

## Article 5.

### General Provisions under Articles 2, 3, and 4.

#### **§ 23-39. Superior or district court tries issue of fraud.**

In every case where an issue of fraud is made up as provided in this Chapter, the case shall be entered in the trial docket of the superior or district court, and stand for trial as other causes; and upon a finding by the jury in favor of the petitioner the judge shall discharge the debtor; if the finding is against the petitioner he shall be committed to jail until he makes full disclosure. (1868-9, c. 162, s. 8; Code, s. 2949; Rev., s. 1935; C.S., s. 1647; 1971, c. 1190, s. 5.)

#### **§ 23-40. Insolvent released on giving bond.**

Every debtor entitled under the provisions of this chapter to discharge as an insolvent may, at the time of filing his application for a discharge or at any time afterwards, tender to the sheriff or other officer having his body in charge, a bond, with sufficient surety, in double the amount of the sum due any creditor or creditors at whose suit he was taken or charged, conditioned for the appearance of such debtor before the court where his petition is filed, at the hearing thereof, and to stand to and abide by the final order or decree of the court in the case. If such bond be satisfactory to the sheriff, he shall forthwith release such debtor from custody. (R.C., c. 59, s. 27; 1868-9, c. 162, s. 17; Code, s. 2958; Rev., s. 1936; C.S., s. 1648.)

#### **§ 23-41. Surety in bond may surrender principal.**

The surety in any bond conditioned for the appearance of any person under this chapter may surrender the principal, or such principal may surrender himself, in discharge of the bond, to the sheriff or other officer of any court where such principal is bound to appear, in the manner provided in the chapter entitled Civil Procedure, article Arrest and Bail. (1793, c. 100, s. 7, P.R.; c. 380, s. 1, P.R.; 1822, c. 1131, s. 3, P.R.; R.C., c. 59, s. 23; 1868-9, c. 162, s. 22; Code, s. 2963; Rev., s. 1937; C.S., s. 1649.)

#### **§ 23-42. Creditor liable for jail fees.**

When any debtor is actually confined within the walls of a prison, on an order of arrest in default of bail or otherwise, the jailer must furnish him with necessary food during his confinement, if the prisoner requires it, for which the jailer shall have the same fees as for keeping other prisoners. If the debtor is unable to discharge such fees, the jailer may recover them from the party at whose instance the debtor was confined. And at any time after the arrest, the sheriff or jailer may give notice thereof to the plaintiff, his agent or attorney, and demand security of him for the prison fees that accrue after such notice, and if the plaintiff fails to give such security then the sheriff may discharge the debtor out of custody. (1773, c. 100, ss. 8, 9, P.R.; 1821, c. 1103, P.R.; R.C., c. 69, s. 5; 1868-9, c. 162, s. 24; Code, s. 2965; Rev., s. 1938; C.S., s. 1650.)

#### **§ 23-43. False swearing; penalty.**

If any insolvent or imprisoned debtor takes any oath prescribed in this chapter falsely and corruptly, that person is guilty of a Class I felony, and he shall never after have any of the benefits of this chapter, but may be sued and imprisoned as though he had never been discharged. (1793,

c. 100, s. 10, P.R.; R.C., c. 59, s. 25; 1868-9, c. 162, s. 23; Code, s. 2964; Rev., ss. 1940, 3614; C.S., s. 1651; 1993, c. 539, s. 1263; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 23-44. Powers of trustees hereunder.**

Any trustee appointed under the last four articles of this chapter, as therein contemplated, is hereby declared a trustee of the estate of the debtor, in respect to whose property such trustee is appointed for the benefit of creditors, and is invested from the time of appointment with all the powers and authority, and subject to the control, obligations and responsibilities prescribed by law in relation to personal representatives over the estates of deceased persons; but all debts shall be paid by the trustees pro rata. (1773, c. 100, ss. 5, 6, P.R.; 1827, c. 44; 1830, c. 26, s. 2; R.C., c. 59, ss. 21, 22; 1868-9, c. 162, s. 44; Code, s. 2977; Rev., s. 1941; C.S., s. 1652.)

**§ 23-45. Jail bounds.**

Any imprisoned debtor may take the benefit of the prison bounds by giving security, as required by law, except as follows:

- (1) A debtor against whom an issue of fraud is found.
- (2) Any debtor who, for other cause, is adjudged to be imprisoned until he makes a full and fair disclosure or account of his property. (1818, c. 964, P.R.; R.C., c. 59, s. 27; 1868-9, c. 162, s. 25; Code, s. 2966; Rev., s. 1942; C.S., s. 1653.)