

This is a translation of the

**Loi (1862) sur les saisies en vertu d'ordres provisoires**

(Chapter 08.690)

as in force on 1 January 2019

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**LAW (1862) ON SEIZURES BY VIRTUE OF PROVISIONAL ORDERS**

**A LAW** on seizures (of the person) by virtue of provisional orders

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**CONSIDERING** the abuses which can result from the right that a creditor has to secure the seizure of the person of an allegedly expatriable debtor;<sup>1</sup> the States have resolved, subject to the sanction of Her Most Excellent Majesty in Council, to enact the following Law –

**1**

A creditor may not, by virtue of a provisional order, cause to be seized by a Judicial Officer<sup>2</sup> the person of his or her expatriable<sup>3</sup> debtor on claim that does not bear the signature of the debtor, without having made a declaration, on oath before one of the Judges of the Royal Court<sup>4</sup> that the claim is well founded to the best of his or her knowledge.

The account or itemized claim must be annexed to such declaration, which shall be signed by the declarant, and by the Judge, who shall attest by his or her signature the account or claim.

**2**

The Judicial Officer,<sup>5</sup> when seizing an expatriable<sup>6</sup> person, shall be required to deliver to the defendant a copy of the itemized account of the demand or claim.

If the defendant so demands or requires, the Officer shall also be required to deliver to the defendant a copy of the declaration made before the Judge; *and the Officer shall receive 15p from the defendant for that copy.*<sup>7</sup>

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<sup>1</sup> A debtor is expatriable if he/she does not possess immovable (real) property in Jersey available to his/her creditors

<sup>2</sup> *Officier de Justice*: an officer of the Viscount's Department (a Viscount Substitute – see *Departments of the Judiciary and the Legislature (Jersey) Law 1965, Art 6*)

<sup>3</sup> See footnote 1

<sup>4</sup> *un des Magistrats de la Cour Royale*: i.e. the Bailiff or one of the Jurats

<sup>5</sup> See footnote 2

<sup>6</sup> See footnote 1

<sup>7</sup> Words in italics now obsolete

3

The plaintiff shall be required to produce to the Court the declaration, with the record of the Officer, when the case is dealt with.

4

When the Officer seizes a debtor, signatory or subscriber of a promissory note, bill of exchange, or other instrument or document, bearing the signature of the debtor, he or she shall be required to furnish a copy of it to the defendant, attested by the said Officer.

5

Where the claim upon which an expatriable<sup>8</sup> debtor has been seized is in the name of a company<sup>9</sup>, one of the partners or directors of the company may make the declaration required by Article 1.

A *tuteur* or curator may make the declaration in the name of his or her pupil or the interdict (as the case may be).

An administrator may make the declaration in the name of his or her principal, provided that he or she knows the claim to be lawful.

An attorney may make the declaration for his or her principal, if he or she knows that the account or the claim is lawful. If the creditor lives out of the Island, the person of the alleged debtor may not, by virtue of a provisional order, be arrested by the Judicial Officer,<sup>10</sup> unless the creditor has sworn an affidavit before a person duly authorized to administer oaths, whose signature shall be legalized by a competent authority.

In every case of seizure, at the instance of a party absent from Jersey, of the person of an alleged debtor by virtue of a provisional order, the representative of the plaintiff shall be personally liable for the judicial costs to which the person whom he or she represents is held liable.

6

If a creditor has good reason to believe that his or her debtor is going to quit the Island, and that there is not time to make a declaration before a Jurat,<sup>11</sup> the Judicial Officer<sup>12</sup> may receive the declaration from the creditor on oath.

The creditor and the Officer shall sign the said declaration; in this case, the Officer shall be required to hand a copy of the said declaration to the defendant; and it shall only be necessary to deliver particulars of the claim within 24 hours of having seized the person.

7

When the Bailiff<sup>13</sup> signs an order of justice authorizing the Officer to seize the person of a debtor, the Bailiff may require the claimant to take oath that the claimant, on his or her conscience, believes that the allegations contained in the order of justice are well founded.

The Bailiff shall fix the amount of bail that the defendant must furnish.

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<sup>8</sup> See footnote 1

<sup>9</sup> *une Société* (a company or a partnership)

<sup>10</sup> See footnote 2

<sup>11</sup> *un Magistrat de la Cour Royale*

<sup>12</sup> See footnote 2

<sup>13</sup> *le Chef Magistrat*

8

When the Court, on the presentation of a Remonstrance, orders the seizure of the person of the defendant, the Court may order that the plaintiff take oath that the plaintiff believes on his or her conscience that the facts contained in the said Remonstrance are well founded.

The Court shall fix the amount of bail that the defendant must furnish.

9

The plaintiff may only make use of the declaration sworn before the Bailiff, a Jurat<sup>14</sup> or the Judicial Officer<sup>15</sup> to justify the seizure of the person of the defendant; it may not be adduced in evidence to support of the claim of the plaintiff.

10

When a person is seized by virtue of a provisional order or an order of justice, is held in custody, the person must be presented before the Court on the first day of the following Samedi Court.<sup>16</sup>

The defendant may obtain from the Court a delay of at least 4 days to prepare submissions in answer to the claim.

11

When a person seized furnishes bail, the Judicial Officer<sup>17</sup> shall set out in writing the terms of the bail; which shall be signed by the person seized, and by the (person giving) surety.

12

Whosoever before the Bailiff, a Jurat<sup>18</sup> or a Judicial Officer<sup>19</sup> makes a declaration required by this Law, knowing that it is false, shall be guilty of perjury, and punished by fine or imprisonment, at the discretion of the Court.

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<sup>14</sup> See footnote 4

<sup>15</sup> See footnote 2

<sup>16</sup> See Parts 2 and 3 of the Royal Court Rules 2004

<sup>17</sup> See footnote 2

<sup>18</sup> See footnote 4

<sup>19</sup> See footnote 2