in order that he may be taken on
12 execution; unless (if the oath for the relief of poor
13 debtors has not been refused him) he recognizes as afore-
14 said, or gives bail or bond as provided in section forty, or
15 takes the oath for the relief of poor debtors, or is dis-
16 charged by the plaintiff.

SECT. 33. If the debtor arrested on execution and taken
2 before the magistrate (Mass.c.162, § 44; R.S.c.113, § 23)
3 does not desire to take the oath, or fails to procure surety
4 or sureties to the satisfaction of the magistrate as before
5 provided, or if upon his examination the oath is refused
6 him, of which refusal a certificate shall be annexed to the
7 execution and signed by the magistrate, he shall be con-
8 veyed to jail, and there kept until he has recognized as

9 herein provided (if the oath for the relief of poor debtors
10 has not been refused him), or until the execution is satis-
11 fied, or he is released by the creditor, or has given notice
12 as before provided and taken the oath for the relief of poor
13 debtors.

PUNISHMENT OF FRAUDULENT DEBTORS.

SECT. 34. When either of the charges named in section
2 six, numbered second, third, fourth, (Mass.c.162, § 49)
3 fifth, sixth, seventh, eighth, is made as therein provided,
4 or when the plaintiff or creditor or any one in his behalf,
5 at any time pending the examination of a defendant or
6 debtor, who has given notice of his desire to take the oath
7 for the relief of poor debtors, files such charges in writing,
8 subscribed and sworn to by the plaintiff or creditor or by
9 some person in his behalf, the charges shall be considered
10 in the nature of a suit at law, to which the defendant or
11 debtor may plead that he is guilty or not guilty, and the
12 magistrate may thereupon hear and determine the same. If
13 a person arrested on execution, after such arrest mis-
14 spends or misuses to the amount of forty dollars, or to an
15 amount equal to the sum for which he is arrested or com-
16 mitted, his goods, effects or credits not exempt from being
17 taken on execution, but which cannot be attached by ordi-
18 nary process of law, without first having offered such
19 goods, effects, or credits to the arresting creditor in satis-
20 faction or part satisfaction of his debt, the charge of such
21 mispending or misusing may be filed in the manner
22 herein provided for filing charges of fraud.

SECT. 35. When the hearing is had on the charges of
 2 fraud mentioned in the preceding (Mass.c.162,§ 50)
 3 section, and judgment is rendered thereon by the magis-
 4 trate, either party may appeal to the supreme judicial
 5 court, and in Kennebec and Cumberland counties to the
 6 superior court, in like manner as from the judgment of a
 7 trial justice in civil actions. The trial in the court ap-
 8 pealed to shall be by a jury, unless the court with the
 9 consent of both parties hears and determines it without a
 10 jury.

SECT. 36. If the plaintiff or creditor appeals, he shall
 2 before the allowance of the appeal (Mass.c.162,§ 51)
 3 recognize with sufficient surety or sureties to enter and
 4 prosecute his appeal with effect, to produce at the court
 5 appealed to a copy of all the proceedings upon said
 6 charges, and to pay all costs if judgment is not reversed.
 7 If the defendant or debtor appeals, he shall recognize in
 8 like manner and with the further condition, that if final
 9 judgment is against him, he will within thirty days there-
 10 after surrender himself to be taken on execution and abide
 11 the order of the court, or pay to the plaintiff or creditor
 12 the whole amount of the original judgment against him.

SECT. 37. If the defendant or debtor, after either of
 2 said charges has been made or filed (Mass.c.162,§ 52)
 3 against him, voluntarily makes default at a time appointed
 4 for the hearing, or if upon a final trial he is found guilty
 5 of any of them, he shall have no benefit from the pro-
 6 ceedings under this chapter, and may be sentenced by the
 7 magistrate or court before whom the trial is had to con-
 8 finement in jail not exceeding six months. But the defend-
 9 ant or debtor, after the expiration of any sentence, may

10 renew his application for the oath for the relief of poor
11 debtors, as though he had not been found guilty and
12 sentenced.

DISCHARGE OR REMOVAL OF INSANE DEBTORS.

SECT. 38. When a person confined in jail on mesne-
2 process, or execution, is supposed to be (Mass.c.162, § 56).
3 insane, and thereby rendered incapable of taking the oath.
4 for the relief of poor debtors, any person interested for
5 his removal from jail on account of his supposed insanity.
6 may apply by petition to the judge of probate for the
7 county in which he is imprisoned, setting forth the facts..
8 The judge shall appoint a time and place for a hearing.
9 and examination in the premises, and shall order notice
10 thereof to be given to the creditor or his attorney seven.
11 days previously to the time appointed, and upon the
12 return day shall proceed to hear and determine the truth
13 of said allegations. If satisfied upon the examination.
14 that the person is insane, the judge may order his dis-
15 charge or removal to the Insane Hospital, or to such other
16 place as is provided by law for insane persons in any city
17 or town in the State.

SECT. 39. When a person is so discharged or removed
2 from jail, the legal rights of the creditor (Mass.c.162, § 57)
3 shall not be affected thereby, but shall remain as though
4 no commitment had taken place.

SPECIAL PROVISIONS FOR PERSONS IN JAIL OR ON BAIL IN
CIVIL ACTIONS, WHEN JUDGMENT IS RECOVERED AGAINST
THEM.

SECT. 40. Every person held in jail in a civil action at
2 the time when final judgment in such (Mass.c.162, § 58)

3 action is rendered against him shall be discharged, upon
 4 giving to the creditor a bond with sufficient surety or
 5 sureties to be approved by some magistrate named in sec-
 6 tion two, in a penalty not less than double the amount
 7 of the judgment, and with condition that he shall surren-
 8 der himself at the same jail, to the keeper thereof,
 9 between the hours of eight and ten o'clock of the fore-
 10 noon of the thirtieth day next after the rendition of said
 11 judgment, or, if said thirtieth day falls on Sunday, on the
 12 next following day, which day shall be specified in the
 13 bond, and there remain until five o'clock of the afternoon
 14 of the same day, so that he may be taken on the execu-
 15 tion issuing on said judgment.

SECT. 41. If an execution issuing on such judgment
 2 amounting to twenty dollars exclusive (Mass.c.162,§ 59)
 3 of costs, and while so much as that amount remains un-
 4 collected, is delivered to an officer qualified to serve the
 5 same, with the affidavit required for the arrest of a debtor
 6 on execution, such debtor may at any time within thirty
 7 days after the rendition of judgment on which the same is
 8 issued leave said execution, or a copy thereof, with the
 9 jailer; and in such case the debtor shall upon the sur-
 10 render of himself as provided in said bond be committed
 11 thereon by the officer to whom the execution was deliv-
 12 ered. The officer shall return the taking and commitment
 13 in like manner, and be entitled to the same fees, as if the
 14 execution had been served in the common form.

SECT. 42. The jailer shall immediately after the expira-
 2 tion of said term of thirty days certify (Mass.c.162,§ 60)
 3 under his hand, upon the execution or copy so left with
 4 him, the fact that such debtor has or has not surrendered

5 himself, according to the truth of the case, and shall give
6 a similar certificate to the officer on request, to be annexed
7 to his return on the execution ; and such certificate shall
8 be deemed sufficient authority to the officer to make his
9 return accordingly. Such return with the certificate
10 annexed shall be deemed prima facie evidence of the fact,
11 as well on the question of breach of condition of the bond
12 as in other cases. If the jailer gives a false certificate, it
13 shall be deemed misconduct in office, for which any party
14 injured shall have a remedy in damages.

SECT. 43. If a person who has given bail on mesne
2 process in a civil action, is surrendered (Mass.c.162,§ 61)
3 by his bail after final judgment in such action, he shall be
4 enlarged upon giving to the creditor a bond like that pre-
5 scribed in section forty, except that the condition thereof
6 shall be for his surrender at the same jail on the thirtieth
7 day next after the surrender by his bail. The particular
8 day on which the same will fall shall be specified in the
9 bond. All other provisions relating to the bond mentioned
10 in section forty shall apply to the bond prescribed in this
11 section.

SECT. 44. Nothing contained in the four preceding sec-
2 tions shall prevent an officer from taking (Mass.c.162,§ 62)
3 the debtor and committing him to jail on such execution
4 at any time within thirty days after the rendition of judg-
5 ment or surrender by the bail as he might have done if
6 such bond had not been given. And the commitment of
7 the debtor in such case shall be deemed equivalent to his
8 surrender according to the condition of his bond, and shall
9 discharge the same.

DISCLOSURES WITHOUT ARREST.

SECT. 45. The owner of any judgment remaining un-
2 satisfied, where no arrest is made, (R.S.c.113, §§ 51 to 67)
3 may have a disclosure of the judgment debtor's business
4 affairs by proceeding according to chapter sixty-seven of
5 the public laws of eighteen hundred and seventy-eight,
6 as amended by chapter ninety-one of the public laws of
7 eighteen hundred and seventy-nine. Section seven of
8 said chapter sixty-seven of the laws of eighteen hundred
9 and seventy-eight is amended by adding thereto the words
10 "but twenty dollars of said coin, bank bills or currency is
11 exempted from the provisions of this section."

SURRENDER OF PRINCIPAL ON RECOGNIZANCES.

SECT. 46. Whoever recognizes as surety for another as
2 provided in this chapter may at any (Mass.c.162, § 63)
3 time before breach of the recognizance surrender his prin-
4 cipal and exonerate himself from all further liability in
5 the manner provided for the surrender by bail, and all the
6 proceedings on such surrender shall be the same as pro-
7 vided in the case of bail.

NON-ATTENDANCE OF MAGISTRATES.

SECT. 47. When a magistrate fails to attend at the time
2 and place to which any process under (Mass.c.162, § 67)
3 this chapter is returnable or continued before him, any
4 other magistrate named in section two may attend at such
5 time and place, and may continue the proceeding for not
6 more than thirty days, without costs, saving the rights of
7 all parties; and he shall make a certificate thereof, which
8 shall be by him delivered to the magistrate before whom
9 such process is pending.

PROVISIONS RELATING TO DEBTORS TO THE STATE.

SECT. 48. Section fifty-seven of chapter one hundred and
2 thirteen of the revised statutes is (R.S.,c.113,§ 74 to § 80)
3 amended by inserting in the fourth line after the words
4 "supreme judicial court" the words "or of the superior
5 court of Kennebec or Cumberland county."

SECT. 49. Section sixty-one of said chapter one hundred
2 and thirteen is amended by adding after the word "judicial"
3 the words "or superior."

SECT. 50. Section sixty-three of said chapter is amended
2 by striking out the words "justice of the peace" wherever
3 they occur and inserting the words "magistrate named in
4 section two."

SUPPORT OF DEBTORS IN JAIL.

SECT. 51. Section fifty-five of said chapter is amended
2 by inserting the words "in all cases (R.S.,c.113,§ 72)
3 where a person is confined in jail on mesne process or on
4 execution, the plaintiff or creditor in such case shall, if
5 required by the jailer, either from time to time advance
6 the money necessary for the support of the prisoner, or
7 give the jailer satisfactory security therefor. If the
8 plaintiff or creditor neglects to do so for twenty-four hours
9 after demand, the jailer shall discharge the prisoner.
10 Such demand may be of the officer who made the commit-
11 ment, or of the plaintiff or creditor or his attorney, at any
12 time after the debtor makes written complaint, by him
13 signed and sworn to, stating that he is unable to support
14 himself in jail and has not sufficient property to furnish
15 security for his support," in the place of the first clause in
16 said section ending with the words "he may release him."

SECT. 52. When a debtor is discharged from jail by
2 order of the creditor, or by the jailer (Mass.c.162,§ 47)
3 for want of security or of an advance of money as before
4 provided, the debt and costs with all sums paid by the
5 creditor for the debtor's support in jail shall remain a legal
6 claim against his goods and estate, and may be enforced
7 accordingly in the same manner as if he had never been
8 committed on the execution; but his body shall never
9 thereafter be liable to arrest or imprisonment on the same
10 debt, costs or charges.

SECT. 53. If the debtor undertakes to satisfy the execu-
2 tion, he shall not be entitled to his (Mass.c.162,§ 48)
3 discharge therefrom until he has paid all charges for his
4 support in prison, both upon the arrest on the original
5 writ and upon the commitment on execution, in addition
6 to the sum due on the execution and the costs and charges
7 thereon.

DAMAGES ON BONDS.

SECT. 54. Section fifty-two of chapter one hundred and
2 thirteen of the revised statutes, is hereby (R.S.c.113,§ 69)
3 amended by striking out in the first sentence thereof the
4 the words "two justices of the peace and of the quorum
5 of the county where the arrest was made" and inserting
6 in place thereof the words "any magistrate named in
7 section two"; also by inserting, in the last sentence
8 thereof, the word "notice" in place of the word "citation."

SECT. 55. No suit, on any bond or recognizance herein
2 authorized to be given, shall be sustained (R.S.c.113,§ 49)
3 unless commenced within one year after the forfeiture;
4 except that the provisions of sections ninety-one and

5 ninety-two of chapter eighty-one of the revised statutes
6 are applicable to such suits.

SECT. 56. If the recognizance or bond was taken on
2 execution, judgment in a suit thereon, (R.S.c.113, § 40)
3 after breach, shall be rendered for the amount of the
4 execution, costs, with all charges arising thereon after the
5 issuing of the original execution, against all the obligors ;
6 and a special judgment against the principal, for a sum
7 equal to the interest on said amount, at the rate of twenty
8 per cent. a year, after said breach.

SECT. 57. In all other actions upon recognizances or
2 bonds given under this chapter judgment shall be entered, after breach, for the full amount of
3 judgment shall be entered, after breach, for the full amount of
4 the penalty, but execution shall issue for so much thereof
5 only as may be justly and equitably due.

SECT. 58. When an escape is made by a prisoner
2 arrested or committed on execution in (Mass.c.162, § 65)
3 a civil action, whether the escape is negligent or voluntary
4 on the part of the officer, the creditor may in an action on
5 the case against the officer recover such damages as he has
6 suffered by the escape, and may also have his remedy
7 against the original debtor by a scire facias or action of
8 debt on the judgment.

GENERAL PROVISIONS.

SECT. 59. No notice shall be deemed incorrect for want
2 of form only, or for circumstantial errors (R.S.c.113, § 28)
3 or mistakes, when the person and case can be rightly
4 understood. Such errors and defects may be amended on
5 motion of either party.

SECT. 60. No criminal conviction, or other disqualifica-
2 tion to be a witness, shall preclude a (R.S.c.113, § 44)
3 debtor from relief under this chapter.

SECT. 61. If by mistake or accident, the penalty of a
2 bond taken by an officer, or magistrate, (R.S.c.113, § 48)
3 under this chapter, varies from the sum required by law,
4 it is still valid ; and the officer is not responsible to either
5 party beyond the actual damage.

SECT. 62. Any bond given on execution is a valid
2 statute bond though the penalty varies (R.S.c.113, § 25)
3 not exceeding five per cent. from the sum required by
4 law ; and judgment in a suit thereon shall be rendered
5 according to section fifty-six.

SECT. 63. No attorney at law or officer of the court
2 shall be accepted as surety in any bond or recognizance
3 herein provided for. No magistrate shall act, in any
4 matter herein provided for, unless disinterested.

FEEES.

SECT. 68. The fees of the magistrate shall be : for
2 hearing an application for a certificate (Mass.c.162, § 68)
3 to arrest one dollar ; for an examination, three dollars for each
4 day spent therein ; for any notice or certificate required to
5 be made or issued by the magistrate, one dollar ; fifty
6 cents for each subpoena ; twenty-five cents for a capias ;
7 fifty cents for a warrant of commitment. In an arrest on
8 mesne process, the plaintiff causing the arrest shall pay
9 the fees in advance ; and if the oath is not administered
10 they shall be allowed as part of the service of the writ.
11 In arrest on execution, the creditor causing the arrest

12 shall pay the fees in advance ; and the same shall be re-
13 paid to said creditor before the magistrate administers the
14 oath ; and if the oath is not administered, they shall be
15 allowed as a part of the service of the execution. If the
16 plaintiff or creditor, at any time after request, makes
17 default in the payment of the fees required of him or if
18 the plaintiff or creditor, or some one in his behalf, does not
19 attend the examination, the defendant or debtor shall, with-
20 out examination and without repayment of any fees, be dis-
21 charged from arrest or imprisonment, and shall be forever
22 exempt from arrest on the same execution or any process
23 founded on the same judgment ; and a certificate of such dis-
24 charge under the hand of the magistrate shall be annexed to
25 the writ or execution ; *provided*, that if, after the oath has
26 been once refused, the defendant or debtor again applies
27 for the benefit of the same, the fees for such subsequent
28 application thereon shall be paid by him. For approving
29 sureties and taking recognizance, the fee shall be one
30 dollar and fifty cents, to be paid in advance by the princi-
31 pal therein ; and the same fee shall be paid, if the sureties
32 are refused by the magistrate. The fee of a magistrate
33 for approving a bond under sections forty and forty-three
34 shall be one dollar to be paid by the applicant.

SECT. 69. The fees of the jailer, under the provisions
2 of sections forty-one and forty-two, (Mass.c.162,§ 69)
3 shall be as follows : On a surrender of a debtor fifty
4 cents ; and for a certificate thereof, or of the non-surrender
5 of the debtor, twenty-five cents, to be paid by the officer
6 and charged with the expenses of serving the execution.

7 In other cases where a certificate is required, the jailer
8 shall charge therefor twenty-five cents, to be paid by the
9 party requiring the same.

REPEALING CLAUSE.

SECT. 70. Chapter one hundred and thirteen of the
2 revised statutes and all acts additional thereto and amend-
3 atory thereof, are hereby repealed, with the following ex-
4 ceptions: Section fifty-four, upon (R.S.,c.112,§ 71)
5 "wilful trespass;" section fifty-five, (R.S.,c.113,§§ 72,73)
6 as amended by chapter one hundred and thirty, public
7 laws of eighteen hundred and seventy-six, upon "support
8 of debtors in jail;" sections fifty and fifty-one, upon "false
9 disclosures and aiding in fraudulent (R.S.,c.113,§§ 67,68)
10 conveyances;" sections fifty-seven to sixty-three, both
11 inclusive, on "debtors to the state;" (R.S.,c.113,§§ 74-80)
12 section forty-one, as amended by chapter seventy-nine,
13 public laws of eighteen hundred and (R.S.,c.113,§ 41)
14 seventy-eight, relating to "arrests for taxes;" sections
15 fifty-two and fifty-three, as amended by chapter two
16 hundred and twenty, public laws of (R.S.,c.113,§ § 69,70)
17 eighteen hundred and seventy-four, on "damages on bonds;"
18 chapter sixty-seven of the public laws of eighteen hundred
19 and seventy-eight, entitled "an act (R.S.,c.113,§ 51 to § 67)
20 to provide additional remedies for the enforcement of
21 judgments," and chapter ninety-one, public laws of eighteen
22 hundred and seventy-nine, additional thereto.

SECT. 71. Said repeal shall not effect any act done, or
2 any right accrued or established, or any proceedings,

3 doings or acts ratified or confirmed, or any suit or proceed-
4 ing had or commenced in a civil case, before said repeal
5 takes effect, but the proceedings therein shall when neces-
6 sary conform to the provisions hereof.

STATE OF MAINE.

In HOUSE OF REPRESENTATIVES, }
January 24, 1883. }

Presented by Mr. HEATH of Augusta, and on his motion ordered
printed.

ORAMANDAL SMITH, *Clerk.*