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CHAPTER 91.

PROCEEDINGS AGAINST GARNISHEES.

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SEC. 1. In any action commenced in any court of record, or justice's court, founded upon contract, expressed or implied, or upon a judgment or decree, or after the rendition of said judgment in any action, if the plaintiff, his agent, or attorney, shall make and file with the clerk of the court, or justice of the peace, stating that he has good reason to believe, and does believe, that any person (naming him) has property, money, or effects, in his hands or under his control, belonging to the defendant in such action, or that such person is indebted to the defendant, if the action is in the justice's court, the justice shall issue a summons against said person, requiring him to appear before such justice at a time and place mentioned in said summons, not less than six nor more than twelve days from the date thereof, and answer under oath all questions put to him, touching his indebtedness to such defendant, and the property, money, and effects of the defendant in his possession, within his knowledge, or under his control, which summons shall be served and returned in the same manner as a summons issued against a defendant in other cases. The garnishee shall be entitled to the same fees as he would if he were subpoenaed as a witness in such case.

When and in what cases party may be summoned as garnishee.

SEC. 2. In actions pending in the district court, the garnishee may be summoned in the same manner as defendants are summoned in that court; the summons must require the garnishee to appear before the court or judge, at a time and place mentioned in the summons, not less than twenty days from the service thereof, and answer such questions as shall be put to him touching his indebtedness to the defendant in the action.

Garnishee how summoned in district court.

SEC. 3. The person summoned as a garnishee, from the time of the service of such summons, shall be deemed liable to the plaintiff in such suit, to the amount of the property, money, or effects in his hands, or possession, or under his control, or due from him to the defendant in such suit: *Provided*, That when the defendant is a householder having a family, nothing herein contained shall be applicable to any indebtedness of such garnishee to the defendant for the personal labor of such

Garnishee how liable.

defendant, or his family, for any amount not exceeding the sum of twenty-five dollars.

Proceedings when garnishee refuse to appear.

SEC. 4. If such garnishee neglect or refuse to appear, at the time and place mentioned in such summons, and answer as aforesaid, the court shall continue the cause to some other day, and without further showing than the proof that the summons had been properly served upon the garnishee, and his fees paid or tendered, issue a warrant to bring such garnishee before him.

Warrant what to contain.

SEC. 5. Such warrant shall command the officer forthwith to take the body of such garnishee, and bring him before such court, and shall contain a further command that such officer shall, after he shall have arrested the garnishee, notify the plaintiff of such arrest; and such warrant shall be served and returned in the same manner as warrants issued in other cases.

Suit when commenced against garnishee.

SEC. 6. The personal service of a summons upon such garnishee, shall be deemed the commencement of suit in the name of the plaintiff, against such garnishee, which may be entered on the docket as suits in other cases.

Cause when adjourned.

SEC. 7. On the application of such garnishee, before such court, or on some other day to which the same may be adjourned, the plaintiff may proceed to examine the garnishee, on oath or otherwise, as the plaintiff may elect, touching the matter alleged in the affidavit, and the justice shall take minutes of such examination and file the same with the other papers in the cause.

Cause when adjourned.

SEC. 8. Upon closing the examination, if a suit be pending and undetermined between the plaintiff and defendant, the cause shall be continued, but it shall not be necessary to adjourn the same to any day certain.

Court when to render judgment in case of garnishee.

SEC. 9. After the final determination of the action against the defendant in the case mentioned in the preceding section, the court in which the action is pending shall, if judgment be rendered in favor of the plaintiff, proceed to render judgment in the matter pending against the said garnishee; and if it appear from the testimony of the said garnishee, or other testimony which may have been taken in the case, that the said garnishee is indebted to the defendant, or that he has property belonging to the defendant in his possession, the court shall proceed to render judgment against the said garnishee, to the amount of his indebtedness to the said defendant, or for so much thereof as may be necessary to satisfy the plaintiff's demand.

Proceedings when discontinued as to garnishee.

SEC. 10. If the plaintiff fail to recover judgment against the defendant, in the cases mentioned in section seven of this chapter, or if the defendant pay the judgment rendered in such cases, or stay the execution thereon, within the time and in the manner prescribed by law, it shall in either case be deemed a discontinuance of all proceedings against the garnishee.

Execution how to issue.

SEC. 11. If judgment be rendered against the garnishee, the court may issue execution thereon as in other cases.

Garnishee when entitled to costs.

SEC. 12. If the garnishee shall on demand, deliver to the officer having such execution, all the property, money, and effects, in his possession, or under his control, belonging to the defendant, and pay all moneys found to be due from him to the defendant, at the time the suit was commenced against him, or so much of the money, property, and effects, as may be necessary to satisfy such execution, then the costs which may have accrued against such garnishee, shall be paid out of the property, money, and effects so paid over or delivered to such officer.

Payment by the garnishee to officer, same as payment to defendant.

SEC. 13. The officer having such execution shall indorse all moneys received from such garnishee, and a description of all property and effects delivered to him by the garnishee, and such delivery or payment shall be deemed a delivery or payment to the defendant in such suit.

SEC. 14. Upon the return of such execution so indorsed, the same shall be entered on the docket of the court, as fully as such return upon such execution, and such entry or transcript thereof shall be prima facie evidence of the facts therein stated.

Indorsement of officer evidence of facts therein stated.

SEC. 15. Whenever the garnishee shall pay or deliver to the officer having such execution, any property which may be sold on an execution by existing laws, the officer shall proceed to levy upon and sell the same at public auction or vendue, as in other cases; and if the garnishee shall deliver to the officer any notes, bills, bonds, or other choses in action, the officer shall return the same to the court, to be retained in his hands for the use of the plaintiff, and the plaintiff may sue and collect the same, or so much thereof as may be necessary to pay the judgment against the defendant, and costs; the balance, if any, shall be returned to the garnishee or the defendant. All bills, bonds, notes, accounts, and other choses in action, secured or delivered under the provisions of this section, shall be taken, subject to all liens, set offs, liabilities, and equities existing between the original parties thereto.

Officer holding execution, how to proceed.

SEC. 16. If the garnishee pay to the officer having such execution, any bank note or bill, the same shall be paid over to the plaintiff at the par value thereof, if he will accept the same, if not, it shall be sold in the same manner as other personal property.

Officer holding execution, how to proceed.

SEC. 17. Judgments rendered against the garnishee, under the provisions of this chapter, shall have the same force and effect, as they would have under existing laws, if such defendant had been named as plaintiff therein.

Effect of judgment against garnishee.

SEC. 18. No suit shall be maintained or recovery had by such defendant against the garnishee, for the amount of money sworn, proved, or admitted to be due from such garnishee to the defendant, or for property of the value thereof, money or effects in the hands of such garnishee as aforesaid, while such proceeding is pending.

Defendant cannot maintain action against garnishee.

SEC. 19. The preceding section shall not be so construed, as to prevent such defendant from prosecuting for, and recovering of such garnishee, any other or future sum of money due from such garnishee, or the possession or value of any other property or effects in the hands of such garnishee belonging to such defendant.

Limitation of preceding section.

SEC. 20. Bills of exchange, and promissory notes not due, in the hands of the garnishee at the time of the service of the summons, shall be deemed "effects" under the provisions of this chapter.

Promissory notes, deemed effects.

SEC. 21. If it shall appear upon any examination or trial, had under the provisions of this chapter, that any sum or sums of money is, or are owing and payable from the garnishee to the defendant, at some future time or times, it shall be the duty of such court, after the examination or the rendition of the verdict, if a trial by jury is had, and after the trial, (if the cause is tried by the court) to note the time or times when the sum or sums of money mentioned in this section, shall become due and payable, and shall thereupon continue the cause until after the time or times so noted.

Proceedings when moneys are due to defendant at a future time.

SEC. 22. After the said sum or sums of money become due and payable as mentioned in the preceding section, the court shall, at the request of the plaintiff, render judgment against the garnishee, as mentioned in section nine of this chapter; and the same proceedings shall be had thereon and with the like effect, as if the said sum or sums of money had been due and payable at the time of the service of the summons.

Proceedings when moneys are due to defendant at a future time.

SEC. 23. Corporations may be proceeded against as garnishees, in the same manner and with the like effect as individuals, under the provisions of this chapter, and the rules of law regulating proceedings against corporations.

Corporations may be proceeded against under this chapter.