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CHAPTER 17.

ARREST AND BAIL IN CIVIL ACTIONS

ARTICLE 1.

ARREST

**SECTION 15‑17‑10.** Person shall not be arrested in civil action except as prescribed.

No person shall be arrested in a civil action except as prescribed by this Code. But this shall not apply to proceedings for contempt.

**SECTION 15‑17‑20.** Arrest in civil actions permitted in certain cases.

The defendant may be arrested, as prescribed in this article, in the following cases:

(1) In an action for money received or property embezzled or fraudulently misapplied by a public officer, an attorney, solicitor or counsellor, an officer or agent of a corporation or banking association in the course of his employment as such or a factor, agent, broker or other person in a fiduciary capacity or in an action for any misconduct or neglect in office or in a professional employment;

(2) In an action to recover the possession of personal property fraudulently detained or when property has been fraudulently concealed, removed or disposed of so that it cannot be found or taken by the sheriff or constable and with intent that it should not be so found or taken or with intent to deprive the plaintiff of the benefit thereof;

(3) When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit;

(4) When the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors;

(5) Whenever a person domiciled in this State, indebted by bond, note or otherwise, is about to remove or abscond from the limits of this State and the debt is not yet due but payable at some future date, the obligee, payee or holder of such demand, or his assignee or endorsee, as the case may be, upon swearing

(a) that such person is indebted to him,

(b) that the demand is just and owing but not yet due,

(c) that the debtor is about to abscond or remove without the limits of this State and

(d) that such creditor was not aware that the debtor had any intention to remove from the State at the time when the original contract was made or at the time of such assignment or endorsement, as the case may be,

May commence an action by issuing a summons and complaint and shall have power to arrest and hold to bail in such manner as is prescribed in this chapter in cases of debts actually due; and

(6) In an action for the recovery of damages in a cause of action not arising out of contract when the defendant is a nonresident of the State or is about to remove therefrom or when the action is for an injury to person or character or for injury to or for wrongfully taking, detaining or converting property.

**SECTION 15‑17‑30.** Females shall be arrested only in certain cases.

No female shall be arrested in any civil action except for a wilful injury to persons, character or property.

**SECTION 15‑17‑40.** By whom order for arrest is made.

An order for the arrest of the defendant must be obtained from a judge, magistrate or clerk of the court in which or before whom the action is brought.

**SECTION 15‑17‑50.** Affidavit to obtain order for arrest.

The order may be made when it shall appear to the proper officer by the affidavit of the plaintiff or of any other person that a sufficient cause of action exists and that the case, from the facts stated, is one of those mentioned in Section 15‑17‑20.

**SECTION 15‑17‑60.** Security by plaintiff before obtaining order for arrest.

Before making the order the judge or other officer shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that, if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff without sureties he shall annex thereto an affidavit that he is a resident and householder or freeholder within the State and worth double the sum specified in the undertaking over all his debts and liabilities.

**SECTION 15‑17‑70.** Making and serving order for arrest; contents.

The order may be made to accompany the summons or at any time afterwards before judgment. It shall require the sheriff or constable of the county in which the defendant may be found forthwith to arrest him and hold him to bail in a specified sum and to return the order at a place and time therein mentioned to the plaintiff or attorney by whom it shall be subscribed or endorsed. But the order of arrest shall be of no avail and shall be vacated or set aside, on motion, unless it is served upon the defendant, as provided by law, before the docketing of any judgment in the action. The defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint.

**SECTION 15‑17‑80.** Affidavit and order shall be delivered to sheriff or constable; copy to defendant.

The affidavit and order of arrest shall be delivered to the sheriff or constable who, upon arresting the defendant, shall deliver to him a copy thereof.

**SECTION 15‑17‑90.** Execution of order.

The sheriff or constable shall execute the order by arresting the defendant and keeping him in custody until discharged by law and may call the power of the county to his aid in the execution of the arrest, as in case of process.

ARTICLE 3.

GIVING BAIL

**SECTION 15‑17‑210.** Defendant shall be discharged on giving bail or making a deposit.

The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article, or under the provisions of Sections 15‑17‑410 to 15‑17‑590.

**SECTION 15‑17‑220.** Manner of giving bail.

The defendant may give bail by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein or, if he be arrested for cause mentioned in item (2) of Section 15‑17‑20, by an undertaking to the same effect as that provided in Section 15‑69‑140.

**SECTION 15‑17‑230.** Qualification of bail.

The qualification of bail must be as follows:

(1) Each of them must be a resident and householder or freeholder within the State; and

(2) Each of them must be worth the amount specified in the order of arrest, exclusive of property exempt from execution.

But the judge or clerk of the court, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order if the whole justification be equivalent to that of two sufficient bail.

**SECTION 15‑17‑240.** Substituting bail for deposit.

If money be deposited, as provided in Section 15‑1‑250, bail may be given and justified upon notice, as prescribed in Section 15‑17‑260, at any time before judgment. Thereupon the judge before whom the justification is had shall direct in the order of allowance that the money deposited be refunded by the sheriff or constable to the defendant, and it shall be refunded accordingly.

**SECTION 15‑17‑250.** Delivery of bail to plaintiff and acceptance by him.

Within the time limited for that purpose the sheriff or constable shall deliver the order of arrest to the plaintiff or attorney by whom it is subscribed, with his return endorsed and a certified copy of the undertaking of the bail. The plaintiff within ten days thereafter may serve upon the sheriff or constable a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff or constable shall be exonerated from liability.

**SECTION 15‑17‑260.** Notice of justification; new bail.

On the receipt of notice that the plaintiff does not accept the bail the sheriff or constable or the defendant may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed notice of the justification of such bail or other bail, specifying the places of residence and occupation of the latter, before a judge or clerk of the court at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given there shall be a new undertaking in the form prescribed in Section 15‑17‑220.

**SECTION 15‑17‑270.** Justification of bail.

For the purpose of justification each of the bail shall attend before the judge, magistrate or clerk of the court at the time and place mentioned in the notice and may be examined on oath on the part of the plaintiff touching his sufficiency in such manner as the judge, magistrate or clerk of the court, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

**SECTION 15‑17‑280.** Allowance of bail.

If the judge, magistrate or clerk of the court find the bail sufficient he shall annex the examination to the undertaking, endorse his allowance thereon and cause them to be filed in the office of the clerk. The sheriff shall thereupon be exonerated from liability.

ARTICLE 5.

RELEASE ON SURRENDER OF PROPERTY

**SECTION 15‑17‑410.** Petition for release.

Any person arrested on mesne or final process in any civil action as provided by this chapter, being unable or unwilling to give the bail therein provided, may petition the court of common pleas of the county wherein he is confined, certifying the causes of his arrest together with an account of his real and personal estate with the dates of the securities wherein any part of it consists and the deeds, notes or vouchers relating thereto and the names of the witnesses to such instruments as far as his knowledge extends therein.

**SECTION 15‑17‑420.** Creditors shall be summoned by public notice.

Upon such petition the clerk shall, by order or rule, cause the petitioner to be brought before the court and also the creditors at whose suit such person shall stand charged, as well as all other creditors to whom he shall be indebted, to be summoned by public notice, to be given three weeks at least in some newspaper of the county wherein the debtor is confined and, if there be no newspaper published in such county, then in some newspaper of general circulation therein, personally or by their attorney, to appear before him at a day for that purpose appointed at or after the expiration of such period of three weeks.

**SECTION 15‑17‑430.** Clerk shall examine as to discharge of prisoner.

Upon the day of such appearance if any of the creditors so summoned shall neglect or refuse to appear, upon affidavit made of the service of such rule or order in manner provided in Section 15‑17‑420, the clerk shall in a summary way examine into the matter of the petition, and hear what shall be alleged for or against the discharge of the petitioner from arrest and confinement.

**SECTION 15‑17‑440.** Oath of petitioner.

Upon such examination the clerk shall administer or tender to the petitioner an oath in the following words:

“I, (A. B.), do solemnly swear that the account by me delivered into this honorable court with my petition doth contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever, without exception, which I or any person in trust for me have or at the time of my petition had, or am or was, in any respect, entitled unto, in possession, remainder or reversion; and that I have not at any time since my being sued, arrested or imprisoned, or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned in such account, any part of my lands, estate, goods, stock, money, debts or other real or personal estate whereby to have or expect any benefit or profit to myself or to defraud any of my creditors to whom I am indebted; and that I will, to the utmost of my power, endeavor to collect all and singular the title deeds to my lands, together with the remainder of my goods and effects contained in said account and the vouchers relating to or concerning the same, wheresoever or in whosesoever hands they may be within this State, and will surrender the same to my assignee or assignees as soon as possible after my discharge from arrest and confinement. So help me God.”

**SECTION 15‑17‑450.** Order for assignment of property; exemptions.

In case the prisoner shall take such oath and upon examination the clerk shall be satisfied with the truth thereof he shall order the lands, goods and effects contained in such account, or so much of them as may be sufficient to satisfy the debts wherewith such petitioner shall be charged and the fees of the keeper of the jail where he shall be in custody together with the costs of suit which shall be incurred on the suit or prosecution commenced against him and all other costs and fees which shall arise or become due upon prosecuting and obtaining his discharge from arrest and confinement, by a short endorsement on the back of his petition, signed by the petitioner, to be assigned to some suitable person to be selected by the clerk, as assignee for the benefit of the plaintiff and such creditors as may appear or establish claims against the debtor. But if the petitioner be the head of a family there shall be reserved to him out of his real and personal property a homestead and such articles as are exempt from attachment, levy and sale under the provisions of the Constitution and laws of this State.

**SECTION 15‑17‑460.** Prisoner shall be discharged on making assignment.

The petitioner upon executing such assignment and delivering unto the hands of the assignee or assignees all and singular his title deeds, vouchers and effects listed in his account, so far as in his power so to do, shall be forthwith discharged, by order, from arrest and confinement.

**SECTION 15‑17‑470.** Prisoner shall be remanded for refusal to assign.

In case any such debtor shall neglect or refuse within a reasonable time to comply with his oath as set out in Section 15‑17‑440 and the provisions of Sections 15‑17‑450 and 15‑17‑460 the judge of the court, upon application upon oath of the assignee or assignees, may again remand the debtor to prison, unless good cause shall be shown by him to the contrary, until he shall fully comply with the terms of his oath and those sections.

**SECTION 15‑17‑480.** Penalty for false schedules.

Any person who shall deliver in a false schedule of his effects shall suffer the penalties of wilful perjury and shall be liable to be arrested again for the same action.

**SECTION 15‑17‑490.** Summoning jury in cases of alleged fraud.

Whenever a debtor in custody under the provisions of this chapter shall be accused by the plaintiff (a) of fraud, (b) of having given an undue preference to one creditor to the prejudice of another or (c) of having made a false return, the clerk of the circuit court, who shall hear the prisoner’s application, may place the names of twenty‑four persons qualified as jurors in a box and from them draw eighteen and direct the sheriff of the county to summon the eighteen whose names shall be thus drawn to attend at the place where the prisoner is confined and at such time as the clerk shall appoint. In the same manner from them shall be drawn twelve, who shall be empaneled to try the facts required by this article.

**SECTION 15‑17‑500.** Filling vacancies in jury panel.

If from the eighteen persons so summoned twelve cannot from any cause be empaneled then the clerk may complete that number from the other freeholders originally selected.

**SECTION 15‑17‑510.** Liability for nonattendance of jurors.

The freeholders so summoned shall be liable to the same objections to be made by either party in the case which may be made to jurors in the court of common pleas and shall be liable to the same fines for nonattendance without sufficient cause to which jurors are for nonattendance at the courts. Such fines shall be imposed by the court of common pleas of the county. It shall be the duty of the clerk to return to the court the names of the freeholders who shall so neglect to attend, to be proceeded against as in the case of nonattending jurors.

**SECTION 15‑17‑520.** Issues on exceptions to clerk’s rulings shall be summarily heard by judge.

In case exceptions be taken to any order or ruling of the clerk while discharging the duties imposed by this article, the issues therein may be summarily heard and tried by the judge of the circuit or by any circuit judge then holding the courts in such circuit or, if there be no judge within such circuit, by any other circuit judge named in the notice for such hearing.

**SECTION 15‑17‑530.** Fees allowed clerk for hearing application.

The clerk who may hear and determine the application of a debtor for the benefit of the provisions of this article shall, if the application be unlitigated, be entitled to receive as a compensation for his services the sum of two dollars out of the property that may be assigned, and whenever the application is litigated the clerk shall be entitled to receive the sum of four dollars as a compensation for his services out of the property of the debtor if the final decision be against him, but if it be in his favor, then such sum shall be paid by the plaintiff.

**SECTION 15‑17‑540.** Fees allowed sheriff.

The sheriff shall receive the sum of five dollars as a compensation for summoning the freeholders, to be paid out of the property of the debtor, if his application be refused, and, if granted, to be paid by the plaintiff.

**SECTION 15‑17‑550.** Proceedings in cases of appeal.

If the verdict of the jury provided in Section 15‑17‑490 is in favor of the debtor and the plaintiff should appeal, the debtor shall be entitled to be discharged from confinement on his giving bond and sufficient sureties to the plaintiff to be forthcoming and to abide by the decision of the court of appeals or the Supreme Court. If the appeal shall be determined against the debtor and he be not surrendered, which the surety may do, before the first day of the circuit court next succeeding the determination of the appeal, then the clerk of the court, on the application of the plaintiff or his agent, shall issue an order on the bond against the prisoner and his sureties, as in cases of estreated recognizances. But if the prisoner should appear or be surrendered, as aforesaid, then the clerk shall proceed with the case as provided in the preceding sections.

**SECTION 15‑17‑560.** Creditors allowed to examine applicants for discharge; penalty for refusal to answer.

Any creditor of any person applying for the benefit of this article, either in person or by attorney, may examine and cross‑examine such applicant on oath in the presence of the judge or the clerk of the court before whom he shall move for his discharge from imprisonment, touching the truth of his schedule and touching the nature and extent of his property, rights and credits liable to be assigned for the benefit of his creditors. And the refusal of any such applicant to answer, fully and directly, all or any proper questions put to him in the course of such examination shall prevent his discharge, if otherwise entitled thereto, until he shall have fully answered such questions.

**SECTION 15‑17‑570.** Debtor required to produce books.

If on such examination it should appear that the debtor has kept books in relation to his trade, profession or occupation he shall be required to produce them, if in his possession or power. On failure to do so he shall be deprived of his discharge until he shall produce such books.

**SECTION 15‑17‑580.** Submission of issues to jury already empaneled.

Nothing contained in this article shall be construed to deprive a judge, sitting in open court, of the power to submit to the jury already empaneled all issues arising under Section 15‑17‑490. But in all cases in which the plaintiff shall appeal the defendant shall be entitled to his enlargement, pending the appeal, on the terms prescribed in Section 15‑17‑550.

**SECTION 15‑17‑590.** No discharge shall be granted until property is delivered to assignee.

In all cases in which a debtor applies for his discharge the judge or clerk of the court before whom the application shall be made shall not discharge him from confinement until the property contained in his schedule is produced and delivered to the assignee, if it be or has been within the power of the debtor to deliver such property since the time of his arrest.

ARTICLE 7.

OTHER PROCEEDINGS SUBSEQUENT TO ARREST OR BAIL

**SECTION 15‑17‑710.** Vacating order of arrest or reducing bail.

A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail.

**SECTION 15‑17‑720.** Affidavits on motion to vacate order of arrest or reduce bail.

If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the motion by affidavits or other proofs in addition to those on which the order of arrest was made.

**SECTION 15‑17‑730.** Surrender of defendant.

At any time before a failure to comply with the undertaking the bail may surrender the defendant in their exoneration or he may surrender himself to the sheriff of the county in which he was arrested in the following manner:

(1) A certified copy of the undertaking of the bail shall be delivered to the sheriff or constable who shall, by a certificate in writing, acknowledge the surrender; and

(2) Upon the production of a copy of the undertaking and the sheriff’s or constable’s certificate a judge or clerk of the court may, upon notice to the plaintiff of eight days with a copy of the certificate, order that the bail be exonerated.

And on filing the order and papers used on such application they shall be exonerated accordingly. But this section shall not apply to an arrest for the cause mentioned in item (2) of Section 15‑17‑20, so as to discharge the bail from an undertaking given to the effect provided by Section 15‑69‑140.

**SECTION 15‑17‑740.** Bail may authorize arrest of defendant.

For the purpose of surrendering the defendant the bail, at any time or place before they are finally charged, may themselves arrest him or by a written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

**SECTION 15‑17‑750.** Exoneration of bail.

The bail may be exonerated either (a) by the death of the defendant, (b) his imprisonment in a State prison, (c) his legal discharge from the obligation to render himself amenable to the process or (d) by his surrender to the sheriff or constable of the county in which he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail or within such further time as may be granted by the court.

**SECTION 15‑17‑760.** Disposal of deposit after judgment in the action.

When money shall have been deposited under Section 15‑17‑240, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply such deposit to the satisfaction thereof and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant the clerk shall refund to him the whole sum deposited and remaining unapplied.

**SECTION 15‑17‑770.** Proceeding against the bail.

In case of failure to comply with the undertaking the bail may be proceeded against by an action only.

**SECTION 15‑17‑780.** Sheriff or constable may be liable as bail.

If after being arrested the defendant escape or be rescued or bail be not given or justified or a deposit made instead thereof the sheriff or constable shall himself be liable as bail. But he may discharge himself from such liability by the giving and justification of bail, as provided in Sections 15‑17‑230 and 15‑17‑260 to 15‑17‑280, at any time before process against the person of the defendant to enforce an order or judgment in the action.

**SECTION 15‑17‑790.** Proceedings on judgment against sheriff or constable.

If a judgment be recovered against the sheriff or constable upon his liability as bail and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff or constable to collect the deficiency as in other cases of delinquency.

**SECTION 15‑17‑800.** Bail may be liable to sheriff or constable.

The bail taken upon the arrest shall, unless they justify or other bail be given or justified, be liable to the sheriff or constable by action for damages which he may sustain by reason of such omission.

**SECTION 15‑17‑810.** In what cases plaintiff shall be liable for maintenance of debtor.

When any person shall be taken on mesne or final process in any civil suit and, from inability to pay the demand, debt or damages or find bail, be committed to the jail and such person has no lands, tenements, goods, chattels or choses in action whereby his maintenance in jail can be defrayed, the plaintiff or person at whose instance such party shall be imprisoned shall pay and satisfy his maintenance. If such person or his attorney shall refuse or neglect, after ten days’ previous notice, to pay or give security to pay the prisoner’s maintenance when demanded, the sheriff or jailer in whose custody such prisoner is may discharge him from such confinement. But such prisoner shall, before he is discharged, render on oath a schedule of all his estate and assign it.

**SECTION 15‑17‑820.** Charges for keeping debtor in jail.

The charges for keeping such debtor in the common jail shall be such as are allowed by law for dieting prisoners confined under process in the court of general sessions. And if the plaintiff recover judgment against the debtor or an assignment of his effects be made as provided in this chapter such charges may be recovered as disbursements in the action or paid out of the estate assigned before any dividend is declared.