

## **TEXAS RULES OF CIVIL PROCEDURE**

### **PART VI - RULES RELATING TO ANCILLARY PROCEEDINGS**

#### **SECTION 1. ATTACHMENT**

##### **RULE 592. APPLICATION FOR WRIT OF ATTACHMENT AND ORDER**

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a writ of attachment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue except upon written order of the court after a hearing, which may be ex parte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property that may be attached, and the amount of bond required of plaintiff, and, further shall command that the attached property be kept safe and preserved subject to further orders of the court. Such bond shall be in an amount which, in the opinion of the court, will adequately compensate the defendant in the event plaintiff fails to prosecute his suit to effect, and to pay all damages and costs which may be adjudged against him for wrongfully suing out the writ of attachment. The court shall further find in its order the amount of bond required of defendant to replevy, which, unless the defendant chooses to exercise his option as provided in Rule 599, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

##### **RULE 592a. BOND FOR ATTACHMENT**

No writ of attachment shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of attachment.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court

shall enter its order with respect to such bond and sufficiency of the sureties.

### **RULE 592b. FORM OF ATTACHMENT BOND**

The following form of bond may be used:

"The State of Texas,  
County of \_\_\_\_\_,

"We, the undersigned, as principal, and and as sureties, acknowledge ourselves bound to pay to C.D. the sum of dollars, conditioned that the above bound plaintiff in attachment against the said C.D., defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs to the extent of penal amount of this bond as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this \_\_\_\_ day of \_\_\_\_\_, 20\_\_."

### **RULE 593. REQUISITES FOR WRIT**

A writ of attachment shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further order of the court, so much of the property of the defendant, of a reasonable value in approximately the amount fixed by the court, as shall be found within his county.

### **RULE 594. FORM OF WRIT**

The following form of writ may be issued:

"The State of Texas.

"To the Sheriff or any Constable of any County of the State of Texas, greeting:

"We command you that you attach forthwith so much of the property of C.D., if it be found in your county, repleviable on security, as shall be of value sufficient to make the sum of \_\_\_\_\_ dollars, and the probable costs of suit, to satisfy the demand of A.B., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before our court in \_\_\_\_\_, County of \_\_\_\_\_. You will true return make of this writ on or before 10 a.m. of Monday, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , showing how you have executed the same."

### **RULE 595. SEVERAL WRITS**

Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in

succession and sent to different counties, until sufficient property shall be attached to satisfy the writ.

#### **RULE 596. DELIVERY OF WRIT**

The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

#### **RULE 597. DUTY OF OFFICER**

The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

#### **RULE 598. LEVY, HOW MADE**

The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

#### **RULE 598a. SERVICE OF WRIT ON DEFENDANT**

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the writ of attachment, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To \_\_\_\_\_, Defendant:

"You are hereby notified that certain properties alleged to be owned by you have been attached. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

#### **RULE 599. DEFENDANT MAY REPLEVY**

At any time before judgment, should the attached property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property

if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property attached. Provided that there has been located sufficient property of the defendants to satisfy the order of attachment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property attached. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from attachment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of attachment or modification thereof shall be terminated. Attachment of substituted property shall be deemed to have existed from the date of levy on the original property attached, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

#### **RULE 600. SALE OF PERISHABLE PROPERTY**

Whenever personal property which has been attached shall not have been claimed or replevied, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

#### **RULE 601. TO PROTECT INTERESTS**

In determining whether the property attached is perishable, and the necessity or advantage or ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record, with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property

at public auction for cash, and thereupon the officer shall sell it accordingly.

#### **RULE 602. BOND OF APPLICANT FOR SALE**

If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

#### **RULE 603. PROCEDURE FOR SALE**

Such sale of attached perishable personal property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and at the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

#### **RULE 604. RETURN OF SALE**

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or justice of the peace, as the case may be, and shall make written return of the order of sale signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

#### **RULE 605. JUDGE MAY MAKE NECESSARY ORDERS**

When the perishable personal property levied on under the attachment writ has not been claimed or replevied, the judge or justice of the peace may make such orders, either in term time or vacation, as may be necessary for its preservation or use.

#### **RULE 606. RETURN OF WRIT**

The officer executing the writ of attachment shall return the writ, with his action endorsed thereon, or attached thereto, signed by him officially, to the court from which it issued, at or before 10 o'clock a.m. of the Monday next after the expiration of fifteen days from the date of issuance of the writ. Such return shall describe the property attached with sufficient certainty to identify it, and state when the same was attached, and whether any personal property attached remains still in his hands, and,

if not, the disposition made of the same. When property has been replevied he shall deliver the replevy bond to the clerk or justice of the peace to be filed with the papers of the cause.

#### **RULE 607. REPORT OF DISPOSITION OF PROPERTY**

When the property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property. Such report shall be filed among the papers of the cause.

#### **RULE 608. DISSOLUTION OR MODIFICATION OF WRIT OF ATTACHMENT**

A defendant whose property has been attached or any intervening party who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the writ, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of perishable property, until a hearing is had and the issue is determined. The writ shall be dissolved unless at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property attached exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove the facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

#### **RULE 609. AMENDMENT**

Clerical errors in the affidavit, bond, or writ of attachment, or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize

by an order entered in the minutes of the court or noted on the docket of the justice of the peace, provided the amendment does not change or add to the grounds of such attachment as stated in the affidavit, and provided such amendment appears to the judge or justice to be in furtherance of justice.

## **SECTION 2. DISTRESS WARRANT**

### **RULE 610. APPLICATION FOR DISTRESS WARRANT AND ORDER**

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for the issuance of a distress warrant with the justice of the peace. Such application may be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts, but shall include a statement that the amount sued for is rent, or advances prescribed by statute, or shall produce a writing signed by the tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant. The application shall comply with all statutory requirements and shall state the grounds for issuing the warrant and the specific facts relied upon by the plaintiff to warrant the required findings by the justice of the peace. The warrant shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No warrant shall issue before final judgment except on written order of the justice of the peace after a hearing, which may be ex parte. Such warrant shall be made returnable to a court having jurisdiction of the amount in controversy. The justice of the peace in his order granting the application shall make specific findings of fact to support the statutory grounds found to exist, and shall specify the maximum value of property that may be seized, and the amount of bond required of plaintiff, and, further shall command that property be kept safe and preserved subject to further orders of the court having jurisdiction. Such bond shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect, and pay all damages and costs as shall be adjudged against him for wrongfully suing out the warrant. The justice of the peace shall further find in his order the amount of bond required to replevy, which, unless the defendant chooses to exercise his option as provided in Rule 614, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several warrants at the same time, or in succession, to be sent to different counties.

### **RULE 611. BOND FOR DISTRESS WARRANT**

No distress warrant shall issue before final judgment until the party applying therefor has filed with the justice of the peace authorized to issue such warrant a bond payable to the defendant in an amount approved by the justice of the peace, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay all damages and costs as may be adjudged against him for wrongfully suing out such warrant.

After notice to the opposite party, either before or after the issuance of the warrant, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in a court having jurisdiction of the subject matter. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties.

### **RULE 612. REQUISITES FOR WARRANT**

A distress warrant shall be directed to the sheriff or any constable within the State of Texas. It shall command him to attach and hold, unless replevied, subject to the further orders of the court having jurisdiction, so much of the property of the defendant, not exempt by statute, of reasonable value in approximately the amount fixed by the justice of the peace, as shall be found within his county.

### **RULE 613. SERVICE OF WARRANT ON DEFENDANT**

The defendant shall be served in any manner prescribed for service of citation, or as provided in Rule 21a, with a copy of the distress warrant, the application, accompanying affidavits, and orders of the justice of the peace as soon as practicable following the levy of the warrant. There shall be prominently displayed on the face of the copy of the warrant served on the defendant, in 10-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

To \_\_\_\_\_, Defendant:

You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT."

### **RULE 614. DEFENDANT MAY REPLEVY**

At any time before judgment, should the seized property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by a court having jurisdiction of the amount in controversy payable to plaintiff in double the amount of the plaintiff's debt, or, at the defendant's option for not less than the value of the property sought to be replevied, plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant shall satisfy to the extent of the penal amount of the bond any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by a court having jurisdiction of the amount in controversy. The court's determination may be made upon the basis of affidavits if uncontroverted



setting forth such facts as would be admissible in evidence, otherwise the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the order of the justice of the peace, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that attached, for the property seized. Provided that there has been located sufficient property of the defendant's to satisfy the order of seizure, the court may authorize substitution of one or more items of defendant's property for all or part of the property seized. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from seizure shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of seizure or modification thereof shall be terminated. Seizure of substituted property shall be deemed to have existed from the date of levy on the original property seized, and no property on which liens have become affixed since the date of levy on the original property may be substituted.

#### **RULE 614a. DISSOLUTION OR MODIFICATION OF DISTRESS WARRANT**

A defendant whose property has been seized or any intervening claimant who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the seizure, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the warrant except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than 10 days after the motion is filed. The filing of the motion shall stay any further proceedings under the warrant, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The warrant shall be dissolved unless, at such hearing, the plaintiff shall prove the specific facts alleged and the grounds relied upon for its issuance, but the court may modify the order of the justice of the peace granting the warrant and the warrant issued pursuant thereto. The movant shall however have the burden to prove that the reasonable value of the property seized exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove the facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party shall be received and considered. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the warrant shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies the order of the justice of the peace of the warrant issue pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

### **RULE 615. SALE OF PERISHABLE PROPERTY**

Whenever personal property which has been levied on under a distress warrant shall not have been claimed or replevied, the judge, or justice of the peace, to whose court such writ is made returnable may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

### **RULE 616. TO PROTECT INTERESTS**

In determining whether the property levied upon is perishable, and the necessity or advantage of ordering a sale thereof, the judge or justice of the peace may act upon affidavits in writing or oral testimony, and may by a preliminary order entered of record with or without notice to the parties as the urgency of the case in his opinion requires, direct the sheriff or constable to sell such property at public auction for cash, and thereupon the sheriff or constable shall sell it accordingly. If the application for an order of sale be filed by any person or party other than the defendant from whose possession the property was taken by levy, the court shall not grant such order, unless the applicant shall file with such court a bond payable to such defendant, with two or more good and sufficient sureties, to be approved by said court, conditioned that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made.

### **RULE 617. PROCEDURE FOR SALE**

Such sale of perishable property shall be conducted in the same manner as sales of personal property under execution; provided, however, that the time of the sale, and the time of advertisement thereof, may be fixed by the judge or justice of the peace at a time earlier than ten days, according to the exigency of the case, and in such event notice thereof shall be given in such manner as directed by the order.

### **RULE 618. RETURN OF SALE**

The officer making such sale of perishable property shall promptly pay the proceeds of such sale to the clerk of such court or to the justice of the peace, as the case may be, and shall make written return of the order of sale, signed by him officially, stating the time and place of the sale, the name of the purchaser, and the amount of money received, with an itemized account of the expenses attending the sale. Such return shall be filed with the papers of the case.

### **RULE 619. CITATION FOR DEFENDANT**

The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice at the first day of the next succeeding term of court, stating the time and place of holding the same, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, stating the place of holding the court, and shall be returned with the other papers to such court. If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter judgment.

### **RULE 620. PETITION**

When the warrant is made returnable to the district or county court, the plaintiff shall file his petition within ten days from the date of the issuance of the writ.

### **SECTION 3. EXECUTIONS**

#### **RULE 621. ENFORCEMENT OF JUDGMENT**

The judgments of the district, county, and justice courts shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in thirty, sixty, or ninety days as requested by the plaintiff, his agent or attorney.

#### **RULE 621a. DISCOVERY AND ENFORCEMENT OF JUDGMENT**

At any time after rendition of judgment, and so long as said judgment has not been suspended by a supersedeas bond or by order of a proper court and has not become dormant as provided by Article 3773, V.A.T.S., the successful party may, for the purpose of obtaining information to aid in the enforcement of such judgment, initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. Also, at any time after rendition of judgment, either party may, for the purpose of obtaining information relevant to motions allowed by Texas Rules of Appellate Procedure 47 and 49 initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. The rules governing and related to such pre-trial discovery proceedings shall apply in like manner to discovery proceedings after judgment. The rights herein granted to the parties shall inure to their successors or assignees, in whole or in part. Judicial supervision of such discovery proceedings after judgment shall be the same as that provided by law or these rules for pre-trial discovery and proceedings insofar as applicable.

#### **RULE 622. EXECUTION**

An execution is a process of the court from which it is issued. The clerk of the district or county court or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, but shall be addressed to any sheriff or any constable within the State of Texas.

#### **RULE 623. ON DEATH OF EXECUTOR**

When an executor, administrator, guardian or trustee of an express trust dies, or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death or termination being filed with the clerk of the court or the justice of the peace, as the case may be, together with the certificate of the appointment of such successor under the hand and seal of the clerk of the court wherein the appointment was made.

#### **RULE 624. ON DEATH OF NOMINAL PLAINTIFF**

When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought upon an affidavit of such death being filed with the clerk of the court or the justice of the peace.

#### **RULE 625. ON MONEY OF DECEASED**

If a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration.

#### **RULE 626. ON PROPERTY OF DECEASED**

In any case of judgment other than a money judgment, where the sole defendant, or one or more of several joint defendants, shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative.

#### **RULE 627. TIME FOR ISSUANCE**

If no supersedeas bond or notice of appeal, as required of agencies exempt from filing bonds, has been filed and approved, the clerk of the court or justice of the peace shall issue the execution upon such judgment upon application of the successful party or his attorney after the expiration of thirty days from the time a final judgment is signed. If a timely motion for new trial or in arrest of

judgment is filed, the clerk shall issue the execution upon the judgment on application of the party or his attorney after the expiration of thirty days from the time the order overruling the motion is signed or from the time the motion is overruled by operation of law.

#### **RULE 628. EXECUTION WITHIN THIRTY DAYS**

Such execution may be issued at any time before the thirtieth day upon the filing of an affidavit by the plaintiff in the judgment or his agent or attorney that the defendant is about to remove his personal property subject to execution by law out of the county, or is about to transfer or secrete such personal property for the purpose of defrauding his creditors.

#### **RULE 629. REQUISITES OF EXECUTION**

The style of the execution shall be "The State of Texas." It shall be directed to any sheriff or any constable within the State of Texas. It shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court, and shall require the officer to execute it according to its terms, and to make the costs which have been adjudged against the defendant in execution and the further costs of executing the writ. It shall describe the judgment, stating the court in which, and the time when, rendered, and the names of the parties in whose favor and against whom the judgment was rendered. A correct copy of the bill of costs taxed against the defendant in execution shall be attached to the writ. It shall require the officer to return it within thirty, sixty, or ninety days, as directed by the plaintiff or his attorney.

#### **RULE 630. EXECUTION ON JUDGMENT FOR MONEY**

When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law.

#### **RULE 631. EXECUTION FOR SALE OF PARTICULAR PROPERTY**

An execution issued upon a judgment for the sale of particular chattels or personal property or real estate, must particularly describe the property, and shall direct the officer to make the sale by previously giving the public notice of the time and place of sale required by law and these rules.

#### **RULE 632. EXECUTION FOR DELIVERY OF CERTAIN PROPERTY**

An execution issued upon a judgment for the delivery of the possession of a chattel or personal

property, or for the delivery of the possession of real property, shall particularly describe the property, and designate the party to whom the judgment awards the possession. The writ shall require the officer to deliver the possession of the property to the party entitled thereto.

### **RULE 633. EXECUTION FOR POSSESSION OR VALUE OF PERSONAL PROPERTY**

If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

### **RULE 634. EXECUTION SUPERSEDED**

The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.

### **RULE 635. STAY OF EXECUTION IN JUSTICE COURT**

At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day.

### **RULE 636. INDORSEMENTS BY OFFICER**

The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

### **RULE 637. LEVY OF EXECUTION**

When an execution is delivered to an officer he shall proceed without delay to levy the same upon the property of the defendant found within his county not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney. The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon, and the levy shall first be made upon the property designated by the defendant, or his agent. If in the opinion of the officer the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall require an additional designation by the defendant. If no property be thus designated by the defendant, the officer shall levy the execution upon any property of the defendant subject to execution.

### **RULE 638. PROPERTY NOT TO BE DESIGNATED**

A defendant in execution shall not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

### **RULE 639. LEVY**

In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground but it shall be sufficient for him to indorse such levy on the writ. Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession. Where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them where there are several.

### **RULE 640. LEVY ON STOCK RUNNING AT LARGE**

A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

### **RULE 641. LEVY ON SHARES OF STOCK**

A levy upon shares of stock of any corporation or joint stock company for which a certificate is outstanding is made by the officer seizing and taking possession of such certificate. Provided, however, that nothing herein shall be construed as restricting any rights granted under Section 8.317 of the Texas Uniform Commercial Code.

### **RULE 643. LEVY ON GOODS PLEDGED OR MORTGAGED**

Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

### **RULE 644. MAY GIVE DELIVERY BOND**

Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond.

### **RULE 645. PROPERTY MAY BE SOLD BY DEFENDANT**

Where property has been replevied, as provided in the preceding rule, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

### **RULE 646. FORFEITED DELIVERY BOND**

In case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the officer shall forthwith indorse the bond "Forfeited" and return the same to the clerk of the court or the justice of the peace from which the execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk or justice shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be indorsed by the clerk or justice on the execution.

### **RULE 646a. SALE OF REAL PROPERTY**

Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated, on the first Tuesday of the month, between the hours of ten o'clock, a.m. and four o'clock, p.m.

### **RULE 647. NOTICE OF SALE OF REAL ESTATE**

The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall



be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall charge the legal rate of Two (2) Cents per word for the first insertion of such publication and One (1) Cent per word for such subsequent insertions, or such newspapers shall be entitled to charge for such publication at a rate equal to but not in excess of the published word or line rate of that newspaper for such class of advertising. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant, or his attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements.

#### **RULE 648. "COURTHOUSE DOOR" DEFINED**

By the term "courthouse door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

#### **RULE 649. SALE OF PERSONAL PROPERTY**

Personal property levied on under execution shall be offered for sale on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property. When a levy is made upon livestock running at large on the range, it is not necessary that such stock, or any part thereof, be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

#### **RULE 650. NOTICE OF SALE OF PERSONAL PROPERTY**

Previous notice of the time and place of the sale of any personal property levied on under execution shall be given by posting notice thereof for ten days successively immediately prior to the date of sale at the courthouse door of any county and at the place where the sale is to be made.

#### **RULE 651. WHEN EXECUTION IS NOT SATISFIED**

When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

#### **RULE 652. PURCHASER FAILING TO COMPLY**

If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

#### **RULE 653. RESALE OF PROPERTY**

When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time; but if not, he shall readvertise and sell the same as in the first instance.

#### **RULE 654. RETURN OF EXECUTION**

The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

#### **RULE 655. RETURN OF EXECUTION BY MAIL**

When an execution is placed in the hands of an officer of a county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by direction of the party entitled to receive the same or his attorney of record.

#### **RULE 656. EXECUTION DOCKET**

The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds six per cent, the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return. Such docket entries shall be taken and deemed to be a record. The clerk shall keep an index and cross-index to the execution docket. When execution is in favor or against several persons, it shall be indexed in the name of each person. Any clerk who shall fail to keep said execution docket and index thereto, or shall neglect to make the entries therein, shall be liable upon his official bond to any person injured for the amount of damages sustained by such neglect.

#### **SECTION 4. GARNISHMENT**

##### **RULE 657. JUDGMENT FINAL FOR GARNISHMENT**

In the case mentioned in subsection 3, section 63.001, Civil Practice and Remedies Code, the judgment whether based upon a liquidated demand or an unliquidated demand, shall be deemed final and subsisting for the purpose of garnishment from and after the date it is signed, unless a supersedeas bond shall have been approved and filed in accordance with Texas Rule of Appellate Procedure 47.

##### **RULE 658. APPLICATION FOR WRIT OF GARNISHMENT AND ORDER**

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of garnishment. Such application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other person having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue before final judgment except upon written order of the court after a hearing, which may be ex parte. The court in its order granting the application shall make specific findings of facts to support the statutory grounds found to exist, and shall specify the maximum value of property or indebtedness that may be garnished and the amount of bond required of plaintiff. Such bond shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect, and pay all damages and costs as shall be adjudged against him for wrongfully suing out the writ of garnishment. The court shall further find in its order the amount of bond required of defendant to replevy, which, unless defendant exercises his option as provided under Rule 664, shall be the amount of plaintiff's claim, one year's accrual of interest if allowed by law on the claim, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

### **RULE 658a. BOND FOR GARNISHMENT**

No writ of garnishment shall issue before final judgment until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of garnishment.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties. Upon hearing, the court shall enter its order with respect to such bond and the sufficiency of the sureties.

Should it be determined from the garnishee's answer if such is not controverted that the garnishee is indebted to the defendant, or has in his hands effects belonging to the defendant, in an amount or value less than the amount of the debt claimed by the plaintiff, then after notice to the defendant the court in which such garnishment is pending upon hearing may reduce the required amount of such bond to double the sum of the garnishee's indebtedness to the defendant plus the value of the effects in his hands belonging to the defendant.

### **RULE 659. CASE DOCKETED**

When the foregoing requirements of these rules have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant; and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court out of which the same is issued at or before 10 o'clock a.m. of the Monday next following the expiration of twenty days from the date the writ was served, if the writ is issued out of the district or county court; or the Monday next after the expiration of ten days from the date the writ was served, if the writ is issued out of the justice court. The writ shall command the garnishee to answer under oath upon such return date what, if anything, he is indebted to the defendant, and was when the writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession.

### **RULE 661. FORM OF WRIT**

The following form of writ may be used:

"The State of Texas.

"To E.F., Garnishee, greeting:

"Whereas, in the \_\_\_\_\_ Court of \_\_\_\_\_ County (if a justice court, state also the number of the precinct), in a certain cause wherein A.B. is plaintiff and C.D. is defendant, the plaintiff, claiming an indebtedness against the said C.D. of \_\_\_\_\_ dollars, besides interest and costs of suit, has applied for a writ of garnishment against you, E.F.; therefore you are hereby commanded to be and appear before said court at \_\_\_\_\_ in said county (if the writ is issued from the county or district court, here proceed: at 10 o'clock a.m. on the Monday next following the expiration of twenty days from the date of service hereof.' If the writ is issued from a justice of the peace court, here proceed: at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service hereof.' In either event, proceed as follows:) then and there to answer upon oath what, if anything, you are indebted to the said C.D., and were when this writ was served upon you, and what effects, if any, of the said C.D. you have in your possession, and had when this writ was served, and what other persons, if any, within your knowledge, are indebted to the said C.D. or have effects belonging to him in their possession. You are further commanded NOT to pay to defendant any debt or to deliver to him any effects, pending further order of this court. Herein fail not, but make due answer as the law directs."

#### **RULE 662. DELIVERY OF WRIT**

The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

#### **RULE 663. EXECUTION AND RETURN OF WRIT**

The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

#### **RULE 663a. SERVICE OF WRIT ON DEFENDANT**

The defendant shall be served in any manner prescribed for service of citation or as provided in Rule 21a with a copy of the writ of garnishment, the application, accompanying affidavits and orders of the court as soon as practicable following the service of the writ. There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To \_\_\_\_\_, Defendant:

"You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

#### **RULE 664. DEFENDANT MAY REPLEVY**

At any time before judgment, should the garnished property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff, in the amount fixed by the court's order, or, at the defendant's option, for the value of the property or indebtedness sought to be replevied (to be estimated by the officer), plus one year's interest thereon at the legal rate from the date of the bond, conditioned that the defendant, garnishee, shall satisfy, to the extent of the penal amount of the bond, any judgment which may be rendered against him in such action.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

On reasonable notice to the opposing party (which may be less than three days) the defendant shall have the right to move the court for a substitution of property, of equal value as that garnished, for the property garnished. Provided that there has been located sufficient property of the defendant's to satisfy the order of garnishment, the court may authorize substitution of one or more items of defendant's property for all or for part of the property garnished. The court shall first make findings as to the value of the property to be substituted. If property is substituted, the property released from garnishment shall be delivered to defendant, if such property is personal property, and all liens upon such property from the original order of garnishment or modification thereof shall be terminated. Garnishment of substituted property shall be deemed to have existed from date of garnishment on the original property garnished, and no property on which liens have become affixed since the date of garnishment of the original property may be substituted.

#### **RULE 664a. DISSOLUTION OR MODIFICATION OF WRIT OF GARNISHMENT**

A defendant whose property or account has been garnished or any intervening party who claims an interest in such property or account, may by sworn written motion, seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ

except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation or sale of any perishable property, until a hearing is had, and the issue is determined. The writ shall be dissolved unless, at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property garnished exceeds the amount necessary to secure the debt, interest for one year, and probable costs. He shall also have the burden to prove facts to justify substitution of property.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders including orders concerning the care, preservation or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

#### **RULE 665. ANSWER TO WRIT**

The answer of the garnishee shall be under oath, in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

#### **RULE 666. GARNISHEE DISCHARGED**

If it appears from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served upon him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and if he has either denied that any other persons within his knowledge are indebted to the defendant or have in their possession effects belonging to the defendant, or else has named such persons, should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

#### **RULE 667. JUDGMENT BY DEFAULT**

If the garnishee fails to file an answer to the writ of garnishment at or before the time directed in the writ, it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, and on or after appearance day, to render judgment by default, as in other civil cases, against such garnishee for the full amount of such judgment against the defendant together with all

interest and costs that may have accrued in the main case and also in the garnishment proceedings. The answer of the garnishee may be filed as in any other civil case at any time before such default judgment is rendered.

#### **RULE 668. JUDGMENT WHEN GARNISHEE IS INDEBTED**

Should it appear from the answer of the garnishee or should it be otherwise made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided for the issuance of execution in other cases.

#### **RULE 669. JUDGMENT FOR EFFECTS**

Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, including any certificates of stock in any corporation or joint stock company, the court shall render a decree ordering sale of such effects under execution in satisfaction of plaintiff's judgment and directing the garnishee to deliver them, or so much thereof as shall be necessary to satisfy plaintiff's judgment, to the proper officer for that purpose.

#### **RULE 670. REFUSAL TO DELIVER EFFECTS**

Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding rule, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause upon a date to be fixed by the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

#### **RULE 672. SALE OF EFFECTS**

The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such effects or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.



### **RULE 673. MAY TRAVERSE ANSWER**

If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by his affidavit stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same to be incorrect. The defendant may also, in like manner, controvert the answer of the garnishee.

### **RULE 674. TRIAL OF ISSUE**

If the garnishee whose answer is controverted, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as in other cases.

### **RULE 675. DOCKET AND NOTICE**

The clerk of the court or the justice of the peace, on receiving certified copies filed in the county of the garnishee's residence under the provisions of the statutes, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial on the docket of such court. Such notice shall be directed to the garnishee, be dated and tested as other process from such court, and served by delivering a copy thereof to the garnishee. It shall be returnable, if issued from the district or county court, at ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of its service; and if issued from the justice court, to the next term of such court convening after the expiration of twenty days after the service of such notice.

### **RULE 676. ISSUE TRIED IN OTHER CASES**

Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as in other cases.

### **RULE 677. COSTS**

Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this section; where the answer is contested, the costs shall abide the issue of such contest.

### **RULE 678. GARNISHEE DISCHARGED ON PROOF**

It shall be a sufficient answer to any claim of the defendant against the garnishee founded on an indebtedness of such garnishee, or on the possession by him of any effects, for the garnishee to show that such indebtedness has been paid, or such effects, including any certificates of stock in any incorporated or joint stock company, have been delivered to any sheriff or constable as provided for in Rule 669.

#### **RULE 679. AMENDMENT**

Clerical errors in the affidavit, bond, or writ of garnishment or the officer's return thereof, may upon application in writing to the judge or justice of the court in which the suit is filed, and after notice to the opponent, be amended in such manner and on such terms as the judge or justice shall authorize by an order entered in the minutes of the court (or noted on the docket of the justice of the peace), provided such amendment appears to the judge or justice to be in furtherance of justice.

#### **SECTION 5. INJUNCTIONS**

##### **RULE 680. TEMPORARY RESTRAINING ORDER**

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after signing, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. No more than one extension may be granted unless subsequent extensions are unopposed. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

### **RULE 681. TEMPORARY INJUNCTIONS: NOTICE**

No temporary injunction shall be issued without notice to the adverse party.

### **RULE 682. SWORN PETITION**

No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief.

### **RULE 683. FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER**

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought. The appeal of a temporary injunction shall constitute no cause for delay of the trial.

### **RULE 684. APPLICANT'S BOND**

In the order granting any temporary restraining order or temporary injunction, the court shall fix the amount of security to be given by the applicant. Before the issuance of the temporary restraining order or temporary injunction the applicant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by the clerk, in the sum fixed by the judge, conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order or temporary injunction shall be dissolved in whole or in part.

Where the temporary restraining order or temporary injunction is against the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the State, municipality, State agency, or subdivision of the State in its governmental capacity, has no pecuniary interest in the suit and no monetary damages can be shown, the bond shall be allowed in the sum fixed by the judge, and the liability of the applicant shall be for its face amount if the restraining order or temporary injunction shall be dissolved in whole or in part. The discretion of the trial court in fixing the amount of the bond shall be subject to review. Provided that under equitable circumstances and for good cause shown by affidavit or otherwise the court rendering judgment on the bond may allow recovery for less than its full face amount, the action of the court to be subject

to review.

### **RULE 685. FILING AND DOCKETING**

Upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge, with the clerk of the proper court; and, if such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant.

### **RULE 686. CITATION**

Upon the filing of such petition and order not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court; provided, however, that when a temporary restraining order is issued and is accompanied with a true copy of plaintiff's petition, it shall not be necessary for the citation in the original suit to be accompanied with a copy of plaintiff's petition, nor contain a statement of the nature of plaintiff's demand, but it shall be sufficient for said citation to refer to plaintiff's claim as set forth in a true copy of plaintiff's petition which accompanies the temporary restraining order; and provided further that the court may have a hearing upon an application for a temporary restraining order or temporary injunction at such time and upon such reasonable notice given in such manner as the court may direct.

### **RULE 687. REQUISITES OF WRIT**

The writ of injunction shall be sufficient if it contains substantially the following requisites:

- (a) Its style shall be, "The State of Texas."
- (b) It shall be directed to the person or persons enjoined.
- (c) It must state the names of the parties to the proceedings, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
- (d) It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
- (e) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date of the court's order granting such temporary restraining order; but if it is a temporary injunction, issued after notice, it

shall be made returnable at or before ten o'clock a.m. of the Monday next after the expiration of twenty days from the date of service thereof, as in the case of ordinary citations.

- (f) It shall be dated and signed by the clerk officially and attested with the seal of his office and the date of its issuance must be indorsed thereon.

#### **RULE 688. CLERK TO ISSUE WRIT**

When the petition, order of the judge and bond have been filed, the clerk shall issue the temporary restraining order or temporary injunction, as the case may be, in conformity with the terms of the order, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined, or to the applicant, as the latter shall direct. If several persons are enjoined, residing in different counties, the clerk shall issue such additional copies of the writ as shall be requested by the applicant.

#### **RULE 689. SERVICE AND RETURN**

The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

#### **RULE 690. THE ANSWER**

The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant.

#### **RULE 691. BOND ON DISSOLUTION**

Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such defendant.

## **RULE 692. DISOBEDIENCE**

Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating what person is guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of any county, and requiring such officer to arrest the person therein named if found within his county and have him before the court or judge at the time and place named in such writ; or said court or judge may issue a show cause order, directing and requiring such person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such attachment or show cause order, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

## **RULE 693. PRINCIPLES OF EQUITY APPLICABLE**

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes.

### **RULE 693a. BOND IN DIVORCE CASE**

In a divorce case the court in its discretion may dispense with the necessity of a bond in connection with an ancillary injunction in behalf of one spouse against the other.

## **SECTION 6. MANDAMUS**

### **RULE 694. NO MANDAMUS WITHOUT NOTICE**

No mandamus shall be granted by the district of county court on ex parte hearing, and any peremptory mandamus granted without notice shall be abated on motion.

## **SECTION 7. RECEIVERS**

### **RULE 695. NO RECEIVER OF IMMOVABLE PROPERTY APPOINTED WITHOUT NOTICE**

Except where otherwise provided by statute, no receiver shall be appointed without notice to take charge of property which is fixed and immovable. When an application for appointment of a receiver

to take possession of property of this type is filed, the judge or court shall set the same down for hearing and notice of such hearing shall be given to the adverse party by serving notice thereof not less than three days prior to such hearing. If the order finds that the defendant is a nonresident or that his whereabouts is unknown, the notice may be served by affixing the same in a conspicuous manner and place upon the property or if that is impracticable it may be served in such other manner as the court or judge may require.

### **RULE 695a. BOND, AND BOND IN DIVORCE CASES**

No receiver shall be appointed with authority to take charge of property until the party applying therefor has filed with the clerk of the court a good and sufficient bond, to be approved by such clerk, payable to the defendant in the amount fixed by the court, conditioned for the payment of all damages and costs in such suit, in case it should be decided that such receiver was wrongfully appointed to take charge of such property. The amount of such bond shall be fixed at a sum sufficient to cover all such probable damages and costs. In a divorce case the court or judge, as a matter of discretion, may dispense with the necessity of a bond.

### **SECTION 8. SEQUESTRATION**

#### **RULE 696. APPLICATION FOR WRIT OF SEQUESTRATION AND ORDER**

Either at the commencement of a suit or at any time during its progress the plaintiff may file an application for a writ of sequestration. The application shall be supported by affidavits of the plaintiff, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for issuing the writ, including the description of the property to be sequestered with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which it is located, and the specific facts relied upon by the plaintiff to warrant the required findings by the court. The writ shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No writ shall issue except upon written order of the court after a hearing, which may be ex parte. The court, in its order granting the application, shall make specific findings of facts to support the statutory grounds found to exist, and shall describe the property to be sequestered with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which it is located. Such order shall further specify the amount of bond required of plaintiff which shall be in an amount which, in the opinion of the court, shall adequately compensate defendant in the event plaintiff fails to prosecute his suit to effect and pay all damages and costs as shall be adjudged against him for wrongfully suing out the writ of sequestration including the elements of damages stated in Sections 62.044 and 62.045, Civil Practice and Remedies Code. The court shall further find in its order the amount of bond required of

defendant to replevy, which shall be in an amount equivalent to the value of the property sequestered or to the amount of plaintiff's claim and one year's accrual of interest if allowed by law on the claim, whichever is the lesser amount, and the estimated costs of court. The order may direct the issuance of several writs at the same time, or in succession, to be sent to different counties.

#### **RULE 697. PETITION**

If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts.

#### **RULE 698. BOND FOR SEQUESTRATION**

No writ of sequestration shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant in the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the plaintiff will prosecute his suit to effect and pay to the extent of the penal amount of the bond all damages and costs as may be adjudged against him for wrongfully suing out such writ of sequestration, and plaintiff may further condition the bond pursuant to the provisions of Rule 708, in which case he shall not be required to give additional bond to replevy unless so ordered by the court.

After notice to the opposite party, either before or after the issuance of the writ, the defendant or plaintiff may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties as justice may require.

#### **RULE 699. REQUISITES OF WRIT**

The writ of sequestration shall be directed "To the Sheriff or any Constable within the State of Texas" (not naming a specific county) and shall command him to take into his possession the property, describing the same as it is described in the application or affidavits, if to be found in his county, and to keep the same subject to further orders of the court, unless the same is replevied. There shall be prominently displayed on the face of the writ, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

#### **RULE 700. AMENDMENT**



Clerical errors in the affidavit, bond, or writ of sequestration or the officer's return thereof may upon application in writing to the judge of the court in which the suit is filed and after notice to the opponent, be amended in such manner and on such terms as the judge shall authorize by an order entered in the minutes of the court, provided the amendment does not change or add to the grounds of such sequestration as stated in the affidavit, and provided such amendment appears to the judge to be in furtherance of justice.

#### **RULE 700a. SERVICE OF WRIT ON DEFENDANT**

The defendant shall be served in any manner provided for service of citation or as provided in Rule 21a, with a copy of the writ of sequestration, the application, accompanying affidavits, and orders of the court as soon as practicable following the levy of the writ. There shall also be prominently displayed on the face of the copy of the writ served on defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"To \_\_\_\_\_, Defendant:

"You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

#### **RULE 701. DEFENDANT MAY REPLEVY**

At any time before judgment, should the sequestered property not have been previously claimed, replevied, or sold, the defendant may replevy the same, or any part thereof, or the proceeds from the sale of the property if it has been sold under order of the court, by giving bond, with sufficient surety or sureties as provided by statute, to be approved by the officer who levied the writ, payable to plaintiff in the amount fixed by the court's order, conditioned as provided in Rule 702 or Rule 703.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

#### **RULE 702. BOND FOR PERSONAL PROPERTY**

If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy, or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment and of the fruits, hire or revenue of the same in case he shall be condemned to do so.

### **RULE 703. BOND FOR REAL ESTATE**

If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do.

### **RULE 704. RETURN OF BOND AND ENTRY OF JUDGMENT**

The bond provided for in the three preceding rules shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be rendered against all the obligors in such bond, jointly and severally, for the value of the property replevied as of the date of the execution of the replevy bond, and the value of the fruits, hire, revenue, or rent thereof, as the case may be.

### **RULE 705. DEFENDANT MAY RETURN SEQUESTERED PROPERTY**

Within ten days after final judgment for personal property the defendant may deliver to the plaintiff, or to the officer who levied the sequestration or to his successor in office the personal property in question, and such officer shall deliver same to plaintiff upon his demand therefor; or such defendant shall deliver such property to the officer demanding same under execution issued therefor upon a judgment for the title or possession of the same; and such officer shall receipt the defendant for such property; provided, however, that such delivery to the plaintiff or to such officer shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant. Where a mortgage or other lien of any kind is foreclosed upon personal property sequestered and replevied, the defendant shall deliver such property to the officer calling for same under order of sale issued upon a judgment foreclosing such mortgage or other lien, either in the county of defendant's residence or in the county where sequestered, as demanded by such officer; provided, however, that such delivery by the defendant shall be without prejudice to any rights of the plaintiff under the replevy bond given by the defendant.

### **RULE 706. DISPOSITION OF THE PROPERTY BY OFFICER**

When the property is tendered back by the defendant to the officer who sequestered the same or to

the officer calling for same under an order of sale, such officer shall receive said property and hold or dispose of the same as ordered by the court; provided, however, that such return to and receipt of same by the officer and any sale or disposition of said property by the officer under order or judgment of the court shall not affect or limit any rights of the plaintiff under the bond provided for in Rule 702.

#### **RULE 707. EXECUTION**

If the property be not returned and received, as provided in the two preceding rules, execution shall issue upon said judgment for the amount due thereon, as in other cases.

#### **RULE 708. PLAINTIFF MAY REPLEVY**

When the defendant fails to replevy the property within ten days after the levy of the writ and service of notice on defendant, the officer having the property in possession shall at any time thereafter and before final judgment, deliver the same to the plaintiff upon his giving bond payable to defendant in a sum of money not less than the amount fixed by the court's order, with sufficient surety or sureties as provided by statute to be approved by such officer. If the property to be replevied be personal property, the condition of the bond shall be that he will have such property, in the same condition as when it is replevied, together with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, or the difference between its value at the time of replevy and the time of judgment (regardless of the cause of such difference in value, and of the fruits, hire or revenue of the same in case he shall be condemned to do so). If the property be real estate, the condition of such bond shall be that the plaintiff will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned to do so.

On reasonable notice to the opposing party (which may be less than three days) either party shall have the right to prompt judicial review of the amount of bond required, denial of bond, sufficiency of sureties, and estimated value of the property, by the court which authorized issuance of the writ. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order either approving or modifying the requirements of the officer or of the court's prior order, and such order of the court shall supersede and control with respect to such matters.

#### **RULE 709. WHEN BOND FORFEITED**

The bond provided for in the preceding rule shall be returned by the officer to the court issuing the writ immediately after he has approved same, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally for the value of the property replevied as of the date of the execution of the replevy bond, and the value of

the fruits, hire, revenue or rent thereof as the case may be. The same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

#### **RULE 710. SALE OF PERISHABLE GOODS**

If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale.

#### **RULE 711. ORDER OF SALE FOR**

The judge or justice granting the order provided for in the preceding rule shall issue an order directed to the officer having such property in possession, commending such officer to sell such property in the same manner as under execution.

#### **RULE 712. RETURN OF ORDER**

The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale.

#### **RULE 712a. DISSOLUTION OR MODIFICATION OF WRIT OF SEQUESTRATION**

A defendant whose property has been sequestered or any intervening party who claims an interest in such property, may by sworn written motion, seek to vacate, dissolve, or modify the writ and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic, including a motion to reduce the amount of property sequestered when the total amount described and authorized by such order exceeds the amount necessary to secure the plaintiff's claim, one year's interest if allowed by law on the claim, and costs. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than ten days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is

had, and the issue is determined. The writ shall be dissolved unless, at such hearing, the plaintiff shall prove the grounds relied upon for its issuance, but the court may modify its previous order granting the writ and the writ issued pursuant thereto. The movant shall, however, have the burden to prove that the reasonable value of the property sequestered exceeds the amount necessary to secure the debt, interest for one year, and probable costs.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders, including orders concerning the care, preservation, or disposition of the property (or the proceeds therefrom if the same has been sold) as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

#### **RULE 713. SALE ON DEBT NOT DUE**

If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due.

#### **RULE 714. PURCHASER'S BOND**

In the case of a sale as provided for in the preceding rule, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given.

#### **RULE 715. RETURN OF BOND**

The bond provided for in the preceding rule shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause.

#### **RULE 716. RECOVERY ON BOND**

In case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when

collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause.

## **SECTION 9. TRIAL OF RIGHT OF PROPERTY**

### **RULE 717. CLAIMANT MUST MAKE AFFIDAVIT**

Whenever a distress warrant, writ of execution, sequestration, attachment, or other like writ is levied upon personal property, and such property, or any part thereof, shall be claimed by any claimant who is not a party to such writ, such claimant may make application that such claim is made in good faith, and file such application with the court in which such suit is pending. Such application may be supported by affidavits of the claimant, his agent, his attorney, or other persons having knowledge of relevant facts. The application shall comply with all statutory requirements and shall state the grounds for such claim and the specific facts relied upon by the claimant to warrant the required findings by the court.

The claim shall not be quashed because two or more grounds are stated conjunctively or disjunctively. The application and any affidavits shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence; provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

No property shall be delivered to the claimant except on written order of the court after a hearing pursuant to Rule 718. The court in its order granting the application shall make specific findings of facts to support the statutory grounds found to exist and shall specify the amount of the bond required of the claimant.

### **RULE 718. PROPERTY DELIVERED TO CLAIMANT**

Any claimant who claims an interest in property on which a writ has been levied may, by sworn written motion, seek to obtain possession of such property. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the claimant is unable to admit or deny the finding, in which case claimant shall set forth the reasons why he cannot admit or deny. Such motion shall also contain the reasons why the claimant has superior right or title to the property claimed as against the plaintiff in the writ. Unless the parties agree to an extension of time, the motion shall be heard promptly, after reasonable notice to the plaintiff (which may be less than three days), and the issue shall be determined not later than 10 days after the motion is filed. The filing of the motion shall stay any further proceedings under the writ, except for any orders concerning the care, preservation, or sale of any perishable property, until a hearing is had, and the issue is determined. The claimant shall have the burden to show superior right or title to the property claimed as against the plaintiff and defendant in the writ.

The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence, but additional evidence, if tendered by either party shall be received and considered. The court may make all such orders, including orders concerning

the care, preservation, or disposition of the property, or the proceeds therefrom if the same has been sold, as justice may require, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

#### **RULE 719. BOND**

No property shall be put in the custody of the claimant until the claimant has filed with the officer who made the levy, a bond in an amount fixed by the court's order equal to double the value of the property so claimed, payable to the plaintiff in the writ, with sufficient surety or sureties as provided by statute to be approved by such officer, conditioned that the claimant will return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, that he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him for wrongfully suing out such claim.

The plaintiff or claimant may file a motion to increase or reduce the amount of such bond, or to question the sufficiency of the sureties thereon, in the court in which such suit is pending. Upon hearing, the court shall enter its order with respect to such bond and sufficiency of the sureties.

#### **RULE 720. RETURN OF BOND**

Whenever any person shall claim property and shall duly make the application and give the bond, if the writ under which the levy was made was issued by a justice of the peace or a court of the county where such levy was made, the officer receiving such application and bond shall endorse on the writ that such claim has been made and application and bond given, and by whom; and shall also endorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond with a copy of the writ to the proper court having jurisdiction to try such claim.

#### **RULE 721. OUT-COUNTY LEVY**

Whenever any person shall claim property and shall make the application and give the bond as provided for herein, if the writ under which such levy was made was issued by a justice of the peace or a court of another county than that in which such levy was made, then the officer receiving such bond shall endorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond with a copy of the writ, to the property court having jurisdiction to try such claim.

#### **RULE 722. RETURN OF ORIGINAL WRIT**

The officer taking such bond shall also endorse on the original writ, if in his possession, that such claim has been made and application and bond given, stating by whom, the names of the surety or

sureties, and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the tribunal from which it issued.

#### **RULE 723. DOCKETING CAUSE**

Whenever any bond for the trial of the right of property shall be returned, the clerk of the court, or such justice of the peace, shall docket the same in the original writ proceeding in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as intervening claimant.

#### **RULE 724. ISSUE MADE UP**

After the claim proceedings have been docketed, and on the hearing day set by the court, then the court, or the justice of the peace, as the case may be, shall enter an order directing the making and joinder of issues by the parties. Such issues shall be in writing and signed by each party or his attorney. The plaintiff shall make a brief statement of the authority and right by which he seeks to subject the property levied on to the process, and it shall be sufficient for the claimant and other parties to make brief statements of the nature of their claims thereto.

#### **RULE 725. JUDGMENT BY DEFAULT**

If the plaintiff appears and the claimant fails to appear or neglects or refuses to join issue under the direction of the court or justice within the time prescribed for pleading, the plaintiff shall have judgment by default.

#### **RULE 726. JUDGMENT OF NON-SUIT**

If the plaintiff does not appear, he shall be non-suited.

#### **RULE 727. PROCEEDINGS**

The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice.

#### **RULE 728. BURDEN OF PROOF**

If the property was taken from the possession of the claimant pursuant to the original writ, the burden of proof shall be on the plaintiff in the writ. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant.



### **RULE 729. COPY OF WRIT EVIDENCE**

In all trials of the right of property, under the provisions of this section in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be.

### **RULE 730. FAILURE TO ESTABLISH TITLE**

Where any claimant has obtained possession of property, and shall ultimately fail to establish his right thereto, judgment may be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff or defendant in the writ, or of the several plaintiffs or defendants, if more than one, and shall fix the amount of the claim of each.

### **RULE 731. EXECUTION SHALL ISSUE**

If such judgment should not be satisfied by a return of the property, then after the expiration of ten days from the date of the judgment, execution shall issue thereon in the name of the plaintiff or defendant for the amount of the claim, or of all the plaintiffs or defendants for the sum of their several claims, provided the amount of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' or defendants' claims, then the respective rights and priorities of the several plaintiffs or defendants shall be fixed and adjusted in the judgment.

### **RULE 732. RETURN OF PROPERTY BY CLAIMANT**

If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

### **RULE 733. CLAIM IS A RELEASE OF DAMAGES**

A claim made to the property, under the provisions of this section, shall operate as a release of all damages by the claimant against the officer who levied upon said property.

### **RULE 734. LEVY ON OTHER PROPERTY**

Proceedings for the trial of right of property under these rules shall in no case prevent the plaintiff

in the writ from having a levy made upon any other property of the defendant.