

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1834.

FOURTEENTH LEGISLATURE.

NO. 36.

SENATE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED
AND THIRTY-FOUR.

AN ACT additional to “an Act for the abolition
of Imprisonment of **Honest Debtors for Debt.**”

SECT. 1. *Be it enacted by the Senate and House of Rep-
2 resentatives in Legislature assembled,* That no person shall
3 hereafter be arrested or committed to prison, either
4 on mesne process founded on any contract made
5 and entered into, or on any cause of action which shall
6 have accrued after this Act shall take effect, or on
7 any execution or legal process founded on any pro-
8 ceedings on any such contract or cause of action, except
9 in conformity with the provisions of this Act.

SECT. 2. *Be it further enacted,* That when judgment
2 shall hereafter be rendered by any court in any suit
3 founded on any contract made and entered into, or
4 cause of action which shall have accrued, after this

5 Act shall take effect, it shall be the duty of the Clerk
 6 of the Court rendering such judgments, and of the Re-
 7 corder or Justice of the Peace, so to carry the form
 8 of the execution, that shall issue thereon, as that the
 9 same shall not run against the body of such debtor or
 10 debtors.

SECT. 3. *Be it further enacted,* That in each county
 2 there shall be appointed by the Governor, by and with
 3 the consent and advice of the Council, three Commis-
 4 sioners of Insolvency, who shall possess such powers
 5 and be subject to such duties as are hereinafter provi-
 6 ded in this Act.

SECT. 4. *Be it further enacted,* That the creditor or
 2 creditors in any execution, issued as aforesaid, wherein
 3 the debt exclusive of costs is not less than five dollars,
 4 may at any time apply to one of said commissioners,
 5 whose duty it shall be forthwith to furnish such credi-
 6 tor or creditors with a notification to his debtor or
 7 debtors, under the hand and seal of said Commissioner
 8 of Insolvency, which said notification shall be in the
 9 form following, to wit :

STATE OF MAINE.

[SEAL.] L. SS. *To the Sheriff of the said county of L. or either
 of his Deputies, or the Constables of the towns within the said
 county or to any or either of them, Greeting.*

In the name of the State of Maine, you are required to summon
 and give notice unto A. B. of D. in said county, (addition) if he
 may be found in your precinct, that he appear before me, E. F.
 Esquire, one of the Commissioners of Insolvency for the County
 aforesaid, at my dwelling-house in G——, on ——, the ——

day of —— at —— of the clock in the —— noon, then and there at the solicitation of E. T. of G —— (addition) to disclose the actual state of his business affairs, and of all and every description of property of which he may be the owner or possessor, either in severalty or in common with others or in reversion or remainder together with a particular description thereof, and where and with whom the same is in keeping or deposit. And of this writ with your doings therein, you are to make true return unto myself at or before the said —— day of —— Dated at B —— aforesaid, the —— day of —— in the year of our Lord ——.

C. D. Commissioner of Insolvency.

10 And it shall be the duty of the officer to whom the said
 11 notification is delivered, to make service and return of
 12 the same agreeably to the precept, which service shall
 13 be made by giving an attested copy thereof in hand to
 14 said debtor, fourteen days, or by leaving an attested
 15 copy thereof at the last and usual place of abode of
 16 said debtor twenty-one days at least before the time
 17 appointed for said debtor to disclose ; for which ser-
 18 vice the officer shall receive the same fee as is now
 19 established by law for the service and return of a writ
 20 issued by a Justice of the Peace.

SECT. 5. *Be it further enacted,* That if said debtor
 2 being notified as aforesaid shall neglect to appear and
 3 make disclosure, and to make answer to such interro-
 4 gatories pertinent to the matter in issue, as the execu-
 5 tion creditor or creditors, his or their attorney may
 6 propound in writing, and to make oath to the truth and
 7 justness of the same, or in case said debtor shall appear
 8 and comply with the foregoing requisition, all which
 9 shall be reduced to writing by the Commissioner ta-

10 king the same, and be signed and sworn to in his pre-
11 sence ; and in case it shall appear to said Commissioner
12 from the disclosure of said debtor, and the other evi-
13 dence produced by the parties, each of whom shall
14 have a right to produce such evidence, which shall also
15 be reduced to writing by said Commissioner, that said
16 debtor has not conducted honestly, without collusion,
17 fraud or intentional concealment respecting his prop-
18 erty, and that said debtor is able to satisfy said execu-
19 tion, or any part thereof without the aid of property
20 exempt by law from attachment and execution, then
21 (and in either case) unless it shall further appear to
22 said Commissioner, that the property thus fraudulently
23 concealed and disposed of by said debtor, has in fact
24 subsequently and before the service of the notification,
25 been applied to the payment of the bona fide debts of
26 said debtor, it shall be the duty of said Commissioner
27 to order said debtor to be committed ; and he shall
28 issue his mittimus accordingly, directed to the keepers
29 of the several jails in the several counties therein, reci-
30 ting the causes of said commitment and the amount of
31 debt and costs, for which he stands committed. And
32 it shall be the duty of the keeper of said jail to receive
33 and keep said debtor, until he shall pay the amount for
34 which he stands committed, together with the costs of
35 commitment, or be otherwise discharged by due course
36 of law.

SECT. 6. *Be it further enacted,* That when said debtor

2 shall be committed and it shall not appear in said mit-
 3 timus, that there was personal service of the notifica-
 4 tion made upon the debtor, or that said debtor did ap-
 5 pear, the keeper of the jail shall release said debtor
 6 from imprisonment, on said debtor's giving bond with
 7 surety or sureties in a sum equal to double the amount
 8 for which said debtor stands committed, to be approved
 9 by one of the Commissioners of Insolvency, condition-
 10 ed that within thirty days from said debtor's liberation
 11 from confinement, he will cause his creditor or credi-
 12 tors, his or their agent or attorney to be legally served
 13 with notice to hear said debtor disclose before one of
 14 the Commissioners of Insolvency in the County where
 15 said debtor stands committed, as it is provided in this
 16 Act; and conditioned, also, that said debtor will at the
 17 time appointed in said notification appear and make
 18 disclosure as aforesaid and then and there abide and
 19 perform the judgment of said Commissioner: *Provided,*
 20 that either party may appeal from the decisions of said
 21 Commissioner as is provided in other cases in and by
 22 this Act.

SECT. 7. *Be it further enacted,* That whenever in any
 2 disclosure, made before any Commissioner of Insol-
 3 vency, pursuant to the provisions of this Act, the exe-
 4 cution debtor shall disclose, describe, and offer to his
 5 said creditor or creditors, the estate real or personal
 6 belonging to said debtor, and shall offer to said com-
 7 missioner for the benefit of the creditor or creditors a

8 legal and sufficient transfer of the same, and it shall ap-
9 pear to said Commissioner that said property thus dis-
10 closed, described and offered, is all the property which
11 said debtor is possessed of, not exempted by law from
12 attachment and execution, and that said debtor has not
13 conducted in the disposition of his property dishon-
14 estly, with collusion, fraud and intentional concealment,
15 as is supposed in and by the fifth section of this Act,
16 and that he is unable to satisfy said execution, or any
17 part thereof, without the aid of property above de-
18 scribed and offered, and not exempted by law from at-
19 tachment and execution; and there be no appeal from
20 such decision, said debtor shall forever after be ex-
21 empted from any further examination and from making
22 any other disclosure on that execution, or on any other
23 execution issued on the same judgment, or on any sub-
24 sequent judgment founded thereon, under any of the
25 provisions of this Act.

SECT. 8. *Be it further enacted,* That the Commission-
2 er before whom any disclosure shall be had as aforesaid,
3 shall have power to adjourn from time to time as the
4 convenience of the parties and impartial justice shall
5 require; and said Commissioners shall keep a true and
6 correct record of their proceedings, and preserve all
7 disclosures and such other evidence as there may be
8 in each case, and shall furnish the parties with true and
9 certified copies of the same whenever thereunto re-

10 quested, for which they shall be entitled to receive the
 11 same fees therefor as are allowed by law for like copies
 12 in other cases : And said Commissioners shall receive
 13 for a notification fifty cents ; for a mittimus one dollar ;
 14 for a subpoena ten cents ; for each day they shall be
 15 employed in receiving a disclosure three dollars, which
 16 together with the officer's fees for service of process,
 17 and the same travel and attendance to parties and their
 18 witnesses, as is now allowed by law in the trial of ac-
 19 tions before a Justice of the Peace, shall be taxed for
 20 the prevailing party in the same manner, as costs in
 21 other cases are taxed ; and said Commissioners shall
 22 have power to render judgment and issue execution
 23 thereon accordingly. And said Commissioners shall
 24 have the same authority to compel the attendance of
 25 witnesses as is now possessed by Justices of the Peace.

SECT. 9. *Be it further enacted,* That whenever a
 2 debtor shall disclose and transfer any property as is
 3 provided in and by the seventh section of this Act, it
 4 shall be the duty of the Commissioner to convert
 5 so much of the same into money in the manner he
 6 shall judge most beneficial for the parties interested, as
 7 shall be sufficient to satisfy the claim of the creditor
 8 or creditors for whose use the same was disclosed and
 9 transferred, and the expenses of sale, and the residue
 10 he shall deliver over to the debtor.

SECT. 10. *Be it further enacted,* That any execution

2 creditor or creditors, or execution debtor who may be
3 aggrieved at the decision of the said Commissioner on
4 any disclosure made as provided by this Act, may ap-
5 peal therefrom to the next Court of Common Pleas to
6 be holden within and for the County where such dis-
7 closure is had, reserving to each party the right of pro-
8 ducing at the trial on such appeal any other evidence
9 relevant to the inquiry; and the party so appealing
10 before such appeal shall be allowed shall recognize
11 with sufficient surety or sureties to the adverse party
12 in a reasonable sum to prosecute his appeal with effect
13 and to pay all such costs as may arise in the suit, after
14 said appeal, which costs shall be taxed for the party
15 prevailing in the same manner as costs are taxed in
16 other cases in the same court, and judgment shall be
17 rendered and execution issued thereon accordingly.
18 And in all such cases a certified copy of the written
19 examination before the Commissioner, which it shall be
20 the duty of the party appealing to produce, with such
21 new evidence as either party may produce at the trial,
22 shall be submitted to the Jury under the direction of
23 the Court, who shall return a special verdict in the
24 premises. And if by such verdict of the Jury it shall
25 appear to said Court that said debtor has fraudulently
26 conducted in the disposition of his property as is con-
27 templated in and by the fifth section of this Act, or if
28 t shall appear to said Court from the verdict aforesaid

29 that said debtor has property or means of payment
30 which he has disclosed, described and offered to said
31 creditor or creditors as is contemplated in and by the
32 sixth section of this Act, and which is not by law ex-
33 empted from attachment and execution, it shall be the
34 duty of the Court to do and perform in the premises,
35 what is provided in the fifth section of this Act to be
36 done and performed by the Commissioner of Insolven-
37 cy, from whose decision the appeal was had. And in
38 case it shall appear from the verdict aforesaid, that
39 said debtor has not conducted fraudulently as is
40 contemplated in and by the fifth section of this Act,
41 and that he is unable to satisfy said execution, and that
42 he has no property which he has not disclosed, describ-
43 ed, and offered as aforesaid, not exempted by law from
44 attachment and execution, the judgment of said Court
45 shall forever after operate as a release of said debtor
46 from liability to be notified as aforesaid, or to make
47 any further disclosure on that execution, or on any
48 other execution issued on the same judgment, or on
49 any subsequent judgment founded thereon.

SECT. 11. *Be it further enacted,* That if any such
2 debtor as aforesaid, shall be convicted of having sold,
3 leased or otherwise conveyed, concealed, or disposed
4 of, or entrusted his or her estate, or any part thereof,
5 directly or indirectly, contrary to his or her foregoing
6 oath or affirmation, he or she shall be liable to the
7 pains and penalties of wilful perjury.

SECT. 12. *Be it further enacted,* That no debtor shall
2 hereafter be arrested on mesne process in any action
3 or suit founded on any contract, or on the cause of
4 action not founded on contract, which shall be made or
5 entered into or accrue after this Act shall take effect,
6 unless the Plaintiff or some other person shall make
7 oath or affirmation before some Justice of the Peace,
8 that the defendant or defendants named in the process
9 is or are justly indebted to the Plaintiff or Plaintiffs in
10 a certain sum stated in said affidavit, and shall moreover
11 make oath or affirmation that he or they have reason
12 to believe that the said defendant or defendants intends
13 or intend to remove from the State, or remove his or
14 their property out of the same or conceal his or their
15 property before judgment, or otherwise abscond, so
16 that the process of the Court, after judgment cannot
17 be executed, which oath or affirmation shall be append-
18 ed to said process, whereupon the said officer, execut-
19 ing the same, shall take bail as was provided by the law
20 passed one thousand eight hundred and twenty-one, but
21 the defendant or defendants may contest the allegation
22 of said oath or affirmation before the Court in which
23 the said suit or action is instituted in such form as the
24 Court may prescribe. And if the Court shall be of
25 opinion that said allegations are not well founded, it
26 may make an order to be entered on record discharging
27 said bail or surety from his or their suretyship, and said

28 Plaintiff or Plaintiffs shall recover no costs in their said
29 action.

SECT. 13. *Be it further enacted*, That when any person
2 who is or may be imprisoned for debt on mesne process,
3 shall give bond to the creditor with one or more sure-
4 ties approved by the creditors, or one of the Commis-
5 sioners of Insolvency in double the amount for which
6 he is imprisoned, said bond to be in the usual form of
7 bail bonds on mesne process, which bond shall be re-
8 turned by the keeper of the jail to the Court or Jus-
9 tice from whom the writ issued, the person thus im-
10 prisoned shall be released from confinement.

SECT. 14. *Be it further enacted*, That when any per-
2 son who shall be committed on execution under the
3 provisions of this Act, he may petition the Court of
4 Common Pleas in the County where he is imprisoned
5 for a discharge from his imprisonment ; and shall cause
6 the same to be served upon the creditor or creditors
7 named in the execution upon which he was committed
8 if inhabitants of the State, and if not, upon his or their
9 Agent or Attornies, fourteen days at least before the
10 term of the Court at which his said petition shall be
12 presented or entered, and that said petitioner may be
13 fairly heard on his petition, the Court may on the
14 hearing thereof order him to be brought into Court for
15 that purpose; and upon hearing of said petition said
16 Court shall have power to continue the same, should

17 they judge the same expedient, or they may proceed to
 18 hear the parties touching the subject matter of the pe-
 19 tition, and discharge the petitioner from his imprisonment
 20 upon such terms and conditions as the Court in its dis-
 21 cretion may prescribe.

SECT. 15. *Be it further enacted,* That the keeper of
 2 the prison shall be entitled to receive the same that is
 3 allowed by law for the support of other criminals, for
 4 the support of each debtor committed to prison by
 5 virtue of the provisions of this Act, to be allowed and
 6 paid from the Treasury of the County where he stands
 7 committed, under the direction of the County Com-
 8 missioners.

STATE OF MAINE.

IN SENATE, February 22, 1834.

ORDERED, That two hundred and fifty copies of the foregoing
 Bill be printed for the use of the Legislature.

[Extract from the Journal.]

Attest, WILLIAM TRAFTON, *Secretary.*