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IMPRISONMENT FOR DEBT

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IMPRISONMENT for debt is usually thought of as a barbarous custom which declined continuously as civilization and Christianity advanced and which was totally done away with long ago. The facts, however, are otherwise. It seems doubtful if history warrants any generalization to the effect that the imprisonment of debtors has been a steadily declining practice. Certain it is, that in a greater or less degree it exists today in many parts of the United States, in England, and in some other countries. Moreover, creditors are making use of it on a comparatively large scale. It is the purpose of this paper to trace briefly the growth of the idea of arrest in civil actions in early times, its progress in the common law, and its development around the writs known as *capias ad respondendum* and *capias ad satisfaciendum*. As representative of the American law on the subject, the present practice in the state of Michigan will be examined, Michigan being a state in which the law of civil arrest has had an unusually luxuriant development. Finally, there will be an examination of available statistics as to the extent and results of the present-day civil arrest, and an attempt will be made to draw some conclusions as to its desirability.

Early History of Imprisonment for Debt

By the Roman law in its earlier period, every lawsuit was commenced by the plaintiff arresting his adversary and haling him into court, where he was required to give bail for his reappearance; and this continued substantially into the time of the Empire, when it was at length terminated.[1] Having secured a judgment, the plaintiff had correspondingly large rights against the defendant's person. If the judgment debt went unpaid for thirty days the creditor could arrest the debtor and detain him in a private prison for sixty days. If the debt was still unpaid at the end of that time the debtor might

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[1]Hunter, Roman Law, 2d ed., 968 *et seq.*; Amos, Roman Civil Law, 381.

be killed or sold into slavery, and competing creditors might divide the body into pieces proportionate to the amount of each one's claim. This last, though permitted by the letter of the law, was unknown in practice; the selling of the debtor into slavery was, however, very common.[2] In Rome's latter days the whole proceeding became rare, owing to the growth of insolvency laws. The Perpetual Edict allowed the debtor a delay of two months; Justinian extended this to four months and introduced the public debtors' prison in place of private captivity in the creditor's house.[3] Throughout the classical period of the Roman law and until the Digest abolished it, the *pater familias* could stifle a prosecution for the tortious act of his son by conveying the son as a slave to the person injured.[4] The Roman law, at first typical of the customs of most peoples on the edge of barbarism,[5] tended to a greater liberality as time went on.

Imprisonment for debt existed in the barbaric kingdoms which supplanted the Roman Empire in the west, and in the early Middle Ages was practically universal.[6] With the rise of feudalism, however, all varieties of civil arrest fell into neglect, the theory being that the arrest of a debtor deprived the debtor's lord of his military service.[7] Nevertheless it seems to have been kept alive to some extent. By the Assizes of Jerusalem the crusaders introduced it into the Holy Land.[8] By the *coutumes* of northern France it seems to have been limited to debts owed to the Crown.[9] As feudalism declined, imprisonment for debt returned in even greater proportions, chiefly through the influence of the Church, debt and insolvency being considered sinful. Debtors were excommunicated; persons who died without leaving sufficient estate to discharge their obligations were denied Christian burial. In some regions the priest who absolved the dying debtor

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[2]Buckland, TEXT BOOK OF ROMAN LAW, 615.

[3]Mackenzie, ROMAN LAW, 5th ed., 373.

[4]Mackenzie, 141; Gaius 4, 75.

[5]Hardouin, ESSAI SUR L'ABOLITION DE LA CONTRAINTE PAR CORPS, 30 *et seq.* Compare Harlan, "A Caravan Journey Through Abyssinia," NAT. GEOG. MAG., June, 1925.

[6]Hardouin, 123 *et seq.*

[7]JOUR. JUR. 239.

[8]Larousse, GRAND DICTIONNAIRE UNIVERSEL DU XIXe SIÈCLE, "Debiteur."

[9]Hardouin, 165.

became liable for the latter's debts. Many debtors who escaped imprisonment were compelled to wear a distinguishing garb.[10] In general, all attempted modifications of imprisonment for debt were resisted by the clergy and the canonists.[11]

In the common law the development of civil arrest has been entirely different from what it was in the Roman law. In considering its evolution the reader must bear in mind certain rather subtle distinctions which the law worked out. One might be put in jail for failure to pay a sum of money, and yet this might not be what was technically called imprisonment for debt. Thus, imprisonment on failure to pay a fine was not imprisonment for debt. In the court of chancery any failure to perform a decree of the court was considered a contempt, a quasi-criminal offense; and therefore if one was committed to jail upon his failure to pay a sum of money in obedience to a chancery decree, this was not imprisonment for debt. The distinction was historical rather than substantial, but it is of great importance even today. In this article the distinction will be observed, and the English and American phases of the problem will be discussed only in connection with the procedure of the courts of law in suits between private parties. Closely allied with the strict imprisonment for debt (the so-called body execution) is the process by which the defendant in any civil action may be arrested when suit is begun and detained in prison to make certain his appearance at the trial.

Imprisonment for debt existed in the primitive Anglo-Saxon law;[12] but the common law, as such, was formed in feudal times, and it has been seen that feudal theories were inconsistent with civil arrest. By the common law as it existed at the beginning of the thirteenth century, it seems that a man could not be arrested either at the time suit was begun, or in execution of a judgment, save only in actions of trespass *vi et armis*. Sir Edward Coke tells us in *Harbert's Case*[13] that the common law so abhorred violence that it punished trespassers by making them liable to *capias*. From this suggestion, and from the form of the writs of *capias*, it seems prob-

[10]25 Jour. Jur. 377; Larouse, *supra*.

[11]Hardouin, 191 *et seq.*; 5 Jour. Jur. 239, 303; Larouse, *supra*.

[12]5 Jour. Jur. 239, 303.

[13]3 Coke 11.

able that civil arrest was a relic of the time when there was no clear distinction between civil and criminal law.[14] A few historians have been of the opinion that at common law there could be imprisonment on all forms of action;[15] but the view expressed above was the tradition accepted by such writers as Coke, Hale, and Blackstone, and seems to have the weight of opinion among legal historians.[16]

In any event, it was not long before the use of civil arrest was greatly extended by act of Parliament. Statutes of Marlbridge (1267) and Westminster II (1285) allowed *capias* in actions of account. In 1351 it was extended to actions of debt; in 1504 to actions on the case; and in 1532 to convenant.[17] Medieval lawyers appear to have found the practice highly convenient, so much so that it became usual in all those forms of action to which the right of arrest had not been extended by statute to begin a concurrent sham action of trespass, on which the defendant could be arrested by force of the common law and detained until the genuine suit came to trial.[18] This device also enabled the plaintiff to take his suit before the King's Bench.[19] By the time of Blackstone all the courts of common law were arresting defendants in suits pending before them, the process being variously called *capias ad respondendum, testatum capias,* Bill of Middlesex, writ of *latitat,* or writ *of quo minus,* according to the court from which it issued and the county in which it was to be served.[20] As for imprisonment in satisfaction of judgment, the rule was that it might be invoked at the end of every suit which had been, or might have been, begun by arresting the defendant. At common law it therefore existed only in actions of trespass;[21] but it was held

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[14]Fox, 'Process of Imprisonment at Common Law," 39 LAW Q. REV. 46.

[15]See Jenks, "Story of Habeas Corpus," 2 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY, 531; Fox, *supra.*

[16]Harbert's Case, 3 Coke 11; Hale, DISCOURSE CONCERNING THE COURTS OF KING'S BENCH AND COMMON PLEAS, HARGRAVE'S TRACTS, 359; 3 BLACKSTONE'S COMMENTARIES, 281, 414; 2 POLLOCK & MAITLAND, HISTORY OF THE ENGLISH LAW, 2d ed., 591, 596; 3 HOLDSWORTH, HISTORY OF ENGLISH LAW, 626.

[17]Harbert's Case, 3 Coke 11; Hale in HARGRAVE'S TRACTS, 359; 3 BLACKSTONE'S COMMENTARIES, 281.

[18]3 BLACKSTONE'S COMMENTARIES 281 *et seq.*

[19]JENKS, SHORT HISTORY OF ENGLISH LAW, 170.

[20]3 BL. COM. 281 *et seq.*

[21]Harbert's Case, 3 Coke 11.

that it was an inseparable appendix to arrest on mesne process, and as the latter was extended by statute the former was held to follow by implication.[22] The process for execution of a money judgment by imprisonment was the writ of *capias ad satisfaciendum.*

It thus appears that the law of England began at a stage considerably in advance of the Roman law's most liberal development, and steadily retrograded until by the time of Blackstone it approximated the law of the Twelve Tables. The impression which the whole system made upon the English people can be measured by the extent to which it has figured in literature.

The American colonies were beneficiaries of the system in various ways. Many of the emigrants who left England to come to this country were debtors, or individuals who feared that they might be arrested by their creditors. General Oglethorpe, a prominent philanthropist and one of the first to become interested in the relief of debtors, promoted the colony of Georgia as a place where debtors might begin life anew. In general the colonial law corresponded with the law of England in the matter of civil arrest, though in many colonies some of the worst abuses of the system were restrained; witness the "Concessions and Agreements" of West New Jersey of 1677.[23]

Until well into the last century the situation in both England and America continued to be nearly as it was when Blackstone wrote. During the eighteen months following the panic of 1825, there were 101,000 writs issued for the arrest of debtors in England. During the year 1829 there were 7,114 persons committed to jail in London for debt, and of these 1,545 were still imprisoned at the end of the year.[24] No extensive reform was attempted until the act of Parliament of 1869, to be discussed later.

In the United States there was very little change until about 1830. In 1792 Congress allowed debtors in the federal prisons to give jail-liberty bonds if their state practice permitted it; in 1800 a poor debtor's oath was provided, and all benefits of state statutes

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[22]3 Bl. Com. 414. See Forsythe v. Judge, 180 Mich. 633.

[23]Greene, Provincial America, 252; Andrews, Colonial Self Government, 122.

[24]New International Encyclopedia, "Debtor."

were extended to federal prisoners.[25] About the year 1830 a wave of reform swept the country.[26] This seems to have been due in part at least to the activities of an association known as the Prison Discipline Society, which was interested in the relief of debtors. From the annual report of the society for the year 1830 the following facts appear:[27]

The number of persons imprisoned annually for debt was 3,000 in Massachusetts, 10,000 in New York, 7,000 in Pennsylvania,[28] and 3,000 in Maryland; the estimated total for the northern and middle states was 50,000 a year. In these states there were from three to five times as many persons imprisoned for debt as for crime. The amounts for which debtors were confined were often insignificant. During the eight months ending February 25, 1830, thirty debtors were imprisoned in Philadelphia for debts of less than one dollar. About fifteen per cent of the prisoners in the northern and middle states were detained for debts of less than five dollars; about fifty-five per cent were detained for debts of from five to twenty dollars, and only ten per cent owed more than a hundred dollars. Usually the costs were more than the debt itself. In the prisons of the southern states however (and this is a surprising fact) there were scarcely any debtors confined. For the year 1829, where a census of seventeen northern jails showed 2,742 debtors detained, the reports from an equal number of southern jails showed only seventeen. At this time, according to the society's report, Kentucky and Ohio had practically abolished imprisonment for debt. In Massachusetts no debtor could be arrested unless the debt was at least five dollars, and in New Hampshire there was a minimum requirement of $13.33. In Massachusetts the creditor was obliged to pay the debtor's board while in prison; in South Carolina the creditor was obliged to make an affidavit of merit. Elsewhere the common law prevailed.

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[25] I STAT. L. 265; 2 STAT. L. 4.

[26] Turner, RISE OF THE NEW WEST, 40.

[27] These figures are taken from the abstract of the report, printed in the NORTH AMERICAN REVIEW for April 1831.

[28] It is to be noticed that in Pennsylvania imprisonment for debt had been nominally abolished by the Constitution of 1776, §28, and by the Constitution of 1790, Art. IX §16.

CURRENT USE OF IMPRISONMENT FOR DEBT

On the continent of Europe in modern times there has never been any procedure corresponding to *capias ad respondendum*. The present German law provides for the arrest of the defendant before judgment in certain cases, for example where it can be shown that he is smuggling his property out of the country; but even this procedure seems to be an anomaly in the continental system.[29] As for imprisonment of the judgment debtor, it could be and was commonly employed throughout Europe, on almost every sort of claim, until comparatively recent times.

In 1834 a British parliamentary commission reported that imprisonment for debt existed in every country in Europe except Portugal.[30] In France imprisonment for debt (called in French law *contrainte par corps*) had survived from the *Ancien Régime* with a five-year intermission during the Revolution and a brief suspension in 1848.[31] It existed prior to 1867 in all commercial matters and in non-commercial transactions where there was fraud, violence, or official misconduct, and where the sum involved was more than three hundred francs. But most of these restrictions could be avoided by use of a promissory note, which made any transaction a commercial one.[32] In the year 1862 there were 1794 debtors imprisoned in France, of whom 664 owed less than 500 francs, 333 owed from 500 to 1000 francs, 532 owed from 1000 to 5000 francs, and 265 owed more than 5000 francs.[33] Over violent opposition the provisions of the Code Napoleon were abrogated by statutes passed in 1867 and 1871;[34] at present the imprisonment of debtors may be used only in the collection of court costs, and in cases of torts which are also crimes. The plaintiff must pay the defendant's board in prison; the duration of the imprisonment varies from two days to two years, according to the amount of the debt; and there are various other

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[29]Hardouin, 477, 482; 2 Heilfron & Pick (3d ed.), LEHRBUCH DES ZIVILPROZESZRECHTS, §31; Z P O §918.

[30]9 LEGAL OBSERVER 131.

[31]1 IRISH LAW TIMES 524.

[32]CODE CIVIL, §2059-2070; Planiol, TRAITÉ ELEMENTAIRE DE DROIT CIVIL, 9th ed., vol. 2, §175.

[33]1 IRISH LAW TIMES 524.

[34]D. P. 67. 4. 75; D. P. 71. 4. 167.

restrictions. It is little used today, but there has been some agitation for the restoration of the old system.[35] Following the example of France, most other continental countries made analogous reforms in their own law within a decade after 1867.[36]

The present-day situation in England is controlled by an act of Parliament passed in 1869.[37] This statute abolished all arrest on mesne process, and this has been construed as doing away with *capias*, though not with *ne exeat*.[38] But the courts were given a power theretofore unknown in England—upon a judgment in any cause being unsatisfied, the court may make an order requiring the defendant to pay in installments; if any installment is defaulted, and if the court believes that the defendant has had the means of paying during the period since the last installment, he may be sentenced to jail for any term not longer than six weeks. This imprisonment is not a satisfaction of the judgment, the defendant being liable to further imprisonment upon subsequent defaults. For debts of less than £50 the county courts have jurisdiction; over £50, the superior courts. Under this procedure many thousands of persons have been imprisoned, almost entirely laborers;[39] within the last few years however the number of debtors has declined very abruptly, for reasons which are not clear. The following table shows the number of imprisonments annually:[40]

1870	6,597
1875	4,063
1905	11,405
1906	11,986
1913	5,711
1919	206
1921	424

Although the number of contract debtors is very much smaller

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[35]Planiol, vol. 2, §175, 895n; see the statutes cited in the preceding reference.

[36]Hardouin, p. 486, 488; ENCYCLOPAEDIA BRITANNICA, 11th ed., "Debt."

[37]32 & 33 VICT. c. 62.

[38]8 L. J. 234.

[39]See an article by Judge Parry in THE LIVING AGE, 281:182.

[40]These figures are taken from 67 SOL. J. & REP. 219, except as to the year 1905, for which see 122 L. T. 500.

than formerly, the English jails are crowded with civil prisoners, there having been a very discouraging increase in the number of commitments for arrears in alimony and bastardy payments, and for failure to pay the income tax. For the year 1921 the total number of civil prisoners in England was 5024, of whom only 424 were contract debtors.[41]

In America, as we have said, there was a general movement for the relief of debtors soon after 1830. This usually took the form of statutes or constitutional amendments abolishing imprisonment for debt except in certain enumerated situations. New York passed such a statute in 1831[42] and many other states followed suit. Unfortunately the wave of enthusiasm soon spent itself and there has been little change since. The general situation of the American law on this point may be determined from a brief summary of the appropriate provisions of the state constitutions:

Connecticut, Delaware, Louisiana, Maine, Massachusetts, New Hampshire, New York, Virginia, and West Virginia have no constitutional provisions on the subject.

In a few states imprisonment for debt in civil actions is forbidden in general terms, without exceptions: Alabama, Georgia, Maryland, Mississippi, New Mexico, Tennessee, and Texas.[43]

Two states forbid imprisonment for debts arising out of contract: South Dakota and Wisconsin.[44]

Two states forbid imprisonment for debt for fines and penalties: Missouri and Oklahoma.[45]

Many states forbid imprisonment for debt except in cases of fraud (or, "where there is a strong presumption of fraud"): Arizona, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Minnesota, Nebraska, North Carolina, Ohio, South Carolina, and Wyoming.[46]

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[41]67 Sol. J. & Rep. 219; 68 *id.* 178, reprinted in 10 A. B. A. Jour, 130.

[42]5 Albany L. J. 243.

[43]See the state constitutions: Alabama, I:20; Georgia, I:1:21; Maryland III:38; Mississippi, III:30; New Mexico, II:21; Tennessee, I:18; Texas, I:18.

[44]South Dakota, VI:15; Wisconsin, I:16.

[45]Missouri, II:16; Oklahoma, II:13.

[46]Arizona, II:18; Arkansas, II:16; Florida, Declaration of Rights, §16; Idaho, I:15; Indiana, I:22; Iowa, I:19; Kansas, Bill of Rights, §16; Minne-

A number of state constitutions forbid the imprisonment of a debtor who has made an assignment for the benefit of his creditors, except in fraud or tort cases: Colorado, Illinois, Kentucky, Montana, North Dakota, Pennsylvania, Rhode Island, Vermont.[47]

The constitutions of Oregon, Utah, and Washington limit arrest for debt to absconding debtors.[48]

The Nevada constitution forbids the imprisonment of debtors except in cases of fraud, libel, and slander, and the California constitution except in cases of fraud and wilful injury.[49] The New Jersey constitution forbids imprisonment in suits founded on contract, except where there is fraud.[50] The constitution of Michigan provides: "No person shall be imprisoned for debt arising out of or founded on a contract express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers or in any professional employment."[51] In the Bill of Rights for Porto Rico[52] and the Philippines[53] it is provided: "No person shall be imprisoned for debt." The Vermont constitution recognizes bondage for debt.[54]

In consequence of constitutional provisions and supplementary statutes, imprisonment for debt is generally abolished in contract cases. There is a great variation in the practice of the various states in tort and fraudulent contract cases. "Fraud" usually includes fraudulent inducement of the contract and fraudulent evasion of it. The more common practice does not allow an order of arrest without a special showing of necessity—that the defendant is about to leave the state, or is concealing his property, etc. Constitutional provisions against imprisonment for debt are usually construed as applying to the common law writs of *capias ad respondendum* and *capias*

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sota, I:12; Nebraska, I:20; North Carolina, I:16; Ohio, 1:15; South Carolina, I:24; Wyoming, I:5.

[47]Colorado, II:12; Illinois, II:12; Kentucky, Bill of Rights, §18; Montana, III:12; North Dakota, I:15; Pennsylvania, I:16; Rhode Island, I:11; Vermont, I:32.

[48]Oregon, I:19; Utah, I:16; Washington, I:17.

[49]Nevada, I:14; California, I:15.

[50]New Jersey, I:17.

[51]Michigan, II:20.

[52]U. S. COMP. STAT. (1918), §3803aa.

[53]U. S. COMP. STAT. (1918), §3810.

[54]Vermont Constitution I:1, as amended.

ad satisfaciendum, but not to equity and admiralty process. In some states there are exemptions from arrest in favor of minors, females, aged persons, or resident freeholders. The plaintiff must usually file an affidavit setting up facts showing that the case is one in which arrest is permitted. Usually the plaintiff must also give bond to indemnify the defendant against damages from false arrest. Some states retain the common law *capias* within the limited field in which arrest is possible; other jurisdictions have abolished *capias* and substituted a statutory body attachment or order of arrest. The defendant is always allowed to give bail, and jail liberty bonds are common. Under some statutes the plaintiff must pay the sheriff for the defendant's board while the latter is imprisoned; otherwise the defendant's support is usually made a burden on the county.[55]

By the Conformity Act there is to be no imprisonment for debt on federal process in any state where imprisonment for debt has been abolished; and whatever restrictions exist in the state courts hold for the federal courts. The poor debtor's oath, jail limit bonds, etc. are the same. The federal practice is thus identical with the local practice.[56]

The Law of Michigan and Its Operation

The Michigan procedure in the matter of civil arrest is governed for the most part by statutes passed in 1846. The case law which has developed around these statutes is unusually voluminous. It would seem that imprisonment for debt is being used in this state today to a considerable extent; it would seem also that it is a source of great oppression.

As has been said before, the state constitution (II:20) provides: "No person shall be imprisoned for debt arising out of or founded on a contract express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers or in any professional employment". This is repeated in the statutes as "No per-

[55]See 34 L. R. A. 634; 37 A. S. R. 758; 15 Ill. L. Rev. 559; 1 N. C. L. Rev. 229; 1 Jur. Rev. 357; New York Civil Practice Act, Art. 44, 47; Kinkead's Ohio Practice, §144; Patton, Pennsylvania Common Pleas Practice, p. 168, 5 C. J. 438 *et. seq.*

[56]U. S. Comp. Stat. (1918) §1636, 1637 (R. S. 990, 991); 3 Foster's Federal Practice, p. 2397.

son shall be arrested or imprisoned on any civil process issuing out of any court of law, or on any execution issuing out of a court of equity, in any proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract express or implied, or for the recovery of any damages for the non-performance of any contract. The preceding section shall not extend to proceedings as for contempts to enforce civil remedies, nor to actions for fines, penalties, or forfeitures, or on promises to marry where fraud is alleged, or for moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment".[57] No woman may be imprisoned on civil process,[58] and civil prisoners must be confined in separate rooms from criminal prisoners.[59] These two provisions are modern compared with the other statutes on the subject: the former dates from 1873 and the latter from 1857.

We shall discuss first of all the procedure for arrest of the defendant before judgment, for which there are two processes—*capias ad respondendum* (in the justice court called a civil warrant), and the fraudulent debtor's warrant.

In the circuit court the jurisdictional amount is one hundred dollars. Any personal contract action which comes within the constitutional exceptions may be commenced either by writ of summons or by writ of *capias*. Any tort action may be begun by *capias*, but the amount demanded being presumably unliquidated, the writ must be first exhibited to the circuit judge, that he may indorse upon it the amount for which the defendant is to be bailed. In either case the plaintiff must file a declaration and affidavit setting up facts to show that the situation is one in which a *capias* may properly issue.[60] So many cases have gone to the supreme court on the question of the affidavit's sufficiency, and so many interpretations of the statute have been formulated, that the drafting of a correct affidavit is a rather technical and troublesome task.[61] If the affidavit is de-

[57]C. L. 1915, §13630, 13631.

[58]C. L. 1915, §12445; People ex rel. Strickland v. Bartow, 27 Mich. 68.

[59]C. L. 1915, §14762.

[60]C. L. 1915, §12414-12416.

[61]Runo v. Rothschild, 219 Mich. 560; Bradley v. Judge, 214 Mich. 142; Thomas v. Rosencrantz, 193 Mich. 357; Timm v. Judge, 192 Mich. 508; Tidey

fective, the defendant by motion may have the writ quashed as to its *capias* clause, and may be discharged from custody; but the suit will proceed on the summons clause of the writ.[62] If a *capias* issues in a situation forbidden by the constitution, the error is jurisdictional and may be taken advantage of at any subsequent stage of the proceedings;[63] but if the affidavit only is defective the defendant waives the point by pleading or by putting in a general appearance; the question can be raised only by *mandamus* or *habeas corpus* before pleading.[64] Service of the writ is made by the sheriff arresting the defendant and committing him to the county jail.[65]

The writ must be served by an officer; but inasmuch as it is not a criminal process, it cannot be served outside of the officer's county.[66] It seems that after the defendant has been arrested the plaintiff may discharge him and then sue out another writ and have him rearrested.[67] Having been arrested, the defendant has a choice of several courses. The statutory provisions as to bail are complex: the defendant may be released on bond to give special bail (corresponding to the common law's *bail below*),[68] or on special

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v. Judge, 179 Mich. 580; Pratt v. Judge, 177 Mich. 558; Soule v. Judge, 175 Mich. 127; Reed v. McCready, 170 Mich. 532; Cheney v. Allgeo, 165 Mich. 384; Ord v. Judge, 160 Mich. 569; Gardiner v. Judge, 155 Mich. 414; Benie v. Judge, 154 Mich. 591; Muir v. Judge, 151 Mich. 117; Conrad v. Judge, 144 Mich. 492; Church v. Judge, 129 Mich. 126; Northrop v. Judge, 128 Mich. 415; McLeod v. Judge, 125 Mich. 344; Wright v. Judge, 119 Mich. 499; Shaw v. Ashford, 110 Mich. 534; Graham v. Judge, 108 Mich. 425; Paulus v. Grobben, 104 Mich. 42; Moyle v. Judge, 97 Mich. 636; Fruitport v. Judge, 90 Mich. 20; Hatch v. Saunders, 66 Mich. 181; Marble v. Curran, 63 Mich. 283; Cummer v. Moyer, 57 Mich. 375; Pease v. Pendell, 57 Mich. 315; Wasey v. Mahoney, 55 Mich. 194; Sheridan v. Briggs, 53 Mich. 569; Meddaugh v. Williams, 48 Mich. 172; DeLong v. Briggs, 47 Mich. 624; Badger v. Reade, 39 Mich. 771; Proctor v. Prout, 17 Mich. 473; In re Teachout, 15 Mich. 346; see also 5 MICH. BAR JOUR. 179.

[62]Tire Co. v. Johnson, 213 Mich. 442; Cheney Co. v. Allgeo, 165 Mich. 384; Graham v. Judge, 108 Mich. 425.

[63]In re Stephenson, 32 Mich. 60.

[64]Baxter v. Woodward, 191 Mich. 378; Graham v. Judge, 108 Mich. 425.

[65]C. L. 1915, §12417.

[66]Whitehead v. Judge, 220 Mich. 504.

[67]Breckton v. Judge, 109 Mich. 615.

[68]C. L. 1915, §12418.

bail (the common law *bail above*),[69] or on jail liberty bond.[70] The special bail bond requires two sureties; by it the sureties undertake that if the plaintiff recovers judgment and the defendant fails to pay it, they will either pay it themselves or surrender the defendant to the plaintiff. The jail liberty bond permits the defendant to go at large in the yard of the jail, which in legal contemplation is the county in which the jail stands; it is executed by the defendant and at least one surety, conditioned that the defendant will not go outside the county till legally discharged. But if the defendant has no property or friends, he either settles with the plaintiff or stays in jail.[71] If the defendant is committed to prison in default of bail, the plaintiff must pay the sheriff for his board, otherwise the sheriff is not to detain him and the suit proceeds as if it had been begun by summons.[72] The statutory provisions as to bail and the liability of sureties have been exhaustively discussed in judicial opinions.[73]

In justice courts the procedure for beginning suit by warrant is substantially similar. For contract actions the statute enumerates the exceptions made by the constitution; it also provides that any suit against a non-resident may be begun by warrant, but this has been held unconstitutional.[74] It is also provided that a suit may be commenced by warrant "if the defendant has committed a trespass or other wrong to the plaintiff".[75] This undoubtedly refers to tort actions, but it is unfortunate that the language is not more categorical;

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[69]C. L. 1915, §12979 *et seq.*

[70]C. L. 1915, §1300 *et seq.*

[71]As will be shown further on, it is unusual for any debtor to actually remain in jail for any considerable length of time.

[72]C. L. 1915, §13027.

[73]Schwartzchild v. Cryan, 167 Mich. 377; McNeal v. Van Duser, 142 Mich. 593; Ludwick v. Judge, 138 Mich. 106; Hughes v. Hally, 137 Mich. 433; Bryant v. Kinyon, 127 Mich. 152; Smith v. Grosslight, 123 Mich. 87; Morgan v. Jones, 117 Mich. 59; Kruse v. Kingsbury, 102 Mich. 100; Lyman v. Giddey, 96 Mich. 401; Fisher v. Drewa, 63 Mich. 655; Clink v. Judge, 58 Mich. 242; Pease v. Pendell, 57 Mich. 315; Vandergazelle v. Rodgers, 57 Mich. 132; Gunn v. Geary, 44 Mich. 615; Koch v. Coots, 43 Mich. 30; Begole v. Stimson, 39 Mich. 288; Wilcox v. Ismon, 34 Mich. 268; DeMyer v. McGonegal, 32 Mich. 120; Campau v. Seeley, 30 Mich. 57; Montgomery v. Henry, 10 Mich. 19; Elliott v. Dudley, 8 Mich. 62.

[74]C. L. 1915. §14324; Chappee v. Thomas, 5 Mich. 53.

[75]C. L. 1915, §14325.

for the writer is informed that many justices of the peace are persuaded that "or other wrong" includes breach of contract. The warrant is served by the constable, and the defendant may be bailed.[76] The statutory provisions as to civil arrest on justice court process date from 1855.

The decisions construing the constitution and statutes have been about what one would expect. It has been held that under the constitution the husband who fails to pay alimony may be imprisoned for contempt of court, but may not be sued by *capias*.[77] A suit based entirely on a written instrument will not support a *capias*.[78] "Money received in any professional employment" refers to the learned professions as traditionally recognized; it does not include a general agency nor a real estate business. Whether the defendant acted in a professional capacity is a jury question.[79] It was held at any early date that the purchase of goods without intention of paying for them was sufficient fraud to justify *capias*.[80] Consequently, if the plaintiff is willing to make an allegation to this effect, there may be *capias* in any action for goods sold and delivered; and the allegation is an easy one to make. The defendant may not be arrested in a suit for breach of promise to marry unless there has been seduction or some other circumstance to amount to fraud.[81] A *capias* will be dismissed if it appear that the suit should have been brought on the equity side of the court.[82] After the defendant has been arrested and bailed on a criminal charge, he cannot be arrested on a *capias ad respondendum* in a civil suit on the same subject matter.[83] If the case made on the trial varies from that stated in the affidavit, the sureties on the special bail are discharged.[84] The sureties on the

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[76]C. L. 1915, §14327-14330.

[77]Steller v. Steller, 25 Mich. 159.

[78]Case v. Ranney, 174 Mich. 673.

[79]Pennock v. Fuller, 41 Mich. 153; Case v. Ranney, 174 Mich. 673.

[80]People ex rel. Watson v. Judge, 40 Mich. 729.

[81]In re Sheahan, 25 Mich. 145; In re Tyson, 32 Mich. 262.

[82]Runo v. Rothschild, 219 Mich. 560.

[83]Baldwin v. Judge, 48 Mich. 525.

[84]Fish v. Barbour, 43 Mich. 19.

special bail bond are not liable to suit until a body execution against the defendant has been returned *non est inventus*.[85]

Proceedings under the Fraudulent Debtor's Act provide a means for arresting the defendant after suit has been begun by summons. It is to be used in situations where the defendant cannot otherwise be arrested. The statute says that after suit is commenced, a warrant may be issued for the defendant's arrest upon affidavit that he is about to remove his property out of the jurisdiction in fraud of his creditors, or fraudulently conceal his property, or make a fraudulent assignment, or that he contracted the obligation fraudulently. When arrested, the defendant is brought into court for a hearing on the charges; if the court is of opinion that the plaintiff is apt to suffer from fraud, the defendant is committed to jail until final judgment, or until he shall have made an assignment for the benefit of his creditors, or been adjudicated a bankrupt, or until he gives satisfactory security.[86] In 1859 the supreme court was equally divided as to whether these proceedings were civil or criminal, but in later opinions it has been held that they are civil.[87]

We come now to examine the local practice as to the other form of imprisonment for debt, the arrest of the defendant after the obligation has been reduced to judgment. In the circuit court this is called *capias ad satisfaciendum*, in the justice court, body execution. As to the circuit court process, "There may be execution against the body in the cases authorized by law",[88] but these cases are nowhere enumerated, and the common law prevails. That is to say, there may be *capias ad satisfaciendum* in any case where there might have been

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[85]C. L. 1915, §12993; Barnum v. Waterbury, 38 Mich. 280; Heymes v. Champlin, 52 Mich. 25.

[86]C. L. 1915, §13630-13640.

[87]Bromley v. People, 7 Mich. 472 (this case is also authority for the proposition that "fraud" as the term is used in the constitution includes both the fraudulent contraction of a debt and the fraudulent evasion of its payment); Johnson v. Maxon, 23 Mich. 129; Wayne County v. Randall, 43 Mich. 137. For other cases on the subject, see Barie Co. v. Casler, 131 Mich. 23; Clark v. Mikesell, 81 Mich. 45; Stensrud v. Delamater, 56 Mich. 144; Butts v. Davis, 50 Mich. 310; In re Lee, 49 Mich. 629; Watson v. Hinchman, 42 Mich. 27; Willison v. Desenberg, 41 Mich. 156; Young v. Stephens, 9 Mich. 500.

[88]C. L. 1915, §12818.

capias ad respondendum.[89] It is said in an early case that there may be no *capias ad satisfaciendum* on a judgment in replevin, there having been none at the common law and the territorial legislature having repealed the English statute which allowed it.[90] The statutes appear to provide that the writ of *capias ad satisfaciendum* may issue out of chancery;[91] they direct that there is not to be simultaneous execution against person and property, or execution against property while there is an unreturned execution against the person, without special leave of the court;[92] where the defendant is already in custody, the *capias ad satisfaciendum* must be sued out within twenty days after judgment;[93] where the defendant has already been arrested and has given bail, there is to be no body execution until a *fieri facias* has been returned unsatisfied.[94] As with the other kind of *capias*, the plaintiff must pay the debtor's board during his imprisonment.[95] Failure to pay board a week in advance discharges the prisoner, and this satisfies the judgment, and the plaintiff cannot even recover from the defendant what he has expended for his board.[96] The result is the same when the plaintiff consents to the defendant's enlargement; but when the defendant is discharged by operation of the law (as by taking the poor debtor's oath), this is not a satisfaction of the judgment.[97] And where a man was in jail eleven months on *capias ad satisfaciendum* and at the end of that time it was discovered that the *capias* was void because not taken out within the required twenty days, it was held that the judgment was not satisfied because the imprisonment was a nullity and of no legal significance.[98] The fact that voluntary release of a *capias ad satisfaciendum* prisoner satisfies the judgment, is the chief difference between this process and *capias*

[89]McDonnell v. Judge, 222 Mich. 516; Forsythe v. Judge, 180 Mich. 633.

[90]Fuller v. Bowker, 11 Mich. 204.

[91]C. L. 1915, §12965.

[92]C. L. 1915, §12825, 12842; Karasiewicz v. Judge, 217 Mich. 589.

[93]C. L. 1915, §12838-12839; Weurding v. Judge, 230 Mich. 300; McDonnell v. Judge, 222 Mich. 516; Westerhouse v. Judge, 212 Mich. 457.

[94]C. L. 1915, §12841.

[95]C. L. 1915, §13027.

[96]Strawsine v. Salsbury, 75 Mich. 542.

[97]Stephenson v. Purchase, 214 Mich. 95.

[98]In re Lauer's Estate, 184 Mich. 497; to the same effect McArthur v. Oliver, 53 Mich. 305.

ad respondendum. It has already been pointed out that the release of the *capias ad respondendum* prisoner does not prejudice the cause of action. The judgment debtor may be released from imprisonment by paying the judgment, putting up a jail-limits bond,[99] or a *supersedeas* bond pending a writ of error,[100] or by taking the poor debtor's oath,[101] or by going into bankruptcy. In the justice court there is a substantially similar procedure called body execution. It is specifically provided that it may be used in replevin cases.[102] An appeal to the circuit court vacates the execution.[103]

After the defendant has been in jail from one to nine months according to the amount of the debt, he may, if he request it, be brought before a circuit court commissioner, where there is an inquiry as to whether he has any property. If the commissioner is convinced that the debtor has no means with which to pay the judgment, and the debtor takes oath to this effect, he is discharged from imprisonment.[104] As has been seen, this does not impair the judgment. To claim the benefit of this statute the debtor must have been actually locked up in the county jail for the specified period; he cannot count the time in which he has had jail liberty.[105]

This concludes the Michigan law of imprisonment for debt in the strict sense. As was said at the beginning of this paper, imprisonment for failure to pay a sum of money may not be what is usually referred to as imprisonment for debt. So in Michigan a large number of persons are annually committed to jail in contempt and quasi-criminal proceedings, mostly for failure to make alimony and bastardy payments.[106] Furthermore, persons may be detained in jail as witnesses; in some circumstances lunatics and imbeciles may be confined in the county jails.

The desirability of civil arrest is to be determined by the extent

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[99]C. L. 1915, §13000.

[100]Douglass v. Judge, 42 Mich. 495.

[101]C. L. 1915, §13617.

[102]C. L. 1915, §14293; Tomlin v. Fisher, 27 Mich. 524.

[103]C. L. 1915, §14410.

[104]C. L. 1915, §13617-13629.

[105]Rusiewski v. Michalski, 135 Mich. 530; Griffin v. Helme, 94 Mich. 494; Miller v. Strabbing, 92 Mich. 300.

[106]See Stewart v. Hart, 196 Mich. 137; Carnahan v. Carnahan, 143 Mich. 390.

of its use and the purposes for which it is employed. The exact number of persons imprisoned for debt in this state cannot be accurately determined. In this connection there should be mentioned the figures contained in the annual reports made by the sheriffs to the secretary of state.[107] An examination of these reports will con-

[107]The figures as to debtors in jail in the state for the years given are as follows:—1873....35; 1875....65; 1876....81; 1877....77; 1878....74; 1879....47 1880....36; 1881....26; 1882....52; 1883....60; 1884....25; 1885....23; 1886....33; 1888....44; 1889....52; 1890....74; 1891....21; 1892....39; 1893....36; 1894....49; 1895....57; 1896....44; 1897....38; 1898....28; 1899....31; 1900....34; 1901....37; 1919....51; 1920....81; 1921....55; 1922....380; 1923....522; 1924....600; 1925....809.

The figures by counties for the last six year are as follows:—

	1919	1920	1921	1922	1923	1924	1925
Alcona	0	0	0	0	0	0	0
Alger	3	4	3	0	0	2	0
Allegan	0	0	0	1	0	0	0
Alpena	0	.	1	0	0	0	0
Antrim	0	0	0	0	0	0	0
Arenac	0	0	0	2	0	0	0
Baraga	0	0	0	0	0	0	0
Barry	0	0	0	0	0	0	0
Bay	0	0	0	0	0	2	0
Benzie	0	0	0	0	0	0	0
Berrien	1	0	11	0	0	0	0
Branch	0	1	0	1	0	0	2
Calhoun	0	2	2	0	1	3	2
Cass	0	0	1	0	0	0	0
Charlevoix	0	0	0	0	0	0	0
Cheboygan	0	0	0	0	0	0	0
Chippewa	0	0	0	0	8	8	0
Clare	0	0	0	0	0	0	0
Clinton	0	0	0	0	0	0	0
Crawford	0	0	0	1	0	0	0
Delta	0	0	0	3	0	0	1
Dickinson	0	0	0	0	0	0	0
Eaton	0	0	4	4	0	0	0
Emmet	0	0	0	0	0	0	1
Genesee	9	26	9	21	16	7	0
Gladwin	0	0	0	0	0	0	0
Gogebic	0	0	0	0	0	0	0
Grand Traverse	0	0	0	0	0	0	0
Gratiot	0	0	0	0	0	0	0
Hillsdale	0	0	0	0	0	0	19
Houghton	5	0	0	0	0	0	0
Huron	0	0	0	1	0	0	1

vince anyone that the information they contain is unreliable. They are, however, the only official information available. Furthermore there has recently been agitation for the compilation of judicial

	1919	1920	1921	1922	1923	1924	1925
Ingham	0	1	0	1	0	0	0
Ionia	0	0	0	0	0	1	0
Iosco	0	0	0	0	0	0	0
Iron	0	0	0	0	0	0	0
Isabella	3	0	1	0	0	0	0
Jackson	0	0	0	1	4	0	80
Kalamazoo	5	0	0	0	0	0	4
Kalkaska	0	0	1	1	0	0	0
Kent	6	11	12	20	9	11	25
Keweenaw	0	0	0	0	0	0	0
Lake	0	0	0	0	0	0	0
Lapeer	0	0	0	1	0	0	0
Leelanau	0	0	0	0	0	0	1
Lenawee	0	0	0	0	0	0	0
Livingston	0	0	0	0	1	0	0
Luce	0	0	0	0	0	0	0
Mackinac	0	0	0	0	1	0	0
Macomb	0	0	0	0	0	0	2
Manistee	0	0	0	0	0	0	0
Marquette	0	0	0	0	0	0	0
Mason	0	0	0	0	1	0	0
Mecosta	0	0	0	0	0	0	0
Menominee	0	0	0	0	0	0	0
Midland	0	0	0	0	0	0	0
Missaukee	0	0	0	0	0	0	0
Monroe	0	0	0	0	0	0	0
Montcalm	0	0	0	0	1	0	0
Montmorency	0	0	0	0	0	0	0
Muskegon	0	2	0	0	0	3	2
Newaygo	0	1	1	0	0	0	0
Oakland	7	1	5	25	9	14	16
Oceana	0	0	0	0	0	0	0
Ogemaw	2	0	0	0	0	0	0
Ontonogon	0	0	0	0	0	0	0
Osceola	0	0	0	0	0	0	1
Oscoda	0	0	0	0	0	0	0
Otsego	0	0	0	0	0	0	0
Ottawa	2	2	2	2	1	1	2
Presque Isle	0	0	0	0	0	0	0
Roscommon	0	0	0	0	0	0	0
Saginaw	3	12	2	0	0	22	0
St. Clair	0	0	0	0	0	0	0

statistics in this state, and the sheriffs' reports afford many suggestions on how not to collect statistics. The sheriffs are required to make their reports on a form which is long and complicated and which demands a considerable knowledge of law in order to fill it out properly. At the same time it is sufficiently ambiguous to allow great variation in the entry of items. In most of the counties the sheriffs become completely lost in the intricacies of the questionnaire.

These figures show that there has been a recent increase in the number of persons imprisoned, the number for 1925 being 809; they indicate also that the problem is principally one of the large city. To this extent they are probably reliable; beyond this they are not to be trusted. Under the item "debtors" on the state department's form it was no doubt meant to include persons brought to the jail on all civil process, including those who are at once released on bond; but the startling variations from year to year in some counties[108] can only be attributed to a new sheriff with a new method of classification. It is evident from the reports themselves that at the ordinary county jail the records are kept in slovenly fashion. For most of the counties the figures given are certainly too low.[109]

	1919	1920	1921	1922	1923	1924	1925
St. Joseph	0	1	0	0	1	1	0
Sanilac	0	0	0	0	0	0	0
Schoolcraft	4	0	0	1	0	0	0
Shiawassee	0	0	0	2	0	0	0
Tuscola	0	0	0	0	0	0	0
Van Buren	0	1	0	0	0	2	0
Washtenaw	0	0	0	0	0	29	0
Wayne	1	16	0	292	469	494	650
Wexford	0	0	0	0	0	0	0
	51	81	55	380	522	600	809

ABSTRACT OF THE REPORTS OF THE SHERIFFS, published annually by the Secretary of State from 1873 to 1918. From 1901 on the abstract does not give the number of debtors, and the original reports have not been preserved. But the original reports for the years since 1919 are still on file with the Department of State in Lansing, and from them the information for those years is taken.

[108]Note particularly Jackson, Saginaw, Washtenaw and Wayne counties.

[109]Thus in the last four years there have been twenty-one writs of *capias* issued in St. Clair county (as appears from the records in the county clerk's office in Port Huron), and a considerable number of these certainly resulted in jail commitments, at least for short periods; but the sheriff of that county reports no debtors for six years. The jailer at Ann Arbor (Washtenaw county)

There seems to be great variation in the extent to which the writ of *capias ad respondendum* is used. During the year 1925 there were 314 suits at law begun in the circuit court for Washtenaw county, of which the law calendar indicates only one as having been begun by *capias ad respondendum*. For the same period in Wayne county there were about 7,500 suits at law begun, of which about 350 were commenced by *capias*, the ratio thus being nearly one in twenty. In the last three and a half years about twenty writs have been issued in St. Clair county.[110] Examination of the court records in Detroit impresses one with the fact that *capias* is used almost entirely by the small firms practicing among the foreign population. The writer has obtained no figures as to the frequency with which writs of *capias ad satisfaciendum* are sued out; but the opinion of the county clerks with whom he has talked is, that the number issued annually is about the same as that of *capias ad respondendum* or perhaps a trifle larger. Thus, at the county jail in Ann Arbor the jailer says that three or four persons are committed annually by *capias ad satisfaciendum*. As to arrest on justice court process, it seems that suits are scarcely ever commenced by warrant; in Detroit a great many body executions are issued out of the justice court; in other parts of the state they are probably not so common. Proceedings under the Poor Debtor's Act are rare—an attorney at the Legal Aid Bureau in Detroit informed the writer that he had known of but one case in six years.

It has been found in other states that civil arrest was very apt to be used for extortion by the shyster lawyer;[111] there is much evidence to indicate that this is being done in Michigan. Members of the Detroit Bar say that civil arrest is rarely resorted to by firms of high standing. The principal victims of the system are the workingmen, to whom arrest and detention for even a few days means

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informed the writer that about half a dozen persons were committed annually, mostly by *ca. sa.* Yet the sheriff's report gives 29 for the year 1924, and none for the other years.

[110]See the law calendars in the county clerk's office in Ann Arbor, Detroit, and Port Huron. The estimate for Wayne county is based on the following count: for the month of June 1925 there were 612 suits begun, of which 32 were by *capias*; for October 1925, 669 suits, of which 27 were by *capias*.

[111]See 7 YALE L. J. 295.

loss of their jobs. It is particularly frequent in justice court suits where the amount involved is less than fifty dollars, so that appeal is impossible. A statute which went into effect in the summer of 1925 greatly restricted the use of garnishment process;[112] since that time there has been a great increase in the number of attempts to get writs of *capias* in the Detroit courts. Dealers selling furniture, automobiles, clothing and jewelry on "easy credit", who formerly began assumpsit actions by garnishing the defendants' wages, are now flooding the courts with the same types of claim disguised as actions in trespass on the case, in order to obtain *capias* or body execution. Some of the Detroit judges and justices have been very vigilant to prevent this, but it seems that a great many writs are being issued in what are actually contract cases pure and simple. It is said that the attorneys for certain credit jewellers have secured several body executions on this theory: to buy a diamond ring and fail to pay for it is a tort, because the diamond market is subject to great fluctuations. One result of the demand for *capias* is that the Detroit judges are fixing the bail at very low amounts. It is said that defendants are usually bailed for about $300 in all actions, and that bail higher than $1000 is very unusual. At the Legal Aid Bureau in Detroit it was said that most of the working class, finding it difficult to furnish bail even at low amounts, settle the claim rather than contest it. In order to obtain the means with which to settle, the defendant is frequently obliged to incur new debts, or to work upon the sympathy of relatives. One can only speculate as to how many more warrants and writs of *capias* are threatened than are actually issued, and this phase of the situation is probably worse in the justice court in the large city than in the circuit court.[113] Of the circuit court debtors arrested on *capias ad satisfaciendum* about seventy per cent give bonds for jail liberty, and very few are actually imprisoned for any length of time.[114]

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[112] P. A. 1925, P. 451, *et seq.*

[113] This has been the case in England. In the small claims courts only one-fiftieth of the warrants issued actually resulted in commitments, which indicates that a great number of persons paid as a result of the threat. See 67 SOL. J. & REP. 219; also the Report of the Select Committee on Debtors, in 7 HOUSE OF COMMONS SESSIONAL PAPERS.

[114] This is the estimate of the sheriff's office in Wayne county.

Some of the other states which retain *capias* exempt minors from the process, but Michigan does not. An infant may be sued for negligence or other tort, and arrested on *capias ad respondendum* or *capias ad satisfaciendum*. This often subjects innocent relatives to a pressure to settle the case which is out of all proportion to the case's importance.[115]

It is believed that the procedure for civil arrest is so complicated and uncertain of result that it cannot practically be employed for any legitimate purpose. The debtor can always evade both *capias ad respondendum* and *capias ad satisfaciendum* by giving bond to the jail limits, which is usually of no value to the plaintiff. The plaintiff must pay the defendant's board in advance (a dollar a day in many counties); this requires a further investment in a bad debt with only a gambling chance of ever recovering anything. With the defendant once in jail on *capias ad satisfaciendum* the plaintiff must continue to pay board; for if he stops, or if he consents to the defendant's even temporary release, the judgment is satisfied. By taking out body execution, the creditor gives up his remedies against the debtor's property. As a result, the different *capias* writs are used chiefly because of their nuisance value. The ordinary practitioner finds them of little advantage; the shyster finds them very useful to threaten and intimidate.

There is reason to think that creditors actually collect very few legitimate claims by the use of imprisonment. This is borne out by evidence from other jurisdictions. In the ten years prior to the abolishment of *contrainte par corps* in France there were 6577 persons discharged from the debtors' prisons of Paris, of whom 3149 were released because the creditors grew tired of paying their board; only 545 paid their debts in full. During the year 1862 there were 1486 debtors released throughout France, of whom only 407 had paid.[116] In the United States in 1830, out of 2057 debtors in seventeen prisons, only 294 paid; 744 took the poor debtor's oath, and 1019 were discharged by the creditor.[117] The legal periodicals con-

[115]For a situation of this sort see People ex rel. McCallum v. Gebhardt, 154 Mich. 504.

[116]I IRISH L. T. 524.

[117]NORTH AMERICAN REVIEW, April 1831, *supra*.

tain many expressions of opinion to the same effect; the two following are illustrative:

"The experience of practicing attorneys will bear out the assertion that there are not five instances in a hundred in which an order for arrest results in collection of a debt from a party who could not otherwise be compelled to pay* * * The practice* * * is not favored among respectable lawyers; they seldom resort to such expedients; the unscrupulous members of the bar find it, sometimes, a means of extorting money or oppressing an enemy or gratifying the malice of a client, and therefore use it unsparingly."[118]

"Every lawyer knows that the law as it stands today is practically, in the great majority of cases, a farce. It only adds a few dollars to the sheriff's fees. The debtor is put upon the limits, the curtain drops, and the play is over. But to the minority this imprisonment is a solemn, a horrible reality."[119]

The Michigan statutes on the subject of imprisonment for debt are very badly compiled, being scattered through many different chapters of the Compiled Laws,[120] the supreme court decisions cluster in great masses around each of the various sections. The amount of litigation in this state on the procedural phases of the subject has been out of all proportion to its importance. The whole represents a large economic waste.

The reasons which have led to the abolition of civil arrest in contract cases would seem to be equally persuasive in tort cases. The punishment of fraud, violence, and official misconduct should be left to the criminal law. It has been suggested that execution against the person is not such a hardship to the workingman's family as is execution against the property; but it seems doubtful if this is so, particularly since the exemption laws in this state are liberal.[121] Those states which retain civil arrest have surrounded it with safeguards which are not found in the Michigan practice. Thus in many jurisdictions no order for arrest is made until special circumstances

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[118] 5 ALBANY L. J. 243.

[119] 24 ALBANY L. J. 106; see also 7 YALE L. J. 295; 25 JOUR. JUR. 337.

[120] C. L. 1915, §4485; 12414-12419; 12445; 12818; 12825; 12838-12845; 12965; 12979-12999; 13000-13027; 13460; 13617-13629; 13630-13640; 14290-14293; 14314; 14324-14330; 14410; 14762.

[121] C. L. 1915, §12858.

have been shown, as that the defendant is about to leave the state, or has concealed his property, etc. Such is substantially the Michigan requirement for the fraudulent debtor's warrant; but *capias* and justice's warrant require no such showing. Under our present system, if the defendant carries off the plaintiff's second-hand automobile tire, the plaintiff cannot replevy it without furnishing a bond; but if he elects to bring an action on the case for conversion he may deprive the defendant of his liberty by merely filing a *praecipe*.

In conclusion: It is believed that the situations in which civil arrest can be used properly and advantageously are very few, while there are a great many occasions on which it can be and is abused. There seems to be no logical or practical reason for retaining it in tort actions after it has been abolished in contract actions. Most of the statutes on civil arrest are eighty years old; they were considered rather liberal when they were enacted; but they leave Michigan procedure far behind that of its sister states today. It is therefore suggested that civil arrest might well be abolished; in any event it ought to be strictly limited to cases where it is shown to a reasonable certainty that the debtor is fradulently concealing his property.