

..... AN ACT for the relief of Insolvent Debtors.

*Be enacted by the Council and House of Representatives of the Territory of Wisconsin.*

Discharge, how obtained.

SECTION 1. Every insolvent debtor may be discharge<sup>d</sup> 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 act.

Insolvents petition, to what officer, schedule.

SEC. 2. Such insolvent debtor shall petition a Judge of the Supreme Court, or Supreme Court Commissioner, praying to be discharged, in pursuance of the provisions of this act, and shall annex to, and deliver with his petition to the officer, to whom it shall be presented a schedule containing,

1st. A full and true account of all his creditors.

2d. The place of residence of each creditor, if known to such insolvent, and if not known the fact to be so stated.

3d. The sum owing to each creditor, and the nature of each demand, whether arising on written security, on account, or otherwise.

4th. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued.

5th. A statement of any existing judgment, mortgage, or collateral, or other security, for the payment of any such debt.

6th. A full and true inventory of all the estate, both real and personal, in law and equity of all *choses in action*, debts due and monies on hand, of such insolvent of the incumbrances existing thereon, and of all the books vouchers and securities relating thereto.

Affidavit.

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 same petition is addressed, who shall certify the same: " 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, whatsoever, disposed of or made over any part of my estate for the future benefit of myself, or my family, or in order to defraud any of my creditors, and that I have, in no in-

stance, created or acknowledged a debt for a greater sum than I honestly or truly owed, and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain the prayer of my petition."

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 estate should not be made, and he be discharged from his debts. Order of notice.

SEC. 5. If the officer making such order, be a Supreme Court Commissioner, and not a Counsellor-at-law, the order shall require such cause to be showed at the term of District Court, to be held next after the expiration of the time of publication of the notice thereof, as hereinafter directed, and the order shall specify the time and place at which such term will be held. In every other case the order shall require such cause to be shown before the officer, to whom the petition shall be presented. Cause to be shown, when, where.

SEC. 6. 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. Contents of order; where to be published.

SEC. 7. 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. Same subject.

SEC. 8. On the day, or at the term appointed in such order, or on any subsequent day or term, that the officer or court before whom cause is required to be shown, may appoint, the said officer or court, as the case may be, shall proceed to hear the proofs and allegations of the parties, and before any other proceeding be had shall require proof of the publication of the notice as herein directed. Hearing of parties.

Creditors objections to be writing, jury.

SEC. 9. Every creditor opposing the discharge of an insolvent, under this act, may at the time appointed for the first hearing, demand of the officer 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 officer or court a specification, in writing, of the grounds of his objection to such discharge.

How drawn, or nominated and sworn.

SEC. 10. 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 cases, from the jurors summoned and attending said court, who shall be sworn as prescribed in this act.

When to be freeholders.

SEC. 11. If such demand be made to any single officer, he shall nominate eighteen reputable 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.

SEC. 12. 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 such officer well and truly to hear, try and determine the validity of the objections so specified.

Verdict conclusive, unless, &c.

SEC. 13. Such jury so drawn and sworn, either by a court or any officer, 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 is usual in like cases in courts of record until they agree upon their verdict and such verdict shall be conclusive in the premises, unless revised on writ of error as hereinafter directed.

SEC. 14. The verdict so rendered shall be recorded by the court or officer in the minutes of the proceedings.

One hearing only before jury.

SEC. 15. There shall be but one hearing before a jury, in any case under this act. If such jury cannot agree, after being kept together a reasonable time, then they shall be discharged, and the court or officer shall decide upon the merits of the application, as if no jury had been called.

SEC. 16. 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.

SEC. 17. 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 all 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 officer 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 provisions of this act until such payment be made, or satisfactory security be given to the officer or court, that such payment shall be made, within thirty days thereafter to the assignees of such insolvent.

SEC. 18. If it shall satisfactorily appear to the officer 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 matters required of him by these acts, [this act,] the officer, or court, before whom the application shall be pending, shall direct an assignment of all such insolvent's estate, both in law and equity, in possession, reversion or remainder, except such articles as may be, by law, exempt from execution.

SEC. 19. 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

Insolvent may be examined on oath.

Allowance for his present support.

Assignment when to be ordered.

Schedule may be corrected by jury.

have been found in favor of the insolvent, such finding shall be conclusive, as to such matters, upon the officer or court before whom the proceedings are pending, and the officer 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.

What vests in the assignees.

SEC. 20. 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 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.

Discharge when to be granted.

SEC. 21. Upon such insolvent's producing a certificate, under the 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 officer, or court, who directed such assignment, shall grant to such insolvent a discharge from his debts, and from imprisonment, which shall have the effect declared in the succeeding sections of this act.

Return where to be made, of what.

SEC. 22. 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 plaintiff [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.

Entries upon docket,

Name and subject.

SEC. 23. 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.

**Sec. 24.** In any action, which shall be brought against such insolvent, or his personal representatives, a discharge granted pursuant to the provisions of this act, may be pleaded or given in evidence under the general issue, and notice thereof, 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 endorsing 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.

What actions  
barred by.

**Sec. 25.** Every such discharge shall also exonerate the insolvent, to whom it shall be granted, from any arrest or imprisonment, thereafter, in any suit, or upon any proceedings founded upon any debt, whatever, contracted by him previous to the execution of the assignment of his estate, as herein directed, or in any suit or upon any proceeding founded upon any liabilities incurred by him, by making or endorsing 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 his assignment.

Exempts from  
arrest and im-  
prisonment.

**Sec. 26.** If such insolvent be in prison, in any suit, or proceeding, founded upon any contract or liability, on which he is exempted from imprisonment, according to the last section, he shall be discharged therefrom, upon producing the discharge granted pursuant to the provisions of this act and upon endorsing his appearance on any *mesne* process upon which he may be so imprisoned.

Same subject.

**Sec. 27.** Every discharge granted to an insolvent under this act shall be voidable in each of the following cases,

Voidable for  
what causes.

1st. If such insolvent shall have wilfully sworn false 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.

2d. 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 herein before directed.

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

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

5th. If he shall pay or consent to the payment of any portion of the debt 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.

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

New hearing to  
be ordered,  
when.

SEC. 28. 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 cause [clause] in the last preceding section has been violated, then, and in such case, a new trial or hearing shall be awarded to the District Court, in which such judgments may have been rendered.

How conducted.

SEC. 29. 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 act, and the judgment, rendered on such new hearing, shall be final and conclusive in the premises.

SEC. 30. No judgment, rendered in pursuance of the provisions of this act, shall be, or become, a lien upon any other property, than such as may have been assigned in satisfaction thereof.

Proceeds of sales  
to be distributed,  
debts and charges  
paid.

SEC. 31. The court, in which judgment may have been rendered, in pursuance of the provisions of this act, may, from time to time, make such orders 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.

Approved, January 13th, 1840.