

RULE 4C. ARREST [ABROGATED]

[Abrogated effective February 15, 1985.]

Explanation of Amendments December 1, 1959; January 1, 1967

Rule 4C(a) was amended November 2, 1959, effective December 1, 1959, to assure the exclusion of any common-law right to arrest on mesne process.

The 1967 amendment updated the statutory reference.

Reporter's Notes December 1, 1959

This rule provides for arrest on a *capias* writ in the manner and to the extent provided by law.* It should be noted, however, that 1959 Laws, c. 317, §§ 55 and 56, amending R.S.1954, Chap. 120, Secs. 1 and 2 [now 14 M.R.S.A. § 3601], considerably restrict the use of arrest in civil cases. The amendment strikes out Sec. 1, which permits arrest to be made freely in tort cases, and makes Sec. 2, now limited to contract actions, govern arrest in all cases. This means that arrest in a tort case will be possible only upon the oath of the plaintiff or his attorney that he has reason to believe and does believe that the defendant is about to depart and reside beyond the limits of the state and take with him property or means of his own beyond what is needed for his immediate support. In practice arrest has been little used in contract cases, and it seems likely that under the amended statute it will also be used sparingly in tort cases.

Subdivision (c) provides for the retention in substance of the procedure under the old *ne exeat* writ under which a defendant may be arrested as a means of insuring the performance of an act, the neglect or refusal to perform which would be punishable as a contempt.

* [According to Field, McKusick & Wroth: "By a 1959 amendment the use of arrest was limited to the manner expressly provided in what is now 14 M.R.S.A. § 3601." 1 Field, McKusick & Wroth, *Maine Civil Practice* at 157 (2d ed. 1970)].