

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1253

S. P. 433

In Senate, March 10, 1971

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Harding of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Abolishing Imprisonment for Debt.

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

Sec. 1. R. S., T. 14, § 253, repealed and replaced. Section 253 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 253. Contempt in disclosure proceedings

No debtor, officer of a debtor corporation or other person shall, in proceedings before any magistrate pursuant to chapter 503:

1. Disobey any lawfully issued order or subpoena;
2. Refuse to produce, after having been ordered to do so, any pertinent document;
3. Refuse to take the oath as a witness; or, having taken the oath, refuse to submit to the examination described in section 3501; or
4. Refuse to make assignment as described in section 3303.

In the event of violation of any of the foregoing provisions of this section, the magistrate may, if the violation is committed in his presence, treat the violation as a contempt and order the violator committed to jail until he purges himself of the contempt or is otherwise discharged. The magistrate shall certify, in the warrant of commitment, that he saw or heard the conduct constituting the contempt and that it was committed in his presence. If the violation was not committed in his presence, the magistrate may issue an order requiring such person to appear on a day fixed to show cause why he

should not be held in contempt, which order shall be served by an officer authorized to serve civil process or by certified mail, with return receipt requested and delivery restricted to the addressee, receipt must be at least 7 days before the return day. If such person fails to appear, or, having appeared, fails to show cause why he should not be held in contempt, the magistrate may adjudge him to be in contempt and order him committed to jail until he purges himself of the contempt or is otherwise discharged. The magistrate shall specify, in the warrant of commitment, the nature of the contempt.

Sec. 2. R. S., T. 14, § 254, repealed. Section 254 of Title 14 of the Revised Statutes, is repealed.

Sec. 3. R. S., T. 14, § 1521, amended. The first sentence of section 1521 of Title 14 of the Revised Statutes is amended to read as follows:

The judge or disclosure commissioner shall be entitled to an entry fee of \$5 at the time application is made for the subpoena described in section 3451, and shall be entitled to a like fee for each hearing on such subpoena or continuance thereof after the first, and for every hearing or continuance thereof held under sections 253, 3302 or 3454 with respect to the judgment described in such subpoena.

Sec. 4. R. S., T. 14, § 2602, sub-§ 3, repealed. Subsection 3 of section 2602 of Title 14 of the Revised Statutes is repealed as follows:

3. Money held by officer, accountable to defendant. By reason of any money in his hands as a public officer for which he is accountable to the principal defendant;

Sec. 5. R. S., T. 14, § 2608, amended. The first sentence of section 2608 of Title 14 of the Revised Statutes is amended to read as follows:

All The State of Maine, all domestic corporations and all foreign or alien companies and corporations established by the laws of any other state or country and having a place of business or doing business within this State may be summoned as trustees, and trustee summonses may be served on them as other process is served on such companies, or corporations and the State.

Sec. 6. R. S., T. 14, § 3151, amended. Section 3151 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3151. Criminals not precluded from oath

No conviction or other disqualification to be a witness precludes a debtor from relief under this chapter and chapter 505.

Sec. 7. R. S., T. 14, § 3152, amended. The first sentence of section 3152 of Title 14 of the Revised Statutes is amended to read as follows:

In disclosure on mesne process or execution, after the examination of the debtor, other competent evidence may be introduced and the debtor may then be further examined by either party.

Sec. 8. R. S., T. 14, § 3153, amended. Section 3153 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3153. Disclosures on islands

In no case under this chapter ~~and chapter 505~~ shall a creditor be cited or notified to attend a disclosure upon any island not connected with the mainland by a bridge, unless, at the time of said disclosure, the debtor resides upon such island ~~and was arrested in the county where the same is situated~~. Disclosures made in violation of this section are void.

Sec. 9. R. S., T. 14, § 3154, amended. The 2nd and 3rd sentences of section 3154 of Title 14 of the Revised Statutes are amended to read as follows:

On oath before a ~~justice of the peace~~ magistrate authorized to hear disclosures he may declare his belief of the truth of the allegations in the complaint. Such ~~justice~~ magistrate shall certify the oath on the complaint.

Sec. 10. R. S., T. 14, § 3154, amended. The 4th sentence of section 3154 of Title 14 of the Revised Statutes is repealed as follows:

~~Thereupon the debtor shall be held to bail, or in default thereof be committed to jail to abide the judgment in the action~~

Sec. 11. R. S., T. 14, § 3154, amended. The last sentence of section 3154 of Title 14 of the Revised Statutes is repealed as follows:

~~The debtor may be arrested and committed to jail on any execution issued on the judgment last recovered, without the privilege of release or discharge except by payment or consent of the creditor~~

Sec. 12. R. S., T. 14, §§ 3201 - 3203, repealed. Sections 3201 through 3203 of Title 14 of the Revised Statutes are repealed.

Sec. 13. R. S., T. 14, §§ 3251 - 3257, repealed. Sections 3251 through 3257 of Title 14 of the Revised Statutes are repealed.

Sec. 14. 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 judgment debtors not liable to arrest by virtue of proceedings under sections 3251 or 3605, thus cited, shall not be arrested except for contempt or upon capias issued to bring them before the magistrate as provided by section 253~~ in this subchapter.

Sec. 15. R. S., T. 14, § 3302, amended. The 4th sentence of section 3302 of Title 14 of the Revised Statutes is repealed as follows:

~~The debtor shall not be required to assign any sums due him as wages for~~

~~his personal labor which would be exempt from attachment on trustee process under section 2602~~

Sec. 16. R. S., T. 14, § 3302, amended. Section 3302 of Title 14 of the Revised Statutes is amended by adding a new paragraph to read as follows:

The magistrate may issue an order requiring the debtor to pay over to the petitioner such sum or sums periodically until the debt, costs and charges are fully satisfied, as the debtor and petitioner may agree to; or, if they cannot agree, then as the magistrate in his discretion may determine equitable. If the debtor is employed and if the petitioner or the debtor so requests then or at any time thereafter while the execution remains in force and unsatisfied, the magistrate may issue an order requiring the debtor's employer to appear on a day fixed to show cause why he should not withhold such sum or sums periodically from the debtor's salary or wages and pay over the same to the petitioner, such order to be served and heard in the same manner as orders.

Sec. 17. R. S., T. 14, § 3302-A, additional. Title 14 of the Revised Statutes is amended by adding a new section 3302-A, to read as follows:

§ 3302-A. Discharge from employment after withholding order

Any employer, served with an order under section 3302 to appear and show cause why a withholding order should not issue, who shall thereafter discharge from employment the debtor to whose wages or salary the withholding order is proposed to apply, solely by reason of the service of such order to appear and show cause or by reason of the issuance of a withholding order shall be punished by a fine of not more than \$1,000 and shall be required to restore the debtor to employment with all the rights, privileges and emoluments thereunto pertaining at the time of the unlawful discharge.

Sec. 18. R. S., T. 14, § 3305, amended. The 2nd and 3rd sentences of section 3305 of Title 14 of the Revised Statutes are amended to read as follows:

If the debtor or the officer of the debtor corporation transfers, conceals or otherwise disposes of it within said time, or suffers it to be done, or refuses to surrender it on demand to any proper officer having an execution on the same judgment, ~~the debtor shall have no benefit from the certificate described in section 355+~~ magistrate may treat such conduct as a contempt and proceed under section 253. The petitioner may recover, in a civil action against ~~him~~ the debtor, the officer of the debtor corporation, or any person fraudulently aiding in such transfer, concealment or disposal, double the amount due on said execution.

Sec. 19. R. S., T. 14, § 3305, amended. The last sentence of section 3305 of Title 14 of the Revised Statutes is repealed as follows:

~~Any execution on a judgment in such action shall run against the bodies of the debtor and other persons so aiding, but the payment thereof is a satisfaction of the original debt~~

Sec. 20. R. S., T. 14, § 3306, amended. Section 3306 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3306. New disclosure after 3 years and while judgment in force

At any time after the expiration of 3 years from the termination of any such proceedings, and while the judgment ~~remains~~ is still in force, the judgment creditor may again avail himself of all the provisions of this subchapter where the original debt exclusive of costs exceeds \$10, and may cause like proceedings to be had as if there had been no previous proceedings under this chapter ~~and chapter 505~~.

Sec. 21. R. S., T. 14, § 3353, amended. Section 3353 of Title 14 of the Revised Statutes is amended as follows:

§ 3353. Commissioner to record proceedings

Every magistrate shall keep a correct and sufficient record of the proceedings under each citation, stating the names of the parties, the amount of the judgment on which the disclosure is sought, the dates of application, of the issuance of subpoena and of the return day thereof, and of all hearings, adjournments and continuances; whether the debtor appeared ~~or was brought in on capias~~ or was defaulted on any contempt proceedings under section 253; the issuance of any orders under section 3302; whether a disclosure was had and if so what property was disclosed; whether the oath was administered or refused, and if refused the record shall state the reason for such refusal.

Sec. 22. R. S., T. 14, § 3402, amended. Section 3402 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3402. Magistrate who refused oath incompetent to again hear disclosure

Any magistrate, who has once refused to administer to the debtor the oath named in section ~~3711~~ 3503 shall be incompetent ~~to sit as a justice of the peace or commissioner under section 3203~~ to hear the disclosure of the debtor in any subsequent proceedings upon the same judgment or any judgment founded thereon.

Sec. 23. 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:

1. By ~~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 and subpoena, which said service shall be at least ~~24 hours~~ 7 days before the time for said disclosure ~~for every 20 miles' travel from his home or place of abode at the time of service to the place of disclosure~~; or

2. By certified mail with return receipt requested and delivery restricted to the debtor, such service to be made at least 7 days before the time for said disclosure.

Sec. 24. R. S., T. 14, § 3454, amended. Section 3454 of Title 14 of the Revised Statutes is amended as follows:

§ 3454. Persons holding property in trust or in fraud of creditors must appear and testify

If said magistrate finds reasonable cause to believe that any other person, firm, corporation or other legal entity, or the State of Maine, holds any property or credits of the debtor in trust for him or in fraud of his creditors, or if the petitioner shall make oath that he believes that such other person, firm, corporation or other legal entity, or the State of Maine, so holds property of the debtor, the magistrate shall issue a similar subpoena to such person, firm, corporation or other legal entity or to the official of the State of Maine who, acting in such capacity, so holds such property, to appear and testify in relation thereto, the same to be served as subpoenas in civil actions or by certified mail with return receipt requested. The testimony of such witness may be reduced to writing and signed by him, and if it shall satisfactorily appear to the magistrate from all the evidence in the case that such person, firm corporation or other legal entity, or the State of Maine, so holds property or credits of the debtor, he shall so certify upon the execution. The petitioner shall have a lien upon said property or credits for 30 days succeeding such disclosure, to be enforced by complaint seeking equitable relief or trustee process, and if upon such complaint or trustee process the court finds such property or credits to be so held as aforesaid, it may order the same, or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the petitioner. In cases where such equitable relief or trustee process is sought to be imposed upon the State of Maine, the defense of sovereign immunity may not be pleaded in bar. If the parties cannot agree upon the value of such property or credits, they shall be assigned to the petitioner, if he shall give such trustee a bond with sufficient surety, accepted by the court, to account for and pay over to said trustee the surplus of the proceeds of such property or credits, after satisfying said judgment and costs.

Sec. 25. R. S., T. 14, § 3503, amended. Section 3503 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3503. Administration of oath by magistrate

If, on such examination and hearing, the magistrate is satisfied that the debtor's disclosure is true and does not discover anything therein inconsistent with his taking the oath, the magistrate may administer to him the following oath ~~prescribed by section 3711~~:

"I,, solemnly swear (or "affirm") that I have no real or personal estate, or interest in any, except what is exempted by statute from attachment and execution, and what I have now disclosed; and that since any part of this debt or cause of action accrued, I have not directly or indirectly sold, conveyed or disposed of, or entrusted to any person, any of my real or personal property to secure it or to receive any benefit from it to myself or others with an intent to defraud any of my creditors. So help me God (or, This I do under the pains and penalties of perjury)."

Sec. 26. R. S., T. 14, § 3505, amended. Section 3505 of Title 14 of the Revised Statutes is amended 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 3532 or have a capias to bring in such debtor and proceed as in section 253.~~

Sec. 27. R. S., T. 14, § 3551, amended. Section 3551 of Title 14 of the Revised Statutes is amended as follows:

§ 3551. Where security and compliance no body execution

After the oath mentioned in section ~~3711~~ 3503 is administered, and the property disclosed is secured, and the debtor or the officer of the debtor corporation has complied with all proper orders of such magistrate, a certificate of the fact of such disclosure shall be indorsed by the magistrate under his hand and seal on the execution issued upon the judgment upon which the disclosure is had, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment or on any judgment founded thereon. ~~The body of the debtor shall thereafter be forever free from arrest on any execution so issued, except as provided in section 3154 and 3305~~

Sec. 28. R. S., T. 14, § 3552, amended. Section 3552 of Title 14 of the Revised Statutes, as last amended by section 18-A of Chapter 590 of the Public Laws of 1969, is further amended as follows:

§ 3552. Failure to obtain benefit of oath

If upon such disclosure the debtor fails to obtain the benefit of the oath provided for in section ~~3711~~ 3503, the magistrate shall, under his hand and seal, indorse a certificate of that fact upon the execution in force at the time of said disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment, or on any judgment founded thereon. ~~Such subsequent execution shall run against the body of said debtor, where the original debt exclusive of costs exceeds \$10 and not otherwise. The magistrate shall issue a capias under his hand and seal, and annex the same to said execution in force at the time of said disclosure, and the debtor may be arrested and imprisoned on said capias and execution, where the original debt exclusive of costs exceeds \$10 and not otherwise. No execution shall run against the body of a judgment debtor who is exempt from arrest by section 3301~~

Sec. 29. R. S., T. 14, § 3553, repealed. Section 3553 of Title 14 of the Revised Statutes is repealed.

Sec. 30. R. S., T. 14, § 3554, repealed. Section 3554 of Title 14 of the Revised Statutes, as enacted by section 18-B, c. 590 of the Public Laws of 1969, is repealed.

Sec. 31. R. S., T. 14, c. 505, repealed. Chapter 505 of Title 14 of the Revised Statutes is repealed.

Sec. 32. R. S., T. 19, § 722, amended. The fifth sentence of section 722 of Title 19 of the Revised Statutes is amended to read as follows:

When the husband or father is committed to jail on execution issued upon decree of alimony, or for payment of money instead thereof, or for the support of his minor children, or for support pending the divorce action, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged from imprisonment by payment of the execution and all costs and expenses of his commitment and support, and he shall not be entitled to relief therefrom under Title 14, ~~chapters~~ **chapter 503 and 505.**

Sec. 33. R. S., T. 36, § 802, amended. Section 802 of Title 36 of the Revised Statutes is amended to read as follows:

§ 802. Proceedings by sheriff

The sheriff or his deputy, on receiving the assessment and warrant for collection provided for in section 801, shall forthwith post in some public place in the municipality assessed, an attested copy of such assessment and warrant, and shall make no distress for any of such taxes until after 30 days therefrom. Any person paying his tax to such sheriff within that time shall pay 5% over and above his tax for sheriff's fees, but those who do not pay within that time shall be ~~distrained or arrested~~ by such officer, as by tax collectors. The same fees shall be paid for travel and service of the sheriff, as in other cases of distress.

Sec. 34. R. S., T. 36, § 803, amended. The second paragraph of section 803 of Title 36 of the Revised Statutes is amended to read as follows:

An officer executing an alias warrant against a delinquent tax collector may ~~arrest the tax collector and proceed as on execution for debt. Such delinquent tax collector shall have the same rights and privileges as a debtor arrested or committed on execution in favor of a private creditor~~

Sec. 35. R. S., T. 36, § 895, amended. Section 895 of Title 36 of the Revised Statutes is amended to read as follows:

§ 895. —Warrant form

If the tax collector of any municipality neglects to collect and pay the taxes to the treasurer named in the assessor's warrant by the time therein stated, such treasurer may issue his warrant, returnable in 90 days, and in substance as follows, to the sheriff of the county or his deputy, who shall execute it.

A. B., treasurer of the municipality of, in the County of, to the sheriff of said county, or his deputy,

Whereas C. D., of, being chosen or appointed tax collector of said municipality on, 19....., for the year 19....., had a list of assessments duly made by the assessors of the said municipality, amounting to the sum of \$....., committed to him with a warrant under their hands, dated, directing and empowering him to collect the several sums in said assessment mentioned, and pay the same to the treasurer of the said municipality by the day

of , 19....., but the said C. D. has been remiss in his duty by law required, and has neglected to collect the several sums aforesaid, and pay them to the said treasurer; and there still remains due thereon the sum of \$....., and the said C. D. still neglects to pay it: You are hereby, in the name of the State, required forthwith to levy the aforesaid sum of \$....., by distress and sale of the estate, real or personal, of said C. D., and pay the same to the treasurer of said municipality, returning the overplus, if any, to said C. D. ~~And for want of such estate, to take the body of said C. D., and him commit to the jail in the county aforesaid, there to remain until he has paid the said sum of \$....., with forty cents for this warrant, together with your fees, or he is otherwise discharged therefrom by order of law;~~ and make return of this warrant to myself, or my successor, as treasurer of said municipality, within 90 days from this time, with your doings therein.

Given under my hand, this day of, in the year nineteen hundred and

....., Treasurer of

Sec. 36. R. S., T. 36, § 898, amended. Section 898 of Title 36 of the Revised Statutes is amended to read as follows:

§ 898. Collector to account when taken on execution

When the estate of any tax collector is taken on execution under section 895, the municipal officers may demand of him a true copy of the tax lists, with the evidence of all payments made thereon. If he complies with this demand, he shall receive such credit as the municipal officers, on inspection of the tax lists, adjudge him entitled to, and account for the balance; ~~but if he refuses, he shall forthwith be committed to jail by the officer who so took him or by a warrant from a justice of the peace, there to remain until he complies.~~

Sec. 37. R. S., T. 36, § 993, repealed. Section 993 of Title 36 of the Revised Statutes, as amended by section 20-C of chapter 425 of the public laws of 1965, is repealed.

Sec. 38. R. S., T. 36, § 994, amended. Section 994 of Title 36 of the Revised Statutes is amended to read as follows:

§ 994. Collector may issue warrant of distress to sheriff

Any tax collector after 3 months from the date of commitment may issue his warrant to the sheriff of any county, or his deputy, or to a constable of his municipality, directing him to distrain the ~~person or~~ property of any taxpayer not paying his taxes, which warrant shall be of the same tenor as that prescribed to be issued by municipal assessors to tax collectors with the appropriate changes returnable to the tax collector issuing the same in 30, 60 or 90 days.

Sec. 39. R. S., T. 36, § 996, sub-§ 4, amended. Subsection 4 of section 996 of Title 36 of the Revised Statutes is amended to read as follows:

4. **Distrain.** He may himself demand immediate payment and upon failure he may distrain the property ~~or arrest the person~~ of such taxpayer.

Sec. 40. R. S., T. 36, § 997, repealed. Section 997 of Title 36 of the Revised Statutes is repealed.

Sec. 41. R. S., T. 36, § 998, repealed. Section 998 of Title 36 of the Revised Statutes is repealed.

Sec. 42. R. S., T. 36, § 1962, amended. Section 1962 of Title 36 of the Revised Statutes is amended to read as follows:

§ 1962. —Form and effect

The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for taxes and may be in substantially the following form:

“....., ss.—To the Sheriffs of our respective counties or either
(Name of county)
of their Deputies,

“Whereas, the Attorney General has certified that, pursuant to the terms of Title 36, section 1957 or 1958, or both, of the Revised Statutes the amount of certain sales or use taxes, assessed against of with interest and penalty, has become final as to law and fact, to wit:

Sales or use tax	\$
Penalty	
Interest
Total	\$
and \$	costs of this proceeding,
and the same is unpaid;

“We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the State of Maine said total and costs, and cents more for this warrant, together with your own fees.

~~“And for want of money, goods or chattels of said debtor, to be by him shown unto you, or found in your precinct, to the acceptance of the Attorney General of the State of Maine, to satisfy the sums aforesaid, we command you to take the body of said debtor, and commit him unto any of our jails in said counties, and there detain in your custody, until he shall pay the full sums aforesaid, with your fees, or be discharged by said State of Maine, or otherwise by order of law.~~

“Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within 3 months from the date hereof.

.....
Clerk of Courts, County of
Date

Warrants shall be returnable within 3 months. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Warrants shall be served by the sheriff of any county or by any of his deputies in the county where the person may be found.

Sec. 43. R. S., T. 36, § 1963, repealed. Section 1963 of Title 36 of the Revised Statutes is repealed.

STATEMENT OF FACT

This bill will abolish the oft-criticized powers of disclosure commissioners to summarily order, upon the request of a creditor, the jailing of a debtor who fails to appear at a disclosure hearing. The bill also removes the existing power of the State and of municipalities to jail persons for nonpayment of taxes without a court hearing.

In place of the disclosure commissioner's summary incarceration powers, the bill substitutes a proceeding which provides notice, hearing and other safeguards more consonant with modern ideas of due process. The bill also provides that the disclosure commissioner may order the debtor's employer, including the State of Maine, to withhold a portion of the debtor's salary for the benefit of the creditor, a technique which has proved satisfactory in wage earner proceedings under chapter XIII of the Bankruptcy Act. The bill prohibits employers from discharging employees who choose to use this withholding procedure.