

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAP. 112.

Remedy, if
execution is
wrongfully
issued.
R.S., c. 112, § 6.
5 Me., 379.

SEC. 6. Any person, injured by the suing out or service of such execution, has his remedy by writ of audita querela or otherwise, as if the execution had been sued out upon a judgment.

CHAPTER 113.

RELIEF OF POOR DEBTORS.

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24. Bond may be given on such arrest; condition and effect thereof.
25. Such instrument is a valid statute bond, if penalty does not vary more than five per cent from double the amount due on the execution.
26. Application by a debtor bonded or imprisoned, to a justice, for privilege of poor debtor's oath. Justice shall appoint time and place, and cite creditor.
27. Citation, how to be served on one of the creditors, his attorney or agent.
28. Examination before two justices of the quorum; proceedings.
29. Creditor may put questions, have them answered in writing and sworn to, and may have a copy.

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31. Certain property disclosed, which cannot be come at to be attached, may be appraised and set off to the creditor, and how.
32. Creditor may accept it within thirty days; if not, to be returned to debtor.
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34. Effect of such certificate.
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37. Preservation of creditor's lien on real estate disclosed.
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45. Costs for creditor, if debtor is not discharged.
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79. The same power is vested in the county commissioners.
80. Application by such debtor to take the poor debtor's oath; citation to the county attorney. County attorney shall attend. Oaths and certificates in such cases.

ARRESTS ON MESNE PROCESS.

No arrest upon mesne process, on contract, unless going out of the state, except in action of tort. R.S., c. 113, § 1. 66 Me., 251. 71 Me., 28, 169, 232.

- SEC. 1. No person shall be arrested upon mesne process in a suit on contract, express or implied, or on a judgment on such contract, except as provided in the following section; and the writ or process shall be varied accordingly; but in all other actions, the original writ or process may run against the body of the defendant, and he may be arrested and imprisoned thereon, or give bail as provided in chapter eighty-five.

ARRESTS AND DISCLOSURES ON LEAVING THE STATE.

Debtor about to leave the state, may be arrested, in certain cases. R.S., c. 113, § 2. 16 Me., 399. 20 Me., 80, 467. 28 Me., 48. 38 Me., 129. 52 Me., 591. 57 Me., 411. 61 Me., 280. 62 Me., 525. 63 Me., 50, 58. 65 Me., 146. 68 Me., 257. 71 Me., 406.

- SEC. 2. Any person, whether a resident of the state or not, may be arrested and held to bail, or committed to prison on mesne process on a contract express or implied, if the sum demanded amounts to ten dollars, or on a judgment on contract, if the debt originally recovered and remaining due is ten dollars or more, exclusive of interest, when he is about to depart and reside beyond the limits of the state, with property or means of his own exceeding the amount required for his immediate support, if the creditor, his agent, or attorney makes oath before a justice of the peace, to be certified by such justice on said process, that he has reason to believe and does believe that such debtor is about so to depart, reside, and take with him property or means as aforesaid, and that the demand, or principal part thereof, amounting to at least ten dollars, is due to him.

Disclosure on such arrest, how to be made. R.S., c. 113, § 3. 15 Me., 56.

- SEC. 3. A debtor arrested or imprisoned, on request to the officer or jailer who has him in custody, may be taken before two disinterested justices of the peace and quorum, to be selected as provided in section forty-two, to disclose the actual state of his affairs.

Notice to be given to the plaintiff.

- SEC. 4. Previous to the disclosure, he shall give to the creditor or one of them, if more than one, his agent, or attorney, due notice of his

intention, and of the time and place for said disclosure, that he may be present and select one of the justices and be heard thereon; such notice shall not be less than one day for every twenty miles' travel, exclusive of Sundays.

SEC. 5. The justices may adjourn from time to time, if they see cause; and if either of them is not present at the adjournment, the other may adjourn to another time; but no such adjournments shall exceed three days in the whole, exclusive of Sundays.

SEC. 6. If the debtor at the appointed time and place makes a full disclosure of the actual state of his affairs and of all his property, rights and credits, and answers all proper interrogatories in regard to the same, to the satisfaction of said justices, and they are satisfied that the disclosure is true, and do not discover anything therein inconsistent with his taking the oath prescribed in section thirty, they may administer it to him and certify the fact on the writ; and the debtor shall thereupon be discharged from arrest; and no execution issuing on the judgment in the suit, shall run against his body, but against his property only.

SEC. 7. All attachable property disclosed by the examination, or so much as the creditor designates to satisfy his demand, shall be held as attached from the time of the disclosure until thirty days after final judgment, like other attachments; the officer shall make return thereof on the writ or process, certifying the fact that the property was so disclosed; if it is real estate, he shall certify it to the register of deeds, like other attachments; and if the creditor requires it, at any time before final judgment, he shall take into his custody any part of the personal property so disclosed, sufficient to secure the demand and hold it as in other cases; and the provisions of section fourteen are also applicable to this class of disclosures.

DISCLOSURES ON MESNE PROCESS BEFORE JUDGMENT.

SEC. 8. When a person is 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, he may, at any time before final judgment, appear before the court or justice, before whom such writ or process is pending, or a disinterested commissioner or commissioners appointed by said court or justice, and submit himself to examination; and such court, justice, or commissioner shall give notice, and proceed to take his disclosure as provided in sections four, five, and six, and with like effect.

SEC. 9. On such examination, the court, justice, or commissioner, except as provided in section fourteen, may determine that the execution on the judgment recovered in the suit, shall run against the property only of the defendant, or otherwise, as justice requires, on the facts so disclosed or proved; and all attachable property so disclosed, from the time of the disclosure, shall be held attached as provided in section seven, subject to the provisions of the two following sections.

SEC. 10. If the disclosed property is real estate, the court, justice, or commissioner, shall deliver to the plaintiff a certificate thereof, stating

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R.S., c. 113, § 4.

Justices may adjourn.
R.S., c. 113, § 5.
18 Me., 144.
28 Me., 460.

Mode of making disclosure; adjudication of justices; effect of discharge.
R.S., c. 113, § 6.
14 Me., 477.

Lien on property disclosed, how to be preserved.
R.S., c. 113, § 7.

—section fourteen applies.

Defendant may, in all cases, disclose on return of writ.
R.S., c. 113, § 8.
14 Me., 477.
65 Me., 556.

—notice, how to be given.

Effect thereof; lien on property disclosed.
R.S., c. 113, § 9.

Certificate of real estate disclosed.

CHAP. 113. the names of the parties, and the amount of the claim in the writ, which shall be filed in registry of deeds. R. S., c. 113, § 10. See c. 116, § 21.

How to preserve lien on personal estate. R. S., c. 113, § 11. 20 Me., 221.

Disclosure on mesne process by consent of parties. R. S., c. 113, § 12.

When execution issues against body. R. S., c. 113, § 13.

Certain property which cannot be come at to be attached, must be delivered up, or assigned by the debtor. R. S., c. 113, § 14.

Debtor arrested, may give bond to disclose within a certain time after judgment. R. S., c. 113, § 15. 4 Me., 13. 15 Me., 57. 22 Me., 485. 36 Me., 242. 40 Me., 133.

the plaintiff shall file with the register of deeds for the county or district where the estate lies, within five days after its date; and the register shall enter and file it as returns of officers making attachments on real estate, and shall be entitled to the same fees from the plaintiff.

SEC. 11. If personal estate liable to attachment is disclosed, and the plaintiff states that he is apprehensive that it may be removed or concealed, so that it cannot be taken on execution, the court in term time, or any justice thereof in vacation, or the trial justice before whom the suit is pending, may issue an order signed and sealed, directing any officer authorized to serve processes in the suit, to take such property into his custody, and hold it as if originally attached; and he shall execute the order accordingly.

SEC. 12. At any time before or after the return day of such writ or process, the parties to the suit, by a written agreement, may appear before a justice of the peace and quorum in the county where the suit is pending; and the defendant shall make the disclosures, and submit to the examinations and proceedings required in section eight, and the record thereof shall, before final judgment, be returned to the court or justice before which the suit is pending, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose.

SEC. 13. If no such disclosure and examination are made before final judgment, or if the result thereof is adverse to the defendant's right to exemption from arrest, the execution shall run against his body.

SEC. 14. If, on any disclosure and examination before judgment, it appears that the debtor possesses, has in his power, or, with intent to protect the same from his creditors, has assigned, secreted, or otherwise disposed of any bank bills, notes, accounts, bonds, other contracts, or property not exempt from attachment, but which cannot be reached to be attached from its nature or otherwise, the debtor, if under arrest, shall not be released; nor shall he be exempted from arrest on execution on judgment in such suit, unless he assigns and delivers to such person as the examining magistrate, court, or commissioner appoints, all such property, or so much of it as they adjudge sufficient security for the creditor, to be held by him, under the direction of the court or justice before which the suit is pending, in trust for the parties, that it may be applied and appropriated as provided in sections thirty-one and thirty-two.

BONDS ON MESNE PROCESS AND DISCLOSURES AFTER JUDGMENT.

SEC. 15. When a person is arrested or imprisoned on mesne process in a civil action, he may be released, by giving bond to the plaintiff in double the sum for which he is arrested or imprisoned, with surety or sureties, approved by him, or by two or three justices of the peace and quorum of the county where the arrest or imprisonment is made, selected and proceeding as prescribed in section forty-two, conditioned that within fifteen days after rendition of judgment, or after the adjournment of the court in which it is rendered, he will notify the creditor, his agent, or attorney,

to attend at a certain place in the county, at a time not more than thirty, nor less than fifteen days after such notice, for the purpose of disclosure and examination; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath; and abide the order of the justices thereon; and if the officer serving the writ takes such bond, he shall return it to the court or justice where the suit is pending.

SEC. 16. After judgment, he may apply in writing to a justice of the peace of the county where he was arrested, who shall issue a citation to the creditor, his agent or attorney; and an examination and disclosure may be had before two justices of the peace and of the quorum, within the time specified in the bond; and the same proceedings shall be had, and the same results shall follow, as in disclosures on bonds given on execution, except as provided in the following section. (a)

SEC. 17. If the debtor, on such examination, does not, in the opinion of the justices, entitle himself, to the benefit of the oath hereinafter provided, and it appears that at that time he has real or personal estate, liable to attachment, or any such property as is described in section thirty-one, they shall permit him to go at large on his bond, during the thirty days that the creditor's lien exists on the property disclosed; and during that time, the creditor may elect to arrest him on execution, or to enforce his lien on the property.

SEC. 18. If the creditor elects so to arrest him, and the officer having the execution, returns that he is not found, his bond shall be forfeited, and on judgment thereon, execution shall issue for the amount of judgment in the original suit, and interest. If the debtor is not arrested within that time, and does not avoid arrest, no execution, issued or founded on such judgment, shall run against his body, but against his property only.

ARRESTS AND BONDS ON EXECUTION, AND DISCLOSURES THEREON.

SEC. 19. No person shall be arrested on an execution issued on a judgment founded on a contract, express or implied, where the debt is less than ten dollars, exclusive of costs; or on a 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.

SEC. 20. In all other cases, except where express provision is by law made to the contrary, an execution 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 it, as hereinafter stated.

SEC. 21. When so arrested, he may, without giving bond, disclose as provided in section twenty-six and the following sections, by serving the citation provided for in said section twenty-six upon the creditor or his attorney, allowing at least twenty-four hours for every twenty miles' travel from the residence of such creditor or attorney to the place of

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52 Me., 258.
53 Me., 63.
56 Me., 182,
544,
57 Me., 364.
71 Me., 232.
72 Me., 261.

Proceedings,
if debtor has
given bond
on mesne
process.
R. S., c. 113,
§ 16.

Debtor may
go at large for
thirty days,
during lien
on property
disclosed.
R. S., c. 113,
§ 17.
20 Me., 468.

Effect of
creditor's
election, to
arrest on
execution, or
otherwise.
R. S., c. 113,
§ 18.

No arrest on
execution
founded on
contract, if
debt is less
than ten
dollars.
R. S., c. 113,
§ 19.
63 Me., 58.

In other
cases, execu-
tion shall run
against body.
R. S., c. 113,
§ 20.
63 Me., 61.
71 Me., 407.

Debtor may
disclose
without
bond; when
and how.
1878, c. 59, § 1.
66 Me., 124.

(a) 15 Me., 338; 21 Me., 442; 22 Me., 401; 48 Me., 103; 51 Me., 109.

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—officer's fees must first be paid.

Disclosure in jail: fees to be first paid.
R. S., c. 113, § 22.
66 Me., 124.

Debtor, to be remanded, or oath to be allowed, and certificate given; its effect.
R. S., c. 113, § 23.

Bond may be given on such arrest; condition and effect thereof.
R. S., c. 113, § 24.

When valid.
R. S., c. 113, § 25.
See § 48.

Application by a debtor under bond or imprisoned, to disclose.
1874, c. 198, § 1.

—justice shall cite the creditor.

—form of citation.

disclosure. The debtor shall pay the officer for serving the notice and keeping him from the arrest until the disclosure, before he can be discharged.

SEC. 22. A debtor committed on execution may disclose thereon at the jail, in the manner and on the notice aforesaid, which may be served by the jailer or other officer; and besides the other fees, he shall pay the jailer's fees before he can be discharged.

SEC. 23. If, in either case, the debtor is not permitted to take the oath, he shall be remanded; otherwise, the justices shall administer the oath prescribed in section thirty, and give him the certificate provided in section thirty-three; and the officer shall make return thereof on the execution; and no subsequent execution shall authorize his arrest.

SEC. 24. When a debtor is arrested or imprisoned on execution, he may be released by giving bond to the creditor, in double the sum due thereon, with surety or sureties approved in writing by the creditor, or by two or three justices of the peace and quorum, in the county where he is arrested or imprisoned, selected and proceeding as provided in section forty-two, conditioned that he will, within six months thereafter, cite the creditor before two justices of the peace and of the quorum; submit himself to examination, and take the oath prescribed in section thirty; pay the debt, interest, costs, and fees, arising in said execution; or deliver himself into the custody of the keeper of the jail to which he is liable to be committed under said execution. (a)

SEC. 25. Such bond is a valid statute bond although the penalty varies not exceeding five per cent. from the sum aforesaid; and judgment in a suit thereon shall be rendered according to section forty.

SEC. 26. A debtor who has given such bond may apply in writing within the time limited in his bond to a justice of the peace in the county where he was arrested, claiming the benefit of the oath authorized in section thirty; or if he is committed or has delivered himself into the custody of the jailer, he may apply to a justice of the same county, or, at his request, the jailer shall apply in his behalf, and in either case the justice shall appoint a time and place for his examination and issue a citation to the creditor, under his hand and seal, which citation may be in substance as follows: (b)

“STATE OF MAINE.

—, ss. To ——. You are hereby notified of the desire of the debtor as expressed in the foregoing application, and that I have appointed —, the — day of —, A. D., 18—, at — o'clock in the — noon, and the — of — in —, in said county, as the time and place for said examination. And you are hereby notified to be present and select one of the justices, and be heard in said examination.

(a) 5 Me., 355; 6 Me., 232; 10 Me., 125; 15 Me., 131; 20 Me., 468; 21 Me., 388, 432; 24 Me., 124, 167, 212, 451, 547, 552; 29 Me., 482; 36 Me., 421; 44 Me., 24, 98; 48 Me., 40, 297; 49 Me., 18, 99; 57 Me., 591; 60 Me., 268; 61 Me., 35; 63 Me., 166; 65 Me., 220; 66 Me., 483; 68 Me., 77, 376, 483; 71 Me., 405, 578.

(b) 10 Me., 335; 15 Me., 35, 338; 17 Me., 97, 400; 18 Me., 121; 32 Me., 28, 452; 35 Me., 159; 48 Me., 81; 51 Me., 109; 71 Me., 188; 73 Me., 558.

Given under my hand and seal at —, in said county, the — day of —, A. D., 18—.

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— —, Justice of the Peace.”

SEC. 27. The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the suit, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties, by reading it to him, or leaving an attested copy of it at his place of last and usual abode, or by giving it to him in hand fifteen days at least before the time appointed for the examination, if the creditor is alive; otherwise it shall be so served on his executor or administrator, if found in the state, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution.

Citation how to be served on one of the creditors, his attorney or agent. R. S., c. 113, § 27. 22 Me., 401. 48 Me., 102. 51 Me., 109. 61 Me., 72. 68 Me., 201. 71 Me., 188. 74 Me., 329.

SEC. 28. The examination shall be before two disinterested justices of the peace and quorum for the county, who may adjourn as provided in section five, and shall examine the citation and return, and if found correct, shall examine the debtor on oath, concerning his estate and effects, their disposal, and his ability to pay the debt for which he is committed. No citation shall be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and case can be rightly understood. Such errors and defects may be amended on motion of either party. (a)

Examination shall be before two justices. 1878, c. 59, § 2.

—remedy for errors and defects in citation.

SEC. 29. The creditor may propose to the debtor any interrogatories pertinent to the inquiry, and if he requires it, they shall be answered in writing, and the answers signed and sworn to by the debtor; and the creditor may have a copy certified by the justices, on paying therefor twelve cents a page. (b)

Creditor may put questions and have sworn answers in writing, and a copy. R. S., c. 113, § 29.

SEC. 30. If, on such examination and hearing, the justices are satisfied that the debtor's disclosure is true, and they do not discover anything therein inconsistent with his taking the oath, they may administer it to him as follows:—

When justices may administer oath. R. S., c. 113, § 30.

“I — —, solemnly swear” (or “affirm”) “that I have no real or personal estate, or interest in any, except what is exempted by statute from attachment and execution, and what I have now disclosed; and that since any part of this debt or cause of action accrued, I have not directly or indirectly sold, conveyed, or disposed of, or intrusted to any person, any of my real or personal property, to secure it, or to receive any benefit from it to myself or others, with an intent to defraud any of my creditors. So help me God;” (or, “this I do under the pains and penalties of perjury.”)

—form of oath. 21 Me., 55, 110. 24 Me., 512. 25 Me., 426. 26 Me., 201. 27 Me., 426. 39 Me., 356. 57 Me., 413. 61 Me., 36. 66 Me., 483. 67 Me., 44. 68 Me., 376.

SEC. 31. When, from such disclosure, it appears that the debtor possesses or has under his control bank bills, notes, accounts, bonds, or other contracts, or other property, not exempted by statute from attachment, which cannot be come at to be attached, and the creditor and debtor

Attachable property disclosed, which cannot be come at, how appraised and set off.

(a) 12 Me., 416; 16 Me., 387; 18 Me., 144; 23 Me., 150; 24 Me., 167, 199; 25 Me., 425; 39 Me., 269; 50 Me., 335; 54 Me., 388; 56 Me., 545; 68 Me., 376; 72 Me., 486; 73 Me., 44; 74 Me., 104, 329.

(b) 73 Me., 273.

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R. S., c. 113,
 § 31.
 21 Me., 193.
 28 Me., 313.
 29 Me., 369.
 32 Me., 459.
 36 Me., 495,
 592.
 38 Me., 215.
 47 Me., 182.
 49 Me., 101,
 355.
 57 Me., 413.
 60 Me., 269.
 61 Me., 36.

Creditor may accept it within thirty days; if not, it shall be returned to the debtor.
 R. S., c. 113,
 § 32.

Form of justices' certificate of discharge.
 R. S., c. 113,
 § 33.

11 Me., 240.
 18 Me., 342.
 19 Me., 453.
 20 Me., 436.
 23 Me., 492.
 24 Me., 199.
 26 Me., 447.
 27 Me., 154,
 178.
 30 Me., 349.
 33 Me., 501.
 34 Me., 231.
 39 Me., 505.
 51 Me., 194.
 66 Me., 483.
 74 Me., 329.

Effect of such certificate.
 R. S., c. 113,
 § 34.
 20 Me., 75.
 24 Me., 452.

Voluntary release from arrest, by creditor.
 R. S., c. 113,
 § 35.

cannot agree to apply the same towards the debt, the justices hearing the disclosure shall appraise and set off enough of such property to satisfy the debt, cost, and charges; and the creditor or his attorney, if present, may select the property to be appraised. If the creditor accepts it, the property may be assigned and delivered by the debtor to him, and applied toward the satisfaction of his demand. If any particular article of such property, necessary or convenient to be applied in satisfaction of the execution, exceeds the amount due thereon, and is not divisible in its nature, the creditor may take it, by paying the overplus to the debtor, or securing it to the satisfaction of the justices.

SEC. 32. If the creditor is absent, or does not so accept it, the debtor shall deposit with the justices a written assignment to the creditor of all the property thus appraised and set off; and they shall make a record of such proceedings, and cause such property to be safely kept and secured for thirty days thereafter, to be delivered to the creditor with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor.

SEC. 33. After the oath is administered and the property disclosed is secured, the justices shall make out and deliver to the debtor a certificate under their hands and seals in the form following:

"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.)

[L. s.] "We, the subscribers, two disinterested justices of the [L. s.] peace and quorum in 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 trial justice, the amount of the judgment, and date of the judgment and execution,) "and committed to the jail at — aforesaid," (or, "enlarged on giving bond to the creditor," as the case may be,) "has caused — —, the creditor, to be notified, according to law, of his desire to take the benefit of the one hundred and thirteenth chapter of the revised statutes; that in our opinion he is clearly entitled to the benefit of the oath prescribed in section thirty thereof; and that we have, after due caution, administered it to him.

Witness our hands and seals, this — day of —, A. D., 18—.

— —, chosen by the —.

— —, chosen by the —."

SEC. 34. The debtor, on delivering the certificate to the prison keeper, or filing it in his office, if imprisoned, shall be set at liberty, so far as relates to such execution; and his body forever after shall be free from arrest thereon, and on every subsequent execution issued on the judgment, or on any other judgment founded thereon, except as provided in sections thirty-eight and sixty-seven.

SEC. 35. A creditor may discharge his debtor from arrest, or imprisonment on execution, by giving to the officer or jailer having him in custody a written permission to go at large; with the same effect as a discharge or disclosure.

SEC. 36. A certificate of a discharge on execution in any of the modes hereby authorized, and of the cause of it, shall, at any time, at the creditor's request, be indorsed on the execution by the officer who had such debtor in custody; and if it is before the return day of the execution, it may still be levied on his property; if after, it may be renewed like other executions, against his property only; and the judgment may be revived or kept in force, with said execution, as judgments in other cases.

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Officer may indorse release on the execution, and proceed to levy on property.
R. S., c. 113, § 36.

SEC. 37. If an execution debtor discloses real estate liable to be seized on execution, the justices shall give the creditor a certificate thereof, stating the names of the parties, and the amount of the execution; and the creditor shall have a lien thereon for thirty days thereafter, if he files the certificate with the register of deeds of the county or district where the real estate lies within five days from the date of the disclosure; and the register shall enter and file it like officers' returns of attachments.

Preservation of creditor's lien on real estate disclosed.
R. S., c. 113, § 37.
31 Me., 57.

SEC. 38. If he discloses personal estate liable to be seized on execution, the creditor shall have a lien on it for thirty days, or so much of it as the justices, in their record, judge necessary; and if the debtor transfers, conceals, or otherwise disposes of it within said time or suffers it to be done, or refuses to surrender it, on demand, to any proper officer having an execution on the same judgment, the debtor shall have no benefit from the certificate described in section thirty-three; and the creditor may recover, in an action on the case against him, or any person fraudulently aiding in such transfer, concealment, or disposal, double the amount due on said execution; and any execution on a judgment in such action shall run against the bodies of the debtor and other persons so aiding; but the payment thereof is a satisfaction of the original debt.

Lien on personal estate disclosed.
R. S., c. 113, § 38.
20 Me., 468.

—effect, if debtor or other person conceals it.

SEC. 39. Every officer, taking a bond on an execution, shall return it with the execution for the benefit of the creditor, who may receive it on filing a copy with the clerk of court, judge or justice to whom it is returned. He may also receive from the jailer any such bond in his hands on the like terms.

Bond taken on execution to be returned with it, and creditor to have copy.
R. S., c. 113, § 39.

SEC. 40. If the debtor fails to fulfil the condition of such bond, judgment in a suit thereon shall be rendered for the amount of the execution, costs, and fees of service, with interest thereon, against all the obligors; and a special judgment against the principal, for a sum equal to the interest on said amount, at the rate of twenty per cent. a year, after breach of the bond. (a)

Amount recoverable thereon, if forfeited.
R. S., c. 113, § 40.

ARRESTS FOR TAXES.

SEC. 41. Any person arrested or imprisoned on a warrant for the collection of a public tax, and every constable, collector, or deputy sheriff, arrested or imprisoned for default in collecting taxes committed

Persons arrested for taxes, and officers for not collecting

(a) 15 Me., 340; 16 Me., 356; 18 Me., 122; 20 Me., 376; 22 Me., 162; 23 Me., 27, 103, 246; 24 Me., 124; 27 Me., 104; 39 Me., 435; 44 Me., 78; 63 Me., 166; 68 Me., 484; 72 Me., 262; 74 Me., 330.

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taxes, to be treated as poor debtors. 1878, c. 79. 19 Me., 326. 39 Me., 346. 73 Me., 283. —assessors of towns deemed creditors.

to him, has the privileges, and is subject to the obligations of this chapter, as if arrested or imprisoned on execution for debt; and for all purposes relating thereto, the assessors of the town for the time being where the tax was assessed, shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate of discharge; but nothing herein exempts any property from distress for taxes, except those implements, tools, and articles of furniture which are exempt from attachment for debt.

GENERAL PROVISIONS.

Manner of selecting the justices to take the disclosure. R. S., c. 113, § 42.

SEC. 42. One of the justices to hear a disclosure, may be chosen by the debtor, and the other by the creditor, his agent, or attorney; and if at the time appointed, he refuses, or unreasonably neglects to appoint, or to procure his attendance, the other may be chosen by an officer who has the debtor in charge, or if the debtor is not in charge, the officer who might serve the precept on which he was arrested; and in such case, the justice chosen by the debtor, if he deems it necessary, may adjourn once, not exceeding twenty-four hours, Sundays excluded, to enable the debtor to procure the attendance of another justice. If the justices do not agree, they may choose a third; if they cannot agree on a third, such officer may choose him; and a majority may decide. (a)

Municipal judges. R. S., c. 113, § 43.

SEC. 43. The judge of a municipal or police court has the same powers, duties and obligations under this chapter, as a justice of the peace and quorum in his county.

Criminal not precluded from oath. R. S., c. 113, § 44.

SEC. 44. No conviction, or other disqualification to be a witness, precludes a debtor from relief under this chapter.

Costs for creditor, if debtor is not discharged. R. S., c. 113, § 45. 73 Me., 498.

SEC. 45. If a debtor fails in an application for a discharge from arrest or imprisonment, the creditor shall recover his costs as in actions before a trial justice, and the justices shall issue execution therefor; but no such failure shall prevent his obtaining a discharge at any future examination, except as provided in sections thirty-eight and sixty-seven.

Debtor, twice refused discharge, may apply to a justice of the supreme court for a commissioner before whom to disclose again: notice by, and proceedings before commissioner. R. S., c. 113, § 46. 48 Me., 74.

SEC. 46. A debtor who has been twice refused a discharge, shall not again disclose before such justices; but may apply to a justice of the supreme judicial court, who in term time or vacation, after notice to the creditor or his attorney, and a hearing of the parties, may appoint a commissioner to take his examination and disclosure; and shall then fix his compensation, which shall be paid by the debtor, before commencing his disclosure. The commissioner shall give to the creditor or his attorney, seven days' notice of the time and place appointed by him for such hearing; and all proceedings relating to such disclosure, oath, discharge and disposal of the property disclosed shall be the same as in disclosures before such justices, and shall have like effect.

Other evidence or depositions.

SEC. 47. In disclosures on mesne process or execution, after the examination of the debtor, other competent evidence may be introduced,

(a) 21 Me., 209; 23 Me., 27, 493; 24 Me., 200; 26 Me., 104; 27 Me., 468, 555; 28 Me., 460; 29 Me., 107; 30 Me., 102, 258; 32 Me., 336; 33 Me., 383; 39 Me., 506; 47 Me., 30, 149; 49 Me., 436; 50 Me., 335; 54 Me., 205, 388; 56 Me., 183; 60 Me., 268; 61 Me., 37; 65 Me., 220; 71 Me., 578; 74 Me., 329.

and the debtor may then be further examined by either party. Depositions may be used in such disclosure; and in any subsequent disclosure or proceeding on that or another arrest or imprisonment for the same cause of action, the same depositions may be used.

SEC. 48. If by mistake or accident, the penalty of a bond taken by an officer under this chapter, varies from the sum required by law, it is still valid; and the officer is not responsible to either party beyond the actual damage. (a)

SEC. 49. No suit, on any bond herein authorized, shall be sustained unless commenced within one year after the forfeiture; except that the provisions of sections ninety-one and ninety-two of chapter eighty-one are applicable to such suits.

SEC. 50. In no case under this chapter, shall a creditor be cited or notified to attend a disclosure upon any island not connected with the main land by a bridge, unless at the time of said disclosure, the debtor resides upon such island, and was arrested in the county where the same is situated; and disclosures made in violation of this section are void.

DISCLOSURE COMMISSIONERS.

SEC. 51. The supreme judicial court in any county, shall, from time to time appoint such number of commissioners, and in such localities in the county, as it determines to be necessary for the purposes of the fifteen following sections, which commissioners shall be sworn and hold office during the pleasure of the court.

SEC. 52. The owner of a judgment remaining unsatisfied in any part may have a disclosure of the judgment debtor's business affairs at any time, by proceeding as hereinafter mentioned.

SEC. 53. Such owner shall make application in writing to a commissioner of the county in which the judgment debtor resides, stating the amount of said judgment, the court and term at which it was rendered, the names of the original parties, the title of the petitioner, and the amount remaining due on the judgment, and praying for a subpoena to issue to the debtor to appear and make disclosure.

SEC. 54. The commissioner, upon such application, shall issue under his hand and seal a subpoena to the debtor, commanding him to appear before said commissioner within said county at a time and place named in the subpoena, to make full and true disclosure on oath of all his business and property affairs. The application shall be annexed to the subpoena.

SEC. 55. The subpoena may be served by any officer qualified to serve civil process in said county, as other subpoenas are served. The debtor shall have twenty-four hours' notice for every twenty miles' travel from his home or place of abode at the time of service, to the place of the disclosure.

SEC. 56. At the time and place named in the subpoena, the debtor shall make on oath, before said commissioner, a full and true disclosure

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—may be used.
R. S., c. 113, § 47.

Bond, when valid.
R. S., c. 113, § 48.
See § 25.

Limitation of suits on bonds.
R. S., c. 113, § 49.
10 Me., 402.

Creditors shall not be cited to hear disclosures on islands, except in certain cases.
1875, c. 22.

Supreme court shall appoint disclosure commissioners.
1878, c. 67, § 1.
71 Me., 76.

Judgment creditor may have a disclosure.
1878, c. 67, § 2.

Application to be made in writing to a commissioner.
1878, c. 67, § 3.
—statement.
—prayer.

Commissioner shall issue subpoena to debtor, to appear and disclose.
1878, c. 67, § 4.

Subpoena, by whom and how served.
1878, c. 67, § 5.

—notice.

Debtor shall make disclosure on oath.

(a) 23 Me., 103; 24 Me., 547; 31 Me., 351; 49 Me., 99, 439, 453; 68 Me., 376.

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1878, c. 67, § 6.

—may be examined by petitioner.

Commissioner may require of debtor, delivery of coin, currency, and other unexempted property.
1878, c. 67, § 7.

—remedies for disagreement upon the value of the property.

Petitioner shall have lien on real estate or personal property disclosed, by filing certificate.
1878, c. 67, § 8.

Penalty for debtor's disposing of property during continuance of lien.
1878, c. 67, § 9.

Commissioner shall issue subpoena to other persons supposed to hold property of debtor.
1879, c. 91, § 1.

—testimony may be reduced to writing, and signed.

—creditor has lien for thirty days upon property or credits held by such person.

of all matters touching the condition of his property, means and resources, transfers, conveyances and gifts by him made or suffered, claims against him, his accounts with others, and the disposal of his property and earnings. He may be examined by the petitioner upon all such matters, and shall produce all books and papers pertaining thereto. The disclosure shall be reduced to writing if the petitioner requires, and be signed by the debtor.

SEC. 57. If it satisfactorily appears to said commissioner from said disclosure, that the debtor has in his possession or under his control coin, or United States or national bank note currency, or personal property, that cannot be reached on execution and is not exempt therefrom, he may require said debtor to deliver to said petitioner enough of said coin or currency at its par value, or of said other property at its agreed value, to satisfy the amount due on said judgment with the costs of the disclosure proceedings. If the petitioner and debtor cannot agree upon the value of such property, the same shall be delivered by the debtor to the officer holding the execution, to be sold thereon. If such property consists of choses in action, and the parties cannot agree upon their value, they shall be assigned by the debtor to the petitioner, if he gives the debtor a bond with sufficient surety, accepted by said commissioner, to account for and pay over to said debtor the surplus of the proceeds of such choses in action, after satisfying said judgment and costs.

SEC. 58. The petitioner shall have a lien on real estate disclosed, by filing within five days after said disclosure is completed, in the registry of deeds of the district where such real estate is situated, a certificate stating the names of the parties, the amount due on the judgment, and the fact of the disclosure. Such lien shall continue ten days from the filing aforesaid. He shall have a similar lien on personal property disclosed, by filing a similar certificate in the office of the clerk of the town in which such debtor resides.

SEC. 59. If during the continuance of said lien said debtor sells, gives away, transfers, eloids, or conceals any of such property, he shall be fined not exceeding five hundred dollars or imprisoned less than one year. Any person aiding the debtor in such sale, gift, transfer, eloidment, or concealment shall be similarly punished.

SEC. 60. If said commissioner finds reasonable cause to believe that any other person holds property or credits of the debtor in trust for him, or in fraud of his creditors, or if the petitioner makes oath that he believes that such other person so holds property of the debtor, the commissioner shall issue a similar subpoena to such person to appear and testify in relation thereto, the same to be served as subpoenas in civil suits. The testimony of such witness may be reduced to writing, and signed by him, and if it satisfactorily appears to the commissioner, from all the evidence in the case, that such person so holds property or credits of the debtor, he shall so certify upon the execution; and the creditor shall have a lien upon said property or credits for thirty days succeeding such disclosure, to be enforced by bill in equity or trustee process, and if upon such bill in equity or trustee process, the court

finds such property or credits to be so held as aforesaid, it may order the same, or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the creditor; and if the parties cannot agree upon the value of such property or credits, they shall be assigned to the creditor, if he gives such trustee a bond with sufficient surety, accepted by the court, to account for and pay over to said trustee the surplus of the proceeds of such property or credits, after satisfying said judgment and costs.

SEC. 61. If the debtor, or any other person duly served with subpoena as above provided, refuses or neglects to appear, the commissioner shall issue a *capias* to bring said debtor or other person before him, and may impose a fine not exceeding ten dollars and costs of *capias*, and service thereof, for such neglect; and in default of payment may commit him to jail until paid.

SEC. 62. If the debtor, or other person duly served with subpoena, refuses to testify in obedience thereto, or refuses to answer any proper question, or if the debtor refuses to make full disclosure upon all matters named in section fifty-six, or if said debtor refuses to comply with any proper order of the commissioner, or to perform the duty imposed upon him by section fifty-seven, he shall be adjudged to be in contempt, and shall be committed to jail until he purges himself thereof by compliance, or is otherwise discharged by due process of law. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.

SEC. 63. The commissioner, for cause shown by either party, may adjourn the proceedings before him from time to time, not exceeding five days.

SEC. 64. The commissioner is entitled to fifty cents for subpoenas to the debtor, twenty-five cents for each extra subpoena, twenty-five cents for *capias*, fifty cents for warrant of commitment, and three dollars for each day in hearing the disclosure and other testimony. The fees of officers are the same as for service of other process of similar nature. The petitioner may, if the commissioner authorizes it, procure an officer to be in attendance during the proceedings, and his fees for such attendance shall be seventy-five cents a day. These fees shall be paid by the petitioner, and may be added to the costs on the judgment and execution. They shall be taxed by the justice and certified in detail on the back of the execution.

SEC. 65. Nothing herein contained affects any other remedy for the enforcement of judgments and executions; but a debtor making a disclosure before a commissioner shall not be arrested on any execution upon said judgment, nor shall a debtor who has disclosed upon arrest on any execution be required to disclose on the same judgment, or on any judgment based thereon, before a commissioner. The commissioner shall make on the execution a certificate of the fact of the disclosure.

SEC. 66. In a disclosure before a commissioner, after the examination of the debtor, other competent evidence may be introduced by either party, and the debtor may then be further examined by either party.

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—property or credits shall be assigned to creditor, if parties do not agree.

—creditor shall give bond.

Commissioner may compel debtor to appear. 1878, c. 67, § 11.

Penalty for refusal to testify or to make full disclosure. 1878, c. 67, § 12.

—how he may purge himself of contempt.

Adjournments from day to day. 1878, c. 67, § 13.

Fees of commissioner. 1878, c. 67, § 14.

—of officers.

—how to be paid and taxed.

Former remedies for enforcement of judgments and executions, are not affected. 1878, c. 67, § 15. —certificate of disclosure.

Other evidence may be introduced. 1879, c. 91, § 2.

CHAP. 113. Depositions may be used in such disclosures, and the commissioner may, at the request of either party, issue subpoenas to witnesses, who are entitled to the same fees as witnesses before a trial justice, which shall be taxed by the commissioner and certified in detail on the back of the execution and shall be paid by the debtor.

—depositions may be used, and commissioner may issue subpoenas.

FALSE DISCLOSURES AND AIDING IN FRAUDULENT CONVEYANCES.

Liability of a debtor, if he discloses falsely.
R. S., c. 113, § 50.
41 Me., 91.
57 Me., 414.
71 Me., 77.

SEC. 67. When a debtor, herein authorized or required to disclose on oath, wilfully discloses falsely, or withholds, or suppresses the truth, the creditor of record or in interest may bring a special action on the case against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property; and, on oath, before a justice of the peace, he may declare his belief of the truth of the allegations in the writ; such justice shall certify the oath on the writ; and thereupon the debtor shall be held to bail, or in default thereof, be committed to jail to abide the judgment in the suit; and if the creditor prevails in the suit, judgment shall be rendered against the 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 the privilege of release or discharge, except by payment or consent of the creditor.

Persons aiding in fraudulent concealment or transfer, are liable to double damages.
R. S., c. 113, § 51.

SEC. 68. Whoever knowingly aids or assists a debtor or prisoner in a fraudulent transfer or concealment of his property to secure it from creditors, and to prevent its attachment or seizure on execution, is liable to any creditor suing therefor in an action on the case, in double the amount of property so fraudulently transferred or concealed, not exceeding double the amount of such creditor's demand. (a)

DAMAGES ON BONDS.

In action on bond, if debtor has taken oath, only actual damages can be recovered.
R. S., c. 113, § 52.

SEC. 69. In actions on any bond given by a debtor to obtain his release from arrest on mesne process, execution, or warrant of distress for taxes, if it appears that, prior to the breach of any of its conditions, the principal had legally notified the creditor, or the assessors who issued such warrant, and had been allowed by two justices of the peace and of the quorum of the county where the arrest was made, having jurisdiction and legally competent to act in the matter, to take, and had taken the oath prescribed in section thirty, the damages shall be assessed by the jury, at the request of either party; otherwise, by the court. The amount assessed shall be the real and actual damage, and any legal evidence on that point may be introduced by either party. In any such action, evidence may be received to show that no legal service of the citation was made on the creditor or assessors, although it may contradict the record and certificate of the magistrates who administered the oath. (b)

(a) 25 Me., 254; 57 Me., 412, 414, 418; 59 Me., 240; 60 Me., 228; 67 Me., 369; 68 Me., 78; 71 Me., 179, 216; 74 Me., 349.

(b) 15 Me., 35; 27 Me., 426; 28 Me., 50, 324; 30 Me., 349, 457; 32 Me., 459; 33 Me., 353, 389, 391, 501; 35 Me., 107; 36 Me., 243; 42 Me., 345; 44 Me., 55, 98; 47 Me., 33, 151, 182; 48 Me., 81; 49 Me., 99, 102, 436, 453; 51 Me., 109; 52 Me., 258; 56 Me., 183, 517; 61 Me., 33, 35, 37; 66 Me., 484; 68 Me., 201; 74 Me., 330.

SEC. 70. If the whole amount due on the execution or warrant of distress is recovered in such action, the new judgment shall be a discharge of said execution or warrant of distress; if only a part is recovered it shall be a discharge of such part. If the penalty in the bond in such action is more than twenty dollars, the plaintiff shall recover full costs, although the amount of damages recovered is less than twenty dollars. If the verdict or judgment is that the creditor has sustained no damage, neither party recovers costs.

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The new judgment on such bond operates as a discharge of the old judgment, so far as it goes. 1874, c. 220. 25 Me., 113. 34 Me., 24. —costs.

WILFUL TRESPASS.

SEC. 71. When, in the trial of an action of trespass on property, the court, jury, or magistrate, determines that such trespass was committed wilfully, and the fact is recorded, and noted on the margin of the execution on such judgment, and the debtor is thereon arrested and committed to prison, he shall not be entitled to give any bond for his liberation; and if he applies to take the oath described in section thirty, no notice shall be issued to the creditor until at least thirty days after his commitment.

Disability of persons committed for wilful trespass. R. S., c. 113, § 54.

SUPPORT OF DEBTORS IN JAIL.

SEC. 72. When a person is committed to jail on mesne process or execution or delivers himself into the custody of the jailer to save the condition of a bond given on execution, and makes a written complaint, by him signed and sworn to, stating that he is unable to support himself in jail, and has not sufficient property to furnish security for his support, the jailer may require of any one of the creditors, their agent or attorney, security for his support; and unless it is satisfactorily furnished within eight days after the request, or money is paid in advance therefor from time to time, he may release him; and when a debtor is committed to prison on mesne process or execution, the creditor committing said debtor shall advance to the jailer pay for one week's board of said debtor; but when a debtor is committed on more than one execution at the same time, the jailer is entitled to pay for board only on the first execution, to be paid equally by all the creditors on whose executions he is committed; and the first creditor may have an action against the other committing creditors for their proportion thereof; and if such debtor is discharged on the first execution, the jailer shall notify the next committing creditor of his liability to pay for his support, as on the first execution.

Prison keeper may require creditor to support debtor, and how and when. R. S., c. 113, § 55. 29 Me., 557. 36 Me., 403. 63 Me., 258. 66 Me., 125. 71 Me., 407.

—creditor shall advance pay for one week's board of debtor committed to prison. R. S., c. 139. 1876, c. 113, § 55. 66 Me., 125.

SEC. 73. In case of dispute about the price of such support, the county commissioners may determine it, not exceeding two dollars and twenty-five cents a week.

Adjustment of price of support. R. S., c. 113, § 56.

PROVISIONS RELATING TO DEBTORS TO THE STATE.

SEC. 74. Any person committed to jail on execution, warrant of distress, or other final civil process for debt, penalty, or costs, due to the State, may make application in writing to a justice of the supreme judicial court for relief, whether the court is in session in the county or not;

State debtor may apply to a justice of the supreme court. R. S., c. 113, § 57.

CHAP. 113. who shall appoint a convenient time and place to inquire into the circumstances of the petitioner; and shall give such notice thereof as he thinks proper to the attorney general, or county attorney for the county where the commitment is made, to attend the hearing in behalf of the State.

—notice to attorney general, or county attorney.

Proceedings, and power to release debtor.
R. S., c. 113, § 58.

SEC. 75. Such justice shall consider all proper evidence offered on either side, and may require the oath of the petitioner to all or any of the facts by him stated; and if satisfied that the prisoner is unable to pay any part of the amount due on such process, may order his discharge from imprisonment, having first administered to him, if he thinks proper, an oath substantially in the form prescribed by section thirty.

Justice may release him or discharge the debt, on payment or security of part.
R. S., c. 113, § 59.

SEC. 76. If, on examination, it appears to such justice that the prisoner is able to pay only a part of the amount due, he shall order his release from imprisonment, and, if he thinks it more for the interest of the State, he 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 such justice shall direct.

Jailer shall comply with the decision.
R. S., c. 113, § 60.

SEC. 77. The jailer having charge of the debtor shall thereupon release him from confinement, or give him a full discharge from the demand on the terms prescribed.

Adjudication shall be recorded.
R. S., c. 113, § 61.

SEC. 78. If such proceedings are had when the supreme judicial court is not in session for the county, such justice shall cause his adjudication and discharge to be entered of record as of the last preceding term of the court therein.

Powers of county commissioners.
R. S., c. 113, § 62.

SEC. 79. The county commissioners, at a regular session, or a majority of them in vacation, may on application, exercise the powers, and their proceedings shall have the effect, provided in the five preceding sections.

Application by such debtor to take the poor debtor's oath.
R. S., c. 113, § 63.

SEC. 80. A person committed on execution as mentioned in section seventy-four, desiring to take the oath provided in section thirty, may apply to the jailer, who shall apply in writing to a justice of the peace in his behalf, and he shall issue a citation as hereinbefore prescribed, to be served on the county attorney for the same county, who shall by himself or a competent substitute, attend at the time and place, as attorney for the State, and a disclosure may thus be had, and all the proceedings and the effect shall be the same as in the disclosures of execution debtors to individual creditors; and the justices of the peace and quorum hearing it, may, if they see cause, administer an oath and grant a certificate to the debtor as hereinbefore provided, with verbal alterations to conform to the case.

—notice to county attorney.

—oath and certificate.