

29. Droit et pauvreté

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One of the prime defenses an indigent debtor possesses is "the \$1,000 rule": the first \$1,000 of household furniture and other things of a general use may not be seized (art. 552(2) C.P.). The enforcement of this right however has not been an easy one. The delays tied in with an opposition to seizure (art. 596 C.P.) mean that months may pass before an illegal seizure is so declared. To circumvent these problems, the courts have recognized a petition to revise a bailiff's valuation in virtue of art. 552(2), second paragraph C.P. (see, *Chronique sur le Droit et Pauvreté* [1972] R. du B. 66-67). This has the advantage of summarily correcting a bailiff's improper valuation with a mere one day notice (art. 78 C.P.). But such remedy neither declares the seizure illegal nor orders the return of the goods illegally seized. The seizing creditor may require the debtor to have the seizure formally declared illegal — a time-consuming process — before he returns the goods. Though the seizure will be declared illegal because of the judge's revised evaluation, the debtor will be deprived for some time of the use of basic household items.

This situation is remedied by a recent amendment adopted on July 8, 1972, so that art. 552(2) C.P. now reads as follows: "The debtor may select from among his property and withdraw from seizure...

"2. Household furniture, utensils and other things of general use

to a value of \$1,000 established by the seizing officer and the food and fuel required by him and his family.

"The valuation by the seizing officer contemplated in paragraph 2 may be revised by a judge; if such last mentioned judge considers the value of the household furniture, utensils, and other things of general use left to the debtor does not reach \$1,000, he may order that the debtor may choose and take from among the similar property seized that required, according to the valuation made by the judge, to cover the difference between such value and the amount of \$1,000". (Author's underlining represents the new amendment).

When a petition to revise a bailiff's valuation is before a judge, he may now in his conclusions be able to order the return of the goods due to the violation of the \$1,000 rule. By avoiding the formality of an opposition to seizure, a speedy effective remedy is available. The above amendment also indicates that a bailiff may have not left \$1,000, and yet the seizure still can be valid if the return of *some* of the goods seized makes up \$1,000.

The amendment also appears to clarify the controversy concerning whether a debtor's failure to request \$1,000 of furniture *during* the seizure is to be construed as a waiver of the right to claim the \$1,000 before the courts. Ferland J. in his *Traité de Procédure civile* (t. 2, Montreal, 1969, at p. 75) argues that article 1980 C.C.

declaring the creditor's privilege over all the property of the debtor is the general rule; and article 552 C.P. is a derogation therefrom. According to the learned Justice, the Code of Procedure creates a privilege in favor of the debtor, not a duty on the seizing officer: «Le débiteur a le droit de s'opposer à la saisie de ces effets; mais il lui appartient de révéler son intention à l'huissier avant l'exécution, c.-à-d. avant la saisie. Il doit invoquer le privilège que la loi lui accorde lors de l'exécution de la saisie, sans quoi l'huissier serait justifié de saisir ces biens. S'il ne le fait pas, c'est qu'il veut éviter une opposition que le saisi pourrait faire aux frais de l'opposant».

This interpretation may be challenged by the introductory French wording to article 552 C.P. which declares: «Il doit être laissé au débiteur la faculté de choisir...». (Underlining is the author's emphasis).

This conveys the impression that an obligation is being statutorily created on the seizing officer to inform the debtor of the relative unseizability of certain household items; the English wording, "the debtor *may* select...". (Under-

lining is the author's emphasis) seems to detract from a notion that an obligation is being imposed. However, the general rule of interpretation would favor the French wording (art. 3 C.P.). The last paragraph of article 552 C.P. fortifies this proposition: "Any renunciation of the exemptions from seizure resulting from this article is null".

If, as Ferland J. indicates (at p. 79), the legislator deemed it necessary to protect the debtor from the rapacity of creditors by nullifying such future renunciations, it was surely the intention of the legislator to extend such protection up to the actual time of seizure.

The recent amendment to article 552(2) C.P. further reinforces the debtor's position, since the Judge may order that the debtor choose the return of goods up to \$1,000. With the amendment, art. 552 C.P. now specifically gives the debtor two chances to select and withdraw goods: at seizure and before the court.

This recent amendment, slipping quietly into force, is an important piece of legislation assisting the indigent debtor.