

[No. 409, S.]

[Published April 23, 1889.]

CHAPTER 384.

AN ACT to amend the charter of the city of
Marinette.

(See Vol. 2.)

[No. 311, A.]

[Published April 18, 1889.]

CHAPTER 385.

AN ACT relating to the discharge of insolvent
debtors who make voluntary assignment.*The people of the state of Wisconsin, represented
in senate and assembly, do enact as follows:*

SECTION 1. Any person who shall have made a voluntary assignment for the benefit of his creditors under or in pursuance of the laws of this state, may be discharged from his debts as a part of the proceedings under such assignment upon compliance with the provisions of this act.

Discharge of
insolvent debt-
ors.

SECTION 2. Such insolvent debtor who shall desire to be discharged from his debts, shall within six months after filing a copy of his assignment in the office of the clerk of the circuit court as required by law, file in the office of the circuit court where such assignment is filed and present to the circuit court of such county, or to the presiding judge thereof, his application for such discharge, addressed to said court, or said judge, in which application he shall state the date of the filing of such assignment, the clerk's office where the same was filed, the name and post-office address of the clerk with whom the same was filed, and the name and post-office address of the assignee named in such assignment.

Application to
be presented
by insolvent.

SECTION 3. Said insolvent debtor shall sign said application and annex thereto an affidavit sub-

To be signed by
debtor and ver-
ified.

scribed and sworn to by him, substantially in the following form:

Form of verification.

State of Wisconsin, }
County of ———. } ss.

I ——— do solemnly swear (or affirm) that I have read (or heard read) the foregoing application signed by me; that the same is true of my own knowledge; that the inventory of my estate and the list of my creditors, filed in the office of the clerk of the circuit court, for the county of ———, as a part of my assignment, are as accurate and complete statements of all my property, except such as is exempt from sale on execution by the laws of this state, and of my creditors as I can make; 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 of 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 owned, and that I have not paid, secured to be paid, nor in any way compounded with any of my creditors with a view to fraudulently obtain the discharge prayed for in the foregoing application.

Court to make order requiring creditors to show cause, if any, why insolvent should not be discharged.

SECTION 4. Upon the filing of such application in the office of the clerk of the circuit court where said assignment is filed and the presentation thereof to said circuit court, or to the presiding judge thereof, such court or judge shall make an order, which shall be entitled in the matter of such assignment, requiring all of the creditors of such insolvent debtor to show cause, if any they have, why such insolvent debtor should not be discharged from his debts. Such order shall refer to said assignment, and shall state the time and place of the filing thereof, the name and post-office address of the clerk in whose office the same is filed, the name and address of the assignee named in such assignment, and the time and place of the filing of such application. If such application is made to such court, such order shall also fix a day in the same or the next ensuing term for a hearing thereof at the court house or at the chambers of such judge, designating the place thereof. Said order shall also require that a copy thereof be published in a newspaper published in the county in which the

Order, what to state and require.

application was made, if there be one, and if not, then in a newspaper published in an adjoining county, for at least six successive weeks prior to the day of hearing. Such order shall also direct that a copy of such application and of said order be, within five days from the date of such order, deposited in the post office, post-paid, directed to each of the creditors of such insolvent debtor whose address is known to such insolvent debtor. But if a copartnership be a creditor, it shall not be necessary to mail a copy of such application and of such order to each member of such copartnership, but it shall be sufficient if a copy of such application and of said order be so deposited and directed to such copartnership in its firm name or designation.

To be published.

Copy of application and order to be sent creditors.

SECTION 5. On the day fixed in such order, or at any subsequent day or time that such judge or court may appoint, such judge or court shall hear the proofs and allegations of the parties; and before any other proceeding be had, shall require proof of the publication of said order, and of the mailing of a copy of said application and order, as in said order required. On the hearing of such application, such application shall be regarded as a complaint, and any creditor of said insolvent debtor who may desire to object to the discharge of such insolvent debtor, may file in the office of the clerk of said court, and present on such hearing his answer to such application, duly verified in the manner that pleadings are required to be verified, setting forth the grounds of his objection to such discharge.

To hear proof.

SECTION 6. Every creditor opposing the discharge of an insolvent debtor under this chapter may, at the time appointed for the first hearing, demand of the court or such judge that the cause of such insolvent debtor be heard and tried by a jury and shall be entitled to an order to that effect and in all cases ordered to be tried by a jury, under the provisions of this section, such trial shall be had in the county where such insolvent debtor shall reside, subject to a change of the place of trial for like causes and according to the provisions which govern, in actions pending in the circuit court.

Creditor may demand jury.

SECTION 7. If such demand is made to such court the jury shall be drawn in the same manner

Jury, how drawn.

as in civil cases from the jurors summoned and attending such court, who shall be sworn as prescribed in the next section.

Venue to issue.

SECTION 8. If such demand is made to such judge he shall name eighteen freeholders of such county, qualified by law, to serve as jurors, and issue a summons to the sheriff or any constable of the county, commanding him to summon the persons so named to appear before him at such court house, or at his chambers, designating them at a day fixed in such summons, not less than six nor more than twelve days from the time of issuing the same, at which time and place twelve of such persons shall be drawn to serve as a jury, in the same manner as juries in circuit court are drawn, who shall be sworn well and truly to hear, try and determine the validity of the objections so specified.

Verdict of jury.

SECTION 9. Such jury 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, or are discharged by court such or judge. Such verdict shall be recorded in such court or by such judge.

Court, when to decide merits.

SECTION 10. There shall be but one hearing before a jury, unless a re trial is granted, and if they cannot agree after being left together for a reasonable time they shall be discharged, and such court or judge shall decide the merits of such application and objections in the same manner as if no jury had been called.

Examination of insolvent.

SECTION 11. At the hearing on any such application, before a jury or otherwise, the insolvent debtor may be examined, on oath, at the instance of any creditor touching his estate or debts, or as to any matter stated in his application, and any such creditor may contradict or impeach by other competent evidence, any testimony given by such insolvent debtor.

Who deemed parties to proceedings.

SECTION 12. Every creditor of such insolvent debtor, whether residing within or without this state, who shall file an affidavit or make other proof of his claim against such insolvent debtor, or who shall accept or receive any dividend from the assignee of such insolvent debtor or out of the estate of such insolvent debtor, or shall in

any way participate in the proceedings under such assignment shall be deemed to be a party to such proceedings for a discharge of such insolvent debtor from his debts, and the filing of such affidavit, and the making such proof of claim, or the receiving such dividend, or participation in such proceedings shall be deemed, to be, and is declared to be an appearance in the matter of such assignment and application for a discharge, and the order and discharge made and granted by said court or judge shall be final and binding upon all of the creditors of said insolvent debtor who shall file an affidavit of their claims, or make other proof of the indebtedness of such insolvent debtor or receive such dividend or participate in such proceedings, subject to the right of such creditor to appeal from any order, decision or judgment made or entered in such proceeding in the manner provided by law.

SECTION 13. If it shall appear upon such hearing or trial, that such insolvent debtor has in good faith made a voluntary assignment for the benefit of his creditors, and has in all respects complied with laws of this state in relation to voluntary assignments, and with this act, such court or judge shall grant such insolvent debtor a discharge from his debts, which shall have the effect declared in this act.

When insolvent, to be discharged.

SECTION 14. Upon the granting of such discharge by said court or judge, the clerk of said court shall immediately enter in the judgment docket of said court against said insolvent debtor, and in favor of each of his creditors who appears, by the list of creditors filed with an assignment of such insolvent debtor, to be a resident of this state, and in favor of each of the creditors of said insolvent debtor whose residence appears by such list to be out of the state, and who has proved his claim against said insolvent debtor under such assignment, or who has appeared in the proceedings under such assignment, or who has received any dividend from the assignee of such insolvent debtor, or out of the estate of such insolvent debtor, or in any way participated in the proceedings under such assignment, or who has appeared in the proceedings for such discharge, for the sum respectively appearing, or shown to be due to him and allowed to him in the proceedings under

Judgment to be entered by clerk on.

Discharge to be entered by clerk.

such assignment, and shall also enter a discharge thereof upon such docket by order of said court, which shall discharge such insolvent debtor from all personal liability in favor of such of his creditors as shall reside in this state, and such of his creditors as reside out of this state who have proved their claims against such insolvent debtor in the proceedings on such assignment, or who have received any dividend from the assignee of such insolvent debtor, or out of the estate of such insolvent debtor, or in any way participated in the proceedings under such assignment, or who have appeared in said proceedings for such discharge. The fees of the clerk of said court for docketing and discharging such judgments shall be five dollars.

Fees of clerk.

Discharge may be pleaded a bar to recovery.

SECTION 15. In any action which may be brought against such insolvent debtor, a discharge granted pursuant to this act may be pleaded, and shall constitute a bar to the recovery against him, for or on account of any indebtedness or liability of his found due in such proceedings and included in said judgment so entered and discharged as above provided.

Appeals may be taken.

SECTION 16. Appeals may be taken to the supreme court by such insolvent debtor, or by any creditor from any order or judgment made or entered in such proceeding by such judge or court, within the same time and in the same manner as appeals in ordinary civil actions, and whenever necessary, bills of exceptions may be settled as in the ordinary appeals in civil actions.

Partners, how discharged and when.

SECTION 17. In all cases where a partnership shall have made, or shall hereafter make a voluntary assignment for the benefit of the creditors of such partnership, any member of such partnership, who has no property nor effects not exempt from execution, may be discharged from all of his liabilities as a member of such partnership, in the proceedings on the assignment of such partnership, under the provisions of this act, upon filing his application for a discharge as herein provided. Such person shall state in his application the existence of such partnership; the name and post-office address of each partner in such partnership; the making of the assignment by such partnership; the name and post-office address of the assignee named in such assignment,

the date of the filing of such assignment; the name and post-office address of the clerk in whose office the same was filed, and that the applicant for such discharge has no property nor effects of any kind, not exempt from execution. Such applicant shall annex to such application his affidavit, subscribed and sworn to by him, in substantially the following form:

Application to be made, what to state.

State of Wisconsin, }
County of ———. } ss.

I, ———, do solemnly swear (or affirm) that I have read (or heard read) the foregoing application signed by me, that the same is true of my own knowledge; that the inventory of the estate of the partnership therein mentioned, and the list of the creditors of such partnership, filed in the office of the clerk of the circuit court for the county of ———, as a part of the assignment of said partnership, are as accurate and complete statements of the property and creditors of said partnership as I can make; that I have no property nor estate of any kind not exempt from execution; that I have not at any time, nor in any manner whatsoever, disposed of, nor made over any part of my estate, for the future benefit of myself or my family, in order to defraud any of my creditors, and that I have in no instance created nor acknowledged a debt for a greater sum than I honestly or truly owed, and that I have not paid, secured to be paid, nor in any way compounded with any of my creditors, or the creditors of said partnership, with a view to fraudulently obtain the discharge prayed for in the foregoing petition.

Verification, form.

SECTION 18. The discharge granted to any member of any partnership under this act may be pleaded in any action brought against such member of said partnership on any indebtedness against said partnership in the same manner and with the same force and effect as herein above provided, and the same shall constitute a bar to recovery against him for or on account of any indebtedness or liability of his as a member of such partnership.

Discharge may be pleaded as bar.

SECTION 19. All acts and parts of acts in conflict with this act are hereby repealed.

Repealed.

SECTION 20. This act shall take effect and be in force from and after its passage and publication.

Approved April 15, 1889.