

446 U.S. 238, 242 (1980). See also *United States v. Radatz*, 447 U.S. 667 (1980).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 63 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

TITLE VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This rule adopts the existing Federal law, except that it specifies the applicable State law to be that of the time when the remedy is sought. Under U.S.C., Title 28, [former] §726 (Attachments as provided by State laws) the plaintiff was entitled to remedies by attachment or other process which were on June 1, 1872, provided by the applicable State law, and the district courts might, from time to time, by general rules, adopt such State laws as might be in force. This statute is superseded as are district court rules which are rendered unnecessary by the rule.

Lis pendens. No rule concerning *lis pendens* is stated, for this would appear to be a matter of substantive law affecting State laws of property. It has been held that in the absence of a State statute expressly providing for the recordation of notice of the pendency of Federal actions, the commencement of a Federal action is notice to all persons affected. *King v. Davis*, 137 Fed. 198 (W.D.Va., 1903). It has been held, however, that when a State statute does so provide expressly, its provisions are binding. *United States v. Calcasieu Timber Co.*, 236 Fed. 196 (C.C.A.5th, 1916).

For statutes of the United States on attachment, see e.g.:

U.S.C., Title 28:

- § 737 [now 2710] (Attachment in postal suits)
- § 738 [now 2711] (Attachment; application for warrant)
- § 739 [now 2712] (Attachment; issue of warrant)
- § 740 [now 2713] (Attachment; trial of ownership of property)
- § 741 [now 2714] (Attachment; investment of proceeds of attached property)
- § 742 [now 2715] (Attachment; publication of attachment)
- § 743 [now 2716] (Attachment; personal notice of attachment)
- § 744 [now 2717] (Attachment; discharge; bond)
- § 745 [former] (Attachment; accrued rights not affected)
- § 746 (Attachments dissolved in conformity with State laws)

For statutes of the United States on garnishment, see e.g.:

U.S.C., Title 28:

- § 748 [now 2405] (Garnishees in suits by United States against a corporation)
- § 749 [now 2405] (Same; issue tendered on denial of indebtedness)
- § 750 [now 2405] (Same; garnishee failing to appear)

For statutes of the United States on arrest, see e.g.:

U.S.C., Title 28:

- § 376 [now 1651] (Writs of ne exeat)
- § 755 [former] (Special bail in suits for duties and penalties)
- § 756 [former] (Defendant giving bail in one district and committed in another)
- § 757 [former] (Defendant giving bail in one district and committed in another; defendant held until judgment in first suit)
- § 758 [former] (Bail and affidavits; taking by commissioners)
- § 759 [former] (Calling of bail in Kentucky)
- § 760 [former] (Clerks may take bail de bene esse)
- § 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)

For statutes of the United States on replevin, see, e.g.:

U.S.C., Title 28:

- § 747 [now 2463] (Replevy of property taken under revenue laws)

NOTES OF ADVISORY COMMITTEE ON RULES—1946
SUPPLEMENTARY NOTE

Sections 203 and 204 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. [App.] §501 *et seq.* [§§ 523, 524]) provide under certain circumstances for the issuance and continuance of a stay of the execution of any judgment entered against a person in military service, or the vacation or stay of any attachment or garnishment directed against such person's property, money, or debts in the hands of another. See also Note to Rule 62 herein.

COMMITTEE NOTES ON RULES—2007 AMENDMENT

The language of Rule 64 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 64 stated that the Civil Rules govern an action in which any remedy available under Rule 64(a) is used. The Rules were said to govern from the time the action is commenced if filed in federal court, and from the time of removal if removed from state court. These provisions are deleted as redundant. Rule 1 establishes that the Civil Rules apply to all actions in a district court, and Rule 81(c)(1) adds reassurance that the Civil Rules apply to a removed action "after it is removed."

Rule 65. Injunctions and Restraining Orders

(a) PRELIMINARY INJUNCTION.

(1) *Notice*. The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But