MESSAGE
OF
HIS EXCELLENCY THE GOVERNOR
TO THE
TWO BRANCHES OF THE LEGISLATURE, MAY 31, 1831.
TRANSMITTING THE
REPORT
OF THE
COMMISSIONERS ON INSOLVENCY AND
IMPRISONMENT FOR DEBT,
TOGETHER WITH THE SAID REPORT AND
A BILL
FOR THE
RELIEF OF INSOLVENT DEBTORS
AND
THE MORE EQUAL DISTRIBUTION OF
THEIR EFFECTS.

BOSTON
DUTTON AND WENTWORTH, PRINTERS TO THE STATE.
NOS. 1 AND 4 EXCHANGE STREET.
1831
REPORT

OF THE

COMMISSIONERS ON INSOLVENCY AND
IMPROVEMENT FOR DRAFT

A BILL

TO AMEND THE

RECEIVER OR CUSTOYER OF
THE MORE KNOWN PROPOSITION OF
THIRD DISTRICT

NORTH

COTTON AND WOOLEY MANUFACTURES OF THE

YEAR 1851
TO THE HONORABLE SENATE, AND
HOUSE OF REPRESENTATIVES,

I hasten to lay before the Legislature, the Report of the Commissioners appointed pursuant to a Resolve of the last Legislature, to revise the Laws in relation to Debtor and Creditor, and Imprisonment for Debt, with an accompanying Bill, proposed by the Commissioners, "for the Relief of Insolvent Debtors, and the more equal distribution of their effects."

The Bill presents, in twenty-nine sections, an entire system of proceedings, for the assignment of the property of the Insolvent, the ascertainment of the claims of the Creditors, and their subsequent payment and satisfaction in equal proportions, and for the exemption of the person of the Debtor from imprisonment in all cases, to which it is intended the law shall apply;—And the Report presents a clear and precise analysis of the Bill, with an explanation of the practical operation of it, in its various provisions, and a perspicuous and forcible exposition "of the motives and considerations by
which the Commissioners have been influenced in their deliberations on the subject," which will not fail to be received with the respect and deference due to their character, and to the laborious and thorough investigation bestowed by them, upon the performance of the interesting and highly important service to which they were assigned.

LEVI LINCOLN.

Council Chamber, June 1st, 1831.
REPORT.

Boston, May 31, 1831.

His Excellency Levi Lincoln,

Sir,—The Commissioners appointed by your Excellency's warrant, dated on the 11th day of April last, on the subject of the Laws relating to Debtor and Creditor, have prepared a Bill for the relief of Insolvent Debtors, and for the more equal distribution of their effects, which I have now the honor to transmit to your Excellency. The Commissioners ask leave to submit at the same time some explanation of the principles and details of the Bill, and of their views concerning it, which they have taken the liberty to express in the Report which accompanies the Bill.

The Commissioners do not flatter themselves, that the Bill which they have prepared will be found free from imperfections; but they trust that its main objects and principles are such as will be generally approved, and that any errors and defects in the particular provisions of the Bill will be easily corrected by the wisdom and experience of the Legislature.

I have the honor to be, Sir, very respectfully, your Excellency's most obedient servant,

Charles Jackson.
TO HIS EXCELLENCY, THE GOVERNOR
OF THE COMMONWEALTH.

The undersigned Commissioners, appointed by your Excellency, in pursuance of a Resolve of the General Court, "to consider the expediency of providing by law for a more equal and equitable distribution of the estates of insolvent debtors; for the abolishing of imprisonment for debt, in all proper cases; and for making such further provision in the existing laws, touching Debtor and Creditor, as the said Commissioners might deem expedient and proper; and to report by Bill or otherwise, to the next General Court," respectfully

REPORT:

That they have attended to the duty assigned to them by the said Commission, and have prepared a Bill for the purposes specified in the said Resolve, which they respectfully present herewith.
They ask leave, at the same time, to submit for the consideration of the General Court, a brief analysis of the Bill, with a sketch of its practical operation, as anticipated by the Commissioners, and an exposition of some of the motives and considerations, by which they have been influenced in their deliberations on the subject.

The first Section of the Bill points out the course to be pursued by an insolvent debtor, who wishes to give up all his property to his creditors, and to obtain a discharge from his debts. The assignments by Indentures, between a debtor and his creditors, which for several years past, have been commonly resorted to for this purpose, are exposed to many inconveniences. No man is permitted by his own act to exempt his property from attachment, even for the purpose of dividing it among his creditors; and as he cannot do this whilst the property remains in his own possession, so he is prohibited from effecting the same object indirectly by an assignment of it to Trustees. Such an assignment, though intended for the benefit of all the creditors, is liable to be defeated, either in part or in whole, at any time before it is acceded to by the creditors, whose debts are equal to the whole value of the property assigned. And thus, whilst on the one hand, these assignments seem inconsistent with the spirit of the laws which authorize attachment on mesne process, and on the other hand, they are constantly resorted to in practice and seem almost to be considered in the community, as part of our established law touching
Debtor and Creditor, the citizen is perplexed by this undefined state of the law; and measures, which, in themselves, are perfectly just and honest, are liable to be embarrassed, and sometimes wholly defeated. Creditors are sometimes excluded, who would gladly have taken their dividend and given the debtor a discharge; other creditors, by having an early opportunity to join in the assignment, or by a fortunate attachment before the assignment is completed, obtain more than their equal portion of the debtor's property; whilst the debtor himself remains undischarged as to all his creditors, who have not become parties to the assignment, or who have not otherwise secured their whole demands. It is proposed by the present Bill, to legalize and facilitate assignments of this kind, and to render them more effectual both for Debtors and Creditors.

The first step in the proceedings is a petition by the debtor, setting forth his desire to surrender and assign all his property, in order to obtain a discharge from his debts, as provided in the Bill. It is necessary, of course, to designate some magistrate or officer, to whom this petition shall be addressed, and who shall superintend and regulate the ulterior proceedings in the case; and as many of these duties are of a judicial character, it seems proper to appoint for this purpose, men who are conversant with the principles and forms of judicial proceedings. It is accordingly proposed, to assign this duty to the Judges of Probate, and the Masters in Chancery, in the several Counties. As the
proceedings, are, in some respects, analogous to those in the Probate Court, upon the distribution of the estate of a deceased insolvent debtor, and the Probate office will be found a safe and convenient depository for the records and papers, this duty seems therefore peculiarly appropriate to the Judge of Probate. But as the business would be liable to frequent interruptions, if there was only one officer in a County who could attend to it, and it would be burdensome to require all the inhabitants of a large County to repair to one place for this purpose, the Masters in Chancery are added, to act in all cases, as the Judge of Probate might do.

One of the undersigned, being himself one of the present Masters in Chancery, felt some delicacy as to proposing an arrangement, which might add to the emoluments of that office. But these scruples were overruled by his colleagues, who were of opinion that this accidental circumstance ought not to prevent their recommending the measure, which seemed in itself the best. It may also be observed, that the General Court, if they adopt the proposed system, can, if they think proper, authorize the appointment of Commissioners of Insolvency, to perform all the duties herein assigned to the Judges of Probate and the Masters in Chancery.

The Bill in prescribing the duties of the Magistrate or Officer, speaks only of the Judge of Probate; and then provides (in the 17th Section,) that all the same duties may be performed by
Masters in Chancery. The undersigned, for the sake of avoiding useless repetitions, will adopt the like course in this report; meaning to include the Masters in Chancery with the Judges of Probate, whenever the latter are mentioned.

The Judge, upon receiving the petition, will immediately issue his warrant to some suitable person, authorizing him to take possession of all the estate of the debtor, excepting such as is by law exempted from attachment. This is the same duty that was assigned to the Messenger, under the former bankrupt law of the United States, and this officer is accordingly so named in this Bill.

There will, undoubtedly, be cases where the amount of debts and of property will be so small as not to justify the expense and trouble of these proceedings; and the Commissioners have accordingly proposed the sum of five hundred dollars of debts, as the limit in this respect. It will, of course, be for the wisdom of the Legislature to enlarge or reduce this sum.

The second Section, provides for a meeting of the creditors, to be held at such time and place, as the Judge shall order, for the purpose of proving their debts and choosing assignees of the debtor's estate. If the Creditors, or many of them, live at a great distance from the place of meeting, the Judge will, of course, give as long a notice, as the law will permit; and when he thinks it expedient, will order notice to distant creditors by letters addressed to them, or by advertisements in the town or State where they reside; and if the as-
signees then chosen should be afterwards disapproved, they may be removed at any subsequent meeting, when more of the creditors may have had opportunity to prove their debts. The choice is given to the greater part in value of the creditors, on the principle, that questions affecting property only, ought to be decided with reference to the amount of property, and not to the number of the persons who hold it.

This Section provides also, for the first publick notice of the issuing of the warrant; which is considered for many purposes, as the commencement of the proceedings under the proposed law. It was necessary to fix some time, at which the legal insolvency should be supposed to have occurred, and to which the assignment, and the debts to be discharged, should have relation. By the mode proposed in the Bill, this time will always be susceptible of clear and unequivocal proof; and it will be made public, so as to put on their guard all who may have dealings with the insolvent debtor. This will prevent the inconvenience and injustice of avoiding contracts and other transactions with insolvent persons, as is done in some bankrupt laws, by relation back to a secret act of bankruptcy.

The proof and allowance of debts, is one of the most important transactions under this Bill, affecting materially the rights, both of the debtor and the creditors, and the duty of the assignees. It is therefore required that a list of the debts shall be formally authenticated by the Judge, and shall also be recorded at length with the proceedings in the case.
The third Section describes the debts that may be proved. This Bill includes some debts that are contingent, but which from their peculiar character, have been thought proper to be included in other insolvent and bankrupt laws. Such are bottomry and respondentia bonds, and policies of insurance, provided the debts become absolute before the making of the first dividend. To these are added bills of exchange made or endorsed, and promissory notes endorsed by the debtor. If the debtor had been the acceptor of a bill, or the maker of a note, the debt would be proveable, and he might be discharged from it, under the general provisions of the bill; and it seems unreasonable to keep up a distinction between these and the former cases, upon grounds that are merely technical. In pursuance of the same principle, if the debtor is liable either as acceptor, maker, or endorser, of any bill or note, and the money is paid by any party who is liable after him, the debt, though technically incurred only when this payment is made, is considered in the proposed law as contracted when the bill or note was made, accepted, or endorsed. So if money is paid by a surety in any other contract, he is allowed to prove it as a debt, although paid after the commencement of the proceedings. The payment in the two last cases is required to have been made, and the contingency in the preceding cases is required to have happened, before the making of the first dividend, to entitle the claimant to prove the debt. It is necessary to fix a period for this purpose
so early in the course of the proceedings, that the creditor in these cases may have opportunity to receive an equal dividend with others; and if it should be postponed to a later time than that proposed in the Bill, he might be deprived of this opportunity, whilst his claim might nevertheless be barred by the certificate of discharge.

There are many cases where goods are delivered to a person as a carrier, factor, trustee, or bailee, for other purposes, and are afterwards so converted or misapplied by him as to render him liable for the value of them to the right owner. In such cases the owner may at his option bring an action on the contract, and recover the value or proceeds of the goods; or he may consider the other party as a wrong-doer, and bring an action against him for the tort. The claim considered in the first view would be proveable as a debt; in the other it would not; and yet it seems absurd, as well as unjust, to let it depend on the will of the creditor, and on the form of action that he shall elect, whether his claim is proveable or not under a law of this kind. The Commissioners have accordingly proposed to consider all claims of this description as proveable debts, entitled to a dividend, and liable to be barred, like those founded wholly on contract. They have proposed also to extend this provision to all cases, even of mere torts, where goods or any valuable property have been wrongfully obtained, taken or withheld by the debtor; confining, however, the sum to be allowed against the estate, to the amount to which the estate has
been benefited, and that of the claimant injured. It is intended of course to exclude, not merely personal injuries, such as assaults and batteries, and slander; but also all injuries to the property of another, which do not benefit the wrong-doer. Thus if a man should wantonly or carelessly burn or destroy his neighbor's property, the damage would not be proveable as a debt; but if he should take the same property and convert it to his own use, the owner would be considered as a creditor for the value of the property.

The provision in this Section respecting mutual credits, and also that respecting creditors who may hold security for their debts, are founded on principles of equity and justice, which have been recognized in similar cases by judges and by legislators.

The fourth Section prescribes the manner in which debts shall be proved before the Judge; and provides for an appeal to a jury by either party who may be dissatisfied. These provisions are taken substantially from the existing law, relating to the estates of insolvent persons who are deceased. The principal difference is, that this bill allows a direct appeal to the Supreme Court, when the demand is of a kind that might be ultimately carried to that Court; and that it authorizes the creditor to present his claim for adjudication, by a declaration to be filed with the clerk, and without the delay and expense of bringing an action. The proceedings in other respects are substantially the same as in an action in the common form; and of
course a new trial may be granted for any legal and sufficient cause; it being the final judgment of the Court, and not merely the verdict, that is to be conclusive in the case.

The fifth Section provides for the assignment of all the estate of the debtor, excepting such as may be exempted from attachment. This assignment includes every species of property which the debtor could in any way sell or dispose of for his own benefit, although it should be so situated that it could not be attached; and it also includes all the estate real or personal, which might be attached as the property of the debtor, although he could not convey it; such as estates conveyed by the debtor with intent to defraud his creditors.

The assignment here proposed supersedes all attachments, existing on the day of the first publication of the notice. Attachment of goods and estate on mesne process, as practised in this State, are unknown to the Common law, and equally so, as it is believed, in most of the United States. It may sometimes be proper and convenient, especially with regard to transient persons, to allow their creditors to attach their property, and prevent their carrying it beyond the reach of our laws; and this may be very just, as between the debtor and creditor. But as between the creditors themselves, there seems to be no reason why any one should by such an attachment gain any preference or advantage over the others. They all trusted alike to the same fund, and if it is insufficient for them all, they should share it equally. The principle on
which the property of bankrupts and insolvent debtors is divided among their creditors, in all the systems of jurisprudence with which we are acquainted, is, that as soon as it is made apparent that the debtor cannot pay all his creditors, no one of them shall be paid in full to the injury of the others. This is the principle adopted by our own laws in the case of deceased persons, whose estates are insolvent; and it is introduced in the bill now proposed as a most essential part of the system, and a provision which is indispensable in a law proposing to secure the rights and interests of creditors as among themselves. In cases of this kind it is most emphatically true, that "Equality is equity."

This assignment is evidenced and authenticated by the deed, which is to be executed by the Judge, but it will be in truth effected by the operation of the law; like the case of the estate of a deceased intestate, of which administration is granted by the Judge. But as the assignment may not be recognized in other States or Countries, where there may be debts or other property of the debtor, it is proposed that he should execute all such conveyances, powers of attorney or other instruments, and do such other acts, as the assignees may require, to enable them to demand and receive all his estate and effects, wheresoever they may be found. And also as to property within this State, although it would be effectually assigned without any confirmation by the insolvent, yet deeds from him may sometimes be convenient; particularly in the case
of real estate, where such deeds would aid in tracing the title at any after time; and it is accordingly provided that the debtor shall make them whenever required by the assignees.

This Section also contains provisions for commencing and conveniently prosecuting actions by the assignees; and directions for continuing the proceedings in case of the debtor’s dying before they are concluded.

The sixth Section requires the debtor to deliver up all his estate; and to make out, and produce at the first meeting of the creditors, a schedule of the names of his creditors with the amount and nature of the debt due to each. This will be useful as evidence in the proof and allowance of debts, though not conclusive, either for or against any claimant.

The same Section requires the attendance of the debtor at other times, to be examined on oath before the Judge and the assignees, and fixes his compensation therefor. It also provides an allowance out of his estate for the support of himself and his family, for such time as he may be supposed to be occupied in the settlement of his estate, and unable to engage in any other business for his support.

The seventh Section prescribes the form of an oath to be taken and subscribed by the debtor, stating that he has delivered up all his estate; and that if any thing more should come to his knowledge or possession he will disclose or deliver it to the assignees; the section then provides for the Certificate of discharge, which is to be granted to
the debtor by the Judge, upon its appearing to his satisfaction that the debtor has done every thing required of him by the law; and unless it is objected to by one half of the creditors in number or in amount. In other bankrupt, and insolvent laws, it has been usual to require the express assent of a certain proportion of the creditors to the allowance of the certificate of discharge; by which means all who are absent, or are by any accident prevented from signing the certificate, are counted among the opposers of it. By the proposed method, no one will be considered as opposed to the discharge but those who are willing openly to express their objections; and the unfortunate debtor and his friends will be saved the labor, sometimes a humiliating one, of applying to each creditor to solicit his signature.

It has been usual also in other codes of this kind, to require the assent of two thirds of the creditors to the certificate of discharge. It has been thought however that the assent of one half ought to be deemed sufficient for that purpose.

This Section also describes the nature and effect of the discharge; which it is proposed to make as extensive as it can be, consistently with the Constitution of the United States. The relief proposed is of two kinds, either an absolute and total discharge of the debt, or an exemption of the person of the debtor from imprisonment for it. The latter being merely a part of the remedy, and not affecting the right, is not supposed to be controlled by the Constitution; and it is accordingly proposed to
grant this exemption to the certificated debtor, as to all his debts which are proveable under this law, whether actually proved or not. The absolute discharge applies, first, to all debts of whatever description that are actually proved in the case; because the creditor by voluntarily coming in under the law and taking the benefit of it, is presumed to assent to the conditions which it imposes. It applies, secondly, to all debts which are proveable in their nature, and founded on any contract made after the act shall go into operation, provided the contract is made within this State, or is to be performed within it; and, thirdly, to all debts that are proveable, and founded on any contract made after the act shall go into operation, wherever the contract is made and wherever it is to be performed, provided the creditor is resident within this State, at the time of the first publication of the notice mentioned in the second section.—It also applies to those demands founded on torts, which are specified in the third section as proveable debts; and includes all of this description, without reference to the time or place of their origin. It is supposed that demands of this kind do not come within that clause of the Constitution which prohibits the several States from passing any law impairing the obligation of contracts; and of course that the discharge may extend to all such demands without any limitation.

It is then provided that this discharge of the insolvent debtor shall not release any person who may be liable as a partner, joint contractor or sure-
ty, for or with him. The twenty-first section contains provisions for proceedings against insolvent partners.

The eighth Section allows to the debtor whose certificate is refused, an appeal to the Supreme Judicial Court; and gives to that Court full power to decide conclusively whether the certificate shall be granted. This superintending and controlling power, which is allowed in other similar codes, seems necessary to correct any error in judgment on the part of the Judge of Probate, or the Master in Chancery, and also to counteract the effect of any unjust prejudice, if any such should exist on the part of the creditors towards the debtor.

This Section further provides for a short and simple plea by the debtor, if he should afterwards impleaded. The general issue which is well enough adapted to this purpose in actions of assumpsit, would be quite incongruous in an action on a bond, and wholly inadequate and improper in an action of debt on a judgment. It seemed therefore necessary to provide for a general plea of the discharge, to be resorted to when the general issue would not answer the purpose.

This eighth Section also prescribes the allowance to be made to the debtor out of his estate. This kind of allowance, which is generally found in all bankrupt and insolvent laws, is granted not merely from motives of humanity, but for reasons of policy also. It tends to induce a debtor, whose situation is doubtful, to look seasonably into his affairs, and not to proceed in a desperate course of
speculation, at the risk and expense of his creditors, when there is no reasonable prospect of retrieving his fortunes.

The ninth Section provides that the debtor, if in prison, may be brought out to be examined; and if that is not done, or if from sickness or any other cause, he cannot attend personally, he may be examined wherever he may be, if within this State. Provision is also made for the case of his being out of the State, and unable to return and attend at the times prescribed in the bill; in which case, if he shall return as soon as it is in his power, and then do all the things required of him, he will be entitled to his discharge.

This Section also provides for the discharge of the person of the debtor, if he should be in prison at the time of obtaining his certificate, for any debt that would be proveable under this act. If he should meet with any obstruction in this respect, he might be relieved by the writ of *habeas corpus*, to which he would be entitled by the existing laws, without the necessity of any new provisions. The certificate is considered as *prima facie* evidence, that the proceedings have all been legal and regular, and that the debtor is entitled to the full benefit of the act; and his arrest before obtaining his certificate does not show any intention on the part of the creditor to contest its validity. But this will not prevent the same creditor from arresting the debtor anew, upon execution for the same debt or otherwise, in like manner as any other creditor may arrest him, with a view to contest the validity of the certificate of discharge.
The tenth Section provides, that the certificate, although formally granted and allowed, shall be wholly void, if it shall afterwards appear that the debtor has been guilty of certain specified acts, which are contrary to the spirit and design of the proposed law; and either of which, if seasonably known, would have been sufficient cause for withholding his certificate. These are, first, his wilfully swearing falsely as to any material fact in the course of the proceedings; secondly, his fraudulent concealment of any part of his estate; and thirdly, his giving, in contemplation of his insolvency, any security or payment to any creditor, endorser, or surety, with a view to give him any preference over the other creditors. This last provision is so explained as not to apply to any mortgage or other security demanded and received at the time of the original agreement, and as part of that agreement. Neither will it extend to any payment made in the usual course of business, nor to any security given on the demand of a creditor whose debt is due and unpaid, and not given with a view to prefer that creditor, or to give him an undue advantage, although it should be known or believed at the time that the debtor was insolvent. This provision, which seems to be essential to every system of insolvent or bankrupt laws, is founded on the same principle of equity that is mentioned above in the remarks on the fifth Section, viz., the perfect equality which ought to be enforced and maintained among all the creditors. It is opposed to a practice which has become com-
mon in some parts of the State, of giving a preference in cases of insolvency to the friends of the debtor who have aided him with their credit, or with temporary loans. According to this practice any friend of a young man who is commencing business, or of one whose credit is doubtful, will endorse his notes, or lend him money, and thereby give him a factitious credit, which induces others to trust him; and when the debtor can hold out no longer, he pays or secures this friend, and leaves to his other creditors what may be left of the residue of his effects. The frequency of this practice may exempt those, who too easily yield to the example, from the charge of intentional fraud or moral turpitude; but this does not alter the character of the transaction as it regards the other creditors; and as to them it has all the effects of a deliberate artifice and contrivance to defraud them of their money under false pretences.

In order the more effectually to repress this practice, the Bill further provides that the creditor shall derive no advantage from the intended preference. For this purpose, it is proposed to render void as to the other creditors, all such payments and securities; and they are accordingly put on the same ground with conveyances, which are now by law considered fraudulent and void, as to the creditors of the grantor. By the operation of this rule, the specific thing mortgaged or conveyed by the debtor, whether it be real or personal estate, may be recovered back by the assignees from the possession of the preferred creditor; but if he has
parted with it to any bona fide purchaser, the latter would hold it, and the creditors would be without remedy. So the case of a payment in money to any creditor with a view to give him a preference, would not fall within the provision respecting fraudulent conveyances. The Bill accordingly provides for these two cases, by enabling the assignees to recover the money, when money has been paid; and when any other property has been mortgaged or conveyed, to recover either the value of that property, or the property itself.

The Bill also provides that the creditor, who knowingly accepts such a preference, shall not be entitled to any dividend, on account of the debt so preferred; it being unjust that he should endeavor to secure an unfair and unlawful advantage over the other creditors, and when defeated in this purpose, come in upon the same terms with those whom he had attempted to defraud. This latter provision, being in the nature of a penalty on the creditor, does not apply unless he voluntarily joins in the meditated fraud, by accepting the payment or security, with knowledge of the purpose for which it is made. Such a preference will indeed very seldom be given, without his knowing the motive and object of it; but it may so happen; and in that case, although the property may be recovered back from him, it is not proposed that he should suffer any other loss or penalty.

The eleventh Section describes the general powers and duties of the assignees, as to collecting and disposing of the estate and effects of the
debtor, and fixes their compensation. It also authorizes them under the direction of the Judge, to compound and settle any controversies, or to submit them to arbitration. If in any part of their duty, the assignees should proceed in a manner not approved by the creditors, they may be removed, and others appointed in their place.

To avoid the frequent repetition in the Bill of the words “assignee or assignees,” they are generally spoken of in the plural number; and this Section declares that when there is but one assignee, all the provisions having reference to several assignees shall apply to that one.

The twelfth Section provides for the first dividend, which is to be made at farthest within six months after the appointment of the assignees. The Judge will appoint the time, on application for that purpose by the assignees; and he will of course fix it earlier or later, within the limited period, according to the progress that shall have been made by the assignees in collecting and disposing of the estate; and also according to the places of residence of the creditors, giving to all of them, so far as can be done conveniently, an opportunity to prove their debts in season for the dividend.

The Judge, in ordering this dividend, will always reserve enough of the estate to meet the claims of the creditors, if he has reason to suppose that there are any, who from their distance, or any other cause, have not then proved their debts.

This Section provides for all debts that are or shall be entitled to any priority or preference, by
the laws of the United States or of this State; directing that they shall be paid, as if this Act had not been passed.

The thirteenth Section prescribes the time and manner of making the second dividend; which will generally be final, unless the business of the debtor shall have been very extensive, and his effects widely dispersed. Provision is however made for further dividends, when necessary; and if the assigned property shall be more than sufficient to pay all the debts, the surplus is to be restored to the debtor.

Whenever a dividend is to be made, and at all other regular meetings, creditors who have not before proved their debts, are allowed to prove them; and in that case they are first to receive such dividend or dividends as the others have already received, so far as it can be done out of the effects remaining in the hands of the assignees, and without disturbing any prior dividend.

This Section also provides for the sale by the assignees of any outstanding debts or property that cannot be collected without great delay. The assignees being entitled to a commission for their services, ought to exercise all reasonable care and diligence in getting in the effects; and should not be permitted, after receiving what is easily obtained, to sacrifice the remainder, in order to save trouble to themselves. It is accordingly provided that no sale of this kind shall be made without the direction of the Judge. But on the other hand, it will be for the interest of the creditors, as well as a
relief to the assignees, to have the estate settled within a reasonable time, even at the risk of some small sacrifice in the disposal of doubtful, or distant, or contingent claims.

The fourteenth Section provides for the appointment of a Clerk, to keep a record of the proceedings, and to take care of all papers that may be used and filed in the case, and perform such other services as shall be prescribed by the Judge. At the close of the proceedings in each case, he is to deposit the record and other papers in the Probate Office, under the care of the Register of Probate. The record may be kept in a book of such size and form as to be easily folded and enclosed with the other papers; and the whole may be so labelled as to make it easy in after time to refer to any case that may be wanted. Copies of the record certified by the Register of Probate, are to be admissible as evidence, prima facie, of the facts therein stated.

The fifteenth Section requires the Judge to preside at all meetings of the creditors, as there may always be creditors who wish to prove their debts; and also because questions may arise as to the right of voting, or as to the result of any vote, which ought to be decided by a disinterested person.

This Section also provides for adjournments of meetings by the Judge; and for the administering of all oaths and affirmations that may be required. It also allows absent creditors in certain cases, of whom an oath may be required, to make it before
other magistrates; and allows all creditors to appear and act in all cases by attorney.

The sixteenth Section establishes the fees to be allowed for the different services required by the Act, so far as the nature and value of each service can be sufficiently ascertained; in other cases, the compensation is left to the discretion of the Judge.

The seventeenth Section makes the provision before adverted to, for authorizing any Master in Chancery to exercise all the power and authority previously given to the Judge of Probate. It is supposed that the number of Masters in Chancery, that can be appointed under the existing law, will be sufficient for the purposes of this Act; but if it should turn out otherwise, the General Court can at any time increase the number, or can provide in any other way for a competent number of magistrates or officers to carry the law into execution.

It may often be convenient and sometimes necessary, that the proceedings commenced before one of these officers, should be carried on before another; and it is probable that there will seldom, if ever, be such a connexion between the different stages of the proceedings as to cause any embarrassment from such a change of the presiding officer. This Section, accordingly provides for such a change, when it shall be found necessary or convenient. When the obstacle is temporary, and the officer who commenced the proceedings is ready to resume them, the one who took his place will of course be willing to retire, and leave the business to be concluded by the former.
The eighteenth Section gives to the Supreme Judicial Court a general superintendence and jurisdiction of all cases arising under the Act. It authorizes them to make general rules for regulating the proceedings, and also to hear and determine particular cases that may be brought before them, by any party interested therein. This kind of appeal in the last resort to one tribunal, is necessary to insure a regular and uniform course of proceedings in all parts of the State; and the power is substantially the same as that which is vested in the same Court, in all matters arising in the Probate Courts. This power is of a kind that could not be exercised by a Court proceeding according to the course of the common law; and it is accordingly provided in this Section, that it shall be exercised according to the course in Chancery.

The foregoing eighteen Sections, contain all the provisions that are proposed, for the case of a voluntary surrender or assignment by a debtor, who may wish to take the benefit of this Act. The nineteenth Section provides for a compulsory assignment of the estate and effects of any debtor, whose conduct shows that he is unable or unwilling to pay his just debts. The facts which are designated as showing this state of the debtor's affairs, are, 1st, his being arrested for a sum equal to fifty dollars, and not giving bail before the return day. The demand may be one that he denies to be just, and his refusal to pay it may therefore be no proof of his insolvency; but
if he is compelled to lie in prison for want of bail, this not only shows that his mercantile credit is bad, but the confinement must prevent him from continuing and attending to his business. If it should be said that a man in good circumstances may be arrested for an unjust and unfounded demand, and for so large an amount that he cannot find bail, the answer is, that the same injustice may be practised under the existing law, and the effects may be equally injurious. In both cases the remedy for the injured party is an action on the case for the malicious prosecution, in which he may recover whatever damages he shall prove that he has sustained.

The second fact which is considered as indicating an insolvency, or an unwillingness to pay his debts, is, his lying in prison for more than thirty days, either on mesne process or execution, in any civil action, for a sum equal to fifty dollars. This is founded on the same reason as the preceding.

The third is, the having his goods or estate attached on mesne process in any civil action, for a sum equal to fifty dollars, and not dissolving the attachment on or before the return day, by giving security to pay what shall be recovered, in the manner provided in the succeeding Section.

In either of the three cases above specified, any creditor who has a demand amounting to fifty dollars, which is then due and payable, may petition the Judge of Probate, or any Master in Chancery, and procure a warrant to be issued to take possession of all the estate of the debtor, in like manner as is
provided in the first Section; and all the subsequent proceedings, for disposing of the estate and dividing it among the creditors, are to be the same as if the original warrant had issued on the petition of the debtor himself.

There is no proviso in this case, that the aggregate of the debts shall amount to five hundred dollars, as there is in the case of a voluntary assignment by the debtor. The reasons are, that the creditor who petitions in this case, may not know, and will not generally have the means to prove, the amount of debts due from the debtor; and, secondly, the case that will authorize this petition cannot occur, unless there are at least two debts of not less than fifty dollars each; and this will seldom happen when the aggregate of the debts does not amount to five hundred dollars.

The twentieth Section provides for dissolving an attachment on mesne process, by giving security to pay whatever shall be recovered in the action. This may, perhaps, be thought a convenient and reasonable regulation in itself, independently of its connexion with the proposed insolvent law. The only lawful or reasonable purpose to be answered by an attachment on mesne process under our laws is, to obtain security for the debt or damages that may be recovered in the suit. But it may be, and sometimes is made an engine of oppression, by withholding from a defendant a ship, or merchandize, or other things that are necessary for carrying on his business. In such cases, the injustice might be prevented, and every allowable
purpose of the attachment might be attained, by permitting the substitution of another satisfactory security for the debt.

In the twenty-first Section, provision is made for proceedings against partners, who become insolvent. The partners are considered, for many purposes, as one person, and their joint stock as the estate of one debtor; and their allowance on the nett produce of their joint stock is accordingly computed on the amount of dividends paid to their joint creditors. But as to the separate estate and the separate creditors of each, they are considered in the same light as if there had been no partnership; and each individual is entitled to an allowance out of his separate estate, according to the amount of dividends paid to his separate creditors. As each partner is a debtor for all the joint debts, as well as for those due to his separate creditors, if he pays fifty per cent on the whole, he is entitled to no more consideration than if he alone had been liable for the whole; and it is accordingly provided that he shall never receive more than the five hundred dollars, allowed in other cases. In marshalling the assets among the joint and several creditors, it is proposed to follow the existing law; and to distribute the property as it would be distributed upon different executions, against the partners collectively, and against each of them severally.

By the twenty-second Section it is proposed to abolish imprisonment for any debt less than fifty dollars. This sum is proposed, as what was
thought reasonable in itself, and also as corresponding with other provisions in the Bill now presented.

If the other parts of this Bill should not be adopted, the undersigned would feel desirous to substitute if possible, a total abolition of imprisonment for debt, or at least to provide that it should be allowed only for debts of a much greater amount than fifty dollars. But if every honest debtor can obtain his enlargement from prison upon the just and easy terms proposed in this Bill, and if arrest for small debts is wholly prohibited, there will, it is believed, be little reason to complain of imprisonment for debt.

The Bill now presented to the consideration of the Legislature, though apparently novel in some of its provisions, and complicated in its detail, will be found to rest upon two or three plain and familiar principles. The first is, that when a debtor is unable to pay all his debts, his property ought to be equally divided among all his creditors. This principle is adopted, it is believed, almost universally by the commercial nations of Europe, as well as in many parts of the United States; and it is recognized and sanctioned by the laws of our own State, when the insolvent debtor is dead. There seems to be no reason, of justice or of policy, for adopting this principle of equality in the latter case, that does not apply with equal force whilst the insolvent debtor is still alive.

The second principle on which this Bill is founded is, that when a debtor, without any fraud
or gross misconduct on his part, is unable to pay all his debts, he ought to be discharged, upon surrendering all his property for the benefit of his creditors. The oppressive and disheartening sense of a liability for debts, which a man is wholly unable to pay, tends to repress his exertions, or to render them fruitless, and thus to make him a useless member of society. The instances are rare of debtors who under such circumstances ever acquire enough afterwards to pay their old debts; and thus the operation of the existing law is seldom of any advantage to the creditor, whilst it is injurious to the debtor, and to the community in which he resides. The Bill makes the discharge of the debtor as extensive as is permitted by the Constitution of the United States; and it may be confidently anticipated that if the system goes into successful operation, those creditors who cannot be compelled to assent to the discharge of the debtor, will find it for their interest to come in and prove their debts with the other creditors, which will operate as a voluntary discharge on their part.

Another important feature in this Bill is that which relates to the dissolving of attachments on mesne process by substituting other satisfactory security for the payment of what may be recovered. This is not essential to the main object of the Bill; and if rejected by the General Court, would require only a corresponding alteration of a few words in the preceding Section. It is however hoped, that it will be considered to be in itself a reasonable and just provision, and a useful amendment of our law.
The other parts of the Bill, voluminous as they appear, contain only the details of proceedings necessary for carrying into operation the two leading principles above mentioned. The Commissioners have endeavored to avoid that multiplicity and minuteness of details, which tend sometimes to render a law obscure and complicated, and to embarrass those who are charged with its administration; but they have thought it useful on the other hand, in introducing a new system, to anticipate, and as far as possible to provide for all the cases that will commonly occur under it. So far as they have succeeded in this attempt, the Bill, instead of being more complicated, will be rendered more plain, intelligible and easy in its operation, by the minuteness and particularity of its provisions.

The Commissioners ask leave to annex to this Report a sketch which they have prepared of some of the forms of proceeding under the proposed Bill. They do not propose that these forms should be adopted, nor in any manner sanctioned by the Legislature; but wish to leave them to be modified as experience shall dictate to those who shall be intrusted with the administration of the law. They present them only with a view to exhibit more fully and distinctly the practical operation of the proposed system; and as tending to facilitate its introduction, if it should be established by the Legislature, and to promote uniformity in the practice under it.

CHARLES JACKSON,
SAMUEL HUBBARD,
JOHN B. DAVIS, Commissioners.

May 31st, 1831.
Forms of Proceedings under the Proposed Bill.

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Petition by an Insolvent Debtor.

To the Honorable the Judge of Probate for the County of S. or to any Master in Chancery, in said County.

Humbly shews, A. D. of B. in the County aforesaid Merchant, That he is indebted in divers sums of money, amounting in the whole to five hundred dollars, which he is unable to pay in full; and he wishes to surrender all his property for the benefit of his Creditors, and to obtain his discharge from his said debts, according to the Statute in this behalf provided: Wherefore, he prays that a warrant may be issued for taking possession of his estate, and that such further proceedings may be had in the premises as the law in such case prescribes.

October 1, 1831. A. D.

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Petition by a Creditor.

To the Honorable the Judge of Probate, for the County of S. or to any Master in Chancery, in said County.
Humbly shews, A. C. of N. in the County of E. Esquire, That A. D. of B. in the said County of S. Merchant, is indebted to your petitioner in the sum of fifty dollars and upwards, for money here­tofore had and received by the said D., to the use of your petitioner, [or in the sum of one hundred dollars, according to the said D’s. promissory note, for that sum given to one R. I. and by him endor­sed to your petitioner,] for which sum he is now entitled to maintain an action against the said D.; and he further shews, that the said D. was on or about the first day of September last, arrested for the sum of fifty dollars or upwards, in a civil action, on a writ returnable to the Court of Com­mon Pleas, holden at B. in the said County of S. on the first Tuesday of this present October; and although the said return day has passed, the said D. has not given bail in the said action: Where­fore, your petitioner prays that a warrant may be issued to some suitable person, to take possession of the estate of the said D. in order that the same may be disposed of for the benefit of his creditors, according to the Statute in this behalf provided; and that such further proceedings may be had in the premises as the law in such case prescribes.

October, 8, 1831.

The statement of the debt due to the petitioner, will vary according to the facts. When the sum is certain, as in the case of a note or bond, it may be set forth precisely; but when it is not exactly
ascertained, as for goods sold, or for the balance of an unliquidated account, &c. it will be sufficient to shew that it amounts to fifty dollars.

So the statement of the act or proceeding of the debtor, on which the petition is founded, will be varied according to the circumstances. If it is lying in prison more than thirty days, it may be as follows:

—and he further shews, that the said D. was on or about the tenth day of August last, arrested and imprisoned on mesne process, [or on execution,] in a certain civil action, for the sum of fifty dollars or upwards, and did lie in prison upon the said process [or execution] for more than thirty days thereafter: Wherefore, &c.

If it is not dissolving an attachment, the statement may be as follows:

—and he further shews, that the goods or estate of the said D. were on or about the first day of September last, attached on mesne process for the sum of fifty dollars or upwards, in a civil action, on a writ returnable to the Court of Common Pleas, &c. &c. And although the said return day has passed, the said D. did not dissolve the said attachment, but the same was continued until after the said return day: Wherefore, &c.

Upon receiving the petition, the Judge may make a memorandum upon it, in substance as follows:
October 9, 1831. The within [or foregoing] petition was this day presented to me, J. P. the Judge of Probate for the said County of S. [or a Master in Chancery in the said County of S.] and thereupon I issued a warrant as by law prescribed, to A. M. as the Messenger in this case, to take possession of the estate of the said A. D.; which warrant is returnable at the Probate Office, [or at the house of A. I. &c. &c.] on the first day of November next, at 10 o'clock in the forenoon. And I have appointed F. C. of said B. Esquire, to be the Clerk in this case; and the said F. C. therefore personally appeared before me, and made oath, that he would faithfully perform all the duties of his said office.

J. P.

When the petition is presented by a creditor, the Judge must of course ascertain that the facts therein stated are true, before issuing the warrant; and in that case, he may add in the foregoing memorandum, the words following:

—and it appearing to me upon due examination that the facts therein set forth are true, I therefore issued a warrant, &c. &c.

Warrant to the Messenger.

[Seal.] To A. M. of B. in the County of S. Gentleman.
Whereas A. D. of B. aforesaid, Merchant, has
this day presented to me, J. P. the Judge of Probate for the said County of S. [or a Master in Chancery, &c.] his petition, setting forth that he is indebted in divers sums of money amounting in the whole to five hundred dollars, which he is unable to pay in full; and praying that a warrant may issue to take possession of his estate for the benefit of his creditors, and that such further proceedings may be had as the law prescribes, for obtaining a discharge from his said debts.

You are therefore hereby authorized and required, as the Messenger in this case, to take possession of all the estate, real and personal of the said A. D. excepting such as is by law exempted from attachment, and all his deeds, books of account, and papers, and the same safely keep until the choice of an assignee or assignees of the said estate, when you shall deliver the same to such assignee or assignees. And you are also required to give notice of the issuing of this warrant by publishing notifications thereof, three weeks successively, in the newspaper called the N. G. printed at said B. [or by publishing notifications thereof, on three different days, in two successive weeks, in the newspaper called the N. G. printed at said B.] the first publication to be made as soon as may be after the receipt of this warrant; and therein to forbid all persons indebted to the said A. D. or that have any of his effects, to pay or deliver the same to any person but to you, or to the assignee or assignees that shall be hereafter chosen; and in the same advertisement you will
also notify and call a meeting of all the creditors of the said A. D. to be held at the Probate office in B. aforesaid [or, at the house of A. I. innholder in said B., or at the office of A. L. Esquire, at No. 5, R. street, in said B.] on the first day of November next, at ten o’clock in the forenoon, when and where they are to come prepared to prove their debts, and then to proceed to the choice of an assignee or assignees of the estate of the said A. D. and to do such other business in relation to the said estate as may then come before them. And you are to make return of this warrant, with your doings thereon, at the time and place last above mentioned.

Dated at B. aforesaid this ninth day of October, in the year of our Lord one thousand eight hundred and thirty one.

J. P.

If the warrant is issued on the petition of a creditor, the recital at the beginning will be altered accordingly; and at the close, in addition to the public notice, the messenger will be required to give personal notice to the debtor, in such manner as the Judge shall think fit.

Form of the Advertisement.

Notice is hereby given, that a warrant has been duly issued by J. P. Esquire, Judge of Probate for the County of S. [or, a Master in Chancery in the County of S.] authorizing and requiring the sub-
scriber to take possession of the estate of A. D. of B. in the said County of S. merchant, an insolvent debtor; and that a meeting of all the creditors of the said A. D. will be held at the Probate office in B. aforesaid [or, at the house, or office of, &c.] on the first day of November next, at ten o'clock in the forenoon; when and where the said creditors are to come prepared to prove their debts, and then to proceed to the choice of an assignee or assignees of the estate of the said A. D., and to do such other business in relation to the said estate as may then come before them. And all persons indebted to the said A. D. or that have any of his effects, are forbidden to pay or deliver the same to any person but the subscriber, or the assignee or assignees who shall be chosen as aforesaid.

A. M., Messenger.

B.—October 10th, 1831.

The return of the Warrant may be as follows.

B.—November 1st, 1831. By virtue of the within warrant to me directed, I have taken possession of all the estate of the within named A. D. that has come to my knowledge, excepting the goods and chattels following, which I have left, as being by law exempted from attachment; that is to say, the wearing apparel necessary for himself the said A. D. and his wife, and his two children, two beds, and bedsteads, with the necessary bedding for each, and certain household utensils of
the value of fifty dollars, also one cow and six sheep, and two tons of hay; I have also taken all the books of account of the said A. D. and all his deeds and papers, relating to his said estate, that have come to my knowledge; and I now have all the said goods and effects and other things, so taken by me, ready to be delivered to the assignee or assignees who shall be chosen in this case. I further certify, that I published the notifications prescribed in the said warrant three weeks successively in the newspaper called the, &c., the first of which publications was made on the tenth day of October last; and I do herewith produce one copy of each of the said newspapers in which the said publications were made.

A. M., Messenger.

The opinion of the Messenger, as to the goods exempted from attachment, will of course not be conclusive either on the debtor or the creditors. The creditors, or the assignees in their behalf, may make any arrangement with the debtor on this subject which the law will authorize.

The Record of each case should be kept in a book by itself, of such form that it may be easily folded, and tied together with all the papers and documents filed in the case.
It may be in substance as follows.
Record of the proceedings in the case of A. D. of B. in the County of S. merchant, an insolvent debtor.

The original warrant in this case was issued by J. P. Esquire, Judge of Probate for the said County of S. on the ninth day of October, in the year of our Lord one thousand eight hundred and thirty-one. It was issued on the petition of the said A. D. and directed to A. M. of B. aforesaid gentleman; and was made returnable on the first day of November, in the year aforesaid, at ten o'clock in the forenoon, at the Probate office in said B. The said Judge also appointed F. C. of said B. Esquire, to be the Clerk in this case; and the said F. C. was on the said ninth day of October, duly sworn before the said Judge to the faithful discharge of the duties of his said office; as appears by a certificate thereof made and signed by the said Judge, and annexed to [or, endorsed upon] the said petition.

And now on this first day of November, in the year of our Lord one thousand eight hundred and thirty-one, at the Probate office in B. aforesaid, before the said Judge,

The said A. M. made return of his warrant, whereby it appeared that he had duly executed the same according to the precept thereof; and in the said warrant and return were filed in the case. It appeared also by the said return, and by the newspapers produced therewith by the said A. M. containing the public notifications of the issuing of the said warrant, and of the other matters required to
be so published, that the first of the said publications was made on the tenth day of October last.

The said A. D. produced a schedule of his creditors, and of the debts due to them respectively, which is filed in the case.

The said Judge then proceeded to receive and examine the proof of the debts claimed by the several creditors who were present or represented at the said meeting; and made a schedule, certified under his hand, of all the debts then proved before him; which schedule is filed in the case, and is of the tenor following.

Schedule of debts due from A. D. of B. in the County of S. merchant, an insolvent debtor, to the several creditors here under named, this day proved and allowed before J. P. Esquire, Judge of Probate for the said County of S.

To A. C. of H. in the County of M. merchant, on a promissory note of the said A. D. dated July 1, 1831, payable to said A. C. in sixty days, for \$500
Add interest from August 29th to October 10th, 3,59 503 59

To F. I. of B. aforesaid, merchant, on a promissory note of the said A. D. dated August 15th, 1831, payable in ninety days to one P. I. and by him endorsed for \$500
Continued, carried forward, \$1003 59
Continued, brought forward, $1003 59
Deduct interest from October 10th to November 13th, 2,75497 25
To B. A. of A. in the State of N. Esquire, for the balance of the Account Current between him and the said A. D. a copy of which account is filed in the case, 1149
To S. I. of S. in the County of E. Esquire, on a promissory note of one R. P. dated September 10th, 1831, payable in sixty days to the said A. D. and by him endorsed for $1200
Deduct interest from October 10th to November 9th, 5,801194 20
Total, $3344 04

Witness my hand, this first day of November, in the year of our Lord one thousand eight hundred and thirty-one.

J. P.

Claims were also presented by, and in behalf of several persons who were not prepared to prove their debts, viz.

For A. P. of N. O. in the State of Louisiana, on a Bill of Exchange accepted by the said A. D. for $1000.

For I. L. of London, in the Kingdom of England,
for the balance of his Account Current with the said A. D. supposed to be about $1350.

For D. D. of B. aforesaid, for the balance of an unliquidated account, upon which he claims $2000 and upwards.

The creditors who had proved their debts as aforesaid, then voted to choose two assignees of the estate of the said A. D.; and the abovenamed A. C. and S. I. were duly chosen assignees, by the vote of the greater part in value of the above named creditors.

Assignment by the Judge to the Assignees.

To all Men to whom these Presents shall come, J. P. of B. in the County of S. and Commonwealth of Massachusetts, Esquire, Judge of Probate for the said County of S. [or a Master in Chancery in the said County of S.]

Sends Greeting.

Whereas a warrant has been duly issued by the said J. P. against the estate of A. D. of B. in the said County of S. Merchant, as an insolvent debtor, which warrant was returnable on this first day of November, in the year of our Lord one thousand eight hundred and thirty-one; and a meeting of the Creditors of the said A. D. has been this day held, in pursuance of the said warrant, and of the public notice given as therein ordered; at which
meeting, the creditors of the said A. D. who had then proved their debts did, by the vote of the greater part in value thereof, choose A. C. of ______, Merchant, and S. I. of ______, Esquire, to be assignees of the estate of the said A. D.

Now know ye, that I the said J. P. by virtue of the power and authority vested in me by reason of the premises, do hereby convey, assign, transfer and set over to the said A. C. and S. I. all the estate, real and personal, of the said A. D. including all such estate of which he was possessed, or which he was interested in or entitled to, on the tenth day of October last past, excepting such parts thereof, as have been or shall be left in his hands, as being by law exempted from attachment, and all debts then due to the said A. D. with all liens and securities for such debts, and all his, the said A. D’s. right of action for any goods of estate, real or personal, and all his rights of redeeming any such goods or estate; and all other the property, effects, rights, and interests whatsoever of him, the said A. D. which are or ought to be by law, vested in them, the said A. C. and S. I. as assignees as aforesaid: To have and to hold all such part of the assigned premises, as is of the nature of real estate to them the said A. C. and S. I. jointly, and to their heirs and assigns forever; and all such part of the same premises as is of the nature of personal estate to them, the said A. C. and S. I. and their executors, administrators and assigns; in trust, nevertheless, for the use and benefit of all the creditors of the said A. D. who have or shall
come in as creditors, and prove their debts, in the proceedings under the aforesaid warrant; and in trust, that they, the said A. C. and S. I. shall use their best endeavors to recover and receive all the estate, debts and effects whatsoever, assigned or intended to be assigned as aforesaid, and that they shall manage, dispose of, and account for the same, and the proceeds thereof, according to law; and shall, at such times as shall be hereafter legally appointed in that behalf, pay over, and distribute what shall remain of the said estate in their hands, after all just and lawful allowances, to and among the creditors of the said A. D. who shall prove their debts as aforesaid.

In witness whereof, I the said J. P. have hereto set my hand and seal on the said first day of November, in the year of our Lord one thousand eight hundred and thirty-one.

FORM OF THE RECORD CONTINUED.

Second Meeting.

The said Judge, having appointed the seventh day of December, 1831, for the second meeting of the said creditors, the said meeting to be held at the said Probate office in B. at 10 o'clock in the forenoon, of which due notice has been given by the said assignees; pursuant to the order of the said Judge, the said meeting was accordingly held at the time and place last aforesaid.
At which meeting, the said Judge received and examined the proof of debts claimed by other creditors of the said A. D.; a schedule whereof, certified under his hand is filed in the case, and is of the tenor following:

Schedule of debts due from A. D. &c. &c. [as in the former schedule.]

At the same meeting, the said A. D. personally appeared, and took and subscribed the oath, by law prescribed, which is filed in the case; and it then appearing to the satisfaction of the said Judge that the said A. D. had made a full disclosure and delivery of all his estate, as by law required, and that he had in all things conformed himself to the directions of the act in this behalf provided, the said Judge granted to the said A. D. a certificate thereof, and of his discharge according to law.

If there should not be time at this meeting to go through the examination of the debtor, or if there should be creditors residing at a distance, who have not had opportunity to prove their debts, or if for any other cause, the Judge should think proper to adjourn the meeting, the entry may be as follows:

—after stating that the meeting was held according to appointment, say,

And the examination of the said A. D. not being finished, the meeting was adjourned by the Judge,
to the twelfth day of this month, then to be held at this place, at 10 o'clock in the forenoon; and the assignees were directed to give notice of this adjournment by publishing an advertisement thereof, &c. &c. &c.—

Or—and it appearing to the said Judge, that there are certain creditors of the said A. D. residing in Maryland and in South Carolina, viz. R. M. of Baltimore, and T. C. of Charleston, whose debts are not yet proved, this meeting is adjourned by the Judge, to the fifth day of January next, then to be held at this place, at 10 o'clock in the forenoon; and the assignees are directed to give notice of this adjournment, by publishing an advertisement thereof in the newspaper called, &c. &c. &c. and also to give the like notice by letters to be sent by the mail to the said R. M. and T. C.

And now, on the said fifth day of January, 1832, the said meeting was held according to the said adjournment:

And the said Judge, at the said original meeting, and at this adjournment thereof, received and examined the proofs of debts claimed by other creditors of the said A. D. [&c. &c. as above.]

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Notice of an Appeal by a Creditor whose Claim is Rejected.

In the case of A. D. an insolvent debtor, now pending before J. P. Esquire, Judge of Probate, for the County of S.
L. R. of N. in the County of E. Merchant, whose claim against the said A. D. was presented at the meeting of his creditors on the fifth day of this present January, and then disallowed by the said Judge, appeals from the said decision of the Judge, to the Supreme Judicial Court, next to be held at B. within and for the said County of S. on the first Tuesday of M. next; and he prays that this notice thereof, may be entered on the record of the proceedings in the case aforesaid. L. R.

B.—January 7, 1832.

To the said J. P. Esquire, and to F. C. his Clerk, and A. C. and S. I. the assignees of the estate of the said A. D.

Entry of said Appeal on the Record.

On this tenth day of January, 1832, L. R. of N. in the County of E. Merchant, whose claim against the said A. D. was presented at the meeting, on the fifth instant, and then disallowed by the Judge, gave notice to me, the Clerk above named, that he had appealed from the said decision of the Judge, to the Supreme Judicial Court, next to be held at B. within and for the said County of S. on the first Tuesday of M. next.

On the tenth day of February, 1832, the above-named assignees, requested the said Judge to ap-
point a time and place for a meeting of the creditors of the said A. D. and for making the first dividend of his estate; and the Judge did accordingly order a meeting to be held for that purpose on the fifteenth day of April, then next, at 10 o’clock in the forenoon, at the office of the said F. C. in R. street, in said B.; and did further order, that the said assignees should give notice of the time, place, and purposes of said meeting, by publishing notifications thereof, three weeks successively, in the newspaper called the E. P. printed at said B. the first publication to be on or before the twelfth day of said February; and that in the same advertisement they should give notice to all creditors of the said A. D. who had not already proved their debts, to come prepared to prove the same.

And now, on this fifteenth day of April aforesaid, at the office of the said F. C. the said assignees, and sundry creditors of the said A. D. attended; and the said J. P. Esquire, did not attend, being prevented by sickness, [or being engaged in the Probate Court, or the said J. P. Esquire, was accidentally prevented from attending.] and L. M. Esquire, one of the Masters in Chancery, for the said County of S. attended in his stead:

The said L. M. Esquire, then proceeded to receive and examine the proof of debts, claimed by other creditors of the said A. D.; a schedule whereof certified under his hand is filed in the case, and is of the tenor following:
Schedule of debts due from A. D. of B. in the County of S. Merchant, an insolvent debtor, &c. &c. [as in the former schedules.]

The said assignees then produced their account, which was examined by the said Master in Chancery, and is filed in this case, showing that they now have in their hands the sum of thirteen thousand dollars of the estate of the said A. D.; and the said Master thereupon ordered a dividend to be paid to and among all the said creditors, who have proved their debts, of fifty cents in the dollar, upon, and in proportion to their several and respective debts.

The order for the second dividend may be varied as follows:

The said assignees then produced their account, which was examined by the said Judge; and is filed in the case, shewing that they now have in their hands of the estate of the said A. D. the sum of six thousand dollars; which is sufficient to pay all the creditors not included in the former dividend, and who have proved their debts since that time, a dividend of fifty cents in the dollar, being the same that was paid to the said former creditors, and also sufficient to pay all the creditors who have at any time proved their debts, the further sum of nineteen cents in the dollar; and the said Judge did thereupon order that the said assignees, do forthwith pay to and among all the creditors, not
included in the former dividend, the sum of fifty cents in the dollar, and to and among all and every of the creditors who have at any time proved their debts, a further dividend of nineteen cents in the dollar, upon, and in proportion to their several and respective debts.

It will probably be found convenient, and for the security of the assignees and the creditors, in addition to the order for a dividend, which is entered on the record, to have a list or schedule of the names of the creditors, with the amount of debt proved by each, and the dividend due to him; to be signed by the Judge, and delivered to the assigness as their authority or warrant for making the dividend.

The same paper may also contain a column for the signatures of the creditors, acknowledging the receipt of their respective dividends.

Such a schedule may be in the following form:

A list of debts proved against the estate of A. D. of B. in the County of S. Merchant, an insolvent debtor, with the amount of each creditor's dividend at the rate of fifty cents in the dollar, being the dividend this day ordered by J. P. Esquire, Judge of Probate for the said County of S.
Names of Creditors. | Debts proved. | Dividends. | We, the undersigned creditors, severally acknowledge to have received the dividends set against our respective names.
---|---|---|---
A. C. | 503 | 251 | 1832, May 5
F. C. | 497 | 248 | A. C.
&c. &c. &c. | 59 | 63 | F. C.

And A. C. and S. I., the assignees of the estate of the said A. D., are accordingly required forthwith to pay to each one of the creditors named in the foregoing schedule, the amount set against their respective names, as dividends on their several debts.

Given under my hand, this fifteenth day of April, in the year of our Lord one thousand eight hundred and thirty-two.

J. P.

It may, perhaps, be found useful, to have a duplicate of this schedule, both to be signed by the creditors, on receiving their dividends; of which one may be kept by the assignees, and the other filed with the other proceedings in the case.

Statement by a Creditor, to be Filed in Court, in case of an Appeal from the Decision of the Judge.

Suffolk ss.

Supreme Judicial Court, [or Court of Common Pleas.] March Term, 1832.

Statement of the claim of L. R. of N. in the County of E. Merchant, against the estate of A. D. of B. in the said County of S. an insolvent
debtor; of which estate A. C. of H., in the county of M., merchant, and S. J. of S., in the county of E., Esquire, are assignees; which claim was rejected by the Judge of Probate, for the said county of S., from which decision the said L. R. appealed to this court: [or, if the appeal were by the assignees, say—which claim was allowed by the Judge of Probate, for the said county of S., from which decision the said assignees appealed to this court.]

The said L. R. says that the said A. D., on the first day of July now last past, by his note in writing under his hand of that date, for value received, promised the said L. R. to pay to him or his order, in sixty days from the said date, the sum of one thousand dollars: And also that the said A. D., on the said first day of July, being indebted to the said L. R. in the sum of five hundred dollars, for so much money before that time had and received by the said A. D., to the use of the said L. R., in consideration thereof promised the said L. R., to pay him the same sum on demand: yet the said A. D., though requested, has never paid either of the said sums.
Commonwealth of Massachusetts.

In the year of our Lord One Thousand Eight Hundred and Thirty-one.

AN ACT

For the relief of insolvent debtors, and for the more equal distribution of their effects.

1. Sec 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That any debtor residing in this Commonwealth who shall desire to take the benefit of this Act, may apply by petition to the Judge of Probate for the County within which he resides, or in which he has his usual place of business, setting forth his inability to pay all his debts, and his willingness to assign all his estate and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as in this act are provided, and if it shall appear to the satisfaction of the said Judge that the debts due
from such applicant amount to not less than five hundred dollars, the said Judge shall forthwith by warrant under his hand and seal, appoint some suitable person as messenger to take possession of all the estate real, and personal, of such debtor, excepting such as may be by law exempted from attachment and of all the deeds, books of account, and papers of such debtor, and to keep the same safely until the appointment of Assignees as hereinafter provided.

Sec. 2. Be it further enacted, That the said messenger shall forthwith give publick notice by advertisement in such Newspaper as shall be designated by the Judge, and also such personal or other notice to any persons concerned as the Judge shall prescribe, which notice shall state that a warrant has issued against the estate of such debtor, and that the payment of any debts, and the delivery of any property belonging to such debtor, to him or for his use, and the transfer of any property by him, are forbidden by law; and the messenger shall in the same notice call a meeting of the creditors of such debtor to prove their debts and to choose one or more assignees of his estate; which meeting shall be held at some convenient time and place to be designated in the warrant, the time to be not less than ten days, and not more than thirty days after the issuing of the warrant. And the said Judge shall attend the said meeting and shall allow all the debts that shall be duly proved before him, and shall cause a list thereof to be made, which shall be certified by himself, and shall be recorded and filed with the other papers and proceedings in the case. And the
24. Creditors shall then proceed in the presence of the
25. said Judge to choose one or more assignees of the
26. estate of the debtor; the choice to be made by the
27. greater part in value of the creditors according to the
28. debts then proved.

1 Sec. 3. Be it further enacted, That all debts due
2 and payable from such debtor at the time of the first
3 publication of the notice of issuing the said warrant
4 may be proved and allowed against his estate assign-
5 ed as aforesaid; and all debts then absolutely due,
6 although not payable until afterwards, may be prov-
7 ed and allowed as if payable presently, with a dis-
8 count or rebate of interest, when no interest is paya-
9 ble by the contract, until the time when the debt
10 would become payable; and all monies due from
11 such debtor on any bottoming or responantia bond,
12 or on any policy of insurance, may be proved and
13 allowed, in case the contingency or loss should hap-
14 pen before the making of the first dividend, in like
15 manner as if the same had happened before the said
16 first publication of the said notice, and in case the
17 debtor shall be liable for any debt, in consequence
18 of having made or indorsed any bill of exchange or
19 promissory note before the first publication of the
20 said notice, or in consequence of the payment, by
21 any party to any bill or note of the whole or any
22 part of the money secured thereby, or of the pay-
23 ment of any sum by any surety of the debtor in
24 any contract whatsoever, although such payment
25 in either case shall be made after the said first pub-
26 lication, provided it be made before the making of
27 the first dividend, such debt shall be considered for
28 all the purposes of this Act as contracted at the
time when such bill or note or other contract, shall have been so made or indorsed, and may be proved and allowed as if the said debt had been due and payable by the said debtor before the said first publication, and all demands against the debtor for or on account of any goods or chattels wrongfully obtained, taken, or withheld by him, whereby his estate may have been benefitted, and that of the lawful owner injured, may be proved and allowed as debts, to the extent to which the estate of the debtor shall have been so benefitted; saving to such owner his action against the debtor for the further damages, if any, arising from such wrongful act, over and above the amount so proveable as a debt, and no debt other than those above mentioned shall be proved or allowed against the estate assigned as aforesaid. And when it shall appear that there has been mutual credit given by the debtor and any other person or mutual debts between them, the account between them shall be stated, and one debt shall be set off against the other, and the balance of such account and no more shall be allowed or paid on either side respectively.

And when any creditor shall have any mortgage or pledge of any real or personal estate of the debtor, or any lien thereon, for securing the payment of any debt claimed by him, the premises so held as security shall, if he require it, be sold, and the proceeds shall be applied towards the payment of his debt, and he shall be admitted as a creditor for the residue thereof, if any; and such sale shall be made in such manner as the Judge shall order, and the creditor and the assignee respectively shall execute
all such deeds and papers as may be necessary or proper for effecting the conveyance. And if the creditor shall not require such sale, and join in effecting the conveyance as aforesaid, he may release and deliver up to the assignees the premises so held as security, and shall thereupon be admitted as a creditor for the whole of his said debt. And if the said premises shall not be either sold, or released and deliver up, as aforesaid, the creditor shall not be allowed to prove any part of his said debt.

Sec. 4. Be it further enacted, That the said Judge may in his discretion require proof on oath of any debt claimed before him, and may examine the party claiming the same, or the agent who shall present the claim in his behalf, and also the debtor, on their respective oaths or affirmations, on all matters relating to such claim. And any supposed creditor, whose claim shall be wholly or in part rejected by the Judge, may appeal from his decision and have the said claim determined at law; and if the debt demanded shall exceed the sum of one hundred dollars such appeal shall be heard and determined in the Supreme Judicial Court, otherwise in the Court of Common Pleas; and the appeal shall be entered in the proper Court which shall be first held,—within or for the County in which the proceedings are had, next after the expiration of fourteen days from the time of claiming the appeal;—but no such appeal shall be allowed unless the same be claimed, and notice thereof be given to the Judge or his Clerk, to be entered on the record of the proceedings, and also to the assignees or one of them, within ten days after the decision appealed from. And upon entering such appeal the creditor
shall file in Court a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at law, and the assignees shall plead or answer thereto in like manner; and the like proceedings shall be had upon the joining of any issue of fact or law, and also upon the nonsuit or default of either party, as in any action for the same cause, commenced and prosecuted in the usual manner; excepting only that no execution shall be awarded against the assignees for the amount of the debt, if any, recovered by the creditor. And if the assignees shall be dissatisfied with the allowance of any claim by the Judge, they may appeal from his decision, and have such claim determined at law; and such appeal shall be claimed, notified, heard and determined in like manner, and the like proceedings shall be had thereon in all respects, as are before prescribed in the case of an appeal by a creditor; and in both cases the final judgment of the Court appealed to shall be conclusive in the premises, and, being certified to the said Judge of Probate, shall ascertain the amount, if any, due to the claimant; and the list of debts shall be altered, if necessary, to conform thereto. And the party prevailing in such suit shall be entitled to costs, to be taxed and recovered as in common actions, against the adverse party; which costs, if recovered against the assignees, shall be allowed to them out of the estate of the debtor.

Sec. 5. Be it further enacted, That the said Judge shall, by an instrument under his hand and seal, assign and convey to the person or persons chosen as assignees as aforesaid, all the estate, real and personal, of the debtor, excepting such as may be by law ex-
empted from attachment, with all his deeds, books and papers relating thereto; which assignment shall vest in the assignees all the property of the debtor, both real and personal, which he could by any way or means have lawfully sold, assigned or conveyed, or which might have been taken in execution on any judgment against him, at the time of the first publication of the notice of issuing the abovementioned warrant, although the same may then be attached on mesne process as the property of the said debtor; and such assignment shall be effectual to pass all the said estate, notwithstanding any such attachment; and the said assignment shall also vest in the said assignees all debts due to the debtor, or to any person for his use, and all liens and securities therefor, and all his rights of action for any goods or estate, real or personal; and all his rights of redeeming any such goods or estate: and the assignees shall have power to redeem all mortgages, conditional contracts, pledges and liens, of or upon any goods or estate of the debtor, or to sell the same, subject to such mortgage or other incumbrance. And the debtor shall likewise, at the expense of the estate, make and execute all such deeds and writings, and endorse all such bills, notes and other negotiable papers, and draw all such checks and orders for monies deposited in Banks or elsewhere, where, and do all such other lawful acts and things, as the assignees shall at any time reasonably require, and which may be necessary or useful for confirming the assignment so made by the said Judge, and for enabling the assignees to demand, recover and receive all the estate and effects assigned as aforesaid, especially such part thereof, if any, as may be without
39 this Commonwealth; and the assignees shall have the 40 like remedy to recover all the said estate, debts and 41 effects, in their own names, as the debtor might have 42 had if no such assignment had been made. And if, 43 at the time of such assignment, any action shall be 44 pending in the name of the debtor, for the recovery 45 of any debt, or other thing, which might or ought to 46 pass to the assignees by the said assignment, the as- 47 signees shall, if they require it, be admitted to prose- 48 cute such action in their own names, in like manner 49 and to the like effect as if the same had been origi- 50 nally commenced by them as such assignees; and no 51 suit pending in the name of the assignees shall be 52 abated by the death or removal of any assignee, but 53 upon the motion of the surviving or remaining as- 54 signee, or of the new assignees, as the case may be, 55 he or they shall be admitted to prosecute the suit in 56 like manner and to the like effect as if the same had 57 been originally commenced by him or them. And in 58 all suits prosecuted by the assignees for any debt, de- 59 mand, right, title or interest, due or belonging to the 60 insolvent debtor, the assignment made to them by 61 the Judge shall be conclusive evidence of their au- 62 thority to sue as such assignees. And if the debtor 63 shall die after the issuing of the abovementioned war- 64 rant, the proceedings shall, notwithstanding, be con- 65 tinued and concluded in the like manner, and with 66 the same validity and effect, as if he had lived; and 67 in such case the allowance to the debtor on the nett 68 produce of his estate, if any shall become due, ac- 69 cording to the provision hereinafter contained, and if 70 the same shall not have been paid to him in his life- 71 time, shall be paid to his executors or administrators,
and shall be disposed of and distributed in like manner as any other property of which he may be possessed at the time of his decease.

Sec. 6. *Be it further enacted*, That the messenger shall, as soon as may be after his appointment, demand and receive from the debtor, and from all other persons all the estate in his or their possession respectively, which is herein above ordered to be assigned, with all the deeds, books of account, and papers of the debtor, relating thereto; and the debtor shall accordingly deliver to the messenger such part of the said estate and other things above specified, as may then be within his possession or power, and shall disclose the situation of such parts thereof as may then be in the possession of any other person or persons, so as to enable the messenger to demand and receive the same. And the debtor shall also make a schedule, containing a full and true account of all his creditors, with the place of residence of each creditor, if known to the debtor, and the sum due to each of them. And the said schedule shall also set forth the nature of each debt, whether founded on written security, on account, or otherwise, and also the true cause and consideration thereof, and a statement of any existing mortgage, pledge, or other collateral security given for the payment of the same; which schedule he shall produce at the first meeting of his creditors to be delivered to the assignees who shall then be chosen. And the debtor shall at all times before the granting of his certificate as hereinafter provided, upon reasonable notice, attend, and submit to an examination on oath, before the Judge, and the
assignees, upon all matters, relating to the disposal of his estate, and to his trade and dealings with others, and his accounts concerning the same, and relating to all debts due or claimed from him, and to all other matters concerning his estate, and the due settlement thereof according to law; such examination to be in writing, when so required by the Judge, and to be signed by the debtor, and filed with the other proceedings. And the debtor shall receive from the assignees one dollar per day, for his attendance on the Judge or the assignees, when required as aforesaid. He shall also be allowed out of his estate, for the necessary support of himself and his family, such sum, not exceeding the rate of three dollars per week for each member of his family, and for such time, not exceeding two months, as the Judge shall order.

Sec. 7. Be it further enacted, That the Judge shall appoint a second meeting of the said creditors to be held at such time, not more than three months after the date of the warrant to the Messenger, as the Judge shall think fit, regard being had to the distance at which the creditors, or any of them, may reside, at which meeting any creditors who have not before proved their debts, shall be allowed to prove the same. And the debtor shall then be allowed to amend the Schedule of his creditors, and to correct any mistake therein; and he shall then make and subscribe an oath before the said Judge, which shall be certified by him and filed in the case, in substance as follows:

"I — do swear that the account of my creditors contained in the schedule made and signed by
me, and now in the hands of the assignees chosen
by my creditors, is in all respects just and true, ac-
cording to my best knowledge and belief. And I
do further swear that I have delivered to ——, the
messenger appointed in that behalf, all my estate,
(excepting such parts thereof as are by law exempt-
ed from attachment, and such as have been necessa-
riely expended for the support of myself and my family)
and all my books of account and papers, relating to
my said estate, that were within my possession or
power when the same were demanded of me by the
said messenger, and that if any other estate, effects
or other things, which shall or ought to be assigned
and delivered to the said assignees, shall hereafter
come to my knowledge or possession, I will forthwith
disclose or deliver the same to the said assignees.
And I do further swear, that there is not any part of
my estate or effects made over or disposed of in any
manner for the future benefit of myself or my family,
or in order to defraud my creditors." And if it shall
then appear to the satisfaction of the Judge, that the
debtor has made a full disclosure and delivery of all
his estate, as herein before required, and that he has
in all things conformed himself to the directions of
this Act, the Judge shall grant to him a certificate
thereof, and the debtor shall be thereupon absolute-
ly and wholly discharged from all his debts, which
shall be at any time actually proved against his
estate assigned as aforesaid; and from all debts which
are proveable under this Act, and which are founded
on any contract made by him, after this Act shall go
into operation, if made within this Commonwealth,
or to be performed within the same; and from all
debts which are proveable as aforesaid, and which are founded on any contract made by him, after this Act shall go into operation, and due to any persons who shall be resident within this Commonwealth at the time of the first publication of the notice of the issuing of the warrant mentioned in the first section of this Act; and from all demands for or on account of any goods or chattels wrongfully obtained, taken or withheld by the debtor, as mentioned in the third section of this Act; and the said debtor shall be also forever discharged and exempted from arrest or imprisonment, in any suit, or upon any proceeding, for, or on account of any debt or demand whatever, which might have been proved against his estate as aforesaid. And the certificate to be granted by the Judge, as above provided, shall be in substance as follows:—

Commonwealth of Massachusetts.

Suffolk, ss.

To all people, to whom these presents shall come, I, A B, Judge of Probate for the said County of Suffolk, send Greeting.

Whereas, it has been made to appear to me, that C. D. of B. in the said County of Suffolk, merchant, whose estate has been assigned for the benefit of his creditors, according to the provisions of an Act made and passed on the —— day of —— in the year of our Lord one thousand eight hundred and thirty one, entitled, "An Act for the relief of insolvent debtors, and for the more equal distribution of their effects," has made a full disclosure and delivery of all his estate as in said Act is required; and that he has in all things conformed himself to the directions of the
said Act: I do accordingly certify that by force of the Act aforesaid, the said C. D. is absolutely and wholly discharged from all his debts, which have been or shall be proved against his estate, assigned as aforesaid, and from all debts which are proveable under the said Act, and which are founded on any contract made by him within this Commonwealth, or to be performed within the same, and made since the passing of the act aforesaid; and from all debts which are proveable as aforesaid, and which are founded on any contract made by him since the passing of said Act, and due to any persons who were resident within this Commonwealth on the day of last, being the day of the first publication of the notice of the warrant issued for the seizure of the estate of the said C. D.; and from all demands against him, for, or on account of any goods or chattels wrongfully obtained, taken or withheld by him, to the extent to which his estate has been benefited thereby; according to the form of the Act aforesaid. And I do further certify that the said C. D. is by force of the Act aforesaid, forever discharged and exempted from arrest or imprisonment, in any suit or upon any proceeding, for, or on account of any debt or demand whatever, which might have been proved against his estate assigned as aforesaid.

Given under my hand and seal on this day of in the year of our Lord ."

Provided however, that if one half in number or in value of the creditors, who shall be creditors respectively for not less than fifty dollars, and who shall have duly proved their debts, shall by writing
under their hands signify to the said Judge of Probate, their dissent and objection to the granting of such certificate, the same shall not be granted; and in such case the debtor shall not be entitled to his discharge, unless he shall obtain the same upon appeal to the Supreme Judicial Court, as herein after prescribed. And provided further, that no discharge of any debtor under this Act shall release or discharge any person who may be liable for the same debt, as a partner, joint contractor, or surety, for or with the debtor.

Sec. 8. Be it further enacted, That in case the Judge of Probate shall not see cause to grant such certificate, or if the granting thereof shall be prevented by the objection of the creditors as above provided, the debtor may appeal to the Supreme Judicial Court which shall be first held within and for the same County, next after the expiration of fourteen days from the time of claiming the appeal, provided that such appeal be claimed, and notice thereof given to the said Judge or his clerk, to be entered upon the record of the proceedings, within ten days after the decision appealed from. And the said appeal may be heard and determined by the said Supreme Judicial Court, whether held by one Justice thereof, or by three or more of the said Justices; and any of the said creditors may appear and object to the allowance of the certificate; and if, after a full hearing of all the parties, it shall appear to the satisfaction of the said Court that the debtor has made a full disclosure and delivery of all his estate, as herein above required, and that he has in all things conformed himself to the directions of
this act, the Court shall cause a certificate thereof,
in substance like that prescribed in the preceding
section, to be made under the seal of the Court, and
signed by the clerk thereof, and to be delivered to
the said debtor; which certificate shall have the
same force and effect as herein provided with regard
to the said certificate when granted by the Judge of
Probate. And every debtor so discharged shall be
allowed five per cent. on the nett produce of all his
estate that shall be received by the assignees,
in case such nett produce, after such allowance
made, shall be sufficient to pay the creditors enti-
tled to a dividend the amount of fifty per cent. on
their debts respectively; and so as the said allow-
ance shall not exceed in the whole the sum of five
hundred dollars.—And if the said debtor shall, after
the allowance of his certificate, be impleaded or
prosecuted for or on account of any debt or demand
which shall or might have been proved against his
estate as aforesaid, he may, according to the nature
and form of the action, either plead the general is-
sue, or plead in general that he has been discharged
under the provisions of this act, and that the cause
of action, if any, did accrue before the time of the
first publication of the notice of issuing the warrant
above mentioned; and in either case he may give
this act and the special matter in evidence.

Sec. 9. Be it further enacted, That if the debtor
shall be in prison, either on mesne process or in ex-
ecution, in any suit or proceeding for or on account
of any debt or demand whatever that is provable
against his estate, at any time before the granting of
his certificate, and when his attendance may be re-
7 quired before the Judge or the assignees, or at any
8 meeting of his creditors, as provided in this act, the
9 said Judge may, in his discretion, by warrant under
10 his hand and seal, require the prison-keeper to pro-
11 duce the debtor for the purposes aforesaid, at such
12 time and place as may be specified in the warrant;
13 and in case the debtor shall, by reason of imprison-
14 ment or sickness, or any other cause which shall be
15 deemed sufficient by the Judge, be unable to attend
16 before the Judge, or the assignees, or at any meet-
17 ing of his creditors, as provided in this act, then the
18 said Judge, or some person to be deputed by him
19 for that purpose, and the assignees or some person
20 appointed by them, shall attend the debtor in prison
21 or elsewhere, if he be within this Commonwealth, in
22 order to take his examination; and the examination
23 thus taken shall be of the same force and effect as
24 if the debtor had attended in person before the
25 Judge or the assignees, or at the meetings aforesaid,
26 and had there undergone the same examination.
27 And if the debtor shall be without this Common-
28 wealth, and shall be unable to return and give his
29 personal attendance at any of the times and for the
30 purposes in this act above specified, and if it shall
31 appear that such absence was not caused by any
32 wilful default of the debtor, and if he shall as soon as
33 may be after the removal of such impediment offer
34 to attend and submit to an examination on oath be-
35 fore the Judge and the assignees as herein before
36 provided, and shall do and perform all things by this
37 act required for the purpose of obtaining his certifi-
38 cate, he shall be entitled thereto in like manner as
39 if he had done all the same things at the times re-
spectively first above prescribed. And if the debtor
shall at the time of obtaining his certificate be in
prison for any cause before mentioned in this sec-
tion, he shall be discharged from such imprisonment
upon producing to the prison-keeper his certificate
granted pursuant to the provisions of this act.

Sec. 10. Be it further enacted, That every certifi-
cate of discharge granted to a debtor under this act
shall be of no effect, if he shall have wilfully sworn
falsely as to any material fact in the course of
the proceedings under this act; or if he shall have
fraudulently concealed any part of his estate or ef-
fects, or any books or writings relating thereto; or
if, after this act shall go into operation, he shall, in
contemplation of his becoming insolvent and of ob-
taining a discharge under the provisions of this act,
make any payment, or any assignment, sale or
transfer, either absolute or conditional, of any part
of his estate, with a view to give a preference to
any creditor, or to any person who is or may be lia-
ble as an indorser or surety for such debtor, or to
any other person who has or may have any claim or
demand against him; provided, that this clause shall
not apply to any security given for the performance
of any contract, when the agreement for such secu-
rety is part of the original contract, and the security
is given at the time of making such contract. And
all such payments, assignments, sales and transfers,
shall, as to the other creditors of such debtor, be
void, in like manner and to the same effect as con-
veyances made by any debtor to the intent or where-
by his creditors may be delayed, hindered or de-
frauded, are now by law void as to such creditors;
and the assignees shall and may, by an action in their own names, recover from the creditor so preferred the money or other things so paid, assigned, sold or transferred to him, or the value thereof, for the use of the other creditors. And the creditor so preferred, if he shall have accepted such payment or security, knowing that the same was made or given by the debtor contrary to the provisions of this section, shall not be allowed to prove the debt on account of which such payment or security was made or given, nor to receive any dividend therefor out of the estate assigned by force of this act.

Sec. 11. Be it further enacted, That the assignees shall forthwith cause the said assignment to be recorded in the Registry of Deeds in each County in the Commonwealth, in which there may be any real estate of the debtor, on which the same may operate; and shall also give public notice of their appointment in such manner as the Judge shall order; and shall demand and receive from the messenger, and from all other persons, all the estate in his or their possession respectively, which shall have been assigned or intended to be assigned according to the provisions of this Act; and they shall sell all the said estate, real and personal, which shall come to their hands, on such terms as they shall think most for the interest of the creditors; and shall keep a regular account of all monies received by them as assignees, to which every creditor shall at all reasonable times have free resort. And the assignees shall, as soon as may be, after receiving any monies belonging to the estate, deposit the same in some Bank, in their names as assignees, or otherwise keep the same distinct and
apart from all other monies in their possession; and they shall likewise, as far as practicable, keep all the goods and effects belonging to the estate separate and apart from all other goods in their possession, or designated by appropriate marks; so that all such monies, goods and effects, belonging to the estate, may be easily and clearly distinguished from other like things in the possession of the assignees, and may not be exposed or liable to be taken as their property or for the payment of their debts. And they shall be allowed and retain out of the monies in their hands all the necessary disbursements made by them in the discharge of their duty, and a commission at the rate of five per cent. on the whole sum that shall have come into their hands. And the assignees shall have power, under the direction of the Judge, to submit any controversy that shall arise in the settlement of any demands against the estate of the debtor, or of debts due to his estate, to the determination of one or more arbitrators, to be chosen by the assignees and the other party to such controversy; and the assignees shall likewise have power, under the direction of the Judge, to compound and settle any such controversy by agreement with the other party thereto, as they shall think proper, and most for the interest of the creditors. And it shall be in the power of the creditors, by a vote of the greater part in value, at any regular meeting called for that purpose to remove all or any of the assignees; and upon such removal, or upon any vacancy by death or otherwise, to choose one or more assignees in his or their place; and all the estate of the debtor, not before lawfully disposed of, shall be forthwith as effectually and legally vested
in such new assignee or assignees as if the original assignment had been made to him or them; and the former assignee or assignees, and his or their executors or administrators shall, upon the request and at the expense of the estate in the hands of the new assignee or assignees, make and execute to him or them all such deeds, conveyances and assurances, and do all such other lawful acts and things, as may be needful or proper to enable the new assignee or assignees to demand, recover, and receive all the said estate. And when only one assignee shall be originally appointed, or when by death or otherwise the number shall be reduced to one, all the provisions in this act contained in reference to several assignees shall apply to such one.

Sec. 12. Be it further enacted, That the assignees shall, at such time as shall be appointed by the Judge, within six months from the time of their appointment, call a meeting of all the creditors of the debtor, by a notice to be published in such manner as the Judge shall direct, at which meeting the creditors who have not before proved their debts, shall be allowed to prove the same; and the assignees shall produce to the Judge and the creditors then present, fair and just accounts of all their receipts and payments touching the estate of the debtor, and shall, if required by the Judge, be examined on oath as to the truth of such accounts; and the said Judge shall thereupon make an order in writing under his hand for a dividend of the said estate and effects, or of such part thereof as he shall think fit, among such of the creditors of the said debtor as shall have proved their debts, in proportion to their respective debts, which
order shall be recorded with the other proceedings in the case. Provided however, that all debts due by the debtor to the United States, or to any persons, who, by the laws of the United States, or of this Commonwealth, are or may be entitled to a priority or preference with respect to such debts out of the estate assigned as aforesaid, shall have the benefit of such priority or preference in like manner as if this act had not been passed. And if at the time of ordering such dividend, it shall appear to the Judge probable that there are just claims against the estate, which by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, the Judge shall, in ordering such dividend, leave in the hands of the assignees a sum sufficient to pay to every such absent creditor a proportion equal to what shall be then paid to the other creditors.

Sec. 13. Be it further enacted, That the said assignees shall, at such time as shall be appointed by the Judge, within eighteen months after the appointment of the assignees, make a second dividend of the said estate, in case the same was not wholly distributed upon the first dividend, and shall give notice of a meeting for that purpose of all the creditors of the debtor in such manner as the Judge shall direct; at which meeting the creditors who have not before proved their debts, shall be allowed to prove the same; and the accounts of the assignees shall then be produced and examined, as provided in the preceding section, and shall be settled by the Judge; and what, upon the balance thereof, shall appear to be in their hands, shall, by a like order of the Judge, be divided among all the creditors who shall then
17 have proved their debts, in proportion to their respective debts; provided, that no creditor whose debt
18 shall be proved at the time of the second, or any after dividend, shall be allowed to disturb any prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the assignees shall be sufficient therefor. And if, at the time of appointing the meeting for the said second dividend, there shall remain in the hands of the assignees any outstanding debts, or other property due or belonging to the estate, which cannot, in the opinion of the Judge, be collected and received by the assignees without unreasonable or inconvenient delay, the assignees may, under the direction of the Judge, sell and assign such debts or other property in such manner as shall be ordered by the Judge. And such second dividend shall be final, unless any suit relating to the estate be then depending, or any part of the estate be outstanding, or unless some other estate or effects of the said debtor shall afterwards come to the hands of the assignees, in which cases another dividend shall be made, by the order of the Judge, in the manner before provided; and further dividends shall be made in like manner as often as occasion shall require; and at every regular meeting of the creditors, those who have not before proved their debts shall be allowed to prove the same. And if, after the payment of all debts proved as aforesaid, any surplus shall remain in the hands of the assignees, the same shall be paid or reconveyed to, or revest in, the debtor or his legal representatives.

1 Sec. 14. Be it further enacted, That the Judge, at the commencement of the proceedings in each case
under this act, shall appoint a clerk, who shall be
sworn to the faithful discharge of his duty; and the
clerk shall keep a record of all the regular meetings
of the creditors, and of all the proceedings thereat,
and shall preserve all papers duly filed in the course
of the proceedings, and perform such other duties ap-
pertaining to his office as shall be prescribed by the
Judge. And the record of the proceedings in each
case, with all the papers filed therein, shall be inclos-
ed together, and at the termination of the proceed-
ings shall be deposited in the Probate Office of the
County, and be there preserved under the care of the
Register of Probate. And the Judge may remove
the clerk for any cause that he shall deem sufficient;
and upon such removal, or upon the death, resigna-
tion or absence of the clerk, may appoint another in
his place. And the certificate of discharge, when
granted by the Judge, shall be recorded at length by
the clerk with the other proceedings; and copies of
all parts of the said record, duly certified by the Reg-
ister of Probate, shall in all cases be admissible as
evidence, *prima facie*, of the facts therein stated and
contained.

Sec. 15. *Be it further enacted*, That the Judge shall
attend and preside at all meetings of the creditors,
and shall regulate the proceedings thereat; and he
may adjourn any meeting from time to time as occa-
sion shall require, and all things lawfully done at any
such adjourned meeting, shall be of the like force and
effect as if done at the original meeting. He shall
also have power to administer all oaths that shall be
required in the course of the proceedings; and when
any oath shall be required by force of this act of any
1 person who is by law permitted to make affirmation
2 instead of taking an oath, such affirmation shall be
3 made accordingly, in like manner and with the like
4 effect, and under the same pains and penalties, as are
5 or may be provided by law in other cases. And if
6 any creditor, who shall reside more than ten miles
7 from the place of meeting of the creditors, shall be
8 required to make oath in support of his claim, such
9 oath may be administered by any Justice of the
10 Peace, or other person duly qualified to administer
11 oaths in the place or County where the debtor may
12 be; and every creditor who has proved his debt may
13 appear, vote and act, at all meetings of the creditors
14 by his attorney duly constituted, in like manner as if
15 he were personally present.

1 Sec. 16. Be it further enacted, That there shall be
2 allowed and paid, out of the estate and effects of the
3 debtor, the following fees for the respective services
4 hereinafter mentioned; that is to say:
5 To the Judge, for receiving and allowing the origi-
6 nal petition, and issuing his warrant thereon, five dol-
7 lars; and the same sum for every day which he may
8 be employed in this duty, to be apportioned among
9 the several causes, if there be more than one, on
10 which he may act on the same day.
11 To the Clerk, for every day’s attendance upon or
12 with the Judge, on any business arising in the case,
13 a sum not exceeding two dollars per day; and such
14 further compensation for keeping a record of the pro-
15 ceedings, and for any other services performed by
16 him, as the Judge shall allow.
17 To the Messenger, such compensation as the Judge
18 shall see fit to allow, according to the circumstances
of each case; regard being had to the fees allowed to
Sheriffs for like services.
To every Witness, the same fees as are or may
be allowed to witnesses in the Court of Common
Pleas.

Sec. 17. Be it further enacted, That every Master
in Chancery, in the County for which he is appoint-
ed, shall have and exercise all the jurisdiction, power
and authority, herein before given to the several
Judges of Probate for the respective Counties; and
all the provisions in this act contained in reference to
the said Judges of Probate, shall apply to the said
Masters in Chancery respectively, in like manner as
if they had been in every instance specially mention-
ed. And in case the Judge of Probate, or any Mas-
ter in Chancery, before whom any proceedings under
this act may be pending, shall die, or shall from any
cause be absent or unable at any time to attend and
perform any of the duties required of him, the same
duties shall and may be performed by any other of
the said officers, in like manner as if the proceedings
had been commenced before him.

Sec. 18. Be it further enacted, That the Supreme
Judicial Court shall have a general superintendence
and jurisdiction, as a Court of Chancery, of all cases
arising under this act; and may, from time to time,
make such general rules as they shall judge necessary
to establish and maintain a regular and uniform course
of proceedings therein, in all the different Counties;
and they shall also have power, in all cases which are
not herein otherwise specially provided for, upon the
bill, petition, or other proper process, of any party
aggrieved by any proceedings under this act, to hear
12 and determine the case, as a Court of Chancery, and
to make such order or decree therein as law and jus-
tice shall require; and all the powers granted in this
section, may be exercised either by the said Court at
any law term thereof, or by any one Justice thereof
respectively, in like manner in all respects as other
Chancery powers vested in said Court may by law be
exercised, excepting the power of making general
rules as aforesaid, which latter power shall be exer-
cised only at a law term of said Court.

1 Sec. 19. Be it further enacted, That if any person
arrested on mesne process in any civil action for the
sum of fifty dollars or upwards, shall not give bail
therein on or before the return day of such process;
or if any person shall be actually imprisoned for
more than thirty days, either upon mesne process or
execution, in any civil action for the sum of fifty
dollars or upwards; or if any person whose goods
or estate are attached on mesne process in any civil
action for the sum of fifty dollars or upwards; shall
not on or before the return day of such process dis-
solve the attachment in the manner hereinafter pro-
vided; then and in each of the cases aforesaid, any
creditor, having a demand against such person to
the amount of fifty dollars, for which a suit might
then be brought, and which is in its nature proveable
against the estate of an insolvent debtor according
to the foregoing provisions of this act, may apply by
petition to the Judge of Probate, or to any Master
in Chancery, for the County in which the said debtor
resides, setting forth the said facts and praying that
a warrant may issue, to take possession of the estate
of the said debtor, and that such further proceedings
may be had as are herein above provided for divid-
ing and distributing the same among all the credit-
ors of such debtor. And if the facts set forth in
such petition shall appear to be true, to the Judge
or the Master in Chancery to whom the same shall
be presented, he shall forthwith, by warrant un-
der his hand and seal, appoint some suitable person
as messenger, to take possession of all the estate,
real and personal, of such debtor, in like manner as
above provided in the first section of this act with
respect to the warrant therein mentioned; and the
messenger shall, in addition to the public notice
above required in this behalf, give notice to the
debtor of the issuing of the said warrant, in such
manner as the Judge shall in the same warrant pre-
scribe. And thereupon the estate of the said debtor
shall be taken, disposed of and divided among his
creditors, in like manner as it would or ought to be
by force of a warrant issued according to the first
section of this act; and all the proceedings, after the
execution of the warrant issued by force of this sec-
tion, shall be conducted in the same manner as in
this act is before provided, in reference to proceed-
ings commenced upon the petition of the debtor
himself.

Sec. 20. Be it further enacted, That any person
whose goods or estate shall be attached on mesne
process in any civil action, may at any time before
final judgment therein, dissolve such attachment, by
giving bond with sufficient sureties to be approved
by the Court in which the action is pending, or by
any Justice thereof, or by any Justice of the Su-
preme Judicial Court, with condition to pay to the
plaintiff in such action the amount, if any, that he shall recover therein, within thirty days after the final judgment in such action; and no sureties shall be deemed sufficient for this purpose, unless it shall be made clearly to appear that each of the sureties, if there are only two, is worth double the sum for which the attachment is laid; or, if there are more than two sureties, that they are all together worth four times the sum for which the attachment is laid, over and above what will pay all their debts.

Sec. 21. Be it further enacted, That where two or more persons who are partners in trade become insolvent, a warrant may be issued in the manner provided in this act, either on the petition of such partners or of any one of them, or on the petition of any creditor of the partners; upon which warrant all the joint stock and property of the company, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as may be by law exempted from attachment; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts. And the assignees in such case shall be chosen by the creditors of the company; and they shall keep separate accounts of the joint stock, or property of the company, and of the separate estate of each member thereof; and after deducting out of the whole amount received by the assignees the whole of the expenses and disbursements paid by them, the nett proceeds of the joint stock shall be appropriated to pay the creditors of the company, and the nett proceeds of the separate estate of each partner shall be appropriated to pay...
his separate creditors. And if there shall be any
balance of the separate estate of any partner, after
the payment of his separate debts, such balance shall
be added to the joint stock for the payment of the
joint creditors; and if there shall be any balance of
the joint stock after the payment of the joint debts,
such balance shall be divided and appropriated to
and among the separate estates of the several part-
ners according to their respective rights and inter-
ests therein, and as it would have been if the part-
nership had been dissolved without any insolvency;
and the sum so appropriated to the separate estate
of each partner shall be applied to the payment of
his separate debts. And in all such proceedings
against partners, each one of them shall be entitled
to the allowance before provided for the mainte-
nance of himself and his family; and the allowance
on the nett produce of the estates, as provided in the
eighth section of this act, shall be computed on the
joint estate, and also on each of the separate estates,
as if there had been a separate warrant against each,
provided that neither of the partners shall receive in
the whole more than five hundred dollars. And the
certificate of discharge shall be granted or refused
to each partner, as the same would or ought to be
if the proceedings had been against him alone. And
in all other respects the proceedings against part-
ners shall be conducted in like manner as if they
had been commenced and prosecuted against one
person alone.

Sec. 22. Be it further enacted, That no person shall
be arrested or imprisoned, on mesne process, or execu-
tion, in any civil action, for any debt contracted after
4 this act shall go into operation, the principal of which
5 without interest or costs, shall be less than fifty dol-
6 lars.

1 Sec. 23. Be it further enacted, That this act shall
2 take effect and be in force from and after the
3 day of next.

Respectfully presented by

CHARLES JACKSON,
SAMUEL HUBBARD,
JOHN B. DAVIS, Commissioners.

May 31, 1831.