

TITLE 8  
PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER 1  
ARREST AND BAIL

8-101. ARREST IN CIVIL ACTION. No person can be arrested in a civil action except as prescribed in this Code.

[(8-101) C.C.P. 1881, sec. 270; R.S., R.C., & C.L., sec. 4240; C.S., sec. 6729; I.C.A., sec. 6-101.]

8-102. GROUNDS FOR ARREST. The defendant may be arrested as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon a contract express or implied where the defendant is about to depart from the state with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another.

2. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office or in a professional employment, or for a wilful violation of duty.

3. In an action to recover the possession of personal property unjustly detained when the property, or any part thereof, has been concealed, removed or disposed of to prevent its being found or taken by the sheriff.

4. 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.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

[(8-102) C.C.P. 1881, sec. 271; R.S., R.C., & C.L., sec. 4241; C.S., sec. 6730; I.C.A., sec. 6-102.]

8-103. ORDER FOR ARREST. An order for the arrest of the defendant must be obtained from a judge of the court in which the action is pending.

[(8-103) C.C.P. 1881, sec. 272; R.S., R.C., & C.L., sec. 4242; C.S., sec. 6731; I.C.A., sec. 6-103; am. 1969, ch. 125, sec. 1, p. 386.]

8-104. AFFIDAVIT FOR ARREST. The order may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section [8-102](#). The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

[(8-104) C.C.P. 1881, sec. 273; R.S., R.C., & C.L., sec. 4243; C.S., sec. 6732; I.C.A., sec. 6-104.]

8-105. UNDERTAKING REQUIRED OF PLAINTIFF. Before making the order the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least \$500, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

[(8-105) C.C.P. 1881, sec. 274; R.S., R.C., & C.L., sec. 4244; C.S., sec. 6733; I.C.A., sec. 6-105.]

8-106. TIME OF MAKING AND CONTENTS OF ORDER. The order may be made at the time of the issuing of the summons, or at any time afterward before judgment. It must require the sheriff of the county where 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 time therein mentioned to the clerk of the court in which the action is pending.

[(8-106) C.C.P. 1881, sec. 275; R.S., R.C., & C.L., sec. 4245; C.S., sec. 6734; I.C.A., sec. 6-106.]

8-107. ARREST -- HOW MADE. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

[(8-107) C.C.P. 1881, sec. 276; R.S., R.C., & C.L., sec. 4246; C.S., sec. 6735; I.C.A., sec. 6-107.]

8-108. ARREST -- CUSTODY OF DEFENDANT. The sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law.

[(8-108) C.C.P. 1881, sec. 277; R.S., R.C., & C.L., sec. 4247; C.S., sec. 6736; I.C.A., sec. 6-108.]

8-109. RIGHT TO BAIL. The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or depositing the amount mentioned in the order of arrest.

[(8-109) C.C.P. 1881, sec. 278; R.S., R.C., & C.L., sec. 4248; C.S., sec. 6737; I.C.A., sec. 6-109.]

8-110. BAIL -- HOW GIVEN. The defendant may give bail by causing a written undertaking to be executed by two (2) or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest that the defendant will 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 that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

[(8-110) C.C.P. 1881, sec. 279; R.S., R.C., & C.L., sec. 4249; C.S., sec. 6738; I.C.A., sec. 6-110.]

8-111. SURRENDER OF DEFENDANT BY BAIL. At any time before judgment or within ten (10) days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

[(8-111) C.C.P. 1881, sec. 280; R.S., R.C., & C.L., sec. 4250; C.S., sec. 6739; I.C.A., sec. 6-111.]

8-112. SURRENDER -- HOW MADE -- EXONERATION OR CHARGE OF BAIL. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery or surrender take place before the expiration of ten (10) days after judgment; but if such arrest, delivery or surrender be not made within ten (10) days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten (10) days thereafter.

[(8-112) C.C.P. 1881, sec. 281; R.S., R.C., & C.L., sec. 4251; C.S., sec. 6740; I.C.A., sec. 6-112.]

8-113. PROCEEDINGS AGAINST BAIL. If the bail neglect or refuse to pay the judgment within ten (10) days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

[(8-113) C.C.P. 1881, sec. 282; R.S., R.C., & C.L., sec. 4252; C.S., sec. 6741; I.C.A., sec. 6-113.]

8-114. EXONERATION OF BAIL. The bail are exonerated by the death of the defendant or his imprisonment in the state prison, or by his legal discharge from the obligation to render himself amenable to the process.

[(8-114) C.C.P. 1881, sec. 283; R.S., R.C., & C.L., sec. 4253; C.S., sec. 6742; I.C.A., sec. 6-114.]

8-115. RETURN BY SHERIFF OF ORDER AND BAIL BOND -- NOTICE BY PLAINTIFF -- FILING OF BOND. Within the time limited for that purpose, the sheriff must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff within ten (10) days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he is deemed to have accepted them, and the sheriff is exonerated from liability. If no notice be served within ten (10) days, the original undertaking must be filed with the clerk of the court.

[(8-115) C.C.P. 1881, sec. 284; R.S., R.C., & C.L., sec. 4254; C.S., sec. 6743; I.C.A., sec. 6-115.]

8-116. JUSTIFICATION OF BAIL -- NOTICE -- NEW UNDERTAKING. Within five (5) days after the receipt of notice, the sheriff or defendant may give the plaintiff or his attorney, notice of the justification of the same, or other

bail (specifying the places of residence and occupation of the latter), before the judge of the court, at a specified time and place; the time to be not less than five (5) nor more than ten (10) days thereafter, except by consent of parties. In case other bail be given there must be a new undertaking.

[(8-116) C.C.P. 1881, sec. 285; R.S., R.C., & C.L., sec. 4225; C.S., sec. 6744; I.C.A., sec. 6-116; am. 1969, ch. 125, sec. 2, p. 386.]

8-117. QUALIFICATIONS OF BAIL. The qualifications of bail are as follows:

1. Each of them must be resident and householder or freeholder within the state.

2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his liabilities, exclusive of property exempt from execution; but the judge, on justification, may allow more than two (2) sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two (2) sufficient bail.

[(8-117) C.C.P. 1881, sec. 286; R.S., R.C., & C.L., sec. 4256; C.S., sec. 6745; I.C.A., sec. 6-117.]

8-118. JUSTIFICATION -- HOW MADE. For the purpose of justification each of the bail must attend before the judge at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his insufficiency, in such manner as the judge in his discretion may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

[(8-118) C.C.P. 1881, sec. 287; R.S., R.C., & C.L., sec. 4257; C.S., sec. 6746; I.C.A., sec. 6-118.]

8-119. ALLOWANCE OF BAIL. If the judge find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff is thereupon exonerated from liability.

[(8-119) C.C.P. 1881, sec. 288; R.S., R.C., & C.L., sec. 4258; C.S., sec. 6747; I.C.A., sec. 6-119.]

8-120. DEPOSIT WITH SHERIFF. The defendant, or a person on behalf of the defendant, may at the time of the defendant's arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of bail be reduced, as provided in this chapter, the defendant, or a person on behalf of the defendant, may deposit such amount instead of giving bail. In either case the sheriff must give the person who made the deposit on behalf of the defendant, a certificate of the deposit made, and the defendant must be discharged from custody.

[(8-120) C.C.P. 1881, sec. 289; R.S., R.C., & C.L., sec. 4259; C.S., sec. 6748; I.C.A., sec. 6-120; am. 1997, ch. 106, sec. 1, p. 250.]

8-121. DEPOSIT -- PAYMENT INTO COURT BY SHERIFF. The sheriff must, immediately after the deposit, pay the same into court and take from the clerk

receiving the same, two (2) certificates of such payment, the one of which he shall deliver to the person who made the deposit on behalf of the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited as in other cases of delinquency.

[(8-121) C.C.P. 1881, sec. 290; R.S., R.C., & C.L., sec. 4260; C.S., sec. 6749; I.C.A., sec. 6-121; am. 1997, ch. 106, sec. 2, p. 250.]

8-122. SUBSTITUTING BAIL FOR DEPOSIT. If money is deposited, as provided in the last two (2) sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the person who made the deposit.

[(8-122) C.C.P. 1881, sec. 291; R.S., R.C., & C.L., sec. 4261; C.S., sec. 6750; I.C.A., sec. 6-122; am. 1997, ch. 106, sec. 3, p. 251.]

8-123. SATISFACTION OF JUDGMENT FROM DEPOSIT -- REFUND. Where money has been deposited, if it remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the person who made the deposit. If the judgment is in favor of the defendant, the clerk must, under the direction of the court refund to the person who made the deposit the whole sum deposited and remaining unapplied.

[(8-123) C.C.P. 1881, sec. 292; R.S., R.C., & C.L., sec. 4262; C.S., sec. 6751; I.C.A., sec. 6-123; am. 1997, ch. 106, sec. 4, p. 251.]

8-126. VACATION OF ORDER OF ARREST -- APPLICATION FOR. A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the judge of the court in which the action is pending, or to the court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

[(8-126) C.C.P. 1881, sec. 295; R.S., R.C., & C.L., sec. 4265; C.S., sec. 6754; I.C.A., sec. 6-126.]

8-127. VACATION OF ORDER OF ARREST -- REDUCTION OF BAIL. If, upon application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

[(8-127) C.C.P. 1881, sec. 296; R.S., R.C., & C.L., sec. 4266; C.S., sec. 6755; I.C.A., sec. 6-127.]