

MAINE STATE LEGISLATURE

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FIFTY-EIGHTH LEGISLATURE.

HOUSE.

No. 123.

STATE OF MAINE.

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

AN ACT to amend chapter seventy-four of the public laws of one thousand eight hundred and seventy-eight, entitled "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. Section nine of said act is hereby
2 amended by striking out the word "laws" in the
3 third line, and inserting instead thereof the word
4 "same," so that said section as amended shall read
5 as follows:

6 Sect. 9. The judges, or a majority of them, may
7 make rules, in writing, for regulating and conduct-
8 ing the business of the courts, and submit the same

9 to the supreme judicial court for approval, amend-
10 ment or alteration.

SECT. 2. Section ten of said act is hereby
2 amended by inserting after “cases,” in the first
3 line, the words “of appeal;” also by striking out
4 the words “arising under,” in said line, and insert-
5 ing instead thereof, the words “provided for by;”
6 also by striking out in the first and second lines
7 the words “there shall be an,” and inserting instead
8 thereof the word “such;” also by inserting after
9 the word “appeal,” in the second line, the words
10 “shall be taken;” also by striking out the words
11 “which appeal,” in the fourth line, and inserting
12 instead thereof the word “and,” so that the first
13 paragraph of said section, as amended, shall read
14 as follows:

15 Sect. 10. In all cases of appeal provided for
16 by this act, such appeal shall be taken to the
17 supreme judicial court next to be holden within
18 and for the county where the proceedings in
19 insolvency are pending, and shall be heard and
20 determined by any justice of said court, either in
21 term time or vacation.

22 Said section is also hereby further amended in
23 the fourteenth line, by striking out the word

24 “may,” and inserting instead thereof the word
25 “shall;” and in the fifteenth line of the same, by
26 striking out the word “justice” and inserting
27 instead thereof the word “justices,” and in the
28 twenty-fifth line of said section, by striking out
29 the words “such justice,” and inserting instead
30 thereof the words “the judge.”

31 Said section is hereby further amended by add-
32 ing after the last word in the same, the words “No
33 appeal shall lie in any case arising under this act,
34 unless specially provided for therein.

SECT. 3. Section eleven of said act is hereby
2 amended, by inserting after the word “vacation,”
3 in the fourth line, the words “upon bill, summary
4 petition, or other proper process.”

SECT. 4. Section fourteen of said act is hereby
2 amended, by inserting after the word “debts,” in
3 the sixteenth line, the words “to or by said debtor,”
4 so that said section as amended shall read as fol-
5 lows:

6 Second—That the payment of any debts to or
7 by said debtor, and the delivery or transfer of any
8 property by him, are forbidden by law.

SECT. 5. Section fifteen of said act is hereby
2 amended by striking out after the word “warrant,”

3 in the thirtieth line, the words "and cause such
4 other proceedings to be had as are provided in
5 section fourteen of this act," and inserting instead
6 thereof the words, "under his hand to the sheriff
7 of the county or either of his deputies, directing
8 him forthwith to attach the real and personal estate
9 of the debtor, not exempt by law from attachment
10 and seizure, on execution, wherever the same may
11 be situated within this state, and forbidding the
12 payment to or by such debtor of any debt, demand
13 or claim whatsoever, and the sale, transfer, mort-
14 gage, pledge, conveyance, or removal by such
15 debtor, his agents or attorneys, of any of his
16 estate, property, rights, or credits, and the making
17 of any contracts for the sale or purchase thereof,
18 or relating thereto, until such warrants shall be
19 revoked by said judge." Also by striking out in
20 the nineteenth and twentieth line of said section,
21 the words "upon his request." Also by adding
22 after the words "are proved," at the end of said
23 section, the words "after the service of the copy
24 of the application and warrant upon such debtor,
25 or the giving of such other notice as the judge
26 may order, as provided by this section, and until
27 the revocation of such warrant any payment of any

28 debt, demand or claim to or by said debtor, and
29 any sale, transfer, mortgage, pledge, conveyance
30 or contract, for the sale or purchase of any estate,
31 property, rights or credits of such debtor, by such
32 debtor or his agent or attorney, shall be null and
33 void. If upon hearing or default the judge shall
34 find the allegations of such application to be true
35 and proved, and that said debtor is insolvent, he
36 shall issue his additional warrant to the said sheriff,
37 or either of his deputies, and cause such other pro-
38 ceedings to be had as are provided in section four-
39 teen of this act," so that said section fifteen when
40 amended, will read as follows:

41 Sect. 15. When two or more creditors of a
42 debtor shall make application under oath, by peti-
43 tion by them signed, to the judge of the county in
44 which the debtor resides, setting forth that they
45 believe their aggregate debts provable under this
46 act, amount to more than one-fourth part of the
47 debts provable against such debtor, and that they
48 further believe and have reason to believe, that
49 said debtor is insolvent, and that it is for the best
50 interests of all the creditors that the assets of such
51 debtor should be divided as provided by this act,
52 and it shall be satisfactorily made to appear to the

53 judge that the allegations contained in such appli-
54 cation are true, and that such debtor is insolvent,
55 it shall be the duty of the judge to issue his war-
56 rant, under his hand, to the sheriff of the county or
57 either of his deputies, directing him forthwith to
58 attach the real and personal estate of the debtor
59 not exempt by law from attachment and seizure on
60 execution, wherever the same may be situated,
61 within this state, and forbidding the payment to or
62 by such debtor of any debt, demand or claim what-
63 soever, and the sale, transfer, mortgage, pledge,
64 conveyance, or removal by such debtor, his agent
65 or attorneys, of any of his estate, property, rights
66 or credits, and the making of any contracts for the
67 sale or purchase thereof, or relating thereto, until
68 such warrant shall be revoked by said judge.
69 Upon the issuing of such warrant the register shall
70 cause an attested copy of such application and
71 warrant to be served upon the debtor, or such other
72 notice as the judge may order to be given, who
73 thereupon may appear, and a hearing shall be had
74 upon such application by the judge, who may there-
75 upon revoke such warrant, unless such allegations
76 are proved after the service of the copy of the
77 application and warrant upon such debtor, or the

78 giving of such other notice as the judge may order,
79 provided by this section, and until the revocation
80 of such warrant, any payment of any debt, demand,
81 or claim, to or by said debtor, and any sale, trans-
82 fer, mortgage, pledge, conveyance, or contract, for
83 the sale or purchase of any estate, property, rights
84 or credits of such debtor, by such debtor or his
85 agent or attorney, shall be null and void. If upon
86 hearing or default, the judge shall find the allega-
87 tions of such application to be true, and proved,
88 and that said debtor is insolvent, he shall issue his
89 additional warrant to the said sheriff or either of
90 his deputies, and cause such other proceedings to
91 be had as are provided in section fourteen of this
92 act.

SECT. 6. Section sixteen of said act is hereby
2 amended by inserting after the word "act," in the
3 second line, the words "commanding the messen-
4 ger to take possession of all the estate, real and
5 personal, of the debtor, except such as may be by
6 law exempt from attachment and seizure on execu-
7 tion, and of all his deeds, books of account, and
8 papers." Also by striking out in the second line
9 of said section, the words "the messenger," and

10 inserting instead thereof the word “he,” so that
11 said section as amended will read as follows:

12 Sect. 16. When the warrant is issued as pro-
13 vided by this act, commanding the messenger to
14 take possession of all the estate, real and personal,
15 of the debtor, except such as may be by law exempt
16 from attachment and seizure on execution, and of
17 all his deeds, books of account, and papers, he shall
18 proceed forthwith and demand and receive from the
19 debtor, and other persons, all the estate of the
20 debtor, with all deeds, books of accounts, and
21 papers relating thereto. In case such warrant is
22 revoked, such estate, deeds, books and papers, shall
23 be returned to the debtor or his legal representa-
24 tives.

SECT. 7. Section seventeen of said act is hereby
2 amended, by inserting after the word “papers,” in
3 the third line, the words “relating to his property
4 and estate.”

SECT. 8. Section twenty-two of said act is hereby
2 amended, by inserting before the word “no,” in
3 first line, the following words: “All debts due
4 and payable from the debtor at the time of the
5 filing of the petition by or against him, and all
6 debts then existing but not payable until a future

7 day, a rebate of interest being made when no inter-
8 est is payable by the terms of the contract, may be
9 proved against the estate of the insolvent. All
10 demands against the insolvent for or on account of
11 any goods or chattles wrongfully taken, converted,
12 or withheld by him, may be proved and allowed as
13 debts, to the amount of the value of property so
14 taken or withheld, with interest. When the insol-
15 vent is liable for unliquidated damages arising out
16 of any contract or promise, or on account of any
17 goods or chattels wrongfully taken, converted or
18 withheld, the court may cause such damages to be
19 assessed, in such mode as it may deem best, and the
20 sum so assessed may be proved against the estate.
21 In all cases of contingent debts and contingent
22 liabilities, contracted by the insolvent, and not
23 herein otherwise provided for, the creditor may
24 make claim therefor, and have his claim allowed
25 with the right to share in the dividends if the con-
26 tingency happens before the order for the final
27 dividend; or he may at any time apply to the court
28 to have the present value of the debt or liability
29 ascertained and liquidated which shall then be
30 done in such manner as the court shall order, and

31 he shall be allowed to prove for the amount so
32 ascertained. Any person liable as bail, surety,
33 guarantor, or otherwise, for the insolvent, who shall
34 have paid the debt, or any part thereof in discharge
35 of the whole, shall be entitled to prove such debt,
36 or to stand in the place of the creditor, if the
37 creditor has proved the same, although such pay-
38 ments shall have been made after the proceedings
39 in insolvency were commenced. And any person
40 so liable for the insolvent, and who has not paid
41 the whole of such debt, but is still liable for the
42 same or any part thereof, may, if the creditor fails
43 or omits upon request to prove such debt, prove
44 the same either in the name of the creditor or
45 otherwise, as may be provided by the rules of the
46 court, as provided in section nine of this act, and
47 subject to such regulations and limitations as may
48 be established by such rules. Where the insolvent
49 is liable to pay rent or other debt falling due at
50 fixed and stated periods, the creditor may prove
51 for a proportionate part thereof up to the time of
52 the insolvency, as if the same grew due from day
53 to day, and not at such fixed stated periods. No
54 debts other than those specified in this section,
55 shall be proved or allowed against the estate.

56 Section twenty-two is hereby further amended
57 by adding after the word "courts," in the last line,
58 the words "the assignee, claimant, creditor, or
59 other person interested, may appeal from the decis-
60 ion of the judge allowing or disallowing in whole
61 or in part any debt, claim or demand, against the
62 debtor or his estate, to the supreme judicial court
63 next to be holden within and for the county where
64 the proceedings in insolvency are pending, which
65 appeal shall be taken, heard, and determined, as
66 provided in section ten of this act as amended."

SECT. 9. Section twenty-three of said act is
2 hereby amended, by striking out the word "meet-
3 ing," and inserting the word "dividend."

SECT. 10. Section twenty-six of said act is
2 hereby amended, by adding after the word "prefer-
3 ence," in the last line, the words, "the assignee
4 after demand, may recover back by action of as-
5 sumpsit, from any creditor whose claim is dis-
6 allowed in whole or in part, any dividend or
7 proportional part thereof, paid to such creditor
8 before the disallowance of such claim.

SECT. 11. Section twenty-eight of said act is
2 hereby amended, so as to read as follows:

3 The creditors shall at the first meeting, in the

4 presence of the judge, choose one or more assignees
5 of the estate of the debtor; such choice shall be
6 made by the greater part in number and value of
7 the creditors present in person or by attorney, who
8 have proved their debts; and such election shall
9 be subject to the approval of the judge, who may
10 appoint additional assignees or order a new elec-
11 tion. If no choice is made by the creditors at said
12 meeting, the judge shall appoint one or more
13 assignees, and the judge may at any time for good
14 cause shown, remove any assignee, and appoint
15 another in his place.

SECT. 12. Section thirty of said act is hereby
2 amended, by striking out in the sixth line the word
3 “executed,” and inserting instead thereof the word
4 “recorded.”

SECT. 13. Section thirty-five of said act is hereby
2 amended, by adding after the word “judge,” in the
3 fifth line in said section, the words, “No dividend
4 already declared, shall be disturbed by reason of
5 debts being subsequently proved, but the creditors
6 proving such debts shall be entitled to a dividend
7 equal to those already received by the other credi-
8 tors, before any further payment is made to the
9 latter.”

SECT. 14. Section thirty-six of said act is hereby
2 amended, by inserting after the word "state", in the
3 second sub-division of said section, the words "or
4 any county, city or town therein;" so that county,
5 city and town taxes shall be entitled to the same
6 priority or preference as state taxes are now enti-
7 tled to in cases of deceased insolvent debtors'
8 estates.

SECT. 15. Section thirty-eight of said act is hereby
2 amended, by adding thereto, after the last word in
3 said section, "the insolvent shall execute all such
4 conveyances, powers of attorney, or other instru-
5 ments, and do such acts as the assignee may re-
6 quire, under the direction of the court, to enable
7 the assignee to recover and receive the estate of
8 the insolvent."

SECT. 16. Section thirty-nine of said act is hereby
2 amended, by striking out in the first line the words
3 "the judge," and inserting instead thereof the words
4 "the assignee with the approval of the judge."

SECT. 17. Section forty of said act is hereby
2 amended, by striking out in the second line the
3 words "issuing the warrant," and inserting instead
4 thereof the words "commencement of proceed-
5 ings;" and also by inserting after the word debtor,

6 in the seventh line, the words "If it shall appear
7 to the court that the insolvent has in all things
8 conformed to his duty under this act, and all acts
9 amendatory thereof, and that he is entitled under
10 the provisions thereof to receive a discharge, the
11 court shall grant him a discharge from all his debts,
12 except as hereinafter provided, and shall give him
13 a certificate thereof under the seal of the court."
14 Said section is hereby further amended, by adding
15 after the last word of said section the words, "In
16 all cases when the judge shall refuse to grant a dis-
17 charge under the provisions of this act, there shall
18 be an appeal to the supreme judicial court next to
19 be holden within and for the county where the pro-
20 ceedings in insolvency are pending, to be taken,
21 heard, and determined, in the manner provided in
22 section ten of this act as amended. The party ap-
23 pealing shall file at the time of entering his appeal,
24 in the supreme judicial court, a copy of the specifi-
25 cations of the grounds of opposition to the dis-
26 charge, certified by the register. At the request of
27 the debtor, or opposing creditor, the presiding judge
28 shall order the question of discharge to be tried by
29 the jury at the first or any subsequent term of said
30 court. Exceptions shall be had as to matters of

31 law, to be heard and decided as provided by said
32 section ten.”

SECT. 18. Section forty-three of said act is hereby
2 amended, by striking out therefrom the following
3 words, “or when the demand arises from the pur-
4 chase of goods, wares or merchandise obtained on
5 credit, when the debtor had reasonable cause to
6 believe that he would not be able to pay for the
7 same.”

SECT. 19. Section forty-five of said act is hereby
2 amended, by striking out in the fifth line the word
3 “found,” and inserting instead thereof the word
4 “proved;” and also by adding to the word “dis-
5 charge,” in the last line thereof, “any creditor of
6 an insolvent whose debt was proved or provable
7 against the estate in insolvency, who desires to
8 contest the validity of the discharge on the ground
9 that it was fraudulently obtained, may at any time
10 within two years after the date thereof apply to
11 the court which granted it, to annul the same. The
12 application shall be in writing, and shall specify
13 which in particular of the several acts mentioned
14 in section forty-two it is intended to prove against
15 the insolvent, and set forth the grounds of avoid-
16 ance; and no evidence shall be omitted as to any

17 other of such acts, but the application shall be sub-
18 ject to amendment at the discretion of the court.
19 The court shall cause reasonable notice of the ap-
20 plication to be given to the insolvent, and order
21 him to appear and answer the same, within such
22 time as to the court shall seem proper. If upon
23 hearing the parties the court finds the fraudulent
24 acts, or any of them, set forth by the creditor
25 against the insolvent are proved, and that the
26 creditor had no knowledge of the same until after
27 the granting of the discharge, judgment shall be
28 given in favor of the creditor, and the discharge of
29 the bankrupt shall be annulled; but if the court
30 finds that the fraudulent acts, and all of them so
31 set forth, are not proved, or that they were known
32 to the creditor before the granting of the discharge,
33 judgment shall be rendered in favor of the insol-
34 vent, and the validity of his discharge shall not be
35 affected by the proceedings.

36 In all cases arising under this section, there shall
37 be an appeal to the supreme judicial court next to
38 be holden within and for the county where the pro-
39 ceedings in insolvency are pending, to be taken,
40 heard and determined, in the manner provided in
41 section ten of this act as amended. The party ap-

42 pealing shall file at the time of entering his appeal
43 in the supreme judicial court, a copy of the appli-
44 cation to have the discharge annulled, certified by
45 the register. At the request of either party, the
46 presiding judge shall order issues of fact to be
47 tried by the jury at the first or any subsequent
48 term of said court. Exceptions shall be had as to
49 matters of law, to be heard and decided as provided
50 by said section ten.”

SECT. 20. Section forty-eight of said act is
2 hereby amended, by striktnng out the words “issu-
3 ing of the warrant,” in the second and third lines,
4 and inserting instead thereof the words “filing of
5 the petition by or against a debtor.”

SECT. 21. The judges may interchange services,
2 or perform each other’s duties, when they find it
3 necessary or convenient, and if a judge is a party
4 or interested to the amount claimed of one hundred
5 dollars, exclusive of interest, in any case arising in
6 his county, or is absent or unable to perform his
7 duties, and no judge interchanges services or per-
8 forms the duties of such interested judge, or if
9 there is a vacancy in the office in any county, the
10 duties shall be performed in the same county by

11 the judge of any other county designated by the
12 register, from time to time as necessity or conven-
13 ience may require.

SECT. 22. Chapter seventy-four of the public
2 laws of one thousand eight hundred and seventy-
3 eight, entitled "an act in relation to the insolvent
4 laws of Maine," except as herein amended or mod-
5 ified, is hereby re-enacted.

SECT. 23. This act shall take effect when ap-
2 proved.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 12, 1879. }

Reported from the Committee on Insolvent Laws, by Mr. MOULTON of Scarboro', and ordered printed under the Joint Rule.

Feb 14. 100 additional copies ordered printed, on motion of Mr. MOULTON of Scarboro'.

B. L. STAPLES, *Clerk.*