

similar case of attachments (see note to Rule 64), the rule specifies the applicable State law to be that of the time when the remedy is sought, and thus renders unnecessary, as well as supersedeas, local district court rules.

Statutes of the United States on execution, when applicable, govern under this rule. Among these are:

U.S.C., Title 12:

§91 (Transfers by bank and other acts in contemplation of insolvency)

§632 (Jurisdiction of United States district courts in cases arising out of foreign banking jurisdiction where Federal reserve bank a party)

U.S.C., Title 19:

§199 (Judgments for customs duties, how payable)

U.S.C., Title 26:

§1610(a) [former] (Surrender of property subject to distraint)

U.S.C., Title 28:

§122 [now 1656] (Creation of new district or transfer of territory; lien)

§350 [now 2101] (Time for making application for appeal or certiorari; stay pending application for certiorari)

§489 [now 547] (District Attorneys; reports to Department of Justice)

§574 [now 1921] (Marshals, fees enumerated)

§786 [former] (Judgments for duties; collected in coin)

§811 [now 1961] (Interest on judgments)

§838 [former] (Executions; run in all districts of State)

§839 [now 2413] (Executions; run in every State and Territory)

§840 [former] (Executions; stay on conditions), as modified by Rule 62(b).

§841 [former] (Executions; stay of one term), as modified by Rule 62(f)

§842 [now 2006] (Executions; against officers of revenue in cases of probable cause), as incorporated in *Subdivision (b)* of this rule

§843 [now 2007] (Imprisonment for debt)

§844 [now 2007] (Imprisonment for debt; discharge according to State laws)

§845 [now 2007] (Imprisonment for debt; jail limits)

§846 [now 2005] (*Fieri Facias*; appraisal of goods; appraisers)

§847 [now 2001] (Sales; real property under order or decree)

§848 [now 2004] (Sales; personal property under order or decree)

§849 [now 2002] (Sales; necessity of notice)

§850 [now 2003] (Sales; death of marshal after levy or after sale)

§869 [former] (Bond in former error and on appeal) as incorporated in Rule 73(c)

§874 [former] (Supersedeas), as modified by Rules 62(d) and 73(d)

U.S.C., Title 31:

§195 [now 3715] (Purchase on execution)

U.S.C., Title 33:

§918 (Collection of defaulted payments)

U.S.C., Title 49:

§74(g) [former] (Causes of action arising out of Federal control of railroads; execution and other process)

Special statutes of the United States on exemption from execution are also continued. Among these are:

U.S.C., Title 2:

§118 (Actions against officers of Congress for official acts)

U.S.C., Title 5:

§729 [see 8346, 8470] (Federal employees retirement annuities not subject to assignment, execution, levy, or other legal process)

U.S.C., Title 10:

§610 [now 3690, 8690] (Exemption of enlisted men from arrest on civil process)

U.S.C., Title 22:

§21(h) [see 4060] (Foreign service retirement and disability system; establishment; rules and regulations; annuities; nonassignable; exemption from legal process)

U.S.C., Title 33:

§916 (Assignment and exemption from claims of creditors) Longshoremen's and Harborworkers' Compensation Act)

U.S.C., Title 38:

§54 [see 5301] (Attachment, levy or seizure of moneys due pensioners prohibited)

§393 [former] (Army and Navy Medal of Honor Roll; pensions additional to other pensions; liability to attachment, etc.) Compare Title 34, §365(c) (Medal of Honor Roll; special pension to persons enrolled)

§618 [see 5301] (Benefits exempt from seizure under process and taxation; no deductions for indebtedness to United States)

U.S.C., Title 43:

§175 (Exemption from execution of homestead land)

U.S.C., Title 48:

§1371o (Panama Canal and railroad retirement annuities, exemption from execution and so forth)

NOTES OF ADVISORY COMMITTEE ON RULES—1946 SUPPLEMENTARY NOTE

With respect to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. [App.] §501 *et seq.*) see Notes to Rules 62 and 64 herein.

NOTES OF ADVISORY COMMITTEE ON RULES—1948 AMENDMENT

The amendment substitutes the present statutory reference.

NOTES OF ADVISORY COMMITTEE ON RULES—1970 AMENDMENT

The amendment assures that, in aid of execution on a judgment, all discovery procedures provided in the rules are available and not just discovery via the taking of a deposition. Under the present language, one court has held that Rule 34 discovery is unavailable to the judgment creditor. *M. Lowenstein & Sons, Inc. v. American Underwear Mfg. Co.*, 11 F.R.D. 172 (E.D.Pa. 1951). Notwithstanding the language, and relying heavily on legislative history referring to Rule 33, the Fifth Circuit has held that a judgment creditor may invoke Rule 33 interrogatories. *United States v. McWhirter*, 376 F.2d 102 (5th Cir. 1967). But the court's reasoning does not extend to discovery except as provided in Rules 26–33. One commentator suggests that the existing language might properly be stretched to all discovery, 7 *Moore's Federal Practice* ¶69.05[1] (2d ed. 1966), but another believes that a rules amendment is needed. 3 *Barron & Holtzoff, Federal Practice and Procedure* 1484 (Wright ed. 1958). Both commentators and the court in *McWhirter* are clear that, as a matter of policy, Rule 69 should authorize the use of all discovery devices provided in the rules.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

Rule 70. Judgment for Specific Acts; Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other doc-

uments or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Compare [former] Equity Rules 7 (Process, Mesne and Final), 8 (Enforcement of Final Decrees), and 9 (Writ of Assistance). To avoid possible confusion, both old and new denominations for attachment (sequestration) and execution (assistance) are used in this rule. Compare with the provision in this rule that the judgment may itself vest title, 6 Tenn. Ann. Code (Williams, 1934), §10594; 2 Conn. Gen. Stat. (1930), §5455; N.M. Stat. Ann. (Courtright, 1929), §117-117; 2 Ohio Gen. Code Ann. (Page, 1926), §11590; and England, Supreme Court of Judicature Act (1925), §47.

Rule 71. Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

(As amended Mar. 2, 1987, eff. Aug. 1, 1987.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

Compare [former] Equity Rule 11 (Process in Behalf of and Against Persons Not Parties). Compare also *Terrell v. Allison*, 21 Wall. 289, 22 L. Ed. 634 (U.C., 1875); *Farmers' Loan and Trust Co. v. Chicago and A. Ry. Co.*, 44 Fed. 653 (C.C. Ind., 1890); *Robert Findlay Mfg. Co. v. Hygrade Lighting Fixture Corp.*, 288 Fed. 80 (E.D. N.Y., 1923); *Thompson v. Smith*, Fed. Cas. No. 13,977 (C.C. Minn., 1870).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

IX. SPECIAL PROCEEDINGS

Rule 71A. Condemnation of Property

(a) **APPLICABILITY OF OTHER RULES.** The Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) **JOINDER OF PROPERTIES.** The plaintiff may join in the same action one or more separate

pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) COMPLAINT.

(1) **Caption.** The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) **Contents.** The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subdivision (e) of this rule. The court meanwhile may order such distribution of a deposit as the facts warrant.

(3) **Filing.** In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) PROCESS.

(1) **Notice; Delivery.** Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) **Same; Form.** Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's