

MAINE STATE LEGISLATURE

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Fifty-Seventh Legislature.

HOUSE.

No. 171.

STATE OF MAINE.

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

AN ACT in relation to the Insolvent Laws of Maine.

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

SECTION 1. The courts of probate for each county in this state
2 are hereby constituted courts of insolvency, and the judges
3 and registers of probate in their respective counties shall be
4 judges and registers thereof.

5 And said courts shall have original jurisdiction in their re-
6 spective counties of all cases of insolvency arising under the
7 provisions of this act, except where it is otherwise specially
8 provided.

SECT. 2. Each court shall be held at the established places for
2 holding probate courts, at such times as the judge shall appoint,
3 and may be held at such other places as shall best promote the
4 convenience of the public within the respective probate dis-
5 tricts. The judge may adjourn any court or meeting from time
6 to time as occasion requires.

SECT. 3. The judge may in vacation do such official acts as
2 do not require notice to an adverse party, the same as in term
3 time.

SECT. 4. The judge may keep order in his court, and punish
2 any contempt of his authority, orders and decrees,—administer

3 oaths, issue commissions, take testimony and compel the at-
4 tendance of witnesses, and the giving of testimony to the same
5 extent as the supreme judicial court, and may appoint such
6 officers to attend upon the court as are necessary for the trans-
7 action of its business and keeping order therein.

SECT. 5. The proceedings in courts of insolvency shall be
2 deemed matters of record, and the assignment and certificate
3 of discharge shall be recorded in full. The other proceedings
4 need not be recorded at large, but shall be carefully filed,
5 numbered and kept in the office of the register. Copies of all
6 parts of the records, and of records of prior proceedings in
7 insolvency deposited in his office, duly certified by the register,
8 shall in all cases be admissible as evidence, the same as the
9 originals would be.

SECT. 6. The register may administer all oaths required in the
2 course of proceedings before the court, except the oath pro-
3 vided by section thirty-nine (39) of this act, and in the absence
4 of the judge, may adjourn a court or meeting; and shall keep
5 a docket with an alphabetical index of all cases, with docket
6 entries of all papers filed and proceedings had in each case.

SECT. 7. All assignments, warrants, orders of notice and pro-
2 cesses issuing from the court shall be under the seal thereof,
3 and shall be executed and obeyed throughout the state, and
4 any officer to whom they are legally directed shall serve the
5 same in any county. The return of such officer or person shall
6 state the manner of such service, and shall be proof thereof.

SECT. 8. Each county shall provide suitable court rooms in
2 the shire towns for all meetings, and the safe keeping of all
3 books and records appertaining to the courts of insolvency.

SECT. 9. The judges, or a majority of them, may make rules
2 in writing for regulating and conducting the business of the
3 courts, and submit the laws to the supreme judicial court for
4 approval, amendment, or alteration.

SECT. 10. In all cases arising under this act, there shall be an
2 appeal to the supreme judicial court next to be holden within
3 and for the county where the proceedings in insolvency are
4 pending, which appeal shall be heard and determined by any
5 justice of said court either in term time or vacation. Upon the
6 hearing of such appeal exceptions shall be to the ruling of such
7 justice in matters of law, which exceptions shall be certified to

8 the chief justice of the supreme judicial court, and the argu-
9 ment in writing by the party filing such exceptions shall be sent
10 to the chief justice within ten days after such exceptions are
11 allowed, and a copy thereof shall be served on the opposing
12 party or his attorney, who shall in like manner forward his
13 argument in reply within ten days after such service, and said
14 exceptions may be considered and decided by the justice of
15 said court as soon as may be, and his decision shall be cer-
16 tified to the clerk of the said court in the county where the
17 case is pending. In case arguments by either party shall not
18 be furnished within the time prescribed herein, the case shall
19 be determined without the argument of such party, unless the
20 judge allowing the exceptions enlarges the time, which addi-
21 tional time shall in no case exceed ten days. Such clerk shall,
22 without delay, certify all final decisions to the register of the
23 court from which the appeal was originally taken. Upon ap-
24 plication of either party such justice may direct the framing of
25 issues of fact to be tried by the jury at the term to which such
26 appeal is taken.

27 When an appeal is taken as provided by this section, notice
28 thereof shall be given to the register to be entered with the
29 record of proceedings within five days after the rendition of the
30 decision or judgment appealed from. But if the appellant in writ-
31 ing waives his appeal before the entry thereof, or fails to enter the
32 same on the first day of the term to which such appeal is taken,
33 proceedings may be had in the court of insolvency as if no appeal
34 had been taken. The prevailing party shall recover the costs of
35 appeal as in other cases, and execution may issue therefor from
36 the court of insolvency.

SECT. 11. The supreme judicial court shall have full equity
2 jurisdiction in all matters arising under this act; the powers here-
3 in granted may be exercised by said court or any justice thereof
4 in term time or vacation, and upon the request of either party
5 the justice before whom a final hearing in any proceeding in
6 equity shall be had, shall certify to the full court for deciding
7 questions of law involved in such proceedings, to be heard and
8 determined in the manner provided in section ten of this act.

SECT. 12. In this act the words "assignee, creditor and debtor
2 shall include the plural also; the word messenger shall include
3 his assistants; and the word "sheriff" shall include deputy
4 sheriff.

SECT. 13. Any inhabitant of this state, owing debts contracted while such inhabitant, may apply by petition to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects not exempt by law from attachment and seizure upon execution, for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in this act.

SECT. 14. If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than three hundred dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or one of his deputies, directing him forthwith as messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment, and of all his deeds, papers and books of account, and to keep the same safely until the election or appointment of an assignee; to publish notice in such newspapers as the warrant specifies, and give such other notice as the judge shall direct, to all creditors upon the schedule furnished him by the debtor, which notice shall state :

1st. That a warrant has been issued against the estate of the debtor.

2d. That the payment of any debts, the delivery and transfer of any property by him are forbidden by law.

3d. That a meeting of the creditors of the debtor to prove their debts and choose one or more assignees of his estate will be held at a court of insolvency to be holden at a time and place designated in the warrant not less than ten nor more than thirty days after the issuing of the same.

SECT. 15. When two or more creditors of a debtor shall make application under oath, by petition by them signed, to the judge of the county within which the debtor resides, setting forth that they believe their aggregate debts provable under this act amount to more than one-fourth part of the debts provable against such debtor, and that they further believe and have reason to believe that said debtor is insolvent, and that it is for the best interests of all the creditors that the assets of such debtor should be divided as provided by this act, and it shall be satisfactorily made to appear to the judge that the allegations contained in such application are true, and that such debtor is insolvent, it shall

13 be the duty of the judge to issue his warrant and cause such
14 other proceedings to be had as are provided in section fourteen
15 of this act.

16 Upon the issuing of such warrant the register shall cause
17 an attested copy of such application and warrant to be served
18 upon the debtor, or such other notice as the judge may
19 order to be given, which debtor thereupon may appear, and
20 upon his request a hearing shall be had upon such application
21 by the judge who may thereupon revoke such warrant, unless
22 such allegations are proved.

SECT. 16. When the warrant is issued as provided by this
2 act the messenger shall proceed forthwith and demand and
3 receive from the debtor and other persons all the estate of the
4 debtor, with all deeds, papers and books of account relating
5 thereto. In case such warrant is revoked, such estate, deeds,
6 papers and books shall be returned to the debtor or his legal
7 representatives.

SECT. 17. Upon demand made by the messenger, the debtor
2 shall forthwith deliver to him all his estate, all deeds, papers
3 and books of account, and shall also furnish him within five
4 days, a full schedule of all creditors with their places of
5 residence and the sum due to each so far as the same shall be
6 known to the debtor, together with the consideration of the
7 indebtedness, and a statement of any existing mortgage, pledge,
8 or other collateral security given to secure the same, and a full
9 list of all his assets, with a brief description of all real estate or
10 interest in real estate which he may own, and the place where
11 the same is situated.

SECT. 18. Upon the application in writing of any party inter-
2 ested, the judge may order the messenger to sell, after due
3 public notice and notice to the debtor, for cash in such manner
4 as he may direct any part of the debtor's estate, and collect
5 and receive debts due such insolvent, and such messenger
6 shall keep a correct account of the names of the purchasers,
7 the articles sold and the prices received therefor, and of all
8 debts collected by him.

SECT. 19. Upon the election of an assignee the messenger
2 shall deliver to him all the property held by him, and cash for
3 goods sold by him, and received by him from the collection of
4 debts, together with an account of the same, and shall return

5 to the register his warrant with a record of all his doings
6 thereon.

SECT. 20. If the debtor dies after the issuing of the warrant, the
2 proceedings shall be continued and concluded in like manner,
3 and with like validity and effect as if he had lived. The judge
4 of probate may make an allowance to the widow or minor
5 children of the deceased out of such estate, as is now pro-
6 vided by law.

SECT. 21. When a creditor has a mortgage or pledge of real
2 or personal estate of the debtor, he cannot vote for assignee,
3 except upon unsecured claims, unless he shall file with the
4 register a discharge of his security, and shall prove his claim
5 against the estate as an unsecured debt.

SECT. 22. No debt shall be proved or allowed unless the
2 creditor or his authorized attorney makes oath in substance as
3 follows :

4 I, _____ do swear that _____ of
5 by or against whom proceedings in insolvency have been insti-
6 tuted, was and still is justly and truly indebted to me in the
7 sum of _____, that the consideration for said indebtedness
8 was and is _____, that the credit to be given upon
9 said claim is _____, that the only security
10 I hold upon said claim is _____, and that I have not
11 nor has any other person for me to my knowledge or belief
12 received any other security or satisfaction whatever; and I do
13 further swear that said claim was not procured by me for the
14 purpose of influencing the proceedings in this case; and I do
15 further swear that I have not, nor has any other person to my
16 knowledge or belief, directly or indirectly entered into any bar-
17 gain, expressed or implied, whereby I am to receive any ex-
18 clusive benefit hereafter, or whereby my vote for assignee, or
19 my assent to the debtor's discharge is or shall be in any way
20 affected or controlled.

21 Such proof may be made, and said oath may be taken before
22 the register of any court of insolvency, or at the creditor's own
23 expense, may be proved in like manner before any justice of
24 the peace or notary public, and such register, justice of the peace
25 or notary public, shall forward such demand and proof to the
26 register of the court of insolvency where the proceedings in
27 insolvency are pending. Such oath or affidavit shall be taken

28 as prima facie evidence of the facts therein stated. The as-
29 signee or any other persons interested may at any time
30 before final dividend, file objections in writing to the allow-
31 ance of such claim, and thereupon the judge may upon
32 such notice as he shall direct to the claimant or his attor-
33 ney, order a hearing upon the same, and thereupon may admit
34 the claim to be proved, or may disallow the same in whole or in
35 part, and at such hearing the judge may require the examina-
36 tion under oath of the claimant or other persons, touching said
37 claims, and all matters connected therewith; whenever the
38 party to be so examined shall not reside in the county where
39 such hearing is to be had, such examination may be had before
40 the judge or register of the court of insolvency of the county
41 where the witness to be examined resides, and such examina-
42 tion shall be taken upon oral or written interrogatories, as the
43 case may be. The notice to be given to the person to be ex-
44 amined shall be at least one day for every twenty miles travel
45 of the witness to the place of examination. If the claimant or
46 person making the original proof of debt, after due notice,
47 shall, without good cause, neglect or refuse to appear and sub-
48 mit to such examination, the judge may reject such claim with-
49 out further hearing thereon, and witnesses shall be entitled to
50 the usual fees as now allowed by law before the probate
51 courts.

SECT. 23. Any creditor may prove his claim at any time before
2 the final meeting.

SECT. 24. For the purpose of making the application provided
2 by section fifty-eight, of effecting the composition provided by
3 said section, and of proving claims against an estate of any
4 insolvent under this act, a creditor, who holds security, shall
5 be considered a creditor only for the amount of his debt above
6 the value of his security.

7 1st In case of such application, such value shall be made to
8 appear in the first instance by the creditor to the satisfaction of
9 the judge, and be formally determined by him upon the hearing
10 upon said application, if any shall be had.

11 2d. In case of composition, such value shall be determined
12 by the judge upon application of either the creditor or debtor.

13 3d. In case of proof of claims such value may be determined
14, by agreement between the creditor and assignee, or by the

15 judge upon application of either the creditor or assignee, either
16 by an adjudication thereof, or by decreeing a sale of such
17 security, in such manner and upon such notice as he may
18 order.

SECT. 25. The judge may postpone the proof of any debt until
2 after an assignee is elected or appointed.

SECT. 26. A person who has accepted any preference, knowing
2 the debtor was insolvent or in contemplation of insolvency,
3 shall not prove the debt on which the preference was given,
4 nor receive any dividend thereon until he shall surrender to
5 the assignee all property, moneys, benefit or advantage re-
6 ceived by him under such preference.

SECT. 27. Any creditor may act at all meetings by his author-
2 ized attorney the same as though personally present.

SECT. 28. The creditors shall, at the first meeting, in the
2 presence of the judge, choose one or more assignees of the
3 estate of the debtor; such choice shall be made by three or
4 more in number of the unsecured creditors present at the meet-
5 ing, in person or by attorney, whose debts amount collectively
6 to one-half in amount of the debts proved, and such election
7 shall be subject to the approval of the judge, who may appoint
8 additional assignees or order a new election. If no choice is
9 made by the creditors at said meeting, the judge shall appoint
10 one or more assignees, and the judge may at any time for good
11 cause shown, remove any assignee and appoint another in his
12 place.

SECT. 29. Upon the application in writing of one or more
2 creditors, representing one-fourth part of the amount of debts
3 proved, the judge shall require the assignee to give a bond for
4 the faithful performance of his duties, in such sum as he shall
5 direct, and with such sureties as he shall approve.

SECT. 30. The judge shall, by an instrument under his hand,
2 assign and convey to the assignee all the estate, real and per-
3 sonal, of the debtor, except such as is by law exempt from
4 attachment, and seizure on execution, together with all deeds,
5 papers and books of account, relating thereto, which assign-
6 ment shall be executed forthwith in the registry of deeds for
7 the county where such proceedings in insolvency are pending,
8 and in the registry of deeds for each county in which there may
9 be real estate of the debtor, and such assignee shall give such

10 public notice of his election or appointment, as the judge may
11 order; such assignment shall relate back to the commencement
12 of proceedings in insolvency, and by operation of law shall vest
13 the title to all the property and estate of the debtor not exempt
14 by law from attachment and seizure on execution, in the as-
15 signee, although the same is then attached on mesne process
16 as the property of the debtor, and such assignment shall dis-
17 solve any such attachment made within four months next
18 preceding the commencement of proceedings in insolvency.

19 Such assignee may sue for and recover by an action at law,
20 or by a bill in equity, any sums of money paid by the debtor
21 to any creditor upon any writ, judgment or execution, when
22 such payment has been made within two months prior to the com-
23 mencement of the proceedings in insolvency, and has been re-
24 ceived by the creditor as a preference, in violation of the pro-
25 visions of this act, and the creditor knew at the time such pay-
26 ments were made, that the debtor making the same was insolvent.

SECT. 31. Whenever any creditor of a debtor, by or against whom
2 proceedings in insolvency shall be commenced, shall at any time
3 within four months prior to the commencement of such pro-
4 ceedings, commence against such debtor any suit at law or in
5 equity, for the recovery of any debt or claim against such
6 debtor, and upon such suit the goods, effects or estate of the
7 debtor shall be seized or attached, the assignee of such debtor
8 when chosen or appointed, may be admitted to prosecute such
9 suit to final judgment or decree, and may in his own name levy
10 upon or sell the property, effects or estate so attached, in the
11 same manner as the creditor might have done had no proceed-
12 ings in insolvency been commenced; and such attachment and
13 the proceeds of the property so attached shall be held for the
14 benefit of the estate of such insolvent, and when such attach-
15 ment is made in good faith, the creditor shall be paid out of the
16 estate the costs and expenses arising from such suit and attach-
17 ment, and the safe keeping or sale of the property so seized and
18 attached, and the expenses of any levy made upon the same,
19 incurred prior to the appearance of such assignee in such suit,
20 and such creditor shall be allowed to prove his debt or claim
21 upon which such suit is brought, in the same manner as if a
22 suit had not been commenced. In case the assignee shall elect
23 not to appear and prosecute such suit, if it shall appear to the

24 judge that it was commenced in good faith for the benefit of all
25 the creditors, he shall order the said costs, and expenses in-
26 curred prior to the assignment of the estate to the assignee, to
27 be paid out of the estate.

SECT. 32. The assignee shall sell and dispose of all the prop-
erty and estate coming to his hands, and upon petition the
judge may make such order concerning the sale or disposition
of the insolvent estate as he may deem proper, and any assignee
shall have power to maintain in his own name all suits at law
and in equity, for the recovery and preservation of the insol-
vent estate, and for the recovery of all dues and claims belong-
ing thereto, whether the same arose prior to the commencement
of proceedings in insolvency, or arise under the provisions of
this act, and shall be admitted to prosecute and defend all suits
relating to said estate, and may with the consent of the judge
settle any demand or controversy by compromise or arbitration,
and sell and assign all uncollected or disputed claims, and the
purchaser may commence or prosecute a suit thereon in his own
name, and the assignee shall not be liable for any costs thereon.

SECT. 33. Whenever upon petition of the assignee it appears
that the title to any portion of the estate which has come to his
possession is in dispute, the judge may, after such notice to the
claimant, his agent, or attorney, as he shall deem reason-
able, order the sale thereof in such manner as he shall
direct, and the assignee shall hold the funds received therefor
in place of the estate so sold, and the proceeds of the sale shall
be considered the measure of the value of the property in any
suit between the parties in any court. But this provision shall
not prevent the recovery of the property from the possession
of the assignee by an action of replevin commenced at any
time before the judge orders the sale.

SECT. 34. The assignee shall deposit in his name, as assignee,
in such bank as the judge shall approve, all money coming to
his hand belonging to the insolvent estate, and shall account
for all interest received thereon.

SECT. 35. Whenever an assignee shall receive from the estate
assets available to pay a dividend equal to twenty-five per cent.
of the debts proved, exclusive of expenses, he shall declare and
pay such dividend and render an account thereof to the judge.
In all cases of contingent or disputed claims the assignee may

6 reserve an amount equal to the dividend which would be due
7 upon such claim if finally allowed, unless otherwise ordered by
8 the judge; if such disputed or contingent claim shall be finally
9 allowed, such reserved amount shall be paid to the owner of
10 such claim, otherwise it shall be accounted for when the final
11 distribution of the estate is made. And for each twenty-five
12 per cent. of assets received a like dividend shall be made. A
13 final dividend shall be made at such time as the judge shall
14 direct, and when the same is made, the assignee shall exhibit an
15 account of the full settlement and disposition of the estate
16 coming to his hands, and of the fees and expenses arising there-
17 from, which shall be examined by the judge, and if found cor-
18 rect, shall be by him approved, and thereupon the assignee
19 shall be discharged from his trust

SECT. 36. In making a dividend under the preceding section
2 the following claims shall first be paid in full in their order :

3 1st. The fees, costs and expenses of suits and proceedings
4 in insolvency under this act.

5 2d. All debts and taxes due to the State and the United States.

6 3d. Wages due to any operative, clerk, or house servant, to
7 an amount not exceeding fifty dollars for labor performed within
8 six months next preceding the issuing of the warrant.

SECT 37. An assignee may, with the consent of the judge,
2 resign his trust and be discharged therefrom and from any per-
3 sonal liability, provided he has acted in good faith.

4 Vacancies, caused by death or otherwise, in the office of as-
5 signee, may be filled by appointment of the judge, or at his dis-
6 cretion by an election at a meeting called for the purpose by
7 such notice to all known creditors, as the judge shall direct,
8 and such assignee shall receive a certificate of his election or
9 appointment under the hand of the judge, and shall give such
10 notice thereof as the judge shall direct, and he shall succeed
11 to all the right of property, powers, and duties of the assignee
12 in whose place he is so elected or appointed.

SECT. 38. The debtor shall at all times before the granting of
2 his certificate, upon reasonable notice, attend and submit to an
3 examination on oath before the judge or some person appointed
4 by him to take such examination, upon all matters relating to his
5 insolvency, and upon application of any party interested the judge
6 may in like manner order the examination of any other person

7 upon any matters concerning the insolvent estate, which exam-
8 ination shall be reduced to writing and signed by the person ex-
9 amined and placed upon the files of the court.

SECT. 39. The judge shall appoint a second meeting of the
2 creditors to be held at such place as he may designate, not more
3 than three months after the date of the warrant, the debtor may
4 then amend and correct his schedule of creditors, and shall take
5 and subscribe an oath before the judge in substance as follows :
6 I, _____ do swear that the account of my creditors
7 contained in the schedule made and signed by me is true, accord-
8 ing to my best knowledge and belief, and I do further swear that
9 I have delivered to _____ the messenger all my estate,
10 except such as was by law exempt from attachment and seizure
11 on execution, and all my books of account, and papers relat-
12 ing to said estate that were within my possession or power when
13 the same were demanded of me by the messenger ; that I have
14 delivered to my assignee all such of my estate, books and papers
15 as have since come to my possession, and will deliver any other
16 estate, books, and papers which ought to be assigned and deliv-
17 ered to my assignee which shall come to my possession or knowl-
18 edge, and I do further swear that there is not any part of my
19 estate or effects made over, concealed or disposed of in any
20 manner for the future benefit of myself, my family, or any
21 other individual, or in order to defraud my creditors.

SECT. 40. At any time after the expiration of four months
2 from the time of issuing the warrant the debtor may apply in
3 writing to the judge for a discharge from his debts. The judge
4 shall order notice to be given to the creditors by mail or other-
5 wise, to appear on a day appointed for that purpose, and show
6 cause why a discharge should not be granted to the debtor.
7 Any creditor opposing the discharge may file a specification
8 in writing of the grounds of his opposition, and a hearing
9 shall be had thereon at such time as the judge appoints.

SECT. 41. A discharge shall not be granted to a debtor a
2 second time insolvent, unless the assent in writing of a majority
3 in number and in value of his known creditors shall first be
4 filed in the case, to be verified by proof satisfactory to the
5 judge. And a discharge shall not be granted to a debtor a
6 third time insolvent, unless the assent in writing of three-
7 fourths of all his creditors in number and in value shall first be
8 filed in the case, to be verified in like manner.

SECT. 42. A discharge shall not be granted, or if granted be
2 valid, if the debtor has sworn falsely, or if he has concealed
3 any property, books or papers relating to his estate and business,
4 or if having reasonable cause to believe himself insolvent, or be-
5 ing in contemplation of insolvency he has within four months of
6 the issuing of the warrant paid or secured directly or indirectly,
7 in whole or in part, any borrowed money or pre-existing debt,
8 or any liability of his or for him, or if he has caused his effects
9 to be attached, or if he has destroyed, altered, mutilated or
10 falsified any of his books, documents, papers, writings or
11 securities, or has made or been privy to the making of any false
12 or fraudulent entry in any book of account or other document,
13 with intent to defraud his creditors, or to give a preference
14 contrary to the provisions of this act, or has removed, or
15 allowed to be removed, any property with a like intent, or has
16 made any fraudulent payment, gift, transfer, conveyance or
17 assignment of any part of his property, or if having knowledge
18 that any person has proved a false debt against his estate he
19 has not disclosed the same to the assignee within thirty days
20 after such knowledge, or if being a merchant or trader he has
21 not since the passage of this bill kept a cash-book and other
22 proper books of account. And the discharge shall be null and
23 void if the debtor or any person in his behalf shall have procured
24 the assent of any creditor thereto by any pecuniary considera-
25 tion or promise of future preference.

SECT. 43. No debt created by the fraud or embezzlement of
2 the insolvent, or by his defalcation as a public officer, or while
3 acting in any fiduciary character, or when the demand arises
4 from the purchase of goods, wares or merchandise, obtained on
5 credit when the debtor had reasonable cause to believe that he
6 would not be able to pay for the same, shall be discharged by
7 proceedings in insolvency under this act, but such debt may be
8 proved and the dividend thereon shall be a payment on account
9 of such debt.

SECT. 44. No discharge shall release, discharge or affect
2 any person liable for the same debt for or with the insolvent,
3 either as partner, joint contractor, indorser, surety or other-
4 wise.

SECT. 45. A discharge in insolvency duly granted shall, sub-
2 ject to the limitations in and by the two preceding sections,

3 within this state, release the insolvent from all debts, claims,
4 liabilities and demands, which were or might have been found
5 against his estate in insolvency, it may be pleaded by a simple
6 averment that on the day of its date such discharge was
7 granted to the insolvent, setting forth a copy of such dis-
8 charge, which shall operate as a full and complete bar to all
9 suits brought on any such debts, claims, or liabilities as were
10 or might have been proved as aforesaid; the certificate shall
11 be conclusive evidence in favor of such insolvent, of the fact
12 and regularity of such discharge.

• SECT. 46. No claim purchased after the warrant in insol-
2 vency has been issued shall be set off against a claim due the
3 estate prior to such purchase.

SECT. 47. No creditor shall commence or maintain any suit
2 against the insolvent debtor upon any claim or demand which
3 he has proved against such debtor in insolvency until after a
4 discharge has been refused such debtor, provided such debtor
5 shall proceed with reasonable diligence to obtain such dis-
6 charge, and no debtor, against whom a warrant in insolvency
7 has been issued shall be liable to arrest on mesne process or
8 execution, where the claim was provable in insolvency during
9 the pendency of the insolvency proceedings unless the same
10 shall be unreasonably protracted by the fault or neglect of such
11 debtor.

SECT. 48. If any person being insolvent or in contemplation of
2 insolvency within four months before the issuing of the war-
3 rant, with a view to give a preference to any creditor or person
4 having a claim against him, or who is under any liability for
5 him, procures or suffers any part of his property to be attached,
6 sequestered or seized on execution, or makes any payment,
7 pledge, assignment, transfer or conveyance of any part of his
8 property, either directly or indirectly, absolutely or condition-
9 ally, the person receiving such payment, pledge, assignment,
10 transfer or conveyance, or to be benefitted thereby, or by such
11 attachment, having reasonable cause to believe such person is in-
12 solvent or in contemplation of insolvency, and that such pay-
13 ment, pledge, assignment or conveyance is made in fraud of the
14 laws relating to insolvency, the same shall be void, and the
15 assignee may recover the property or the value of it from the
16 person so receiving it or so to be benefitted, and if such sale,

17 assignment, transfer or conveyance is not made in the usual
18 and ordinary course of business of the debtor, that fact shall
19 be *prima facie* evidence that such sale, assignment, transfer or
20 conveyance was intended as such preference in violation of the
21 provisions of this act, but nothing in this section or act shall
22 be construed to invalidate any loan of actual value or the secu-
23 rity therefor made in good faith upon a security taken in good
24 faith on the occasion of making such loan.

SECT. 49. The debtor shall be allowed out of his estate for his
2 services, attendance, and for the necessary support of himself
3 and his family, such sum not exceeding one dollar per day for
4 himself, and three dollars per week for each member of his
5 family, and for such time not exceeding three months, as the
6 judge may order.

SECT. 50. If a debtor, after notice of the filing of a petition
2 by or against him, sells, removes, secretes or conceals, any
3 property, money or effects belonging to his estate, or any
4 books, papers, documents or writings relating thereto, or in
5 any manner whatever disposes of any part of his estate with a
6 view to defraud his creditors, or to prevent the same from
7 coming to the hands of his assignee, except such as may rea-
8 sonably be expended for the support of himself and family, not
9 exceeding the amount specified in section forty-nine, he shall,
10 upon conviction thereof, be punished by imprisonment in the
11 county jail not more than one year, or by fine of not more than
12 five hundred dollars.

SECT. 51. If any person knowingly and wilfully aids the debtor
2 after the issuing of a warrant against him under this act, in
3 concealing any property, books or papers relating to or belong-
4 ing to such debtor's estate, with the intent to prevent the same
5 coming to the hands of the assignee of such debtor, or to defraud
6 the creditors of such debtor, or shall by himself, his agent, or
7 attorney, make any fraudulent purchase or fraudulent agree-
8 ment to purchase of the messenger or assignee having the pos-
9 session of the debtor's estate, any of the property or estate of
10 such debtor at a less price than its fair market value, he shall,
11 upon conviction thereof, be punished by imprisonment in the
12 county jail not more than one year, or by fine of not more than
13 five hundred dollars.

SECT. 52. If any messenger or assignee having possession of

2 the debtor's estate under a warrant, as provided by this act,
3 shall knowingly and wilfully suffer any of the property belong-
4 ing to such estate to be destroyed or wasted, or shall fraudu-
5 lently sell or cause to be sold or disposed of any, of the property
6 belonging to the estate of the debtor at less than its fair market
7 value, he shall, upon conviction thereof, be punished by im-
8 prisonment in the county jail not more than one year, or by fine
9 of not more than five hundred dollars.

PARTNERSHIP.

SECT. 53. The provisions of this act shall apply to all cases
2 where two or more persons are doing business within this state
3 as partners, and where any one of such persons resides in this
4 state, and in such cases the notice required by this act shall be
5 given to all the known partners residing within the state.
6 Any partner may file his petition as herein provided, which
7 shall contain the averment that the partnership of which he is
8 a member is insolvent, and unable to pay its debts, and that it
9 is for the best interest of such partnership and its creditors that
10 its property and estate should be distributed according to the
11 provisions of this act, but no warrant shall issue until such
12 notice as the judge directs shall be given to the remaining
13 partners, and upon hearing, it shall appear to the satisfaction of
14 the judge that the allegations contained in the petition are true.
15 The schedule required by this act shall contain the names of all
16 creditors of the firm, and the residences of the same so far as
17 they shall be known, the amount due to each with the consid-
18 eration thereof, and a statement of any existing mortgage,
19 pledge, or other collateral security given to secure the same,
20 and also a like list of the creditors of each individual member
21 of the firm. Upon issuing the warrant, all the property and
22 estate of the partnership, and also all the separate estate of
23 each individual partner, except such as may be by law exempt
24 from attachment, shall come into the hands and possession of
25 the messenger, shall be returned to the assignee, and otherwise
26 disposed of as hereinbefore provided, and all creditors of the
27 partnership, and the separate creditors of each partner may
28 prove their debts in the manner provided by this act.

SECT. 54. The assignee shall be chosen by the creditors of the
2 partnership, and shall also be assignee of the estate of each

3 separate member of such partnership, and shall keep separate
4 accounts of the funds of the estate of the partnership and of the
5 estate of each member thereof, and after deducting out of the
6 whole amount received by him, the total expenses and disburse-
7 ments, the net proceeds of the partnership property shall be
8 appropriated to pay the creditors of such partnership; and the
9 net proceeds of the separate estate of each partner shall be ap-
10 propriated to pay his separate creditors. If there is any bal-
11 ance of the separate estate of a partner after the payment of his
12 separate debts, it shall be added to the avails of the partnership
13 property, so far as necessary for the payment of the partner-
14 ship debts. If there is a balance of the partnership assets re-
15 maining after the payment of the partnership debts, it shall be
16 divided among the separate estates of the several partners, ac-
17 cording to their respective rights and interests therein, as it
18 would have been, had the partnership been dissolved without
19 insolvency, and the sum so appropriated to the separate estate
20 of each partner shall be applied to the payment of his separate
21 debts, and in case anything remains it shall be divided among
22 the several partners, according to their respective interests.

SECT. 55. The certificate of discharge shall be granted or
2 refused to each partner as it would or ought to be if the pro-
3 ceedings had been against him alone. In all other respects the
4 proceedings against partners shall be conducted in the same
5 manner as against a single person.

SECT. 56. In all proceedings against partners, each shall be
2 entitled to the same allowance as that provided in section forty-
3 nine of this act, to continue for such time as the judge may
4 direct, not exceeding two months.

SECT. 57. The provisions of this act shall apply to all corpor-
2 ations created by the authority of the laws of this state, carry-
3 ing on manufacturing, trading, mining, building, insurance or
4 other private business, but not to include corporations engaged
5 in a business involving public duties and obligations, among
6 which are railroads, banks, corporations engaged in supplying
7 cities and towns with gas or water, and other corporations of
8 like character. And upon the petition of any officer duly au-
9 thorized by a legal vote of such corporation passed at a legal
10 meeting called for that purpose, or upon a petition of any

26 each exceed the sum of fifty dollars, and by creditors holding
27 three-fourths of all his indebtedness, in the form following:

28 We, the undersigned, creditors of _____ of
29 in the county of _____, do hereby agree to accept _____ per
30 cent. of our actual net claims against him, the amounts of which
31 are correctly stated against our respective names, in full dis-
32 charge of the same. And we further agree that we have not,
33 directly or indirectly, received any compensation or promise of
34 future payment, beyond the per cent. herein named.

35 And if the judge shall be satisfied that such agreement is
36 signed by said proportion of the creditors of such debtor, and that
37 such debtor has either paid or secured the percentage named in
38 such agreement and according to the terms thereof, he shall
39 give such debtor, under his hand and the seal of the court, a
40 full discharge of all his debts and liabilities contracted prior
41 to the commencement of the proceedings in insolvency, and
42 named in the schedule annexed to said affidavit.

43 Such discharge shall not be valid if the signature of any
44 creditor has been obtained by fraud, or if any material state-
45 ment contained in such affidavit or schedule is false to the
46 knowledge of the debtor making the same, and any creditor
47 may sue for and recover the balance of his claim or debt
48 against such debtor.

49 In case the proceedings in insolvency are by or against a co-
50 partnership, the affidavit, agreement and certificate shall be
51 varied accordingly, and shall contain both the names of the
52 firm and the names of the members thereof.

53 Before such certificate shall be granted, the debtor shall pay
54 all expenses incurred during the proceedings.

SECT. 59. Any person whose debt or debts do not exceed the
2 sum of three hundred dollars may at any time assign, convey
3 and deliver to the register of the probate court of the county
4 within which he resides all of his real and personal estate,
5 rights and credits not exempt by law from attachment and
6 seizure on execution, together with a schedule of the same
7 signed by such debtor, and a list of all his creditors with their
8 places of residence, so far as the same are known to him, and
9 thereupon the register shall, with the approval of the judge,
10 appoint the time for a hearing thereon, before the judge, or
11 such a person as he may appoint to take such examination,

52 After the assignment and conveyance provided by this sec-
53 tion, the register, or some person appointed by the judge, shall
54 dispose of said debtor's property and effects to the best advan-
55 tage, keeping and rendering to the judge a strict account of
56 its disposition and the net proceeds thereof, after reserving
57 such percentage as the judge shall decide to be reasonable, to
58 be paid by the register into the county treasury, shall be divided
59 pro rata among the creditors named in the schedule of said
60 debtor in part satisfaction of their respective debts.

61 The examination herein provided for, shall be in writing, and
62 shall be signed by the debtor and filed in the office of the
63 register, and in case the judge shall appoint any person to take
64 such examination he may allow him reasonable compensation
65 therefor, to be paid out of the debtor's assets if they shall be
66 sufficient, otherwise such compensation or such part thereof as
67 shall remain unsatisfied out of the debtor's estate shall be paid
68 out of the county treasury.

SECT. 60. The fees of all officers, the compensation of as-
2 signees, and of the judges and registers of probate under the
3 provisions of this act, shall be established by the supreme
4 judicial court, and shall be paid out of the estates. And in all
5 voluntary proceedings under the provisions of this act, the fees
6 and costs shall be paid by the petitioners.

SECT. 61. This act shall take effect on the repeal of the
2 United States bankrupt act of eighteen hundred and sixty-
3 seven, now in force.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 13, 1878. }

Reported from the Committee on the Judiciary, by Mr. PIERCE
of Portland, and ordered printed under the Joint Rule.

ORAMANDAL SMITH, *Clerk.*