

CHAPTER 571

GARNISHMENT

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571.01 AFFIDAVIT; GARNISHEE SUMMONS; TITLE OF ACTION. In an action in a court of record or justice court for the recovery of money, if the plaintiff, his agent or attorney, at the time of issuing the summons, or at any time during the pendency of the action, or after judgment therein against the defendant, files with the clerk of the court, or, if the action is in a justice court, with the justice, an affidavit stating that he believes that any person (naming him) has property or money in his hands or under his control belonging to the defendant, or that such person is indebted to the defendant, and that the value of such property or the amount of such money or indebtedness exceeds \$25.00, if the action is in the district court, or \$10.00, if in a justice court, and if the plaintiff files with such affidavit a copy of the complaint when the complaint has not been theretofore either served on the defendant or filed in the action, provided, that no fee be charged by the clerk of the court for filing such copy of the complaint, a summons may be issued against such person, as hereinafter provided, in which summons and all subsequent proceedings in the action the plaintiff and defendant shall be so designated, and the person against whom the summons issues shall be designated as garnishee.

[R. L. s. 4229; 1927 c. 300; 1929 c. 215] (9356)

571.02 PROCEEDINGS IN JUSTICE COURT. If the action is in a justice court, the summons shall be issued by the justice, and shall require the garnishee to appear before him at a time and place specified therein, not less than six, nor more than 12, days from the date thereof, to answer under oath such questions as may be put to him touching his indebtedness to the defendant, and any property or money of the defendant in his possession or under his control, which summons shall be served and returned in the same manner as a summons against a defendant, except that the service must be personal. A copy of the summons, together with a notice to the defendant stating the time, place, and manner of service upon the garnishee, and signed by the justice or the officer who served the same, and requiring the defendant to appear and take part in the examination, shall be served upon the defendant at least three days before the time specified in the summons for the appearance of the garnishee.

[R. L. s. 4230] (9357)

571.03 IN DISTRICT COURT. In actions in the district court such summons may be issued by the plaintiff or his attorney in the action, and shall be served and returned in the same manner as a summons issued against a defendant, except that the service shall be personal. It shall require the garnishee to appear before the court in which the action is pending, or the judge or clerk thereof, or a court commissioner of the county in which the action is pending, at a time and place specified therein, not less than 20 days from the service thereof, and answer touching his indebtedness to the defendant, and any property or money of the defendant in his possession or under his control. A copy of the summons, together with a notice to the defendant stating the time, place, and manner of service thereof upon the

garnishee, signed by the plaintiff or his attorney, or the person or officer who served the summons upon the garnishee, and requiring the defendant to appear and take part in such examination, shall be served upon the defendant at least ten days before the time specified in the summons for the appearance of the garnishee. Such notice and copy of the summons may be served in the same manner as a summons in ordinary cases.

[R. L. s. 4231] (9358)

571.04 EFFECT OF SERVICE ON GARNISHEE; FEES. The service of the summons upon the garnishee shall attach and bind all the property and money in his hands or under his control belonging to the defendant, and all indebtedness owing by him to the defendant at the date of such service, to respond to final judgment in the action. He may be compelled to disclose under oath respecting all matters contained in the affidavit. No person shall be obliged to appear as garnishee unless the fees for one day's attendance and mileage allowed by law be paid or tendered in advance.

[R. L. s. 4232] (9359)

571.05 GARNISHEE SUMMONS; WHEN EFFECTIVE. No garnishee summons served subsequent to the passage of this section upon the garnishee in any action whereby a sum of less than \$100.00 is impounded shall be effective for any purpose after two years from the date of service thereof upon the garnishee unless the plaintiff, or his attorney, shall, prior to the expiration of such time, serve upon the garnishee an affidavit to the effect that the action against the defendant is being diligently prosecuted and that judgment therein has not been entered, or if entered, that the time to appeal has not expired and that the affidavit is made for the purpose of continuing the force and effect of the summons upon the garnishee for one year. The force and effect of the summons upon the garnishee may be extended from year to year, if the facts in the case warrant it, by serving a like notice prior to the expiration of the previous notice. No such garnishee summons served prior to the passage of this section upon the garnishee in any action shall be effective for any purpose after two years from the passage of this section unless its force and effect upon the garnishee is extended prior to the expiration of such time by serving a similar affidavit upon the garnishee, as provided for herein.

[1931 c. 213 ss. 1, 2; 1935 c. 241] (9359-1)

571.06 PROPERTY SUBJECT TO GARNISHMENT. All moneys and other personal property, including such property of any kind due from or in the hands of an executor or administrator, and all written evidences of indebtedness, whether negotiable or not, or under or overdue, may be attached by garnishment; and money or any other thing due or belonging to the defendant may be attached by this process before it has become payable, if its payment or delivery does not depend upon any contingency; but the garnishee shall not be compelled to pay or deliver the same before the time appointed by the contract.

[R. L. s. 4233] (9360)

571.07 PROPERTY SUBJECT TO GARNISHMENT; MONEY DUE FROM HIGHWAY DEPARTMENT; PROCEDURE. Money due or owing to any corporation or person by the state on account of any employment, work, or contract with the commissioner of highways shall be liable to garnishment, except as exempted by law. The garnishee summons may be served upon the commissioner of highways by registered mail; and the disclosure shall be made by the commissioner or by some person having knowledge of the facts designated by him. The commissioner, or the person having knowledge of the facts as so designated by the commissioner, shall not appear before the court for disclosure, unless the district court, the municipal court, or justice of the peace otherwise orders and by such order appoints a referee to take the disclosure at the time and place specified in the order upon six days' notice to the garnishee and to the defendant, but the commissioner shall, at least three days before the date of hearing on disclosure on such garnishee summons, transmit to the court or officer before whom the disclosure is to be made a duly verified and authenticated statement of the moneys due and owing to the defendant, if any, which statement shall constitute the disclosure, unless otherwise ordered by the court, as above specified. Unless the commissioner, or person having knowledge of the facts disclosed by him, as aforesaid, is actually required to appear in court by the order of the court, no mileage fee shall be charged by the commissioner, or any other person, on account of any such disclosure, but a fee of \$2.00 shall be allowed for making the disclosure. The examina-

tion may proceed without notice to the defendant, if it be made to appear to the referee by affidavit that the defendant is not a resident of the state and cannot be found therein. When payment is made pursuant to judgment against the commissioner as garnishee a certified copy of the judgment, with a certificate of satisfaction to the extent of such payment endorsed thereon, shall be delivered to the commissioner as his voucher for such payment.

[1923 c. 363; 1925 c. 33] (9360-1)

571.08 WHEN GARNISHMENT PROHIBITED. No person or corporation shall be adjudged a garnishee in any of the following cases:

(1) By reason of any money or other thing due to the defendant, unless at the time of the service of the summons the same is due absolutely, and without depending on any contingency;

(2) By reason of any debt due from such garnishee on a judgment, so long as he is liable to an execution thereon;

(3) By reason of any liability incurred, as maker or otherwise, upon any draft, bill of exchange, or promissory note.

[R. L. s. 4234] (9361)

571.09 EXAMINATION OF GARNISHEE. Upon his appearance before the court or officer named in the summons, at the time specified therein, or to which an adjournment may be had, and the filing of proof of the service upon the defendant of such summons and notice, the garnishee shall be examined on oath touching the matters alleged in the affidavit, and full minutes of the examination shall be taken by the examining officer and filed with the clerk. If the defendant does not appear at the time and place specified in the summons for the appearance of the garnishee, and it appears that the plaintiff has been unable to notify him, the examining officer may postpone the examination for such reasonable time as may be necessary for that purpose, and thereupon service of such summons and notice, together with notice of the time to which the examination is postponed, shall be served upon defendant, at least ten days, if in the district court, and three days, if in justice court, before the day to which the examination is postponed. If the plaintiff, his agent or attorney, files with the examining officer an affidavit that the defendant is not a resident of this state, and is not within the same as affiant verily believes, the examination shall proceed as if the summons and notice had been served upon defendant or he had duly appeared.

[R. L. s. 4235] (9362)

571.10 GARNISHMENT OF CORPORATIONS. A corporation may be garnished, and may appear by its cashier, treasurer, or such other officer or person as it shall appoint, and the disclosure of such officer or person shall be considered the disclosure of the corporation; but if it appears to the court that some other person connected with the corporation is better acquainted with the subject matter than the one making the disclosure, such person may be cited to appear and answer in the proceeding and, if he shall neglect or refuse to attend, judgment may be entered, as hereinafter provided, upon default. Service upon an agent of a foreign corporation doing business in this state shall be service upon such corporation.

[R. L. s. 4236] (9363)

571.11 SALARIES OR WAGES OF OFFICERS OR EMPLOYEES OF MUNICIPAL CORPORATIONS; PROCEDURE. The salary or wages of any officer of, or person employed by, a county, town, city, village, or school district, or by any department thereof, shall be liable to garnishment, attachment, and execution, except as exempt by law. Any officer of, or person employed by, a county, town, city, village, or school district, or by any department thereof, shall have the same right to sell, assign, or transfer his salary or wages as is now possessed by any officer of, or person employed by, any corporation, firm, or person. In the case of such officer, the garnishee summons, writ of attachment, or execution shall be served upon the auditor, treasurer, or clerk of such body, or department thereof of which he is an officer; and in other cases such process shall be served upon the officer in whose office, or the head of the department in which, or the presiding officer of the body by which, such person is employed; and the disclosure, in a case of garnishment, or the certificate, in case of execution, shall be made by the officer or person so served, or by some person having knowledge of the facts designated by him. When the garnishee summons is returnable elsewhere than in the town, city, or village where such officer resides, or in which his office is located or his duties are usually performed, he shall not be required to appear at

the time and place therein specified, but, upon application of the plaintiff, the court or justice shall by order appoint a referee to take the disclosure at a time and place therein specified, within such town, city, or village, upon six days' written notice to the garnishee and to the defendant. If the plaintiff, his agent or attorney, files with the referee an affidavit that the defendant is not a resident of this state and cannot be found therein as affiant verily believes, the examination may proceed without notice to the defendant. When payment is made by such debtor pursuant to a judgment against him as garnishee, or upon levy of execution, a certified copy of the judgment or execution, with a certificate of satisfaction to the extent of such payment endorsed thereon, shall be delivered to the treasurer of the debtor as his voucher for such payment.

[R. L. s. 4237; 1925 c. 387] (9364)

571.12 WHEN PROPERTY GARNISHED EXCEEDS CLAIM. When it appears that the property garnished is more than sufficient to pay the amount claimed in the complaint, and the probable interest and costs which may accrue to the plaintiff, the court, upon motion, may make an order releasing such excess from the garnishment.

[R. L. s. 4238] (9365)

571.13 CLAIMANT OF PROPERTY TO BE JOINED. If it appear from the evidence, or otherwise, that any person not a party to the action has or claims an interest in any of the garnished property antedating the garnishment, the examining officer may permit such person to appear in the action and maintain his right; and if he do not so appear, may direct that he be notified to appear or be barred of his claim. The notice in such case may be served in any manner that such officer shall direct, and the person so appearing or notified shall be joined as a party to the action and be bound by the judgment.

[R. L. s. 4239] (9366)

571.14 PROCEEDINGS WHEN DEBT OR TITLE IS DISPUTED. If the garnishee hold the garnished property by a title that is void as to defendant's creditors, he may be charged therefor although the defendant could not have maintained an action against him therefor; but in this, and in all other cases where the garnishee, upon full disclosure, denies his liability as such, the plaintiff may move the court at any time before the garnishee is discharged, on notice to both the defendant and the garnishee, for leave to file a supplemental complaint making the latter a party to the action, and setting forth the facts upon which he claims to charge him; and, if probable cause is shown, such motion shall be granted. The supplemental complaint shall be served upon both defendant and garnishee, either or both of whom may answer, and the plaintiff may reply. The issues thus made up shall be brought to trial and tried as in other actions.

[R. L. s. 4240] (9367)

571.15 TIME FOR APPEARANCE IN GARNISHEE PROCEEDINGS. When any person duly summoned as garnishee neglects to appear at the time specified in the summons, or within one hour thereafter, he shall be defaulted, and a judgment payable in money shall be rendered against him for the amount of damages and costs recovered by the plaintiff in the action against the defendant, and execution may issue therefor directly against the property of such garnishee; but the court, upon good cause shown, may remove such default, and permit the garnishee to appear and answer on such terms as may be just.

[R. L. s. 4241; 1919 c. 184 s. 1] (9368)

571.16 WHEN RENDERED; DISCHARGE; TRANSFER OF ACTION. No judgment shall be rendered against a garnishee until after judgment is rendered against the defendant; but a garnishee may be discharged after disclosure, if it appears that he ought not to be held. When he is not so discharged, the cause shall be continued to abide the result in the original action; and in case any such original action, pending in a court not of record, shall be transferred under the provisions of law to any other court, except by appeal, any garnishee action, the judgment in which is conditioned on the judgment in the original action, shall be transferred therewith, and written notice of such transfer, specifying the court to which the same is made and the time, which shall not be less than two days after service of the notice, when such garnishee action will be heard, shall be served by the plaintiff on the garnishee. Such transfer shall carry with it all proceedings already had and any disclosure made therein.

[R. L. s. 4242] (9369)

571.17 PROCEEDINGS WHEN VENUE IS CHANGED. In case of a change of venue, in an action in the district court, before the garnishee has fully disclosed, the disclosure may be taken or completed regardless of such change, unless the defendant at whose instance the change was made shall otherwise require. If the change be ordered by the court, the order, upon request of the moving defendant, shall direct when, where, and before whom the examination shall proceed; otherwise the defendant shall serve, with his demand, written notice of such time and place, and of the court or officer before whom the examination will proceed. If such notice be not given and filed, the clerk shall retain all papers relating to the garnishment until the disclosure is completed. The place of disclosure, when changed, shall be within the county to which the action is transferred, unless the parties otherwise agree, and the time thereof not more than ten days later than that previously fixed; and the plaintiff shall pay to the garnishee additional mileage if the distance be increased.

[R. L. s. 4243] (9370)

571.18 WHO MAY TAKE DISCLOSURE. Court commissioners, clerks of the district court, and referees appointed by the court for that purpose are authorized and required to take the disclosure of any garnishee, together with any other testimony offered by the parties to the action, and report the same to the court. All testimony shall be taken subject to any seasonable objection thereto. Any examining officer, other than the judge, shall receive from the plaintiff ten cents a folio for taking the disclosure, and the fee so paid may be taxed in the judgment against the garnishee. No judgment shall be rendered against the garnishee unless ordered by the court.

[R. L. s. 4244] (9371)

571.19 DISCLOSURE BEFORE RETURN DAY. When any person is summoned as a garnishee in the district court, he may appear before the officer named in the summons at any time before the return day thereof, and with the consent of the plaintiff, to be certified by such officer, make his disclosure with like effect as if made at the time specified in the summons. If the plaintiff will not consent to such disclosure, the garnishee, in case he is compelled to be absent from the county until after the return day of the summons, may make affidavit to that effect, which, with a notice of the time and place of making his disclosure before the same officer, he shall serve on the plaintiff or his attorney at least 24 hours before the time therein fixed for taking the same. On proof of such service, his disclosure shall be taken as hereinbefore provided, and with like effect.

[R. L. s. 4245] (9372)

571.20 AMOUNT OF JUDGMENT; EFFECT. Judgment against a garnishee shall be rendered, if at all, for the amount due the defendant, or so much thereof as may be necessary to satisfy the plaintiff's judgment against such defendant, with costs taxed and allowed in the proceeding against the garnishee. Such judgment shall acquit and discharge the garnishee from all claims of all the parties to the process in and to the property or money paid, delivered, or accounted for by such garnishee by force of such judgment.

[R. L. s. 4246] (9373)

571.21 DUTY AND RIGHTS OF GARNISHEE. When any person is charged as garnishee by reason of any property in his possession other than an indebtedness payable in money, he shall deliver the same, or so much thereof as may be necessary, to the officer holding the execution, and such property shall be sold and the proceeds accounted for in the same manner as if it had been taken on execution against the defendant; but the garnishee shall not be compelled to deliver any specific articles at any other time or place than as stipulated in the contract between him and the defendant.

[R. L. s. 4247] (9374)

571.22 COURT MAY DETERMINE VALUE, MAKE ORDERS. Upon application of any party in interest, on notice, the court may determine the value of any property so in the hands of the garnishee for delivery, and may make any order relative to the keeping, delivery, and sale thereof, or touching any of the property attached, that is necessary to protect the rights of those interested, and at any time after the service of the garnishee summons may require the property or money so attached to be brought into court or delivered to a receiver by it appointed.

[R. L. s. 4248] (9375)

571.23 PROCEEDINGS WHEN GARNISHEE HAS LIEN. If it appear that the garnishee has a lien on such garnished property, or that it is in any way liable for the payment of a debt due to him, the plaintiff, on motion, may be permitted to pay the amount thereof, and the amount so paid shall be repaid to plaintiff, with interest, out of the proceeds of the sale of such property. If the garnishee refuses or neglects to comply with any order of the court in the premises, he may be punished for a contempt, and also shall be liable to the plaintiff for the value of such property, less the amount of his lien. He may sell the property to satisfy the lien, if a sale be authorized by his contract, at any time before such payment or tender.

[R. L. s. 4249] (9376)

571.24 GARNISHEE NOT LIABLE FOR DESTRUCTION. If any such garnished property be destroyed without negligence of the garnishee, after judgment and before demand by the officer holding the execution, the garnishee shall be discharged from all liability to the plaintiff for the non-delivery thereof.

[R. L. s. 4250] (9377)

571.25 FEES AND ALLOWANCES OF GARNISHEE. A garnishee who appears and submits himself to examination, as herein provided, shall be allowed his fees and mileage for attendance at the rate allowed by law to a witness, and in extraordinary cases, such further sum as the court shall deem reasonable for his counsel fees and other necessary expenses. If he be charged as a garnishee, the amount of such allowances may be retained out of the property in his hands and, if charged on account of specific articles of personal property, he shall not be required to deliver the same to the officer until payment thereof; and, if he be not held as a garnishee, he may recover judgment therefor against the plaintiff.

[R. L. s. 4251] (9378)

571.26 PLAINTIFF'S COSTS LIMITED. Except when the garnishee fails to appear, the plaintiff shall in no case recover a greater sum for costs, including fees and costs allowed the garnishee, than the amount of damages recovered of the defendant.

[R. L. s. 4252] (9379)

571.27 MINIMUM JUDGMENT IN JUSTICE AND DISTRICT COURTS. No judgment shall be rendered against a garnishee in a justice court where the judgment against the defendant is less than \$10.00, exclusive of costs, nor where the indebtedness of the garnishee to the defendant, or the value of the property or money of the defendant in the hands of the garnishee or under his control, as proved, is less than \$10.00. If the action is in the district court, no judgment shall be rendered against the garnishee where the indebtedness proved against him, or the value of the money or property of the defendant in his hands or under his control is less than \$25.00; and, in all such cases, the garnishee shall be discharged, recover his costs, and have execution therefor against the plaintiff.

[R. L. s. 4253] (9380)

571.28 DISCHARGE NOT A BAR. If any person summoned as a garnishee is discharged, the judgment shall be no bar to an action brought against him by the defendant or other claimants for the same demand.

[R. L. s. 4254] (9381)

571.29 GARNISHMENT BY DEFENDANT. When the defendant shall recover judgment against the plaintiff, or shall set up in his answer a counter-claim exceeding in amount the sum admitted in such answer to be due to the plaintiff, he may institute and prosecute garnishment proceedings under this section as if he were plaintiff. For the purposes of such proceedings he shall be considered as plaintiff, and the plaintiff as defendant, and his answer shall be deemed a complaint.

[R. L. s. 4255] (9382)

571.30 DISCHARGE OF ATTACHMENT OR GARNISHMENT. At any time before the entry of judgment, the defendant whose property has been attached or garnished may secure its release by giving a bond, approved by a judge or court commissioner if the action is in the district court, by the judge if in a municipal court, and by the justice if in justice court, in a penal sum at least double the amount claimed in the complaint, or, if the value of the property attached or

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garnished is less than such amount, then in double such value, conditioned to pay any judgment recovered against him in the action, or so much thereof as shall equal such value. The officer approving such bond shall make an order discharging such attachment or garnishment and releasing the property. The order shall become effective upon filing the same with the bond in the court in which the proceedings are pending and, in the case of garnishment, serving a copy of the order on the garnishee.

[*R. L. s. 4256*] (*9383*)

571.31 APPEALS. Any party to a garnishment proceeding deeming himself aggrieved by any order or final judgment therein may remove the same from a justice court to the district court, or from the district court to the supreme court, by appeal, in like cases, in the same manner, and with like effect, as in a civil action.

[*R. L. s. 4257*] (*9384*)