

HOUSE...No. 34.

[Reported by the Committee on the Judiciary.]

Commonwealth of Massachusetts.

In the year One Thousand Eight Hundred and Forty-four.

AN ACT

Concerning Poor Debtors.

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

1 SECT. 1. Whenever any person shall be arrested on
2 mesne process in any civil suit for any debt ; or when-
3 ever any person shall have been so arrested and
4 have given bail, or been committed to jail ; or shall
5 have been committed to jail on surrender in court or
6 otherwise, by his bail in the suit, he may, at any
7 time after his arrest or commitment, give notice, in
8 writing, to any justice of the peace in the county

9 where the arrest was made, that he is desirous to
10 take the oath prescribed in the ninety-eighth chapter
11 of the Revised Statutes for “ the relief of poor debtors
12 committed on execution for debt ;” which notice, if
13 given by the debtor, or officer who made the arrest,
14 or has him in custody, or by any other person in be-
15 half of the debtor, shall be sufficient.

1 SECT. 2. It shall be the duty of the justice so
2 notified, forthwith to appoint a time and place for the
3 examination of the debtor, and to issue a notice
4 thereof to the plaintiff, by a citation under his hand,
5 which citation shall be served and returned by any
6 officer who is authorized to serve any civil process
7 between the same parties.

1 SECT. 3. The citation aforesaid may be served
2 upon the plaintiff, his agent or attorney, by giving
3 him in hand a copy thereof attested by the officer
4 serving the same, or by leaving such copy at his
5 usual place of abode, allowing in all cases not less
6 than twenty-four hours, after such service before the
7 time appointed for the examination ; and also allow-
8 ing time for his travel from the place of service to
9 the place appointed for the examination after being
10 so notified, not less than at the rate of one day
11 (Lord’s day excluded) for every twenty-four miles’
12 travel ; and the service, when made on his agent or
13 attorney, as aforesaid, shall have the same effect as
14 if made on the plaintiff himself.

1 SECT. 4. When there are more than one per-
2 son plaintiff in the action, or more than one agent
3 or attorney, the service of the citation upon one
4 of the plaintiffs, agents or attorneys, shall be suffi-
5 cient.

1 SECT. 5. When the plaintiff is not a resident of
2 this State, the citation shall be served upon his agent
3 or attorney, if living within this State, but if no such
4 agent or attorney can be found within this State by
5 the officer serving the same, an attested copy of the
6 citation shall be left by the officer with the clerk of the
7 court, or justice of the peace, before whom the writ
8 is returnable or action is pending,—allowing time,
9 after leaving the copy with the clerk or justice, the
10 same as is prescribed in the third section of this act,
11 computing time for travel from the place of leaving
12 the copy, to that appointed for the examination;—
13 the person who made the writ in the suit on which
14 the arrest was made, shall be considered the attor-
15 ney of the plaintiff as to the service of the citation
16 in that case.

1 SECT. 6. The examination may be had before any
2 two justices of the peace for the county, each of
3 whom shall be of the quorum, and disinterested and
4 not related either to the plaintiff or debtor; and shall
5 be conducted in the same manner, and with the same
6 powers in the justices, as is provided in the ninety-
7 eighth chapter of the Revised Statutes.

1 SECT. 7. If, upon examination, the debtor shall
2 be admitted to take the oath, his bail, if he then be
3 under bail, shall be discharged; and the debtor shall
4 not be arrested again for the same cause of action;
5 but, if judgment shall not have been then rendered
6 in the action in which the debtor was arrested, the
7 action may be prosecuted to final judgment in the
8 same manner as if the debtor had not been admitted
9 to take the oath.

1 SECT. 8. If the debtor, upon such examination,
2 shall be admitted to take the oath, it shall be the
3 duty of the justices who administered the oath, upon
4 the request of the debtor and at his expense, in ad-
5 dition to the certificate required to be made by them
6 by the tenth section of the ninety-eighth chapter of
7 the Revised Statutes, to give him a certificate briefly
8 stating the fact that they have administered to him
9 the poor debtor's oath, which certificate being filed
10 with the clerk of the court, or justice of the peace,
11 before whom the writ on which he was arrested and
12 so admitted to take the oath, is returnable, or the
13 suit is pending, no execution which may be issued
14 on the judgment rendered in that action, shall run
15 against the body of the debtor. The certificate re-
16 quired by the tenth section of said chapter of the
17 Revised Statutes, to be made out by the justices ad-
18 ministering the oath, shall be filed with the jailor
19 when the debtor is in close confinement, or has given
20 bond for the prison limits, whether he be so on
21 mesne process, execution, or on surrender by his
22 bail; and in all other cases it may be delivered to
23 the debtor; and shall be so varied as to conform to
24 the facts of the case.

1 SECT. 9. Whenever any person shall be commit-
2 ted to jail on execution in any civil action, or for
3 any debt, and is desirous to take the oath prescribed
4 for the relief of poor debtors confined on execution,
5 the same notice shall be given and the same pro-
6 ceedings had as are provided in this act for the relief
7 of persons arrested on mesne process.

1 SECT. 10. No debtor shall be entitled to the

2 benefit of the provisions contained in the preced-
3 ing sections of this act, after a writ of scire facias
4 on the bail bond given by him in the original ac-
5 tion, has been served upon his bail therein; and
6 whenever evidence of such service of scire facias
7 shall be produced to the justices before whom
8 the examination of the debtor is to be had, all
9 further proceedings in the examination shall be dis-
10 missed.

1 SECT. 11. When any debtor shall have given no-
2 tice of his intention to take the poor debtor's oath in
3 manner in this act provided, and the plaintiff or cred-
4 itor shall think proper to allege any or all of the
5 charges of fraud mentioned in the ninety-eighth chap-
6 ter of the Revised Statutes, he shall be allowed so
7 to do by complying with the provisions of the said
8 ninety-eighth chapter of the Revised Statutes in all
9 respects, except that he, his agent or attorney, shall
10 be allowed to exhibit his charges of fraud, and to give
11 notice to the debtor, by giving him a copy thereof at
12 the time and place appointed for the examination,
13 and when so exhibited and notice given, the proceed-
14 ings thereon shall conform to the provisions relat-
15 ing thereto, contained in said ninety-eighth chapter
16 of the Revised Statutes.

1 SECT. 12. Nothing in this act contained shall in
2 any way affect the rights of any creditor, accrued or
3 accruing, or discharge any debtor or his bail from
4 any liability incurred, under the act or any law here-
5 by repealed.

1 SECT. 13. The act entitled "an act concerning
2 imprisonment for debt," approved by the Governor

3 the third day of March, in the year eighteen hundred
4 and forty-two, and all other provisions of law incon-
5 sistent with the provisions of this act, are hereby re-
6 pealed.

1 SECT. 14. This act shall take effect from and af-
2 ter its passage.