

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1858.



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1858.

THIRTY-SEVENTH LEGISLATURE.

SENATE.]

[No. 10.

STATE OF MAINE.

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

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

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

SECTION 1. Any person residing in this state, who  
2 shall desire to take the benefit of this act, may, by  
3 petition, apply to the judge of probate for the county  
4 in which he resides, or has his usual place of busi-  
5 ness, setting forth his inability to pay all his debts,  
6 and his willingness to assign all his estate and effects  
7 for the benefit of his creditors, and praying that such  
8 proceedings may be had in the premises as are pro-  
9 vided in this act. The judges of the probate courts  
10 may at any time receive petitions, issue orders of

11 notice, and warrants, approve compositions or bonds,  
12 order sales, and do all such other official acts as do  
13 not require notice to the adverse party.

SECT. 2. If it shall appear to the satisfaction of the  
2 judge, that the debts due from the applicant amount  
3 to not less than two hundred dollars, he shall forth-  
4 with, by warrant under his hand and seal, appoint the  
5 sheriff of the county, or either of his deputies, a mes-  
6 senger to take possession of the debtor's estate as  
7 provided in the eleventh section of this act. Such  
8 messenger shall forthwith give public notice by adver-  
9 tisement in such newspaper and also such other notice  
10 to any persons interested, as the judge in said warrant  
11 shall prescribe, which notice shall state that a warrant  
12 has been issued against the estate of said debtor and  
13 that the payment to him of any debts, and the delivery  
14 to him or for his account of any property belonging  
15 to him, and the transfer of any property by him, are  
16 forbidden by law, and in the same notice shall call a  
17 meeting of the creditors of such debtors to prove  
18 their debts, and to choose one or more assignees of  
19 his estate, which meeting shall be held at such time  
20 and place as is designated in the warrant, and not less  
21 than ten or more than thirty days after the issuing of  
22 the warrant, the messenger shall also send through

23 the post written notice to the creditors named in the  
24 schedule, of the time and place of the first meeting  
25 of such creditors of the debtor.

SECT. 3. The debtor, within five days from the first  
2 newspaper publication of the notice aforesaid, shall pre-  
3 sent to the judge a schedule of all his real and personal  
4 estate, giving a description of the same, and stating  
5 where it is situated, and also a schedule containing a  
6 true and full account of all his creditors, with the  
7 place of each one's residence, if known to the debtor,  
8 and the sum due to each of them. The schedule  
9 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,  
14 and such schedules shall be verified by the oath of  
15 the debtor.

SECT. 4. The judge shall preside at all meetings of  
2 the creditors, and after due proof shall allow the  
3 debts absolutely due at the first newspaper publica-  
4 tion aforesaid, from the debtor upon any judgment,  
5 bond, note, bill of exchange or other contract, and all  
6 demands against the debtor for or on account of any  
7 goods or chattels wrongfully obtained, taken or with-

8 held by him, may be proved and allowed as debts to  
9 the amount of the value of such goods and chattels.  
10 All debts not then payable, may be allowed with a  
11 discount or rebate of interest, when no interest is  
12 payable by the contract until the time when the debts  
13 would become payable. And the judge shall cause a  
14 list of such debts, certified by himself, to be recorded  
15 and filed in the case. He may also receive proof of  
16 any contingent claims against the debtor, at the time  
17 aforesaid, upon any bottomry or respondentia, bond  
18 or policy of insurance, or upon any endorsement or  
19 suretyship on note or bill of exchange or other con-  
20 tract, and if before making the first dividend among  
21 creditors, such contingent claims proved as aforesaid  
22 shall have become absolutely due, the amounts so due  
23 shall be allowed as debts. No debts of any other  
24 description shall at any time be allowed against the  
25 estate.

SECT. 5. 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, subject to the pro-  
6 visions of the thirty-ninth section of this act, and  
7 the balance of such account and no more shall be  
8 allowed or paid on either side respectively.

SECT. 6. At the meeting called by the messenger  
2 as aforesaid, the creditors, in the presence of the  
3 judge shall proceed to choose one or more assignees  
4 of the estate of the debtor, the choice to be made by  
5 the greater part in interest of the creditors according  
6 to the absolute debts there proved; *provided*, that  
7 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 judge shall appoint one or more  
13 assignees, and in case any assignee duly chosen or  
14 appointed, shall fail within four days to express in  
15 writing his acceptance of the trust the judge shall  
16 call another meeting for the choice of assignees.

SECT. 7. 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 the securing the pay-  
4 ment of any debt claimed by him, the property so  
5 held as security, shall, if he require it, be sold, and  
6 the proceeds shall be applied toward the payment of  
7 his debt, and he shall be admitted as a creditor for  
8 the residue thereof, the sale to be made in such manner  
9 as the judge 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 deliver  
14 up to the assignees, or the messenger in trust for the  
15 assignees to be chosen, the property so held as secu-  
16 rity, and shall thereupon be admitted as a creditor for  
17 the whole debt. But if said property shall not be  
18 either sold or released and delivered up as aforesaid,  
19 he shall not be allowed to prove any part of his debt.

SECT. 8. No debt shall be allowed against any in-  
2 solvent estate, unless the creditor or his agent or  
3 attorney shall make oath to the validity of the claim.  
4 The oath of the creditor shall be in substance, as  
5 follows:

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



16 this case. And I do further swear, that I have not,  
17 directly or indirectly made or entered into any bar-  
18 gain, arrangement, or agreement, express or implied,  
19 to sell, transfer or dispose of my claim against said  
20 debtor, nor have directly or indirectly received or  
21 taken, or made or entered into any bargain, arrange-  
22 ment or agreement, express or implied, to take or  
23 receive, directly or indirectly, any money, property or  
24 consideration whatsoever, to myself, or to any person  
25 or persons to my use or benefit, under or with any un-  
26 derstanding or agreement, express or implied, whereby  
27 my vote for assignees', or my assent to the debtor's  
28 discharge, is or shall be in any way affected, influenced  
29 or controlled, or whereby the proceedings in this case  
30 are or shall be affected, influenced or controlled.

31 In case any creditor shall be disabled by absence  
32 from the state, sickness, or in any other manner, from  
33 proving his claim, such claim may be proved by any  
34 agent or attorney acting in behalf of such creditor,  
35 and the oath as administered to such agent or attorney  
36 shall be, that the allegations therein contained are  
37 true according to the best of his knowledge and belief;  
38 and the judge may require such further proof and  
39 hear such further evidence in relation to such claims  
40 as he shall deem expedient. The oath required by  
41 this section shall or may be administered by any justice

42 of the peace or notary public. Every creditor who  
43 has proved his debt, may appear, vote and act at all  
44 meetings of the creditors, by his attorney duly au-  
45 thorized, in writing, for this purpose.

SECT. 9. Any supposed creditor whose claim in  
2 whole or in part shall be rejected by the judge, may  
3 appeal from his decision, and have the same deter-  
4 mined by law. So also the assignees, if dissatisfied  
5 with the allowance of any claim may appeal in like  
6 manner. The appeal shall be entered at the term  
7 within the county next after fourteen days from the  
8 claiming of the appeal. The judgment of the court  
9 shall be conclusive, except that exceptions may be  
10 allowed and acted upon as in other civil matters.  
11 The final judgment shall be certified to the judge  
12 conformably to which the list of debts shall be altered  
13 if necessary. No appeal shall be allowed unless the  
14 same be claimed and notice thereof given to the judge  
15 or register to be entered in the records of the proceed-  
16 ings, and also to one of the assignees, if the creditor  
17 appeal, and to the creditor if the assignees appeal,  
18 within ten days after the decision complained of. At  
19 the time of the entering of such appeal, the creditor  
20 shall file in court a statement in writing of his claim,  
21 setting forth the same substantially as in a declara-  
22 tion at law for the same cause of action, and the

23 assignees shall plead or answer to the same in like  
24 manner. And the like proceedings shall be had upon  
25 the joining of any issue in law or fact, or upon default  
26 or non-suit, as in actions in usual form for the same  
27 cause, except that no execution for the debt shall be  
28 awarded. The prevailing party in the appeal shall  
29 recover his costs. If recovered against the assignees,  
30 the same shall be allowed to them out of the estate  
31 of the debtor.

SECT. 10. The said judge shall by an instrument  
2 under his hand and seal, assign and convey to the  
3 person or persons chosen or appointed assignees as  
4 aforesaid, all the estate, real and personal, of the  
5 debtor, excepting such as may be by law exempted from  
6 attachment under the provision of chapter eighty-one  
7 of the revised statutes, with all his deeds, books and  
8 papers relating thereto, which assignment shall vest  
9 in the assignees all the property of the debtor, both  
10 real and personal, which he could by any way or  
11 means have lawfully sold, assigned or conveyed, or  
12 which had been by him conveyed or transferred in  
13 fraud of this act, or which might have been taken in  
14 execution on any judgment against him at the time  
15 of the first publication of the notice of issuing the  
16 above mentioned warrant; and all attachments on

17 mesne process against said debtor, shall be dissolved,  
18 although made before the passage of this act; and  
19 such assignment shall be effectual to pass all the said  
20 estate and dissolve any such attachment; and the said  
21 assignment shall also vest in the said assignees all  
22 debts due to the debtor, or to any person for his use,  
23 and all liens and securities therefor, and all his rights  
24 of action for any goods or estate, real or personal, and  
25 all his rights of redeeming any such goods or estate;  
26 and the assignees shall have power to redeem all  
27 mortgages, conditional contracts, pledges and liens of  
28 or upon any goods or estate of the debtor, or to sell  
29 the same, subject to such mortgage or other encum-  
30 brance. And the debtor shall likewise at the expense  
31 of the estate, make and execute all such deeds and  
32 writings, and indorse all such bills, notes and other  
33 negotiable papers, and draw all checks and orders for  
34 moneys deposited in banks or elsewhere, and do all  
35 such other lawful acts and things as the assignees  
36 shall at any time reasonably require, and which may  
37 be necessary or useful for confirming the assignment  
38 so made by the said judge, and for enabling the as-  
39 signees to demand, recover and receive all the estate  
40 and effects assigned as aforesaid, especially such part  
41 thereof, if any, as may be without this state; and the

42 assignees shall have the like remedy to recover all  
43 the said estate, debts and effects in their own names,  
44 as the debtor might have had if no such assignment  
45 had been made. And if at the time of such assign-  
46 ment, any suit at law or in equity shall be pending  
47 in the name of the debtor for the recovery of any debt  
48 or other thing which might or ought to pass to the  
49 assignees by the said assignment, the assignees shall,  
50 if they require it, be admitted to prosecute the same  
51 in their own names, in like manner and to the like  
52 effect as if the same had been originally commenced  
53 by them as assignees; and no suit pending in the  
54 name of the assignees shall be abated by the death or  
55 removal of any assignee, but upon motion of the sur-  
56 viving or remaining assignee, or of the new assignees,  
57 as the case may be, he or they shall be admitted to  
58 prosecute the same in like manner and to the like  
59 effect as if the same had been originally commenced  
60 by him or them. And in all actions prosecuted by  
61 the assignees, the assignment made to them by the  
62 judge shall be conclusive evidence of their authority  
63 to sue as such assignees.

SECT. 11. The messenger, as soon as may be, shall  
2 demand and receive from the debtor and from all  
3 other persons, all the estate of the debtor which by

4 this act would vest in the assignees, with all the  
5 deeds, books of account and papers of the debtor  
6 relating thereto, all which the debtor shall deliver to  
7 the messenger, if in his possession or power, or dis-  
8 close the situation thereof, if in the possession of any  
9 other person, that the messenger may demand and  
10 receive the same.

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

SECT. 13. The judge upon complaint made on oath  
2 of any person interested in the estate, against any  
3 person suspected of having fraudulently received,  
4 concealed, embezzled or conveyed away any of the  
5 money, goods, effects or other estate of such insolvent,  
6 may cite such suspected person to appear before him  
7 to be examined on oath upon the matter of such com-  
8 plaint. And if the person so cited shall refuse to  
9 appear, and submit to such examination, or to answer  
10 to such interrogatories as shall lawfully be pro-  
11 pounded to him, the judge may commit him to the  
12 county jail there to remain in close custody until he  
13 shall submit to the order of the judge. All such  
14 interrogatories shall with the answers be in writing.  
15 The answer shall be signed by the party examined  
16 to be used in any manner authorized by law; *provi-*  
17 *ded*, that no such answer shall be ever used as evi-  
18 dence in any criminal prosecution against the signer  
19 of them.

SECT. 14. The judge shall call a second meeting of  
2 creditors to be held at a time not more than three  
3 months from and after the close of their first meeting;  
4 he shall also call a third meeting of the creditors at  
5 a time not more than three months from and after  
6 the close of the second meeting. Of each of said

7 meetings the assignees shall give such persons notice  
8 as the judge shall direct. At said second and third  
9 meetings the creditors whose provable debts shall not  
10 have been previously proved may prove the same;  
11 and at either of said meetings the debtor may amend  
12 the schedule of his creditors. He shall then make  
13 and subscribe before the judge an oath, (to be certified  
14 by him and filed in the case,) in substance as follows:  
15 I, —, do swear that the account of my creditors  
16 contained in the schedule made and signed by me and  
17 now in the hands of the judge of insolvency is in all  
18 respects true according to my best knowledge and  
19 belief. And I do further swear that I have delivered  
20 to the messenger all my estate (excepting such articles  
21 as I am allowed to retain by law.) And all my books  
22 of account and papers relating to said estate that  
23 were in my possession or power when the same were  
24 demanded by the messenger; that I have assigned  
25 and delivered to the assignees all such of my estate,  
26 books and papers as have since come into my posses-  
27 sion; and that if any other estate, effects or things  
28 which should or ought to be assigned or delivered to  
29 said assignees, shall hereafter come to my knowledge  
30 or possession, I will forthwith disclose and deliver the  
31 same to them. And I do further swear that there is



32 not any part of my estate or effects made over or dis-  
33 posed of in any way or manner for the future benefit  
34 of myself or my family, or in order to delay or de-  
35 fraud any of my creditors.

SECT. 15. If it shall appear to the judge that the  
2 debtor has made a full disclosure and delivery of all  
3 his estate herein before required, and that he has in  
4 all things conformed to the directions of this act, and (if  
5 solvent at the passage of this act that he had reason-  
6 able cause to believe himself solvent within one year  
7 next preceding the filing the petition by or against  
8 him,) the judge shall grant him a certificate thereof,  
9 and the debtor shall thereupon be absolutely dis-  
10 charged from all his debts which then shall have  
11 been or afterwards shall be proved under said petition  
12 and from all debts which are provable as aforesaid  
13 and which are founded on any contract made after  
14 this act shall go into operation if made within this  
15 State or to be performed within the same, and from  
16 all debts provable as aforesaid founded upon any  
17 contract made after this act shall go into operation  
18 and due to any person who at the first newspaper  
19 publication aforesaid shall be a resident in this State,  
20 excepting all debts arising from the debtor's defal-  
21 cation as a public officer, executor, administrator,

22 guardian, trustee, receiver, or assignee of an insolvent  
23 estate, and all debts for and on account of the wrong-  
24 ful taking, obtaining or withholding by the debtor of  
25 any goods or chattels. And the debtor shall be abso-  
26 lutely discharged and exempted from arrest in any  
27 suit or proceeding for the recovery of any debt or  
28 demand to which the discharge above provided for  
29 shall extend; *provided, nevertheless*, that the discharge  
30 shall not be granted, or if granted, shall be of no  
31 effect in any of the following cases:

32 *First*—If the debtor shall have willfully sworn false-  
33 ly to any material fact in the course of the proceedings  
34 under this act.

35 *Second*—If becoming insolvent after the passage of  
36 this act, the assets of the estate shall pay less than  
37 fifty per cent. on all claims proved, unless a majority  
38 in value of the creditors who have proved their claims  
39 shall within six months next after the issuing of the  
40 warrant to the messenger, assent in writing to the  
41 discharge.

42 *Third*—If he shall have fraudulently destroyed, con-  
43 cealed, given or withheld any part of his estate or  
44 effects, or any books, deeds or writings relating there-  
45 to.

46 *Fourth*—If after the passing of this act he shall have

47 destroyed, altered, mutilated or falsified any of his books,  
48 documents, papers, writings or securities, or made or  
49 been privy to the making of any false or fraudulent  
50 entry in any book of account or other document with  
51 intent to defraud his creditors, or shall have removed  
52 himself, or removed or cause to be removed his prop-  
53 erty, or any part thereof, from the state, with intent  
54 to defraud his creditors, or shall make any fraudulent  
55 payments, gift, transfer, conveyance or assignment of  
56 his property or any part thereof, or shall spend the  
57 same or any part thereof in gaming; or, being a mer-  
58 chant or tradesman, shall not, after the passage of this  
59 act, have kept proper books of account; or if any  
60 person having a false debt against the debtor's estate,  
61 said debtor being privy thereto, or afterwards knowing  
62 the same, he shall not have disclosed the same to his  
63 assignees within one month after such knowledge.

64 *Fifth*—If after the passing of this act and within  
65 one year before the filing of the petition by or against  
66 him being insolvent, or in contemplation of his being  
67 so, he shall have procured his lands, money, goods or  
68 chattels to be attached on mesne process, or seques-  
69 tered or seized on execution, with intent to give a  
70 preference to any creditor or to any person who was  
71 or may be liable for him as endorser, surety, or other-

72 wise, unless it shall be made to appear that at the time  
73 of making such preference the debtor had reasonable  
74 cause to believe himself solvent.

75 *Sixth*—If after the passing of this act and within  
76 one year before the filing of the petition by or against  
77 him, the said debtor being insolvent or in contempla-  
78 tion of insolvency, shall have made any payment, or  
79 made any assignment, sale, transfer or conveyance,  
80 either absolute or conditional, of any part of his estate,  
81 real or personal, intending thereby to give a prefer-  
82 ence to any creditor or to any person who was or may  
83 be liable for him as endorser, surety or otherwise,  
84 unless it shall be made to appear that at the time of  
85 making such preference the debtor had reasonable  
86 cause to believe himself solvent.

87 *Seventh*—When the discharge is applied for upon a  
88 second or subsequent insolvency under this act, and  
89 the net assets shall fail to pay fifty per cent. of the  
90 debts proved, and one-half in value of the creditors to  
91 whom said debts have been allowed shall not within  
92 six months next after the issuing of the warrant to  
93 the messenger, assent in writing to the discharge.

94 *Eighth*—When the debtor shall have procured the  
95 assent of any creditor to his discharge by payment or  
96 promise of any valuable consideration.

SECT. 16. 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 there-  
 4 from. No person who has obtained his discharge as  
 5 an insolvent under this act, shall afterwards be sub-  
 6 ject to arrest or imprisonment on any claim which  
 7 could have been proved against his estate. Whenever  
 8 under the provisions of this act, a discharge shall be  
 9 granted to any person, the property or estate of said  
 10 person by him acquired subsequently to the time of  
 11 the first publication of the notice of the issuing of the  
 12 warrant in said case, shall not be subject to attach-  
 13 ment by trustee process or otherwise, in any suit to  
 14 recover any debt which may have been provable under  
 15 this act, excepting those of a fiduciary character.

SECT. 17. The certificate of discharge shall be con-  
 2 clusive as to the regularity of the proceedings before  
 3 the judge of probate, and shall be in substance, as  
 4 follows:

5 STATE OF MAINE.

6 ———, ss.—To all people to whom these presents  
 7 shall come.

8 I, ———, judge of probate for said county of ———,  
 9 send greeting.

10 Whereas, in pursuance of a petition dated ———

11 eighteen —, the estate of — has been disposed  
12 of conformably to the act of the year eighteen —,  
13 entitled “An act for the relief of insolvent debtors;”  
14 and whereas, said — has made a full disclosure and  
15 delivery of all his estate, and conformed himself in all  
16 things to the directions of said act, now therefore, I,  
17 —, the said judge, hereby certify, that by force of  
18 said act the said — is absolutely and wholly dis-  
19 charged from all his debts which have been or shall  
20 be proved in the proceedings under said petition;  
21 also from all debts provable under said petition which  
22 are founded on any contract made after this act shall  
23 go into operation, if made in this state, or to be per-  
24 formed within the same; and from all debts provable  
25 as aforesaid, founded upon any contract made after  
26 this act shall go into operation, due to any person  
27 who at the first newspaper publication as above  
28 required, viz., shall have been a resident in this state,  
29 excepting, however, all debts arising from the debtor’s  
30 defalcation as a public officer, executor, administrator,  
31 guardian, receiver, trustee or assignee of an insolvent  
32 estate, and all debts for or on account of the wrongful  
33 taking, obtaining or withholding by the debtor of any  
34 goods or chattels. And the debtor shall be and here-  
35 by is discharged from any arrest or imprisonment in

36 any suit or proceeding for the recovery of any debt,  
37 from which said debtor is discharged, or which might  
38 have been proved against his estate under this act.  
39 *Provided, however,* that this discharge is subject to  
40 be vacated as specified in the proviso in the fifteenth  
41 section of the act aforesaid.

42 Given under my hand and seal of the court this —  
43 day of ———, in the year of our Lord one thousand  
44 eight hundred and ———.

SECT. 18. If the judge shall refuse to grant the  
2 certificate of discharge, the debtor may appeal to the  
3 supreme judicial court which shall be first held in  
4 such county next after the expiration of fourteen  
5 days from the claiming of the appeal, *provided* notice  
6 of the appeal be given in writing to the judge or reg-  
7 ister within ten days after the decision appealed from.  
8 Said court, on a hearing of all parties interested, may  
9 grant or refuse a discharge, and award costs at their  
10 discretion, but no discharge of any debtor under this  
11 act shall discharge any other person who may be liable  
12 for the same debt.

SECT. 19. The assignees shall forthwith cause the  
2 assignment to be recorded in the registry of deeds  
3 in all counties in the state in which there may be  
4 any real estate of the debtor upon which the same

5 may operate, and shall give public notice of their  
6 appointment as the judge shall direct. They shall  
7 receive from the messenger and all other persons, all  
8 the estate in his or their hands respectively, which  
9 shall have been assigned to or shall have rested in  
10 them by the proceedings under this act. They shall  
11 sell the estate on such terms as they shall think most  
12 for the interest of the creditors, and shall keep a  
13 regular account of all moneys received by them, to  
14 which the creditors shall have access, and which the  
15 assignees shall exhibit at the meetings of the credit-  
16 ors, and shall render upon oath to the judge of pro-  
17 bate a true account of their doings as assignees.  
18 They shall have power, under the direction of the  
19 judge, to submit to arbitration any controversy arising  
20 in the settlement of the estate and to compound any  
21 claim; they shall be allowed all necessary disburse-  
22 ments and a reasonable compensation for their services  
23 at the discretion of the judge.

SECT. 20. It shall be in the power of the creditors,  
2 by such a vote as is provided for in the sixth section,  
3 at a meeting called for that purpose by the judge  
4 either at his discretion or on application by a majority  
5 in number or value of the creditors, to remove any or  
6 all of the assignees, and on any vacancy (by such



7 removal or by resignation, death or otherwise,) to  
8 supply such vacancy by a new choice. And all the  
9 estate of the debtor not before disposed of, shall forth-  
10 with vest in such new assignee or assignees as if the  
11 original assignment had been made to him or them.  
12 The judge, at the third meeting of the creditors, (and  
13 also at the second if he thinks it expedient,) may  
14 order a dividend of said estate or of so much thereof  
15 as he may deem fit, among the creditors who shall  
16 have proved their debts, and in proportion to their  
17 several amounts; *provided, however*, that debts which  
18 by law have priority shall be first paid in full. The  
19 judge shall call such further meetings of the creditors  
20 as he may deem necessary, at which further debts  
21 may be proved, and at each of such meetings he may  
22 order dividends of the sums, if any, which may be  
23 remaining in the hands of the assignees. But a  
24 creditor whose debt shall be proved at the third or  
25 any subsequent meeting, shall be entitled only to his  
26 proportion of the fund unappropriated when his debt  
27 is proved. If, after payment of all the debts, a sur-  
28 plus shall remain in the hands of the assignees, they  
29 shall pay over the sum to the debtor.

SECT. 21. The register of probate in each county,  
2 shall record in books to be kept for that purpose, all

3 the proceedings at the meetings of creditors, and all  
4 decrees and orders of said court, all warrants, assign-  
5 ments, returns, certificates of discharge, and all such  
6 other acts and proceedings as he shall by the rules of  
7 the court, or by any special order of the judge be  
8 required to record. Said register shall also make and  
9 keep a docket of all cases pending in said court, and  
10 of the proceedings thereon, with an alphabetical  
11 index thereto. He shall also have the care and cus-  
12 tody of all the books, documents and papers apper-  
13 taining to said court, and filed or deposited therein,  
14 and shall carefully preserve the same to be delivered  
15 to his successor; and he shall also perform such other  
16 duties appertaining to his office as shall be prescribed  
17 by the judge. All said books, records, documents and  
18 papers, and said docket, shall be at all times open to  
19 the inspection of the public. Said register shall also  
20 make all computations of dividends, and make out all  
21 orders of distribution, and shall furnish to the assign-  
22 ees a certified copy of such orders, and also all  
23 schedules of creditors and of assets filed in each case,  
24 and of all other papers that may be required, and to  
25 the insolvent a certified copy of the record. The  
26 register shall also have power, in case of the absence  
27 of the judge, to adjourn any court or meeting. The

28 register shall not receive any compensation for any  
29 order or copy which he is required by law to furnish to  
30 any party—for all other copies he shall receive twelve  
31 cents a page—and being duly certified by the register,  
32 they shall be admissible as evidence in all cases.

SECT. 22. If any debtor shall have been arrested on  
2 mesne process in a civil action upon a just debt of a  
3 character provable under this act and amounting to  
4 at least one hundred dollars, and shall not, on or be-  
5 fore the return day of the process, give bail or other  
6 bond authorized by law: or if he shall be actually  
7 imprisoned for more than thirty days on mesne pro-  
8 cess or execution in any civil action on any such debt:  
9 Or if his goods or chattels shall have been attached  
10 on mesne process in a civil action upon such debt,  
11 and he shall not, before the expiration of the return  
12 term of the writ, dissolve the attachment:  
13 Or if he shall remove from the state with his pro-  
14 perty, or any part thereof, with intent to defraud his  
15 creditors:  
16 Or shall conceal himself to avoid arrest:  
17 Or shall cause his property, or any part thereof, to  
18 be attached, or taken on legal process with a view to  
19 defraud or give a preference to any creditor:  
20 Or shall conceal or transfer his property, or any

21 part thereof, to prevent its being attached or taken  
22 on legal process :

23 Or shall make any conveyance or transfer of his  
24 property with any intent or design on his part to de-  
25 fraud any of his creditors :

26 Or, if being insolvent, or in contemplation of in-  
27 solvency, or having reasonable cause to believe himself  
28 insolvent, shall, after the passing of this act, and  
29 within one year before the filing of a petition against  
30 him, make any payment or give any mortgage, pledge,  
31 assignment, conveyance or transfer of any money  
32 or other property belonging to him, with a view  
33 directly or indirectly to give a preference to any pre-  
34 existing creditor, or to any person having any pre-  
35 existing claim or demand against such debtor, or to  
36 any person who is or may be liable as endorser, guar-  
37 antor or surety for such debtor.

38 Any creditor whose claim (of a nature provable  
39 under this act) amounts to one hundred dollars, may,  
40 within ninety days after such delinquency of the  
41 debtor, apply by petition to the judge of probate of  
42 the county in which the debtor resides or last resided,  
43 stating on oath the nature and amount of his claim  
44 and the delinquency of the debtor, and praying that  
45 the debtor's estate may be seized and distributed  
46 under this act.

SECT. 23. Upon such application the judge after  
2 notice by copy served personally on the debtor or left  
3 at his place of last and usual abode by the sheriff or  
4 his deputy, and after hearing the parties at the time  
5 and place designated in the notice, or on the debtor's  
6 default, then and there to appear if the facts set forth  
7 in the petition are proved, shall forthwith issue his  
8 warrant to a messenger as aforesaid to take possession  
9 of the debtor's estate, (excepting the property which  
10 by law the debtor is allowed to retain,) and such  
11 further proceedings shall be had as are provided for  
12 and may be necessary for distributing the same among  
13 his creditors, in the same manner as in this act is  
14 provided in reference to proceedings commenced on  
15 the petition of the debtor. The forms of the papers  
16 and processes and discharge if granted shall conform to  
17 the character of the law; *provided*, that these pro-  
18 ceedings shall not be had unless the debtor had a  
19 residence in the state within one year next before  
20 making application.

SECT. 24. Any person whose goods or chattels shall  
2 have been attached on mesne process, in a civil ac-  
3 tion, for any debt in its nature provable under this  
4 act, amounting to at least fifty dollars may at any  
5 time before final judgment dissolve the attachment by

6 giving bond with sufficient surities approved by one  
7 of the justices of the court in which the action is  
8 pending, or to which it may be returnable conditional  
9 to pay to the plaintiff within thirty days after final  
10 judgment the amount which he may recover, the  
11 sureties must be with twice the amount for which the  
12 attachment is laid, over and above all their debts.

SECT. 25. The assignees shall give bond to the  
2 judge of probate with sufficient sureties by him ap-  
3 proved, conditional, to render upon oath a true ac-  
4 count of their doings as assignees whenever required  
5 so to do by the judge of probate, and for the faithful  
6 performance of their duties as assignees which may  
7 be prosecuted for the benefit of the creditors in the  
8 manner provided for the prosecution of bonds given  
9 by administrators to the judge of probate. If such  
10 assignee fail to give bond within ten days after his  
11 election, the judge shall order a new election of such  
12 assignees on a new notice to the creditors.

SECT. 26. If either of said judges shall from sick-  
2 ness, absence or any other cause be unable to perform  
3 the duties required of him in any case arising within  
4 his jurisdiction, or shall be interested in any case, the  
5 duties required of him shall be performed by the  
6 judge of probate of the oldest adjoining county, and

7 he shall on notice from the register of probate act in  
8 the case in the county in which the case shall arise.

SECT. 27. Whenever it shall appear to the judge  
2 that any part of the debtor's estate is of a perishable  
3 nature, and likely to deteriorate before an assignee  
4 can be legally appointed, he may order the same to be  
5 sold by the messenger who will hold the avails there-  
6 of in place of the estate so disposed of.

SECT. 28. 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 judge on notice  
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. 29. If any assignee or any insolvent debtor  
2 shall refuse or unreasonably neglect to execute any  
3 instrument which he shall be lawfully required by  
4 the judge to execute, or shall disobey any lawful or-  
5 der of the judge, the judge may issue his warrant to  
6 any sheriff or deputy sheriff, commanding him to  
7 arrest and commit such assignee or debtor to the  
8 common jail in the county where he may be found.  
9 And such assignee or debtor shall remain in close  
10 custody until he shall be discharged by the judge or  
11 some justice of the supreme court.

SECT. 30. Should it appear that the dissolution of  
2 an attachment as provided for in section ten would  
3 prevent the attached property from passing to the  
4 assignees, the attachment shall, upon the order of the  
5 judge, survive notwithstanding the provisions of said  
6 section, and the assignees shall have power to prose-  
7 cute the action in which the attachment shall have  
8 been made to judgment and execution; and the  
9 amount, exclusive of costs, shall vest in the assignees.

SECT. 31 Whenever an attachment on mesne pro-  
2 cess shall be dissolved by virtue of proceedings under  
3 this act, if the claim sued shall be proved against the  
4 estate of the insolvent, the legal costs and expenses of  
5 the suit and of the custody of the property may also  
6 be proved. No debtor discharged by this act shall  
7 by means of such discharge recover costs against the  
8 plaintiff in any suit which shall be commenced against  
9 him previous to his discharge.

SECT. 32. When two or more persons who are  
2 partners in business become insolvent a warrant may  
3 be issued on the petition of all of them, or of one or  
4 more of the partners, after notice to the co-partners  
5 or of any one of the partnership creditors after the  
6 notice provided in the twenty-third section upon  
7 which warrant the joint and several property of the



8 partners may be taken and the creditors of the com-  
9 pany and the creditors of each partner may prove  
10 their debts. In such case the assignees shall be voted  
11 for by the creditors of the company and by those of  
12 each partner, the former voting according to the  
13 debts proved, the latter according to the debts proved  
14 divided by the number of partners. The assignees  
15 shall keep separate accounts of the company estate  
16 and of the individual estates, and after deducting from  
17 the whole amount by them received the whole expen-  
18 ses, the net proceeds of the joint property shall be  
19 divided among the creditors of the company, and the  
20 net proceeds of the separate estate of each partner  
21 shall be divided among his separate creditors. The  
22 surplus if any of the company estate shall go to the  
23 creditors of each partner so far as he may be an own-  
24 er of said surplus. The surplus, if any of the estate  
25 of each partner, shall go to the creditors of the com-  
26 pany. The certificate of discharge shall be granted  
27 or refused to each partner as the same would or ought  
28 to be if the proceedings had been by or against him  
29 alone. In all other respects the proceedings in such  
30 case shall be conducted in like manner as if they had  
31 been commenced by or against a single individual.

SECT. 33. When the general partners in any limited

2 partnership formed agreeably to the provisions of the  
3 thirty-third 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 special  
7 partner shall not be subject to any of the proceedings.

SECT. 34. Any person who shall have performed  
2 any labor as an operative in the service of the insolv-  
3 ent, shall be entitled to receive from the assignee the  
4 full amount of the wages due to him for such labor,  
5 not exceeding twenty dollars; *provided* such labor  
6 shall have been performed within ninety days before  
7 the first publication of notice; and such debts shall  
8 be deemed to be preferred debts next after debts due  
9 to the United States and to this state, and taxes  
10 assessed upon the estate of the debtor, and unpaid at  
11 the time of the assignment; all of which shall be paid  
12 before any dividend is made to the creditors.

SECT. 35. Any creditor who has proved his claim,  
2 may signify his assent to the discharge of the insolvent,  
3 notwithstanding an appeal from the allowance of his  
4 claim may be pending; and such assent, if made with-  
5 in the time prescribed by law, shall have the same  
6 effect as if no appeal had been taken; *provided* such  
7 claim shall be finally allowed, and not otherwise.

SECT. 36. If any person after the passing of this  
2 act, being insolvent or in contemplation of insolvency,  
3 shall within twelve months before the filing of the  
4 petition by or against him, make any payment, assign-  
5 ment or transfer directly or indirectly, to give a pref-  
6 erence to any pre-existing creditor or to any person  
7 having any pre-existing claim or demand against such  
8 debtor, or to any person who is or may be liable as  
9 endorser, guarantor or surety for such debtor, such  
10 payment, assignment or transfer shall, as to the other  
11 creditors be void, and the assignees may recover from  
12 the person so preferred, the amount of such payment  
13 or the value of the property so transferred or assigned,  
14 with interest; *provided*, such person, when accepting  
15 such preference, had reasonable cause to believe such  
16 debtor insolvent. The provisions of this section shall  
17 not apply to any payment not exceeding twenty-five  
18 dollars in amount upon any debt contracted for neces-  
19 saries furnished to the debtor or his family.

SECT. 37. If any person, after the passing of this  
2 act, being insolvent or in contemplation of insolvency,  
3 shall within twelve months before the filing of the  
4 petition by or against him, make or give any mort-  
5 gage, pledge, assignment, transfer or conveyance of  
6 any money or other property belonging to him to

7 secure any person who is or may be liable as endorser,  
8 guarantor, surety or otherwise liable for such debtor,  
9 with a view to give a preference directly or indirectly  
10 to any other endorser, guarantor or surety or any pre-  
11 existing creditor, whether by passing, assigning, trans-  
12 ferring or delivery to or for him, the note, bill of  
13 exchange, obligation or contract upon which such  
14 person shall be so liable for such debtor, or by ena-  
15 bling him to avail himself in any other manner di-  
16 rectly or indirectly of the benefit of such liability,  
17 such mortgage, pledge, assignment, transfer or con-  
18 veyance shall be void as to the creditors of such other  
19 debtors, and the assignees may recover the full value  
20 of the property so mortgaged, pledged, transferred,  
21 assigned or conveyed, or the property itself, from the  
22 person to whom such mortgage, pledge, assignment,  
23 transfer or conveyance shall be made, *provided*, he  
24 shall, when receiving such mortgage, pledge, assign-  
25 ment, transfer or conveyance, have reasonable cause  
26 to believe such debtor was then insolvent and intended  
27 to prefer; or the value of the property from the per-  
28 son so preferred, *provided*, that when accepting such  
29 preference, he had reasonable cause to believe such  
30 debtor insolvent.

SECT. 38. If any person, after the passing of this

2 act, being insolvent or in contemplation of insolvency,  
3 shall within twelve months before the filing of the  
4 petition by or against him, make any sale, assignment,  
5 transfer or conveyance, either absolute or conditional  
6 of any of his property to any person who then has  
7 reasonable cause to believe such debtor insolvent or  
8 in contemplation of insolvency, and that such sale,  
9 assignment, transfer or conveyance is made with a  
10 view to prevent the property so sold, transferred,  
11 assigned or conveyed, from coming to the assignees,  
12 or to prevent the same being distributed according to  
13 the insolvent laws, or to defeat the object of, or in any  
14 way impair, hinder, impede or delay the operation or  
15 effect of, or to evade any of said laws, such sale, assign-  
16 ment, transfer or conveyance shall be void, and the  
17 assignees may recover the property so sold, assigned,  
18 transferred or conveyed or the value thereof, as assets  
19 of said insolvency. And the fact of such sale, assign-  
20 ment, transfer or conveyance not being made in the  
21 usual or ordinary course of business of the debtor,  
22 shall be prima facie evidence of such cause of belief.

SECT. 39. No draft, bill of exchange, promissory  
2 note, claim, demand or cause of action which shall  
3 after the passing of this act within twelve months  
4 before the filing of the petition by or against any

5 insolvent debtor, be assigned, transferred, conveyed or  
6 delivered to any person who is or may be indebted,  
7 or in any way liable to such insolvent debtor, shall  
8 be offset or pleadable in defense, or in bar to any suit  
9 by the assignees to recover such debt or liability, but  
10 such assignees may recover the same, notwithstanding  
11 such draft, bill of exchange, promissory note, claim  
12 or cause of action; *provided*, the person to whom the  
13 same shall be assigned, transferred, conveyed or deliv-  
14 ered as aforesaid, shall at the time of such assignment,  
15 transfer, conveyance or delivery, have reasonable cause  
16 to believe such debtor insolvent.

SECT. 40. No person who shall have after the pass-  
2 ing of this act accepted any preference, having reason-  
3 able cause to believe that the same was made or given  
4 by the debtor contrary to any of the provisions of the  
5 insolvent laws, shall be allowed to prove the debt or  
6 claim on account of which such preference was made  
7 or given, nor to receive any dividend therefor out of  
8 the debtor's estate. Nor shall any person who shall  
9 have had or received any preference contrary to the  
10 provisions of the insolvent laws be eligible as assignee,  
11 or shall be allowed to vote upon the choice of assigns  
12 of the estate of any insolvent debtor.

SECT. 41. In all matters of insolvency that are con-

2 tested either before the probate court or supreme  
3 judicial court, said respective courts may in their  
4 discretion award costs to either party to be paid by  
5 the other, or to either or both parties, to be paid out  
6 of the estate which is the subject in controversy, as  
7 justice or equity may require, and the probate court  
8 may issue execution for costs when it may be neces-  
9 sary and proper.

SECT. 42. Every assignee on the settlement of his  
2 account with the judge of probate, shall pay to the  
3 register of probate two per cent. upon the net assets  
4 of the estate, if the net assets shall not exceed five  
5 hundred dollars, and one per cent. on all over that  
6 sum, for the use of the county, and the register shall  
7 account therefor and pay over the same to the treas-  
8 urer of the county quarter yearly, on the first Mon-  
9 days of January, April, and October in each year; the  
10 assignee shall also pay to the messenger such com-  
11 pensation as may be allowed by the judge.

SECT. 43. The judges and registers of probate in  
2 the several counties shall so long as they are subject  
3 to the duties required of them by this act, receive for  
4 the performance of such duties,

SECT. 44. The supreme judicial court shall have a  
2 general superintendence and jurisdiction as a court of  
3 chancery in all causes and questions arising under  
4 this act. And they may from time to time by a  
5 majority of their number, make such general rules as  
6 they may deem necessary in order to establish a gen-  
7 eral and uniform course of proceedings in the several  
8 counties; and said court, or any one justice thereof,  
9 shall have power in all cases not herein otherwise  
10 provided for, upon the bill, petition or proper process  
11 of the party aggrieved by any proceedings under this  
12 act, to hear and determine the case as a court of  
13 chancery, and to make such decrees and orders as law  
14 and justice may require, and to issue such mandates  
15 and processes as may be required to enforce the same;  
16 and all the powers granted in this section, may be  
17 exercised by any one justice thereof, excepting the  
18 power of making general rules, which shall only be  
19 exercised at a law term of said court; *provided, how-*  
20 *ever,* that any party aggrieved by any decision of any  
21 judge at *nisi prius*, may by exceptions thereto present  
22 the same to the law term of said court for its decision  
23 thereon.

SECT. 45. Any person owing over two hundred dollars,  
2 being insolvent and desirous of effecting a compromise



3 with his creditors, may petition the judge of the probate  
4 court of the county in which he resides or has his  
5 usual place of business, setting forth his insolvency  
6 and his desire to compromise with his creditors, and  
7 thereupon, the judge shall forthwith issue his warrant  
8 to a messenger to take possession of all the debtor's  
9 estate as herein before provided, and all his property  
10 and estate, shall, by operation of law, vest for  
11 the time being in said messenger, and by the same  
12 warrant the messenger shall be required to call a  
13 meeting of the creditors of the insolvent, to be held  
14 within twenty days after the first publication of no-  
15 tice, for the purpose of proving claims and to examine  
16 into the affairs of the insolvent and to act upon his  
17 proposed compromise; and if three-fourths in num-  
18 ber and amount of all his creditors exceeding twenty  
19 dollars shall vote to accept the compromise, a second  
20 meeting of the creditors shall be called by the mes-  
21 senger, to be held not less than thirty or more than  
22 forty days from the adjournment of the first meeting,—  
23 the meetings of the creditors may be adjourned from  
24 time to time not exceeding seven days in the whole,  
25 to each meeting, and creditors whose claims are proved  
26 may vote by attorney specially authorized in writing;  
27 if at such second meeting four-fifths in number

28 and amount of the creditors exceeding twenty dollars,  
29 shall accept the compromise, the judge of probate, on  
30 satisfactory proof, within ten days after the final ad-  
31 journment of the last meeting, that the terms of such  
32 compromise have been fully and entirely complied  
33 with by the insolvent, shall grant him a discharge  
34 from all claims thus compromised, and from all other  
35 demands contracted after the passing of this act, and  
36 from which he could be discharged under the provis-  
37 ions of section fifteenth of this act; the form of the  
38 certificate of discharge shall be changed, so far as  
39 may be necessary under this section. The debtor,  
40 before receiving his discharge, shall pay to the regis-  
41 ter, for the use of the county, one per cent. on the  
42 full amount paid to all his creditors, and such dis-  
43 charge shall by operation of law revert in the insol-  
44 vent all the property and estate vested in the messen-  
45 ger as before provided, and the judge shall also order  
46 the same to be restored to the debtor by the messen-  
47 ger on his being paid a reasonable compensation to  
48 be allowed by the judge; and such property or estate  
49 whilst vested in said messenger, shall not be subject  
50 to attachment on mesne process, or to be taken on  
51 execution as the property of the debtor. The mes-  
52 senger may receive payments of any demands whilst

53 the same are invested in him, and shall account there-  
54 for to the debtor, and any action may be commenced  
55 by the messenger respecting said property or estate so  
56 vested in him that may be directed by the judge of  
57 probate; and the discharge of the insolvent under  
58 the provisions of this section, shall vacate all attach-  
59 ments on his property or estate made at any time  
60 previous to his petition to the probate court.

SECT. 46. If the compromise is not accepted by the  
2 creditors as provided in the previous section, the in-  
3 solvent shall forthwith petition the judge of probate  
4 under the provisions of the first section of this act,  
5 and he shall issue his warrant to the messenger, di-  
6 recting him to call a meeting of the creditors to choose  
7 assignees and prove their claims, and the same pro-  
8 ceedings shall take place and with the same effect as  
9 though the original petition of the insolvent had been  
10 under the provisions of the first section of this act,  
11 and the messenger shall also make and execute to the  
12 assignees a release of all his interest in the insolvent's  
13 property and estate.

SECT. 47. The judges of probate shall have power  
2 to issue commission to take testimony to be used in  
3 evidence before them under this act; also subpoenas  
4 and all other process necessary to compel the attend-

5 ance of witnesses on the insolvent, and the giving of  
6 testimony in the like manner and to the same extent  
7 as in the supreme judicial court. No judge or regis-  
8 ter of probate shall be counsel or attorney either in  
9 or out of court in any matter or proceeding whatever  
10 in insolvency, nor shall either of them be assignee on  
11 any insolvent estate, nor in any manner interested in  
12 the fees or emoluments of any such assignee, nor shall  
13 either of them receive any fee or compensation for any  
14 thing done by them in their official capacity, except-  
15 ing the allowance to register for copies as before  
16 provided.

SECT. 48. The seventieth chapter of the revised  
2 statutes and all provisions of law inconsistent with  
3 this act, are hereby repealed, saving all rights which  
4 shall have accrued to any person by virtue of the  
5 same, excepting any lien or claim by virtue of any  
6 attachment on mense process, or seizin on execution.  
7 And this act shall take effect from and after the —  
8 day of — next.

## ERRATA.

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Page 26, line 37, after word "debtor" insert a semicolon instead of a period, and read in line 38 "Then any creditor," &c.



STATE OF MAINE,

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IN SENATE, February 13, 1858.

ORDERED, That 1000 copies of the foregoing bill be printed for the use of the Legislature.

ATTEST:

JOSEPH B. HALL, *Secretary.*