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The Writ of Sequestration in Louisiana

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Comments

THE WRIT OF SEQUESTRATION IN LOUISIANA*

Sequestration is one of the five conservatory writs designed to preserve the res of the suit in its status quo until definitive judgment. Being a simple conservatory measure, it confers no rights which did not exist before the sequestration,[1] nor does it create a lien or privilege on the property sequestered.[2] All kinds of property may be sequestered, whether real or personal,[3] including obligations and titles,[4] and the revenues therefrom during the sequestration.[5] That property is perishable furnishes no obstacle to its sequestration.[6]

There are two types of sequestration; judicial, where the judge issues the writ on his own motion; and legal (or conventional), where the writ is granted at the request of one of the parties.[7] The order granting or refusing the writ is an interlocutory one, and hence is not appealable unless irreparable injury will result.[8] The trial court can issue the writ at any time during the suit, even though an appeal has been perfected, as long as it does not effect the matter as submitted to the appellate court.[9] The granting of a judicial sequestration being a matter of trial court discretion,

* Statute and code articles herein cited have been abbreviated and modified for the purposes of clarification.

1. Bank of Alabama v. Hozey, 2 Rob. 150 (La 1842).

2. Art. 724, La. Code of Practice of 1870: ". . . sequestration give[s] no privilege to those (who obtain the writ), until they have obtained a judgment and order of execution on the property sequestered." The writ does not become functus officio when the judgment is rendered in the cause in which it is issued or when such judgment becomes executory, and, if maintained, holds the property sequestered in order that said judgment may be executed. Jennings-Heywood Oil Syn. v. Houssiere-Latreille Oil Co., 117 La. 960, 42 So. 467 (1906).

3. Art. 271, La. Code of Practice of 1870.

4. Art. 272, La. Code of Practice of 1870.

5. Supra note 3.

6. As to the proper procedure when perishable property is sequestered, see infra note 113.

7. Arts. 273 and 274, La. Code of Practice of 1870; see also Art. 2979, La. Civil Code of 1870. Although the term "conventional" has crept into our jurisprudence in describing this type of sequestration, the term "legal" is preferable. "Conventional sequestration" implies that the writ issues as a result of some convention between the parties, whereas the defendant never actually consents to it. The plaintiff is entitled to it by effect of law, not as a result of contract.

8. Schwan v. Schwan, 52 La. Ann. 1183, 27 So. 678 (1900).

9. McFarlane v. Richardson, 1 La. Ann. 12 (1846); State ex rel. Jennings-Heywood Oil Syn. v. De Baillon, 113 La. 572, 37 So. 481 (1904).

mandamus and prohibition will not lie to compel the judge to grant or refuse the sequestration writ, nor to continue or discontinue it.[10]

Since sequestration is only an accessory proceeding,[11] the dismissal of the suit effects the dissolution of the sequestration.[12] This should not be an ex parte dismissal,[13] however, for the purpose of the writ is to hold the property until some *definitive* judgment is rendered. The defendant in the sequestration proceeding, whether in the first instance or on appeal, may be cited either in the jurisdiction where the property is situated or found,[14] or in the jurisdiction of his domicile, as the plaintiff chooses.[15]

When the property has been brought into the custody of one court, no other court may sequester it. The New Federal Rules of Civil Procedure make the Louisiana writ of sequestration available to litigants in the federal courts of Louisiana, regardless of whether the action was lodged in the federal court originally, or removed there.[16] Hence where the federal court sequesters the property, it is no longer subject to a writ from a state court.[17]

Sequestration may be granted in chambers by the judge.[18] Where a judge issues the writ on his own motion, he may do so without a hearing of the parties, provided he predicate his action on *all* of the pleadings and circumstances alleged by the parties.[19] Clerks of district courts, outside of Orleans Parish, also may issue the writ, but it would seem that this power would be limited to

10. State ex rel. Knighton v. Derryberry, 188 La. 412, 177 So. 256 (1937).

11. A court should, of course, have jurisdiction over the principal *demand* to issue the accessory writ. Bradley v. Woodruff, 26 La. Ann. 299 (1874); Gay v. Eaton, 27 La. Ann. 166 (1875).

12. Watkinson v. Black, 14 La. 351 (1840).

13. Allen v. Allen, 165 La. 437, 115 So. 648 (1928).

14. Art. 163 of the Louisiana Code of Practice of 1870, as amended and reenacted by La. Act 64 of 1876, contains the following provision as to in rem proceedings: "provided, that all judgments rendered in such cases shall only be operative up to the value of the property proceeded against, and not binding for any excess over the value of the property in personam against the defendant." Compare Franek v. Turner, 164 La. 532, 114 So. 148 (1927).

15. Art. 163, La. Code of Practice of 1870.

16. Rule 64, Federal Rules of Civil Procedure for District Courts. See Flory and McMahon, The New Federal Rules and Louisiana Practice (1938) 1 LOUISIANA LAW REVIEW 45, 76.

17. Gest & Atkinson v. New Orleans, St. Louis, and Chicago Ry., 30 La. Ann. 28 (1878).

18. Art. 130.1, Dart's La. Code of Practice (1942); La. Rev. Stats. of 1870, § 1936.

19. Ludwig v. Calloway, 191 La. 1000, 187 So. 4 (1939). But see Dickinson v. Texana Oil Co., 144 La. 489, 80 So. 699 (1919), where the writ was set aside because the trial judge based his action solely on the allegations of the plaintiff's petition, without considering the other party's pleadings.

cases of legal sequestration only.[20] In all cases coming within the concurrent jurisdiction of district courts and justice of the peace courts, when suit is filed in a district court, the order of sequestration may be granted by the judge, clerk, or chief deputy clerk thereof.[21]

The Plaintiff's Affidavit and Sequestration Bond

In order to obtain the legal sequestration, the plaintiff must annex to the petition in which he prays for the writ an affidavit setting forth the cause for which the sequestration is claimed.[22] This presupposes that the affidavit is to be made by the plaintiff himself; and, where the plaintiff is present and no proper cause is shown for his not making the affidavit, the oath of his agent is not sufficient to authorize the writ's issuance.[23] The plaintiff should state some particular ground of apprehension in those cases where he apprehends that the property will be disposed of to his prejudice, or at least bring his case within the words of the code and allege that he has good ground.[24] However, the words to be used in the affidavit are not sacramental.[25]

As a general rule the granting of the order of sequestration follows the filing of the petition in the suit, but Article 276 of the Louisiana Code of Practice authorizes the granting of the writ before the filing of the petition in the cases specified in Article 237. In such cases it is necessary that the plaintiff or his attorney (1) has made affidavit and given bond, (2) filed same in the court, and (3) obtained the judge's order for issuance of the writ. Then it is the clerk's duty to issue the writ without any petition being presented, and the sheriff will immediately execute the process. This apparently refers to legal sequestration only; also this procedure seems available only when the judge himself grants the order. The usual petition, however, must be filed on the day following that on which the writ is issued, unless a legal holiday is the next day. In the latter case the petition should be filed on the day next succeeding the day of public rest.[26] As to whether the plaintiff or his attorney should file the petition for the writ with the clerk before presenting it to the judge for the order required,

20. Art. 783.1, Dart's La. Code of Practice (1942); La. Act 204 of 1924, § 1.
21. Art. 145.37, Dart's La. Code of Practice (1942); La. Act 223 of 1928, § 8.
22. Art. 276, La. Code of Practice of 1870.
23. Hawley v. Tarbe, 14 La. 92 (1839).
24. Leavenworth v. Plunkett, 7 La. 341 (1834).
25. Levy v. Goldberg, 1 Orl. App. 311 (1904).
26. Art. 237, La. Code of Practice of 1870, as amended by La. Act 14 of 1880.

it has been held that such prior filing is not a condition precedent to the signing of the order for the issuance of the writ.[27]

Besides the affidavit and the petition for the writ, the plaintiff in the sequestration proceeding must execute a bond in favor of the defendant, with the surety of one solvent person residing within the jurisdiction.[28] This is to discourage the improper use of such a harsh remedy as sequestration, and to afford relief to the defendant in the writ in case it is found that the sequestration has been wrongfully obtained.[29] The amount of the bond is a matter of judicial discretion, except where revenue producing real property is sequestered.[30] In that case the judge must require a bond sufficient in amount to compensate the defendant for all damage he may sustain, *plus* the deprivation of the revenues of the property during the suit.[31] The only case in which the plaintiff is not required to give a sequestration bond is where the defendant has been judicially declared insolvent;[32] and this, even though the property sequestered be revenue producing realty.[33]

To hold the plaintiff and his surety on the bond for the wrongful issuance or the illegal obtaining of the writ, the defendant should show that the writ issued when the plaintiff was not entitled to it under the law.[34] Thus, where a plaintiff attempted to sequester an immovable under Article 275 (8) (which applies only to movables), damages were allowed.[35] In this way a defendant may recover for all damages he sustained from the illegal sequestration, including such items as his attorney's fees and damage to his reputation.[36] But where the writ was dissolved because of

27. Zion Mercantile Co. v. Pierce, 163 La. 477, 112 So. 371 (1927). The court held it to be the mandatory duty of the judge to sign the order when presented with proper affidavit and bond. The fact that costs had not been paid was not grounds for refusing to sign the order—it was with the clerk to raise that matter when he was called upon to file and issue the process.

28. Art. 276, La. Code of Practice of 1870. The plaintiff in forma pauperis seems unexcused from furnishing this bond. See Cadwallader, Civil Suits in Forma Pauperis (1939) 1 LOUISIANA LAW REVIEW 787, 793. See also Orgeron v. Lytle, 180 La. 646, 157 So. 377 (1934).

29. Ibid.

30. Art. 277, La. Code of Practice of 1870. See Mississippi Valley Transport Co. v. Fosdick, Man. Unrep. Cases 3 (1877).

31. Art. 277, La. Code of Practice of 1870.

32. See State ex rel. Hyman v. Lewis, 42 La. Ann. 847, 8 So. 602 (1890).

33. Art. 278, La. Code of Practice of 1870.

34. The defendant may in the same suit by reconventional demand recover from plaintiff damages sustained from illegal resort to the writ. Art. 375, La. Code of Practice of 1870, as amended by La. Act 50 of 1886.

35. Dixon v. Alford, 143 So. 679 (La. App. 1932).

36. American Hoist and Derrick Co. v. Frey, 127 La. 183, 53 So. 486 (1910). Cf. General Finance Co. v. Veith, 184 So. 364 (La. App. 1938). In Dixon v. Alford, 143 So. 679 (La. App. 1932), the court refused to allow as an element of damage defendant's expenses for transportation to the parish seat to defend the suit.

plaintiff's failure to comply with one of the formalities of its issuance, and it appeared that he was entitled to it under the law, no damages were allowed.[37] And, if the dissolution of the writ takes place after hearing on the merits of the case, so that it is impossible to differentiate between attorney's fees for dissolving the writ and those for defending the suit, no allowance for damages will be made on this count, for to do so would in effect be to allow recovery of fees for defending the suit, which is not permissible.[38]

Grounds for Issuance of the Writ

In judicial sequestration, the court may on its own motion issue the writ where the ownership of property is in dispute and where neither party has a more apparent right to possession than the other.[39] This apparently is confined to real property by the terms of the code article.[40] In such cases the judge may continue the writ until the question of ownership has been decided. A previous request that the property be legally sequestered does not affect the court's power thereafter to sequester the property judicially.[41] Only the judge can sequester judicially, even though court clerks may in some instances sequester legally.[42] Perhaps the most common instance of judicial sequestration is where a suit is instituted for the partition of property held jointly in indivision, or property held by a partnership.[43]

Sequestration is a harsh remedy, and can only be resorted to in those cases authorized by the very letter of the law.[44] Thus legal sequestration is limited to eight situations set forth in Article 275 of the Code of Practice:

(1) Where one who has possessed for over one year, and who has been evicted through violence, sues to be restored to his possession.[45] This has been held to refer to the possession of real

37. Barry v. Union Sulphur Co., 167 La. 227, 119 So. 30 (1928). See also Donohoe Oil and Gas Co. v. Mack-Jourden Co., 144 So. 169 (La. App. 1932).

38. Fariss v. Swift, 156 La. 12, 99 So. 893 (1924); Smith v. W. D. Keith Motors Co., 163 La. 395, 111 So. 798 (1927).

39. Art. 274, La. Code of Practice of 1870.

40. Ibid.

41. Allen, West, & Bush v. Whetstone, 35 La. Ann. 846 (1883).

42. Supra notes 20 and 21.

43. Blanchard v. Luce, 19 La. Ann. 46 (1867); Interstate Land Co. v. Doyle, 120 La. 46, 44 So. 918 (1907). Legal sequestration would be used to bring into the custody of the court movable property held in indivision. See Segur v. Sorel, 11 La. 439 (1837).

44. James Beck & Co. v. Brady, 6 La. Ann. 444 (1851).

45. Art. 275(1), La. Code of Practice of 1870.

property.[46] It is absolutely necessary to allege that the eviction was through violence.[47]

(2) Where one sues for the possession of a movable, and fears that the party having possession may send such property out of the court's jurisdiction during the pendency of the suit.[48] A request for possession and a refusal are sufficient to arouse a fear that the property will be sent out of the jurisdiction.[49] The propinquity of the property to the border of another state is an element to be considered in estimating the strength of his apprehension.[50] The question for the court is not whether the defendant intended to remove the property out of the jurisdiction, but whether his acts were such that the plaintiff might apprehend the existence of an intention to so remove.[51] Although Article 275 (2) of the Code of Practice states the removal to be "out of the jurisdiction of the court," it seems tacitly accepted that this phrase is intended to mean a removal out of the state.

(3) Where one claims the ownership or possession of real property, and has good ground to apprehend that the defendant may make use of his possession to waste the fruits and revenues of the property, or convert them to his own use.[52] The question before the court would again be whether the acts of the defendant were such as to induce the plaintiff to believe that such waste or conversion would occur.

(4) Where a woman sues either for a separation from bed and board, or for a separation of property from her husband, and has reason to apprehend that he will ruin her dotal property or waste its fruits and revenues, during the pendency of the action.[53] Dotal property means "that property which the wife brings to the husband to assist him in bearing the expenses of the marriage settlement."[54] Consequently, Article 275 (4) of the Code of Practice has practically lost its vitality through the disappearance of the custom of dowry.[55]

46. Succession of Macheca, 147 La. 164, 84 So. 574 (1920).
47. Copley v. Bonner, 7 La. Ann. 578 (1852).
48. Art. 275 (2), La. Code of Practice of 1870.
49. Leschen & Sons Rope Co. v. Patterson & Co., 130 La. 557, 58 So. 336 (1912).
50. Duncan v. Wise, 39 La. Ann. 74, 6 So. 13 (1887).
51. Ibid.
52. Art. 275 (3), La. Code of Practice of 1870.
53. Art. 275 (4), La. Code of Practice of 1870.
54. Black's Law Dictionary (1933) 614.
55. However, the wife's right to her share of the community seems amply protected by Article 149 of the La. Civil Code of 1870, which authorizes an inventory and appraisement of the community, and an injunction restraining the husband from disposing of any part of such property.

(5) Obsolete. Where a defendant has petitioned for a stay of proceedings and a meeting of his creditors, and such creditors fear that he may avail himself of the stay of proceedings to place the whole or a part of his property out of their reach.[56] Again the matter before the court is whether the facts and circumstances are such as might reasonably induce the creditors to fear such an act by the debtor.[57]

(6) A creditor by special mortgage may sequester the mortgaged property, when he apprehends that it will be moved out of the state before he can have the benefit of his mortgage.[58] This is said to be the only case where a writ of sequestration can issue antecedent to the maturity of the obligation sued on.[59] It is a necessary prerequisite here for the creditor to make oath of the *facts* which induced his apprehension concerning the property[60]—for the creditor merely to swear that he fears the removal is insufficient.[61]

(7) The plaintiff may obtain a sequestration in all cases where he has a lien or privilege on the property, upon complying with the requisites provided by law.[62] This apparently contemplates both movables and immovables.[63] The "requisites provided by law" have been held to be the same as those in Article 275(6), i.e., (1) that the plaintiff should have just ground to apprehend that the property on which he has a privilege will be removed out of the state before he can have the benefit of the privilege, and (2) that the plaintiff make oath of the facts which induced his apprehension.[64] Only the particular property on which the lien or privilege exists may be sequestered, and the writ will not issue where such property has lost its identity.[65] The judgment rendered, if in favor of the plaintiff, should in terms recognize the

56. Art. 275 (5), La. Code of Practice of 1870.

57. Section 5 of Article 275 is for all practical purposes obsolete. The National Bankruptcy Act [11 U.S.C.A.] supercedes and suspends state insolvency laws purporting to discharge a debtor.

58. Art. 275(6), La. Code of Practice of 1870.

59. Egan v. Fush, 46 La. Ann. 474, 15 So. 539 (1894). For a possible exception, see dicta in Catlett v. Heffner & Likens, 23 La. Ann. 577 (1871), pointing out the situation where the privilege exists, even though the principal obligation sued on is not due.

60. Supra note 58.

61. Bres v. Booth, 1 La. Ann. 307 (1846).

62. Art. 275(7), La. Code of Practice of 1870.

63. Succession of Macheca, 147 La. 164, 84 So. 574 (1920).

64. Sullivan & Phelps v. Koy, 5 Orl. App. 37 (La. App. 1907). This interpretation does not alter the rule that the case in Article 275(6) is the only instance where the writ may issue antecedent to the maturity of the obligation sued on.

65. Bulloch v. Camp, 167 So. 839 (La. App. 1936).

existence of the alleged lien or privilege, for a mere personal judgment has the legal effect of dissolving the sequestration.[66]

(8) Sequestration may issue in all cases where a party fears that the other will conceal, part with, or dispose of the movable in his possession during the pendency of the suit, upon complying with the requisites of the law.[67] This section was an amendment to the original Article 275, and its sole purpose is said to be to give the right to the writ when the ownership of a movable in the possession of the defendant was in dispute.[68] The mere fact that it is within the defendant's power to conceal, part with, or dispose of the movable in his possession will justify an affidavit by the plaintiff.[69] This possession need not be physical, but may be either natural or civil, as long as it is within the defendant's power to conceal, part with, or dispose of the movable during the suit.[70] It is not necessary to have reasonable grounds to believe that the defendant will thus dispose of the movable, but the bare fact that he has the power to do so will entitle the plaintiff to the writ.[71]

In all cases of legal sequestration the party must bring his grounds for sequestration within one of the eight categories expressly authorized by law,[72] and in all these instances it will be noted that (1) he must state that he is the owner of the property or has a privilege thereon,[73] and (2) he must allege that the defendant in the writ has either possession or detention of the property.[74]

66. American Multigraph Sales Co. v. Globe Indemnity Co., 11 La. App. 353, 123 So. 358, 360 (1929), holding: "in . . . sequestration cases, . . . a judgment is presumed to cover every phase of the case and, accordingly, where a judgment is silent upon a particular item of relief demanded by plaintiff, that silence has the legal effect of rejecting that portion of plaintiff's demand." See also Nalle v. Baird, 30 La. Ann. 1148 (1878).

67. Art. 275(8), La. Code of Practice of 1870. This article covers the assertion of a privilege on movables as well as a claim to a right of possession to such property. La. Act. 190 of 1912.

68. Succession of Macheca, 147 La. 164, 84 So. 474 (1920).

69. Art. 275.1, Dart's La. Code of Practice (1942); La. Act 190 of 1912, § 1.

70. Blitz v. Guenin, 187 So. 690 (La. App. 1939).

71. Gueydan v. T. P. Ranch Co., 156 La. 397, 100 So. 541 (1924). Prior to Act 190 of 1912, in order to obtain a sequestration under Article 275(8), it was necessary to prove the particular grounds which induced the fear that the defendant would conceal, part with, or dispose of the property in controversy. American Furniture Co. v. Grant-Jung Furniture Co., 50 La. Ann. 931, 24 So. 182 (1898). See Bugea, Lazarus, and Pegues, The Louisiana Legislation of 1940 (1940) 3 LOUISIANA LAW REVIEW 98, 147.

72. Art. 275, La. Code of Practice of 1870, § 108. Talamon v. Ytasse, 4 Rob. 462 (La. 1843).

73. Baer v. Kopfler, 19 La. Ann. 194 (1867).

74. Ozan Lumber Co. v. Goldonna Lumber Co., 124 La. 1025, 50 So. 839 (1909). See also Blitz v. Guenin, 187 So. 690 (La. App. 1939).

The Release or Forthcoming Bond

After the sequestration has been obtained, the defendant may have it set aside by executing a release bond in favor of the sheriff, with one good and sufficient surety.[75] In all cases, whether the property be movable or immovable,[76] the amount of the bond shall be equal to the value of the property released, such value to be determined by the judge.[77] The plaintiff's right to object to the insufficiency of security on release bonds seems now governed by Act 112 of 1916, which provides a special procedure for this objection, and permits substitution of new, additional, or supplemental bond.[78] The bond of release is of no force, however, until the seized property is released by the sheriff.[79]

Both judicial and legal sequestrations may be released on bond.[80] The conditions of the forthcoming or release bond, when the sequestered property is movable, are[81] (1) that the defendant shall not send the property out of the jurisdiction of the court, (2) that the defendant shall not make an improper use of the property,[82] and (3) that he will faithfully present the bonded property[83] after definitive judgment, if he be decreed to restore

75. Art. 279, La. Code of Practice of 1870.

76. Ramos Lumber Co. v. Sanders, 112 La. 614, 36 So. 625 (1904). It is also immaterial whether the suit be directed against "property" as mentioned in Article 271, or against "obligations and titles" as mentioned in Article 272. State ex rel. New Orleans v. Judge, 22 La. Ann. 260 (1870). Rights and interests of a litigant in a pending lawsuit may be seized. Arts. 268.5-268.9, Dart's La. Code of Practice (1942); La. Act 85 of 1928.

77. The provision in Article 279 contemplating that the judge shall fix the amount of the bond is directory to the extent that, where the bond given is sufficiently large, the omission to apply to the judge is immaterial. Vawter v. Morgan, 6 Mart. (N.S.) 46 (La. 1827). Where the amount of the release bond was agreed upon and executed by the parties, the formalities of Article 279 need not be complied with, to make the surety responsible. Coleman v. Hemler, 1 La. App. 29 (1924).

78. The provision in Article 279 that the "act of surety shall be assigned by the sheriff to the plaintiff in the same manner as bail bonds" seems obsolete in view of Section 1 of Act 112 of 1916, that: "All bonds required by law or by the order of any court . . . may be made payable to the clerk of such court, provided that any person in interest can sue upon any bond furnished in connection with any judicial proceeding without regard to who may be named in such bond as to obligee. . . ."

79. Ware v. Wilson, 22 La. Ann. 102 (1870).

80. Ramos Lumber & Mfg. Co. v. Sanders, 112 La. 614, 36 So. 625 (1904).

81. Art. 280, La. Code of Practice of 1870.

82. Improper use includes non-feasance such as allow rent or liens to accumulate on the bonded property. Clapp v. Seibrecht, 11 La. Ann. 528 (1856). But decrease in value of property and natural deterioration are not improper use. Mitchell v. Maxey, 11 La. App. 317, 123 So. 436 (1929).

83. If the defendant is prevented by a fortuitous event or irresistible force from complying with his obligations under the bond, he is exonerated from liability. See Strickland v. Winn, 4 La. App. 8 (1926), where a bonded mule died of a disease known to the equine world as "Blindstaggers."

it to the plaintiff.[84] The sheriff has no authority to accept a release bond with any conditions other than those above mentioned.[85] Where an additional stipulation is inserted in the bond, it will be disregarded;[86] and it would seem that these conditions would by effect of law be written into the bond, whether they are actually included therein or not.[87] The sheriff has no right to make a condition of the bond that the party pay any of the expenses of the sequestration, for the defendant will be liable therefor only in case judgment is rendered against him.[88]

The sureties on a bond to release movables cannot be held for more than the value of the property released.[89] The general rule is that prima facie, at least, the value of the property is measured by the amount of the bond.[90] The principal, of course, should be put in default, and the plaintiff should take the necessary steps to insure the presentation and delivery of the property.[91] Moreover, the surety should be proceeded against directly, and not summarily by rule or motion.[92] Where the sequestration of the movables has been to enforce the lien or privilege, the judgment, if in favor of the plaintiff, must recognize the privilege, in order to impose liability on the surety.[93]

Where the defendant in sequestration bonds immovables, he must execute his obligation in favor of the sheriff, in the same manner and amount as in the release of movables, and give one good and sufficient surety.[94] However, the three conditions of the bond in the release of movables do not obtain in the release of sequestered immovables. The security is given to prevent the defendant, while in possession, from wasting the property; and for the faithful restitution of the fruits that he may have received since the institution of the suit, or the value thereof, in case the plaintiff prevails in the main demand.[95] It is only where the prop-

84. Art. 280, La. Code of Practice of 1870.
85. Mitchell v. Maxey, 11 La. App. 317, 123 So. 436 (1929).
86. Mulligan v. Vallee, 31 La. Ann. 375 (1879); Baker v. Morrison, 4 La. Ann. 372 (1849).
87. Goss v. Turner, 149 La. 327, 89 So. 20 (1921).
88. Fink v. Martin, 10 Rob. 147 (La. 1845).
89. Carroll v. Hamilton, 30 La. Ann. 520 (1878); Cf. Howell v. Titus, 7 La. App. 236 (1927).
90. Mulligan v. Vallee, 31 La. Ann. 375 (1879).
91. Downey v. Kenner, 42 La. Ann. 1129, 8 So. 302 (1890).
92. Colligan v. Benoit, 141 So. 467 (La. App. 1932).
93. American Multigraph Sales Co. v. Globe Indemnity Co., 11 La. App. 353, 123 So. 358 (1929).
94. Art. 279, La. Code of Practice of 1870.
95. Art. 281, La. Code of Practice of 1870.

erty released is immovable that the law fixes responsibility for revenues.[96]

The general rule is that the right of the defendant to bond the sequestration, whether judicial or conventional, of movables or of immovables, is absolute.[97] However, there are three exceptions recognized to this rule: (1) where the defendant is a judicially declared insolvent,[98] (2) where prior to the defendant's application to bond, he has made a cession of his property to his creditors,[99] and (3) where the release of the sequestered property would defeat the purpose of the suit, such as in liquidation, settlement of a partnership, and partition proceedings.[100]

If the defendant fails to exercise his right to bond the property in the manner prescribed within ten days after the sheriff seizes it, the plaintiff may make bond and take the sequestered property into his possession.[101] After this ten day period has elapsed, the plaintiff has the better, though not the exclusive, right to bond the property.[102] The release bond and security which the plaintiff gives are similar to the release bond and security required on the defendant,[103] and may be executed by his agent or his attorney in fact.

The right to bond and take possession has also been extended to an intervener in certain cases.[104] The property must have been sequestered in his actual or constructive possession, and he must make a prima facie showing to the court that he is either the bona fide owner, pledgee, or consignee of such property. The inter-

96. Segassie v. Piernas, 26 La. Ann. 742 (1874).

97. Ramos Lumber Co. v. Sanders, 112 La. 614, 36 So. 625 (1904).

98. Art. 279, La. Code of Practice of 1870; State ex rel. Hyman v. Lewis, 42 La. Ann 847, 8 So. 602 (1890).

99. State ex rel. Simmons v. Theard, 50 La. Ann. 621 (1898). The possession by the sheriff of the debtor's property, under a writ in a suit pending, is divested by the cession; the property is transferred to the syndic; and the suit is arrested. See Art. 2170, 2176, La. Civil Code of 1870.

100. Suit to end indivision in ownership, Interstate Land Co. v. Doyle, 120 La. 46, 44 So. 918 (1907); partnership property, State ex rel. Roth v. Judge, 38 La. Ann. 49 (1886), the partner may not bond the property because, the effects being those of the partnership and not strictly his, he is not such a defendant as is contemplated in Article 279; corporation property, Eltringham v. Clarke, 49 La. Ann. 340 (1897), but see statute controlling annullment or forfeiture of the corporate charter La. Act 124 of 1908, § 2; Dart's Code of Practice (1942), Art. 309.33.

101. Art. 279, La. Code of Practice 1870. This article originally restricted the right to bond to the defendant in the suit. Since 1842 the plaintiff has been allowed the privilege as above stated, and since 1876 an intervener has the right under certain conditions. See Act of 5th of March, 1842, and La. Act. 51 of 1876.

102. Hecker v. Bourdette, 121 La. 467, 46 So. 575 (1908).

103. Art 279, La. Code of Practice of 1870.

104. La. Act 51 of 1876 [Dart's Stats. (1939) § 2140-2143].

vener may then execute a release bond in the same manner and amount, within the same delay, and with the same effect as a bonding by the defendant.[105] Another measure of protection afforded a third party is the third party affidavit, but this remedy will not necessarily result in the recovery of possession of the sequestered property by the third party.[106] However, if allowed, it will force the seizing plaintiff to give an indemnity bond in an amount double the value of the property seized,[107] or deliver up the property to the third party.[108]

The Sheriff's Return and Administration

After the sheriff has (1) sequestered the property pursuant to the order of the court and (2) served the petition and the copy of the order of sequestration on the defendant, he should send his written return to the clerk of the court which gave the order.[109] This return should state in what manner the order was executed, and have annexed to it a true and minute inventory of the property sequestered. The inventory should be drawn in the presence of two witnesses. Where the return of the sheriff contradicts the recitals on the face of the bond of release, the sheriff's entries will control.[110] It is the sheriff's duty to proceed with the inventory without waiting for a final judgment maintaining the writ of sequestration.[111]

In contrast to the procedure in some conservatory writs,[112] the sheriff has a two-fold duty to perform while he retains possession of sequestered property: a careful keeping[113] and a prudent

105. Hardy v. Lemons, 36 La. Ann. 107 (1884).

106. La. Rev. Stats. of 1870, § 3579; La. Act 37 of 1882, § 1; Dart's La. Code of Practice (1942) Art. 773.1.

107. This remedy is limited to personal property, and the third person must claim as owner, either personally or in a representative capacity. The affidavit must state that the party has personal knowledge of the facts, and that he is the real bona fide owner either personally or in said representative capacity; and should set forth all the facts on which the title or claim of ownership is based. Supra note 106.

108. Ibid.

109. Art. 282, La. Code of Practice of 1870.

110. Ware v. Wilson, 22 La. Ann. 102 (1870).

111. Bellau v. Ramsey, 139 La. 983, 72 So. 708 (1916).

112. See comparison of attachment and sequestration in American National Bank v. Childs, 49 La. Ann. 1359, 22 So. 384 (1897).

113. If the property is perishable, or subject to loss or deterioration in value during the suit or before the ordinary formalities of legal sales can be complied with, the court may order, at plaintiff's request, the immediate sale of the thing at public auction. Notice of the time and place of the sale must first be given the defendant in sequestration. No appraisement or advertisement is necessary. The sale shall be for cash to the last and highest bidder, and the proceeds shall be held by the court until final determination of the suit or seizure therein. La. Act 195 of 1936, § 1 [Dart's Stats. (1939) § 2154].

administration.[114] This power to administer carries with it the power to contract for the preservation of the property.[115] The only limitation is that his acts be the same as a prudent man would make under like circumstances.[116] The keeping and administration may be delegated to guardians and overseers, but the sheriff's responsibility remains the same.[117]

For his administration the sheriff is entitled to a just compensation, to be paid out of the proceeds of the property sequestered, if judgment is rendered for the plaintiff and to be charged as costs against the plaintiff, if he be cast in the suit. It is necessary, however, to differentiate between expenses necessary to the keeping and administration of the property, and expenses necessary for the continued operation of the property or inherent by nature to the property, e. g.—in the case of a sequestered oil well, the ordinary expenses of operation.[118] In the latter instance the expenses are not taxed as costs, but follow the property itself and are chargeable to it.

The just compensation paid the sheriff is to be determined by the court, where not otherwise provided.[119] These charges are the subject of proof, however, and not of judicial discretion.[120] Statutory alterations to the general rule provide that the Sheriff of Orleans Parish shall collect no other fees than those expressly

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Nothing in the act should be construed so as to prevent a party from bonding the property as provided by law.

114. Art. 283, La. Code of Practice of 1870. The sheriff is under no duty to insure the property held in his possession. Owens v. Davis, 15 La. Ann. 22 (1860). Where a bill of exchange is sequestered, the sheriff should see that it is presented for payment at maturity, and if not paid, to have it protested and due notice given to all parties to it. Parish v. Hozey, 17 La. 578 (1841). If the property should perish, or be destroyed, without any fault or negligence on the part of the sheriff or his agents, there would be no liability for the loss either to seizing creditors or owners. Owens v. Davis, supra. As to the sheriff's duty in regard to perishable property, see relevant statute condensed in note 113, supra.

115. Jennings-Heywood Oil Syn. v. Houssiere-Latreille Oil Co., 127 La. 971, 54 So. 318 (1910). Although the sheriff, being the executive arm of the court, should ordinarily obtain special authorization from the court in such cases, nevertheless, as the law itself confers this power of administration, he may make contracts for the direct purposes of his administration without such authorization. Art 283, La. Code of Practice of 1870.

116. Art. 283, La. Code of Practice of 1870. Where the contract is not such as a prudent man would make, but still for the preservation of the property, recovery under such contract would be allowed only on quantum meruit. See Jennings-Heywood Oil Syn. v. Houssiere-Latreille Oil Co., 127 La. 971, 54 So. 318 (1910).

117. Art. 283, La. Code of Practice of 1870.

118. Jennings-Heywood Oil Syn. v. Houssiere-Latreille Oil Co., 127 La. 971, 54 So. 318 (1910).

119. Art. 283, La. Code of Practice of 1870.

120. Witkouski v. Witkouski, 16 La. Ann. 232 (1861).

provided for. Hence, where property is kept in the Orleans Sheriff's custody and a keeper or guardian is required, $3.00 per diem is allowable, with provision for more keepers according to the nature of the property.[121]

Closing Remarks

The writ of sequestration has existed in Louisiana in substantially its present form since the Code of Practice of 1825.[122] The later amendatory statutes have been purposed to broaden the scope of the remedy rather than to alter or eliminate portions of the articles themselves. The "jurisprudence" of the court interpreting these articles has been notably "constant." These circumstances would indicate general approval of the sequestration laws by the bench, bar, and legislature.

A question which has probably occurred to many a Louisiana lawyer is why we need three separate and distinct remedies such as sequestration, attachment, and provisional seizure, with three totally different sets of detailed rules. It is not difficult to conceive of one remedy covering all three types of cases, with only such variations in the rules as the type of case may require. Thus, while no suggestion of change is made as to the sequestration laws themselves, a definite improvement could be made by devising one set of rules to cover attachment, provisional seizure, and sequestration.

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REVERSIONARY INTERESTS IN MINERALS

The Louisiana Supreme Court recently decided two cases,[1] *Hodges v. Norton* and *White v. Hodges*. These decisions may have far reaching effects upon the law of oil and gas in Louisiana. It is to a discussion of these cases and the *reversionary interest*[2] involved that this paper is dedicated.

121. La. Act 136 of 1880, § 23; La. Act 69 of 1922; La. Act 398 of 1938, § 1 [Dart's Stats. (1939) § 1378]. In regard to parishes outside Orleans, La. Act 167 of 1928, § 1 [Dart's Stats. (1939) § 1338] govern, but do not seem to change the general rule for charges for keeping and administering the property set out in Article 283.

122. See 2 Louisiana Legal Archives, Projet of the Code of Practice of 1825 (1937).

1. Hodges v. Norton, 200 La. 614, 8 So. (2d) 618 (1942); White v. Hodges, 9 So. (2d) 433 (La. 1942).

2. A reversion has been defined as "the residue of an estate left in the grantor to commence in possession after the determination of some particular estate granted out by him." 1 Simes, Law of Future Interests (1936) 59, § 42.