

#39.230

8/29/75

Memorandum 75-70

Subject: Study 39.230 - Enforcement of Judgments (Supplementary Procedures)

Attached to this memorandum as Exhibit I (green pages) is a draft of Chapter 5 of the Enforcement of Judgments title which provides a variety of procedures for enforcing money judgments to be used in place of or in conjunction with the writ of execution. The Commission has not yet considered most of this material, so we plan to go through the draft of Chapter 5 section by section.

Also attached hereto are copies of various statutes referred to in the Comments or Notes to the draft sections. Relevant sections of the Code of Civil Procedure are in Exhibit II (yellow pages). Business and Professions Code Section 24074 relating to liquor license escrows is in Exhibit III (white pages). Corporations Code Section 15028 relating to charging orders is in Exhibit IV (buff pages). For comparative purposes several New York statutes are in Exhibit V (blue pages) and several Pennsylvania rules of court are in Exhibit VI (gold pages). An excerpt from Witkin's California Procedure concerning charging orders is in Exhibit VII (pink pages).

Respectfully submitted,

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Exhibit I

Draft of §§ 705.010-705.450 Supplementary Procedures

405-385

CHAPTER 5. SUPPLEMENTARY PROCEDURES FOR THE
ENFORCEMENT OF A MONEY JUDGMENT

Comment. Chapter 5 makes available to the judgment creditor a variety of procedures for the enforcement of a money judgment. It is anticipated that the writ of execution will remain the primary enforcement tool. However, in some circumstances, execution operates in a less than satisfactory way, and sometimes it is not effective at all. The procedures provided in this chapter supplement execution and should provide an arsenal adequate to protect the judgment creditor. Article 1 continues the substance of former Sections 714-715, 717-722, and 723 relating to the examination of the judgment debtor as well as examination of a third person indebted to the judgment debtor. Article 2 authorizes the judgment creditor to bring suit against third persons indebted to or in possession of property belonging to the judgment debtor. Article 3 provides for the appointment of a receiver to aid in the enforcement and satisfaction of a judgment. Article 4 provides for the issuance of an installment payment order directed to the judgment debtor which enables the judgment creditor to reach periodic payments not otherwise subject to process. Article 5 provides an exclusive procedure for collection of money judgments where the judgment debtor is a creditor of a public entity. Article 6 provides for charging orders against the interest of a debtor-partner in partnership property. Article 7 provides for a lien on a cause of action and judgment. Article 8 provides for assignment of assets which are not subject to levy, i.e., patents, copyrights, trademarks, and most wages in the hands of the federal government.

Article 1. Examination of Judgment Debtor,
Third Person Indebted to Judgment Debtor,
and Additional Witnesses

§ 705.010. Power of court commissioner and referee; qualifications of
referee; disobedience of order of court commissioner or
referee a contempt

705.010. (a) An order to appear and answer concerning property may be issued pursuant to Sections 705.020, 705.030, and 705.040 by a court commissioner.

(b) The examination proceedings authorized by Sections 705.020, 705.030, and 705.040 may be conducted by a court commissioner or a referee appointed by the court, and such officer may issue any order authorized by Section 705.050 or warrant authorized by Section 705.060 and has the same powers as the court to grant adjournments, to preserve order, and to subpoena witnesses to attend the examination.

(c) Any referee appointed pursuant to the provisions of this article shall be an attorney duly licensed to practice law in all the courts of this state at least five years prior to the date of such appointment.

(d) If any person disobeys an order of a court commissioner or referee properly made pursuant to this article, such person may be punished by the court for contempt.

Comment. Section 705.010 reenacts the substance of portions of several former sections and supplements Sections 259 and 259a (court commissioners) and 639 (reference). Subdivision (a) codifies a rule stated in Lewis v. Neblett, 188 Cal. App.2d 290, 10 Cal. Rptr. 441 (1961). Insofar as subdivision (b) authorizes a court commissioner or referee to preside over an examination proceeding, it continues the authority provided by former Sections 714, 715, and 717. See also Sections 259 and 259a. The authority of such officer to issue an order requiring the application of property to the satisfaction of a judgment or forbidding transfer of property (Section 705.050) continues authority provided by former Sections 719 and 720. The authority of such officer to issue a warrant to compel the appearance of a person and to control the proceeding generalizes the authority provided by former Section 723. See also former Sections 714, 715, and 717.

Subdivision (c) makes applicable to all referees the qualifications formerly required of referees appointed in a county or city and county having a population of one million or more. Compare former Section 723. See also Govt. Code § 70142.

Subdivision (d) reenacts the substance of former Section 721. It should be noted that, although a court commissioner or referee may issue a warrant of attachment pursuant to Section 705.050, only a judge of the court may exercise power to punish contempt for failure to appear.

Note. We believe that this section preserves the existing law and its division of authority among court (judge), court commissioner, and referee.

§ 705.020. Examination of judgment debtor; order; frequency

705.020. (a) Whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ of execution has been issued or returned, the judgment creditor is entitled to

an order from the court requiring the judgment debtor to appear and answer concerning his property before the court at a time and place specified in the order.

(b) Notwithstanding subdivision (a), a judgment debtor may not be required to appear and answer more frequently than every four months. However, nothing in this section shall be construed to restrict the rights granted by Section 705.030.

(c) An order made pursuant to subdivision (a) shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Comment. Section 705.020 reenacts the substance of the first paragraph of former Section 714. Although Section 705.020 no longer specifically so provides, an order requiring a judgment debtor to appear for an examination may still be issued against any one (or more) of several judgment debtors. Moreover, Section 705.010 continues the authority for a court commissioner or other appointed officer both to issue an order requiring an appearance and to preside over the examination itself. See Section 705.010 and the Comment thereto. Compare former Section 714. Finally, the second paragraph of former Section 714 provided for the arrest of the judgment debtor where he failed to appear in compliance with an order issued under Section 714. This provision has been continued by Section 705.060 (arrest of person ordered to appear under this article). Subdivision (c) continues the fourth paragraph of former Section 714.

Note. New York procedure provides for issuance of one or more of the following: (1) a subpoena requiring attendance for the taking of a deposition; (2) a subpoena duces tecum requiring the production of books

or documents; or (3) an information subpoena (basically written interrogatories). See N.Y.C.P.L.R. §§ 5223-5224. In short, the New York procedure has attempted to remove any vestiges of a separate proceeding and is now analogous to ordinary prejudgment discovery procedures. We have not attempted to pursue such a course but offer the idea for your consideration.

404/945,6

§ 705.030. Proceedings in aid of execution; examination; arrest of debtor; undertaking or imprisonment

705.030. (a) After the issuance of an execution against property of the judgment debtor, and upon proof by affidavit or otherwise to the satisfaction of the court that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, the court may order the judgment debtor to appear at a specified time and place before the court to answer concerning the same.

[(b) Instead of the order requiring the attendance of the judgment debtor, the court may, upon affidavit of the judgment creditor, his agent, or attorney, if it appears to him that there is danger that the debtor will abscond, order the sheriff, or a constable, or marshal to arrest the judgment debtor and bring him before the court. Upon being brought before the court, the judgment debtor may be ordered to make an undertaking, with sufficient sureties, that he will attend from time to time before the court as may be directed during the pendency of proceedings and until the final determination thereof and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.]

[c] An order made pursuant to subdivision (a) shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Comment. Section 705.030 reenacts the substance of a portion of former Section 715. The authority for a commissioner or other appointed officer both to issue an order requiring an examination and to preside over the examination itself is continued in Section 705.010. The authority of the court to order the application of property of the judgment debtor toward the satisfaction of the judgment is continued in Section 705.050. [The authority to arrest the debtor on the creditor's ex parte application has been deleted. However, the debtor may still be arrested pursuant to Section 705.060 where he fails to appear after being ordered to do so, and he is, of course, subject to being held in contempt of court for such failure.] Subdivision [c] is based on similar provisions in former Sections 714 and 717.

Note. We have retained subdivision (b) only for purposes of discussion. This provision was considered in connection with the civil arrest recommendation, but it was decided then to take no action until the execution topic was taken up. The staff recommends that subdivision (b) now be deleted. We believe that the contempt power is an adequate sanction for the protection of the judgment creditor and that the reasons which supported the repeal of the civil arrest remedy are applicable here. See Recommendation and Study Relating to Civil Arrest, 11 Cal. L. Revision Comm'n Reports 1, 27-37 (1973). See also Section 705.160 (arrest of person ordered to appear under this chapter).

404-947

§ 705.040. Examination of debtor of judgment debtor [; exception for spouse of debtor]

705.040. (a)[After the issuance of an execution against property of the judgment debtor, and] upon proof by affidavit or otherwise, to the satisfaction of the court, that any person has property of the

judgment debtor, or is indebted to him in an amount exceeding fifty dollars (\$50), the court may, by an order, require such person or, in the case of a corporation, any officer or member thereof, to appear at a specified time and place before the court to answer concerning the indebtedness. [The spouse of a judgment debtor to the extent provided by Sections 970 and 971 of the Evidence Code may not be required to so testify if there has not been a waiver of such provisions in the action giving rise to the judgment.]

(b) The clerk shall send notice of the time and place of the examination to the judgment debtor.

(c) An order made pursuant to subdivision (a) shall contain the following statement in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Comment. Section 705.040 reenacts the substance of the first sentence of former Section 717. Although Section 705.040 no longer specifically so provides, an order requiring the appearance of a debtor of one (or more) of several judgment debtors may still be issued. Moreover, Section 705.010 continues the authority for a court commissioner or other appointed officer both to issue an order requiring the appearance and to preside over the examination itself. See Section 705.010 and the Comment thereto.

[The second sentence of former Section 717 has been deleted; however, this works no change in the law. Evidence Code Sections 970 and 971 provide that a married person has a privilege not to testify or even be

called to testify against his spouse in any proceeding. These privileges apply as well in the proceedings under this chapter unless, of course, the privilege has been waived earlier in the action giving rise to the judgment. See Evid. Code § 973 and Comment thereto.]

Subdivision (b) is new.

The second paragraph of former Section 717 provided for the arrest of a person where he failed to appear in compliance with an order issued under Section 717. This provision has been continued by Section 705.060. Subdivision (c) continues the third paragraph of former Section 717.

Note. The second sentence of former Section 717 was only enacted in 1972. However, we believe that the matter can be adequately covered by a Comment. Is this approach satisfactory?

We have placed the introductory clause to Section 705.040 in brackets because we do not believe that issuance of an execution should be a prerequisite to examination. May we delete this requirement?

Should we raise the \$50 minimum indebtedness provided by subdivision (a)? It has been at that level for 124 years.

404-948

§ 705.050. Order applying property toward satisfaction of judgment

705.050. (a) After an examination pursuant to Section 705.020, 705.030, or 705.040, the court may order any nonexempt property of the judgment debtor in the hands of the debtor or any other person or any nonexempt debt due to the judgment debtor, to be applied toward the satisfaction of the judgment.

(b) Notwithstanding subdivision (a), if a person alleged to have property of the judgment debtor or to be indebted to him, claims an interest in the property adverse to the judgment debtor or denies the debt, the court may not order that such interest or alleged debt be

applied toward the satisfaction of the judgment, but the court may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced by the judgment creditor pursuant to Section 705.110.

Comment. Section 705.050 reenacts the substance of former Section 719 and a portion of former Section 720. Although Section 705.050 no longer refers specifically to referees, the orders authorized by this section may be made by a referee. See Section 705.010 and Comment thereto.

Note. This section provides only for restraining orders after examination. Present law does not provide specifically for orders restraining transfer of property pending the examination proceeding. Where a writ of execution has been levied on property, the levy will bind the property; however, a levy will not always have been made, and we wonder whether specific authority for a temporary restraining order, which provides protection pending the hearing, should be provided. Compare N.Y.C.P.L.R. § 5222 (T.R.O. issued by clerk or attorney for judgment creditor himself!). Of course, commencement of supplementary procedures itself creates a lien on the property discovered thereby. Canfield v. Security-First Nat'l Bank, 13 Cal.2d 1, 87 P.2d 830 (1939).

404-949

§ 705.060. Arrest of person ordered to appear under this article

705.060. If a person ordered to appear pursuant to Section 705.020, 705.030, or 705.040 fails to appear, and if the order requiring his appearance has been served by a levying officer or some person specially appointed by the court in the order, or a registered process server, the court may, pursuant to a warrant, have such person brought before the court to answer [concerning the property and] for such failure to appear.

Comment. Section 705.060 reenacts the substance of the second paragraph of former Section 714 and former Section 717. [It also .

supersedes the authority to arrest the judgment debtor on the ex parte application of the judgment creditor which was provided by the last three sentences of former Section 715.]

Note. The sentence in brackets will be included if we delete subdivision (b) of Section 705.030 as recommended above. This section apparently limits the courts contempt power to cases where the order is served by one of the specified persons. Is it needed? The phrase in brackets is added since it would be absurd to arrest the debtor or third person for failure to appear and then fail to examine him.

404-950

§ 705.070. Examination; attendance outside county of residence or place of business; tender of mileage fees; costs

705.070. (a) Neither a judgment debtor nor a debtor of a judgment debtor shall be required to attend before a court located outside of the county in which he resides or in which he has a place of business unless the distance is less than 150 miles from his place of residence or his place of business to such court.

(b) No process to require the attendance, pursuant to this article, of a debtor of a judgment debtor is effective unless, at the time of service of process, the person serving it tenders to such person mileage fees in the amount of fifteen cents (\$0.15) per mile necessary to be traveled, one way, from such person's residence to the court. Such mileage fees are an item of costs chargeable to the judgment debtor, and the court may, pursuant to Section 705.050, order the application of [any] property of the judgment debtor to the satisfaction of such costs.

Comment. Section 705.070 is substantively identical to former Section 717.1.

Note. Should the property chargeable for mileage fees be "non-exempt," as opposed to "any?"

404-951

§ 705.080. Examination proceedings in other counties

705.080. When any judgment debtor, or any person or corporation or officer or member of such corporation, does not reside or have a place of business in the county where the judgment roll is filed, or where the judgment is entered in the docket in the justice court, an order authorized to be made under any of the provisions of this article may be made by any court of similar jurisdiction of the county where such judgment debtor or other person resides or has a place of business or, if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein, upon filing with the clerk or judge of said court an abstract of the judgment, in the form prescribed by Section 674, and upon presenting to such court an affidavit showing the existence of the facts required to be shown herein. At the time of filing such abstract, there shall be paid to such clerk or judge, a filing fee of four dollars (\$4) when filed in a justice court or six dollars (\$6) when filed in a superior or municipal court.

Comment. Section 705.080 is substantively identical to former Section 722.

404-952

§ 705.090. Witnesses

705.090. Witnesses may be required to appear and testify before the court in any proceeding under this article in the same manner as upon the trial of an issue.

Comment. Section 705.090 is substantively identical to former Section 718. Although Section 705.090 no longer refers specifically to referees, the proceedings authorized by this article may be conducted by such officers. See Section 705.010 and Comment thereto.

405-394

Article 2. Creditor's Suit Against Third Person

§ 705.110. Action by judgment creditor to enforce right to possession of judgment debtor or payment of debt owed to judgment debtor

705.110. A judgment creditor may bring an action against any person against whom his judgment debtor could have maintained an action for the possession of personal property or the payment of a debt. The judgment debtor shall be joined in the action. If it is shown that the judgment debtor is entitled to possession of the personal property, the judgment in the action shall require the sale of the property, or so much of it as is required to satisfy the judgment creditor's judgment, and the payment of the proceeds of the sale to the judgment creditor. If it is shown that the defendant in the action is indebted to the judgment debtor, a judgment in the action may be entered against the defendant and in favor of the judgment creditor. Costs of the action shall not be awarded against a person who did not dispute the judgment debtor's right to possession or the indebtedness.

Comment. Section 705.110 supersedes a portion of former Section 720. It authorizes suit by a judgment creditor to enforce his judgment debtor's right to possession of personal property or to collect a debt owed to his judgment debtor. This is a separate and distinct remedy. It is anticipated that it will be used only when the third person has failed to perform his duties under Section 703.160 (duties of garnishee under levy of execution) and an order requiring the application of property to the satisfaction of the judgment creditor's judgment is unavailable under Section 705.050. Costs of the action will not be awarded against a defendant who does not dispute the judgment debtor's rights; hence, the judgment creditor is encouraged to pursue the faster and less expensive procedures first. However, neither issuance or levy of execution nor an examination proceeding is a prerequisite to suit.

Note. Section 705.110 is based in part on Section 720 and also incorporates some features of N.Y.C.P.L.R. §§ 5225 and 5227 and Cal. Code Civ. Proc. § 488.550. We note that this section, Section 703.160 (liability of garnishee), and Section 705.050 (order following examination proceedings) are all limited to debts due and owing when the respective procedure is utilized. The staff believes that some provision should be made for payment of unmatured debts as they become due. This can be accomplished perhaps by the appointment of a receiver. See Section 705.210. However, we wonder whether a receiver is always necessary or desirable. It may also be accomplished by the procedure proposed in Article 4. See Sections 703.310 et seq.

405-395

Article 3. Receiver to Enforce Judgment

§ 705.210. Receiver to enforce judgment

705.210. (a) Whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ of execution has been issued or returned, upon application of either the judgment creditor or judgment debtor after a noticed hearing, the court may appoint a receiver who may be authorized to do any acts designed to satisfy the judgment.

(b) The order of appointment shall specify the property to be received, the duties of the receiver, and the manner in which these duties are to be performed. The order may direct a levying officer to deliver to the receiver any property previously levied upon under a writ of execution or attachment and may authorize the receiver to sell any real or personal property in any manner and on such terms and conditions as will insure that a fair consideration is obtained by the sale. Any sale made pursuant to this section may be made absolute.

(c) The court, without the consent of the judgment debtor, may appoint the judgment creditor or his attorney as the receiver but, if such appointment is made, the receiver is not entitled to compensation.

(d) Except as otherwise provided in this article, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5A (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Note. Section 705.210 is essentially a new section. Under present law, Section 564 provides in part:

In superior courts a receiver may be appointed by the court in which an action or proceeding is pending:

* * * * *

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment; or after sale of real

property under execution of a judgment or pursuant to a decree of foreclosure or sale during the period provided by law for the redemption thereof from sale, to collect rents thereon, and to expend and disburse such rents as may be directed by the court or otherwise provided by law;

Municipal courts are also authorized to appoint a receiver in aid of execution as provided in paragraph 4 of Section 564. See Section 89(a)(8). However, the appointment of a receiver seems to have been approached by the courts in a generally restrictive way. The staff believes that this is unfortunate because, in some circumstances and with appropriate controls, we believe that the use of a receiver could be very beneficial to all concerned. We suggest accordingly that a section be added along the lines indicated in an attempt to encourage a new judicial approach.

Section 705.210 makes clear that issuance or return of an execution is not a prerequisite to the appointment of a receiver. We think that in some circumstances a receiver may be preferable to enforcement by execution, e.g., collection of the rents from an apartment house for a period of time may be much more desirable for both parties than sale of such property. Similarly, collection of periodic payments under notes, accounts receivable, and so on may be greatly simplified through use of a receiver. Hence, we have eliminated the suggestion that execution must first be pursued. See generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 179-182 at 3538-3540 (2d ed. 1971).

Section 568 provides a receiver with broad general powers; Section 568.5, however, requires the receiver to make sales in the same manner as under execution. We take a quite different approach. Subdivision (b) authorizes the court to permit sales to be made in any manner as long as a fair price is obtained. Our intent here is to use a "receiver" as a more flexible alternative to the usual sale under execution. For example, the creditor himself can be appointed the receiver for the sole purpose of selling a particular item of property through a negotiated private sale.

Section 566 provides that "no party, or attorney of a party, . . . can be appointed receiver . . . without the written consent of the parties . . ." Subdivision (c) changes this rule. The receiver must be bonded and, as long as the court is satisfied that the judgment creditor or his attorney will do a satisfactory job, we see no reason to require the judgment debtor's consent. Subdivisions (b) and (c) both express features of the present law in New York. See N.Y.C.P.L.R. § 5228. Pennsylvania also seems to have a liberal approach to the use of a receiver. See Pa. R. Ct. 3114.

If the general scheme outlined above is satisfactory, it may be helpful to provide specifically for the priorities between judgment creditors who have utilized this procedure and those who have levied execution, recorded a judgment lien, or pursued some other remedy. We would assume that the basic rule--first in time, first in right--would apply but, if desired, we can make the point clear. Compare N.Y.C.P.L.R. § 5234.

406-210

§ 705.220. Receiver to transfer alcoholic beverage license

705.220. (a) A receiver may be appointed pursuant to Section 705.210 for the purpose of transferring an alcoholic beverage license held by the judgment debtor which is transferable under Article 5 (commencing with Business & Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(b) If, at the hearing provided by Section 705.210, the judgment debtor shows that claims of creditors with priority over the judgment creditor as provided by Business and Professions Code Section 24074 exceed the probable sale price of the license, the court may not authorize the appointment of a receiver for the purpose of transferring the license.

(c) The receiver may exercise the powers of the licensee as necessary, and shall comply with the applicable provisions of Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act and any applicable regulations of the Department of Alcoholic Beverage Control.

(d) An alcoholic beverage license may be applied to the satisfaction of a judgment for the payment of money only as provided in this section.

Comment. Section 705.220 allows the judgment creditor to force the sale by a receiver of an alcoholic beverage license held by the judgment debtor. Alcoholic beverage licenses are not subject to levy of writ of execution. See Section [703.050]. The Alcoholic Beverage Control Act

(commencing with Business and Professions Code Section 23000) provides detailed procedures for the sale of alcoholic beverage licenses which make use of a receiver appropriate. Cf. Hollis v. Jiffy-Stitcher Co., 125 Cal. App.2d 236, 270 P.2d 25 (1954). Apparently, since the amendment to former Section 688 in 1959 (Cal. Stats. 1959, Ch. 2140, §1) alcoholic beverage licenses had not been reachable by any state enforcement process. See 37 Ops. Cal. Atty. Gen. 4 (1961).

In order to prevent punitive forced sales of the judgment debtor's license, subdivision (b) of Section 705.220 allows the judgment debtor to show that it is unlikely that the judgment held by the judgment creditor would be satisfied in whole or in part if the license were sold because claims of creditors with priority over the judgment creditor pursuant to Business and Professions Code Section 24074 exceed the probable sale price of the license. The scheme of priorities set out in Section 24074 is "mandatory and exclusive." See Grover Escrow Corp. v. Gole, 71 Cal.2d 61, 453 P.2d 461, 77 Cal. Rptr. 21 (1969); Bus. & Prof. Code § 24076.

Subdivision (c) enables the receiver to exercise the powers of the licensee necessary to comply with the transfer provisions of the Alcoholic Beverage Control Act. The strict regulation of all aspects of alcoholic beverage licenses by the Alcoholic Beverage Control Act requires that the receiver comply with the procedures set out in Article 5 (commencing with Business and Professions Code Section 24074) of Chapter 6 of the act and the regulations of the Department of Alcoholic Beverage Control.

Note. This section implements a decision made at the March 1974 meeting to provide a procedure for reaching liquor licenses. As an alternative it would be possible to provide for levy and sale by an officer; however, the staff thinks this would be awkward since the transfer would still have to be approved by the Department of Alcoholic Beverage Control. Special levy procedures would also have to be provided. In Division of Labor Law Enforcement v. U.S., 301 F.2d 82 (9th Cir. 1962), a federal officer levying on a liquor license for purposes of a tax lien under 26 U.S.C. Section 6331 took possession of the license certificate and sent notice to both the licensee and the ABC.

405-880

For the text of Business and Professions Code Section 24074, see Exhibit III.

Business and Professions Code Section 24075 purports to exempt receivers and others from the requirements of Section 24074:

24075. The provisions of Sections 24073 and 24074 do not apply to any transfer of a license made by an executor, administrator, guardian, conservator, trustee, receiver, or other person acting in the legal or proper discharge of official duty, or in the discharge of any trust imposed upon him by law, nor to any transfer or assignment, statutory or otherwise, made for the benefit of creditors, nor to a surviving spouse or fiduciary or other person within the meaning of Section 24071.

At present Section 24075 is ineffective so far as receivers or officers conducting execution sales are concerned because liquor licenses may not be reached to satisfy a money judgment. It appears that the original intent of the language was to enable fiduciary officers to perform the functions of the escrow agent provided in Section 24074. The rigid system of priorities was enacted later and Section 24075 was apparently overlooked. The staff can see no reason why the persons listed in Section 24075 should be exempt from following the priorities set out in Section 24074. Accordingly, the staff proposes to amend Section 24075 by adding the following phrase: "Except as otherwise provided by Code of Civil Procedure Section 705.220, . . ."

405-397

Article 4. Installment Payment Order

§ 705.310. Installment payment order

705.310. (a) Whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ of execution has been issued or returned, upon application of the judgment creditor, after a noticed hearing where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court may order that the judgment debtor make specified installment payments to the judgment creditor.

(b) In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor and the

judgments debtor's dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

(c) Upon application of either the judgment debtor or the judgment creditor, and after a noticed hearing where it is shown that there has been a material change in circumstances since the time of the previous hearing on the installment payment order, the court may modify or set aside such order.

Comment. Section 705.310 is substantively similar to N.Y.C.P.L.R. § 5226. It does not alter the rule that Chapter 4 provides the exclusive procedure for withholding earnings of an employee. However, it does seem to provide a useful supplementary remedy to reach income from federal employment, out-of-state employers, or from self-employment. Moreover, because it is not a garnishment or withholding procedure but rather operates directly against the judgment debtor, it can also be used to reach amounts greater than those permitted under the wage garnishment provisions (e.g., where the employee's income is large and the amount remaining after withholding is more generous than seems necessary) or it can be used by a second judgment creditor where a prior earnings withholding order is in effect. This should not undermine the wage garnishment law and subdivision (c) attempts to make clear that the order issued is not irrevocable and the judgment debtor can seek further review where the impact of the order has increased due to a change in circumstances. (Of course, on the other hand, the debtor's circumstances may change for the better; hence, subdivision (c) permits either party to move to have the order modified, i.e., the judgment creditor may seek to have the amount to be paid over increased.)

Note. Section 705.310 is new; we know of no present counterpart. Is the idea worth preserving?

969-015

In New York, this procedure has created certain priority problems since it was held in Schwartz v. Goldberg, 58 Misc.2d 308, 295 N.Y.S.2d 245 (1968), that a creditor using the installment payment order had priority over six creditors who were waiting in line for income executions (wage garnishment). It should also be noted that New York's wage garnishment law which exempts all but 10 percent of weekly wages over \$85 leaves more disposable income to the debtor to be subjected to an installment payment order than does present California law.

The installment order procedure could be limited to situations where there is no wage garnishment. To do otherwise would defeat the purpose of the exemption of a certain amount of wages, whether paid or unpaid, when there has been a wage garnishment.

Another objection is that subdivision (b) creates a very vague test in the nature of a standard of living test.

The Commission should also note the newly-enacted Code of Civil Procedure Section 85 (Cal. Stats. 1974, Ch. 1415) which provides that in municipal or justice courts the judgment debtor may be ordered to pay the amount of the judgment "immediately or at any time and upon such terms and conditions, including installment payments, which the court may prescribe." In making its determination the court must consider factors relevant to exemptions and examinations of debtors.

This procedure may be so similar to that proposed in Article 8 that the two would best be merged. For now we have kept them both for your consideration and comparison. What does the Commission wish to do?

969-010

Article 5. Collection of Judgment Where

Judgment Debtor is Creditor of Public Entity

§ 705.410. "Public entity," "state," and "local public entity" defined

705.410. (a) The definition provided in this section govern the construction of this article.

(b) "Public entity" means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.

(c) "State" means the State of California and includes the Regents of the State of California.

(d) "Local public entity" means any public entity other than the state.

969-011

§ 705.420. Exclusive procedure provided by this article and Chapter 4

705.420. A judgment for the payment of money against a person to whom money is owing and unpaid by a public entity, may only be enforced against such entity in the manner provided by this article and Chapter 4 (commencing with Section 704.010).

405-380

§ 705.430. Collection of judgment where judgment debtor is creditor of state or political subdivision

705.430. (a) Whenever a judgment for the payment of money is rendered against a person to whom money is owing and unpaid by a public entity, the judgment creditor may file a duly authenticated abstract or transcript of such judgment together with an affidavit which states that he desires to avail himself of the relief provided by this section and states the exact amount then due, owing, and unpaid on the judgment.

(b) If the money is owing and unpaid by the state to the judgment debtor, the judgment creditor shall file the abstract or transcript and affidavit with the state department, board, office, or commission owing such money to the judgment debtor prior to the time the department, board, office, or commission presents the claim of the judgment debtor therefor to the State Controller. The department, board, office, or commission in presenting the claim of the judgment debtor to the State

Controller shall note thereunder the fact of the filing of the abstract or transcript and affidavit and state the amount unpaid on the judgment as shown by the affidavit and shall also note any amounts advanced to the judgment debtor by, or which the judgment debtor owes to, the state by reason of advances for expenses or for any other purpose. The State Controller, to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by a warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting from the claim an amount sufficient to reimburse the department, board, office, or commission for any amounts advanced to the judgment debtor or by him owed to the state, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and the balance thereof, if any, to the judgment debtor.

(c) If the money is owing and unpaid to the judgment debtor by any local public entity the judgment creditor shall file the abstract or transcript and affidavit with the auditor of such local public entity (and in case there be no auditor then with the official whose duty corresponds to that of auditor). The auditor (or other official), to discharge the claim of the judgment debtor, shall pay into the court which issued the abstract or transcript, by his warrant or check payable to the court, the whole or such portion of the amount due the judgment debtor on the claim, after deducting from the claim an amount sufficient to reimburse the local public entity for any amounts advanced to the judgment debtor or by him owed to such public entity, as will satisfy in full or to the greatest extent the amount unpaid on the judgment and the balance thereof, if any, to the judgment debtor.

(d) The judgment creditor upon filing the abstract or transcript and affidavit shall pay a fee of two dollars and fifty cents (\$2.50) to the person or agency with whom the same is filed.

(e) Whenever a court receives any money hereunder, it shall pay as much thereof as is not exempt from enforcement to the judgment creditor and the balance thereof, if any, to the judgment debtor. The procedure for determining the exemption shall be governed by the procedure set forth in Chapter 7 (commencing with Section 707.010) and the court rendering the judgment shall be considered the levying officer for this purpose.

(f) In the event the money owing to a judgment debtor by any public entity is owing by reason of an award made in a condemnation proceeding brought by the public entity, such public entity may pay the amount of the award to the clerk of the court in which such condemnation proceeding was tried and shall file therewith the abstract or transcript of judgment and the affidavit filed with it by the judgment creditor. Such payment into court shall constitute payment of the condemnation award within the meaning of Section 1268.010. Upon such payment into court and the filing with the county clerk of such abstract or transcript of judgment and affidavit, the county clerk shall notify by mail, through their attorneys, if any, all parties interested in the award of the time and place at which the court which tried the condemnation proceeding will determine the conflicting claims to the award. At such time and place, the court shall make such determination and order the distribution of the money held by the county clerk in accordance therewith.

(g) The judgment creditor may state in the affidavit any fact or facts tending to establish the identity of the judgment debtor. No public officer or employee shall be liable for failure to perform any duty imposed by this section unless sufficient information is furnished by the abstract or transcript together with the affidavit to enable him in the exercise of reasonable diligence to ascertain such identity therefrom and from the papers and records on file in the office in which he works. The word "office" as used herein does not include any branch or subordinate office located in a different city.

(h) Nothing in this section shall authorize the filing of any abstract or transcript and affidavit against any overpayment of tax, penalty, or interest, or interest allowable with respect to such overpayment, under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(i) Any fees received by a state agency under this section shall be deposited to the credit of the fund from which payments were, or would be, made on account of a garnishment under this section.

(j) This section does not authorize the withholding of earnings of a public officer or employee. The earnings of a public officer or employee may be withheld only pursuant to Chapter 4 (commencing with Section 704.010).

Comment. Section 705.430 is substantively identical to former Section 710.

Note. Section 705.430 is presented here in substantially the same form as it appears in our wage garnishment procedure recommendation. The reference to Section 1268.010 anticipates the enactment of the Eminent Domain Law.

§ 705.440. Collection of judgment where judgment debtor is contractor on public work; subordination to claims of laborers and materialmen

705.440. (a) Where the judgment debtor named in any abstract or transcript of judgment filed under Section 705.430 is a contractor upon any public work, the cost of which is to be paid out of any public moneys voted, appropriated, or otherwise set apart for the purpose of paying therefor, only so much of the contract price shall be deemed owing to the contractor, within the meaning of Section 705.430, as may remain payable to him under the terms of his contract, upon the completion thereof, after the sums severally due and to become due to all persons who perform labor upon such work or who bestow skill or other necessary services or furnish materials, appliances, [teams], or power used or consumed in the performance of such work have been ascertained and paid.

(b) In ascertaining the sums severally due or to become due to the persons who perform labor upon public works or other necessary services or furnish materials, appliances, [teams], or power used or consumed in the performance of such work, only such claims shall be considered as are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) The controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract shall not draw his warrant in favor of the court which issued the ab-

stract or transcript until the contract is completed and the payments above specified are made and then only for the excess, if any, of the contract price over the aggregate of the sums so paid.

Comment. Section 705.440 is substantively identical to former Section 710a.

Note. This section has been tentatively approved; however, the Commission reserved for further consideration the question whether a comparable provision should be made applicable to private construction contracts.

969-013

Article 6. Charging Orders

§ 705.510. Order charging interest of partner in partnership property; appointment of receiver; exclusive procedure

705.510. (a) Whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ of execution has been issued or returned, upon application by the judgment creditor of a partner to the court which entered the judgment, and after notice to each partner of the judgment debtor and a hearing, the court may [charge the interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest thereon, may appoint a receiver as provided in Section 705.210 to collect the judgment debtor's share of the profits and any other money as it becomes due to him from the partnership, and may] make any [other] orders directed to the partners or to a receiver appointed by the court which are necessary to secure the satisfaction of the judgment.

(b) If the judgment is not satisfied within a reasonable period of time pursuant to subdivision (a), the court in its discretion may appoint a receiver, if it has not previously done so, and authorize the receiver to sell the interest charged in the manner and on the terms and conditions prescribed by the court. Before sale, the interest charged may be purchased without thereby causing a dissolution (1) with separate property, by any one or more of the partners, or (2) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(c) Except on a claim against the partnership, the right of a partner in specific partnership property may only be applied to the satisfaction of a judgment pursuant to this section.

Comment. Section 705.510 provides the exclusive procedure for reaching the interest of a partner in specific partnership property where the partner, but not the partnership, is a judgment debtor. This section implements the practice developed under Corporations Code Section 15028.

Note. See excerpt from Witkin in Exhibit VII.

405-483

Article 7. Lien on Cause of Action and Judgment

§ 705.610. Judgment creditor of party; order granting lien; notice; intervention; extent of lien; endorsement upon judgment and abstract

705.610. (a) Upon motion of a judgment creditor of any party to an action or special proceeding made in the court in which the action or proceeding is pending upon written notice to all parties, the court may, in its discretion, order that the judgment creditor be granted a lien

upon the cause of action, and upon any judgment subsequently procured in such action or proceeding, and, during the pendency of such action, may permit such judgment creditor to intervene therein.

(b) The judgment creditor shall be granted a lien to the extent of his judgment upon all money recovered by his judgment debtor in such action or proceeding, and no compromise, settlement, or satisfaction shall be entered into by or on behalf of the judgment debtor without the consent of the judgment creditor unless the lien is sooner satisfied or discharged.

(c) The clerk or judge of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the date of the entry of the order creating the lien, and the place where entered. Any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674, a statement of the lien in favor of such judgment creditor.

Comment. Section 705.610 is substantively identical to subdivision (a) of former Section 688.1. See Section [703.160] and the Comment thereto (property subject to execution).

969-012

§ 705.620. Exclusive procedure provided by this article; other liens preserved

705.620. (a) When an action or special proceeding in which the judgment debtor is a party is pending, this article provides the exclusive procedure by which the judgment creditor may obtain a lien upon the cause of action and any judgment subsequently obtained.

(b) Any lien on the cause of action obtained before the action or special proceeding was commenced is continued and is superior to the lien provided by this article.

Comment. Subdivision (a) of Section 705.620 makes clear that once an action or special proceeding in which the judgment debtor is a party has been commenced, the judgment creditor may obtain a lien on the cause of action and any eventual judgment only by following the procedure set out in Section 705.610 although prior liens are continued as provided in subdivision (b). See e.g., §§ 705.050 (order applying property toward satisfaction of judgment and 705.110 (creditor's suit).

969-024

Article 8. Assignment Orders

§ 705.710. Order assigning rights to future payments

705.710. (a) Whenever a writ of execution against property of a judgment debtor may properly be issued, whether or not a writ of execution has been issued or returned, upon application of the judgment creditor and after a noticed hearing, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 3 (commencing with Section 705.210) all or part of any right to future payments, including, but not limited to, payments and wages due from the federal government, rents, commissions, surplus amounts from spendthrift trust, and payments due from a patent or copyright.

(b) When determining whether to order an assignment or fixing the amount of an assignment of part of a right to future payments, the court shall take into consideration the reasonable requirements of the judg-

ment debtor and the judgment debtor's dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

Note. Article 8 provides a procedure for reaching certain forms of property which cannot be reached by levy of execution and sale. Patents and copyrights have been reached by creditor's suits and supplementary proceedings where the debtor is ordered to assign his patent rights to a receiver. See Pacific Bank v. Robinson, 57 Cal. 520 (1881)(patent rights); Finnegan v. Finnegan, 64 Cal. App.2d 109, 148 P.2d 37 (1944) (patent rights); Security-First Nat'l Bank v. Republic Pictures Corp., 97 F. Supp. 360 (S.D. Cal. 1951)(copyrights). The surplus income from a spendthrift trust may be reached by a creditor's suit where it is shown that there is no provision in the trust for accumulation of surplus income and that the income is not at all necessary for the beneficiary's education and support. See Civil Code § 359; Estate of Lawrence, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968); Canfield v. Security-First Nat'l Bank, 13 Cal. 2d 1, 87 P.2d 830 (1939). Wages due a federal employee generally may not be garnished, but may be reached in supplementary proceedings by an order to the debtor to endorse and deliver his paychecks to a receiver. See Sheridan v. Sheridan, 33 Cal. App.3d 917, 109 Cal. Rptr. 466 (1972). However, pursuant to recent federal amendments, the wages of federal employees may be garnished for enforcement of child support and alimony payments "as if the United States were a private person." See 42 U.S.C. § 659 (effective January 1, 1975).

404-343

§ 705.720. Modifying or setting aside assignment order

705.720. Upon application of either party, after a noticed hearing where it is shown that there has been a material change in circumstances since the time of the previous hearing on the assignment order, the court may modify or set aside such order, except as provided in Section 705.730.

969-050

§ 705.730. Assignment by receiver of right to future payment

705.730. Rights to future payments may be assigned to third persons only as provided in Article 3 (commencing with Section 705.210). Where an assignment by a receiver to a third person is made absolute, the order of assignment made pursuant to Section 705.710 may not be modified or set aside.

Note. The intent of this provision is to guarantee court supervision of any assignment of a right to future payment by the receiver to third persons. Section 705.210 tentatively provides that the sale or assignment of property by the receiver (who may be the judgment creditor) must be on such terms and conditions as will insure a fair consideration. Normally it is contemplated that collection of the payments as they accrue is the best method to satisfy the judgment, but there may be circumstances where outright sale of the right to future payments is advantageous to both debtor and creditor.

405-996

§ 705.740. Recording patent and copyright assignment

705.740. (a) An assignment of a patent pursuant to this article shall be recorded in the United States Patent Office as provided by federal law.

(b) An assignment of a copyright pursuant to this article shall be recorded in the United States Copyright Office as provided by federal law.

Note. This section puts the creditor or receiver on notice of the existence of 35 U.S.C. § 261 (1970), which provides in part:

Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patents, or any interest therein shall be assignable in law by an instrument in writing An assignment, grant or conveyance shall be void as against any subsequent

purchaser or mortgagee for valuable consideration, without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

And 17 U.S.C. § 28 (1970):

Every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Does the Commission think we need such a provision, or should reference be made only in a Comment?

EXHIBIT II

[California Code of Civil Procedure
§§ 85, 564-571, 688.1, 714-723.]

Code Civ. Proc. § 85. Payment of money judgments in installments

If the judgment or order in a municipal court or justice court in any action or proceeding in which the defendant has appeared is for the payment of money by the defendant, he shall pay the same immediately or at any time and upon such terms and conditions, including installment payments, which the court may prescribe. In any determination regarding the imposition of terms and conditions upon the payment of the judgment, the court shall consider any factors which would be relevant to the determination of a claim for exemption pursuant to Chapter 1 (commencing with Section 681) of Title 9 of Part 2 or the examination of a debtor pursuant to Chapter 2 (commencing with Section 714) of Title 9 of Part 2.

CHAPTER 5. RECEIVERS

§ 564. [Cases wherein appointment is authorized.] A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which such court is empowered by law to appoint a receiver.

In superior courts a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or funds, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment; or after sale of real property under execution of a judgment or pursuant to a decree of foreclosure and sale, during the period provided by law for the redemption thereof from sale, to collect rents thereon, and to expend and disburse such rents as may be directed by the court or otherwise provided by law;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In an action of unlawful detainer;

7. In all other cases where receivers have heretofore been appointed by the usages of courts of equity. [1872; 1919 ch 166 § 1; 1933 ch 744 § 85a; 1941 ch 444 § 1.] *1 Cal Jur 3d Actions § 77; Cal Jur 2d Corp §§ 438, 442, 443, Crops §§ 10, 40, Exec §§ 135, 187, 195, 239, Mig §§ 196, 200, 507, 512, 513, Partn § 151, Rec §§ 3, 4, 5, 8, 9, 15-20, 22, 24-26, 28, 34, 36, 42, V & P § 449; Cal Practice §§ 16:3, 16:4, 56:137, 56:312, 195:4, 247:2; Witkin Procedure 2d pp 441, 1465, 1625, 1627, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 3538, 3539; Summary (8th ed) p 1563.*

§ 565. [Appointment upon dissolution of corporation.] Upon the dissolution of any corporation, the superior court of the county in which the corporation carries on its business or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members. [1872; 1880 ch 15 § 7.] *Cal Jur 2d Corp § 443, Rec § 20; Witkin Procedure 2d pp 1629, 1634.*

§ 566. [Restrictions on appointment: Ex parte application, undertaking on.] No party, or attorney of a party, or person interested in an action, or related to any judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk. If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion at any time after said appointment, require an additional undertaking. [1872; 1873-74 ch 383 § 73; 1897 ch 65 § 1; 1907 ch 374 § 1.] *Cal Practice* §§ 16:6, 16:9, 16:27, 19:20, 130:11, 195:4; *Witkin Procedure 2d* pp 1639, 4152.

§ 567. [Oath and undertaking of receiver.] Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with two or more sureties, approved by the court or judge, execute an undertaking to the State of California, in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. [1872; 1907 ch 374 § 2.] *Cal Jur 2d Mtg* § 516, *Rec* § 53; *Cal Practice* §§ 16:9, 16:27, 130:11; *Witkin Procedure 2d* p 1641.

§ 568. Powers of receivers. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize. [1872.] *12 Cal Jur 3d Compromise, Settlement, and Release* § 57; *Cal Jur 2d Exec* § 239, *Mtg* § 517, *Rec* §§ 73, 79, 80, 89, 95; *Cal Practice* §§ 16:37, 214:25; *Witkin Procedure 2d* pp 1643, 1644, 1788; *Summary (8th ed)* p 928.

§ 568.1. [Securities depositories.] Any securities in the hands of a receiver may, under the control of the court, be deposited by the receiver in a securities depository, as defined in Section 30004 of the Financial Code, which is licensed under Section 30200 of the Financial Code or exempted from licensing thereunder by Section 30005 or 30006 of the Financial Code, and such securities may be held by such securities depository in the manner authorized by Section 775 of the Financial Code. [1972 ch 1057 § 9.]

§ 568.5. [Authority to sell real and personal property: Requisites of sales: Redemption.] A receiver may, pursuant to an order of the court, sell real or personal property in his possession as such receiver, upon the notice and in the manner prescribed by law for the sale of such property under execution. The sale shall not be final until confirmed by the court. Sales made pursuant to this section shall not be subject to redemption. [1939 ch 374 § 1.] *Cal Jur 2d Exec* §§ 144, 200, *Jud S* § 3, *Rec* §§ 73, 84; *Cal Practice* §§ 56:77, 56:274; *Witkin Procedure 2d* p 1645.

§ 569. Investment of funds. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action. [1872.] *Cal Jur 2d Rec* § 83.

§ 570. [Notice of unclaimed funds in receiver's hands: Disposition of: Recovery by owner.] A receiver having any funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as such receiver, publish a notice, in one or more newspapers published in the county, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of such owner and the amount of such unclaimed funds. Any funds remaining in his hands unclaimed for 30 days after the date of the last publication of such notice, shall be reported to the court, and upon order of the court, all such funds must be paid into the State Treasury accompanied with a copy of the order, which must set forth the facts required in the notice herein provided. Such funds shall be deemed to have been received by the State under Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of this code and may be recovered in the manner prescribed therein.

All costs and expenses connected with such advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

CHAPTER 5A

Undertaking of Persons Handling Private Property or Funds

§ 571. [Bond to State by receiver, referee, or commissioner to have or expected to have duties involving custody of personal property or receipt or disbursement of moneys: Amount.] Whenever a receiver, referee, or commissioner is appointed by a court of record, and the duties of such receiver, referee, or commissioner will, or are reasonably anticipated to, involve the custody of personal property or the receipt or disbursement of moneys, the order of appointment shall provide that before entering upon his duties, such receiver, referee, or commissioner, with two or more sureties, approved by the court or judge, shall execute an undertaking to the State of California, to the effect that he will faithfully discharge the duties of receiver, referee, or commissioner, as the case may be, and obey the orders of the court therein.

The order of appointment shall specify the amount of the undertaking, but a failure to so specify shall not invalidate the order.

§§ 16:9, 16:17.

§ 688.1. [Lien of judgment creditor in action or special proceeding: Notice: Extent of lien: Statement in abstract.] (a) Except as provided for in subdivision (b), upon motion of a judgment creditor of any party in an action or special proceeding made in the court in which the action or proceeding is pending upon written notice to all parties, the court or judge thereof may, in his discretion, order that the judgment creditor be granted a lien upon the cause of action, and upon any judgment subsequently procured in such action or proceeding, and, during the pendency of such action, may permit such judgment creditor to intervene therein. Such judgment creditor shall have a lien to the extent of his judgment upon all moneys recovered by his judgment debtor in such action or proceeding and no compromise, settlement or satisfaction shall be entered into by or on behalf of such debtor without the consent of such judgment creditor, unless his lien is sooner satisfied or discharged. The clerk or judge of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the date of the entry of the order creating the lien, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Section 674 of the Code of Civil Procedure, a statement of the lien in favor of such judgment creditor.

(b) Nothing in this section shall be construed to permit an assignee by operation of law of a party to a personal injury action to acquire any interest in or lien rights upon any moneys recovered by such party for general damages.

CHAPTER 2

Proceedings Supplemental to Execution

- § 714. Examination of judgment debtor: Limitations on frequency: Failure to appear.
- § 715. Proceedings in aid of execution.
- § 716. Payment of judgment by third party.
- § 717. Examination of debtor of judgment debtor: Failure to appear.
- § 717.1. Attendance outside county of residence or place of business: Maximum distance authorized.
- § 718. Witnesses.
- § 719. Judge may order property applied to judgment.
- § 720. Person or corporation having property of or indebted to judgment debtor claiming an adverse interest or denying debt: Action by judgment creditor.
- § 721. Contempt.
- § 722. Execution in another county on judgment.
- § 722.5. Remedies available to state agency issuing warrant to enforce lien arising under Unemployment Insurance Code or Revenue and Taxation Code: Jurisdiction of superior court.
- § 723. Qualifications and powers of referee.

§ 714. [Examination of judgment debtor: Limitation on frequency: Failure to appear.] When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, may properly be issued, whether or not such execution has been issued or returned, the judgment creditor is entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order. However, a judgment debtor may not, pursuant to this section, be required to appear and answer more frequently than every four months. This section shall not be construed to restrict the rights granted by Section 715.

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

An order made pursuant to this section shall contain the following language in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Any person who willfully makes an improper service of an order directed to a judgment debtor to appear and answer concerning his property which subsequently results in his arrest is guilty of a misdemeanor. [1872; 1930 ch 17 § 1; 1907 ch 362 § 1; 1933 ch 744 § 140; 1945 ch 1139 § 1; 1951 ch 1737 § 109; 1953 ch 1191 § 1; 1957 ch 1194 § 1; 1969 ch 134 § 2; 1974 ch 213 § 1.] *1 Cal Jur 3d Actions § 77; Cal Jur 2d Attach § 122, Exec §§ 219, 226, 227, 229, 231, 240, Recds § 9; Cal Practice §§ 38:3, 56:116, 56:117, 56:122, 56:124, 56:128, 56:130; Witkin Evidence 2d p 851; Evidence 2d, 1972 Supp p 476; Procedure pp 339, 3487, 3488, 3489, 3490.*

§ 715. [Proceedings in aid of execution.] After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff, or a constable, or marshal to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient sureties, that he will attend from time to time before the judge, or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison. [1872; 1880 ch 17 § 2; 1933 ch 744 § 141; 1951 ch 1737 § 110.] *Cal Jur 2d Arr § 11, Attach § 122, Exec §§ 225, 227-229, 240, Ne Ex § 1; Cal Practice §§ 38:3, 56:116, 56:118, 56:122, 56:124, 56:127, 56:128; Witkin Procedure 2d pp 3438, 3439, 3490, 3537; Summary p 988.*

§ 716. [Payment of judgment by third party.] After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff, constable, or marshal having such execution the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and such officer's receipt is a sufficient discharge for the amount so paid. [1872; 1933 ch 744 § 142.] *Cal Jur 2d Attach § 122, Exec §§ 47, 79, 84, 227, 229, 240; Cal Practice §§ 38:3, 56:39, 56:116, 56:128; Witkin Procedure 2d pp 3491, 3493; Summary p 998.*

§ 717. [Examination of debtor of judgment debtor: Failure to appear.] After the issuing or return of an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars (\$50), the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same. The spouse of a judgment debtor to the extent provided by Sections 970 and 971 of the Evidence Code may not be required to so testify, if there has not been a waiver of such provisions in the action giving rise to the judgment.

If the 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, some person specially appointed by the court in the order, or a registered process server, the judge may, pursuant to a warrant, have such person brought before the court to answer for such failure to appear.

An order made pursuant to this section shall contain the following language in boldface type: "Failure to appear may subject the party served to arrest and punishment for contempt of court."

Any person who willfully makes an improper service of an order made pursuant to this section which results in the arrest of the person ordered to appear is guilty of a misdemeanor. [1872; 1907 ch 362 § 2; 1933 ch 744 § 143; 1951 ch 1737 § 111; 1969 ch 134 § 3; 1972 ch 619 § 1; 1974 ch 214 § 1.] *Cal Jur 2d Attach §§ 122, 127, Div & S § 241, Exec §§ 220, 226, 227, 229, 238, 240, Interpl § 15; Cal Practice §§ 38:3, 56:116, 56:119, 56:121, 56:122, 56:124, 56:128, 56:130; Witkin Procedure 2d pp 3488, 3489, 3490, 3496.*

§ 717.1. [Attendance outside county of residence or place of business: Maximum distance authorized.] Neither a judgment debtor nor a debtor of a judgment debtor shall be required 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 is less than 150 miles from his place of residence or his place of business to the place of trial.

No process to require the attendance, pursuant to this chapter, of a debtor of a judgment debtor, shall be effective unless, at the time of service of process, the person serving same tenders to such person mileage fees in the amount of fifteen cents (\$0.15) per mile necessary to be traveled, one way, from such person's residence to the court or other place where attendance is sought. Such mileage fees shall be an item of costs chargeable to the judgment debtor, and the court may, pursuant to Section 719, order the application of any property of the judgment debtor to the satisfaction of such costs. [1945 ch 1139 § 2; 1951 ch 1737 § 112; 1957 ch 1596 § 4; 1959 ch 196 § 1; 1963 ch 691 § 1.] *Cal Jur 2d Attach § 122, Exec §§ 224, 226, 227, 229, 238, 240, Interpl § 15; Cal Practice §§ 38:3, 56:116, 56:122, 56:128; Witkin Procedure 2d pp 3488, 3489, 3491.*

§ 718. [Witnesses.] Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue. [1872; 1933 ch 744 § 144; 1951 ch 1737 § 113.] *Cal Jur 2d Attach § 122, Exec §§ 226, 227, 229, 230, 236, 238, 240, Interpl § 15; Cal Practice §§ 38:1, 56:116, 56:128, 56:129; Witkin Procedure 2d p 3487.*

§ 719. [Judge may order property applied to judgment.] The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment debtor or denies the debt. [1872; 1907 ch 362 § 3; 1933 ch 744 § 145; 1951 ch 1737 § 114.] *Cal Jur 2d Actns § 282, Attach §§ 122, 127, Cr Suits § 8, Exec §§ 220, 226, 227, 229, 238, 240, Interpl § 15, Ref § 13; Cal Practice §§ 38:3, 56:116, 56:121, 56:128, 56:132; Witkin Evidence 2d, 1972 Supp p 476; Procedure 2d pp 3491, 3493, 3496, 3498, 3507.*

§ 720. [Person or corporation having property of or indebted to judgment debtor claiming an adverse interest or denying debt: Action by judgment creditor.] If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt; and the judge or referee may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge or referee granting the same, or the court in which

the action is brought, at any time, upon such forms as may be just. [1872; 1907 ch 362 § 4; 1931 ch 607 § 1; 1933 ch 744 § 146; 1951 ch 1737 § 115.] *Cal Jur 2d Attach §§ 122, 127, Cts § 65, Cr Suits §§ 3, 8, 10, 11, Exec §§ 133, 226, 227 et seq., Frd Conv § 85, Interpl § 15; Cal Practice §§ 18:174, 33:3, 56:116, 56:128, 56:132; Witkin Procedure 2d pp 441, 450, 941, 947, 1279, 3470, 3491, 3492, 3506.*

§ 721. [Contempt.] If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt. [1872; 1933 ch 744 § 147; 1951 ch 1737 § 116.] *Cal Jur 2d Attach § 122, Contpt §§ 9, 21, Exec §§ 226, 227, 229, 235, 238, 240, Interpl § 15; Cal Practice §§ 38:3, 56:116, 56:128, 56:135, 56:149; Witkin Procedure 2d pp 3487, 3493, 3496, 3520.*

§ 722. [Execution in another county on judgment.] When any judgment debtor, or any person or corporation or officer or member of such corporation, does not reside or have a place of business in the county where the judgment roll is filed, or where the judgement is entered in the docket in the justice court, an order authorized to be made under any of the provisions of this chapter may be made by any judge of a court of similar jurisdiction of the county where this judgment debtor or other person resides or has a place of business, or if there be no court of similar jurisdiction in such county, by a court of higher jurisdiction therein, upon filing with the clerk or judge of said court an abstract of the judgment, in the form prescribed by Section 674 of this code and upon presenting to the judge of such court an affidavit showing the existence of the facts required to be shown herein. At the time of filing such abstract, there shall be paid to such clerk or judge, as and for a filing fee, the sum of four dollars (\$4) when filed in a justice court; the sum of six dollars (\$6) when filed in a superior or municipal court. [1929 ch 483 § 1; 1933 ch 744 § 148; 1951 ch 1737 § 117; 1967 ch 64 § 2.] *Cal Jur 2d Exec §§ 229, 231; Cal Practice §§ 38:3, 56:116, 56:123, 56:128; Witkin Procedure 2d p 3498.*

§ 722.5. [Remedies available to state agency issuing warrant to enforce lien arising under Unemployment Insurance Code or Revenue and Taxation Code: Jurisdiction of superior court.] Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant shall be entitled to all of the remedies available to judgment creditors. Where jurisdiction of any court is required for enforcement of such remedies, jurisdiction is conferred upon the superior court of the State of California in and for the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this State, in any county of this State. [1963 ch 1664 § 1.] *Cal Jur 2d Exec § 229, Mot Tr § 66, Tax § 383, Unem Ins § 40; Witkin Procedure 2d p 3389.*

§ 723. [Qualifications and powers of referee.] A referee appointed by a judge of the superior court of a county or city and county having a population of one million inhabitants or more, pursuant to the provisions of this chapter, must be an attorney duly licensed to practice law in all the courts of this State at least five years prior to the date of such appointment, and said referee of the superior court of such county or city and county of the State shall have the same powers as the court to grant adjournments, to preserve order, to subpoena witnesses to attend before him and to compel the attendance of witnesses by attachment. [1931 ch 607 § 2; 1963 ch 1629 § 1.] *Cal Jur 2d Exec § 229; Cal Practice §§ 38:3, 56:116, 56:128; Witkin Procedure 2d p 3487.*

EXHIBIT III

(California Business & Professions Code § 24074--
Liquor License Escrow)

§ 24074. Escrow

Before the filing of such a transfer application with the department, if the intended transfer of the business or license involves a purchase price or consideration, the licensee and the intended transferee shall establish an escrow with some person, corporation, or association not a party to the transfer acting as escrow holder, and the intended transferee shall deposit with the escrow holder the full amount of the purchase price or consideration. The transfer application shall be accompanied by a description of the entire consideration. Such description shall include a designation of cash, checks, promissory notes, and tangible and intangible property, and the amount of each thereof. The licensee and intended transferee shall also enter into an agreement, which agreement shall be deposited with the escrow holder, directing the escrow holder, after the requirements for transfer as provided in Section 24039 are satisfied, to pay out of the purchase price or consideration, the claims of the bona fide creditors of the licensee who file their claims with the escrow holder before the escrow holder is notified by the department of its approval of the transfer of the license or if the purchase price or consideration is not sufficient to pay the claims in full, to distribute the consideration as follows:

First, to the payment of claims for wages, salaries, or fringe benefits of employees of the seller or transferor earned or accruing * * * prior to the sale, transfer, or opening of an escrow for the sale thereof;

Second, to the payment of claims of secured creditors to the extent of the proceeds which arise from the sale of the security;

Third, to the United States for claims based on income or withholding taxes; and thereafter for claims based on any tax other than taxes specified in Section 24039;

Fourth, to the payment of claims on mechanics' liens;

Fifth, to the payment of escrow fees and the payment of claims for prevailing brokerage fees for services rendered and claims for reasonable attorney's fees for services rendered;

Sixth, to the payment of claims for goods sold and delivered to the transferor for resale at his licensed premises and the payment of claims for services rendered, performed, or supplied in connection with the operation of the licensed business.

Seventh, to the payment of all other claims. The payment of these claims if sufficient assets are not available for the payment of the claim in full shall be paid pro rata.

If the transferor licensee disputes any claim, the escrow holder shall notify the claimant, and the amount or pro rata amount thereof shall be retained by the escrow holder for a period of 25 days, and if not attached shall be paid to the transferor licensee. The agreement shall also provide that the escrow holder shall make the payment or distribution within a reasonable time after the completion of the transfer of the license.

EXHIBIT IV

(California Corporations Code § 15028--Charging Order)

§ 15028. Creditor's remedy to reach partner's interest in partnership

(1) **Application by judgment creditor; charge on partner's interest; appointment of receiver.** On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) **Redemption; purchase at judicial sale.** The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners,
or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) **Application of exemption laws.** Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

EXHIBIT V

(New York Civil Practice Law and Rules
§§ 5223-5228, 5234)

§ 5223. Disclosure.

At any time before a judgment is satisfied ~~or vacated~~, the judgment creditor may compel disclosure of all matter ~~relevant to~~ the satisfaction of the judgment, by serving upon any person a subpoena which shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and shall state that false swearing or failure to comply with the subpoena is punishable as a contempt of court.

R 5224. Subpoena; procedure.

(a) Kinds and service of subpoena. Any or all of the following kinds of subpoenas may be served:

1. a subpoena requiring attendance for the taking of a deposition upon oral or written questions at a time and place named therein; or

2. a subpoena duces tecum requiring the production of books and papers for examination at a time and place named therein; or

3. an information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope. Service of an information subpoena may be made by registered or certified mail, return receipt requested. Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information, if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt.

(b) Fees. A judgment debtor served with a subpoena under this section shall not be entitled to any fee. Any other person served with a subpoena requiring attendance or the production of books and papers shall be paid or tendered in advance authorized traveling expenses and one day's witness fee. Any other person served with an information subpoena shall be paid in advance the sum of fifty cents, except that a person served with an information subpoena shall not be entitled to a fee where the state, a municipality, or an agency or officer of either, is the judgment creditor.

(c) Time and place of examination. A deposition on oral or written questions or an examination of books and papers may proceed upon not

less than ten days' notice to the person subpoenaed, unless the court orders shorter notice, before any person authorized by subdivision (a) of rule 3113. An examination shall be held during business hours and, if taken within the state, at a place specified in rule 3110. Upon consent of the witness, an examination may be held at any other place within the state and before any officer authorized to administer an oath.

(d) Conduct of examination. The officer before whom the deposition is to be taken shall put the witness on oath. If requested by the person conducting the examination, the officer shall personally, or by some one acting under his direction, record and transcribe the testimony and shall list all appearances by the parties and attorneys. Examination and cross-examination of the witness shall proceed as permitted in the trial of actions in open court. Cross-examination need not be limited to the subject matter of the examination in chief. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or of a person recording it, or to the manner of taking it, or to the testimony presented, or to the conduct of any person, and any other objection to the proceedings, shall be noted by the officer upon the deposition and the deposition shall proceed subject to the right of a person to apply for a protective order. The deposition shall be taken continuously and without unreasonable adjournment, unless the court orders or the witness agrees otherwise. If the witness does not understand the English language, the judgment creditor shall, at his own expense, provide a translation of all questions and answers. Unless the court orders otherwise, a person other than the judgment debtor served with a subpoena duces tecum requiring the production of books of account may produce in place of the original books of account a sworn transcript of such accounts as are relevant.

(e) Signing deposition; physical preparation. At the request of the person conducting the examination, a deposition on written questions or a deposition on oral questions which has been transcribed shall be submitted to the witness and shall be read to or by him, and any changes in form or substance which the witness desires to make shall be entered upon the deposition with a statement of the reasons given by the witness for making them; and the deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign the deposition, the officer before whom the deposition was taken shall sign it and state on the record the fact of the witness's failure or refusal to sign together with any reason given. The deposition may then be used as fully as though signed. Where testimony is transcribed, the officer before whom the deposition was taken shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness.

(f) Subsequent examination. Leave of court is required to compel a judgment debtor to appear for the taking of his deposition or to compel the production by him of books and papers within one year after the conclusion of a previous examination of him with respect to the same judgment.

§ 5225. Payment or delivery of property of judgment debtor.

(a) Property in the possession of judgment debtor. Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is in possession or custody of money or other personal property in which he has an interest, the court shall order that the judgment debtor pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

(b) Property not in the possession of judgment debtor. Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceedings shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

(c) Documents to effect payment or delivery. The court may order any person to execute and deliver any document necessary to effect payment or delivery.

1964 AMENDMENTS

L. 1964, c. 388, effective Sept. 1, 1964, corrected the cross-reference to "5238" in Subd. (b) to read "5239." Mechanical correction recommended by the Judicial Conference Feb. 1, 1964, Report to the Legislature.

§ 5226. Installment payment order.

Upon motion of the judgment creditor, upon notice to the judgment debtor, where it is shown that the judgment debtor is receiving or will receive money from any source, or is attempting to impede the judgment creditor by rendering services without adequate compensation, the court shall order that the judgment debtor make specified installment payments to the judgment creditor. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the

payments, the court shall take into consideration the reasonable requirements of the judgment debtor and his dependents, any payments required to be made by him or deducted from the money he would otherwise receive in satisfaction of other judgments and wage assignments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the judgment creditor by rendering services without adequate compensation, the reasonable value of the services rendered.

§ 5227. Payment of debts owed to judgment debtor.

Upon a special proceeding commenced by the judgment creditor, against any person who it is shown is or will become indebted to the judgment debtor, the court may require such person to pay to the judgment creditor the debt upon maturity, or so much of it as is sufficient to satisfy the judgment, and to execute and deliver any document necessary to effect payment; or it may direct that a judgment be entered against such person in favor of the judgment creditor. Costs of the proceeding shall not be awarded against a person who did not dispute the indebtedness. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

§ 5228. Receivers.

(a) Appointment of receiver. Upon motion of a judgment creditor, upon such notice as the court may require, the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. As far as practicable, the court shall require that notice be given to the judgment debtor and to any other judgment creditors of the judgment debtor. The order of appointment shall specify the property to be received, the duties of the receiver and the manner in which they are to be performed. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. A receiver shall be entitled to necessary expenses and to such commissions, not exceeding five percent of the sums received and disbursed by him, as the court which appointed him allows, but if a judgment creditor is appointed receiver, he shall not be entitled to compensation. If a receiver has been appointed, a court making an order directing payment, or delivery, of property shall direct that payment, or delivery, be made to the receiver rather than to a sheriff. Sections 6402, 6403, 6404 and 6405 are applicable to receivers appointed under this subdivision.

(b) Extension of receivership. Where a receiver has been appointed, the court, upon motion of a judgment creditor, upon such notice as it may require, shall extend the receivership to his judgment.

§ 5234. Distribution of proceeds of personal property; priorities.

(a) Distribution of proceeds of personal property. After deduction for and payment of fees, expenses and any taxes levied upon sale, delivery, transfer or payment, the proceeds of personal property or debt acquired by a receiver or a sheriff or other officer authorized to enforce the judgment shall be distributed to the judgment creditor and any excess shall be paid over to the judgment debtor.

(b) Priority among execution creditors. Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to the same enforcement officer, they shall be satisfied out of the proceeds of personal property or debt levied upon by the officer in the order in which they were delivered. Where two or more executions or orders of attachment are issued against the same judgment debtor and delivered to different enforcement officers, and personal property or debt is levied upon within the jurisdiction of all of the officers, the proceeds shall be first applied in satisfaction of the execution or order of attachment delivered to the officer who levied, and thereafter shall be applied in satisfaction of the executions or orders of attachment delivered to those of the other officers who, before the proceeds are distributed, make a demand upon the officer who levied, in the order of such demands. An execution or order of attachment returned by an officer before a levy or delivered to him after the proceeds of the levy have been distributed shall not be satisfied out of those proceeds.

(c) Priority of other judgment creditors. Where personal property or debt has been ordered delivered, transferred or paid, or a receiver thereof has been appointed by order, or a receivership has been extended thereto by order, and the order is filed before the property or debt is levied upon, the rights of the judgment creditor who secured the order are superior to those of the judgment creditor entitled to the proceeds of the levy. Where two or more such orders affecting the same interest in personal property or debt are filed, the proceeds of the property or debt shall be applied in the order of filing. Where delivery, transfer, or payment to the judgment creditor, a receiver, or a sheriff or other officer is not completed within sixty days after an order is filed, the judgment creditor who secured the order is divested of priority, unless otherwise specified in the order or in an extension order filed within the sixty days.

EXHIBIT VI

(Pennsylvania Rules of Court 3114, 3118, 3136, 3137)

Rule 3114. Sequestration of Rents, Principal, Interest, Income, Etc.

Upon execution against any interest in real property, or a mortgage or lien thereon the court on petition of the plaintiff, may order the sheriff, or a sequestrator appointed by the court, to collect any rent, interest, principal or other sum becoming due to the defendant, to exercise any powers possessed by the defendant as landlord, mortgagee, life tenant, judgment creditor, lien holder, vendor or otherwise, and to account to the court. The court may require a sequestrator's bond in such amount and upon such terms as it deems proper. Adopted March 30, 1960. Eff. Nov. 1, 1960.

Rule 3118. Supplementary Relief in Aid of Execution

(a) On petition of the plaintiff, after notice and hearing, the court in which a judgment has been entered may, before or after the issuance of a writ of execution, enter an order against any party or person

- (1) enjoining the negotiation, transfer, assignment or other disposition of any security, document of title, pawn ticket, instrument, mortgage, or document representing any property interest of the defendant subject to execution;
- (2) enjoining the transfer, removal, conveyance, assignment or other disposition of property of the defendant subject to execution;
- (3) directing the defendant or any other party or person to take such action as the court may direct to preserve collateral security for property of the defendant levied upon or attached, or any security interest levied upon or attached;
- (4) directing the disclosure to the sheriff of the whereabouts of property of the defendant;
- (5) directing that property of the defendant which has been removed from the county or concealed for the purpose of avoiding execution shall be delivered to the sheriff or made available for execution; and
- (6) granting such other relief as may be deemed necessary and appropriate.

(b) The petition and notice of the hearing shall be served only within the Commonwealth in the manner provided by Rules 233 (a) (1) and 233(a) (2) and (b).

(c) Violation of the mandate or injunction of the court may be punished as a contempt. Adopted March 30, 1960. Eff. Nov. 1, 1960.

Note: Service of a writ of execution against a garnishee enforces him as provided in Rule 3111 but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.

Rule 3136. Distribution of Proceeds

(a) Not later than thirty (30) days after the sale of real property and not later than five (5) days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and shall be available for inspection in his office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only.

(b) When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price the schedule shall set forth his name and address, the amount of his judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price.

(c) In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified to him from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county. The cost of certifying the list of liens or the title search, the acknowledgment, recording and registry of the deed and transfer or documentary stamps shall be charged as an expense of distribution.

(d) The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with him not later than ten (10) days after the filing of the proposed schedule.

(e) Upon the filing of exceptions with the sheriff he shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution.

(f) The court shall determine the exceptions, and for this purpose may receive evidence by deposition or otherwise, or may appoint an auditor to hear the evidence and report to the court.

(g) The proceeds of sale need not be paid into court by the sheriff but upon petition of the sheriff or any part, in interest, the court may order the proceeds to be paid into court to await distribution or may order the sheriff to invest the fund for distribution pending final disposition of the exceptions or an appeal therefrom.

(h) If the sheriff receives any money for costs or in connection with a stay, adjournment or postponement of sale or otherwise, he shall account for it on returning the writ. Adopted March 30, 1960. Eff. Nov. 1, 1960.

Rule 3137. Priority of Distribution as Between Competing Plaintiffs

(a) When levies are made against the same personal property under two or more writs of separate plaintiffs, priority of distribution between them of the proceeds of a sheriff's sale thereof shall be determined by the time of delivery of their respective writs to the sheriff for execution.

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs priority of distribution between them shall be determined by the date of service of their respective writs upon the garnishee as to all property then in the hands of the garnishee or coming into his possession up to time of judgment against him.

(c) When tangible personal property is both levied upon and attached under two or more writs of separate plaintiffs, priority of distribution as between the levying and attaching plaintiffs shall be determined by the time of delivery of the writ to the sheriff in the case of levy, and from the date of service of the writ upon the garnisher in the case of attachment. Adopted March 30, 1960. Eff. Nov. 1, 1960.

EXHIBIT VII

(5 B. Witkin, California Procedure Enforcement of Judgment § 142 (2d ed. 1971))

4. [§142] Charging Order Against Partnership.

(a) *Normal Remedy.* At one time in California any judgment creditor of an individual partner (separate as distinguished from firm creditor) could execute on partnership property. Upon the adoption of the Uniform Partnership Act in 1929 this right was abolished. The normal remedy of a separate creditor is a "due application to a competent court" to "charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest." (Corp.C. 15028; see 7 U.L.A. (Master Ed.) 358; 9 Cal. L. Rev. 219, 224, 225; 17 Cal. L. Rev. 624; *Sherwood v. Jackson* (1932) 121 C.A. 354, 8 P.2d 943; *Ribero v. Callaway* (1948) 87 C.A.2d 135, 138, 196 P.2d 109 [application should be by noticed motion]; C.E.B., Debt Collection Practice, p. 371 et seq.; 7 Cal Practice 493 et seq.; on the right to a receiver, see Corp.C. 15028, infra, §180.)

(b) *When Creditor May Execute.* Implied exceptions to the statutory prohibition of execution were recognized in *Taylor v. S & M Lamp Co.* (1961) 190 C.A.2d 700, 12 C.R. 323:

"It was to prevent such 'hold up' of the partnership business and the consequent injustice done the other partners resulting from execution against partnership property that the quoted code sections . . . were adopted. As we view those code sections they are not intended to protect a debtor partner against claims of his judgment creditors where no legitimate interest of the partnership, or of the remaining or former partners is to be served." (190 C.A.2d 708.)

In the instant case plaintiff obtained a charging order and then had execution levied on the property of defendant partners. *Held*, this was proper, because plaintiff alleged that the partnership assets had been transferred without fair consideration for the purpose of defrauding creditors. "To apply the general rule as a shield to such a situation is contrary to reason and would violate public policy." (190 C.A.2d 711.)

The opinion further states: "On the one hand we know of no reason why, when a partnership has been dissolved, and the purposes which Corporations Code sections 15025 and 15028 are designed to protect no longer exist, a judgment creditor of an individual partner should be prohibited from pursuing the same remedy of levy and sale at execution which is available to judgment creditors in nonpartnership matters. On the other hand, if, as alleged, the levy in this case was made some weeks before dissolution, and at a time when such levy was forbidden by Corporations Code, section 15025, subdivision (2)(c),

. . . a separate question would be presented; specifically, what rights, if any, are acquired by a purchaser at a sale based upon a void or a voidable levy where dissolution of the partnership intervened between the date of the charging order and the date of the sheriff's sale? Under our view of the law governing the rights of the holder of a charging order, in relation to the alleged facts of this case, which for the purposes of a motion to exclude evidence must be treated as true, the appellant's rights may be enforced without regard to the sheriff's sale." (190 C.A.2d 713.)