

Chapter 23.

Debtor and Creditor.

Article 1.

Assignments for Benefit of Creditors.

§§ 23-1 through 23-12: Repealed by Session Laws 2020-75, s. 2(a), effective January 1, 2021, and applicable to receiverships commenced on or after that date.

Article 2.

Petition of Insolvent for Assignment for Creditors.

§§ 23-13 through 23-17: Repealed by Session Laws 2020-75, s. 2(a), effective January 1, 2021, and applicable to receiverships commenced on or after that date.

Article 3.

Trustee for Estate of Debtor Imprisoned for Crime.

§ 23-18. Persons who may apply for trustee for imprisoned debtor.

When any debtor is imprisoned in the penitentiary for any term, or in a county jail for any term more than 12 months, application by petition may be made by any creditor, the debtor, or by his or her spouse, or any of his or her relatives, for the appointment of a trustee to take charge of the estate of such debtor. (1868-9, c. 162, s. 40; Code, s. 2974; Rev., s. 1943; C.S., s. 1626; 1977, c. 549.)

§ 23-19. Superior court appoints; copy of sentence to be produced.

The application must be made to the superior court of the county where the debtor was convicted, and upon producing a copy of the sentence of such debtor, duly certified by the clerk of the court, together with an affidavit of the applicant that such debtor is actually imprisoned under such sentence, and is indebted in any sum, the clerk or the judge may immediately appoint a trustee of the estate of such debtor. (1868-9, c. 162, ss. 41, 42; Code, s. 2975; Rev., s. 1944; C.S., s. 1627.)

§ 23-20. Duties of trustee; accounting; oath.

The trustee of the imprisoned debtor shall pay his debts pro rata. After paying such debts, the trustee shall apply the surplus, from time to time, to the support of the wife and children of the debtor, under the direction of the superior court. When the imprisoned debtor is lawfully discharged from his imprisonment, the trustee shall deliver to him all the estate, real and personal, of such debtor, after retaining a sufficient sum to satisfy the expenses incurred in the execution of the trust and lawful commissions therefor. The trustee shall make his returns and have his accounts audited and settled by the clerk of the superior court of the county where the proceeding was had, in like manner as provided for personal representatives. Before proceeding to the discharge of his duty, the trustee shall take and subscribe an oath, well and truly to execute his trust according to his best skill and understanding. The oath must be filed with the clerk of the superior court.

(1868-9, c. 162, ss. 43, 45, 46; Code, ss. 2976, 2978, 2979; Rev., ss. 1945, 1946, 1947; C.S., s. 1628.)

§ 23-21. Court may appoint several trustees.

The court has power, when deemed necessary, to appoint more than one person trustee under this chapter; but in reference to the rights, authorities and duties conferred herein, all such trustees shall be deemed one person in law. (1868-9, c. 162, s. 47; Code, s. 2980; Rev., s. 1948; C.S., s. 1629.)

§ 23-22. Court may remove trustee and appoint successor.

In case of the death, removal, resignation or other disability of a trustee, the court making the appointment may from time to time supply the vacancy; and all proceedings may be continued by the successor in office in like manner as in the first instance. (1868-9, c. 162, s. 48; Code, s. 2981; Rev., s. 1949; C.S., s. 1630.)

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).)

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.)

Article 6.

Practice in Insolvency and Certain Other Proceedings.

§ 23-46. Unlawful to solicit claims of creditors in proceedings.

It shall be unlawful for any individual, corporation, or firm or other association of persons, to solicit of any creditor any claim of such creditor in order that such individual, corporation, firm or association may represent such creditor or present or vote such claim, in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors. (1931, c. 208, s. 1.)

§ 23-47. Violation of preceding section a misdemeanor.

Any individual, corporation, or firm or other association of persons violating any provision of G.S. 23-46 shall be guilty of a Class 1 misdemeanor. (1931, c. 208, s. 3; 1993, c. 539, s. 399; 1994, Ex. Sess., c. 24, s. 14(c).)

Article 7.

Bankruptcy of Taxing, etc., Districts, Counties, Cities, Towns and Villages.

§ 23-48. Local units authorized to avail themselves of provisions of bankruptcy law.

With the approval of the Local Government Commission of North Carolina and with the consent of the holders of such percentage or percentages of its indebtedness as may be required by Public Act Number three hundred two of the Seventy-fifth Congress, First Session, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July first, one thousand eight hundred ninety-eight and Acts amendatory thereof and supplementary thereto," approved August sixteenth, one thousand nine hundred thirty-seven, as amended, any taxing district, local improvement district, school district, county, city, town or village in the State of North Carolina is authorized to avail itself of the provisions of said act of Congress as said act now exists or may be hereafter amended. (1939, c. 203.)