Article 8.

Attendance of Witness.

§ 8-59. Issue and service of subpoena.

In obtaining the testimony of witnesses in causes pending in the trial divisions of the General Court of Justice, subpoenas shall be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure for civil actions. Provided that in criminal cases any employee of a local law-enforcement agency may effect service of a subpoena for the attendance of witnesses by telephone communication with the person named. However, in the case of a witness served by telephone communication pursuant to this section, neither an order to show cause nor an order for arrest shall be issued until such person has been served personally with the written subpoena. (1777, c. 115, s. 36, P.R.; R.C., c. 31, s. 59; Code, s. 1355; Rev., s. 1639; C.S., s. 1803; 1959, c. 522, s. 2; 1967, c. 954, s. 3; 1971, c. 381, s. 5; 1981, c. 267; 1989, c. 262, s. 2.)

§ 8-60. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-61. Subpoena for the production of documentary evidence.

Subpoenas for the production of records, books, papers, documents, or tangible things may be issued in criminal actions in the same manner as provided for civil actions in Rule 45 of the Rules of Civil Procedure. (1797, c. 476, P.R.; R.C., c. 31, s. 81; Code, s. 1372; Rev., s. 1641; C.S., s. 1805; 1967, c. 954, s. 3; c. 1168.)

§ 8-62. Repealed by Session Laws 1967, c. 954, s. 4.

§ 8-63. Witnesses attend until discharge; effect of nonattendance.

Every witness, being summoned to appear in any of the said courts, in manner before directed, shall appear accordingly, and, subject to the provisions of G.S. 6-51, continue to attend from session to session until discharged, when summoned in a civil action or special proceeding, by the court or the party at whose instance such witness shall be summoned, or, when summoned in a criminal prosecution, until discharged by the court, the prosecuting officer, or the party at whose instance he was summoned; and in default thereof shall forfeit and pay, in civil actions or special proceedings, to the party at whose instance the subpoena issued, the sum of forty dollars ($40.00), to be recovered by motion in the cause, and shall be further liable to his action for the full damages which may be sustained for the want of such witness's testimony; or if summoned in a criminal prosecution shall forfeit and pay eighty dollars ($80.00) for the use of the State, or the party summoning him. If the civil action or special proceeding shall, in the vacation, be compromised and settled between the parties, and the party at whose instance such witness was summoned should omit to discharge him from further attendance, and for want of such discharge he shall attend the next session, in that case the witness, upon oath made of the facts, shall be entitled to a ticket from the clerk in the same manner as other witnesses, and shall recover from the party at whose instance he was summoned the allowance which is given to witnesses for their attendance, with costs.

No execution shall issue against any defaulting witness for the forfeiture aforesaid but after notice made known to him to show cause against the issuing thereof; and if sufficient cause be shown of his incapacity to attend, execution shall not issue, and the witness shall be discharged of the forfeiture without costs; but otherwise the court shall, on motion, award execution for the forfeiture against the defaulting witness. (1777, c. 115, ss. 37, 38, 43, P.R.; 1799, c. 528, P.R.; 1801,

c. 591, P.R.; R.C., c. 31, ss. 60, 61, 62; Code, s. 1356; Rev., s. 1643; C.S., s. 1807; 1965, c. 284; 1971, c. 381, s. 12.)

§ 8-64. Witnesses exempt from civil arrest.

Every witness shall be exempt from arrest in civil actions or special proceedings during his attendance at any court, or before a commissioner, arbitrator, referee, or other person authorized to command the attendance of such witness, and during the time such witness is going to and returning from the place of such attendance, allowing one day for every thirty miles such witness has to travel to and from his place of residence. (1777, c. 115, s. 44, P.R.; R.C., c. 31, s. 70; Code, s. 1367; Rev., s. 1644; C.S., s. 1808.)