

#39.70

1/27/72

Memorandum 72-10

Subject: Study 39.70 - Attachment, Garnishment, Execution (Prejudgment Attachment Procedure)

Attached to this memorandum are two copies of a draft statute which provides a prejudgment attachment procedure consistent with the Commission's decisions at the January meeting.

If we are to meet the schedule outlined in Memorandum 72-9, it seemed desirable that we distribute a working draft at the earliest possible date in order to provide a focal point for discussion. Accordingly, the attached draft is my work product alone and has not been reviewed even by the other members of the staff. It is only intended to be a working draft. Constructive criticism as to both substance and form is heartily encouraged; indeed, it is essential if we are to produce a worthwhile product.

A host of difficult problems remains. For example, no attempt has been made in this draft to define "in the ordinary course of business" or to provide detailed provisions for filing a court order in lieu of attachment. The exemption provision (Section 538.02(f)), dealing with the individual doing business in a corporate or partnership form, is inadequate. The exemption of bank accounts is, I believe, unsatisfactory (Section 538.01(b)), and so on. The staff will continue to work on these problems and hopefully will be able to provide better solutions to these problems at or before the February meeting. In the meantime, we ask that you critically examine the attached draft. We have provided an extra copy which we encourage you to hand in at the meeting with suggested drafting changes.

Respectfully submitted,

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Assistant Executive Secretary

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PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to amend Sections 689, 690, 690.4, 690.6, 690.18, 690.21, 690.24, 690.50, and 921 of, to add Sections 684.2 and 690.7 to, to add Chapter 4 (commencing with Section 537.01) to Title 7 of Part 2 of, to repeal Section 690.7 of, and to repeal Chapter 4 (commencing with Section 537) of Title 7 of Part 2 of the Code of Civil Procedure, relating to attachment, garnishment, and execution.

The people of the State of California do enact as follows:

Section 1. Chapter 4 (commencing with Section 537) of Title 7 of Part 2 of the Code of Civil Procedure is repealed.

Comment. The provisions of Chapter 4 are superseded by the new or amended provisions of the Code of Civil Procedure indicated below:

[When time permits we will prepare a disposition table.]

Note: The text of the repealed sections is set out in the Appendix, infra (pink pages attached hereto).

Sec. . . Chapter 4 (commencing with Section 537.01) is added to Title 7 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 4. ATTACHMENT

Article 1. General Provisions

§ 537.01. Definitions

537.01. As used in this chapter:

(a) "Complaint" means a complaint or cross-complaint.

(b) "Plaintiff" means a person who files a complaint or cross-complaint.

(c) "Levying officer" means the sheriff, constable, or marshal to whom a writ or order issued under this chapter is directed.

(d) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

§ 537.02. Actions in which attachment is authorized

537.02. (a) A writ of attachment may be issued only in the following cases:

(1) In an action for the recovery of money in a fixed or reasonably ascertainable amount, but not less than five hundred dollars (\$500) exclusive of interest and attorney's fees, upon a contract, express or implied, including an action pursuant to Section 1692 of the Civil Code, where the contract is not secured by a security interest upon real or personal property or, if originally so secured, such security interest has been lost or the collateral become valueless without act of the plaintiff.

(2) In an action for the recovery of money against a defendant if the attachment is necessary or is reasonably believed to be necessary to secure the exercise of jurisdiction by the court.

(3) In an action by the State of California, or any political subdivision thereof, for the collection of taxes due the state or such political subdivision or for the collection of any moneys due upon any obligation or penalty imposed by law.

(4) In an action by the State of California, or any political subdivision thereof, for the recovery of funds pursuant to Section 11680.5 of the Health and Safety Code, including funds on the defendant's person at the time of his arrest which are retained in official custody.

(b) An action shall be deemed an action for the recovery of money if the relief demanded includes the payment of money even though other forms of relief are demanded.

§ 537.03. Judicial Council authorized to prescribe practice and procedure;
forms

537.03. The Judicial Council may provide by rule, not inconsistent with this chapter, for practices and procedures in proceedings under this chapter. The Judicial Council shall prescribe the form of the applications, notices, orders, and other documents required by this chapter. Such forms shall require the information prescribed by this chapter and such additional information as the Judicial Council requires.

Article 2. Exempt Property

§ 538.01. Property exempt from attachment without claim of exemption

538.01. The following property shall be exempt from levy of attachment without the filing of a claim of exemption:

(a) All earnings of an individual defendant which are due and owing to him or which have been paid to him and are in his possession in a form identified by the levying officer as earnings.

(b) Deposit accounts, as defined in Section 690.7, standing in an individual defendant's name, either solely or jointly, in the aggregate amount of two hundred dollars (\$200).

(c) Household furnishings, appliances, wearing apparel, and personal effects, ordinarily and reasonably necessary to, and personally used by, an individual defendant and members of his household.

(d) Provisions and fuel procured for use by an individual defendant and members of his household.

(e) One motor vehicle in the personal use of an individual defendant or a member of his household.

(f) One housetrailer, housecar, or houseboat used as the principal residence of an individual defendant.

(g) The property described in Sections 690.15, 690.16, 690.175, 690.18, 690.19, 690.21, and 690.25 which is exempt from execution without filing a claim for exemption as provided in Section 690.50.

(h) A levying officer is not liable for any injury resulting from any identification or misidentification of assets made pursuant to this section, whether or not such identification or misidentification be negligent, unless he is guilty of actual fraud, corruption, or actual malice.

§ 538.02. Property exempt from attachment upon claim and adequate showing

538.02. The following property shall be exempt from levy of attachment when a proper claim for exemption for the same is made by the defendant as provided in Section 540.07:

(a) All earnings of an individual defendant which have been paid to him and are retained in the form in which paid or as cash but which are not identified by the levying officer as earnings.

(b) Tools, implements, equipment, instruments, uniforms, books, commercial or farming vehicles, vessels, and other personal property ordinarily and reasonably necessary to, and personally used by, an individual defendant in the exercise of the trade, business, profession, or agricultural pursuit by which the defendant earns his livelihood.

(c) Accounts receivable and inventory with a [actual fair market] value not exceeding five hundred dollars (\$500), over and above all liens and encumbrances on such property.

(d) To the extent not otherwise covered by Section 538.01 and this section, all property by rule of law exempt from execution.

(e) All money and other property not otherwise exempt from attachment which is necessary for the support of an individual defendant and members of his household in the light of contemporary needs.

(f) In any action where the assets of a corporation or partnership are attached or sought to be attached, an individual (whether or not a defendant) doing business in such form--upon a showing that, by virtue of his participation in and management of such corporation or partnership that he is substantially equivalent to a sole proprietorship or joint venture--shall be entitled to claim the exemptions provided by Section 538.01 and this section

Article 3. Undertakings

§ 539.01. Undertakings; corporate surety bond or cash deposit

539.01. Any person required by the provisions of this chapter to file an undertaking shall satisfy such requirement by:

(a) Filing a bond in the amount of the undertaking required issued by a corporate insurer authorized by the Insurance Commissioner to write surety insurance; or

(b) Making a cash deposit in court of the amount of the undertaking required.

§ 539.02. Exception to and justification of corporate surety

539.02. (a) At any time after the filing of an undertaking given by a corporate surety, but not later than five days after actual notice of such filing, the adverse party may except to the surety in the manner provided by Section 1057b. If the adverse party fails to so except, he is deemed to have waived all objections to the surety.

(b) Within five days from service of written notice of exception, upon notice to the excepting party of not less than two days, the corporate surety shall justify on the undertaking in the manner provided by Section 1057a. Upon failure to justify the court shall issue an appropriate order on behalf of the excepting party.

§ 539.03. Submission to jurisdiction of surety giving security; enforcement of liability on motion

539.03. (a) Where an undertaking is given by a corporate surety, the surety submits itself to the jurisdiction of the court in all matters affecting its liability on the bond.

(b) After final judgment, the prevailing party may enforce the liability of the corporate surety on motion filed in the trial court, without the necessity of an independent action. Notice of the motion shall be served on the surety and party on whose behalf the undertaking was given at least 30 days prior to the time set for hearing of the motion. The notice shall state the amount of the claim and shall be supported by affidavit setting forth the facts on which the claim is based.

(c) Judgment may be entered in accordance with the notice against the corporate surety, unless such surety shall serve and file an affidavit in opposition to the motion showing such facts as may be deemed by the court sufficient to present a triable issue of fact. If such showing is made, the issues to be tried shall be specified by the court and trial thereof shall be set for the earliest date convenient to the court, allowing sufficient time for such discovery proceedings as may be requested. Trial by jury shall be waived unless demand therefor is served and filed not later than 10 days after notice of the order fixing the trial date. Affidavits filed pursuant to this section shall conform to the standards prescribed for affidavits filed pursuant to Section 437c.

Article 4. Procedures: Issuance of Temporary Restraining
Order or Writ of Attachment; Claims of Exemption; Al-
ternative Relief; Release or Discharge of Order
or Writ; Disposition of Property Prior to
Judgment

§ 540.01. When attachment may be issued

540.01. A writ of attachment may be issued on behalf of a plain-
tiff at any time after he has filed his complaint and before final
judgment.

§ 540.02. Writ of attachment issued upon judicial order after notice and hearing

540.02. Except as provided in Section 540.15, a writ of attachment shall be issued only upon a judicial order to that effect after notice and hearing. The order for issuance of the writ may be made by a judge, justice, or a commissioner or referee appointed by the court.

§ 540.03. Application for the issuance of a writ of attachment; setting
for hearing

540.03. (a) A plaintiff may apply for the issuance of a writ of attachment by filing an application with the court in which the action is pending.

(b) Upon receiving the application, the court shall set the matter for hearing.

§ 540.04. Application for writ of attachment

540.04. The "Application for Writ of Attachment" shall be executed under oath and shall include all of the following:

(a) A statement of the **grounds** upon which an attachment is requested.

(b) A statement of the amount claimed as owed by the defendant over and above all legal setoffs and counterclaims; or, if an attachment is sought for only part thereof, such partial amount.

(c) A description of the property sought to be attached, including its [actual, fair market] value.

(d) A statement that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

(e) A statement that the applicant has no information and belief that the indebtedness for the recovery of which an attachment is sought has been discharged in a proceeding under the National Bankruptcy Act or that the prosecution of an action for its recovery has been stayed in a proceeding under the National Bankruptcy Act.

(f) A statement that an attachment is not sought for a purpose other than the recovery of the indebtedness stated.

§ 540.05. Notice to defendant

540.05. Not less than 10 days prior to the date set for hearing pursuant to Section 540.03, unless for good cause shown the court orders otherwise, the plaintiff shall serve on the defendant:

- (a) A copy of the application for an attachment.
- (b) A notice of the application.
- (c) If not previously served, a copy of the summons and of the complaint.

§ 540.06. Notice of application

540.06. The "Notice of Application for an Attachment" shall inform the defendant of all of the following:

(a) The plaintiff in the action has applied for the issuance of a writ of attachment against the property described in the application.

(b) A hearing will be held on a specified date and at a specified place.

(c) Such hearing has the purpose of determining whether the plaintiff has shown the probable validity of his claim and is otherwise entitled to relief under this chapter and whether the property which he seeks to be attached is subject to attachment.

(d) The hearing is not held for the purpose of determining the merits of the actual validity of the plaintiff's claim.

(e) The defendant may be present at such hearing in person or represented by attorney.

§ 540.07. Readiness for hearing; continuance; defendant's counteraffidavits;
precedence of hearing

540.07. (a) Upon the date set for hearing, the plaintiff shall be ready to proceed. If the plaintiff is not ready or if he has failed to serve any of the papers as required by Section 540.05, the court shall dissolve any temporary restraining order issued pursuant to Section 540.13 and deny the application for attachment.

(b) The defendant shall be entitled as a matter of course to one continuance for a reasonable period if he desires it to enable him to meet the application for an attachment.

(c) The defendant may, in response to such application, present affidavits relating to the application for an attachment. These affidavits may include an affidavit alleging that the property sought to be levied upon is exempt. Such affidavit shall identify the property and state all facts necessary to support the claim of exemption. The defendant shall serve these affidavits on the plaintiff at least two days prior to the hearing. If such service is accomplished within the time specified, the plaintiff shall not be entitled to any continuance on account thereof.

(d) On the day upon which such hearing is set, it shall take precedence of all other matters on the calendar of that day except older matters of the same character and matters to which special precedence may be given by law.

§ 540.08. Defendant's failure to appear not a bar to court's determinations

540.08. Failure of the defendant to be present or represented at the hearing shall not bar the court from taking any action, including making a finding on the probable validity of plaintiff's claim or a finding on whether the property sought to be attached is subject to attachment. Failure to be present or represented at the hearing shall not constitute a default in the main action or bar the defendant from claiming subsequently that the property attached is exempt from execution.

§ 540.09. Court determination of probable validity of claim; exempt property; order for issuance of writ of attachment

540.09. (a) The judge, justice, commissioner, or referee at the hearing shall determine whether the plaintiff has shown the probable validity of his claim and is otherwise entitled to relief under this chapter and whether the defendant has shown that the property which the plaintiff requests be attached is exempt from attachment.

(b) If the judge, justice, commissioner, or referee finds that the plaintiff has shown the probable validity of his claim and is entitled to relief under this chapter and that the defendant has failed to show the property sought to be attached is exempt, he shall issue either (1) an order that a writ of attachment be issued, specifying the amount to be secured by the attachment and the property to be levied upon or, (2) in lieu thereof, an order as prescribed in Section 540.11.

§ 540.10. Multiple writs

540.10. Several writs may be issued upon the same application and undertaking simultaneously or from time to time within 60 days after the issuance of an order for attachment and the filing of an undertaking by the plaintiff. Such writs may be delivered to the levying officer of any county whether or not any writ previously issued has been returned.

§ 540.11. Order in lieu of attachment

540.11. (a) As to any property subject to levy in the manner provided by Section 541.04, in lieu of attachment, the judge, justice, commissioner, or referee may, at the request of the plaintiff, order that the defendant be enjoined from dealing with such property in any way other than in the ordinary course of his business. Such order may include the continuance in effect of a temporary restraining order issued pursuant to Section 540.13. In such case, the effective date of the order issued pursuant to this section shall relate back to the time of service of the temporary restraining order.

(b) Where an order is issued pursuant to this section, the plaintiff shall file with [the Office of the Secretary of State] [the recorder of the county in which the property is located] a copy of the order and a description of the property affected thereby. Any person who, without actual knowledge of such order, purchases such property prior to such filing shall acquire the property free of any interest in the plaintiff.

§ 540.12. Undertaking by plaintiff; amount; increase or decrease in amount

540.12. (a) Before issuance of a temporary restraining order pursuant to Section 540.13 or a writ of attachment pursuant to Section 540.09 or Section 540.15, the court shall require the plaintiff to file an undertaking.

(b) The undertaking shall be in an amount equal to twice the value of the property as stated in the application for an attachment or as determined by the court following the hearing prescribed in Section 540.09. Such undertaking shall be to the effect that, if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he has sustained by reason of the order or attachment, and if the order or attachment is discharged on the ground that the plaintiff was not entitled thereto, the plaintiff will pay all damages which the defendant has sustained by reason of the order or attachment, costs and attorney's fees incurred in obtaining the discharge, and punitive or exemplary damages, if any, not exceeding the sum specified in the undertaking. Nothing herein shall be construed to preclude the acceptance of an undertaking in a larger sum if such is offered.

(c) The court, at any time after issuance of an order or writ, on motion of either party, after notice to the other party, may order the amount of the undertaking increased for decreased as required for the protection of the secured party, but in no event to an amount less than the actual value of the property.

(d) An undertaking shall not be required upon the issuance of a writ of attachment pursuant to Section 540.09 if an undertaking has previously been filed upon the issuance of an order pursuant to Section 540.13, or upon the issuance of a writ pursuant to Section 540.15.

§ 540.13. Temporary restraining order; available where an attachment may
be issued

540.13. A temporary restraining order may be granted without notice to the defendant, in any action in which an attachment may be issued, if the plaintiff shows by affidavit that it is more probable than not that he will be entitled to attach property of the defendant following notice and a hearing.

§ 540.14. Temporary restraining order; limitations on relief afforded

540.14. The temporary restraining order issued pursuant to Section 540.13 shall provide such relief as the court deems appropriate to protect the creditor against frustration of the enforcement of his claim pending a hearing pursuant to Section 540.09. In no event, however, shall such order deny the defendant the ability to use, consume, sell, or otherwise dispose of that property described in Section 538.01 nor deny the defendant the ability to deal with any other property in the ordinary course of his business.

§ 540.15. Attachment prior to notice and hearing; grounds and showing for issuance; subsequent hearing

540.15. (a) A writ of attachment may be issued upon a judicial order to that effect without prior notice and hearing as required by Section 540.02 if the judge, justice, commissioner, or referee is satisfied that the plaintiff has shown:

(1) That an actual risk has arisen that the debtor will conceal property sought to be attached or will abscond; or

(2) That the attachment is necessary for the exercise of jurisdiction by the court; and

(3) The probable validity of his claim; and

(4) That the property sought to be attached is not exempt from attachment pursuant to Section 538.01.

(b) A hearing to determine the probable validity of the plaintiff's claim and whether the property attached should be subject to attachment shall be set for the earliest possible date and, in no event, more than 10 days following the service required by Section 540.16.

(c) The provisions of Sections 540.07, 540.08, and 540.09 shall be applicable to the hearing required by this section.

§ 540.16. Attachment prior to notice and hearing; service of notice for hearing; time limit

540.16. (a) Where a writ of attachment is issued pursuant to Section 540.15, concurrently with the levy of attachment, the plaintiff shall serve on the defendant the papers required by Section 540.05.

(b) Unless the plaintiff shows that he has made the service required by this section within five days after the issuance of the writ, the writ shall be quashed and any levy thereunder shall be set aside.

§ 540.17. Application for release of attachment; proper court; undertaking;
multiple defendants

540.17. (a) A defendant whose property has been or is subject to being attached and who has appeared in the action may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, [or, if a writ of attachment is levied in another county, to a court in such county having jurisdiction in cases involving the amount specified in the writ,] for an order permitting him to file an undertaking in lieu of any property which has been or is subject to being attached.

(b) The application shall include a statement, executed under oath, describing the character of the defendant's title to the property and the manner in which he acquired such title.

(c) Before making such order, the court shall require the defendant to file with the court in which the application is made an undertaking in an amount equal to the value of the property as stated in the writ. Such undertaking shall be to the effect that, if the plaintiff recovers judgment in the action against the defendant (by whom or in whose behalf the undertaking is given) the defendant will pay to the plaintiff the value of the property released not exceeding the amount of such judgment against such defendant. The court shall issue such order upon being satisfied that a valid and sufficient undertaking has been filed.

(d) Where an action is against more than one defendant, any defendant may make such application. The filing of an undertaking by such defendant shall not subject him to any demand against any other defendant; however, the levying officer shall not be prevented thereby from

§ 540.17

attaching, or be obliged to release from attachment, any property of any other defendant. Where two or more defendants have an interest in the same property, a joint application and undertaking shall be filed to secure the release of such property.

§ 540.18. Defendant's application for discharge of temporary restraining order or attachment issued prior to hearing; plaintiff's liability upon discharge of order or attachment

540.18. (a) Any defendant whose property has been subjected to a temporary restraining order issued pursuant to Section 540.13 or attached pursuant to Section 540.15 may, upon motion and reasonable notice to the plaintiff, apply for the discharge of such order or writ on the ground that the plaintiff is not entitled thereto.

(b) If, upon such application, the defendant shows that the plaintiff is not entitled to the order or writ, the court shall order the discharge of such order or writ and award the defendant any actual damages which the defendant has sustained by reason of the order or attachment, costs, and attorney's fees incurred in obtaining the discharge. If, in addition, the defendant shows that the attachment was fraudulently or maliciously obtained, the court may award punitive or exemplary damages.

§ 540.19. Attachment of property; duration; termination; extension

540.19. (a) Any attachment shall, unless sooner released or discharged, cease to be of any force or effect, and the property levied on shall be released from the operation of such attachment at the expiration of three years after the issuance of the writ of attachment under which said levy was made.

(b) Notwithstanding subdivision (a), upon motion of the plaintiff, made not less than 10 or more than 60 days before the expiration of such period of three years and upon notice of not less than five days to the defendant whose property is attached, the court in which the action is pending may, by order filed prior to the expiration of the period and for good cause, extend the time of such attachment for a period not exceeding one year from the date on which the original attachment would expire.

(c) Notice of such order shall be served upon any person holding property pursuant to an attachment and shall be recorded in any office where the writ and notice of attachment is recorded prior to the expiration of the period described in subdivision (a) or any extension thereof.

(d) Any attachment may be extended from time to time in the manner herein prescribed provided that the aggregate period or periods of such extensions shall not exceed two years.

§ 540.20. Judgment for defendant; release of property and return of proceeds

540.20. If the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for judgment notwithstanding the verdict or for a new trial is filed and served and no appeal is perfected and undertaking executed and filed as provided in Section 921 of this code, any undertaking received from the defendant in the action, all the proceeds of sales and money collected by the levying officer, and all the property attached remaining in such officer's hands shall be delivered to the defendant; and the court shall order the discharge of any attachment made in the action and the release of any property held thereunder.

§ 540.21. Postjudgment continuance of attachment; increase in undertaking

540.21. (a) At any time after entry of judgment in favor of the defendant and before perfection of an appeal under the provisions of Section 921, upon motion of the defendant, the trial court may order an increase in the amount of the original undertaking on attachment in such amount, if any, as is justified by the detriment reasonably to be anticipated by continuing the attachment. Unless such undertaking is made within 10 days after such order, the order of attachment shall be discharged, and the property released therefrom.

(b) If an order increasing the undertaking is made, the amount of the undertaking on appeal required by Section 921 of this code shall be the same as the amount fixed by the trial court in said order.

(c) Neither the pendency nor granting of a motion timely filed and served by the plaintiff for vacation of judgment, or for judgment notwithstanding the verdict or for new trial shall continue in force an attachment, unless an undertaking is made by the plaintiff that he will pay all costs and damages sustained by continuing the attachment. The undertaking may be included in the undertaking specified in Section 921. If not so included, the same procedure shall apply as in case of an undertaking pursuant to Section 921.

§ 540.22. Release of attachment

540.22. (a) The levying officer shall release an attachment whenever he receives a written direction from the plaintiff, or a certified copy of an order of the court in which the action is pending, discharging or dissolving the attachment or releasing the property.

(b) Where the property to be released has been taken into custody, it shall be delivered to the person from whom it was taken. If such person cannot be found within the county where the property was levied upon, the levying officer shall retain the property but give reasonable notice to such person as to where he may secure its possession. If, after 30 days from the giving of such notice, such person has not claimed the property, the levying officer shall sell such property in the same manner that property is sold on execution and deposit the proceeds, after first deducting his costs and expenses, in the court to abide the judgment in the action.

(c) Where the property to be released has not been taken into custody, the levying officer shall release the attachment by issuing a writt'n release addressed to the person served with the copy of the writ and notice and, where the writ and notice were recorded, by recording such written release in the same office.

(d) There shall be no liability for persons acting in conformity with the release of the levying officer or for such officers releasing such attachments in accordance with this section.

§ 540.23. Third party claims to attached property

540.23. In any case where a third person claims, as his property, any property attached, the rules and proceedings applicable in cases of third party claims under Section 689 shall apply.

§ 540.24. Sale of or receiver for attached property; proceeds; receiver's expenses

540.24. (a) Whenever property is or may be attached, the court, upon application of either party, after reasonable notice to the adverse party and a showing that the interests of the parties will be best served thereby, may order that such property be sold or may appoint a receiver to take charge of, cultivate, care for, preserve, or sell such property.

(b) Any sale of such property shall be made in [the same manner that property is sold on execution][a commercially reasonable manner], and the proceeds shall be deposited in the court to abide the judgment in the action.

(c) Where a receiver is appointed, the court shall fix the fee per day of such receiver and may order the plaintiff to pay such fee and expenses of the receiver in advance or may direct that the whole or any part of such fee and expenses be paid from the proceeds of any sale of such property.

§ 540.25. Secrecy prior to return of service; request; exception

540.25. (a) In any action described in Section 537.02, the clerk of the court with whom the complaint is filed, if so requested by plaintiff in writing at the time of filing the complaint, shall not make public the fact of the filing of the complaint or of any application for relief pursuant to this chapter until after the date of the hearing provided for in Section 540.03 except that, if no hearing is held within one year after the filing of the complaint, the clerk of the court with whom the complaint is filed shall make available to the public the records and documents in such action.

(b) Notwithstanding the provisions of subdivision (a) of this section, the clerk of court shall make the entire file in the action available for inspection at any time to any party named in the complaint or to his attorney.

(c) The request by plaintiff that the fact of filing of a complaint or application for relief not be made public may take the form of a notation to that effect, made by rubber stamp or other suitable means, at the top of the first page of the complaint filed with the clerk.

Article 5. Method of Levy; Return of Levying Officer

§ 541.01. Writ of attachment; notice of attachment; levying officer shall promptly comply with writ

541.01. (a) The "Writ of Attachment" shall identify the defendant whose property is to be attached and the property to be levied upon. The description of such property may be set forth in the writ or in a separate statement attached to and incorporated by the writ.

(b) The "Notice of Attachment" shall inform the person who is served with the attachment of his rights and duties under the attachment.

(c) The writ may be directed to any sheriff or constable or marshal of any county in which property of the defendant described in the writ may be and shall require him to attach and safely keep such property.

(d) The levying officer to whom the writ is directed and delivered shall execute the same without delay in the manner provided in this article.

§ 541.02. Real property in name of defendant

541.02. Real property, or any interest therein, belonging to the defendant, and standing upon the records of the county in the name of the defendant, shall be attached, by recording with the recorder of the county a copy of the writ, together with a description of the property attached, and a notice that such property is attached.

§ 541.03. Crops growing on real property in name of defendant

541.03. Growing crops (which, until severed, shall be deemed personal property not capable of manual delivery), or any interest therein, belonging to the defendant and growing upon real property standing upon the records of the county in the name of the defendant, shall be attached by recording with the recorder of the county a copy of the writ, together with a description of the growing crops to be attached, and of the real property upon which the same are growing, and a notice that such growing crops are attached.

§ 541.04. Deliverable personal property in the possession of the defendant; officer's demand for expenses; liability of levying officer

541.04. (a) Personal property, capable of manual delivery, in the possession of the defendant, shall be attached by the levying officer taking such property into custody.

(b) The plaintiff shall be required, as a prerequisite to the taking of such property, to deposit with the levying officer a sum of money sufficient to pay the expenses of taking and keeping safely said property for a period not to exceed 30 days. In the event that further detention of the property is required, the levying officer shall, from time to time, make written demand upon the plaintiff or his attorney for further deposits to cover estimated expenses for periods not to exceed 90 days each. Such demand shall be served as provided in Section 1011 or by depositing such notice in the post office in a sealed envelope, as first-class registered mail, postage prepaid, addressed to the person on whom it is served at his last known office or place of residence. In the event that the money so demanded is not paid, the levying officer shall release the property to the defendant, in the manner provided in Section 540.22.

(c) There shall be no liability upon the part of the levying officer to take or hold personal property unless the provisions of this section shall have been fully complied with.

(d) There shall be no liability upon the part of the levying officer either to the plaintiff or the defendant for loss by fire, theft, injury, or damage of any kind to personal property while in the possession of the levying officer either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the levying officer is negligent in his care or handling of the property.

§ 541.05. Personal property not capable of manual delivery in the possession of the defendant

541.05. Except as provided in Section 541.03, personal property not capable of manual delivery and in the possession of the defendant shall be attached by filing with [the Office of the Secretary of State] [the recorder of the county in which the property is located] a copy of the writ, together with a description of the property attached, and a notice that it is attached.

§ 541.06. Real property in name of third party

541.06. (a) Real property, or any interest therein, belonging to the defendant, standing upon the records of the county in the name of another person, shall be attached in the same manner as is real property standing upon the records of the county in the name of the defendant.

(b) A copy of the writ, the description, and the notice shall be served upon such other person in the manner provided for the service of summons, not more than 45 days after the date of the attachment. If service is not completed as required by this subdivision, the lien of attachment shall cease at the end of the 45-day period, and the court, on the application of any person, shall order the discharge of such attachment.

(c) The recorder must index such attachment when recorded in the names both of the defendant and of the person by whom the property is held or in whose name it stands of record.

§ 541.07. Crops growing on real property in name of third person

541.07. (a) Growing crops (which, until severed, shall be deemed personal property not capable of manual delivery), or any interest therein, belonging to the defendant but growing upon real property standing upon the records of the county in the name of another person, shall be attached in the same manner as growing crops growing upon real property standing upon the records of the county in the name of the defendant are attached.

(b) A copy of the writ, the description, and the notice shall be served upon such other person in the manner provided for the service of summons, not more than 45 days after the date of the attachment. If service is not completed as required by this subdivision, the lien of attachment shall cease at the end of the 45-day period, and the court, on the application of any person, shall order the discharge of such attachment.

(c) The recorder must index such attachment when recorded in the names of both the defendant and of the person by whom the real property is held or in whose name it stands on the record.

§ 541.08. Personal property in the possession of third party; removal on demand of third party; liability of third party; third party's branch offices

541.08. (a) Except as otherwise provided in Sections 541.09, 541.10, and 541.11, personal property, belonging to the defendant but in the possession of another person, including debts and credits owing to the defendant by such third person, shall be attached by personally serving upon such person a copy of the writ, together with a description of the property attached, and a notice that the personal property in his possession, belonging to the defendant, is attached.

(b) Upon the demand of such third person, the levying officer shall take into custody any personal property capable of manual delivery. In such case, the levying officer shall make demand on the plaintiff for expenses in the manner provided in Section 541.04. In the event that the money so demanded is not paid, the levying officer shall release the property to the person from whom it was taken in the manner provided in Section 540.22.

(c) Any person having in his possession, or under his control, any credit or other personal property belonging to the defendant or owing any debt to the defendant at the time of service upon him of a copy of the writ and notice, who does not deliver such property or pay over such credit or debt to the levying officer shall be liable to the plaintiff for the amount of such credit, property, or debt until the attachment is released or discharged or any judgment recovered by the plaintiff be satisfied.

(d) Where the third person is any one of the financial institutions described in subdivision (e) and maintains branch offices,

the copy of the writ, the description, and the notice shall be served at the office or branch thereof at which the account evidencing the indebtedness to the defendant is carried or at which the financial institution has credits or other personal property belonging to the defendant in its possession. No attachment shall be effective as to any debt owing by such financial institution if the account evidencing such indebtedness is carried at an office or branch thereof not so served or as to any credits or other personal property in its possession or under its control at any office or branch thereof not so served.

(e) The financial institutions referred to in subdivision (d) are:

- (1) Banks;
- (2) Savings and loan associations;
- (3) Title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code); and
- (4) Industrial loan companies (as defined in Section 18003 of the Financial Code).

§ 541.09. Levy on bank account, savings and loan association share or certificate, or property in safe deposit box not wholly in name of defendant; nonliability of bank, trust company, savings and loan association, or safe deposit corporation

541.09. (a) The provisions of this section shall apply where the following personal property is sought to be attached:

(1) Any bank account, or interest therein, not standing in the name of the defendant alone;

(2) Any savings and loan association share, investment certificate, or account, or interest therein, not standing in the name of the defendant alone; or

(3) Property in a safe deposit vault or box maintained by a bank, trust company, savings and loan association, or other corporation authorized and empowered to conduct a safe deposit business and rented by it to a person other than a defendant.

(b) Prior to levy, the plaintiff shall provide an undertaking in an amount not less than twice the amount of the plaintiff's claim. Such undertaking shall indemnify any person, other than the defendant whose interest is sought to be attached, who is rightfully entitled to the property (which person need not be named specifically in said undertaking but may be referred to generally in the same manner as in this sentence), against actual damage by reason of the taking or holding of the property and assuring to such person the return of the property to him upon proof of his right thereto.

(c) While the attachment is in force, no bank, trust company, savings and loan association, or safe deposit corporation shall be liable to any person by reason of:

- (1) Its compliance with the levy;
 - (2) The nonpayment of any check or other order for the payment of money drawn or presented against the account or other credit;
 - (3) The refusal to pay any withdrawal in respect of the share, investment certificate, or account;
 - (4) The removal, pursuant to the levy, of any of the contents of the safe deposit vault or box;
 - (5) The refusal to permit access to the safe deposit vault or box by the renter thereof.
- (d) Before giving access to any safe deposit vault or box, the bank, trust company, savings and loan association, or safe deposit corporation may demand payment to it of all costs and expenses of opening the safe deposit vault or box and all costs and expenses of repairing any damage to the safe deposit vault or box caused by the opening thereof.

§ 541.10. Interest in estate of decedent

541.10. (a) The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee or devisee, shall be attached by serving the personal representative of the decedent with a copy of the writ together with a description of the property attached, and a notice that the interest is attached. A copy of the writ and of the notice shall also be filed in the office of the clerk of the court in which the estate is being administered and the personal representative shall report such attachment to the court when any petition for distribution is filed.

(b) Such attachment shall not impair the powers of the representative over the property for the purposes of administration.

(c) In the decree made upon any petition for distribution, distribution shall be ordered to the defendant, but delivery of the property shall be ordered to the officer making the levy subject to the claim of the defendant or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing the interest has become final.

§ 541.11. Judgments owing to the defendant as a judgment creditor

541.11. Any judgment owing to the defendant shall be attached by filing a copy of the writ and a notice that amounts owing on the judgment to the defendant are attached in the action from which the judgment arose and by serving a copy of the writ and notice upon the judgment debtor in such action.

§ 541.12. Return of writ

541.12. The levying officer shall return the writ to the clerk of the court from whom the writ issued with a certificate of his proceedings endorsed thereon or attached thereto. Such return shall be made promptly after service and in no event later than 30 days after the officer receives the writ.

§ 541.13. Inventory; memorandum; time limit

541.13. (a) The levying officer shall make a full inventory of any property attached and return such inventory with the writ.

(b) Except as to property taken into custody pursuant to subdivision (b) of Section 541.08, as to debts, credits, or other personal property not in the possession of the defendant, the levying officer shall request, at the time of service, the party owing the debt or having the credit or other personal property belonging to the defendant to give him a memorandum stating the amount and description of the property levied upon within 10 days after such service. If such memorandum is refused, the levying officer shall return the fact of such refusal with the writ.

(c) A party refusing to give the memorandum within the time specified may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debts or credits or other personal property.

§ 541.14. Execution of commercial paper by levying officer

541.14. (a) When a check, draft, money order, or other order for the withdrawal of money from a banking corporation or association, or the United States, or any state or public entity within any state, payable to the defendant on demand, comes into the possession of a levying officer under a writ of attachment, the officer shall promptly endorse the same and present it for payment.

(b) The levying officer shall endorse the check, draft, money order, or other order by writing the name of the defendant thereon and the name and official title of the levying officer and giving the title of the court and the cause in which the writ was issued. Such endorsement shall constitute a valid endorsement. No banking corporation or association or public entity on which the check, draft, money order, or other order is drawn shall incur any liability to any person, firm, or corporation by reason of paying to the officer the check, draft, money order, or other order by reason of such endorsement. No levying officer shall incur any liability by reason of his endorsing, presenting, and obtaining payment of the check, draft, money order, or other order. The funds or credit resulting from the payment of the check, draft, money order, or other order shall be held by the levying officer subject to the levy of the writ of attachment.

(c) If it appear from the face of the check, draft, money order, or other order that the same has been tendered to the defendant in satisfaction of a claim or demand and endorsement thereof shall be considered a release and satisfaction by defendant of such claim or demand, the officer making the levy shall not endorse the check, draft,

§ 541.14

money order, or other order unless the defendant shall first endorse the same to the officer making the levy. If the defendant shall not endorse the check, draft, money order, or other order to the officer making the levy, the officer shall hold such check, draft, money order, or other order subject to the levy and shall incur no liability to the defendant or to any other person, firm, or corporation for delay in presentment of the same for payment.

§ 541.15. Lien of attachment; effective date; exception

541.15. (a) The lien of attachment on real property and on growing crops becomes effective upon the date of recording pursuant to this article.

(b) The lien of attachment on personal property capable of manual delivery and in the possession of the defendant becomes effective on the date the levying officer takes custody of such property.

(c) The lien of attachment on personal property, other than growing crops, not capable of manual delivery and in the possession of the defendant becomes effective upon the date of filing pursuant to Section 541.05.

(d) The lien of attachment on personal property in the possession of a person other than the defendant becomes effective upon the date of service pursuant to Sections 541.08, 541.10, and 541.11.

(e) Notwithstanding subdivisions (a) through (d) of this section, where a temporary restraining order has been issued pursuant to Section 540.13, any lien of attachment subsequently acquired on property subject to such an order shall, as to any other levy of attachment or execution, relate back to the date of service of such order.

Article 6. Examination of Defendant or Third

Party Indebted to Defendant

§ 542.01. Defendant or third party indebted to defendant or possessing or controlling property or credits of defendant; examination

542.01. (a) The defendant, or any person owing debts to the defendant, or having in his possession or under his control, any credits or other personal property belonging to the defendant, may be required to appear before a judge, justice, or a commissioner or referee appointed by the court, and be examined on oath regarding such property.

(b) The judge, justice, commissioner, or referee may, after such examination, order that property belonging to the defendant be attached in the manner and under the conditions provided by this chapter.

(c) If the defendant or other person ordered to appear pursuant to this section fails to do so, and if the order requiring his appearance has been served by a sheriff, constable, marshal, or some person specially appointed by the court in the order, the judge, justice, commissioner, or referee may, pursuant to a warrant, have such defendant or other person brought before the court to answer for such failure to appear.

§ 542.02. Examination; attendance of persons outside county; 150-mile limit

542.02. No person shall be required to appear pursuant to Section 542.01 outside of the county in which he resides or in which he has a place of business unless the distance to the place of hearing is less than 150 miles from his place of residence or place of business.

§ 542.03. Order for examination of defendant or third person outside county of residence or place of business

542.03. (a) When the defendant or third person does not reside or have a place of business in the county where the action is pending, an order for his examination, authorized by Section 542.01, may be made by any judge, justice, commissioner, or referee of a court of similar jurisdiction of the county where the defendant or third person resides or has a place of business or, if no court of similar jurisdiction is in the county, by a court of higher jurisdiction therein, upon filing with the clerk of the court a certified copy of the complaint in the pending action and an affidavit showing the existence of the facts required to be shown herein.

(b) The fee for filing pursuant to this section shall be four dollars (\$4) when filing is in a municipal court and five dollars (\$5) when filing is in a superior court.

§ 542.04. Witnesses; compelling appearance; testimony

542.04. In any proceeding for the examination of a defendant or third person under this article, witnesses may be required to appear and testify in the same manner as upon the trial of an issue.

§ 684.2 (added). Satisfaction of judgment from attached property; proceeds of perishable property sold, debts or credits collected; sales under execution; notices; delivery of balance

Sec. . Section 684.2 is added to the Code of Civil Procedure, to read:

684.2. Where an attachment has previously been issued and judgment is recovered by the plaintiff, the sheriff, constable, or marshal shall satisfy the same out of any property attached by him which is still subject to such attachment:

(a) First, by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remain due and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution. If, after selling the property attached by him remaining in his hands, deducting his fees, and applying the proceeds, together with the proceeds of any debts or credits collected by him, to the payment of the judgment, any balance shall remain due, the sheriff, constable, or marshal must proceed to collect such balance as upon an execution in other cases.

(c) Whenever the judgment shall have been paid, the sheriff, constable, or marshal shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the property attached unapplied on the judgment.

Comment. Section 684.2 combines the substance of former Sections 550 and 551.

§ 689 (amended). Third party claims; release; undertaking by plaintiff; justification of sureties; sufficiency of undertaking; appraisal of property; liability of officer; hearing; notices; continuance; protective orders; jury trial; appeals

Sec. . Section 689 of the Code of Civil Procedure
is amended to read:

Where ~~689. If tangible or intangible personal~~ property levied on, whether or
not it be in the actual possession of the levying officer, is claimed by
a third person as his property by a written claim verified by his oath
or that of his agent, setting out the reasonable value thereof, his title
and right to the possession thereof and delivered, together with a
copy thereof, to the officer making the levy, such officer must release
the property and the levy unless the plaintiff, or the person in whose
favor the writ runs, within five days after written demand by such
officer, made by registered or certified mail within five days after
being served with such verified claim, gives such officer an under-
taking executed by at least two good and sufficient sureties, in a
sum equal to double the value of the property levied upon.

whether real or
personal and

Such undertaking shall be made in favor of and shall indemnify
such third person against loss, liability, damages, costs and counsel
fees, by reason of such levy or such seizing, taking, collecting, with-
holding, or sale of such property by such officer; provided, however,
that where the property levied upon is required by law to be reg-
istered or recorded in the name of the owner and it appears that at
the time of the levy the defendant or judgment debtor was the reg-
istered or record owner of such property and the plaintiff, or the
person in whose favor the writ runs, caused the levy to be made and
maintained in good faith, and in reliance upon such registered or rec-
ord ownership, there shall be no liability thereunder to the third
person by the plaintiff, or the person in whose favor the writ runs,
or his sureties, or the levying officer.

Exceptions to the sufficiency of the sureties and their justifi-
cation may be had and taken in the same manner ~~as upon an under-
taking on attachment.~~ If they, or others in their place, fail to justify
at the time and place appointed, such officer must release the prop-
erty and the levy; provided, however, that if no exception is taken
within five days after notice of receipt of the undertaking, the third
person shall be deemed to have waived any and all objections to
the sufficiency of the sureties.

provided in Sec-
tions 1057 and
1057a.

If objection be made to such undertaking, by such third person,
on the ground that the amount thereof is not sufficient, or if for any
reason it becomes necessary to ascertain the value of the property in-
volved, the property involved may be appraised by one or more dis-
interested persons, appointed for that purpose by the court in which
the action is pending or from which the writ issued, or by a judge
thereof, or the court or judge may direct a hearing to determine the
value of such property.

If, upon such appraisal or hearing, the court or judge finds that
the undertaking given is not sufficient, an order shall be made fixing
the amount of such undertaking, and within five days thereafter an
undertaking in the amount so fixed may be given in the same form
and manner and with the same effect as the original.

The officer making the levy may demand and exact the undertaking herein provided for notwithstanding any defect, informality or insufficiency of the verified claim delivered to him. Such officer shall not be liable for damages to any such third person for the levy upon, or the collection, taking, keeping or sale of such property if no claim is delivered as herein provided, nor, in any event, shall such officer be liable for the levy upon, or the holding, release or other disposition of such property in accordance with the provisions of this section.

If such undertaking be given, the levy shall continue and such officer shall retain any property in his possession for the purposes of the levy under the writ; provided, however, that if an undertaking be given under the provisions of Section 710b of this code, such property and the levy shall be released.

Whenever a verified third party claim is delivered to the officer as herein provided, upon levy of execution or attachment (whether any undertaking hereinabove mentioned be given or not), the plaintiff, or the person in whose favor the writ runs, the third party claimant, or any one or more joint third party claimants, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining title to the property in question. Such hearing must be granted by the said court upon petition therefor, which must be filed within 15 days after the delivery of the third party claim to the officer. Such hearing must be had within 20 days from the filing of such petition, unless continued as herein provided. Ten days' notice of such hearing must be given to the officer, to the plaintiff or the person in whose favor the writ runs, and to the third party claimant, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question; provided, that no such notice need to be given to the party filing the petition. The court may continue the hearing beyond the said 20-day period, but good cause must be shown for any such continuance. Whenever the petition for such hearing is filed by the third party claimant, or by any one or more joint third party claimants, neither such petition nor proceedings pursuant thereto may be dismissed without consent of the plaintiff or the person in whose favor the writ runs. The court may order the sale of any perishable property held by such officer and direct the disposition of the proceeds of such sale. The court may, by order, stay execution sale, or forbid a transfer or other disposition of the property involved, until the proceedings for the determination of such title can be commenced and prosecuted to termination, and may require, as a condition of such order, such bond as the court may deem necessary. Such orders may be modified or vacated by the judge granting the same, or by the court in which the proceeding is pending, at any time prior to the termination of such proceedings, upon such terms as may be just. At the hearing had for the purpose of determining title, the third party claimant shall have the burden of the proof. The third party claim delivered to the officer shall be filed by him with the court and shall constitute the pleading of such third party claimant, subject to the power of the court to permit an amendment in the interest of justice, and it shall be deemed controverted by the plaintiff or other person in whose favor the writ runs. Nothing herein contained shall be construed to deprive anybody of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial shall be waived

in any such case in like manner as in the trial of an action. No findings shall be required in any proceedings under this section. At the conclusion of the hearing the court shall give judgment determining the title to the property in question, which shall be conclusive as to the right of the plaintiff, or other person in whose favor the writ runs, to have said property levied upon, taken, or held, by the officer and to subject said property to payment or other satisfaction of his judgment. In such judgment the court may make all proper orders for the disposition of such property or the proceeds thereof. If the property or levy shall have been released by the officer for want of an undertaking, and final judgment shall go for the plaintiff or other person in whose favor the writ runs, the officer shall retake or levy upon the property on such writ if the writ is still in his hands, or if the writ shall have been returned, another writ may be issued on which the officer may take or otherwise levy upon such property. An appeal lies from any judgment determining title under this section, such appeal to be taken in the manner provided for appeals from the court in which such proceeding is had.

§ 690 (conforming amendment)

Sec. . Section 690 of the Code of Civil Procedure
is amended to read:

690.

(a) Except as otherwise specifically provided, the property mentioned in Sections 690.1 to 690.29, inclusive, is exempt from execution ~~or attachment~~, when claim for exemption is made to the same by the judgment debtor ~~or defendant~~ as hereinafter in Section 690.50 provided.

(b) Whenever it is specifically provided in Sections 690.1 to 690.29, inclusive, that the filing of a claim of exemption is not required, the property so mentioned in each such section shall not be subject to levy of ~~attachment or~~ execution in any manner.

(c) As used in Sections 690.1 to 690.29, inclusive, "debtor" means debtor, claimant, ~~defendant, cross-defendant,~~ or judgment debtor.

(d) As used in Sections 690.1 to 690.29, inclusive, "creditor" means the plaintiff or the person in whose favor the writ runs.

Comment. Section 690 is amended to delete the reference to exemptions from attachment. Such exemptions are now covered in Article 2 (commencing with Section 538.01) of Chapter 4 of Title 7 of this part.

§ 690.4 (conforming amendment)

Sec. . Section 690.4 of the Code of Civil Procedure
is amended to read:

690.4. To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances on such items at the time of any levy of ~~attachment or~~ execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood.

Comment. Section 690.4 is amended to delete the reference to exemption from attachment. Compare Section 538.02(b).

§ 690.6 (amended). Exemptions; earnings

Sec. . Section 690.6 of the Code of Civil Procedure
is amended to read:

~~690.6 (a) Except as provided in Section 11400 of the Welfare and Institutions Code, all of the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.~~

~~(b)~~

(a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

~~(c)~~

(b) All earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the levy of execution, if necessary for the use of the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

- (1) Incurred by the debtor, his wife, or his family for the common necessities of life.
- (2) Incurred for personal services rendered by any employee or former employee of the debtor.

~~(d)~~

(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

~~(e)~~

(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section.

Comment. Section 690.6 is amended to delete the exemption provision relating to attachment. This provision is superseded by Section 538.01(a).

Note: A double joinder provision will be necessary.

§ 690.7 (repealed)

Sec. . Section 690.7 of the Code of Civil Procedure
is repealed.

~~690.7.~~
~~(a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively.~~

~~(b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community.~~

Comment. Section 690.7 is superseded by new Section 690.7.

See the Comment to that section.

§ 690.7 (added). Deposit account; exemption from execution

Sec. . Section 690.7 is added to the Code of Civil Procedure,
to read:

690.7. [Here we will pick up latest version of the **Employees'**
Earnings Protection Law.]

Note: A double joinder provision will be necessary.

§ 690.18 (amended). Exemptions; public and private pension, retirement, disability, or death benefits; vacation credits

Sec. . . Section 690.18 of the Code of Civil Procedure is

amended to read:

690.18. (a) All money received by any person, a resident of the state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension purposes or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding. ~~This subdivision shall not apply to any moneys held in any retirement program established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962" (P.L. 87-702, 76 Stat. 800), nor to any moneys received in any manner by persons from any such retirement program so established.~~

(d) Nothing in this section limits the applicability of any exemption otherwise provided by statute.

Comment. Subdivision (c) of Section 690.18 formerly excluded Keogh Act plans from the exemption provided by this section. Such exclusion conflicted with the exemption provided such plans under Sections 28002 and 28005 of the Corporations Code. The conflict has been resolved by deletion of the reference to Keogh Act plans from Section 690.18. The reference to attachment in subdivision (c) has been deleted as unnecessary. See Section 538.02(d).

Subdivision (d) has been added to make clear that this section is not the exclusive source of exemptions for retirement funds. See, e.g., Corp. Code § 28005; Educ. Code § 13808 (State Teachers' Retirement System); Govt. Code § 21201 (State Employees' Retirement Law).

Note: A double joinder provision will be necessary.

§ 690.21. (conforming amendment)

Sec. . Section 690.21 of the Code of Civil Procedure
is amended to read:

690.21. The funds of any person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him, or to his credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, not to exceed the sum of forty dollars (\$40), shall be exempt from ~~attachment or execution~~ without filing a claim for exemption as provided in Section 690.50.

Comment. Section 690.21 is amended to delete the unnecessary reference to attachment. Such an exemption is now provided by Section 538.01(g).

§ 690.24 (conforming amendment)

Sec. . Section 690.24 of the Code of Civil Procedure is amended to read:

690.24. All lots of land, not exceeding one-quarter of an acre in size, owned, used, or occupied by any person, or by any person in joint tenancy or tenancy in common with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all gravestones, tombstones, monuments, and other appropriate improvements thereon erected, are exempt from levy and forced sale by virtue of any writ, order, judgment, or decree, or by any legal process whatever. In cases of religious or benevolent associations or corporations, the amount of land so exempt may extend to not exceeding five acres.

Not more than one lot owned, used, or occupied by any such person or by any person in joint tenancy or tenancy in common with any other person or persons or such association or corporation in any one cemetery, graveyard or other place is exempted by this section.

This section does not apply to land held by any person or persons, association, or corporation for the purpose of sale or disposition as burial lots or otherwise.

No property dedicated as a cemetery by a cemetery authority shall be subject to execution ~~or attachment~~ because of debts due from an individual owner of an interment plot.

All money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is not subject to ~~attachment or~~ execution if used for the purpose enumerated in Section 7925 of the Health and Safety Code.

Comment. Section 690.24 is amended to delete the unnecessary references to attachment. Such an exemption is now provided by Section 538.02(d).

§ 690.50 (amended). Exemptions; affidavits and counter-affidavits; release; hearing; custody and disposition of property; appeal

Sec. . Section 690.50 of the Code of Civil Procedure

is amended to read:

690.50. (a) If the property mentioned in Sections 690.1 to 690.29, inclusive, shall be levied upon under ~~writ of attachment or execution, the defendant or judgment debtor (herein referred to as "the debtor"),~~ writ of ~~at-~~ ² in order to avail himself of his exemption rights as to such property, shall within 10 days from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided.

(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within five days after service of such writing.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of five days, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, 690.6, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court ~~in which the action is pending or~~ from which the writ issued for the purpose of determining the claim to exemption, the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6 or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein

that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

levied upon

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property ~~attached, or to continue to hold it to sell it~~, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under ~~attachment or~~ execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

Comment. Section 690.50 is amended to delete the provisions relating to claims of exemption from attachment. These provisions are superseded by the provisions of Chapter 4 (commencing with Section 537.01) of Title 7 of this part. See, e.g., Section 540.07 and Comment thereto.

Note: A double joinder provision will be necessary.

§ 921 (conforming amendment)

Sec. . Section 921 of the Code of Civil Procedure

is amended-to read:

921. An appeal by a party who has levied an attachment shall not continue in force the attachment, unless an undertaking be executed and filed on the part of the appellant that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained in favor of the respondent; and unless, within five days after written notice of the entry of the order appealed from, such appeal shall be perfected. The amount of the undertaking on appeal required by this section shall be such amount as is fixed by the trial court on motion of the respondent as provided in ~~Section 553-of-this-code~~ 540.21 and if no such order shall have been made, the undertaking shall be in double the amount of the debt claimed by the appellant. If the respondent is not satisfied with the undertaking in double the amount of the debt ~~or the amount fixed by order under Section 553~~, the trial court upon motion of the respondent made within 60 days after perfecting the appeal may order an increase in the amount of the undertaking in such amount as is justified by the detriment reasonably to be anticipated by continuing the attachment. If such an order be made, the attachment shall be discharged and the property released therefrom, unless the undertaking shall be executed and filed within 10 days after the order is made. The sureties on any undertaking required for the purpose of continuing an attachment may be required to justify as provided in Section 922 and if they fail to do so, the order of attachment shall be discharged.

Comment. Section 921 is amended to properly refer to Section 540.21 and to eliminate the ability of the defendant-respondent to move to increase the amount of the undertaking which he has previously secured under Section 540.21. No apparent need to relitigate this issue exists.

TITLE VII OF THE PROVISIONAL

REVEDIES IN CIVIL ACTIONS

CHAPTER 4. ATTACHMENT

§ 537. Actions in which authorized; time

The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, except earnings of the defendant as provided in Section 690.6, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, as in this chapter provided, in the following cases:

1. Unsecured contract; support actions.

1. In an action upon a contract, express or implied, for the direct payment of money, (a) where the contract is made or is payable in this state; or (b) where the contract is made outside that state and is not payable in this state and the amount of the claim based upon such contract exceeds five thousand dollars (\$5,000); and where the contract described in either (a) or (b) is not secured by any mortgage, deed of trust, or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless. An action upon any liability, existing under the laws of this state, of a spouse, relative, or kindred, for the support, maintenance, care, or necessities furnished to the other spouse, or other relatives or kindred, shall be deemed to be an action upon an implied contract within the term as used throughout all subdivisions of this section. An action brought pursuant to Section 1692 of the Civil Code shall be deemed an action upon an implied contract within the meaning of that term as used in this section.

2. Contracts of nonresidents and absentees.

2. In an action upon a contract, express or implied, against a defendant not residing in this state, or who has departed from the state, or who cannot after due diligence be found within the state, or who conceals himself to avoid service of summons.

3. Damages for injuries by nonresidents or absentees.

3. In an action against a defendant, not residing in this state, or who has departed from the state, or who cannot after due diligence be found within the state, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to or death of a person, or damage to property in this state, in consequence of negligence, fraud, or other wrongful act.

4. Unlawful detainer; unsecured rent.

4. In an action in unlawful detainer where it appears from the verified complaint on file therein that rent is actually due and payable from the defendant to the plaintiff for the premises sought to be recovered in said action; provided, the payment of such rent is not secured by any mortgage or lien upon real or personal property, or pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff or the person to whom the security was given, become valueless.

5. Actions by state or political subdivisions for taxes or on obligations.

5. In an action by the State of California or any political subdivision thereof, for the collection of taxes due said state or political subdivision, or for the collection of any moneys due upon any obligation or penalty imposed by law.

6. Actions for recovery of funds expended in narcotics investigations.

6. In any action by the State of California, or any political subdivision thereof, for the recovery of funds pursuant to Section 11680.5 of the Health and Safety Code. In such cases, funds on the defendant's person at the time of his arrest which are retained in official custody shall also be subject to attachment.

§ 537.5 Secrecy prior to return of service; request; exception

In cases of attachment the clerk of the court with whom the complaint is filed, if requested by plaintiff in writing at the time of filing the complaint, shall not make public the fact of the filing of the complaint, or of the issuance of the attachment, until after the filing of the return of service of the writ of attachment, except that if the return of service of the writ of attachment is not made within one year after the filing of the complaint in the action in which the writ is issued, the clerk of the court with whom the complaint is filed shall make available to the public the records and documents in such action. However, the clerk of such court shall make the entire file in the action available for inspection at any time to any party named in the complaint, or to his attorney.

The request by plaintiff that the fact of filing of a complaint or issuance of an attachment not be made public may take the form of a notation to that effect, made by rubber stamp or other suitable means, at the top of the first page of the complaint filed with the clerk.

§ 538. Issuance; contents of affidavit; minimum amount

The clerk of the court, or the justice, where there is no clerk, must issue the writ of attachment upon receiving an affidavit by or on behalf of the party seeking the writ showing:

1. The facts specified in Section 537 which entitle him to the writ;
2. The amount of the indebtedness claimed, over and above all legal setoffs or counterclaims, or the amount claimed as damages; or, if an attachment is then sought for only part thereof, such partial amount; and

3. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

4. That the affiant has no information or belief that the defendant has been adjudicated a bankrupt, with reference to the indebtedness for which the writ is sought, nor that the defendant or cross defendant is, at the time of the request for the writ, under any wage earner's plan approved by any United States court.

Provided, however, that no attachment may be issued under this chapter in any action in which the sum total claimed, exclusive of interest and attorney's fees, is less than two hundred dollars (\$200).

§ 539. Undertaking; amount; justification of sureties; increase of amount

Before issuing the writ, the plaintiff must file with the clerk or judge a written undertaking with two or more sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under Section 537, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. The sum specified in the undertaking shall be one-half ($\frac{1}{2}$) of the principal amount of the total indebtedness or damages claimed, or a partial amount thereof, as may be set forth in plaintiff's affidavit pursuant to Section 538, excluding attorneys' fees, but not less than fifty dollars (\$50). Nothing herein shall be construed to preclude the acceptance of an undertaking in which a larger sum is specified, if such undertaking be offered. The court on ex parte application of the plaintiff, may by written order, direct the issuance of the writ on the filing of an undertaking in a lesser sum, but not less than fifty dollars (\$50).

At any time after the issuing of the attachment, but not later than five days after actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. When excepted to, the plaintiff's sureties, within five days from service of written notice of exception, upon notice to the defendant of not less than two nor more than five days, must justify before the judge or clerk of the court in which the action is pending, in the same manner as upon bail on arrest; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the writ of attachment must be vacated.

The court, at any time after issuance of the writ, on motion of the defendant, after notice to the plaintiff, may order the amount of the undertaking increased, but in no event to an amount exceeding the amount for which the writ has been issued.

§ 539a. Levy on bank account, savings and loan association share or certificate, or property in safe deposit box not wholly in name of defendant

If the debt, credit, or other personal property sought to be attached is (a) any bank account, or interest therein, not standing in the name of the defendant or defendants or standing in the name of the defendant or defendants and one or more other persons who are not defendants, or (b) any savings and loan association share, investment certificate, or account, or interest therein, not standing in the name of the defendant or defendants or standing in the name of the defendant or defendants and in one or more other persons who are not defendants, or (c) property in a safe deposit vault or box maintained by a bank, trust company, savings and loan association, or other corporation authorized and empowered to conduct a safe deposit business and rented by it to a person or persons other than a defendant or defendants or rented by it to one or more such defendants and to one or more other persons who are not defendants, the provisions of this section and of Section 539 shall be complied with; otherwise, the levy shall not be effectual for any purpose and shall be disregarded. The plaintiff shall provide and concurrently with the levy of the writ of attachment the sheriff, constable, or marshal shall deliver to such bank, trust company, savings and loan association, or safe deposit corporation a bond in an amount not less than twice the amount of the plaintiff's claim indemnifying the person or persons, other than the defendant or defendants whose interest is sought to be attached, rightfully entitled to such debt, credit, or other personal property (which person or persons need not be named specifically in said bond but may be referred to generally in the same manner as in this sentence), against actual damage by reason of the taking or holding of such debt, credit, or other personal property and assuring to such person or persons the return thereof to him or them upon proof of his or their right thereto. Upon delivery to it of the aforesaid bond such bank, trust company, savings and loan association, or safe deposit corporation shall comply with the writ of attachment and shall not be liable to any person by reason of such compliance or by reason of the nonpayment of any check or other order for the payment of money drawn against the account or other credit so attached and presented while the attachment is in force or by reason of refusal to pay any withdrawal in respect of the share, investment certificate or account so attached while the attachment is in force or by reason of the removal, pursuant to the levy, of any of the contents of such safe deposit vault or box or by reason of the refusal of such bank, trust company, savings and loan association, or safe deposit corporation to permit access to such safe deposit vault or box by the renter thereof. The bond described above shall be executed by the plaintiff or plaintiffs with two or more sufficient sureties. Exceptions to the sufficiency of the sureties may be taken by any person claiming to be the rightful owner of the debt,

§ 539a

credit, or other personal property levied upon, in the same manner as that provided in Section 539 of this code and when excepted to the sureties must justify in the same manner as that provided in said Section 539. The bank, trust company, savings and loan association, or safe deposit corporation to whom any such bond is delivered shall deliver it as directed by the obligees thereof. Before giving access to any safe deposit vault or box the bank, trust company, savings and loan association, or safe deposit corporation may demand payment to it of all costs and expenses of opening the safe deposit vault or box and all costs and expenses of repairing any damage to the safe deposit vault or box caused by the opening thereof.

540.

The writ must be directed to the sheriff, or a constable, or marshal of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county not exempt from attachment, or so much of the property of such defendant as may be sufficient to satisfy the plaintiff's demand against such defendant, the amount of which must be stated in conformity with the amount stated in plaintiff's affidavit filed pursuant to Section 538, not exceeding the amount of the complaint, unless such defendant give him security by the undertaking of at least two sufficient sureties, which must first be approved by a judge of the court issuing the writ, or if said writ of attachment is issued to another county then by a judge of a court, having jurisdiction in cases involving the amount specified in the writ, in the county where the levy shall have been, or is about to be, made, or deposit a sum of money with the sheriff, constable, or marshal in an amount sufficient to satisfy such demand against such defendant. * * * in addition to those costs actually incurred to the time of giving the undertaking or the deposit of money with the sheriff, constable, or marshal, a sum not to exceed 25 percent of the amount of the plaintiff's demand, and in no event more than one thousand dollars (\$1,000), or in an amount equal to the value of the property of such defendant which has been or is about to be attached, in which case to take such undertaking or sum of money in lieu of the property which has been or is about to be attached.

In the event that the action is against more than one defendant, any defendant whose property has been or is about to be attached in the action may give the sheriff, constable, or marshal such undertaking which must first be approved by the judge as hereinabove provided, or deposit such sum of money, and the sheriff, constable, or marshal shall take the same in lieu of such property. Such undertaking, or the deposit of such sum of money, shall not subject such defendant to, or make him answerable for, any demand against any other defendant, nor shall the sheriff, constable, or marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant. However, such defendant, at the time of giving such undertaking to, or depositing such sum of money with the sheriff, constable, or marshal, shall file with the sheriff, constable, or marshal a statement, duly verified by his oath, wherein such defendant shall state the character of his title to the attached property and the manner in which he acquired such title, and aver and declare that the other defendant or defendants, in the action in which said undertaking was given or such sum of money was deposited, has or have not any interest or claim of any nature whatsoever in or to said property.

Several writs may be issued upon the same affidavit and undertaking simultaneously or from time to time within 60 days after the filing of the affidavit and undertaking, to the sheriffs, constables, or marshals of any county or counties, whether or not any writ previously issued has been returned.

§ 541. Property subject to attachment; sale to satisfy judgment

SHARES OF STOCK AND DEBTS DUE DEFENDANT, HOW ATTACHED AND DISPOSED OF. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

§ 542. Instructions; manner of execution of writ

The sheriff, constable, or marshal, to whom the writ is directed and delivered, must, upon receipt of instructions in writing, signed by the plaintiff or his attorney of record, and containing a description of the property, and in the case of real property or growing crops the name of the record owner of the real property to be attached, or upon which the crops are growing, execute the same without delay, and if the undertaking mentioned in Section 540 of this code be not given, as follows:

1. Real property in name of defendant.

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by recording with the recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached, and by serving an occupant of the property, if there is one upon the property at the time service is attempted, with a similar copy of the writ, description and notice, or if there is no occupant then on the property, then, by posting the same in a conspicuous place on the property attached. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the property described in the notice consists of more than one distinct lot, parcel or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, one service or posting need be made as to each such continuous, unbroken tract.

1a. Crops growing on real property in name of defendant.

1a. Growing crops (which, until severed, shall be deemed personal property not capable of manual delivery), growing upon real property standing upon the records of the county in the name of the defendant, must be attached by recording with the recorder of the county a copy of the writ, together with a description of the growing crops to be attached, and of the real property upon which the same are growing, and a notice that such growing crops are attached in pursuance of the writ, and by serving an occupant of the real property, if there is one upon the real property at the time service is attempted, with a similar copy of the writ description

and notice, or if there is no occupant then on the real property, then, by posting the same in a conspicuous place on the real property. Service upon the occupant may be made by leaving said copy of the writ, description and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the real property at the time service thereof is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the real property described in the notice consists of more than one distinct lot, parcel or governmental subdivision, and any of such lots, parcels or governmental subdivisions lie with relation to any of the others so as to form one or more continuous unbroken tracts, one service or posting need be made as to each such continuous unbroken tract.

Whenever growing crops have been attached under the provisions of this subdivision, which will greatly deteriorate in value, unless properly cultivated, cared for, harvested, packed or sold, the court issuing such writ, upon application of the person in whose favor the writ runs, and after due notice to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold on execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

2. Real property in name of third party.

2. Real property, or any interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached in the same manner as is real property standing upon the records of the county in the name of the defendant by the provisions of subdivision 1 of this section and the notice of attachment shall state that the real property therein described, and any interest of the defendant therein held by or standing on the records of the county in the name of such other person (naming him), are attached. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if within the county. The recorder must index such attachment when recorded, in the names, both of the defendant and of the person by whom the property is held or in whose name it stands of record.

2a. Crops growing on real property in name of third party.

2a. Growing crops (which, until severance, shall be deemed personal property not capable of manual delivery), or any interest therein, belonging to the defendant, and growing upon real property held by any other person or standing upon the records of the county in the name of any other person, must be attached in the same manner as growing crops growing upon real property standing upon the records of the county in the name of the defendant are attached by the provisions of subdivision 1a of this section, and the notice of attachment shall state that the crops therein described or any interest of the defendant therein, held by, or standing upon the records of the

county in the name of, such other person (naming him), are attached in pursuance of the writ. In addition, a similar copy of the writ, description and notice shall be delivered to such other person, or his agent, if known and within the county, or left at the residence of either, if known and within the county. The recorder must index such attachment when recorded, in the names of both the defendant and of the person by whom the real property is held, or in whose name it stands on the record.

Whenever growing crops have been attached under the provisions of this subdivision, which will greatly deteriorate in value unless properly cultivated, cared for, harvested, packed or sold, the court issuing such writ, upon application of the person in whose favor the writ runs, and with or without notice as the court directs to the owner of said property, may direct the sheriff to take possession of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold under execution and the proceeds must be retained by the sheriff to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall order said applicant to pay such expenses in advance if the court may deem it proper, or may direct that the whole or any part of such expenses be paid from the proceeds of any sale of such property.

3. Deliverable personal property.

3. Personal property, capable of manual delivery, in the possession of the defendant, must be attached by taking it into custody. When the personal property is used as a dwelling, such as a house trailer, mobile home, or boat, the same is to be attached by placing a keeper in charge of the property, at plaintiff's expense, for at least two (2) days. At the expiration of said period the officer shall remove its occupants, and take the property into his immediate custody, unless other disposition is made by the court or the parties to the action. Whenever a levy under attachment or execution shall be made on personal property, other than money, or a vehicle required to be registered under the Vehicle Code belonging to a going concern, then the officer making the levy must, if the defendant consents, place a keeper in charge of said property levied upon, at plaintiff's expense, for at least two days, and said keeper's fees must be prepaid by the levying creditor. During said period defendant may continue to operate in the ordinary course of business at his own expense provided all sales are for cash and the full proceeds are given to the keeper for the purposes of the levy unless otherwise authorized by the creditor. After the expiration of said two days the sheriff, constable, or marshal shall take said property into his immediate possession unless other disposition is made by the court or the parties to the action.

4. Deliverable personal property; deposit for expenses of taking and keeping.

4. In cases where the sheriff, constable, or marshal is instructed to take into possession personal property capable of manual delivery, whether the same is to be placed in a warehouse or in custody of a keeper, the sheriff, constable or marshal shall require, as a prerequisite to the taking of such property, that in addition to written instructions the plaintiff or his attorney of record deposit with the sheriff, constable or marshal, a sum of money sufficient to pay the expenses of taking and keeping safely said

property for a period not to exceed 15 days. In the event that a further detention of said property is required, the sheriff, constable or marshal must, from time to time, make written demand upon the plaintiff or his attorney for further deposits to cover estimated expenses for periods not to exceed five days each. Such demand must be served as provided in Section 1011 of this code, or by depositing such notice in the post office in a sealed envelope, as first-class registered mail, postage prepaid, addressed to the person on whom it is served at his last known office or place of residence. In the event that the money so demanded is not paid, the sheriff, constable or marshal shall release the property to the person or persons from whom the same was taken. There shall be no liability upon the part of the sheriff, constable or marshal to take or hold personal property unless the provisions of this section shall have been fully complied with. There shall be no liability upon the part of the sheriff, constable or marshal, either to the plaintiff or the defendant for loss by fire, theft, injury or damage of any kind to personal property capable of manual delivery while in the possession of the sheriff, constable or marshal either in a warehouse or in the custody of a keeper or en route to or from a warehouse unless the sheriff, constable or marshal shall be negligent in his care or handling of the property.

5. Debts, credits, judgments, and personal property not capable of manual delivery.

5. With the exception of earnings of the defendant which are exempt as provided in Section 690.6, debts, credits, judgments, and other personal property not capable of manual delivery shall be attached by leaving with the persons owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent or, in the case of a corporation, with the president of the corporation, vice president, secretary, assistant secretary, cashier, or managing agent thereof, a copy of the writ, and, if the demand as stated in the writ does not exceed three hundred dollars (\$300) exclusive of interest, attorney's fees and costs, a copy of the complaint in the action from which the writ issued, and, in every case, a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ. However, whenever a judgment has been attached under the provisions of this subdivision, a copy of the writ and notice shall be filed in the action from which the judgment arose and served upon the judgment creditor of such action. However, debts owing to the defendant by any of the following financial institutions: (a) banks; (b) savings and loan associations; (c) title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code); (d) industrial loan companies (as defined in Section 18003 of the Financial Code), maintaining branch offices, or credits or other personal property whether or not the same is capable of manual delivery, belonging to the defendant and in the possession of or under the control of such financial institution shall be attached by leaving a copy of the writ and the notice, together with a copy of the complaint if required hereunder, with the manager or other officer of such financial institution at the office or branch thereof at which the account evidencing such indebtedness of the defendant is carried, or at which such financial institution has credits or other personal property belonging to the defendant in its possession or under its control; and no attachment shall be effective as to

any debt owing by such financial institution if the account evidencing such indebtedness is carried at an office or branch thereof not so served, or as to any credits or other personal property in its possession or under its control at any office or branch thereof not so served.

6. Commercial paper.

6. When checks, drafts, money orders and other orders for the withdrawal of money from a banking corporation or association, the United States, any state or public entity within any state, payable to the defendant or judgment debtor on demand, come into the possession of a levying officer under a writ of attachment or execution, the sheriff, constable, or marshal, to whom the writ is directed and delivered, shall promptly thereafter endorse the same and present, or cause the same to be presented, for payment. The sheriff, constable, or marshal shall endorse such check, draft, money order or other order for the withdrawal of money by writing the name of the defendant or judgment debtor thereon and the name and official title of the officer making the levy with the statement that such endorsement is made pursuant to levy of writ of attachment or execution and giving the title of court and cause in which such writ was issued, and such endorsement shall be sufficient endorsement and no banking corporation or association or public entity on which said check, draft, money order or other order for the withdrawal of money is drawn shall incur any liability to any person, firm or corporation by reason of paying to such officer such check, draft, money order or other order for withdrawal of money by reason of such endorsement, nor shall the officer making the levy incur any liability by reason of his endorsing and presenting for and obtaining payment of such check, draft, money order or other order for the payment of money; provided, however, that the funds or credit resulting from the payment of such check, draft, money order or other order for withdrawal of money shall be held by said officer subject to the levy of said writ of attachment or execution. If it appear from the face of such check, draft, money order or other order for the withdrawal of money that the same has been tendered to the defendant or judgment debtor in satisfaction of a claim or demand and that endorsement thereof shall be considered a release and satisfaction by defendant or judgment debtor of such claim or demand, then, in such event, the officer making the levy shall not endorse said check, draft, money order or other order for the withdrawal of money unless the defendant or judgment debtor shall first endorse the same to the officer making the levy; provided, however, that if said defendant shall not endorse said check, draft, money order or other order for withdrawal of money to the officer making the levy, said officer may thereafter hold such check, draft, money order or other order for the withdrawal of money subject to such levy and shall incur no liability to the defendant or judgment debtor or to any other person, firm or corporation for delay in presentment of the same for payment.

§ 542a. Lien on real estate; time effective; duration; termination; extension

The lien of the attachment on real property attaches and becomes effective upon the recording of a copy of the writ, together with a description of the property attached, and a notice that it is attached with the county recorder of the county wherein said real property is situated; provided, however, that in the event that the sheriff, constable, or marshal does not complete the execution of said writ in the manner prescribed in Section 542 of this code within a period of 15 days next following said recording in the recorder's office then said lien shall cease at the expiration of said period of 15 days.

The attachment whether heretofore levied or hereafter to be levied shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged either as provided in this chapter, or by dismissal of the action, or by the recording with the recorder of an abstract of the judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred; provided, that upon motion of a party to the action, made not less than five nor more than 60 days before the expiration of said period of three years, the court in which the action is pending may extend the time of said lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the recording before the expiration of the existing lien, of a certified copy of the order with the recorder of the county in which the real property attached is situated. The lien may be extended from time to time in the manner herein prescribed.

542b.

An attachment or garnishment on personal property, whether heretofore levied or hereafter to be levied, shall, unless sooner released or discharged, cease to be of any force or effect and the property levied on be released from the operation of such attachment or garnishment, at the expiration of three years after the issuance of the writ of attachment under which said levy was made; and the property levied on shall be delivered to the defendant or his order or to his assignee or executor or administrator; provided, that upon motion of a party to the action, made not less than 10 nor more than 60 days before the expiration of such period of three years, and upon notice of not less than five days to the party whose property is attached or garnished, the court in which the action is pending may, by order filed prior to the expiration of the period and for good cause, extend the time of such attachment or garnishment for a period not exceeding one year from the date on which the original attachment or garnishment would expire. The attachment or garnishment may be extended from time to time in the manner herein prescribed provided that the aggregate period or periods of such extensions shall not exceed two years.

§ 543. Third party indebted to defendant or possessing or controlling property or credits of defendant; exception

Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or owes any debt to the defendant, the sheriff, constable, or marshal shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ, except that earnings of the defendant for his personal services are exempt from attachment, as provided in Section 690.6.

§ 544. Third party indebted to defendant or possessing or controlling property or credits of defendant; liability to plaintiff; release of attachment or garnishment

All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in this chapter, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, constable, or marshal, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment or garnishment be released or discharged or any judgment recovered by him be satisfied.

The levying officer shall release such attachment or garnishment in full or in part as required, by issuing a written release addressed to the person served with the copy of the writ and notice, upon (1) written direction of the plaintiff or his attorney, or (2) upon receipt by the officer of an order of the court in which the action is pending, or a certified copy thereof, discharging or dissolving the attachment or garnishment or releasing the property; provided, no appeal is perfected and undertaking executed and filed as provided in Section 946 of this code or a certificate to that effect has been issued by the clerk of the court, or (3) in all other cases provided by law. There shall be no liability for such persons acting in conformity with such releases or for such officers releasing such attachments or garnishments in accordance with the foregoing.

§ 545. Third party indebted to defendant or possessing or controlling property or credits of defendant; examination

Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge and be examined on oath respecting the same. The defendant may also be required to attend for

the purpose of giving information respecting his property, and may be examined on oath. The court, judge, or referee may, after such examination, order personal property, capable of manual delivery, to be delivered to the sheriff, constable, or marshal on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

If the defendant or other person ordered to appear pursuant to this section fails to do so, and if the order requiring his appearance has been served by a sheriff, constable, marshal, or some person specially appointed by the court in the order, the judge may, pursuant to a warrant, have such defendant or other person brought before the court to answer for such failure to appear.

§ 545.1 Examination; attendance of persons outside county; 150 mile limit

No person shall be required, pursuant to Section 545 of this code, to attend before a judge or referee outside of the county in which he resides or in which he has a place of business, unless the distance to the place of trial is less than 150 miles from his place of residence or place of business.

§ 545.2 Order for examination of defendant or garnishee outside county of residence or place of business

When a defendant or a garnishee does not reside or have a place of business in the county where the action is pending, an order for his examination, authorized by Section 545 of this code, may be made by any judge of a court of similar jurisdiction of the county where the defendant or garnishee resides or has a place of business, or if no court of similar jurisdiction is in the county, by a court of higher jurisdiction therein, upon filing with the clerk or the judge of the court a certified copy of the complaint in the pending action and upon presenting to the judge of the court an affidavit showing the existence of the facts required to be shown herein. At the time of filing the certified copy of the complaint, there shall be paid to the clerk or judge, as and for a filing fee, the sum of four dollars (\$4) when filed in a justice court; the sum of five dollars (\$5) when filed in a superior court.

§ 545.3 Witnesses; compelling appearance; testimony

In any proceeding for the examination of a defendant or a garnishee under this chapter, witnesses may be required to appear and testify before the judge or referee in the same manner as upon the trial of an issue.

§ 546. Inventory; memorandum; time limit

The officer levying the attachment must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached and other personal property not in the possession of the defendant, he must request, at the time of service, the party owing the debt or having the credit or other personal property belonging to the defendant to give him a memorandum, stating the amount and description of each, within 10 days after such service; and if such memorandum be refused, he must return the fact of such refusal with the writ. The party refusing to give the memorandum within the time specified may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debts or credits or other personal property.

§ 547. Perishable property; sale; custody of proceeds; collection of debts and credits attached

If any of the property attached be perishable, the officer levying the attachment must sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the levy of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The receipt of such officer is a sufficient discharge for the amount paid.

§ 547a. Receiver for perishable property or to cultivate, care for and preserve property; sale; proceeds; fees; expenses

Whenever a writ of attachment is issued and the holder of such writ desires to attach, or has attached, property which is perishable, or which will greatly deteriorate in value unless properly cultivated,

cared for, harvested, packed or sold, the court issuing such writ, upon application of the holder thereof, and after due notice to the owner of said property, may appoint a receiver to take charge of said property and to cultivate, care for and preserve the same and, when necessary, harvest, pack and sell such property. Any sale of such property shall be made in the same manner that property is sold on execution and the proceeds must be retained by such receiver to be applied to the satisfaction of any judgment which may be recovered in the action in which said writ is issued. The court shall fix the fee per day of such receiver and may order said applicant to pay such fee and expenses of said receiver in advance if the court may deem it proper, or may direct that the whole or any part of such fee and expenses be paid from the proceeds of any sale of such property.

§ 548. Sale; prerequisites

Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such order can be made only (1) after notice to the adverse party or his attorney in case such party has been personally served with a summons in the action or, (2) after an order of service of summons by publication has been made.

§ 549. Third party claims; personal property

In cases where a third person claims, as his property, any personal property attached, the rules and proceedings applicable in cases of third party claims after levy under execution shall apply.

§ 550. Satisfaction of judgment; proceeds of perishable property sold, debts or credits collected; sales under execution; notices

If judgment be recovered by the plaintiff, the sheriff, constable, or marshal must satisfy the same out of the property attached by him which has not been delivered to the defendant, or released because of a third party claim, or subjected to a prior execution or attachment, if it be sufficient for that purpose:

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1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

§ 551. Balance due after applying proceeds of attached property; collection; return of surplus

If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff, constable, or marshal must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, constable, or marshal upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

§ 552. Actions on undertakings

WHEN SUITS MAY BE COMMENCED ON THE UNDERTAKING. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to Section 540 or Section 555, or he may proceed, as in other cases, upon the return of an execution.

§ 553. Judgment for defendant; release of property and return of proceeds; increase in and continuance of undertaking

If the defendant recovers judgment against the plaintiff, and no timely motion for vacation of judgment, or for judgment notwithstanding the verdict, or for a new trial, is filed and served, and no appeal is perfected and undertaking executed and filed as provided in Section 921 of this code, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, constable, or marshal and all the property

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attached remaining in such officer's hands, must be delivered to the defendant or his agent, the order of attachment be discharged, and the property released therefrom; provided, that at any time after entry of judgment and before perfection of the appeal under the provisions of Section 921 of this code, upon motion of the defendant, the trial court may order an increase in the amount of the original undertaking on attachment in such amount, if any, as is justified by the detriment reasonably to be anticipated by continuing the attachment. Unless such undertaking shall be executed and filed by at least two sureties within 10 days after such order, the order of attachment shall be discharged, and the property released therefrom. The sureties may be required to justify before the court within 10 days after the undertaking is filed and if they fail to do so, the order of attachment shall be discharged and the property released therefrom. If an order increasing the undertaking is made, the amount of the undertaking on appeal required by Section 921 of this code shall be the same as the amount fixed by the trial court in said order. Neither the pendency nor granting of a motion timely filed and served for vacation of judgment, or for judgment notwithstanding the verdict or for new trial shall continue force an attachment, unless an undertaking be executed and filed on the part of the moving party by at least two sureties that the moving party will pay all costs and damages sustained by continuing the attachment. The undertaking may be included in the undertaking specified in Section 921. If not so included, the same procedure shall apply as in case of an undertaking pursuant to Section 921.

§ 553.5 Release from attachment upon filing of undertaking on appeal

Whenever a defendant appeals and the enforcement of the judgment against him is stayed by the filing of a sufficient undertaking on appeal as provided by this code, all property of said defendant which has been attached in said action shall be released from the attachment levy upon the justification of the defendant's sureties, or written waiver thereof, or upon the failure of the respondent to except to said sureties within five days after written notice of the filing of the undertaking. If the officer's fees for services rendered on the attachment are unpaid, such officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

§ 554. Application for discharge of attachment; undertaking; order; delivery of property; justification of sureties

Whenever any defendant has appeared in the action, such defendant may upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment wholly, or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made releasing from the operation of the attachment, any or all of the property of such defendant attached; and all of the property so released and all of the proceeds of the sales thereof, must be delivered to such defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. Such justification must take place within five days after the notice of the filing of such undertaking.

§ 555. Undertaking for discharge of attachment; sureties; amount; justification

Before making such order, the court or judge must require an undertaking on behalf of such defendant, by at least two sureties, residents and freeholders, or householders in the State to the effect that in case the plaintiff recovers judgment in the action against the defendant, by whom, or in whose behalf such undertaking shall be given, such defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of any judgment in such action against said defendant, or in default thereof, that such defendant and sureties will, on demand, pay to the plaintiff the full value of the property released not exceeding the amount of such judgment against such defendant. The court or judge making such order may fix the sum for which the undertaking must be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge and the property attached cannot be released from the attachment without their justification if the same is required.

§ 556. Discharge for irregularity

The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply, on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to a judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

§ 557. Motion for discharge made on affidavit may be opposed by affidavit

WHEN MOTION MADE ON AFFIDAVIT, IT MAY BE OPPOSED BY AFFIDAVIT. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

§ 558. Discharge for irregularity; amendments

If upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged; *provided* that such attachment shall not be discharged if at or before the hearing of such application, the writ of attachment, or the affidavit, or undertaking upon which such attachment was based shall be amended and made to conform to the provisions of this chapter.

§ 559. Return of writ

The sheriff, constable, or marshal must return the writ of attachment with the summons, if issued at the same time, and may return it separately from the summons if issued at a later time. The writ of attachment must be returned forthwith after levy and service in accordance with the instructions given to the officer at the time such writ or writ and summons are delivered to him, but in no event later than 30 days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto, together with the undertaking given under the provisions of Section 540 of this code to prevent or release the levy of the attachment, to the clerk of the court from which said writ of attachment was issued, except that if cash has been deposited with such levying officer in lieu of an undertaking as permitted by Section 540 of this code, such cash shall be retained in such levying officer's trust fund, and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be recorded in the offices of the county recorders in which the notices of attachment have been recorded, and be indexed in like manner.

§ 559¹/₂. Alias writs; issuance

After the return and filing of the writ of attachment, or upon filing by the plaintiff of a verified affidavit setting forth the loss of the writ of attachment, the clerk, upon demand of the plaintiff at any time before judgment, may issue an alias writ which shall be in the same form as the original, without requirement of a new affidavit for attachment or of a new undertaking as provided in Section 539 of the Code of Civil Procedure.

The provisions of this section do not prohibit the issuance of several writs as provided for in Section 540.

§ 560. Real estate; release; manner

An attachment as to any real property may be released by a writing signed by the plaintiff, or his attorney, or the officer who levied the writ, and acknowledged and recorded in the like manner as a grant of real property.

§ 561. Interest in estate of decedent

The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representative over the property for the purposes of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered and the personal representative shall report such attachment to the court when any petition for distribution is filed, and in the decree made upon such petition distribution shall be ordered to such heir, legatee or devisee, but delivery of such property shall be ordered to the officer making the levy subject to the claim of such heir, legatee or devisee, or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.
