

Article 4.

Discharge of Insolvent Debtors.

**§ 23-23. Insolvent debtor's oath.**

Prisoners in order to be entitled to discharge from imprisonment under the provisions of this article shall take the following oath:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not the worth of fifty dollars in any worldly substance, in debts, money or otherwise whatsoever, and that I have not at any time since my imprisonment or before, directly or indirectly, sold or assigned, or otherwise disposed of, or made over in trust for myself or my family, any part of my real or personal estate, whereby to have or expect any benefit, or to defraud any of my creditors: so help me, God. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 31; 1881, c. 76; Code, s. 2972; Rev., s. 1918a; C.S., s. 1631.)

**§ 23-24. Persons imprisoned for nonpayment of costs in criminal cases.**

The following persons may be discharged from imprisonment upon complying with this article and G.S. 153-194:

Every person committed for the fine and costs of any criminal prosecution. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 26; Code, s. 2967; Rev., s. 1915; C.S., s. 1632; 1933, c. 228, s. 9.)

**§ 23-25. Petition; before whom; notice; service.**

Every such person, having remained in prison for 20 days, may apply by petition to the court where the judgment against him was entered, praying to be brought before such court at a time and place to be named in the petition, and to be discharged upon taking the oath hereinbefore prescribed. The applicant shall cause 10 days' notice of the time and place of filing the petition to be served on the sheriff or other officer by whom he was committed. In cases of conviction before a magistrate the clerk of the superior court of the county where the convicted person confined for costs is, may administer the oath and discharge the prisoner. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, ss. 27, 28; 1873-4, c. 90; 1874-5, c. 11; Code, ss. 2968, 2969; 1891, c. 195; Rev., s. 1916; C.S., s. 1633; 1971, c. 1190, s. 1.)

**§ 23-26. Warrant issued for prisoner.**

The clerk of the superior court before whom such petition is presented shall forthwith issue a warrant to the sheriff, or keeper of the prison, requiring him to bring the prisoner before the court, at the time and place named for the hearing of the case, which warrant every such sheriff or keeper shall obey. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 29; Code, s. 2970; Rev., s. 1917; C.S., s. 1634; 1971, c. 1190, s. 2.)

**§ 23-27. Proceeding on application.**

At the hearing of the petition, if the prisoner has no visible estate, and takes and subscribes the oath or affirmation prescribed in this Article, the clerk of the superior court before whom he is brought, shall administer the oath or affirmation to him, and discharge him from imprisonment, of

which an entry shall be made in the docket of the court. (1773, c. 100, s. 1, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 30; Code, s. 2971; Rev., s. 1918; C.S., s. 1635; 1971, c. 1190, s. 3.)

#### **§ 23-28. Suggestion of fraud.**

The chairman of the board of commissioners, and every officer interested in the fee bill taxed against such prisoner, may oppose his taking the insolvent debtor's oath above prescribed, and file particulars of the suggestion in writing, in the court where the same shall stand for trial as prescribed in this chapter in other cases of fraud or concealment. (1868-9, c. 162, s. 32; Code, s. 2973; Rev., s. 1919; C.S., s. 1636.)

#### **§ 23-29. Persons taken in arrest and bail proceedings, or in execution.**

The following persons also are entitled to the benefit of this article as hereinafter provided:

- (1) Every person taken or charged on any order of arrest for default of bail, or on surrender of bail in any action.
- (2) Every person taken or charged in execution of arrest for any debt or damages rendered in any action whatever. (1868-9, c. 162, s. 10; Code, s. 2951; Rev., s. 1920; C.S., s. 1637; 1967, c. 24, s. 5; c. 1078.)

#### **§ 23-30. When petition may be filed.**

Every person taken or charged as in the preceding section [§ 23-29] specified may, at any time after his arrest or imprisonment, petition the court from which the process issued on which he is arrested or imprisoned, for his discharge therefrom, on his compliance with this chapter. (R.C., c. 59, s. 3; 1868-9, c. 162, s. 11; Code, s. 2952; Rev., s. 1921; C.S., s. 1638.)

#### **§ 23-30.1. Provisional release.**

Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, counsel shall be appointed for the prisoner in accordance with rules adopted by the Office of Indigent Defense Services. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor may be provisionally released even though actual service upon the creditor has not been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor. (1977, c. 649, s. 5; 2000-144, s. 32; 2001-487, s. 13.)

#### **§ 23-31. Petition; contents; verification.**

The petition shall set forth cause of the imprisonment, with the writ or process and complaint on which the same is founded, and shall have annexed to it a just and true account of all his estate, real and personal, and of all charges affecting such estate, as they exist at the time of filing his petition, together with all deeds, securities, books or writings whatever relating to the estate and the charges thereon; and also what property, real and personal, the petitioner claims as exempt from sale under execution, and shall have annexed to it on oath or affirmation, subscribed by the

petitioner and taken before any person authorized by law to administer oaths, to the effect following:

I, \_\_\_\_\_, the within named petitioner, do swear (or affirm) that the within petition and account of my estate, and of the charges thereon, are, in all respects, just and true; and that I have not at any time or in any manner disposed of or made over any part of my property, with a view to the future benefit of myself or my family, or with an intent to injure or defraud any of my creditors: so help me, God. (R.C., c. 59, s. 3; 1868-9, c. 162, ss. 12, 13; Code, ss. 2953, 2954; Rev., s. 1922; C.S., s. 1639.)

**§ 23-32. Notice; length of notice and to whom given.**

Twenty days notice of the time and place at which the petition will be filed, together with a copy of such petition and the account annexed thereto, shall be personally served by such debtor on the creditor or creditors at whose suit he is arrested or imprisoned, and such other creditors as the debtor may choose, or their personal representatives or attorneys. If the person to be notified reside out of the State, and has no agent or attorney in the State, the notice may be served on the officer having the claim to collect, or by two weekly publications in any newspaper in the State. (1773, c. 100, s. 8, P.R.; R.C., c. 59, ss. 3, 20; 1868-9, c. 162, s. 14; Code, s. 2955; Rev., s. 1923; C.S., s. 1640.)

**§ 23-33. Who may suggest fraud.**

Every creditor upon whom the notice directed in G.S. 23-32 is served may suggest fraud upon the hearing of the petition, and the issues made up respecting the fraud shall stand for trial as in other cases. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 13; 1868-9, c. 162, s. 15; Code, s. 2956; Rev., s. 1924; C.S., s. 1641.)

**§ 23-34. Where no suggestion of fraud, discharge granted.**

If no creditor suggests fraud or opposes the discharge of the debtor, the clerk of the superior court before whom the petition is heard shall forthwith discharge the debtor, and, if he surrenders any estate for the benefit of his creditors, shall appoint a trustee of such estate. The order of discharge and appointment shall be entered in the docket of the court. (1773, c. 100, P.R.; 1808, c. 746, s. 2, P.R.; 1810, cc. 797, 802, P.R.; 1830, c. 33; 1838, c. 23; 1840, cc. 33, 34; 1852, c. 49; R.C., c. 59, s. 1; 1868-9, c. 162, s. 16; Code, s. 2957; Rev., s. 1925; C.S., s. 1642; 1971, c. 1190, s. 4.)

**§ 23-35. Continuance granted for cause.**

When it appears to the court that any debtor, who may have given bond for his appearance under this chapter, is prevented from attending court by sickness or other sufficient cause, the case shall be continued to another day, or to the next term, when the same proceedings shall be had as if the debtor had appeared according to the condition of his bond, and in the event of his death in the meantime, his bond shall be discharged. (1822, c. 1131, s. 1, P.R.; R.C., c. 59, s. 10; 1868-9, c. 162, s. 18; Code, s. 2959; Rev., s. 1926; C.S., s. 1643.)

**§ 23-36. Where fraud in issue, discharge only after trial.**

After an issue of fraud or concealment is made up, the debtor shall not discharge himself as to the creditors in that issue, except by trial and verdict in the same, or by a discharge by consent. (R.C., c. 59, s. 17; 1868-9, c. 162, s. 21; Code, s. 2962; Rev., s. 1927; C.S., s. 1644.)

**§ 23-37. If fraud found, debtor imprisoned.**

If, on the trial, the jury finds that there is any fraud or concealment, the judgment shall be that the debtor be imprisoned until a full and fair disclosure and account of all his money, property or effects be made by the debtor. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 14; 1868-9, c. 162, s. 20; Code, s. 2961; Rev., s. 1928; C.S., s. 1645.)

**§ 23-38. Effect of order of discharge.**

The order of discharge under any Article of this Chapter, whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor, or otherwise, shall declare that the debtor shall forever thereafter be exempted from arrest or imprisonment on account of any judgment, or by reason of any debt due at the time of such order, or contracted for before that time though payable afterwards, except that (i) no debt, demand, judgment, or decree against a debtor who is discharged under this Chapter shall be affected or impaired by the discharge, but the same shall remain valid and effective against all of the property of the debtor acquired after discharge and the appointment of a trustee, and the lien or any judgment or decree upon the property of the debtor shall not in any manner be affected by the discharge and (ii) the body of such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him only, to whom the notice required may have been given; and the notices, or copies thereof, shall in all cases be filed in the office of the superior court clerk. (1822, c. 1131, s. 4, P.R.; 1835, c. 12; R.C., c. 59, s. 11; 1868-9, c. 162, s. 19; Code, s. 2960; Rev., s. 1929; C.S., s. 1646; 2020-75, s. 3(c).)