

MAINE STATE LEGISLATURE

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



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

DOCUMENTS

PUBLISHED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE.

1865.

AUGUSTA:

STEVENS & SAYWARD, PRINTERS TO THE STATE.

1865.

FORTY-FOURTH LEGISLATURE.

SENATE.

No. 21.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
SIXTY-FIVE.

AN ACT additional to chapter eighty-one of the revised
statutes, relating to civil actions.

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

SECTION 1. Any defendant, or any one or more of
2 several defendants, whose real estate or interest there-
3 in, or whose personal property, is attached on mesne
4 process, may have the same released from such attach-
5 ment by giving the security authorized by this act.

SECT. 2. If real estate, or any interest therein, is
2 attached, he or they may apply to any justice of the
3 supreme judicial court, in term time or vacation, by
4 petition, in writing, briefly setting forth the names of
5 the parties to the suit, the court and county in which

6 the same is returnable or pending, the fact of the
7 attachment, the particular real estate, or interest
8 therein, which he or they desire to have released
9 therefrom, the value of the same, and that the peti-
10 tioners desire to have the benefit of this act by giving
11 the security herein provided.

SECT. 3. Such justice shall issue a notice in writing
2 which shall be served on all the persons living in the
3 state who are parties to the suit, and also upon the
4 attorney of the plaintiff, not less than ten days before
5 the time therein appointed for hearing the parties.

SECT. 4. If it shall appear upon the hearing that
2 the real estate, or interest therein, described in the
3 petition, is of equal or greater value than the amount
4 of property directed to be attached in the writ, the
5 justice shall direct the party petitioning to give bond
6 to the plaintiff in such sum, and with such sureties, as
7 he may order, with condition that the judgment which
8 the plaintiff may recover in the suit, and his costs on
9 the petition, shall be paid within thirty days after
10 such recovery. If it shall appear that such real es-
11 tate, or interest therein, is of less value than the
12 amount directed to be attached, the condition of the
13 bond shall be varied so as to require that a sum equal
14 in amount to the value thereof as found by the justice,

15 shall be paid on such judgment, together with the costs
16 on the petition as aforesaid, within thirty days after the
17 recovery thereof.

SECT. 5. The petition and proceedings thereon shall
2 be filed in the office of the clerk of the court in which
3 the suit is returnable or pending, and shall be recorded
4 as part of the case; and the bond required by the
5 justice, when approved by him in writing, shall also
6 be filed in said office for the use of the plaintiff.

SECT. 6. The clerk of the court shall deliver to the
2 party petitioning as aforesaid, an attested copy of the
3 petition and proceedings, with an official certificate
4 attached thereto under the seal of the court, that the
5 bond required therein, has been duly filed in said
6 clerk's office; and said copy and certificate, being
7 recorded in the registry of deeds for the county in
8 which the real estate, or interest therein, described in
9 the petition, is situate, shall vacate the attachment
10 thereof.

SECT. 7. When personal property is attached, and
2 actual possession thereof taken by the attaching officer,
3 the same proceedings shall be had as are above author-
4 ized, with the additional provision that the officer
5 making the attachment shall also be notified as re-
6 quired by section three. And the attested copy and

7 certificate thereto attached, authorized by section six,
8 when delivered to such officer by the party petitioning,
9 shall vacate the attachment, and the officer shall return
10 the property to such party on demand therefor.

SECT. 8. When stock or shares in a banking or other
2 corporation, are attached, or personal property which
3 by reason of its bulk or other special cause cannot be
4 immediately removed, and such attachment is duly
5 filed with the clerk, cashier or treasurer of such cor-
6 poration, or with the clerk of the town, as the case
7 may be, under the provisions of chapter eighty-one
8 aforesaid, the proceedings shall be the same as are au-
9 thorized by the last section, except that the copy and
10 certificate shall be filed with the clerk, cashier or
11 treasurer of the corporation, or with the clerk of the
12 town, as the case may be, with whom the attachment
13 was filed ; and when so filed shall vacate such attach-
14 ment.

SECT. 9. In cases of attachment under the trustee
2 process, any one or more of the principal defendants
3 whose property is thus attached, may have the benefit
4 of this act, and the proceedings shall be the same as
5 provided in sections two, three, four and five, except
6 that the condition of the bond to be given to the plain-
7 tiff, shall require the party giving it, to pay the amount

8 for which the court shall finally adjudge the trustee or
9 trustees chargeable, if any, on the judgment which the
10 plaintiff may recover, not, however, exceeding the
11 amount of such judgment, together with the plaintiff's
12 costs on the petition, within thirty days after the re-
13 covery thereof. The notice required in section three
14 shall also be given to each of the alleged trustees
15 named in the petition, and such trustee may appear
16 before the justice and be heard, if he deems it neces-
17 sary. And the justice shall require the party petition-
18 ing to give bond to each supposed trustee named in
19 the petition, with such sureties as he may order, and
20 in a sum sufficient to protect him against any judg-
21 ment which the plaintiff may recover against him, and
22 which he shall have paid, and also sufficient to cover
23 all legal costs of such supposed trustee in the suit,
24 together with the costs allowed him by the justice at
25 the hearing of the petition, if he appears; and such
26 bond shall be approved by the justice and filed in the
27 clerk's office for the benefit of such trustee. And the
28 copy and certificate authorized in section six, when
29 delivered to the trustee or trustees, shall vacate the
30 attachment of all goods, effects and credits of the party
31 petitioning, in the hands or possession of such trustee
32 or trustees.

SENATE—No. 21.

SECT. 10. The clerk of the court shall be paid two
2 dollars for recording the petition and proceedings, and
3 making the copy thereof and certificate provided by
4 section six; and the register of deeds shall receive
5 seventy-five cents for recording the same. When
6 required to be filed, as provided in the last section,
7 the clerk or officer receiving the same shall receive
8 twenty cents for such filing and the necessary certificate
9 thereof. And the party finally prevailing in the suit
10 shall recover the costs of the proceedings herein au-
11 thorized, to be taxed in the same manner as other costs
12 of court are taxed, and to be certified by the justice
13 hearing the petition, and execution shall issue therefor
14 accordingly.

SECT. 11. This act shall take effect when approved.

STATE OF MAINE.

IN SENATE, February 17, 1865.

Reported by Mr. BARKER, from the Committee on the Judiciary.

THOMAS P. CLEAVES, *Secretary.*