

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1845.

AUGUSTA:

WM. T. JOHNSON, PRINTER TO THE STATE.

1845.

TWENTY-FIFTH LEGISLATURE.

No. 25.]

[SENATE.

[Reported from the Committee on the Judiciary.]

STATE OF MAINE.

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

AN ACT additional to the one hundred and forty-eighth
chapter of the Revised Statutes.

*Be it enacted by the Senate and House of Represent-
2 atives in Legislature assembled—as follows :*

3 SECTION 1. Any person arrested or imprisoned,
4 who would be entitled to be released on giving the
5 bond described in the seventeenth or twentieth sec-
6 tions of the one hundred and forty-eighth chapter of
7 the revised Statutes, shall be released upon giving to
8 the officer having him in custody a bond to the cred-
9 itor, at whose suit he is arrested or imprisoned, for the
10 amount and upon the conditions provided in said sev-
11 enteenth and twentieth sections respectively, with

12 good and sufficient sureties to be approved by the
13 officer.

SEC. 2. The officer so holding any debtor arrested
2 or imprisoned and the sheriff of the county, if such
3 officer be his deputy or jailer, are hereby subjected to
4 the same duties and liabilities in regard to the suffi-
5 ciency of said sureties as officers are by law subject
6 to in regard to the sufficiency of bail in civil actions;
7 and any person injured by the default of such officer
8 in the premises, may have the same remedies as are
9 by law provided in regard to defaults of officers in
10 taking bail in civil actions.

SEC. 3. If the officer having the debtor in custody
2 as aforesaid shall refuse to receive the bond tendered
3 by said debtor because of the insufficiency of the
4 sureties, the debtor may, on request to the officer
5 having him in custody, be carried before two justices
6 of the peace and of the quorum in the county where
7 he is so arrested or imprisoned, to be selected in the
8 manner provided by law for the selection of justices
9 to take disclosures of poor debtors, for the purpose of
10 having the sufficiency of the sureties so offered de-
11 cided.

SEC. 4. Previous to the trial he shall give notice
2 to the creditor, his agent or attorney, of his intention
3 and of the time and place of said trial, and of the

4 names and places of residence of the sureties offered,
5 and that said creditor, his agent or attorney, may be
6 present and select one of the justices and be heard
7 therein; which notice shall be not less than one day,
8 exclusive of Lord's days, for every twenty miles travel,
9 and shall be served as notices for the taking of deposi-
10 tions are served. *Provided however,* that if neither
11 the creditor nor his attorney of record in the suit on
12 which said debtor is so arrested or imprisoned resides
13 within said county, no such notice need be given, un-
14 less the creditor, prior to the time of the arrest of said
15 debtor, shall have appointed an agent residing in said
16 county, and shall have given the officer arresting said
17 debtor notice in writing of the appointment and
18 place of residence of such agent, in which case no-
19 tice as aforesaid shall be given to such agent; and
20 when notice of the appointment of such agent has
21 been given to such officer he shall communicate it to
22 the debtor.

SEC. 5. The justices before whom such debtor is
2 brought, after satisfying themselves that legal notice
3 has been given, shall proceed to examine such wit-
4 nesses as may be produced and to hear the parties;
5 and upon such examination and hearing shall decide
6 whether the sureties in the bond offered by the debtor
7 are sufficient. If they shall decide that said securities

8 are good and sufficient they shall make a certificate to
9 that effect upon the bond offered by the debtor. And
10 the officer having such debtor in custody, upon re-
11 ceiving the bond with such certificate thereon, shall
12 release the debtor and shall be relieved from any lia-
13 bility on account of the insufficiency of such sureties.
14 But if the justices shall decide that such sureties are
15 insufficient, the debtor shall remain in custody as if no
16 bond had been offered.

SEC. 6. The fees of the justices and of the officer
2 shall be the same as are provided in cases of the
3 disclosure of poor debtors, and shall be paid by the
4 debtor. *Provided*, that the officer shall be entitled to
5 no fees after the time the bond was offered him, if the
6 justices shall decide that the sureties are sufficient.

SEC. 7. In case the sureties are decided by the jus-
2 tices to be insufficient, the creditor shall be entitled to
3 the same fees for his travel and attendance, and for
4 the summoning and travel and attendance of wit-
5 nesses, as in the trial of civil actions before justices
6 of the peace ; and the justices before whom the trial
7 is had shall issue execution therefor against the debtor.

SEC. 8. The justices shall keep records of their
2 proceedings under this act, and shall have the same
3 power to compel the attendance and testimony of

4 witnesses, as they have in the trial of civil actions
5 before them.

SEC. 9. All the provisions of law applicable to the
2 bonds described in the seventeenth and twentieth sec-
3 tions of the act to which this act is additional shall be
4 applicable to bonds given in pursuance of this act.

SEC. 10. So much of the seventeenth and twentieth
2 sections of the one hundred and forty eighth chapter of
3 the Revised Statutes as provides for the approval of
4 poor debtors' bonds by two justices of the peace and
5 quorum, is hereby repealed.

SEC. 11. In any suit upon a bond given by a per-
2 son arrested or imprisoned upon mesne process or
3 execution under and by virtue of any provision of the
4 one hundred and forty eighth chapter of the Revised
5 Statutes, or of any act or acts additional to or in
6 amendment of said chapter, it shall be lawful in de-
7 fence thereof to allege, in a brief statement, that the
8 principal in any such bond was insane at the time of
9 the breach of the condition thereof, or at the time
10 when notice for disclosure thereon ought to have been
11 given, and, if it shall be so found by the jury on a trial
12 being had thereon, a verdict shall be returned for the
13 defendant, and judgment entered accordingly.

SEC. 12. In any case where insanity of the princi-
2 pal in any such bond shall be pleaded in defence

3 thereof, the jury may be required at the request
4 of either party to find a special verdict on that fact;
5 and if a verdict shall be found for the defendants on
6 that fact alone, no costs shall be taxed for the defend-
7 ants in such suit.

SEC. 13. Whenever judgment shall have been en-
2 tered for the defendants in consequence of and in
3 accordance with the provisions of the eleventh, twelfth
4 and thirteenth sections of this act, the principal in any
5 such bond shall be liable to arrest in the same manner
6 as if no previous arrest had been made, and no bond
7 given as aforesaid. And an attested copy of the
8 record of the suit on such bond filed in the office of
9 the clerk of the court or with the justice from whom
10 the writ or execution on which such bond was taken
11 issued, shall authorize such clerk or justice to pro-
12 ceed as if no such arrest had been made or bond
13 taken.

SEC. 14. The same defence specified in the elev-
2 enth section of this act may be made to any such suit
3 upon any such bond commenced before a justice of
4 the peace. And if any justice shall give judgment for
5 the defendants on such defence alone he shall enter
6 the same upon his record, and allow no costs to de-
7 fendants in said suit.



STATE OF MAINE.

IN SENATE, March 8, 1845.

ORDERED, That 350 copies be printed for the use of the
Legislature.

J. O. L. FOSTER, *Secretary.*