Garnishment in Louisiana

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IN GENERAL

Before judgment can be obtained in a suit, plaintiff may deem it advisable to procure the issuance of conservatory writs in order to preserve defendant’s property so that when judgment against defendant is obtained, assets will be available out

1. At the time of this writing the Louisiana State Law Institute is preparing a projet for a new code of practice pursuant to a mandate from the Legislature in Act 335 of 1948. Although work is still in progress, the Institute’s proposed revision of those segments of Louisiana practice dealing with provisional remedies and the execution of judgments has been completed. This Comment includes within its scope treatment of the law of garnishment under the Code of Practice of 1870 and in addition indicates the proposed changes in the law of garnishment prepared by the Law Institute.
of which the judgment may be satisfied. Thus, under a writ of attachment, or a writ of sequestration, and without recourse to garnishment proceedings, plaintiff may cause the seizure of property or credits belonging to defendant whether the property is found in defendant's possession, or in the hands of a third person. Similarly, when a money judgment has been obtained which is not paid, the judgment creditor will be prompted to procure the issuance of a writ of fieri facias under which defendant's property can be seized wherever it may be found, and applied toward the satisfaction of the judgment.

While defendant's property and credits may be effectively seized in the hands of a third person by the use of writs of attachment, sequestration, or fieri facias without more, such practice nevertheless leaves much to be desired. Under this procedure, for example, plaintiff must often wait a month or longer before he can know whether there has been a successful seizure of defendant's property, and before he can know whether that amount of defendant's property which is successfully seized is sufficient to satisfy a contemplated or rendered judgment. By the same token, under this practice plaintiff cannot be certain

2. In Section 256 of the Louisiana Code of Practice of 1870 "property" is alluded to as consisting of "goods, effects, rights, credits, or right of actions." Such a definition includes both the corporeal and the incorporeal property of defendant. In view of the popular use of the term "property" to refer only to corporeal property the phrase "property" or credits is frequently used in this Comment as a reminder that incorporeal rights may also be garnished. Perhaps the most frequent use of garnishment is to seize the incorporeal rights such as money owed another, e.g., garnishment of a bank account, or the garnishment of earnings owed defendant by his employer.

3. LA. CODE OF PRACTICE art. 241 et seq., art. 269 et seq. (1870).

4. LA. CODE OF PRACTICE art. 641 et seq. (1870).

5. This may be illustrated by the case where the property seized does not belong to defendant, but instead is owned by another. Under such circumstances it is possible that plaintiff would not discover until long after the property had been sold that he had not in fact seized property belonging to defendant. The real owner need not inform plaintiff of his error unless he wishes to do so, for the owner is amply protected under the law. If the owner wishes he may remain silent until after the seized property is sold under judicial process and then simply institute an action against the sheriff and the seizing creditor for damages. Duperon v. Van Wickle, 4 Rob. 39, 39 Am. Dec. 509 (La. 1843). This is not the only remedy of the real owner, however. He might choose to wait until just before the sale of the property and then institute a third opposition. LA. CODE OF PRACTICE art. 396 et seq. (1870). In this regard see also id. arts. 298(7), 299, 339, and 400. A third possible course of action is open to the owner. Any time before the actual sale of the property the owner might execute a "third party affidavit" setting out the acquisition and ownership of the property seized, thus forcing the sheriff to call upon the seizing creditor to furnish an indemnity bond to protect the sheriff against damages for an illegal seizure and sale. LA. R.S. 13:3869 (1950). In a large number of cases this effects a return of property. It is thus seen that plaintiff might be completely deceived as to the amount of defendant's property he has successfully seized, and cannot know whether he is adequately protecting his rights, or adequately providing a fund from which his judgment can be satisfied.
that the property and credits which he has caused to be seized belong to defendant, and thus plaintiff incurs the risk of damages for wrongful seizure should it later develop that the property in fact belongs to another.\(^6\)

In order to overcome the shortcomings attendant to proceeding solely on the basis of a writ of attachment or \textit{fieri facias} to effect a seizure of defendant's property and credits which lie in the hands of a third person, provision is made in the Code of Practice to implement the effectiveness of these writs by the use of garnishment process. By the use of garnishment proceedings in connection with a writ of attachment or \textit{fieri facias}, plaintiff may cause third persons to be cited to answer under oath detailed interrogatories concerning any property or credits in their possession or under their control which belong to defendant.\(^7\)

The third person thus cited is named the garnishee, who must, within the delay for answering in ordinary suits, clearly and categorically answer the interrogatories propounded.\(^8\) Neglect or refusal of the garnishee to answer may subject him to liability to plaintiff for the full amount which plaintiff seeks to recover from defendant.\(^9\) If the plaintiff has grounds to believe that the answers of the garnishee are false, he may traverse the garnishee's answers and prove that the latter does have property in his possession belonging to the defendant.\(^10\) Thus, by the use of garnishment proceedings in connection with a writ of attachment or \textit{fieri facias}, plaintiff is normally apprised of the status of his seizures within a period of two weeks. Furthermore, under garnishment proceedings plaintiff usually does not incur the risk of liability in damages for wrongful seizure of another's property. While seizure of defendant's property in the garnishee's possession is effective as of the moment of service of the interrogatories, if the garnishee in fact has no property belonging to defendant, no seizure has taken place. These and other principles of the garnishment process will be more fully treated hereafter.\(^11\)

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7. See page 468 infra.
8. See page 468 infra.
9. See page 494 infra.
10. See page 499 infra.
11. Under some circumstances it is unnecessary to use garnishment process since under the action taken against the defendant the plaintiff is already entitled to receive from third persons the property in their hands belonging to defendant. For example, suppose co-defendant A owes co-defendant B a sum of money suf-
It is to be noted that the use of garnishment proceedings in connection with the available writs is optional and that plaintiff may effect seizure of defendant's property in the hands of a third person under one of several writs without the use of garnishment process. In view of the advantages derived from the use of the garnishment process, however, this is seldom done.

**Origin**

The historic source from which a segment of the law is derived is sometimes considered in interpreting the provisions of the Code. The practice of pursuing the property of a debtor in the hands of a third person probably had its origin in the trading centers of England, especially in the "Custom of London." A sufficient to pay the judgment against them. In an attempt to collect the entire judgment from B it has been held that the judgment creditor cannot garnish A to reach the debt owed by A to B on the ground that, since both A and B are liable for the entire amount of the judgment, garnishment of A is not permitted. Such proceedings could add nothing to the liability of A as regards the judgment. Earlier cases involving garnishment of a co-defendant under a judgment in solido reached the same result by holding that the garnishment process was not available since the co-defendant could not be classed as a "third person" under the terms of La. Code of Practice art. 246(1)(3) (1870). J. T. Bailey & Co. v. Lacey, Terry & Co., 27 La. Ann. 39 (1875). In the case of A. M. & J. C. Dupont, Inc. v. Boudreaux, 182 So. 184 (La. App. 1938) the court specifically rejected this analysis.

The fruits of an immovable produced while it is under seizure are considered as being part of the property seized and inure to the benefit of the party making the seizure. La. Civil Code art. 466 (1870); La. Code of Practice art. 656 (1870). Thus when plaintiff seizes defendant's rental property it is unnecessary to garnish the lessee for the periodic rent payments since plaintiff is entitled to receive the rent by operation of law. In Summers & Brannins v. Clark, 30 La. Ann. 436 (1878), the plaintiff not only seized defendant's rental property under a fieri facias but also garnished the tenant. The court commented that under the circumstances "the process of garnishment was unnecessary, and constituted simply another seizure of what was already under seizure." Id. at 439.


13. MILLAR, CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 481-487 (1952). Professor Millar points out that older writers believed that in London this practice represented a survival of the law in force at the time of
citizen of London, by use of the foreign attachment, could pursue
the effects and credits of a nonresident debtor in the hands of a
third person. The desire to expand the jurisdiction of this insti-
tution brought about such a disfigurement of practice that by
the latter part of the nineteenth century, attachment of property
on mesne process disappeared completely in England. However,
the principles of foreign attachment were particularly desirable
for the early colonies since a local debtor could easily move to
another English-speaking jurisdiction to escape from his creditors.
Foreign attachment became so entrenched in American
procedural systems that it became a general pattern of business.

The name “garnishment” was derived by the English from
the French word “garnissement,” which means “a warning to a
person not to pay money or deliver property to another, but ap-
pear and answer to plaintiff’s suit.” It was from the English
jurisprudence that the redactors of the Code of Practice of 1825
introduced garnishment process into the law of Louisiana.
However, garnishment process in Louisiana bears only a general
resemblance to the procedure then in use in England and other
common law jurisdictions. Strangely, although the word “gar-
nishment” is of French origin, “garnissement” is not used in
France to designate the remedy corresponding to that of Louisi-
ana. It is settled that if recourse is taken to the origin of gar-
nishment process, reference should be made to the jurisprudence
of common law jurisdictions and not the laws of France.

Writs Under Which Garnishment Process May Issue

Under the Code of Practice of 1870, the use of garnishment
proceedings is authorized only in connection with the writs of
attachment and fieri facias, and cannot be used as an accessory

the Roman occupation of Britain. He states that this “may be dismissed as some-
thing out of the realm of legend.” Id. at 482.
14. Id. at 483.
15. Id. at 485.
16. Id. at 486.
17. CROSS, PLEADINGS IN COURTS OF ORDINARY JURISDICTION 335 (1885).
(1909); CROSS, PLEADINGS IN COURTS OF ORDINARY JURISDICTION 335 (1885).
19. 5 ENCYCLOPEDIA OF THE LAWS OF ENGLAND 810 et seq. (3d ed. 1940); 14
HALSBURY, LAWS OF ENGLAND 106 et seq. (2d ed. 1934). It is to be noted that
garnishment under a writ of fieri facias still obtains in England. Ibid.
20. See generally 4 AM. JUR. 533 et seq. (1936).
21. The French counterpart to the Louisiana garnishment process is called
saisie-arret. See CUCHE, PRECIS DES VOCS D'EXECUTION § 91 et seq. (1952).
to the writ of sequestration. The Louisiana Law Institute has recognized that no valid reason exists to deprive a plaintiff of the advantages of garnishment process in this instance, and has provided for garnishment under the writ of sequestration in the proposed new Code of Practice. Since garnishment process is presently available only as an accessory to the writ of attachment or fieri facias, the availability of this proceeding in turn depends upon whether plaintiff is entitled to procure the issuance of one of these writs. If no writ is procured, on which to base the garnishment proceeding, or if an improper writ is obtained, garnishment cannot take place and any action taken is null. Garnishment of defendant’s property will be effected, however, if the sheriff has a proper and subsisting writ in his hands at the time he cites the third person to answer the interrogatories. Garnishment cannot be made, however, if before citation of the third person the writ has expired, or has been returned by the sheriff. By the same token, even if a valid garnishment is made, the proceedings will be null if the writ is later dissolved.

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23. See LA. CODE OF PRACTICE art. 246 (1870) and dicta in Ozan Lumber Co. v. Goldonna Lumber Co., 124 La. 1025, 50 So. 859 (1908).
25. Id. at 7, art. 4.
26. The grounds for obtaining a writ of attachment are not within the scope of this Comment. Cf. CODE OF PRACTICE art. 240 (1870).
29. As will more fully appear hereafter, in citing a third person as garnishee, the sheriff serves the third person with plaintiff's petition in the suit of a defendant, the petition for issuance of garnishment proceedings, the interrogatories, the citation, and notice of seizure.
30. Chalmette Petroleum Corp. v. Myrtle Grove Syrup Co., 175 La. 969, 144 So. 730 (1932); Egana v. Bringier, 24 La. Ann. 164 (1872); Matta v. Thomas, 21 La. Ann. 37 (1869). Dicta in some cases indicate that it is sufficient that a proper writ has been applied for at the time the sheriff serves the petition and interrogatories on the garnishee. Pollock v. Williams, 9 La. Ann. 460 (1854); Raboteau v. Valetto, 11 Rob. 218 (La. 1845). The validity of the garnishment is unaffected if having had the writ in his hands at the time of the service of the petition and interrogatories, the sheriff later returns the writ without retaining a copy thereof. Egana v. Bringier, 24 La. Ann. 164 (1872). See also Dockham v. New Orleans, 26 La. Ann. 302 (1874).
Whether the proceedings are based upon a writ of attachment or upon a writ of 
*fieri facias*, virtually the same procedure is employed to effect a garnishment of defendant's property. The few procedural differences which do arise in this regard, however, are important and well defined. These differences arise as to the venue of garnishment proceedings, the time at which judgment will be rendered ordering the garnishee to deliver defendant's property to the sheriff; the parties who are entitled to post bond to obtain the release of property seized; the maximum time within which answers to the interrogatories may be filed; and, whether the seizure will be an amount to satisfy plaintiff's claim alone, or plaintiff's unpaid judgment with costs.

The type of writ on which the garnishment process is based, however, is not the only variable factor in garnishment procedure. Independent of whether the garnishment process is based on a writ of attachment or *fieri facias*, procedural differences also arise depending on whether the type of property sought to be garnished is earnings owed defendant by his employer, or other types of property belonging to defendant held by a third person. These latter differences will be treated in a subsequent section.

**Venue**

The relationships existing among plaintiff, defendant, and garnishee differ, depending upon the character of the writ on which the garnishment proceeding is based. During the course of the suit against defendant, if plaintiff resorts to garnishment under a writ of attachment the garnishment proceeding is merely an incident to the prosecution of the main demand against defendant. **

34. The basic provisions for garnishment under the Code of Practice of 1870 are contained in the section on attachments. Under Article 246 it is provided that garnishment under *fieri facias* is to be conducted "in the same manner and with the same regulations as are provided in relation to garnissees in cases of attachment." Under the provisions of the proposed code the situation is reversed and the basic provisions are treated in the section on execution of judgments. Under Article 3 of Exposé des motifs No. 18, bk. vii, Special Provisions, tit. I, Provisional Remedies, it is provided that "Except as otherwise provided, the provisions applicable to garnishment under *fieri facias* apply also to garnishment under attachment or sequestration." 
35. See page 452 infra.
36. See page 502 infra.
37. See page 470 infra.
38. See page 487 infra.
39. See page 472 infra.
40. See pages 464 and 506 infra.
defendant. Under these circumstances the principal controversy before the court is between plaintiff and defendant and, regardless of the parish in which a third person may be domiciled, the court which has cognizance over the main demand is the court of proper venue in which to file a petition for the citation of the third person as garnishee.

Different circumstances exist, however, where plaintiff has already obtained a money judgment against defendant and resorts to garnishment proceedings under a writ of fieri facias. Here the controversy between plaintiff and defendant has ended and the only issues before the court are between plaintiff and garnishee. Under these circumstances the status of the garnishee resembles that of a defendant, and the garnishee is thus entitled to be proceeded against according to the rules of venue for suits against defendants. As a general rule, therefore, a petition for the issuance of garnishment process under a writ of fieri facias is filed in the court of garnishee's domicile. If two or more persons living in different parishes are sought to be made garnishees, plaintiff will normally be required to institute separate garnishment proceedings in each of such parishes.

When a money judgment is sought against a nonresident over

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42. Marqueze & Co. v. LeBlanc, 29 La. Ann. 194 (1877). The decision in this case settled the previously conflicting authorities on the venue of garnishment under writs of attachment and of fieri facias. No venue provision is found in the Code of Practice of 1870. The rules of venue in the Marqueze case are codified in the proposed Code of Practice. See Louisiana State Law Institute, Proposed Code of Practice, Exposé des Motifs No. 15, Book IV, Execution of Judgments, art. 44, p. 31 (1953). Under this provision the venue for the writ of sequestration is the same as that of the writ of attachment.

For a discussion of the relationship which garnishee bears to the merits of the case as between plaintiff and defendant, and to plaintiff and defendant individually, see page 479 infra.

43. The suit against defendant and the garnishment proceeding under fieri facias are considered separate and distinct and denial of mandamus sought to enforce payment of a judgment directly against defendant cannot be urged as res judicata to a garnishment proceeding brought to execute the judgment. Bullis v. Town of Jackson, 203 La. 289, 14 So.2d 1 (1943).

44. Marqueze & Co. v. LeBlanc, 29 La. Ann. 194 (1877). This rule of venue is codified under the proposed Code of Practice. See generally note 42 supra. See also Alter v. Pickett, 24 La. Ann. 513 (1872); Featherstone v. Compton, 3 La. Ann. 380 (1848); Manuel Motor Co. v. Graham, 69 So.2d 64 (La. App. 1953). In garnishment under fieri facias, defendant is not a party to the garnishment proceedings and is not served with notice of the proceedings. See note 117 infra.

45. See La. Code of Practice art. 89 (1870). This rule often places a hardship in cases where defendant is employed by a large corporation such as a railroad whose domicile is many miles away from defendant's residence. In many of such cases the practical effect of this rule is to deprive plaintiff of the use of garnishment process. See Manuel Motor Co. v. Graham, 69 So.2d 64 (La. App. 1953).
whom jurisdiction cannot be obtained by personal citation, plaintiff may be forced to obtain jurisdiction based on the attachment of whatever property of the nonresident that may be found within the state.\(^{46}\) In this regard, the use of garnishment proceedings under a writ of attachment to search out and seize property held by third persons (which belongs to the nonresident) is an important means of establishing jurisdiction. The parish in which it is known or suspected that one or more third persons can be found in possession of the nonresident's property or credits will determine an available venue for the institution of the suit against the nonresident, as well as the institution of garnishment proceedings against the third persons.\(^{47}\) Since jurisdiction is dependent upon the attachment of the nonresident's property, if it develops that none of the third persons cited as garnishees hold property or credits belonging to the nonresident, the result is that nothing is attached and plaintiff's suit against defendant will be dismissed.\(^{48}\) If any of defendant's property or credits is attached in the hands of a garnishee,\(^{49}\) or if a garnishee fails to answer the interrogatories propounded him and is cast in judgment for the sum of money claimed by plaintiff,\(^{50}\) the jurisdiction of the court is established and the principal demand may be tried on the merits.\(^{51}\) Once jurisdiction has been established, plaintiff is not forced to rely solely on the property thus attached for the satisfaction of the judgment he hopes to obtain against defendant. The jurisdiction thus conferred on the court includes juris-

\(^{46}\) See **La. Code of Practice** art. 240(2) (1870); **La. R.S. 13:3952** (1950).

\(^{47}\) As will be more fully treated on page 454 infra, in this instance the court in which these proceedings are brought could cite several third persons within the parish as garnishees, and jurisdiction will be established if property belonging to the nonresident is attached in the hands of any one of such garnishees.\(^{48}\) Germania Savings Bank v. Peuser, 40 La. Ann. 796, 5 So. 75 (1888); Rose & McCarthy v. Whalet & Edwards, 14 La. Ann. 374 (1859); Oliver v. Gwin, 17 La. 28 (1841). It would appear that the dismissal of plaintiff's suit under these circumstances would not preclude plaintiff from later efforts in the same court to secure jurisdiction on the basis of nonresident attachment by the use of garnishment proceedings. In such proceedings the plaintiff may wish to cite other third persons as garnishees, or indeed, may cause the citation of the same third persons previously made garnishees in the hopes that in the interim property belonging to defendant may have come into their hands. It is to be noted that even though the garnishee has no property belonging to the nonresident, if garnishee fails to answer and a judgment pro confesso is awarded against him, this will be sufficient to sustain the jurisdiction of the court, though in a technical sense no property belonging to the nonresident has been attached. Spring v. Barr, 120 So. 256 (La. App. 1929).


\(^{50}\) Spring v. Barr, 120 So. 256 (La. App. 1929). See note 48 supra.

\(^{51}\) The merits of the main demand against defendant could not be tried until the jurisdiction of the court is established. Any attempt at trial of the merits for the time would be subject to the exception of lack of jurisdiction over the person of the defendant.
diction over the entire demand asserted by plaintiff, and as a
necessary incident to this jurisdiction, the court has power to
extend its process to property belonging to defendant located
anywhere within the state.\textsuperscript{52} Thus in suits based on nonresident
attachment, as in the case of suits based on personal citation of
defendant, the court which has cognizance of the main demand is
the court of proper venue to petition for the initiation of gar-
nishment proceedings under a writ of attachment.

\textit{Persons Who May Be Made Garnishees}

Garnishment proceedings may be both annoying and costly to
a party who is made garnishee. While it would appear that ade-
quate safeguards should be available to protect against abuse of
the right to use garnishment process, plaintiff is allowed much
freedom in the selection of parties he may cause to be cited as
garnishees. Under the provisions of both the Code of Practice of
1870,\textsuperscript{53} and the Proposed Code,\textsuperscript{54} any “third person” is subject to
being made garnishee at plaintiff’s request. While all parties
other than plaintiff and defendant are normally regarded as be-
ing strangers or “third persons” as to the principal litigants,
there are nevertheless some parties who cannot be made gar-
nishees.

Under some circumstances, the nature of the legal relations
existing between a third party and defendant are such that cita-
tion of the party as garnishee would be equivalent to the garnish-
ment of defendant himself. Parties thus identified with the de-
fendant\textsuperscript{55} are not “third persons” within the meaning of the
Code, and therefore cannot be made garnishees. Thus, when de-
fendant is an interdict, his property cannot be garnished in the
hands of his curator since the latter stands in the place of the
interdict in all matters pertaining to the possession and adminis-
tration of the interdict’s estate.\textsuperscript{56} A person may or may not be
regarded as a third party subject to citation as garnishee depen-
ding upon the capacity in which the party possesses defend-
ant’s property. Thus in cases where defendant is a corpora-
tion, corporate officers who possess corporate property in their ca-

\textsuperscript{52} Kahn & Bigart v. Sippili, 35 La. Ann. 1039 (1883).
\textsuperscript{53} LA. CODE OF PRACTICE art. 246(1) (S) (1870).
\textsuperscript{54} LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOsé
\textsuperscript{55} Regarding the citation of a co-defendant as garnishee when judgment in
solido has been obtained against several defendants see note 11 supra.
\textsuperscript{56} Converse v. Dicks, 179 La. 339, 154 So. 17 (1934).
capacity as officers are not third persons subject to citation as garnishees. However, it would not be denied that the same officers could be made garnishees in their capacity as debtors of the corporation for the unpaid subscriptions on the stock which they held in the corporation.

The rule that any party who may be considered as a “third person” within the contemplation of the Code is subject to being made garnishee admits of at least one exception. While a wife in her capacity as debtor to the community is technically a “third person” in regard to the community, it has nevertheless been held that the wife is not subject to garnishment by creditors of the community.

Once it has been determined that various parties belong to the class of persons subject to citation as garnishee, plaintiff may freely choose which party or parties he wishes the court to make garnishee. Plaintiff’s choice is not restricted to making only those parties garnishees who may reasonably be expected to hold property belonging to defendant. The courts have sanctioned

57. Swift & Co. v. Centerville Co., 161 La. 183, 108 So. 408 (1926). The court in this case observed that in other states a contrary result is reached. The decisions are usually based on local statutes permitting such action. No statute in Louisiana authorizes this action.

58. Brode v. Firemen’s Insurance Co., 8 Rob. 244 (1844) semble.

59. Kelly & Frazier v. Robertson, 10 La. Ann. 303 (1855). The announced basis of decision in this case was that the husband could not sue the wife to collect the community debt, and that it was not intended that a creditor could exercise any greater right than the debtor himself could exercise. This rationale is not sound, however, as is pointed out by the court in the garnishment case of Summers & Brannins v. Clark, 30 La. Ann. 436, 466 (1878).

60. Article 246(3) of the Code of Practice would seem to require that a judgment creditor must have “reason to believe” that a third party holds property of defendant or is indebted to him before the judgment creditor could use garnishment under fieri facias. Article 246(1) of the Louisiana Code of Practice of 1870 providing for garnishment under writ of attachment would seem to indicate that a party could be made garnishee only if plaintiff “knows or suspects” that prospective garnishee has in his possession property belonging to the defendant, or that he is indebted to the defendant. From a practical standpoint, the requirement of simple suspicion, without regard to the reasonableness of such suspicion, is tantamount to permitting garnishment of whomever the plaintiff desires. No cases were found where the court attempted to delve into the question of whether plaintiff actually did have “knowledge or suspicion” or “reason to believe” that the garnishee had any property or credits belonging to defendant. Some decisions have permitted garnishment under circumstances which would tend to indicate that these requirements are disregarded. See note 61 infra.

In the proposed Code of Practice the requirement of “knowledge or suspicion” or “reason to believe” is omitted, the appropriate article reading simply “... by petition the [plaintiff] may cause a third person to be cited as a garnishee. ...” See LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSE DES MOTIFS, No. 15, Book IV, Execution of Judgments, art. 39, p. 26 (1953). It is to be noted that while the compilers of the proposed new Code have not prescribed more stringent requirements as to who may be made garnishees, they have given the garnishees some relief from the burden and risks imposed on a party made
the garnishment of parties even though there is only a remote possibility that any of defendant's property will be found. Furthermore, plaintiff is not limited in the number of parties he may cause to be cited. In one case the court permitted the garnishment of forty-nine insurance companies based on plaintiff's belief that certain property destroyed by fire might have been owned by defendant and that if so, the defendant might have carried fire insurance.

Property Which Is Subject to Garnishment

Although a third party may hold property or credits belonging to defendant, and although such party belongs to the class of persons subject to citation as garnishee, plaintiff may nevertheless be prevented from garnishing all or part of defendant's property because the property itself is of a type which is exempt from seizure by statute. Ordinarily plaintiff may garnish all species of defendant's property which is under the garnishee's control, whether that property consists of the tangible effects belonging to defendant, or whether it takes the form of an incorporeal right such as a debt owed defendant by the garnishee. By special statutes, however, garnishment process cannot be used to seize certain items.

garnishee. As will be later noted, the compilers of the code have provided new safeguards for garnishee against the risk of being liable for the whole of plaintiff's claim under a judgment pro confesso, for parties to answer the garnishment interrogatories. See page 497 infra.

61. Isaac v. Commission Reguladora del Mercado de Henequen, 204 La. 1, 14 So.2d 865 (1943) (fishing expedition by plaintiff).

62. Ibid. This was done under a single writ of fieri facias.

63. For the legal effect of garnishee's claim of ownership of the property garnished, and the procedure to establish that such property in fact belongs to defendant, see page 480 infra.

64. It would appear that factual control by a third person over the defendant's property is sufficient possession to authorize the use of garnishment process, whether or not the garnishee's control is based on legal authority. Buddig v. Simpson, 33 La. Ann. 375 (1881).

Article 262 of the Code of Practice of 1870 speaks in terms of the garnishment of property belonging to defendant which the garnishee has in his possession, by whatever title he may possess the same, as well as what sums he may owe to such defendant, whether the same be due or not yet due. In Ivens v. E. M. Ivens & Co., 30 La. Ann. 249, 250 (1878), it was said that "title" in this article referred to the right by which the garnishee holds for or under the defendant as bailee, lessee, or otherwise. It would appear from this case that defendant's luggage in a hotel, or defendant's valuables in a bank safety deposit box could be effectively seized under garnishment process. Article 262 does not apply to the case where the garnishee himself claims ownership of the property. Ivens v. E. M. Ivens & Co., supra. When garnishee answers claiming title to the property, garnishment process cannot reach the property though it in fact belongs to defendant. Garnishment process cannot be used as a substitution for the revocatory action or the action in declaration of simulation.

65. See LA. CODE OF PRACTICE arts. 642, 241 (1870).

188, § 1, pp. 711-12 (some of the exempt items are the books, tools and instruments necessary for the execution of defendant's trade or calling; certain basic household furniture, appliances, and utensils including "bed, bedding or bedstead, . . . cooking stove, and utensils of said stove, . . . plates, dishes, knives and forks, spoons, . . . dining table and dining chairs, . . . washtub, . . . smoothing iron, ironing furnaces . . .;" linen and wearing apparel; and the rights of personal servitude against the estate of a minor child).


**LA. R.S. 23:1205 (1950)** (the payments due for workmen's compensation).


**LA. R.S. 17:1013 (1950)** (retirement system benefits, Orleans Parish School employees).

**LA. R.S. 17:883 (1950)** (Orleans Parish Teacher's Retirement System Benefits; State School Employees' Retirement System Benefits).

**LA. R.S. 17:673 (1950)** (Teacher's Retirement System Benefits).

**LA. R.S. 17:1233 (1950)** (School Lunch Employees' Retirement System Benefits).

**LA. R.S. 33:6103 (1950)** (Parochial Employees' Retirement System Benefits).


Certain other types of defendant's property which are exempt include gratuitous payments made by employers to their employees or his survivors. **LA. R.S. 20:33 (1950)**: family portraits; musical instruments played or practiced by any member of defendant's family; arms and military accoutrements; or poultry or fowls for family use. **LA. CODE OF PRACTICE art. 644 (1870)**, as amended, **La. Acts 1942, No. 188, § 1, pp. 711-12**. Money allowed for succession of deceased husband to dependent widow as widow in necessitous circumstances. **LA. CIVIL CODE art. 3252 (1870)**. See Johnson v. Bolt, 146 So. 375 (La. App. 1933).

Under the homestead exemption provision in **LA. CONST. art. XI, § 1**, the following are exempt from seizure even though they are not found on the homestead: two work horses, one wagon or cart, one automobile truck, one yoke of oxen, two cows and calves, twenty-five head of hogs, or 1,000 pounds of bacon, or its equivalent in pork. Of course, land or property lying outside the state is not subject to seizure by garnishment process issuing from Louisiana courts. Bancker v. W. Harlington & Co., 30 La. Ann. 158 (1878). Property taken from a prisoner by the sheriff cannot be garnished since in legal contemplation such money is considered as still being upon his person except for the purpose for which it was impounded. Property or money carried on the person is not subject to attachment or sequestration. See Hotel Grunewald Co. v. Brakenridge, 13 Orl. App. 174 (La. App. 1916). See also Whitney Central Trust & Savings Bank v. Norton, 157 La. 199, 102 So. 366 (1924).

The jurisprudence has extended the types of property exempt from seizure to include funds belonging to the Federal Government irrespective of the nature of defendant's claim to the funds. Works & Rhea v. Shaw, 156 So. 81 (La. App. 1934); Quigles v. Davis, Gunby's Dec. 89 (La. 1885). Similarly, with the exception of liability for wages, salaries, and commissions of employees, funds belonging to the state government, or any of its political subdivisions are not ordinarily subject to seizure by garnishment process. Works & Rhea v. Shaw, 156 So. 81 (La. App. 1934); Droes v. Parish of East Baton Rouge, 36 La. Ann. 340 (1884).

But property owned by a municipality which is not and can never be needed for strictly municipal or public purposes may be treated as the private assets of the municipality and may be levied on and sold under execution for the debts of the corporation. Bulis v. Town of Jackson, 203 La. 259, 14 So.2d 1 (1943).

The earnings owed defendant by his employer are normally only partially exempt from garnishment. Defendant's earnings are wholly exempt, however, in cases where they are derived from employment with the federal government, and in certain cases in which the main demand against defendant is based on a cause of action arising outside the state. In all other instances, 80% of defendant's wages are exempt from garnishment, subject to the further qualification that in no event can defendant be deprived of a minimum of $60 of his earnings each month, this sum being always exempt. It is to be noted that this exemption for defendant's earnings can be effectively circumvented if plaintiff procures an assignment of wages from defendant. This result would appear to be against the spirit of the earnings' exemption, since plaintiff may obtain all of defendant's earnings under an assignment. However, the theory is that the assignment operates automatically to vest the earnings

68. See note 66 supra.
69. Under LA. R.S. 13:3912 (1950), in cases where the cause of action arose outside this state, defendant's wages are exempt from garnishment if the wages are both earned outside of the state and are payable outside the state. It is provided that it is the duty of the garnishee in such cases to plead this exemption unless the defendant is actually served with process. It is to be noted that this exemption would not apply if the wages were either earned in Louisiana, or are payable in Louisiana.
70. This exemption applies to all employments, whether the employee is skilled or unskilled, whether the employee works for private enterprise or for the state government or its political subdivisions, and whether compensation is paid in the form of wages, salaries, or commissions. LA. CODE OF PRACTICE art. 644(2) (1870).

The amendment to Article 644(2) in 1942 overturned the prior jurisprudence to the effect that the salaries of state officials were exempt from seizure, e.g., see Wild v. Ferguson, 23 La. Ann. 752 (1871). Similarly, the broad terms of the amendment obliterated the fine distinction which grew up over the interpretation of the word "laborer." See, e.g., Groves & Rosenblath v. Atkins, 160 La. 489, 107 So. 316 (1926).

71. LA. CODE OF PRACTICE art. 644(2) (1870). In Civic Agency v. Quealy, 172 So. 555, 556 (La. App. 1937), the proper method of computing this exemption was said to be: "... if [the employee] earned as much as $60 [he] should receive not less than $60, but that, if he received more than $60, 20 per cent of the total should be subject to seizure, provided that the deduction from the total of 20 per cent should not reduce the balance available to the employee to less than $60." (Emphasis added.) See also Jones v. Commagere, 189 So. 603 (La. App. 1939) (court made inquiry to determine amount of total salary).

However, if the assignment of wages is for a loan under the "Small Loan Act" the employer must consent in writing to the assignment, and the lender can obtain an assignment of only ten percent of the employee's salary. LA. R.S. 6:587, 588, as amended (1932). Whether this limitation on the percentage of assignable salary prohibits an assignment of ten percent of the salary to a second lender after the employee has already assigned ten percent of his wages to a prior lender is not clear.
in plaintiff as they accrue, and thus no wages are ever owed defendant to which the earnings' exemption could apply.\textsuperscript{73}

Even though the property or credits are of a type subject to seizure under garnishment process, plaintiff may nevertheless be prevented from seizing them because defendant's right to the ownership of the property or credits in question is so imperfect that it cannot be said to belong to defendant. Whether defendant's right to ownership of the property or credits is sufficient to support a seizure under garnishment process is determined solely from the facts existing at the time the interrogatories and other pleadings are served on the garnishee\textsuperscript{74} since this is the time at which seizure is effected.\textsuperscript{75} The general rule under the provision of the Code of Practice is that defendant's right to the property and credits held by a third person is sufficient to support seizure under garnishment process if the defendant is in all respects entitled to ownership of the property or credits or if the only imperfection in his ownership is that the time for payment or delivery has not yet arrived.\textsuperscript{76} Thus a sum owed defendant at

\textsuperscript{73} Thomas v. Young, 71 So.2d 308 (La. App. 1954). The Full Faith and Credit Clause of the United States Constitution may operate to circumvent the exemptions from garnishment process when a foreign judgment is rendered against the garnishee, even though the defendant is a Louisiana resident, and his labor is performed in this state and he is always paid in Louisiana. See Williams v. St. Louis & S.W. Ry. Co., 109 La. 90, 33 So. 94 (1902).

\textsuperscript{74} Silverman v. Grinnell, 165 La. 587, 115 So. 789 (1928) ; Humphrey v. Midkiff, 122 La. 939, 48 So. 331 (1909) ; Maduel v. Mousseaux, 29 La. Ann. 228 (1877) ; Blanchard v. Cole, 8 La. 160 (1835) (semblé) ; Simon v. Hulse, 124 So. 845 (La. App. 1929). The general rule is that seizure affects only such property and credits subject to garnishment which are in the garnishee's custody at the moment seizure is effected, and from the fact that seizure takes effect upon the service of the interrogatories and the other pleadings on the garnishee. See textual discussion at page 471 infra. An express exception to this rule is made in Article 4667 of the Civil Code of 1870, which provides that the fruits of an immovable property gathered or produced under seizure are considered as coming under the seizure. A second exception to this rule is found in LA. R.S. 13:3921-3927 (1950), where wages or salaries are garnished. See page 506 infra.

\textsuperscript{75} Maduel v. Mousseaux, 29 La. Ann. 228 (1877). It is to be noted that garnishment process may be used to seize sums due defendant under an executory or completed contract, even though the garnishee claims that for some reason, such as breach of contract, nothing is due defendant. In such cases plaintiff could traverse the answers of the garnishee and on trial of the traverse, a very summary proceeding, attempt to force the settlement of the dispute arising out of the contract between garnishee and defendant. The garnishee could be seriously prejudiced by trying the dispute in the garnishment proceeding, rather than trying it under ordinary process in a suit between himself
a future date on a non-negotiable promissory note may be garnished before maturity of the note.\textsuperscript{77} Under this general rule, no basis for garnishment exists, however, if the defendant's claim to ownership of the property or credit in question is contingent in nature.\textsuperscript{78} Accordingly, the residual interest which an heir has in a succession under administration cannot be garnished.\textsuperscript{79} Similarly, damages which defendant claims for personal injury from a tortfeasor cannot be garnished before the defendant has been awarded a judgment by the court.\textsuperscript{80} The mere fact that a dispute exists between defendant and garnishee as to the precise amount of money owed defendant does not of itself classify the garnishee's liability as contingent.\textsuperscript{81} At least two exceptions\textsuperscript{82} have been made to the general rule that in order to form a basis for seizure under garnishment process defendant must either be in all respects entitled to ownership of the property or credits in question, or else the only imperfection in his ownership is that the time for payment or delivery has not yet arrived.

and defendant. Accordingly the jurisprudence permits the garnishee to object to the trial of such issues in the garnishment proceeding. If garnishee fails to object, however, he loses his right to the determination of the issue by ordinary process. These situations are discussed more fully on page 481 infra.


\textsuperscript{78} Silverman v. Grinnell, 165 La. 587, 115 So. 789 (1928); Maduel v. Mousseaux, 29 La. Ann. 228 (1877); Coleman, Britton & Withers v. Finimore, 16 La. Ann. 253 (1861) (installment owed defendant under a building contract cannot be garnished if failure to complete the contract on time operates to forfeit the installment). Of course, if the installment is absolutely due at the time the interrogatories are served, the installment may be garnished. See Morehouse Lumber & Bldg. Material Co. v. Jacob & Walker, 139 So. 713 (La. App. 1932), aff'd on rehearing, 144 So. 100 (La. App. 1932), aff'd, 177 La. 76, 147 So. 504 (1933). See Annot., 82 A.L.R. 1115 (1933).

\textsuperscript{79} First National Bank & Trust Co. v. Drexler, 171 So. 151 (La. App. 1936). This decision is also based on the ground that to permit garnishment would hamper the administration of the estate. As to the heir's interest in an unliquidated succession for which no administrator or executor has been appointed, see note 110 infra.


\textsuperscript{81} See Appalachian Corp. of La. v. Compania General de Petroleo, 162 La. 774, 111 So. 160 (1927); Marchand v. Bell, 21 La. Ann. 33 (1869).

\textsuperscript{82} A third exception arises on grounds and policy considerations independent of the nature of the claims which defendant has against property belonging to him in the garnishee's hands. Plaintiff may seize assets which defendant has pledged to the garnishee, but such assets are sold subject to the garnishee-pledgee's claim. Kirkpatrick & Co. v. Oldham, 38 La. Ann. 553 (1880). This decision rests on the policy of the law that the property of a debtor is the common pledge of all his creditors, and that the pledgee's right is only that of priority of privilege over the plaintiff on the proceeds from the sale of the property.
The first exception is a product of the jurisprudence, and operates to subject to seizure property and credits of defendant which may be said to be in esse at the time the interrogatories and other pleadings are served on the garnishee.83 Under this rule the courts are apparently willing to permit the seizure of property and credits at the time of the service of the interrogatories and other pleadings even though the defendant's right to receive them in the future is dependent upon the occurrence of one or more contingent events. Thus when defendant lumber company and the garnishee are parties to an executory contract to mill and sell lumber, plaintiff is permitted to seize the proceeds which may later accrue to defendant under the contract, although defendant's right to such proceeds is contingent upon the performance by defendant of his obligation to saw the logs supplied him, and although the amount of such proceeds is dependent upon the number of logs supplied and the price at which the lumber is sold.84 The courts have not defined the nature of the minimum legal claim which defendant must have in property or credits to categorize them as being in esse. Due to the small number of cases on the question, no accurate guide can be formulated to determine in a given case whether defendant's claim to property and credits will be considered as being contingent in nature and thus not subject to seizure, or whether seizure will be permitted on the ground that as to defendant the property and credits are in esse.85 It is to be noted that in a limited sense

83. This rule was apparently first stated in the case of Humphrey v. Midkiff, 122 La. 939, 48 So. 331 (1909), as a means to explain the decisions in the cases of Buddig v. Simpson, 33 La. Ann. 375 (1881) and J. E. Fay & Egan Co. v. Ouachita Excelsior Saw and Planing Mills, 50 La. Ann. 205, 23 So. 312 (1898), connecting case, 51 La. Ann. 1708, 26 So. 386 (1899). The most recent acknowledgments of this rule were made in the cases of Simon v. Hulse, 124 So. 845 (La. App. 1929) and United States v. Feazel, 49 F. Supp. 679 (W.D. La. 1943).


85. "In esse" is defined in BLACK'S LAW DICTIONARY (4th ed. 1951) as "in being" or "actually existing." In the Fay & Egan case (referred to above) it could be said that defendant had some contract right at the time the interrogatories and the pleadings were served upon him. But cf. Buddig v. Simpson, 33 La. Ann. 375 (1881), in which seizure was permitted of money placed under garnishee's custody after the interrogatories were served, though on the same day. In the case of Humphrey v. Midkiff, 122 La. 939, 48 So. 331 (1909), it was said that the deposit was "in esse" on the day service was made and therefore subject to seizure. This case would apparently suggest that the seizing power of the writ on which the garnishment proceeding is based has an extended life. As to this question, see page 471 infra. It would appear that these cases have nothing in common from which any rule could be devised to predict the treatment the court
the general rule under the provisions of the Code of Practice of 1870 permits seizure of property and credits which are in esse by authorizing seizure, although the time of delivery or payment of the property and credits in question has not yet arrived. It was probably the intention of the compilers of the Code of Practice of 1870 that this should prescribe the limits within which property and credits in esse should be subject to seizure under garnishment process. When the passage of time is the sole obstacle to defendant’s right to demand the property or credits from the garnishee, there is no contingency and the court may safely adjudicate upon the property and credits without prejudicing the rights of the garnishee, and without vainly attempting to seize that which may not accrue.

The second exception to the general rule regarding the nature of the claim defendant must have to property and credits held by the garnishee in order to support seizure under garnishment process, arises from statutory enactment. By Act 181 of 1932 the garnishment of wages, salaries, and commissions in the hands of defendant’s employer were exempted from the operation of the general rule. Under this statute seizure is made under a single garnishment proceeding not only of the accrued earnings due defendant for the work he has performed, but also of so much of defendant’s future earnings as is necessary to satisfy plaintiff’s claim.

It is to be noted in connection with the consideration of property which is subject to garnishment, that while normally the rights which plaintiff has against the property or credits in question are measured by the rights which defendant has against the garnishee, under certain circumstances the plaintiff acquires greater rights than those to which defendant is entitled. The

86. LA. R.S. 13:3921-3927 (1950). This statute is popularly known as the “Continuing Garnishment Statute.”
87. Prior to the enactment of this statute the general rule under Article 246 of the Code of Practice of 1870 permitted garnishment of only the accrued wages owed defendant. See e.g., Humphrey v. Midkiff, 122 La. 339, 48 So. 331 (1909).
88. The detailed operation of the procedure for garnishment of defendant’s earnings will be treated subsequently, page 506 infra.
89. Exposition Ry. & Improvement Co. v. Canal St. Expositions Ry., 42 La. Ann. 370, 7 So. 627 (1899) ; Summers & Brannins v. Clark, 30 La. Ann. 436, 439 (1878) ; The statement is made in Summers case that “the proposition that the of his debtor must be taken cum grano salis, and is not absolutely true.” See also Relf & Co. v. Boro, 17 La. Ann. 258 (1865) ; Many cases overlook the technicalities involved and broadly state the contrary position. See, e.g., Kelly & Frazier v. Robertson, 10 La. Ann. 303 (1855).
defendant may divest himself of his rights to ownership of property or credits without divesting plaintiff of the right to treat the property as still being owned by defendant. This situation would arise in transactions involving the sale of a movable unaccompanied by delivery of the thing sold,90 or the assignment of a debt without notice of the assignment to the debtor.91 Under such circumstances plaintiff could garnish both the sum owed defendant and the thing sold even though the defendant could exercise no rights of ownership against the vendee or assignee.

GARNISHMENT OF PROPERTY AND CREDITS OTHER THAN WAGES AND SALARIES

Procedure

The basic procedural rules governing garnishment proceedings are found in the Code of Practice. The demands imposed upon the garnishee under the provisions of the Code of Practice of 1870 produced undesirable results in cases where an employer was made garnishee in order to seize defendant's earnings.92 To remedy this situation, in 1932 the Legislature prescribed special rules which largely supplant the applicability of the provisions of the Code of Practice to the garnishment of wages, salaries, and commissions due defendant by his employer.93 These provisions are found in the Revised Statutes of 1950.94 As a result of this special legislation, certain aspects of the procedure prescribed to garnish defendant's earnings are different from the procedure used to garnish other types of property. The type of property sought to be garnished, therefore, is important in determining the procedure by which garnishment is effected. Since the differences in the two procedures are not radical, the procedure for garnishing property other than defendant's earnings will be presented first, and the procedure to garnish wages, salaries, and commissions will be separately treated by indicating the points at which these special

92. See page 506 infra.
93. LA Acts 1932, No. 18.
94. LA R.S. 13:3921-3927 (1950). These provisions will not be incorporated into the proposed Code of Practice, and will remain in the Revised Statutes. See LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSE DES MOTIFS No. 15, Book IV, Execution of Judgments 55 (1954).
rules depart from the procedure prescribed under the provisions of the Code of Practice.

Garnishment proceedings are often used to seize defendant’s bank account, or to seize a debt owed defendant by a third person. Though seldom used for other purposes, garnishment proceedings may likewise be utilized to seize tangible assets belonging to defendant such as merchandise stored in another’s warehouse, or livestock and autos which may have been placed in another’s custody.

**Petition.** Garnishment proceedings must be commenced by petition.\(^9\) When garnishment is sought under a writ of attachment, plaintiff ordinarily incorporates his request for garnishment process in the petition in which he institutes suit against defendant. These proceedings may be requested by supplemental petition, however, anytime before judgment is rendered in the case.\(^8\) The only allegations required as the grounds on which a writ of attachment may be procured, are the amount of money or property which plaintiff claims against defendant\(^9\) and the fact that plaintiff believes a designated third person is indebted to defendant or holds property belonging to him.\(^8\) It is not necessary for plaintiff to allege the circumstances under which the garnishee is obligated to defendant.\(^9\) In the prayer of the petition, plaintiff asks that a writ of attachment be issued; that the designated third person be made and cited as garnishee; and that he be ordered to answer the accompanying interroga-

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\(^9\) LA. CODE OF PRACTICE art. 250 (1870). Express authorization for garnishment process to issue by supplemental petitions has been omitted from the proposed Code of Practice. General authorization for supplemental petitions are found in LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 7, tit. 1, Pleading, c. 7, Amended and Supplemental Pleadings (1954).

\(^7\) Bird v. Cain, 6 La. Ann. 248 (1851). The description of the claim against defendant is necessary in order to apprise garnishee of the amount of defendant’s assets seized in his hands, and of the amount of liability which the garnishee will incur if he fails to answer the interrogatories. While the petition is the more appropriate plan, it may also be placed in the interrogatories. Failure to mention specifically the definite amount claimed against defendant either in the petition or the interrogatories is fatal to garnishment proceedings. National Park Bank v. Concordia Land & Timber Co., 159 La. 86, 105 So. 234 (1925); Copley v. Snow, 4 La. Ann. 521 (1849). See also Bird v. Cain, 6 La. Ann. 248 (1851).

\(^8\) In the case of garnishment of wages, salaries, and commissions, the fact of employment must be alleged.

\(^9\) Rice Stix Dry Goods Co. v. Saunders, 130 La. 627, 58 So. 413 (1912); Bean v. Mississippi Union Bank, 5 Rob. 333 (La. 1843).
100. See Fleming, A Formulary of Civil Procedure 651 (1933); Louisiana State Bar Ass'n, Louisiana Formulary Annotated 27 (1951).

101. State v. Rightor, 49 La. Ann. 696, 22 So. 245 (1897). The usual practice is for the garnishee to answer the interrogatories under oath before a notary.

102. Whenever plaintiff thinks it proper to propound interrogatories to the garnishee to be answered in open court, plaintiff is bound to move the court to appoint a day for the garnishee to appear. If plaintiff fails to do so the garnishee is relieved from the obligation of appearing in open court, and if the plaintiff proceeds to trial without procuring the appointment of a day, the plaintiff waives his right to have the garnishee answer the interrogatories. Petway v. Goodin, 12 Rob. 445 (La. 1846). See also Cockfield v. Tourres, 24 La. Ann. 168 (1872); Dwight v. Webster & Co., 7 La. Ann. 538 (1852); Spears v. Nugent, 2 La. Ann. 11 (1847); Parmely v. Bradbury, 13 La. 351 (1839).

103. The only difference is that plaintiff would allege the amount of the judgment he has obtained rather than the amount of money he originally claimed against defendant. Of course, the prayer must be for the writ of fieri facias rather than for a writ of attachment.

104. If garnishment process issues from the same court which rendered judgment in the principal demand the petition bears the same title and docket number as the suit in which the judgment was rendered. In Bank of Monroe v. Ouachita Valley Bank, 124 La. 798, 50 So. 718 (1909), the court held plaintiff's garnishment proceedings to be of no effect when plaintiff submitted a petition to the court which rendered judgment in the principal demand bearing a different title and docket number from the suit in which the judgment was rendered and the fieri facias issued. There is some doubt as to whether this case would be followed today. Cf. Kunnes v. Kogos, 109 La. 652, 123 So. 122 (1929).

105. See page 453 supra.

106. Normally plaintiff will ask for a writ of fieri facias in this petition. If plaintiff wishes, however, he may procure his fieri facias from the court in which he obtained his judgment against defendant and require the clerk thereof to send the writ to the sheriff of the parish where the third person is domiciled. Featherstone v. Compton, 3 La. Ann. 380 (1848).

107. In Isaac v. Comision Reguladora del Mercado de Henequen, 204 La. 1,
only one petition is filed, separate and distinct garnishment pro-
ceedings are brought against each garnishee cited.\textsuperscript{108}

\textbf{Court order for garnishment process to issue — service by
the sheriff.} Upon consideration of plaintiff's petition, most
courts issue a formal order for garnishment process to issue.
The issuance of such an order is not required by either the Code
of Practice of 1870, or the proposed Code of Practice. The Su-
preme Court has held that if the interrogatories are embodied
in the text of the petition an order for garnishment process to
issue is unnecessary.\textsuperscript{109} The premise on which these cases are
based is that the copy of the petition containing the interroga-
tories and the citation as garnishee are sufficient notice to the
garnishee of the obligation under which he is to answer. Whether
an order is necessary if the interrogatories are simply attached
to the petition as in the case where the interrogatories are
printed on a standard form is undecided. It would appear, how-
ever, that if plaintiff recites in the text of the petition that he
wishes to have the attached interrogatories considered as being a
part of the petition itself, that sufficient warning would be given
to the garnishee and that no order for garnishment process to
issue would be necessary.\textsuperscript{110} The safe course to follow in any
event is for the order to be issued.

The sheriff must cite the designated party as garnishee, and
must serve upon him a notice of seizure,\textsuperscript{111} and a copy of the

\textsuperscript{108} 14 So.2d 865 (1943), forty-nine different garnishees in the same petition.
\textsuperscript{109} First National Bank v. Moss, 52 La. Ann. 170, 26 So. 828 (1899) ; Smith
v. McCall, 122 So. 149 (La. App. 1929).
\textsuperscript{110} Mitchell v. Murphy, 151 La. 977, 60 So. 636 (1913); Parmely v. Brad-
bury, 13 La. 351 (1839). It is to be noted that the Mitchell case speaks in terms
of an order for garnishment process to issue, and that the Parmely case speaks in
terms of an order for the garnishee to answer. Both refer to the question of
whether the garnishee is legally obligated to recognize the validity of the garnish-
ment proceedings commenced against him. When an order for garnishee to answer
is issued by the court it would normally be in the form of an order for garnish-
ment process to issue. The contents of an order for garnishment process to issue
ordinarily substantially tracks the prayer of the petition. But if the garnishee is
to be required to answer in open court an order is necessary. Dwight v. Webster
\textsuperscript{111} The early case of Elder v. Rogers, 11 La. Ann. 606 (1856) contains lan-
guage which apparently holds the order unnecessary when the interrogatories are
simply attached to the petition. In light of the emphatic language used in the
Mitchell case, however, this case is of doubtful value.
\textsuperscript{111} The Code of Practice of 1870 contains no provision requiring that notice
of seizure be served upon the garnishee. \textit{But cf.} Ornelas v. Silvan Newburger Co.,
139 La. 832, 72 So. 372 (1916). In Billeaudex v. Manuel, 159 La. 146, 105 So.
266 (1925), garnishment was not permitted of an heir's interest in an unliquidated
succession because there was no legal representative appointed upon whom notice
of seizure could be served. For a case indicating that service of notice of seizure is
a requisite see Koningh v. Knecht, 48 So.2d 409 (La. App. 1950). \textit{Article 40
petition and the interrogatories. Under both the Code of Practice of 1870, and under the proposed Code, this service must be personal. This requirement of personal service has been rigidly enforced and cannot be waived. If the garnishee has concealed or absented himself in order to avoid personal service, the regular means of service of citation are authorized. Special rules are provided for the garnishment of a partnership, and a domestic or foreign corporation.

There is no requirement that defendant be served with notice that seizure has been made in the hands of the garnishee.

Interrogatories. As previously indicated, the interrogatories may be listed separately and attached to the petition, or they may be placed in the text of the petition itself. Since plaintiff usually has little or no knowledge concerning the affairs of defendant, and since even with the use of interrogatories the answer which may be obtained from the garnishee cannot be conditioned on an answer to an interrogatory, it is probable that service need be made only of the supplemental petition. If notice of citation as garnishee is not served on the third party, the garnishment proceedings are null.

(Execution of Judgments) of the Proposed Code of Practice expressly provides for the service of notice of seizure on garnishee.

112. LA. CODE OF PRACTICE art. 252 (1870). See also Koningh v. Knecht, 48 So.2d 409 (La. App. 1950). In garnishment under attachment when garnishment process is procured by supplemental petition, valid service on the garnishee can be made only by service of both the original as well as the supplemental petition. Lovell v. Cartwright, 17 La. 547 (1841). In garnishment under fieri facias, it is probable that service need be made only of the supplemental petition.


116. See note 115 supra.

117. In garnishment under fieri facias it has been held that it is not necessary that defendant judgment debtor be served with notice of seizure. Chalmette Petroleum Corp. v. Myrtle Grove Syrup Co., 175 La. 969, 144 So. 730 (1932). No case or statute was found which requires notice of seizure to be served on defendant when garnishment is made under a writ of attachment. Since notice to the debtor is not necessary for nonresident attachment, it would follow by analogy that it would not be necessary for garnishment under attachment.

118. See page 467 supra.
The courts early required the garnishee to submit to the most pointed and searching interrogatories. Plaintiff is entitled to probe the conscience of a garnishee and to make pertinent inquiries calculated to elicit the truth as fully as he might do on cross-examination of defendant himself. The scope and the nature of the interrogatories, however, must not go beyond the purpose of garnishment process and can inquire only concerning any debts owed defendant by the garnishee, or any property belonging to defendant which is in the garnishee’s custody. If an interrogatory inquires about other matters, however closely related they may be to the satisfaction of plaintiff’s claim against defendant, the garnishee is not required to answer. The proper course for the garnishee to follow in this event is to file an exception to the interrogatories indicating that due to the nature of the particular interrogatory no answer is required by law. Thus an interrogatory asking garnishee whether he was indebted to the wife of the defendant is improper and need not be answered by the garnishee. Moreover, garnishment process cannot be used as a substitute for the revocatory action. Thus the garnishee is not required to answer an interrogatory inquiring whether property held in the garnishee’s own name really belongs to defendant.

When plaintiff prepares the interrogatories to accompany his petition for garnishment proceedings he should take care to make a full inquiry into whether the garnishee is indebted to defendant or holds property belonging to him. Aside from the obvious advantage of an early determination of whether any of defendant’s property or credits have been seized, it is to be noted that once the initial set of interrogatories has been propounded to the

119. See page 501 infra.
126. Kearney v. Nixon, 19 La. Ann. 16 (1867). For numerous cases reciting the prohibition against using garnishment process as a substitute for the revocatory action, and the action in declaration of simulation, see note 175 infra.
garnishee, plaintiff has no right to propound supplemental interrogatories, although under some circumstances the court in its discretion may permit him to do so. As will be developed more fully hereafter, answers of the garnishee which are responsive to the interrogatories propounded are the sole measure of any liability of the garnishee unless plaintiff can establish the garnishee's liability by successfully traversing the latter's answer in accordance with stringent proof requirements.\footnote{127} It is much easier for plaintiff to establish essential facts by eliciting them from the garnishee through searching interrogatories than by traversing his answers. So long as the garnishee's answer to the initial interrogatories has not been filed there would appear to be no objection to permitting plaintiff to file supplemental interrogatories. When the garnishee has answered the initial interrogatories propounded to him, however, permitting plaintiff to propound supplemental interrogatories involves the danger that plaintiff may be seeking to escape the task of formally traversing the garnishee's answer but nevertheless indirectly accomplishing the same result by propounding interrogatories based on the knowledge he has gained from the answers of the garnishee. When the court suspects that resort is made to such tactics, plaintiff will not be permitted to file supplemental interrogatories.\footnote{128} Relegating plaintiff to a traverse of garnishee's answers in such case is sound. The requirement that the answers be traversed is a safeguard afforded the garnishee against over-zealous plaintiffs. Where it is clear that plaintiff is not attempting to indirectly traverse the garnishee's answer, however, the courts have permitted plaintiff to propound supplemental interrogatories.\footnote{129}

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\footnote{127} See page 490 infra. \footnote{128} Securities Finance Co. v. Phipp, 157 So. 747 (La. App. 1934). See Ober, Nanson & Co. v. Matthews, 24 La. Ann. 90 (1872) (court permitted additional interrogatories to be filed when it was clear that the garnishee bank had made errors in its answer. Plaintiff alleged he wished to give the bank an opportunity to correct these errors rather than subject the bank to the embarrassment of having its answers traversed). \footnote{129} Coleman, Britton & Withers v. Fennimore, 16 La. Ann. 253 (1861). Garnishee answered further liability to defendant-contractor was contingent on defendant completing the performance of the contract on designated day. During appeal designated day arrived and Supreme Court remanded the case to trial court to permit filing of supplemental interrogatories. See also Ober, Nanson and Co. v. Matthews, 24 La. Ann. 90 (1872), note 128 supra.
tories under facts and articles. It is probable that these provisions should not be construed in pari materia.

Seizure. Under the provisions of the Code of Practice of 1870 and the proposed Code, seizure of defendant's property and credits in the hands of the garnishee is constructive in nature and is effected simply by the service of the petition, citation, and interrogatories on the garnishee. In contrast to the method of effecting seizure under a writ of attachment or fieri facias without more, property and credits are subjected to seizure under garnishment process without the necessity of being selected and identified by the sheriff as the specific assets which he causes to be seized. By operation of law defendant's property and credits in the garnishee's hands may be subjected to seizure even though both plaintiff and the sheriff are unaware of their existence, and in some cases even though the garnishee does not believe he is indebted to defendant. Due to the fact that the constructive seizure effectively seizes every asset of defendant in the garnishee's hands which is properly subject to seizure under garnishment process, some limit must be placed on the amount of property and credits seized in order to avoid unnecessary interference with the affairs of defendant. Though

132. The seizure thus effected was styled a "constructive" seizure in Lehman, Stern & Co. v. E. Martin & Co., 132 La. 231, 61 So. 212 (1913) and Matta v. Thomas, 21 La. Ann. 37 (1869).
133. LA CODE OF PRACTICE art. 246 (1870); LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, Execution of Judgments art. 39 (1954). While Article 246 of the Code of Practice of 1870 mentions only the service of interrogatories, as previously indicated, valid seizure cannot be made without the service of the petition and citation. Technically speaking, seizure takes place without service of the notice of seizure on the garnishee, but as previously indicated at note 111 supra service of notice of seizure on the garnishee is an indispensable requirement for effecting a valid seizure.

The statement is often made in the jurisprudence that no valid seizure can be made unless at the time of the service of the interrogatories and other pleadings on the garnishee the sheriff has in his hands the writ of attachment or fieri facias on which the garnishment proceeding is based. See note 30 supra. The case of Pollock v. Williams, 9 La. Ann. 460 (1854) would appear to hold that the garnishee may require proof of the issuance of a valid and subsisting writ as a prerequisite for effecting a valid service upon him.

134. See note 133 supra.
135. Amount owed defendant in dispute at time seizure effected and garnishee even answered interrogatories to effect that there was no indebtedness. Later, however, garnishee and defendant entered into a compromise, thus liquidating the claim. Held, the compromise was an acknowledgment of the pre-existing indebtedness, and the acknowledgment relates back to the date of the seizure and the indebtedness is covered by the seizure. Appalachian Corp. of La. v. Compania General de Petroleo, 162 La. 774, 111 So. 160 (1927); Marchand v. Bell, 21 La. Ann. 33 (1869).

136. As a practical matter the draftsmen of the Code of Practice of 1870, and the earlier garnishment act found in Act 53 of 1839 could not have intended that this ancillary procedure should prove to be more harsh than seizure under a writ
the proposed Code is silent on the point, under Article 256 and other provisions of the Code of Practice of 1870, the aggregate value of the assets seized in the garnishee's hands cannot exceed the amount of plaintiff's claim against defendant plus an estimated amount to cover court costs, interest, and costs of seizure and sale where such items may be incurred. Under this rule the same amount of defendant's assets is permitted to be seized under garnishment process, as is permitted in the case where seizure is made under a simple writ of attachment or fieri facias without the use of garnishment process. Thus if plaintiff has obtained a $250 judgment against defendant and under garnishment process seeks to execute that judgment against defendant's $1000 bank account, the garnishee bank should be lawfully entitled to honor withdrawals on defendant's account so long as the account at no time decreases below an amount necessary to pay the judgment and the interest which may accrue thereon. If the garnishment process was issued as an adjunct to a writ of attachment, the garnishee bank should be lawfully entitled to honor withdrawals on defendant's account so long as the account at on time decreases below the amount claimed in the suit against the defendant.

The sheriff does not take the property and credits seized of attachment or fieri facias. Further, it would be completely untenable to hold that it was intended that one who resorts to garnishment process should run the risk of incurring damages for excessive seizure, e.g., under Article 642 of the Code of Practice of 1870, simply because the garnishee happened to have assets belonging to defendant in excess of the claim which plaintiff has against defendant. On the contrary, as previously indicated, the probable purpose of incorporating garnishment procedure into Louisiana law was to make possible a more effective and safer seizure than was possible by effecting seizure under a simple writ of attachment of fieri facias.

137. Article 256 of the Code of Practice of 1870 provides: "The sheriff shall . . . seize and detain so much of whatever property the debtor may possess within the parish over which his powers extend . . . as may be equal in value to the amount claimed in the suit." While this article is cast in terms applicable to seizure under a writ of attachment without the use of garnishment process, viz., "seize and detain" defendant's property, reference is made in the article to notification of the garnishee "if there be such made party to the suit," and hence it may be fairly said that the measure of property to be seized by the sheriff would be the same in cases of attachment (garnishment). Article 642 authorizes garnishment under writs of fieri facias "in the manner and with the same regulations as are provided in relation to garnishees in cases of attachment, and pursuant to special laws."

It is to be noted that while Article 256 dealing with attachment authorizes seizure in an amount equal in value to the amount claimed in the suit, Article 651, dealing with fieri facias, provides: "The sheriff shall seize the property of the debtor to a sufficient amount to discharge the judgment, as well as interests and costs: he may even seize something beyond this amount, to pay the interest which may become due, and the estimated costs of the seizure and sale." Hence, the maximum amount of assets which may be seized under garnishment process differs according to the particular writ on which the garnishment proceeding is based.

138. See note 137 supra.
from the garnishee's possession at the time of seizure. Once seizure is effected, the garnishee becomes the legal custodian of the seized assets, and is obligated to hold them subject to the order of the court. These assets remain under seizure until final disposition thereof is made by the court, unless for varying reasons later to be noted they are earlier released from seizure. As in the case of seizure under a writ of attachment or fi ci facias without the use of garnishment process, the act of seizure operates to vest in plaintiff a privilege on the property and credits seized.

With one statutory exception, the settled rule under the jurisprudence is that seizure can be effected only upon such property and credits as are subject to seizure under garnishment process at the moment the interrogatories and other pleadings are served on the garnishee. As to the individual garnishee’s possession at the time of seizure.

139. Lehman Stern & Co. v. E. Martin & Co., 132 La. 231, 61 So. 212 (1913); A. & J. Dennistoun & Co. v. N. Y. Croton & Steam F. Co., 6 La. Ann. 782 (1851); Caldwell v. Townsend, 5 Mart. (N.S.) 307 (1827); Schoefield v. Bradlee, 8 Mart. (O.S.) 495 (1829). The garnishee cannot be ordered to deliver the property or credits to the sheriff until after plaintiff has obtained judgment against defendant in the main demand. See generally page 502 infra.


142. La Code of Practice art. 722 (1870); Dockham v. New Orleans, 26 La. Ann. 302 (1874); Marchand v. Bell, 21 La. Ann. 33 (1869) (fi ci facias). Attachment of defendant’s property gives plaintiff a privilege on the property and credits seized from the moment of seizure provided plaintiff later procures judgment against defendant. Board of Supervisors of L.S.U. v. Hart, 210 La. 78, 26 So.2d 361 (1946). No cases were found applying this rule to garnishment under a writ of attachment. The operation of this rule will not be affected, however, by the fact that the attachment was effected via garnishment proceedings. This case is codified as to both attachments and sequestration in Louisiana State Law Institute, Proposed Code of Practice, Exposé des Motifs No. 15, Book IV — Execution of Judgments art. 7 (1954). The priority among privileges placed on the same property or credits is not changed by the fact that the seizure is made under garnishment process rather than by a simple seizure under writ of attachment or fi ci facias without more. See Gomilla v. Milliken, 41 La. Ann. 116, 5 So. 548 (1889); Dockman v. New Orleans, supra; Louisiana Oil Refining Corp. v. Hammet, 145 So. 38 (La. App. 1932). Seizure may also operate to interrupt prescription. See National Park Bank v. Concordia Land & Timber Co., 159 La. 86, 105 So. 234 (1925).

143. When immovable property is seized, under Article 466 of the Civil Code of 1870, the revenues and other fruits produced by the property during the seizure are deemed to come under the seizure. See page 474 infra. When wages or salaries are garnished, under La. R.S. 13:3921-3927 (1950), unearned wages as well as earned wages are deemed to come under the seizure. See page 506 infra.

shee, no authority exists in either the Code of Practice of 1870 or the proposed Code to afford the writ of attachment or *fieri facias* power to place property and credit under seizure beyond this point of time. In the absence of such authority, and in view of the harshness of devices which permit the seizure of property belonging to another, the rule of the jurisprudence restricting the seizing power of these writs is sound. It is to be noted that this rule applies only to determine what property and credits are seized in the hands of a particular garnishee, and does not contravene the previously mentioned rule that during the life of a single writ of attachment or *fieri facias*, plaintiff may cause several different parties to be made garnishees and thereby effectively seize property and credits belonging to defendant in the hands of each. Accordingly, property and credits which come into the garnishee's hands subsequent to the time the interrogatories and other pleadings were served on the garnishee do not come under the seizure. The single exception to the rule determining what property and credits are seized in the garnishee's hands exists in the case where revenues or other fruits are produced by immovable property during the period of

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145. Article 246 of the Code of Practice of 1870 provides in part: "The property and effects in the possession of a third person, belonging to defendant, or debts due by him to such defendant, shall be deemed to be *levied* as by the sheriff, from the date of service of the interrogatories on such persons." Article 39 of the Proposed Code of Practice, Exposé des motifs No. 15, bk. IV — Execution of judgment — contains the language: "Seizure of such property or indebtedness under garnishment shall *take effect* upon service of the petition, citation, and interrogatories." Neither of these provisions would fairly support an interpretation that an extended duration of time is contemplated with which additional property and credits coming into the garnishee's control should likewise come under the seizure.

146. Writs of attachment are *stricti juris* and all formalities and requirements prescribed must be strictly complied with under pain of nullity. Lehman v. Broussard, 45 La. Ann. 346, 12 So. 504 (1893). This proposition is well settled. The basic provisions for garnishment under the Code of Practice of 1870 are contained in the section on attachments. Under Article 246 it is provided that garnishment under *fieri facias* is to be conducted "in the same manner and with the same regulations as are provided in relation to garnishees in cases of attachment." Under the provision of the proposed Code the situation is reversed and the basic provisions are treated in the section on Execution of Judgments. Article 30 of Exposé des motifs No. 18, bk. VII, Special Proceedings, tit. I, Provisional Remedies, states that except as otherwise provided, the provisions applicable to garnishment under *fieri facias* apply also to garnishment under attachment or sequestration. It is probable that the arrangement of the proposed Code has no substantive significance, and that the only reason for the change in arrangement was recognition that in the vast majority of cases garnishment is used in execution of money judgments. See Drake, A TREATISE ON THE LAW OF SUITS BY ATTACHMENT § 667 (4th ed. 1873).

147. See pages 457 and 466 *supra*.

time when the property is under seizure. Though such revenues and other fruits accrue after the time of service of the interrogatories and other pleadings, under Article 466 of the Civil Code, they are deemed to come under the seizure already effected.\textsuperscript{149} This exception is of minor importance since immovable property is ordinarily not seized under garnishment process.\textsuperscript{150} Since Article 466 has no application to movable property, any dividends or interest which might accrue from movable assets which are commonly seized under garnishment process such as corporate securities or deposits in savings accounts would be governed by the general rule and would not be deemed to come under the seizure.\textsuperscript{151}

As a practical matter the amount of defendant's assets seized in the hands of a single garnishee are usually insufficient to satisfy the claim which plaintiff has against defendant. If plaintiff is aware of this before he brings the garnishment proceedings, he may cause several third persons to be cited as garnishees at the same time\textsuperscript{152} in order to seize an ample amount of defendant's assets as quickly as possible. This may become particularly advisable if it is feared that defendant may seek to place his assets beyond plaintiff's reach. As will be developed more fully hereafter,\textsuperscript{153} this practice involves the possibility that the total amount of assets seized will exceed that amount which is necessary to satisfy plaintiff's claim against defendant. Although this situation seldom arises, the result is that plaintiff exposes himself to liability in damages to defendant for excessive seizure. In the case where the assets seized in the hands of a single garnishee are insufficient to satisfy plaintiff's claim, or where such a deficiency exists after several persons have been

\textsuperscript{149} La Civil Code art. 466 (1870). This provision applies to seizures under either writ of attachment or writ of fieri facias. Posey v. Fargo, 187 La. 122, 174 So. 175 (1937) (attachment); New Orleans Compress Co. v. Katz, 185 La. 723, 170 So. 244 (1938) (fieri facias). In neither of these cases was seizure effected under garnishment process. No garnishment cases were found involving the use of Article 466. In light of garnishment process being only an ancillary proceeding, however, it is probable that this provision applies equally well to seizures under garnishment process. See also note 11 supra.

\textsuperscript{150} It is possible that occasion for the use of this article could arise in the case where defendant had made a simulated sale of immovable property to the garnishee and the garnishee failed to object to the use of garnishment process to try the question of the ownership of the property. See page 480 infra.

\textsuperscript{151} Provisions for seizure under garnishment process are strictly construed. See note 146 supra.

\textsuperscript{152} Though plaintiff asks in a single petition that two or more persons be cited as garnishees, there is created a separate garnishment proceeding against each garnishee. Neither garnishee is a party to any other proceeding than his own. First Natchez Bank v. Moss, 52 La. Ann. 170, 26 So. 828 (1899).

\textsuperscript{153} See page 477 infra.
cited as garnishees, plaintiff can still bring further garnishment proceedings in an attempt to seize additional assets belonging to defendant.

While property and credits coming into a garnishee's hands subsequent to the service of the interrogatories and other pleadings ordinarily do not come under the seizure effected, plaintiff may by supplemental petition have an additional garnishment proceeding brought against the same garnishee and thereby effect a new seizure which will reach such newly acquired assets as are found in his hands. Of course, bringing an additional garnishment proceeding against the garnishee will not reach newly acquired property and credits which the garnishee has disposed of before the additional seizure is effected. The garnishee is not obligated to assist plaintiff in seizing defendant's property and credits, nor is the garnishee bound to refrain from cooperating with defendant in order to dispose of newly acquired assets to prevent them from being seized in his hands.

If plaintiff wishes to cause additional third persons to be cited as garnishees in order to supply the deficiency in the amount of assets seized, he may do so by means of petition to the proper court or courts according to the rules of venue. Whenever seizure is made in the hands of two or more garnishees, however, the possibility arises that an excessive amount of defendant's assets may be seized. In the absence of special instructions given by plaintiff to the sheriff, all the garnishable assets in the hands of each garnishee cited are seized up to the amount necessary to satisfy the claim which the petition states plaintiff has against defendant, plus an amount for interest and

154. It is probable that plaintiff should allege in his petition that it is believed that additional property and credits have come into the garnishee's hands since seizure was effected under the previous garnishment proceedings. It would not be necessary to procure an additional writ of fieri facias or attachment to effect the second seizure if the original writ was still valid and subsisting. If the writ has expired or has otherwise been returned by the sheriff, it would be necessary to procure the issuance of an additional writ under which the seizure could be effected. See page 471 supra.

155. See page 452 et seq. supra.

156. Apparently the only reported case on this problem is Lovell v. Cartwright, 17 La. 547 (1841). In this case, when an insufficiency resulted from seizure in the hands of the first garnishee, a second garnishee was cited who failed to answer the interrogatories. Although the service of pleading on the second garnishee was defective, and therefore no seizure effected, the court noted in dictum that had the second garnishee been cast in judgment pro confesso, it would have been entitled to a deduction or credit for the proceeds which had previously been attached in the hands of the first garnishee. The court in effect recognizes that the amount of assets for which the second garnishee was accountable was the amount claimed by plaintiff in the petition.
various costs if garnishment is under a writ of *fieri facias*. This is the necessary result stemming from the nature of the constructive seizure effected under garnishment process in which assets are seized without being selected and identified by the sheriff at the time of seizure. While defendant may suffer only nominal damages because of excessive seizure, the likelihood that substantial damages may be incurred is enhanced by the fact that the defendant is not entitled to receive notice that seizure has been made in the hands of the garnishees. In the case where seizures have already been made under garnishment process and plaintiff knows the amount of defendant's assets which he has seized, at least two protective measures would be available to plaintiff to permit him to make an additional seizure under garnishment process without incurring the risk of damages for excessive seizure. The safest precaution is to state in the petition for the citation of the additional party as garnishee that designated assets belonging to defendant have already been seized. A second protective measure is to inform the sheriff before he cites the additional party as garnishee that certain assets have already been seized and that he should seize only so much of defendant's assets in the garnishee's hand as is necessary to satisfy the deficiency. It is to be recognized, of course, that the problems involved in effecting an excessive seizure are largely academic, and are not likely to arise in practice.

Despite the ability of the constructive seizure effected under garnishment process to subject to seizure all the garnishable assets in the garnishee's hands, it must be noted that various practical and procedural difficulties may prevent plaintiff from effectively subjecting the assets seized to the satisfaction of his claim.

Plaintiff obtains the maximum benefits from garnishment process when the garnishee makes responsive and truthful an-

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157. See note 137 supra. This is the only result that can be derived from Article 256 of the Code of Practice of 1870. The amount which plaintiff claims from defendant must appear in the petition or in the interrogatories. See note 97 supra.

158. See note 117 supra.

159. There would appear to be no danger of excessive seizure in the case where only one person has been made garnishee, and plaintiff wishes to bring additional garnishment proceedings against the same garnishee to seize assets which have come into the latter's possession subsequent to the initial seizure. It would appear unreasonable to assume that more was demanded of the garnishee than the amount claimed in the suit no matter how many times that garnishee was cited. A different problem would arise, however, if assets had been seized in the hands of another person before the garnishee was garnished the second time.

160. The sheriff could designate in the notice of seizure served on the garnishee the amount of assets which he seizes in the latter's hands. See note 137 supra.
swers. Untruthful and incomplete answers made in a manner which prevents detection result in the seizure of little or no assets which in contemplation of law have been made available to the plaintiff.

Release of seizure. As previously noted, property and credits seized under garnishment process are not taken from the garnishee at the time of seizure, but remain in the garnishee's hands until the latter is ordered by the court to deliver them to the sheriff. Since the property and credits seized in the garnishee's hands belong to the defendant, the general rule is that only defendant is entitled to post bond and obtain release of the seized assets. As the garnishee is the legal custodian of the property and credits seized, in some instances defendant may find no practical advantage in obtaining the release of the assets. When defendant deems it advantageous to obtain the release of the assets seized, however, he has the right to do so. Defendant need not wait to obtain the release of the assets until after the garnishee has answered the interrogatories propounded him and the plaintiff has learned the identity of the property and credits seized. If defendant wishes to free the assets from seizure as quickly as possible, he may post the required bond immediately after seizure has been effected, and before the garnishee has answered. In such cases, if defendant leaves in the garnishee's hands the assets which have been released, the fact that the assets have been seized and then released from seizure does not relieve the garnishee from the obligation of answering the interrogatories. If defendant obtains the release of the assets into his own possession, however, the garnishee is relieved from the obligation of answering the interrogatories and the garnishment proceeding is terminated. This is based on the premise that since defendant has posted bond for the release of the assets,
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and plaintiff has consented to the sufficiency of the surety on the bond, both parties to the suit have taken the property and credits out of the garnishee’s hands, and hence there is no longer any reason for the garnishment proceeding to continue. It would appear to be clear, however, that before defendant could have released into his own possession the assets seized in the garnishee’s hands, defendant’s claim to the assets must entitle defendant to possession as against the garnishee.

The only exceptions to the rule that only defendant may post bond and obtain the release of assets seized under garnishment process arise when garnishment is made under a writ of attachment. The garnishee under a writ of attachment may post bond and obtain the release of those assets seized in his hands which he holds under pledge or consignment from defendant.

If plaintiff withdraws garnishment proceedings, seized assets in the hands of the garnishee are automatically released. Additionally, assets of defendant which are not admitted in the answer are released from seizure if the delay for traversing expires.

Procedural and Substantive Rights of the Garnishee

For the protection of his interests the garnishee is afforded certain rights which may be classified as: the right to ordinary process; the right to be proceeded against according to the rules of procedure prescribed for garnishment process; the right to assert defenses which he has against the defendant; and the right to protection against double liability. These rights will be separately treated in subsequent sections of the paper.

The garnishee occupies the position of a stakeholder whose only responsibilities are to answer truthfully the interrogatories, to support his answers should they be traversed, and to pay or deliver the property and credits in his hands to whomever the

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166. It is to be noted that the proposed Code contains provisions which will authorize garnishment under a writ of sequestration. If these provisions are adopted by the Legislature, a second group of exceptions will be created. See note 158 infra.

167. La. R.S. 13:3941 (1950); Louisiana State Law Institute, Proposed Code of Practice, Exposé des motifs No. 18, Book VII, Special Proceedings, art. 9, tit. 1, Provisional Remedies (1954). These provisions apply also to the writ of sequestration.

court may order. As a stakeholder, the garnishee must stand aloof from the claims which all other parties have to the property and credits in his hands. He may not inquire into the merits of the controversy between plaintiff and defendant and cannot oppose the garnishment proceeding brought against him by showing that plaintiff's claim against defendant is invalid, or that defendant has a defense which defeats the claim. Similarly, the garnishee may not champion the rights of the creditors of defendant, nor the rights of another garnishee, nor those of an intervener in the garnishment proceeding. The only legitimate concern of the garnishee is to protect his own interests.

Right to ordinary process. As will be subsequently seen, due to the status of the garnishee as a stakeholder, fewer procedural safeguards are afforded the garnishee than are accorded a defendant in suits conducted under ordinary process. Therefore, when the plaintiff asserts demands of a character which cannot be adequately tried in garnishment proceedings, the garnishee has a right to be proceeded against according to the rules for ordinary process. Plaintiffs commonly resort to such tac-


170. Johnson v. Murphy, 124 La. 143, 49 So. 1007 (1909); Brode v. Fire Ins. Co. of New Orleans, 8 Rob. 244 (La. 1844); Frazier v. Wilcox, 4 Rob. 517 (La. 1843); Lee & Hardy v. Palmer, 18 La. 405 (1841).


175. Lee & Hardy v. Palmer, 18 La. 405 (1841).

176. The foundation cases are Taylor v. Whittemore, 2 Rob. 99 (La. 1842); Laville v. Hébrard, 1 Rob. 455 (La. 1842); Samory v. Hébrard, 17 La. 555 (1841) (attempts to substitute garnishment process for the revocatory action).


In Laville v. Hébrard, 1 Rob. 435 (La. 1842), plaintiff's right to assert a revocatory action had prescribed and plaintiff attempted to assert that action
tics in an attempt to bring indirectly a revocatory action against the garnishee when the latter’s answers to the interrogatories propounded him set up a claim of ownership\textsuperscript{177} in property which plaintiffs suspect actually belongs to defendant. If plaintiff were permitted to do so, he could on traverse of the garnishee’s answers, introduce evidence attacking the garnishee’s title, and in this manner try the question of title without the necessity of meeting the strict substantive requirements of the revocatory action,\textsuperscript{178} and perhaps more important, due to short notice given the garnishee to appear in court to contest the traverse,\textsuperscript{179} without the garnishee having had adequate time within which to prepare his defense. Much the same problem arises in cases where plaintiff traverses the garnishee’s answers in an attempt indirectly by garnishment process.

But there is no objection to the plaintiff’s traverse of the answers in the garnishment proceeding if at the same time plaintiff brings a revocatory action against the garnishee and defendant for annulment of the contract. Oliver, Voorhies & Lowery v. Majors, 133 La. 764, 63 So. 323 (1913).

In Bank of Baldwin v. Broussard, 119 So. 567 (La. App. 1929), the first garnishee answered that he held goods belonging to defendant subject to an order of delivery in favor of one Banta. Banta was then made garnishee. In an attempt to force plaintiff to resort to the action in declaration of a simulation Banta answered that he owned the rice. To avoid circuity of actions the court permitted plaintiff to rule defendant and both garnishees into court to show cause why the rice delivery should not be deemed a simulation. Cf. First National Bank of Ruston v. Largrove, 166 La. 626, 117 So. 741 (1928). These two cases appear to be distinguishable from the general rule since they involved simulation wherein no title passes.

This rule is alluded to in the cases of Lowery v. Zorn, 184 La. 1054, 188 So. 297 (1938) and Liminet v. Fourchy, 51 La. Ann. 1299, 28 So. 87 (1899). In neither of these cases, however, did the court deny the trial of the garnishee’s liability in the garnishment proceeding. In the Lowery case a dispute existed between the garnishee-insurance company and defendant, the garnishee’s liability turning solely on the determination of the question of whether in fact passengers riding in a vehicle were riding free of charge or were passengers for hire. The court thought this narrow question could be determined as well in the garnishment proceeding as it could have been in a direct action against the insurer. In the Liminet case the garnishee failed to object timely to the form of procedure, and there was further suspicion on the part of the court that the defendant and plaintiff were in collusion so that defendant was in effect suing the garnishee indirectly in the name of plaintiff and was seeking to establish the alleged indebtedness by his (defendant’s) own testimony as a witness for plaintiff. In this connection see Peet, Yale & Bowling v. J. J. McDaniel & Co., 27 La. Ann. 435 (1875) (suit for damages in progress between defendant and garnishee and plaintiff brought garnishment proceedings against garnishee).

\textsuperscript{177} "The doctrine that garnishment cannot be substituted for the revocatory action is applicable only to cases where the title of the defendant has been apparently divested by a contract in due form." Commercial Bank of Alexandria v. Shanks, 129 La. 861, 883, 56 So. 1028, 1029 (1912) (doctrine does not apply when garnishee claims the property was pledged to him).

\textsuperscript{178} For example, the requirements that plaintiff show fraud on the part of the debtor (Lowenberg Martin & Co. v. Newman, 142 La. 959, 77 So. 891 (1918)), and the requirement that plaintiff prove the contract was injurious to him (LA. CIVIL CODE art. 1978 (1870); Taylor v. Whittemore, 2 Rob. 99 (La. 1842)).

\textsuperscript{179} Often only a period of from three to five days is allowed.
to establish that the garnishee is indebted to defendant when such indebtedness is the subject of bona fide dispute between the garnishee and defendant. Such disputes may exist, for example, over the liability of the garnishee arising out of an alleged breach of a contract in force between the garnishee and defendant.

The garnishee’s right to ordinary process is not absolute, however, and he can avail himself of this right only if before the trial of the traverse180 the garnishee files an exception objecting to the trial of the issues under garnishment process.181 Failure of the garnishee to file this exception timely operates to waive his right to ordinary process and may materially prejudice his interests.182

The right to be proceeded against according to the rules of procedure prescribed for garnishment process. If plaintiff is not in all respects entitled to bring a garnishment proceeding, the garnishee can cause the proceeding to be dismissed. Thus, if there is no valid writ of attachment or fieri facias to support the proceeding,183 or in the case of garnishment under writ of fieri facias, if plaintiff does not have a valid judgment against the defendant, the garnishee may file a peremptory exception and have the proceeding dismissed.184 When the defect is not discovered until after judgment has been rendered against the garnishee, the latter may rule plaintiff into court to show cause why the judgment should not be set aside.185 If plaintiff does not conform to the rules prescribed for the conduct of garnishment proceedings, the garnishee may object to the use of such improper procedure.186 Thus, the garnishee may file an exception to the right of plaintiff to propound supplemental interrogatories when the interrogatories are being used as a substitute for a traverse of the garnishee’s answers.187 Similarly,

182. Ibid.
183. See page 450 supra.
184. Johnson v. Murphy, 124 La. 143, 49 So. 1007 (1909) (plaintiff’s judgment null because defendant was an unrepresented minor); Hiriart v. Hardy, 152 So. 333 (La. App. 1934) (no citation of defendant). See also Pollock v. Williams, 9 La. Ann. 460 (1854).
if plaintiff's interrogatories contain questions foreign to the liability of the garnishee to defendant, the garnishee may file an exception objecting to such interrogatories. By the same token, if a rule to traverse the garnishee's answers does not fully disclose the grounds on which the traverse is based, an exception of vagueness may properly be filed by the garnishee. Exceptions to improper process are usually dilatory in nature, and hence will be waived unless filed in limine litis.

The right to assert defenses which the garnishee has against defendant. The garnishee is entitled to assert all defenses against plaintiff in the garnishment proceeding that the garnishee could assert in a suit brought directly by defendant. This rule apparently admits of no exceptions. Thus, if, under the terms of a loan, a bank has credited money to defendant's account to be used only for designated purposes, the bank can set up the restrictions placed on the use of the funds as a defense to a garnishment proceeding brought by defendant's creditor.

Right to protection of claims which the garnishee has against the defendant. When the garnishee has a claim against the defendant, liquidated and equally demandable with the claim which the defendant has against the garnishee, the latter may plead this in compensation in garnishment proceedings. But if the claim of the garnishee is disputed by the defendant, or undefined either as to amount or as to facts from which the court can determine the amount, the garnishment proceeding is not the appropriate setting for a trial of the plea. Under such circumstances proof adduced by the garnishee to establish his

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189. Hibernia Bank & Trust Co. v. Dresser, 145 La. 133, 81 So. 875 (1919) (exception of vagueness to rule to show cause why judgment pro confesso should not be rendered); Florance v. Yorke, 2 La. Ann. 995 (1847) (plaintiff required to disclose the specific property which he expected to prove in the possession of the garnishee).
claim would not bind the defendant either as to the findings of the court or by the decree declaring the garnishee's claim in compensation.\footnote{195}

If the garnishee has a privilege on the assets in his hands which belong to defendant, though the assets are not for this reason exempt from seizure, the existence and priority of the privilege will be recognized if (in the garnishee's answers to the interrogatories propounded him) he asserts his claim to the privilege and indicates that the privilege attached to the property prior to its seizure by the sheriff in the garnishment proceeding.\footnote{196}

The right to protection against double liability. The courts use every available means to protect the garnishee against the possibility that he may be required to pay the same debt twice. In one early case in which the assets in the garnishee's hands had previously been seized by another of defendant's creditors, the garnishee filed answers admitting that it had assets belonging to defendant but made no mention of the previous attachment. Despite the garnishee's carelessness, when the plaintiff ruled the garnishee into court to show cause why the assets should not be condemned to pay plaintiff's claim against defendant, the court protected the garnishee against double recovery by permitting him to contradict his answers by showing that the assets had in fact been previously attached by another.\footnote{197}

While the court may have gone far in protecting the garnishee against the consequence of his own carelessness, there are situations in which even the careful and well-advised garnishee will be exposed to double liability unless he is afforded protection. Such a situation exists where the garnishee knows or fears that some party other than defendant may have an interest in the assets which have been seized in his hands, and payment to the creditor of the defendant would not protect the garnishee from a subsequent claim by the third party. In such cases, the courts afford the garnishee two alternative courses of action: the garnishee may require plaintiff to bring the third party into the garnishment proceeding for the purpose of having his rights

\footnote{195. Ibid.}
\footnote{196. McRae, Coffman & Co. v. Austin, 9 La. Ann. 360 (1854). In this case the garnishee intervened in the suit between plaintiff and defendant and set up his privilege in the character of an intervenor. The court found that the attachment levied by plaintiff when the garnishee was cited primed the garnishee's privilege due to the latter's failure to assert his privilege by answer in the garnishment proceeding. See also Gardiner v. Smith, 12 La. 370 (1838).}
\footnote{197. Robeson v. Mississippi & Alabama R.R., 13 La. 465 (1839).}
determined, or the garnishee may convokve a concursus proceeding in which the plaintiff and the third person are cited to appear and assert their claim to the assets.198

A garnishee is likewise subjected to the danger of double liability when the debt he owes defendant has been previously seized by process issuing from judicial proceedings currently being conducted in another state. Here the court can exercise no control over the nonresident claimants to the assets. The out-of-state proceeding may be a garnishment proceeding brought by a creditor of defendant, or it may be a suit brought by defendant himself to enforce payment of the debt. In such cases the Louisiana courts have held that in order to protect the garnishee the Louisiana court in which the garnishment proceeding is pending should either suspend all further proceedings until final disposition of the prior claim by the out-of-state court, or permit plaintiff to prosecute his garnishment proceeding to judgment on the condition that adequate security be given the garnishee to indemnify him against loss should the out-of-state court order him to pay the debt.199 Dictum in one recent case

198. First State Bank v. Burton, 222 La. 1030, 64 So.2d 421 (1953). Where the garnishee adduces evidence to show that debt sought to be garnished is payable to a third person and not to defendant in the principal action, the disclosure itself is sufficient to protect the garnishee, and it involves upon plaintiff to bring in such party if he desires to test the validity of the garnishee's claim. Airey & Stoupe v. Hoke, 164 La. 998, 115 So. 60 (1927); Edward Thompson Co. v. Durand, 124 La. 351, 50 So. 407 (1909). But cf. Reif & Co. v. Boro, 17 La. Ann. 258 (1865); Hazard v. Agricultural Bank, 11 Rob. 326 (1845) (no interest in third party assignee as to require him to be brought into the garnishment proceeding, nor to make it unsafe to the garnishee to pay as ordered). See also Brown v. Lowe & Pattison, 5 La. Ann. 34 (1850) (plaintiff was also garnishee under a garnishment proceeding previously brought by defendant) and Smith v. Paderas, 1 OrI. App. 239 (La. App. 1904).

For his own protection the garnishee has a right to institute an inquiry into whether he can pay to plaintiff without subjecting himself to double liability. Allard v. DeBrot, 15 La. 235 (1840).

199. Woodruff and Co. v. French, 6 La. Ann. 62 (1851). This view is supported by the earlier Louisiana cases of Broadnax v. Thomsoson, 1 La. Ann. 382 (1846); Frazier v. Willeox, 4 Rob. 517 (La. 1843) (principle recognized, but not applied since the first claim had ceased to be prosecuted); Carrol v. McDonough, 10 Mart. (O.S.) 609 (La. 1822) (the foundation case).

In the recent case of Isaac v. Comision Reguladora Del Mercado de Henequen, 204 La. 1, 13, 14, 16, 14 So.2d 865, 869, 870 (1943), the court was apparently not aware of the above cited cases when in dictum the court spoke of the proper action to be taken by the court in the situation discussed in the following terms: "There is a conflict among the authorities as to the proper course to be pursued by the respective courts. It is held by one line of the authorities that the court which first acquires jurisdiction over the debt has the right to maintain it to the end of the litigation, and enforce or subject the debt, irrespective of the proceedings in the other court; and that the court which last acquires jurisdiction as to the debt, whether it be by the action of the creditor to recover his debt or under a garnishment by his creditor, must dismiss the action or garnishment, when the pendency of the prior action or garnishment is duly brought to its notice. [citing cases] The other line of the authorities holds that whether the action by the
indicates that the court might favor a third solution as being most satisfactory from the standpoint of both the garnishee and plaintiff: permit plaintiff to prosecute the garnishment proceedings to judgment, but order a stay of execution on the judgment so obtained until the out-of-state proceeding is determined. Under this alternative procedure, upon the determination of the out-of-state proceeding the court may order that the stay be removed or be made perpetual, in whole or in part, as the exigency of the case may require. If before the Louisiana garnishment proceeding has been brought, the out-of-state court has rendered judgment against the garnishee ordering him to pay the debt, the latter judgment, if entitled to full faith and credit, is available to the garnishee as a defense to the garnishment proceeding.

THE ANSWER

The citation naming the third party as garnishee directs him to answer the interrogatories. The time within which the garnishee may file his answers will be treated below. The answer must be made by the garnishee himself, or by the garnishee's creditor to recover his debt or the garnishment be first commenced, the court in which the action by the creditor is pending should, upon due notice of the garnishment, either suspend all proceedings in the action to await the determination of the garnishment, or, which is deemed better, proceed to judgment on the debt, with a stay of execution on the judgment until the garnishment is determined, which stay can be removed or made perpetual, in whole or in part, as the exigency of the case may require. By this course the rights of the attaching creditor would not be injuriously affected, and the garnishee would at the same time be effectively protected against a double liability. [citing cases] In the instant case this court . . . is not called upon to decide which of the above-mentioned two conflicting courses is proper where actions involving the same debt are pending in different jurisdictions. It is to be noted that the previously mentioned cases indicate that the view adopted in Louisiana is the latter view mentioned by the court in the Isaac case dictum. It is reasonable to assume that when the situation is presented to the court again, this is the view that will be followed.

200. Isaac v. Comision Reguladora del Mercado de Henequen, 204 La. 1, 14 So.2d 865 (1943).

201. Ibid. But if the out-of-state suit is still pending at the time the Louisiana garnishment proceeding is brought, for the garnishee to be able to urge a judgment rendered by the out-of-state court the garnishee must have as a defense to the garnishment proceeding taken all necessary steps to prevent recovery against himself in the out-of-state court. For a listing of the steps the garnishee is required to take, see the Isaac case supra.

202. LA. CODE OF PRACTICE art. 252 (1870). But if before the answer can be filed, the defendant posts bonds to obtain the release of the property seized in the garnishee's hands, the court order requiring the garnishee to deliver the property excuses the garnishee from the necessity of answering the interrogatories. Brown & Co. v. Richardson, 1 Mart. (N.S.) 210 (La. 1823).

agent if he has been expressly authorized to answer interrogatories by the garnishee. In the absence of instructions by the court to the contrary, the garnishee must answer the interrogatories on oath before a notary and file them with the clerk of court within the permissible delay. The practice of requiring the garnishee to answer in open court is seldom used. The answers of the garnishee are presumed to be truthful, and are entitled to full credit until they are successfully traversed.

Time within which answers may be filed; failure of the garnishee to answer. Under the provisions of the Louisiana Code of Practice of 1870, the garnishee is allowed the same delay within which to file his answers as is permitted for filing answers in ordinary suits. This usually allows the garnishee a period of ten days. Failure of the garnishee to file his answers within this delay entitles plaintiff to seek judgment pro confesso.

203. The case of Zenero v. Pressey, 1 La. App. 347 (1924) indicates that the garnishee can be bound by the answers of an agent duly authorized to answer the interrogatories, citing the case of Lewis v. Franks, 18 La. Ann. 564 (1866). The Lewis case in turn was based on the decision in Dickson & Co. v. Morgan, 6 La. Ann. 562 (1851). It is to be noted that this last case was subsequently appealed and in Dickson & Co. v. Morgan, 7 La. Ann. 400, 491 (1852) the court held: "The power of answering interrogatories on oath, we do not think can be conferred by one person on another." (Emphasis added.) The decision on appeal in this case seems to have escaped the attention of the courts in the later decisions on the point; and, in view of the intervening jurisprudence, it seems likely that the courts will continue to hold that an agent can be clothed with authority to answer the interrogatories.


205. When the clerk of court has lost the answers filed with him by the garnishee the nature of the answers may be proved by parol evidence. Taylor & Knapp v. McGee, 19 La. Ann. 374 (1867). Failure of the clerk to mark the answers "filed" or to enter the filing on the docket, and the failure of the garnishee to pay the filing fee, will prevent a judgment pro confesso when the answers were actually placed in the case record in the clerk's office. Livingston Finance Corp. v. Baudin, 120 So. 401 (La. App. 1929).

206. Whether the garnishee is to be required to answer in open court rests in the discretion of the court. See page 406 supra.


208. LA. CODE OF PRACTICE arts. 252, 262 (1870). As will be noted later, the delay is expressly set at fifteen days under the provisions of the proposed Code. See page 497 infra.

209. Victoria Lumber Co. v. Woodson, 127 So. 95 (La. App. 1930) (calculation of the delay within which to answer).

210. Carelessness or other error on the part of the garnishee or his agents is no excuse for failing to answer. Warren v. Copp, 48 La. Ann. 810, 19 So. 746 (1896) (employee of the garnishee told to take the answers to the courthouse for filing but failed to do so); Landry v. Dickson, 7 La. Ann. 238 (1852) (garnishee not warranted in taking the word of the sheriff that since garnishee had no assets belonging to defendant he need not answer); Comstock v. Paie, 18 La. 479 (1841) (no attorney-client privilege found under circumstances to excuse the failure to answer).

But if the failure to answer is caused by "some unforeseen event or accident or fraud which has not been brought about through the agency" of the garnishee,
confesso against the garnishee. A judgment pro confesso is an interlocutory decree which, as a matter of law, deems the garnishee's failure to answer a confession that he has sufficient assets in his hands to satisfy plaintiff's claim. The expiration of the legal delay for answering does not, however, automatically prevent the garnishee from subsequently filing his answers. Due to judicial dislike for the harshness of the judgment pro confesso, the courts have liberally interpreted the provisions of the Code to enable the garnishee of right to file his answers any time before motion is made by the plaintiff for judgment pro confesso in garnishment proceedings under fieri facias. When the garnishment proceeding is based on a writ of attachment, even though judgment pro confesso may have been rendered against the garnishee, the latter may nevertheless file his answers any time before plaintiff obtains a judgment against defendant on the main demand.

Responsiveness of the answer. The garnishee is required to make a fair and categorical answer to each interrogatory propounded. The detail with which an interrogatory must be answered is not specified. The failure to arrive is excused and judgment pro confesso will not be rendered against the garnishee. Warren v. Copp, supra.

210. See generally page 494 et seq.
211. La. Code of Practice art. 263 (1870); Louisiana State Law Institute, Proposed Code of Practice, Exposé des motifs No. 15, Book IV, Execution of Judgments art. 41 (1954); Humphrey v. Midkiff, 122 La. 939, 48 So. 331 (1909); Landry v. Dickson, 7 La. Ann. 228 (1852); Blanchard v. Vargas, 18 La. 486 (1841).

212. See page 496 infra.
213. Victoria Lumber Co. v. Woodson, 127 So. 95 (La. App. 1930); Copley v. Dosson, 3 La. Ann. 651 (1848). But cf. Elder v. Rogers, 11 La. Ann. 606 (1856), where the court held that though the interlocutory decree holding the interrogatories confessed had been rendered, the garnishee could obtain a rescission of this decree and be permitted to file his answers, if before the court renders the judgment against the garnishee ordering him to deliver up the assets the garnishee produces an affidavit of surprise giving a satisfactory explanation of the failure to answer on time. See also Copley v. Snow, 4 La. Ann. 521 (1849).


215. See page 496 infra.
216. Under the proposed Code the garnishee will have a legal delay of 15 days to answer. See Louisiana State Law Institute, Proposed Code of Practice, Exposé des motifs No. 15, Book IV, Execution of Judgments art. 40 (1954). See page 497 infra.

217. La. Code of Practice art. 262 (1870); Louisiana State Law Institute, Proposed Code of Practice, Exposé des motifs No. 15, bk. IV, Execution of Judgments art. 39 (1854); John I. Adams & Co. v. Millsaps & Trousdale, Gun-
answered is determined by the character of the demands which plaintiff makes in the interrogatory. If plaintiff satisfies himself with general and sweeping interrogatories, they may be properly met with answers of a similar character. Where, however, by reason of a lack of confidence in the integrity of the garnishee, or for other reason, plaintiff propounds interrogatories calling for pertinent details of any kind, the interrogatories must be answered according to their letter and spirit.

Fairness requires the garnishee to make some disclosures in his answers even though no pointed interrogatory calls for such information. The garnishee is under a duty to disclose all facts which bear a reasonably close relation to the success of plaintiff's efforts to seize assets of defendant in the garnishee's hands. Accordingly, the garnishee should disclose his knowledge that the defendant has been thrown into bankruptcy; and a bank made garnishee should disclose in its answer that it has no account in the name of defendant, individually or in some representative capacity. Failure of the garnishee to make a full disclosure of such facts may result in his answers being characterized as vague or evasive with the attendant consequences discussed below.

"Categorical" means direct and explicit in the manner of expression. WEBSTER, NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED) (2d ed. 1949). While "categorical" does not require that the answer to each interrogatory be separately stated, the well-drawn answer will contain separate answers rather than a running statement which in fact answers all the interrogatories. Separate answers for each interrogatory lessens the chance that the answer may be misinterpreted and the garnishee prejudiced thereby.

In Taylor & Knapp v. McGee, 19 La. Ann. 374 (1867), the court held a general statement made by the garnishee that he had no property belonging to defendant nor did he owe him anything, to be a sufficient answer, since it negated every fact inquired of in the interrogatories. For an illustration of when answers will and will not be considered as having been made categorically, see Ullmeyer v. Ehrmann & Lecanu, 24 La. Ann. 32 (1872); DeBlanc v. Webb, 5 La. 82 (1853).

219. If the interrogatory calls for information not pertinent to the presence in the garnishee's hands of assets belonging to defendant, the garnishee need not answer that part of the interrogatory. See page 469 supra.
222. Ibid.
224. In addition to disclosing those facts which he is obligated to disclose, the garnishee should also include in his answer any assertion necessary for the pro-
Rules of construction for answers. The garnishee's answers must be given a fair and reasonable construction.225 When the answer to one interrogatory is not sufficiently explicit, the deficiency may be supplied by reference to the answers given to other interrogatories in the same connection.226 Similarly, an unimpeached statement must be read in the light of all its qualifying clauses, and one phrase cannot be singled out to serve as an unqualified admission that the garnishee has assets belonging to defendant.227 If the garnishee fails to answer an interrogatory, it is presumed that had the answer been given, it would have been favorable to plaintiff.228 Thus, if the garnishee fails to answer an interrogatory asking for the amount of defendant's assets in his hands, the presumption is raised that the garnishee has sufficient assets to satisfy the claim which plaintiff has against defendant.229 Where any obscurity in the meaning of an answer arises from the manner in which the interrogatory is phrased, the obscurity of the answer is the fault of plaintiff, and cannot be charged against the garnishee.230

Liability of the garnishee as determined by his answer. As previously noted, the garnishee's answers are presumed to be truthful, and are entitled to full credit until they are traversed and disproved by plaintiff. So long as plaintiff has not traversed and disproved the answers, they are the sole measure of the garnishee's liability.231 If the garnishee fails in his duty to answer

225. Meyer v. Madden, Gunby's Dec. 12 (La. 1885). If the time at which the garnishee is contemplated as having defendant's assets in her possession is not indicated in either the interrogatories or the answer, the court will construe the answers to relate to the time at which the interrogatories were served. John Adams & Co. v. Millsaps & Trousdale, Gunby's Dec. 33 (La. 1885).


227. Auge v. Variol, 31 La. Ann. 365 (1879). The statement "I have, but as a pledge" cannot be divided to make the words "I have" stand alone.


the interrogatories fairly and categorically, and one or more of his answers on their face are manifestly vague, or evasive,
plaintiff may treat the answers as if they had not been filed and is entitled to seek judgment pro confesso against the garnishee.

If the answers admit without reservation that the garnishee is indebted or has assets belonging to defendant, and if plaintiff has obtained judgment against defendant in the main demand, plaintiff is entitled to rule the garnishee into court to show cause why the latter should not be cast in judgment to pay the assets for the satisfaction of plaintiff’s claim. On the other hand, so long as the answers are not disproved, the indebtedness or assets admitted by the garnishee to be owed or in his possession will not benefit plaintiff if the admission is qualified by the assertion of a defense to the garnishment proceeding, or by the assertion of any grounds which if true would prevent plaintiff from subjecting the assets or indebtedness to his claim.

When the answers of the garnishee deny any indebtedness or assets belonging to defendant and are not traversed and dis-


234. It is to be noted that utilizing the penalty of judgment pro confesso for evasive or vague answers is a product of the jurisprudence and is based on no express provisions of the Code of Practice of 1870. The provisions of the proposed Code of Practice likewise contain no provisions for the treatment of such answers. It is probable that the jurisprudential treatment will likewise be applied under the proposed Code. The penalty for such answers, however, would be much less severe under the lenient provisions for judgment pro confesso under the proposed Code. Should the court in its wisdom believe a stronger sanction is called for in such cases than is provided under the new judgment pro confesso provisions, a rule might be developed that evasive or vague answers will ipso facto subject the garnishee to liability for the full amount of plaintiff’s claim. Such a rule would be substantially similar to the results reached in judgments pro confesso under the Code of Practice of 1870. See generally pages 494 infra.

235. See page 502 infra.

236. LA. CODE OF PRACTICE art. 248 (1870); LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS NO. 15, Book IV, EXECUTION OF JUDGMENTS art. 43 (1953). See also Robeson v. Mississippi & Alabama R.R., 13 La. 465 (1839).

proved, the garnishee cannot be held liable to plaintiff.\textsuperscript{238} Again, if plaintiff doubts the integrity of the garnishee and suspects that his answers are false, it devolves upon him to traverse the answers and to prove their falsity. Proof that the denial in the garnishee's answers is false necessarily entails proving as a matter of fact that the garnishee is indebted to defendant, or that he has assets in his possession which belong to defendant.\textsuperscript{239} If plaintiff successfully traverses the answers of the garnishee, the measure of liability is the amount of assets and indebtedness established as \textit{in fact} belonging or is owed to defendant by the garnishee.\textsuperscript{240} Under the provisions of the Code of Practice of 1870, an anomalous situation is thus presented: the garnishee who makes evasive or vague answers is subject to liability under judgment \textit{pro confesso} for the entire amount of plaintiff's claim, while the liability of the garnishee who commits the greater wrong of lying is measured only by the assets which are in fact owed or belong to defendant. Article 264 has no counterpart in the proposed Code of Practice. Cases of this type arising under the proposed Code will likely be handled in the same manner as cases involving vague or evasive answers,\textsuperscript{241} viz., considering false answers as equivalent to a \textit{failure} to answer, with the resulting application of the provisions for judgment \textit{pro confesso}. Under this procedure, false, vague, and evasive answers are treated alike and the anomaly existing under the present Code of Practice is removed. Due to the more liberal provision for judgment \textit{pro confesso} under the proposed Code, the measure of the garnishee's liability for making false answers will normally be the same as that prescribed by Article 264 of the Code of Practice of 1870, i.e., the amount of indebtedness and assets which in fact are owed and belong to defendant.\textsuperscript{242}

\textbf{Filing of amended or supplemental answers.} Since the garnishee is a mere stakeholder whose principal duty is to give true


\textsuperscript{239} If the interrogatories propounded require the garnishee to give his opinion on a \textit{question of law}, since opinion and not facts are elicited, if the garnishee is mistaken in his belief as to the legal status of the property it cannot be said that his answers are false. Brian v. Shad, 186 So. 766 (La. App. 1939).

\textsuperscript{240} \textit{LA. CODE OF PRACTICE} art. 264 (1870); Humphrey v. Midkiff, 122 La. 939, 48 So. 331 (1909); Marks & Co. v. Reinberg, 16 La. Ann. 348 (1861).

\textsuperscript{241} But see note 234 supra.

\textsuperscript{242} For a discussion of judgment \textit{pro confesso} under the provisions of the proposed Code of Practice, see page 497 \textit{infra}.
and responsive answers to interrogatories, the courts have not accorded him the same liberal privileges of filing amended or supplemental answers as is accorded defendants in ordinary suits. Under some circumstances, however, the garnishee is permitted to alter his initial answers by amendment or supplemental answers. If this is permitted, the rule appears to be that they must be filed within the same delay prescribed for the initial filing of the garnishee's answers.

Where, despite the good faith of the garnishee in answering the interrogatories, his answers are not as comprehensive as they might have been, the garnishee may, in the discretion of the court, be allowed to file amended or supplemental answers. However, where the garnishee files initial answers which are manifestly evasive or vague, no amendment or supplemental answers will be permitted. In this situation the plaintiff has the right to seize upon the garnishee's misconduct and seek a judgment *pro confesso*. By the same token, if the garnishee answers that he has assets belonging to defendant, he will not be allowed to file amended or supplemental answers denying this unless he can show that an error was made in good faith. Except where

243. DeBlanc v. Webb, 5 La. 82 (1833). If the clerk of court loses the answers after they have been filed, the contents of the answers may be established by a competent witness' testimony. Taylor v. McGee, 19 La. Ann. 374 (1867).

244. See page 487 infra. There would appear to be no reason why a different time limit should obtain for filing amended or supplemental answers than for the filing of initial answers. It is to be noted that the statement of the limits within which initial answers may be filed contains reference only to the judgment *pro confesso*, since that is the judgment to be rendered when the garnishee fails to answer. These rules would apply literally in the cases where the initial answers sought to be amended or supplemented are manifestly evasive or vague, since plaintiff would be seeking judgment *pro confesso* against the garnishee for his misconduct in answering in this fashion. Where the initial answers admit the existence of assets in the garnishee's hands, or contain statements other than those which may be considered as evasive or vague, the only judgment plaintiff would be seeking against the garnishee would be a judgment ordering him to pay the assets over to the sheriff. In these instances the name of the judgment sought to be obtained would be different although the measure of time would be the same.

While the case of Tapp v. Green, 22 La. Ann. 42 (1870) would appear to adopt the same delay for cases of garnishment under writ of attachment, there apparently has been no case directly considering the time limit for filing amended or supplemental answers in cases of garnishment under writ of *fieri facias*. The case of Hennen v. Forget, 27 La. Ann. 381 (1875), however, would be consistent with the application of the same delay as if prescribed by the courts for the filing of initial answers. See also Hibernia Bank & Trust Co. v. Dresser, 145 La. 133, 81 So. 875 (1919).


the privilege of filing amended or supplemental answers rests in the discretion of the court, the garnishee will be permitted to file such answers if plaintiff fails to raise an objection.\textsuperscript{248}

\textit{Judgment Pro Confesso}

As previously noted, when the garnishee fails to answer the interrogatories within the legal delay, plaintiff is entitled to seek judgment \textit{pro confesso}, against the garnishee.\textsuperscript{249} Further, evasive or vague answers filed by the garnishee even within the legal delay are considered as being no answers at all, and plaintiff is likewise entitled to seek judgment \textit{pro confesso}.\textsuperscript{250} Under a literal application of the provision of the Code of Practice of 1870, if for any reason the garnishee failed to answer the interrogatories within the prescribed delay, plaintiff may immediately have him cast in judgment \textit{pro confesso} and afterwards ordered to pay the total amount of plaintiff’s claim against defendant, plus interest and court costs. Under the rules allowing plaintiff almost unrestricted freedom in causing as many parties to be made garnishees as he wishes, the judgment \textit{pro confesso} became oppressive and unduly harsh in the many cases where the garnishee failed to answer due to simple oversight or other non-blameworthy causes.\textsuperscript{251} This dissatisfaction with the judgment \textit{pro confesso} caused the Louisiana Law Institute to make radical changes in both the nature and effect of the judgment in the preparation of the proposed Code of Practice. The role of the judgment \textit{pro confesso} under the provisions of the Code of Practice of 1870, and the proposed Code, are treated separately below.

\textit{Judgment pro confesso under the Code of Practice of 1870.} Under Article 263 of the Code of Practice of 1870, the mere failure of the garnishee to file his answers within the legal delay


\textsuperscript{249} LA. CODE OF PRACTICE art. 263 (1870); LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, \textit{Execution of Judgments}, art. 41 (1955).

\textsuperscript{250} See page 488 supra.

\textsuperscript{251} Because of this the judgment \textit{pro confesso} became disfavored by the courts, and various practices and rules were evolved to avoid the injustice such judgments may cause. See page 488 supra.
automatically entitles plaintiff to have judgment pro confesso against the garnishee.\footnote{252} Plaintiff's right to this judgment is not self-executing, however, and the judgment can be obtained only by a formal motion requesting the court to render it.\footnote{253} Plaintiff is not normally required to give the garnishee notice of his intention to seek judgment pro confesso against him and may file an \textit{ex parte} motion that the interrogatories be taken as confessed.\footnote{254} Plaintiff has no absolute right to proceed \textit{ex parte} to obtain the judgment, however, and the court may in its discretion relegate plaintiff to proceed contradictorily with the garnishee under a rule to show cause why the answers should not be taken as confessed.\footnote{255} As previously noted, even though the legal delay has expired, the garnishee is always entitled to file his answers before the motion for judgment pro confesso is filed.\footnote{256} In such cases when the garnishee files his answers plaintiff's right to judgment pro confesso is destroyed and the garnishee's liability must be determined by the answers he has filed.\footnote{257} If no answers are filed, however, plaintiff is entitled of right to a judgment pro confesso declaring the garnishee's failure to answer the interrogatories as a judicial confession that he has in his possession sufficient assets belonging to defendant to satisfy plaintiff's claim.\footnote{258} This judgment is interlocutory in nature\footnote{259} and serves to fix, at least for the time being, the measure of the garnishee's liability; but it does not require the garnishee to pay the amount

\footnote{252}{No evidence is necessary to authorize the taking of the interrogatories as a confession of indebtedness other than evidence of the failure of the garnishee to answer. McKinbrough v. Castle, 19 La. Ann. 128 (1867). The clerk of court may render a judgment pro confesso: Winnfield Furniture Co. v. Peyton, 171 La. 519, 131 So. 657 (1930). When judgment pro confesso is rendered it becomes effective from the date of service of the interrogatories. Morris Lake & Son v. Strickland, 55 So.2d 51 (La. App. 1951).}

\footnote{253}{Copley v. Dosson, 3 La. Ann. 651 (1848); Victoria Lumber Co. v. Woodson, 127 So. 95 (La. App. 1930).}

\footnote{254}{Landry v. Dickson, 7 La. Ann. 238 (1852); Sturges v. Kendall, 2 La. Ann. 565 (1847); Poole v. Brooks, 12 Rob. 484 (La. 1846); Parmely v. Bradbury, 33 La. 851 (1839).}

\footnote{255}{Hennen v. Forget, 27 La. Ann. 381 (1875). In this regard see Hibernia Bank & Trust Co. v. Dresser, 145 La. 133, 81 So. 875 (1919).}

\footnote{256}{See page 488 supra.}

\footnote{257}{See page 488 supra.}

\footnote{258}{La. Code of Practice art. 263 (1870). If plaintiff's petition or interrogatories fail to disclose the amount of plaintiff's claim against defendant, no judgment pro confesso can be rendered. Copley v. Snow, 4 La. Ann. 521 (1849). If the judgment actually obtained against defendant is larger than that stated in the petition or interrogatories as being claimed against defendant, the judgment pro confesso will be limited to the amount stated in the petition or interrogatories. Sturges v. Kendall, 2 La. Ann. 565 (1847). See note 97 supra.}

of plaintiff’s claim. In this respect the judgment pro confesso serves much the same function as do the answers of the garnishee in cases where they have been seasonably filed. Though his liability is fixed, the garnishee does not pay the amount of plaintiff’s claim until a final judgment is rendered by the court ordering him to do so. If the garnishment proceeding is based on a writ of fieri facias, immediately after judgment pro confesso has been rendered plaintiff is entitled to a judgment ordering the garnishee to discharge his liability by paying plaintiff’s claim.

In cases of garnishment under attachment, however, though plaintiff has judgment pro confesso against the garnishee, plaintiff cannot obtain a judgment ordering the garnishee to pay unless and until he has perfected his right to receive payment by obtaining a judgment against defendant in the main demand. The nature and effect of the judgment ordering the garnishee to discharge his liability will be subsequently treated.

Even though plaintiff has obtained a judgment pro confesso, since this judgment is interlocutory in nature, the court may, before a definitive judgment is rendered ordering the garnishee to pay the claim, set aside the judgment pro confesso and permit the garnishee to file his answers. In such cases the liability of the garnishee fixed by the judgment pro confesso is destroyed, and the answers filed by the garnishee determine the measure of liability, if any. As previously seen, in cases of garnishment under attachment, until such time as plaintiff obtains judgment against defendant in the main demand, the garnishee is entitled of right to answer, and the court will set aside the judgment pro confesso to permit the garnishee to file his answer.

In cases of garnishments under writ of fieri facias, and in cases of garnishments under writ of attachment when plaintiff has judgment against defendant in the main demand, the court may in the exercise of its discretion set a judgment pro confesso aside and

260. See Rose v. Whaley, 14 La. Ann. 374 (1859). If several garnishees cited fail to answer, all may be cast in judgment pro confesso and in this case their liability is several. Bird v. Culin, 6 La. Ann. 248 (1851).

261. La. Code of Practice art. 263 (1870). As a practical matter, under these circumstances plaintiff usually incorporates into a single motion the request both for judgment pro confesso and for judgment ordering the garnishee to pay the claim.

262. Rose v. Whaley, 14 La. Ann. 374 (1859); Proseus v. Mason, 12 La. 16 (1858). The right of plaintiff to get judgment pro confesso against the garnishee is not waived when plaintiff waits to do so until after he has gotten judgment against defendant. Sturges v. Kendall, 2 La. Ann. 569 (1847).

263. See page 502 infra.


265. See page 488 supra.
permit plaintiff to answer.266 The liberality with which the garnishee will be treated will, of course, vary from court to court. So strong is the disfavor for the judgment pro confesso that some courts are willing to set aside the judgment and permit the garnishee to answer in any case where he has not demonstrated indifference in failing to answer.267 Other courts have taken a less liberal attitude, and when the garnishee’s failure is due to carelessness they will refuse to set the judgment aside.268

When judgment pro confesso has been rendered because the garnishee filed manifestly evasive or vague answers, different considerations are involved. Although there appears to be no case in point, the rule undoubtedly is that since the garnishee has become a wrongdoer he is not entitled to the protection of the court against the consequences of his own misconduct, and hence the court will not set aside a judgment pro confesso to permit him to file amended or supplementary answers.

Judgment pro confesso under the proposed Code. Under the proposed Code the garnishee has fifteen days after service of the interrogatories to answer.269 Even though this delay has expired, he may file his answers anytime before a motion for judgment pro confesso is filed.270 Failure of the garnishee to answer within the delay or before motion is made for judgment does not automatically entitle the plaintiff to a judgment pro confesso as is

266. Elder v. Rogers, 11 La. Ann. 606 (1856) announces the broad rule that before final judgment is rendered ordering the garnishee to pay plaintiff’s claim, the court may in its discretion set a judgment pro confesso aside and permit plaintiff to answer. As previously noted, however, the case of Rose v. Whaley, 14 La. Ann. 374 (1859) apparently would entitle the garnishment under a writ of attachment the right to file his answer any time before judgment is rendered against defendant on the main demand. This situation, therefore, would be an exception to the rule in Elder v. Rogers, so far as the discretion of the court is concerned.

267. Elder v. Rogers, 11 La. Ann. 606 (1856) (garnishee filed affidavit of surprise which explained the circumstances which led to their apparent neglect). In Marchand v. Noyes, 33 La. Ann. 882 (1881), not only had the answer been taken as confessed, but a definitive judgment had been rendered against the garnishee, the City of New Orleans, although that judgment had not become effective because it had not been signed by the judge. The court said since the mayor was "overwhelmed with a multiplicity of public duties," and since the city should not suffer for his neglect, the court would set aside the judgment.

268. Warren v. Copp, 48 La. Ann. 810, 19 So. 746 (1896) (garnishee’s messenger failed to file answer); Landry v. Dickson, 7 La. Ann. 238 (1852) (garnishee relied on assurance by sheriff that since he had no assets belonging to defendant he need not answer the interrogatories); Bird v. Cain, 6 La. Ann. 248 (1851) (garnishee did not attempt to explain reason for his failure to answer, but attacked the validity of the judgment on the grounds that the petition did not clearly state the amount which plaintiff claimed against defendant and from the garnishee).

269. LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, EXECUTION OF JUDGMENTS art. 40 (1954).

270. Id. art 41.
the case under the present Code of Practice. Article 41 of the title Execution of Judgments under the proposed Code eliminates the ex parte judgment pro confesso and provides for contradictory proceedings.

Failure of the garnishee to answer will be considered prima facie proof on trial of the motion that he has property of or is indebted to the defendant to the extent of the unpaid judgment, plus interest and costs. The burden is on the garnishee to prove that he has no assets of the defendant. If the garnishee proves an amount of property or indebtedness smaller than the amount of the plaintiff’s unpaid judgment, his liability will be limited to the amount proved. However, even if the garnishee proves that he has no assets of the defendant, he will be liable for costs and reasonable attorney’s fees incurred for the motion.

The judgment pro confesso under the proposed Code, as under the present Code of Practice, is interlocutory in nature and serves to fix the measure of the garnishee’s liability; but it does not require the garnishee to pay the amount of plaintiff’s claim until final judgment is rendered by the court ordering him to do so. Although it has often been the practice under the present Code of Practice to set aside the judgment pro confesso before a definitive judgment rendered ordering the garnishee to pay, and to allow the garnishee to file his answers, this would be unnecessary under the proposed Code. The trial of the motion for judgment pro confesso should afford the garnishee ample opportunity to establish whether or not he has assets or is indebted to the defendant. Furthermore, in cases of garnishment under writ of attachment the garnishee will no longer be entitled of right to file his answers any time before judgment is rendered against the defendant in the main demand.

Neither the present Code of Practice nor the proposed Code contains an express provision for a judgment pro confesso when the garnishee has filed manifestly evasive or vague answers. The theory upon which a judgment pro confesso is rendered against

271. Ibid. See note 252 supra.
272. Ibid.
273. Ibid.
274. Ibid.
275. Ibid.
276. Ibid.
277. See note 264 supra.
278. LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, Execution of Judgments art. 41 (1954).
the garnishee in such a situation is that since the garnishee failed in his duty to answer fairly and categorically, plaintiff may treat the answer as if it had not been filed. It would appear that this practice will obtain under the proposed Code, but the liability of the garnishee will be limited to the assets which in fact he holds of the defendant, plus costs, and reasonable attorney fees.

Should the courts feel stronger sanctions are called for in such cases, a rule might be developed that evasive or vague answers will ipso facto subject the garnishee to liability for the full amount of plaintiff's unpaid judgment.

**Traverse of Garnishee's Answers**

If the answers of the garnishee admit only a conditional or qualified liability to the defendant, or if the answers unqualifiedly deny liability, the plaintiff may doubt their verity and take a rule to traverse. A rule to traverse must be filed within twenty days after the plaintiff has notice that the answers have been filed. The record must show that the notice of filing of

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279. See note 234 supra.
280. See note 278 supra.
281. See page 497 supra.
282. LA. CODE OF PRACTICE art 264 (1870); LA. R.S. 13:3911 (1950). A judgment cannot be rendered against a garnishee who denies an indebtedness to the defendant in answer to interrogatories, unless the answer has been properly traversed. David v. Rode, 35 La. Ann. 961 (1883). It is not necessary that the defendant be made a party to the rule to traverse, or that he have notice of the intention of the plaintiff to take the rule. Chalmette Petroleum Corp. v. Myrtle Grove Syrup Co., 175 La. 969, 144 So. 730 (1932). The traverse proceedings assume the nature and formalities of a suit between only the plaintiff and the garnishee. It is no longer a case in which the garnishee merely complies with the process of court, occupying more the character of a witness than a party. Carroll v. Powell, 136 So. 219 (La. App. 1931); National Park Bank v. Concordia Land and Timber Co., 159 La. 86, 105 So. 254 (1925). However, the issue thus formed does not require an answer in writing by the garnishee. Oakley v. Miss. & Ala. R.R., 13 La. 567 (1839).

Even before plaintiff takes a rule to traverse the answers of the garnishee, it has been held that he can get a court order to inspect the notes and bills of the garnishee which the garnishee in his answer stated were pledged to him. Sewall v. McNeill, 17 La. 185 (1841).


If the rule to traverse is not timely filed, the answers remain the sole measure of the garnishee's liability. Airey & Stouse v. Hoke, 164 La. 998, 115 So. 60 (1927). If the garnishee has denied any liability to the defendant, the property, rights, and credits of the garnishee in his hands are automatically released. Johnson v. Bolt, 146 So. 375 (La. App. 1933).

When the circumstances are such that plaintiff does not discover the untruthfulness of the garnishee's answers until after the expiration of the delay for traversing, he will have to have issued a new garnishment, and traverse the answers under it.
the answers has been served upon the plaintiff, or the statutory delay for traversing will not commence to run.\textsuperscript{284} Since there is no good reason for the delay for traversing to be longer than the delays in ordinary suits, the proposed Code shortens this period to fifteen days after the plaintiff has notice that the answers have been filed.\textsuperscript{285}

When the plaintiff timely files his rule to traverse, he must serve notice of this proceeding upon the garnishee.\textsuperscript{286} This is provided for in neither the present Code of Practice nor the proposed Code, but is essential under the theory that there must be issue joined and an opportunity afforded for defense before a judgment can be rendered.\textsuperscript{287} The garnishee will usually be cited to appear in court to defend his answers within three to five days.

\textit{Trial of the traverse.} Since the answers of the garnishee to the interrogatories are presumed to be truthful, the burden is on the plaintiff to prove them false.\textsuperscript{288} In some instances, i.e., when the garnishee has admitted a conditional or possible liability to the defendant, the plaintiff does not have to establish the falsity of the answers to prove the garnishee’s liability to the defendant.\textsuperscript{289} If this is the case, the plaintiff may use any competent

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\textsuperscript{284} Alexius Bros. & Co. v. Brock, 58 So.2d 279 (La. App. 1952). In Armstrong v. Ellerslie, 146 La. 559, 83 So. 830 (1920), the plaintiff timely filed his motion for rule to traverse the answers of the garnishee, but the clerk of court failed to endorse the filing mark. The Supreme Court held that the motion would be treated as having been filed timely since the plaintiff had reasonably complied with the law.

In Industrial Loan & Ins. Co. v. Price, 31 So.2d 881 (La. App. 1947), there had been no formal service of notice that the answers of the garnishee had been filed. However, plaintiff filed a formal motion to set aside the answers, and the court held that, by filing the motion, the garnishee waived his right to object to the absence of notice, and the delay of 20 days commenced to run from the filing of the motion by the plaintiff.

\textsuperscript{285} LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, Execution of Judgments art. 42 (1954).

\textsuperscript{286} Rockwell v. Smith, 1 La. 228 (1830); Allyn v. Wright, 9 Mart. (O.S.) 271 (La. 1821).

\textsuperscript{287} See note 286 supra.

\textsuperscript{288} Home Finance Service v. Treadway, 185 So. 700 (La. App. 1939); Flash & Co. v. Norris, 27 La. Ann. 93 (1875). Apparently, the only deviation from this rule occurs when the garnishee claims that he holds property under a pledge from defendant. In this situation the garnishee must prove that he holds a valid pledge of the property. Commercial Bank of Alexandria v. Shanks, 129 La. 861, 56 So. 1028 (1912).

\textsuperscript{289} Wagner v. Tarrant, 124 So. 614 (La. App. 1929); Appalachian Corp. v. Compania General De Petroleo, 162 La. 774, 111 So. 160 (1927). It is only where a question of fact is presented that the plaintiff is limited to written proof or the oath of two credible witnesses. In Home Finance Service v. Treadway, 185 So. 700 (La. App. 1939), it was held that if the garnishee answers that he did not know, as a matter of fact, whether he owed defendant any amount, proof on traverse would not be limited to the forms provided for in Article 264 of the
\end{footnotesize}
proof that tends to show the garnishee's indebtedness to, or possession of property of, the defendant. However, if the plaintiff is required to prove the falsity of the garnishee's answers to establish his liability, he must offer either written proof or the oath of two witnesses worthy of belief. This limitation has been necessarily harsh and has proven almost unworkable. For example, in one case the plaintiff was not allowed to traverse the answers of the garnishee who had orally admitted indebtedness to the defendant, but the plaintiff had no written proof, nor could he produce two credible witnesses. Realizing the unworkability of this limitation, the redactors of the proposed Code have omitted this provision. Under their proposal, the answers of the garnishee may be traversed by any competent proof which the court considers of sufficient weight to prevail over the garnishee's answers.

If on trial of the rule to traverse, the plaintiff's aims are vague as to what property he is trying to prove in the hands of the garnishee, the latter may properly file an exception. Also, if the plaintiff attempts to raise issues not appropriate to garnishment proceedings, such as attacking the garnishee's claim of title to assets or if he seeks to establish his liability arising out of an alleged breach of contract with the defendant, the garnishee can file an exception to such an action being tried in summary proceedings. However, if the objection is not raised before trial on the traverse, it will be held to have been waived.

Louisiana Code of Practice of 1870. The court also stated that there did not have to be a traverse under such circumstances, although it was the more desirable procedure.

Ibid.


LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSÉ DES MOTIFS No. 15, Book IV, Execution of Judgments art. 42 (1954).

Florance v. Yorke, 2 La. Ann. 995 (1847). In this case it was held that a mere motion would not be sufficient and a written exception of vagueness must be formally placed on record. Accord, Carter Bros. & Co. v. Galloway & Burns, 36 La. Ann. 730 (1884).

Carter Bros. & Co. v. Galloway & Burns, 36 La. Ann. 730 (1884). A written exception to trying title in garnishment proceedings must be made before argument on the merits. See pages 480, 481, 482 supra for comprehensive treatment of this area.

Although plaintiff cannot attack the garnishee's title to property on traverse, he can traverse the answers of the garnishee who claims that the property in his possession is pledged to him. The doctrine that garnishment proceedings cannot be substituted for the revocatory action is applicable only to cases where the title of the defendant has been apparently divested by a contract in due form.

Rice Stix Dry Goods Co. v. Saunders, 130 La. 627, 58 So. 413 (1912). See also note supra.
When the nature of the dispute as to liability between the garnishee and the defendant is one that can fairly be determined by trial on the traverse, the court, in the interest of expediency, has allowed plaintiff to try the issue in traverse proceeding.\textsuperscript{297} However, it is doubtful whether this procedure will be extended beyond a case where the liability of the garnishee to the defendant depends upon the determination of a single question of fact.

When the garnishee does not claim title to assets sought to be garnished, but answers that the property belongs to a third party, the plaintiff can traverse the answers. However, he may do so only if he makes all interested persons parties to the suit.\textsuperscript{298}

Both the Code of Practice of 1870 and the proposed Code fix the liability of the garnishee whose answers have been successfully traversed as the amount of property held or indebtedness in fact owed to the defendant.\textsuperscript{299} Even if the plaintiff is successful on his rule to traverse, he must further prove that the garnishee held assets of the defendant.\textsuperscript{300} If the assets proved to be held by the garnishee are not sufficient to satisfy the unpaid judgment of the plaintiff, he must look elsewhere to satisfy his claim.

\textit{Judgment Against the Garnishee and Order to Deliver Possession of Property or Pay Debts}

Where garnishment proceedings have been issued under a writ of attachment and the garnishee admits in his answer, or it is established on the motion to traverse that he has property belonging to the defendant or is indebted to him, the plaintiff cannot obtain judgment against the garnishee until he obtains a judgment in the main demand.\textsuperscript{301} In practice the plaintiff usual-
ly incorporates a prayer for judgment against the garnishee in his principal demand against the defendant. However, this is not essential for a judgment against the garnishee, and sometimes a judgment is subsequently rendered against the garnishee on a rule to show cause.

Where garnishment proceedings have been issued under a writ of *fieri facias*, and the liability of the garnishee established, the plaintiff may immediately rule the garnishee into court to show cause why he should not be cast in judgment to pay the assets in satisfaction of plaintiff's judgment.

Unless a judgment *pro confesso* has been rendered against the garnishee, he will be ordered to deliver the property or pay the indebtedness that existed at the time the interrogatories were served. No judgment can be taken against the garnishee for more than that which is sufficient to cover plaintiff's claim against the defendant and costs. If the plaintiff has obtained satisfaction in part by other means, the judgment against the garnishee will be only for the unsatisfied remainder.

If the debt which the garnishee owes the defendant is not yet due, he will be ordered to pay the debt to the plaintiff when it

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v. Friend, 21 La. Ann. 7 (1869); Caldwell v. Townsend, 5 Mart. (N.S.) 307 (1827). See Lynch v. Burr, 10 Rob. 138 (La. 1845). See also Frank I. Abbott Lumber Co. v. Home Ins. Co., 140 La. 130, 72 So. 841 (1916) (plaintiff cannot get the court to order the garnishee to deposit the money with the civil sheriff or in the registry of the court). Lehman, Stern, & Co. v. E. Martin & Co., supra (there will never be judgment against a garnishee who has surrendered the property to the court).

302. See Kirkman v. Hills, 16 La. 523 (1840).
303. Ibid. See also Bullis v. Town of Jackson, 203 La. 289, 14 So. 2d 1 (1943); Sturges v. Kendall, 2 La. Ann. 565 (1847).

Payment to the sheriff before a court order to do so will not relieve the garnishee of liability. Yale & Co. v. Whitmore, 15 La. Ann. 65 (1860).
304. LA. CODE OF PRACTICE art. 246 (1870). This rule remains the same in the proposed Code of Practice. See LOUISIANA STATE LAW INSTITUTE, PROPOSED CODE OF PRACTICE, EXPOSE DES MOTIFS No. 15, Book IV, Execution of Judgments art. 43 (1954).

305. See note 304 supra. In Citizens' Bank of Louisiana v. Payne & Gilman, 21 La. Ann. 380 (1869), the garnishee paid certain funds, which belonged to the defendant, to third persons after service of the interrogatories. The court held that he was liable for the funds he held as of the time of service of the interrogatories. However, if the property held by the garnishee becomes worthless after service of the interrogatories, he is not liable for the loss. Hearne v. Commercial Nat. Bank, 155 La. 488, 99 So. 413 (1924). See also A. & J. Dennisoun & Co. v. New York Croton & Steam F. Co., 6 La. Ann. 782 (1851).

The garnishees are liable only for the sum which they owe the defendants, and do not have to pay interest until they are put in default, since the garnishment process prohibited them from paying until ordered by the court. Clark Bros. & Co. v. Powell & Co., 17 La. Ann. 177 (1865).

306. See note 305 supra.
307. See note 305 supra.
becomes due. If the debt owed the garnishee has been previously seized by process issuing from judicial proceedings currently being conducted in another state, the judgment ordering garnishee to pay the indebtedness or deliver property will be conditional on the plaintiff giving adequate security to protect the garnishee should the out-of-state court order him to pay the debt. Also, it has been indicated that another procedure may be favored — a judgment will be rendered against the garnishee, but a stay of execution ordered until the out-of-state proceeding is determined.

The above principles also apply when a judgment pro confesso has been rendered against the garnishee, the only difference being that under the present Code of Practice the plaintiff will rule the garnishee into court to show cause why he should not satisfy the unpaid judgment. A copy of the order of court, with the receipt of the sheriff, is delivered to the garnishee and is equivalent to a receipt from the defendant himself.

A garnishee who has mistakenly answered that he is indebted to the defendant has been allowed to correct this error on the rule to show cause. Also, if the proceedings by which the judgment has been obtained against the defendant are irregular, in the sense that the garnishee will not be protected if he pays the indebtedness, this could be brought out on the rule to show cause. Once a valid judgment ordering payment of indebtedness or delivery of property is rendered against the garnishee, in order to escape liability he will have to show circumstances warranting a new trial, rehearing, or action of nullity.

308. See page 460 supra.
309. See page 485 supra.
310. Isaac v. Comision Reguladora del Mercado de Henequen, 204 La. 1, 14 So.2d 865 (1943). See page 485 supra.
311. LA. CODE OF PRACTICE art. 263 (1870). If the judgment actually obtained against the defendant is larger than that stated in the petition or interrogatories as being claimed against the defendant, the judgment pro confesso will be limited to the amount stated in the petition or interrogatories. Sturges v. Kendall, 2 La. Ann. 265 (1847).
314. See Rockholt Lbr. Co. v. Miller, 64 So.2d 477 (La. App. 1953), where it was held that LA. R.S. 13:3923 (1950), which authorized a reopening of a case against the garnishee, only applied to garnishment of wages and salaries.

In Marchand v. Noyes, 33 La. Ann. 982 (1881), a judgment pro confesso was rendered against the City of New Orleans when the mayor negligently failed to file answers to the interrogatories. Plaintiff then obtained a judgment against the city to pay over the assets. Upon application of the garnishee, the trial judge set aside the judgment and granted a new trial. The Supreme Court held that the
Rights of Defendant

When assets of the defendant have been seized by garnishment process under either a writ of *fieri facias* or attachment, he may post bond and obtain their release from seizure immediately after the interrogatories have been served on the garnishee. Where defendant is unable to post bond to free the property seized in the hands of the garnishee, it has been held that he may take a rule on plaintiff and garnishee contradictorily to show cause why the assets should not be turned over to the sheriff to be held pending the litigation.

Although the primary question in garnishment proceedings is usually whether ultimately there shall be judgment against the garnishee, the defendant is not wholly cut off from interfering to prevent judgment. If the plaintiff’s claim against the garnishee is invalid, or if the defendant has a defense which defeats the claim upon which the garnishment process is issued, he could clearly intervene to prevent judgment against the garnishee. Also, if the property in the hands of the garnishee is by law exempt from seizure, or if more property has been seized than is necessary to satisfy plaintiff’s claim, the defendant would have the right to raise this in garnishment proceedings.

Since the purpose of garnishment proceedings is to establish assets in the hands of the garnishee which belong to the defendant, it has been held that he cannot oppose an exception of no cause of action at any stage of the proceedings. However, when the purpose of an intervention by the defendant is to establish a cause of action in favor of the plaintiff, he has been allowed to do so. In one case the garnishee denied possession of the discretion of the trial judge had been soundly exercised, for a municipal corporation should not be made to suffer for the neglect of one of its officers.

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Since the garnishee is the legal custodian of the property and credits seized, in some instances defendant may find no practical advantage in obtaining the release of the assets. For comprehensive discussion see page 471 supra.


320. See page ... supra.


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any assets of the defendant, and the latter was allowed to intervene and traverse the answers of the garnishee.\textsuperscript{822}

It has been held that the defendant, as a third party, has sufficient interest to appeal from the final judgment in garnishment proceedings.\textsuperscript{823} Also, a judgment by the plaintiff in garnishment proceedings is res judicata as to defendant only to the amount of indebtedness or assets that the garnishee was required to pay in the garnishment proceedings.\textsuperscript{824} He can subsequently sue the garnishee and establish liability for any assets or indebtedness that the garnishee was not ordered to deliver or pay in the garnishment proceedings.\textsuperscript{825}

**Garnishment of Wages and Salaries**

For the most part, garnishment of wages and salaries is governed by the same substantive and procedural rules appropriate for garnishment of other assets. However, there are a few substantive and procedural rules peculiar to this type of garnishment which deserve specific mention. Eighty per cent of defendant's earnings are exempt from seizure, provided that in no case can his monthly salary be reduced below $60.\textsuperscript{826} It is to be noted that if the defendant earns over $60 per month, the seizable portion is not 20% of the amount over $60, but is 20% of the entire salary earned, provided that this sum does not reduce the portion available to the defendant to less than $60.\textsuperscript{827}

The most significant difference between garnishment of wages and salaries and seizure of other assets is the "continuing nature" of the seizure under a garnishment of wages and salaries.\textsuperscript{828} That is, the defendant does not have to be entitled in all respects to the ownership of the wages for an effective seizure. Under one set of interrogatories, not only the accrued earnings are seized, but also future earnings.\textsuperscript{829}

The interrogatories inquire as to whether the defendant is an employee of the garnishee, the rate and manner compensation is

\textsuperscript{822} Rochereau \& Co. v. Bringier, 22 La. Ann. 129 (1870).
\textsuperscript{823} First National Bank v. Lagrone, 164 La. 907, 114 So. 832 (1927).
\textsuperscript{824} Robeson v. Carpenter, 7 Mart.(N.S.) 30 (La. 1828).
\textsuperscript{825} Ibid.
\textsuperscript{826} LA. CODE OF PRACTICE art. 644.2 (1870). If defendants' earnings are derived from the Federal Government, or are both earned and payable outside of the state, they cannot be seized under garnishment process. For a comprehensive discussion of exemptions from seizure see pages 457-460 supra.
\textsuperscript{827} Civic Agency v. Qualey, 172 So. 555, 556 (La. App. 1937).
\textsuperscript{828} LA. R.S. 13:3921-3927 (1950).
\textsuperscript{829} Id. 13:3923.
paid, whether the defendant is indebted to the employer, and whether there are other garnishments affecting the non-exempt portion of the defendant's wages.\textsuperscript{380}

After the garnishee answers, the court fixes the exempt portion and renders a judgment for periodic payments to the plaintiff out of the available non-exempt portion.\textsuperscript{381} If it is determined that a prior garnishment affects the non-exempt portion of defendant's wages, a judgment is rendered to take effect upon the liquidation of the prior demand.\textsuperscript{382}

If the garnishee answers and establishes that the defendant is indebted to him, the court renders an order for the liquidation of this debt just as if it were a prior garnishment; and the plaintiff's judgment is ordered to take effect upon the termination of this claim.\textsuperscript{383}

To include a situation where there is an increase or decrease in defendant's compensation which might affect the amount of compensation subject to seizure, provision is made for reopening the case upon the motion of any party concerned. The judge may amend or set aside his judgment and institute a new one appropriate to the changed circumstances.\textsuperscript{384} Furthermore, specific provision is made for reopening the case when a judgment \textit{pro confesso} has been rendered against the garnishee.\textsuperscript{385}

\textbf{Appeal}

The final judgment in garnishment proceedings is the order that the garnishee pay the indebtedness or deliver the prop-

\textsuperscript{380} Id. 13:3924, 13:3925. The monthly salary credited to defendant on the books is not controlling if it can be shown that the defendant is actually receiving, or entitled to receive, more. Jones v. Commagere, 189 So. 603 (La. App. 1939); Brown Shoe Co. v. Monsour, 174 So. 340 (La. App. 1935).

\textsuperscript{381} La. R.S. 13:3921 (1950). The court renders judgment for monthly, semimonthly, weekly, or daily payments to be made to the plaintiff according to the circumstances. See Jones v. Commagere, 181 So. 198 (La. App. 1938).

\textsuperscript{382} La. R.S. 13:3922 (1950).

\textsuperscript{383} Id. 13:3925. The employer must make a full and complete disclosure of the status of the account, showing the time the debt was incurred, the exact amount of the indebtedness, the credits applicable, and the manner in which the debt is being liquidated.


\textsuperscript{385} Ibid. This provision for reopening the case after a judgment \textit{pro confesso} cannot be used to reopen a case where there has been a judgment pursuant to garnishment of assets other than wages and salaries. Rockholt Lbr. Co. v. Miller, 64 So. 2d 477 (La. App. 1953).
Therefore, there can be no appeal from a judgment pro confesso establishing liability of the garnishee before there is a judgment against the defendant and an order to deliver the property or pay the indebtedness, because such proceedings are interlocutory in nature and do not cause irreparable harm.

If there is a judgment against the garnishee ordering payment of the indebtedness or delivery of property, but there has been a devolutive appeal by the defendant from the principal judgment, the garnishee should not be required to pay; for, if the principal judgment is reversed on appeal, the garnishee will continue to be liable to the defendant.

Generally it may be stated that the demand of the plaintiff against the defendant, and not the value of the property seized in the hands of the garnishee, is that which determines the jurisdictional amount for appeal. However, if the garnishee contests the plaintiff's right to seize in his hands the amount alleged to be due by him to the defendant, there is indication that the amount in contest will be the jurisdictional amount for appeal, and not the amount that the garnishee claims against the defendant.

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337. The confession of judgment in garnishment proceedings is different from the confession of judgment from which no appeal lies. The admission of having assets of the defendant does not in this instance necessarily admit the right of the creditor to them. State ex rel. Tureaud v. Parish Judge of Ascension, 23 La. Ann. 717 (1871); H. L. Bain & Co. v. Oliphant, 124 La. 583, 50 So. 588 (1909). Therefore, once a judgment is rendered against the garnishee ordering him to deliver the property or pay assets, there can be an appeal even though a judgment pro confesso has been rendered against them.

338. See note 337 supra. However, when a judgment has been rendered against the garnishee in traverse proceedings, there is indication that an appeal may be allowed. See Daigle v. Bird, 22 La. Ann. 138 (1870).

In Industrial Loan & Investment Co. v. Price, 26 So.2d 229 (La. App. 1946), it was held that there could be no appeal for a dismissal of a rule to show cause why the garnishee's answers should not be set aside, because the judgment was not definitive in character, but interlocutory. The court stated that plaintiff should have traversed the garnishee's answers after his rule was dismissed.

339. Wilkinson v. Boughton, Man. Unrep. Cas. 243 (La. 1877-1880). See also, Bullis v. Town of Jackson, 203 La. 289, 14 So.2d 1 (1943) (garnishment proceedings under fieri facias are not brought before the Supreme Court through an appeal taken from the judgment in the main suit.)


When there is an appeal from a judgment in garnishment proceedings, the garnishee is always a necessary party to the appeal. Although the defendant is not a necessary party, he has sufficient interest as a third person to appeal from a judgment in the garnishment proceedings. When the defendant or an intervening third party appeals from a judgment in garnishment proceedings, both the garnishee and the plaintiff are necessary parties.

Since the garnishee is merely a stakeholder in the garnishment proceedings, he cannot appeal to investigate the merits of the judgment between the plaintiff and the defendant. All the garnishee has a right to complain of on appeal is the judgment of the court insofar as it affects his interests.

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Expropriation—A Survey of Louisiana Law

Eminent domain is the inherent right of a sovereign to acquire private property for a public purpose without the owner's

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343. Katz & Barnett v. Sorsby, 34 La. Ann. 588 (1882); Elder v. Rogers, 11 La. Ann. 606 (1858). If the defendant is cited to appear, and on appeal he asks that the judgment be affirmed, he acknowledges that the original judgment is correct and the proceedings under the writ of fieri facias are regular so far as he is concerned. Campbell v. Myers, 16 La. Ann. 362 (1861).
347. Hanna's Syndics v. Lauring, 10 Mart. (O.S.) 568 (La. 1822); Kimball v. Plant. 14 La. 511 (1840).
348. See note 347 supra.
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1. Two schools of thought exist concerning this attribute of the right. The "natural law school" holds that eminent domain exists simply as another example of the right of the state over private property. The second school proposes that the right exists as a necessity of government. Both recognize that it need not be constitutionally created. 1 NICHOLS, EMINENT DOMAIN 13 (3d ed. 1950). In this particular see also JAHN, EMINENT DOMAIN 5 (1953) and 29 C.J.S., Eminent Domain § 2 (1941).