

MAINE STATE LEGISLATURE

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NEW DRAFT.

Sixty-Eighth Legislature.

SENATE.

No. 197.

STATE OF MAINE.

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

AN ACT to amend Chapter one hundred and thirteen of the Revised Statutes, and Chapter one hundred and thirty-seven of the Public Laws of eighteen hundred and eighty-seven, as amended by Chapter three hundred and thirteen of the Public Laws of eighteen hundred and ninety-three, relating to the appointment and duties of disclosure commissioners.

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

Section 1. Chapter one hundred and thirteen, section 2 fifty-one, of the Revised Statutes, is hereby repealed and the 3 following is enacted in place thereof:

‘Section 51. The Governor shall from time to time 5 appoint commissioners in different localities within and for

6 each county of the State who shall have jurisdiction within
7 the county for which they are appointed and shall perform
8 the duties required by the fifteen following sections. Such
9 commissioners shall be attorneys at law and shall be sworn
10 and shall hold office for the term of seven years. They shall
11 have an official seal which shall have engraved thereon the
12 name of the commissioner, the words "Disclosure Commis-
13 sioner" and the word "Maine" and the name of the county
14 and the town or city where the commissioner resides. Each
15 town or city of not more than five thousand inhabitants
16 as shown by the last preceding census of the United States
17 shall be entitled to two such commissioners and not more
18 than two and for every additional five thousand inhabitants
19 thus shown an additional commissioner shall be allowed,
20 provided that the total number of commissioners in any one
21 town or city shall in no case exceed six. The office of dis-
22 closure commissioner as heretofore created under the former
23 provisions of this section is hereby abolished, but nothing
24 in this act shall be construed to affect the validity of execu-
25 tions or certificates thereon heretofore issued by such com-
26 missioners. Any commissioner appointed under this act
27 shall have power to renew executions heretofore issued by
28 any former commissioner within and for the same county,
29 and executions heretofore issued by himself.'

Sect. 2. The commissioners appointed under said section
2 fifty-one of chapter one hundred and thirteen of the Revised
3 Statutes, as amended by this act, shall perform the duties
4 required by chapter one hundred and thirty-seven of the
5 Public Laws of eighteen hundred and eighty-seven, and acts
6 amendatory thereof and additional thereto.

Sect. 3. Chapter one hundred and thirty-seven, section 2 two, of the Public Laws of eighteen hundred and eighty-3 seven is hereby amended by striking out in the first line of 4 said section the words “such a” and substituting therefor the 5 word ‘any’, and by striking out the words “a judgment 6 debtors business affairs” and substituting therefor the 7 words ‘the business and property affairs of any judgment 8 debtor,’ and also by adding to said section the following 9 words: ‘but married women thus cited shall not be arrested 10 except for contempt or upon capias issued to bring them 11 before the magistrate as provided by section fourteen,’ so 12 that said section as amended shall read as follows:

‘Section 2. The owner of any judgment remaining unsat-14 isfied in any part may have a disclosure of the business and 15 property affairs of any judgment debtor, at any time, by 16 proceedings as hereinafter provided, but married women 17 thus cited shall not be arrested except for contempt or upon 18 capias issued to bring them before the magistrate as pro- 19 vided by section fourteen.’

Sect. 4. Section four of said chapter is hereby amended 2 by inserting between the word “county” and “at” in the 3 third line thereof, the words ‘in the town in which the 4 debtor, the petitioner, or his attorney, resides, or at the shire 5 town of said county,’ so that said section, as amended, shall 6 read as follows:

‘Section 4. Such magistrate shall thereupon issue under 8 his hand and seal a subpoena to the debtor, commanding 9 him to appear before such magistrate within said county, 10 in the town in which the debtor, the petitioner, or his attor- 11 ney, resides, or at the shire town of said county, at a time 12 and place therein named, to make full and true disclosure,

13 on oath, of all his business and property affairs. The appli-
14 cation shall be annexed to the subpoena.'

Sect. 5. Section five of said chapter, as amended by chap-
2 ter three hundred and thirteen of the Public Laws of eigh-
3 teen hundred and ninety-three, is hereby further amended
4 so as to read as follows:

'Section 5. The subpoena may be served by any officer
6 qualified to serve civil process in said county, by giving him
7 in hand a certified copy of the subpoena, in which case the
8 debtor shall have twenty-four hours notice for every twenty
9 miles travel from his home or place of abode at the time of
10 service, to the place of disclosure, or, said subpoena may be
11 served by said officer by leaving at his last and usual place of
12 abode a certified copy of the same seven days at least before
13 the time appointed for the hearing.'

Sect. 6. Section seven of said chapter is hereby amended
2 by adding thereto the following words: 'If the petitioner
3 is absent or does not propose interrogatories the commis-
4 sioner shall conduct the examination,' so that said section,
5 as amended, shall read as follows:

'Section 7. The petitioner may propose to the debtor any
7 interrogatories pertinent to the inquiry and if he requires it,
8 they shall be answered in writing and signed and sworn by
9 the debtor. If the petitioner is absent or does not propose
10 interrogatories the commissioner shall conduct the examin-
11 ation.'

Sect. 7. Section nine of said chapter is hereby amended
2 by inserting in the thirteenth line of said section after the
3 the word "demand" and before the word "if," the words
4 'except where the original debt was for necessaries, the
5 debtor shall not be required to assign any sums due him as

6 wages for his personal labor earned within one month next
7 preceding the date of the disclosure and not exceeding
8 twenty dollars,' so that said section, as amended, shall read
9 as follows:

'Section 9. When from such disclosure it appears that the
11 debtor possesses, or has under his control, any bank bills,
12 notes, accounts, bonds, or other contracts or property, not
13 exempted by statute from attachment, which cannot be
14 come at to be attached, and the petitioner and debtor can-
15 not agree to apply the same towards the debt the magistrate
16 hearing the disclosure, shall appraise and set off enough of
17 such property to satisfy the debt, cost and charges: and the
18 petitioner or his attorney, if present, may select the property
19 to be appraised. If the petitioner accepts it, it may be
20 assigned and delivered to him by the debtor, and applied
21 towards the satisfaction of his demand. Except where the
22 original debt was for necessaries, the debtor shall not be
23 required to assign any sums due him as wages for his per-
24 sonal labor earned within one month next preceding the
25 date of the disclosure and not exceeding twenty dollars. If
26 any particular article of such property, necessary or conven-
27 ient to be applied in satisfaction of the execution, exceeds
28 the amount due thereon, and is not divisible in its nature,
29 the petitioner may take it, by paying the overplus to the
30 debtor or securing it to the satisfaction of the magistrate.'

Sect. 8. Section fourteen of said chapter, as amended by
2 chapter three hundred and thirteen, section three, of the
3 Public Laws of eighteen hundred and ninety-three, is
4 hereby amended by inserting in the third line of said section
5 after the word "shall" and before the word "issue," the
6 words 'upon the request of the petitioner;' by striking out

7 the word "executing" in the seventh line of said section and
8 substituting therefor the word 'serving;' by striking out all
9 after the words "capias" in the sixth line of said section and
10 by adding to said section the words 'after the question of
11 costs of issuing and serving said capias has been thus deter-
12 mined, such debtor or other person shall submit himself to
13 the examination required by his original subpoena,' so that
14 said section, as amended, shall read as follows:

'Section 14. If the debtor or any other person duly served
16 with subpoena as above provided, refuses or neglects to
17 appear, the magistrate shall upon the request of the peti-
18 tioner issue a capias to bring said debtor or other person
19 before him, and if upon hearing, said debtor or other person
20 does not show good cause for his failure to appear, he may
21 be ordered to pay the costs of issuing and serving said
22 capias. After the question of costs of issuing and serv-
23 ing said capias has been thus determined, such debtor or
24 other person shall submit himself to the examination
25 required by his original subpoena.'

Sect. 9. Section sixteen of said chapter is hereby amended
2 so as to read as follows:

'Section 16. In case the commissioner who issued the
4 summons is unable to attend, any other commissioner may
5 attend and take the disclosure, and, for cause shown by
6 either party, the examination may be adjourned from time
7 to time.'

Sect. 10. Section twenty of said chapter is hereby
2 amended by inserting after the word "debtor" and before
3 the word "the" in the eighth line of said section, the words
4 'where the original debt, exclusive of costs, exceeds ten dol-
5 lars and not otherwise,' and by adding to said section the

6 words 'where the original debt, exclusive of costs, exceeds
7 ten dollars, and not otherwise,' so that said section, as
8 amended, shall read as follows:

'Section 20. If upon such disclosure the debtor fails to
10 obtain the benefit of the oath provided for in section eight,
11 the magistrate shall, under his hand and seal, indorse a cer-
12 tificate of that fact upon the execution in force at the time
13 of said disclosure, and a copy of said certificate shall be
14 indorsed on every subsequent execution issued on said
15 judgment or on any judgment founded thereon, and such
16 subsequent execution shall run against the body of said
17 debtor, where the original debt, exclusive of costs, exceeds
18 ten dollars and not otherwise. The magistrate shall also
19 issue a *capias* under his hand and seal, and annex the same
20 to said execution in force at the time of said disclosure, and
21 the debtor may be arrested and imprisoned on said *capias*
22 and execution, the same as upon executions issued in actions
23 of tort, where the original debt, exclusive of costs, exceeds
24 ten dollars and not otherwise.'

Sect. 11. Section twenty-one of said chapter is hereby
2 amended by striking out the first three words of said sec-
3 tion and substituting therefor the words 'If a debtor cited to
4 disclose on a judgment where the original debt, exclusive
5 of costs, exceeds ten dollars,' and by striking out all after the
6 word "subpoena" in the third line of said section and sub-
7 stituting therefor the words 'the petitioner may have a
8 default recorded and then proceed as in section twenty, or,
9 have a *capias* to bring in such debtor and proceed as in sec-
10 tion fourteen,' so that said section, as amended, shall read as
11 follows:

‘Section 21. If a debtor cited to disclose on a judgment
13 where the original debt, exclusive of costs, exceeds ten dol-
14 lars, fails to appear and submit himself to examination, at
15 the time and place named in subpoena, the petitioner may
16 have a default recorded and then proceed as in section
17 twenty or have a capias to bring in such debtor and proceed
18 as in section fourteen, as amended.’

Sect. 12. Section twenty-six of said chapter is hereby
2 repealed and the following enacted in place thereof: ‘Every
3 commissioner shall keep a correct and sufficient record of
4 the proceedings under each citation, stating the names of
5 the parties, the amount of the judgment on which the dis-
6 closure is sought, the dates of application, of the issuance
7 of subpoena and of the return day thereof, and of all hear-
8 ings, adjournments, and continuances; also whether the
9 debtor appeared or was brought in on capias, or was
10 defaulted; whether a disclosure was had and if so what
11 property was disclosed; whether the oath was administered
12 or refused, and if refused the record shall state the reason for
13 such refusal.’

Sect. 13. This act shall take effect July one, eighteen
2 hundred and ninety-seven.

STATE OF MAINE.

IN SENATE, March 20, 1897.

Reported by Mr. REYNOLDS of Cumberland, from Committee on
Legal Affairs, and laid on table to be printed under joint rules.

KENDALL M. DUNBAR, *Secretary.*