

SENATE No. 289.

[Senate, No. 285, as passed to be engrossed by the Senate.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Eighty-eight.

AN ACT

Relating to the Procedure in Poor Debtor Matters.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section seventeen of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the first paragraph of the
4 said section as amended shall read as follows:—
5 Except as provided in sections five to sixteen
6 inclusive, and in section twenty-five, and except
7 in actions of tort, no person shall be arrested on
8 an execution in a civil action, unless the judgment
9 creditor or some person in his behalf, after execu-
10 tion is issued amounting to twenty dollars exclu-
11 sive of all costs which make part of said judgment,

12 whether the same have accrued in the last action
13 or in any former action on the same original cause
14 of action, and while so much as that amount
15 remains uncollected, makes affidavit, and proves
16 to the satisfaction of some court of record, or
17 police, district, or municipal court, or, except in
18 the county of Suffolk, some trial justice, that he
19 believes and has good reason to believe.

1 SECT. 2. Section eighteen of chapter one hun-
2 dred and sixty-two of the Public Statutes is
3 hereby amended so that the fourth sentence of
4 the said section as amended shall read as fol-
5 lows:—The magistrates or courts before whom
6 such examinations may be held shall be;—some
7 court of record, or police, district, or municipal
8 court, or, except in the county of Suffolk, some
9 trial justice.

1 SECT. 3. Section twenty of chapter one hun-
2 dred and sixty-two of the Public Statutes is
3 hereby amended by adding at the end thereof the
4 following words:—If at the examination it
5 appears that, after the service of the notice
6 and pending the proceedings thereon, the debtor
7 has made a payment of money or a convey-
8 ance, assignment or transfer of any property of
9 his not exempt from being taken on execution,
10 with intent to prevent the same from being trans-
11 ferred or paid to the creditor, or applied by the
12 force of the said proceedings to the satisfaction
13 of the execution, such transfer, assignment, con-

14 veyance or payment shall be deemed to be made
15 in contempt of the court or magistrate, and the
16 debtor shall be liable in the discretion of the court
17 or magistrate to be committed as for a contempt,
18 and, when the court or magistrate makes a certifi-
19 cate therefor, shall be conveyed to jail and there
20 kept until discharged by said court or magistrate
21 or otherwise according to law; but payment of
22 debts for necessaries for support of himself and
23 family, debts due on executions upon which he
24 has already been cited to appear for examination
25 under the provisions of this chapter or any act
26 amendatory thereof or supplementary thereto,
27 and a reasonable sum for counsel fees, shall not
28 be deemed within the prohibition of this section.

1 SECT. 4. Section twenty-five of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the said section as amended
4 shall read as follows:—If in addition to the first
5 charge specified in section seventeen the judgment
6 creditor, or some one in his behalf, makes affida-
7 vit and proves to the satisfaction of some court or
8 magistrate named in section one that there is good
9 reason to believe that the debtor intends to leave
10 the state, the court or magistrate may without
11 notice to the debtor authorize his arrest.

1 SECT. 5. Section twenty-seven of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the last sentence in the
4 said section as amended shall read as follows:—

5 When arrested on mesne process, if he does not
6 give bail, and when arrested on execution in any
7 case, he shall be taken before some court of
8 record, or police, district, or municipal court, or,
9 only if he wishes to recognize, a master in chan-
10 cery, or, only if he wishes to recognize, a com-
11 missioner of insolvency, or, except in the county
12 of Suffolk, a trial justice.

1 SECT. 6. Section twenty-eight of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the said section as
4 amended shall read as follows:—When taken
5 before the court or magistrate, if the defendant or
6 debtor desires to take an oath as hereinafter men-
7 tioned, but does not desire a time fixed for his
8 examination, the court or magistrate may take his
9 recognizance with surety or sureties in a sum not
10 less than double the amount of the execution, or
11 of the ad damnum in the writ if he is arrested on
12 mesne process, that within thirty days from the
13 day of his arrest he will deliver himself up for
14 examination before some court of record, or
15 police, district, or municipal court, or, except in
16 the county of Suffolk, some trial justice, giving
17 notice of the time and place thereof as herein
18 provided, and appear at the time fixed for his
19 examination, and from time to time until the same
20 is concluded, and not depart without leave of the
21 court or magistrate, making no default at any
22 time fixed for his examination, and abide the
23 final order of the court or magistrate thereon; but

24 if he is arrested on mesne process and the writ is
25 returnable within thirty days, the number of days
26 within which he shall deliver himself up shall be
27 limited by the court or magistrate so as not to
28 extend beyond the return day of the writ.

1 SECT. 7. Section thirty-one of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the first paragraph of
4 the said section as amended shall read as fol-
5 lows:—If the defendant or debtor, when taken
6 before the court or magistrate or at any time
7 when entitled thereto, desires to take an oath as
8 hereinafter provided, and to have a time fixed
9 therefor, some court of record, or police, district,
10 or municipal court, or, except in the county of
11 Suffolk, some trial justice, shall appoint a time
12 and place for his examination, and shall issue a
13 notice thereof to the plaintiff or creditor, signed
14 by some justice of the court or the magistrate
15 and designating his official capacity, substantially
16 in the following form.

1 SECT. 8. Section thirty-three of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended by adding at the end thereof the
4 following words:—But if the oath for the relief
5 of poor debtors has been refused no application
6 to take the same shall be made by the defendant
7 or debtor until the expiration of seven days from
8 the hour of such refusal.

1 SECT. 9. Section thirty-four of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the said section as
4 amended shall read as follows:— When the notice
5 mentioned in section thirty-one has been duly
6 served, the court or magistrate who issued it, or
7 any court of record, or police, district, or municipi-
8 pal court, or, except in the county of Suffolk, any
9 trial justice, shall attend at the time and place
10 therein specified, and examine the defendant or
11 debtor as herein provided.

1 SECT. 10. Section fifty-four of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended so that the first sentence in the
4 said section as amended shall read as follows:—
5 If he represents to the jailer that he is desirous
6 to take the oath for the relief of poor debtors, the
7 jailer shall make the same known to some court
8 of record, or police, district, or municipal court,
9 or, except in the county of Suffolk, some trial
10 justice.

1 SECT. 11. There shall be appointed in the man-
2 ner provided by the constitution one additional
3 associate justice of the municipal court of the
4 city of Boston, who shall be paid in the manner
5 provided by law the salary established by law for
6 an associate justice of the said court: so that the
7 said court shall be composed of one chief justice,
8 four associate justices and one special justice.

1 SECT. 12. Any justice of any court of record,
2 or police, district, or municipal court, and any
3 special justice when exercising the powers and
4 duties of a justice of any such court, may act as
5 such court under chapter one hundred and sixty-
6 two of the Public Statutes and any act amend-
7 atory thereof or supplementary thereto. Under
8 the said chapter and acts any such court shall have
9 the powers and duties therein given to a justice
10 thereof. Upon legal application made to any
11 police, district or municipal court such court shall
12 exercise and perform its said powers and duties
13 under the said chapter and acts, accordingly,
14 without unreasonable delay. The term "magis-
15 trate," and the term "magistrates," wherever
16 either occurs in any section of the said chapter
17 or acts, shall be construed to mean, respect-
18 ively — magistrate or court, — and, — magistrates
19 or courts. There shall be no appeal from any
20 judgment or order of any court or magistrate ren-
21 dered or made under the said chapter or acts, ex-
22 cept as provided in and by the said chapter. Any
23 court or magistrate acting under the said chapter
24 or acts may issue a writ of *habeas corpus* when
25 necessary to bring before such court or magis-
26 trate for examination a defendant or debtor im-
27 prisoned on mesne process or execution, and the
28 proceedings provided for in chapter one hundred
29 and eighty-five of the Public Statutes shall be
30 followed so far as the same are applicable
31 thereto.

1 SECT. 13. Section sixty-eight of chapter one
2 hundred and sixty-two of the Public Statutes is
3 hereby amended by adding at the end thereof the
4 following words:— The fees of a court or magis-
5 trate shall be for each postponement or continu-
6 ance of an examination or the time fixed therefor
7 one dollar. When any police, district or munic-
8 ipal court acts hereunder, or under any act
9 amendatory hereof or supplementary hereto, the
10 fees shall be paid into such court as for civil
11 business, and shall be accounted for and paid
12 by the clerk of such court, or by the justice
13 of such court where there is no clerk, to the
14 treasurer of the county in which such court
15 is held; but in the county of Suffolk such
16 clerks and justices as by law account and pay
17 to the collector of the city of Boston shall
18 account and pay to such collector hereunder.
19 The clerk of the municipal court of the city of
20 Boston, for civil business, shall be paid by the
21 county of Suffolk one thousand dollars for extra
22 clerical assistance in addition to and in the man-
23 ner provided for the amount now paid by the said
24 county to him for extra clerical assistance. The
25 fees of an officer for service of notices under the
26 provisions of this chapter shall be the same as are
27 allowed by law for the service of an original sum-
28 mons in an action at law. If the arrest was on
29 mesne process and final judgment in the action is
30 rendered for the defendant, he shall have taxed in
31 his costs against the plaintiff all lawful costs paid
32 by him because of the arrest, and execution shall

33 issue therefor. If the arrest was on execution,
34 the debtor shall not be deemed to have satisfied
35 the same until he has paid all lawful costs paid
36 by the creditor upon and after the arrest, and all
37 lawful charges paid by the creditor for his sup-
38 port in prison. If the arrest was on mesne
39 process and the plaintiff shall recover more than
40 twenty dollars, exclusive of all costs, the lawful
41 costs paid by him upon and after the arrest, and
42 the lawful charges paid by him for the defend-
43 ant's support in prison, shall be taxed in his costs
44 against the defendant, and execution shall issue
45 therefor.

1 SECT. 14. The provisions of this act shall not
2 apply to cases pending under the provisions of
3 chapter one hundred and sixty-two of the Public
4 Statutes, chapter four hundred and forty-two of
5 the acts of the year eighteen hundred and eighty-
6 seven, or any act amendatory thereof or supple-
7 mentary thereto enacted and taking effect before
8 this act takes effect.

1 SECT. 15. This act shall take effect upon the
2 first day of October in the year eighteen hundred
3 and eighty-eight.

SENATE, May 24 (P. M.), 1888.

Passed to be engrossed.

Sent down for concurrence.

E. HERBERT CLAPP, *Clerk.*

