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**Veto Message: Governor Dillingham
1865 (H.11)**

**An Act in addition to chapter one hundred and twenty-one of the General Statutes
[Debtors]**

STATE OF VERMONT
Executive Department.
Montpelier, Vt., Nov. 3, 1865.

A communication in writing from the Governor, was read by the Clerk, as follows:

HON. JOHN W. STEWART,

Speaker of the House of Representatives:

SIR: I herewith return to the House of Representatives, in which House it originated, the bill entitled "An act in addition to chapter one hundred and twenty-one of the General Statutes," which I have not approved.

The first clause of the first section of the bill returned, refers to section forty-five of chapter one hundred and twenty-one of the General Statutes, which is in these words: "If the commissioners find that the prisoner has no estate to the amount of twenty dollars, nor sufficient to satisfy the execution on which he is committed, exclusive of such property as is by law exempt from execution, and has not disposed of any part of his estate to defraud his creditors, nor disposed of the same after his commitment, for the purpose of defrauding the committing creditor, or of preferring other creditors to him, they shall admit him to the poor debtor's oath, and deliver him two certificates in the form hereinafter prescribed." The first section of the returned bill provides that notwithstanding the debtor may have committed any or all of these frauds, and for that cause has been denied the benefits of the poor debtor's oath, he may nevertheless make

application to the county court or to a judge of the Supreme Court by petition praying to be discharged from such imprisonment; and the subsequent sections authorize the county court, or such judge of the Supreme Court, if he chooses to entertain the petition, to order a final discharge of the prisoner, to take effect at such time as they determine.

All this, too, is to be done without providing at all for the interest of the defrauded creditor.

The common law, as accepted and administered in this State, holds all fraud in business transactions in great abhorrence, and discountenances it in every possible way; it annuls and holds as void all contracts into the composition of which fraud enters, and holds a fraudulent party to make good in damages, all injury his act has occasioned to another. And our State legislation has, from its beginning, stood boldly by the common law, going further than that could, and imposing penalties and forfeitures upon the fraudulent party. As a specimen of State legislation, I refer to sections thirty-two and thirty-three of chapter one hundred and thirteen of the General Statutes.

The forty-fifth section of chapter one hundred and twenty-one, before quoted, is in perfect keeping and harmony in principle with all our other State legislation upon the subject of frauds and fraudulent transactions; and it seems to me that the bill now under discussion, both in spirit and purpose, is in conflict with all our previous legislation upon the same subject. Had the bill been put in different form and contained a simple proposition, so to amend section forty-five of chapter one hundred and twenty-one, that any disposition of the debtor's property which he might make, with the *intent* to defraud his creditors, should be no bar to his being allowed the benefit of the poor debtor's oath, I apprehend that it would have met with little favor from the Legislature. Does not the bill, in its provisions, indirectly do the same thing? Is there any satisfactory reason why it should become law? It seems more than probable that it was introduced and urged upon the attention of the Legislature to meet some existing case where a debtor has unfortunately, in his own estimation, thrown embarrassments about himself by some violation of existing laws; if that be so, we

are to remember that all jail limits now are co-extensive with the boundaries of our State, and the inconvenience to an individual from having to reside constantly in Vermont, or else pay an honest debt, should not, I think, furnish sufficient reason for a change, which to say the least of it, is a receding from the high tone of business morals and integrity, which our laws have hitherto uniformly insisted upon.

It is not to be presumed that any board of jail commissioners ever did, or will, refuse the poor debtor's oath to one in prison, on the ground of a fraudulent disposition of his property, until the fraud is clearly proved, and when that is done, to turn him over to another tribunal to be discharged, his fraud to the contrary notwithstanding, seems repugnant both to the harmony of our laws, and to sound justice.

These views have induced me to return this bill to the House for their further consideration, and should it after that consideration become law, I shall feel more reconciled to it than I could have been had I approved it without submitting it to the second sober thought the Legislature.

PAUL DILLINGHAM,
Governor

Governor's Veto Sustained
H.11, 1865

Governor's veto overridden in the House:

Yeas: 125 Nays: 48

Governor's veto Sustained in the Senate:

Yeas: 1 Nays: 26

Sources: *Journal of the House*, November 3, 1865 (pages 203-206 and 306-307);

Journal of the Senate, November 9, 1865 (pages 206-209)