

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

**A. D. 1838.**

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# EIGHTEENTH LEGISLATURE.

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No. 20.

HOUSE.

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## STATE OF MAINE.

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

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### AN ACT for the relief of Poor Debtors.

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SECT. 1. *Be it enacted by the Senate and House*  
2 *of Representatives in Legislature assembled, That*  
3 no person shall be arrested on any suit founded on  
4 contract, express or implied, bond or other special-  
5 ty, or on a judgment or contract, when the sum  
6 demanded, nor on any execution issued on any  
7 judgment when the debt or damage are less than  
8 five dollars, nor on any suit on a judgment founded  
9 on any former judgment when the original debt or  
10 damage are less than five dollars.

SECT. 2. *Be it further enacted, That the body*  
2 of no person shall be arrested on mesne process  
3 founded on any contract or on any judgment ren-  
4 dered in any suit upon contract, unless the plain-  
5 tiff, agent or attorney, shall make oath before some  
6 Justice of the Peace duly qualified, that he or she  
7 believes the whole or a greater part of the amount

8 claimed in that suit is justly and equitably due and  
9 unpaid.

SECT. 3. That whenever any person, who is or  
2 may be arrested or imprisoned for debt on mesne  
3 process or execution, shall give bond to the creditor,  
4 or creditors with one or more sureties approved by  
5 the creditor or by two Justices of the Peace and  
6 Quorum, and gaol delivery in double the amount  
7 for which he or she may be arrested or imprisoned,  
8 conditioned that if not legally discharged, he or  
9 she will within nine months from the rendition of  
10 judgment if arrested or imprisoned on such mesne  
11 process, or within nine months from executing said  
12 bond if he or she may be arrested on execution,  
13 he or she will surrender himself or herself to the  
14 gaol keeper and go into close confinement as is  
15 required by law, the officer making the arrest, or  
16 the keeper of the gaol shall release him from  
17 arrest or imprisonment without requiring any other  
18 condition in such bond.

SECT. 4. *Be it further enacted,* That any bond  
2 which may be given as aforesaid, shall be discharg-  
3 ed and void if the principal shall within nine  
4 months from the rendition of judgment if given on  
5 arrest or imprisonment upon mesne process as  
6 aforesaid, or within nine months from the time of  
7 executing such bond if given on arrest or imprison-  
8 ment on execution, surrender himself or herself or  
9 be surrendered by his or her surety to the keeper

10 of the gaol in the county where such arrest or im-  
 11 prisonment may be made ; and such surrendered  
 12 principal shall be in the custody of the gaol keep-  
 13 er under the execution or writ on which the bond  
 14 was executed, as fully as on the first commitment,  
 15 which may be made. Provided, however, that  
 16 after such surrender, said principal shall be enti-  
 17 tled, on giving bond anew, to the same privileges  
 18 as he was or would be before such surrender ; but  
 19 such new bond shall not extend the time beyond  
 20 the expiration of the nine months, as provided in  
 21 the bond first named.

SECT. 5. *Be it further enacted,* That nothing  
 2 shall be considered a breach of any bond given by  
 3 any debtor as aforesaid, excepting the failure to  
 4 surrender himself to the gaol keeper as is required  
 5 in the fourth section of this Act. And no officer  
 6 shall be chargeable for any mistake or misapprehen-  
 7 sion in not taking bond as aforesaid for double the  
 8 amount of the sum claimed in the writ or execu-  
 9 tion ; provided the penal sum in the bond shall be  
 10 sufficiently large to cover the sum for which judg-  
 11 ment may be rendered for a breach of said bond.

SECT. 6. *Be it further enacted,* That when a  
 2 bond is taken as aforesaid on arrest upon mesne pro-  
 3 cess or execution, without a commitment, it shall  
 4 be the duty of the officer who shall serve said writ  
 5 or execution, to return said bond with the writ or  
 6 execution to the Clerk or Justice to whom said

7 writ or execution is made returnable ; and if taken  
8 by the gaol keeper, it shall be his duty to deliver the  
9 same on the order of the creditor or creditors, his,  
10 her or their attorney ; and if not called for, to keep  
11 the same safely for the benefit of such creditor or  
12 creditors ; and if a suit shall be commenced upon  
13 such bond for breach of the condition, and judg-  
14 ment shall be rendered thereon, it shall be entered  
15 up for the amount of the debt in the execution, and  
16 interest thereon to the time of a breach of the same,  
17 together with the costs on that execution, and offi-  
18 cers' fees as a principal, and upon that principal,  
19 interest at the rate of twenty-five per cent. per  
20 annum from the breach of such bond. And no  
21 action shall be sustained, if commenced after one  
22 year from the time of the breach of such bond.

SECT. 7. *Be it further enacted,* That when any  
2 person shall wish to take the benefit and privilege  
3 of this Act, he shall make application in writing  
4 to be by him signed, to some Justice of the Peace  
5 in the county where he or she was arrested, re-  
6 questing him to issue a notification to the creditor  
7 or creditors, of his design to take the benefit of  
8 this Act ; and if the debtor shall be in close con-  
9 finement, he or she shall make a similar applica-  
10 tion to the keeper of the gaol where so confined,  
11 who shall forthwith, on the tender of his legal fees,  
12 apply to such Justice in writing to be by him  
13 signed, to issue such notice ; and the Justice shall,

14 on the tender of his legal fees, immediately issue  
15 a notification under his hand and seal to the  
16 creditor or creditors—thereby signifying to such  
17 creditor or creditors, the desire of such person to  
18 take the privilege and benefit allowed by this Act,  
19 and the time and place appointed for the intended  
20 caption or affirmation allowed by this Act; and  
21 which being served on the creditor or creditors, if  
22 within this State, his or her executor or adminis-  
23 trator, and if such creditor or creditors live out of  
24 this State, upon his or her agent or attorney, by  
25 leaving an attested copy thereof at the usual place  
26 of abode of such creditor or creditors, agent or  
27 attorney, at least fifteen days before the time ap-  
28 pointed for the taking of said oath, that he or she  
29 may be present if they see cause. Provided, that  
30 if any creditor or creditors live out of this State,  
31 and have no agent or attorney living in the same,  
32 an attested copy of such notification shall be left  
33 with the Clerk of the Court, or the Justice by  
34 whom the writ or execution was signed, at least  
35 fifteen days before such intended caption; and  
36 such notification may be served and returned by  
37 a sheriff, his deputy or a constable.

SECT. 8. *Be it further enacted,* That there  
2 shall be appointed by the Governor, by and with  
3 the advice and consent of the Council, in each  
4 county, so many as he shall think necessary, Jus-  
5 tices of the Peace and of the Quorum, and gaol

6 delivery, who shall be commissioned and qualified  
 7 in the manner of other Justices of the Peace, who  
 8 are prudent, discreet, intelligent and experienced  
 9 freeholders in said county, and who have resided  
 10 therein not less than two years next preceding the  
 11 time of their appointment.

SECT. 9. *Be it further enacted,* That any two  
 2 of the Justices mentioned in the eighth section of  
 3 this Act, within and for the county where such  
 4 oath or affirmation is to be taken, who are disinter-  
 5 ested, and not nearly connected in blood or affinity  
 6 with the debtor, and no others, are hereby author-  
 7 ised and empowered at the time and place appoint-  
 8 ed for the caption of such oath or affirmation, to  
 9 examine the notice and return; and if they ap-  
 10 pear to be duly made, to administer said oath or  
 11 affirmation, after fully examining and hearing the  
 12 parties, if they the said Justices shall think proper  
 13 so to do, and not otherwise, to such debtor.

SECT. 10. *Be it further enacted,* That said  
 2 Justices or either of them, before whom any per-  
 3 son may appear, for taking the oath or affirmation  
 4 prescribed in this act, shall have power to adjourn  
 5 their proceedings, from time to time as they shall  
 6 deem reasonable; but such adjournment shall in  
 7 no case operate to prevent a breach of such bond,  
 8 if it would have taken place without such adjourn-  
 9 ment—and the creditor, his or her attorney attend-  
 10 ing such examination, may propose to the debtor



11 such interrogatories in writing pertinent to the en-  
 12 quiry as he may think fit, which interrogatories  
 13 shall be answered in writing before said justices,  
 14 and signed and sworn to before they shall proceed  
 15 to administer the oath or affirmation, to discharge  
 16 such debtor, if the creditor or attorney shall re-  
 17 quire the same. And the creditor or attorney  
 18 shall have a right to receive said interrogatories and  
 19 answers, certified as sworn to, by said Justices, for  
 20 which or she shall pay them the same fees, travel-  
 21 ing fees excepted, as for taking depositions of the  
 22 same length. And if it shall not clearly appear  
 23 upon interrogatories and answers and other evi-  
 24 dence in the case, that such person is entitled to  
 25 his discharge, the said Justices shall not adminis-  
 26 ter the said oath to him, notwithstanding he may  
 27 offer to take it—and one of said Justices shall  
 28 always make proper entries and records of their  
 29 proceedings and enter judgment in due form as in  
 30 other cases.

SECT. 11. *Be it further enacted,* That it shall  
 2 be the duty of the Justices who may administer  
 3 an oath or affirmation to any person who has given  
 4 bond as aforesaid in order that his body may be  
 5 discharged from arrest and imprisonment, to ad-  
 6 minister an oath in form, following to wit: I  
 7 — do swear before Almighty God, (or affirm as  
 8 the case may be,) that I have not any estate, real  
 9 or personal, in possession, reversion or remainder ;

10 excepting the goods and chattels by law exempted  
 11 from attachment and execution ; and that I have  
 12 not, since the commencement of this suit against  
 13 me, or at any other time directly or indirectly sold  
 14 leased or otherwise conveyed or disposed of to, or  
 15 entrusted any person or persons whomsoever, with  
 16 all or any part of the estate real or personal,  
 17 whereof I have been the lawful owner or possessor,  
 18 with any intent or design to secure the same or to  
 19 receive or expect any profit or advantage therefor,  
 20 or have caused or suffered to be done, any thing  
 21 else whatsoever, whereby any of my creditors  
 22 may be defrauded, so help me God, (or this I do  
 23 under the pains and penalties of perjury, as the  
 24 case may be,) which oath or affirmation being ad-  
 25 ministered by said Justices to, and taken by the  
 26 person having given bond as aforesaid, and a cer-  
 27 tificate made under the hands and seals of said  
 28 Justices, the body of such debtor shall forever af-  
 29 terwards be discharged and protected from arrest  
 30 for the same cause, and no execution, afterwards  
 31 issued on such debt shall run against the body of  
 32 such debtor ; which certificate to be made by the  
 33 Justices as aforesaid shall be in the form, following  
 34 to wit : G—— ss. To —— keeper of the goal  
 35 at A——, We the subscribers, two Justices of the  
 36 Peace and Quorum, and of gaol delivery for the  
 37 said County of G—— hereby certify that G. Z—  
 38 a poor debtor, who was arrested on a writ, (or ex-

39 ecution as the case may be,) in the County of G—  
 40 has caused E. F——, the creditor at whose suit  
 41 he was so arrested, to be notified according to law  
 42 of his the said G. Z——’s, desire of taking the  
 43 benefit of this Act, entitled “ An Act for the Re-  
 44 lief of Poor Debtors,” that in our opinion the said  
 45 G. Z—— was clearly entitled to have the oath  
 46 prescribed in said Act administered to him by us ;  
 47 and that we have after due caution to him, admin-  
 48 istered the oath to him (or affirmation as the case  
 49 may be. Witness our hands and seals this  
 50 day of                    Anno Domini

SECT. 12. *Be it further enacted*, That when-  
 2 ever any person shall have been convicted of any  
 3 offence against Government, and shall have suffer-  
 4 ed the penalties of the law therefor, and therefore  
 5 cannot be admitted as a witness in any civil or  
 6 criminal action, and shall have been arrested for  
 7 debt, and being otherwise entitled to the benefit  
 8 of this Act, the same person may be admitted to  
 9 the oath prescribed in this Act, he or she conform-  
 10 ing to all the requisitions therein prescribed.

SECT. 13. *Be it further enacted*, That if any  
 2 person so arrested as aforesaid, shall be convicted  
 3 of having sold, leased or otherwise conveyed, con-  
 4 cealed or disposed of, or entrusted his or her  
 5 estate or any part thereof, directly or indirectly,  
 6 contrary to his or her foregoing oath or affirmation,  
 7 he or she shall not only be liable to the pains and

8 penalties of wilful perjury, but shall receive no  
 9 benefit from said oath or affirmation; and in case  
 10 such person at the time of the intended caption,  
 11 shall not take the said oath or affirmation, or be  
 12 not admitted thereto by the said Justices, he shall  
 13 not be discharged from prison, if committed there-  
 14 to, and shall not be entitled to the benefit of this  
 15 Act, unless a notification shall be made out and  
 16 served as aforesaid.

SECT. 14. *Be it further enacted,* That all and  
 2 every judgment obtained against such person ar-  
 3 rested or imprisoned as aforesaid, shall, notwith-  
 4 standing such discharge as aforesaid, be and  
 5 remain good and effectual in law to all intents and  
 6 purposes against any estate whatsoever, which may  
 7 then, or at any time afterwards, belong to him or  
 8 her; and the creditor or creditors, agent or attor-  
 9 ney, their executors or administrators may take out  
 10 a new execution against the lands, tenements or  
 11 hereditaments, goods and chattels of such person  
 12 so discharged, (the goods and chattels by law  
 13 exempted from attachment and distress only ex-  
 14 cepted) for the satisfaction of the debt in such  
 15 manner as might have been done in case the said  
 16 debtor had never been arrested.

SECT. 15. *Be it further enacted,* That when-  
 2 ever a debtor arrested on mesne process or execu-  
 3 tion, having goods, effects or credits, to the amount  
 4 of thirty dollars or more, (that are unattachable by

5 the common and ordinary process of law,) shall  
 6 spend or use the same, or so much thereof for his  
 7 subsistence, as shall amount to the sum which is  
 8 recovered as debt in the execution, without giving  
 9 the creditor, his or her agent or attorney notice,  
 10 where, and of what kind they are, and enabling  
 11 him, if he thinks proper, to accept the same, or  
 12 such part of them as will amount to the debt for  
 13 which he is in execution, in satisfaction thereof,  
 14 such neglect shall be esteemed and taken as a  
 15 fraudulent transaction in the debtor; and every  
 16 person who shall knowingly aid and assist a  
 17 debtor in such fraudulent transaction, shall be  
 18 answerable and chargable to the creditor to double  
 19 the full value of the money, goods or effects by  
 20 him; her or them thus secreted or embezzled in a  
 21 special action on the case.

SECT. 16. *Be it further enacted,* That the  
 2 Court of County Commissioners shall, in all cases,  
 3 determine the compensation to be paid the gaoler  
 4 for such articles, which are necessarily furnished  
 5 for any debtor while confined in such prison by him,  
 6 and their opinion shall be final in such matters.

SECT. 17. *Be it further enacted,* That if any  
 2 person, who may hereafter be arrested or impris-  
 3 oned for debt on mesne process, founded on con-  
 4 tract as aforesaid shall not within            months  
 5 from the time of the rendition of final judgment,  
 6 or any person who shall have been arrested or

7 imprisoned on execution, shall not within  
8 months from the time of executing such bond as  
9 aforesaid, be discharged according to law, such  
10 person shall no longer be entitled to his liberty ;  
11 and if he or she do not within three days after the  
12 expiration of said term of time surrender himself  
13 to the gaol keeper and go into close confinement,  
14 it shall be deemed a breach of the condition of his  
15 said bond. Provided, that when any person shall  
16 own and possess real estate, and shall in writing of-  
17 fer the same to the creditor, so that it may be taken  
18 in execution, he may be admitted to take the oath  
19 prescribed in the eleventh section of this Act, by  
20 adding thereto after the word execution—"and  
21 the real estate described in my offer, in satisfac-  
22 tion of the claim whereon I was arrested."—  
23 And the creditor shall have a lien on the real  
24 estate thus offered, for thirty days after the time  
25 of such offer, if judgment be then rendered ; or  
26 if not rendered, for thirty days after the rendition  
27 thereof; and on filing the said offer in writing  
28 with the Clerk or Justice of the Peace who issued  
29 said execution, shall be entitled to a new execu-  
30 tion, if one had before issued, on which he  
31 may cause said real estate to be set off according  
32 to law.

SECT. 18. *Be it further enacted,* That if any  
2 person shall be arrested or imprisoned by virtue of  
3 any warrant, for the collection of any tax, he shall

4 stand in the same relation to the assessors of the  
 5 city, 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 arrested,  
 8 shall be subject to the same liabilities, and entitled  
 9 to the same benefits and immunities as debtors are  
 10 in regard to their creditors, as herein provided.  
 11 Provided, that the oath or affirmation and certifi-  
 12 cate of discharge prescribed in the section of this  
 13 Act, shall be so varied as to substitute in the oath,  
 14 “assessment of the tax, for commencement of said  
 15 suit;” and “the city, town or plantation,” for  
 16 “any of my creditors”—and in the certificate of  
 17 discharge, “warrant for taxes,” for “writ” or  
 18 “execution”—and “assessors” for “creditors.”

SECT. 19. *Be it further enacted,* That when  
 2 any constable, collector or deputy sheriff, shall be  
 3 arrested or committed for default in payment of  
 4 any taxes committed to him to collect, such con-  
 5 stable, collector or deputy sheriff, shall be subject  
 6 to all the provisions of this Act.

SECT. 20. *Be it further enacted,* That when  
 2 there are two gaols in the same county, every  
 3 person who may be committed or surrendered for  
 4 debt, shall be committed or surrendered to the gaol  
 5 which shall be nearest to his place of abode.

SECT. 21. *Be it further enacted,* That when-  
 2 ever any person or persons shall have been arrest-

3 ed for debt, and given bond as aforesaid, or shall  
 4 have been committed to prison, and his or her  
 5 creditor shall think proper to discharge his or her  
 6 debtor from arrest or imprisonment, or from any  
 7 liability on such bond, he or she shall have  
 8 the right so to do, without affecting or discharg-  
 9 ing the claim or judgment on which said writ or  
 10 execution may be founded, by giving the debtor a  
 11 discharge from his bond, if he be under such, or  
 12 if in close gaol, by leaving with the keeper thereof  
 13 a written permission for such debtor to go at large;  
 14 and such discharge shall not operate to release the  
 15 debtor from the debt and costs on which he was  
 16 arrested or committed; but such debt and costs  
 17 shall be and remain a legal claim against the goods  
 18 and estate of such debtor; but the body of such  
 19 debtor so released, shall be forever thereafter ex-  
 20 empted from arrest and imprisonment upon such  
 21 writ or execution, or upon any writ or execution  
 22 which may be obtained in virtue of the judgment  
 23 upon which such writ or execution issued.

SECT. 22. *Be it further enacted,* That the  
 2 keeper of any prison, whenever any person may be  
 3 committed to prison upon mesne process or execu-  
 4 tion, shall require of the creditor, his or her attor-  
 5 ney, security for the payment of the expense of sup-  
 6 porting such debtor, in case he or she shall claim  
 7 relief as a pauper, it may be lawful for, and the



8 duty of such prison keeper, to discharge said  
 9 debtor from prison on such commitment, unless  
 10 satisfactory security is given within eight days  
 11 after such request, or money advanced for the  
 12 support of such debtor, while he or she shall re-  
 13 main in close confinement. Provided, that such  
 14 discharge shall not operate to release the debt or  
 15 cost on which such debtor was imprisoned.

SECT. 23. *Be it further enacted*, That the fees  
 2 for the services under this Act, for the Justices of  
 3 the Peace and Quorum, and of gaol delivery, shall  
 4 for attending the disclosure of any debtor, besides  
 5 the fees for interrogatories and answers thereto,  
 6 be one dollar each—and making certificate and  
 7 recording same, for certifying an offer of real  
 8 estate, twenty-five cents. The officer who shall  
 9 prepare a bail or bond under this Act, twenty-five  
 10 cents—for serving a notice on each creditor, thirty  
 11 cents—and travel from the place of service to the  
 12 place of caption, four cents a mile.

SEC. 24. *Be it further enacted*, That this act  
 2 shall be in force from and after it shall be approved  
 3 by the Governor ; and all acts and parts of acts in-  
 4 consistent herewith, be and are hereby repealed,  
 5 excepting an act entitled an act giving further rem-  
 6 edies in cases of wilful trespass, approved Feb.  
 7 14, 1833 : *Provided however*, That all arrests,  
 8 commitments and bonds, which have been made or

9 given under former acts, and all suits which have  
10 been commenced and are now pending, shall be  
11 governed by former acts, and not in any degree to  
12 be affected hereby.

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STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }  
MARCH 1, 1838. }

Laid on the table and one thousand copies ordered to be  
printed for the use of the Legislature.

(Extract from the Journal.)

GEO. C. GETCHELL, Clerk.