

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|-----------------------------------|
| 7666 | 34 U.S.C. 1144. | R.S. 4628. |

The statement in subsection (b) of the responsibility of the auctioneer and agent to the marshal in the collection and deposit of proceeds is inserted to clarify the marshal's functions. It is derived from 34 U.S.C. 1139, and appears in § 7662 of this title.

§ 7667. Transfer of prize property to another district for sale

(a) In the case of any prize property ordered to be sold, if the court believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, the court may direct the marshal to transfer the property to the district selected by the court for the sale, and to insure it. In such a case the court shall give the marshal proper orders as to the time and manner of conducting the sale.

(b) When so ordered the marshal shall transfer the property and keep it safely. He is responsible for its sale in the same manner as if the property were in his own district and for the deposit of the gross proceeds with the Treasurer of the United States or public depository nearest to the place of sale, subject to the order of the court for the district where the adjudication is pending.

(c) The necessary expenses of insuring, transferring, receiving, keeping, and selling the property are a charge upon it and upon the proceeds. Whenever any such expense is paid in advance by the marshal, any amount not repaid to him from the proceeds shall be allowed to him as in the case of expenses incurred in suits in which the United States is a party.

(d) If the Secretary of the Navy believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, he may, either by a general regulation or by a special direction in the cause, require the marshal to transfer the property from the district in which the judicial proceedings are pending to any other district for sale. In such a case proceedings shall be had as if the transfer had been made by order of the court.

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|------------------------|---------------------------|-----------------------------------|
| 7667 | 34 U.S.C. 1145. | R.S. 4629. |

34 U.S.C. 1145 and this section reflect the Act of May 29, 1920, ch. 214, § 1, 41 Stat. 654, which requires substitution of "Treasurer of the United States or public depository" for "assistant treasurer".

In subsection (b) the words "He is responsible for its sale" are substituted for the words "It shall be the duty of the marshal to * * * sell the same", because, as shown in § 7666 of this title, the marshal does not sell the property himself but supervises the auctioneer who conducts the sale.

§ 7668. Disposition of prize money

The net proceeds of all property condemned as prize shall be decreed to the United States and shall be ordered by the court to be paid into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

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| 7668 | 34 U.S.C. 1151. | R.S. 4630; R.S. 4641. |

R.S. 4630 provided that in some circumstances the captors were to receive the net proceeds of prize property and in other circumstances they were to receive half and the United States was to receive the other half. The Act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, repealed "all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize". Thus the only part of R.S. 4630 that remains in effect, as is indicated in 34 U.S.C. 1151, is that part which provides that proceeds shall be decreed to the United States. The section is so worded. R.S. 4641 stated how proceeds decreed to captors should be divided among them. These provisions were eliminated by the Act of March 3, 1899, supra. All that remains of R.S. 4641, as is indicated in 34 U.S.C. 1151, is the provision that proceeds decreed to the United States shall be paid into the Treasury, and the section is worded accordingly.

§ 7669. Security for costs

The court may require any party to give security for costs at any stage of the cause and upon filing an appeal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

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| 7669 | 34 U.S.C. 1148. | R.S. 4638. |

The word "filing" is substituted for the word "claiming".

§ 7670. Costs and expenses a charge on prize property

(a) Costs and expenses allowed by the court incident to the bringing in, custody, preservation, insurance, and sale or other disposal of prize property are a charge upon the property and shall be paid from the proceeds thereof, unless the court decrees restitution free from such a charge.

(b) Charges for work and labor, materials furnished, or money paid must be supported by affidavit or vouchers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

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| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-------------------------------|-----------------------------------|
| 7670(a) | 34 U.S.C. 1149. | R.S. 4639. |
| 7670(b) | 34 U.S.C. 1150 (2d sentence). | R.S. 4640 (2d sentence). |

§ 7671. Payment of costs and expenses from prize fund

(a) Payment may not be made from a prize fund except upon the order of the court. The

court may, at any time, order the payment, from the deposit made with the Treasurer or public depository in the cause, of costs or charges accrued and allowed.

(b) When the cause is finally disposed of, the court shall order the Treasurer or public depository to pay the costs and charges allowed and unpaid. If the final decree is for restitution, or if there is no money subject to the order of the court in the cause, costs or charges allowed by the court and not paid by the claimants shall be paid out of the fund for paying the expenses of suits in which the United States is a party or is interested.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

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| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|------------------------------------|-----------------------------------|
| 7671 | 34 U.S.C. 1150 (less 2d sentence). | R.S. 4640 (less 2d sentence). |

In subsection (b) the words "or orders" after "order" are omitted as surplusage. The words "a charge upon and" are omitted as surplusage.

§ 7672. Recaptures: award of salvage, costs, and expenses

(a) If a vessel or other property that has been captured by a force hostile to the United States is recaptured, and the court believes that the property had not been condemned as prize by competent authority before its recapture, the court shall award an appropriate sum as salvage.

(b) If the recaptured property belonged to the United States, it shall be restored to the United States, and costs and expenses ordered to be paid by the court shall be paid from the Treasury.

(c) If the recaptured property belonged to any person residing within or under the protection of the United States, the court shall restore the property to its owner upon his claim and on payment of such sum as the court may award as salvage, costs, and expenses.

(d) If the recaptured property belonged to any person permanently residing within the territory and under the protection of any foreign government in amity with the United States, and, by the law or usage of that government, the property of a citizen of the United States would be restored under like circumstances of recapture, the court shall, upon the owner's claim, restore the property to him under such terms as the law or usage of that government would require of a citizen of the United States under like circumstances. If no such law or usage is known, the property shall be restored upon the payment of such salvage, costs, and expenses as the court orders.

(e) Amounts awarded as salvage under this section shall be paid to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

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| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|--------------------------------------|-----------------------------------|
| 7672 | 34 U.S.C. 1158 (less last sentence). | R.S. 4652 (less last sentence). |

In subsection (c) the words "restore the property" are substituted for the words "adjudge to be restored." A similar substitution is made in subsection (d).

In subsection (d) the words "foreign government" are substituted for the words "foreign prince, government, or state".

Subsection (e) is derived from the next to the last sentence of R.S. 4652 which, when enacted, read:

"The whole amount awarded as salvage shall be decreed to the captors and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize."

The Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, repealed all laws authorizing the distribution of prize money to captors. Accordingly, 34 U.S.C. 1158 states:

"The whole amount awarded as salvage shall be disposed of as in the case of proceeds of property condemned as prize."

As shown in §7668 of this title, the net proceeds of property condemned as prize must be decreed to the United States. Subsection (e) is phrased so as to state directly, instead of by reference, the fact that the amount awarded as salvage is paid to the government. While this is apparently inconsistent with R.S. 4652 as originally enacted, it is consistent with the intent expressed by Congress in the provision of the Act of March 3, 1899 (supra), which repealed provisions relating to the distribution of prize money and bounty to crews. This act, it is true, did not mention salvage; and salvage money is still occasionally awarded to crews of naval vessels. However, such occasions are rare, and it is the general policy of the Department of the Navy not to claim salvage on behalf of its personnel. No case appears in which salvage derived from prize has been claimed for such personnel. Prize salvage is more closely related to prize money than it is to other salvage. The determination by Congress that captors should not share in the proceeds of prizes is, therefore, as in 34 U.S.C. 1158, carried through the revised section to salvage derived from prize. The word "amounts" is substituted for the words "the whole amount".

§ 7673. Allowance of expenses to marshals

The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, and sale or other disposal of the prize property, and for executing any order of the court in the prize cause. Charges of the marshal for expenses or disbursements shall be allowed only upon his oath that they have been necessarily incurred for the purpose stated.

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|------------------------|---------------------------|-----------------------------------|
| 7673 | 34 U.S.C. 1153. | R.S. 4645. |

34 U.S.C. 1153 and the revised section reflect the Act of May 28, 1896, ch. 252, §6, 29 Stat. 179, which provided that marshals should receive annual salaries in lieu of the fees and emoluments previously allowed them.

§ 7674. Payment of witness fees

If the court allows fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the marshal shall pay the fees. He shall be repaid from any money deposited to the order of the court in the cause. Any amount not so repaid to the marshal shall be allowed him as witness fees paid by him in cases in which the United States is a party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)