

of such sale; and the balance, if any remaining, shall be paid over to the owner of such property, or his representatives; and if the said balance is not claimed by such owner within sixty days after such sale, then the said balance to be paid over to the overseer of the poor of said city or township, for the support of the poor.

## Insolvent Debtors.

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**An act for the relief of persons imprisoned on civil process.** R. S. 323, 325.

Revision—Approved March 27, 1874.

P. L. 1853, p. 21.  
 " 1855, p. 566.  
 " 1858, p. 103.

### I. Application for relief.

1. That any person who now is, or hereafter shall be, in actual confinement, (a) for debt or damages, in any of the jails of this state, and is willing to deliver up to his creditor or creditors all his estate, both real and personal, towards the payment of his creditor or creditors, is hereby authorized to present a petition, in the manner hereinafter appointed for the benefits of this act.

Debtors in actual confinement may apply for discharge.

R. S. 325, § 1.

2. Any person or persons who may be arrested or held in custody by any sheriff, constable or other officer in any civil action upon mesne process or process of execution, or upon an attachment for not performing an award, or who may be surrendered in discharge of his or their bail, shall be discharged from arrest or custody by such officer; (b) provided, such person or persons shall make out and deliver to the officer making the arrest, or in whose custody such person or persons may be, a true and perfect inventory, under oath or affirmation, of all his or their goods and chattels, rights, credits, lands, tenements, hereditaments and real estate, (c) and shall give bond to the plaintiff at whose suit he or they are arrested, with sufficient security, being a freeholder or freeholders and resident in the county, in double the sum for which he or they are arrested or taken in execution, with a condition that he or they will appear before the next court of common pleas to be holden in the county wherein such arrest is made, and petition said court for the benefit of the insolvent laws of this state; and that the said defendant will in all things

Defendant discharged on giving bond, etc.

R. S. 323, § 2.

Inventory.

(a) One who has been arrested on a *ca. res.*, and permitted by the sheriff to go at large, is not in "actual confinement," *In re Brush*, 1 Hal. 404. The debtor must be under arrest or held in custody, *Bond v. Cox*, 1 Vr. 381.

(b) If the party is surrendered in discharge of his bail, the surrender must be a legal one, *Hulshizer v. Kocker. Spen.* 390. If he has surrendered himself to the sheriff before the return day of the writ, in discharge of his bail bond, he is regarded as in the custody of the sheriff, *Dalbey v. Lowen-*

*stein*, 5 Vr. 465. He could not formerly apply after confinement in jail on execution, *Eayre v. Earl*, 3 Hal. 359.

(c) The common pleas have no authority to discharge a defendant on a summary application, *Stryker v. Rea*, 6 Hal. 319. Giving a bond without the inventory is not sufficient, *Davis v. Hendrickson*, 3 Gr. 481. The inventory need not be dated or sworn to at the time of his discharge; one made upon a former discharge will answer, *Race v. DeHart*, 4 Zab. 37.

comply with the requirements of the said insolvent laws, and will appear in person at every subsequent court, until he or they shall be duly discharged as an insolvent debtor; and if refused a discharge, surrender himself or themselves immediately thereafter, to the sheriff or keeper of the jail of said county, there to remain until discharged by due course of law; and in case of the forfeiture of the said bond by breach of any condition therein, the plaintiff, his executors or administrators may bring an action thereon, and recover the debt, damages and costs due from the person or persons so arrested, and for which the arrest was made as aforesaid.<sup>(a)</sup>

Application to  
the court.  
Ib. § 3.

3. That any person or persons, arrested as aforesaid, and having given such bond, shall be entitled to make application for his or their discharge under this act, at the next, or any subsequent court after such arrest, as fully and effectually as if he or they were actually confined in the common jail of said county.

Officer's return.  
Ib. § 4.

4. That when the sheriff, constable or other officer has discharged the defendant or defendants from arrest upon mesne process, upon giving bond as aforesaid, he shall so return on the process to the court or justice issuing the same, and shall also return therewith the inventory and bond taken by him in pursuance of this act; and the plaintiff may thereupon proceed to judgment, and have execution against the goods and chattels and real estate of such defendant or defendants, as in other cases allowed by law; and when the defendant or defendants shall be discharged upon execution, the sheriff or other officers shall so return the same with the said bond and inventory; and the delivery of the bond to the plaintiff shall exonerate the officer from any liability for escape.<sup>(b)</sup>

Officer's fee.  
Ib. § 5.

5. That the sheriff, constable or other officer shall be entitled to have the sum of fifty cents for taking such bond and inventory, to be paid by the defendant or defendants.

## II. Petition to the court and the hearing thereon.

Petition for  
discharge.  
R. S. 325, § 1.

6. Any person so being in actual confinement or having been discharged on bond as aforesaid, shall have leave to present a petition to the court of common pleas in and for the county, wherein he is so imprisoned, or was so arrested, at any stated term thereof, setting forth the cause or causes of his imprisonment, containing also a just and true account of all his real and personal estate, a full and true inventory of all his deeds, bonds, notes, books of account, vouchers and securities whatsoever, together also with a list of all his creditors, with the moneys due and owing to each of them, to the best of his knowledge.<sup>(c)</sup>

Time for hearing  
and notice.  
Ib. § 2.

7. That the court, to whom such application is made, are required to name the time and place, at which they will attend to hear what can be alleged for or against the liberation of such debtor, which time shall not be less than forty days after making said application; of which time and place, so appointed by the court, the debtor shall cause notice in writing, at least thirty days previous thereto, to be served on, or left at the usual place of residence, of each of his creditors, if residing within this state, and have the same inserted in one of the newspapers of this state.<sup>(d)</sup>

Proceeding at  
the hearing.  
Ib. § 3.

8. That at the time and place so appointed, the debtor applying to the court as aforesaid, shall appear before the said court and exhibit a just and true account of all his estate, both real and personal, either in possession, reversion or remainder, together with a just and true inventory of all his deeds, bonds, notes, books of account, vouchers, specialties

(a) The bond is good even if our state law is suspended by the bankrupt act, *Steeleman v. Mattis*, 7 Vr. 344. It should be taken in double the sum sworn to and endorsed on the writ, and not in double the sum for which the writ issued, *Stephens v. Tucker*, 2 Gr. 600. Any material omission in the bond will prevent a discharge, *Browning v. Cooper*, 3 Harr. 196. See *Hamilton v. Chevallier*, 3 Harr. 433. A failure to discharge is equivalent to a refusal, and the defendant must surrender himself into custody, *Voorhees v. Thorn*, 1 Zab. 77. Damages on such bond on judgment by default may be assessed by the court, *Rogers v. Brundred*, 1 Harr. 159. Any irregularity in the *ca. sa.* is waived by giving the bond, *Ex parte Case*, *Spen.* 653.

(b) If the sheriff permit a defendant who has surrendered himself in pursuance of his bond, to go at large, he is liable for an escape, *Woodruff v. Barrett*, 3 Gr. 40.

(c) No form is prescribed, it must show such an arrest as to give the court jurisdiction and to entitle the defendant to his discharge, *Van Waggoner v. Coe*, 1 *Dutch.* 197. If the debtor omit any creditor unintentionally, it will not deprive him of his discharge, *Jay v. Stack*, 1 *South.* \*177. *Berry v. Arthur*, 1 Gr. 308. *Hogan v. Hutton*, *Spen.* 82. Or if the name of the creditor is put down without the amount of his claim, *LeChevallier v. Hamilton*, 3 Harr. 260. It need not state that the applicant is a resident of the state, *Stagg v. Austin*, 3 Harr. 82. *Hogan v. Hutton*, *Spen.* 82.

(d) The court should receive evidence of any non-compliance with the provisions of the act, *Davis v. Hendrickson*, 5 Gr. 481. The hearing may be postponed by the court, *Stagg v. Austin*, 3 Harr. 82.

whatsoever, with the sums due thereon, as near as may be, and a list of all his creditors, with the amount of debts to them due and owing; and the court shall proceed to hear, consider and examine into the truth and justice of such application or petition, so as aforesaid made and presented, and to consider and examine the truth and fairness of the account and inventory so exhibited before the said court.

9. That such examination shall be had in open court and on interrogatories proposed by the court to such debtor, touching and concerning the disposition of his estate, the truth and fairness of the account and inventory, so as aforesaid exhibited; and the debtor shall, on his oath or solemn affirmation, make a true and direct answer, of and concerning the same, to all such questions as shall be asked him by the court; and if the debtor, to such interrogatories, shall knowingly, falsely swear or affirm, such debtor shall be adjudged guilty and liable to the pains and penalties of wilful and corrupt perjury.<sup>(a)</sup>

Examination of the debtor.  
Ib. § 4.

Penalty for false swearing.

10. That it shall also be the duty of the court, at the time of hearing, to examine the debtor touching his confinement, whether his imprisonment was compulsory or voluntary, and whether he has not, at any time between the day of his application to the court for his hearing, and the time of his examination, been without the prison limits; to all which, and such other questions as shall be asked by the creditor, under permission of the court, the debtor shall full answer make, subject to the requirements and liabilities in this act prescribed; and if it shall appear that the debtor has been without the prison limits, or that his confinement was not compulsory, or he will not a satisfactory answer make to the questions proposed, it shall be the duty of the court to stay all further proceedings in the case.

Further examination.  
Ib. § 5.

In what case proceedings stayed.

11. That if, after the hearing, consideration and examination of the proofs and allegations of such debtor, the court and the creditor or creditors, that may attend, shall be satisfied that the conduct of the debtor has been fair, upright and just, the court shall proceed forthwith to appoint one or more respectable, judicious and responsible freeholder or freeholders of the county, where such debtor may be imprisoned, as assignee or assignees; to which said assignee or assignees the debtor shall forthwith execute an assignment of all his real and personal estate where-soever or whatsoever, except such apparel for himself, his wife and children, and such tools and implements of his trade or occupation, as the court may judge proper, not exceeding the value of twenty-five dollars in the whole; and except also such property of the said debtor as is or may be by law exempted from execution; upon making which assignment and filing the same in the clerk's office of the said court, the court may, by writing, under their hands and seals, direct the sheriff to discharge said debtor from confinement on account of any debts by him previously contracted.<sup>(b)</sup>

Assignee appointed, and assignment made.  
Ib. § 6.

Debtor discharged.

12. That upon the death, or removal from the state, of any assignee appointed under the preceding section of this act, it shall and may be lawful for the court in which such appointment was made, on application, and being satisfied that the same is just and reasonable, to appoint another in the place of such dead or removed assignee; and an entry of such order and appointment shall be made in the minutes of the court; upon which such newly appointed assignee, shall have and possess all the powers, rights and interests, in the estate of the insolvent debtor that were vested in the deceased or removed assignee; and execute all such conveyances, and do all such lawful acts and things as the said dead or removed assignee might or ought to have done; and the same shall be as valid as if done by the deceased or removed assignee; and in case there be a co-assignee or assignees not dead or removed, shall and may act, do and complete all things with him or them, as the said deceased or removed assignee might or ought to have done.<sup>(c)</sup>

When new assignee appointed.  
Ib. § 7.

Powers.

May act with co-assignee.

(a) The interrogatories need not be in writing. *State v. Ludlow*, 2 South. 772. Creditors may inquire as to the arrest, the inventory or any other matter relating to the debtor's application, *Bond v. Cox*, 1 Vr. 381. *Hamilton v. Chevallier*, 3 Harr. 433, 434. *Berry v. Arthur*, 1 Gr. 308.

(b) The clause which requires the debtor's conduct to be fair, upright and just, must be restricted to his conduct in

the insolvent proceedings, and does not extend to his conduct in contracting the debt. *Reford v. Cramer*, 1 Vr. 250. It is not necessary that the assignment should be filed in the clerk's office, before the order of discharge is made, *State v. Stiles*, 7 Hal. 296. Nor need it be made until the debtor is entitled to his discharge, *Berry v. Arthur*, 1 Gr. 308.

(c) See *Sloan v. Appgar*, 4 Zab. 608.

Proceedings if  
creditors dissatis-  
fied.  
Ib. § 8.

P. L. 1858, p. 103.

13. If the creditor or creditors at whose suit such debtor is imprisoned, or any other creditor shall not be satisfied with the truth and honesty of the declaration and confession of such debtor, nor with the truth and fairness of the account and inventory, so as aforesaid to be exhibited, and such creditor or creditors shall offer and undertake to the court to prove by the first day of the next term, that such debtor has concealed and secreted some part of his estate, and has not fairly, fully and honestly, delivered up to the use and benefit of his creditors the whole of his estate, real and personal, it shall and may be lawful for the court to remand such debtor to prison, and direct such debtor and the said creditor or creditors so dissatisfied, as aforesaid, to appear before the court on the first day of the next term; *provided*, that such creditor or creditors so dissatisfied, shall and do agree by writing under his or their hands, to allow and pay any sum that the court may direct, not exceeding two dollars per week, to and for the support of such debtor, to be paid to the debtor or left with the jailor at such time and in such sum as the creditor or creditors may choose; *provided*, the said allowance be not withheld for a space longer than one week at any one time; and on failure of payment of such weekly sum, such debtor shall, on application to the court, or any three judges thereof, be forthwith by order as aforesaid, discharged; *provided also*, that if such creditor or creditors so dissatisfied, shall prove that such debtor hath concealed and kept back any part of his estate, he or they shall be reimbursed the expense of supporting such debtor out of the estate of such debtor; *provided further*, that such debtor who shall be remanded to prison under this section, is hereby authorized to execute and deliver to the sheriff or keeper of the jail of the county a bond with one or more sufficient securities, freeholders and resident in the county, in double the sum for which such debtor was arrested or held in custody, or taken in execution, to any of the creditors who shall undertake, as in this section is mentioned, conditioned, that such debtor shall in all things remaining, fully and honestly comply with the requirements of the insolvent laws of this state, and shall appear before the court according to law, and if refused a discharge, surrender himself immediately thereafter to the sheriff or keeper of the jail of the county, there to remain until discharged by due course of law; which bond, if forfeited, may be prosecuted for the use of such creditors; and on receipt of such bond the sheriff or jailkeeper shall discharge such debtor from custody, and all subsequent proceedings shall be had in like manner as near as may be, as if the said debtor had been remanded to prison, and been actually in prison under such remand. (a)

Proceedings  
where debtor  
is remanded.

R. S. 325, § 9.  
Amended.

14. After such debtor shall be remanded to prison as aforesaid, or shall have been discharged on bond as aforesaid, he shall, within thirty days, file in the clerk's office of said court a declaration to the following effect, to wit: Hunterdon (or other county, as the case may be), to wit: A. (name of the debtor) cometh before the court and saith that he ought against his creditors to be discharged out of custody for debt, because, he saith, that he hath become, according to the force, form and effect of an act of the legislature, entitled "An act for the relief of persons imprisoned on civil process," and, within the true intent and meaning of such act, an insolvent debtor; and that he hath well and truly complied with the said act in all things on his part, for the benefit and to the use of his creditors, to wit: on the first day of March, in the year of our Lord seventeen hundred and ninety-five (or other time, as the case may be), at the township of Amwell, in the county of Hunterdon (or other place), whereby good right and full title, by virtue of the said act, hath accrued to him against his creditors to be discharged out of custody for debt, and this he is ready to verify; wherefore he prayeth judgment of discharge out of custody for debt, according to the force, form and effect of the said act; that within twenty days (b) after filing the said declaration, but not afterwards, all the creditors of said debtor, or any one of them, may file in the

(a) The creditors must object personally—an attorney can not do so for them without special authority, *Hogan v. Hutton, Spen. 82*. The debtor who has been remanded must go on and prove his case to the jury if the creditor fails to appear against him, *Williamson v. Booram, 5 Hal. 351*. The "weekly sum" must be paid on fixed days, *State v. Stiles, 7 Hal. 297*. But a *mandamus* will not be allowed requiring

the common pleas to discharge the debtor because the creditors have failed to pay his weekly allowance, *Ricardo v. Common Pleas of Passaic, Nov. 1875*.

(b) In calculating the twenty days, one day is to be counted and the other excluded, *State v. Jackson, 1 South. \*323*.

clerk's office of said court, his, her or their plea to the following effect, to wit: B., C., D. (the names of the creditors), come before the court and say that the said A. is not an insolvent debtor, and that he hath not well and truly complied with the said act in all things on his part, for the benefit and to the use of his creditors, in manner and form as the said A. hath thereof declared against his creditors, and of this they put themselves upon the country; that the debtor may join issue with the creditor or creditors, by filing in the office of the said court the replication of the debtor to the following effect, to wit: and the said A. doth so likewise; that for the trial of the issue joined as aforesaid between the debtor as plaintiff of the one part, and all the creditors or creditor as defendants or defendant of the other part, in one action, and not in two or more actions, the debtor do cause a *venire facias* to issue, directed to the sheriff, requiring him to summon twelve respectable residents of the county make a jury between the said parties; the debtor filing in the office of the said court, lawful notice of trial to the creditor or creditors, named in his, her or their plea, do cause the issue joined as aforesaid to be tried in turn before the court by the said jury to be summoned by the sheriff of the county as aforesaid; that the trial on the said issue shall be had only between the debtor named in the declaration, and the creditor or creditors named in the plea, and not between the debtor and other creditors; that all proceedings had under this act, on the part of the debtor, may, on trial of the issue, if joined as aforesaid, be before the court and jury deemed competent, but not conclusive evidence on his part; and that the debtor do, on the trial of the issue before the court and jury, further than by the proceedings aforesaid, prove in evidence and maintain the truth and legality of his case, according to the issue on his part joined (a); and that if the jury do find a verdict for the debtor, the court do render judgment, that the debtor be discharged out of custody according to the force, form and effect of this act; that if the jury do find a verdict for the creditor or creditors, the court do render judgment, that the debtor be continued in custody, until he be thence delivered by due course of law; that if, within twenty days after filing the declaration of the debtor, no creditor do file a plea to the same, the clerk of the court, on the application of the debtor, is hereby required to enter in the minutes of the said court a certificate, that no plea has been filed by any creditor to the declaration of the debtor, and that the debtor may produce a copy of the said certificate, under the hand of the clerk, and seal of the court, to any two judges of the court, who, being together, are hereby empowered to make their joint order in writing, under their hands and seals, that the debtor, for default of a plea filed to his declaration by any creditor, be discharged out of custody, according to the force, form and effect of the said act; which order is to be delivered to the clerk of the court, and by him to be entered on the minutes of the said court, and to be filed; and if, on the trial before the court and jury, and the verdict and judgment thereupon, the debtor shall be convicted, he shall pay such costs as may be taxed by the court; and if the creditor or creditors shall not maintain the issue on his or their part, the said creditor or creditors shall in such case pay the costs by the court to be taxed.

15. If it shall appear to the satisfaction of any court before which an application shall be made for the benefit of the insolvent laws, or by the verdict of a jury if demanded by the debtor, that the debtor or debtors so applying has or have concealed or kept back any part of his or their estate or property, or made any conveyance, deed, mortgage, judgment, sale, transfer, assignment or other disposition of his or their estate, real, personal or mixed, with intent to defraud his or their creditor or creditors, then, and in either of these cases, the said debtor or debtors shall be refused his or their discharge; and it shall be lawful for such court to remand him or them to prison, there to remain in close confinement until discharged by due course of law; (b) *provided however*, that it shall be lawful for said debtor to make a second application by petition or otherwise for the benefit of the insolvent laws of this state, and to proceed thereon as if no

(a) At the trial the preliminary proceedings are sufficient to justify the debtor's discharge unless opposed by adverse evidence, *Brown v. Wright*, 1 Gr. 240.

(b) It is a question for the jury whether a conveyance by the debtor is fraudulent or not, *Reford v. Cramer*, 1 Vr. 250.

Issue to be tried.

Amended.

Jury.

Notice of trial.  
Proceedings  
—evidence.

Verdict and  
judgment.

Debtor discharged  
for default of  
plea.

Who to pay costs

If fraud proved,  
debtor re-  
manded.  
Ib. § 10.

May make  
another appli-  
cation.

P. L. 1853, p. 21.

former application had been made, and it shall and may be lawful for the court of common pleas of each county, or any three judges thereof, whenever applied to for that purpose, forthwith to set aside the verdict of a jury rendered in such court for or against any debtor applying for the benefit of the insolvent laws, and to grant a new trial, and order a venire to the sheriff to return a jury before said court or judges upon such terms and at such short day and notice as they may deem right and proper, and also upon like terms to permit the proceedings and papers on either side to be amended, and the debtor re-examined.<sup>(a)</sup>

Seducer not entitled to immediate discharge.

P. L. 1855, p. 566, § 1.

16. If, upon the hearing before the court or jury, as the case may be, of any person who shall make application for the benefit of this act, it shall appear to the satisfaction of such court or jury, that the object of such application shall be to be discharged from arrest or confinement, or to get rid of liability to arrest or confinement, on mesne or final process issued for any cause of action for the seduction of any female,<sup>(b)</sup> then and in such case the debtor so applying shall not be entitled to his discharge; but the said court shall remand him to prison for any period in their discretion not to exceed three years; *provided, nevertheless*, that at any time during said period, upon payment of the damages adjudged against him for the said seduction, with the interest thereon and costs, the said applicant shall be forthwith discharged.

Discharge after term of imprisonment. Ib. § 2.

Not to have benefit of prison limits.

17. Upon the expiration of the period to which the said applicant shall have been remanded to prison, as in the preceding section mentioned, the said court shall direct him to be brought before them and shall proceed and discharge him, if it shall appear to them that he has in all things complied and shall comply with the requirements of this act; *provided*, that such person so remanded shall not, upon giving bond, have liberty to walk within the prison limits.

### III. The estate and power of the assignee.

Estate vested in assignee.

R. S. 325, § 11.

18. The assignee or assignees so to be appointed as aforesaid, are hereby declared to be invested with as ample title to all lands, goods, debts and effects whatsoever so assigned, as the assignor himself had; and no release of the assignor, his executor, administrator or any trustee for him subsequent to such assignment, shall bar the assignee or assignees from recovering any debts or other property mentioned in the assignment to them made; and the assignee or assignees, after paying the fees of the jail keeper, shall divide the proceeds of the property so assigned to them among all the creditors in proportion to their respective debts, reserving to themselves such compensation for their services as is hereinafter allowed them.<sup>(c)</sup>

To divide proceeds.

What conveyances void.

R. S. 323, § 6.

19. Any conveyance, deed, mortgage, judgment, sale, transfer, assignment or other disposition made, given or executed, by the said debtor, of, for or upon any of his estate, real or personal, to any person after the said arrest, shall as against his creditors, or any assignee or assignees, to be appointed by said court under this act, be void and of no effect; and such assignee or assignees may recover said estate, real or personal, or the value thereof, with costs of suit, in his or their own name or names, for the use of said creditors, in any proper action to be instituted therefor, against any person who may have purchased or in any manner come to the possession thereof, after the said arrest.

Power of assignee to sell.

R. S. 325, § 12.

20. Such assignee or assignees shall have full power and authority to dispose of all estates which shall be assigned to them, or which ought, by virtue of this act, to be assigned to them, to execute good and sufficient deeds for the same, to redeem all mortgages and conditional contracts, and to recover in their own names everything belonging or appertaining to the estate, real or personal, of such debtor; and shall have full power and authority to refer to arbitration, settle, compound and agree with any person or persons indebted to such insolvent, in such manner as shall from time to time be agreed upon between them; and shall proceed to convert the estate of every such debtor into money as soon as conveniently may be, and upon such credit as the major part in value of the creditors shall

(a) See *Race v. Dehart*, 4 Zab. 37.

(b) See *Wallace v. Coil*, 4 Zab. 600. *Hatfield v. Boswell*, 1 Dutch. 85.

(c) Surplus money due a mortgagor, who has made an assignment, must be paid to his assignee, *Clark v. Smith*, Saz. 121.

direct; and shall, within the space of eighteen months,<sup>(a)</sup> proceed to make a division of all the money which shall come to their hands of all the estate aforesaid, first giving three months' notice of the time and place of making such dividend, by advertising the same in one or more of the public newspapers of this state nearest the place of said debtor's confinement, and fixing advertisements in five of the most public places of the county; and if the whole be not then distributed, shall, within the space of one year thereafter, make a second division of what moneys may come to their hands after the first division; and so from year to year till a final settlement thereof, and a just and equal distribution of the whole estate be made; and in case any creditor or creditors of any such debtor shall reside in any other of the United States, and the circumstances of the case require, in the opinion the court, a more extended publication, then such assignee shall, before making such dividend, give such further notice of the time and place of making the same as the court shall direct.

Division, when and how made.

21. The assignee or assignees shall, at least one month before a division is made, appoint the day, by public notice as hereinbefore is directed, for a general meeting of all such creditors as shall choose to attend, to examine and ascertain the debts due to each creditor; and in case of any controversy relating to such debts, it shall be determined in the following manner: the assignee or assignees shall nominate two arbitrators, not being creditors of the insolvent, and the creditor, whose debt is in controversy, shall nominate two others, and their names shall be separately written on four pieces of paper as nearly of the same size as possible, which shall be rolled up in the same manner and put into a covered box, and from thence one of the assignees shall draw out three of the said pieces of paper, and the persons whose names are so drawn shall finally settle such controversy; and if any arbitrator so appointed shall refuse or be incapable of acting in a reasonable time, a new choice shall be made in the same manner; and in case any such creditor shall refuse to nominate arbitrators on his part, the assignees shall nominate them for him.

General meeting of creditors. Ib. § 13.

Controversies to be determined by arbitration.

22. The assignee or assignees shall immediately after the assignment, take an oath or affirmation, as the case may require, to be administered by the judges aforesaid, to the following effect, viz.: I, A. B., do solemnly swear that I will well and faithfully manage the insolvent's estate, and keep and render a true account of all that shall come to my hands of the same. So help me God. Which oath or affirmation shall be in writing, subscribed by the assignee or assignees, and filed with the clerk of the said court; and the said assignees shall keep regular books of account, to which every creditor shall, at all reasonable times, have recourse; and for the care and trouble incumbent on the assignees, they shall be allowed, out of the insolvent's estate, such sum as the court may deem adequate to their services and expenses.

Oath of assignee. Ib. § 14.

To keep books of account.

23. For the more full discovery of the estate and effects of such debtor, the court or judges as aforesaid, at the request of the assignee or assignees, shall have full power and are hereby required to summon and examine on oath or affirmation as aforesaid, the wife of such debtor and every other person whatsoever, known or supposed to detain any part of the said debtor's estate or effects, or to be indebted to it; and in case any person on such summons shall refuse to attend, having no reasonable excuse, or shall refuse to be sworn or affirmed, then it shall and may be lawful for the said court or judges to commit such person so refusing to jail, till he or she shall submit to be examined concerning what he or she knows relating to such insolvent's estate or effects.

Proceedings to discover effects of debtor. Ib. § 15.

24. The wife of such debtor, and every person whatsoever, summoned as aforesaid, shall be examined on interrogatories in writing, which interrogatories with the several answers thereto, shall be signed by the persons so examined, and filed by the clerk of such court, as shall award the debtor's discharge.

May examine wife of debtor. Ib. § 16.

25. No suit in equity shall be commenced by any assignee or assignees without the consent of the major part of the creditors in value, at a meeting to be held for that purpose; and if any creditor shall neglect or

When suit in equity authorized. Ib. § 17.

(a) After a lapse of eleven years a jury should be instructed that they might presume the trust to be executed, *Den v. Manning, Spen.* 612. The sale by the assignee must

be conducted in all respects as other sales of real estate, *Sloan v. Appgar, 4 Zab.* 608.

refuse to give notice of and prove his or her debt within eighteen months after the assignment, and a division of the whole estate be made, such creditor shall not be entitled to a dividend; and all the money arising from the sale of the said debtor's estate, shall be divided among the other creditors; but in case the whole of such debtor's estate shall not be divided and settled by the time herein appointed for the first division, and such creditor shall prove his debt before the time appointed for a second division, then such creditor shall, before a second division be made among the other creditors, have his first dividend; but no creditor shall be admitted to prove his debt, in order to entitle himself to a share in the insolvent's estate, after the second division, but shall by this act be debarred from any share thereof.

When creditor to prove his debt.

Proceedings when debtor has become bail. *Ib.* § 18.

26. Every such debtor who shall, before the delivery of the petition before directed, have become bail in any case, on account of which he hath reason to think judgment may be had against him, and shall make oath or affirmation as aforesaid, that at the time he so became bail, he esteemed himself vested with an estate sufficient to answer any demand that could, with any probability, be made upon him as bail, may add to the account of the creditors, and the moneys owing by him before directed to be given an account of, the manner of his becoming bail, and annex such sum as he imagines he will be liable to pay on that account, and then the assignee or assignees shall reserve in his or their hands, for the space of eighteen months, such a dividend as a creditor for a like sum would have a right to receive; and after judgment obtained against any such debtor, the person obtaining the same shall be considered in every respect as another creditor, whose debt was due before the delivery of the petition; but if, in the space of eighteen months after the petition is delivered, no judgment shall be obtained against the insolvent, the moneys so reserved shall be divided among the other creditors in the same manner as if the sum so annexed to the account of his creditors was paid; if judgment should be obtained against such debtor as bail for any sum, within eighteen months after the petition is delivered, and after the division of his or her effects among his or her creditors, and the said debtor shall have omitted either wholly or in part to annex the said sum to the account delivered, the person obtaining such judgment shall recover against the said debtor, either for the whole or the part omitted, as the case may be, so much as the other creditors of the said debtor ought to have received for the like debt, and no more.

Debts not due allowed. *Ib.* § 19.

27. That all other persons who have given credit to such insolvent debtor on valuable consideration for any sum of money, or other matter or thing, which is or may not be due or payable at or before the time of the delivery of the petition, shall and may be admitted and considered as creditors, whose debts are then due, and shall receive a dividend in the same proportion as the other creditors, deducting thereout only a rebate of lawful interest for what shall be received on such debt, to be computed from the actual payment thereof to the time it would have become due.

The debtor's discharge. *Ib.* § 20.

28. That every such insolvent debtor, having given up all his or her estate, and conformed in all things to the directions of this act, shall forever thereafter be discharged from all debts due at the time of the assignment, or contracted for before that time, though payable afterwards, so far as regards the imprisonment of his or her person. (a)

Penalty for fraudulent conduct. *Ib.* § 21.

29. That in case any such debtor shall, after the assignment of his or her estate, receive any debt or debts due to him or her before, or shall secrete any part of his or her estate, or any book or writings relating thereto, with an intent to defraud his or her creditors, he shall on being thereof convicted on indictment, be adjudged guilty of wilful and corrupt perjury, and suffer accordingly, and shall be totally precluded from all benefit and advantage whatever, which he or she might otherwise be entitled to.

Fees. *Ib.* § 22.

30. That in proceedings under this act, the officers and persons in this section named, shall be entitled to demand and receive of each insolvent debtor, for the services hereinafter mentioned, the following, and no other fees:

Clerk, filing and reading petition and schedule, eighteen cents.

(a) As to the conclusiveness of the discharge and manner of pleading it, see *Jay v. Slack*, 1 South. \*77. *State v. Ward*, 3 Hal. 120. *Ackerman v. Van Houten*, 5 Hal. 332. *Paxon v. Haster*, 6 Hal. 410. *Lloyd v. Ford*, 7 Hal. 151. *State v. Stiles*, 7 Hal. 296. *State v. Giberson*, 2 Gr. 388. *Cutter v. Day*, 1 Harr. 439.



Administering every oath or affirmation, eight cents.  
 Drawing up assignment and discharge, fifty cents.  
 Filing and recording the same, forty-eight cents.  
 Certificate under seal of office, twenty-five cents.  
 The court hearing the application, one dollar and thirty cents.  
 Crier, for fees, ten cents.

**IV. Prison limits.**

31. The courts of common pleas are hereby respectively empowered and required to mark and lay out the bounds and rules of the prisons in their several counties, adjoining to such prison, so as to embrace the whole of the city, town, village or borough in which the prison shall be, and shall cause the external or boundary lines of such limits to be marked on a map; which marks and bounds shall be recorded by the clerk of the said court, and may be altered or renewed from time to time as occasion may require; and every prisoner, in any civil action, giving bond to the sheriff, with sufficient sureties, being freeholders and residents in the county, in double the sum for which he is committed, that he will keep within the said bounds, shall have liberty to walk therein; and if the said bond shall be forfeited, the sheriff at the request of the plaintiff or his attorney, shall assign such bond to the said plaintiff, by endorsing the same, and attesting it under his hand and seal, in the presence of two or more witnesses, and the said plaintiff may bring an action thereon in his own name.

Common pleas to assign prison bounds.  
 Ib. § 23.

32. If any person who may enter into bond to keep the prison limits, in pursuance of the preceding section of this act, shall voluntarily and intentionally walk, or go out of, and beyond the prison limits that have been or shall be hereafter prescribed by virtue of this act such voluntary and intentional walking or going out of or beyond the said prison limits, shall be deemed and taken to be an absolute forfeiture of such bond; and the sheriff to whom such bond may have been given, or the plaintiff or plaintiffs at whose suit the prisoner may be in custody, in case such bond shall have been assigned to him, shall and may maintain an action on the said bond, notwithstanding the prisoner may have returned to and within the said prison limits before the commencement of such action, any law, usage or custom to the contrary notwithstanding.(a)

What a forfeiture of bond.  
 Ib. § 24.

33. It shall be lawful for any person in actual confinement for debt or damages, in any jail in this state to give bond for the prison limits as aforesaid, and thereupon to be discharged from imprisonment, except within said limits, notwithstanding any former verdict or judgment may have been rendered against him on any application for the benefit of this act.

Debtor refused discharge may give bond for limits.  
 P. L. 1853, p. 21.

**Supplement.**

Approved February 16, 1875. P. L. 1875, p. 12.

34. SEC. 1. That where any person shall be imprisoned by virtue of any order, writ, or process made by or issued [out] of the court of common pleas, the court making such order, or out of which said writ or process has issued, is hereby authorized to discharge the person so imprisoned at the discretion of said court, whenever, in the judgment of said court, the ends of justice require such discharge; *provided*, that when such imprisonment shall be legal no order for the discharge of the person so imprisoned shall be made, unless the president judge of the said court shall be present and consent thereto.

Common pleas may discharge person imprisoned, at discretion of court.

**Supplement.**

Approved February 16, 1875. P. L. 1875, p. 18.

35. SEC. 1. That if upon the hearing before the court of common pleas of any county in this state, of the application and petition of any person for the benefit of the insolvent laws of this state, and for his discharge as an insolvent debtor, under the provisions of the said act to which this is supplement, or of the act entitled, "An act for the relief of persons imprisoned on civil process," approved April sixteenth, eighteen hundred and forty-six, or of any supplement thereto, the said court shall fail or refuse,

Proceedings in case common pleas fail or refuse to discharge insolvent debtor.

(a) How limits are to be marked out, and forfeitures of bonds, see *Allen v. Smith*, 7 Hal. 159; *Sax*, 44. *Camp v. Allen*, 7 Hal. 1. *Tunison v. Cramer*, 2 South. \*498. *Stephens v. Tucker*, 2 Gr. 600. *Howard v. Blackford*, Pen. \*777. *Beatty v. Ivins*, Pen. \*628.

New inventory and bond to be delivered to sheriff.

for any reason, to discharge such person as an insolvent debtor, as provided in said laws, and such person upon such refusal, shall surrender himself immediately to the sheriff or keeper of the jail of said county, it shall be lawful for such person thereupon to make out and deliver to such sheriff or keeper a new inventory and a new bond as and in the manner, and of the tenor and effect mentioned in the second section of the said act to which this is a supplement; whereupon such person shall be discharged from the custody of such sheriff or keeper; and he shall be entitled to make a new application to said court for his discharge under the said act, and the same proceedings shall be had for that purpose, as fully and effectually as if no previous application had been made.

## Insurance Companies.

### I. AS TO THE INSURANCE COMPANIES OF OTHER STATES DOING BUSINESS WITHIN THIS STATE.

1. Foreign companies to make annual statement.
2. Certificate of authority to transact business.
3. License and taxes.
4. Appropriation of tax.
5. Secretary of state to make statement of moneys received.
6. Certificates of authority to agents to be issued.
7. Secretary of state may revoke certificates.
8. No insurance to be made without certificate of authority.
9. Penalty for violation of preceding section.
10. Licenses and taxes of life insurance companies.
11. Licenses, fees and taxes of fire insurance companies.
12. Last two sections to include all impositions.
13. Insurance companies of other states may hold real estate.

### II. AS TO INSURANCE COMPANIES OF THIS STATE.

#### 1. FORMATION, POWERS AND MANAGEMENT.

14. Association for marine, fire and life insurance.
15. Reinsurance allowed, but classes of insurance to be kept separate.
16. Declaration in writing to be filed with secretary of state.
17. Notice of intended corporation to be published.
18. Subscription of stock thereupon authorized.
19. Organization may be joint stock or mutual.
20. Amount of capital required.
21. Capital of life, health or accident insurance.
22. Duties of attorney-general and secretary of state.
23. Deposit required before doing business.
24. Comptroller to prescribe regulations to secure proper investment on mortgage.
25. Secretary of state to certify as to deposit.
26. Increase of capital stock.
27. Directors to open books of subscription therefor.
28. When increase shall be deemed part of capital.
29. Suits between corporation and stockholders.
30. Companies so formed, bodies corporate.
31. Prohibition of trade by a company.
32. Investments of capital or accumulations.
33. Power to hold lands and restrictions thereon.
34. Trustees liable until stock invested.
35. Limits of liability.
36. Extension of charter of companies already incorporated.

37. Charter to continue thirty years, except life companies.
38. Fraudulent dividends.
39. Surplus capital in mutual companies.
40. Fees of secretary of state.
41. Capital stock may be increased to amount of surplus earned.
42. Deposit of securities necessary to commence business in other states.
43. Company may draw dividends on securities deposited.
44. Fees of state treasurer.
45. Proviso as to the deposit of securities.

#### 2. STATEMENTS, RETURNS, REMEDIES.

46. Life insurance companies to make returns annually.
47. Every company to file statement of its condition during January of each year.
48. Secretary of state to examine condition of fire insurance companies.
49. When certificates of foreign companies to be revoked.
50. Life insurance companies subject to the same examination.
51. Secretary of state to be commissioner of insurance.
52. Insurance companies to do no business until certificate of authority given.
53. Deposit subject to approval of secretary of state.
54. Penalty for unauthorized insurance.
55. Act to apply to all persons and companies effecting insurance.

#### 3. DISSOLUTION.

56. Provisions in corporation act for winding up applicable.
57. Act to extend to any company transacting insurance. Repealer.
58. Collateral security must be 25 per centum in excess of the amount loaned.
59. Secretary of state may notify to make good deficiency.
60. Mortgage must be first lien and fifty per centum in excess of amount of bond.
61. Every foreign insurance company shall file a copy of charter.
62. No policy in unauthorized company to be delivered, etc.
63. Repealer.
64. No foreign company, nor any person for them, shall effect insurance before compliance with law.
65. Certificates of officers of other states to be received as such states receive certificates of this state.
66. Penalty for violation of this act.