

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ACTS AND RESOLVES

OF THE

FIFTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE.

1879.

Published by the Secretary of State, agreeably to Resolves of June 28,
1820, February 18, 1840, and March 16, 1842.

AUGUSTA:
E. F. PILLSBURY & CO., STATE PRINTERS.
1879.

PUBLIC LAWS

OF THE

STATE OF MAINE.

1879.

Chapter 154.

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:

Sec. 9, ch. 74,
public laws
1878 amended

SECT. 1. Section nine of chapter seventy-four of the public laws of eighteen hundred and seventy-eight is hereby amended by striking out the word "laws" in the third line, and inserting instead thereof the word 'same,' so that said section as amended shall read as follows:

Judges may
make rules.

'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 same to the supreme judicial court for approval, amendment or alteration.'

Sec. 10 amend-
ed.

SECT. 2. Section ten of said act is hereby amended by striking out in the first and second lines the words "arising under this act, there shall be an appeal," and inserting instead thereof the words 'of appeal provided for by this act, such appeal shall be taken;' also by striking out the words "which appeal," in the fourth line, and inserting instead thereof the word 'and,' so that the first paragraph of said section, as amended, shall read as follows:

Appeal to S. J.
Court—

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

When to be
heard and de-
termined.

Said section
further amend-
ed.

Said section is also hereby further amended in the fourteenth line, by striking out the word "may," and inserting instead thereof the word 'shall;' and in the fifteenth line of the same, by striking out the word "justice" and inserting instead thereof the word 'justices,' and in the twenty-fifth line of said section, by striking out the words "such justice," and inserting instead thereof, the words 'the judge.'

Said section
further amend-
ed.

Said section is hereby further amended by adding after the last word in the same, the words, 'No appeal shall lie in any case arising under this act, unless specially provided for therein.'

Sec. 11 amend-
ed.

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

Sec. 11 further
amended.

Said section is hereby further amended by striking out in the seventh line the word "deciding," and inserting instead thereof the word 'decision.'

Sec. 14 amend-
ed.

SECT. 4. Section fourteen of said act is hereby amended by inserting after the word "papers," in the eighth line the words

“relating to his property and estate.” Also after the word “debts,” in the sixteenth line, the words, ‘to or by said debtor.’ CHAP. 154.

SECT. 5. Section fifteen of said act is hereby amended by striking out after the word “warrant,” in the thirteenth line, the words “and cause such other proceedings to be had as are provided in section fourteen of this act,” and inserting instead thereof the words, ‘under his hand to the sheriff of the county or either of his deputies, directing him forthwith to attach the real and personal estate of the debtor, not exempt by law from attachment and seizure, on execution, wherever the same may be situated within this state, and forbidding the payment to or by such debtor of any debt, demand or claim whatsoever, and the sale, transfer, mortgage, pledge, conveyance, or removal by such debtor, his agents or attorneys, of any of his estate, property, rights, or credits, and the making of any contracts for the sale or purchase thereof, or relating thereto, until such warrants shall be revoked by said judge.’ Also by striking out in the eighteenth and nineteenth lines of said section, the words “upon his request.” Also by adding after the words “are proved,” at the end of said section, the words ‘After the service of the copy of the application and warrant upon such debtor, or the giving of such other notice as the judge may order, as provided by this section, and until the revocation of such warrant any payment of any debt, demand or claim to or by said debtor, and any sale, transfer, mortgage, pledge, conveyance or contract, for the sale or purchase of any estate, property, rights or credits of such debtor, by such debtor or his agent or attorney, shall be null and void. If upon hearing or default the judge shall find the allegations of such application to be true and proved, and that said debtor is insolvent, he shall issue his additional warrant to the said sheriff, or either of his deputies, and cause such other proceedings to be had as are provided in section fourteen of this act,’ so that said section fifteen when amended, will read as follows:

‘SECT. 15. When two or more creditors of a debtor shall make application under oath, by petition by them signed, to the judge of the county in 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, under his hand, to the sheriff of the county or either of his deputies, directing him forthwith to attach the real and personal estate of the debtor not exempt by law from attachment and seizure on execution, wherever the same may be

Two or more creditors of a debtor making application to the judge of county in which the debtor resides setting forth certain facts as they believe them.

It appearing to the satisfaction of the judge that the allegations in the application are true.

His duty to issue his warrant.

To whom directed.

Sec. 15 amended.

CHAP. 154.

What his warrant shall contain.

Register to cause attested copy of application and warrant to be served on the debtor—or such other notice as the judge may order.

Hearing.

Judge to revoke warrant unless allegations proved.

After service of warrant or notice on debtor and until revocation of the warrant any payment or sale or purchase of property to be void.

If upon hearing or default judge finds allegations true, to issue additional warrant, etc.

Sec. 16 amended.

When the warrant is issued commanding messenger to perform certain things—Duty of messenger, to demand and receive certain property.

Warrant revoked, property to be returned.

Sec. 17 amended.

Sec. 20 amended.

situated, within this state, and forbidding the payment to or by such debtor of any debt, demand or claim whatsoever, and the sale, transfer, mortgage, pledge, conveyance, or removal by such debtor, his agents or attorneys, of any of his estate, property, rights or credits, and the making of any contracts for the sale or purchase thereof, or relating thereto, until such warrant shall be revoked by said judge. 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 a hearing shall be had upon such application by the judge, who may thereupon revoke such warrant, unless such allegations are proved. After the service of the copy of the application and warrant upon such debtor, or the giving of such other notice as the judge may order, provided by this section, and until the revocation of such warrant, any payment of any debt, demand, or claim, to or by said debtor, and any sale, transfer, mortgage, pledge, conveyance, or contract, for the sale or purchase of any estate, property, rights or credits of such debtor, by such debtor or his agent or attorney, shall be null and void. If upon hearing or default, the judge shall find the allegations of such application to be true, and proved, and that said debtor is insolvent, he shall issue his additional warrant to the said sheriff or either of his deputies, and cause such other proceedings to be had as are provided in section fourteen of this act.

SECT. 6. Section sixteen of said act is hereby amended by inserting after the word "act," in the second line, the words 'commanding the 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 seizure on execution, and of all his deeds, books of account, and papers relating thereto.' Also by striking out in the second line of said section, the words "the messenger," and insert instead thereof the word 'he,' so that said section as amended will read as follows :

'SECT. 16. When the warrant is issued as provided by this act, commanding the 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 seizure on execution, and of all his deeds, books of account, and papers relating thereto, he 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. 7. Section seventeen of said act is hereby amended, by inserting after the word "papers," in the third line, the words 'relating to his property and estate.'

SECT. 8. Section twenty of said act is hereby amended by

striking out after the word "dies" in the first line, the words "after issuing of the warrant, the" and inserting instead thereof the words, 'after commencement of proceeding, such.'

SECT. 9. Section twenty-two of said act is hereby amended, by inserting before the word "no," in the first line, the following words: 'All debts due and payable from the debtor at the time of the filing of the petition by or against him, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the insolvent. All demands against the insolvent for or on account of any goods or chattels wrongfully taken, converted, or withheld by him, may be proved and allowed as debts, to the amount of the value of the property so taken or withheld, with interest. When the insolvent is liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted or withheld, the court may cause such damages to be assessed, in such mode as it may deem best, and the sum so assessed may be proved against the estate. In all cases of contingent debts and contingent liabilities, contracted by the insolvent, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed with the right to share in the dividends if the contingency happens before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise, for the insolvent, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor, if the creditor has proved the same, although such payments shall have been made after the proceedings in insolvency were commenced. And any person so liable for the insolvent, and who has not paid the whole of such debt, but is still liable for the same or any part thereof, may, if the creditor fails or omits upon request to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules of the court, as provided in section nine of this act, and subject to such regulations and limitations as may be established by such rules. Where the insolvent is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the insolvency, as if the same fell due from day to day, and not at such fixed and stated periods. No debts other than those specified in this section, shall be proved or allowed against the estate.'

Section twenty-two is hereby further amended by adding after the word "courts," in the last line, the words 'the assignee, claim-

Sec. 22 amended.

What debts may be proved.

What else may be proved.

Unliquidated damages how disposed of.

Contingent debts and liabilities.

Persons liable as bail, surety, guarantor or otherwise who have paid the debt, may prove such debt or take place of creditor if he has proved it.

Persons so liable who have not paid the whole of the debt, proceedings.

Insolvent liable to pay rent or other debt falling due at stated periods, creditor may prove for a proportionate part.

No other debts than those specified allowed.

Sec. 22 further amended.

CHAP 154.

Assignee, claimant or creditor or other interested person may appeal.

How appeal shall be taken and heard.

Sec. 23 amended.

Sec. 26 amended.

Assignee may recover back any dividend paid to a creditor whose claim is disallowed.

Sec. 28 amended.

Creditors to choose assignees. How such choice shall be made.

Election subject to approval of judge. He may appoint additional assignees or order new election.

No choice—Judge to appoint. Judge may remove assignee for good cause.

Sec. 30 amended.

Sec. 35 amended.

Dividends already declared not to be disturbed by debts subsequently proved. Proceedings.

Sec. 36 amended.

Sec. 38 amended.

Insolvent to execute conveyances &c.

ant, creditor or other person interested, may appeal from the decision of the judge allowing or disallowing in whole or in part any debt, claim or demand, against the debtor or his estate, 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 taken, heard and determined, as provided in section ten of this act as amended.'

SECT. 10. Section twenty-three of said act is hereby amended, by striking out the word "meeting," in the second line, and inserting instead thereof the word 'dividend.'

SECT. 11. Section twenty-six of said act is hereby amended, by adding after the word "preference," in the last line, the words, 'the assignee after demand, may recover back by action of assumpsit, from any creditor whose claim is disallowed in whole or in part, any dividend or proportional part thereof, paid to such creditor before the disallowance of such claim.'

SECT. 12. Section twenty-eight of said act is hereby amended so as to read as follows:

'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 the greater part in number and value of the creditors present in person or by attorney, who have proved their debts; 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.'

SECT. 13. Section thirty of said act is hereby amended, by striking out in the sixth line the word "executed," and inserting instead thereof the word 'recorded.'

SECT. 14. Section thirty-five of said act is hereby amended, by adding after the word "judge," in the fifth line in said section, the words, 'No dividend already declared, shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors, before any further payment is made to the latter.'

SECT. 15. Section thirty-six of said act is hereby amended, by inserting after the word "state," in the second sub-division of said section, the words 'or any county, city or town therein:' also by striking out the words "issuing of the warrant" in the third and fourth lines of the third sub-division of said section, and inserting instead thereof the words, 'filing of the petition.'

SECT. 16. Section thirty-eight of said act is hereby amended, by adding thereto, after the last word in said section, 'The insolvent shall execute all such conveyances, powers of attorney, or other

instruments, and do such acts as the assignee may require, under the direction of the court, to enable the assignee to recover and receive the estate of the insolvent.'

SECT. 17. Section thirty-nine of said act is hereby amended, by striking out in the first line the words "The judge," and inserting instead thereof the words 'The assignee with the approval of the judge.'

Sec. 39 amend-
ed.

SECT. 18. Section forty of said act is hereby amended, by striking out in the second line the words "issuing the warrant," and inserting instead thereof the words 'commencement of proceedings;' and also by adding after the last word of said section the words 'If it shall appear to the court that the insolvent has in all things conformed to his duty under this act, and all acts amendatory thereof, and that he is entitled under the provisions thereof to receive a discharge, the court shall grant him a discharge from all his debts, except as hereinafter provided, and shall give him a certificate thereof under the seal of the court. In all cases when the judge shall refuse to grant a discharge under the provisions of 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, to be taken, heard and determined in the manner provided in section ten of this act as amended. The party appealing shall file at the time of entering his appeal, in the supreme judicial court, a copy of the specifications of the grounds of opposition to the discharge certified by the register. At the request of the debtor, or opposing creditor, the presiding judge shall order the question of discharge to be tried by the jury at the first or any subsequent term of said court. Exceptions shall be had as to matters of law, to be heard and decided as provided by said section ten.'

Sec. 40 amend-
ed.

If insolvent has done his duty under this act and is entitled to the provisions thereof, shall receive discharge.

If Judge does not grant discharge, appeal lies.

How taken, heard and determined.

Duty of party appealing, what he shall file.

On request judge shall order question of discharge tried by jury.

Exceptions lie.

SECT. 19. Section forty-three of said act is hereby amended, by striking out therefrom the following words, "or when the demand arises from the purchase of goods, wares or merchandize obtained on credit, when the debtor had reasonable cause to believe that he would not be able to pay for the same."

Sec. 43 amend-
ed.

SECT. 20. Section forty-five of said act is hereby amended, by striking out in the fifth line the word "found," and inserting instead thereof the word 'proved;' and also by adding after the word "discharge," in the last line thereof, 'any creditor of an insolvent whose debt was proved or provable against the estate in insolvency, who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may at any time within two years after the date thereof apply to the court which granted it, to annul the same. The application shall be in writing, and shall specify which in particular of the several acts mentioned in section forty-two it is intended to prove against the insolvent, and set forth the grounds of avoidance; and no evidence shall be admitted as to any

Sec. 45 amend-
ed.

Creditor desiring to contest the validity of the discharge may apply to the court within two years.

What application shall set forth.

What evidence admissible.

CHAP. 154.

Application may be amended.

Notice of application-Hearing.

Decision of the court.

On what grounds discharge annulled.

Where judgment shall be rendered in favor of insolvent.

In all cases under this section appeal shall be to S. J. C. next holden in the county to be taken, heard and determined as in sec. 10.

What appellant shall file.

At request of either party Judge to order trial by jury. Exceptions same as in sec. 10. Sec. 46 amended.

Sec. 48 amended.

Sec. 51 amended.

Sec. 58 amended.

Judges may interchange services when necessary or convenient.

other of such acts, but the application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of the application to be given to the insolvent, and order him to appear and answer the same, within such time as to the court shall seem proper. If upon hearing the parties the court finds the fraudulent acts, or any of them, set forth by the creditor against the insolvent are proved, and that the creditor had no knowledge of the same until after the granting of the discharge, judgment shall be given in favor of the creditor, and the discharge of the bankrupt shall be annulled; but if the court finds that the fraudulent acts, and all of them so set forth, are not proved, or that they were known to the creditor before the granting of the discharge, judgment shall be rendered in favor of the insolvent, and the validity of his discharge shall not be affected by the proceedings.

In all cases arising under this section, 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, to be taken, heard and determined, in the manner provided in section ten of this act as amended. The party appealing shall file at the time of entering his appeal in the supreme judicial court, a copy of the application to have the discharge annulled, certified by the register. At the request of either party, the presiding judge shall order issues of fact to be tried by the jury at the first or any subsequent term of said court. Exceptions shall be had as to matters of law, to be heard and decided as provided by said section ten.'

SECT. 21. Section forty-six of said act is hereby amended by striking out after the word "purchased," in the first line, the words, "after the warrant of insolvency is issued," and inserting instead thereof the words, 'after commencement of proceedings in insolvency.'

SECT. 22. Section forty-eight of said act is hereby amended, by striking out the words "issuing of the warrant," in the second and third lines, and inserting instead thereof the words 'filing of the petition by or against a debtor.'

SECT. 23. Section fifty-one of said act is hereby amended, by striking out after the word "debtor," in the second line, the words, "after the issuing of a warrant," and inserting instead thereof the words, 'after the commencement of proceedings.'

SECT. 24. Section fifty-eight of said act is hereby amended by striking out after the word "debtor," in the third line, the words, "at the first," and inserting instead thereof the words, 'or debtors at any; ' also, by inserting after the word "may," in the fiftieth line, the words, 'within two years.'

SECT. 25. The judges may interchange services, or perform each others' duties, when they find it necessary or convenient, and if a judge is a party or interested to the amount claimed of one

hundred dollars, exclusive of interest, in any case arising in his county, or is absent or unable to perform his duties, and no judge interchanges services or performs the duties of such interested judge, or if there is a vacancy in the office in any county, the duties shall be performed in the same county by the judge of any other county designated by the register, from time to time as necessity or convenience may require.

SECT. 26. 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," except as herein amended or modified, is hereby re-enacted.

SECT. 27. This act shall take effect when approved.

Approved March 3, 1879.

CHAP. 155.

Judge being a party interested to amount of \$100, or unable to perform his duties, and no Judge interchanges services; or if a vacancy exists in any county, duties to be performed by some other Judge designated by the register.

Ch. 74 of public laws of 1878 re-enacted, except as herein amended.

Chapter 155.

An Act to regulate the taking and shooting of pigeons.

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

Whoever wilfully commits any trespass in the towns of Harmony or Hartland, in the county of Somerset, by killing pigeons on, or frightening them from beds made for the purpose of taking them in nets, or otherwise, by firing guns or in any other manner, within one hundred rods of the same, except on lands lawfully occupied by himself, shall pay a fine not exceeding ten dollars; and shall also be liable for the actual damages to the owner or occupant of such beds.

Pigeon beds in Harmony and Hartland—
Protection of.

Fine of \$10.

Approved March 3, 1879.

Chapter 156.

An Act to modify and limit the liability of Towns and Cities, in actions for damages by reason of defects in Highways.

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

SECT. 1. No person shall recover more than two thousand dollars damages against any town or city, in any action on account of injury to his person and property, by reason of any defect or want of repair or sufficient railing, in any highway, townway, causeway or bridge.

\$2000—the highest amount that can be recovered in action against town on account of defective highway.

SECT. 2. No town or city shall be liable to any action for the recovery of damages to any person on foot, on account of snow or

Slippery sidewalk no cause of action.