

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

SIXTY-THIRD LEGISLATURE

OF THE

STATE OF MAINE.

1887.

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PUBLIC LAWS
OF THE
STATE OF MAINE.

1887.

Chapter 137.

An Act to abolish Imprisonment for Debt except in cases of fraud.

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

No execution on a judgment shall run against the body of the debtor.

—exceptions.

SECT. 1. No execution issued on a judgment founded on a contract, express or implied, or on a prior judgment on contract, shall run against the body of the judgment debtor, except as hereinafter provided, or unless the debtor was arrested on the original writ as provided in section two of chapter one hundred and thirteen of the revised statutes.

Owner of judgment may cause debtor to disclose at any time.

SECT. 2. The owner of such a judgment remaining unsatisfied in any part, may have a disclosure of a judgment debtor's business affairs at any time, by proceeding as hereinafter provided.

Owner may make application to magistrate for subpoena to compel debtor to appear and to make disclosure.

SECT. 3. Such owner, or his attorney, may make application in writing to a disclosure commissioner, judge of probate, register of probate, or judge of a municipal or police court, in the county in which the judgment debtor resides, stating the amount of the debt and of the costs for which said judgment was rendered, the court and term at which it was rendered, the names of the original parties, the title of the petitioner, and praying for subpoena to issue to the debtor to appear and make disclosure.

Subpœna shall be issued to debtor to appear.

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

How subpoena may be served.

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

—notice to debtor.

Examination of debtor.

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

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

Petitioner may put questions and have sworn answers in writing.

SECT. 8. If, on such examination and hearing, the magistrate is satisfied that the debtor's disclosure is true, and does not discover anything therein inconsistent with his taking the oath, the magistrate may administer to him the oath prescribed by section thirty of chapter one hundred and thirteen of the revised statutes.

When magistrate may administer oath.

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

Attachable property disclosed, which cannot be come at, how appraised and set off.

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

Petitioner may demand it within thirty days.

—If not demanded, shall be returned to debtor.

SECT. 11. If an execution debtor discloses real estate liable to be seized on execution, the magistrate shall give the petitioner a certificate thereof, stating the names of the parties and the amount of the execution; and the petitioner shall have a lien thereon for thirty days thereafter, if he files the certificate with the register of deeds of the county or

Preservation of petitioner's lien on real estate, disclosed.

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district where the real estate lies, within five days from the date of the disclosure; and the register shall enter and file it like officers' returns of attachments.

Lien on personal estate, disclosed.

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

—effect, if debtor or other person conceals it.

Persons holding property in trust, or in fraud of creditors, may be compelled to appear and testify.

SECT. 13. If said magistrate finds reasonable cause to believe that any other person holds any property or credits of the debtor in trust for him, or in fraud of his creditors, or if the petitioner shall make oath that he believes that such other person so holds property of the debtor, the magistrate shall issue a similar subpœna to such person to appear and testify in relation thereto, the same to be served as subpœnas in civil suits. The testimony of such witness may be reduced to writing, and signed by him, and if it shall satisfactorily appear to the magistrate, from all the evidence in the case, that such person so holds property or credits of the debtor, he shall so certify upon the execution; and the petitioner shall have a lien upon said property or credits for thirty days succeeding such disclosure, to be enforced by bill in equity or trustee process, and if upon such bill in equity or trustee process, the court finds such property or credits to be so held as aforesaid, it may order the same, or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the petitioner; and if the parties cannot agree upon the value of such property or credits, they shall be assigned to the petitioner, if he shall give such trustee a bond with sufficient surety, accepted by the court, to account for and pay over to said trustee, the surplus

—if property is disclosed, magistrate shall certify to it.

—petitioner shall have lien; how enforced.

of the proceeds of such property or credits, after satisfying said judgment and costs.

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

If debtor refuses to appear, he shall be adjudged in contempt, and shall pay costs.

SECT. 15. If the debtor, or other person duly served with subpœna, refuses to testify in obedience thereto, or refuses to answer any proper question, or if the debtor refuses to make full disclosure upon all matters named in section six, or if said debtor refuses to comply with any proper order of the magistrate, or perform the duty imposed upon him by section ten, he shall be adjudged to be in contempt, and be committed to jail until he purges himself of such contempt by compliance, or is otherwise discharged by due process of law. The warrant of commitment shall state specifically the contempt of which the prisoner is guilty.

If debtor refuses to testify, he shall be committed for contempt.

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

Magistrate may adjourn.

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

Competent testimony may be introduced by either party.

SECT. 18. Section sixty-seven of chapter one hundred and thirteen of the revised statutes, shall apply to disclosures under this act.

Sec 67, ch. 113, R. S., shall apply.

SECT. 19. After the oath mentioned in section eight of this act is administered, and the property disclosed is secured, and the debtor has complied with all proper orders of such magistrate, a certificate of the fact of such disclosure shall be indorsed by the magistrate under his hand and seal, on the execution issued upon the judgment upon which the disclosure is had, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment or on any judgment founded thereon, and the body of the debtor shall there-

When property disclosed is secured and debtor has complied with all orders, fact shall be indorsed on execution and body of debtor shall be free from arrest.

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after be forever free from arrest on any execution so issued, except as provided in sections twelve and eighteen of this act.

If debtor fails to obtain benefit of oath, fact shall be indorsed on execution and he may be imprisoned.

SECT. 20. If upon such disclosure, the debtor fails to obtain the benefit of the oath provided for in section eight, the magistrate shall, under his hand and seal, indorse a certificate of that fact upon the execution in force at the time of such disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment, or on any judgment founded thereon, and such subsequent execution shall run against the body of said debtor. The magistrate shall also issue a capias under his hand and seal, and annex the same to said execution in force at the time of such disclosure, and the debtor may be arrested and imprisoned on said capias and execution, the same as upon executions issued in actions of tort.

If debtor fails to appear, he shall be defaulted.

SECT. 21. If the debtor fails to appear and submit himself to examination, at the time and place named in the subpœna, his default may be recorded and like proceedings had as in section twenty.

Proceedings for release of debtor when arrested.

SECT. 22. When a debtor is arrested upon said capias and execution, or upon any subsequent execution upon which a copy of either of the certificates required by sections twenty and twenty-one has been indorsed, all subsequent proceedings for his release shall be the same as in case of arrest or imprisonment on executions in actions of tort; but if said debtor fails to obtain his discharge at any subsequent examination before justices of the peace and quorum, he shall not a second time disclose before such justices, but may thereafter apply to a justice of the supreme judicial court and disclose as provided in section forty-six of chapter one hundred and thirteen of the revised statutes.

—if debtor fails to obtain discharge, he may apply to a justice of S. J. court, for appointment of a commissioner, before whom to disclose the second time.

Fees of magistrate.

SECT. 23. The magistrate shall be entitled to twenty-five cents for each subpœna, twenty-five cents for capias, twenty-five cents for certificate, and three dollars for each day in hearing the disclosure and other testimony, and for entering default, one dollar. The fees of officers shall be the same as for service of other process of similar nature. The petitioner may, if the magistrate authorizes it, procure an officer to be in attendance during the proceedings, and the fees for such attendance shall be seventy-five cents a day. The above fees shall be paid by the petitioner, and in case the oath named in

—fees of officers.

—fees, by whom paid.

section eight is administered, shall be added to the costs on the judgment and execution and taxed in detail thereon by the magistrate. In case said oath is not administered to the debtor, the petitioner shall recover his costs and said fees, as in actions before a trial justice, and the magistrate shall issue a separate execution therefor.

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

Debtor shall not be required to disclose twice on same judgment.

SECT. 25. Any magistrate who has once refused to administer to the debtor the oath named in section eight, shall be incompetent to sit as a justice of the peace and quorum or commissioner, under section forty-six of chapter one hundred and thirteen of the revised statutes, to hear the disclosure of the debtor, in any subsequent proceedings upon the same judgment or any judgment founded thereon.

Magistrate who has once refused to administer oath, is incompetent to again hear disclosure on same judgment.

SECT. 26. Any disclosure commissioner heretofore or hereafter appointed under the provisions of section fifty-one of chapter one hundred and thirteen of the revised statutes, shall have power to perform the duties required by this act.

Disclosure commissioners may perform duties required by this act.

SECT. 27. This act shall not apply to any existing contract, pending action or existing judgment.

Act shall not apply to pending actions.

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

Errors in application or subpoena may be amended.

Approved March 17, 1887.

Chapter 138.

An Act to extirpate Contagious Diseases among Cattle.

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

SECT. 1. That for the purpose of facilitating and encouraging the live-stock interests of the state of Maine, and for extirpating all insidious, infectious and contagious diseases,

Purposes.