

## CHAPTER 571

## GARNISHMENT

571.01 to 571.31. (repealed).

Superseded by sections 571.32 to 571.56.

**Note.**

Mr. Justice Cardozo, in 292 US 208, states that the processes of garnishment and attachment of today have no common law ancestry and are strictly statutory remedies.

The process known as "foreign attachment" arose because of the necessities of the merchants at the great English fairs and originated in the Pi Poudre courts. This later merged with the common law proceeding of attaching chattels to compel the appearance of a debtor.

In the American colonies the courts granted writs of attachment to an astounding extent and made little distinction between a common law or domestic attachment and a foreign attachment. In 1644, the Massachusetts Bay Colony authorized attachments as a method to commence an action. This led to such evils that many colonies were obliged to restrict the use of attachments to non-resident defendants.

Maryland in 1683, adopted the first garnishment statute.

There was to some extent a merger of remedies, but the colonial courts recognized the difference between the common law theory of domestic attachments and the statutory, though ancient foreign attachment; the first being more or less an action in rem, while the foreign attachment (later garnishment) was a trustee process. This trustee process was first recognized as such by Massachusetts Statutes in 1708.

When the colonies became states, commercial practice was reformed. The territory of the United States, northwest of the Ohio, established in 1787, made a clear distinction between common law and trustee attachments; and following a Massachusetts act of 1794, the 1787 ordinance was in 1807, further clarified by a statute regulating in detail the practice of attachment and of garnishment. The territory of Louisiana, in 1807, adopted the same practice. Garnishment or trustee process is now clearly distinguished from proceedings in attachment in all the states created out of the northwest or Louisiana territories.

Minnesota, when the first Revised Statutes were adopted in 1851, for the most part, followed the New York code of civil procedure; but as relating to attachment and garnishment a Michigan statute of 1849, regulating proceedings against garnishees in all courts, was adopted. Nine years later, without following any of her sister states, Minnesota (Laws 1860, Chapter 70) enacted entirely original laws relating to attachment and garnishment. These statutes, with few amendments remained the law in Minnesota until the enactment Laws 1945, Chapter 424.

Chapter 424 repealed all laws relating to the garnishment process and enacted an entirely new code. The important changes from the old practice are: (1) Simplification of procedure; (2) elimination of the affidavit for garnishment; (3) written verified disclosure by mail; and, (4) limitation as to the amount the garnishee is required to hold. Chapter 424 became effective September 1, 1945. See Mussman and Riesenfeld, on garnishment and bankruptcy, 27 MLR 1.

The following annotations relate to the repealed sections:

**571.01 AFFIDAVIT; GARNISHEE SUMMONS; TITLE OF ACTION.**

**HISTORY.** R.S. 1851 c. 91 s. 1; P.S. 1858 c. 80 s. 1; P.S. 1858 c. 80 and R.S. 1851 c. 91, repealed in 1860 c. 70 s. 35; 1860 c. 70 s. 1; G.S. 1866 c. 66 s. 147; 1867

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c. 65 s. 1; G.S. 1878 c. 66 s. 164; G.S. 1894 s. 5306; R.L. 1905 s. 4229; G.S. 1913 s. 7859; G.S. 1923 s. 9356; 1927 c. 300; M.S. 1927 s. 9356; 1929 c. 215; 1943 c. 151 s. 1.

No summons can be properly issued in garnishment proceedings without the existence of two prerequisites: (1) The principal action must be founded upon a contract, express or implied, or upon a judgment or decree; and (2) an affidavit must have been made and filed, setting forth the indebtedness of the party to be garnished. *Black v Brisben*, 3 M 360 (253); *Prince v Heenan*, 5 M 347 (279); *Hinkley v St. Anthony Falls*, 9 M 55 (44).

The garnishee waives any irregularity in the summons by appearing without objection. *Hinkley v St. Anthony*, 9 M 55 (44); *Aultman v Markley*, 61 M 404, 63 NW 1078.

The principal defendant cannot object to any irregularity in the summons against the garnishee. *Hinkley v St. Anthony*, 9 M 55 (44).

Service of a garnishee summons upon one member of a firm, or upon two persons when one only is indebted, and modifying the decision in *Prince v Heenan*, 5 M 347 (279), is sufficient to charge the garnishee for a debt due from him to those or to one to which he is indebted. *Hinkley v St. Anthony*, 9 M 55 (44); *Aultman v Markley*, 61 M 404, 63 NW 1078.

An affidavit is not void because entitled in an action not actually commenced when the affidavit was sworn to. *Crombie v Little*, 47 M 581, 50 NW 823.

The affidavit need not allege the incorporation of the garnishee. It is sufficient if it conforms to the statute. *Howland v Jeuel*, 55 M 102, 56 NW 581.

While it is somewhat in the nature of a complaint against the garnishee, its sufficiency is not to be determined by the ordinary rules of pleading. *Aultman v Markley*, 61 M 404, 63 NW 1078.

The garnishee disclosed an indebtedness to debtor of \$34.87. Defendant claimed his statutory exemption. The justice allowed the exemption, and erroneously rendered judgment against the garnishee for \$9.87. Error, because judgment cannot be rendered against a garnishee for less than \$10.00. *Sheehan v Newpick*, 77 M 426, 80 NW 356.

Garnishment proceedings are authorized in actions in tort. *Cummings v Edwards-Wood Co.* 95 M 118, 103 NW 709, 106 NW 304.

Failure to serve on the defendant a proper copy of the garnishee summons and notice is not a jurisdictional defect, such as to render void a judgment entered against the garnishee; but the garnishment proceedings may be dismissed and garnishee discharged on motion of the defendant, specially appearing for that purpose. *Webster v Penrod*, 103 M 69, 114 NW 257.

After a case has been removed by appeal to the district court, garnishment proceedings may be commenced in the district court, even though an appeal bond is in full force and effect. *Hopkins v McCusker*, 103 M 79, 114 NW 468.

Upon a judgment being entered against the assured, it became, even though an appeal is pending, without a supersedeas bond, as between plaintiff, defendant, and surety company, a liability or debt owing by the company to the assured which was subject to garnishment. *Patterson v Adam*, 119 M 308, 138 NW 281; *Mahr v Maryland Casualty*, 132 M 336, 156 NW 668.

It is essential that either the main action be pending or that it be commenced by issuing a valid summons at the time of the issuance of the garnishee summons. *Hudson v Patterson*, 123 M 330, 143 NW 792.

A garnishee holding a claim against debtor in the main action in excess of the claim of plaintiff against debtor, is not liable. *Truan v London Guarantee*, 124 M 339, 145 NW 26.

A debt has a situs wherever defendant may be found; and wherever a creditor might sue for its recovery, there it may be reached by garnishment. This may be done by an action in rem. *Templeton v Van Dyke*, 169 M 188, 210 NW 874.

A garnishment is not an attachment within the meaning of the recording act. Garnishment proceedings for the most part have to do with personal property only. *Watson v Goldstein*, 176 M 18, 222 NW 509.

Garnishment will not lie in an action which is not for the recovery of money. It does not lie in an action for specific performance even if an accounting is an incident of the action. *Mahlberg v Jones*, 176 M 522, 223 NW 922.

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A garnishment matter is not removable to the federal court. *Pearson v Zacher*, 177 M 182, 225 NW 9.

To constitute the issuance of a summons it must be either served or delivered to the proper officer for service. *Borgen v Corty*, 181 M 349, 232 NW 512.

If the garnishee make disclosure without objection, the court acquires jurisdiction irrespective of irregularities in service. By answering or appearing generally in the main action, the court acquires jurisdiction of the defendant in both the main action and also the garnishment proceedings ancillary thereto. *Chapman v Foshay*, 184 M 318, 238 NW 637.

A garnishment proceeding is begun by the service of summons as of the date thereof. It is ancillary or incident to a main action. A supplemental complaint in the garnishment is a continuation of a garnishment already begun, and is not the commencement of a separate action. *Gilloley v Sampson*, 203 M 233, 281 NW 3.

An action is deemed begun when summons is served upon the defendant or is delivered to the proper officer for service. An attorney at law is not a statutory "officer" for the service of a summons. *Melin v Aronson*, 205 M 353, 285 NW 830.

The garnishees, corporate entities, should have been compelled to disclose as to matters dealing with transfers of stock, since it was relevant to the proceeding and information as to possible claimants who might have rights superior to the garnishing creditors. *Wackenbarth v Weisman*, 207 M 507, 292 NW 214.

A federal district court sitting as a bankruptcy court had power to make an ex parte order permitting a plaintiff in a law action in the district court to serve garnishee summons on bankruptcy trustee to make disclosure as provided by law, where a judgment already existed in favor of plaintiff. *National Automatic Tool v Goldie*, 27 F. Supp. 399.

Relation between renter of safe deposit box and the safe deposit company. 11 MLR 448.

What constitutes issuance of a summons. 16 MLR 441.

Proceedings ancillary to suit in state court; right of removal. 23 MLR 543.

Garnishment and bankruptcy. 27 MLR 4.

## 571.02 PROCEEDINGS IN JUSTICE COURT.

HISTORY. 1860 c. 70 s. 2; G.S. 1866 c. 66 s. 148; G.S. 1878 c. 66 s. 165; G.S. 1894 s. 5307; R.L. 1905 s. 4230; G.S. 1913 s. 7860; G.S. 1923 s. 9357; M.S. 1927 s. 9357.

A judgment in a court of justice of the peace against a garnishee upon his disclosure that he was indebted to the defendant, though his indebtedness was evidenced by a judgment, the justice having jurisdiction of the subject matter and of the parties, was with jurisdiction, was subject to correction on appeal, but not subject to collateral attack; and payment by the garnishee of the judgment in the garnishment proceeding discharged pro tanto the judgment in the action against him. *Lloyd v Harris*, 161 M 374, 201 NW 546.

The provisions of section 530.01, providing that a justice of the peace may issue attachments and garnishments running into counties other than the one wherein he resides, do not authorize such attachments and garnishments except in actions of which the justice has jurisdiction; and a corporation which has its principal and only place of business in a given county and no office or residual agent elsewhere is a resident of said given county, within the meaning of section 542.09. *Thomas v Hector*, 216 M 207, 12 NW(2d) 769.

A justice of the peace may charge and collect fees in garnishment proceedings similarly as in civil proceedings generally. 1930 OAG 176, Sept. 30, 1930.

## 571.03 IN DISTRICT COURT.

HISTORY. R.S. 1851 c. 91 s. 2; 1852 amend. p. 17; P.S. 1858 c. 80 s. 2; 1860 c. 70 s. 3; G.S. 1866 c. 66 s. 149; 1871 c. 66 c. 1; G.S. 1878 c. 66 s. 166; G.S. 1894 s. 5308; R.L. 1905 s. 4231; G.S. 1913 s. 7861; G.S. 1923 s. 9358; M.S. 1927 s. 9358.

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The summons in garnishee proceedings cannot properly be issued until the proper affidavit has been filed. It may be issued by the plaintiff's attorney without allowance by a judicial officer. Irregularity is waived by garnishee upon his general appearance. *Black v Brisbin*, 3 M 360 (253); *Hinkley v St. Anthony Falls*, 9 M 55 (44); *Howland v Jeuel*, 55 M 102, 56 NW 581.

A summons is not "process" within the meaning of Minnesota Constitution, Article 6, Section 14; and it need not run in the name of the state. *Hanna v Russell*, 12 M 80 (43).

A garnishment can only be served upon debtors owing debts; and where the assignee has the account books in his possession service naming him as garnishee is ineffectual to reach debtors of the party who made the assignment. *Ide v Harwood*, 30 M 191, 14 NW 884.

Any number of persons may properly be included as garnishees; and a summons made returnable at a time and place named, at a special term of a particular court, then and there held, sufficiently determines the court or officer before whom returnable. *Northwestern Fuel v Kofod*, 74 M 448, 77 NW 206.

A garnishment proceeding is not an independent action, but is incidental and ancillary to the main action; and the district court wherein a judgment was originally entered has sole jurisdiction in garnishment proceedings. *Willson v Pennoyer*, 93 M 348, 101 NW 502.

A garnishee summons is issued when delivered by the plaintiff or his attorney to a proper officer for service upon the garnishee. If by mail, delivery is complete at the time the officer receives it, service on the defendant of a copy of the garnishee summons is not jurisdictional, but if the defendant, specially appearing, moves its discharge, the garnishee proceedings may be dismissed. *Webster v Penrod*, 103 M 69, 114 NW 257.

Origin and legislative history of service of garnishment summons on non-residents by publication and similar. *Wipperman v Jacobson*, 133 M 326, 158 NW 606.

Proper grounds for discharge of garnishee on motion. *McCleery v Davidson*, 157 M 283, 195 NW 1015; *Farmers Bank v Riebe*, 160 M 443, 200 NW 468.

Service of a garnishee summons before the issuance of a valid summons in the main action is unauthorized and of no effect. *Hudson v Patterson*, 123 M 330, 143 NW 792; *First National v Casey*, 164 M 363, 205 NW 264.

There having been a general appearance by the garnishee through his authorized agent, a defect in the summons was immaterial. The garnishee having failed to disclose under oath, judgment was properly entered against him. *Security Bank v Thor*, 184 M 156, 238 NW 52.

Proceedings defective because service was made upon "auditor or agent" of the garnishee without any allegation descriptive of the legal entity. An ex parte order appointing the clerk of the court of Hennepin county as referee when plaintiff and defendant were residents of St. Louis county was unauthorized. *Maras v Butchart*, 192 M 18, 255 NW 83.

Where jurisdiction is obtained of the person of the defendant in the main action, the steps taken to bring in the garnishee are not jurisdictional as to him. *Melin v Aronson*, 205 M 353, 285 NW 830.

Garnishment proceedings through disclosure require no leave of court; but subsequent to disclosure they are under the court's control. *Gulbrandsen v Pelto*, 205 M 609, 287 NW 116.

## 571.04 EFFECT OF SERVICE ON GARNISHEE; FEES.

**HISTORY.** R.S. 1851 c. 91 s. 3; 1852 amend. p. 17; P.S. 1858 c. 80 s. 2; 1860 c. 70 ss. 2, 3; G.S. 1866 c. 66 ss. 149, 150; G.S. 1878 c. 66 ss. 166, 167; G.S. 1894 ss. 5308, 5309; 1901 c. 186; R.L. 1905 s. 4232; G.S. 1913 s. 7862; G.S. 1923 s. 9359; M.S. 1927 s. 9359.

A garnishee cannot be held for property coming under his control after service of the summons in the garnishment proceedings. *Nash v Gale*, 2 M 310 (265); *McLean v Sworts*, 69 M 128, 71 NW 925.

A federal voucher given defendant for personal services to the federal government may be a proper subject of garnishment, as in the instant case in the hands of defendant's attorneys. *Leighton v Heagerty*, 21 M 43.

Persons other than the garnishee may be called upon to testify, and where it develops on full inquiry that in a disputed case the garnishee clearly has property of the defendant in his control, the case does not call for a supplemental complaint. *Leighton v Heagerty*, 21 M 43; *Farmers Bank v Welles*, 23 M 475.

A private boom owner, in exclusive possession of a boom, may properly be charged as garnishee of a defendant who has placed logs in the boom for safe keeping. *Farmers Bank v Welles*, 23 M 475.

An assignee under a general assignment is not properly a garnishee as to amounts due from persons to the one who executed the deed of assignment. *Ide v Harwood*, 30 M 191, 14 NW 884; *Lord v Meachem*, 32 M 66, 19 NW 346.

Certificates of stock in a foreign corporation, when in the hands of third parties, are subject to garnishment proceedings. *Puget Sound Bank v Mather*, 60 M 362, 62 NW 396.

Discussion of duty of the bank to one presenting a check for payment drawn by one whose account has been garnished after the check was drawn, but before in ordinary course it could be presented for payment. *Rostad v Union Bank*, 85 M 313, 88 NW 848.

The pendency of a garnishee action constitutes a defense by way of a plea in abatement in an action by the garnishee's creditor to recover the debt sought to be reached by the garnishment proceedings. The proper practice is a stay of proceedings in the action to recover the debt, pending the determination of liability of the garnishee in the garnishment action. *American Hardwood v Joannin*, 99 M 305, 109 NW 403.

The service of a summons in garnishment proceedings does not change the rights of the parties, further than to transfer the right of the principal defendant to proceed against the garnishee for the collection of the debt; and the lien acquired is generally subject to all equities existing between the garnishee and the defendant. *Bacon v Felthouse*, 103 M 387, 115 NW 205; *Wanderlich v Merchants Bank*, 109 M 468, 124 NW 223; *Swanson v Stafford*, 166 M 481, 208 NW 413.

A creditor by garnishment of a debt gets nothing more than an inchoate lien which cannot be tacked to a lien of an execution on the judgment against the defendant and levied upon the indebtedness by the garnishee so as to make up the four months specified in the bankruptcy act. *Marsh v Wilson*, 124 M 254, 144 NW 959.

In an action to recover money, the plaintiff is not entitled to judgment, where the money sought to be recovered is subject to an undetermined garnishment. *First National v State Bank*, 125 M 262, 146 NW 1093.

Where a debtor by a trust deed assented to by all his creditors in the usual form and for the usual purposes, the creditors took a vested interest in the trust estate; and the vested interest of any creditor is subject to garnishment, and defendant's vested interest is impounded pending the determination of the amount of that interest. *National Surety v Hurley*, 130 M 393, 153 NW 740.

A verdict upon which no judgment has been entered is not subject to garnishment. An unliquidated tort demand arising out of fraud is not garnishable. *Lind v Hurd*, 148 M 190, 181 NW 326.

While the garnishment attaches and binds as of the date of the service, no person shall be adjudged a garnishee by reason of any money or other thing due defendant unless at the time of the service the same is due absolutely and without depending on any delinquency. *First Bank v West*, 185 M 225, 240 NW 892.

Garnishment against a non-resident is a proceeding in rem, and if no property is seized, the proceeding is subject to attack directly or collaterally at any time for lack of jurisdiction. *First Bank v Viegel*, 185 M 225, 240 NW 892.

Where defendant has deposited money in a savings and loan company under agreement entitling her to one share of capital stock for each \$100.00 deposit, the court has jurisdiction to order the company to issue such unissued shares as defendant is entitled to and deliver same to sheriff for sale on execution to satisfy

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a judgment that may be obtained in the main action by a creditor who instituted the garnishment proceedings. *First National v Malerich*, 193 M 626, 259 NW 546; *Wackerborth v Weisman*, 207 M 511, 292 NW 214.

Under usual conditions, contents of two key safe deposit boxes are not subject to garnishment. *Wells v Cole*, 194 M 275, 260 NW 520.

Garnishment statutes are designed to protect creditors without injustice to debtors or garnishees. It is not contemplated that the garnishee interest himself for the protection of the creditor, nor should the statute be so construed as to enable the garnishee to assist his creditor. *Knudson v Anderson*, 199 M 479, 272 NW 376.

Service of the garnishment summons operates as an attachment upon which all subsequent proceedings are based; and plaintiff can assert rights of the defendant against the garnishee only as of the time of, and not before or after, service of the garnishment summons. *Gilloley v Sampson*, 203 M 238, 281 NW 3; *Gilbert v Pioneer Bank*, 206 M 213, 288 NW 153.

When served with garnishment summons, funds belonging to defendant were being held by the garnishee as collateral for his obligations, and, since their future payment depended on a contingency, there was nothing of value belonging to defendant to reach by garnishment. *McKnight v Tomkinson*, 209 M 399, 296 NW 569.

Where a creditor served garnishee summons upon a person holding bankrupt's funds more than four months before petition in bankruptcy was filed, creditor had rights superior to the trustee, notwithstanding the judgment in the bankruptcy proceedings and not entered against the garnishee until the day following filing of bankruptcy petition. *Re Unit Oil Company*, 50 F. Supp. 265.

Acts of bankruptcy; lien by legal proceedings. 25 MLR 102.

Garnishment and bankruptcy. 27 MLR 50.

## 571.05 GARNISHEE SUMMONS; WHEN EFFECTIVE.

HISTORY. 1931 c. 213 ss. 1, 2; 1935 c. 241; M. Supp. s. 9359-1.

## 571.06 PROPERTY SUBJECT TO GARNISHMENT.

HISTORY. 1860 c. 70 ss. 5, 8, 9; G.S. 1866 c. 66 ss. 151, 154, 155; G.S. 1878 c. 66 ss. 168, 171, 172; G.S. 1894 ss. 5310, 5315, 5316; R.L. 1905 s. 4233; G.S. 1913 s. 7863; G.S. 1923 s. 9360; M.S. 1927 s. 9360.

### 1. Generally

### 2. Subject to garnishment

### 3. Not subject to garnishment

#### 1. Generally

An order denying a motion to discharge a garnishee is not appealable, but one denying a motion to vacate an ex parte order making a claimant of the garnishee property a party to the proceedings is appealable. *Security Bank v Brecht*, 150 M 502, 185 NW 1021.

Property arrested by garnishment is subject to all the rights, legal and equitable, of the garnishee therein. *Hansen v Wilmers*, 162 M 139, 202 NW 708; *Carlson v Stafford*, 166 M 481, 208 NW 413; *Knudson v Anderson*, 199 M 481, 272 NW 376.

Defendants were insurance brokers, and plaintiff sued and garnished their bank account. Held that insurance company, as intervenor, had no superior right to the money as a trust fund made up of premiums collected from people insuring in their company. *Mannheimer v Phinney*, 174 M 504, 219 NW 765.

A plaintiff may not garnishee property in his hands belonging to the defendant, and it is an abuse of process for a corporate creditor having possession of a motor car, to assign their claim against the car owner to the president of the corporation so that he may sue and garnishee. *Wood v Bangs*, 199 M 208, 271 NW 447.

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Exclusion from insurance coverage of driving which is prohibited by law is not unreasonable, and in the instant case, the insurance company may have a defense and the garnishment is discharged. *Giacomo v State Mutual*, 203 M 185, 280 NW 653.

A garnishment action is begun by the service of summons as of the date thereof, and a supplemental complaint in the garnishment is a continuation of the action so begun and not the commencement of a separate action. *Gilloley v Sampson*, 203 M 234, 281 NW 3.

Deposit for a specific purpose. Rights of attaching creditor. 8 MLR 546.

Garnishment before proofs of loss filed. 9 MLR 159.

Spendthrift trusts. Creditor's right to reach beneficiary's interest. 15 MLR 577.

Garnishment of shares of corporate stock where certificates have not been issued. 19 MLR 809.

Garnishment of funds upon which garnishee has a lien. 25 MLR 953.

Garnishment and bankruptcy. 27 MLR 50.

### 2. Subject to garnishment

The following are subject to garnishment: Bonds of the state in hands of trustee for benefit of owner and owner's creditors. *Banning v Sibley*, 3 M 389 (282).

A federal voucher for labor performed for the United States and in the hands of the owner's attorneys for collection. *Leighton v Heagerty*, 21 M 42.

Logs under the control of a boom company. *Farmers Bank v Welles*, 23 M 475.

Money in hands of garnishee which in equity and good conscience belongs to defendant. *De Graff v Thompson*, 24 M 452; *Pabst v Liston*, 80 M 473, 83 NW 448.

Debt owing to a non-resident, the debtor being within the state. *Lewis v Bush*, 30 M 244, 15 NW 113; *Harvey v Great Northern*, 50 M 405, 52 NW 905.

If the garnishee has a lien on defendant's property in his hands, the fact that the amount of it is unliquidated will not defeat the garnishment. *Trunkey v Crosby*, 33 M 464, 23 NW 846.

Property held by an assignee under a general assignment for the benefit of, but invalid as to the instant creditor. *May v Walker*, 35 M 194, 28 NW 252.

Money deposited with the clerk of court but not under order of the court is subject to garnishment. *Marine National v Whiteman*, 49 M 133, 51 NW 665.

Money due from the receiver of a railroad company, appointed by the federal court, is subject to garnishment; but no execution may issue against the receivers, and the creditor must make application to the federal court in charge of the receivership for an order directing payment. *Irwin v McKechnie*, 58 M 145, 59 NW 987.

Certificates of stock in a foreign corporation in the hands of third parties are subject to garnishment. *Puget Sound Bank v Mather*, 60 M 362, 62 NW 396.

Courts of this state have jurisdiction to entertain garnishment against non-residents where defendants and garnishee, are both personally served within the state. *Swedish Bank v Bleecker*, 72 M 383, 75 NW 740.

Where the warehouseman agreed to keep goods safely, and they were destroyed, there is an absolute liability from the warehouseman, and a creditor of the bailor may garnishee the warehouseman. *Olson v Brady*, 76 M 8, 78 NW 864.

Money in the hands of a stakeholder of a bet may be garnished. *Pabst v Liston*, 80 M 473, 83 NW 448.

Where probate proceedings are pending, and funds of an heir in the hands of an administrator are garnished, the proper practice is for the court taking the disclosure to stay all proceedings pending construction of the will and a deter-

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mination of its legal effect in the probate court. *Duxbury v Shanohan*, 84 M 353, 87 NW 944.

A debt due from one foreign corporation to another foreign corporation, arising out of a contract entered into in this state at the resident agency of the former, is subject to garnishment in an action in this state by a Minnesota resident. *Krafve v Roy*, 98 M 141, 107 NW 966.

The courts of this state, (distinguishing *Swedish Bank v Bleecker*, 72 M 383, 75 NW 740, and *McKinney v Milis*, 80 M 478, 83 NW 452), have jurisdiction to entertain garnishment proceedings against non-residents in all cases where defendant and garnishee are both personally served with process while within the state. *McShane v Knox*, 103 M 268, 114 NW 955.

In an action brought by a resident plaintiff to recover damages for a negligent shipment of goods to a point in this state, a debt due from a corporation doing business here to a corporation not doing business here is subject to garnishment. *Starkey v Cleveland*, 114 M 27, 130 NW 540.

Notwithstanding the sale contract to third party claimant, the money in the hands of the auction clerk legally was the property of the defendant and subject to garnishment. *Johnson v Carlin*, 123 M 444, 143 NW 1130.

Where a debtor by trust deed conveys his property for benefit of creditors to which all assent, each creditor acquires a vested interest in the estate, and such interest is subject to garnishment. *National Surety v Hurley*, 130 M 393, 153 NW 740.

A judgment is sufficient upon which to base garnishment, although on appeal without supersedeas. *Mahr v Maryland Casualty*, 132 M 336, 156 NW 668.

In an action by a third party against the insured, under an indemnity policy, where the insurer assumes the defense under the policy, a judgment in the action becomes as between plaintiff, defendant and insurer, a liability or debt owing unconditionally by the insurer to the insured which may be reached by garnishment. *Reilly v Linden*, 151 M 7, 186 NW 121.

A promise to apply the proceeds of specified property upon a particular debt does not give a lien upon or right to such proceeds until so applied, and until so applied they may be attached by garnishee process in an action against the promissor. *O'Connor v Einfeldt*, 164 M 422, 205 NW 268.

Where funds garnished were claimed by a bowling club of which defendant was treasurer, no relation of trustee and cestui que trust existed. *Coffin v Prudenske*, 190 M 160, 251 NW 19.

Money and property in the hands of the representatives of an estate are subject to garnishment. *Fulton v Okes*, 195 M 252, 262 NW 570.

The contractor had completed his contract. The unpaid balance due him was not in dispute. There was nothing remaining contingent, and the fund to debtor's credit was subject to garnishment. *Northern Engineering v Neukom*, 210 NW 329, 208 NW 47.

### 3. Not subject to garnishment

The following are not subject to garnishment; Insured's interest in a policy of insurance when the loss is unadjusted and contingent. *Geis v Bechtner*, 12 M 279 (183);

Property in custodia legis. *Davis v Seymour*, 16 M 210 (184); *Mann*, insolvent, 32 M 60, 19 NW 347; *Simon v Mann*, 32 M 65, 19 NW 347; *Lord v Meachem*, 32 M 66, 19 NW 346; *Second National v Schranck*, 43 M 38, 44 NW 524;

Money chargeable to garnishee by defendant for delivery of logs not subject to garnishment because only delivered in part and balance contingent. *Wheeler v Day*, 23 M 545.

Chattels were purchased at an agreed price but subject to liquidation of liens against the chattels of an undetermined amount. The amount was contingent and not subject to garnishment until the exact amount was determined. *Durling v Peck*, 41 M 317, 43 NW 65.



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Property in the hands of a common carrier for shipment to a place outside the state is not subject to garnishment. *Stevenot v Eastern Railway*, 61 M 104, 63 NW 256; *Baldwin v Great Northern*, 81 M 247, 83 NW 986.

A debt owing by and to a non-resident is not subject to garnishment. *Swedish Bank v Bleecker*, 72 M 383, 75 NW 740; *McKinney v Mills*, 80 M 478, 83 NW 452.

An administrator may pay over to an heir or legatee funds properly payable to him, and without an order of probate court, and he cannot be held as garnishee of the party to whom the money was paid prior to the service of the garnishee summons. *Kraus v Kraus*, 81 M 484, 84 NW 332.

Proper practice of carrier where goods of shipper are seized in transit. *Merz v Chicago, Northwestern*, 86 M 33, 90 NW 7.

A judgment obtained in and by citizen of Minnesota against an Iowa corporation doing business here, cannot be impounded or its collection here stayed by garnishment proceeding in Iowa by a creditor of the plaintiff in the Minnesota case, naming the Iowa judgment debtor garnishee. *Boyle v Musser*, 88 M 456, 93 NW 520.

A railroad car of a foreign company sent into this state with freight to be delivered here and there, within a reasonable time, reloaded, and forwarded to the state from which it came, is not liable to attachment here. *Connery v Quincy Omaha*, 92 M 20, 99 NW 365.

A garnishment of funds belonging to an insolvent person within four months of the time he is adjudged a bankrupt is, within the meaning of the federal bankruptcy act, dissolved and rendered null and void by the bankruptcy proceedings. *Cavanaugh v Fenley*, 94 M 505, 103 NW 711.

Where the funds garnished are payable to the debtor conditionally the garnishee must be discharged. *Bacon v Felthous*, 103 M 387, 115 NW 205.

A verdict upon which no judgment has been entered is not subject to garnishment. *Lind v Hurd*, 148 M 190, 181 NW 326.

By operation of the statutes of South Dakota, a debt due to an insolvent bank passed to the superintendent of banks, and nothing was attached by the garnishment. *Mercantile State v Farmers Bank*, 160 M 229, 199 NW 575; *Pride v Bank of Commerce*, 170 M 120, 212 NW 3.

The garnishee disclosure of an automobile indemnity insurer does not show that by carrying on the defense for the assured it estopped itself or waived the right to assert nonliability under the policy. *Humphrey v Polski*, 161 M 61, 200 NW 812.

Under the Minnesota standard form of fire insurance policy, claim after loss is not subject to garnishment if dependent on any contingency. *Smaltz v Poppe*, 172 M 44, 214 NW 762.

Where bills for labor and material remain unpaid by a contractor who has agreed to pay them as an incident to his contract, money unpaid on such contract is not subject to garnishment, because payment depends on a contingency. *National Exchange v Solberg*, 175 M 437, 221 NW 677.

An unpaid check in the hands of an attorney and upon which he has a lien for services, and as only a part of the proceeds of the check belong to the attorney's client, is not garnishable. *Lundstrom v Hedge*, 185 M 43, 239 NW 664.

As the property attached is not absolutely due and owing, but payment is contingent, the disclosure does not support the garnishment. *First Bank v Veigel*, 185 M 225, 240 NW 892.

Contents of a safe deposit box which can be opened only by the simultaneous use of two keys, not subject to garnishment. *Wells v Cole*, 194 M 275, 260 NW 520.

When served with garnishment summons, funds belonging to the defendant were being held by the garnishee as collateral to his obligations, and since their future payment or delivery to defendant was dependent upon collectibility of certain pledged collateral (a contingency), there was nothing reached by garnishment. *McKnight v Tomkinson*, 209 M 399, 296 NW 569.

# MINNESOTA STATUTES 1945 ANNOTATIONS

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GARNISHMENT 571.08

## 571.07 PROPERTY SUBJECT TO GARNISHMENT; MONEY DUE FROM HIGHWAY DEPARTMENT; PROCEDURE.

HISTORY. 1923 c. 363; 1925 c. 33; M.S. 1927 s. 9360-1.

Laws 1923, Chapter 363, as amended by Laws 1925, Chapter 33, subjecting to garnishment money owed by the state to employees of the highway department is constitutional as against the objection of special legislation, lack of equal protection, and due process. *Franke v Allen*, 199 M 450, 272 NW 165.

## 571.08 WHEN GARNISHMENT PROHIBITED.

HISTORY. 1860 c. 70 s. 7; G.S. 1866 c. 66 s. 153; G.S. 1878 c. 66 s. 170; G.S. 1894 s. 5312; R.L. 1905 s. 4234; G.S. 1913 s. 7864; G.S. 1923 s. 9361; M.S. 1927 s. 9361.

1. Clause (1)
2. Clause (2)
3. Clause (3)
4. Generally

### 1. Clause (1)

In case of a loss under an insurance policy containing certain conditions of limitation, until the adjustment of the loss or waiver of conditions precedent, the payment of the claim is contingent, and the claim is not the subject of garnishment. *Gies v Bechtner*, 12 M 279 (183).

While the amount and price of logs had been agreed upon, the amount was determinable when logs were delivered at the boom pool. The delivery not having been completed, the liability is contingent, and funds are not subject to garnishment. *Wheeler v Day*, 23 M 345.

The chattels were sold at an agreed price, but the purchaser was to adjust and pay all liens against them and pay the balance to the vendor. The amount being contingent garnishment did not lie. *Durling v Peck*, 41 M 317, 43 NW 65.

Under our standard form of fire insurance policy, claim after loss is not subject to garnishment if dependent on any contingency. *Smaltz v Poppe*, 172 M 43, 214 NW 762.

Where an attorney collected a claim for client in the form of a check, the fund represented by the check is not subject to garnishment by a creditor of the client, because under the attorney's lien for fees the amount is contingent and uncertain until adjusted. *Lundstrom v Hedge*, 185 M 43, 239 NW 664.

The contingency which will prevent garnishment is not presented by the mere fact of denial by the garnishee of the obligation. The uncertainty contemplated by law is one that conditions the obligation itself. The contingency must affect the actual liability of the garnishee. *Knudson v Anderson*, 199 M 479, 272 NW 376.

Garnishment of fire insurance before proofs of loss are filed. 9 MLR 159.

### 2. Clause (2)

A judgment obtained in, and by a citizen of, this state, against a foreign corporation doing business here, cannot be impounded by attachment or garnishment proceedings in the state where the judgment creditor was incorporated in an action brought by a corporation of that state against the judgment creditor upon whom substituted service only can be made. *Boyle v Musser*, 88 M 456, 93 NW 520.

The provisions of section 571.08 prevent the garnishment of a judgment against a county, even though at the time the execution was being stayed by statute until funds were available in the treasury. *United States Fidelity v Haney*, 166 M 403, 208 NW 17.

**3. Clause (3)**

The maker of a promissory note cannot be garnished upon it in an action against the maker. *Hubbard v Williams*, 1 M 54 (37); *Groh v Bassett*, 7 M 325 (254).

A garnishee must be tried upon his disclosure, and cannot be contradicted. If the disclosure leaves any doubt as to his indebtedness, he must be discharged. *Cole v Sater*, 5 M 468 (378).

In an action on promissory notes, a verdict upon which no judgment has been entered is not subject of garnishment. *Lind v Hurd*, 148 M 190, 181 NW 326.

Party who has incurred liability as maker of a check does not thereby become liable as garnishee. Where delay of presentation is asked and granted, the drawer may be liable on the check as a negotiable instrument, and is not subject to garnishment. *Kullberg v Smith*, 173 M 505, 216 NW 249, 218 NW 99.

The state has the same jurisdiction over chattels as over real property. So as to chattels within the state, the courts have power to proceed in rem or quasi in rem; so as to bearer bonds the courts may determine title by a proceeding quasi in rem. *First Trust v Matheson*, 187 M 473, 246 NW 1.

Where agreement contained in collateral notes constituted a present pledge of maker's property and checking account balances in bank's possession as security for maker's indebtedness to bank, and gave bank right to apply all of maker's property in bank's hands to payment of any indebtedness on attempted garnishment, and at time of service of garnishee summons on bank, maker's indebtedness to bank was in excess of value of moneys of maker in bank's possession, the bank was not subject to garnishment, even though no part of the indebtedness was past due. *Lang v Northern Jobbing Co.* 22 F. Supp. 689.

**4. Generally**

Indebtedness incurred by the federal receivers of a railway company, operating under the federal court are subject to garnishment, but the judgment obtained must be collected by applying to the federal court for payment in the same manner as other bills. *Irwin v McKechnie*, 58 M 145, 59 NW 987.

A garnishment proceeding is incidental to the main action; and where a supplemental complaint is filed against the garnishee, it is a part of the pending action and not a new case. *Olson v Brady*, 76 M 8, 78 NW 864.

The proper tribunal to determine whether a garnishee may be charged as such on the facts of his disclosure is the court in which the garnishment action is pending. *American Hardwood v Joannin*, 99 M 305, 109 NW 403.

The examination was directed to the situation at the time of the disclosure, which was immaterial. The disclosure should have been as of the date of service of the summons, so the disclosure is insufficient to support a judgment against the garnishee. *First Bank v Veigel*, 185 M 225, 240 NW 892.

**571.09 EXAMINATION OF GARNISHEE.**

**HISTORY.** R.S. 1851 c. 91 s. 7; 1852 amend. pp. 17, 18; P.S. 1858 c. 80 s. 7; 1860 c. 70 s. 10; 1864 c. 36 s. 1; G.S. 1866 c. 66 s. 156; 1871 c. 66 s. 1; G.S. 1878 c. 66 s. 173; G.S. 1894 s. 5317; R.L. 1905 s. 4235; G.S. 1913 s. 7865; G.S. 1923 s. 9362; M.S. 1927 s. 9362.

Under the garnishment statute, Public Statutes 1858, Chapter 80, the disclosure of the garnishee was conclusive on the plaintiff. Evidence in corroboration of garnishee was admissible but not evidence in contradiction. *Banning v Sibley*, 3 M 389 (282); *Chase v North*, 4 M 381 (288); *Cole v Sater*, 5 M 468 (378); *Leighton v Heagerty*, 21 M 42.

Where the plaintiff is not satisfied with the disclosure, his only course is to proceed by supplemental complaint. *Vanderhoof v Halloway*, 41 M 498, 43 NW 331.

No supplemental complaint being filed, and no third party claim, the statute does not contemplate findings of fact. *Wildner v Ferguson*, 42 M 112, 43 NW 794.

There is no provision for pleading on the part of the garnishee. Plaintiff has the right to examine the garnishee so as to bring out all the facts in order that the court and not the garnishee may determine latter's liability. Garnishee may state matters in defense or setoff. Applications for further disclosure on the ground of mistake, inadvertence or excusable neglect may be addressed to the judicial discretion of the trial court. *Milliken v Mannheimer*, 49 M 521, 52 NW 139.

Garnishee appeared by attorney and offered to file an affidavit denying any indebtedness but did not answer in any other manner. Judgment was properly entered against the garnishee. *Peterson v Lake Tetonka*, 72 M 263, 75 NW 375.

The garnishee, executor of an estate, may introduce testimony other than his own for the purpose of corroboration and explanation of his testimony and for the purpose of showing that the money and effects in his hands do not belong to the judgment creditor. *Pitzl v Winter*, 96 M 499, 105 NW 673.

Failure to serve a copy of the garnishee summons and notice on defendant is not jurisdictional, but defendant may appear specially on the date set for disclosure and move and obtain a dismissal. *Webster v Penrod*, 103 M 69, 114 NW 257.

Prior to the revision of the laws in 1905, if an affidavit was filed that defendant was a non-resident, it was not necessary to serve notice on him. The report of the commission that no change was made, and the act of the legislature in enacting the revision into law, relieves plaintiff from giving notice to a non-resident. *Wipperman v Jacobson*, 133 M 326, 158 NW 606.

Application to open judgment against garnishee and permit further disclosure was addressed to the discretion of the court and was properly denied. *Olmstad v Meyers*, 155 M 507, 194 NW 2.

Order discharging garnishee based on lack of notice to defendant or filing of affidavit, and also that fund was proceeds of sale of homestead, is sustained. *McCleery v Davidson*, 157 M 283, 195 NW 1015.

Plaintiff allowed to cross-examine person making garnishment disclosure for a corporation. *Hansen v Wilmers*, 162 M 139, 202 NW 708.

The issue between a judgment creditor and a garnishee, as to whether the latter is under any liability to the judgment debtor which can be subject to garnishment, arises under a statutory proceeding which is equitable in nature. In consequence, there is no constitutional right to trial by jury. *Bassi v Bassi*, 165 M 100, 205 NW 947.

The service of a garnishee summons does not change the rights of the parties except to transfer to the plaintiff whatever claim the defendant had against the garnishee. In the instant case, it operated as an equitable assignment. *Carlson v Stafford*, 166 M 481, 208 NW 413.

Wherever a creditor can sue debtor he can attach debtor's property. It may be done by an action in rem, though all the parties are non-resident. *Templeton v Van Dyke*, 169 M 188, 210 NW 874.

Irregularities in the garnishee proceeding did not deprive the court of jurisdiction. *O'Day v O'Day*, 171 M 282, 214 NW 26.

There was no abuse in permitting a garnishee who was not represented by an attorney to make a supplemental disclosure; and the garnishee is not estopped by the facts revealed at the first disclosure. *Bank v Meyers*, 182 M 178, 233 NW 864.

There having been a general appearance by duly authorized agent of the garnishee, a fatal defect in service of the summons was immaterial. The garnishee having failed to disclose under oath, judgment was properly taken against him by default. *State Bank v Thor*, 184 M 156, 238 NW 52.

Where the garnishee appeared by attorney and filed written affidavits, and the attorney was sworn but declined to answer pertinent questions, judgment was properly entered against the garnishee. *Olds v Berggren*, 189 M 640, 250 NW 567.

**571.10 GARNISHMENT OF CORPORATIONS.**

HISTORY. R.S. 1851 c. 91 s. 23; P.S. 1858 c. 80 s. 23; 1860 c. 70 s. 6; G.S. 1866 c. 66 s. 152; G.S. 1878 c. 66 s. 169; G.S. 1894 s. 5311; R.L. 1905 s. 4236; G.S. 1913 s. 7866; G.S. 1923 s. 9363; M.S. 1927 s. 9363.

Where an attorney for the garnishee appeared and filed an ex parte affidavit denying any liability to defendant, but made no other disclosure, judgment was properly entered against the garnishee for failure to disclose. *Peterson v Lake Tetonka*, 72 M 263, 75 NW 375; *Olds v Berggren*, 189 M 640, 250 NW 567.

In citing in other parties to supplement the disclosure by the garnishee, the court exercised reasonable discretion. *Johnson v Bergman*, 80 M 73, 82 NW 1108.

**571.11 SALARIES OR WAGES OF OFFICERS OR EMPLOYEES OF MUNICIPAL CORPORATIONS; PROCEDURE.**

HISTORY. 1901 c. 96; R.L. 1905 s. 4237; G.S. 1913 s. 7867; G.S. 1923 s. 9364; 1925 c. 387; M.S. 1927 s. 9364.

This section originated with Laws 1901, Chapter 96, and changes the rule in case of *McDougal v Board*, 4 M 184 (130), and under the present law a public corporation is subject to garnishment when it owes an ordinary debt to a third person. *Mitchell v Miller*, 95 M 62, 103 NW 716.

Revised Laws 1905, Section 4096 (section 542.10), does not authorize a change of venue in an action to which the municipal corporation is a party defendant from the county in which the municipality is located. *State ex rel v District Court*, 120 M 458, 139 NW 947.

There is no power in the district court to authorize a receiver, appointed in proceedings supplementary to execution, to collect the official salary to be earned in the future by the judgment debtor. *Knott v Hawley*, 166 M 364, 207 NW 736.

Under the police power, the legislature may regulate, if it proceeds reasonably, the assignment of unearned wages or salary, and the statute applies to an elective county commissioner. *Murphy v County of St. Louis*, 187 M 70, 244 NW 335.

Bankrupt's assignment of salary expected to be earned by him in future is not fraudulent "transfer of property" barring his discharge. *Strane v Schaeffer*, 87 F(2d) 365.

Municipal corporations; liability to garnishment. 15 MLR 247.

**571.12 WHEN PROPERTY GARNISHED EXCEEDS CLAIM.**

HISTORY. 1901 c. 186; R.L. 1905 s. 4238; G.S. 1913 s. 7868; G.S. 1923 s. 9365; M.S. 1927 s. 9365.

**571.13 CLAIMANT OF PROPERTY TO BE JOINED.**

HISTORY. 1860 c. 70 s. 11; G.S. 1866 c. 66 s. 157; G.S. 1878 c. 66 s. 174; G.S. 1894 s. 5318; R.L. 1905 s. 4239; G.S. 1913 s. 7869; G.S. 1923 s. 9366; M.S. 1927 s. 9366.

1. Generally
2. Summoning claimant
3. Pleading; burden of proof
4. Answer
5. Practice
6. Evidence

**1. Generally**

A claimant who succeeds is entitled to the same costs as a defendant in an action. *Mahoney v McLean*, 28 M 63, 9 NW 76; *Twohy v Melbye*, 83 M 394, 86 NW 411.

Where the money or property in the hands of a garnishee is claimed by a person not a party to the action, the mode of procedure is governed by section 571.13, and not by section 571.14. *Smith v Barclay*, 54 M 47, 55 NW 827.

In an action upon a bond given to secure the release of money in the hands of a garnishee in which it is stated that there was on hand in the possession of the garnishee a definite sum of money, the principals and sureties are estopped from asserting that there was no garnishable property in the hands of the garnishee at the time of the service of the process. *Mensing v Meland*, 181 M 405, 232 NW 631.

Intervenors having appeared separately, each by his own attorney, and plaintiff having joined issue on each complaint in intervention, are severally entitled to charge statutory costs. *Pesis v Burdman*, 190 M 563, 252 NW 454.

### 2. Summoning claimant

Where the garnishee discloses an indebtedness, but shows that it is claimed to have been assigned and is due to a third person named, it is error to order judgment against the garnishee before the claimant is cited in and made a party; and the rights of such claimant cannot be barred or affected by the judgment, unless he is duly summoned to appear, and is made a party to the proceeding. *Levy v Miller*, 38 M 526, 38 NW 700.

If a plaintiff in a garnishment proceeding desires to take issue on the disclosure of the garnishee, or if there be a claimant of the fund, our statutes contemplate a trial of the issue, upon evidence as in ordinary litigated actions. *Parke Davis v Mewhirter*, 150 M 234, 185 NW 648.

The place of trial may be changed upon application of the intervenor if the court in its discretion so orders. *State ex rel v District Court*, 150 M 498, 185 NW 1019.

Denying a motion to vacate an ex parte order making a claimant a party to the garnishment proceedings is appealable. *Security Bank v Brecht*, 150 M 505, 185 NW 1021.

Where issues are framed as between plaintiff and third party claimant, it was error for the judge to discharge the garnishee without a trial of the issues so raised. *Lincoln National v Murphy*, 152 M 435, 189 NW 433.

### 3. Pleading; burden of proof

The affirmative is on the claimant who must serve first pleading in the form of a complaint in intervention to which the plaintiff may answer. *Donnelly v O'Connor*, 22 M 309; *North Star v Ladd*, 32 M 381, 20 NW 334; *Smith v Barclay*, 54 M 47, 55 NW 827; *Conroy v Ferree*, 68 M 325, 71 NW 383.

Claimant may rest his claim upon the disclosure alone. *Donnelly v O'Connor*, 22 M 309.

In the instant case, the answer of the plaintiff to the intervening complaint shows the superior right of the claimant. *McMahon v Merrick*, 33 M 262, 22 NW 543.

The complaint need not allege matter already of record in the garnishment proceedings. *Smith v Meyer*, 84 M 455, 87 NW 1122.

Misnaming claimant by using "bank" instead of "company" in reference did not affect the situation. *Hancock v Midwest Food Co.* 182 M 426, 234 NW 696.

### 4. Answer

The answer need not allege facts alleged in the original complaint or which appear of record in the main action. *Smith v Barclay*, 54 M 47, 55 NW 827; *Smith v Meyer*, 84 M 455, 87 NW 1122.

Plaintiff has 20 days to answer the intervening complaint. *Leslie v Godfrey*, 55 M 231, 56 NW 818.

### 5. Practice

Claimant has the same opportunity to protect his interests as is accorded a party in an ordinary action. *Donnelly v O'Connor*, 22 M 309.

Claimants should be brought in or should be allowed to intervene by formal order. *Williams v Pomeroy*, 27 M 85, 6 NW 445; *Levy v Miller*, 38 M 526, 38 NW 700.

A claimant may move to discharge the garnishee, even though a previous motion by other parties has been denied. *McMahon v Merrick*, 33 M 262, 22 NW 543.

Personal service of an order to a non-resident to intervene if served outside the state is void. *Levy v Miller*, 38 M 526, 38 NW 700.

On issues formed on complaint in intervention and answers thereto, the parties are entitled to a trial as in ordinary actions; and if trial to the court, findings of fact should be made. *Wildner v Ferguson*, 42 M 112, 43 NW 794; *Leslie v Godfrey*, 55 M 231, 56 NW 818.

Neither party is entitled to a jury trial as of right. *Smith v Barclay*, 54 M 47, 55 NW 827; *Weibeler v Ford*, 61 M 398, 63 NW 1075.

The intervenor not being the owner of the property involved, has no right to question the sale thereof to the several garnishees who were successful bidders therefor at the auction. *Kronberg v Bondhus*, 164 M 446, 205 NW 371.

A referee has power to bring in a claimant. If the claimant fails to appear or intervene, the final order of the court bars any interest he may have had. *Hancock v Midwest Co.* 182 M 426, 234 NW 696.

Where in a garnishment the garnishee summons is served before the summons in the main action is issued and delivered to the officer for service, and a subsequent garnishment is regularly and lawfully made by a third party before the defect in the first garnishment has been waived the plaintiff in the second garnishment is entitled to intervene in the first and claim the right of precedence in the fund or property in the hands of the garnishee. *Nash v Brauman*, 210 M 203, 297 NW 755.

### 6. Evidence

Under allegation of ownership in the complaint of the claimant and denial in answer of plaintiff, the plaintiff may introduce any evidence to impeach the title of claimant. *North Star v Ladd*, 32 M 381, 20 M 334; *Coykendall v Ladd*, 32 M 529, 21 NW 733; *Smith v Barclay*, 54 M 47, 55 NW 827.

The "disclosure" of the garnishee is competent evidence in favor of a "claimant." *Bradley v Thorne*, 67 M 281, 69 NW 909.

Where by an answer to a supplemental complaint served upon a garnishee, allegations contained in the latter to the effect that the garnishee holds property belonging to the defendant, by virtue of a transfer fraudulent as to creditors, are put in issue, it is incumbent upon the plaintiff creditor to prove the indebtedness at the trial; and a finding of the existence of the debt at the time of transfer to sustain a finding that the transfer was made to delay or defraud. *First National v Brass*, 71 M 211, 73 NW 729.

Statements of officers of the bank made in casual conversation with plaintiff or in an affidavit procured by plaintiff for his own purposes, are not admissions of the bank, nor evidence against the bank. *McCoy v City National*, 128 M 455, 151 NW 178.

In a garnishment action where several intervenors established their right to the res, the rule excluding testimony of the declaration of an assumed agent to show his agency does not touch the competency of the testimony of the agent, otherwise admissible, to establish the agency. *Pesis v Burdman*, 190 M 563, 252 NW 454.

**571.14 PROCEEDINGS WHEN DEBT OR TITLE IS DISPUTED.**

**HISTORY.** 1860 c. 70 s. 12; G.S. 1866 c. 66 s. 158; G.S. 1878 c. 66 s. 175; G.S. 1894 s. 5319; R.L. 1905 s. 4240; G.S. 1913 s. 7870; G.S. 1923 s. 9367; M.S. 1927 s. 9367.

1. Generally
2. Exclusive mode of controverting disclosure
3. Service of notice and complaint
4. When not allowed
5. Practice
6. Fraudulent conveyances

**1. Generally**

When the plaintiff submits the liability of garnishee on the disclosure alone, he cannot afterwards petition for leave to file a supplemental complaint. *Mahoney v McLean*, 28 M 63, 9 NW 76.

The framing of issues under this section is not a matter of right. It can be done, if at all, at the discretion of the court. *Mahoney v McLean*, 28 M 63, 9 NW 76.

The "disclosure" of the garnishee is competent evidence in favor of a "claimant" and against the plaintiff, on which to order judgment in favor of the intervenor. *Bradley v Thorne*, 67 M 281, 69 NW 909.

To entitle a party to an order permitting the filing of a supplemental complaint under section 571.14, he must make application therefor with reasonable diligence, and, if he neglects to do so for an unreasonable length of time, his application will be denied. *Stacy v Stephen*, 78 M 480, 81 NW 391.

The disclosure was in effect a denial of liability, was sufficient in form, and presented an issue of fact as to the law of Nebraska to be tried upon a supplemental complaint as provided for by section 571.14. In view of the issue thus presented, plaintiff was not entitled to judgment on the disclosure. *Culver v Johnson*, 131 M 75, 154 NW 739.

An order under section 571.14 granting plaintiff leave to file a supplemental complaint against a garnishee is not appealable. *Medgarden v Paulson*, 172 M 368, 215 NW 516.

A referee may, under section 571.13, bring in a claimant without a direct order of the court to do so. *Hancock v Midwest Packers*, 182 M 426, 234 NW 696.

**2. Exclusive mode of controverting disclosure.**

The garnishee having denied any indebtedness to the defendant, the plaintiff can only proceed further by filing a supplemental complaint as provided in Laws 1860, Chapter 70, Section 12 (section 571.14). *Ingersoll v First National*, 10 M 396 (315); *Stub v Hein*, 129 M 189, 152 NW 136; *Culver v Johnson*, 131 M 78, 154 NW 739; *Parke Davis v Mewhirter*, 150 M 235, 185 NW 648.

*Davis* brought suit against *Spratt* and summoned *Mendenhall* as garnishee. The creditor may prove in this suit, without alleging it by supplemental complaint that a bill of sale of said property, given by *Spratt* to his foreman, was not meant to operate, but was merely a cover-up from creditors. *Davis v Mendenhall*, 19 M 149 (113); *Leighton v Heagerty*, 21 M 46; *Vanderhoof v Holloway*, 41 M 498, 43 NW 331.

Upon garnishee disclosure, the executor of an estate may introduce testimony other than his own for the purpose of explanation and corroboration of his own, and develop facts additional to his own disclosure. *Pitzl v Winter*, 96 M 499, 105 NW 673.

In an action brought by a third party against the insured under an indemnity policy, where the insurer assumes the defense as it agreed to do under the policy, a judgment in the action becomes as between plaintiff, defendant, and insurer,



a liability owing unconditionally by the insurer to the insured, which may be reached by garnishment. *Reilly v Linden*, 151 M 2, 186 NW 121.

### 3. Service of notice and complaint

Notice of application for leave to serve a supplemental complaint, and the supplemental complaint, may properly be served on the attorney who has appeared for the defendant. *Trunkey v Crosby*, 33 M 464, 23 NW 846; *Wipperman v Jacobson*, 133 M 329, 158 NW 606.

### 4. When not allowed

Will not be allowed if the facts disclosed by garnishee in themselves warrant judgment against him. *Leighton v Heagerty*, 21 M 42, *Farmers Bank v Welles*, 23 M 475.

Where money or property in the hands of a garnishee is claimed by a person not a party to the action, the mode of procedure is governed by section 571.13 and not by section 571.14. *Smith v Barclay*, 54 M 47, 55 NW 827; *King v Carroll*, 74 M 470, 77 NW 409.

The contingency which will prevent garnishment is not presented by the mere denial of any obligation by the garnishee. The uncertainty contemplated by law is one that conditions the obligation itself. The contingency must affect the actual liability of the garnishee. *Knudson v Anderson*, 199 M 479, 272 NW 376.

### 5. Practice

In garnishment proceedings, if, after a disclosure, the plaintiff submit the matter for decision on the disclosure, and the court decide it, it is too late for him to ask leave to file a supplemental complaint. The framing of issues in such proceedings, other than by supplemental complaint, is not a matter of right. If it can be done at all, it is within the discretion of the court. All proceedings are deemed a continuance of the garnishment proceeding. *Mahoney v McLean*, 28 M 63, 9 NW 76; *Trunkey v Crosby*, 33 M 464, 23 NW 846; *Olson v Brady*, 76 M 8, 78 NW 864.

Where, upon a trial under the supplemental complaint, the plaintiff makes the garnishee his witness, it is in the discretion of the court to permit the plaintiff to ask him as to former statements inconsistent with his testimony. *Trunkey v Crosby*, 33 M 464, 23 NW 846.

On issues formed by the supplemental complaint and answer thereto the trial is governed by the same rules of procedure and evidence as an ordinary civil action. The court should make findings of fact. *Wildner v Ferguson*, 42 M 211, 43 NW 794; *Bank v Brass*, 71 M 211, 73 NW 729.

A third party claimant should proceed by section 571.13 and not under section 571.14. *Smith v Barclay*, 54 M 47, 55 NW 827; *First National v Brass*, 71 M 211, 73 NW 729.

Neither party is entitled to a jury trial as a matter of right. *Weibeler v Ford*, 61 M 398, 63 NW 1075.

A supplemental complaint is to be construed in connection with the original complaint and it is not necessary to repeat allegations found in the original. (See as to burden of proof). *First National v Brass*, 71 M 211, 73 NW 729; *Olson v Brady*, 76 M 8, 78 NW 864; *Smith v Meyer*, 84 M 455, 87 NW 1122.

The court will take judicial notice of the entry of judgment in the main action. *Olson v Brady*, 76 M 8, 78 NW 864.

A judgment cannot be rendered against a garnishee upon unevasive disclosure which does not affirmatively and clearly show liability on his part. *Stub v Hein*, 129 M 188, 152 NW 136.

A supplemental complaint is not fatally defective because it merely alleges an indebtedness on the part of the garnishee to the defendant. The garnishee's

remedy is to move that the complaint be made more definite and certain. *Hanson v Wilmers*, 162 M 140, 202 NW 708.

Upon an uncontradicted affidavit stating that under the South Dakota statute the assets of the defendant passed by operation of law to the superintendent of banks, the court was justified in dismissing the action, although by virtue of an unverified reply the existence of the statute was an issue in the case. *Pride v Bank*, 170 M 122, 212 NW 3.

The plaintiff having commenced these proceedings supplementary to garnishment on the wrong theory, and the statutory requirements not having been complied with, the order of the trial court finding for the plaintiff is reversed. *Shandorf v Sampson*, 198 M 94, 268 NW 841.

The mere fact that the insurer denies liability does not, where the required preliminary steps provided by that section have been taken, relieve it from the duty of responding if and when the facts show liability. *Knudson v Anderson*, 199 M 486, 272 NW 376.

A garnishment action is begun by the service of summons as of the date thereof, and a supplemental complaint in the garnishment is a continuation of the garnishment so begun and not the commencement of a separate action. *Gilloley v Sampson*, 203 M 233, 281 NW 3.

Where garnishee denies liability upon disclosure, the plaintiff is entitled to file a supplemental complaint under section 571.14 only by leave of court obtained upon a showing by evidence which fairly and reasonably tends to show the existence of facts alleged. *Gulbrandsen v Pelto*, 205 M 607, 287 NW 116.

#### 6. Fraudulent Conveyances

Ex. Laws 1874, Chapter 141, Section 1, has no reference to garnishments which are merely ancillary to the main action, and the trial court was entirely correct in holding the sale void as against plaintiff. *Benton v Snyder*, 22 M 247.

Where by an answer to a supplemental complaint served upon a garnishee in accordance with section 571.14, allegations that the garnishee holds property belonging to the defendant debtor by virtue of a transfer fraudulent to existing creditors is put in issue, the creditor plaintiff must not only prove his claim against debtor, but that it existed at the time of the transfer. *First National v Brass*, 71 M 211, 73 NW 729.

The agreement did not vest title in the claimant, and the proceeds of the auction sale in the hands of the garnishee are subject to attachment. *Johnson v Carlin*, 123 M 444, 143 NW 1130.

Plaintiff in this proceeding could not avoid the mortgage merely because it gave the creditors it secured a preference over other creditors. He could do so only in aid of bankruptcy or insolvency proceedings. *Wilson v Geiss*, 153 M 216, 190 NW 61.

Uniform fraudulent conveyance act. 7 MLR 542.

#### 571.15 TIME FOR APPEARANCE IN GARNISHEE PROCEEDINGS.

HISTORY. R.S. 1851 c. 91 s. 4; P.S. 1858 c. 80 s. 4; 1860 c. 70 s. 13; G.S. 1866 c. 66 s. 159; G.S. 1878 c. 66 s. 176; G.S. 1894 s. 5320; R.L. 1905 s. 4241; G.S. 1913 s. 7871; 1919 c. 184 s. 1; G.S. 1923 s. 9368; M.S. 1927 s. 9368.

An order relieving a garnishee from default will not be reviewed, unless there is an abuse of discretion. *Goodrich v Hopkins*, 10 M 162 (130).

If a garnishee suffers judgment to go against him upon default of his appearance, his remedy must be taken in the same proceeding. *Segog v Engle*, 43 M 191, 45 NW 427.

Default was properly entered where the garnishee appeared by an attorney and merely offered to file an affidavit of no indebtedness, and gave no other evidence. *Peterson v Lake Tetonka*, 72 M 263, 75 NW 375.

A garnishee who defaults thereby admits that he has the property in his possession, and thereafter is estopped to assert that a judgment in the original action was void for want of jurisdiction; nor can he make a disclosure until after

the default has been removed for good cause shown. *Mpls., St. Paul v Pierce*, 103 M 504, 115 NW 649.

In the instant case, an order denying the garnishee's motion to be relieved from his default, was not an abuse of discretion. *Jordan v Jordan*, 109 M 299, 123 NW 825.

Certiorari will not issue to review an order of judgment from which an appeal is given by statute. The remedy by appeal in such case is exclusive. The statute given an appeal to the district court from an order made by a justice of the peace denying an application for relief from a default judgment in garnishment proceedings. *State ex rel v Kane*, 144 M 225, 174 NW 884.

A garnishment proceeding is not a "suit" which is removable to the federal court. *Pearson v Zacher*, 177 M 186, 225 NW 9.

#### 571.16 WHEN RENDERED; DISCHARGE; TRANSFER OF ACTION.

**HISTORY.** R.S. 1851 c. 91 s. 9; P.S. 1858 c. 80 s. 9; 1860 c. 70 s. 14; G.S. 1866 c. 66 s. 160; G.S. 1878 c. 66 s. 177; G.S. 1894 s. 5321; R.L. 1905 s. 4242; G.S. 1913 s. 7872; G.S. 1923 s. 9369; M.S. 1927 s. 9369.

Judgment can be rendered against a garnishee on his disclosure only where he admits that he is owing the principal debtor, or that he has in his possession or under his control property belonging to such debtor, or when the facts stated in his disclosure show beyond a reasonable doubt that such is the case. *Banning v Sibley*, 3 M 389 (282); *Chase v Carli*, 4 M 381 (288); *Cole v Sater*, 5 M 468 (378); *Shafer v Vizena*, 30 M 387, 15 NW 675; *Vanderhoof v Holloway*, 41 M 498, 43 NW 331; *Milliken v Mannheimer*, 49 M 521, 52 NW 139; *McLean v Sworts*, 69 M 128, 71 NW 925.

To render the garnishee liable, there must be a formal entry of the judgment. *Langdon v Thompson*, 25 M 509; *Pitzl v Winter*, 96 M 499, 105 NW 673.

To deny a motion for judgment in garnishee proceedings made by the plaintiff before the disclosure is closed, is not error. *Williams v Pomeroy*, 27 M 85, 6 NW 445.

If the debt sought to be reached appears from the disclosure to belong to a third party, the garnishee should be discharged, unless the third party is brought in. *Mansfield v Stevens*, 31 M 40, 16 NW 455; *Levy v Miller*, 38 M 526, 38 NW 700.

When a garnishee is discharged, there is no entry of judgment, and he is not entitled to costs. *McConnell v Rakness*, 41 M 3, 42 NW 539; *Cummings v Edwards*, 95 M 118, 103 NW 709, 106 NW 304.

The proper tribunal to determine whether a garnishee may be charged as such on the facts of his disclosure is the court in which the garnishment action is pending. *American Hardwood v Joannin*, 99 M 305, 109 NW 403.

A dismissal of the main action discharges the garnishee. *Holland v Nichols*, 136 M 356, 162 NW 468.

When a defendant in a garnishee proceeding moves for a dismissal thereof upon the ground that the debt is not due him unconditionally from the garnishee, he cannot claim the order of dismissal to be res judicata that the debt sought to be reached by his creditor did not belong to him. *Wickstrand v Pure Oil Co.* 159 M 263, 198 NW 811.

In the instant case there was no laches on the part of the garnishee in applying for vacation of the order for judgment against it. *Carlson v Stafford*, 166 M 481, 208 NW 413.

Not being a "suit" a garnishment proceeding is not removable to the federal court. *Pearson v Sacher*, 177 M 182, 225 NW 9.

#### 571.17 PROCEEDINGS WHEN VENUE IS CHANGED.

**HISTORY.** R.S. 1851 c. 91 s. 9; P.S. 1858 c. 80 s. 9; 1860 c. 70 s. 14; G.S. 1866 c. 66 s. 160; 1875 c. 59 s. 1; G.S. 1878 c. 66 s. 177; G.S. 1894 s. 5321; R.L. 1905 s. 4243; G.S. 1913 s. 7873; G.S. 1923 s. 9370; M.S. 1927 s. 9370.

**571.18 WHO MAY TAKE DISCLOSURE.**

**HISTORY.** 1860 c. 70 ss. 15, 16, 17; G.S. 1866 c. 66 ss. 161, 162, 163; 1871 c. 66 s. 1; G.S. 1878 c. 66 ss. 178, 179, 180; G.S. 1894 ss. 5322, 5323, 5324; R.L. 1905 s. 4244; G.S. 1913 s. 7874; G.S. 1923 s. 9371; M.S. 1927 s. 9371.

To enter judgment against a garnishee an order of court is necessary. *Langdon v Thompson*, 25 M 509; *Willson v Pennoyer*, 93 M 348, 101 NW 502.

The garnishee may introduce testimony of others in explanation or corroboration of his own. *Pitzl v Winter*, 96 M 499, 105 NW 673.

**571.19 DISCLOSURE BEFORE RETURN DAY.**

**HISTORY.** 1860 c. 70 ss. 25, 26; G.S. 1866 c. 66 ss. 171, 172; G.S. 1878 c. 66 ss. 188, 189; G.S. 1894 ss. 5332, 5333; R.L. 1905 s. 4245; G.S. 1913 s. 7875; G.S. 1923 s. 9372; M.S. 1927 s. 9372.

1. Application
2. Amount of judgment
3. Effect of judgment

**1. Application**

This section is intended for convenience of garnishee, but not to do away with service of summons on defendant, nor to prevent defendant from appearing at time specified in summons and insisting on his rights. *Webster v Penrod*, 103 M 74, 114 NW 257.

**2. Amount of judgment**

When the defendant offers to allow judgment to be taken against him for a specified amount and costs, which offer is not accepted, unless the plaintiff recover a more favorable judgment than was the offer, he cannot recover the disbursements of the action, but they must be allowed to defendant. *Woolsey v O'Brien*, 23 M 71.

The rule that a garnishee is not chargeable with interest (as damages for detention of money), while he is, by the operation of an attachment, restrained from making payment, applies only when he stands in all respects as a mere stakeholder, ready and willing to pay to whomsoever the court directs, and not where he assumes the attitude of a litigant. *Ray v Lewis*, 67 M 365, 69 NW 1100.

**3. Effect of judgment**

The silence of Black, the garnishee, when he made disclosure, regarding notice of the rights of Brisbin, looks like collusion with Crumby to overreach Brisbin, and he is therefore estopped by his own wrong from taking advantage of what, under different circumstances, might have been available. *Black v Brisbin*, 3 F 360 (253).

Garnishment is an effectual attachment of the effects of the defendant in the garnishee's hands, differing in no essential respect from attachment by levy, except that the plaintiff does not require a full lien upon the res, but only such lien as gives him the right to hold the garnishee liable for it or its value. *Banning v Sibley*, 3 M 389 (282) (297).

Prior to the enactment of Laws 1869, Chapter 74, payment by garnishees, without execution, of the judgment against them before a justice of the peace discharges them, though the judgment against the defendant was upon default upon service of the summons by publication, and subsequent to the payment, within one year it was set aside, and the defendant was permitted to defend and succeeded in his defense. *Troyer v Schwaizer*, 15 M 241 (187).

An instrument under seal: "I, George Braun, do hereby certify and acknowledge that I have, on the first day of March, 1876, given up all claims I have against John Hauenstein in favor of John B. Karl," is sufficient to pass title. *Crone v Brawn*, 23 M 239.

After the disclosure of the garnishee, a motion to discharge the garnishee was denied. That does not conclude the claimants to later invoke the same remedy. *McMahon v Merrick*, 33 M 262, 22 NW 543.

Where the disclosure indicates a third party claimant, it is error to order judgment against the garnishee before the claimant is cited in and made a party, and the rights of such claimant cannot be barred or affected by the judgment, unless he is duly summoned to appear, and is made a party to the proceedings. *Levy v Miller*, 38 M 526, 38 NW 700.

A railway company, after termination of the transportation of property, and while it is holding the same only as a warehouseman, is liable to garnishment in respect to such property; and such garnishment excuses the company from surrendering the property to consignor or consignee. *Cooley v Minnesota Transfer*, 53 M 327, 55 NW 141.

Property in the hands of federal receivers for a railway may be garnished, but no executory process can be issued, but the attaching creditor may file his judgment obtained against the garnishee as a claim to be paid by the receivers as other claims are paid. *Irwin v McKechnie*, 58 M 145, 59 NW 987.

#### 571.20 AMOUNT OF JUDGMENT; EFFECT.

**HISTORY.** 1860 c. 70 ss. 24, 32; G.S. 1866 c. 66 ss. 170, 178; G.S. 1878 c. 66 ss. 187, 195; G.S. 1894 ss. 5331, 5339; R.L. 1905 s. 4246; G.S. 1913 s. 7876; G.S. 1923 s. 9373; M.S. 1927 s. 9373.

A creditor by the garnishment of a debt gets nothing more than an inchoate lien; and this inchoate lien can be perfected only by proceeding to judgment against the garnishee in the manner provided by statute. *March v Wilson*, 124 M 254, 144 NW 959.

In the instant garnishment, bankruptcy proceedings, the casualty company cannot offset its liability arising subsequent to the bankruptcy of the defendant's provable claims in its favor arising prior to bankruptcy and provable therein either for premiums earned on policies, or for sums paid out. *Mahr v Maryland Casualty*, 132 M 337, 156 NW 668.

In the exercise of discretion, the trial court properly denied the motion of the garnishee to set aside the judgment, and permit a new disclosure to disclose liens against the res overlooked in the original disclosure. *Olmstad v Meyers*, 155 M 507, 194 NW 2; *Dahl v Neib*, 180 M 119, 230 NW 476.

The casualty company by its assumption and control of the trial made itself liable for all damages included in the verdict. *Oehme v Johnson*, 181 M 138, 231 NW 817.

#### 571.21 DUTY AND RIGHTS OF GARNISHEE.

**HISTORY.** 1860 c. 70 s. 18; G.S. 1866 c. 66 s. 164; G.S. 1878 c. 66 s. 181; G.S. 1894 s. 5325; R.L. 1905 s. 4247; G.S. 1913 s. 7877; G.S. 1923 s. 9374; M.S. 1927 s. 9374.

Property in the hands of a common carrier in transit to a place outside the state is not subject to garnishment. *Stevenot v Eastern Ry.* 61 M 104, 63 NW 256; *Baldwin v G. N.* 81 M 247, 83 NW 986.

Where a stranger to the bill of lading makes claim upon a shipment prior to the actual forwarding of same, the carrier has a reasonable time within which to make inquiry. *Merz v Chgo. & N. W.* 86 M 33, 90 NW 7.

The attaching creditor occupies no better position with respect to the garnishee than would the defendant in a suit by him against the garnishee. The garnishee can be required to pay only in the manner provided by the contract which creates his liability. *Bacon v Felthous*, 103 M 387, 115 NW 205.

#### 571.22 COURT MAY DETERMINE VALUE, MAKE ORDERS.

**HISTORY.** 1860 c. 70 s. 19; G.S. 1866 c. 66 s. 165; G.S. 1878 c. 66 s. 182; G.S. 1894 s. 5326; R.L. 1905 s. 4248; G.S. 1913 s. 7878; G.S. 1923 s. 9375; M.S. 1927 s. 9375.

Prior to the entry of judgment, an officer holding an execution against the debtor defendant has no authority to seize property of garnishee, by virtue of the inchoate lien created by garnishee proceedings. A mere order for judgment is

insufficient. *Langdon v Thompson*, 25 M 509; *Franke v Allen*, 199 M 451, 272 NW 165.

In the absence of the district court sitting in bankruptcy, the district judge as a district court could do nothing which would tend to defeat or interfere with the bankruptcy court's jurisdiction in rem. A district judge sitting as a bankruptcy court had power to make an ex parte order permitting a plaintiff in a law action in the district court to serve garnishee summons on bankruptcy trustee, and directing the trustee to disclose as to defendant's anticipated dividend. *National Automatic v Goldie*, 27 F. Supp. 400.

#### 571.23 PROCEEDINGS WHEN GARNISHEE HAS LIEN.

**HISTORY.** 1860 c. 70 ss. 20 to 22; G.S. 1866 c. 66 ss. 166 to 168; G.S. 1878 c. 66 ss. 183 to 185; G.S. 1894 ss. 5327 to 5329; R.L. 1905 s. 4249; G.S. 1913 s. 7879; G.S. 1923 s. 9376; M.S. 1927 s. 9376.

If personal property remains in the possession of the mortgagor, he may sell it; but the purchaser takes it subject to the lien of the mortgage. *Daley v Proetz*, 20 M 411 (363).

Where goods are seized upon writs of attachment against the mortgagor while in the rightful possession of the mortgagee, the latter, in an action against the levying officer; can recover only the value of his interest. *Becker v Durham*, 27 M 32, 6 NW 406.

If a garnishee has a lien on defendant's property in his hands, the fact that the amount of it is unliquidated will not defeat the garnishment. *Trunkey v Crosby*, 33 M 464, 23 NW 846.

Finding that the garnishee was unconditionally indebted to defendant in a stated amount is not supported by the evidence, but a finding of an unconditional indebtedness in a smaller amount would be justified. *Hansen v Wilmers*, 162 M 139, 202 NW 708; *McKnight v Tomkinson*, 209 M 399, 296 NW 569.

Judgment against garnishee pledgor properly denied where plaintiff omitted statutory method (section 571.23) of obtaining collateral held by garnishee. *Twin City Fire v Midland National*, 166 M 379, 208 NW 22.

The facts revealed by the two disclosures do not warrant a money judgment against the garnishee, the res being merely a right of redemption. *Douglas Bank v Meyers*, 182 M 178, 233 NW 864.

Defendant's indebtedness to the garnishee was \$5,000, the garnishee holding long past due collateral amounting to \$10,000. Defendant had offered to cancel the \$10,000 note if the maker would obtain a loan and pay the \$5,000 to the garnishee. Not having followed the statute by making a tender, plaintiff has no claim against the garnishee. *Rushford Bank v Benston*, 194 M 415, 260 NW 873; *McKnight v Tomkinson*, 209 M 399, 296 NW 569.

Where it appears that a third party is probably entitled to possession, he should be brought in as a party by intervention or impleader. The latter may be, and in proper case should be, ordered by the court on its own motion. *Braman v Wall*, 210 M 548, 299 NW 243.

Replevin cases sought recovery of exempt life policies and assignments thereof which had been seized by the sheriff under levy while held by the bank as collateral. The sheriff paid off the bank's lien. All but \$215.00 of the amount used to lift the bank's lien was recovered from other collateral seized. The plaintiff is entitled to the policies and assignments, and need not pay the \$215.00. *Braman v Wall*, 214 M 238, 7 NW (2d) 924.

Scope of homestead exemption. 27 MLR 74.

#### 571.24 GARNISHEE NOT LIABLE FOR DESTRUCTION.

**HISTORY.** 1860 c. 70 s. 23; G.S. 1866 c. 66 s. 169; G.S. 1878 c. 66 s. 186; G.S. 1894 s. 5330; R.L. 1905 s. 4250; G.S. 1913 s. 7880; G.S. 1923 s. 9377; M.S. 1927 s. 9377.

#### 571.25 FEES AND ALLOWANCES OF GARNISHEE.

**HISTORY.** R.S. 1851 c. 91 s. 4; P.S. 1858 c. 80 s. 4; 1860 c. 70 ss. 27 to 29; G.S. 1866 c. 66 ss. 173 to 175; G.S. 1878 c. 66 ss. 190 to 192; G.S. 1894 ss. 5334 to 5336; R.L. 1905 s. 4251; G.S. 1913 s. 7881; G.S. 1923 s. 9378; M.S. 1927 s. 9378.

Under General Statutes 1866, Chapter 66, Section 173 (section 571.25), the allowance to a garnishee of any amount beyond costs for travel and attendance, for counsel fees and other necessary expenses is to be made in the garnishee proceeding, and by and in the discretion of the trial judge. *Schwerin v DeGraff*, 19 M 414 (359); *Crone v Braun*, 23 M 239; *McConnell v Rakness*, 41 M 3, 42 NW 539.

The word "costs", as used in this section, includes disbursements. *Woolsey v O'Brien*, 23 M 71.

**571.26 PLAINTIFF'S COSTS LIMITED.**

HISTORY. 1860 c. 70 s. 30; G.S. 1866 c. 66 s. 176; G.S. 1878 c. 66 s. 193; G.S. 1894 s. 5337; R.L. 1905 s. 4252; G.S. 1913 s. 7882; G.S. 1923 s. 9379; M.S. 1927 s. 9379.

**571.27 MINIMUM JUDGMENT IN JUSTICE AND DISTRICT COURTS.**

HISTORY. 1860 c. 70 s. 31; G.S. 1866 c. 66 s. 177; G.S. 1878 c. 66 s. 194; G.S. 1894 s. 5338; R.L. 1905 s. 4253; G.S. 1913 s. 7883; G.S. 1923 s. 9380; M.S. 1927 s. 9380.

As the statute does not compel a garnishee to obey a summons unless his fees for mileage and attendance are paid in advance, he has no further claims for fees, except in such cases as he is made a party to the action. *McConnell v Rakness*, 41 M 3, 42 NW 539.

Where the garnishee disclosed owing the defendant \$34.87, and defendant claimed his \$25.00 exemption, it was error to order judgment against the garnishee for the \$9.87. *Sheehan v Newpick*, 77 M 426, 80 NW 356.

In an action upon bond given to secure the release of property garnished, the statement in the bond estops the surety from asserting that there was not garnishable property in the hands of the garnishee. *Wilcox v Conley*, 169 M 179, 210 NW 887.

The district court did not err in awarding costs to the garnishee who appeared for examination and disclosure to find that plaintiff had abandoned the action. *Physicians & Dentists Service v Leslie*, 196 M 592, 265 NW 820.

**571.28 DISCHARGE NOT A BAR.**

HISTORY. 1860 c. 70 s. 33; G.S. 1866 c. 66 s. 179; G.S. 1878 c. 66 s. 196; G.S. 1894 s. 5340; R.L. 1905 s. 4254; G.S. 1913 s. 7884; G.S. 1923 s. 9381; M.S. 1927 s. 9381.

**571.29 GARNISHMENT BY DEFENDANT.**

HISTORY. 1871 c. 67 s. 1; G.S. 1878 c. 66 s. 198; 1881 c. 55 ss. 1, 2; 1889 c. 203 s. 1; G.S. 1894 s. 5342; R.L. 1905 s. 4255; G.S. 1913 s. 7885; G.S. 1923 s. 9382; M.S. 1927 s. 9382.

**571.30 DISCHARGE OF ATTACHMENT OF GARNISHMENT.**

HISTORY. R.S. 1851 c. 70 s. 153; P.S. 1858 c. 60 s. 161; 1862 c. 37 s. 1; G.S. 1866 c. 66 s. 140; 1868 c. 69 s. 1; 1871 c. 67 s. 1; G.S. 1878 c. 66 ss. 157, 198; 1881 c. 55 ss. 1, 2; 1889 c. 203 s. 1; G.S. 1894 ss. 5299; 5342; R.L. 1905 s. 4256; G.S. 1913 s. 7886; G.S. 1923 s. 9383; M.S. 1927 s. 9383.

1. Discharge of attachment
2. Discharge of garnishment

**1. Discharge of attachment**

When an officer has levied and a bond is given, and possession thereby obtained, the obligors on the bond, cannot object to defects, or question the validity of the levy, or that an assignee was substituted for plaintiff. *Scanlan v O'Brien*, 21 M 434; *Slosson v Ferguson*, 31 M 448, 18 NW 281.

It is only the defendant whose property has been attached that this section gives the right to procure a discharge of an attachment upon furnishing a bond. *Kling v Childs*, 30 M 366, 15 NW 673.

Where defendant procures the discharge ex parte by executing the statutory bond, he waives his right to move to dissolve the attachment. *Rochelman v Skinner*, 46 M 196, 48 NW 776.

## 2. Discharge of garnishment

An order for judgment does not authorize seizure. There must be a court order. *Langdon v Thompson*, 25 M 509.

Where the debtors made no effort to set aside the garnishment within the statutory time, creditors under Laws 1881, Chapter 148, Section 2, were authorized to institute insolvency proceedings. *Maxfield v Johnson*, 38 M 539, 38 NW 701.

Obligors upon a bond to discharge a garnishment made admissions as to liability, and are estopped in an action on the bond from claiming the admission in error. *Greengard v Fretz*, 64 M 10, 65 NW 949; *Wilcox v Conley*, 169 M 180, 210 NW 887; *Mensing v Meland*, 181 M 404, 232 NW 631.

After a case has been removed by appeal from a justice court to district court, and a proper appeal bond given, garnishment is available. *Hopkins v McCusker*, 103 M 79, 114 NW 468.

The value of the property at the time of service of process, fixes maximum liability of surety. *Wilcox v Conley*, 169 M 180, 210 NW 887.

Where plaintiff abandons the proceedings without notice, the garnishee who appears may have costs awarded to him by the district court. *Physicians and Dentists v Leslie*, 196 M 591, 265 NW 820.

See district court rules. *Minnesota Statutes 1941, Page 3982.*

Garnishment and bankruptcy. 27 MLR 74.

### 571.31 APPEALS.

HISTORY. 1860 c. 70 s. 34; G.S. 1866 c. 66 s. 180; G.S. 1878 c. 66 s. 197; G.S. 1894 s. 5341; R.L. 1905 s. 4257; G.S. 1913 s. 7887; G.S. 1923 s. 9384; M.S. 1927 s. 9384.

A garnishee cannot be forced into court as plaintiff in error against his consent by a stranger to the record. *Hollinghead v Banning*, 4 M 116 (77).

An order refusing to set aside garnishee proceedings and granting leave to file a supplemental complaint, is not appealable. *Prince v Heenan*, 5 M 347 (279).

Where the court in which the garnishee proceeding is instituted gives to a claimant full opportunity to establish his claim, and he omits to do so, and the court renders judgment on the disclosure, discharging the said garnishee, upon an appeal by the plaintiff on questions of law alone, the appellate court may, upon reversing the trial court, render judgment on the disclosure against the garnishee. *Donnelly v O'Connor*, 22 M 309.

An order of a district court for judgment against a garnishee is not appealable. *Croft v Miller*, 26 M 317, 4 NW 45.

A separate appeal to the municipal court of the city of St. Paul may be taken by a garnishee from a judgment against him rendered by one of the city justices, and such right of appeal is not dependent upon the removal by appeal of the judgment in the principal action. *Albachten v Chgo., St. Paul*, 40 M 378, 42 NW 86.

An order made by the district court, for any cause, whether on examination or not, discharging a garnishee, is appealable. *McConnell v Rakness*, 41 M 3, 42 NW 539; *Cummings v Edwards*, 95 M 118, 103 NW 709, 106 NW 304.

An order refusing to discharge a garnishee is not appealable. *Duxburg v Shanahan*, 84 M 353, 87 NW 944.

After removal to district court, garnishment may be commenced therein, even though the usual appeal bond is in force. *Hopkins v McCusker*, 103 M 79, 114 NW 468.

As a default judgment is appealable, a writ of certiorari will not issue. *State ex rel v Kane*, 144 M 225, 174 NW 884.



# MINNESOTA STATUTES 1945 ANNOTATIONS

## 571.41 GARNISHMENT

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In the instant case, and under the circumstances, the rule that an order refusing to vacate a nonappealable order is not appealable, is not applicable. *Carlson v Stafford*, 166 M 482, 208 NW 413.

### 571.41 GARNISHEE SUMMONS.

HISTORY. 1945 c. 424 s. 1.

### 571.42 EFFECTIVE SERVICE OF SUMMONS.

HISTORY. 1945 c. 424 s. 2.

### 571.43 WHEN GARNISHMENT PROHIBITED.

HISTORY. 1945 c. 424 s. 3.

### 571.44 AGENT TO ACCEPT SERVICE.

HISTORY. 1945 c. 424 s. 4.

### 571.45 SALARY OF PUBLIC SERVANTS.

HISTORY. 1945 c. 424 s. 5.

### 571.46 MONEY DUE FROM HIGHWAY DEPARTMENT.

HISTORY. 1945 c. 424 s. 6.

### 571.47 IN DISTRICT COURT.

HISTORY. 1945 c. 424 s. 7.

### 571.48 JUSTICE COURT.

HISTORY. 1945 c. 424 s. 8.

### 571.49 DISCLOSURE.

HISTORY. 1945 c. 424 s. 9.

### 571.50 EFFECT OF DISCLOSURE.

HISTORY. 1945 c. 424 s. 10.

### 571.51 ORAL DISCLOSURE; SUPPLEMENTAL COMPLAINT.

HISTORY. 1945 c. 424 s. 11.

### 571.52 THIRD PARTY MAY INTERVENE.

HISTORY. 1945 c. 424 s. 12.

### 571.53 DEFAULT.

HISTORY. 1945 c. 424 s. 13.

### 571.54 JUDGMENT AGAINST GARNISHEE; WHEN; EFFECT.

HISTORY. 1945 c. 424 s. 14.

### 571.55 DISCHARGE OF GARNISHEE FOR LACHES.

HISTORY. 1945 c. 424 s. 15.

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GARNISHMENT 571.66

**571.56 VALUE.**

HISTORY. 1945 c. 424 s. 16.

**571.57 GARNISHEE FEES.**

HISTORY. 1945 c. 424 s. 17.

**571.58 MINIMUM JUDGMENT.**

HISTORY. 1945 c. 424 s. 18.

**571.59 DISCHARGE NOT A BAR.**

HISTORY. 1945 c. 424 s. 19.

**571.60 GARNISHMENT BY DEFENDANT.**

HISTORY. 1945 c. 424 s. 20.

**571.61 DEFENDANT MAY GIVE BOND.**

HISTORY. 1945 c. 424 s. 21.

**571.62 TRANSFER TO ANOTHER COURT.**

HISTORY. 1945 c. 424 s. 22.

**571.63 CHANGE OF VENUE.**

HISTORY. 1945 c. 424 s. 23.

**571.64 APPEAL.**

HISTORY. 1945 c. 424 s. 24.

**571.65 IMPLIED REPEAL.**

HISTORY. 1945 c. 424 s. 25.

**571.66 MISCELLANEOUS PROCEDURE.**

HISTORY. 1945 c. 424 s. 26.