

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1857.

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PART SECOND.

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AUGUSTA:  
STEVENS & BLAINE, PRINTERS TO THE STATE.  
1857.

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# THIRTY-SIXTH LEGISLATURE.

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HOUSE.]

[No. 24.]

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## STATE OF MAINE.

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

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AN ACT to Provide for the Equitable Distribution of  
the Estates of Insolvent Debtors.

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

SECTION 1. The Judge of Probate for the county  
2 in which the debtor resides, or in which was his prin-  
3 cipal place of business, if he has left the State or never  
4 resided therein, shall have original jurisdiction in all  
5 proceedings under the provisions of this act. The  
6 proceedings shall be as nearly as may be in conformity  
7 with the law and usage of probate courts in the settle-  
8 ment of estates of persons deceased, insolvent, leaving

9 no widow or children; and shall be commenced by  
10 petition to the judge, shewing that the debtor is in-  
11 solvent, and praying that a decree may be passed  
12 declaring him to be an insolvent debtor, and that his  
13 estate may be equitably distributed among all his cred-  
14 itors. Partners or members of a firm may be included  
15 in the same petition. The Supreme Judicial Court  
16 shall from time to time, by general rules, establish a  
17 bill of fees, to be paid to the Judge and Register of  
18 Probate, and other officers and persons, for services  
19 herein required; and also all needful rules and regu-  
20 lations for carrying into effect the provisions of this  
21 act.

SECT. 2. Proceedings may be instituted in the fol-  
2 lowing cases:

*First.* When the estate of the debtor is under at-  
4 tachment, to secure the claims of one or more of his  
5 principal creditors.

*Second.* When the debtor, in contemplation of in-  
7 solvency, has by a mortgage, assignment or other con-  
8 veyance, given a security to one or more of his prin-  
9 cipal creditors, which may operate as a preference of  
10 their claims.

*Third.* When a majority in interest of his creditors unite in a petition, shewing that he is insolvent, and setting forth the facts upon which they rely to prove the insolvency, verified by the oath of one or more of the petitioners.

*Fourth.* When the debtor himself presents his petition, declaring that he is insolvent, accompanied with a schedule of his debts and of his estate, and the estimated value and amount of each item in each, verified by his oath.

SECT. 3. Thereupon the judge shall issue his citation to the debtor and to all persons interested, to appear at a time and place stated, and shew cause why the debtor should not be decreed an insolvent debtor; and at the time and place stated, shall examine the debtor appearing, on oath, upon all pertinent interrogatories, in writing, proposed by the judge or by any person interested in his estate, and receive any statements in writing offered by the debtor, all to be subscribed and sworn to by the debtor, and shall hear and consider any other pertinent testimony offered, all tending to shew the state of the debtor's affairs, and if the debtor is the petitioner, or does not appear, he

14 shall hear and consider all pertinent testimony offered ;  
15 and if he finds the debtor to be insolvent, he shall  
16 enter his decree accordingly ; and if he finds that the  
17 debtor is not insolvent, he shall dismiss the petition  
18 with costs for the debtor, if filed by the creditors, and  
19 issue execution therefor. No person shall be decreed  
20 an insolvent debtor upon the petition of his creditors,  
21 without personal service of the citation on him, if  
22 within this State. If the debtor within the State  
23 avoids service, or having lived within the State has  
24 removed therefrom, or never resided within the State,  
25 the judge may order such notice as he deems suitable  
26 and sufficient.

SECT. 4. If he decrees the debtor to be insolvent,  
2 he shall appoint some suitable disinterested person to  
3 be assignee of the debtor's estate, who shall, with ref-  
4 erence thereto, be subject to all the duties, liabilities  
5 and obligations, and have all the powers of an admin-  
6 istrator of an insolvent estate, according to the laws  
7 of this State ; and all the debtor's estate, as it existed  
8 at the time the petition was filed, shall by force of the  
9 decree vest in the assignee, free from any of the  
10 attachments, conveyances or incumbrances, before

11 described, or any like claims, accruing subsequent  
12 thereto, with the right to the possession and use of all  
13 his books and papers relating to his business affairs  
14 of every kind and description ; and he shall have the  
15 right to sell and dispose of all of the estate in such  
16 manner as he thinks best for the interest of the cred-  
17 itors, without further authority from the judge, and  
18 to use all needful process of law for the collection of  
19 debts due the estate, in the name of the debtor, or  
20 otherwise, as the case may be. No mortgage or other  
21 security, given in good faith and not in contemplation  
22 of insolvency, to secure the price of property purchased  
23 by the debtor, and no lien created by law or by act of  
24 the parties in good faith, and no attachment made to  
25 secure a sum due from the debtor in any fiduciary ca-  
26 pacity, shall be made void by these proceedings, but  
27 the property subject to such claims shall pass to the  
28 assignee. The judge may require the debtor, when  
29 the proceedings are commenced by the petition of the  
30 creditors, to file schedules of his debts and of his es-  
31 tate, in the same manner as in case of proceedings on  
32 the petition of the debtor. The assignee shall, from

33 time to time, file such schedules, or add to or correct  
34 the schedules, as circumstances require.

SECT. 5. The judge shall also appoint two or more  
2 suitable persons commissioners, to examine claims  
3 against the estate, and their duties, powers and pro-  
4 ceedings shall be in substance the same as in case of  
5 commissioners on insolvent estates of deceased persons.  
6 Controversies with regard to contested claims, and  
7 pending suits growing out of such claims, and all pro-  
8 ceedings by the assignee for the settlement and distri-  
9 bution of the debtor's estate, of every kind, shall be  
10 in accordance with the provisions of law for the set-  
11 tlement of insolvent estates by administrators.

SECT. 6. No appeal shall be allowed from any or-  
2 der or decree, except from the final decree of the Pro-  
3 bate Court. The reasons of appeal may embrace any  
4 and every want of compliance with the material pro-  
5 visions of this act, and every reason going to show  
6 that the debtor ought not to be discharged from any  
7 one or more of his debts.

SECT. 7. If the debtor disposes of any of his estate,  
2 in contemplation of taking the benefit of this act, or

3 practices any fraud, concealment or neglect, to the  
4 damage of his creditors, in relation to proceedings un-  
5 der this act, he shall not be entitled to a discharge,  
6 but his estate so administered shall be applied first to  
7 the fees and charges of administration, and then to  
8 the pro rata payment of the claims proved, and for the  
9 balance thereof remaining unpaid, he shall be liable  
10 in the same manner as if no proceedings under this  
11 act had been had.

SECT. 8. When the commissioners have made their  
2 final report, and notice has been published for all per-  
3 sons interested to appear and shew cause why the  
4 debtor should not be discharged from all his debts,  
5 and no sufficient cause has been shown, and after ex-  
6 amining the debtor under oath, if required, if the  
7 judge finds that his proceedings are not subject to any  
8 of the objections specified in the seventh section, that  
9 he has well and truly complied with all the orders of  
10 the judge and requirements of law, and has delivered  
11 possession to the assignee of all his estate, and books  
12 and papers, according to the provisions of this act, he  
13 shall enter a decree that the debtor be discharged from  
14 his debts; and the debtor shall thereupon be fully

15 discharged from all debts and claims against him  
16 proved, or which might been proved before the com-  
17 missioners, and all such debts and claims shall be  
18 forever barred ; but claims for sums due in a fiduciary  
19 capacity, or for damages recovered for a willful tres-  
20 pass, shall not be barred unless they were proved  
21 before the commissioners. A certified copy of the  
22 decree shall be sufficient evidence of the debtor's dis-  
23 charge in any trial at law, liable to be impeached only  
24 by the allegation and proof of falsehood and fraud in  
25 procuring it to be entered.

SECT. 9. Wearing apparel, suitable and proper for  
2 the debtor and his family, need not be included in the  
3 inventory. When the petition is filed by the debtor,  
4 no suit being pending against him, the judge may  
5 allow him, in addition to the wearing apparel, other  
6 specific articles of his personal estate, not exceeding  
7 in the whole three hundred dollars. When after suit  
8 pending, as provided in section two, the petition is  
9 filed by the debtor, or in any case when filed by his  
10 creditors, he may have in addition to what is so al-  
11 lowed by the judge, all of his property which is by  
12 law exempted from attachment. Such property shall

13 be included in the inventory, but need not be delivered  
14 to the assignee.

SECT. 10. All costs and expenses incurred in the  
2 settlement of the insolvent debtor's estate shall be  
3 taxed and allowed by the court, and paid out of the  
4 assets, and if these are not sufficient, the debtor, if he  
5 is the petitioner, shall pay the balance before he is  
6 discharged; if the creditors are petitioners, they shall  
7 pay the balance, and execution may issue therefor.  
8 The allowance to assignees for collections and pay-  
9 ments shall not exceed that usually made to admin-  
10 istrators for similar services. No claim or charge for  
11 any extra service shall be allowed, without having been  
12 examined and approved by the judge.

SECT. 11. This act to take effect and be in force  
2 from and after the first day of January next, and be  
3 published in the State paper for three months pre-  
4 ceding said first day of January.

# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
March 6, 1857. }

Laid on the table, by Mr. Fox, of Portland, and 350 copies ordered to be printed for the use of the Legislature.

GEO. W. WILCOX, *Clerk.*