

MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE
REVISED STATUTES

OF THE
STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAP. 69.

Death of administrator on partnership estate, proceedings in case of. 1876, c. 116.

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CHAPTER 70.

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SEC. 1. The courts of probate for each county are courts of insolvency, and the judges and registers of probate therein are judges and registers thereof. Said courts have original jurisdiction in their respective counties of all cases of insolvency arising under this chapter, except where it is otherwise specially provided.

SEC. 2. Each court shall be held at the established places for holding probate courts, at such times as the judge appoints, and may be held at such other places as 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.

SEC. 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.

What may be done in vacation. 1878, c. 74, § 3. Powers and duties of judge. 1878, c. 74, § 4.

SEC. 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.

Records, how to be made, and files kept. 1878, c. 74, § 5.

SEC. 5. The proceedings in courts of insolvency are 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, are in all cases admissible as evidence, the same as originals.

—office copies admissible as evidence.

The judge may compel attendance of witnesses, and take testimony, to be used in another court. 1881, c. 26.

SEC. 6. The judge of any court of insolvency has the same power to compel the attendance and take the examination of witnesses residing in his county, on application made to him by any person interested, as the judge of said court in the county where the proceedings are pending; and such witnesses shall attend and testify in relation to the insolvent estate and the dealings of the insolvent, and the testimony shall be reduced to writing and filed in the court where the proceedings in insolvency are pending.

Powers and duties of register.

SEC. 7. The register may administer all oaths required in the course of proceedings before the court, except the oath provided by section

forty-three, 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.

SEC. 8. All assignments, warrants, orders of notice and processes issuing from the court shall be under its seal, 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.

SEC. 9. 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.

SEC. 10. The judges, or a majority of them, may make rules in writing, for regulating and conducting the business of their courts, and shall submit the same to the supreme judicial court for approval, amendment or alteration.

SEC. 11. The judges may interchange services, or perform each others' duties, when they find it necessary or convenient, and if a judge is interested in any case arising in his county, wherein the amount of one hundred dollars is claimed, exclusive of interest, 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 any county, the duties shall be performed therein by the judge of any other county designated by the register, from time to time as necessity or convenience requires.

SEC. 12. In all cases of appeal in insolvency, such appeal shall be taken to the supreme judicial court next to be held within and for the county where the proceedings are pending, and shall be heard and determined by any justice thereof, either in term time or vacation. Upon the hearing of such appeal, there shall be exceptions 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 them shall be sent to the chief justice within ten days after they 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 such exceptions shall be considered and decided by the justices of said court as soon as may be, and the decision shall be certified to the clerk of said court in the county where the case is pending. If arguments by either party are not 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, not exceeding 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, the judge 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 so taken, notice thereof shall be given to the register to be entered with the record of proceedings within five days after rendition of the decision or judgment appealed from. But if the appellant, in writing, waives his

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1878, c. 74, § 6.

Warrants, assignments, and other processes to be under seal.
1878, c. 74, § 7.
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—return.
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1878, c. 74, § 8.

Majority of judges may make rules.
1879, c. 154, § 1.

Judges may interchange services.
1879, c. 154, § 25.
—when register may designate judge of another county to perform duty.

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1879, c. 154, § 2.
73 Me., 265.
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1878, c. 74, § 10.

—decision, to whom to be certified.
1879, c. 154, § 2.
1878, c. 74, § 10.

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appellant
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1878, c. 74, § 11.
1879, c. 154, § 3.
1878, c. 74, § 11.
69 Me., 598.
71 Me., 155,
391.
73 Me., 265.
74 Me., 586.
1879, c. 154, § 3.
1878, c. 74, § 11.
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1878, c. 74, § 12.

Debtor may
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If debts
amount to
\$300, judge
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warrant.
1878, c. 74, § 14.
70 Me., 513.
—sheriff acts
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1879, c. 154, § 4.
1878, c. 74, § 14.

—notice, how
given, and
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state.

1879, c. 154, § 4.
1878, c. 74, § 14.

When credit-
ors make
application,
setting forth
certain alle-
gations, the

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. No appeal in insolvency lies in any case arising under this chapter unless specially provided for herein.

SEC. 13. The supreme judicial court has full equity jurisdiction in all insolvency matters; the powers herein granted may be exercised by said court or any justice thereof in term time or vacation, upon bill, summary petition, or other proper process, and upon the request of either party the justice before whom a final hearing in any proceeding in equity is had, shall certify to the full court for decision, questions of law involved in such proceedings, to be heard and determined in the manner provided in the preceding section.

SEC. 14. In this chapter the words "assignee," "creditor" and "debtor" include the plural also; the word "messenger" includes his assistants; and the word "sheriff" includes deputy sheriff.

PROCEEDINGS IN INSOLVENCY.

SEC. 15. Any inhabitant of the 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 chapter.

SEC. 16. 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, not exempt from attachment, and of all his deeds, books of account and papers relating to his property and estate, and safely keep the same 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 directs, to all creditors upon the schedule furnished him by the debtor, which notice shall state:

I.—That a warrant has issued against the estate of the debtor.

II.—That the payment of any debts, to or by said debtor, and the delivery and transfer of any property by him, are forbidden.

III.—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 at a time and place designated in the warrant, not less than ten nor more than thirty days after the issuing of the same.

SEC. 17. When one or more creditors of a debtor makes application under oath, by petition by them signed, to the judge of the county in which the debtor resides, or from which he has absconded or removed beyond the state, within six months before the filing of said petition,

leaving property or estate in said county, setting forth that they believe that their aggregate debts provable under this chapter, 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 chapter, 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, the judge shall 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 situated within the state, and forbidding the payment to or by such debtor of any debt, demand or claim, 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 is 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, and the debtor 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 service of the copy of the application and warrant upon such debtor, or the giving of such other notice provided by this section, as the judge may order, and until the revocation of such warrant, any payment of a 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 him, or his agent or attorney, shall be null and void. If upon hearing or default, the judge finds the allegations of such application to be true and proved, and that said debtor is insolvent, he shall issue his additional warrant to said sheriff or either of his deputies, and cause such other proceedings to be had as are provided in the preceding section.

SEC. 18. When the warrant is issued as provided by this chapter, commanding the messenger to take possession of all the estate, real and personal, of the debtor, not exempt from attachment and seizure on execution, and of all his deeds, books of account, and papers relating thereto, the messenger shall forthwith demand and receive from the debtor, and other persons, all the estate of the debtor, with all deeds, books of account, and papers relating thereto. If such warrant is revoked, such estate, deeds, books and papers, shall be returned to the debtor or his legal representatives.

SEC. 19. Upon demand made by the messenger, the debtor shall forthwith deliver to him all his estate, and all deeds, books of account and papers relating to his property and estate, and shall within five days also furnish to him a full schedule of all creditors, with their places of residence and the sum due to each so far as the same is known to the debtor, together with the consideration of the indebtedness, and a state-

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judge may issue warrant for attachment of property, and forbidding payments, sales, transfers and contracts, by debtor or his representatives.
1881, c. 14.
70 Me., 513.
71 Me., 391.

—register shall cause copy of warrant to be served upon debtor, and a hearing shall be had.

—payment of debts, conveyance of property, or contract of such debtor, after service or notice, and before revocation of warrant, void.
—additional warrant to issue, if allegations are proved.

When warrant is issued, messenger to demand and receive debtor's property.
1879, c. 154, § 6.

—if warrant is revoked, property to be returned.

Debtor to deliver property to messenger.
1878, c. 74, § 17.
1879, c. 154, § 7.
1878, c. 74, § 17.
—furnish schedule of creditors;

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When debtor
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1883, c. 21, § 3.

Judge may
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1878, c. 74, § 18.

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1878, c. 74, § 19.
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1878, c. 74, § 20.
1879, c. 154, § 8.
1878, c. 74, § 20.
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or minor
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Secured
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for assignee.
1878, c. 74, § 21.
72 Me., 268.

What debts
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1879, c. 154, § 9.
71 Me., 438.

—what else
may be
proved.

—unliquidat-
ed damages,
how
disposed of.

—contingent
debts and
liabilities.

ment 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 owned by him, and the place where the same is situated.

SEC. 20. When it appears to the satisfaction of the judge of any court of insolvency that the debtor has withheld and not delivered to the messenger or assignee any part of his property or estate not exempted under this chapter, such judge may, upon application and after hearing, order delivery of such property or estate, and enforce the order or decree, as provided in section four.

SEC. 21. Upon application, in writing, of any party interested, and after due public notice and notice to the debtor, the judge may order the messenger to sell, for cash, in such manner as he directs, any part of the debtor's estate; and in his own name, as messenger, to 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.

SEC. 22. Upon the election of an assignee, the messenger shall deliver to him all the property held by him, and cash received 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.

SEC. 23. If the debtor dies after commencement of proceedings, such proceedings shall be continued and concluded in like manner, and with like validity and effect as if he had lived. The judge may make such an allowance to the widow or minor children of the deceased out of such estate, as the judge of probate may, out of estates of deceased persons under his jurisdiction.

SEC. 24. 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 files with the register a discharge of his security, and proves his claim against the estate as an unsecured debt.

SEC. 25. 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 deems 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 orders, and he may prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise, for the insolvent, who has paid the debt, or any part thereof, in discharge of the whole, may prove such debt, or stand in the place of the creditor, if the creditor has proved the same, although such payments were 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, under section ten, 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. No debt shall be proved or allowed unless the creditor or his authorized attorney makes oath in substance as follows:

"I, ———, 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 which 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 further swear that said claim was not procured by me for the purpose of influencing the proceedings in this case; and 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."

Such proof may be made, and such oath taken before the register of any court of insolvency, or at the creditor's own expense it 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 are pending. Such oath or affidavit is 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 to the claimant or his attorney as he directs, 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

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—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 whole debt; proceedings.

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

—debts not specified, disallowed.

—oath.
1878, c. 74, § 22.

—form of creditor's oath.

—before whom, proof must be made and oath taken.

—interested person may file objection to allowance of claim.

—proceedings.

CHAP. 70. claims, and all matters connected therewith; whenever the party to be so examined does 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 such witness resides, and such examination shall be taken upon oral or written interrogatories. The notice given to such witness 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, without good cause neglects or refuses to appear and submit to such examination, the judge may reject such claim without further hearing thereon, and witnesses are entitled to the usual fees allowed in probate courts. The assignee, claimant, 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 held within the county where the proceedings in insolvency are pending, which appeal shall be taken, heard and determined, as provided in section twelve.

—notice.

—if claimant fails to appear, claim may be rejected.

—assignee, claimant, creditor, or other interested person, may appeal. 1879, c. 154, § 9.
—how taken and heard.

Claim, when proved. 1878, c. 74, § 23. 1879, c. 154, § 10.

Secured creditors, how considered. 1878, c. 74, § 24. 72 Me., 268.

SEC. 26. Any creditor may prove his claim at any time before the final dividend.

SEC. 27. For the purpose of making the application provided by section sixty-two, of effecting the composition therein provided, and of proving claims against the estate of an insolvent, a creditor, who holds security, shall be considered a creditor only for the amount of his debt above the value of his security.

I.—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 on said application, if any is had.

II.—In case of composition, such value shall be determined by the judge, on application of either the creditor or debtor.

III.—In case of proof of claims, such value may be determined by agreement between the creditor and assignee, or by the judge, on 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.

Proof may be postponed. 1878, c. 74, § 25.

SEC. 28. The judge may postpone the proof of any debt until after an assignee is elected or appointed.

Property accepted under preference, to be surrendered. 1878, c. 74, § 26.
—assignee to recover back dividend paid to creditor whose claim is disallowed. 1879, c. 154, § 11.

SEC. 29. A person who has accepted any preference, knowing that 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 surrenders to the assignee all property, money, benefit or advantage received by him under such preference. 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 such disallowance.

Creditor may act by att'y. 1878, c. 74, § 27.

SEC. 30. A creditor may act at all meetings by his authorized attorney, as if personally present.

Creditors, how

SEC. 31. At the first meeting, the creditors, in presence of the judge,

shall 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 is 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 he may at any time for good cause shown, remove an assignee and appoint another in his place.

SEC. 32. The judge shall require the assignee to give bond for the faithful performance of his duties, in such sum as he directs, and with such sureties as he approves.

SEC. 33. The judge shall, by an instrument under his hand, assign and convey to the assignee, all the estate, real and personal, of the debtor, not exempt from attachment and seizure on execution, together with all deeds, books of account, and papers relating thereto, which assignment shall be recorded forthwith in the registry of deeds for the county where such proceedings are pending, and in the registry of deeds in each county in which there is 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 vest the title to all the property and estate of the debtor not exempt from attachment and seizure on execution, in the assignee, although the same is then attached on mesne process as the property of the debtor, or is claimed under a mortgage given by the debtor to secure a debt to a prior existing creditor, which has not been recorded at least three months prior to commencement of insolvency proceedings, and such assignment dissolves any such attachment made within four months, and any such mortgage not recorded at least three months preceding the commencement of such proceedings. Such assignee may sue for and recover, by action at law, or 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 said proceedings; and is received by the creditor as a preference, in violation of this chapter, and when the creditor knows, at the time such payments are made, that the debtor making the same is insolvent.

SEC. 34. Whenever any creditor of a debtor, by or against whom proceedings in insolvency shall be commenced, at any time within four months prior to the commencement of such proceedings, commences 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 are 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

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to choose assignees. 1879, c. 154, § 12.

—judge may confirm choice, appoint additional assignees, or remove for cause.

Assignee may be required to give bond. 1883, c. 180.

Judge shall assign and convey property to assignee. 1880, c. 199, § 2. 71 Me., 435. 74 Me., 335, 469.

—assignee shall give notice of election. See c. 81, § 68.

—attachments, made within four months, dissolved.

—when money paid by debtor upon writ, judgment or execution within two months, may be recovered.

Assignee may prosecute to final judgment, suit commenced by creditor within four months prior to commencement of insolvency proceedings. 1878, c. 74, § 31.

—proceedings.

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Disposal of property.
1878, c. 74, § 32.
71 Me., 155.

SEC. 35. 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 disposal of the insolvent estate as he deems proper, and any assignee may 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 shall arise under this chapter; and he 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.

Sale of property in dispute, may be ordered by judge.
1878, c. 74, § 33.

SEC. 36. 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 he deems reasonable, order the sale thereof in such manner as he directs, 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. But this provision shall not prevent the recovery of the property from the possession of the assignee by an action of replevin commenced before the judge orders the sale.

Claimant of property sold and in dispute, must sue within sixty days.
1883, c. 214, § 4.

SEC. 37. The claimant of property sold under section thirty-six shall bring his suit against the assignee, to be served on him within sixty days after the judge orders such sale, to recover compensation for the value thereof, or be precluded thereafter from maintaining any action at law or in equity for its recovery.

Assignee to deposit money, and account for interest.
1878, c. 74, § 34.

SEC. 38. The assignee shall deposit in his own name, as assignee, in such bank as the judge approves, all money coming to his hands belonging to the insolvent estate, and shall account for all interest received thereon.

Dividends, when declared and paid, 1878, c. 74, § 35.—dividends declared, shall not be disturbed by

SEC. 39. Whenever an assignee receives from the estate assets available to pay a dividend equal to twenty-five per cent. of the debts proved, exclusive of expenses, he shall declare and pay such dividend, and render an account thereof to the judge. No dividend already declared, shall be disturbed by reason of debts being subsequently

proved, but the creditors proving such debts are entitled to a dividend equal to those already received by the other creditors, before any further payment is made to the latter. 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 is 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 directs, and when the same is made, the assignee shall exhibit an account of the full settlement and disposal 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. No dividend shall be paid or declared without the approval of the court, entered of record. The register shall give not less than five days' notice, to all creditors named in the schedule of debts, of all dividends about to be declared, and shall receive the same fee as for other notices.

SEC. 40. In making a dividend under the preceding section, the following claims shall first be paid in full, in their order.

I.—The fees, costs and expenses of suits and proceedings in insolvency.

II.—All debts and taxes due to the State or to any county, city or town therein, and to the United States, except debts due to the State in behalf of the state prison.

III.—Wages due to any operative, clerk, or house servant, not exceeding fifty dollars, for labor performed within six months preceding the filing of the petition.

SEC. 41. An assignee may, with consent of the judge, resign his trust and be discharged therefrom, and from any personal liability, if he has acted in good faith. 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 he directs; 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 directs, 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.

SEC. 42. 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, signed by the person examined, and placed upon the files of the court. The insolvent shall execute all such conveyances, powers of attorney, or other instruments, and do such acts as the assignee may require, under direc-

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debts subsequently proved.
1879, c. 154, § 14.
—proceedings in case of contingent or disputed claims.
1878, c. 74, § 35.

—dividends not to be paid, without approval of court.
1883, c. 214, § 2.
—notice by register.

What claims paid in full.
1878, c. 74, § 36.
71 Me., 404.
Order of payment.
1879, c. 154, § 15.
1878, c. 74, § 36.
1883, c. 124.
1878, c. 74, § 36.
1879, c. 154, § 15.

Assignee may resign.
1878, c. 74, § 37.
—vacancies, how filled.

Debtor shall submit to examination before certificate is granted.
1878, c. 74, § 38.

—insolvent to execute conveyances, &c.
1879, c. 154, § 16.

CHAP. 70. tion of the court, to enable the assignee to recover and receive the estate of the insolvent.

Second meeting of creditors. 1879, c. 154, § 17. 1878, c. 74, § 39.

—oath.

—form of debtor's oath.

SEC. 43. The assignee, with the approval of the judge, shall appoint a second meeting of the creditors, to be held at such place as he designates, not more than three months after the date of the warrant, and 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 :

"I, ———, 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 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 account, 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 come to my possession or knowledge; and I further swear that no part of my estate or effects is made over, concealed or disposed of in any manner for the future benefit of myself, my family, or any other person, or to defraud my creditors."

DISCHARGE.

Debtor may apply for discharge, after four months. 1878, c. 74, § 40. 1880, c. 199, § 1. 1878, c. 74, § 40.

—notice to creditors. —creditor opposing discharge, may file specifications.

—if insolvent has conformed to law, court shall grant discharge. 1880, c. 199, § 1. —exception. —appeal may be taken to supreme court. —proceedings.

—question of discharge to be tried by jury. —exceptions.

Second discharge requires consent of majority of creditors. 1878, c. 74, § 41.

SEC. 44. At any time after four months from the commencement of proceedings, 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 such discharge should not be granted. Any creditor opposing the discharge may file a specification in writing of the grounds of his opposition, and a hearing shall be had thereon at such time as the judge appoints. If it appears to the court that the insolvent has in all things conformed to his duty under this chapter, and that he is entitled thereto, 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. When the judge grants or refuses a discharge under the provisions aforesaid, there shall be an appeal to the supreme judicial court, next to be held within the county where the proceedings in insolvency are pending, to be taken, heard and determined in the manner provided in section twelve. The party appealing shall, at the time of entering his appeal in the supreme judicial court, file 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 may be had as to matters of law, to be heard and decided as provided by said section.

SEC. 45. 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 is first filed in the case, and 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 is first filed in the case, and verified in like manner.

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—third,
three fourths.

SEC. 46. 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 this chapter, 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 March twenty-three, eighteen hundred and seventy-eight, kept a cash book and other proper books of account. And the discharge is null and void, if the debtor, or any person in his behalf, has procured the assent of any creditor thereto, by any pecuniary consideration or promise of future preference.

Discharge shall not be granted, or if granted, is not valid, in cases of fraud.
1878, c. 74, § 42.
72 Me., 490.

—null and void, if assent of creditor is purchased.

SEC. 47. 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, is discharged by proceedings in insolvency, but such debt may be proved and the dividend thereon shall be a payment on account of such debt.

What debts are not discharged.
1878, c. 74, § 43.
1879, c. 154, § 19.

SEC. 48. 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, indorsers, &c., not released.
1878, c. 74, § 44.

SEC. 49. A discharge in insolvency duly granted shall, subject to the limitations in the two preceding sections, within this state, release the insolvent from all debts, claims, liabilities and demands, which were or might have been proved 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 thereof, which shall bar 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. Any creditor of an insolvent whose debt was proved or provable against the estate in insolvency, and who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may 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-six, it is intended to prove against the insolvent, and shall set forth

Liabilities, from which insolvent is released.
1878, c. 74, § 45.
1879, c. 154, § 20.
1878, c. 74, § 45.
70 Me., 410.
74 Me., 160.

—certificate, conclusive evidence.

—creditor, contesting validity of discharge, may apply in writing to the court in two years.
1879, c. 154, § 20.

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—what the application shall set forth.
 —what evidence is admissible.
 —application amendable.
 —notice.
 —hearing and decision.
 —on what grounds, discharge may be annulled.
 —when judgment shall be rendered for insolvent.
 —appeal to supreme court.

—what appellant shall file.

—at request of either party, trial by jury.
 —right of exceptions.

the grounds of avoidance; and no evidence shall be admitted as to any 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 seems proper. If, upon hearing the parties, any of the fraudulent acts set forth by the creditor against the insolvent are proved, and 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 insolvent annulled; but if none of the fraudulent acts, so set forth, are proved, or 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 held within the county where the proceedings in insolvency are pending, to be taken, heard and determined, as provided in section twelve. The party appealing shall, at the time of entering his appeal in the supreme judicial court, file 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 may be had as to matters of law, to be heard and decided as provided by said section.

MISCELLANEOUS PROVISIONS.

Set-off of claims.
 1878, c. 74, § 46.
 1879, c. 154, § 21.
 1878, c. 74, § 46.
 Creditor cannot bring suit against debtor, until discharge is refused.
 1878, c. 74, § 47.
 70 Me., 409.

—liability to arrest.

SEC. 50. No claim purchased after commencement of proceedings in insolvency, shall be set off against a claim due the estate prior to such purchase.

SEC. 51. No creditor shall commence or maintain any suit against the insolvent debtor, upon a claim or demand which he has proved against such debtor in insolvency, until after a discharge has been refused such debtor, *provided*, that such debtor proceeds with reasonable diligence to obtain such discharge; and no debtor against whom a warrant in insolvency has been issued is liable to arrest on mesne process or execution, where the claim was provable in insolvency during the pendency of the proceedings, unless the same is unreasonably protracted by the fault or neglect of such debtor.

SEC. 52. If any person, being insolvent or in contemplation of insolvency, within four months before the filing of the petition by or against a debtor, 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 such payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe that 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

Fraudulent attachment, or conveyance of property, is void.
 1878, c. 74, § 48.
 1879, c. 154, § 22.
 1878, c. 74, § 48.
 74 Me., 189.

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 is *prima facie* evidence that such sale, assignment, transfer or conveyance was intended as such preference, in violation of this chapter; but nothing in this chapter shall 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.

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—loans of actual value, secured in good faith, not invalidated.

SEC. 53. 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 a day for himself, and three dollars a week for each member of his family, and for such time not exceeding three months, as the judge may order.

Allowance to debtor.
1878, c. 74, § 49.

SEC. 54. 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 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 the preceding section, he shall be punished by imprisonment in jail not more than one year, or by fine of not more than five hundred dollars.

Penalty, for disposal of property to defraud creditors.
1878, c. 74, § 50.

SEC. 55. Whoever knowingly and wilfully aids the debtor after the commencement of proceedings against him under this chapter, in concealing any property, books or papers relating or belonging to such debtor's estate, with intent to prevent the same from coming to the hands of the assignee of such debtor, or to defraud the creditors of such debtor, or by himself, his agent or attorney, makes any fraudulent purchase or fraudulent agreement to purchase of the messenger or assignee having possession thereof, any property or estate of such debtor, at a less price than its fair market value, shall be punished by imprisonment in jail not more than one year, or by fine of not more than five hundred dollars.

Penalty, for aiding to defraud creditors.
1878, c. 74, § 51.
1879, c. 154, § 23.
1878, c. 74, § 51.

SEC. 56. If any messenger or assignee having possession of the debtor's estate under a warrant, as provided by this chapter, knowingly and wilfully suffers any property belonging to such estate to be destroyed or wasted, or fraudulently sells or causes to be sold or disposed of, any property belonging to the estate of the debtor at less than its fair market value, he shall be punished by imprisonment in 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.
1878, c. 74, § 52.

PARTNERSHIP.

SEC. 57. This chapter applies to all cases where two or more persons are doing business within the state as partners, and where either of such persons resides in the state, and in such cases the notice required shall be given to all the known partners residing within the state. Either partner may file his petition as herein provided, which shall aver 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

Partnership.

—scope of this chapter.
1878, c. 74, § 53.
70 Me., 378.

—either partner may file notice.

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--notice to be given to each partner.

--schedule, to contain names of creditors of firm and of each member.

--property of firm and of each partner, to be returned to assignee.

--how creditors may prove debts.

Assignee, how chosen.

--shall be assignee of firm, and of estate of each partner, and keep separate accounts.
1878, c. 74, § 54.
70 Me., 366.
73 Me., 266.

--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.
1878, c. 74, § 55.

Allowance to partners.
1878, c. 74, § 56.

This chapter applies to corporations.
1878, c. 74, § 57.

--exceptions.

creditors that its property and estate should be distributed according to this chapter, but no warrant shall issue until such notice as the judge directs has been given to the remaining partners, and upon hearing, it appears to the satisfaction of the judge that the allegations in the petition are true. The schedule shall contain the names of all creditors of the firm, and their residences, so far as known, the amount due to each with the consideration therefor, 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 member of the firm. Upon issuing the warrant, all the property and estate of the partnership, and all the separate estate of each partner, not exempt from attachment, shall come into the hands and possession of the messenger, and shall be returned to the assignee, and be 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 herein provided.

SEC. 58. The assignee shall be chosen by the creditors of the partnership, and shall also be assignee of the estate of each separate member thereof, 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 from 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 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. Any balance of the partnership assets remaining after payment of the partnership debts, 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 if anything remains it shall be divided among the several partners, according to their respective interests.

SEC. 59. The certificate of discharge shall be granted or refused to each partner as it would or ought to have been if proceedings had been against him alone. In other respects the proceedings against partners shall be conducted in the same manner as against a single person.

SEC. 60. In proceedings against partners, each is entitled to the same allowance, as that provided in section fifty-three, to continue for such time as the judge directs, not exceeding two months.

CORPORATIONS.

SEC. 61. This chapter applies to all corporations created by the law of the state, carrying on manufacturing, trading, mining, building, insurance or other private business, but does not apply to corporations engaged in 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 petition of any officer authorized by legal vote of such corporation, passed at a legal meeting called for that purpose, or upon petition of any creditor or creditors of such corporation, made and presented as in this chapter is provided in the case of an individual debtor, and upon such notice as the judge orders, a hearing shall be had upon such petition, and if it appears 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 insolvent, and a warrant shall issue against its property and effects, as hereinbefore provided; and all the provisions of this chapter relating to proceedings subsequent to the issuing of a warrant against the estate of an individual debtor, apply to said corporation and the disposal of its effects and estate, but no discharge shall be granted to such corporation, and nothing in this chapter affects the liability of any stockholder in such corporation as is now provided by law.

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—proceed-
ings.

—no dis-
charge to be
granted, and
liability of
stockholder
not affected.

GENERAL PROVISIONS.

SEC. 62. In all cases of insolvency where the liabilities exceed three hundred dollars, if the debtor or debtors at any meeting of the creditors produce an affidavit by him or them signed and sworn to before the judge or register, of the tenor following:—

“I, ———, of ———, in the county of ———, solemnly swear that I have not removed, concealed or secreted any money, papers, securities, effects, or property, real or personal, with 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 preferring any of my creditors; and that I have not, directly or indirectly, given to 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 hereto annexed and signed by me.”

Debtor shall
produce
affidavit.
1878, c. 74, § 58.
1879, c. 154,
§ 24.
1878, c. 74, § 58.
71 Me., 435
—form of
affidavit.

And at the same time also produces an agreement signed by a majority in number of his creditors, each of whose debts exceeds fifty dollars, and by creditors holding three fourths of all his indebtedness, in the form following:—

—creditors’
agreement.

“We, the undersigned, creditors of ———, of ———, in the county of ———, 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 thereof. We have not, directly or indirectly, received any compensation or promise of future payment beyond the per cent. herein named.”

—form of
agreement.

And if the judge is satisfied that such agreement is signed by said —if agree-

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ment is satisfactory, judge shall give debtor discharge. 1883, c. 214, § 1. 1878, c. 74, § 58.

—not valid, in case of fraud or falsehood.

1879, c. 154, § 24. 1878, c. 74, § 58.

—debtor to pay expenses.

When debtor is ignorant of holder of note or bill, he shall describe debt. 1883, c. 214, § 1.

—creditor not found or refusing to accept percentage, amount to be deposited in court.

—claim not proved and percentage accepted in six months, to be repaid to insolvent.

—no discharge granted unless percentage paid.

Any person whose debts do not exceed \$300, may make assignment. 1878, c. 74, § 59. 71 Me., 435. 74 Me., 159. —proceedings.

proportion of the creditors of such debtor, and that he has either paid or secured to all the creditors whose names appear in the schedules annexed to his affidavit, the percentage named in such composition agreement and according to the terms thereof, he shall give to 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 insolvency proceedings, and named in the schedule annexed to said affidavit. Such discharge is not valid if the signature of any creditor has been obtained by fraud, or if any material statement contained in such affidavit or schedule is false, to the knowledge of the debtor making the same, and any creditor may within two years, sue for and recover the balance of his claim or debt against such debtor. If the proceedings are by or against a co-partnership, 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 is granted, the debtor shall pay all expenses incurred during the proceedings.

SEC. 63. In proceedings for composition, where a debt arises on a bill of exchange or promissory note, if the debtor does not know who is the holder thereof, he shall state its amount, the date on which it falls due, the names of the acceptor and payee, and all other particulars within his knowledge respecting the same; which shall be a sufficient description by the debtor in respect to such debt. If any creditor named in the debtor's schedule of debts cannot be found, or refuses to accept the percentage due him under such proceedings, the debtor may deposit in court the amount of such percentage in money, which shall be a security for said debt. If any such creditor, at the end of six months after said deposit, fails to prove his claim and accept said percentage, the court may order the same to be repaid to said insolvent, or, after notice to him, make such distribution thereof as justice requires. No discharge shall be granted to a debtor under such proceedings, unless the judge is satisfied that the debtor has either paid or secured the percentage, named in his composition agreement, to all the creditors whose names appear in the schedule annexed to his affidavit.

SEC. 64. Any person whose debts do not exceed 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 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 known, and thereupon the register shall, with approval of the judge, appoint the time for a hearing thereon, before the judge, or such person as he appoints to take such examination, and shall give such notice to the creditors, of the time and place of such hearing as the judge orders, and any creditor may appear at such hearing and examine the debtor, under oath, concerning his business, property and effects, and the disposal thereof. Such examination shall be confined within such limits as the judge directs, and in no case shall such examination extend 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 appears 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 him the following oath:—

"I, ———, 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 further swear that I have delivered to ———

—form of oath.

——, the register of probate, all my estate, rights and credits, except such as is exempt from attachment and seizure on execution; and I further swear that no part of my estate, rights or credits, has been made over, concealed, or disposed of in any manner, for the future benefit of myself, my family, or any other person, or to defraud my creditors:"

—unless he has discovered, by such examination, such facts as render it inconsistent for the debtor to take such oath, or finds that any of the statements made by him 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 thenceforth released and discharged from arrest upon mesne process or execution arising from any debt contracted prior to the taking such oath, and owing to any creditor named in said schedule. This section also applies

—judge shall give certificate of release.

to any person 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 herein specified. After the assignment and conveyance herein provided, 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 disposal, and the net proceeds thereof, after reserving such percentage as the judge decides 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, signed by the debtor and filed in the office of the register, and if the judge appoints any person to take such examination, he may allow him reasonable compensation therefor, to be paid out of the debtor's assets if they are sufficient, otherwise such compensation, or such part thereof as remains unsatisfied out of the debtor's estate, shall be paid out of the county treasury.

—this section applies to person committed to jail on mesne process or execution.

—disposal of debtor's property.

—examination shall be in writing.

—expenses shall be paid by debtor.

SEC. 65. The fees of all officers, the compensation of assignees, and of the judges and registers of probate, under this chapter, shall be established by the supreme judicial court, and shall be paid out of the estates. And in all voluntary proceedings under this chapter, the fees and costs shall be paid by the petitioners.

Fees shall be established by supreme court. 1878, c. 74, § 60. —how paid.

SEC. 66. The judges of the courts of insolvency shall prepare and file in the office of the secretary of state annually on the first Monday of January, a report of all the cases in insolvency within their respective

Judges shall report annually to secretary of state, all cases of

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insolvency,
with
particulars.
1883, .214, § 5.

CHAPTER 71.

SALES OF REAL ESTATE BY LICENSE OF COURT.

LICENSES TO SELL ESTATES OF RESIDENT OWNERS.

- SEC. 1. When license may be granted to sell, lease or exchange real estate.
 2. Judge of probate, on application, with written consent of widow, may license sale of real estate, including right of dower and reversion. Proceeds, how to be divided.

SALES AT AUCTION.

- SEC. 3. Sales to be at auction; exceptions. Appeal. Original and concurrent jurisdiction of supreme court.
 4. Bond to be filed. Conditions.
 5. Oath first to be taken.
 6. Notice to be given, before license is granted.
 7. No license shall issue, if parties give bond, and fulfil it.
 8. Notice of sale, how to be given.
 9. Judge shall certify to supreme court in certain cases.
 10. Parties may be examined under oath.
 11. Overseers of the poor shall certify in certain cases.

PRIVATE SALES, AND SALES ON OFFER.

- SEC. 12. Licenses to sell at private sale, and on offer; proceedings.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

- SEC. 13. Wife of incapacitated ward may join in guardian's deed, or release dower.
 14. Guardian may by agreement invest her interest; agreement may be enforced by the court, in equity as a trust.

SALES OF ESTATES OF NON-RESIDENT OWNERS.

- SEC. 15. Sale of estate of non-resident persons or of wards.
 16. Proof of the appointment of executor, or guardian, in another state.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

- SEC. 17. Executors, administrators and guardians of heirs may be licensed to carry into effect certain contracts of deceased.
 18. Notice shall be given, and bond required.

GENERAL PROVISIONS.

- SEC. 19. Licenses are limited to one year; but may be renewed.
 20. Sales may be adjourned.
 21. Licenses may include lands in other counties.
 22. Licenses may prescribe what land is to be sold.
 23. What estate of deceased is liable to sale. Effect of deed.
 24. Surplus proceeds of sale shall be distributed as real estate.
 25. What parties must be notified, and who may appear.
 26. Costs, when license is contested.
 27. Proof of notice of sale; certificate and record.
 28. Proof by parol, when certificate is not returned.
 29. Remedy for neglect or misconduct of person licensed.