

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1849.



Augusta:

WM. T. JOHNSON;.....PRINTER TO THE STATE.

1850.

TWENTY-NINTH LEGISLATURE.

No. 32.]

[SENATE.

STATE OF MAINE.

The committee on the Judiciary, to whom was referred the petition of S. P. Strickland and others, praying for an enactment which shall secure a pro rata distribution, among creditors, of the effects of a debtor, except what may be exempt from attachment, when such debtor shall have been sued by one or more of his creditors, thereby causing his failure,—have had the same under consideration and now respectfully present the following

REPORT.

The petition presents a subject of much importance. It proposes a radical change in the collection code of the State. It calls for a pro rata distribution among creditors of all an insolvent debtor's attachable property. To an attachment of property on mesne process, prior in point of time, it would give no priority of effect. It seems to hold in low estimation the old maxim, that "to the most vigilant creditor the highest privilege should be given." It seems to consider a proportionate division to be the most equitable disposition of an insolvent estate.

The petitioners have presented no views as to the effect of the

distribution upon the debtor ; whether his body should be liable to arrest, or his subsequently acquired property, to seizure for such balances as the distributed estate might prove inadequate to pay.

It does not appear whether they desire the proposed enactment to operate as a bankruptcy law or merely to defeat the ordinary effect of an attachment upon some or all of a debtor's property by converting it into a lien upon all his property for the discharging ratably of all his debts.

No doubt, one object of the petitioners is to do away the inequalities, resulting to creditors equally meritorious, from our attachment system.

It is believed that this system has no existence, except in a very few of the States of our Union. Objections have often been made to it, not only that it gives inequitable preferences, but that it sequesters a man's property before ascertaining that he is a debtor ; that the attachment of a part may preclude him from business as effectually as if the whole were taken ; that it encourages the malice of enemies ; that it rewards the more rigorous creditor at the expense of the more humane, and that it is needlessly expensive. It has been contemptuously called the "grab-game of New England," and is often spoken of as an anomaly and a mischief in the legal code of any people.

Probably, too, the petitioners are hoping that, under the proposed law, the legal proceedings will be more speedy and less expensive to the parties. The ascertainment of the existence and of the amount of indebtedness is a vital part of the collection system. All principle requires that such adjudications be had at the earliest possible day. So thought the worthies who framed the constitution,—and so thought the whole people who adopted it. So the people now think.

"*Promptly and without delay*," are prominent words in that instrument. They express the character of the treaty between the State and each of its citizens. If a man bring an action in the law, having a right to recover, he has that right *now*. All delays, that might be avoided, are wrongs. Justice delayed is justice

denied. Against such a denial, he may appeal to the guaranties of the constitution. Those guaranties are not set aside by the mere fact that the courts are not sufficient in number or frequency. That fact is a wrongful one. It is not perceived how it should involve more hazard to the cause of right, or more judicial labor or more expense to parties, to have cases finally determined in the first year or the first quarter of a year than in the second. That improvements upon the present practice, in these respects, may yet be realized, is still a matter of hope in the public mind.

The petition comes from a most respectable source ; from a large number of upright and highly intelligent men, who have had long and intimate acquaintance with business, in almost every department ; who have attentively observed the operation and tendencies of our legal institutions, and whose soundness of judgment entitle their views to high consideration.

To prepare an enactment, of the character proposed, so as best to secure the object, without conflict or detriment to the other portions of our legal code, (out of which it is to be so liberally carved,) would demand much circumspection and labor.

In view of the many considerations connected with the subject matter of the petition, the committee deem it suitable that, before any enactment be had upon it, the public thought in relation to it should be more fully matured. They are, therefore, constrained to recommend and to report that the petition be referred to the next legislature.

They also report an order which is hereto subjoined.

JOHN HODGDON, *Chairman.*

STATE OF MAINE.

Ordered, That the petition of S. P. Strickland and
2 others, praying for an alteration in the collection laws
3 of the state, be forthwith printed in the papers ap-
4 pointed to publish the laws.

Ordered, That Asa Redington, of Augusta, Anson
2 G. Chandler, of Calais, and Jonas Cutting, of Ban-
3 gor, be employed to prepare a bill, providing the
4 requisite improvements in the law for the collection
5 of debts and securing both to creditor and debtor
6 their appropriate rights.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, July 31, 1849.

ORDERED, That 350 copies of the foregoing Report, be printed.

E. W. FLAGG, *Clerk.*