

MAINE STATE LEGISLATURE

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FIFTY-FOURTH LEGISLATURE.

SENATE.

No. 46.

STATE OF MAINE.

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

[S. 93.] AN ACT amendatory of and additional to chapter one hundred and thirteen of the revised statutes, in relation to poor debtors.

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

SECTION 1. The first section of the one hundred and 2
thirteenth chapter of the revised statutes, is hereby 3
amended so as to read as follows, to wit :

4 *Sect. 1.* No person shall be arrested on mesne pro- 5
cess, except as provided in the following section, and 6
the writ or process shall be varied accordingly.

SECT. 2. The second section of said chapter one 2
hundred and thirteen, is hereby amended so as to read 3
as follows, to wit :

4 *Sect. 2.* Any person, a resident within this state or 5
not, may be arrested on mesne process and held to bail,

6 or for disclosure, or in default thereof committed to
7 prison if the sum demanded amounts to at least ten
8 dollars or more, exclusive of interest, when he is about
9 to depart and reside beyond the limits of this state, if
10 the plaintiff, his agent, or attorney, makes oath before
11 a justice of the peace, to be certified by the justice on
12 said process, that he has reason to believe and does be-
13 lieve, and stating the grounds of his belief, that the
14 defendant is about to depart and reside beyond the
15 limits of this state, and that the plaintiff has a legal
16 claim against the defendant for at least ten dollars, ex-
17 clusive of interest. In actions *ex delicto*, the defend-
18 ant may be arrested in like manner, if the plaintiff, his
19 agent, or attorney, shall make oath before a justice of
20 the peace, to be certified by said justice on the pro-
21 cess, that he believes the defendant committed the
22 alleged wrong willfully, or without reasonable claim of
23 right. In any case when arrested the defendant may
24 give bail as provided in chapter eighty-five of the
25 revised statutes.

SECT. 3. The Supreme Judicial Court shall, at the
2 next term held in the county after the passage of this
3 act, designate one or more justices of the peace and
4 quorum for that county to be commissioners, for the
5 purpose of hearing disclosures of debtors under the one
6 hundred and thirteenth chapter of the revised statutes

7 and acts additional thereto, such designation to be for
8 the term of three years, unless sooner vacated by the
9 court. A single commissioner shall have and exercise
10 all the powers and perform all the duties, in relation to
11 debtors under said chapter and acts additional thereto,
12 as are now exercised by a justice of the peace and by
13 two or three justices of the peace and quorum; and
14 from and after the time this act goes into effect,
15 all proceedings in relation to the disclosure of debtors
16 under said chapter and acts additional thereto, shall
17 be before a commissioner, but the present jurisdiction
18 of justices of the peace and justices of the peace and
19 quorum under said chapter and acts additional thereto,
20 shall not cease in any county until the appointment
21 in such county of commissioners under this act. The
22 proceedings before a commissioner shall be the same
23 as now had before justices of the peace and justices of
24 the peace and quorum, under said chapter and acts
25 additional thereto, and the certificates of discharge
26 may be varied accordingly.

SECT. 4. In all cases of bonds given under said
2 chapter and acts additional thereto before the time this
3 act goes into effect, the condition of which requires a
4 disclosure before two justices of the peace and quorum,
5 such condition shall be satisfied by legal disclosure
6 before a commissioner under this act. In such bonds

7 given after the time this act goes into effect, the con-
8 dition shall be varied to provide for a disclosure before
9 a commissioner.

SECT. 5. In all cases where the defendant or debtor
2 would under said chapter be taken by the officer or
3 jailor having him in custody before two justices of the
4 peace and quorum, for disclosure, he shall be taken
5 before a commissioner to be selected by such officer or
6 jailor. Whenever under said chapter the debtor or the
7 jailor in his behalf is required to make application to
8 a justice of the peace, he or the jailor in his behalf
9 shall make such application to a commissioner, who,
10 in addition to his other duties, thereupon shall select
11 the commissioner to hear the disclosure and examine
12 the debtor.

SECT. 6. No such application shall be deemed insuf-
2 ficient in form or substance, if it sufficiently set forth
3 the names of the parties and the fact of the arrest in
4 the county. No notice or citation to plaintiff creditor
5 shall be deemed insufficient in form or substance if it
6 shall sufficiently inform the plaintiff or creditor of the
7 name of the defendant and the time and place of the
8 disclosure.

SECT. 7. No commissioner shall hear a disclosure
2 unless he is disinterested, nor shall he hear any disclo-
3 sure where he has any interest in the subject matter,

4 nor where he has been counsel or attorney in the same,
5 or has advised the defendant in relation to such dis-
6 closure.

SECT. 8. The commissioner to hear a disclosure may
2 adjourn proceedings from time to time and to another
3 place, having regard to the interests of both parties,
4 and may take the defendant's recognizance in sufficient
5 sum and with sufficient surety for his attendance, and
6 to abide the final order of the commissioner. In case
7 the commissioner designated is unable to attend at the
8 time and place appointed, such other commissioner as
9 he may designate, or the parties agree upon, may have
10 jurisdiction. If he fail to designate such commissioner
11 and the parties cannot agree, any officer qualified to
12 serve the process upon which the defendant was ar-
13 rested, may select such commissioner. The fee of the
14 officer for such service shall be twenty-five cents.

SECT. 9. The fee of a commissioner for issuing no-
2 tice shall be twenty-five cents; for each day's service
3 in hearing a disclosure, three dollars.

SECT. 10. At any time before final judgment in ac-
2 tion in the supreme judicial court, where the original
3 process did not run against the body of the defendant,
4 and the defendant is about to depart and reside beyond
5 the limits of the state, if the plaintiff shall make the
6 affidavit prescribed in the second section, and shall

7 further make affidavit that the property of the defend-
8 ant attached on the original process is insufficient to
9 satisfy the plaintiffs' claim and costs, and shall file said
10 affidavit in the office of the clerk of the court for the
11 county where such action is returnable, the clerk shall
12 issue under the seal of the court an order for the arrest
13 of the defendant, which order shall be accompanied by
14 a copy of the plaintiff's affidavit. Such order may be
15 served by any officer qualified to serve the original
16 process, and the arrest of the defendant thereon shall
17 vacate any then existing attachment of property in said
18 suit. The order of arrest may be in the form following:

19 STATE OF MAINE.

20 ——— ss.

21 [L. s.] To the Sheriffs of the several counties and
22 their deputies, Greeting :

23 Whereas, there is pending in the Supreme Judicial
24 Court for said county an action in favor of ——,
25 Plaintiff, against ——, Defendants, wherein the
26 damages are laid in the sum of —— dollars; and
27 whereas, the body of the defendant was not attached
28 on said writ; and whereas, the said plaintiff has filed
29 in the office of the clerk of the courts for said county
30 an affidavit, a true copy of which is annexed; now,
31 therefore, in the name of the state you are commanded
32 to take the body of the defendant, if he may be found

33 in your precinct, to the end that he make a disclosure
34 of his property as provided by law.

35 Hereof fail not, and make return of this order with
36 your doings thereon, into the office of the clerk of the
37 courts for said county within thirty days.

38 Witness: ———, Esquire, Judge of our said Court,
39 at ——— in the County of ———, the ——— day of ———
40 in the year ———. ———, Clerk.

SECT. 11. Any person arrested as provided in the
2 preceding section, may give bond or disclose or give
3 bail as when arrested on mesne process, and the same
4 proceedings be had. If the defendant is discharged,
5 the certificate thereof shall be made on the order of
6 arrest. Any attachable property disclosed may be
7 attached on the order of arrest, in the same manner
8 as on mesne process. The order of arrest and bond, if
9 any, shall then be returned into court.

SECT. 12. This act shall take effect on the first day
2 of June next hereafter.

SECT. 13. All acts and parts of acts inconsistent
2 with this act are hereby repealed.

STATE OF MAINE.

IN SENATE, February 15, 1875.

Reported by Mr. EMERY of Hancock, from the Committee on the Judiciary, and laid over to be printed under the Joint Rule.

SAMUEL W. LANE, *Secretary.*