

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1878.

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1878.

PUBLIC LAWS
OF THE
STATE OF MAINE.
1878.

CHAP. 74. aldermen shall be in open session on each of not less than three secular days, for the purposes provided in this section,' so that said section, as amended, shall read as follows :

Aldermen of cities of ten thousand inhabitants to be in session four days to receive evidence of qualifications of voters.

—shall enter names of persons qualified on list.

—to be in session certain hours.

—in cities containing less than ten thousand inhabitants, shall be in session three days.

'**SECT. 1.** In cities containing more than ten thousand inhabitants, the aldermen shall be in open session on each of not less than four secular days next preceding any day of election, when a list of voters is required, at some convenient place, to receive evidence of the qualifications of voters whose names are not on the list ; and on satisfactory evidence produced at such session, they shall enter the names of the persons qualified on the list for the proper ward ; and for said purposes said aldermen shall be in session from nine to twelve o'clock in the forenoon, and from two to five o'clock in the afternoon on each of said days ; and in cities containing less than ten thousand inhabitants the aldermen shall be in open session on each of not less than three secular days, for the purposes provided in this section.'

SECT. 2. This act shall take effect when approved.

Approved February 21, 1878.

Chapter 74.

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 :

Courts of probate constituted courts of insolvency.

—officers.

—jurisdiction.

SECT. 1. The courts of probate for each county in this state are hereby constituted courts of insolvency, and the judges and registers of probate in their respective counties shall be judges and registers thereof. And said courts shall have original jurisdiction in their respective counties of all cases of insolvency arising under the provisions of this act, except where it is otherwise specially provided.

Court, when and where held.

—may adjourn from time to time.

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

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

CHAP. 74.
What may be done in vacation.

SECT. 4. The judge may keep order in his court, and punish any contempt of his authority, orders and decrees; administer oaths, issue commissions, take testimony and compel the attendance of witnesses, and the giving of testimony to the same extent as the supreme judicial court, and may appoint such officers to attend upon the court as are necessary for the transaction of its business and keeping order therein.

Powers and duties of judge.

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

Records, how to be made and files kept.

Papers admissible as evidence.

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

Powers and duties of register.

SECT. 7. All assignments, warrants, orders of notice and processes issuing from the court shall be under the seal thereof, and shall be executed and obeyed throughout the state, and any officer to whom they are legally directed shall serve the same in any county. The return of such officer shall state the manner of such service, and shall be proof thereof.

Assignments warrants, &c., to be under seal.

—service.

—return.

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

County to provide court rooms in shire town.

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

Judges may make rules.

CHAP. 74.

Appeal to S. J. court.

—when to be heard and determined.

—exceptions to be certified to chief justice.

—decision, to whom certified.

Case may be determined without argument.

Final decision to be certified to register.

Issues of fact may be tried by jury.

Notice to be given to register.

Proceedings when appellant waives appeal.

Prevailing party to recover costs.

S. J. court to have equity jurisdiction.

SECT. 10. In all cases arising under this act, there shall be an appeal to the supreme judicial court next to be holden within and for the county where the proceedings in insolvency are pending, which appeal shall be heard and determined by any justice of said court, either in term time or vacation. Upon the hearing of such appeal, exceptions shall be to the ruling of such justice in matters of law, which exceptions shall be certified to the chief justice of the supreme judicial court, and the argument, in writing, by the party filing such exceptions, shall be sent to the chief justice within ten days after such exceptions are allowed, and a copy thereof shall be served on the opposing party or his attorney, who shall in like manner forward his argument in reply within ten days after such service, and said exceptions may be considered and decided by the justice of said court as soon as may be, and the decision shall be certified to the clerk of the said court in the county where the case is pending. In case arguments by either party shall not be furnished within the time prescribed herein, the case shall be determined without the argument of such party, unless the judge allowing the exceptions enlarges the time, which additional time shall in no case exceed ten days. Such clerk shall, without delay, certify all final decisions to the register of the court from which the appeal was originally taken. Upon application of either party such justice may direct the framing of issues of fact to be tried by the jury at the term to which such appeal is taken. When an appeal is taken as provided by this section, notice thereof shall be given to the register to be entered with the record of proceedings within five days after the rendition of the decision or judgment appealed from. But if the appellant, in writing, waives his appeal before the entry thereof, or fails to enter the same on the first day of the term to which such appeal is taken, proceedings may be had in the court of insolvency as if no appeal had been taken. The prevailing party shall recover the costs of appeal as in other cases, and execution may issue therefor from the court of insolvency.

SECT. 11. The supreme judicial court shall have full equity jurisdiction in all matters arising under this act; the powers herein granted may be exercised by said court or any justice thereof in term time or vacation, and upon the request

of either party the justice before whom a final hearing in any proceeding in equity shall be had, shall certify to the full court for deciding questions of law involved in such proceedings, to be heard and determined in the manner provided in section ten of this act.

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

Application of terms.

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.

Debtor may petition for proceedings.

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 either 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, books of account and papers, and 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:

If debts amount to three hundred dollars, judge shall issue warrant.

Sheriff to act as messenger.

Notice, how given, and what it shall state.

First. That a warrant has issued against the estate of the debtor.

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

Third. 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

Creditors may petition for proceedings.

CHAP. 74. 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 be the duty of the judge to issue his warrant and cause such other proceedings to be had as are provided in section fourteen of this act. Upon the issuing of such warrant the register shall cause an attested copy of such application and warrant to be served upon the debtor, or such other notice as the judge may order to be given, who thereupon may appear, and upon his request a hearing shall be had upon such application by the judge, who may thereupon revoke such warrant, unless such allegations are proved.

Notice to be given debtor.

Messenger to take possession of property of debtor.

—returned, if warrant is revoked.

Upon demand, debtor to deliver property to messenger.

—shall furnish schedule of creditors.

—statement of securities.

—description of real estate.

Judge may order sale of property.

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

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

SECT. 18. Upon the application, in writing, of any party interested, the judge may order the messenger to sell, after due public notice and notice to the debtor, for cash, in such manner as he may direct, any part of the debtor's estate, and collect and receive debts due such insolvent; and such

messenger shall keep a correct account of the names of the purchasers, the articles sold, and the prices received therefor, and of all debts collected by him.

SECT. 19. Upon the election of an assignee, the messenger shall deliver to him all the property held by him, and cash for goods sold by him, and received by him from the collection of debts, together with an account of the same, and shall return to the register his warrant, with a record of all his doings thereon.

Messenger to deliver property to assignee.

—return warrant.

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

Death of debtor not to affect proceedings.

Judge may make allowance to widow or minor children.

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

Creditor secured, cannot vote for assignee.

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

Creditor shall make oath.

I, _____ do swear that _____ of _____ by or against whom proceedings in insolvency have been instituted, was and still is justly and truly indebted to me in the sum of _____, that the consideration for said indebtedness was and is _____, that the credit to be given upon said claim is _____, that the only security I hold upon said claim is _____, and that I have not, nor has any other person for me to my knowledge or belief, received any other security or satisfaction whatever; and I do further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case; and I do further swear that I have not, nor has any other person to my knowledge or belief, directly or indirectly entered into any bargain, expressed or implied, whereby I am to receive any exclusive benefit hereafter, or whereby my vote for assignee, or my assent to the debtor's discharge is or shall be in any way affected or controlled.

—form.

Such proof may be made, and such oath may be taken before the register of any court of insolvency, or at the

Before whom, proof made and oath taken.

CHAP. 74. creditor's own expense may be proved in like manner before any justice of the peace or notary public, and such register, justice of the peace or notary public, shall forward such demand and proof to the register of the court of insolvency where the proceedings in insolvency are pending. Such oath or affidavit shall be taken as prima facie evidence of the facts therein stated. The assignee, or any other person interested, may at any time before final dividend, file objections in writing to the allowance of such claim, and thereupon the judge may upon such notice as he shall direct to the claimant or his attorney, order a hearing upon the same, and thereupon may admit the claim to be proved, or may disallow the same, in whole or in part, and at such hearing the judge may require the examination under oath of the claimant or other persons, touching said claims, and all matters connected therewith; whenever the party to be so examined shall not reside in the county where such hearing is to be had, such examination may be had before the judge or register of the court of insolvency of the county where the witness to be examined resides, and such examination shall be taken upon oral or written interrogatories, as the case may be. The notice to be given to the person to be examined shall be at least one day for every twenty miles travel of the witness to the place of examination. If the claimant or person making the original proof of debt, after due notice, shall, without good cause, neglect or refuse to appear and submit to such examination, the judge may reject such claim without further hearing thereon, and witnesses shall be entitled to the usual fees as now allowed by law before the probate courts.

Interested person may file objection to allowance of claim.

—proceedings.

—notice.

If claimant fails to appear, claim may be rejected.

Time for proving claim.

Secured creditors, how considered.

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

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

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

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

Third. In case of proof of claims, such value may be determined by agreement between the creditor and assignee, or by the judge, upon application of either the creditor or assignee, either by an adjudication thereof, or by decreeing a sale of such security, in such manner and upon such notice as he may order.

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

Proof of debt may be postponed.

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

Property accepted under preference to be surrendered

SECT. 27. Any creditor may act at all meetings by his authorized attorney, the same as though personally present.

Creditor may act by attorney.

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

Assignees, how chosen.

—may be appointed and removed.

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

Assignee may be required to give bond.

SECT. 30. The judge shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the debtor, except such as is by law exempt from attachment and seizure on execution, together with all deeds, books of account, and papers relating thereto, which assignment shall be executed forthwith in the registry of

Judge shall assign and convey property to assignee.

CHAP. 74.

Assignee to give notice of election.

Attachments made within four months, dissolved

Money paid by debtor upon writ, judgment or execution, within two months, may be recovered in certain cases.

Assignee may prosecute to final judgment, suit commenced by creditor, within four months prior to commencement of proceedings.

—proceedings.

deeds for the county where such proceedings in insolvency are pending, and in the registry of deeds in each county in which there may be real estate of the debtor, and such assignee shall give such public notice of his election or appointment as the judge may order; such assignment shall relate back to the commencement of proceedings in insolvency, and by operation of law shall vest the title to all the property and estate of the debtor not exempt by law from attachment and seizure on execution, in the assignee, although the same is then attached on mesne process as the property of the debtor, and such assignment shall dissolve any such attachment made within four months next preceding the commencement of proceedings in insolvency. Such assignee may sue for and recover by an action at law, or by a bill in equity, any sums of money paid by the debtor to any creditor upon any writ, judgment or execution, when such payment is made within two months prior to the commencement of the proceedings in insolvency, and is received by the creditor as a preference, in violation of the provisions of this act, and the creditor knows at the time such payments are made that the debtor making the same is insolvent.

SECT. 31. Whenever any creditor of a debtor, by or against whom proceedings in insolvency shall be commenced, shall at any time within four months prior to the commencement of such proceedings, commence against such debtor any suit at law or in equity, for the recovery of any debt or claim against such debtor, and upon such suit the goods, effects or estate of the debtor shall be seized or attached, the assignee of such debtor, when chosen or appointed, may be admitted to prosecute such suit to final judgment or decree, and may in his own name levy upon or sell the property, effects or estate so attached, in the same manner as the creditor might have done had no proceedings in insolvency been commenced; and such attachment and the proceeds of the property so attached shall be held for the benefit of the estate of such insolvent, and when such attachment is made in good faith, the creditor shall be paid out of the estate the costs and expenses arising from such suit and attachment, and the safe keeping or sale of the property so seized and attached, and the expenses of any levy made upon the same, incurred prior to the appearance of such assignee in such suit, and such creditor shall be allowed to prove his debt or claim upon

which such suit is brought, in the same manner as if a suit had not been commenced. In case the assignee shall elect not to appear and prosecute such suit, if it shall appear to the court that it was commenced in good faith for the benefit of all the creditors, he shall order the said costs, and expenses incurred prior to the assignment of the estate to the assignee, to be paid out of the estate.

SECT. 32. The assignee shall sell and dispose of all the property 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 insolvent estate, and for the recovery of all dues and claims belonging 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.

Disposal of
property.

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 the judge shall deem reasonable, order the sale thereof in such manner as the judge 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.

Sale of property
in dispute.

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

Assignee to de-
posit money and
account for
interest thereon.

SECT. 35. Whenever an assignee shall receive from the estate assets available to pay a dividend equal to twenty-five

Dividends, when
declared and
paid.

CHAP. 74. 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 reserve an amount equal to the dividend which would be due upon such claim if finally allowed, unless otherwise ordered by the judge; if such disputed or contingent claim shall be finally allowed, such reserved amount shall be paid to the owner of such claim, otherwise it shall be accounted for when the final distribution of the estate is made. And for each twenty-five per cent. of assets received a like dividend shall be made. A final dividend shall be made at such time as the judge shall direct, and when the same is made, the assignee shall exhibit an account of the full settlement and disposition of the estate coming to his hands, and of the fees and expenses arising therefrom, which shall be examined by the judge, and if found correct, shall be by him approved, and thereupon the assignee shall be discharged from his trust.

Contingent
claims.

Claims to be paid
in full.

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

--order.

First. The fees, costs and expenses of suits and proceedings in insolvency under this act.

Second. All debts and taxes due to the state and the United States.

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

Assignee may
resign.

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

--vacancies, how
filled.

Vacancies, caused by death or otherwise, in the office of assignee, may be filled by appointment of the judge, or, at his discretion, by an election at a meeting called for the purpose, by such notice to all known creditors, as the judge shall direct; and such assignee shall receive a certificate of his election or appointment, under the hand of the judge, and shall give such notice thereof as the judge shall direct, and he shall succeed to all the rights of property, powers and duties of the assignee in whose place he is so elected or appointed.

SECT. 38. The debtor shall at all times before the granting of his certificate, upon reasonable notice, attend and submit to an examination, on oath, before the judge or some person appointed by him to take such examination, upon all matters relating to his insolvency, and upon application of any party interested, the judge may in like manner order the examination of any other person upon any matters concerning the insolvent estate, which examination shall be reduced to writing, and signed by the person examined, and placed upon the files of the court.

Debtor shall submit to examination before certificate is granted.

SECT. 39. The judge shall appoint a second meeting of the creditors, to be held at such place as he may designate, not more than three months after the date of the warrant, the debtor may then amend and correct his schedule of creditors, and shall take and subscribe an oath before the judge in substance as follows :

Second meeting of creditors.

I, _____ do swear that the account of my creditors contained in the schedule made and signed by me is true, according to my best knowledge and belief; and I do further swear that I have delivered to _____ the messenger, all my estate except such as was by law exempt from attachment and seizure on execution, and all my books of accounts, and papers relating to said estate that were within my possession or power when the same were demanded of me by the messenger; that I have delivered to my assignee all such of my estate, books and papers as have since come to my possession, and will deliver any other estate, books, and papers which ought to be assigned and delivered to my assignee which shall come to my possession or knowledge; and I do further swear that there is not any part of my estate or effects made over, concealed or disposed of in any manner for the future benefit of myself, my family, or any other individual, or in order to defraud my creditors.

Debtor's oath.

SECT. 40. At any time after the expiration of four months from the time of issuing the warrant, the debtor may apply in writing to the judge for a discharge from his debts. The judge shall order notice to be given to the creditors by mail or otherwise, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the debtor. Any creditor opposing the discharge may file a specification in writing of the grounds of his opposition, and

Debtor may apply for discharge, after four months.

Creditors to be given notice.

—opposing discharge, may file specifications.

CHAP. 74. a hearing shall be had thereon at such time as the judge appoints.

Discharge not to be granted second time unless majority of creditors consent.

—third time, unless three-fourths of creditors consent.

Discharge not to be granted, or if granted, not valid in certain cases.

—null and void if assent of creditor is purchased.

Debts that shall not be discharged by proceedings under this act.

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

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

SECT. 43. No debt created by the fraud or embezzlement of the insolvent, or by his defalcation as a public officer, or while acting in any fiduciary character, or when the demand arises from the purchase of goods, wares or merchandise, obtained on credit when the debtor had reasonable cause to believe that he would not be able to pay for the same, shall

be discharged by proceedings in insolvency under this act, but such debt may be proved and the dividend thereon shall be a payment on account of such debt.

CHAP. 74.

Dividends may be paid thereon.

SECT. 44. No discharge shall release, discharge or affect any person liable for the same debt for or with the insolvent, either as partner, joint contractor, indorser, surety or otherwise.

Partners, joint contractors, indorsers, &c., not released.

SECT. 45. A discharge in insolvency duly granted shall, subject to the limitations in and by the two preceding sections, within this state, release the insolvent from all debts, claims, liabilities and demands, which were or might have been found against his estate in insolvency; it may be pleaded by a simple averment that on the day of its date such discharge was granted to the insolvent, setting forth a copy of such discharge, which shall operate as a full and complete bar to all suits brought on any such debts, claims, or liabilities as were or might have been proved as aforesaid; the certificate shall be conclusive evidence in favor of such insolvent, of the fact and regularity of such discharge.

Liabilities from which insolvent is released.

Certificate, conclusive evidence.

SECT. 46. No claim purchased after the warrant in insolvency has issued, shall be set off against a claim due the estate prior to such purchase.

Claim purchased after warrant is issued, not to be set off against claim due estate, prior.

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

Creditor shall not bring suit against debtor, until discharge is refused.

—liability to arrest.

SECT. 48. If any person being insolvent or in contemplation of insolvency within four months before the issuing of the warrant, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered or seized on execution, or makes any payment, pledge, assignment, transfer or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving

Fraudulent attachment or conveyance of property, void.

CHAP. 74. such payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent or in contemplation of insolvency, and that such payment, pledge, assignment or conveyance is made in fraud of the laws relating to insolvency, the same shall be void, and the assignee may recover the property or the value of it from the person so receiving it or so to be benefited, and if such sale, assignment, transfer or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be prima facie evidence that such sale, assignment, transfer or conveyance was intended as such preference, in violation of the provisions of this act; but nothing in this section or act shall be construed to invalidate any loan of actual value or the security therefor made in good faith, upon a security taken in good faith on the occasion of making such loan.

Loans of actual value secured in good faith, not invalidated.

Allowance to debtor.

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

Penalty for disposal of property to defraud creditors.

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

Penalty for aiding to defraud creditors.

SECT. 51. If any person knowingly and wilfully aids the debtor after the issuing of a warrant against him under this act, in concealing any property, books or papers relating to or belonging to such debtor's estate, with the intent to prevent the same coming to the hands of the assignee of such debtor, or to defraud the creditors of such debtor, or shall by himself, his agent or attorney, make any fraudulent

purchase or fraudulent agreement to purchase of the messenger or assignee having the possession of the debtor's estate, any of the property or estate of such debtor, at a less price than its fair market value, he shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by fine of not more than five hundred dollars.

SECT. 52. If any messenger or assignee having possession of the debtor's estate under a warrant, as provided by this act, shall knowingly and wilfully suffer any of the property belonging to such estate to be destroyed or wasted, or shall fraudulently sell or cause to be sold or disposed of, any of the property belonging to the estate of the debtor at less than its fair market value, he shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by fine of not more than five hundred dollars.

Penalty for fraudulent disposal of property by messenger or assignee.

PARTNERSHIP.

SECT. 53. The provisions of this act shall apply to all cases where two or more persons are doing business within this state as partners, and where either of such persons reside in this state, and in such cases the notice required by this act shall be given to all the known partners residing within the state. Either partner may file his petition as herein provided, which shall contain the averment that the partnership of which he is a member is insolvent, and unable to pay its debts, and that it is for the best interest of such partnership and its creditors that its property and estate should be distributed according to the provisions of this act, but no warrant shall issue until such notice as the judge directs shall be given to the remaining partners, and upon hearing, it shall appear to the satisfaction of the judge that the allegations contained in the petition are true. The schedule required by this act shall contain the names of all creditors of the firm, and the residences of the same, so far as they shall be known, the amount due to each with the consideration thereof, and a statement of any existing mortgage, pledge, or other collateral security given to secure the same, and also a like list of the creditors of each individual member of the firm. Upon issuing the warrant, all the property and

Partnership.

—application of act.

Either partner may file notice.

Notice to be given to each partner.

Schedule to contain names of creditors of firm and of each member.

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Property of firm and each partner to be returned to assignee.

Creditors may prove debts.

Assignee, how chosen.

—shall be assignee of estate of each partner and keep separate account.

Net proceeds, how appropriated.

Net balance of estate of partner, how disposed of.

Net balance of estate of firm, how disposed of.

Certificate of discharge, how granted or refused.

Other proceedings.

Allowance to partners.

Act to apply to corporations.

estate of the partnership, and also all the separate estate of each individual partner, except such as may be by law exempt from attachment, shall come into the hands and possession of the messenger, shall be returned to the assignee, and otherwise disposed of as hereinbefore provided, and all creditors of the partnership, and the separate creditors of each partner may prove their debts in the manner provided by this act.

SECT. 54. The assignee shall be chosen by the creditors of the partnership, and shall also be assignee of the estate of each separate member of such partnership, and shall keep separate accounts of the funds of the estate of the partnership and of the estate of each member thereof, and after deducting out of the whole amount received by him the total expenses and disbursements, the net proceeds of the partnership property shall be appropriated to pay the creditors of such partnership; and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of a partner after the payment of his separate debts, it shall be added to the avails of the partnership property, so far as necessary for the payment of the partnership debts. If there is a balance of the partnership assets remaining after the payment of the partnership debts, it shall be divided among the separate estates of the several partners, according to their respective rights and interests therein, as it would have been had the partnership been dissolved without insolvency, and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts, and in case anything remains it shall be divided among the several partners, according to their respective interests.

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

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

SECT. 57. The provisions of this act shall apply to all corporations created by the authority of the laws of this state, carrying on manufacturing, trading, mining, building,

insurance or other private business, but not to include corporations engaged in a business involving public duties and obligations, among which are railroads, banks, corporations engaged in supplying cities and towns with gas or water, and other corporations of like character; and upon the petition of any officer duly authorized by a legal vote of such corporation, passed at a legal meeting called for that purpose, or upon a petition of any creditor or creditors of such corporation, made and presented as in this act is provided in the case of an individual debtor, and upon such notice as the judge shall order, a hearing shall be had upon such petition, and if it shall appear that such corporation is insolvent, and that such facts exist as would authorize the judge to issue a warrant against the estate of an individual debtor, such corporation shall be adjudged to be insolvent, and a warrant shall issue against its property and effects as hereinbefore provided; and all the provisions of this act relating to proceedings subsequent to the issuing of a warrant against the estate of an individual debtor, shall apply to said corporation and the disposition of its effects and estate, but no discharge shall be granted to such corporation, and nothing in this act shall affect the liability of any stockholder in such corporation as is now provided by law.

Exceptions.

Proceedings.

No discharge to be granted and liability of stockholder not affected.

SECT. 58. In all cases of insolvency where the debtor or debtors' liability exceeds the sum of three hundred dollars, if the debtor at the first meeting of the creditors shall produce an affidavit by him or them signed and sworn to before the judge or register of the court of insolvency, of the tenor following:

Debtor shall produce affidavit.

I, _____ of _____ in the county of _____ do solemnly swear that I have not removed, concealed or secreted any money, papers, securities, effects, or property, real or personal, with the intent, purpose or expectation of receiving, directly or indirectly, any benefit or advantage to myself, and that I have not changed or falsified any of my books of account, deeds or papers relating to my estate, and that I have not sold, pledged, conveyed or transferred any of my property or estate in anticipation of insolvency, or made any conveyance, mortgage, pledge, transfer or payment to any creditor, or caused or procured any attachment of my property for the purpose of preferring any of my creditors;

—form.

CHAP. 74. and that I have not, directly or indirectly, given any creditor or other person any compensation or promise of reward, except reasonable counsel fees for services or influence in effecting a compromise with my creditors, and that my assets and liabilities are correctly stated in the schedule hereunto annexed and signed by me.

Agreement. And at the same time shall also produce an agreement signed by a majority in number of his creditors, whose debts shall each exceed the sum of fifty dollars, and by creditors holding three-fourths of all his indebtedness, in the form following :

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

If agreement is satisfactory, judge shall give debtor discharge. And if the judge shall be satisfied that such agreement is signed by said proportion of the creditors of such debtor, and that such debtor has either paid or secured the percentage named in such agreement and according to the terms thereof, he shall give such debtor, under his hand and the seal of the court, a full discharge of all his debts and liabilities contracted prior to the commencement of the proceedings in insolvency, and named in the schedule annexed to said affidavit. Such discharge shall not be valid if the signature of any creditor has been obtained by fraud, or if any material statement contained in any such affidavit or schedule is false, to the knowledge of the debtor making the same, and any creditor may sue for and recover the balance of his claim or debt against such debtor. In case the proceedings in insolvency are by or against a copartnership, the affidavit, agreement and certificate shall be varied accordingly, and shall contain both the names of the firm and the names of the members thereof. Before such certificate shall be granted, the debtor shall pay all expenses incurred during the proceedings.

--when not valid.

Debtor to pay expenses.

Any person whose debts do not exceed three hun- **SECT. 59.** Any person whose debt or debts do not exceed the sum of three hundred dollars, may at any time assign,

convey and deliver to the register of the probate court of the county within which he resides, all of his real and personal estate, rights and credits not exempt by law from attachment and seizure on execution, together with a schedule of the same, signed by such debtor, and a list of all his creditors, with their places of residence, so far as the same are known to him, and thereupon the register shall, with the approval of the judge, appoint the time for a hearing thereon, before the judge, or such a person as he may appoint to take such examination, and shall give such notice to the creditors, of the time and place of such hearing as the judge may order, and any creditor may appear at such hearing and examine the debtor, under oath, concerning his business, property and effects, and the disposition of the same. Such examination shall be confined within such limits as the judge shall direct, and in no case shall such examination be extended to any matters arising prior to the time of the contracting of the debts owed by such debtor at the time of the examination. If it shall appear to the judge, or the person appointed by him to take such examination, that the debtor has assigned, conveyed and delivered to the register all his said real and personal estate, rights and credits, and that he has disclosed to the register the names and places of residence of all creditors known to him, he shall administer to such debtor the following oath: I do swear that the account of my creditors contained in the schedule made and signed by me is true, according to my best knowledge and belief; and I do further swear that I have delivered to , the register of probate, all my estate, rights and credits, except such as is by law exempt from attachment and seizure on execution; and I do further swear that there is not any part of my estate, rights or credits, made over, concealed, or disposed of in any manner, for the future benefit of myself, my family, or any other individual, or in order to defraud my creditors; unless he shall have discovered, by such examination, such facts as shall render it inconsistent for the debtor to take such oath, or finds that any of the statements made by such debtor upon said examination are not true. When such debtor has taken and subscribed said oath, the judge shall give him a certificate thereof under his hand, and thereupon he shall be thereafter released and discharged from

undred dollars, may make assignment.

—proceedings.

Form of oath.

Judge to give certificate of release.

CHAP. 74.

arrest upon mesne process or execution arising from any debt or debts contracted prior to the taking such oath, and owing to any creditor named in said schedule. The provisions of this section shall also apply to any person who has been arrested or committed to jail upon mesne process or execution, and such debtor shall be taken by the jailer, or officer having him in charge, before the court for the purposes specified in this section. After the assignment and conveyance provided by this section, the register, or some person appointed by the judge, shall dispose of said debtor's property and effects to the best advantage, keeping and rendering to the judge a strict account of its disposition, and the net proceeds thereof, after reserving such percentage as the judge shall decide to be reasonable, to be paid by the register into the county treasury, shall be divided pro rata among the creditors named in the schedule of said debtor in part satisfaction of their respective debts. The examination herein provided for shall be in writing, and shall be signed by the debtor and filed in the office of the register, and in case the judge shall appoint any person to take such examination he may allow him reasonable compensation therefor, to be paid out of the debtor's assets if they shall be sufficient, otherwise such compensation, or such part thereof, as shall remain unsatisfied out of the debtor's estate, shall be paid out of the county treasury.

SECT. 60. The fees of all officers, the compensation of assignees, and of the judges and registers of probate, under the provisions of this act, shall be established by the supreme judicial court, and shall be paid out of the estates. And in all voluntary proceedings under the provisions of this act, the fees and costs shall be paid by the petitioners.

Applies to person committed to jail upon mesne process or execution.

Disposal of debtor's property.

Examination to be in writing.

Expenses to be paid by debtor.

Fees to be established by S. J. court.

—how paid.

Approved February 21, 1878.