

MAINE STATE LEGISLATURE

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Sixty - Third Legislature.

HOUSE.

No. 250.

STATE OF MAINE.

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

AN ACT to abolish Imprisonment for Debt, except in cases
of fraud.

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

SECTION 1. No execution issued on a judgment founded
2 on a contract, express or implied, or on a prior judgment
3 on contract shall run against the body of the judgment
4 debtor, except as hereinafter provided, or unless the
5 debtor was arrested on the original writ as provided in
6 section two of chapter one hundred and thirteen of the
7 Revised Statutes.

SECT. 2. The owner of such a judgment remaining un-
2 satisfied in any part, may have a disclosure of the judg-
3 ment debtor's business affairs at any time by proceeding
4 as hereinafter provided.

SECT. 3. Such owner, or his attorney, may make ap-
2 plication in writing to a Disclosure Commissioner, Judge

3 of Probate, Register of Probate or Judge of a Municipal
4 or Police Court in the county in which the judgment
5 debtor resides, stating the amount of the debt and of the
6 costs for which said judgment was rendered, the court
7 and term at which it was rendered, the names of the
8 original parties, the title of the petitioner and praying for
9 subpœna to issue to the debtor to appear and make dis-
10 closure.

SECT. 4. Such magistrate shall thereupon issue under
2 his hand and seal a subpœna to the debtor, commanding
3 him to appear before such magistrate within said county
4 at a time and place therein named, to make full and true
5 disclosure on oath of all his business and property affairs.
6 The application shall be annexed to the subpœna.

SECT. 5. The subpœna may be served by any officer
2 qualified to serve civil process in said county as other
3 subpœnas are served. The debtor shall have twenty-four
4 hours notice for every twenty miles travel from his home
5 or place of abode, at the time of service, to the place of
6 disclosure.

SECT. 6. At such time and place the debtor shall appear
2 and submit himself to examination on oath concerning his
3 estate and effects, their disposal and his ability to pay the
4 judgment.

SECT. 7. The petitioner may propose to the debtor any
2 interrogatories pertinent to the inquiry, and if he requires
3 it, they shall be answered in writing and signed and sworn
4 to by the debtor.

SECT. 8. If on such examination and hearing the magis-
2 trate is satisfied that the debtor's disclosure is true and
3 does not discover anything therein inconsistent with his

4 taking the oath, the magistrate may administer to him the
5 oath prescribed by section thirty of chapter one hundred
6 and thirteen of the Revised Statutes.

SECT. 9. When, from such disc'osure, it appears that
2 the debtor possesses or has under his control any bank
3 bills, notes, accounts, bonds, or other contracts, or
4 property, not exempted by statute from attachment, which
5 cannot be come at to be attached, and the petitioner and
6 debtor cannot agree to apply the same towards the debt,
7 the magistrate hearing the disclosure shall appraise and
8 set off enough of such property to satisfy the debt, cost,
9 and charges ; and the petitioner or his attorney, if present,
10 may select the property to be appraised. If the petitioner
11 accepts it, it may be assigned and delivered by the debtor
12 to him, and applied towards the satisfaction of his demand.
13 If any particular article of such property, necessary or
14 convenient to be applied in satisfaction of the execution,
15 exceeds the amount due thereon, and is not divisible in its
16 nature, the petitioner may take it, by paying the overplus
17 to the debtor, or securing it to the satisfaction of the
18 magistrate.

SECT. 10. If the petitioner is absent, or does not accept
2 it, the debtor shall deposit with the magistrate a written
3 assignment to the petitioner of all the property thus ap-
4 praised and set off ; and the magistrate shall make a record
5 of such proceedings, and cause such property to be safely
6 kept and secured for *the term of* thirty days thereafter,
7 to be delivered to the petitioner with the assignment, on
8 demand, within that time. If not so demanded, they shall
9 be returned to the debtor.

SECT. 11. If an execution debtor discloses real estate
2 liable to be seized on execution the magistrate shall give
3 the petitioner a certificate thereof, stating the names of the
4 parties, and the amount of the execution ; and the peti-
5 tioner shall have a lien thereon for thirty days thereafter,
6 if he files the certificate with the register of deeds of
7 the county or district where the real estate lies within
8 five days from the date of the disclosure ; and the register
9 shall enter and file it like officers' returns of attachments.

SECT. 12. If he discloses personal estate liable to be
2 seized on execution, the petitioner shall have a lien on it,
3 or so much of it as the magistrate in his record judges
4 necessary for thirty days ; and if the debtor transfers,
5 conceals, or otherwise disposes of it within said time or
6 suffers it to be done, or refuses to surrender it, on demand,
7 to any proper officer having an execution on the same
8 judgment, the debtor shall have no benefit from the cer-
9 tificate described in section nineteen ; and the petitioner
10 may recover, in an action on the case against him, or any
11 person fraudulently aiding in such transfer, concealment,
12 or disposal, double the amount due on said execution ; and
13 any execution on a judgment in such action shall run
14 against the bodies of the debtor and other person so aiding,
15 but the payment thereof is a satisfaction of the original
16 debt.

SECT. 13. If said magistrate finds reasonable cause to
2 believe that any other person holds any property or credits
3 of the debtor in trust for him, or in fraud of his creditors,
4 or if the petitioner shall make oath that he believes that
5 such other person so holds property of the debtor, the magis-

6 trate shall issue a similar subpœna to such person to appear
7 and testify in relation thereto, the same to be served as
8 subpœnas in civil suits. The testimony of such witness
9 may be reduced to writing, and signed by him, and if it
10 shall satisfactorily appear to the magistrate, from all the
11 evidence in the case, that such person so holds property
12 or credits of the debtor, he shall so certify upon the exe-
13 cution; and the petitioner shall have a lien upon said
14 property or credits for thirty days succeeding such dis-
15 closure, to be enforced by bill in equity or trustee process,
16 and if upon such bill in equity or trustee process, the
17 court finds such property or credits to be so held as afore-
18 said, it may order the same, or so much of them as may
19 be necessary to satisfy the judgment and all costs, to be
20 conveyed, transferred or assigned to the petitioner; and
21 if the parties cannot agree upon the value of such prop-
22 erty or credits, they shall be assigned to the petitioner, if
23 he shall give such trustee a bond with sufficient surety,
24 accepted by the court, to account for and pay over to
25 said trustee the surplus of the proceeds of such prop-
26 erty or credits, after satisfying said judgments and costs.

SECT. 14. If the debtor or any other person duly served
2 with subpœna as above provided refuses or neglects to ap-
3 pear the magistrate shall issue a *capias* to bring said debtor
4 or other person before him, and may adjudge such debtor
5 or other person to be in contempt and shall order him to
6 pay the costs of issuing and executing said *capias* and in
7 default thereof to be committed to jail until paid.

SECT. 15. If the debtor, or other person duly served
2 with subpœna, refuses to testify in obedience thereto, or
3 refuses to answer any proper question, or if the debtor

4 refuses to make full disclosure upon all matters named in
5 section six, or if said debtor refuses to comply with any
6 proper order of the magistrate, or perform the duty im-
7 posed upon him by section ten, he shall be adjudged to be
8 in contempt, and be committed to jail until he purges
9 himself of such contempt by compliance, or is otherwise
10 discharged by due process of law. The warrant of com-
11 mitment shall state specifically the contempt of which the
12 prisoner is guilty.

SECT. 16. The magistrate for cause shown by either
2 party may adjourn from time to time.

SECT. 17. After the examination of the debtor, other
2 competent evidence may be introduced by either party and
3 the debtor may then be further examined. Depositions
4 may be used in such disclosures, and the magistrate may
5 at the request of either party issue subpoenas to witnesses,
6 who are entitled to the same fees as witnesses before a
7 trial justice.

SECT. 18. Section sixty-seven of chapter one hundred
2 and thirteen of the Revised Statutes shall apply to dis-
3 closures under this act.

SECT. 19. After the oath mentioned in section eight of
2 this act is administered, and the property disclosed is se-
3 cured, and the debtor has complied with all proper orders
4 of such magistrate, a certificate of the fact of such dis-
5 closure shall be indorsed by the magistrate under his hand
6 and seal on the execution issued upon the judgment upon
7 which the disclosure is had, and a copy of said certificate
8 shall be endorsed on every subsequent execution issued
9 on said judgment or on any judgment founded thereon,

10 and the body of the debtor shall thereafter be forever free
11 from arrest on any execution so issued, except as provided
12 in sections twelve and eighteen of this act.

SECT. 20. If upon such disclosure the debtor fails to
2 obtain the benefit of the oath provided for in section
3 eight, the magistrate shall, under his hand and seal, in-
4 dorse a certificate of that fact upon the execution in force
5 at the time of such disclosure, and a copy of said certifi-
6 cate shall be indorsed on every subsequent execution
7 issued on said judgment or on any judgment founded
8 thereon and such subsequent execution shall run against
9 the body of said debtor. The magistrate shall also issue
10 a *capias* under his hand and seal and annex the same to
11 said execution in force at the time of such disclosure, and
12 the debtor may be arrested and imprisoned on said *capias*
13 and execution the same as upon executions issued in
14 actions of tort.

SECT. 21. If the debtor fails to appear and submit
2 himself to examination at the time and place named in the
3 *subpœna*, his default may be recorded and like proceed-
4 ings had as in section twenty.

SECT. 22. When a debtor is arrested upon said *capias*
2 and execution or upon any subsequent execution upon
3 which a copy of either of the certificates required by sec-
4 tions twenty and twenty-one has been indorsed, all subse-
5 quent proceedings for his release shall be the same as in
6 case of arrest or imprisonment on executions in actions of
7 tort; but if said debtor fails to obtain his discharge at
8 any subsequent examination before justices of the peace
9 and quorum he shall not a second time disclose before

10 such justices, but may thereafter apply to a justice of the
11 supreme judicial court and disclose as provided in section
12 forty-six of chapter one hundred and thirteen of the
13 Revised Statutes.

SECT. 23. The magistrate shall be entitled to twenty-
2 five cents for each subpoena, twenty-five cents for capias,
3 twenty-five cents for certificate, and three dollars for each
4 day in hearing the disclosure and other testimony, and for
5 entering default one dollar. The fees of officers shall be
6 the same as for service of other process of similar nature.
7 The petitioner may, if the magistrate authorizes it, pro-
8 cure an officer to be in attendance during the proceedings,
9 and the fees for such attendance shall be seventy-five cents
10 a day. The above fees shall be paid by the petitioner,
11 and in case the oath named in section eight is adminis-
12 tered shall be added to the costs on the judgment and ex-
13 ecution and taxed in detail thereon by the magistrate. In
14 case said oath is not administered to the debtor, the peti-
15 tioner shall recover his costs and said fees as in actions
16 before a trial justice.

SECT. 24. No debtor who has disclosed upon mesne
2 process before judgment, or upon any execution, shall be
3 required to disclose under the provisions of this act upon
4 the same judgment or upon any judgment founded thereon,
5 and a debtor who has once been examined upon a judg-
6 ment under this act shall not be required to again submit
7 himself to examination under this act upon the same judg-
8 ment, or upon any judgment founded thereon.

SECT. 25. Any magistrate who has once refused to
2 administer to the debtor the oath named in section eight
3 shall be incompetent to sit as a Justice of the Peace and

4 quorum or commissioner under section forty-six of chapter
5 one hundred and thirteen of the Revised Statutes, to hear
6 the disclosure of the debtor in any subsequent proceed-
7 ings upon the same judgment, or any judgment founded
8 thereon.

SECT. 26. Any Disclosure Commissioner heretofore or
2 hereafter appointed under the provisions of section fifty-
3 one of chapter one hundred and thirteen of the Revised
4 Statutes, shall have power to perform the duties required
5 by this act.

SECT. 27. This act shall not apply to any existing con-
2 tract, pending action or existing judgment.

SECT. 28. No application or subpœna shall be deemed
2 incorrect for want of form only, or for circumstantial
3 errors or mistakes when the person and case can be rightly
4 understood. Such errors and mistakes may be amended
5 on motion of either party.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
March 10, 1887. }

Reported from Committee on Judiciary by Mr. POWERS of Houlton;
ordered printed under joint rule.

NICHOLAS FESSENDEN, Clerk.