

MAINE STATE LEGISLATURE

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CHAPTER 503

DISCLOSURES

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§ 3151. Criminals not precluded from oath

No conviction or other disqualification to be a witness precludes a debtor from relief under this chapter and chapter 505.

R.S.1954, c. 120, § 70.

§ 3152. Scope of evidence; depositions

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. 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.

R.S.1954, c. 120, § 73.

§ 3153. Disclosures on islands

In no case under this chapter and chapter 505 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. Disclosures made in violation of this section are void.

R.S.1954, c. 120, § 76.

§ 3154. False disclosure; liability

When a debtor, herein authorized or required to disclose on oath, willfully discloses falsely or withholds or suppresses the truth, the creditor of record or in interest may bring a civil action against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property. On oath before a justice of the peace he may declare his belief of the truth of the allegations in the complaint. Such justice shall certify the oath on the complaint. Thereupon the debtor shall be held to bail, or in default thereof be committed to jail to abide the judgment in the action. If the creditor prevails in the action, judgment shall be rendered against the debtor for double the amount of the debt and charges on the former judgment. 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.

R.S.1954, c. 120, § 77; 1961, c. 317, § 434.

§ 3155. Fraudulent concealment or transfer; liability

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 a civil action, in double the amount of property so fraudulently transferred or concealed, not exceeding double the amount of such creditor's demand.

R.S.1954, c. 120, § 78; 1961, c. 317, § 435.

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§ 3201. Selection

One of the justices to hear a disclosure may be chosen by the debtor and the other by the creditor, his agent or attorney. 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. In such case, the justice chosen by the debtor, if he deems it necessary, 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 3rd. If they cannot agree on a 3rd, such officer may choose him and a majority may decide.

R.S.1954, c. 120, § 68.

§ 3202. District Court Judges

The Judge of a District Court has the same powers, duties and obligations under this chapter and chapter 505 as a justice of the peace in his county.

R.S.1954, c. 120, § 69; 1963, c. 402, § 195.

§ 3203. Examination of debtor twice refused discharge

A debtor who has been twice refused a discharge shall not again disclose before such justices; but may by motion apply to the Superior Court, which, 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. 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.

R.S.1954, c. 120, § 72; 1961, c. 317, § 432.

SUBCHAPTER III

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- 3255. Disclosure on mesne process by consent.
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- 3257. Property which cannot be reached.

§ 3251. Notice

When a person is served with a summons or other mesne process in any action, 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 process is pending or a disinterested commissioner or commissioners appointed by said court or justice and submit himself to examination. Such court, justice or commissioner shall give notice and proceed to take his disclosure as provided in sections 3603 to 3605 and with like effect. The court may continue the cause to permit such disclosure to be taken.

R.S.1954, c. 120, § 8; 1959, c. 317, § 257.

§ 3252. Determination of exemption from arrest

On such examination, the court, justice or commissioner, except as provided in section 3257, may determine that the defendant shall forever thereafter be exempt from arrest on any execution issued on the judgment recovered in the action, 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. All attachable property so disclosed, from the time of the disclosure, shall be held attached as provided in section 3606, subject to sections 3253 and 3254.

R.S.1954, c. 120, § 9; 1961, c. 317, § 419.

§ 3253. Certificate of disclosed real estate to be filed

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 complaint, 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. 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.

R.S.1954, c. 120, § 10; 1961, c. 317, § 420.

§ 3254. Lien on personal estate preserved

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 which the action is pending may issue an order signed and sealed, directing any officer authorized to serve processes in the action to take such property into his custody and hold it as if originally attached; and he shall execute the order accordingly.

R.S.1954, c. 120, § 11; 1961, c. 317, § 421; 1963, c. 402, § 190.

§ 3255. Disclosure on mesne process by consent

At any time, the parties to the action, by a written agreement, may appear before a justice of the peace in the county where the action is pending. The defendant shall make the disclosures and submit to the examinations and proceedings required in section 3251, and the record thereof shall, before final judgment, be returned to the court or justice before which the action is pending, where the proceedings shall be the same as if the disclosure had been before a commissioner appointed for the purpose.

R.S.1954, c. 120, § 12; 1959, c. 317, § 258.

§ 3256. Body execution

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.

R.S.1954, c. 120, § 13.

§ 3257. Property which cannot be reached

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 action, 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 action is pending, in trust for the parties that it may be applied and appropriated as provided in sections 3712 and 3713.

R.S.1954, c. 120, § 14; 1961, c. 317, § 422.

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ARTICLE 1. GENERAL PROVISIONS

§ 3301. Owner of judgment may have disclosure any time

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 provided, but married women, and officers of judgment debtor corporations, and judgment debtors not liable to arrest by virtue of proceedings under sections 3251 or 3605, thus cited, shall not be arrested except for contempt or upon *capias* issued to bring them before the magistrate as provided by section 253.

R.S.1954, c. 120, § 22; 1957, c. 397, § 54.

§ 3302. Appraisal and setoff; no wage assignment

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. 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 section 2602. 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.

R.S.1954, c. 120, § 29.

§ 3303. Where no demand in 30 days property returned to debtor

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. 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.

R.S.1954, c. 120, § 30.

§ 3304. Preservation of lien on real estate

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. 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. The register shall enter and file it like officers' returns of attachments.

R.S.1954, c. 120, § 31.

§ 3305. Lien on personal property; concealment

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. 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 3551. The petitioner may recover, in a civil action against him or any person fraudulently aiding in such transfer, concealment or disposal, double the amount due on said execution. 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.

R.S.1954, c. 120, § 32; 1961, c. 317, § 424.

§ 3306. New disclosure after 3 years and while judgment in force

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 this subchapter 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 this chapter and chapter 505.

R.S.1954, c. 120, § 43.

ARTICLE 2. COMMISSIONERS

§ 3351. Appointment; renewal of former executions

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 the total number of commissioners in any one town or city shall in no case exceed 6. Any commissioner appointed under this section shall have power to renew executions

issued by any former commissioner within and for the same county and executions issued by himself.

R.S.1954, c. 120, § 19.

§ 3352. Vacancy in office

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 shall not apply to cases of disclosure commissioners called into the military or naval service of the United States under the Selective Service Act.

R.S.1954, c. 120, § 20.

§ 3353. Commissioner to record proceedings

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, adjournments and continuances; 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.

R.S.1954, c. 120, § 45.

ARTICLE 3. MAGISTRATES

§ 3401. Unable to attend; adjournment

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.

R.S.1954, c. 120, § 36.

§ 3402. Magistrate who refused oath incompetent to again hear disclosure

Any magistrate, who has once refused to administer to the debtor the oath named in section 3711 shall be incompetent to sit

as a justice of the peace or commissioner under section 3203 to hear the disclosure of the debtor in any subsequent proceedings upon the same judgment or any judgment founded thereon.

R.S.1954, c. 120, § 44.

ARTICLE 4. SUBPOENAS

§ 3451. Subpoena to appear and disclose

The owner of any judgment described in section 3301, or his attorney, may make application in writing to a Judge of the District Court in the division or to a disclosure commissioner, judge of probate, register of probate in the county in which the judgment debtor resides, or, if the judgment debtor is a nonresident of this State, in the county or division 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.

R.S.1954, c. 120, § 23; 1963, c. 402, § 191.

§ 3452. Amendment of errors in application or subpoena

Such magistrate as described in section 3451 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, or in the nearest town 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 District 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.

R.S.1954, c. 120, § 24; 1963, c. 402, § 192.

§ 3453. Service of subpoena

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.

R.S.1954, c. 120, § 25.

§ 3454. Persons holding property in trust or in fraud of creditors must appear and testify

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 actions. 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. The petitioner shall have a lien upon said property or credits for 30 days succeeding such disclosure, to be enforced by complaint seeking equitable relief or trustee process, and if upon such complaint 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. 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.

R.S.1954, c. 120, § 33; 1961, c. 317, § 425.

ARTICLE 5. EXAMINATION

§ 3501. Appearance and examination of debtor

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 6¢ 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.

R.S.1954, c. 120, § 26.

§ 3502. Proceedings on examination

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.

R.S.1954, c. 120, § 27.

§ 3503. Administration of oath by magistrate

If, on such examination and hearing, the magistrate is satisfied that the debtor's disclosure 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 3711.

R.S.1954, c. 120, § 28.

§ 3504. Offering of evidence

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 corpora-

tion 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 District Court.

R.S.1954, c. 120, § 37; 1963, c. 402, § 193.

§ 3505. Default recorded for nonappearance

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 section 3552 or have a *ca-pias* to bring in such debtor and proceed as in section 253.

R.S.1954, c. 120, § 40.

ARTICLE 6. BODY EXECUTION

§ 3551. Where security and compliance no body execution

After the oath mentioned in section 3711 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. The body of the debtor shall thereafter be forever free from arrest on any execution so issued, except as provided in sections 3154 and 3305.

R.S.1954, c. 120, § 38.

§ 3552. Failure to obtain benefit of oath

If upon such disclosure the debtor fails to obtain the benefit of the oath provided for in section 3711, 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. 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 issue a *ca-pias* 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, 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 section 3301.

R.S.1954, c. 120, § 39; 1961, c. 317, § 426.

§ 3553. Release of arrested debtor

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 sections 3505 and 3552 has been indorsed, all subsequent proceedings for his release shall be the same as in case of arrest or imprisonment on executions in civil actions; 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 the Superior Court and disclose as provided in section 3203.

R.S.1954, c. 120, § 41; 1961, c. 317, § 427; 1963, c. 414, § 136.