

MAINE STATE LEGISLATURE

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CHAPTER 505

ARRESTS

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SUBCHAPTER I

DEBTORS ABOUT TO LEAVE STATE

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§ 3601. Arrest of debtor about to leave State

Any person, whether a resident of the State or not, may be arrested and held to bail or committed to prison on mesne process in any action, if the sum demanded amounts to \$10, when he is about to depart and reside beyond the limits of the State with property or means of his own exceeding the amount required for his immediate support, if the creditor, his agent or attorney makes oath before a justice of the peace, to be certified by such justice on said process, that he has reason to believe and does believe that such debtor is about so to depart, reside and take with him property or means, and that the demand or principal part thereof, amounting to at least \$10, is due to him.

R.S.1954, c. 120, § 2; 1959, c. 317, § 256.

§ 3602. Disclosure on arrest

A debtor arrested or imprisoned, on request to the officer or jailer who has him in custody, may be taken before 2 disinterested justices of the peace, to be selected as provided in section 3201, to disclose the actual state of his affairs.

R.S.1954, c. 120, § 3.

§ 3603. Notice to plaintiff

Previous to the disclosure, the debtor shall give to the creditor, or one of them if more than one, his agent or attorney, due notice of his intention and of the time and place for said disclosure, that he may be present and select one of the justices and be heard thereon. Such notice shall not be less than one day for every 20 miles' travel, exclusive of Sundays.

R.S.1954, c. 120, § 4.

§ 3604. Justices may adjourn

The justices may adjourn from time to time, if they see cause. If either of them is not present at the adjournment, the other may adjourn to another time. No such adjournments shall exceed 3 days in the whole, exclusive of Sundays.

R.S.1954, c. 120, § 5.

§ 3605. Adjudication of justices; discharge

If the debtor at the appointed time and place makes a full disclosure of the actual state of his affairs and of all his property, rights and credits, and answers all proper interrogatories in regard to the same to the satisfaction of said justices, and they are satisfied that the disclosure is true and do not discover anything therein inconsistent with his taking the oath prescribed in section 3711, they may administer it to him and certify the fact on the complaint. The debtor shall thereupon be discharged from arrest, and no execution issuing on the judgment in the action shall run against his body, but against his property only.

R.S.1954, c. 120, § 6; 1963, c. 414, § 135.

§ 3606. Duration of lien; certification

All attachable property disclosed by the examination, or so much as the creditor designates to satisfy his demand, shall be held as attached from the time of the disclosure until 30 days aft-

er final judgment, like other attachments. The officer shall make return thereof on the writ or process, certifying the fact that the property was so disclosed. If it is real estate, he shall certify it to the register of deeds like other attachments; and if the creditor requires it at any time before final judgment, he shall take into his custody any part of the personal property so disclosed sufficient to secure the demand and hold it as in other cases, and section 3257 is applicable to this class of disclosures.

R.S.1954, c. 120, § 7.

SUBCHAPTER II

ARRESTS ON MESNE PROCESS

Sec.

- 3651. Arrested debtor may give bond to disclose after judgment.
- 3652. Proceedings where bond on mesne process.
- 3653. Debtor free for 30-day lien period.
- 3654. Creditor's election to arrest on execution or otherwise.

§ 3651. Arrested debtor may give bond to disclose after judgment

When a person is arrested or imprisoned on mesne process in a civil action, he may disclose as provided in sections 3602 to 3606 or he may be released by giving bond to the plaintiff in a sum not exceeding the amount prayed for in the complaint upon which he is arrested or imprisoned, with surety or sureties, said bond to be approved by him or by 2 or 3 justices of the peace of the county where the arrest or imprisonment is made, and selected and proceeding as prescribed in section 3201, conditioned that within 15 days after a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or certificate of decision from the law court, he will notify the creditor, his agent or attorney to attend at a certain place in the county at a time not less than 15 days nor more than 30 days after such notice, for the purpose of disclosure and examination; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath, and abide the order of the justices thereon; and if the officer serving the writ takes such bond, he shall return it to the court or justice where the action is pending.

R.S.1954, c. 120, § 15; 1959, c. 317, § 259.

§ 3652. Proceedings where bond on mesne process

After such final judgment, the debtor may apply in writing to a justice of the peace of the county where he was arrested, who shall issue a citation to the creditor, his agent or attorney. An examination and disclosure may be had before 2 justices of the peace within the time specified in the bond. The same proceedings shall be had and the same results shall follow as in disclosures on bonds given on execution, except as provided in section 3653.

R.S.1954, c. 120, § 16; 1959, c. 317, § 260.

§ 3653. Debtor free for 30-day lien period

If the debtor, on such examination, does not, in the opinion of the justices, entitle himself to the benefit of the oath provided and it appears that at that time he has real or personal estate liable to attachment or any such property as is described in section 3712, they shall permit him to go at large on his bond during the 30 days that the creditor's lien exists on the property disclosed. During that time, the creditor may elect to arrest him on execution or to enforce his lien on the property.

R.S.1954, c. 120, § 17.

§ 3654. Creditor's election to arrest on execution or otherwise

If the creditor elects so to arrest him and the officer having the execution returns that the debtor is not found, his bond shall be forfeited. On judgment thereon, execution shall issue for the amount of judgment in the original action, and interest. If the debtor is not arrested within that time and does not avoid arrest, no execution, issued or founded on such judgment, shall run against his body, but against his property only.

R.S.1954, c. 120, § 18; 1961, c. 317, § 423.

SUBCHAPTER III

JUDGMENT DEBTORS IN TORT AND OTHER ACTIONS

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- 3701. Body execution.
- 3702. Debtor may disclose without bond.
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Sec.

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- 3719. Lien on personal property; concealment.
- 3720. Bond returned; creditor may have bond.
- 3721. Judgment on forfeit.

§ 3701. Body execution

In any civil action, except where express provision is by law made to the contrary, an execution shall run against the body of the judgment debtor. He may be arrested and imprisoned thereon for the purpose of obtaining a discovery of his property where-with to satisfy it.

R.S.1954, c. 120, § 46; 1961, c. 317, § 428.

§ 3702. Debtor may disclose without bond

When so arrested, he may, without giving bond, disclose as provided in this subchapter and subchapters IV to IX, by serving the citation provided for in section 3707 upon the creditor or his attorney, allowing at least 24 hours for every 20 miles' travel from the residence of such creditor or attorney to the place of disclosure. The debtor shall pay the officer for serving the notice and keeping him from the arrest until the disclosure, before he can be discharged.

R.S.1954, c. 120, § 47.

§ 3703. Disclosure in jail

A debtor committed on execution may disclose thereon at the jail, in the manner and on the notice provided, which may be served by the jailer or other officer.

R.S.1954, c. 120, § 48.

§ 3704. Debtor remanded or oath allowed

If, in either case, the debtor is not permitted to take the oath, he shall be remanded. Otherwise, the justices shall administer the oath prescribed in section 3711 and give him the certificate provided in section 3714. The officer shall make return thereof on the execution, and no subsequent execution shall authorize his arrest.

R.S.1954, c. 120, § 49.

§ 3705. Release by bond

When a debtor is arrested or imprisoned on execution, he may be released by giving bond to the creditor, in double the sum due thereon, with surety or sureties approved in writing by the creditor or by 2 or 3 justices of the peace in the county where he is arrested or imprisoned, selected and proceeding as provided in section 3201, or a Justice of the Supreme Judicial or Superior Court; conditioned that he will, within 6 months-thereafter, cite the creditor before 2 justices of the peace, submit himself to examination and take the oath prescribed in section 3711, pay the debt, interest, costs and fees arising in said execution, or deliver himself into the custody of the keeper of the jail to which he is liable to be committed under said execution.

R.S.1954, c. 120, § 50; 1961, c. 317, § 429.

§ 3706. Validity of bond

The bond described in section 3705 is a valid statute bond although the penalty varies not exceeding 5% from the sum aforesaid. Judgment in a civil action thereon shall be rendered according to section 3721.

R.S.1954, c. 120, § 51; 1961, c. 317, § 430.

§ 3707. Application for examination; citation

A debtor who has given such bond may apply in writing within the time limited in his bond to a justice of the peace in the county where he was arrested, claiming the benefit of the oath authorized in section 3711; or, if he is committed or has delivered himself into the custody of the jailer, he may apply to a justice of the same county, or, at his request, the jailer shall apply in his behalf, and in either case the justice shall appoint a time and place for his examination and issue a citation to the creditor, under his hand and seal, which citation may be in substance as follows:

“STATE OF MAINE.

“....., ss. To You are hereby notified of the desire of the debtor as expressed in the foregoing application, and that I have appointed, the day of, A. D., 19..., at o'clock in the noon, and the of in, in said county, as the time and place for said examination. And you are hereby notified to be present and select one of the justices, and be heard in said examination.

“Given under my hand and seal at, in said county, the day of, A. D., 19...
....., Justice of the Peace.”

R.S.1954, c. 120, § 52.

§ 3708. Service of citation

The citation shall be served on the creditor, or one of them if there is more than one, or the attorney of record in the action, or any known authorized agent of the creditor, by any officer qualified to serve civil process between the same parties. Service shall be made in the manner provided for service of other civil process 15 days at least before the time appointed for examination, if the creditor is alive; otherwise, it shall be so served on his executor or administrator, if found in the State, and if not, such copy shall be left in like time with the clerk of the court or magistrate who issued the execution.

R.S.1954, c. 120, § 53; 1959, c. 317, § 261.

§ 3709. Examination; errors or defects in citation

The examination shall be before 2 disinterested justices of the peace for the county, who may adjourn as provided in section 3604, and shall examine the citation and return, and if found correct shall examine the debtor on oath concerning his estate and effects, their disposal and his ability to pay the debt for which he is committed. No citation shall be deemed incorrect for want of form only, or for circumstantial errors or mistakes, when the person and case can be rightly understood. Such errors and defects may be amended on motion of either party.

R.S.1954, c. 120, § 54.

§ 3710. Interrogatories

The creditor may propose to the debtor any interrogatories pertinent to the inquiry and, if he requires it, they shall be an-

swered in writing and the answers signed and sworn to by the debtor. The creditor may have a copy certified by the justices on paying therefor 12¢ a page.

R.S.1954, c. 120, § 55.

§ 3711. Oath

If, on such examination and hearing, the justices are satisfied that the debtor's disclosure is true and they do not discover anything therein inconsistent with his taking the oath, they may administer it to him as follows:

"I,, solemnly swear" (or "affirm") "that I have no real or personal estate, or interest in any, except what is exempted by statute from attachment and execution, and what I have now disclosed; and that since any part of this debt or cause of action accrued, I have not directly or indirectly sold, conveyed or disposed of, or entrusted to any person, any of my real or personal property to secure it or to receive any benefit from it to myself or others with an intent to defraud any of my creditors. So help me God." (or, "This I do under the pains and penalties of perjury.")

R.S.1954, c. 120, § 56.

§ 3712. Disclosure, appraisal and setoff

When from such disclosure it appears that the debtor possesses or has under his control bank bills, notes, accounts, bonds or other contracts or other property, not exempted by statute from attachment, which cannot be come at to be attached, and the creditor and debtor cannot agree to apply the same towards the debt, the justices hearing the disclosure shall appraise and set off enough of such property to satisfy the debt, cost and charges. The creditor or his attorney, if present, may select the property to be appraised. If the creditor accepts it, the property may be assigned and delivered by the debtor to him and applied toward the satisfaction of his demand. If any particular article of such property, necessary or convenient to be applied in satisfaction of the execution, exceeds the amount due thereon and is not divisible in its nature, the creditor may take it by paying the overplus to the debtor or securing it to the satisfaction of the justices.

R.S.1954, c. 120, § 57.

§ 3713. Acceptance within 30 days or return to debtor

If the creditor is absent or does not so accept it, the debtor shall deposit with the justices a written assignment to the creditor of all the property thus appraised and set off. They shall make a record of such proceedings, and cause such property to be safely kept and secured for 30 days thereafter, to be delivered to the creditor with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor.

R.S.1954, c. 120, § 58.

§ 3714. Certificate of discharge

After the oath is administered and the property disclosed is secured, the justices shall make out and deliver to the debtor a certificate under their hands and seals in the form following:

“STATE OF MAINE.

“....., ss. To the sheriff of the County of, or his deputy, and to the keeper of the jail at,” (or to any constable.)

[L. S.] “We, the subscribers, two disinterested justices of the peace in said County of, hereby certify, that, a poor debtor arrested on a certain execution issued by” (here insert the name and style of the court, the amount of the judgment, and date of the judgment and execution,) “and committed to the jail at aforesaid,” (or, “enlarged on giving bond to the creditor,” as the case may be,) “has caused, the creditor, to be notified, according to law, of his desire to take the benefit of the Revised Statutes of 1964, Title 14, chapters 503 and 505; that in our opinion he is clearly entitled to the benefit of the oath prescribed in section 3711 thereof; and that we have, after due caution, administered it to him.

“Witness our hands and seals, this day of, A. D., 19...

....., chosen by the
....., chosen by the”

R.S.1954, c. 120, § 59.

§ 3715. Effect of certificate

The debtor, on delivering the certificate to the prison keeper or filing it in his office, if imprisoned, shall be set at liberty so far as relates to such execution. His body forever after shall be free from arrest thereon and on every subsequent execution issued

on the judgment or on any other judgment founded thereon, except as provided in sections 3154 and 3719.

R.S.1954, c. 120, § 60.

§ 3716. Release by creditor

A creditor may discharge his debtor from arrest or imprisonment on execution by giving to the officer or jailer having him in custody written permission to go at large; with the same effect as a discharge or disclosure.

R.S.1954, c. 120, § 61.

§ 3717. Judgment in force after discharge

A certificate of a discharge on execution in any of the modes authorized and of the cause of it shall, at any time at the creditor's request, be indorsed on the execution by the officer who had such debtor in custody. If it is before the return day of the execution, it may still be levied on his property; if after, it may be renewed like other executions against his property only. The judgment may be revived or kept in force, with said execution, as judgments in other cases.

R.S.1954, c. 120, § 62.

§ 3718. Lien on real estate disclosed

If an execution debtor discloses real estate liable to be seized on execution, the justices shall give the creditor a certificate thereof, stating the names of the parties and the amount of the execution. The creditor shall have a lien thereon for 30 days thereafter, if he files the certificate with the register of deeds of the county or district where the real estate lies within 5 days from the date of the disclosure. The register shall enter and file it like officers' returns of attachments.

R.S.1954, c. 120, § 63.

§ 3719. Lien on personal property; concealment

If an execution debtor discloses personal estate liable to be seized on execution, the creditor shall have a lien on it for 30 days, or so much of it as the justices, in their record, judge necessary. If the debtor transfers, conceals or otherwise disposes of it within said time, or suffers it to be done, or refuses to surrender it on demand to any proper officer having an execution on the same judgment, the debtor shall have no benefit from the cer-

tificate described in section 3714. The creditor may recover, in a civil action against him or any person fraudulently aiding in such transfer, concealment or disposal, double the amount due on said execution. Any execution on a judgment in such action shall run against the bodies of the debtor and other persons so aiding, but the payment thereof is a satisfaction of the original debt.

R.S.1954, c. 120, § 64; 1961, c. 317, § 431.

§ 3720. Bond returned; creditor may have bond

Every officer, taking a bond on an execution, shall return it with the execution for the benefit of the creditor, who may receive it on filing a copy with the clerk of court, judge or justice to whom it is returned. He may receive from the jailer any such bond in his hands on the like terms.

R.S.1954, c. 120, § 65.

§ 3721. Judgment on forfeit

If the debtor fails to fulfill the condition of such bond, judgment in an action thereon shall be rendered for the amount of the execution, costs and fees of service, with interest thereon, against all the obligors; and a special judgment against the principal for a sum equal to the interest on said amount at the rate of 20% a year after breach of the bond.

R.S.1954, c. 120, § 66; 1963, c. 414, § 137.

SUBCHAPTER IV

BONDS

Sec.

- 3801. Validity of bond.
- 3802. Limitation of actions on bonds.
- 3803. Recovery of damages on bond.
- 3804. New judgment on bond; costs.
- 3805. No bond where willful trespass; oath.

§ 3801. Validity of bond

If by mistake or accident the penalty of a bond taken by an officer under this chapter and chapter 503 varies from the sum required by law, it is still valid. The officer is not responsible to either party beyond the actual damage.

R.S.1954, c. 120, § 74.

§ 3802. Limitation of actions on bonds

No action on any bond herein authorized shall be sustained unless commenced within one year after the forfeiture; except that sections 855 and 856 are applicable to such actions.

R.S.1954, c. 120, § 75; 1961, c. 317, § 433.

§ 3803. Recovery of damages on bond

In actions on any bond given by a debtor to obtain his release from arrest on mesne process, execution or warrant of distress for taxes, if it appears that, prior to the breach of any of its conditions, the principal had legally notified the creditor or the assessors who issued such warrant and had been allowed by 2 justices of the peace of the county where the arrest was made, having jurisdiction and legally competent to act in the matter, to take and had taken the oath prescribed in section 3711, the damages shall be assessed by the jury, at the request of either party; otherwise, by the court. The amount assessed shall be the real and actual damage, and any legal evidence on that point may be introduced by either party. In any such action, evidence may be received to show that no legal service of the citation was made on the creditor or assessors, although it may contradict the record and certificate of the magistrates who administered the oath.

R.S.1954, c. 120, § 79.

§ 3804. New judgment on bond; costs

If the whole amount due on the execution or warrant of distress is recovered in such action, the new judgment shall be a discharge of said execution or warrant of distress. If only a part is recovered, it shall be a discharge of such part. If the penalty in the bond in such action is more than \$20, the plaintiff shall recover full costs although the amount of damages recovered is less than \$20. If the verdict or judgment is that the creditor has sustained no damage, neither party recovers costs.

R.S.1954, c. 120, § 80.

§ 3805. No bond where willful trespass; oath

When, in the trial of a civil action for trespass on property, the court, jury or judge determines that such trespass was committed willfully and the fact is recorded and noted on the margin of the execution on such judgment and the debtor is there-

on arrested and committed to jail, he shall not be entitled to give any bond for his liberation. If he applies to take the oath described in section 3711, no notice shall be issued to the creditor until at least 30 days after his commitment.

R.S.1954, c. 120, § 81; 1961, c. 317, § 436.

SUBCHAPTER V

SUPPORT OF DEBTORS IN JAIL

Sec.

3851. Support by creditor.

3852. Adjustment of price of support.

§ 3851. Support by creditor

When a person is committed to jail on mesne process or execution or delivers himself into the custody of the jailer to save the condition of a bond given on execution and makes a written complaint by him signed and sworn to, stating that he is unable to support himself in jail and has not sufficient property to furnish security for his support, the jailer may require of any one of the creditors, their agent or attorney, security for his support. Unless it is satisfactorily furnished within 8 days after the request or money is paid in advance therefor from time to time, he may release him. When a debtor is committed to prison on mesne process or execution, the creditor committing said debtor shall advance to the jailer pay for one week's board of said debtor. When a debtor is committed on more than one execution at the same time, the jailer is entitled to pay for board only on the first execution, to be paid equally by all the creditors on whose executions he is committed. The first creditor may have an action against the other committing creditors for their proportion thereof. If such debtor is discharged on the first execution, the jailer shall notify the next committing creditor of his liability to pay for his support as on the first execution.

R.S.1954, c. 120, § 82.

§ 3852. Adjustment of price of support

In case of dispute about the price of such support, the county commissioners may determine it, not exceeding \$1.75 a day.

R.S.1954, c. 120, § 83; 1957, c. 110.

SUBCHAPTER VI

TAX CASES

Sec.

3901. Persons arrested for taxes and officers for noncollection deemed poor debtors.

§ 3901. Persons arrested for taxes and officers for noncollection deemed poor debtors

Any person arrested or imprisoned on a warrant for the collection of a public tax and every constable, collector or deputy sheriff arrested or imprisoned for default in collecting taxes committed to him has the privileges and is subject to the obligations of this chapter and chapter 503 as if arrested or imprisoned on execution for debt. For all purposes relating thereto, the assessors of the town for the time being where the tax was assessed shall be deemed the creditors, and corresponding verbal alterations shall be made in the oath and certificate of discharge. Nothing herein exempts any property from distress for taxes, except those implements, tools and articles of furniture which are exempt from attachment for debt.

R.S.1954, c. 120, § 67.

SUBCHAPTER VII

CONTRACT ACTIONS

Sec.

3951. No body executions on contracts.

§ 3951. No body executions on contracts

No execution issued on a judgment founded on a contract, express or implied, or on a prior judgment on contract, shall run against the body of the judgment debtor, except as provided, unless otherwise determined in proceedings under section 3251 or unless the debtor was arrested on the original writ as provided in section 3601.

R.S.1954, c. 120, § 21.

SUBCHAPTER VIII

DEBTORS TO THE STATE

Sec.

- 4001. State debtor may apply to Justice of Superior Court.
- 4002. Power to release debtor.
- 4003. Release or discharge of debt on payment or security of part.
- 4004. Compliance by jailer.
- 4005. Record of adjudication.
- 4006. Power of county commissioners.
- 4007. Application to take oath; notice.

§ 4001. State debtor may apply to Justice of Superior Court

Any person committed to jail on execution, warrant of distress or other final civil process for debt, penalty or costs due to the State may make application in writing to a Justice of the Superior Court for relief, whether the court is in session in the county or not, who shall appoint a convenient time and place to inquire into the circumstances of the petitioner; and shall give such notice thereof as he thinks proper to the Attorney General, or county attorney for the county where the commitment is made, to attend the hearing in behalf of the State.

R.S.1954, c. 120, § 84.

§ 4002. Power to release debtor

The justice shall consider all proper evidence offered on either side, and may require the oath of the petitioner to all or any of the facts by him stated; and, if satisfied that the prisoner is unable to pay any part of the amount due on such process, may order his discharge from imprisonment, having first administered to him, if he thinks proper, an oath substantially in the form prescribed by section 3711.

R.S.1954, c. 120, § 85.

§ 4003. Release or discharge of debt on payment or security of part

If on examination it appears to such justice that the prisoner is able to pay only a part of the amount due, he shall order his release from imprisonment and, if he thinks it more for the interest of the State, he may order the whole debt to be discharged upon his paying or securing such sum of money or assigning to the

State such securities or other property, at such time and in such manner and to be deposited with such public officer, as such justice shall direct.

R.S.1954, c. 120, § 86.

§ 4004. Compliance by jailer

The jailer having charge of the debtor shall thereupon release him from confinement or give him a full discharge from the demand on the terms prescribed.

R.S.1954, c. 120, § 87.

§ 4005. Record of adjudication

If such proceedings are had when the Superior Court is not in session for the county, such justice shall cause his adjudication and discharge to be entered of record as of the last preceding term of the court therein.

R.S.1954, c. 120, § 88.

§ 4006. Power of county commissioners

The county commissioners at a regular session or a majority of them in vacation may, on application, exercise the powers, and their proceedings shall have the effect provided in sections 4001 to 4005.

R.S.1954, c. 120, § 89.

§ 4007. Application to take oath; notice

A person committed on execution as mentioned in section 4001, desiring to take the oath provided in section 3711, may apply to the jailer, who shall apply in writing to a justice of the peace in his behalf, and he shall issue a citation as prescribed, to be served on the county attorney for the same county, who shall by himself or a competent substitute attend at the time and place as attorney for the State, and a disclosure may thus be had and all the proceedings and the effect shall be the same as in the disclosures of execution debtors to individual creditors. The justices of the peace hearing it may, if they see cause, administer an oath and grant a certificate to the debtor as provided, with verbal alterations to conform to the case.

R.S.1954, c. 120, § 90.

SUBCHAPTER IX

EXEMPTIONS

Sec.

4051. Holidays.

4052. Election days.

§ 4051. Holidays

No person shall be arrested in a civil action, on mesne process, or execution or on a warrant for taxes on the day of annual Thanksgiving; the 19th day of April; the 30th day of May; the 4th of July; the first Monday of September; Veterans Day, November 11th; or Christmas. On the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same shall be arrested on any such processes.

R.S.1954, c. 112, § 87; 1957, c. 397, § 52; 1959, c. 230, § 4; 1961, c. 395, § 46.

§ 4052. Election days

No elector shall be arrested, except for treason, felony or breach of the peace, on the days of election of United States, state or town officers.

R.S.1954, c. 112, § 88.