

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1710

S. P. 680

In Senate, June 9, 1967

Report by Majority from Committee on Judiciary. Printed under Joint
Rules No. 18.

JERROLD B. SPEERS, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

**AN ACT to Abolish Imprisonment for Debt and to Revise the Laws Relating
to Disclosures of Debtors.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 14, § 253, amended. Section 253 of Title 14 of the Revised Statutes is amended to read as follows:

§ 253. Debtor's refusal to appear

If the debtor or the officer of the debtor corporation or any other person duly served with subpoena under chapter 503 refuses or neglects to appear, the magistrate shall upon the request of the petitioner issue a *capias* to bring said debtor or the officer of the debtor corporation or other person before him **then sitting or at a specified date, time, and place as soon as possible thereafter. An arrest shall not be made before 7:00 a.m. on the date specified unless specially authorized in the *capias* for good cause shown. If arrest prior to the specified date is authorized, the person arrested may be imprisoned until that date unless he gives bond for his appearance in the manner provided in chapter 511. and** ~~and~~ **if** If upon hearing, said debtor or the officer of the debtor corporation or other person does not show good cause for his failure to appear, he may be ordered to pay the costs of issuing and serving said *capias*. After the question of costs of issuing and serving said *capias* has been thus determined, such debtor or the officer of the debtor corporation or other person shall submit himself to the examination required by his original subpoena.

Sec. 2. R. S., T. 14, § 254 amended. Section 254 of Title 14 of the Revised Statutes is amended to read as follows:

§ 254. Debtor's refusal to testify

If the debtor or the officer of the debtor corporation or other person duly served with subpoena under chapter 503 refuses to testify in obedience thereto, or refuses to answer any proper questions or if the debtor or the officer of the

debtor corporation refuses to make full disclosure upon all matters named in section 3501, or if said debtor or the officer of the debtor corporation refuses to comply with any proper order of the magistrate or perform the duty imposed upon him by section 3303, he shall be adjudged to be in contempt and be committed to jail until he purges himself of such contempt by compliance ~~or is otherwise discharged by due process of law.~~ ~~The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.~~ If said officer complies with the requirements of section 253, ~~no execution shall run against his body, or by payment of the judgment and costs.~~ The warrant of commitment shall state specifically the contempt of which the prisoner is guilty. Any person so committed may apply to any Judge of the District Court of the district in which he is committed, or to a Justice of the Supreme Judicial Court or the Superior Court, for release from such commitment, and such judge or justice, upon hearing after due notice to the creditor or attorney of record, may order the release of such person for good cause.

Sec. 3. R. S., T. 14, § 3301, amended. Section 3301 of Title 14 of the Revised Statutes is amended to read as follows :

§ 3301. Owner of judgment may have disclosure any time

The owner of any judgment remaining unsatisfied in any part may have a disclosure of the business and property affairs of any judgment debtor, including corporations, at any time, by proceedings as provided ~~but married women, and officers of judgment debtor corporations, and judgement debtors not liable to arrest by virtue of proceedings under sections 2351 or 3605.~~ **No judgment debtor, or officer of a judgment debtor corporation, thus cited, shall not be arrested except for contempt, or upon capias issued to bring them him before the magistrate as provided by section 253, or upon process issued pursuant to section 3154 or 3305.**

Sec. 4. R. S., T. 14, § 3401, amended. Section 3401 of Title 14 of the Revised Statutes is amended to read as follows :

§ 3401. Unable to attend; adjournment

In case the magistrate ~~who issued the summons before whom the debtor is summoned to attend~~ is unable to attend, any justice of the peace may continue the case not exceeding twice, or any other magistrate qualified to take disclosure may attend and take the disclosure, ~~and, for cause shown by either party, the examination may be adjourned from time to time.~~ **The examination may be continued or adjourned from time to time on request of either party for good cause shown, except that no such continuance or adjournment shall be granted at the request of the judgment creditor without the written consent of the debtor noted upon the record of the proceedings, unless such request was made prior to the time of hearing and after reasonable notice thereof to the debtor. The reasons for such continuance or adjournment shall be noted by the magistrate in his record of the proceedings kept as provided in section 3353. The fact that the parties have reached a voluntary agreement for payment of the debt in installments shall not constitute good cause within the meaning of this section.**

Sec. 5. R. S., T. 14, § 3452, amended. Section 3452 of Title 14 of the Revised Statutes is amended to read as follows :

§ 3452. Amendment of errors in application or subpoena

Such magistrate as described in section 3451 shall thereupon issue under his hand and seal a subpoena to the debtor commanding him, or in case the debtor is a corporation commanding an officer thereof, to appear before ~~any such disinterested magistrate within said county in the town in which the debtor, the petitioner or his attorney resides, or the corporation has an established place of business, or in which any officer thereof on whom the subpoena is served, resides, or in the nearest town in which there is such a magistrate or in the shire town of said county~~ the District Judge in the division in which the judgment debtor resides, or, if a corporation, in which the debtor has an established place of business, or before a disclosure commissioner, if any, in the place where the debtor resides or has an established place of business or, if none, before a disclosure commissioner in the town nearest to the debtor's residence or established place of business, at a time and place therein named to make full and true disclosure, of oath, of all the business and property affairs of such debtor. ~~A Judge of any District Court may hold disclosure court upon a subpoena returnable as aforesaid in any town in which the regular terms of the court of which he is judge are held. The application shall be annexed to the subpoena. Any town in which the regular sessions of the Superior Court are held shall be considered a shire town for the purpose of this section.~~ If the debtor is a nonresident of this State, the subpoena shall order him to appear before the magistrate to whom the application was directed as provided in section 3451. The application shall be annexed to the subpoena.

The subpoena shall clearly state that persons having no property except what is exempt from attachment or who have made an honest disclosure of the location and extent of any nonexempt property and have complied with all proper orders of the magistrate, shall be entitled to receive the poor debtor's oath and shall thereafter be free from arrest for such debt, except as otherwise provided by law. The subpoena shall further state in conspicuous type: "IF YOU FAIL TO APPEAR AT THE TIME AND PLACE STATED HEREIN, YOU MAY BE ARRESTED AND BROUGHT IN TO MAKE DISCLOSURE." No application or subpoena shall otherwise be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and the case can be rightly understood. Such errors and mistakes may be amended on application of either party.

Sec. 6. R. S., T. 14, § 3453, amended. Section 3453 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3453. Service of subpoena

The subpoena may be served by any officer qualified to serve civil process in said county by giving to the debtor or to an officer of a debtor corporation in hand an attested copy of the ~~petition~~ application and subpoena ~~which said service shall be at least 24 hours before the time of said disclosure for every 20 miles' travel from his home or place of abode at the time of service to the place of disclosure.~~ The officer shall make his return of service upon the original subpoena which shall forthwith be returned to the judgment creditor or his attorney. Service shall be made at least 72 hours before the time of the disclosure examination.

Sec. 7. R. S., T. 14, § 3505, amended. Section 3505 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3505. Default recorded for nonappearance

If a debtor, cited to disclose on a judgment where the original debt exclusive of costs exceeds \$10, fails to appear and submit himself to examination at the time and place named in subpoena, the petitioner may ~~have a default recorded and then proceed as in section 3552 or~~ have a capias to bring in such debtor and proceed as in section 253.

Sec. 8. R. S., T. 14, § 3552, amended. Section 3552 of Title 14 of the Revised Statutes is amended by repealing the last 3 sentences and enacting the following in place thereof:

The magistrate thereupon shall proceed under section 254 to determine whether the debtor has committed contempt and to commit him for any such contempt as provided therein.

Sec. 9. R. S., T. 14, § 3553, repealed. Section 3553 of Title 14 of the Revised Statutes is repealed.

Sec. 10. R. S., T. 14, § 3702, amended. Section 3702 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3702. Debtor may disclose without bond

When so arrested, he may, without giving bond, disclose as provided in this subchapter and subchapters IV to IX ~~by serving the citation provided for in section 3703 upon the creditor or his attorney, allowing at least 24 hours for every 20 miles' travel from the residence of such creditor or attorney to the place of disclosure. The debtor shall pay the officer for serving the notice and keeping him from the arrest until the disclosure, before he can be discharged.~~

Sec. 11. R. S., T. 14, § 3708, amended. Section 3708 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3708. Service of citation

The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the action, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties. Service shall be made in the manner provided for service of other civil process ~~± 7~~ 7 days at least before the time appointed for examination, if the creditor is alive; otherwise, it shall be so served on his executor or administrator, if found in the State, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution, **except that in all cases in which the debtor is in jail, such notice may be served upon the creditor no less than 24 hours before the time appointed for the examination and the costs of such service shall be borne by the county in which the jail is located.**

Sec. 12. R. S., T. 14, § 3851, amended. Section 3851 of Title 14 of the Revised Statutes is amended by inserting after the 3rd sentence, a new sentence to read as follows:

Any such sums advanced by the creditor may be added to the judgment and costs which the debtor is liable to pay, but no debtor obtaining the benefit of the oath provided by section 3711 shall be required to repay such costs of board as a condition for obtaining his release from jail.