

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1835.

AUGUSTA:
WILLIAM J. CONDON,.....PRINTER.

1835.

FIFTEENTH LEGISLATURE.

NO. 46.

HOUSE.

AMENDMENT to the Bill entitled "an Act for the Relief of Poor Debtors."

Strike out all after the enacting clause to the 29th Section, and insert the following:

That no person shall be arrested on any suit, 2 where the sum demanded, nor on any execution 3 issued on any judgment where the debt or dam- 4 ages are less than five dollars, nor on any suit 5 on a judgment or an execution issued on a judg- 6 ment founded on any prior judgment, where the 7 original debt or damages are less than five 8 dollars.

SECT. 2. *Be it further enacted,* That in 2 all other cases on contracts, express or impli- 3 ed, bond or other speciality, or on a judgment 4 in civil actions, no person shall be arrested or 5 imprisoned on mesne process, and no such

6 process shall run against the body of such debt-
7 or, nor shall any person be arrested or imprison-
8 ed on any execution issued on any judgment, on
9 such contract, bond, speciality or judgment, nor
10 shall any such execution run against the body
11 of such person, except as hereinafter excepted.

SECT. 3. *Be it further enacted*, That any
2 person may be arrested on mesne process, on
3 any contract, bond, speciality or judgment, men-
4 tioned in the second section of this Act, and held
5 to bail or committed to prison, when he is about
6 to depart and establish his residence beyond the
7 limits of this State, with property or means ex-
8 ceeding the amount required for his own imme-
9 diate support; *Provided*, any creditor, his agent
10 or attorney, shall make oath or affirmation, be-
11 fore a Justice of the Peace, to be certified by
12 such Justice on such process, that he has reason
13 to believe, and does believe that such debtor is
14 about to depart, and take with him property as
15 aforesaid, and that the demand in the writ,
16 is, or the principal part thereof, due him.

SECT. 4. *Provided nevertheless, and be it*
2 *further enacted*, That on any arrest or im-
3 prisonment, by virtue of the process provided in
4 the third Section of this Act, such debtor may,

5 on demand made by him, of the officer who ar-
6 rested him, or the gaoler who has him in custo-
7 dy, be taken before two Justices of the Peace
8 of the County, *Quorum unus*, to be by him
9 selected, to disclose the actual state of his af-
10 fairs, and he shall give notice to the creditor,
11 his agent or attorney, of his intention so to do,
12 and the time and place, and Justices before
13 whom he so intends to disclose, and if he shall
14 thereupon make a full disclosure of the actual
15 state of his affairs, and of all his estate, proper-
16 ty, rights and credits in possession, expectation
17 or reversion, and answer all proper interrogato-
18 ries in regard to the same, and shall sign and
19 offer to make oath to the same before said Jus-
20 tices, they shall administer to him such oath,
21 and upon the whole examination, and hearing
22 all proper evidence offered in the case, said
23 Justices may discharge such debtor from arrest
24 or imprisonment, or remand him into the cus-
25 tody of the officer who arrested him, or the
26 gaoler who held him in prison, as the case may
27 be, and in case of such discharge, no execution
28 issuing on the judgment in such suit or process
29 shall run against the body of such debtor.

SECT. 5. *Be it further enacted,* That all
2 attachable property disclosed by virtue of such
3 examination, or so much thereof as the creditor
4 may designate to satisfy his demand against the
5 debtor, shall be held as attached from the time
6 of such disclosure, and the officer shall make
7 return thereof on the writ or process, certifying
8 the fact that the property was so disclosed.

SECT. 6. *Be it further enacted,* That
2 whenever any person shall be served with writ
3 or process, founded on such contract, bond, spe-
4 ciality, or judgment, in any other manner than
5 by arrest of the body, such person, may on the
6 return day of the said writ, or on any day to
7 which the suit may be continued, appear before
8 the Justice, Judge or Court, to which the writ
9 or process in said suit may be returnable, or a
10 commissioner or commissioners appointed by said
11 Judge or Court, and then and there disclose
12 the actual state of his affairs, and of all his es-
13 tate, property, rights, and credits, in possession,
14 expectation or reversion, and shall answer all
15 proper interrogatories in regard to the same,
16 and shall sign and offer to make oath or affir-
17 mation, to such disclosure, the Justice, Judge,
18 or Court shall administer such oath, and may

19 upon the whole examination, adjudge and de-
 20 termine that execution on such judgment as
 21 the plaintiff may recover in said suit or process,
 22 shall issue against his estate or property only, or
 23 otherwise, as justice upon such disclosure may
 24 require, and the attachable estate or property
 25 disclosed, shall from the time of such disclosure,
 26 be held attached as is provided in the fifth Sec-
 27 tion of this Act.—*Provided, however, That*
 28 at any time before the return day of any such
 29 writ or process, the parties to the suit, may, by
 30 agreement in writing, appear before any Justice
 31 of the Peace and of the Quorum, in the County
 32 where the suit or process may be pending, and
 33 the debtor or defendant shall make the same
 34 disclosures, and submit to the same examina-
 35 tion and proceedings, as is provided in this
 36 Section, to be had before a Justice, Judge,
 37 Court or Commissioner, and in such case, the
 38 Justice, Judge, or Court shall proceed thereon,
 39 in the same manner, and to the same effect as
 40 if the same disclosures were made as first pro-
 41 vided in this Section.

SECT. 7. *Be it further enacted, That*
 2 whenever any person shall be arrested or im-
 3 prisoned on mesne process, in any civil action,

4 he may be released therefrom by giving bond,
5 with surety or sureties, to be approved by a
6 Justice of the Peace and of the Quorum, in
7 double the sum for which he is imprisoned,
8 conditioned that he will within fifteen days af-
9 ter final judgment against him in said suit, no-
10 tify the creditor to attend in the making such
11 disclosure, and taking such oath or affirmation,
12 as is provided in the tenth Section of this Act,
13 and if it shall appear on such examination and
14 disclosure, that the debtor has attachable estate
15 or property, the judgment shall be a lien on such
16 estate or property, thirty days after such exam-
17 ination and disclosure, and if the debtor, on such
18 examination and disclosure, shall not entitle him-
19 self to the benefit of said oath in the opinion of said
20 Justices, he shall be committed to prison until
21 discharged under the provisions of this Act, or
22 otherwise by order of law, unless the creditor
23 shall within thirty days elect to levy the execu-
24 tion issued on such judgment upon the estate or
25 property so disclosed, in which case, the body
26 of such debtor shall be forever discharged from
27 any execution issuing from or founded on such
28 judgment; *Provided*, That nothing in this Act,
29 shall impair the right of any person to bail, in
30 any action or suit.

SECT. 8. *Be it further enacted*, That when-
 2 ever any debtor, arrested or imprisoned on ex-
 3 ecution, issuing on judgment in any civil suit,
 4 shall give bond in double the amount for which
 5 he is so arrested or imprisoned, conditioned,
 6 that, in six months, he will cite the creditor
 7 before two Justices of the Peace, *Quorum unus*,
 8 and submit himself to examination, and take the
 9 oath or affirmation as prescribed in the tenth
 10 section of this Act, or pay the debt, interest,
 11 costs and fees arising in said execution, or be
 12 delivered in custody of the gaoler within said
 13 time, he shall be discharged, and if said debtor
 14 fails to fulfil the condition of such bond, the
 15 same shall be forfeited, and judgment in any suit
 16 on such bond, shall be rendered for the amount
 17 of the execution and fees, and costs of commit-
 18 ment, with interest thereon at per cent;
 19 *Provided*, That no suit on any bond authorized
 20 by this Act, shall be sustained, unless com-
 21 menced within one year after the forfeiture.

SECT. 9. *Be it further enacted*, That when
 2 any person committed to prison by force of any
 3 execution, shall make written complaint to the
 4 keeper of the gaol where he is committed, that
 5 he has not estate sufficient to support him in

6 prison, the keeper shall thereupon apply to a
7 Justice of the Peace of the County, who shall
8 make out a notification under his hand and seal,
9 to the creditor, of such prisoner's desire to take
10 the privilege and benefit of the oath or affirma-
11 tion authorized by this Act, and the time and
12 place of the intended caption, which may be
13 served by any sheriff, deputy, or constable,
14 (not a party,) on any creditor, if living within
15 the State, or if not, on any agent or attorney, by
16 an attested copy delivered in hand, or left at
17 the last and usual place of abode of such credi-
18 tor, agent or attorney, fifteen days at least before
19 the time appointed for taking the oath or affir-
20 mation, that he may be present, if he see cause;
21 *Provided*, That if no creditor, agent or attor-
22 ney live within the State, the notification shall
23 be left with the Clerk of the Court, or Justice
24 from whom said execution issued, at least fifteen
25 days before such intended caption.

SECT. 10. *Be it further enacted*, That
2 any two Justices of the Peace and of the Quo-
3 rum of the County, and disinterested, may, at
4 the time and place of caption, examine the noti-
5 fication and return, and if regular and in due

6 form, may hear, and if requested, take in writ-
 7 ing, the disclosure of the debtor, and proceed in
 8 the examination as is provided in the fourth
 9 Section of this Act, and if upon the whole ex-
 10 amination, the Justices shall be satisfied that
 11 the debtor's disclosure is true, they may proceed
 12 to administer to him the following oath or affir-
 13 mation:

I _____ do solemnly swear, (or affirm as the case may be,) that I have not any estate, real or personal, in possession, reversion, or remainder, except the goods and chattels exempted by law from attachment and execution; and that I have not since the commencement of this suit against me, or at any other time, directly or indirectly, sold, loaned, leased, or otherwise disposed of, or conveyed, or entrusted, to any person or persons whomsoever, all or any part of the estate, real or personal, whereof I have been possessed, or been the lawful owner, with any intent or design to secure the same, or to receive, or to expect any profit, gift, remuneration or advantage therefor personally, or that any or all of my family, heirs or friends, should receive or expect, any profit, advantage or benefit therefrom, that I have not since the commencement of said suit against me, applied or disposed of any of my said property, to the payment in whole or in part of any debt or demand, owed by me, or for which I was liable at that time, or have caused or suffered to be done any thing else whatsoever, whereby any of my creditors might have been, or may be defrauded, **SŌ HELP ME GOD.** (or this I do under the pains and penalties of perjury, as the case may be.)

14 which oath or affirmation, being administered
 15 by said Justices to, and taken by said debtor,
 16 said Justices shall make out a certificate thereof
 17 under their hands and seals to such gaoler or
 18 prison keeper, and deliver it to the said debtor,
 19 in the form following, to wit:

W——, ss. To —— keeper of the Gaol at ——.

[SEAL.] We, the Subscribers, two disinterested Justices of
 [SEAL.] the Peace, and of the Quorum, in and for said
 County of W——, and each of us freeholders, hereby certify,
 that (A— B—,) a poor prisoner committed upon execution for
 debt, to the gaol at —— aforesaid, hath caused (C— D—,)
 the creditor at whose suit he was so committed, to be notified
 according to law, of his, the said (A— B—'s,) desire of taking
 the benefit of the Act, entitled an Act for the relief of poor
 debtors, that in our opinion, he was clearly entitled to have the
 oath prescribed in said Act, administered to him by us; and
 that we have, after due caution to him, administered said oath
 to him.

*Witness our hands and seals, this — day of — Anno
 Domini, —.*

E—— F——, } Justices
 G—— H——, } aforesaid.

20 and the said debtor on delivering said certificate
 21 to said gaoler or prison keeper, or filing it in
 22 his office, shall be thereby discharged and set at
 23 liberty from commitment on the execution con-
 24 cerning which said notification issued, and the
 25 body of said debtor shall forever thereafter be
 26 free from liability to arrest and imprisonment on
 27 said execution, and on every other execution
 28 which may be issued on the same judgment, or
 29 on any other judgment founded thereon: *Pro-*
 30 *vided*, That any debtor or prisoner otherwise
 31 disqualified as a witness, shall be entitled to all
 32 the benefit of this Act, and nothing herein con-
 33 tained shall prevent any such debtor who shall
 34 be remanded, or fail to obtain his discharge,

35 from a discharge at any future examination as
36 is hereinafter provided.

SECT. 11. *Be it further enacted*, That if any
2 debtor authorized or required to disclose on
3 oath or affirmation, according to the provisions
4 of this Act, shall falsely disclose, or withhold,
5 or suppress the truth, he shall, on conviction
6 thereof, be adjudged guilty of the crime of wil-
7 ful and corrupt perjury, and subjected to the
8 pains and penalties thereof, and shall receive no
9 benefit from said oath or affirmation. And the
10 creditor, his agent or attorney, may commence
11 against such debtor a special action on the case,
12 particularly alleging the false oath or affirmation,
13 and the fraudulent concealment of said debtor's
14 estate or property, and on oath or affirmation
15 before some Justice of the Peace, or other mag-
16 istrate authorized to administer the same, declare
17 his belief of the truth of the declarations in the
18 writ, the Justice or magistrate administering
19 the oath or affirmation, shall certify the same on
20 the writ, and thereupon the debtor shall be
21 held to bail on said writ, or in default thereof,
22 committed to prison to abide the judgment in
23 said suit; and if judgment shall be rendered

24 against said debtor in the suit, it shall be for
25 double the amount of the debt and costs, and he
26 may be arrested and committed to prison on any
27 execution issued on said judgment, without any
28 privilege of release or discharge, under this Act.

SECT. 12. *Be it further enacted,* That no
2 release of any debtor or prisoner, under the pro-
3 visions of this Act, shall affect or impair the
4 right of the creditor to his debt or demand,
5 but the same shall remain in full force against
6 the property or estate of said debtor, and may
7 be at any time satisfied out of any such property
8 and estate, which may be discovered, and shall
9 not by law be exempted from attachment and
10 execution, in the same manner as if such dis-
11 charge had not been made.

SECT. 13. *Be it further enacted,* That any
2 person who shall knowingly aid or assist any
3 debtor or prisoner in any fraudulent conceal-
4 ment of his property or estate, or any transfer
5 thereof to secure or conceal the same from cred-
6 itors, to prevent the same from attachment or
7 execution, he shall be answerable in a special
8 action of the case, to any creditor who may sue
9 for the same, in double the amount of the prop-
10 erty or estate, so fraudulently concealed or trans-

11 ferred, not exceeding however, double the
12 amount of such creditor's just debt or demand.

SECT. 14. *Be it further enacted,* That any
2 person committed to prison by virtue of any
3 warrant for the collection of any tax, shall stand
4 in the same relation to the Assessors of the
5 town or plantation, as the debtor shall to the
6 creditor in this Act, and the same proceedings
7 may be had, and the person taxed and commit-
8 ted shall be subject to the same liabilities, and
9 entitled to the same benefits and immunities as
10 debtors are in regard to their creditors, as here-
11 in provided. *Provided,* That the oath or affir-
12 mation, and certificate of discharge prescribed
13 in the tenth section of this Act, shall be so va-
14 ried as to substitute in the oath "assessment of
15 the tax," for "commencement of said suit,"
16 and the "town or plantation," for "any of my
17 creditors," and in the certificate of discharge,
18 "warrant for taxes," for "execution for debt,"
19 and "Assessors" for "creditors."

SECT. 15. *Be it further enacted,* That when-
2 ever a debtor in execution, having property, es-
3 tate, goods, effects or credits, to the amount of
4 *thirty dollars* or more, shall spend or use the

5 same, or so much thereof for his subsistence, as
6 shall amount to the sum upon which he is com-
7 mitted in execution, without giving the creditor,
8 his agent or attorney, notice where, and of what
9 kind they are, and enabling him, if he thinks
10 proper, to accept the same, or such part of them,
11 as will amount to the debt for which he is in
12 execution, in satisfaction thereof, such neglect
13 shall be deemed and taken as a fraudulent trans-
14 action of such debtor, and any person who shall
15 knowingly aid or assist him therein, shall be
16 subject to the same liabilities and in the same
17 manner as is provided in the thirteenth section
18 of this Act.

SECT. 16. *Be it further enacted,* That when-
2 ever the keeper of any prison, when any person
3 may be committed on mesne process or execution,
4 shall require of the creditor, his agent or attor-
5 ney, security for the payment of the expense of
6 supporting such debtor, in case he shall claim
7 relief as a pauper, it shall be the duty of the
8 keeper to discharge such debtor from prison on
9 such commitment, unless satisfactory security is
10 given within eight days after such request, or
11 money advanced for the support of such debtor,

12 while he shall remain in close confinement.
 13 And in case of any dispute about the price of
 14 any articles furnished a prisoner in confinement,
 15 the County Commissioners may determine the
 16 same.

SECT. 17. *Be it further enacted*, That the
 2 fees for the services required by this Act, shall be
To the Officer for taking a debtor before a Jus-
tice or Justices for a disclosure,
 For travel, as in service of a writ, and at-
 tendance,
 For certifying property disclosed,
 For a bail or other bond,
 For release from confinement,
 For recommitment of prisoner when re-
 manded under the provisions of this Act,
To the Justices, for any examination under this
Act, each,
 For interrogatories proposed by the creditor,
 or his attorney, and answers, to be paid
 by the creditor,

SECT. 18. *Be it further enacted*, That all
 2 Acts regulating, prescribing and defining "gaol
 3 yards" or "gaol limits," and all other Acts and
 4 parts of Acts inconsistent with the provisions of
 5 this Act, be, and the same hereby are repealed.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 17, 1835. }

MR. HOLMES of Alfred, read the foregoing amendment to the Bill entitled "an Act for the Relief of Poor Debtors," which was ordered to lie on the table till Thursday next, at 10 o'clock, and 500 copies to be printed for the use of the Legislature.

[Extract from the Journal of the House.]

Attest: JAMES L. CHILD, Clerk.

WM. J. CONDON....PRINTER TO THE STATE.
