

HOUSE....No. 19.

[Reported by the Committee on the Judiciary.]

Commonwealth of Massachusetts.

In the Year of our Lord One Thousand Eight Hundred
and Thirty-Six.

AN ACT

To regulate the assignment and distribution of the prop-
erty of Insolvent Debtors.

1 SEC. 1. **BE** *it enacted by the Senate and House of*
2 *Representatives, in General Court assembled, and by*
3 *the authority of the same,* That any debtor may as-
4 sign and convey his property to his creditors, or to
5 one or more assignees or trustees for the use of his
6 creditors, in the manner herein after mentioned ; and
7 such assignment shall be valid and effectual against

8 any attachment or execution thereafter made or levi-
9 ed on any of the property so assigned.

1 SEC. 2. All persons who are indorsers or sureties for
2 the debtor, or who have demands against him as drawer
3 or indorser of any bill of exchange, or indorser of any
4 note, and all who have demands upon any policy of in-
5 surance, or any bottomry or respondentia bond, or for a
6 debt that may become due on any other contingency
7 whatever, may be considered as creditors within the
8 provisions of this act; provided, that the bill, note,
9 bond, or other contract, be made by the debtor be-
10 fore the date of the assignment; and provided also,
11 that the debt demanded thereupon shall become abso-
12 lute before the final dividend of the assigned prop-
13 erty.

1 SEC. 3. The assignment shall be so made as to give
2 to each of the creditors, who shall become parties to
3 it, an equal share of the property, in proportion to
4 their respective debts, without any preference, excep-
5 ting as to such debts as by the laws of the United
6 States or of this Commonwealth, may, from time to
7 time, be entitled to a preference in such case.

1 SEC. 4. All the creditors shall have a right to be-
2 come parties to the assignment, provided they apply
3 therefor, before the final dividend is declared; but no
4 creditor who comes in after any dividend is declared,
5 shall be allowed to disturb the same, but he shall re-
6 ceive an equal portion with the other creditors, so far
7 as the funds then remaining unappropriated in the
8 hands of the assignees shall be sufficient therefor.

1 SEC. 5. The assignees shall, as soon as may be
2 after the assignment, give notice thereof by adver-
3 tisement in some newspaper printed in the town

4 where the debtor resides, if there be any, and if not,
5 in some newspaper printed in the same county, or in
6 the city of Boston ; and such advertisement shall be
7 published not less than once a week for three weeks
8 successively.

1 SEC. 6. The assignees shall declare and pay divi-
2 dends from time to time, as soon as may be after con-
3 verting the effects into money ; provided, that when it
4 shall appear that there are creditors who, from their
5 distant residence or other sufficient reason, cannot be-
6 come parties to the assignment before the making of
7 the first dividend, the assignees may delay the divi-
8 dend, or may retain, until the second or other later
9 dividend, a sum sufficient to pay to every such sup-
10 posed creditor an equal portion with the other credi-
11 tors.

1 SEC. 7. The supreme judicial court shall have
2 power, upon the petition or other application of the
3 debtor, or of the assignees, or of any creditor or other
4 person interested in the case, to remove any assignee for
5 any sufficient cause, and upon such removal, or upon
6 the death or resignation of an assignee, to appoint ano-
7 ther in his place ; and to cause a just and prompt
8 settlement of the estate of the insolvent, and a dis-
9 tribution thereof among all who are entitled thereto,
10 having a due regard to the rights of creditors who, by
11 reason of their distant residence or otherwise, may be
12 delayed in presenting their claims and becoming par-
13 ties to the assignment ; and generally to hear and de-
14 termine, as a court of chancery, all matters arising
15 under any such assignment, and to make such orders
16 and decrees therein as law and justice shall require,
17 and as shall be necessary and proper to carry into ef-

18 fect the provisions of this act: provided, that when
19 the amount claimed as due to any supposed creditor
20 is disputed by the debtor, or the assignees, or by any
21 other creditor, the same shall, if required by either
22 party, be determined by a jury, upon an issue to be
23 framed under the direction of the court.

1 SEC. 8. Every debtor who shall make such an as-
2 signment as is herein before mentioned, shall be
3 discharged from all debts due to any of his creditors,
4 who shall become parties to the assignment, except-
5 ing as is provided in the following section; but no
6 such discharge shall release any person who may be
7 liable for the same debt as a partner, joint-contrac-
8 tor, indorser, acceptor, or surety, for or with the
9 debtor.

1 SEC. 9. The debtor, if afterwards sued for any
2 such debt, shall have no benefit of the said discharge,
3 but judgment shall be rendered against him for the
4 amount that shall then appear to be due, if the plain-
5 tiff shall prove any of the following facts, to wit:

6 First. That the debtor has fraudulently concealed
7 or disposed of any of his property to the amount of
8 one hundred dollars, which he undertook to assign,
9 and which the indenture or instrument of assignment
10 purported to convey for the use of his creditors:

11 Secondly. That he did it knowingly and wilfully
12 make any false statement, in any disclosure made to
13 or for his creditors, concerning the amount or the dis-
14 position of his property:

15 Thirdly. That he did, at any time after this act
16 shall have gone into operation, and in contemplation
17 of such an assignment of his property as is herein
18 provided for, voluntarily make any payment, or any

19 transfer or conveyance of any part of his property,
20 with a view to give to any creditor, or to any indors-
21 er or surety for the debtor, a preference or advan-
22 tage over the other creditors, contrary to the intent
23 and purpose of this act : or,

24 Fourthly. That he did, in contemplation of such
25 an assignment, give notice of his insolvency to any
26 creditor, with a view to enable him, by means of an
27 attachment or otherwise, to obtain any such prefer-
28 ence or advantage over the other creditors.

1 SEC. 10. The debtor shall not be required to plead
2 his discharge specially, but may give it in evidence
3 under the general issue ; unless when the action is of
4 such a nature that the discharge could not be summit-
5 ted and proved to a jury under the general issue.

1 SEC. 11. No assignment or conveyance, made by
2 any debtor to assignees or trustees for the use of any
3 of his creditors, shall be valid and effectual against an at-
4 tachment or execution in behalf of any creditor who is
5 not a party to it, unless it is so made as to allow all the
6 creditors of the debtor to become parties to it, if they
7 see fit ; and unless also it is so made as to give to
8 each of the creditors who shall become parties to it
9 an equal share of the property in proportion to their
10 respective debts, excepting only such creditors as may,
11 by the laws of the United States or of this Common-
12 wealth, be entitled in such case to a preference.

