

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

United States and of the State of Maine,

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

APPENDIX.

PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

Augusta:

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....
1841.

actions, by his giving to such claimant, or his agent or guardian, if CHAP. 147.
 in the state, an attested copy of such writing, or by leaving the
 same at his dwelling house; or, if not resident in the state, then a
 copy may be left with the tenant or occupant, if there be one, of
 the estate; and, if not, then such copy shall be affixed to the house
 or other conspicuous part of the premises; and the return of the
 officer shall be made on the original writing, and the whole be
 recorded in the registry of deeds in the county, or registry district,
 within which such estate lies, within three months from the time
 of such service: and such notice may be given by the agent or
 guardian of the owner of the land.

CHAPTER 148.

OF THE RELIEF OF POOR DEBTORS.

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ARTICLE I. OF ARRESTS AND DISCLOSURES ON MESNE PROCESS.

SECTION 1. No person shall be arrested on mesne process, in any suit brought on any contract, express or implied, or brought on any judgment founded on such contract, except as provided in the following section; and the writ or other process shall be so varied, as not to require the arrest of the defendant.

No arrest on mesne process on contract, except where specially provided.

1835, 195, § 2.

Debtor, about to leave the state, may be arrested in certain cases.

1835, 195, § 1, 3.

1836, 245, § 1.

5 Greenl. 291.

16 Maine, 398.

SECT. 2. Any person, whether a resident within this state or not, may be arrested and held to bail, or committed to prison on mesne process, on any contract express or implied, when the sum demanded amounts to ten dollars, or on a judgment founded on contract, when the debt, originally recovered and still remaining due, is ten dollars or more, exclusive of interest on such judgment, when he is about to depart and reside beyond the limits of this

state, with property or means exceeding the amount required for his own immediate support; provided, that the creditor, his agent or attorney, shall make oath before a justice of the peace, to be certified by such justice on the said process, that he has reason to believe, and does believe, that such debtor is about to depart and reside, and to take with him property or means as aforesaid, and that the demand in the said process, or the principal part thereof, amounting to at least ten dollars, is due to him.

SECT. 3. On the arrest or imprisonment of any debtor, by virtue of the preceding section, he may, on request to the officer, or jailer, who has him in custody, be taken before two disinterested justices of the peace and quorum, to be selected, as provided in the forty sixth section, to disclose the actual state of his affairs.

SECT. 4. Previous to such disclosure, he shall give due notice to the creditor, his agent or attorney, of his intention, and of the time and place for attending to said disclosure; and that such creditor, agent or attorney may be present, and select one of the justices, and be heard thereon; which notice shall not be less than one day, for every twenty miles' travel, exclusive of Lord's days.

SECT. 5. If the debtor shall, at the time and place appointed, make, to the satisfaction of said justices, a full disclosure of the actual state of his affairs, and of all his estate, property, rights and credits in possession, expectation or reversion, and answer all proper interrogatories in regard to the same, and shall sign and offer to make oath to the truth of his said disclosure and answers, before such justices, they shall administer to him such oath, and may hear such further and proper evidence, as may be offered upon either side.

SECT. 6. The said justices shall have power to adjourn, from time to time, if they see cause; and, if either of the said justices shall not be present at such adjournment, the other may adjourn to another time, but no such adjournment or adjournments, shall exceed three days in the whole, exclusive of the Lord's day.

SECT. 7. On such examination, the said justices may discharge such debtor from arrest and imprisonment, or remand him into the custody of the jailer or other officer, as the case may require; and, in case of such discharge, no execution, issuing on the judgment in such suit or process, shall run against the body of such debtor.

SECT. 8. All attachable property, disclosed by such examination, or so much thereof as the creditor may designate, to satisfy his demand against the debtor, shall be held as attached from the time of such disclosure, and until thirty days after final judgment, as in other cases of attachment; and the officer shall make return thereof on the writ or process, certifying the fact that the property was so disclosed; and, if it be real estate, shall certify the same to the register of deeds, as provided in section, thirty two, of chapter, one hundred and fourteen. And, if the creditor require it, at any time before final judgment in the suit, the officer shall take into his custody any part of the personal property, so disclosed, sufficient to secure the demand, and hold the same as in other cases.

SECT. 9. In all actions, not founded on contract, or on a judgment on such contract, the original writ or process shall run against the body of the defendant, and he may be thereon arrested and

CHAP. 148.

Disclosure, on such arrest.
1835, 195, § 4.
4 Greenl. 484.
15 Maine, 55.

Notice to be given to the plaintiff.
1835, 195, § 1.

Mode of making disclosure.
1835, 195, § 4.

Justices may adjourn.
1831, 320, § 7.

Adjudication of the justices; effect of discharge.
1835, 195, § 4.
14 Maine, 475.

Lien on property disclosed, how preserved.
1835, 195, § 5.

Arrests allowed, in actions not founded on contract.
1836, 245, § 2.

CHAP. 148. imprisoned; or he may give bail, as provided in chapter, one hundred and fourteen.

Defendant may, in all cases, disclose on return of writ.
1835, 195, § 6.

SECT. 10. Whenever any person shall be served with an original writ or other mesne process, founded on such contract or judgment, in any other manner than by arrest of the body, such person may, at any time before final judgment, appear before any court or justice, before whom such writ or process may be pending, or before a disinterested commissioner or commissioners to be appointed by such court or justice, and may submit himself to examination; and such court, justice or commissioner shall, after giving like notice of the time and place of hearing, as is provided in the fourth section, then and there proceed and take the disclosure of such person; and the like proceedings shall be had before such court, justice or commissioner, as is provided in the fifth and sixth sections, when before two justices of the peace and quorum, and with the like effect.

Effect thereof. Lien on property disclosed.
1835, 195, § 6.

SECT. 11. On the whole examination, the said court, justice or commissioner may, except as provided in the sixteenth section of this chapter, adjudge and determine, that the execution on the judgment, which the plaintiff may recover in such suit, shall run against the property only of the defendant, or otherwise, as justice may require, on the facts so disclosed or proved; and all attachable estate or property, so disclosed, shall, from the time of such disclosure, be held attached, as provided in the eighth section, and be further subject to the provisions of the two following sections.

Certificate of real estate disclosed, to be filed in registry of deeds.

SECT. 12. If the property, so disclosed, be real estate, the said court, justice or commissioner, as the case may be, shall deliver to the plaintiff a certificate thereof, stating the names of the parties and the amount of the claim in the writ, which the plaintiff shall cause to be filed with the register of deeds for the county or district, where the real estate is situated, within five days after the date thereof; and the register shall proceed with the said certificate, in the same manner, as he is required to do, with the returns of officers making attachments on real estate, under the provisions of chapter, eleven, and be entitled to the same fees from the plaintiff.

Preservation of lien on personal estate.

SECT. 13. If personal estate, liable to attachment, be disclosed, on application of the plaintiff, stating, that he is apprehensive that said property may be removed or concealed, so as to render it impracticable to seize the same on execution, the court in term time, or any justice thereof in vacation, or the justice of the peace before whom the suit is pending, may issue an order under the seal of the court or justice of the peace, and signed by the clerk of the court or by the justice, as the case may be, directing any officer authorized to serve processes in such suit, to take such property into his custody and hold the same, as if originally attached; which order such officer is hereby authorized to execute accordingly.

Disclosure on mesne process, by consent of parties.
1835, 195, § 6.

SECT. 14. At any time before or after the return day of any such writ or process, as is described in the tenth section, the parties to the suit may, pursuant to any agreement by them made in writing, appear before any justice of the peace and of the quorum, in the county where the suit may be pending; and the defendant shall make the same disclosures and submit to the same examination and proceedings, as is provided in the said tenth section, when

had before a commissioner; and the record of the same shall, before final judgment, be returned to the court or justice, before which the suit shall be pending; and the like proceedings shall be had, by such court or justice, as if the same disclosures had taken place before a commissioner, duly appointed for the purpose.

SECT. 15. If no disclosure and examination be made or had before final judgment by the defendant, as is herein before provided, or if the result of such disclosure and examination should be adverse to the defendant's right to exemption from arrest, the execution, which may issue against him on final judgment, shall run against his body.

Execution to issue against the body, unless there be a disclosure and discharge. 1835, 195, § 6.

SECT. 16. If, on the disclosure and examination of any debtor, made pursuant to the fifth and tenth sections of this chapter, previously to final judgment, it shall appear, that such debtor possesses or has in his power, or has, with intent to protect the same from his creditors, assigned or secreted, or otherwise disposed of any bank bills, notes, accounts, bonds or other contracts, or other property, not exempted by any statute from attachment, but which cannot be come at, to be attached, from its nature or otherwise, such debtor, if under arrest, shall not be released, neither in any case shall his person be exempted from arrest, on any execution to be issued on the judgment to be recovered in such suit, unless the debtor shall assign and deliver to such person, as the examining magistrates or court, or commissioners may appoint, all such property, or so much thereof, as such magistrates or court, or commissioners may adjudge to be sufficient security for the creditor; to be held by such person, under the direction of the court or justice before which the suit shall be pending, in trust for the parties, in order that the same may be applied and appropriated, as hereinafter provided in sections, twenty nine and thirty.

Certain property, not attachable, to be delivered up, on disclosure.

SECT. 17. Whenever any person shall be arrested or imprisoned on mesne process, in any civil action, he may be also released from such arrest by giving bond to the plaintiff, with surety or sureties to the acceptance of the plaintiff, or approved by two justices of the peace and of the quorum of the county, where such arrest or imprisonment may be, in double the sum for which he is arrested or imprisoned; conditioned, that he will, within fifteen days after the last day of the term of the court, at which the judgment shall be rendered in such suit, or after the day of the rendition of judgment, if before a justice of the peace, notify the judgment creditor, or his agent or attorney to attend at a certain place in the county, and at a time, to be fixed within thirty days after such notice, and not less than fifteen days, for the purpose of disclosure and examination under the provisions of the thirty fifth section of this chapter; and that he will, at such time and place, submit himself to examination, make true disclosure of his business affairs and property on oath, and abide the order of the justices of the peace and of the quorum thereon, in manner provided in said thirty fifth, thirty sixth and thirty seventh sections; and, if such bond be taken by the officer, serving the writ, he shall return the same to the court or justice, where the suit is pending.

Person arrested may give bond, to disclose in a certain time after judgment. 1835, 195, § 7. 1836, 245, § 3, 4. 4 Greenl. 10.

CHAP. 148. ARTICLE II. OF ARRESTS AND IMPRISONMENT ON EXECUTION, AND OF DISCLOSURES THEREON, OR AFTER JUDGMENT, AND EFFECT THEREOF.

No arrest on execution on contract, if debt be less than ten dollars.
1835, 195, § 1.

SECT. 18. No person shall be arrested on any execution, issued on any judgment in any suit, founded on any contract, express or implied, where the debt is less than ten dollars, exclusive of costs, or in any suit founded on any prior judgment on contract, where the amount of the original debt, remaining due, is less than ten dollars, exclusive of costs; and the form of the process shall be varied accordingly.

Arrest in other cases, and object thereof.
1836, 245, § 2.

SECT. 19. In all other cases, except where express provision is by law made to the contrary, executions shall run against the body of the judgment debtor; and he may be arrested and imprisoned thereon, for the purpose of obtaining a discovery of his property, wherewith to satisfy the same, as hereinafter stated.

Bond may be given on such arrest. Condition and effect thereof.
1835, 195, § 8.
1836, 245, § 4.
5 Greenl. 353.
1 Fairf. 121.
1 Metc. 127.

SECT. 20. Wherever any debtor arrested or imprisoned on execution, issued on any judgment in a civil suit, shall give bond to the creditor in execution, with sufficient surety or sureties, to be approved in writing by the creditor, or by two justices of the peace and of the quorum of the county, where the arrest is made, in double the sum for which he is so arrested or imprisoned, conditioned, that he will, within six months thereafter, cite the creditor before two justices of the peace and of the quorum, and submit himself to examination, and take the oath prescribed in the twenty eighth section of this chapter, or pay the debt, interest, costs and fees; arising in said execution, or deliver himself into the custody of the keeper of the jail, into which he is liable to be committed under the said execution, he shall be released from his said arrest or imprisonment.

Application to a justice, by a debtor under bond, or imprisoned, for privilege of the poor debtor's oath.
1835, 195, § 9.
1839, 412, § 1.
15 Maine, 33, 337.

SECT. 21. Any debtor on any judgment, who has given bond, pursuant to the provisions of the seventeenth and twentieth sections of this chapter; within the times limited by such bonds respectively, and any person, being in prison by force of any execution in a civil suit, may make application in writing to any justice of the peace of the county, in which he is arrested or imprisoned, claiming to have the privilege and benefit of the oath authorized by the twenty eighth section hereof, or if the said debtor be imprisoned, the keeper of the jail, shall, if requested by the debtor, make such application in his behalf.

Justice to appoint the place, and cite the creditor.
1835, 195, § 9.
1839, 412, § 1.
3 Pick. 404.

SECT. 22. The justice shall thereupon appoint a time and place for the examination of the debtor, and shall give notice thereof to the creditor, by a citation under his hand and seal, which notification shall be served and returned by any officer, who is qualified to serve any civil process between the same parties.

Citation, how served.
1835, 195, § 9.
11 Pick. 487.

SECT. 23. The notification shall be served on the creditor by reading it to him, or by leaving an attested copy thereof at his last and usual place of abode, fifteen days at least before the time appointed for the examination, if the creditor be alive and within the state; otherwise, it shall be served in like manner on the person who was his attorney in the suit, the executor or administrator of a deceased creditor, or some known authorized agent; and; if no

such representative can be found in the state, a copy of the notification shall be left in like time with the clerk of the court or justice of the peace, from whom the execution issued.

SECT. 24. The examination shall be had before two disinterested justices of the peace and of the quorum for the county, and the justices shall have like power to adjourn, as is provided in section six.

Examination before two justices of the quorum.
1835, 195, § 10.

SECT. 25. The justices shall examine the notification and return, and, if they deem the same correct, they shall examine the debtor on his oath, concerning his estate and effects, and the disposal thereof, and his ability to pay the debt for which he is committed; and they shall also hear any other legal and pertinent evidence, that may be adduced by the debtor or by the creditor.

Made of examination.
1835, 195, § 10.
3 Pick. 404.
3 Fairf. 415.
16 Maine, 386.

SECT. 26. The creditor may, upon such examination, propose to the debtor any interrogatories pertinent to the inquiry, and they shall, if required by the creditor, be proposed and answered in writing, and the answers shall be signed and sworn to by the debtor; and the creditor may have a copy of the interrogatories and answers certified by the justices, on paying therefor the same fees, as for a deposition of the same length.

Same subject.
10 Pick. 358.

SECT. 27. If, upon such examination, and the hearing of such evidence, the justices shall be satisfied that the debtor's disclosure is true, and shall not discover any thing thereby inconsistent with his taking the oath, set forth in the next section, they may proceed to administer the same accordingly.

When the justices shall administer the oath.
1835, 195, § 10.

SECT. 28. The oath shall be in the form following, to wit:

"I, _____, do solemnly swear," (or, "affirm," as the case may be), "that I have not any estate, real or personal, in possession, reversion or remainder, except the goods and estate expressly exempted by statute from attachment and execution, and whatever property I have now disclosed; and, that I have not, since the commencement of this suit, or the time when the debt, or cause of action, or any part thereof, on which this suit was brought, was contracted by me, directly or indirectly sold, loaned, leased, or otherwise disposed of, or conveyed or entrusted to any person or persons, whomsoever, all or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or expect any profit, advantage or benefit therefrom, to myself or others, with an intent or design to defraud any of my creditors. So help me God:" (or, "this I do under the pains and penalties of perjury," if the debtor affirms.)

Form of the poor debtor's oath.
1835, 195, § 10,
1836, 245, § 7.

SECT. 29. Whenever, from the disclosure of any debtor arrested or imprisoned on any execution, it shall appear, that he possesses, or has under his control any bank bills, notes, accounts, bonds or other contracts, or any property, not exempted expressly by statute from attachment, but which cannot be come at to be attached, and if the creditor and debtor cannot agree to apply the same in part or in full discharge of the debt, the debtor may choose one disinterested person, the justices, a second, and the creditor, or, in case of his absence or refusal, the same justices, a third, who shall, under oath, appraise and set off such property, or enough of the same to

Certain property disclosed, not liable to attachment, may be appraised off to the creditor.
1839, 412, § 2.

CHAP. 148. satisfy the amount of the debt, costs and charges; and the creditor or his attorney, if present, shall have the right to select the property to be so appraised. If the creditor will accept the same, it may be thereupon assigned and delivered by the debtor to the creditor, and applied in satisfaction of his demand, in whole or in part, as the case may be. If any particular article of property thus appraised and set off, and necessary and convenient to be applied in satisfaction of the execution, should exceed the amount or balance due thereon, and not be divisible in its nature, the creditor shall have a right to take the same, on advancing to the debtor the overplus, or securing the same to the satisfaction of the justices.

Creditor may accept it within thirty days.

SECT. 30. If the creditor be absent, or shall not then conclude to accept the same as aforesaid, the debtor shall deposit with the justices an assignment in writing to the creditor, of all the property, thus appraised and set off; and the justices shall make a record of such proceedings, and cause the property, so disclosed, to be safely kept and secured, for the term of thirty days thereafterwards, to be delivered to the creditor with the assignment aforesaid, on his demanding the same within that time. If not so demanded, they shall be returned to the debtor.

Justices' certificate of administration of the oath.
1835, 195, § 10.
2 Fairf. 238.

SECT. 31. After the administering of the oath aforesaid to the debtor, and the property disclosed as provided in the two preceding sections shall have been duly secured, the justices aforesaid shall make out, and deliver to the debtor, a certificate under their hands and seals, in the form following, to wit:

“STATE OF MAINE.

_____, ss. To the sheriff of the county of _____, or his deputy, and to the keeper of the jail at _____,” (or, “to any coroner,” or, “constable,” as the case may require.)

“(L. s.) We the subscribers, two disinterested justices of the _____ (L. s.) peace and of the quorum, in and for said county of _____, hereby certify that _____, a poor debtor, arrested on a certain execution issued by” (here insert the name and style of the court, or of the justice of the peace, and the amount of the judgment and date of the judgment and execution), “and committed to the jail at _____ aforesaid,” (or, “enlarged on giving bonds to the creditor,” as the case may be), “hath caused _____, the creditor, to be notified, according to law, of his the said debtor’s desire of taking the benefit of the one hundred and forty eighth chapter of the revised statutes of this state, entitled, ‘of the relief of poor debtors,’ that in our opinion he is clearly entitled to have the oath, prescribed in the twenty eighth section of said chapter, administered by us; and that we have, after due caution to him, administered said oath to him.

Witness our hands and seals, this _____ day of _____, in the year, 18—. _____, { Justices of the peace and _____, { of the quorum.”

Effect of such certificate.
1835, 195, § 10.

SECT. 32. The said debtor, on delivering the said certificate to the prison keeper or filing it in his office, shall, if imprisoned, be set at liberty, so far as relates to the said execution: and his body shall, forever thereafter, be free from arrest on the same, and on every subsequent execution to be issued on the same judgment, or on any

other judgment founded thereon; except as provided in sections, CHAP. 148.
thirty four, forty seven and forty eight of this chapter.

SECT. 33. Whenever any debtor in execution shall disclose before two justices of the peace and of the quorum, as provided in this chapter, any real estate liable to be levied upon by virtue of such execution, the said justices shall give the creditor a certificate thereof, stating therein the names of the parties, and the amount of the execution: and the creditor shall have a lien on said real estate, for thirty days thereafter; provided, he shall file the said certificate with the register of deeds of the county or district, where the real estate lies, within five days from the date of such disclosure: and the register shall make an entry thereof, and proceed in like manner, as is before mentioned in section, twelve.

Preservation of creditor's lien on real estate disclosed. 1831, 520, § 5.

SECT. 34. If the debtor shall, as aforesaid, disclose any personal estate, liable to be levied upon by said execution, the creditor shall also have a lien thereon, or so much thereof, as the justices in their record shall judge to be necessary, for the term of thirty days; and, if the debtor shall transfer, conceal or otherwise dispose of the personal property, so disclosed or designated, within the time aforesaid, or suffer the same to be done, or if he shall refuse to surrender the same on the demand of any proper officer, having an execution on the same judgment, the debtor shall receive no benefit from the certificate described in the thirty first section; and the creditor may recover against the debtor, or any person fraudulently aiding or abetting in the said transfer, concealment or disposal, double the amount due on the said execution, to be recovered in an action on the case; and any execution, on a judgment in such action, shall run against the body of such debtor and other persons so aiding or abetting; provided, however, that the payment of such judgment shall be also a satisfaction of the original debt.

Lien on personal estate disclosed. Consequence, if debtor, or any person, transfer or conceal the same. 1831, 520, § 5.

SECT. 35. Any debtor, who may have given bond on mesne process to his creditor, pursuant to the provisions of the seventeenth section of this chapter, may, after judgment, apply to a justice of the peace of the county in which he was arrested, and the said justice shall issue a notification to the creditor or his agent or attorney, and an examination and disclosure may be had within the times specified in the condition of said bond, before two justices of the peace and of the quorum; and the like proceedings shall be had, and the like consequences shall result therefrom, as herein before provided for the case of a debtor, disclosing after arrest or imprisonment on execution, except as mentioned in the following section.

Proceedings, if debtor have given bond on mesne process. 1835, 195, § 7.

SECT. 36. If, on such examination, the judgment debtor shall not entitle himself, in the opinion of the justices, to the benefit of the oath provided in the twenty eighth section, and, if it shall appear that said debtor, at the time of such examination, has any real or personal estate liable to attachment or levy under execution, or that he has other property, such as is described in the twenty ninth section of this chapter, the said debtor shall by the justices be permitted to go at large, upon the bond given at the time of his arrest, during the thirty days in which the creditor's lien shall exist on the property disclosed; and, during that term, the creditor may

Debtor, in such case, may go at large thirty days, during the lien on the property disclosed. 1835, 195, § 7. 1836, 245, § 8.

CHAP. 148. arrest the debtor on execution, or enforce his lien on the property disclosed, at his election.

Effect of creditor's election, to arrest on execution, or otherwise.
1835, 195, § 7.

SECT. 37. If the creditor shall make his election to arrest the debtor on the execution within the thirty days, and the proper officer, having the execution, shall return that the debtor is not found, the bond given on mesne process shall be forfeited, and, on judgment thereon, execution shall be awarded to the creditor for the amount of his judgment in the original suit, and interest thereon. If the creditor do not arrest the debtor within that time, the person of the debtor shall be forever discharged from any execution, issued on or founded upon such judgment, unless he shall avoid arrest on the execution as aforesaid.

Bond, taken on execution to be returned therewith, for use of the creditor.
1836, 245, § 5.

SECT. 38. Every officer, serving an execution and taking a bond, as provided in the twentieth section hereof, shall return the bond therewith for the benefit of the creditor, who shall be entitled to receive the same, on filing a copy thereof with the clerk of the court or justice, to whom such execution and bond is returned. The creditor shall also be entitled to receive from the prison keeper any such bond, in his hands, on the like terms.

Amount recoverable thereon, if forfeited.
1839, 195, § 8.
15 Maine, 340.
16 Maine, 353.

SECT. 39. If the debtor fail to fulfil the condition of any such bond, the same shall be forfeited, and judgment in any suit on such bond shall be rendered for the amount of the execution and costs, and fees of service, with interest on the same, against all the obligors; and a special judgment shall be also rendered against the said principal debtor for a further sum equal to the interest on the same, at the rate of twenty per cent. by the year, after the breach of the bond.

Persons incompetent as witnesses may take the poor debtor's oath.
1835, 195, § 10.

SECT. 40. No debtor shall be precluded from taking any oath, prescribed in this chapter for his relief, on account of his having been convicted of any crime, or being otherwise disqualified to testify as a witness in judicial proceedings; and nothing herein contained, except as provided in the thirty fourth, forty seventh and forty eighth sections, shall prevent any debtor, who shall fail to obtain his discharge, from obtaining a certificate for that reason, at a future examination for the same debt.

Costs for creditor, if debtor be not discharged.
1835, 195, § 10.

SECT. 41. If any debtor shall fail, in his application for a discharge from arrest or imprisonment, the creditor shall recover his costs, to be taxed as in actions before justices of the peace; and the justices shall award the same, and issue execution accordingly.

Discharge of debtor's body, no discharge of the debt.
1835, 195, § 12.

SECT. 42. No release of any debtor or prisoner, under the provisions of this chapter, shall affect or impair the right of the creditor to his debt or demand; but the same shall remain in full force against the property or estate of the debtor, in the same manner, as if such release had not been given.

ARTICLE III. GENERAL PROVISIONS AND RULES, APPLICABLE TO CERTAIN SPECIFIED CASES OF ARREST AND IMPRISONMENT.

Bond to be valid, though not taken for the exact amount.

SECT. 43. Whenever any officer, holding a debtor under arrest or imprisonment, shall be required to take from him any bond described in this chapter, and, from mistake, accident or misapprehension, shall, in fixing the penalty of such bond, exceed or fall short of the sum required by law, such bond shall, notwithstanding, be

valid, and the officer shall not be responsible to either party to a greater extent than the damage, actually sustained by him thereby. CHAP. 148.

SECT. 44. Nothing, contained in this chapter, shall impair the right of any person to bail on mesne process. Right to bail not impaired. 1835, 195, § 7.

SECT. 45. No suit for the breach of any bond, authorized to be given by this chapter, shall be sustained, unless commenced within one year after the forfeiture; except that the provisions of the twelfth and thirteenth sections of chapter, one hundred and forty six, shall be applicable to suits on such bonds. Limitation of suits on bonds. 1835, 195, § 8. 1 Fairf. 399.

SECT. 46. In all cases of disclosure, provided for in this chapter, one of the justices may be selected by the debtor, one by the creditor, his attorney or agent, if the same can conveniently be done, otherwise by the officer having such debtor in charge, or, if he be at large, by the sheriff or any deputy or coroner, who might legally serve the precept on which he was arrested, as the case may be; and such officer may also select, in case the parties, or either of them, decline so to do. In case said justices, so selected, do not agree, they may select a third, and a majority shall decide; and, if said two justices are unable to agree on a third, he may be selected by the officer, as before provided. Manner of selecting the justices to take a disclosure.

SECT. 47. Whenever a debtor, authorized or required to disclose on oath by the provisions of this chapter, shall, wilfully, disclose falsely, or withhold or suppress the truth, the creditor may commence against such debtor, whether otherwise criminally prosecuted or not, a special action on the case, particularly alleging the false oath and the fraudulent concealment of such debtor's estate or property, and, on oath before some justice of the peace, may declare his belief of the truth of the allegations in the writ and declaration, and the justice, administering the oath, shall certify the same on the writ; and thereupon the debtor shall be held to bail, or, in default thereof, committed to jail to abide the judgment in the suit. Liability of a debtor, if he disclose falsely. 1835, 195, § 11.

SECT. 48. If the creditor prevail in such suit, judgment shall be rendered against such debtor, for double the amount of the debt and charges on the former judgment; and the debtor may be arrested and committed to prison on any execution, issued on the judgment last recovered, without any privilege of release or discharge, except by payment or the consent of the creditor. Same subject. 1835, 195, § 11.

SECT. 49. Any person, who shall knowingly aid or assist any debtor or prisoner, in any fraudulent concealment or transfer of his property, to secure the same from creditors, and to prevent the seizure of the same by attachment or levy on execution, shall be answerable, in a special action on the case, to any creditor who may sue for the same, in double the amount of the property, so fraudulently concealed or transferred; not, however, exceeding double the amount of such creditor's just debt or demand. Liability of persons aiding in fraudulent concealment or transfer of property. 1835, 195, § 13.

SECT. 50. Any person, arrested or imprisoned by virtue of any warrant for the collection of any public tax, shall be entitled to the privileges of this act, and subject to the obligations of the same in all respects, as if arrested or committed on execution for debt, and for all the purposes of notice and other proceedings, relating to the discharge from arrest or imprisonment of the person taxed, the Persons arrested for taxes entitled to the privileges of this chapter. 1835, 195, § 14. 1836, 245, § 5.

CHAP. 148. assessors of the town, plantation or parish, by whom such warrant was issued, shall be regarded as the creditors.

Variation of form of the oath, in such case.
1835, 195, § 14.
1835, 245, § 5.

SECT. 51. In case of the taking of the oath, set forth in the twenty eighth section of this chapter, the same may be varied by substituting for the words, "commencement of the suit," or, "the time when the debt or cause of action, or any part thereof, on which this suit was brought was contracted by me," the following, "assessment of the tax for which I have been arrested," and for the words, "any of my creditors," the following, "any town, plantation or parish."

Change of the form of the certificate.
1835, 195, § 14.

SECT. 52. In such case the certificate of discharge shall be varied by substituting the words, "a warrant for taxes," for "execution," and, "assessors," for, "creditors."

Privileges extended to collectors and other officers arrested for taxes committed to them.
1835, 245, § 6.

SECT. 53. Whenever any constable, collector, or deputy sheriff, shall be arrested, or committed to jail, for default on account of any taxes committed to him to collect, such constable, collector or deputy sheriff, shall be subject to the provisions of this chapter, and have the privileges thereof; and, in all proceedings under the same, the assessors of the town, plantation or parish, assessing such taxes, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate, mentioned in the twenty eighth and thirty first sections.

Disabilities of persons committed for wilful trespass.
1833, 51.

SECT. 54. Whenever, in pursuance of the provisions of the one hundred and ninth section of chapter, one hundred and fifteen; in the trial of any action of trespass upon property, any court or jury, or justice of the peace, shall have determined that such trespass was committed wilfully, and the court or justice shall have made a record of the fact, and the same shall have been noted on the margin of any execution on such judgment, and, if the judgment debtor be thereupon arrested, he shall be committed to prison, and shall not be entitled to give any of the bonds, provided in this chapter for the liberation of his person; and, in case such person shall apply to take the oath described in the twenty eighth section, no notice shall be issued to the creditor, until at least thirty days after the commitment of the debtor.

Service of a citation on a corporation, creditor.

SECT. 55. Whenever, in any proceeding, under this chapter, for the relief of any debtor, the creditor shall be a corporation aggregate, the notification to be issued thereon may be served upon any individual, upon whom service of any original writ or summons may be made, pursuant to sections, forty two and forty three, of chapter, one hundred and fourteen, or upon the attorney of the corporation in the suit; provided, that it shall not be necessary to extend the time of notice beyond the terms mentioned herein.

Prison keeper may require the creditor to support the debtor. Special provision, if committed on several precepts.
1835, 195, § 15.
1840, 58.
2 Pick. 439.
3 Pick. 259.
7 Pick. 216.

SECT. 56. Whenever any person shall be committed to prison, on mesne process or on execution, the keeper of the prison, if he see cause, may require of the creditor, his agent or attorney, security for the payment of the expense of supporting such debtor, in case he shall claim relief as a pauper; and, unless within eight days after such request, security be furnished, satisfactory to the keeper, or money paid in advance from time to time, so far as necessary for the support of such debtor, the keeper may release him from his confinement: provided, that whenever any debtor

shall stand committed on more than one execution at the same time, the keeper shall be entitled to receive pay for board, only on the first execution, and such board shall be paid for, equally by all the creditors, on whose executions such debtor may be committed; and the creditor, first committing, shall have a several right of action against the other committing creditors for their proportion of such board; and, if any debtor, standing committed on several executions, shall be discharged on the first of them, the jailer shall give a new notice to the creditor on whose execution the debtor may have been next committed, of his liability to pay for the support of such debtor, in like manner as on the first execution.

SECT. 57. In case of any dispute about the price of any articles, furnished a prisoner confined for debt, the county commissioners may determine the same, not however in any case exceeding the amount per week, specified in the thirty fourth section of chapter, thirty two.

Adjustment of price of articles furnished to a prisoner. 1835, 195, § 15.

SECT. 58. Whenever notice shall be given by any jailer, under the fifty fifth section of this chapter, to the creditors, or by any debtor to his creditors, of any intended disclosures, under the provisions of this chapter, in order to be released or protected from arrest or imprisonment, and there be more than one creditor in the same suit, such notice given to any one of such creditors, being within the state, shall be deemed sufficient for all.

Citation to one of several joint creditors, to hear disclosure, sufficient.

SECT. 59. Any creditor, who may have caused his debtor to be arrested or imprisoned on execution, may discharge him from such arrest or imprisonment, by giving to the officer making the arrest, or by leaving with the keeper of the prison, a written permission for such debtor to go at large; and such discharge shall not operate to release the goods and estate of the debtor, from the debt and costs due, but the body of such debtor shall be forever exempted from arrest or imprisonment on such execution, or any future process or suit, founded upon the same judgment.

Effect of voluntary release by creditor from arrest on execution. 1822, 209, § 27. 1828, 410, § 3.

SECT. 60. If the body of any person, arrested or imprisoned on execution, shall be released in any of the modes authorized by this chapter, the officer having such debtor in custody shall, at any time on the request of the creditor after such release, indorse upon the said execution a certificate of the fact of such release, and the cause thereof; and, if the day of the return of such execution have not arrived, the same may, notwithstanding such release, be levied on the goods and estate of the debtor; and, if the return day be passed, the same may also be renewed like other executions with the exception of the authority to levy the same upon the body of the released debtor.

Officer may indorse such release on the execution, and then proceed to levy the same on property. 1828, 410, § 3.

SECT. 61. Whether such indorsement be made on the executions or not, the judgment, on which the same was issued, may be revived or continued in force with the said exception, by an action of debt, or on scire facias to be brought, as in other cases of judgment.

How judgment may be kept in force, after such release.

SECT. 62. The judge of any municipal or police court within his county shall have the same powers, and be subject to the like duties and obligations, under this chapter, as any justice of the peace and quorum in the same county.

Judges of municipal and police courts may act as justices of the peace and quorum. 1836, 245, § 10.

CHAP. 148.

ARTICLE IV. SPECIAL PROVISIONS, RELATING TO DEBTORS TO THE STATE.

Such debtor may apply to the judge of the district court. 1830, 458, § 1, 2.

SECT. 63. Any person, committed to jail in any county in this state on any execution, warrant of distress, or any other final civil process for a debt, penalty or costs due to the state, may make application in writing to the judge of the district court, having jurisdiction in said county, for relief, whether the said court shall be in session or not; and it shall be the duty of the said judge on such application to appoint a convenient time and place to inquire into the circumstances of the petitioner.

Notice of hearing to be given to the county attorney, or attorney general. 1830, 458, § 1.

SECT. 64. Previously to proceeding in the hearing of such petition, the said judge shall give notice, in such mode as he may think proper, of the pendency of such application, to the county attorney for the county in which the commitment shall have been made, or to the attorney general; and it shall be the duty of such attorney to attend the hearing in behalf of the state.

Proceedings, and power to release such debts. 1830, 458, § 1, 2.

SECT. 65. The said judge shall consider all such proper evidence, as may be offered on either side, and, if he think proper, may require the oath of the petitioner to all or any of the facts by him stated; and, if he shall be satisfied that the prisoner is unable to pay any part of the amount due on the process, on which he is committed, he may order his discharge from imprisonment, having first administered to him, if he think proper, an oath substantially in the form of the oath, prescribed by the twenty eighth section of this chapter.

Judge may discharge him, or discharge the debt, on payment or security for a part. 1830, 458, § 1.

SECT. 66. If, on such examination, it shall appear to such judge that such prisoner is able to pay only a part of the amount due on such process, the said judge shall order his release from imprisonment; and, if he think it more for the interest of the state, may order the whole debt to be discharged, upon his paying or securing such sum of money, or assigning to the state such securities or other property, at such time and in such manner, and to be deposited with such public officer, as the judge shall direct.

Jailer to comply with the decision of the judge. 1830, 458, § 1.

SECT. 67. The prison keeper having charge of such debtor, shall be thereupon authorized to release him from confinement, or to give him a full discharge from the demand, on such terms, as the judge shall have prescribed.

Adjudication to be entered on the record. 1830, 458, § 3.

SECT. 68. If such proceedings be had at any time, when the district court shall not be in session for such county, the judge shall cause his adjudication and discharge, to be entered of record, as of the last preceding term of the court in the said county.

Same powers vested in the county commissioners.

SECT. 69. The courts of county commissioners in their respective counties, at a regular session, or a majority thereof, in vacation, may exercise the same powers, and their proceedings shall have the like effect, on application made to them, as is provided in the six preceding sections, in reference to the judge of any district court.

Application by such debtor to take the poor debtor's oath, and citation to the county attorney. 1830, 458, § 4.

SECT. 70. Any person committed on execution, as mentioned in the sixty third section, who may be desirous of taking the oath as prescribed in the twenty eighth section, may make application to the jailer having him in custody, and such jailer shall apply in writing to a justice of the peace in his behalf, and the said justice

shall thereupon issue a notification, as prescribed in the twenty second section, directed to the county attorney of the county for which the commitment is made; and the said notification shall be served and returned, and proceedings thereupon may be had, in the same manner and with the like effect, as in cases where notice is served on individual creditors or their attorneys. CHAP. 148.

SECT. 71. It shall be the duty of the said county attorney, on such notice, to attend by himself, or some competent substitute, at the time and place specified in the said notification, as attorney for the state. Duty of county attorney to attend. 1830, 458, § 4.

SECT. 72. Upon such examination, the justices of the peace and of the quorum, before whom the debtor shall thus appear, may, if they see cause, administer to him an oath, substantially like that prescribed in the twenty eighth section, with proper verbal alterations to conform to the case, and may grant a similar certificate of discharge, which shall have a like effect, as in the cases before mentioned. Oaths, and certificates in such cases. 1830, 458, § 4.