

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1851--2.

Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1852.

THIRTY-FIRST LEGISLATURE.

No. 21.]

[SENATE.

SIR:—The undersigned, Commissioners appointed to report to this Legislature a Bill for an Insolvent Law for this State, in discharge of that duty, have the honor to report the accompanying Bill.

H. W. PAINE,
L. M. MORRILL.

HON. NOAH PRINCE,
President of the Senate.

Feb. 17, 1852.

STATE OF MAINE.

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

AN ACT for the relief of Insolvent Debtors.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. The governor, with the advice and
2 consent of council, shall appoint some person in each
3 county to be a commissioner of insolvency therein,
4 who shall hold his office for the term of seven years,
5 unless sooner removed—and such commissioner shall,
6 at the shire town of his county, upon the first Tuesday
7 of every month, hold a court of insolvency for pro-
8 ceedings under this act, which proceedings shall be
9 had only in court and after due notice to all parties
10 interested. If the business cannot be completed, on
11 that day he may adjourn his court from day to day,
12 till the business shall be disposed of; *provided however,*
13 that said court shall be considered open at all times,

14 for the receiving of petitions, issuing notices and
15 warrants, approving of bonds and of sales and of
16 compositions.

SECT. 2. Any person residing in this State, who
2 shall desire to take the benefit of this act, may by
3 petition apply to the commissioner for the county in
4 which he resides or has his usual place of business,
5 setting forth his inability to pay his debts and his will-
6 ingness to assign his estate and effects for the benefit
7 of his creditors, and praying that such proceedings
8 may be had in the premises as are provided for in this
9 act.

SECT. 3. If it shall appear to the commissioner that
2 the debts due from said applicant amount to two hun-
3 dred dollars or over, he shall forthwith by warrant
4 appoint a messenger to take possession of the debtor's
5 estate as mentioned in the fourteenth section of this
6 act. And such messenger shall forthwith give public
7 notice by such newspaper and such other publications
8 and modes, as the commissioner, in said warrant, shall
9 prescribe, to all persons interested, which notice shall
10 state that a warrant has been issued against the estate
11 of said debtor, and that the payment or delivery to said
12 debtor or for his use of any money or property be-
13 longing to him, and the transfer of any property by

14 him, are forbidden by law ; and in the same notice
15 shall call a meeting of the creditors, to prove their
16 debts before the commissioner, and to choose one or
17 more assignees of the estate. Said meeting to be
18 held at such time and place as the commissioner may
19 in his warrant have designated, the time to be not less
20 than ten nor more than thirty days after the issuing of
21 the warrant.

SECT. 4. The debtor, within ten days from the first
2 newspaper publication of the notice aforesaid, shall
3 present to the commissioner a schedule of all his real
4 and personal estate, giving a description of the same
5 and stating where it is situated, and also a schedule
6 containing a true and full account of all his creditors
7 with the place of each one's residence, if known to the
8 debtor, and the sum due to each of them. The sched-
9 ule shall set forth the nature of each debt, whether
10 founded on written security or on account or other-
11 wise, and also the true consideration thereof, and a
12 statement of each existing mortgage, pledge, or other
13 collateral security given for the payment of the same.

SECT. 5. The commissioner shall preside at the
2 meeting of the creditors, and, after due proof, shall
3 allow the debts absolutely due at the first newspaper
4 publication aforesaid, from the debtor upon any judg-

5 ment, bond, note, bill of exchange or other contract,
6 and all demands against the debtor for or on account of
7 any goods or chattels wrongfully obtained, taken or
8 withheld by him, may be proved and allowed as debts,
9 to the amount of the value of such goods and chattels.
10 And the commissioner shall cause a list of such debts
11 certified by himself, to be recorded and filed in the
12 case. He may also receive proof of any contingent
13 claims against the debtor, at the time aforesaid, upon
14 any bottomry or respondentia, bond or policy of insur-
15 ance, or upon any endorsement or suretyship on note
16 or bill of exchange or other contract, and if before
17 making the first dividend among creditors, such con-
18 tingent claims, proved as aforesaid, shall have become
19 absolutely due, the amounts so due shall be allowed as
20 debts. No debts of any other description shall at any
21 time be allowed against the estate.

SECT. 6. When it shall appear that there has been
2 mutual credit given by the debtor and any other per-
3 son, or that there are mutual debts between them, the
4 account between them shall be stated, and one debt
5 shall be set off against the other, and the balance of
6 such account and no more shall be allowed or paid on
7 either side respectively.

SECT. 7. At the meeting called by the messenger
2 as aforesaid, the creditors, in the presence of the com-
3 missioner, shall proceed to choose one or more as-
4 signees of the estate of the debtor, the choice to be
5 made by the greater part in interest of the creditors,
6 according to the absolute debts there proved; *provided*
7 that when the number of creditors shall amount to five
8 and less than ten, the votes of two at least shall be
9 necessary to a choice, and when the number of cred-
10 itors shall amount to ten, the votes of three at least
11 shall be necessary to a choice. And if no such choice
12 shall be made, the commissioner shall appoint one or
13 more assignees, and in case any assignee duly chosen
14 or appointed, shall fail within four days to express in
15 writing his acceptance of the trust, the commissioner
16 shall appoint another.

SECT. 8. Whenever any creditor shall have a mort-
2 gage or pledge of any real or personal estate of the
3 debtor, or any lien thereon for securing the payment
4 of any debt claimed by him, the property so held as
5 security, shall, if he require it, be sold, and the pro-
6 ceeds shall be applied toward the payment of his debt,
7 and he shall be admitted as a creditor for the residue
8 thereof, the sale to be made in such manner as the
9 commissioner may order. The creditor and assignees

10 shall execute all such deeds and other instruments as
11 may be necessary and proper, to effectuate the con-
12 veyance. If the creditor shall not require such sale
13 and join in the conveyance, he may release and
14 deliver up to the assignees the property so held as
15 security, and shall thereupon be admitted as a creditor
16 for the whole debt. But if said property shall not be
17 either sold or released and delivered up as aforesaid,
18 he shall not be allowed to prove any part of his debt.

SECT. 9. No debt shall be allowed against any in-
2 solvent estate unless the creditor shall make oath to
3 the validity of the claim. The oath shall be in sub-
4 stance as follows:—

5 I — do swear that — by (or against) whom
6 proceedings in insolvency have been instituted, was at
7 the time of instituting said proceedings, and still is
8 justly and truly indebted to me in the sum of — for
9 which sum or any part thereof, I have not, nor has
10 any person to my knowledge or belief, received to my
11 use any security or satisfaction whatever beyond what
12 has been disposed of agreeably to law. And I do fur-
13 ther swear that said claim was not procured by me for
14 the purpose of influencing the proceedings in this case.

15 This oath may be administered by any justice of the
16 peace.

SECT. 10. Any supposed creditor whose claim in
2 whole or in part shall be rejected by the commission-
3 er may appeal from his decision and have the same
4 determined at law. So also, the assignees, if dissatis-
5 fied with the allowance of any claim, may appeal in
6 like manner. If the debt claimed shall amount to
7 two hundred dollars, the appeal may be made to and
8 determined in the supreme judicial court, otherwise,
9 to and in the district court. The appeal shall be
10 entered at the term within the county next after four-
11 teen days from the claiming of the appeal. The
12 judgment of either court shall be conclusive, except
13 that exceptions may be allowed and acted upon, as in
14 other civil matters. The final judgment shall be cer-
15 tified to the commissioner, conformably to which the
16 list of debts shall be altered if necessary. No appeal
17 shall be allowed unless the same be claimed and
18 notice thereof given to the commissioner or his clerk,
19 to be entered in the record of the proceedings, and
20 also to one of the assignees, if the creditor appeal,
21 and to the creditor if the assignees appeal, within

22 ten days after the decision complained of. At the
23 time of the entering of such appeal, the creditor shall
24 file in court a statement in writing of his claim, setting
25 forth the same substantially as in a declaration at law
26 for the same cause of action, and the assignees shall
27 plead or answer to the same in like manner. And
28 the like proceedings shall be had upon the joining of
29 any issue in law or fact or upon default or non-suit
30 as in actions in usual form for the same cause, except
31 that no execution for the debt shall be awarded.
32 The prevailing party shall recover his costs. If re-
33 covered against the assignees the same shall be
34 allowed to them out of the estate of the debtor.

SECT. 11. All the property and rights of property,
2 which the debtor at the time of the first newspaper
3 publication could have lawfully sold or assigned, or
4 which might then have been taken on execution
5 against him, although the same may be under attach-
6 ment on mesne process as the property of the debtor,
7 shall, by mere operation of law, be divested out of the
8 debtor and vested in such assignees as shall from time
9 to time be chosen or appointed as before provided ;
10 and any attachment on mesne process against said
11 debtor shall be dissolved. And such assigns shall

12 have power to redeem all mortgages, pledges, and
13 liens of or upon the property and rights of property
14 aforesaid, or to sell the same subject to such incum-
15 brances, and to manage and dispose of such property
16 and rights of property and in their own names to sue
17 for and defend the same under the directions of the
18 commissioner. *Provided* that there may be retained
19 out of the estate by the debtor, for his own use, exempt
20 from any claim of the assignees, the property exempt-
21 ed from attachment and execution by the following
22 enactments of the legislature, viz: the thirty-eighth
23 section of chapter one hundred and fourteen of the
24 revised statutes—the act approved July 3d, 1847, and
25 the act entitled, “An act to exempt certain property
26 from attachment” approved August 14, 1849.

SECT. 12. The debtor shall, at the expense of the
2 estate, make and execute all such deeds and writings
3 and endorse all such bills, notes or other negotiable
4 paper and draw all such checks and orders for moneys
5 deposited in banks or elsewhere, and do all such other
6 acts as the assignees shall reasonably require, or which
7 shall the better enable the assignees to demand, re-
8 cover and receive all the property or rights of pro-
9 perty in them vested.

SECT. 13. If at the time of the newspaper publica-
2 tion aforesaid, any suit at law or in equity shall be
3 pending to which the debtor is a party, the court may,
4 upon suggestion that a process of insolvency has
5 been instituted, continue the cause, for the assignees
6 to come in and assume the prosecution or defence
7 thereof. All such suits may be prosecuted and de-
8 fended by the assignees to their final conclusion in
9 the same way and with the same effect as they might
10 have been by such debtor, and no suit commenced
11 or prosecuted by or against an assignee shall be
12 abated by his death, but the same may be prosecuted
13 or defended by his associates or successors.

SECT. 14. The messenger, as soon as may be, shall
2 demand and receive from the debtor and from all other
3 persons, all the estate of the debtor which by this act
4 would vest in the assignees, with all the deeds, books
5 of account, and papers of the debtor relating thereto,
6 all which, the debtor shall deliver to the messenger,
7 if in his possession or power, or disclose the situation
8 thereof, if in the possession of any other person, that
9 the messenger may be enabled to demand and receive
10 the same.

SECT. 15. The debtor shall, at all times before the
2 granting of this certificate, upon reasonable notice,
3 attend before the commissioner and the assignees, and
4 submit to an examination upon oath as to all matters
5 relating to his disposal of his estate and to his trade
6 and business with others, and his accounts concerning
7 the same, and relating to all debts due or claimed
8 from him, and as to all matters concerning his estate
9 and the due settlement thereof according to law. The
10 examination to be in writing, when required by the
11 commissioner and signed by the debtor and filed with
12 the other papers in the case. The debtor shall re-
13 ceive out of the estate one dollar per day for such
14 attendance before the commissioner or assignees. If
15 the debtor shall die after the issuing of the warrant,
16 the proceedings shall, notwithstanding, be continued
17 and concluded in the like manner and with the same
18 effect as if he had lived.

SECT. 16. The commissioner, upon complaint made
2 on oath by any person interested in the estate, against
3 any person suspected of having fraudulently received,
4 concealed, embezzled or conveyed away any of the
5 money, goods, effects or other estate of such insol-

6 vent, may cite such suspected person to appear
7 before him, to be examined on oath upon the matter
8 of such complaint. And if the person so cited shall
9 refuse to appear and submit to such examination, or
10 to answer to such interrogatories as shall lawfully be
11 propounded to him, the commissioner may commit
12 him to the county jail, there to remain in close cus-
13 tody until he shall submit to the order of the commis-
14 sioner. All such interrogatories and answers shall be
15 in writing. The answer shall be signed by the party
16 examined, to be used in any manner authorized by
17 law. *Provided* that no such answer shall be ever used
18 as evidence in any criminal prosecution against the
19 signer of them.

SECT. 17. The commissioner shall call a second
2 meeting of the creditors, at a time not more than
3 three months from and after the close of their first
4 meeting; he shall also call a third meeting of the
5 creditors, at a time not more than three months from
6 and after the close of the second meeting. Of each
7 of said meetings the assignees shall give such persons
8 notice as the commissioner shall direct. At said
9 second and third meetings the creditors whose prova-

10 ble debts shall not have been previously proved, may
11 prove the same ; and at either of said meetings, the
12 debtor may amend the schedule of his creditors. He
13 shall then make and subscribe, before the commis-
14 sioner, an oath (to be certified by him and filed in the
15 case) in substance as follows :

16 I —— do swear that the amount of my creditors
17 contained in the schedule made and signed by me,
18 and now in the hands of the commissioner of insol-
19 vency, is in all respects true, according to my best
20 knowledge and belief. And I do further swear that
21 I have delivered to the messenger all my estate
22 (excepting such articles as I am allowed to retain by
23 the eleventh section of an act passed in the year 1852
24 entitled, “An act for the relief of insolvent debtors”)
25 and all my books of account and papers relating to
26 my said estate that were in my possession or power
27 when the same were demanded of me by the messen-
28 ger ; that I have delivered to the assignees all such
29 of my estate, books and papers as have since come
30 into my possession ; and that if any other estate, effects
31 or things which are vested in said assignees, shall
32 hereafter come to my knowledge or possession, I will

33 forthwith disclose and deliver the same to them. And
34 I do further swear that there is not any part of my
35 estate or effects made over or disposed of in any
36 manner for the future benefit of myself or my family,
37 or in order to delay or defraud any of my creditors.

SECT. 13. If it shall appear to the commissioner
2 that the debtor has made a full disclosure and deliv-
3 ery of all his estate herein before required, and that
4 he has in all things conformed to the directions of this
5 act, the commissioner shall grant him a certificate
6 thereof, and the debtor shall thereupon be absolutely
7 discharged from all his debts, which then shall have
8 been or afterwards shall be proved under said petition,
9 which are founded on any contract made after this
10 act shall go into operation, if made within this State
11 or to be performed within the same, and from all
12 debts provable as aforesaid, founded upon any con-
13 tract made after this act shall go into operation, and
14 due to any person who, at the first newspaper publi-
15 cation aforesaid, shall be a resident in this State, ex-
16 cepting all debts arising from the debtor's defalcation
17 as a public officer, executor, administrator, guardian,
18 receiver, trustee or assignee of an insolvent estate ;

19 and all debts for or on account of the wrongful tak-
20 ing, obtaining or withholding by the debtor of any
21 goods or chattels. And the debtor shall be absolute-
22 ly discharged and exempted from arrest in any suit or
23 proceeding for the recovery of any debt or demand
24 to which the discharge above provided for, shall
25 extend. *Provided nevertheless*, that the discharge
26 shall not be granted, or if granted shall be of no effect
27 in any of the following cases :

28 *First*, if the debtor shall have willfully sworn falsely
29 to any material fact in the course of the proceedings
30 under this act.

31 *Second*, if he shall have fraudulently destroyed, con-
32 cealed, given or withheld any part of his estate, or
33 effects, or any books, deeds or writings relating thereto.

34 *Third*, if after the passing of this act, and within
35 one year before the filing of the petition by or against
36 him, he shall have procured his lands, money, goods
37 or chattels to be attached on mesne process, or se-
38 questered or seized on execution, with intent to give
39 a preference to any creditor or to any person who
40 was or may be liable for him as endorser, surety or
41 otherwise, and it shall be made to appear that at the

42 time of making such preference, the debtor believed
43 himself insolvent.

44 *Fourth*, if after the passing of this act, and within
45 one year before the filing of the petition by or against
46 him, the said debtor, being insolvent or in contem-
47 plation of insolvency, shall have made any payment
48 or made any assignment, sole transfer or conveyance,
49 either absolute or conditional, of any part of his estate,
50 real or personal, intending thereby to give a prefer-
51 ence to any creditor or to any person, who was or
52 may be liable for him as endorser, surety or other-
53 wise, and it shall be made to appear that at the time
54 of making such preference, the debtor believed him-
55 self insolvent.

56 *Fifth*. When the discharge is applied for, upon a
57 second or subsequent insolvency under this act, and
58 the net assets shall fail to pay fifty per cent. of the
59 debts proved, and three-fourths in value of the credi-
60 tors to whom said debts have been allowed, shall not
61 within six months next after the issuing of the war-
62 rant to the messenger, assent in writing to the dis-
63 charge.

64 *Sixth*. When the debtor shall have procured the

65 assent of any creditor to his discharge, by payment or
66 promise of any valuable consideration.

SECT. 19. The dividends which any creditor shall
2 receive shall be payment of the debt to that extent,
3 although the debtor shall not be discharged therefrom.

SECT. 20. The certificate of discharge shall be in
2 substance as follows :

3 STATE OF MAINE.

4 ——— ss.

5 By the commissioner of insolvency for the
6 [L. s.] county aforesaid,

7 Greeting.

8 Whereas, in pursuance of a petition dated ———,
9 18—, the estate of ——— has been disposed of con-
10 formably to the act of the year 1852, entitled “An
11 act for the relief of insolvent debtors;” and whereas,
12 said ——— has made a full disclosure and delivery
13 of all his estate, and conformed himself in all things
14 to the directions of said act. Now, therefore, I, the
15 said commissioner, hereby certify that by force of
16 said act, the said ——— is absolutely and wholly dis-
17 charged from all his debts which have been or shall
18 be proved in the proceedings under said petition ;

19 also from all debts provable under said petition, which
20 are founded on any contract made after this act shall
21 go into operation, if made in this State, or to be per-
22 formed within the same ; and from all debts provable
23 as aforesaid, founded upon any contract made after
24 this act shall go into operation, due to any person
25 who, at the first newspaper publication as above re-
26 quired, shall be a resident in this State, excepting
27 however, all debts arising from the debtor's defalca-
28 tion as a public officer, executor, administrator, guard-
29 ian, receiver, trustee or assignee of an insolvent
30 estate, and all debts for or on account of the wrong-
31 ful taking, obtaining or withholding by the debtor of
32 any goods or chattels. And the debtor shall be and
33 hereby is discharged, from any arrest or imprisonment
34 in any suit or proceeding for the recovery of any
35 debt from which said debtor is discharged. *Provided*
36 *however*, that this discharge is subject to be vacated
37 as specified in the proviso in the seventeenth section
38 of the act aforesaid.

39 Given under my hand and seal, this —— day
40 of ——, in the year one thousand eight hundred
41 and ——

SECT. 21. If the commissioner shall refuse to grant
2 the certificate of discharge, the debtor may appeal to
3 the supreme judicial court which shall be first held in
4 such county next after the expiration of fourteen days
5 from the claiming of the appeal, *provided*, notice of
6 the appeal be given in writing to the commissioner or
7 his clerk, within ten days after the decision appealed
8 from. Said court, whether held by one or more of its
9 justices, on a hearing of all parties interested, may
10 grant or refuse a discharge, and award costs at their
11 discretion—but no discharge of any debtor under this
12 act shall discharge any other person who may be lia-
13 ble for the same debt.

SECT. 22. The assignees shall give public notice of
2 their appointment in such manner as the commissioner
3 may direct. They shall receive from the messenger
4 and all other persons all the estate in his or their
5 hands respectively, which shall have vested in them
6 by the proceedings under this act. They shall sell
7 the estate on such terms as they shall think most for
8 the interest of the creditors, and shall keep a regular
9 account of all moneys received by them, to which the
10 creditors shall have access and which the assignees

11 shall exhibit at the meetings of the creditors. They
12 shall have power, under the direction of the commis-
13 sioner, to submit to arbitration any controversy arising
14 in the settlement of the estate and to compound any
15 controverted claim.

SECT. 23. It shall be in the power of the creditors,
2 by such a vote as is provided for in the seventh sec-
3 tion, at a meeting called for that purpose by the com-
4 missioner, either at his discretion or on application by
5 a majority in number or value of the creditors, to
6 remove any or all of the assignees, and on any va-
7 cancy (by such removal or by resignation, death or
8 otherwise) to supply such vacancy by a new choice.
9 And all the estate of the debtor—(excepting what
10 he is allowed to retain by the eleventh section)—not
11 before disposed of, shall forthwith vest in such new
12 assignee or assignees.

SECT. 24. The commissioner, at the third meeting
2 of the creditors, (and also at the second, if he thinks
3 it expedient) may order a dividend of said estate, or
4 of so much thereof as he may deem fit, among the
5 creditors who shall have proved their debts, and in
6 proportion to their several amounts. *Provided, how-*

7 *ever*, that debts which by law have priority, shall be
8 first paid in full.

SECT. 25. The commissioner shall call such further
2 meetings of the creditors as he may deem necessary,
3 at which further debts may be proved, and at each of
4 such meetings, he may order dividends of the sums,
5 if any, which may then be remaining in the hands of
6 the assignees. But a creditor whose debt shall be
7 proved at the third or any subsequent meeting shall
8 be entitled only to his proportion of the fund unap-
9 propriated when his debt is proved. If, after payment
10 of all the debts, a surplus shall remain in the hands of
11 the assignees, they shall pay over the sum to the
12 debtor.

SECT. 26. The commissioner shall appoint a clerk,
2 who shall hold his office during the pleasure of the
3 commissioner, and shall record all proceedings had
4 and preserve all papers used in the case, and perform
5 such other duties as the commissioner may require.
6 In the absence of the commissioner the clerk may
7 adjourn the court.

SECT. 27. If any debtor shall have been arrested
2 on mesne process in a civil action upon a just debt,

3 of a character provable under this act and amounting
4 to at least one hundred dollars, and shall not before
5 the return day of the process give bail or other bond
6 authorized by law :

7 *Or*, if he shall be actually imprisoned for more than
8 thirty days on mesne process or execution in any civil
9 action on any such debt :

10 *Or*, if his goods or chattels shall have been attached
11 on mesne process in a civil action upon such debt, and
12 he shall not, before the expiration of the return time,
13 dissolve the attachment :

14 *Or*, if he shall remove from the State with his prop-
15 erty or any part thereof with intent to defraud his
16 creditors :

17 *Or*, shall conceal himself with a view to avoid arrest :

18 *Or*, shall cause his property or any part thereof to
19 be attached or taken on legal process with a view to
20 defraud or give a preference to any creditor :

21 *Or*, shall conceal or transfer his property or any
22 part thereof, to prevent its being attached or taken on
23 legal process :

24 Any creditor whose claim (of a nature provable
25 under this act) amounts to one hundred dollars, may,

26 within ninety days after such delinquency of the
27 debtor, apply by petition to the commissioner of the
28 county in which the debtor resides or last resided,
29 stating on oath the nature and amount of his claim
30 and the delinquency of the debtor, and praying that
31 the debtor's estate may be seized and distributed un-
32 der this act.

SECT. 23. Upon such application, the commissioner,
2 after notice by copy served personally on the debtor,
3 or left at his place of last and usual abode by the
4 sheriff or his deputy, and after hearing the parties at
5 the time and place designated in the notice, or on the
6 debtor's default then and there to appear, if the facts
7 set forth in the petition are proved, shall forthwith
8 issue his warrant to a messenger, to take possession
9 of the debtor's estate, (excepting the property which
10 by the eleventh section the debtor is allowed to re-
11 tain,) and such further proceedings shall be had as
12 are provided for and may be necessary, for distribut-
13 ing the same among his creditors according to the
14 intent of this act. The forms of the papers and pro-
15 cesses of discharge, if granted, shall conform to the
16 character of the law. *Provided*, that these proceed-

17 ings shall not be had, unless the debtor had a resi-
18 dence in the State, within one year before making
19 the application.

SECT. 29. Any person whose goods or chattels
2 shall have been attached on mesne process, in a civil
3 action, for any debt in its nature provable under this
4 act, amounting to at least one hundred dollars, may
5 at any time before final judgment dissolve the attach-
6 ment, by giving bond with sufficient sureties, ap-
7 proved by the court in which the action is pending,
8 conditional to pay to the plaintiff within thirty days
9 after final judgment, the amount which he may re-
10 cover.

SECT. 30. The assignees shall, if required by a ma-
2 jority in interest of the creditors who have proved
3 their debts, give bond to the commissioner with suffi-
4 cient sureties by him approved, conditional for the
5 faithful performance of their duties, which may be
6 prosecuted for the benefit of the creditors, in the
7 manner provided for the presecution of bonds given
8 by administrators to the judge of probate.

SECT. 31. If the commissioner shall be interested in
2 any question pending before him, the clerk shall note

3 that fact on the record of the case, and thereupon the
4 judge of probate of the county shall have jurisdiction
5 of the whole case, and shall hear and determine the
6 same with the same effect as the commissioner might
7 have done, if he had not been interested. And the
8 judge of probate shall have the same compensation
9 as the commissioner would be entitled to for like
10 services.

SECT. 32. Whenever it shall appear to the com-
2 missioner, that any part of the debtor's estate is of a
3 perishable nature, and likely to deteriorate before an
4 assignee can be legally appointed, he may order the
5 same to be sold by the messenger, who will hold the
6 avails thereof, in place of the estate so disposed of.

SECT. 33. Whenever any creditor who has proved
2 his debt, shall present his petition for a stay of the
3 proceedings, it shall be lawful for the commissioner
4 to order all the proceedings vacated: *provided* no
5 objection be made by the debtor, or by any creditor
6 who has proved his debt.

SECT. 34. If any assignee or any insolvent debtor
2 shall refuse or unreasonably neglect to execute any in-
3 strument which he shall be lawfully required by the
4 commissioner to execute, or shall disobey any lawful

5 order of the commissioner, the commissioner may
6 issue his warrant to any sheriff or deputy sheriff, com-
7 manding him to arrest and commit such assignee or
8 debtor to the common jail in the county where he
9 may be found. And such assignee or debtor shall
10 remain in close custody until he shall be discharged
11 by the commissioner or some justice of the supreme
12 court.

SECT. 35. There shall be allowed and paid out of
2 the debtor's estate, viz: to the commissioner for issu-
3 ing the warrant to the messenger, three dollars, and
4 five dollars per day while employed in the duties of
5 his office, to be apportioned among the several cases,
6 if more than one, upon which he shall act the same
3 day—to the clerk, messenger and assignees, such
9 compensation as shall be prescribed by the commis-
10 sioner, and each commissioner shall, on every first day
11 of January, render to the county treasurer a true
12 account of all fees received by him during the next
13 preceding year.

SECT. 36. Any commissioner appointed while a
2 case in insolvency is pending, shall have jurisdiction
3 thereof, and shall proceed therein in the same manner
4 as if the process had been instituted before him.

SECT. 37. Should it appear that the dissolution of
2 an attachment as provided for in section eleven would
3 prevent the attached property from passing to the
4 assignees, the attachment shall, upon the order of the
5 commissioner, survive, notwithstanding the provisions
6 of said section, and the assignees shall have power to
7 prosecute the action in which the attachment shall
8 have been made, to judgment and execution; and
9 the amount, exclusive of costs, shall vest in the
10 assignees.

SECT. 38. Whenever an attachment on mesne
2 process shall be dissolved by virtue of proceedings
3 under this act, if the claim sued shall be proved
4 against the estate of the insolvent, the legal costs and
5 expenses of the suit and of the custody of the prop-
6 erty may also be proved. No debtor discharged by
7 this act, shall by means of such discharge recover
8 costs against the plaintiff in any suit which shall be
9 commenced against him previous to his discharge.

SECT. 39. When two or more persons who are
2 partners in business become insolvent, a warrant may
3 be issued on the petition of one or all of them, or of
4 any one of the partnership creditors; upon which
5 warrant the joint and several property of the part-

6 ners may be taken, and the creditors of the company
7 and the creditors of each partner may prove their
8 debts. In such case, the assignees shall be voted for
9 by the creditors of the company and by those of each
10 partner, the former voting according to the debts
11 proved, the latter according to the debts proved di-
12 vided by the number of partners. The assignees shall
13 keep separate accounts of the company estate and of
14 the individual estates, and after deducting from the
15 whole amount by them received, the whole expenses,
16 the net proceeds of the joint property shall be divided
17 among the creditors of the company, and the net
18 proceeds of the separate estate of each partner shall be
19 divided among his separate creditors. The surplus,
20 if any, of the company estate, shall go to the credit-
21 ors of each portion, so far as he may be an owner in
22 said surplus. The surplus, if any, of the estate of
23 each partner, shall go to the creditors of the company.
24 In all other respects the proceedings in such case shall
25 be conducted in like manner as if they had been com-
26 menced by or against a single individual.

SECT. 40. When the general partners in any limi-
2 ted partnership formed agreeably to the provisions of
3 the forty-fifth chapter of the revised statutes, shall be-

4 come insolvent, the same proceedings in all respects
5 may be had as are provided in the preceding section,
6 except that the separate estate and debts of the spe-
7 cial partner shall not be subject to any of the proceed-
8 ings.

SECT. 41. Before entering upon their respective
2 offices, the commissioner, messenger, assignees and
3 clerk shall be sworn to the faithful discharge of their
4 duties. The oath may be administered to the com-
5 missioner by any person authorized to qualify civil
6 officers, and the commissioner may administer all other
7 oaths authorized or required by this act.

SECT. 42. The supreme judicial court shall have
2 a general superintendence and jurisdiction, as a court
3 of chancery, in all causes and questions arising under
4 this act. And they may from time to time, by a ma-
5 jority of their number, make such general rules as
6 they may deem necessary, in order to establish a
7 general and uniform course of proceedings in the
8 several counties; and said court, or any one justice
9 thereof, shall have power, in all cases not herein
10 otherwise provided for, upon the bill, petition, or
11 proper process of the party aggrieved by any proceed-
12 ings under this act, to hear and determine the case as

13 a court of chancery, and to make such decrees and
14 orders as law and justice may require, and to issue
15 such mandates and processes as may be required to
16 enforce the same.

STATE OF MAINE.

IN SENATE, Feb. 18, 1852.

Ordered, That 350 copies of the foregoing Report, with the accompanying Bill, be printed for the use of the Legislature.

ALBERT H. SMALL, *Secretary*.