

MAINE STATE LEGISLATURE

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CHAPTER 107.

RELIEF OF POOR DEBTORS.

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Exemption from Arrest

Sec. 1. Arrests upon mesne process. R. S. c. 124, § 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 102.

See c. 81, § 131, re executions issued on a judgment recovered for the collection of a poll-tax to run against the body of the judgment debtor; c. 128, § 19, re person committed to jail on warrant for expense of abating nuisance may have benefit of this chapter; *66 Me. 251; 71 Me. 28, *169, *232.

Arrests and Disclosures on Leaving the State

Sec. 2. Debtor about to leave the state may be arrested in certain cases. R. S. c. 124, § 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 \$10, or on a judgment on contract, if the debt originally recovered and remaining due is \$10 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 \$10, is due to him.

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; *86 Me. 214; 91 Me. 64; 112 Me. 497; 115 Me. 168; *116 Me. 22; 133 Me. 243; 135 Me. 2.

Sec. 3. Disclosure on such arrest. R. S. c. 124, § 3. A debtor arrested or imprisoned, on request to the officer or jailer who has him in custody, may be taken before 2 disinterested justices of the peace, to be selected as provided in section 68, to disclose the actual state of his affairs.

15 Me. 56.

Sec. 4. Notice to be given to the plaintiff. R. S. c. 124, § 4. Previous to the disclosure, the debtor 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 1 day for every 20 miles' travel, exclusive of Sundays.

133 Me. 243; 138 Me. 12.

Sec. 5. Justices may adjourn. R. S. c. 124, § 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 3 days in the whole, exclusive of Sundays.

18 Me. 144; 28 Me. 460; 91 Me. 151; 133 Me. 243.

Sec. 6. Mode of making disclosure; adjudication of justices; effect of discharge. R. S. c. 124, § 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 56, 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.

14 Me. 477.

Sec. 7. Lien on property disclosed, how to be preserved; § 14 applies. R. S. c. 124, § 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 30 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 14 are also applicable to this class of disclosures.

Disclosures on Mesne Process before Judgment

Sec. 8. Defendant may, in all cases, disclose before judgment; notice. R. S. c. 124, § 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 4, 5, and 6, and with like effect; and the court may continue the cause to permit such disclosure to be taken.

14 Me. 477; 65 Me. 556; *115 Me. 168.

Sec. 9. Effect thereof; lien on property disclosed. R. S. c. 124, § 9. On such examination, the court, justice, or commissioner, except as provided in

section 14, may determine that the defendant shall forever thereafter be exempt from arrest on any execution issued on the judgment recovered in the suit, and that such execution 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 7, subject to the provisions of the 2 following sections.

See § 21.

Sec. 10. Certificate of real estate disclosed to be filed in registry of deeds. R. S. c. 124, § 10. If the disclosed property is real estate, the court, justice, or commissioner 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 file with the register of deeds for the county or district where the estate lies within 5 days after its date; and the register shall enter and file it as returns of officers making attachments of real estate and shall be entitled to the same fees from the plaintiff.

Sec. 11. How to preserve lien on personal estate. R. S. c. 124, § 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.

20 Me. 221.

Sec. 12. Disclosure on mesne process by consent of parties. R. S. c. 124, § 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 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 8, 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. When execution issues against body. R. S. c. 124, § 13. If the result of such disclosure and examination is adverse to the defendant's right to exemption from arrest, the execution shall run against his body.

Sec. 14. Certain property which cannot be attached must be delivered up, or assigned by the debtor. R. S. c. 124, § 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, or 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 whom the suit is pending, in trust for the parties, that it may be applied and appropriated as provided in sections 57 and 58.

See §§ 7, 9.

Bonds on Mesne Process and Disclosures after Judgment

Sec. 15. Debtor arrested, may give bond to disclose after judgment. R. S. c. 124, § 15. 1939, c. 97. When a person is arrested or imprisoned on mesne process in a civil action, he may disclose as provided in sections 3, 4, 5, 6, and 7 or he may be released by giving bond to the plaintiff in a sum not exceeding the ad damnum of the writ upon which he is arrested or imprisoned, with surety or sureties, said bond to be approved by him or by 2 or 3 justices of the peace of the county where the arrest or imprisonment is made, and selected and proceeding as prescribed in section 68, conditioned that within 15 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 less than 15 days nor more than 30 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.

See c. 153, § 63, re decree of alimony; 4 Me. 13; 15 Me. 57; 22 Me. 485; 36 Me. 242; 40 Me. 133; 52 Me. 258; *53 Me. 63; 56 Me. 182, 544; 57 Me. 364; *71 Me. 232; 72 Me. 261; 78 Me. 418; 115 Me. 357; 119 Me. 280; 133 Me. 244.

Sec. 16. Proceedings, if debtor has given bond on mesne process. R. S. c. 124, § 16. After judgment, the debtor 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 2 justices of the peace 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.

15 Me. 338; 21 Me. 442; 22 Me. 401; 48 Me. 103; 51 Me. 109; 133 Me. 243.

Sec. 17. Debtor may go at large for 30 days, during lien on property disclosed. R. S. c. 124, § 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 57, they shall permit him to go at large on his bond during the 30 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.

20 Me. 468.

Sec. 18. Effect of creditor's election to arrest on execution or otherwise. R. S. c. 124, § 18. If the creditor elects so to arrest him and the officer having the execution returns that the debtor 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.

Disclosure Commissioners

Sec. 19. Appointment of disclosure commissioners; qualification and tenure; seal; number that may be appointed; renewal of former executions. R. S. c. 124, § 19. The governor shall from time to time appoint disclosure commissioners in different localities within and for each county of the state who shall

have jurisdiction within the county for which they are appointed. Such commissioners shall be attorneys at law and shall hold office for the term of 7 years. They shall have an official seal which shall have engraved thereon the name of the commissioner, the words "disclosure commissioner" and the word "Maine" and the name of the county and the town or city where the commissioner resides. Each town or city of not more than 4,000 inhabitants, as shown by the last preceding census of the United States, shall be entitled to one such commissioner and not more than one, and for every additional 5,000 inhabitants thus shown, or fraction thereof, an additional commissioner shall be allowed, provided that the total number of commissioners in any one town or city shall in no case exceed six. Any commissioner appointed under the provisions of this section shall have power to renew executions issued by any former commissioner within and for the same county, and executions issued by himself.

*92 Me. 88; *105 Me. 298.

Sec. 20. Disclosure commissioners. 1941, c. 146, § 7. The removal of a disclosure commissioner from the state, or from the county for which he is appointed, or his acceptance of any appointment under the federal government, shall vacate his office. This, however, shall not apply to cases of disclosure commissioners called into the military or naval service of the United States under the selective service act.

Sec. 21. Executions on contract not to run against body of debtor; exceptions. R. S. c. 124, § 20. No execution issued on a judgment founded on a contract, express or implied, or on a prior judgment on contract, shall run against the body of the judgment debtor, except as hereinafter provided, unless otherwise determined in proceedings under section 8, or unless the debtor was arrested on the original writ as provided in section 2.

See § 13.

Sec. 22. Owner of judgment may have disclosure any time. R. S. c. 124, § 21. 1933, c. 239, § 1. The owner of any judgment remaining unsatisfied in any part may have a disclosure of the business and property affairs of any judgment debtor, including corporations, at any time, by proceedings as hereinafter provided, but married women, and officers of judgment debtor corporations, and judgment debtors not liable to arrest, as provided in section 131 of chapter 81 or by virtue of proceedings under sections 6 or 8, thus cited shall not be arrested except for contempt or upon *capias* issued to bring them before the magistrate as provided by section 34.

See c. 149, § 68; *92 Me. 89.

Sec. 23. Owner may make application for subpoena to debtor to make disclosure. R. S. c. 124, § 22. 1933, c. 118, § 1; c. 239, § 2. The owner of any judgment described in the preceding section, or his attorney, may make application in writing to a disclosure commissioner, judge of probate, register of probate, judge of a municipal court in the county in which the judgment debtor resides, or, if the judgment debtor is a non-resident of this state, in the county in which he is commorant, or in case of a corporation, in which said corporation has an established place of business, or in which any officer of the corporation, on whom the subpoena is served, resides, stating the amount of the debt and of the costs for which said judgment was rendered, the court and term at which it was rendered, the names of the original parties, the title of the petitioner, and praying for subpoena to issue to the debtor or to an officer of a debtor corporation to appear and make disclosure.

*92 Me. 89.

Sec. 24. Subpoena to issue to debtor to appear and disclose; errors in application or subpoena may be amended. R. S. c. 124, § 23. 1931, c. 194. 1933, c. 117; c. 239, § 3. Such magistrate as described in the preceding section shall thereupon issue under his hand and seal a subpoena to the debtor commanding him, or in case the debtor is a corporation commanding an officer thereof to appear before any such disinterested magistrate within said county in the town in which the debtor, the petitioner or his attorney resides, or the corporation has an established place of business, or in which any officer thereof on whom the subpoena is served, resides, and in case there is no such magistrate in such town then in the nearest town thereto in which there is such a magistrate or in the shire town of said county, at a time and place therein named to make full and true disclosure, on oath, of all the business and property affairs of such debtor. A judge of any municipal court may hold disclosure court upon a subpoena returnable as aforesaid in any town in which the regular terms of the court of which he is judge are held. The application shall be annexed to the subpoena. Any town in which the regular sessions of the superior court are held, shall be considered a shire town for the purpose of this section. No application or subpoena shall be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and the case can be rightly understood. Such errors and mistakes may be amended on application of either party.

*92 Me. 89; *101 Me. 400; *104 Me. 21; *105 Me. 297; 125 Me. 4.

Sec. 25. Service of subpoena. R. S. c. 124, § 24. 1933, c. 239, § 4. The subpoena may be served by any officer qualified to serve civil process in said county by giving to the debtor or to an officer of a debtor corporation in hand an attested copy of the petition and subpoena, which said service shall be at least 24 hours before the time of said disclosure for every 20 miles' travel from his home or place of abode at the time of service to the place of disclosure.

*92 Me. 89; 138 Me. 12.

Sec. 26. Debtor to appear and submit to examination. R. S. c. 124, § 25. 1933, c. 239, § 5. At such time and place, the debtor or the officer of the debtor corporation shall appear, and submit himself to examination on oath concerning his estate and effects or the estate and effects of the debtor corporation, their disposal and his ability or the ability of the debtor corporation to pay the judgment. Should the owner of said judgment or his attorney neglect to have the original petition and subpoena before said magistrate at the time therein designated for said disclosure, upon prayer therefor, said magistrate shall issue an execution against said judgment owner in favor of said debtor for his travel at 6c per mile and attendance at \$1.50, if he actually attends at said time and place, and said debtor or the officer of the debtor corporation shall not thereafter be compelled to disclose on said judgment until said execution has been satisfied.

See § 35; c. 149, § 68.

Sec. 27. Proceedings at examination. R. S. c. 124, § 26. 1933, c. 239, § 6. The petitioner may propose to the debtor, or the officer of the debtor corporation, any interrogatories pertinent to the inquiry, and if either party requires it, the examination shall be in writing and signed and sworn to by the debtor, or the officer of the debtor corporation. If the petitioner is absent or does not propose interrogatories, the magistrate shall conduct the examination.

*92 Me. 89.

Sec. 28. When magistrate may administer oath. R. S. c. 124, § 27. If, on such examination and hearing, the magistrate is satisfied that the debtor's dis-

closure is true, and does not discover anything therein inconsistent with his taking the oath, the magistrate may administer to him the oath prescribed by section 56.

Sec. 29. Attachable property disclosed, which cannot be come at, how appraised and set off; debtor not to be required to assign wages. R. S. c. 124, § 28. 1933, c. 239, § 7. When from such disclosure it appears that the debtor or the officer of the debtor corporation possesses, or has under his control, any bank-bills, notes, accounts, bonds, or other contracts or property, not exempted by statute from attachment, which cannot be come at to be attached, and the petitioner and debtor, or the officer of the debtor corporation, cannot agree to apply the same towards the debt, the magistrate hearing the disclosure shall appraise and set off enough of such property to satisfy the debt, cost, and charges; and the petitioner or his attorney, if present, may select the property to be appraised. If the petitioner accepts it, it may be assigned and delivered to him by the debtor, or the officer of the debtor corporation, and applied towards the satisfaction of his demand. The debtor shall not be required to assign any sums due him as wages for his personal labor which would be exempt from attachment on trustee process under the provisions of section 55 of chapter 101. 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 petitioner may take it, by paying the overplus to the debtor or the officer of the debtor corporation or securing it to the satisfaction of the magistrate.

*92 Me. 89; 97 Me. 148; 98 Me. 340; 110 Me. 160.

Sec. 30. Petitioner may demand it within 30 days; if not demanded, to be returned to debtor. R. S. c. 124, § 29. 1933, c. 239, § 8. If the petitioner is absent, or does not so accept it, the debtor or the officer of the debtor corporation shall deposit with the magistrate a written assignment to the petitioner, of all the property thus appraised and set off; and the magistrate shall make a record of such proceedings, and cause such property to be safely kept and secured for the term of 30 days thereafter, to be delivered to the petitioner with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor or the officer of the debtor corporation.

Sec. 31. Preservation of petitioner's lien on real estate disclosed. R. S. c. 124, § 30. 1933, c. 239, § 9. If an execution debtor or the officer of the debtor corporation discloses real estate liable to be seized on execution, the magistrate shall give the petitioner a certificate thereof, stating the names of the parties and the amount of the execution; and the petitioner shall have a lien thereon for 30 days thereafter, if he files the certificate with the register of deeds of the county or district where the real estate lies, within 5 days from the date of the disclosure; and the register shall enter and file it like officers' returns of attachments.

Sec. 32. Lien on personal estate disclosed; effect, if debtor or other person conceals it. R. S. c. 124, § 31. 1933, c. 239, § 10. If the debtor or the officer of the debtor corporation discloses personal estate liable to be seized on execution, the petitioner shall have a lien on it, or so much of it as the magistrate in his record judges necessary, for 30 days; and if the debtor or the officer of the debtor corporation 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 38; and the petitioner 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.

88 Me. 117.

Sec. 33. Persons holding property in trust, or in fraud of creditors, may be compelled to appear and testify; petitioner to have lien; how enforced. R. S. c. 124, § 32. If said magistrate finds reasonable cause to believe that any other person holds any property or credits of the debtor in trust for him, or in fraud of his creditors, or if the petitioner shall make oath that he believes that such other person so holds property of the debtor, the magistrate 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 shall satisfactorily appear to the magistrate, 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 petitioner shall have a lien upon said property or credits for 30 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 petitioner; and if the parties cannot agree upon the value of such property or credits, they shall be assigned to the petitioner, if he shall give 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.

See c. 95, § 4, sub-§ XI, re equity powers.

Sec. 34. Debtor or other person refusing to appear, to be adjudged in contempt. R. S. c. 124, § 33. 1933, c. 239, § 11. If the debtor or the officer of the debtor corporation or any other person duly served with subpoena as above provided, refuses or neglects to appear, the magistrate shall upon the request of the petitioner issue a *capias* to bring said debtor or the officer of the debtor corporation or other person before him, and if upon hearing, said debtor or the officer of the debtor corporation or other person does not show good cause for his failure to appear, he may be ordered to pay the costs of issuing and serving said *capias*. After the question of costs of issuing and serving said *capias* has been thus determined, such debtor or the officer of the debtor corporation or other person shall submit himself to the examination required by his original subpoena.

*92 Me. 89.

Sec. 35. If the debtor refuses to testify, to be committed for contempt. R. S. c. 124, § 34. 1933, c. 239, § 12. 1935, c. 5, § 4. If the debtor or the officer of the debtor corporation or other person duly served with subpoena, refuses to testify in obedience thereto, or refuses to answer any proper questions, or if the debtor or the officer of the debtor corporation refuses to make full disclosure upon all matters named in section 26, or if said debtor or the officer of the debtor corporation refuses to comply with any proper order of the magistrate, or perform the duty imposed upon him by section 30, he shall be adjudged to be in contempt and be committed to jail until he purges himself of such contempt 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. If said officer complies with the requirements of section 34 no execution shall run against his body.

Sec. 36. Magistrate unable to attend. R. S. c. 124, § 35. In case the magistrate who issued the summons is unable to attend, any justice of the peace may continue the case not exceeding twice, or any other magistrate qualified to take disclosures may attend and take the disclosure, and, for cause shown by either party, the examination may be adjourned from time to time.

*92 Me. 89; *105 Me. 298.

Sec. 37. Evidence may be introduced by either party. R. S. c. 124, § 36. 1933, c. 239, § 13. After the examination of the debtor or the officer of the debtor corporation, other competent evidence may be introduced by either party, and the debtor or the officer of the debtor corporation may then be further examined. Depositions may be used in such disclosures, and the magistrate may, at the request of either party, issue subpoenas to witnesses, who are entitled to the same fees as witnesses before a trial justice.

Sec. 38. When property disclosed is secured and debtor has complied with all orders, proceedings; body of debtor to be free from arrest. R. S. c. 124, § 37. 1933, c. 239, § 14. After the oath mentioned in section 56 is administered, and the property disclosed is secured, and the debtor or the officer of the debtor corporation has complied with all proper orders of such magistrate, a certificate of the fact of such disclosure shall be indorsed by the magistrate under his hand and seal, on the execution issued upon the judgment upon which the disclosure is had, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment or on any judgment founded thereon, and the body of the debtor shall thereafter be forever free from arrest on any execution so issued, except as provided in sections 32 and 77.

Sec. 39. If debtor fails to obtain benefit of oath, proceedings. R. S. c. 124, § 38. If upon such disclosure the debtor fails to obtain the benefit of the oath provided for in section 56, the magistrate shall, under his hand and seal, indorse a certificate of that fact upon the execution in force at the time of said disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment, or on any judgment founded thereon, and such subsequent execution shall run against the body of said debtor, where the original debt exclusive of costs exceeds \$10 and not otherwise. The magistrate shall also issue a capias under his hand and seal, and annex the same to said execution in force at the time of said disclosure, and the debtor may be arrested and imprisoned on said capias and execution, the same as upon executions issued in actions of tort, where the original debt exclusive of costs exceeds \$10 and not otherwise. No execution shall run against the body of a judgment debtor who is exempt from arrest by the provisions of section 22.

*63 Me. 58; 80 Me. 537; *87 Me. 437; *92 Me. 89; 104 Me. 21; *124 Me. 21; 134 Me. 4.

Sec. 40. If debtor fails to appear, default may be recorded; proceedings. R. S. c. 124, § 39. If a debtor, cited to disclose on a judgment where the original debt exclusive of costs exceeds \$10, fails to appear and submit himself to examination at the time and place named in subpoena, the petitioner may have a default recorded and then proceed as in the preceding section or have a capias to bring in such debtor and proceed as in section 34.

*92 Me. 89; 134 Me. 4.

Sec. 41. Proceedings for release of debtor when arrested. R. S. c. 124, § 40. When a debtor is arrested upon said *capias* and execution, or upon any subsequent execution upon which a copy of either of the certificates required by the 2 preceding sections has been indorsed, all subsequent proceedings for his release shall be the same as in case of arrest or imprisonment on executions in actions of tort; but if said debtor fails to obtain his discharge at any subsequent examination before justices of the peace, he shall not a second time disclose before such justices, but may thereafter apply to a justice of the superior court and disclose as provided in section 72.

Sec. 42. Fees; costs to be taxed and indorsed on execution. R. S. c. 124, § 41. The magistrate shall be entitled to 25c for each subpoena, 75c for entry, 25c for *capias*, 25c for certificate, and \$3 for each day in hearing the disclosure and other testimony, and for entering default, 25c. The fees of officers shall be the same as for service of other process of similar nature. The petitioner may, if the magistrate authorizes it, procure an officer to be in attendance during the proceedings, and the fees for such attendance shall be 75c a day. The above fees shall be paid by the petitioner, and in case the oath named in section 56 is administered, shall be added to the costs on the judgment and execution and taxed in detail thereon by the magistrate. In case said oath is not administered to the debtor, the petitioner shall recover his costs and said fees, as in actions before a trial justice. Whenever the petitioner recovers costs or costs and fees against the judgment debtor, either on hearing, default, or otherwise, the magistrate shall tax such costs or costs and fees in detail, and make a record thereof, and under his hand and official seal shall indorse upon or annex to the execution in force at the time of disclosure, hearing, or default, a certificate certifying that the petitioner has recovered costs or costs and fees and stating therein, in detail, the costs or costs and fees recovered, and also the date of such recovery. A copy of said certificate shall be indorsed upon or annexed to every subsequent execution issued upon the same judgment, or upon any judgment founded thereon. Costs or costs and fees recovered, taxed, and certified, as aforesaid, shall be deemed a part of the original judgment for costs recovered against the judgment debtor.

*87 Me. 437; 97 Me. 149.

Sec. 43. Debtor may be required to disclose again after 3 years, and while judgment remains in force. R. S. c. 124, § 42. At any time after the expiration of 3 years from the termination of any such proceedings, and while the judgment remains in force, the judgment creditor may again avail himself of all the provisions of the 22 preceding sections, where the original debt exclusive of costs exceeds \$10, and may cause like proceedings to be had as if there had been no previous proceedings under the provisions of this chapter.

Sec. 44. Magistrate who has once refused oath is incompetent to again hear disclosure. R. S. c. 124, § 43. Any magistrate, who has once refused to administer to the debtor the oath named in section 56, shall be incompetent to sit as a justice of the peace or commissioner under the provisions of section 72, to hear the disclosure of the debtor in any subsequent proceedings upon the same judgment or any judgment founded thereon.

Sec. 45. Commissioner to keep a full record of all proceedings. R. S. c. 124, § 44. Every magistrate shall keep a correct and sufficient record of the proceedings under each citation, stating the names of the parties, the amount of the judgment on which the disclosure is sought, the dates of application, of the issuance of subpoena and of the return day thereof, and of all hearings, adjourn-

ments, and continuances; also whether the debtor appeared or was brought in on *capias* or was defaulted; whether a disclosure was had and if so what property was disclosed; whether the oath was administered or refused, and if refused the record shall state the reason for such refusal.

Arrests and Bonds on Execution, and Disclosures Thereon

Sec. 46. When execution to run against body. R. S. c. 124, § 45. In actions of tort and 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.

See §§ 77, 81; c. 153, § 38, re liability of wife for her debts; *63 Me. 61; *71 Me. 407; 80 Me. 537; 91 Me. 481.

Sec. 47. Debtor may disclose without bond. R. S. c. 124, § 46. When so arrested, he may, without giving bond, disclose as provided in section 52 and the following sections, by serving the citation provided for in said section 52 upon the creditor or his attorney, allowing at least 24 hours for every 20 miles' travel from the residence of such creditor or attorney to the place of 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.

*66 Me. 124.

Sec. 48. Disclosure in jail. R. S. c. 124, § 47. 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.

*66 Me. 124.

Sec. 49. Debtor to be remanded, or oath to be allowed. R. S. c. 124, § 48. 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 56, and give him the certificate provided in section 59; and the officer shall make return thereof on the execution; and no subsequent execution shall authorize his arrest.

Sec. 50. Bond may be given on such arrest; condition thereof. R. S. c. 124, § 49. 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 2 or 3 justices of the peace in the county where he is arrested or imprisoned, selected and proceeding as provided in section 68; conditioned that he will, within 6 months thereafter, cite the creditor before 2 justices of the peace, submit himself to examination and take the oath prescribed in section 56, 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.

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. 36; *63 Me. 166; 65 Me. 220; 66 Me. 483; 68 Me. 77, *376, 483; 71 Me. 405, 578; *77 Me. 17; 87 Me. 256; 91 Me. *149, 481; 106 Me. 123; 107 Me. 40; 109 Me. 102; 125 Me. 4; 129 Me. 386; 131 Me. 407; 138 Me. 12.

Sec. 51. When valid. R. S. c. 124, § 50. The bond described in the preceding section is a valid statute bond although the penalty varies not exceeding 5%

from the sum aforesaid; and judgment in a suit thereon shall be rendered according to the provisions of section 66.

See § 74; 92 Me. 550.

Sec. 52. Application by a debtor under bond or imprisoned; citation to creditor. R. S. c. 124, § 51. 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 56; 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:

“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., 19—, 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.

Given under my hand and seal at —, in said county, the — day of —, A. D., 19—.

— —, Justice of the Peace.”

See § 47; 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; 81 Me. 430; 125 Me. 4; 128 Me. 451; 131 Me. 408; 138 Me. 12.

Sec. 53. Citation, how to be served on one of the creditors, his attorney or agent. R. S. c. 124, § 52. 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 thereof at his place of last and usual abode, or by giving an attested copy of it thereof to him in hand 15 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.

22 Me. 401; 48 Me. 102; *51 Me. 109; 61 Me. 72; 68 Me. 201; 71 Me. 188; *74 Me. 329; 131 Me. 408; 138 Me. 12.

Sec. 54. Examination to be before 2 justices; remedy for errors and defects in citation. R. S. c. 124, § 53. The examination shall be before 2 disinterested justices of the peace for the county, who may adjourn as provided in section 5, 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.

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; *81 Me. 103; 91 Me. 151; 125 Me. 5; 128 Me. 451.

Sec. 55. Examination may be in writing and sworn to. R. S. c. 124, § 54. 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 12c a page.

73 Me. 273.

Sec. 56. Administration of oath. R. S. c. 124, § 55. 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:

"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 entrusted 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.")

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; 87 Me. 438; 91 Me. 150; 104 Me. 18; 106 Me. 124; 127 Me. 286; 131 Me. 233, 408; 133 Me. 245; 138 Me. 12.

Sec. 57. Attachable property disclosed, which cannot be come at, how appraised and set off. R. S. c. 124, § 56. 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 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.

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; 78 Me. 310.

Sec. 58. Creditor may accept it within 30 days; if not, to be returned to the debtor. R. S. c. 124, § 57. 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 30 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. 59. Form of justices' certificate of discharge. R. S. c. 124, § 58. 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 constable.)

[L. S.] “We, the subscribers, two disinterested justices of the peace in

[L. S.] 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 seventh chapter of the revised statutes; that in our opinion he is clearly entitled to the benefit of the oath prescribed in section fifty-six thereof; and that we have, after due caution, administered it to him.

Witness our hands and seals, this — day of —, A. D. 19—.

— —, chosen by the —.

— —, chosen by the —.”

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.

Sec. 60. Effect of such certificate. R. S. c. 124, § 59. 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 64 and 77.

20 Me. 75; 24 Me. 452; 87 Me. 120.

Sec. 61. Release by creditor. R. S. c. 124, § 60. A creditor may discharge his debtor from arrest, or imprisonment on execution, by giving to the officer or jailer having him in custody written permission to go at large; with the same effect as a discharge or disclosure.

35 Me. 274; 87 Me. 120.

Sec. 62. After discharge judgment still in force. R. S. c. 124, § 61. 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.

20 Me. 75; 36 Me. 485; 87 Me. 120.

Sec. 63. Preservation of creditor's lien on real estate disclosed. R. S. c. 124, § 62. 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 30 days thereafter, if he files the certificate with the register of deeds of the county or district where the real estate lies, within 5 days from the date of the disclosure; and the register shall enter and file it like officers' returns of attachments.

31 Me. 57; 87 Me. 120.

Sec. 64. Lien on personal estate disclosed; effect, if debtor or other person conceals it. R. S. c. 124, § 63. If an execution debtor discloses personal estate liable to be seized on execution, the creditor shall have a lien on it for 30 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 59; 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.

20 Me. 468.

Sec. 65. Bond taken on execution to be returned with it, and creditor may have bond. R. S. c. 124, § 64. 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.

Sec. 66. Amount recoverable thereon, if forfeited. R. S. c. 124, § 65. 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 20% a year, after breach of the bond.

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; 78 Me. 583; 91 Me. 481; 92 Me. 248; 105 Me. 293, 300; 109 Me. 102.

Arrests for Taxes

Sec. 67. Persons arrested for taxes, and officers for not collecting taxes, to be treated as poor debtors. R. S. c. 124, § 66. 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 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.

19 Me. 326; 39 Me. 346; 73 Me. 283.

General Provisions

Sec. 68. Manner of selecting the justices to take the disclosure. R. S. c. 124, § 67. 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 neces-

sary, may adjourn once, not exceeding 24 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.

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; *91 Me. 149; 115 Me. 357; 133 Me. 243.

Sec. 69. Municipal court judges. R. S. c. 124, § 68. 1933, c. 118, § 1. The judge of a municipal court has the same powers, duties, and obligations under the provisions of this chapter, as a justice of the peace in his county.

Sec. 70. Criminal not precluded from oath. R. S. c. 124, § 69. No conviction or other disqualification to be a witness precludes a debtor from relief under the provisions of this chapter.

Sec. 71. Costs for creditor, if debtor is not discharged. R. S. c. 124, § 70. 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 64 and 77.

73 Me. 498.

Sec. 72. Proceedings when debtor twice refused discharge. R. S. c. 124, § 71. A debtor who has been twice refused a discharge shall not again disclose before such justices; but may apply to a justice of the superior 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 7 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.

48 Me. 74.

Sec. 73. Other evidence or depositions may be used. R. S. c. 124, § 72. In disclosures on mesne process or execution, after the examination of the debtor, other competent evidence may be introduced, 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. 74. Bond, when valid. R. S. c. 124, § 73. 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.

See § 51; 23 Me. 103; 24 Me. 547; 31 Me. 351; 49 Me. 99, 439, 453; 68 Me. 376.

Sec. 75. Limitation of suits on bonds. R. S. c. 124, § 74. No suit on any bond herein authorized shall be sustained unless commenced within 1 year after the forfeiture; except that the provisions of sections 99 and 100 of chapter 99 are applicable to such suits.

10 Me. 402.

Sec. 76. Creditors not to be cited to hear disclosures on islands, except in certain cases. R. S. c. 124, § 75. In no case under the provisions of this chapter shall a creditor be cited or notified to attend a disclosure upon any island not connected with the mainland 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.

False Disclosures and Aiding in Fraudulent Conveyances

Sec. 77. Liability of a debtor, if he discloses falsely. R. S. c. 124, § 76. 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 jail on any execution issued on the judgment last recovered, without the privilege of release or discharge except by payment or consent of the creditor.

41 Me. 91; 57 Me. 414; 71 Me. 77; 113 Me. 244.

Sec. 78. Persons aiding in fraudulent concealment or transfer are liable to double damages. R. S. c. 124, § 77. 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.

25 Me. 254; 57 Me. *412, 414, 418; 59 Me. 240; 60 Me. 228; 67 Me. 369; 68 Me. 78; 71 Me. 179, 216; *73 Me. 238; 74 Me. 349; 98 Me. 469; *115 Me. 264; 118 Me. 30.

Damages on Bonds

Sec. 79. In action on bond, if debtor has taken oath, only actual damages can be recovered. R. S. c. 124, § 78. 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 2 justices of the peace 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 56, 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.

See § 66; 15 Me. 35; 27 Me. 426; 28 Me. 50, 324; 30 Me. 349, 457; 32 Me. 459; 33 Me. 358, 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; 78 Me. 310.

Sec. 80. Effect of new judgment on such bond; costs. R. S. c. 124, § 79. 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 \$20, the plaintiff shall recover full costs although the amount of damages recovered is less than \$20. If the verdict or judgment is that the creditor has sustained no damage, neither party recovers costs.

25 Me. 113; 34 Me. 24.

Wilful Trespass

Sec. 81. Disability of persons committed for wilful trespass. R. S. c. 124, § 80. 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 jail, he shall not be entitled to give any bond for his liberation; and if he applies to take the oath described in section 56, no notice shall be issued to the creditor until at least 30 days after his commitment.

See c. 100, § 61, re trespass.

Support of Debtors in Jail

Sec. 82. Jail keeper may require creditor to support debtor; board for 1 week to be paid in advance. R. S. c. 124, § 81. 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 8 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 1 week's board of said debtor; but when a debtor is committed on more than 1 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.

29 Me. 557; 36 Me. 403; 63 Me. 258; *66 Me. 125; 71 Me. 407; 87 Me. 257; *107 Me. 41.

Sec. 83. Adjustment of price of support. R. S. c. 124, § 82. In case of dispute about the price of such support, the county commissioners may determine it, not exceeding 75c a day.

Provisions Relating to Debtors to the State

Sec. 84. State debtor may apply to a justice of the superior court. R. S. c. 124, § 83. 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 superior court for relief, whether the court is in session in the county or not, 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.

Sec. 85. Proceedings, and power to release debtor. R. S. c. 124, § 84. The 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 56.

Sec. 86. Justice may release him or discharge the debt on payment or security of part. R. S. c. 124, § 85. 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.

Sec. 87. Jailer to comply with the decision. R. S. c. 124, § 86. 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.

Sec. 88. Adjudication to be recorded. R. S. c. 124, § 87. If such proceedings are had when the superior 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.

Sec. 89. Power of county commissioners. R. S. c. 124, § 88. 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 5 preceding sections.

Sec. 90. Application by such debtor to take oath; notice. R. S. c. 124, § 89. A person committed on execution as mentioned in section 84, desiring to take the oath provided in section 56, 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 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.

Attorney at law arrested on execution issued on judgment for money collected, shall not have citation to disclose for 90 days, c. 93, § 13; proceedings upon judgments against sheriffs, c. 79, § 185; against warden of state prison, c. 23, § 34.

Release of insane person arrested or imprisoned on mesne process or execution, c. 113, § 38.

Persons committed to jail on warrant for abatement of a nuisance may have benefit of this chapter, c. 128, § 19; also respondents in bastardy process, after remaining in jail 6 months, c. 153, § 32.

Debtors on executions issued on judgment for money lost by gambling, to be committed for 3 months, and may then have benefit of this chapter, c. 126, § 8.

Debtors for penalties under law against lotteries shall not have benefit of this chapter, c. 126, § 18.