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LEGISLATIVE ASSEMBLY,

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CHAPTER 89.

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SEC. 1. Every insolvent debtor may be discharged from his debts, as hereinafter provided, upon executing an assignment of all his property, real and personal, for the benefit of his creditors, and upon compliance with the several provisions of this chapter.

Insolvent debtor may be discharged from his debt.

SEC. 2. Such insolvent debtor shall petition a judge of the district court, praying to be discharged in pursuance of the provisions of this chapter, and shall annex to, and deliver with his petition to the officer to whom it shall be presented, a schedule containing:

Petition and schedule what to contain.

1. A full and true account of all his creditors;
2. The place of residence of each creditor, if known to such insolvent, and if not known, the fact to be so stated;
3. The sum owing to each creditor, and the nature of each demand, whether arising on written security, on account, or otherwise;
4. The true cause and consideration of such indebtedness, in each case, and the place where such indebtedness accrued;
5. A statement of an existing judgment, mortgage, or collateral or other security, for the payment of any such debt;
6. A full and true inventory of all the estate, both real and personal, in law, and in equity, of all choses in action, debts due, and moneys on hand, of such insolvent, of the incumbrances existing thereon, and of all the books, vouchers, and securities relating thereto.

SEC. 3. An affidavit, in the following form, shall be annexed to the said petition, account, and inventory, and shall be sworn to and subscribed by such insolvent in the presence of the officer to whom the said petition is addressed, who shall certify the same:

Affidavit to be annexed to petition.

"I, _____ do swear, (or affirm, as the case may be,) that the account of my creditors, and the inventory of my estate, which are annexed to my petition, and herewith delivered, are in all respects just and true, and that I have not, at any time or in any manner whatever, disposed of or made over any part of my estate for the future benefit of

Form of affidavit.

myself, or my family, or in order to defraud any of my creditors, and that I have in no instance, created or acknowledged a debt for a greater sum than I honestly or truly owed, and that I have not paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain the prayer of my petition."

Order for creditors to show cause.

SEC. 4. The officer receiving such petition, schedule, and affidavit, shall make an order, requiring all the creditors of such insolvent to show cause, if any they have, at a certain time and place, to be specified by him, why an assignment of the insolvent's estate should not be made, and he be discharged from his debts.

Contents of notice to be published in newspaper.

SEC. 5. The officer granting such order shall direct notice of its contents to be published in a newspaper printed at the seat of government of the territory, and in a newspaper printed in the county in which such application is made, if there be one; and if one-fourth part in amount, of the debts owing by such insolvent, shall have accrued in any other state or territory, or be due to creditors residing there, such officer shall also designate a newspaper at the seat of government of such state or territory, in which such notice shall be published.

Order how published where creditors reside in the territory.

SEC. 6. If all the creditors of such insolvent reside within the territory, the said officer shall direct such notice to be published once in each week, for six successive weeks, and if any of such creditors reside out of the territory, the notice shall be directed to be published once in each week for ten successive weeks.

Court to hear proof, &c.

SEC. 7. On the day, or at the term appointed in such order, or any subsequent day or term, that the judge or court before whom cause is required to be shown, may appoint, the said judge or court, as the case may be, shall proceed to hear the proof and allegations of the parties, and before any other proceeding be had, shall require proof the publication of the notice as herein directed.

Trial by jury when ordered.

SEC. 8. Every creditor opposing the discharge of an insolvent, under this chapter, may at the time appointed for the first hearing, demand of the judge or court before whom such hearing shall be had, that the case of such insolvent be heard and determined by a jury, and shall be entitled to an order to that effect, upon filing with such judge or court a specification in writing, of the grounds of his objection to such discharge.

Jury drawn as in civil actions.

SEC. 9. Upon such demand being made to any court, before which a hearing shall be had, a jury shall be drawn in the same manner as for the trial of civil actions, from the jurors summoned and attending said court, who shall be sworn as prescribed in this chapter.

Jury how drawn in vacation.

SEC. 10. If such demand be made to any court in vacation, he shall nominate eighteen freeholders of the county, and shall issue a summons to the sheriff or any constable of the county, commanding him to cause the persons so nominated to appear before such officer, at a time and place to be specified in the summons, not less than six nor more than twelve days from the time of issuing the same.

Jury how drawn in vacation.

SEC. 11. At the time and place so appointed, twelve of the persons so summoned and appearing, shall be balloted for and drawn, in like manner as jurors in a court of record, and shall be sworn by the judge, well and truly to hear, try, and determine the validity of the objection so specified.

Jury how to proceed.

SEC. 12. Such jury so drawn and sworn, either by a court, or judge in vacation, having heard the proofs and allegations of the parties, shall determine the matter submitted to them, and for that purpose shall be kept together by some proper officer, to be sworn as usual in like cases in courts of record, until they agree upon their verdict, and such verdict shall be conclusive in the premises, unless reversed on writ of error, as hereinafter directed.

SEC. 13. The verdict so rendered, shall be recorded by the court or judge, in the minutes of the proceedings.

Verdict to be recorded.

SEC. 14. There shall be but one hearing before a jury, in any case under this chapter. If such jury cannot agree after being kept together a reasonable time, then they shall be discharged, and the court or judge shall decide upon the merits of the application, as if no jury had been called.

If jury do not agree judge to render judgment.

SEC. 15. At the hearing of any such petition, before a jury or otherwise, the insolvent may be examined on oath, at the instance of any creditor, touching his estate or debts, or any matter stated in his schedule, and may be required to state any change which may have occurred in the situation of his property, since the making of his schedule, and particularly whether he has collected any debts or demands, or made any transfer of any part of his real or personal estate; but this shall not be construed, to prohibit any such creditor from contradicting or impeaching, by other competent testimony, any evidence given by such insolvent.

Insolvent may be examined at the hearing.

SEC. 16. If it shall appear on such examination, or otherwise, by competent proof, that such insolvent has collected any debts or demands, or made any transfer absolute, or conditional, or otherwise, of any part of his real or personal property, since the making of the schedule annexed to his petition, he shall be required to pay forthwith to the officer or to the clerk of the court, before whom the hearing shall be had, the full amount of debts and demands so by him collected or received, and the full value of all property so by him transferred, except such part of the said debts and property as shall satisfactorily appear to the judge or court, to have been necessarily expended by such insolvent, for the support of himself, or his family; and no discharge shall be granted to him under the provision of this chapter, unless such payment shall be made within thirty days thereafter, to the assignee of such insolvent.

Where property has been sold amount to be paid to clerk of court.

SEC. 17. If it shall satisfactorily appear to the judge, or the court before whom such application is pending, in cases where no jury has been required, or the jury have disagreed, that the insolvent is justly and truly indebted to the creditors, in the sums mentioned in his schedule and affidavit, that such insolvent has honestly and fairly given a true account of his estate, and has in all things, conformed to the matter required of him in this chapter, the judge or court before whom the application shall be pending, shall direct an assignment of all such insolvent's estate, both in law and in equity, in possession, reversion, or remainder, except such property as may be by law exempt from execution.

When judge to direct an assignment of estate.

SEC. 18. When any of the matters in the last section, required to be established previous to granting an order of assignment, shall have been submitted to a jury as herein provided, and shall have been found in favor of the insolvent, such finding shall be conclusive as to such matters, upon the officers or court before whom the proceedings are pending; and the officers or court shall direct an assignment accordingly: *Provided*, That the jury may increase or diminish the amount of any debt, by such insolvent set forth in his schedule.

Finding of jury to be conclusive.

SEC. 19. Such assignment shall vest in the assignees, all the interest of such insolvent at the time of executing the same, in any estate, or property, real or personal, whether such interest be legal or equitable; but no contingent interest shall pass to the assignees by virtue of such assignment, unless the same shall become vested within three years after the making of the assignment; and in case of its becoming so vested, it shall pass to the assignees in the same manner, as it would have vested in such insolvent if no assignment had been made by him.

Property of insolvent vested in assignee.

SEC. 20. Upon such insolvent's producing a certificate under the

Court when to

grant insolvent discharge.

hands and seals of the assignees, executed in the presence of such officer, or of two witnesses, and proved by the affidavit of one of them, stating that such insolvent has assigned and delivered for the use of all his creditors, all his estate so directed to be assigned, and all the books, vouchers, and securities relating to the same; and upon his also producing a certificate of the register of deeds of the proper county, that such assignment has been duly recorded in his office, the officers or court who directed such assignment, shall grant to such insolvent a discharge from his debts, which shall have the effect declared in the succeeding sections of this chapter.

What papers to be filed with clerk.

SEC. 21. The petition, affidavit, order of discharge, and all the testimony, proceedings, and papers in the case of such insolvent, shall be filed in the office of the clerk of the district court; whose duty it shall be to enter upon the docket of judgments in such court, the names of the several creditors mentioned in the schedule of such insolvent, as plaintiffs, and the name of such insolvent, as defendant, and to enter a judgment in said docket by confession of defendant, for the several sums respectively appearing, or shown to be due in and by such schedule and proceedings.

Discharge of judgment when to be entered by clerk.

SEC. 22. The said clerk shall also enter a discharge of such judgment upon the docket, by order of the court, and such discharge may be pleaded in all cases hereinafter mentioned.

Discharge may be pleaded in bar to action.

SEC. 23. In any action which shall be brought against such insolvent, or his personal representatives, a discharge granted pursuant to the provisions of this chapter, may be pleaded in his answer, in bar of any action upon any contract made by such insolvent, and in bar of any action upon any liability of such insolvent, incurred by making or indorsing any promissory note or bill of exchange, previous to the execution of his assignment, or incurred by him in consequence of the payment by any party to such note or bill of the whole, or any part of the money secured thereby, whether such payment be made prior or subsequent to the execution of the assignment by such insolvent: *Provided*, The same or the consideration be included in such schedule.

Discharge when voidable.

SEC. 24. Every discharge granted to an insolvent under this chapter, shall be voidable in each of the following cases:

1. If such insolvent shall have willfully sworn falsely in his affidavit annexed to his petition, or upon his examination in relation to any material fact concerning his estate, or his debts, or to any other material fact:

2. If, after the presentation of his petition, he shall sell, or in any way transfer or assign any of his property, or collect any debts due him, and shall not give a just and true account thereof, on the hearing of his application, and shall not also pay or secure the payment of the money so collected, or the value of the property so assigned, as hereinbefore directed:

3. If he shall secrete any part of his estate, or any books or writings relative thereto, with intent to defraud his creditors:

4. If he shall fraudulently conceal the names of any of his creditors, or the amount of any sum due to any of them:

5. If he shall pay, or consent to the payment of any portion of the debts or demand of any of his creditors, or shall grant, or consent to the granting of any gift or reward to any such creditor, upon any express or implied contract or trust, that the creditor so paid or rewarded, should abstain or desist from opposing the discharge of such insolvent:

6. If he shall be guilty of any fraud whatever, contrary to the true intent of this chapter.

Writs of error may issue within one year.

SEC. 25. Writs of error from the supreme court, may be sued out within one year next after the rendition of the several judgments

against such insolvent in the district court, and if upon the hearing of such cause in the supreme court, it shall appear by affidavit that any clause in the last preceding section has been violated, then and in that case, a new trial or hearing, shall be awarded to the district court, in which such judgments may have been rendered.

SEC. 26. The new hearing to be had, in pursuance of the last preceding section shall be in all respects conducted according to the provisions of this chapter; and the judgment rendered on such new hearing shall be final and conclusive in the premises.

New hearing when allowed.

SEC. 27. No judgment rendered in pursuance of the provisions of this chapter, shall be, or become a lien upon any other property, than such as may have been assigned in satisfaction thereof.

Judgment on what to become a lien.

SEC. 28. The court in which judgment may have been rendered in pursuance of the provisions of this chapter, may from time to time make such order, for the distribution of the proceeds of the sale of the property assigned by any insolvent, as to said court may appear most for the interest of the creditors; and for the payment from the proceeds of sales of such property, of all legal fees and expenses accruing on the application for discharge by any such insolvent.

Judge may make order for the distribution of the proceeds of sale, &c.

CHAPTER 90.

OF THE RELIEF OF PERSONS CONFINED IN JAIL ON CIVIL PROCESS.

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8. Jailor when to discharge debtor.
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10. Effect of discharge.
11. Judgment shall remain in full force.
12. Debtor liable for support in prison.
13. Plaintiff may order prisoner discharged.

SEC. 1. Every person confined in jail, on an execution issued on a judgment recovered in an action for injury shall be discharged therefrom at the end of ten days from his first confinement, upon the conditions hereinafter specified.

Person confined in prison how discharged.

SEC. 2. Such person shall cause notice to be given to the plaintiff in the suit, his agent or attorney in writing, that on a certain day and hour and at a certain place, he will apply to two justices of the peace of the county where the person is committed, stating the names of such justices, for the purpose of obtaining a discharge from his imprisonment.

Notice of application to be given plaintiff.

SEC. 3. Such notice shall be served by a copy on the plaintiff, his agent, or attorney, twenty-four hours before the hour of hearing the application in cases where the plaintiff, his agent, or attorney lives within twenty miles of the place of the hearing, and twenty-four hours shall be added to the time of the notice, for every twenty additional miles, the plaintiff, his agent or attorney, shall reside distant from that place.

Notice how served.