

# MAINE STATE LEGISLATURE

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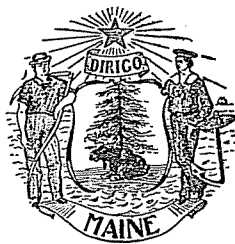
THE  
REVISED STATUTES

OF THE  
STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

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BY THE AUTHORITY OF THE LEGISLATURE.



AUGUSTA :  
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1904.

## CHAP. 72.

the partnership property is exhausted. Such proceedings already had, are valid.

Sale of co-partnership real estate when a partner has died.  
R. S., c. 69, § 7.  
See c. 73, §§ 1-5.  
74 Me., 339.

SEC. 7. The executor or administrator of a deceased member of a co-partnership, or the surviving partner, who files a bond and is authorized to close the affairs of a partnership estate, may, on application to the judge of probate of the county, be licensed to sell real estate, assets of the late partnership, in the same manner as any other executor or administrator is licensed to sell real estate, on petition and notice, and on giving bond, with sufficient sureties, to appropriate the proceeds to the payment of the partnership debts; and to pay over any balance that remains in his hands, after closing the affairs of said partnership estate, to the persons entitled to the same, and on complying with all the requirements of the law authorizing a sale of real estate.

Death of administrator on partnership estate, proceedings.  
R. S., c. 69, § 8.

SEC. 8. When the person who has given bond to administer on a partnership estate where one of the partners is deceased, dies before completing the administration, the judge may commit administration on the estate of the partnership not already administered, to such person as he thinks fit, who shall give the bond required by section two, with the necessary variations, and comply with all the provisions of this chapter applicable to such cases.

Note. Compensation of surviving partners, c. 65, § 37.

## CHAPTER 72.

## THE INSOLVENT LAW.

## COURTS OF INSOLVENCY.

Courts of insolvency, officers and jurisdiction.  
R. S., c. 70, § 1.  
70 Me., 154.  
71 Me., 152.

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.

Sessions.  
R. S., c. 70, § 2.

—may be adjourned from time to time.

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 counties. The judge may adjourn any court or meeting from time to time as occasion requires.

Acts in vacation.  
R. S., c. 70, § 3.

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.

Powers and duties of judge.  
R. S., c. 70, § 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.  
R. S., c. 70, § 5.  
81 Me., 171.

—office copies admissible as evidence.

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.

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.

The judge may compel attendance of witnesses, and take testimony, to be used in another court.  
R. S., c. 70, § 6.  
See c. 65, § 8.

SEC. 7. The register may administer all oaths required in the course of proceedings before the court, except the oath provided by section forty-five, and in the absence of the judge, may adjourn the court or meeting; he shall keep a docket with an alphabetical index of all cases, with docket entries of all papers filed and proceedings had in each case.

Powers and duties of register.  
R. S., c. 70, § 7.

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.

Warrants, assignments, and other processes to be under seal.  
R. S., c. 70, § 8.  
—service.

SEC. 9. 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.

Judges may interchange services.  
R. S., c. 70, § 11.

—when register may designate judge of another county to perform duty.

SEC. 10. 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 appeal before the entry thereof, or fails to enter the same on the first day of the term to which such appeal is

Appeal to supreme court.  
R. S., c. 70, § 12

—when heard and determined.

—exceptions, to be certified to chief justice.

—decision, to whom to be certified.

—when case may be determined without argument.

—final decision, to be certified to register.

—issues of fact.

—notice of appeal.

—when appellant waives appeal.

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—costs.

—when no  
appeal.Supreme  
court has  
equity juris-  
diction.  
R. S., c. 70, § 13.Application  
of certain  
terms.  
R. S., c. 70, § 14.  
1897, c. 325, § 1.Petition  
by debtor.  
R. S., c. 70, § 15.  
1897, c. 325, § 2.  
81 Me., 586.If debts  
amount to  
\$300, judge  
shall issue  
warrant.—sheriff  
acts as  
messenger.  
R. S., c. 70, § 16.  
1897, c. 325, § 2.  
70 Me., 513.  
81 Me., 586.—notice,  
how given,  
and contents

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. (a)

SEC. 11. 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. (b)

SEC. 12. In this chapter the word "messenger" includes his assistants; the word "sheriff" includes deputy sheriffs; "required majority" shall mean a majority in number of creditors, each of whose debts exceeds fifty dollars, and of creditors holding three-fourths of all the indebtedness; and "commencement of proceedings" shall mean the date of the filing of the petition by or against the debtor.

## PROCEEDINGS IN INSOLVENCY.

SEC. 13. 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. He shall file with his petition 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 statement of any existing mortgage, pledge or other collateral security given to secure the same, and a full list of all his assets, with a brief description of all real estate or interest in real estate owned by him, and the place where the same is situated.

SEC. 14. If it appears to the satisfaction of the judge that the unsecured 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 newspaper 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.

(a) 73 Me., 265; 75 Me., 581; 76 Me., 395; 85 Me., 341, 543; 93 Me., 251; 94 Me., 580.

(b) 69 Me., 598; 71 Me., 155, 391; 73 Me., 265; 74 Me., 586; 78 Me., 525; 81 Me., 587; 82 Me., 464; 83 Me., 354.

III. That a meeting of the creditors, to prove their debts, and, in case there are assets sufficient to authorize the same, to 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 fifty days after the issuing of the same.

SEC. 15. When one or more creditors of a debtor make application under oath, by petition by them signed, to the judge of the county in which the debtor resides, or if a non-resident of the state, to the judge of the county in which said non-resident debtor may have personal property or real estate, 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. 16. 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.

Petition by creditors.

—the judge may issue warrant for attachment, forbidding payments, sales, transfers and contracts, by debtor or his representatives.  
R. S., c. 70, § 17.  
1891, c. 109.  
70 Me., 513.  
71 Me., 381.  
86 Me., 110.  
88 Me., 278, 291.

—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.  
R. S., c. 70, § 18.

—if warrant is revoked, property to be returned.

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Debtor  
to deliver  
property to  
messenger.  
R. S., c. 70, § 19.

—furnish  
schedule of  
creditors and  
list of assets.

When debtor  
withholds  
property,  
judge may  
enforce  
delivery.  
R. S., c. 70, § 20.

Judge may  
order sale of  
property.  
R. S., c. 70, § 21.  
1885, c. 320.

Messenger  
to deliver  
property to  
assignee.  
R. S., c. 70, § 22.

—and return  
warrant.

Debtor's  
death not  
to affect  
proceedings.  
R. S., c. 70, § 23.

—allowance  
to widow  
or minor  
children.

Secured  
creditor  
cannot vote  
for assignee.  
R. S., c. 70, § 24.  
72 Me., 268.

What debts  
may be  
proved.  
R. S., c. 70, § 25.  
1893, c. 312, § 1.

—what else  
may be  
proved.  
71 Me., 438.  
82 Me., 510.  
83 Me., 343, 352.  
84 Me., 236, 443.  
89 Me., 544.  
94 Me., 580.

—unliquidated  
damages, how  
disposed of.

—contingent  
debts and  
liabilities.

SEC. 17. 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 statement of any existing mortgage, pledge or other collateral security given to secure the same, and a full list of all his assets, with a brief description of all real estate or interest in real estate owned by him, and the place where the same is situated.

SEC. 18. 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. 19. Upon application, in writing, of any party interested, 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. 20. 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. 21. 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 make out of estates of deceased persons under his jurisdiction.

SEC. 22. 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. 23. 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, 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 \_\_\_\_\_, 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 within six months after the filing of the claim and 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 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

—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. 84 Me., 236.

—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.

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

—interested person may file objections to allowance of claim. 80 Me., 265.

—proceedings. 85 Me., 342.

—notice.



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

—assignee, claimant, creditor or other interested person may appeal.

—how taken and heard.

Claim, when proved.  
R. S., c. 70, § 26.

Secured creditors, how considered.  
R. S., c. 70, § 27.  
72 Me., 268.

Proof may be postponed.  
R. S., c. 70, § 28.

Property accepted under preference, to be surrendered.  
R. S., c. 70, § 29.  
1897, c. 323, § 4.  
80 Me., 584.  
88 Me., 464.  
96 Me., 55.

—assignee may recover dividend, paid to creditors whose claim is disallowed.  
—creditor who has accepted preference, shall not take part in proceedings.

Creditor may act by att'y.  
R. S., c. 70, § 30.

If no assets, assignee shall not be elected, unless a creditor claims under oath that he believes that there are undisclosed

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 ten.

SEC. 24. Any creditor may prove his claim at any time before the final dividend.

SEC. 25. For the purpose of making the application provided by section sixty-five, 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.

SEC. 26. The judge may postpone the proof of any debt until after an assignee is elected or appointed.

SEC. 27. 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. And any creditor who has accepted a preference contrary to the provisions of this chapter shall not be permitted to vote for assignee, nor shall his claim or vote be considered in any petition, or other proceedings, except that he shall be allowed his percentage of any dividend paid upon filing with the register a discharge of his security and proving his claim against the estate as an unsecured debt.

SEC. 28. A creditor may act at all meetings by his authorized attorney, as if personally present.

SEC. 29. If there are no assets, no assignee shall be elected, unless a written motion for such election shall be filed by some creditor, which he may do at any time, and shall therein state upon oath that he has reason to believe and does believe that there are undisclosed assets, or, that the value of the assets, as stated by the debtor in his lists so furnished, is grossly undervalued, which property and interest shall be stated so far as

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possible by said creditor. If the assets not claimed as exempt do not exceed one hundred dollars, no assignee shall be elected, unless the judge so orders, but the debtor shall, at said first meeting, assign, convey and deliver to the register of the court of insolvency all his real and personal estate, rights and credits, not exempt from attachment and seizure on execution, to be disposed of by said register as provided in section sixty-eight of this chapter for the disposition of the estate of debtors whose debts do not amount to the sum of three hundred dollars. If the assets exceed the sum of one hundred dollars, or the judge so orders when the assets are one hundred dollars or less, 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 shall be made at the first meeting unless the judge otherwise orders. 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 the time designated 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. At this meeting the debtor shall attend and submit himself to examination.

SEC. 30. 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. 31. 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. (a)

SEC. 32. The judge may, at any time, direct the assignee to make and return upon oath into the court of insolvency, a true inventory of all the property of the debtor, real and personal, which the assignment vests in such assignee, and which has come to his possession or knowledge; and the

(a) 71 Me., 435; 74 Me., 335, 469; 75 Me., 66, 396; 77 Me., 180; 80 Me., 584; 81 Me., 316, 439, 448; 83 Me., 562; 84 Me., 410; 86 Me., 110; 88 Me., 279; 89 Me., 229; 94 Me., 78, 440; 96 Me., 55; 97 Me., 449.

assets.  
R. S., c. 70, § 31.  
1897, c. 325, § 5.

—how credi-  
tors may  
choose  
assignees.

78 Me., 527.

Bond of  
assignee.  
R. S., c. 70, § 32.  
1889, c. 236, § 2.  
See c. 74, §§ 2, 14.  
82 Me., 330.

Judge shall  
assign and  
convey  
property to  
assignee.  
R. S., c. 70, § 33.

—assignee  
shall give  
notice of  
election.  
See c. 83, § 70.

—attach-  
ments, made  
within four  
months,  
dissolved.

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

Inventory and  
appraisement  
of insolvent  
estates.  
1885, c. 316.

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estate comprised in such inventory, shall be appraised in the same manner as the estates of deceased persons are required by law to be appraised. Such inventory and appraisal shall be made and returned at such time as the judge may direct.

Judge may authorize assignee to carry on business of the insolvent. 1889, c. 182, § 1. 1897, c. 325, § 17.

SEC. 33. The judge of the court of insolvency having jurisdiction of the case, may, in his discretion, on sufficient cause shown, authorize the assignee of such insolvent estate to carry on the business of the insolvent, or any part thereof, under the direction of the court, when such judge shall determine, after the notice and hearing provided in section thirty-five, that the interests of the estate and of the creditors require it.

May authorize him to expend money for benefit of estate. 1889, c. 182, § 2.

SEC. 34. Such judge may also, upon application of the assignee, and on sufficient cause shown, authorize him to expend money of the estate for the purpose of putting any of the property of the estate into a more salable condition.

May appoint time for hearing on application specified in preceding sections. 1889, c. 182, § 3.

SEC. 35. Upon application for the authority specified in either of the two preceding sections, the judge shall appoint a time and place for a hearing thereon, and the register shall give such public notice thereof as the judge shall order, and he shall also send notice by mail of the application and of the time and place of the hearing thereon, to all creditors of the insolvent, who have proved their claims or whose names appear upon the schedule of creditors; such notice shall be prepaid and shall be deposited in the post office at least ten days before the day of the hearing. At such hearing any creditor of the insolvent may appear and be heard and show cause for or against the granting of the authority asked for.

—notice, how given.

Assignee may prosecute to final judgment, suit commenced by creditor within four months prior to commencement of insolvency proceedings. R. S., c. 70, § 34. 84 Me., 410.

SEC. 36. 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 when such attachment is made in good faith, the creditor shall be paid out of the estate the costs and expenses arising from such suit and attachment, and the safe keeping or sale of the property so seized and attached, and the expenses of any levy made upon the same, incurred prior to the appearance of such assignee in such suit; and such creditor may prove his debt or claim upon which such suit is brought, in the same manner as if a suit had not been commenced. If the assignee elects not to appear and prosecute such suit, and if it appears to the court that it was commenced in good faith for the benefit of all the creditors, it shall order said costs, and expenses incurred prior to the assignment of the estate to the assignee, to be paid out of the estate.

—proceedings.

Disposal of property. R. S., c. 70, § 35. 71 Me., 155. 82 Me., 330.

SEC. 37. The assignee shall sell and dispose of all the property and estate coming into 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.

SEC. 38. 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.

SEC. 39. The claimant of property sold under section thirty-eight 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.

SEC. 40. 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. And funds remaining in his hands uncalled for when he settles his final account and the like funds in the hands of the register, may be paid into the county treasury, to be drawn therefrom and paid to the party entitled thereto only upon order of the judge of the court of insolvency. The county treasurer's receipt, stating the amount and the case in which the same is deposited, shall be filed with the papers in the court of insolvency and be allowed as a voucher by the judge.

SEC. 41. 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. In all cases, he shall file an account within six months from the date of his election, unless for cause shown the judge shall extend the time. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts are entitled to dividends 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 within one year from the date of his election, unless for cause shown the judge shall extend the time, 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

Sale of property in dispute, may be ordered by judge.  
R. S., c. 70, § 36.  
83 Me., 398.

Claimant of property sold and in dispute, must sue within sixty days.  
R. S., c. 70, § 37.  
83 Me., 398.

Assignee to deposit money, and account for interest.  
R. S., c. 70, § 38.  
1897, c. 325, § 6.

—how he shall dispose of funds uncalled for.

Dividends, when declared and paid.  
R. S., c. 70, § 39.  
1897, c. 325, § 7.

—shall file account within six months.  
78 Me., 526.

—dividends declared, shall not be disturbed by debts subsequently proved.

—proceedings, in case of contingent or disputed claims.

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—dividends  
not to be  
paid, without  
approval of  
court.

What claims  
paid in full.  
R. S., c. 70, § 40.  
1897, c. 325, § 8.  
71 Me., 404.  
See c. 65, § 41.

79 Me., 594.  
See c. 8, § 20.

82 Me., 510.

Assignee  
may resign.  
R. S., c. 70, § 41.

—vacancies,  
how filled.

Debtor shall  
submit to  
examination  
before  
certificate  
is granted.  
R. S., c. 70, § 42.  
See c. 65, §§ 8, 12.  
79 Me., 516.

—insolvent to  
execute con-  
veyances, etc.

Oath may  
be taken  
any time  
before dis-  
charge.  
R. S., c. 70, § 43.  
1897, c. 325, § 9.

—form of  
oath.

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 the same fee shall be charged as for other notices.

SEC. 42. In making a dividend under the preceding section, the following claims shall first be paid in full in their order:

I. The debts contracted by the debtor to obtain, in whole or in part, the amount paid by him as fees to the court of insolvency and for reasonable attorneys' fees.

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

III. 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.

IV. 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. 43. 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. 44. 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 direction of the court, to enable the assignee to recover and receive the estate of the insolvent.

SEC. 45. The debtor, at any time before applying for his discharge, may appear before said judge and 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 the messenger or 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."

Whenever in any case the debtor fails to take said oath within six months after the commencement of proceedings, the same may be dismissed upon motion of any party interested, after such notice as the judge shall order.

—proceedings may be dismissed, if oath is not taken within six months.

## DISCHARGE.

SEC. 46. 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. If the debtor fails to apply for a discharge, any creditor, at the expense of said debtor's estate, may, at any time after six months from the commencement of proceedings, file a petition that a hearing may be had upon the question whether a discharge shall be granted to the debtor. Upon said petition, the judge shall order due notice, and may grant or refuse the same, as upon the debtor's petition. 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 ten. 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. (a)

Debtor may apply for discharge, after four months.  
R. S., c. 70, § 44.  
1897, c. 325, § 10.

—creditor opposing discharge, may file specifications.

—if insolvent has conformed to law, court shall grant discharge.

—if debtor fails to apply for discharge, creditor may petition for hearing.

—appeal may be taken to supreme judicial court.

—question of discharge may be tried by jury.

—exceptions.

SEC. 47. 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. And in the case of a debtor a second or third time insolvent, a voluntary petition by him shall not be considered or acted upon by the court, unless said debtor shall file with his petition a copy certified by the register of insolvency, of his certificate of discharge under his previous proceedings, or in lieu thereof, the assent in writing of the required majority of all his known creditors. If he fails to do this, his discharge shall not be granted, or, if granted, be valid.

Second discharge, requires consent of majority of creditors.  
R. S., c. 70, § 45.  
1897, c. 325, § 11.

—third, three-fourths.

—proceedings in the case of a debtor, a second or third time insolvent.

(a) 75 Me., 305; 76 Me., 395, 499; 79 Me., 519; 80 Me., 395; 84 Me., 129; 88 Me., 605; 91 Me., 431.

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Discharge shall not be granted, or if granted, is not valid, in case of fraud.  
 R. S., c. 70, § 46.  
 1897, c. 325, § 12.  
 72 Me., 490.  
 76 Me., 499.  
 77 Me., 277.  
 79 Me., 194.  
 80 Me., 233.  
 83 Me., 353.  
 84 Me., 443.  
 85 Me., 154.  
 86 Me., 484.  
 90 Me., 128.

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

What debts are not discharged.  
 R. S., c. 70, § 47.  
 1897, c. 325, § 13.  
 79 Me., 594.  
 80 Me., 242.  
 81 Me., 171.

Partners, indorsers, etc., not released.  
 R. S., c. 70, § 48.  
 81 Me., 164.

Application for discharge, when to be made before January 1, 1904.  
 1903, c. 134.

Liabilities, from which insolvent is released.  
 R. S., c. 70, § 49.  
 1885, c. 359, § 13.

SEC. 48. A discharge shall not be granted, or, if granted, be valid, if the debtor has sworn falsely to any material fact, 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 filing of the petition by or against him, 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, unless the same was paid by him in the usual course of business, without any intent on his part to violate the provisions of this chapter, and he shall not be so entitled if he has caused his effects to be attached, or if he has destroyed, altered, mutilated or falsified any of his books, documents, papers, writings or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, or to give a preference contrary to the provisions of this 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 has designedly in contemplation of insolvency contracted any debt out of the usual course of business by purchasing upon credit any goods, wares or merchandise, or if he has obtained the same on credit by any intentional false statement as to his property, earnings or ability to pay, or if he has wasted his means by gambling, 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 whose usual and customary business is the purchasing and selling of goods, wares and merchandise, he has not kept 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.

SEC. 49. 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. And no claim for necessities furnished the debtor, or to his family, within thirty days of the commencement of proceedings, is discharged by such proceedings, unless such claim shall have been proved against his estate.

SEC. 50. No discharge shall release, discharge or affect any person liable for the same debt for or with the insolvent, either as a partner, joint contractor, indorser, surety or otherwise.

SEC. 51. A discharge shall not be granted to a debtor in any case pending in the several courts of insolvency on March twenty-four, nineteen hundred and three, unless written application is made therefor before the first day of January, nineteen hundred and four, and in case no such application is made, all proceedings in such case may be dismissed upon motion of any party interested, after such notice, if any, as the judge shall order.

SEC. 52. A discharge in insolvency duly granted shall, subject to the limitations in sections forty-nine and fifty, 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

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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-eight, it is intended to prove against the insolvent, and shall set forth 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 if the fraudulent acts proved, 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 ten. 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. (a)

—certificate, conclusive evidence.

—creditor, contesting validity of discharge, may apply in writing to the court within two years.

—contents of application.

—application amendable.

—hearing and decision.

—on what grounds, discharge may be annulled.

—when judgment shall be rendered for insolvent.

—appeal to supreme court.

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

## MISCELLANEOUS PROVISIONS.

SEC. 53. No claim purchased after commencement of proceedings in insolvency, shall be set off against a claim due the estate prior to such purchase.

Set-off of claims.  
R. S., c. 70, § 50.

SEC. 54. 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. No debtor who has received a discharge in insolvency proceedings, shall ever be arrested on mesne process or any judgment recovered on any claim or demand which was proved or might have been proved against his estate, *provided*, such claim or demand was not

Creditor can not bring suit against debtor until discharge is refused.  
R. S., c. 70, § 51.  
1895, c. 93.  
70 Me., 409.  
77 Me., 20.  
80 Me., 508.

—liability to arrest.

(a) 70 Me., 410; 74 Me., 160; 75 Me., 305; 76 Me., 395; 78 Me., 312; 79 Me., 519, 558, 594; 80 Me., 469; 81 Me., 164; 83 Me., 157; 84 Me., 129, 138, 443; 86 Me., 107; 88 Me., 605; 91 Me., 431; 93 Me., 251; 95 Me., 520.



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Fraudulent attachment, or conveyance of property, is void.  
 R. S., c. 70, § 52.  
 1897, c. 325, § 14.  
 74 Me., 189.  
 75 Me., 66, 397, 484.  
 80 Me., 109.  
 83 Me., 562.  
 84 Me., 412.  
 86 Me., 475.  
 89 Me., 230, 440, 524.  
 93 Me., 512.

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

--fraudulent conveyances made within six months are null and void.

--provision applies to mortgages or securities, given for money to make deposit or pay attorney's fees.

--contract made to purchase forbearance of a creditor, void.

--penalty for forbearing, for a consideration, to oppose discharge.

Allowance to debtor.  
 R. S., c. 70, § 53.

created by fraud or embezzlement of said debtor, or by his defalcation as a public officer, or while acting in a fiduciary character.

SEC. 55. If any person, being insolvent or in contemplation of insolvency, within four months before the filing of the petition by or against him, 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 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 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. And if any person, being insolvent, or acting in contemplation of insolvency within six months before the filing of the petition, by or against him, makes any payment, sale, assignment, transfer, conveyance or other disposition of his property, to any person who then has reasonable cause to believe him insolvent, or acting in contemplation of insolvency, and that such payment, sale, assignment, transfer or other conveyance, is made with a view to prevent his property from coming to his assignee, or to prevent the same from being distributed under this chapter, or to defeat the object of, or in any way impair, hinder, impede or delay the operation and effect of any of the provisions of this chapter, and such person received the same in order to assist the debtor in such purpose, the sale, assignment, transfer or conveyance, shall be void, and the assignee may recover the property or the value thereof, as assets of the insolvent. And the foregoing provisions shall apply to mortgages or other securities given to obtain money to make the deposit in the court of insolvency, or to pay the attorney for future services therein. Any contract, covenant or security, made or given by an insolvent, or any other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for, or with intent to induce a creditor to forbear opposing the application for discharge of the insolvent, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels or security from any person, as an inducement for forbearing to oppose or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the insolvent, and shall also forfeit double the value or amount of such money, goods, chattels or security so obtained, to be recovered by the assignee for the benefit of the estate.

SEC. 56. 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.

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SEC. 57. If a debtor, after the filing of a petition, by or against him, or within four months before, 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, and evade the provisions of the insolvent law, 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 for not more than one year, or by fine of not more than five hundred dollars.

Penalty for disposal of property to defraud creditors.  
R. S., c. 70, § 54.  
1888, c. 298.

SEC. 58. 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 for not more than one year, or by fine of not more than five hundred dollars.

Penalty, for aiding to defraud creditors.  
R. S., c. 70, § 55.

SEC. 59. 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 for 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.  
R. S., c. 70, § 56.

## PARTNERSHIP.

SEC. 60. This chapter applies to all cases where two or more persons are doing business within the estate 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 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.

## Partnership.

—scope of this chapter.  
R. S., c. 70, § 57.  
70 Me., 378.  
82 Me., 120.  
92 Me., 466.

—either partner may file petition.

—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.

SEC. 61. The assignee shall be chosen by the creditors of the partnership, and shall also be assignee of the estate of each separate member

Assignee, how chosen.

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—shall be assignee of firm, and of estate of each partner, and keep separate accounts.  
R. S., c. 70, §58.  
70 Me., 366.  
73 Me., 266.  
92 Me., 466.

—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.  
R. S., c. 70, §59.

Allowance to partners.  
R. S., c. 70, §60.

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

## CORPORATIONS.

This chapter applies to corporations.  
R. S., c. 70, §61.

—exceptions.  
82 Me., 470.  
88 Me., 612.

—proceedings.

—no discharge to be granted, and liability of stockholder not affected.

SEC. 64. This chapter applies to all corporations created by the law of the state, carrying on manufacturing, trading, mining, building 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.

## GENERAL PROVISIONS.

Debtor shall produce affidavit in cases of composition.  
R. S., c. 70, §62.  
1889, c. 162.  
See § 25.  
71 Me., 435.

SEC. 65. 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 hereunto annexed and signed by me."

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:

"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."

And if the judge is satisfied that such agreement is signed by said 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; and any creditor of said insolvent estate who knowingly receives, directly or indirectly, from a debtor in insolvency, or from his estate, as an inducement to consent to said debtor's discharge, or to assign his claim to a third person who will so consent, a larger percentage on his debt than shall be offered and distributed to other creditors of the same class, shall forfeit to any other creditor of such estate first suing therefor, a sum equal to the whole amount received by him on account of said claim, including dividends legally declared, with interest from the time such sums were so received, which sum may be recovered in an action on the case, brought by the creditor discovering such overpayment, in any county in which either party to such suit resides, within one year after such discovery. 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 the expenses incurred during the proceedings; and said certificate shall not issue, until all the priorities provided in section forty-two are paid or secured to the satisfaction of the court.

—form of  
affidavit.  
76 Me., 395.  
79 Me., 350, 516.  
81 Me., 169.  
83 Me., 347, 352.  
84 Me., 184.  
88 Me., 426.

—creditors'  
agreement.

—form of  
agreement.

—if agree-  
ment is  
satisfactory,  
judge shall  
give debtor  
discharge.

—not valid,  
in case of  
fraud or  
falsehood.

—penalty if  
any creditor  
fraudulently  
consents to  
discharge of  
debtor.

—debtor to  
pay expenses.

1887, c. 32.

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When debtor is ignorant of holder of note or bill, he shall describe debt.  
R. S., c. 70, § 63.  
—creditor not found or refusing to 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 inhabitant owing debts contracted while inhabitant of the state, may petition and make assignment.  
1897, c. 325, § 16.  
93 Me., 313.  
95 Me., 394, 396.

—shall file list of creditors and assets.

—notice and hearing thereon.

—if debtors act in good faith, shall be discharged.

—fees.

Any person whose debts do not amount to \$300, may make assignment.  
R. S., c. 70, § 64.  
1897, c. 325, § 15.

—proceedings.  
71 Me., 435.  
74 Me., 159.

SEC. 66. 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. 67. 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 stating therein that by a written assignment executed by and between him and the required majority of his creditors he has assigned to some suitable person specified in said agreement, all his estate and effects not exempt by law from attachment and seizure on execution, for the benefit of his creditors, and praying that due proceedings may be had as hereinafter provided. He shall file with said petition a full schedule of his creditors and a list of his assets, as specified in section thirteen of this chapter, together with said written agreement executed by him and his said creditors. Thereupon the judge shall order notice as provided in section fourteen of this chapter so far as applicable to be given by the register to all creditors named in said schedule who have not signed the articles of agreement, and a hearing shall be had as to whether the same have been executed by the required majority and whether the allegations of said petition are true. If upon hearing it is so determined and that the same have been executed in good faith by said debtor and his said creditors, the judge may approve the same, and may require the assignee to give bond and settle his account, the same as in insolvency proceedings; and the judge shall give the debtor a discharge as in section sixty-five of this chapter, from all debts named in the debtor's said schedules. The same fees shall be taxed for these proceedings as for similar services under this chapter.

SEC. 68. Any person whose debts do not amount to three hundred dollars, may at any time assign, convey and deliver to the register of the court of insolvency in and for the county within which he resides, all 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 by him, and at the same time may apply by petition to the judge of said court, setting forth his inability to pay all his debts in full, and that he has assigned, conveyed and delivered to the register of said court, all 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 him, and a list of all his creditors, with their places of residence, so far as known by him, and that he wishes to be examined as provided by

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this section, and to have the oath provided by this section administered to him. Thereupon the judge shall appoint a time and place for the examination of the debtor, which examination may be before the judge, or register, and the register shall give such notice to the creditors of the debtor of the time and place of such examination as the judge orders, and any creditor may appear at such examination and be heard, and may 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 or register directs, and in no case shall it extend to any matters arising prior to the time of the contracting of the debts owed by such debtor, at the time of his examination. The examination herein provided for shall be in writing, signed by the debtor, and filed in the office of the register. If upon such hearing, it appears to the judge that the debtor has assigned, conveyed and delivered to the register all his said real and personal estate, rights and credits, not exempt from attachment and seizure on execution, together with a schedule of the same, signed by him, and that he has disclosed the names and places of residence of all creditors so far as known to him, he shall administer to the debtor 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 \_\_\_\_\_, the register of the court of insolvency, all my estate, rights and credits, except such as are 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 the judge 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 the debtor in or upon said examination are not true. When the debtor has taken and subscribed said oath, the judge shall give him a certificate thereof under his hand and the seal of the court, and thereupon he shall be thenceforth released and discharged from arrest upon mesne process or execution arising from any debt contracted prior to taking such oath, and owing to any creditor named in said schedule, and he shall not be required to submit himself to examination under provisions of sections twenty to forty-four inclusive, of chapter one hundred and fourteen as to any matters arising prior to the time of taking such oath. Nor shall the amount due him as wages for his personal labor for a time not exceeding one month next preceding the service of the process, and not exceeding twenty dollars, be liable to attachment on any trustee process in a suit brought against him upon any debt contracted prior to said time. This section also applies to any person arrested or committed to jail upon mesne process or execution, and such debtor shall be taken by the jailor, or officer having him in charge, before the court for the purposes herein specified. After the assignment and conveyance herein provided, the register shall dispose of said debtor's property and effects to the best advantage, depositing in his own name, as register in such bank as the judge approves, all the money coming into his hands belonging to said estate, and keeping and rendering to the judge a strict account of its disposal, and the net proceeds thereof, after deducting the expenses of the proceedings, shall be divided by the register, pro rata, among the creditors of the debtor named in his original schedules, or schedules as amended by order of the

—judge shall appoint hearing for examination of debtor.

—examination shall be in writing.  
See c. 65, § 8.

—if it appears debtor has assigned and delivered all his estate, judge shall administer the oath.

—form of oath.

—debtor may then be discharged.

—wages not exceeding \$20, shall be exempt.

—this section applies to persons arrested or committed to jail.

—property of debtor shall be sold and proceeds divided, pro rata, among the creditors.

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—fees of  
judge and  
register.  
See c. 65, § 41.

—how pay-  
ment of  
fees shall  
be secured.

Fees shall be  
established  
by supreme  
judicial court.  
R. S., c. 70, § 65.  
1899, c. 43.

—how paid.

When estate  
is insufficient  
to pay fees,  
petitioner may  
be ordered to  
deposit a sum  
of money with  
the register,  
for payment  
of expenses.  
1891, c. 113.

Judges shall  
report annu-  
ally to secre-  
tary of state,  
all cases of  
insolvency,  
with par-  
ticulars.  
R. S., c. 70, § 66.

judge, and such other creditors as shall have proved their claims before such distribution, in part satisfaction of their respective debts. The judge and register shall be allowed the same fees for their services under this section as they are allowed for similar services in other insolvency proceedings, and said fees and compensation shall be paid out of the debtor's assets if they are sufficient; otherwise such fees and compensation, or such part thereof as remains unsatisfied, shall be paid by the debtor before he shall be entitled to take the oath heretofore provided. And in all cases arising under this section the judge may require a reasonable sum of money to be by him specified, to be deposited with the register by the debtor at the time the assignment and petition is filed, as security for the payment of said fees and compensation.

SEC. 69. The fees of all officers, the compensation of assignees, and of judges and registers of probate, under this chapter, shall be established by the supreme judicial court, and shall be paid out of the estates if there are sufficient assets; if there are not sufficient assets for the payment of the fees, costs and expenses of the insolvency proceedings, the person upon whose petition the warrant is issued shall pay the same, and the court of insolvency, after thirty days' notice in writing, by the court, to him, or his attorney of record, may issue an execution against him to compel payment to the register. Said executions shall be under the seal of the court issuing the same, bear the teste of the judge, be signed by the register, issued in the name of the assignee, and shall be for the full amount of all unpaid fees, costs and expenses, in the proceedings, due the officers, assignee, judge and register, and shall run against the body.

SEC. 70. In all cases wherein the estate is insufficient to pay the fees and expense of the court and its officers, the judge in his discretion may order the petitioner at any time during the pendency of the proceedings, upon petition of any party interested, to deposit a specified sum of money with the register to be used in payment of the expense of the insolvent proceedings; and, upon the failure of the insolvent to comply with the order of court, the judge may order the proceedings dismissed.

SEC. 71. 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 counties, showing the names of the insolvents, the date of the filing of the petition, the date of the discharge, the amount and average rate of dividends declared, inclusive of composition cases, and the amount of fees received or earned by them and the registers of said court.

Note. Appointment of stenographers and their duties in courts of probate and insolvency, c. 65, § 8.

Assignees to pay amount of stenographer's fees, c. 65, § 41.

Rules and uniform blanks, c. 65, § 43.