

CATALOGED

94th Congress }
1st Session }

COMMITTEE PRINT

76.7715

DEPOSITORY

Provisions of State Laws and Other Data Relating to Wage Garnishment, Attachment and Assignment, and Establishment of Paternity

Background Information Prepared by the Staff for the
Use of the

COMMITTEE ON FINANCE
UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

RUTGERS LAW SCHOOL LIBRARY
CAMDEN N. J. 08102
GOVERNMENT DOCUMENT

OCTOBER 1975

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

51-207

1641160B

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price \$2.65

549
A-12

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

HERMAN E. TALMADGE, Georgia

VANCE HARTKE, Indiana

ABRAHAM RIBICOFF, Connecticut

HARRY F. BYRD, Jr., Virginia

GAYLORD NELSON, Wisconsin

WALTER F. MONDALE, Minnesota

MIKE GRAVEL, Alaska

LLOYD BENTSEN, Texas

WILLIAM D. HATHAWAY, Maine

FLOYD K. HASKELL, Colorado

CARL T. CURTIS, Nebraska

PAUL J. FANNIN, Arizona

CLIFFORD P. HANSEN, Wyoming

ROBERT DOLE, Kansas

BOB PACKWOOD, Oregon

WILLIAM V. ROTH, Jr., Delaware

BILL BROCK, Tennessee

MICHAEL STERN, *Staff Director*

DONALD V. MOOREHEAD, *Chief Minority Counsel*

Acknowledgment

The staff wishes to acknowledge the assistance provided by the Congressional Research Service of the Library of Congress in the preparation of this committee print.

(iii)

16811160 P28 35718 7/100c

Preface

Public Law 93-647, as amended, established new provisions for child support and establishment of paternity. This book assembles material on various State laws and other data which should be helpful in understanding the scope of the State laws which may be utilized in the implementation of the new provisions.

CONTENTS

	Page
Preface -----	v
I Garnishment of wages -----	1
II Attachment provisions of State laws -----	71
III Assignment of wages -----	189
IV Establishment of paternity -----	211
V Appendix -----	261
Tables:	
1. AFDC families, by number of illegitimate recipient children, 1973 -----	284
2. AFDC children by number and percent of illegitimate children, 1961 and 1973 -----	286

NOTE.—A detailed table of contents for each chapter listed above can be found at the beginning of each chapter.

I. GARNISHMENT OF WAGES

Garnishment of Wages

CONTENTS

A. Highlights of State Statutes Governing the Process of Garnishment Under Judicial Procedures in Aid of Attachments and Executions on Judgment.....	Page 7
Code of Alabama.....	9
Alaska Statutes.....	10
Arizona Revised Statutes.....	11
Arkansas Statutes.....	12
California Civil Procedure Code.....	13
Colorado Revised Statutes.....	14
Connecticut General Statutes.....	15
Delaware Code.....	16
District of Columbia Code.....	17
Florida Statutes.....	17
Code of Georgia.....	18
Hawaii Revised Statutes.....	19
Idaho Code.....	20
Illinois Revised Statutes.....	21
Indiana Statutes.....	22
Code of Iowa.....	23
Kansas Statutes.....	23
Kentucky Revised Statutes.....	24
Louisiana Revised Statutes.....	25
Maine Revised Statutes.....	26
Maryland Code.....	27
Massachusetts General Laws.....	28
Michigan Compiled Laws.....	29
Minnesota Statutes.....	30
Mississippi Code.....	31
Missouri Statutes.....	32
Montana Code.....	33
Nebraska Statutes.....	34
Nevada Revised Statutes.....	35
New Hampshire Revised Statutes.....	36
New Jersey Statutes.....	37
New Mexico Statutes.....	38
New York Consolidated Laws.....	39
North Carolina General Statutes.....	40
North Dakota Century Code.....	41
Ohio Revised Code.....	42
Oklahoma Statutes.....	43

	Page
A—Continued	
Oregon Revised Statutes.....	44
Pennsylvania Statutes.....	45
Rhode Island General Laws.....	46
South Carolina Code.....	47
South Dakota Compiled Laws.....	48
Tennessee Code.....	48
Texas Civil Statutes.....	50
Utah Code.....	50
Vermont Statutes.....	51
Virginia Code.....	52
Washington Revised Code.....	53
West Virginia Code.....	54
Wisconsin Statutes.....	55
Wyoming Statutes.....	57
B. Statutory Remedy for Recovery of Support and Maintenance under the Aid to Families with Dependent Children Pro- gram	59
Washington	60
Florida	62
Georgia	63
Maine	64
Utah	66
Virginia	68

I. Garnishment of Wages

The common definition of garnishment is:

A statutory proceeding whereby a person's property, money, or credits in possession of, or under control of, or owing by another are applied to payment of the former's debt to a third person by proper statutory process against the debtor and garnishee. (Black's Law Dictionary, 4th Edition, 1951.)

This chapter has two parts, the first providing a separate treatment of the principal features of the garnishment process issued through the courts and the second dealing with new processes that might be initiated without recourse to the courts.

Two States have no provision in State law relating to garnishment. All the earnings of a debtor for his personal services is exempt from garnishment in South Carolina by statute. Current wages for personal services are not subject to garnishment in Texas by both the constitution and civil statutes.

A. Highlights of State Statutes Governing the Process of Garnishment in Aid of Attachments and Executions on Judgment

This compilation sets forth the highlights of State laws relating to wage attachments or garnishments through the courts. It is not intended to be a comprehensive treatment of the process as it is made available in the various States; a treatment of that nature would require an in-depth review of pertinent case law interpretative of the State statutes and rules of the court.

Additionally, note must be taken of two recent United States Supreme Court decisions that are of particular application to State statutory provisions respecting prejudgment attachments and garnishments. Read together, the cases set forth a constitutional principle that if due process standards are to be met, notice and hearing, aimed at establishing the probable validity of the prospective judgment creditor's claim, must be afforded to the alleged debtor before he is deprived of the use of his property. (See: *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).)

Further, the highlights included in the compilation are to be compared with their corresponding provisions in the Federal Consumer Credit Protection Act. Codified at 15 U.S.C. 1601 et seq. That act sets out as exemptions in garnishment actions (or process initiated as an aid in attachment proceedings or in execution on a judgment) the greater of the following: (a) 75% of the wage earner's disposable income for that workweek, or (b) the amount by which such disposable earnings for that week exceed 30 times the Federal minimum hourly wage. In the case of earnings for any pay period other than a week the Secretary of Labor is required to prescribe, by regulation, a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (b). (15 U.S.C. § 1673(a)).

The above restrictions are inapplicable to any order of any court for the support of any person (15 U.S.C. § 1673(b)(1)), nor may any employer discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness. (15 U.S.C. § 1674(a)).

The Federal act does not annul, alter, or affect, or exempt any person from complying with the laws of any State prohibiting garnishments, providing for more limited garnishments than allowed under the Federal act, or prohibiting the discharge of an employee by reason of a garnishment of his wages. (15 U.S.C. § 1677).

On a comparative basis, then, the Federal exemption would be more beneficial to an employer and would control in the States of: Alabama, Arizona, Colorado, Delaware (excepting New Castle County), Michigan, Mississippi, Oklahoma, Rhode Island, Tennessee, Utah, West Virginia, and Wyoming; and, in certain circumstances, the Federal exemption would be more beneficial and controlling in the States of: Alaska, Arkansas, Florida, Hawaii, Illinois, Maryland, Missouri, New

Hampshire, New Jersey, New York, North Carolina, Pennsylvania, and South Dakota.

On the same basis, the Federal restriction respecting discharge of an employee would apply in the States of: Alabama, Arizona, Arkansas, Florida, Louisiana, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, and Tennessee.

Code of Alabama

Exemptions

Seventy-five percent of wages, salaries or other compensation of resident laborers or employees. (§ 7-630).

Personal property to the extent of \$1,000 is exempted from sale or execution or other process for the collection of a debt. (§ 7-629). Personal property, in the exemption laws, includes wages. (*Walker v. Williams and Bauler Constr. Co.*, 46 Ala. App. 337, 241 So. 2d. 896, (1970)).

Consumer Finance Act.—The exemption is the greater of: (a) 80 percent of disposable earnings for that week, or (b) the amount by which disposable earnings for that week exceed 50 times the Federal minimum hourly wage. (§ 5-326). Act applies to consumer loans, consumer credit sales and consumer leases.

Before judgment

No garnishment of earnings before judgment under Consumer Finance Act, (§ 5-326); otherwise, an employer may be served with a writ of garnishment in suits in which judgment has been rendered or in which judgment may be rendered. (§§ 7-314, 996). Prejudgment garnishment of salaries of public officials and employees is prohibited. (§ 7-1035).

Public officers and employees

Salaries due officials and employees of a city, county or State government, or any department or institution thereof, may be garnished after judgment. (§ 7-1032).

Service of process

On the person authorized by law to draw a warrant on the treasury of said government, or to issue a check for salary due. (§ 7-1033).

Time to answer

Within 30 days of service of the writ. (§ 7-999).

Examination of garnishee

Plaintiff may demand oral examination of garnishee before the Court, (§ 7-1011). He may also be examined on written interrogatories. (§ 7-477). Answer may be controverted and issues tried by court. (§ 7-1020).

Penalty on failure to answer

A conditional judgment may be entered for the amount of the plaintiff's claim, to be made absolute unless appearance made within 30 days after notice of the conditional judgment.

Effect of writ

Nonexempt salary is to be retained during such period of time as is necessary to accumulate a sum equal to the sum shown due by the court on the writ. (§ 7-630).

Discharge of employee

No statutory provision.

NOTE: In *Lasseter v. Lasseter*, 266 Ala. 459, 97 So. 2d 555, it was held that the salary of a public official is not subject to garnishment on a decree for support and maintenance.

Alaska Statutes

Exemptions

The maximum part of the aggregate disposable income of an individual for any week which is subject to execution may not exceed: (a) 25% of his disposable income for that week, or (b) the amount by which his disposable income for that week exceeds \$114, whichever is less. The multiple of the weekly wage for semimonthly and monthly income periods is $2\frac{1}{6}$ and $4\frac{1}{3}$ respectively.

Support orders.—The above exemptions are inapplicable to an order of a court for the support of any person. (§ 09.35.080). Additionally, the amount which the judgment debtor has been ordered to pay to a court trustee as child support payments is exempt from execution. (§ 09.35.085).

Before judgment

Prejudgment attachment of nonexempt wages permitted after notice and hearing. (§ 09.040.030; Alaska Rules of Court Procedure and Administration, Civil Rule 89).

Public officers and employees

Salaries, wages, credits or other personal property in possession or control of the State, or an organized or unorganized borough, city, incorporated town, school district or other political subdivision, or a board, institution, commission or officer of the State, belonging or owed to any person, is subject to attachment and execution in the manner and with the same effect as property in the possession of private persons. (§ 09.35.330).

Service of process

Upon the Attorney-General and upon the state officer or agency when the State or an officer or agency thereof is the party designated as garnishee; and, upon the chief executive officer, chief clerk or secretary of a public corporation summoned as garnishee. (Alaska Rules of Court Procedure and Administration, Civil Rule 4).

Time to answer

Within a reasonable time and in any event within 24 hours, he must furnish a statement designating the amount and description of personal property in his possession belonging to the defendant or any debt he owes to the defendant. (§ 09.40.060).

Examination of garnishee

Upon refusal to answer, or providing an unsatisfactory answer, the garnishee may be ordered to appear before the court and be examined. (§ 09.40.060). Examination may also be by interrogatories after order for appearance has issued. (Alaska Rules of Court Procedure and Administration, Civil Rule 89). He may also be examined at trial of any issues raised. (Rule 89).

Penalty on failure to answer

Judgment may be rendered against the garnishee to the full value of the defendant's property liable to the attachment and in his hands at the time of the service of the writ. (Alaska Rules of Court Procedure and Administration, Civil Rule 89).

Effect of writ

Binds wages and salaries owed at time of service of the writ. (§ 09.10.010).

Discharge of employee

No employer may discharge an employee by reason of the fact that his income has been subject to execution for any one indebtedness. (§ 09.33.080).

Arizona Revised Statutes*Exemptions*

Fifty percent of resident debtor's wages, earnings or salary for personal services rendered at any time within 30 days next preceding the levy of garnishment when it appears from the debtor's affidavit that such earnings, wages or salary are necessary for use by the debtor's resident family supported wholly or in part by him. (§ 12-1594).

Before judgment

Permitted (§ 12-1571), but prejudgment garnishment of wages is invalid in the absence of some provision respecting notice to the defendant and a hearing on the validity of the plaintiff's claim. (*Terminal Inc. v. Superior Court of Maricopa County*, 105 Ariz. 270, 463 P.2d 68, (1969)).

Public officers and employees

The salaries of officers, deputies, clerks, and employees of the State or its political subdivisions is subject to garnishment. (§ 12-1601).

Service of process

Upon the State treasurer in the case of garnishment of salaries and wages owed by the State; upon the chief disbursing officer of the political subdivision in case of the garnishment of wages and salaries paid by a political subdivision. (§ 12-1602).

Time to answer

In the superior court, the garnishee must answer within 10 days if the writ is served in the county wherein the action is brought, and within 20 days if served out of the county. In justice court if served within precinct in which action is brought, within 5 days; if without the precinct but within the county, within 10 days; if within the county, within 15 days. (§ 12-1576).

Examination of garnishee

Plaintiff or defendant may controvert the garnishee's answer and file pleadings stating why they believe the garnishee's answer is incorrect. Thereafter, the issue is resolved at trial. (§§ 12.1589, 1590).

Penalty on failure to answer writ

If garnishee fails to answer within the time specified in the writ, the court may, after judgment has been rendered against defendant, render

judgment by default against garnishee for the full amount of the judgment against defendant (§ 12-1583).

Effect of writ

Does not reach salary, wages or earnings earned by employee after date of service. (*Gillespie Land and Irrigation Co. v. Jones*, 63 Ariz. 535, 164 P.2d 4J6).

Discharge of employee

No statutory provision.

Arkansas Statutes

Exemptions

Unmarried resident.—Personal property of a value of \$200 is exempt from execution for collection of any debt by contract. (Const. Art. 9, § 1).

Married resident or head of family.—Personal property of a value of \$500 is exempt from execution for collection of any debt by contract. (Const. Art. 9, § 2).

Laborers and mechanics

Wages for 60 days exempt provided a statement is filed to the effect that said wages plus personal property holdings are less than the constitutional exemption (§ 30-207). The first \$25 per week of net wages is absolutely exempt without the necessity of filing a schedule of exemptions. (§ 30-207(b)).

NOTE: Courts are specifically authorized to enforce their order or decrees for alimony and support by sequestration of defendant's property, or by such other lawful means, including equitable garnishment. (§ 34-1212).

Before judgment

Prejudgment garnishment authorized. (§ 31-501). Prejudgment garnishment of the State is prohibited. (§ 31-521).

Public officers

Any indebtedness, goods and chattels, moneys, credits or effects belonging to a defendant in a civil action and in the hands or possession of the State, any subdivision thereof, institution, department, special district or instrumentality of the State shall be subject to garnishment. (§ 31-519).

Service of process

Upon the individual representing the State, subdivision thereof, institution, department, special district or instrumentality of the State. (§ 31-520).

Time to answer

Return day named in the writ. (§ 31-506).

Examination of garnishee

If the plaintiff shall deem the garnishee's answer to be untrue or insufficient, he may deny such answer and have the issue tried by a court or jury. (§ 31-508). Interrogatories filed with writ. (§ 31-505).

Penalty on failure to answer

If garnishee neglects or refuses to answer the writ, judgment must be entered against him for the full amount of the plaintiff's judgment, plus costs. (§ 31-512).

Effect of writ

Binds all property in the garnishee's hands and belonging to the defendant at the time of service. (*Harris v. Harris*, 201 Ark. 684, 146 S.W. (2d) 539).

Discharge of employee

No statutory provision.

California, Civil Procedure Code*Exemptions*

Fifty percent or such greater portion as is allowed by statute of the United States of earnings received for personal services rendered within 30 days preceding date of withholding by the employer.

One hundred percent of earnings for personal services rendered 30 days preceding date of withholding by employer if needed for the support of his resident family.

Exception.—100 percent exemption inapplicable if the debt was incurred by the debtor, his wife or his family for the common necessities of life, or, if the debt was incurred for personal services rendered by any employee or former employee of the debtor. (C.C.P. § 690.6).

NOTE: Earnings not exempt against judgment for alimony. (*Bruton v. Tearle*, 7 Cal. 2d. 48, 59 P.2d. 953, (1936)).

No exemption from writ of execution issued against 50 percent of earnings of absent parent after judgment in action for support; earnings received for personal services are not exempt from levy of attachment in connection with such support judgment. (C.C.P. § 690.6).

Before judgment

Writ may be issued at time of issuance of summons or afterwards. (C.C.P. § 537-538); but prejudgment garnishment of wages violates procedural due process. (*Lynch v. Superior Court of Los Angeles County*, 83 Cal. Rptr. 670, 464 P.2d 126 (1970)).

Public officers and employees

After judgment, money due officers and employees of the State or its political subdivisions is subject to garnishment. (C.C.P. § 710).

NOTE: Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer and Attorney-General are exempted.

Service of process

The judgment creditor shall file a duly authenticated abstract or transcript of such judgment, together with an affidavit stating the exact amount then due and owing and unpaid, with the State department, board, office or commission owing such money, or with the auditor of the political subdivision owing such money, wages or salary to the judgment debtor. (C.C.P. § 710).

Time to answer

The party owing the debts or credits to the judgment debtor must supply a memorandum thereof within 10 days after service to the officer levying the attachment or garnishment. (C.C.P. § 546).

Examination of garnishee

Any person having any credits belonging to defendant may be required to attend before a court or judge, or a referee appointed by the court or judge and be examined on oath respecting the same. (C.C.P. § 545).

Penalty on failure to answer

Failure to supply the required memorandum within the time specified may subject the employer to liability for payment of costs of proceedings for the purpose of obtaining the required information. (C.C.P. § 546).

Effect of writ

Garnishee is liable to plaintiff until garnishment is released or judgment is satisfied. (C.C.P. §§ 544, 550).

Discharge of employee

Prohibited (Labor Code § 2929).

Colorado Revised Statutes*Exemptions*

Head of family.—70% of earnings due at time of service of the garnishment summons. *Single person:* 35% of such earnings. (§ 13-54-104.) The above exemptions are subject to the exemption provisions of the Uniform Consumer Credit Code, which exempts the greater of: (a) 75% of disposable earnings for a workweek, or (b) the amount each week equal to 30 times the Federal minimum hourly wage. For pay period other than a workweek, an appropriate multiple determined by the administrator shall be applied to ascertain the amount of the exemption. (§ 5-5-105; Colorado Rules of Civil Procedure, Rule 103(a)).

Before judgment

May issue garnishment any time after issuance of an attachment (which may be issued before judgment) providing the sum exceeds twenty dollars. (Colorado Rules of Civil Procedure, Rule 103(a)). No prejudgment garnishment for debts arising from consumer credit sale, consumer lease or consumer loan. (§ 5-5-104). Attachment issues only at or after complaint filed. (Colorado Rules of Civil Procedure, Rule 102).

Public officers and employees

Salaries and wages of officers and employees of the State, municipal and quasi-municipal corporations, or boards and commissions thereof, is subject to garnishment. *Exception:* officers whose salaries or fees are fixed by the State Constitution. (§ 13-61-101).

Service of process

Upon the officer whose duty it is to issue pay warrants, checks or money in payment of salaries and wages. (Colorado Rules of Civil Procedure, Rule 103(d)).

Time to answer

Within the time specified in the writ. (Colorado Rules of Civil Procedure, Rule 103(e)).

Examination of garnishee

Interrogatories submitted and answered under oath and on failure to answer interrogatories, the plaintiff may enter a default against him and proceed before the court to prove the garnishee's liability, and in such case, the garnishee may be compelled to give testimony as a witness. His answer may also be traversed and issues thereby raised are tried by the court. (Colorado Rules of Civil Procedure, Rule 103(g), (1); (n)).

Penalty on failure to answer

Plaintiff may have judgment entered (on the default) the same as if the garnishee had answered. If the employer is found liable, the plaintiff may recover costs, otherwise, the employer is discharged without costs. (Colorado Rules of Civil Procedure, Rule 103(e)).

Effect of writ

Binds wages earned at the time of service. (Colorado Rules of Civil Procedure, Rule 103(k)).

Discharge of employee

Prohibited with respect to garnishments on judgments arising out of consumer transactions. (§ 5-5-106).

Connecticut General Statutes

Exemption

The greater of: (1) 75% of disposable earnings for a workweek, or (2) disposable earnings for a workweek up to the greater of \$65 or the amount equal to forty times the Federal minimum hourly wage. (§ 52-361(b)).

Support orders.—Exemption limited to \$25 per workweek (§ 52-362).

Before judgment

Wage executions issue only after a judgment order has been entered and judgment debtor defaults in complying with the terms of the order. (§ 52-361(a)).

Public officials and employees

Earnings of State employees are subject to wage executions (§ 52-361(c)).

Service of process

May be made on the clerk or chief presiding officer of a political subdivision (§ 52-57) or upon the State by leaving a true and attested copy of the process with the Attorney-General (§ 52-64).

Penalty on failure to answer

No statutory provisions requiring answers. Employer required to pay over nonexempt wages as of date of service of the writ, which is a continuing levy. Upon failure to pay, the employer is liable to an action by the judgment creditor. (§ 52-361(e)).

Effect of writ

A continuing levy until such execution and expenses are fully satisfied. (§§ 52-361(b), 362).

Discharge of employee

Prohibited unless garnishments exceed seven in a calendar year. (§ 52-361(h)).

Delaware Code*Exemptions*

Eighty-five percent of wages (§ 10-4913).

Support orders.—Not more than 25% of defendant's "net" or "take home" salary or wages shall be attached for 1 child whom defendant is legally obligated to support, and not more than an additional 5% of "net" or "take home" salary or wages shall be attached for each additional child whom defendant is legally bound to support. (§§ 10-4913; 13-507(d)).

Before judgment

Writs of attachments containing an order summoning the employer as garnishee may be issued before judgment. (§ 10-3501).

Public officers and employees

Subject to attachment and garnishment. (§ 10-3503(a)).

Service of process

Made upon any officer of the State or its political subdivisions whose duty it is to pay such employees compensation from funds of the State or the political subdivision. (§ 10-3503(a)).

Time to answer

Garnishee must serve answer within 20 days specifying money and credits of a defendant in his possession. (Superior Court Civil Rules, Rule 5).

Examination of garnishee

At option of the plaintiff, garnishee's answer may be taken by affidavit before any person authorized to administer oaths. A prejudgment garnishee who fails to appear, as required, may be compelled to appear and answer or plead. (§ 10-3509). A plaintiff may file exceptions to an answer and the issues thereby raised will be tried by the court. (Superior Court Civil Rules, Rule 5).

Penalty on failure to answer

Judgment may be entered for plaintiff in an amount equal to the value of the property of the defendant in the garnishee's custody or possession, or for the amount of his judgment, whichever is less. (Superior Court Civil Rules, Rule 5).

Effect of writ

Garnishment attaches at time when garnishee is served and continues on all moneys which accrue to the debtor's credit until the garnishment is answered. (*Cooper's Home Furnishings Inc. v. Lolley*, 270 A 2d. 676. (Del Super. Ct. 1970)).

Discharge of employee

An employer shall not discharge an employee because the employer was summoned as garnishee. (§ 10-3509).

District of Columbia Code

Exemptions

Greater of: (1) 75% of disposable earnings for a workweek, or (2) amount of disposable earnings for a workweek equal to 30 times the Federal minimum wage. (§ 16-572). For pay periods longer than one week, the exemption equals the number of workweeks (or fraction thereof) times 30 times the applicable Federal minimum wage. (Minimum Wage and Industrial Safety Board Order No. 74-4).

Employer.—Garnishee shall not withhold or pay over more than 10% of gross wages for any period ending in any calendar month until the total amount of gross wages equals \$200; nor more than 20% of gross wages in excess of \$200 until the total amount of gross wages equal \$500. (§ 16-573(d)).

Support orders.—Limitation shall be 50% of gross wages for the pay period or periods ending in any calendar month.

Debtor who is principal support of his family.—Two-hundred dollars each month of earnings (other than wages) of person residing or earning major portion of his livelihood in the District of Columbia is exempt for 2 months next preceding issuance of the writ.

Debtor who is not the principal support of his family.—Sixty dollars each month of earnings (other than wages) for 2 months preceding date of attachment of persons residing or earning the major portion of their income in the District of Columbia. (§ 15-503).

Before judgment

Prohibited (§ 16-588).

Public officers and employees

No statutory authorization.

Time to answer

Within 10 days after service of the writ. (§ 16-521a).

Examination of garnishee

In addition to answers to written interrogatories, the garnishee, on motion, may be required to appear in court and be examined orally under oath. (§§ 16-521(b), 552(b)). An answer may be traversed and issues raised tried by a court or jury. (§ 16-553).

Penalty on failure to answer

Judgment may be entered against the garnishee for the whole of the plaintiff's judgment (§§ 16-526, 556) or for an amount equal to the percentages with respect to which the failure occurs in garnishments in aid of execution of support orders. (§ 16-575).

Effect of writ

Until judgment satisfied, writ is a continuing levy upon wages (§ 16-572).

Discharge of employee

Prohibited (§ 16-584).

Florida Statutes

Exemptions

One hundred percent of wages due for personal services or labor performed by a head of a family are exempt from garnishment. (§ 222.11).

Support orders.—Such amount as the court shall order to be withheld. (§ 61.12).

Before judgment

No garnishment shall issue before judgment in any action sounding in tort. The writ is available before judgment in suits to recover a debt. (§ 77.01).

Public officers and employees

Subject to garnishment proceedings to enforce court orders for alimony, suit money or support, or other proceedings for dissolution, alimony, or child support. (§ 61.12).

Service of process

Served on public officer whose duty it is to pay the salary of a State or county public officer. (§ 61.12).

Time to answer

Garnishee required to answer writ within 20 days after service. (§ 77.04).

Examination of garnishee

If plaintiff unsatisfied with garnishee's answer, he shall serve a reply within 20 days denying the allegations of the answer. (§ 77.061). The issue thereby raised may be tried by a judge or jury. (§§ 77.07, .08).

Penalty on failure to answer

A default shall be entered in the cause and, upon final judgment in favor of the plaintiff, judgment shall be entered against the garnishee for the amount of the plaintiff's claim with interest and costs. (§ 77.081).

Effect of writ

Writ attaches all credits and debts due to defendant at the time of its service on the garnishee or at any time between the service and the time of the garnishee's answer. (§ 77.06).

Discharge of employee

No statutory provision. The Federal restriction would apply.

Code of Georgia

Exemptions

The lesser of: (a) 25% of disposable earnings for that workweek, or (b) the amount by which disposable earnings for that workweek exceed 30 times the Federal minimum hourly wage in effect at the time the earnings are payable. In the case of pay periods of other than one week, a multiple of the minimum Federal hourly wage that is equal in effect to the weekly exemption. (§ 46-208).

NOTE: Exemption from garnishment is ineffective as against a decree for alimony. (*Huling v. Huling*, 195 Ga. 819, 22 S.E. 2d. 832 (1952)).

Before judgment

Authorized by statute (§ 46-101) but held unconstitutional in present form as violative of due process in that it permits prejudgment garnishment without notice or hearing to the alleged debtor. (*Morrow Electric Co. Inc. v. Cruse*, (D.C. Ga. 1974) 370 F.Supp. 639).

Public officers and employees

Money due officials or employees of the State or its political subdivisions, as salary for services performed, may be garnished. (§ 46-801).

Service of process

Writ is to be served on the person authorized by law to draw the warrant on the treasury of the government to be garnished. (§ 46-802).

Time to answer

Garnishee is required to answer under oath not sooner than 30 days and not later than 45 days of the service of a summons of garnishment. (§ 46-105).

Examination of garnishee

Garnishee's answer may be traversed by a plaintiff or claimant, or both, and the issue raised thereby may be tried by a jury. (§ 46-303). A garnishee may also be required to make his answer under oath in the court where suit is pending or judgment has been obtained. (§ 46-105).

Penalty on failure to answer

Judgment by default may be entered against the garnishee for the amount of such judgment as may have been obtained against the defendant. (§ 46-106).

Effect of writ

Attaches to all money and credits due at time of service and that accrue to the debtor's credit up to the date of the answer. (§ 46-203).

Discharge of employee

Prohibited with respect to any one indebtedness. (§ 46-215).

Hawaii Revised Statutes*Exemptions*

Ninety-five percent of the first \$100 per month, ninety percent of the next \$100 per month, and eighty percent of all sums in excess of \$200 per month. (§ 652.1).

Before judgment

Permitted upon hearing and proof of statutory grounds required to be alleged in plaintiff's motion for an attachment of wages, salary or commissions before judgment. (§§ 652-1, 653-6).

Public officers and employees

The salary, stipend or wages of an officer or employee of the State or its political subdivisions is subject to garnishment. (§ 653-2).

Service of process

Writ is served on the comptroller of the State or political subdivision. After judgment, the judgment creditor's affidavit as to the amount due and unpaid, along with a certified copy of the judgment, may be filed with the comptroller in lieu of a garnishee summons. (§ 653-6).

Time to answer

On return day specified in the writ. (§ 652-1). No answer or court appearance is required with respect to the garnishment of the salary,

stipend or wages of public officials and employees; it is sufficient for the garnishee in such cases to withhold the required amount or amounts which shall thereafter be deemed sequestered in the treasury of the State or its political subdivision. (§ 653-11).

Examination of garnishee

Either party to an action may, on written notice served on the garnishee, require the garnishee to appear and be examined under oath as to the disclosures in his return or as to his liability as garnishee. (§ 652-1). Does not apply in garnishments directed to the State or its political subdivisions. (§ 653-11).

Penalty on failure to answer

If plaintiff recovers a judgment, execution shall issue at his request, against the estate of the contumacious garnishee for the amount of the judgment. (§ 652-8).

Effect of writ

Continues until judgment is satisfied. (§§ 652-3, 4; 653-11).

Discharge of employee

Prohibited. (§ 387-32).

Idaho Code

Exemptions

The greater of: (a) 75 percent of disposable earnings for a workweek, or (b) the amount by which disposable earnings for that workweek exceed 30 times the Federal minimum hourly wage. For pay periods other than a week, the exemption is to be determined by application of an appropriate multiple of the Federal minimum hourly wage equivalent, in effect, to (b) above. (§ 11-207).

Uniform consumer credit code.—The exemption is the greater of: (a) 75 percent of disposable earnings for that workweek, or (b) the amount by which disposable earnings for that week exceed 40 times the Federal minimum hourly wage. For pay periods other than a week, an appropriate multiple of the Federal minimum hourly wage equivalent, in effect, to (b) applies. (§ 28-35-105).

Support orders.—Exemptions of § 11-207 inapplicable to support orders.

Before judgment

Permitted if, on a show cause hearing, it is shown that there is a reasonable probability the plaintiff will prevail. (§ 8-502 (e)). Prohibited in consumer credit transactions. (§ 28-35-104).

Public officers and employees

Permitted as to all except elected officers. (§§ 8-502, 11-202).

Service of process

Service is to be made on the mayor, president of the council or board of trustees, or any presiding officer of a political subdivision. (§ 8-507). As to State officers and employees, service is to be made on the State auditor. (§ 11-202).

Time to answer

Within 5 days of service. (§ 8-512).

Examination of garnishee

Garnishee may be required to attend before the court, a judge or a referee for examination under oath. (§ 8-509). Examination may also be by written interrogatories. (§ 8-511). A plaintiff may also file exceptions to an answer and issues thus presented may be tried by a court. (§ 8-514).

Penalty on failure to answer

Failure or refusal to answer may result in a default judgment for an amount not greater than the debt claimed by the plaintiff, plus interest and costs. (§ 8-512).

Effect of writ

Binds all credits until it is discharged or any judgment recovered by the plaintiff is satisfied. (§ 8-508).

Discharge of employee

Prohibited under Consumer Credit Code. (§ 28-35-106).

Illinois Revised Statutes*Exemptions*

Wages, salary, commissions, bonuses and periodic payments pursuant to a retirement or pension plan are exempt to the extent of: (a) \$65 per week in the case of a head of a family who contributes substantially to its support and \$50 per week for a nonhead of a family, or (b) 85 percent of such funds, or (c) the amounts prescribed by Title III of the Federal Consumer Protection Act, whichever amount is greater. (§ 62-73).

Before judgment

No statutory authorization with respect to garnishment of wages.

Public officers and employees

Precluded on public policy grounds. (*Lloyd v. State*, 11 Ill. Ct. Cl. 456; and *Quitsow v. Hennessey*, 38 Ill. App. 176, 86 N.E. 2nd 836).

Time to answer

Writ must be answered by garnishee on or before the return date therein specified. (§ 62-77).

Examination of garnishee

Judgment creditor may contest the employer's answer in which case the issues shall be immediately tried by the court. (§ 62-80), may also be examined on written interrogatories. (§ 62-74).

Penalty on failure to answer

A conditional judgment may be entered against the employer for the amount due on the underlying judgment against the judgment debtor. A summons to confirm the conditional judgment then issues and if the employer fails to answer the summons (which is returnable not less than 10 nor more than 20 days after issuance) final judgment is entered for the balance of the underlying judgment and costs (§ 62-76).

Effect of writ

Writ continues until the total amount due on the judgment and costs is paid. (§ 62-77).

Discharge of employee

Prohibited for any one indebtedness. (§ 62-88).

Indiana Statutes*Exemptions*

Under Uniform Consumer Credit Code, only 25 percent of disposable earnings in excess of 30 times the Federal minimum hourly wage may be garnished. (§ 24-4.5-5-105).

Support orders.—Exemption inapplicable to court orders for the support of any person, and to any decree awarding alimony or attorney's fees therein when such decree specifies the amount or percentage of the disposable earnings to be applied thereon. (§ 24-4.5-5-105).

Resident householders.—An exemption of \$15 per week plus 90 percent of excess over \$15, \$1,000 maximum. (§ 34-2-28-1).

Householders.—An exemption not exceeding \$25 at any one time. (§ 34-1-11-47).

NOTE: In *Mims & Commercial Credit Co.*, 307 N.E. 2d. 867 (S. Ct. Ind., 1974) it was held that the uniform garnishment exemption does not repeal the resident-householder exemption, but that under the two statutes, the debtor defendant who satisfies the requirements of the resident-householder exemption and whose indebtedness flows from a contractual breach is entitled to whichever results in the least amount of garnished income.

Before judgment

Permitted in personal actions arising upon contract (§ 34-1-11-20) but prohibited with respect to actions under the Consumer Credit Code (§ 24-4.5-5-104).

Public officers and employees

Permitted on order of court in satisfaction of a judgment. (§ 34-1-44-7).

Service of process

Court order to be served upon the governmental officer indicated to the judgment debtor. (§ 34-1-44-7).

Time to answer

Within 5 days of service. (§ 34-1-11-22).

Examination of garnishee

On failure to answer within the specified time, the garnishee may be required to appear before the court for examination proceedings under oath. (§ 34-1-11-22).

Penalty on failure to answer

A garnishee failing to answer may be defaulted and judgment rendered against him as against other defendants. (§ 34-1-11-23).

Effect of writ

From the day of the service of summons, the garnishee shall be accountable to the plaintiff in the action for the amount of money, property or credit in his hands. (§ 34-1-11-21).

Discharge of employee
Prohibited (§ 24-4.5-5-106).

Code of Iowa

Exemptions

The greater of: (a) 75 percent of disposable earnings for a workweek, or (b) amount each week equal to 30 times the Federal minimum hourly wage. For pay periods other than a week, a multiple of the minimum hourly wage equal in effect to the weekly exemption applies. Excepting support orders, the annual maximum exemption is \$250 for each judgment creditor. (§ 642.21.)

Consumer Credit Act.—Exemption is the greater of: (a) 75 percent of disposable workweek earnings, or (b) 40 times the Federal minimum hourly wage. A consumer may apply to the court for a greater exemption on the ground that it is necessary for the maintenance of the consumer or a family wholly or partially supported by the consumer. The court may exempt part or all of the earnings in such application. (Ia. Acts 1974, c. 1250, § 5.105).

Before judgment

Permitted in aid of an attachment. (*Eller v. National Motor Vehicle Co.*, 181 Iowa 679, 165 N.W. 64). Prohibited in consumer credit transactions. (Ia. Acts 1974, c. 1250, § 5.105).

Public officers and employees

State officials cannot be garnished. (Op. Atty-Gen. 1911-12, p. 433). Municipal or political corporations shall not be garnished. (§ 642.2).

Time to answer writ

Plaintiff may direct the sheriff to take the garnishee's answer at time of service of the writ. (§ 642.5).

Examination of garnishee

If garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer in court, and he may be so required in any event, if the plaintiff so notifies him. (§§ 642.6, 7). The answer may be controverted and issues raised tried by court. (§ 642.11).

Penalty on failure to answer

Judgment may be rendered for the full amount of the plaintiff's demand. (§ 642.9).

Effect of writ

Writ attaches to amounts owing to defendant at time of its service. (§ 642.10, 21).

Discharge of employee

Prohibited (§ 642.21).

Kansas Statutes

Exemptions

Greater of: (1) 75 percent of aggregate disposable earnings for a workweek, or (2) the amount by which the aggregate disposable earnings for that workweek or multiple thereof exceed an amount equal

to 30 times the Federal minimum hourly wage, or equivalent multiple thereof for such longer period, whichever is less. (§ 60-2310(b)).

Support order.—Restrictions do not apply to any order to any court for the support of any person. (§ 60-2310(e)(1)).

Before judgment

Available upon showing a ground or grounds of attachment. (§ 60-715).

Public officers and employees

Garnishment law applies to all State, county, city, township and school district officers and employees as well as to all officers and employees of all municipal or quasi-municipal corporations. (§ 60-723).

Service of process

Upon a public officer for the State or any instrumentality thereof. (§ 60-718).

Time to answer

Within 30 days after service of a garnishment seeking to attach earnings due and owing to the defendant. (§ 60-718(b)).

Examination of garnishee

If a reply is filed to the garnishee's answer, the court shall try the issues joined thereby. Must also answer interrogatories on writ. (§ 60-718).

Penalty on failure to answer

Judgment may be taken against the garnishee for the amount of the plaintiff's judgment or claim against defendant. Judgment against the State or any instrumentality thereof shall be limited to an amount for claim and costs not exceeding the total amount of the indebtedness of the State or instrumentality thereof to the defendant. (§ 60-718(c)).

Effect of writ

Writ attaches to earnings for the entire normal pay period in which the order is served. (§ 60-717(c)).

Discharge of employee

Prohibited for any three indebtednesses. (§ 60-2311).

Kentucky Revised Statutes

Exemptions

The maximum disposable earnings for any workweek subject to garnishment may not exceed: (1) 25 percent of his disposable earnings for that workweek, or (2) the amount by which his disposable earnings for that week exceed 30 times the Federal minimum hourly wage. (§§ 427.010(2)(a), (b)).

Support orders.—The above restrictions do not apply to any order of any court for the support of any person. (§ 427.010(3)), nor to garnishments issued for the collection or maintenance of minor children. (§ 427.045).

Before judgment

Prejudgment garnishment treated as an attachment. Person seeking order must make a demand in writing and deliver such demand to the debtor at least 7 and not more than 60 days before such order is sought. The demand shall advise defendant he has 7 days to petition the court for a hearing or in which to pay the claim in full, and that unless a hearing is set or the claim paid, an order of attachment or garnishment will be sought to subject his earnings to the payment of the claim. (§ 425.185(h) (4)).

Public officers and employees

Salaries or sums due State, county, city and school board officers and employees, and all sums due any person from the State or any agency or department thereof and all sums due from any county school board, city or county, shall be subject to garnishment. (§§ 427.130(1), (2)).

Service of process

Made upon the commissioner of finance, and the State treasurer. (§ 427.130(3)).

Time to answer

Affidavit (answer) must be filed and served in the manner and at the time required for an answer by the Rules of Civil Procedure. (§ 425.315).

Examination of garnishee

A garnishee may appear in court rather than file an answer to the writ and he may be compelled to appear if he should default by not appearing to answer the writ. (§ 425.315).

Penalty on failure to answer

On failure to make a satisfactory disclosure, he may be made a defendant in the suit, and the plaintiff may proceed against the garnishee in the same manner as the defendant might proceed in an action against the garnishee to recover property held or a debt owing to the garnishee. (§ 425.325).

Effect of writ

Attaches to property in garnishee's possession at time of service of the writ. (§ 425.190).

Discharge of employee

Employee may not be discharged by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness. (§ 427.140).

Louisiana Revised Statutes*Exemptions*

Seventy-five percent of disposable earnings for any week, but not less than \$70 per week, or a multiple or fraction thereof according to whether the employee's pay period is greater or lesser than one week. (§ 13:3881).

Support orders.—Exemption inapplicable to orders for support of parents and grandparents. (§§ 13:4731, 4732). Child support orders take precedence over all garnishments of a father's wages. (§ 13:3928).

Before judgment

Garnishment available in aid of attachment (La. Code of Civil Procedure, Act. 3503).

Public officers and employees

State waives its immunity from garnishment only with respect to public employees or contractors of the State, its agencies, boards, commissions, political subdivisions, public corporations, and municipal corporations. (§ 13-3881).

Service of process

Upon the chief executive officer of the political entity. (C.C.P. 1265).

Time to answer

Within 15 days of date of service (C.C.P. 2412).

Examination of garnishee

Garnishee's answer to interrogatories may be traversed by the attaching creditor and issues thereby raised are tried by the court. (C.C.P. 2414). Garnishee may also be examined by interrogatories. (§ 13:3924).

Penalty on failure to answer

Judgment may be rendered against garnishee for full amount of the unpaid judgment, with interest and costs. (C.C.P. 2413).

Effect of writ

Seizure includes both accrued and future earnings. (C.C.P. 2411). *Sun Sales Co. v. Hodges*, 256 La. 687, 237 So. 2d 684, (1970).

Discharge of employee

No statutory provision.

Maine Revised Statutes

Exemptions

Under trustee process, 100 percent of wages due a debtor for his personal labor, or that of his wife or minor children, is exempt. (§ 14-2602(6)).

Enforcement of money judgments.—When a judgment debtor receives money or earnings from a source other than a source which is otherwise exempt from trustee process, the maximum amount of the earnings of any natural person for any workweek that may be subjected to an installment payment order of the court may not exceed: (1) 25 percent of the judgment debtor's disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed 30 times the Federal minimum hourly wage, whichever is less. Multiples of the Federal minimum hourly wage are exempt for non-weekly pay periods, as per regulations of the United States Secretary of Labor. (§ 14-3127).

Consumer Credit Code.—Garnishment to enforce judgments arising from consumer credit transactions, the exemption is equal to 75 percent of weekly disposable earnings or 40 times the Federal minimum hourly wage. Multiples of the Federal minimum hourly wage are to be prescribed for nonweekly pay periods. (§ 9A-5.105).

Before judgment

Prohibited under the Consumer Credit Code (§ 9A-5.104). Authorized under trustee process at commencement of any nonexcepted personal action. (§ 14-2601).

Public officers and employees

The statute providing that no person shall be adjudged trustee by reason of any money in his hands as a public officer has been interpreted as not applying to cases of personal indebtedness on the part of such officer. (*Tyler v. Winslow*, 46 Me. 348 (1859) interpreting § 14-2602).

Service of process

Upon a county, by serving a county commissioner, their clerk, or the county treasurer. Upon a town, by serving the town clerk, selectman or assessor. Upon a city, by serving the city clerk, treasurer manager. Upon any other public corporation or body, by serving any director, officer or manager thereof. (Maine Rules of Civil Procedure, Rule 4).

Time to answer

Within 20 days of service. (Maine Rules of Civil Procedure, Rule 4B).

Examination of garnishee

Garnishee must submit his disclosure under oath and submit to examination. (§§ 14-2701, 2707).

Penalty on failure to answer

Garnishee is liable for all costs (§ 14-2701) and is liable for the whole sum remaining due on the judgment against the defendant. (§ 14-2952).

Discharge of employee

Discharge for subjection of earnings to installment order. (§ 14-3137). Discharge for subjection of unpaid earnings to satisfaction of judgment arising from consumer credit transaction prohibited. (§ 9A-5.106).

Maryland Code*Exemption*

The amount equal to \$120 multiplied by the number of weeks in which such wages due were earned, or 75 percent of such wages, whichever is greater. (Art. 9, § 31(a)).

Caroline, Worcester, Kent, and Queen Anne Counties.—The exemption is the greater of: (1) 75 percent of the wages due or (2) 30 times the federal minimum hourly wage. (Art. 9, § 31(a)).

Wife and child support.—Willful neglect to support a wife or child is a misdemeanor. In lieu of punishment on conviction, the court may order the defendant to pay a certain sum weekly toward their support. Any such order is a lien on defendant's earnings and the employer is required to deduct such sum and pay it over to the Probation Department. (Art. 27, § 88).

Before judgment

No separate garnishment proceeding exists. Practice is to levy an attachment. In such proceeding, the third party is referred to as a garnishee. Pursuant to the Maryland Rules of Procedure, an attachment may issue on original process against matured or unmatured property or credits upon the application of any person that has the right to become a plaintiff in an action. (Maryland Rules of Procedure, Rule G40).

Public officers and employees

No statutory provision.

Time to answer

Within 15 days after return day. If interrogatories are served upon the garnishee, answer thereto must be made within 30 days after service. (Maryland Rules of Procedure, Rules G47, G56).

Examination of garnishee

By appearance in court to show cause why property or credits attached should not be condemned, and by interrogatories. (Maryland Rules of Procedure, Rules G47, G56).

Penalty on failure to answer

Judgment may be entered for the full amount of the plaintiff's claim. (Maryland Rules of Procedure, Rule G56).

Effect of writ

Writ does not affect salary of wages which are not actually due at date of attachment. (Art. 9, § 31(a)).

Discharge of employee

May not discharge an employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness within a calendar year. (Art. 9, § 31(b)).

Massachusetts General Laws*Exemptions*

\$125 of wages for labor performed or services rendered during each week is exempt from attachment under the trustee process. (§ 246-28).

Before judgment

Trustee process involving wages is available only in actions brought upon a judgment and is authorized in advance by a justice of the court in which the action is commenced. (§ 246-32(8)).

Public officers and employees

Towns, cities, and counties are liable to be summoned as trustees. (*Adams v. Tyler*, 121 Mass. 380, (1876)). The Commonwealth, in the absence of statutory authority, cannot be summoned as a trustee. (*MacQuarrie v. Balch*, 1972 Mass. Adv. Sh. 1225, 285 N.E. 2d. 103).

Service of process

Statute declares only that trustee writs shall be served on each trustee. (§ 246-5).

Time to answer

Within 20 days of service of the trustee summons. (Mass. Rule of Civ. Proc., Rule 4.2).

Examination of garnishee

Plaintiff may, from time to time, examine trustee upon written interrogatories. (§ 246-12). An answer may be controverted and the issues raised tried by the court. (§ 246-17).

Penalty on failure to answer

A trustee who neglects to appear and answer shall be defaulted and adjudged a trustee. (§ 246-18). He is liable for the full amount of the judgment in the suit, plus interest thereon, if he willfully falsifies his answers. (§ 246-19).

Effect of writ

Writ attaches only to money which is unconditionally due. (*Benison v. Wright*, 21 Mass. App. Dec. 68, (1961)).

Discharge of employee

No statutory provision.

Michigan Compiled Laws

Exemptions

(a) *First garnishment of a householder having a family.*—The basic exemption is 60 percent of wages, with the following limitations: (1) if the labor extends over a period of 1 week or less; the maximum exemption is \$50 and the minimum is \$30; (2) if the labor extends over a period greater than 1 week, the maximum exemption is \$90 and the minimum is \$60.

(b) *Subsequent garnishments of a householder with a family.*—The exemption is to the amount of 60 percent of the indebtedness, but: (1) if the labor extends over a period of 1 week or less, the maximum exemption is \$30 and the minimum is \$12; (2) if the labor extends over a period greater than 1 week but not exceeding 16 days, the maximum exemption is \$60 and the minimum is \$124; (3) if the labor extends over a period in excess of 16 days, the maximum exemption is \$60 and the minimum is \$30.

(c) *First garnishment of an employee who is not a householder with a family.*—The basic exemption is 40 percent with a maximum exemption of \$50 and a minimum of \$20.

(d) *Subsequent garnishments of an employee who is not a householder with a family.*—The basic exemption is 30 percent with a maximum exemption of \$20 and a minimum of \$10. (§§ 600.4031, 7267, 7511).

Support orders.—In addition to above exemptions, such sums as are required to comply with court orders for alimony and child support is exempted. (§ 600.7511(4)).

Before judgment

A plaintiff's claim must be reduced to judgment before garnishment of wages for labor performed may issue. (§§ 600.4011 (b) (3)).

Public officers and employees

Under Michigan case law, compensation of State officers or employees may not be garnished. (*Auditor General v. Wayne Circuit Judge*, 234 Mich. 540, 208 N.W. 696). No execution may issue against any township, village, city, the trustees or common council, or the officers thereof any corporate body or unincorporated board having

charge or control of any State institution, any school district, any county of the board of supervisors or any county officer. (§ 600.6021).

Time to answer

In court of record, garnishee must file answer within 15 days after service. (Rule 738.3). In justice court, summons involving wages is returnable in not less than 5 nor more than 9 days, except that in counties with a population greater than 2 million, the summons shall be returned in not less than 9 nor more than 15 days. (§ 600.7509).

Examination of garnishee

Plaintiff, unsatisfied with garnishee's answer, may serve written interrogatories or demand oral examination of garnishee. (Rule 738.8). In justice court, the garnishee is required to appear before the justice on the return day. (§ 600.7517).

Penalty on failure to answer

A default may be taken as in other civil actions (Rule 738.8). In justice court, garnishee is liable to arrest. (§ 600.7515).

Effect of writ

Attaches wages earned and due on the next date when payment is regularly made. (§ 600.7511).

Discharge of employee

Prohibited with respect to justice court garnishments. (§ 600.7585).

Minnesota Statutes

Exemptions

Seventy-five percent of disposable earnings for any period, or an amount equal to eight times the number of business days and paid holidays, not to exceed five per calendar week, in the pay period times the Federal minimum hourly wage, whichever is greater. (§ 550.37 (13), 571.55).

Before judgment

In specified instances, a garnishment before judgment is permitted. (§ 571-41(2)).

Public officers and employees

Salary or wages of any official or employee of a county, town, city, village, or school district, or any department thereof is subject to garnishment. (§ 571.45).

Money due or owing any person or corporation by the State on account of any employment, work, or contract with the commissioner of highways is liable to garnishment. (§ 571.46).

Service of process

On the auditor, treasurer or clerk of the bodies specified in § 571.45. In other cases, service on such bodies shall be made 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. (§ 571.45).

Under § 571.46, service may be made by registered mail on the commissioner of highways.

Time to answer

Within 20 days (12 days in justice court) after service thereof. (§§ 571.47, 571.48).

Examination of garnishee

Either before or after written disclosure by answer to interrogatories submitted by a plaintiff, any party to the garnishment proceeding may obtain an ex parte order requiring oral disclosure. (§§ 571.47, 571.5).

Penalty on failure to answer

Judgment may be rendered against a defaulting garnishee for an amount not exceeding the judgment creditor's judgment against the judgment debtor or 110 percent of the amount claimed in the garnishee summons, whichever is smaller. (§ 571.53).

Effect of writ

Binds all disposable earnings earned or to be earned within that one pay period. (§§ 550.37(13), 571.42(2)).

Discharge of employee

Prohibited unless there have been more than three garnishments within a 90 day period involving more than one indebtedness. (§ 571.61).

Mississippi Code*Exemptions*

Seventy-five percent of a resident's wages, salary or other compensation, due or to become due. (§ 85-3-1).

Before judgment

Authorized in aid of attachment (§ 11-35-3) but is apparently authorized only after judgment to bind wages of public officers and employees. (§ 11-35-1).

Public officers and employees

Garnishment provisions apply to any person, either natural or artificial, including the State, any county, municipality, school district, board or other political subdivision thereof. (§ 11-35-1).

Service of process

(a) In case of garnishment against any employee of a State department, agency, board, commission, institution or other authority, the writ shall be served upon the department head, president of the institution or chairman or other presiding officer thereof.

(b) The writ shall be served on the State auditor in case of a garnishment against a State officer, departmental head, president of an institution, director of a board or other head of any other agency or commission of the State.

(c) The writ shall be served on the State treasurer in case of a garnishment against the State auditor. The writ shall also be served on the State treasurer in case of a garnishment against one of his employees.

(d) The writ shall be served on the clerk of the county chancery court in case of a garnishment against a salaried officer or employee of a county.

(e) The writ shall be served on the county sheriff in case of a garnishment against the clerk of the chancery court.

(f) The writ shall be served on the superintendent of the school district in case of a garnishment against a salaried officer or employee of a county or separate municipal school district.

(g) In case of garnishments against the school district superintendent, the writ shall be served on the president of the board of education or board of trustees.

(h) Garnishments against officers or employees of a municipality shall be served on the city, town or village clerk. (§ 11-35-11).

Time to answer

Answers in the circuit or chancery courts are due on the first day of the return term; in the justice of the peace court, the answer is due by noon on the return day of the writ. (§ 11-35-27).

Examination of garnishee

Garnishee required to submit written answers under oath. (§ 11-35-25). Garnishee's answer may be contested by the plaintiff. (§§ 11-35-45, 85-3-1), issues thereby raised are triable by the court. (§ 11-35-45).

Penalty on failure to answer

If the plaintiff prevails in a contest of garnishee's answer, judgment may be rendered against the garnishee for such amount as would have been subject to the order of condemnation had the said sum not been released to the defendant. (§ 85-3-1). On simple failure to answer, judgment for the amount of the plaintiff may be entered. (§ 11-35-1).

Judgment shall not be rendered against the State, county, municipality, State institution, board, commission or authority for default in failing to answer a writ of garnishment. (§ 11-35-13).

A sum of \$25 may be recovered by a plaintiff from any person failing to answer a writ of garnishment served upon him in his representative capacity under the provisions of § 11-35-11 above. (§ 11-35-19).

Effect of writ

Attaches wages on a continuing lien basis until the amount shown as due is equalled. (§ 85-3-1).

Discharge of employee

No statutory provision.

Missouri Statutes

Exemption

The greater of: (a) 75 percent of workweek earnings, after deductions required by law to be withheld; (b) an amount each week equal to 30 times the Federal minimum hourly wage, or (c) if the employee is a resident head of a family, 90 percent of such earnings after deductions required by law.

Support orders.—Restrictions due not apply in the case of any order of any court for the support of any person. (§§ 452.140, 525.030(2)).

Before judgment

Available in aid of an attachment before judgment (§ 525.010), but sequestration of a public officers or employees salary may be made only after a judgment. (§ 525.310).

Public officers and employees

Permitted (§§ 525.030, 310).

Service of process

Upon the treasurer or the disbursing or auditing officer of the State or political subdivision charged with the duty of payment or audit of the salary, wages, fees or earnings of an officer, employee, or appointee of the State or political subdivision. (§ 525.310).

Time to answer

The return date of a summons to a garnishee is the return date of the execution. (Missouri Rules of Civil Procedure, Rule 90.02).

Answer to interrogatories filed by a plaintiff is due within 10 days after service thereof. (Missouri Rules of Civil Procedure, Rule 90.13).

In magistrate courts, time to answer, by appearance before the magistrate, is specified in the writ, but may not be more than 90 days from the date of service of the writ. (§ 525.320).

Examination of garnishee

The garnishee may be examined on written interrogatories submitted by the plaintiff. (§ 525.130).

In magistrate courts, garnishee may file written answer to statutory interrogatories, under oath, or the magistrate may, at his request, write the answer of the garnishee to each interrogatory separately and file the answer as a paper in the cause. (§ 525.350).

Penalty of failure to answer

The plaintiff may take judgment by default against the garnishee, or the court, on motion, may compel him to answer by attachment of his body. (§ 525.140). The same procedure applies in magistrate courts. (§ 525.360). The plaintiff may deny the garnishee's answer and issues thereby raised are to be tried by the court. (§ 525.190).

Effect of writ

Writ attaches to all earnings due on date of service, or which may become due between that time and the time of filing his answer. (§ 525.040).

Discharge of employee

Prohibited (§ 525.030(5)).

Montana Code

Exemptions

One hundred percent of earnings for personal services rendered at any time within 45 days next preceding the levy of execution or attachment when it appears, by debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, supported in whole or in part by his labor.

A 50 percent exemption applies if the obligation was incurred for gasoline or the common necessities of life. (§ 93-5816).

Before judgment

In general, garnishments are in all respects subject to the same statutes as attachments and are available at the time of issuing the summons, or at any time afterward. (§§ 93-4301, 4314).

Public officers and employees

Attachment or garnishment of money, credits or property in the possession or under the control of any public officer of a political subdivision, or State board or State government, is permitted. (§ 93-4341).

Service of process

The writ is to be served upon the clerk of the county or chairman of the board of county commissioners, the city clerk or mayor of a municipal corporation, or upon the clerk of the board of school trustees or chairman of such board, as the case may be. (§ 93-4341).

Time to answer

No specific time specified by statutes which state, only, that upon application of the officer serving an attachment, the garnishee must furnish such levying officer a statement of the property of the defendant held by the garnishee. (§ 93-4310).

Examination of garnishee

Upon a refusal to give the required certificate, or if there is reason to believe the certificate submitted is untrue or incomplete, the court may order a garnishee to appear at a specified place and time for an examination under oath by a judge or referee. (§ 93-4311). Garnishees may also be required to appear in court or before a judge or referee to answer as to his indebtedness to the defendant. (§ 93-4315).

Penalty on failure to answer

No statutory provision.

Effect of writ

Attaches to credits due at time of service (§ 93-4314).

Discharge of employee

Prohibited (§ 41-305.1).

Nebraska Statutes

Exemptions

Greater of: (a) 75 percent of workweek's disposable earnings, or (b) the amount each week equal to 30 times the Federal minimum hourly wage, or (c) 85 percent of disposable earnings for workweek if the wage earner is a head of a family. Multiples of the minimum wage apply for pay periods longer than one week. (§ 25-1558).

Support orders.—Exemptions inapplicable to support orders. (§ 25-1558).

Before judgment

Wages may be garnished by an order for attachment. (§§ 25-1002, 1010).

Public officers and employees

Garnishment provisions apply to all State, county, municipal, municipally owned corporations, townships and school district officers and employees. (§ 25-1012).

Service of process

Made upon the officer whose duty it is to issue warrants for the payment of the officer or employee whose earnings are sought to be held. (§ 25-1013).

Time to answer

Within 10 days of issuance of summons to garnishee to answer interrogatories. (§ 25-1010).

Examination of garnishee

By interrogatories submitted by plaintiff. (§ 25-1010).

A garnishment summons served on a disbursing officer of the State or a political subdivision may be answered by him in writing by mail, or he may appear in person before the court, or file his written answer to the summons. In no case shall he be required to appear in person. (§ 25-1013).

Penalty on failure to answer

Garnishee is presumed to be indebted to the defendant to the full amount of the plaintiff's claim, and upon notice as directed by the court, judgment may be entered against him. (§ 25-1028).

Effect of writ

A garnishee summons binds wages under the control of the employer at the time of the service of the summons. (§ 25-1010). An order of attachment binds the wages in the employer's hands from the time of service. (§ 25-1017). Garnishment of State or political subdivision binds wages due between date of service and answer day. (§ 25-1013).

Discharge of employee

Discharge for garnishment for any one indebtedness prohibited. (§ 22-155S).

Nevada Revised Statutes*Exemptions*

The greater of: (1) 75 percent of disposable earnings for relevant pay period, or (2) the amount by which his disposable earnings for each week of that pay period exceed 30 times the Federal minimum hourly wage.

Support orders.—The above restrictions do not apply to any court order for the support of any person. (§§ 21.090, 31.295).

Before judgment

A writ of garnishment may be issued at the time of the order directing a writ of attachment to issue. (§§ 31.240; 249).

Public officers and employees

Fees and salaries of all officers and employees of the State, county, city, town, township or school district are subject to attachment and

execution for all debts and liabilities created or incurred by such officials or other persons. (§ 281.130).

Service of process

Service is upon the appropriate auditor, treasurer or disbursing officer. (§ 281.130).

Time to answer

Within 20 days of the date of service of the writ. (§ 31.260).

Examination of garnishee

Garnishee required to answer written interrogatories under oath. (§ 31.290). The plaintiff may traverse a garnishee's answer and new matters raised thereby shall be tried by the court. (§§ 31.330, 340).

Penalty on failure to answer

Judgment may be entered in favor of the defendant for the use of plaintiff against the garnishee for the value of the property or amount of money specified in the writ of garnishment. (§§ 31.260, 320).

Effect of writ

Attaches to wages earned as of the time of service, whether due or not. (§ 31.290).

Discharge of employee

No statutory provision.

New Hampshire Revised Statutes

Exemptions

Wages for labors performed after service of the writ on the trustee are exempt from the trustee process. Wages for services performed before service of the writ on the trustee are exempt except in actions founded upon a debt on a judgment issued by a State court; in such case, wages earned, before service of the writ, to the amount of 50 times the minimum hourly wage shall be exempt. (§§ 512.21(1), (2)).

Before judgment

Wages of an employee may be reached by an attachment of wages by trustee process before or after judgment. (§ 512.1).

Public officers and employees

Salary and wages of officials and employees of the State, county, city, town or school district are subject to the trustee process. (§§ 512.9, 9-a).

Service of process

Process served upon the State treasurer or treasurer of the county, city, town or school district. (§§ 512.9, 9-a).

Time to answer

At any time after service of the writ, a trustee's disclosure may be given or taken by any party after giving the same notice to the adverse party as is required in taking depositions. (§ 512.12). Superior Court rules respecting the taking of depositions deems 20 days notice as being reasonable. (Rules of the Superior Court, Rule 30). Depositions are submitted at the term next after the trustee's deposition is taken (§ 512.16).

Examination of garnishee

The writ requires the trustee to appear in court and show cause, if any, why execution should not issue against him for the judgment which may be recovered by the plaintiff. (§ 509.18). Examination may also be had under the deposition process set out above, (§ 512.13), and a trial of any issues raised by the deposition may be had on the motion of either party to the suit before a decision of the court. (§ 512.18).

Penalty on failure to answer

A trustee may be charged on default after a refusal to answer upon such notice as the court may order. (§ 512.10). If a trustee again defaults after such notice, he may be held chargeable for the amount of the judgment recovered by the plaintiff. (§ 512.11). If upon depositions or trial by jury, and verdict thereof, it appears that the trustee had in his possession at the time of the service of the writ upon him, or at any time thereafter, any money, goods, chattels, rights or credits of the defendant, not exempted from the trustee process, the trustee must be adjudged chargeable therefor. (§ 512.20).

Effect of writ

Attaches only to wages owing at the time of the writ's service. (§ 512.21).

Discharge of employee

No statutory provision.

New Jersey Statutes

Exemption

A minimum wage exemption of \$48 per week applies. If the wages, debts, earnings, salary, trust fund income or profits due and owing to a judgment debtor do not exceed \$7,500 per annum, the amount specified in any execution issued out of any court shall not exceed 10 percent thereof. If such income exceeds \$7,500 per annum, the court may order a larger percentage. (§§ 2A:17-52, 17-53, 17-57).

Support orders.—In case of multiple executions against such income, executions pursuant to court orders for maintenance and support of a wife and children shall be first satisfied. (§ 2A:17-52).

Before judgment

Wages may be reached by attachment or execution, attachments may be issued before judgment in specified instances. (§ 2a:26-2). An execution may issue only when a judgment has been recovered. (§ 2A:17-50).

Public officers and employees

Wages of State and public employees may be levied against by execution. (§ 2A:17-53).

Service of process

May be made upon any person, agent, treasurer or other fiduciary officer of a private or public municipal corporation, including the county, the State, or other governmental agency. (§ 2A:17-53).

Time to answer

The person to whom an execution is presented is required to pay over to the officer presenting the same, such amount of such indebted-

edness as such execution shall prescribe, until such execution shall be wholly satisfied. (§ 2A:17-53).

Examination of garnishee

No statutory provision.

Penalty on failure to answer

Failure or refusal to make payments required by § 2A:17-53 shall render such person, agent or officer so failing liable to an action therefor by the judgment creditor named in the execution.

Effect of writ

A continuing lien and levy upon the wages, debts, earnings, salary, trust fund income or profits due or to become due to such judgment debtor to the amount specified therein. (§ 2A:17-51).

Discharge of employee

No statutory provision.

New Mexico Statutes

Exemptions

The greater of: (1) 75 percent of defendant's disposable earnings for any pay period, or (2) an amount each week equal to 40 times the Federal minimum hourly wage. Equivalent exemptions to be prescribed for pay periods other than one week. (§ 36-14-7).

Before judgment

Permitted on specified grounds. (§ 36-14-1), but prejudgment garnishment does not attach wages or salary due defendant from garnishee. (§ 36-14-3(B)).

Public officers and employees

Wages and salaries due public officials and employees of the State or its political subdivision are subject to garnishment *only after* a judgment has been obtained by the plaintiff. (§ 36-14-8).

Service of process

In garnishment actions involving State officials and employees, service shall be made upon the department of finance and administration, on the attorney general, and on the head of the branch, agency, bureau, department, commission or institution. ((§ 5-6-22)(G)).

Time to answer

Within 20 days of the service of the writ. (§ 36-14-2).

Examination of garnishee

Answer of public officer of the State or its political subdivisions shall be by statement over his official signature and filed in the action without cost. (§ 36-14-8). Statute requires other garnishees to appear before the magistrate court and file their answers, under oath, to interrogatories stated on the writ. (§§ 36-14-2, 36-14-15). Answers may be controverted and issues thereby raised may be tried by the magistrate court. (§ 36-14-5).

Penalty on failure to answer

Failure to answer under oath within 20 days may result in a judgment against garnishee for the full amount of a plaintiff's judgment, together with interest and costs. (§ 36-14-4(B)).

Effect of writ

The writ is a continuing lien and levy upon the judgment debtor's wages and salary until the judgment is paid or his employment is terminated. (§ 36-14-7.2).

Discharge of employee

No statutory provision.

New York Consolidated Laws*Exemptions*

Under income execution procedure, 90 percent of earnings for service within 60 days before, and at anytime after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment, is exempt. The exemption may be reduced by such amount as the court may determine to be unnecessary for the reasonable requirements of the judgment debtor and his dependents. Earnings of \$85 per week or less are entirely exempt. (Civil Practice Law and Rules, §§ 5205, 5231).

Support orders.—Court determines amount necessary for support of spouse and children and may order an employer to deduct such amount from an employee's wages, salary and commissions, and forward such amount monthly to the court as directed in the order. (Personal Property law § 49-b).

Before judgment

Income executions are available in satisfaction of judgments. (Civil Practice Law and Rules, § 5231). Wages may be reached before judgment by the attachment process. (*Morris Plan Industrial Bank v. Gunning*, 295 N.Y. 324, 67 N.E. 2d. 510, (1946)).

Public officers and employees

Wages and salaries of state and political subdivision officers and employees is subject to income executions. (Civil Practice Law and Rules, § 5231 (f)).

Service of process

A levy upon money payable directly by a department of the State, or by an institution under its jurisdiction, shall be made by serving the income execution on the head of the department, or an officer designated by him, at the office of the department in Albany. A levy upon money payable directly upon the State comptroller's warrant, or directly by a State board, commission, body or agency which is not within any department of the State shall be made by serving the income execution upon the State department of audit and control at its office in Albany. Service on municipal or public benefit corporations or boards of education are apparently made by leaving a copy of the income execution with an executive officer or person whose duties are of sufficient importance to make it reasonably probable that process will be brought to the attention of the corporation or board. (Civil Practice Law and Rules, § 5231 (f)).

Time to answer

Written interrogatories may be served upon an employer pursuant to a subpoena and are returnable within 7 days of their receipt or serv-

ice. *Procedure*: the income execution is served upon an employer by the sheriff who is then required to make a return of service within 60 days. Service of the income execution subjects the judgment debtor's nonexempt income to a lien and requires the employer to withhold such nonexempt income of the judgment debtor and pay the same over to the sheriff who in turn shall, from time to time, and at least once every six months, account for and pay all installments of monies collected under the execution to the person entitled thereto. (Civil Practice Law and Rules, §§ 5224, 5231 (f), (i)).

Examination of garnishee

A judgment creditor may subpoena any person to compel disclosure of matters relevant to the satisfaction of their judgment. The subpoena may be accompanied by written interrogatories or it may require the person to attend at an oral deposition. (Civil Practice Law and Rules, §§ 5223, 5224).

Penalty on failure to answer

A person renders himself liable to the judgment creditor for the accrued installments upon a failure to pay such installments to the sheriff. (Civil Practice Law and Procedures, § 5231).

Effect of writ

The income execution is a continuing levy on the judgment debtor's salary or wages. (Civil Practice Law and Procedure, § 5231).

Discharge of employee

No employer shall discharge or lay off an employee because one or more income executions have been served upon such employer against the employee's wages. (Civil Practice Law and Rules, § 5252).

North Carolina General Statutes

Exemptions

One hundred percent of a debtor's earnings for personal services rendered at any time within 60 days next preceding the order of execution when it appears, by affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partially by his labor. (§ 1-362).

Before judgment

Garnishment is not an independent action but is a proceeding ancillary to attachment. (§ 1-440.21). A summons to a garnishee may be issued: (1) at the time of the issuance of the original order of attachment, or (2) at any time thereafter prior to judgment in the principal action. (§ 1-440.22), and is available in actions for alimony, or maintenance and support. (§ 1-440.2).

Public officers and employees

For reasons of public policy, the salaries of officers and the pay of employees of the State cannot be reached by creditors by proceedings supplementary to execution. (*Swepson v. Turner*, 76 N.C. 115 (1877)).

Service of process

Personal service on garnishee required. (§ 1-440.22).

Time to answer

Within 20 days of service. (§ 1-440.23).

Examination of garnishee

Interrogatories are incorporated in the garnishment summons. (§ 1-440.23). Additionally, a plaintiff may challenge a garnishee's answer and the issues thereby raised are triable by a court or jury. (§ 1-440.31).

Penalty on failure to answer

A conditional judgment for the full amount of the plaintiff's claim, plus costs, may be entered. A conditional judgment may be made final upon a continued failure to appear. (§ 1-440.27).

Effect of writ

Attachment reaches wages owing at and from the time of service of the summons until the employer makes his answer. (§ 1-440.28(a)(1)).

Discharge of employee

No statutory provisions.

North Dakota Century Code

Exemptions

The greater of: (a) 75 percent of disposable earnings for workweek, or (b) an amount equal to 40 times the Federal minimum hourly wage. Equivalent multiples as prescribed by the Secretary of Labor apply in cases of pay periods other than a week. (§ 32-09-02(2)).

Support orders.—The above exemptions are inapplicable to any order of any court for the support of any person. (§ 32-09-02(3)(a)). Upon affidavit of need for the support of a family, 100 percent of earnings for personal services rendered within 60 days of order may be exempted by the court. (§ 28-25-11).

Before judgment

Prejudgment garnishment may be issued at any time before final judgment in any action to recover damages founded upon contract, express or implied, or upon a judgment or decree. (§ 32-09-06).

Public officers and employees

Garnishment is available against any person, any public corporation, the State, or any institution, department, or agency of the State. (§ 32-09-01).

Service of process

Service is made upon the director of the department of accounts and purchases. (§ 32-09-05).

Time to answer

An affidavit denying indebtedness or an answer to the garnishment summons must be filed within 20 days of service of the summons. (§§ 32-09-07, 14).

Examination of garnishee

By affidavit concerning his liability to the defendant (§ 32-09-15) and such answer is conclusive unless controverted by the plaintiff, in which case, the issues thereby raised shall be tried by the court. (§ 32-09-18).

Penalty on failure to answer

The court may render judgment against the garnishee for the amount of the judgment which the plaintiff shall recover against the defendant in the action for damages and costs, together with the costs of such garnishment action. (§ 32-09-16).

Effect of writ

Attaches earnings from the time of service of the demand for the employees disposable earnings and for five days thereafter. (§ 32-09-03).

Discharge of employee

No statutory provision.

Ohio Revised Code*Exemptions*

A debtor's earnings owed for services rendered within 30 days before attachment, process, judgment or order is exempt to the extent of the greater of: (1) if paid weekly, 30 times the current federal minimum hourly wage; if paid biweekly, 60 times the current Federal minimum hourly wage; if paid semi-monthly, 65 times the current Federal minimum hourly wage; or if paid monthly, 130 times the current Federal minimum hourly wage in effect at the time the earnings are payable; or (2) 75 percent of the disposable earnings due the debtor. (§§ 2329.62, 66).

Support orders.—Limitations do not apply to support orders. Employers must withhold the amount ordered by the court for the support of the wage earner's minor children. (§ 3113.21).

Before judgment

Attachments against the personal earnings of defendant, through an action in garnishment, may be granted only after a judgment has been obtained by the plaintiff. (§ 2715.01). A demand for payment is prerequisite to issue of garnishment summons. (§ 2715.02).

Public officers and employees

State subject to garnishment process with respect to its officers and employees. (§ 115.46).

Service of process

On State auditor (§ 115.46).

Time to answer

Garnishee required to appear and answer within the time allowed the defendant to answer the petition upon which the attachment was granted. (§ 2715.29).

Examination of garnishee

In the case of garnishments issued by the court of common pleas, the garnishee shall make his answer before the clerk of the court and a special examination of the garnishee shall be had. (§ 2715.13). In municipal or county court, garnishee appears at Court and answers questions put to him respecting credits and debts owed by him to the defendant. (§1911.35).

Penalty on failure to answer

On failure to appear and answer, the plaintiff may proceed against the garnishee by civil action wherein judgment may be rendered in favor of the plaintiff for the amount of the property and credits of the defendant in the possession of the garnishee, and for what appears to be owing by him to the defendant, and for the costs of the proceedings against such garnishee. (§§ 1911.44, 2715-33).

Effect of writ

Binds garnishee for all property of the defendant held by him, all amounts due the defendant from the garnishee from the time of the service of the order, and personal earnings owed the defendant for services rendered before service of the notice. (§§ 1911.35, 2715.19, 2715.29).

Discharge of employee

Discharge for any one garnishment of personal earnings in any twelve-month period is prohibited. (§ 2715.01).

Oklahoma Statutes*Exemptions*

Resident homeowner and head of family, 75 percent of wages or earnings for professional or personal services earned during last 90 days is exempt. (§ 31-1-1). Seventy-five percent of wages of resident nonfamily head is exempt. (§ 31-1-4).

Support orders.—One hundred percent of earnings for services performed within 90 days before issuance of execution is exempt if the same is necessary for the maintenance of a family wholly or partially supported by the defendant's labor (§ 31-1.1). Does not apply to orders for child support. (§ 31-1.1(1)).

Consumer Credit Code.—Exempts the greater of: (a) 75 percent of disposable earnings for that workweek, or (b) an amount each week equal to 30 times the Federal minimum hourly wage. For pay periods other than a week, the Administrator shall prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (b) (§ 14A-5-105(2)).

Before judgment

Garnishment may issue at or after issuance of the summons and before judgment. (§ 12-1172). Prejudgment garnishment of wages, however, is prohibited under the general garnishment provisions and under the Consumer Credit Code. (§ 12-1171.1; §14A-5-104). A hearing is a prerequisite to prejudgment garnishments. (§ 2-1172.1).

Public officers and employees

Garnishment proceedings may be initiated against State, county, city, town, school board, board of education, or any municipal subdivision officer or employee. (§ 12-1191).

Service of process

When the State is garnished, process shall be served upon the officer having control of the department or institution which caused the State to become indebted to the defendant. If such department is under the control of a board or commission, service may be had upon either the chairman or secretary of such board or commission.

Service on an officer having control of a State institution shall be had upon the president of the school, college or university, the superintendent of the institution or the warden of the penitentiary or reformatory involved.

Service on the State Auditor shall be made when a State officer not under the control of a State Department or Institution is the defendant.

Service shall be made on the clerk of a county, city, town, township, school board or board of education in garnishments affecting officers and employees of such bodies. (§ 12-1193).

Time to answer

Within 10 days from date of service (§ 12-1194).

Examination of garnishee

A garnishee may be examined by deposition or written interrogatories at any time after he files his answer. (§ 12-1183). A plaintiff may also elect to take issue on a garnishee's answer, in which case the issue shall stand for trial. (§ 12-1177). Garnishee may answer by affidavit. (§ 12-1178).

Penalty on failure to answer

Judgment may be rendered against him for the amount of the judgment which the plaintiff shall recover against the defendant, plus costs, together with the costs of such garnishment. (§ 12-1179). No judgment, however, shall be rendered against the State, or any county, city, town, board of education, school board, or any municipal subdivision of the State named as garnishee, but judgment may be rendered against any person served as provided under § 12-1193 above (i.e. the State offices, city, county, town, or township clerk, etc.). (§ 12-1194).

Effect of writ

Attaches to wages, salaries, bonus, and commission owing on the date of service. (§ 12-1173).

Discharge of employee

Discharge because of garnishment or like proceeding brought for purpose of paying a judgment arising out of a consumer credit transaction is prohibited unless such action is brought on more than two occasions within one year. (§§ 14A: 5.106, 5.202).

Oregon Revised Statutes

Exemptions

The greater of: (1) seventy-five percent of disposable earnings for a workweek, or (2) the amount by which his disposable earnings for that week exceed 30 times the Federal minimum hourly wage. (§ 23.185(1) (a), (b)).

Support orders.—Exemptions do not apply to court orders for the support of any person, including an award for attorneys fees or costs. (§ 23.185(2) (a)).

Before judgment

Prejudgment attachment and garnishment authorized on stated grounds (§ 29.110) and upon a hearing into the grounds alleged in the affidavit for a garnishment before judgment. (§§ 29.025, .065).

Public officers and employees

Salary, wages, credits, or other personal property in possession or control of the State or of any county, city, school district or other political subdivision, or any board, institution, commission, or officer of the same, is subject to garnishment. (§ 23.190).

Service of process

Process served on the board, department, institution, commission, agency, or officer charged with the duty of approving a voucher or claim for such salary, wages, credits, or other public property. (§ 23.190).

Time to answer

Within 5 days of service when service made in the county in which the action is pending; 10 days when service is made in any other county. (§ 29.280).

Examination of garnishee

Garnishee may be examined by written interrogatories or before the court, on oath, if he fails to respond to the writ, or provides an unsatisfactory response thereto. (§§ 29.280, .310). An answer may be controverted and the issues tried by the Court. (§ 29.340).

Penalty on failure to answer

Judgment may be entered against garnishee for an amount not greater than the judgment against plaintiff. (§ 29.330).

Effect of writ

Attaches to credits due at time of service. (§ 29.280).

Discharge of employee

Discharge because earnings have been garnished is prohibited. (§ 23.185(7)).

Pennsylvania Statutes*Exemptions*

One hundred percent of all wages (§ 42-886).

Support orders.—Exemptions do not apply to orders for support of wife and children. (§ 48-136).

Before judgment

Attachment of wages for a duty of support presupposes a court order requiring payments.

The procedure for enforcing court orders for support is set out at § 62: 2043.39 of the Code, and states as follows:

§ 2043.39 Enforcement of orders of the court

(a) The court, upon receiving information, either through written application or at any hearing, that there is failure to comply with the order of the court, may issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named be brought before the court at such time as the court may direct which in counties of the first class shall be within forty-eight (48) hours or two court working days, whichever is the longer from the time the person is taken in custody of law pursuant to the attachment.

(b) Any willful failure to comply with any order of the court may be deemed a contempt of court and except in counties of the first class may be punishable by the court by commitment to the county jail or house of correction. In counties of the first class, any person who is found, after hearing, to have willfully failed to comply with any order of the court may be adjudged in contempt of court and may be punished by the court by commitment to the county jail or house of correction until compliance with said order, but in no case for a period exceeding six (6) months, and the court in its order shall state the condition which upon fulfillment will result in the release of such person.

(c) The wages, salary or commissions of any person owing a duty, of support may be attached in the following manner:

(1) A certified copy of the order of support shall be served on the employer, whether a corporation, political subdivision, association, company, firm or individual, and may be served by registered mail or by any adult person or by any other manner provided by law.

(2) Such certified copy of the order shall contain an order directing the employer to make a full answer, within ten (10) days after service of the order, of the amount of wages, salary or commissions of the defendant, and further directing the employer to make no payment to the defendant over 50 percent of the amount due him until further order of the court.

(3) The court shall determine the amount of the wages, salary or commissions which shall be regularly paid by the employer to the Domestic Relations Division and shall so notify said employer.

(4) Thereafter, it shall be the duty of the employer to pay such amount regularly to the Domestic Relations Division, and upon failure so to pay shall be in contempt and subject to the court's order as now provided in proceedings against defendant. The employer is authorized to deduct 2 percent of the amount paid under the order from the wages of the defendant for clerical work and expense involved in complying therewith.

(5) Such attachment shall continue until discharge by order of the court.

(d) The Domestic Relations Division shall make periodic reports to the court of defaults in and failure to comply with any order of the court.

Rhode Island General Laws

Exemptions

Salary or wages due a defendant at time of service of the writ in excess of \$50 may be attached. (§ 9-26-4).

Before judgment

At the time of the commencement of any action, or at any time thereafter prior to judgment, a court may authorize issuance of an attachment (garnishment) after hearing on the plaintiff's motion for authority to attach a defendant's assets. (§§ 10-5-2, 5, 8).

NOTE: Prejudgment attachment, insofar as it is authorized without judicial notice and hearing, was held unconstitutional in *McClellan v. Commercial Credit Co.*, (D.R.I. 1972) 350 F. Supp. 1013.

Public officers and employees

City is subject to garnishee process, (*Wilson v. Lewis*, 10 R.I. 285 (1872)).

Service of process

Service upon a public corporation, body, or authority is made by delivering a copy of the summons or process to any officer, director or manager thereof. (District Court Civil Ruler, Rule 4).

Time to answer

In district courts, within 10 days after service of the writ, in the Superior Court, within 20 days after service of the writ. (§ 10-17-4).

Examination of garnishee

Each garnishee is required to render an account in writing, upon oath, of what estate, if any, had in its hands or possession at the time the writ was served. (§ 10-17-2). A person signing the garnishee's answer may be summoned by either party at any time before final judgment and subjected to examination and cross-examination upon all matters relating to or connected with the facts set forth in such answer. (§ 10-17-6).

Penalty on failure to answer

Upon failure to render an account, a garnishee may be charged to the amount of the judgment or decree rendered against the defendant in the suit. If no judgment is rendered because of want of service on the defendant, the garnishee shall be charged to the amount of the just claim or demand which the plaintiff may show against the defendant to the satisfaction of the court. (§ 10-17-15).

Effect of writ

Attaches salary and wages due and payable at the time of the service of the writ. (§ 10-5-8).

Discharge of employee

No statutory provision.

South Carolina Code

Exemptions

All of the earnings of a debtor for his personal services is exempt from the process of garnishment. (§ 10-1731).

Consumer Protection Code.—Under the Consumer Protection Code, a creditor may not attach unpaid earnings of the debtor by garnishment to enforce collection of a debt arising from a consumer credit sale, a consumer lease, or a consumer loan, regardless of where made. Nor may an employer discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings for the purpose of paying a judgment arising from a consumer credit sale, consumer lease or consumer loan. (S.C. Laws 1974, No. 1476) (§§ 5.104, 106).

South Dakota Compiled Laws

Exemptions

One hundred percent of earnings for personal services rendered within 60 days prior to the court order if such earnings are necessary for the use of a family supported wholly or partly by his labor. (§ 15-20-12).

Before judgment

A garnishment of earnings may be issued only in aid of execution following a final judgment. (§ 21-18-3.1).

Public officers and employees

The writ may issue against any person, including the State and any municipal or public corporation. (§ 21-18-1).

Service of process

Upon the State auditor or on the head of the State department, institution or agency affected, or on his deputy, or on any member of the board in control of said department, institution or agency, or on both the State auditor and such heads, deputies or members of the boards, when the State is the garnishee. (§ 21-18-8).

Time to answer

Within 30 days from the date of service. (§§ 21-18-26 to 29).

Examination of garnishee

State need only inform the plaintiff, by registered or certified mail, the amount it owes to the principal defendant. (§ 21-18-28). In all other cases, a garnishee answers, by affidavit, the questions relating to the nature and extent of his indebtedness to the defendant as the same are prescribed at § 21-18-27. A garnishee's answer may be traversed, in which case, the issues thereby raised stand for trial as a civil action. (§ 21-18-30). No issues may be raised against the State by traverse of its reply. (§ 21-18-30).

Penalty on failure to answer

Court may render judgment against a garnishee (except the State) for the amount of any judgment, including costs, which the plaintiff shall recover, together with costs of the garnishee action. (§ 21-18-39). No judgment shall be entered against the State nor shall any actual liability be incurred by the State in any garnishment proceeding. (§ 21-18-40).

Effect of writ

Attaches to property, money, credits and effects in the garnishee's possession at the time of service and thereafter until garnishee makes his answer. (§ 21-18-12).

Discharge of employee

No statutory provision.

Tennessee Code

Exemptions

The greater of 50 percent or \$20 per week of the total weekly salary, wages or income of every resident head of a family, subject to a maximum total exemption of \$50 per week; and, 40 percent or \$17.50, whichever is greater, of the total weekly salary, wages or income of every

resident nonhead of a family, subject to a maximum total exemption of \$40 per week.

An additional exemption of \$2.50 per week is provided for each dependent child under 16 years of age. (§ 26-207).

Support orders.—Unless a spouse (in whose favor an order, decree or judgment has been rendered) has remarried, the exemptions do not apply with respect to alimony and child support. (§ 26-210).

Before judgment

Excepting State, county and municipal employees, an employee's wages may be reached by garnishment at the commencement of an action and before or after judgment, if grounds for an attachment exist, since the attachment may be by garnishment. (§§ 23-601, 701). Garnishment is also available in aid of execution on a judgment. (§ 26-501).

Public officers and employees

Salaries, wages or other compensation of State, county and municipal officers and employees is subject to garnishment. (§ 26-518).

NOTE: This section does not authorize commencement of a suit against a State employee by attachment or attachment by garnishment against wages due the State employee. The wages may not be attached before the claim for which they are sought has been reduced to judgment. (*Brewington v. Brewington*, 215 Tenn. 475, 387 S.W. (2d) 777, (1965)).

Service of process

Process is served on the budget officer in the department in which the garnisheed employee works, and also upon the commissioner of that department in which such official or employee shall be engaged or connected. (§ 26-519).

Time to answer

In attachments by garnishment, the garnishee shall appear at the return term of the attachment, or before a justice of the peace, at a time and place fixed, to answer such questions as may be asked of him touching the property and effects of defendant. (§ 26-703). Garnishments in aid of execution are required to be answered within 10 days after issuance except that if the execution is issued from a justice of the peace or general sessions court, the officer or clerk of the latter court shall set the time when the garnishee shall appear. (§ 26-501). Income executions are to be answered by mail, or appearance before the court, within 5 days. (§ 26-207).

Examination of garnishee

Statute specifies questions garnishee may be required to answer under oath. Statute applies to attachments by garnishment and garnishment in aid of execution. (§§ 23-707, 26-207, 506). He may be required to answer such other questions as are put to him by the court or judgment creditor. (§ 26-506(4)). Additionally, an answer is not conclusive for amounts under \$1,000, and it may be controverted with a resulting trial on issues raised thereby. (§ 26-507).

Penalty on failure to answer

In case of a default in appearance or answer, a conditional judgment may be entered against the garnishee for the amount due and

a second summons is issued. Upon a second default, the conditional judgment may become final. (§§ 23-714 to 717; 26-511).

Effect of writ

Attaches to salaries, wages or income earned at the time of service (§ 26-207).

Discharge of employee

No statutory provision.

Texas Civil Statutes

Exemptions

Current wages for personal services are not subject to garnishment. (Tex. Const. Act 16, § 28, and Civil Statutes, articles 3836, 4099).

Utah Code

Exemptions

Fifty percent of earnings for personal services rendered any time within 30 days next preceding the levy of execution or attachment by garnishment or otherwise, when it appears, by affidavit, that the debtor is a married man, or head of a family, and that such earnings are for the use of his family residing within the state and supported wholly or in part by his labor. The minimum exemption hereunder is \$50 per month. (§ 78-23-1).

Exemptions with respect to enforcement of judgments arising from debt on a consumer credit sale are the greater of: (a) 75% of disposable earnings for a workweek, or (b) the amount by which disposable earnings for a workweek exceed 40 times the Federal minimum hourly wage. The multiple prescribed by the administrator shall apply for pay periods other than a week.

An employee's earnings shall not be garnished in any amount where his disposable earnings for a pay period of one week or less is \$84 or less; \$163 for a two-week pay period; \$182 for a semi-monthly pay period. (Uniform Consumer Credit Code, Rule 5).

Support orders.—Exemptions inapplicable to court orders for child support. Court may order an employer trustee, financial agency, or other person, firm or corporation indebted to the parents, or either of them, to withhold and pay over to the clerk of the court, moneys due or to become due not in excess of the lesser of: (a) the amount ordered to be paid by the court, or (b) one-fourth of the amount due or to become due at each regular or usual payday or day of disbursement. (§ 55-10-110).

Before judgment

Wages and earnings are excepted from prejudgment garnishment (Rules of Civil Procedure, Rule 64d(b)(i)); garnishment before judgment is also prohibited for debts arising from consumer credit sale, consumer lease or consumer loan. (§ 70B-5-104).

Public officers and employees

No statutory provision.

Service of process

Service is made upon person or persons designated by plaintiff as garnishee or garnishees. (Rules of Civil Procedure, Rule 64D(e)(i)).

Time to answer

Within 10 days from date of service. (Rules of Civil Procedure, Rule 64D(e)(ii)).

Examination of garnishee

The writ may require the garnishee to answer written interrogatories; the answer may be controverted and the issues thereby raised tried by a court or jury; the garnishee may be examined, under oath, by the court, if he fails to answer the writ within the time required. (Rules of Civil Procedure, Rule 64D(e), (h), (j)).

Penalty on failure to answer

Plaintiff may enter the garnishee's default and proceed to prove the liability of the garnishee. In such procedure, the court may make provision for witness fees and mileage, as may be just. Judgment shall be entered on the evidence to the same effect as if the garnishee had answered, and costs may be awarded to the plaintiff. (Rules of Civil Procedure, Rule 64D(R)).

Effect of writ

Attaches to indebtedness due at the time of service. (Rules of Civil Procedure, Rule 64D(a)).

Discharge of employee

No employer may discharge an employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness. (§ 70B-5-106).

Vermont Statutes

Exemptions

Vermont Rules of Civil Procedure, Rule 4.2(j)(2) incorporate the provisions of the Federal Consumer Credit Protection Act (15 U.S.C. §§ 1671-1677) which impose maximum limits upon the amount of earnings that may be garnished to satisfy a debt, but expresses the requirements of the Federal Act in terms of its practical effect, i.e., the exemption is stated as \$48 on disposable earnings of \$67 per week or less, and not more than 25 percent of earnings where the weekly disposable earnings exceed \$64. Limitations for pay periods longer than a week shall be those prescribed by regulations of the United States Secretary of Labor.

Before judgment

No trustee process shall issue against earnings except on a claim that has first been reduced to judgment. (Vermont Rules of Civil Procedure, Rule 4(j)(i)).

Public officers and employees

Earnings of officers and employees of the State is subject to the trustee process. (§ 12-3013).

Service of process

Upon the State Treasurer (§ 12-3013).

Time to answer

Within 30 days after the service of the trustee summons upon the trustee. (Vermont Rules of Civil Procedure, Rule 4.2(f)).

Examination of garnishee

Trustee may be examined by interrogatories answered in writing and under oath. (§ 12-3064). A trustee's answer is not conclusive and either party may allege and prove facts material to that issue. (§ 12-3066). Questions of fact arising upon such additional allegations are triable by court or jury. (§ 12-3067), or may be determined by a commissioner if a person is summoned as a trustee in a county court and he does not choose to appear before a justice or district judge competent to try causes between the parties. (§§ 12-3068, 3070).

Penalty on failure to answer

Judgment by default may be entered for the amount of the damages and costs recovered by the plaintiff in the action. (§ 12-3063).

Effect of writ

The writ attaches to the goods, effects or credits in the hands of the trustee at the time of service, or which come into his hands or possession before disclosure. (§ 12-3013).

Discharge of employee

Prohibited unless the employer has been previously summoned as trustee on five or more separate occasions arising from separate actions, or unless the employer establishes that there were other substantial causes contributing to the discharge (§ 12-3165).

Virginia Code*Exemptions*

The greater of: (a) 75 percent of disposable earnings for a work-week, or (b) the amount by which disposable earnings exceed 30 times the Federal minimum hourly wage. (§ 34-29). Appropriate multiple applicable to pay periods of longer than a week.

Support orders—Exemptions inapplicable to order of any court for the support of any person. (§ 34-29).

Before judgment

A garnishment summons must allege it is based on a judgment. (§ 8-441).

Public officers and employees

The wages and salaries of all employees of the State, other than State officers, is subject to garnishment or execution upon any judgment rendered against them. (§ 8-449.1).

The wages and salaries of all officials, clerks and employees of any city, town or county is also subject to garnishment or execution upon any judgment rendered against them. (§ 8-449.2).

Service of process

Service is made upon the comptroller or other officer through whom the judgment debtor's salary or wages is paid. (§ 8-449.1).

Time to answer

No specific statutory period. A person summoned as garnishee shall appear, in court, in person, on the date specified in the summons. (§ 8-441.1).

Examination of garnishee

A person summoned as garnishee may file a verified statement or appear in person and be examined under oath. If judgment creditor disputes the verity of the statement, he may require the garnishee to appear in person for examination on oath. (§ 8-443).

Penalty on failure to answer

Court may compel appearance or hear proof of any debt owing by garnishee, or of effects in his hands belonging to defendant, and make such orders in relation thereto as if what is so proved had appeared on his examination. (§§ 8-447, 552).

Effect of writ

Wages and salaries due up to the return day of the process are bound by the writ. (§§ 8-443, 445, 449.1; § 34-29).

Discharge of employee

Prohibited with respect to any one indebtedness. (§ 34-29).

NOTE: Statute empowers courts or judges to revoke exemptions upon proof that the holder of an exemption certificate is no longer entitled thereto. (§ 34-31).

Washington Revised Code*Exemptions*

The greater of: (1) 40 times the State hourly minimum wage, or (2) 75 percent of the defendant's disposable earnings. The exemption applies whether such earnings are to be paid, or are paid, weekly, monthly, or at other intervals, and whether the earnings are due for one week, a portion thereof, or for a longer period. (§ 7.33.280).

Support orders.—Exemption does not apply for child support if: (a) the garnishment is based on a judgment or other court order; (b) the amount stated in the writ does not exceed the amount of two months support payments, and (c) specific statutory language showing the garnishment is based on a court order is conspicuously added to the writ. (§ 7.33.280).

Before judgment

Authorized with respect to earnings on stated grounds. (§ 7.33.010).

Public officers and employees

The State, counties, cities, towns, school districts and other municipal corporations are subject to garnishment. (§ 7.33.060).

Service of process

Process against the State is served upon the Attorney General. (§ 4.92.020). Service on the county is made upon the county auditor; on the mayor with respect to service on a town or incorporated city; and upon the clerk if a school district is to be served. (§ 4.28.080).

Time to answer

Within 20 days of service (§ 7.33.050).

Examination of garnishee

By interrogatories incorporated upon the writ. (§ 7.33.150). The plaintiff may controvert a garnishee's answer (§ 7.33.240) and the issues thereby raised may be tried by the court (§ 7.33.260).

Penalty on failure to answer

Judgment may be rendered by default against the garnishee for the full amount claimed by the defendant, or in case the plaintiff has a judgment against defendant, for the full amount of such judgment with all accruing interest and costs. Upon motion and before execution, such judgment may be reduced to the amount of the nonexempt funds or property actually in the garnishee's possession at the time of the writ's service plus nonexempt earnings subject to continuing lien, or \$100, whichever is more. (§ 7.33.190).

Effect of writ

A plaintiff or judgment creditor may obtain a continuing lien on wages. The lien catches nonexempt wages owed at time of service and the nonexempt portion of all wages earned through the end of the last pay period ending immediately prior to 30 days after service of the writ. At end of the 30 day period, the garnishee must answer a second set of answer forms. (§§ 7.33.350-380).

Discharge of employee

Prohibited unless three or more such garnishments are served upon the employer within any period of twelve consecutive months. (§ 7.33.160).

West Virginia Code*Exemptions*

Eighty percent of wages, but in no event shall the amount payable to a judgment debtor be reduced thereby to less than \$20 per week. (§ 38-5A-3).

Consumer Credit and Protection Act.—The greater of: (a) 80 percent of disposable earnings for a workweek, or (b) 30 times the Federal minimum hourly wage. For pay periods longer than a week, the commissioner of banking is to prescribe, by rule, a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in subdivision (b) above.

Upon proof that an execution on wages will cause or is causing undue hardship to him or his family, an execution arising from a consumer credit sale or consumer loan may be temporarily or permanently removed by a court. (§ 46A-2-130).

Before judgment

No garnishment before judgment under the Consumer Credit and Protection Act. (§ 46A-2-118). In all other cases, the process of binding the wages and salaries of private and public employees in satisfaction of a debt is termed a "sugestee execution." The process is not authorized to issue before judgment. (§ 38-5A-2).

Public officers and employees

Wages and salaries of officers and employees of the State, a State agency, or any political subdivision of the State are subject to garnishment and sugestee execution. (§ 38-5B-2).

Service of process

Upon the State auditor in the case of money owed by the State; upon the auditor of a State agency in case of money payable directly by such agency, or, lacking such, upon the officer thereof whose duty

it is to audit and/or issue warrants or orders for the payment of such claims: or, upon the person designated by the State auditor or head of such department, agency or institution to receive such service.

Service on political subdivisions shall be made upon the auditor thereof or the officer who, or the clerk of the board or any body which, is charged with the duty of auditing and/or issuing warrants or orders for the payment of such claims. (§ 38-5B-5).

Time to answer

No provision respecting answer and appearance. The employer, upon service of the execution, is, apparently, required to immediately pay over nonexempt wages or salaries to the officer serving the execution or to the judgment creditor. (§ 38-5A-5).

The proper State officer upon whom such an execution has been served is required to pay over the nonexempt wages or salaries to the person serving the execution or to the court or clerk of the court issuing the execution. (§ 38-5B-9).

Penalty on failure to answer

A suggestee who fails and refuses to pay such nonexempt wages and salaries shall be liable to an action therefor. (§ 38-5A-5).

A public officer shall be personally liable in like circumstances only if he acted in bad faith.

A political subdivision failing and refusing to pay over such non-exempt wages and salaries shall be liable to an action therefor.

No judgments shall be recovered against the State as suggestee, but a judgment creditor may bring an action for declaratory judgment to establish his right to have sums due or to become due from the State or a State agency applied in satisfaction of his suggestee execution. (§ 38-5B-9).

Effect of writ

Execution becomes a lien and continuing levy upon salary and wages due or to become due to the judgment debtor within one year after issuance of the same. (§§ 38-5A-3, 38-5B-2).

Execution does not become a lien against salary or wages due or to become due from the State or a State agency within 10 days after service thereof or payable by a political subdivision within 5 days after service thereof. Wages and salaries due or to become due after such periods are subject to a lien and continuing levy. (§ 38-5B-3).

Discharge of employee

No employer may discharge an employee by reason of a garnishment to pay a judgment arising from a consumer credit transaction. (§ 46A-2-131).

Wisconsin Statutes

Exemptions

Greater of: (a) 75 percent of disposable earnings for each full week of the pay period, or (b) an amount equal to 30 times the Federal minimum hourly wage for each full week of the pay period. In case of pay periods other than a week, the exemption shall be determined by use of a multiple of the Federal minimum hourly wage prescribed by rule of the industry, labor and human relations commission. (§ 267.18(2)(a)).

Support orders.—The exemptions are inapplicable to an order of any court for the support of any person.

Consumer Act.—Exemption is the greater of: (a) 75 percent of customer's earnings after deductions required by law to be withheld, or (b) \$15 per dependent per week, other than the customer, and as claimed by him for Federal income tax purposes, plus 40 times the Federal minimum hourly wage. (§ 425.106(a)).

NOTE: The above exemptions do not displace other provisions of law which afford additional or greater protection to the customer. (§ 425.106(c)(2)).

Employee with dependents.—A basic exemption of \$120 plus an additional \$20 for each dependent for each 30 day period prior to service of process to collect a debt. The maximum exemption is 75 percent of income. The one claiming the exemption may elect to have the exemption computed on a 90 day basis. (§ 272.18(15)(c)).

Employee without dependents.—A basic exemption of 60 percent of income for each 30 day period prior to service of process to collect a debt. The minimum exemption is \$75, the maximum is \$100. (§ 272.18(15)(b)). The 90 day election also applies.

NOTE: "Income," for purposes of the above, is defined as gross receipts less Federal, State and social security tax withholdings. (§ 272.18(15)(a)).

Before judgment

Garnishment actions affecting the earnings of the principal defendant may not be commenced before judgment in the principal action. (§ 267.02(2)(a)).

Public officers and employees

Only a judgment creditor may maintain garnishment actions to reach the disposable earnings of officers and employees of the State or any political subdivision thereof. (§ 267.23(1)(a)).

Service of process

On the department of administration, if the State is the garnishee; otherwise to its secretary or clerk. (§ 267.23(2)(a)).

Time to answer

Within 20 days of service of process. (§§ 267.11.23(b)(4)).

Examination of garnishee

Interrogatories incorporated on summons. (§ 267.11). Plaintiff may reply to a garnishee's answer and the issues thereby raised and joined shall be tried by the court. (§ 267.14). The answer of the State is conclusive in the garnishment action. (§ 267.23(4)).

Penalty on failure to answer

Judgment may be entered to the amount of the plaintiff's judgment and costs. (§ 267.04(2)).

Effect of writ

When earnings are the subject of the garnishment action, the amount owed the principal defendant on the payday for the pay period in which the garnishment summons was served on the garnishee is subject to garnishment. (§ 267.18(1)(b)).

Discharge of employee

Discharge for garnishment for any one indebtedness is prohibited. (§ 267.235). Employer prohibited from discharging an employee because his earnings have been subjected to garnishment for the purpose of paying a judgment arising from a consumer credit transaction. (§ 425.110).

Wyoming Statutes*Exemptions*

Fifty percent of a judgment debtor's earnings for personal services rendered at any time within 60 days next preceding the levy of execution or attachment if it appears such earnings are necessary for the use of his resident family supported wholly or in part by him. (§ 1-422).

Uniform Consumer Credit Code.—The greater of: (a) 75 percent of disposable earnings for that week, or (b) the amount by which disposable earnings for that workweek exceed 30 times the Federal minimum hourly wage. For pay periods other than a week, the exemption is determined by application of a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in (b). (§ 40-5-105).

Before judgment

Available in aid of attachment at or after commencement of suit. (§§ 1-226, 571). Prohibited in actions for debts arising from consumer credit sale, consumer lease or consumer loan. (§ 40-5-104).

Public officers and employees

Salaries and wages of State, county, county board of commissioners, municipalities, cities, towns, and employees is subject to garnishment in the same manner and for the same causes as are private individuals.

Service of process

Upon the chief executive officer of a department or agency of the State, a municipal or other public corporation, or to its secretary, clerk, person in charge of its principal office or place of business, or any member of its governing body. (Wyoming Rules of Civil Procedure, Rule 4).

Time to answer

Within 20 days of service. (§ 1-252). Within the time specified in the writ of garnishment issued by justice of the peace courts (§ 1-579).

Examination of garnishee

Appearance in and examination under oath in justice of the peace courts. (§ 1-579). Employers served with garnishments in aid of execution may be required to appear before the court and respond to interrogatories or be questioned respecting the debtor's property in his hands. (§§ 1-414, 430, 579) or file answers to interrogatories with the court. (§ 1-252). Answer to interrogatories may be traversed and issues raised thereby shall be tried by the court. (§ 1-252).

Penalty on failure to answer

Judgment may be rendered in favor of plaintiff for the amount of the property and credits of the defendant in the garnishee's possession, and for what may appear to be owing by him to the defendant. (§§ 1-256, 582).

Effect of writ

Binds wages earned and those wages due within the designated period. (§ 1-422).

Discharge of employee

No employer shall discharge an employee for the reason that a creditor has subjected the employee's wages to garnishment for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan. (§ 40-5-106).

B. Statutory Remedy for Recovery of Support and Maintenance Under the Aid to Families With Dependent Children Program

Legislatures of at least six States Florida, Georgia, Maine, Utah, Virginia, and Washington have concluded that existing common law and statutory remedies for the enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency.

These statutory remedies generally consist of suing out writs of attachment or garnishment to subject a delinquent parent's property and earnings to the satisfaction of a support obligation due and owing; the imposition of a statutory lien on a responsible parent's real and personal property for nonpayment of support, and its subsequent enforcement by distraint, seizure and sale; the initiation of judicial proceedings to adjudge a delinquent parent in contempt for failure to comply with a court order of support; and the definition and delineation of nonsupport as a crime subjecting a delinquent parent to arrest and imprisonment upon conviction of the crime.

Despite the enactment of Public Law 93-647, impediments on the Federal level to the effective and efficient enforcement of State child support statutes might still be found in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 App. U.S.C. §§ 501-585. Under this Act, nothing prejudicial to the civil rights of persons in the armed forces can be enforced by legal proceedings; thus, at any stage of any proceeding in any court, a person in the military service can petition the court to stay the proceedings and the court is bound to do so if, in its opinion, the petitioner's conduct of his defense would be materially affected by reason of his military service. (50 App. U.S.C. § 521).

Under the doctrine of sovereign immunity, the Federal Government cannot be subjected to legal process or action without its consent. Prior to the enactment of Public Law 93-647, 88 Stat. 2337, the Federal Government could not be subjected to garnishment and similar proceedings for enforcement of child support and alimony obligations of its civilian employees and members of its armed services. Section 459 of Public Law 93-647 waives the government's immunity in this area; and from and after its January 1, 1975 effective date, the United States is subject, in like manner and to the same extent as if it were a private person, to legal process brought for the enforcement of the support and alimony obligations of its employees and members of its armed forces.

In light of the foregoing, the aforementioned States in the exercise of their police and sovereign powers have augmented their existing common law and statutory remedies through enactment of additional remedies directed to the real and personal property resources of the responsible parent of financially dependent children. The statutes

that are hereinafter summarized provide an alternative support method whose purpose is, in part, to reduce the burden presently borne by the general public through welfare payments to dependent children of a financially responsible parent or parents. A summary of these statutes follows.

Washington ¹

General background

The payment of public assistance money for the benefit of any dependent child creates a debt due and owing to the State department of social and health services. By accepting public assistance for or on behalf of a child or children, the recipient is deemed to have made an assignment to the department of any and all right, title, and interest in any support obligation up to the amount of the public assistance money paid for or on behalf of such child or children. The amount of the debt may also be limited to the amount specified in any support agreement respecting the foster care of such child or children, or by the amount specified in a court order for support.

A court order for support prevails over any support agreement and the department is empowered to petition the courts for modification of a court order on the same grounds as a party to said cause. The department is also empowered to conduct hearings and enter findings, subject to judicial review, respecting a debtor's disclaimer of liability, or the financial responsibility of the responsible parent or parents.

Additionally, the department is subrogated to the rights of said child, children, or the person having the care, custody and control of them, to prosecute or maintain any support action or execute any administrative remedy to obtain reimbursement of moneys expended; and, when a money judgment for support is entered by a court, the department is subrogated to the debt created by the order and said money judgment is deemed to be in favor of the department.

Initiation of proceedings

Proceedings are initiated by issuance of a notice of a support debt accrued and/or accruing based either upon subrogation or assignment of the judgment created by a court order, or based upon the payment of public assistance to or for the benefit of any dependent child or children.

Service of notices

Notices relating to findings of financial responsibility of a responsible parent may be served in the same manner prescribed for service of a summons in a civil action. Notices of liens, withholding orders and debts accrued and/or accruing based upon subrogation or assignment of a support order may be served in the same manner prescribed for service of a summons in a civil action or by certified mail, return receipt requested. Notice of debts accrued and/or accruing based upon payment of public assistance may be served on the debtor in the manner prescribed for the service of a summons in a civil action, including summons by publication where appropriate and necessary.

¹ RCW, §§ 74.20A.010 to 74.20A.900 (approved and effective 5/20/71). See Appendix A for the Washington Revised Code.

Time to answer notices

Within 20 days of the date of service of the notice.

Penalty on failure to answer

(a) Collection actions may be undertaken against a delinquent debtor, and (b) persons, firms, corporations, political subdivisions or departments of the State failing to answer lien or withholding order notice shall be liable in an amount equal to 100% of the value of the debt which is the basis of the lien or withholding order.

(NOTE: The same penalty is assessed for a failure or refusal to comply with a lien or withholding order, or failure to honor a wage assignment.)

Type of collection actions

(a) *Lien*—a lien against all property of debtor, with the priority of a secured creditor, may be asserted on claims for support debts not paid when due. (b) *Order to withhold and deliver*—the secretary may issue such orders to bind a debtor's property of any kind, including earnings, due, owing or belonging to the debtor. (c) *Wage assignments*—a debtor may execute a wage assignment as part of an approved plan with the secretary to satisfy or retire a support debt or obligation.

Effect of withholding orders and wage assignments

Binds nonexempt earnings on a continuing basis until the entire amount of the support debt has been withheld.

Exemptions

50% of earnings (defined as including wages, salary, commissions, bonuses, periodic payments pursuant to pension or retirement plans or insurance policies of any type but does not include payments based on inability to work or obtain employment, or payment of money to a head of a family when the same is due for the personal labor or services of such person. Excluded from the definition, but subject to the collection actions, are: 100% of temporary and permanent total disability compensation to a workman allocated respectively by the State industrial insurance statutes, to the spouse and children of a workman, and 40% of the net proceeds of payments to a workman for permanent partial disability).

Enforcement of liens

By distraint, seizure and sale of property subject to the lien, or through the courts by foreclosure actions and sale, after the required public notice of sale.

Right of redemption

For a period of up to 240 days after a foreclosure sale, a person owning or having an interest in real or personal property sold in satisfaction of a child support debt may redeem it by paying the purchaser, at foreclosure, the purchase price plus interest at the rate of 6% per annum.

Discharge of employee—prohibited.

Florida¹

General background

In all cases where regular child support payments are not being made, the department of health and rehabilitative services shall institute a civil action for support from the persons liable for the support of the dependent child or children. The action may be instituted within 30 days of the date an applicant is approved for public assistance on behalf of such child or children. The department may also petition the appropriate court for modification of a court order on the same grounds as either party to the cause.

The payment of public assistance money to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents responsible for the support of such children. The amount of that debt is limited to the amount of the public assistance payment or the amount of support specified in a court order or decree. To obtain reimbursement of money thus expended, the department is subrogated to the right of the child or children or person having the care, custody and control of the child or children to maintain any support action, to determine paternity, or execute any appropriate administrative remedy. Additionally, the department is empowered to conduct hearings respecting a debtor's disclaimer of liability, and its decision in the hearing shall establish the liability of the debtor, if any, for repayment of public assistance moneys expended to date as an assessed and determined child support debt. The findings are subject to judicial review.

Initiation of proceedings

Proceedings are initiated by issuance of a notice of a support debt accrued and/or accruing based either on subrogation to or an assignment of the judgment created by a court order or final judgment of dissolution of marriage, or based upon the payment of public assistance to or for the benefit of any dependent child or children.

Service of notices

Notices of a support debt or lien based on subrogation, assignment or payment of public assistance shall be served in the manner prescribed for service of summons in a civil action. Notices of distraint, seizure and sale of property subject to a lien shall be served by certified mail, return receipt requested. A withholding order shall be served in the manner prescribed for service of a summons in a civil action or by certified mail, return receipt requested.

Time to answer notices

Within 20 days of service of the notice.

Penalty on failure to answer

(a) Collection actions may be instituted against the delinquent debtor; (b) any person, firm, corporation, association, political subdivision or department of the State who fails to answer an order to withhold and deliver, or comply with a lien, honor a wage assignment or distraint, shall be liable to the department in an amount equal to 100% of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and attorney fees.

¹ Statutes §§ 409.2452-409.2509 (approved 7/3/74, effective 10/1/75).

Types of collection actions

(a) *Lien*—may be asserted against the debtor's property, earnings or bank deposits and balances. (b) *Order to withhold and deliver*—upon proper notice and hearing, a court may issue a withholding order binding property, including earnings, due, owing or belonging to the debtor and in the possession of any person, firm, corporation, association, political subdivision or department of the State. (c) *Wage assignment*—a debtor may execute a wage assignment as part of an approved plan with the department to satisfy or retire a child support debt or obligation.

Effect of withholding orders and wage assignments

Bind nonexempt earnings on a continuing basis until the entire amount of the support debt has been withheld or the assignment is released in writing, by the department.

Exemptions

50% of disposable earnings. (Disposable earnings means that part of an individual's earnings remaining after deductions required by law to be withheld.) Earnings include: wages, salary, commission, bonus, periodic payments pursuant to pension or retirement programs or insurance policies, that part of temporary and total disability payments and compensation as provided under the workmen's compensation statutes to the spouse and children of a workman, and not more than 40% of net proceeds of payments to a workman for permanent partial disability. It does not include State payments based upon inability to work or obtain employment, or the payment of any money or thing due to a resident head of a family for the personal services or labor of such person.

Enforcement of liens

By distraint, seizure and sale of property subject to the lien, or through the courts by foreclosure actions and sale, after the required public notice of sale.

Right of redemption

For a period of up to 240 days after a foreclosure, a person owing or having an interest in the real or personal property sold in satisfaction of a support debt may redeem it by paying the purchaser, at foreclosure, the purchase price plus interest at the rate of 6% per annum.

Discharge of employee

Prohibited.

Georgia¹

Summary

Under the child support recovery act; the payment of public assistance to or on behalf of a dependent child or children creates a debt due and owing to the State by the responsible parent or parents of the child. Such payment also operates as an assignment to the State of the right to any child support owed for the child or children up to the amount of public assistance paid, and the State is subrogated to the right of the child or children or person having their custody, to initiate

¹ Code, §§ 90-901b to 90-919b (approved and effective on 3/28/73).

any action for their support and to recover any payments ordered by the State courts or courts of any other State.

The department of human resources is charged with the responsibility of administering the Act. In this respect, it is empowered to conduct investigations to determine whether a responsible person is able to support the dependent child receiving public assistance. In the conduct of its investigations, the department may examine any books, papers or memoranda bearing on the determination of the ability to support and may compel the attendance of witnesses and the production of relevant documents. The department is also required to develop standards for measuring the ability of a responsible parent or parents to support his child or children.

Upon fifteen (15) days notice to a parent after the department's investigation and application of its support standard leads it to believe a parent is able to provide support, the department, or its designated hearing officer shall conduct an administrative hearing to finally determine such ability and the amount of support. The department's final affirmative order, in this respect, shall inform the parent that any failure to pay support may result in foreclosure of liens on his real or personal property or in other collection actions. The finding is subject to judicial review.

The child support lien in favor of the department attaches to all personal and real property of the responsible parent if he fails to make any support payment within 30 days after it is due, and the department is required to file its lien within three (3) months from the time it attaches.

Maine ¹

General background.—A public assistance payment for the benefit of a dependent child creates a debt due to the Department of Health and Welfare. The amount of the debt is limited to: (a) the amount of public assistance paid; (2) the amount decreed by a court order of support; or (3) in the absence of a court order and after a hearing, the periodic support payment established by the department.

The department is required to create a scale of suggested support payments to assist courts and others in determining the amount a parent should contribute to the support of a child. Also, for a fee, and upon application, the department may locate absent parents, enforce support obligations, and determine paternity on behalf of persons who are not recipients of public assistance, by actions under any appropriate statute. However, no support obligations or debts incurred before *October 1, 1975* shall be enforced by the methods prescribed by this law.

In the absence of a court order for support, the department may, upon a hearing, establish a periodic payment to satisfy the responsible parent's support obligation. The statute prescribes the criteria to be applied in deciding on the amount of the periodic payment.

The department is subrogated to the rights of any dependent child, children, or person having their custody, to pursue any court action or administrative remedy to secure payment of the accrued or accruing debt and to enforce the court order. Further, the receipt of public assistance constitutes an assignment by the recipient to the department

¹ Revised Statutes, §§ 19-491 to 19-515 (approved 6/20/75, effective 10/1/75).

of all rights to support for the child, including any support unpaid at the time of assignment as long as public assistance is paid. The recipient is also deemed to have appointed the commissioner of the department as his or her attorney in fact to perform the specific act of endorsing over to the department any and all drafts, checks, money orders, or other negotiable instruments for the support of the child.

The responsible parent or the department may move for an administrative review of any action taken under this act; and, excepting its decision respecting the periodic support payment, the department may review any action taken under this act. Finally, upon exhaustion of their administrative remedies, any party aggrieved by any final action of the commissioner may seek judicial review of that action.

Initiation of proceedings.—Administrative proceedings are initiated by issuance of notice of a hearing. Such notice shall contain a statement of the debt accrued or accruing; the time and place of the hearing; a statement of the periodic public assistance and the name of the public assistance recipient and the dependent children; a statement that upon failure to appear, the accrued debt and future periodic support payments shall be assessed against the responsible parent and enforced by collection actions.

Service of notice.—Service of any notice or lien may be by certified mail, return receipt requested; by publication, or by service in hand, as specified in civil actions.

Time to answer notices.—Within 20 days of service.

“Penalty” on failure to answer.—Collection actions may be undertaken and failure to comply therewith may result in liability for the entire debt plus costs, reasonable attorney fees, and interest at the rate of 6% per annum.

Type of collection actions.—(a) *Lien.*—21 days after service of notice of debt or the decision establishing the periodic support payment of the responsible parent, a lien in favor of the department may be asserted against all the property of the responsible parent. (b).

Order to withhold and deliver.—21 days after service of notice of debt, and the filing of a lien, the commissioner may serve on any person, and the responsible parent, an order to withhold and deliver any property, including wages, to the commissioner. Such order must be answered within 20 days of its service. (c) *Wage assignment.*—A debtor may execute a wage assignment to the commissioner. (d) *Administrative seizure and disposition of property.*—If it can be done without a breach of the peace, the commissioner may seize or demand surrender of any property subject to a lien.

Effect of withholding order and wage assignment.—Bind earnings on a continuing basis until the entire amount of the debt has been withheld or the assignment is released in writing by the commissioner.

Exemptions.—(a) all property otherwise exempt from trustee process, attachment and execution is exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure.

(b) Weekly earnings up to 30 times the State minimum hourly wage are exempt. Also, a minimum amount for each dependent natural or adopted child is also exempt. Such amount is to be determined by the commissioner.

Enforcement of Liens.—By foreclosure actions in the county where the lien is filed and in accordance with the statutory procedures applicable to foreclosure real and personal property liens. Upon administrative seizure of property subject to a lien, the commissioner may dispose of it in any commercially reasonable manner or turn it over to the recipient of assistance for the express benefit of the dependent child involved.

Discharge of employee.—Prohibited.

Utah¹

General background.—The receipt of assistance furnished by the department of social services constitutes the department as trustee of any cause of action of the obligee or any minor child in that obligee's custody, to recover support due the obligee from any person and may bring and maintain the action either in its own name or in the name of the obligee.

The department is invested with power of attorney to act in the name of any recipient in endorsing and cashing any and all drafts, checks, money orders or other negotiable instruments received by the department and representing support payments.

Court orders embodying money judgments for support shall be deemed in favor of the department to the extent of the department's subrogation rights; and the department has the right to petition the court for modification of any court order on the same basis as a party to that action would have been able to do so. Additionally, to the extent of any conflict between them, a court order takes precedence over any order of the department.

The level of support payments established by the department may be reset at any time and may be cancelled and payment in full demanded when the department is justly apprehensive of losing property which could become subject to a collection action to satisfy the support debt.

Support liens, wage assignments or garnishments shall not be invalidated by reason of the operation of any statute of limitations; however, an 8 year period of limitations applies to actions to enforce liabilities due or to become due by reason of the failure to provide support or maintenance for dependent children.

No injunction shall issue suspending or restraining any order or award adopted by the department or any action required to be taken under this act by the county-attorney or attorney-general; and no action, proceeding or suit to set aside or vacate or amend any order issued pursuant to this act, or to enjoin the enforcement thereof shall be brought unless the plaintiff shall have so applied to the department for a hearing thereon and shall have presented every issue presented by such action, proceeding or suit.

The department, in the absence of a court order, is empowered to conduct hearings to determine the support debt of the obligee, whether accrued, accruing, or both, and, where appropriate, the amount to be paid thereon each month. A party aggrieved by such determinations may request a hearing before appointed examiners who shall provide a full and fair hearing into the responsibility and liability of the aggrieved party. A further judicial review is available.

¹ Code, §§ 78-45b-1 to 78-45b-22 (approved 2/11/75, effective 5/13/75).

In all investigations and prosecutions of any action against the obligor, the attorney-general is empowered to grant criminal immunity to witnesses and parties.

Initiation of proceedings.—By issuance of a notice of a support debt accrued or accruing, based either upon a court order or upon the furnishing of support by the department. Proceedings may also be initiated by issuing an order to show cause, to the obligor, why a previously entered order should not be prospectively modified.

Notices shall contain:—(a) A statement of the debt accrued or accruing, (b) the name of the recipient of department assistance and the name of the minor child to whom assistance is being provided; (c) a demand for payment; and (d) the consequences of failure to comply or submit an answer setting forth any claimed defenses to liability.

Service of notice.—By certified mail, return receipt requested. Orders to show cause shall be served in the manner of a summons in a civil action.

Time to answer notices.—Within 20 days of service.

Penalty on failure to answer.—Collection actions may be initiated.

Type of collection actions.—(a) *Lien.*—A lien against the real and personal property of the obligor arises at the time of the filing of the abstract of the final order of the department and continues thereafter for a period of 3 years from the date of the award. The lien has the same preference against the debtor's assets as claims for taxes have. (b) *Wage assignments.*—Upon entry of an order for support, the court, upon motion of the department, shall order any parent to assign to the county clerk or such other officer, designated by the court to receive payments, that portion of the parent's salary or wages to become due as may be sufficient to pay the court ordered support amount.

Effect of wage assignment.—Binds current and future wages until the entire amount of court ordered support has been satisfied, or until released in writing by the director.

Exemptions.—50% of disposable earnings. Exemptions from judgment lien and forced sale consist of: (a) a homestead exemption of lands, appurtenances and improvements to the sum of \$4,000 for the head of a family; (b) a further sum of \$1,500 for the spouse, and \$600 for each other member of the family; except upon the following obligations: (a) taxes accruing and levied thereon; (b) judgments obtained on debts secured by lawful mortgage on the premises and on debts created for the purchase price thereof; and (c) judgments obtained by an appropriate party on debts created by failure to provide support or maintenance for dependent children.

Enforcement of lien.—By execution upon and sale of the property subject to said lien.

Right of redemption.—Prior to sale, the property may be redeemed upon payment of the amount due, together with expenses of the proceedings and reasonable attorney fees. Within 90 days after sale, redemption may be effected upon payment of the amount paid by the purchaser plus interest thereon at the rate of 6% per annum.

Discharge of employee.—Prohibited. The discharge of an employee subjects the employer to liability in damages to the employer and, additionally, to the department in an amount equal to the debt, together with costs, interest and attorney fees.

Virginia¹

General background.—The payment of public assistance to or for the benefit of any dependent child or children creates a debt due and owing to the State Department of Welfare in an amount equal to the amount of public assistance paid.

Where there is a court order or final divorce decree, the debt shall be limited to the amount specified in such order or decree. The department has the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause. Further, the department is subrogated to the right of a child or children or person having the care, custody and control of such child or children to prosecute and maintain any support action or execute any administrative remedy to obtain reimbursement of any moneys thus expended; and, the department is further subrogated to the debt for support created in any court order or final decree of divorce.

The department is obligated to undertake any action to insure that a responsible parent shall comply with the obligation to provide the support, care and maintenance of a dependent child or children in receipt of public assistance. In this respect, the department is specifically empowered to: (1) represent dependent children on whose behalf public assistance is being provided; (2) appear as a friend of the court in divorce and separate maintenance suits, or proceedings supplemental thereto; (3) upon request, assist mothers of dependent children, on whose behalf public assistance is being provided, for the purpose of securing modifications of divorce or separate maintenance decrees when it appears to the satisfaction of the court that the mother is without funds to employ private counsel; (3) initiate any civil proceeding deemed necessary to secure reimbursement from a parent or parents of all money expended by the State in providing assistance to the dependent child or children.

Upon approval of the Federal Department of Health, Education and Welfare, the State Department of Welfare may disclose and keep the Federal Internal Revenue Service advised of the names of all persons who are under a legal obligation to support any dependent child or children and who are not doing so.

All money paid as the result of any action taken under this act shall be paid to the clerk of juvenile and domestic relations district court. The clerk is required to notify and report all persons in arrears. Reports of delinquent obligors shall be made to the department's investigation and enforcement unit.

The department is required to establish a scale of suggested minimum contributions to assist localities and courts in determining the amount that a responsible person should be expected to contribute toward the support of his or her child. The department is also authorized and directed to establish a central unit to serve as a registry for the receipt of information for answering interstate inquiries concerning deserting responsible persons. The unit's primary functions are: (1) investigate individual assistance cases as to the potential for provision of support by an absent responsible person; (2) locate absent responsible persons; (3) assessment and acquisition of voluntary support, where

¹ Code, §§ 63.1-249 to 63.1-289.2 (approved 4/5/74, effective date, 7/11/74).

possible; (4) enforce child support through administrative action; (5) prepare cases for court action; (6) ensure a continuity of support payments; (7) investigate fraud involving public assistance applicants.

The department director is empowered, without the necessity of signing any document, to act as attorney-in-fact to endorse any and all drafts, checks, money orders or other negotiable instruments representing child support payments which are received on behalf of a dependent child or children as reimbursement for public assistance moneys previously paid to such recipient.

A debtor filing an answer to a notice of a debt under this act is entitled to an administrative hearing of his defenses, and if his property is assessed with a lien for a support debt, he may appeal de novo to the circuit court of the jurisdiction wherein the property is located on the basis that no child support debt is due and owing. It is the legislative intent in this respect that jurisdictional and constitutional issues, if any, shall be subject to review but that administrative remedies shall be exhausted prior to judicial review.

Interest at the rate of 6% per annum accrues on past due support debts, and the director is empowered to demand full payment and file and serve liens when the collection of any support debt appears to be in jeopardy.

Initiation of proceedings.—By issuance of a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgement created by a court order or final decree of divorce, or based upon payment of public assistance to or for the benefit of any dependent child or children. Notices shall include a statement of: (a) the amount of the debt; (b) the amount required to be paid under the court order, or the amount of public assistance previously paid and to be paid in the future; (c) a demand for payment; and (d) the actions to be taken upon a failure to comply with the notice.

Service of notice.—By certified mail, return receipt requested, or, by personal service by a sheriff or by delivery to any person at the obligor's residence.

Time to answer notices.—Within 20 days of service.

Penalty on failure to answer.—Collection actions may be initiated.

Types of collection actions.—(a) *Lien.*—May be asserted on the debtor's real and personal property, and such lien shall have the priority of a secured creditor. (b) *Order to withhold and deliver.*—After service of a notice of a debt or the filing of a lien, the director may issue a withholding order respecting the debtor's property in the possession of any person, firm, corporation, association, political subdivision or department of the state. (c) *Wage assignment.*—A debtor may execute a wage assignment as part of a plan to satisfy or retire a child support debt obligation.

Effect of withholding orders and wage assignments.—Bind non-exempt property and earnings on a continuing basis until the entire amount of the debt is satisfied. Noncompliance herewith may result in the employer's liability to the department in an amount equal to 100% of the value of the debt.

Exemptions.—50% of disposable earnings, which is defined as that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law.

Enforcement of liens.—By distraint, seizure and sale, after notice, of the property subject to such lien; or through the courts by foreclosure actions.

Right of redemption.—Upon institution of foreclosure proceedings, a debtor may redeem his property by payment of the amount due, together with the expenses of the proceedings and reasonable attorney fees. For a period of up to 240 days after the sale of the property foreclosed, the debtor may redeem his property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of 6% per annum.

Discharge of employee.—Permitted only if more than three child support liens are served upon the same employer and directed to the same employee within any period of 12 consecutive months.

II. ATTACHMENT PROVISIONS OF STATE LAWS

Attachment Provisions of State Laws

CONTENTS

	Page
Introduction -----	75
Law Digest:	
Alabama -----	77
Alaska -----	80
Arizona -----	80
Arkansas -----	85
California -----	86
Colorado -----	90
Connecticut -----	92
Delaware -----	96
District of Columbia -----	98
Florida -----	100
Georgia -----	102
Hawaii -----	104
Idaho -----	105
Illinois -----	107
Indiana -----	111
Iowa -----	113
Kansas -----	114
Kentucky -----	116
Louisiana -----	118
Maine -----	120
Maryland -----	122
Massachusetts -----	124
Michigan -----	129
Minnesota -----	132
Mississippi -----	134
Missouri -----	135
Montana -----	137
Nebraska -----	139
Nevada -----	141
New Hampshire -----	143
New Jersey -----	145
New Mexico -----	148
New York -----	150
North Carolina -----	154
North Dakota -----	156
Ohio -----	159
Oklahoma -----	161
Oregon -----	163
Pennsylvania -----	165

Law Digest—Continued	Page
Rhode Island-----	169
South Carolina-----	171
South Dakota-----	172
Tennessee-----	174
Texas-----	175
Utah-----	177
Vermont-----	179
Virginia-----	180
Washington-----	181
West Virginia-----	183
Wisconsin-----	185
Wyoming-----	187

II. Attachment Provisions of State Laws

The general definition for attachment is:

The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. Attachment is a remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain. Though sometimes called an ancillary or auxiliary proceeding, attachment is in all essential respects, a suit. The purpose is to take defendant's property into legal custody, so that it may be applied on defendant's debt to plaintiff when established (Black's Law Dictionary, 4th Edition, 1951).

The attachment provisions set out in this part refer to the general survey of State laws.¹ Procedures to execute delayed listing of exempt property and other matters in text referred to under "See Topic—" can be found in Volume VI, Martindale-Hubbell Law Directory, which sets out a digest of the laws of the various States under specific topic headings.

Attachment is a procedure for collecting judgment and can be used for collecting arrearages with regard to alimony, separate maintenance and support of dependent spouse, child, or children. (For a complete and comprehensive understanding of the attachment provisions of a State law, it is necessary to examine case law and the other provisions in the law which set out additional requirements.)

¹ Volume VI, Martindale-Hubbell Law Directory, 107th Annual Edition 1975, Published by Martindale-Hubbell, Inc., Summit, N.J. Reprinted with permission of the publishers. All rights reserved.

Alabama Law Digest

Attachment

Actions in which allowed.—An attachment may issue in following kinds of actions: (1) To enforce collection of a debt, whether due or not, (2) for a liquidated money demand, (3) to recover unliquidated damages for breach of contract, (4) when action sounds in damages merely. (7-845). Attachments may only issue in cases where defendant (1) resides outside State, (2) absconds, (3) secretes himself so that process cannot be served on him, (4) is about to remove from State, (5) is about to remove his property out of State, (6) is about fraudulently to dispose of his property, (7) has fraudulently disposed of his property, or (8) has money, property or effects liable to satisfaction of his debts which he fraudulently withholds. (7-846).

Similar rules prevail in respect to attachments to enforce certain specified liens (31-19, 20, 23, 29-34; 33-7, 8, 16, 18-21, 25, 26, 66-76, 81, 82) and in suits to collect municipal taxes (37-694).

In addition, an attachment may issue: In an action by State for recovery from a public officer of public money (7-76); on application of any surety in a written contract (7-310-313); on arbitration awards, whether for delivery of property or to do or omit a particular act (7-835); on a judgment in detinue for recovery of specific property (7-924-927). When summons to a defendant resident of the county is returned "Not found" plaintiff may sue out an attachment on making an affidavit that the defendant has evaded service of process. (7-880, 881).

Time for issuance.—Plaintiff may sue out an attachment pending suit under same conditions as in original attachment proceedings. (7-879).

In equity.—Writs of attachment issued in proceedings formerly cognizable in equity on legal demands operate only on effects or choses in action to which defendant is equitably entitled. (7-302). Ne exeat and equitable attachment may issue on equitable demands in any case in which an attachment at law may issue, except where otherwise provided. (7-301). Equitable attachment may issue before demand is reduced to judgment. (7-303).

Executor or administrator may commence a suit by attachment in representative character. (7-864). No judgment can be rendered against an executor or administrator on his answer in attachment until 6 months after the grant of letters testamentary or of administration. (7-891).

Corporations.—An attachment may be sued out by or against a corporation. (7-854-857, 860).

Jurisdiction to issue.—Attachment to enforce collection of debt or liquidated money demand may be issued by judge or clerk of circuit court, judge of probate, attachment to recover unliquidated damages for breach of contract or on claim sounding in damages merely can be issued only by judge of circuit court, or judge of probate. (7-847).

Circuit judges and registers may order equitable attachments to issue. (7-309).

Procedure.—Complaint must be filed in 15 days after suing out attachment if demand was then due; otherwise within 15 days after claim or demand becomes due. (7-882). A summons may issue on a complaint so filed, but has no effect on levy lien or enforcement of the attachment. (7-883). If defendant appears and pleads, the cause proceeds as in suits commenced by summons and complaint; if defendant fails to appear or to plead within time required by law, plaintiff may take judgment by default or, if necessary, may execute a writ of inquiry. (7-884; see also ARCP 55).

Affidavit

In order to obtain an attachment to enforce collection of debt or liquidated money demand, plaintiff must make written oath that the debt or demand is justly due or to become due, that one of the grounds for attachment exists, and that the attachment is not sued out to harass defendant. (7-848).

Special affidavits.—In order to obtain attachment to recover unliquidated damages for breach of contract or to enforce a claim sounding in damages, merely, plaintiff must, in addition, make affidavit as to the special facts and circumstances. (7-850). A nonresident seeking an attachment against another nonresident, in addition to the other requirements, must make affidavit that defendant has not sufficient property within the State of his residence wherefrom to satisfy the debt. (7-851).

Bond.—Except where attachment is sued out on ground that defendant is nonresident or in suits brought by wife for alimony or support where husband has threatened to leave State or fraudulently dispose of assets, plaintiff must supply bond with sufficient surety. (7-301, 849).

Defendant may bring suit on attachment bond within 3 years, and he may recover vindictive damages if attachment was sued out maliciously. (7-887).

Alias writ of attachment may be issued without a renewal of the bond or affidavit required in original proceeding in cases where insufficient property has been found or, pending suit, plaintiff wishes to garnish other persons. (7-867).

Notice of the attachment must be given a nonresident defendant by publication and by mail. (7-852). Personal notice or notice left at his residence must be given a defendant who is a resident of the county; notice by posting at the courthouse door and by mail must be given a defendant who is a resident of some other county. (7-853; see also ARCP 4[c]). Similar rules obtain in all other cases, whether or not specifically provided. (31-21; 33-5).

Notice is necessary for attachment for enforcement of arbitration award (7-835) and where hereinabove expressly stated; see also ARCP 70.

Levy

Attachments may be levied on real estate, personalty (whether or not in possession of defendant) or choses in action (7-861), and also on the joint and separate estate of joint obligors, promisors or partners, whether resident or nonresident (7-863). An attachment issued in equitable proceedings, whether on equitable or legal demands, operates

only on effects or choses to which the defendant is equitably entitled. (7-301-303).

Levy on Investment Securities.—No attachment or levy upon a security is valid until security is actually seized by officer making levy, but security which has been surrendered to issuer may be levied on at source. Creditor whose debtor owns a security is entitled to injunctive relief in reaching security. (1965-549, § 8-317).

Levy on Goods Covered by Negotiable Document.—Except where document was issued upon an unauthorized bailment, there can be no valid attachment of goods in possession of bailee for which negotiable document is outstanding unless document be surrendered to bailee or its negotiation enjoined. (1965-549, § 7-602).

Where Levy Made.—An attachment may be executed by the sheriff of the county in which the property is located. (7-865, 866).

Indemnity to Officer.—A sheriff may demand indemnity when doubt exists as to defendant's title to personal property on which he is required to levy. (7-875). Such demand may be made either before or after levy. (99 Ala. 292, 13 So. 305).

Lien.—Levy creates a lien in favor of plaintiff. (7-869). Equitable attachment creates a lien from service of attachment. (7-307). Liens of attaching creditors are given priority according to dates of levies. (99 Ala. 292, 13 So. 305).

Repossession.—A defendant, or, in his absence, a stranger, may on execution of an approved bond, replevy the attached goods. (7-876-878). Defendant may also replevy goods seized under equitable attachment. (7-305, 306).

Vacation.—Attachment issued without the required affidavit and bond may be abated on plea of defendant filed within 30 days after service of summons and complaint (7-885), but plaintiff is allowed a liberal right to cure defects in his affidavit or bond and to supply a bond after such plea is made. (7-886).

Sale.—Plaintiff, after judgment, may obtain a sale of property levied on. Court, on motion of either party, must before judgment order sale of perishable property levied on; sheriff retains proceeds to await final disposition of cause. (7-870). Sheriff must sell at public auction goods so perishable that they will deteriorate greatly in value before meeting of court, and goods the charge of keeping which is very great; proceeds of such sales must be paid into court. (7-871). A circuit judge or register of court in which complaint is filed may order a sale of personal property levied on under an equitable attachment, and proceeds must be paid to register. (7-309).

Proceeds of Sale.—Plaintiff, on notice to defendant and execution of a proper bond, in the absence of an adverse third person's claim and of a sworn denial by the defendant of plaintiff's claim, may before judgment obtain proceeds of sale. (7-5, 872, 873).

Judgment.—Where contest arises concerning title to or right in attached property, no judgment can be rendered against defendant in attachment until trial of such collateral issues. (7-889). When plaintiff fails to obtain judgment against defendant in attachment because claim for trial of right to property has been interposed, attached property must be restored to claimant at cost of plaintiff. (7-890). If judgment:

for plaintiff is not satisfied by property attached, execution may issue thereon against any property of defendant (7-892), but this does not apply to a nonresident who fails to appear. (109 Ala. 270, 19 So. 814).

Forms of attachment and other proceedings are set out in the Code. (7-857; 13-432).

Alaska Law Digest

Attachment

Actions in Which Allowed—Grounds.—At any time after complaint is filed, writ of attachment may be secured by plaintiff: (1) In any action on contract, for payment of money which is not secured by a lien on property, or if so secured, when security is insufficient to satisfy a judgment for amount justly due plaintiff; (2) in any action on contract against a defendant not residing in State; (3) in any action for collection of any State tax or license fee. (09.40.010).

Courts Which May Issue Writ.—Superior, district and magistrate courts.

In Whose Favor Writ May Issue.—No distinctions made between residents and nonresidents as to right to secure attachment.

Property Subject.—All property not exempt from execution is liable to attachment. (09.40.010).

Affidavit

To secure the writ, an affidavit must be filed showing the amount of the debt, with all proper allowances for setoff and counterclaims; and ground for attachment.

Undertaking.—Before the writ issues, an undertaking with one or more sureties, for not less than \$100, and at least equal to the amount for which judgment is claimed, must be filed by the plaintiff. With the undertaking must also be filed affidavits showing that the sureties are qualified and that, taken together, they are worth twice the penalty of the undertaking, above their liabilities, excluding exempt property. (09.40.020).

Provisional Levy.—Property may be attached and held during pendency of motion for issuance of execution reviving judgment and until final ruling.

Release of Property.—Upon giving redelivery bond. (09.40.110).

It is a good defense to an action on a redelivery bond that the property did not, at the time of the execution of the writ of attachment, belong to the defendant against whom it was issued.

Discharge of Attachment.—Provided where perishable goods have been sold. (Rule 89, Civ. R.P.).

Levy on Mortgaged Personalty.—See Chattel Mortgages.

Third Party Claims.—See Executions.

Arizona Law Digest

Proceedings.—Plaintiff seeking an attachment must file an affidavit showing:

That defendant is indebted to plaintiff on a contract, express or implied, for direct payment of money, that such contract was made or is payable in this State, and that payment has not been fully secured by mortgage, lien or pledge, or, if originally so secured, that such security

has, without any act of plaintiff or person to whom security was given, become valueless, character of indebtedness, that same is due to plaintiff over and above all legal setoffs or counterclaims, and that demand has been made for payment of amount due; or

That defendant is indebted to plaintiff, stating amount and character of debt; that same is due and payable over and above all legal setoffs and counterclaims, and that defendant is a nonresident of this State or is a foreign corporation doing business in this State; or

That the action is brought on a judgment of another State or territory of United States, or of the District of Columbia; or

That action is pending between parties and that defendant is about to remove his property beyond jurisdiction of court to avoid payment of judgment; and

That attachment is not sought for wrongful or malicious purpose, and action is not prosecuted to hinder or delay any creditor. (12-1522).

Debt Not Due.—Attachment may issue upon a debt not yet due in the following cases, on affidavit showing:

That defendant is indebted to plaintiff on a contract, express or implied, for direct payment of money, stating amount and that debt is not due; that such contract was made or is payable in this State, and that payment has not been secured by mortgage, pledge or lien, and stating the character of the debt sued for and that there are no legal setoffs or counterclaims against the same; and

That defendant is about to remove permanently out of the State and has refused to secure the debt; or

That he has secreted his property for the purpose of defrauding his creditors; or

That he is about to remove his property out of the State without leaving sufficient remaining for the payment of his debts; or

That he has disposed of his property, in whole or in part, with intent to defraud his creditors or that he is about to do so; and

That the attachment is not sued for the purpose of injuring or harassing the defendant; and

That the plaintiff will probably lose such debt unless such attachment is issued. (12-1523).

Bond must be given in not less than the amount of the debt sued for conditioned that plaintiff will prosecute his writ to effect and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. (12-1524).

Issuance of Writ.—One or more writs may issue at the same time and to different counties. (12-1528).

Levy on personal property is made by seizure and on real property by filing a copy of the writ with description of the property with the county recorder where real property is situate.

Return.—Writs are returnable at any time within 30 days after levy. (12-1531).

Indemnity.—Officer levies at own risk but may require indemnity bond. (12-1529).

Release of Property.—At any time before judgment the defendant may replevy the attached property by giving bond in double the amount of plaintiff's debt or at defendant's option, for the value of the property, conditioned that the defendant will satisfy the judgment

which may be rendered in the action, or will pay the value of the property. (12-1536).

Sale.—Perishable personal property may be sold prior to final judgment upon order of the court issuing the writ. (12-1533).

Third Party Claims.—Third party claim to personal property is made by presenting written property beyond jurisdiction of court in which action is pending for purpose of defeating collection of judgment; or

In an action on contract, express or implied, against a defendant not residing in this State or a foreign corporation doing business in this State; or when executor or administrator has failed to file required verified account (14-622); or in an action upon a judgment of any State or territory in United States, or of District of Columbia (12-1521).

See also infra, subhead Debt Not Due.

Attachment

Courts Which May Issue Writ.—Superior courts, justice courts.

Lien.—No statutory provision.

In Whose Favor Writ May Issue.—There is no restriction on right of nonresident individual or foreign corporation to obtain attachment.

Actions in Which May Issue; Grounds.—Attachments may issue in the following cases:

In an action on contract, express or implied, for direct payment of money, where contract is made or is payable in this State, and is not fully secured by any mortgage or lien on real or personal property, or any pledge of personal property; or, if originally so secured, such security has without any act of plaintiff, or person to whom the security was given, become valueless; or

When any suit is pending for damages, and defendant is about to dispose of or remove his claim under oath to levying officer and posting bond equal to double the value of the property (12-1331), the bond to be conditioned on claimant's return of the property in good condition or its value plus damages and costs if he fails to establish his claim (12-1332). The property must then be returned to the claimant (12-1333) and the claim and bond returned to the proper court and there docketed for hearing of the question of ownership (12-1335-41).

Attorneys and Counselors

There is a public corporation called "The State Bar of Arizona" to which all lawyers must belong.

Jurisdiction Over Admission.—Board of Governors of State bar, with approval of supreme court, has power to fix and determine qualifications for admission. (32-237).

Eligibility.—Applicant must be 21 years of age or over, a citizen of the United States, of good moral character, mentally and physically able to practice law, and in good standing in any other State in which he may have been admitted to practice.

Residence Requirements.—Applicant must have resided in Arizona for 3 months immediately prior to first day of month of examination applied for and must have been physically present within State of Arizona for at least 75% of said period; or applicant must have been

a resident of Arizona for more than 1 year immediately prior to first day of month of examination applied for and have been physically absent from the State for more than 25% of the last 6 months because of some reason deemed substantial by the committee; or must have resided at the College of Law, University of Arizona, for 2 semesters immediately preceding examination.

Educational Requirements.—Applicant for admission on examination must be a graduate of a law school fully approved by the council of education of the American Bar Association at the time of graduation.

Registration as a law student is not required.

Application for admission and all documents required to be filed plus an examination fee of \$75, must be filed not later than first day of October if application is for the following February examination and not later than first day of March, if application is for the following July examination. Any applicant who has previously been admitted to practice or who has not been a resident of Arizona for 5 years, with the exception of certain students, must pay an additional registration fee of \$100.

Requests for information should be addressed to State Bar of Arizona, 910 Union Title Building, Phoenix, Ariz. S5026.

Investigations.—Applicant may be required to appear for personal interview.

Written examination held in February and July.

Admission without examination is no longer permitted. All applicants for admission to the bar must comply with examination requirements.

Admission Pro Hac Vice.—Attorney practicing in another State may be permitted on motion, to be associated with local counsel in trial of any particular action.

Fees.—Active member of bar must pay annual fee fixed by the board of governors with the consent of the supreme court not exceeding \$40 per year: fee for retired member fixed by board of governors with consent of supreme court (32-217). Member failing to pay fee after 2 months notice of delinquency will be suspended from practice, but may be reinstated. (32-219).

Readmission fee after disbarment or suspension for cause other than nonpayment of dues is \$50.

Disabilities.—No attorney of record of either party to an action or proceeding may be a surety. (7-109).

Complaints.—Board of governors has jurisdiction of complaints, may take evidence and dismiss complaint or certify evidence, with or without recommendation to the supreme court, which may then act.

Disbarment or Suspension.—Proceeding by local administrative committee pursuant to supreme court rules 30 to 44.

Professional Corporations.—See topic Corporations.

Unlawful Practice.—Only active members of the State bar in good standing may practice law. It is a misdemeanor to practice law unless an active member in good standing. (32-261).

Real Estate Transactions.—See topic Brokers.

Automobiles.—See Motor Vehicles.

Bail.—See Criminal Law.

Banks and Banking

Uniform commercial code adopted. See topic Commercial Code.

Regulated by.—State banking department, under management of superintendent of banks, has charge of execution of laws in relation to banks and banking.

Deposits.—Bank deposits may be made in the name of two or more persons including minors payable to either or any of them or to any or the sole survivor. (6-267).

In Trust.—When deposit made in trust without further indication of existence of a legal trust, on death of trustee deposit may be paid to person for whom deposit was made. (6-268).

Unclaimed Deposits.—See Absentees, subhead Escheat.

Stock assessment may be imposed to extent of par value of stock held in addition to amount invested.

Limitation of Loans.—Unsecured loans over \$1,000 must be accompanied by financial statement every 6 months. Continuing loan must be accompanied by yearly statement. Real property outside of United States may not be used as security for loans. (6-251).

Savings banks may invest in first mortgages on real estate, subject to restrictions as to amount of loans and location of property (6-322) and securities of State and United States, but may not invest or loan on mining or oil stock.

Trust Companies.—Persons engaged in trust business certified and regulated by state superintendent of banks. Banks exempted from certification and other trust company requirements (except trust account administration requirements) if member of F.D.I.C. and otherwise authorized to engage in trust business under Federal or State laws. Trust companies subject to recordkeeping, examination, investigation, reporting and administration of accounts requirements (6-851 et seq.). Bank or trust company receiving trust funds must pledge its assets to extent necessary to comply with Federal Reserve requirements, or if not a member bank, with rules of superintendent. (6-225).

Uniform Common Trust Fund Act adopted. (6-871 et seq.).

Uniform Fiduciaries Act has been adopted, except that words "actual knowledge" are changed to "actual constructive knowledge" throughout Arizona act. (14-1101 et seq.).

Foreign Banks.—See topic Executors and Administrators.

Building and Loan Association.—Funds may be invested in improved and certain unimproved real estate, shares of association, bonds of United States, warrants of State and subdivisions, or debentures, notes or membership in Federal Home Loan Bank. Foreign association is prohibited from doing business within State. Superintendent of banks has supervisory control and can bring action and be appointed receiver to liquidate. (6-401 et seq.).

Uniform Disposition of Unclaimed Property Act in effect. (44-351 et seq.).

Bills and Notes

Uniform Commercial Code in effect. (44-2501 et seq.). See topic Commercial Code.

Attorney's Fees.—Clause for collection is valid. (77 Ariz. 107; 267 P.2d 740).

Judgment Notes.—See Judgments, subhead Judgment by Confession.

Bills of Lading.—See topic Commercial Code.

Bills of Sale.—See Sales.

Blue Sky Law.—See Securities.

Arkansas Law Digest

Attachment

Actions in Which Allowed.—Any civil action for the recovery of money (31.101).

Attachment lies in equity as well as at law (33 Ark. 397).

In Whose Favor Writ May Issue.—Any plaintiff, even though a nonresident or a foreign corporation, may secure an attachment. (31.101).

Claims on Which Writ May Issue.—On unliquidated or unmatured claims in actions on contract (31.201; 62 Ark. 326, 35 S.W. 435) and on contingent claims in tort actions (31.103). It is not necessary that the claim sued on be payable in the State.

Time for Issuance.—Writ may be issued at or after commencement of an action. (31.101).

County to Which Issued.—A writ of attachment (31.101) or garnishment (31.142) may be directed to any county (31.110) in which property may be attached or a garnishee who is indebted to or has property belonging to defendant may be served with process (31.104).

Grounds for attachment in action on contract are that a defendant: (1) Is a foreign corporation or nonresident; (2) has been absent from the State 4 months; (3) has departed from the State with intent to defraud his creditors; (4) has left the county of his residence to avoid the service of summons; (5) conceals himself so that a summons cannot be served upon him; (6) is about to remove or has removed his property or a material part thereof out of this State, not leaving enough therein to satisfy the plaintiff's claim or the claims of said defendant's creditors; (7) has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold with fraudulent intent to cheat, hinder or delay his creditors; or (8) is about to sell, convey or otherwise dispose of his property with such intent. (31.101). An attachment on the sixth, seventh, or eighth ground may be sued out before maturity of the debt. (31.201).

In action in tort or to recover a statutory penalty, ground for attachment is that defendant is a nonresident of the State and cannot be personally served with process within the State. (31.103).

Specific attachment may be had in actions to enforce a lien upon or for the recovery, partition or sale of personal property if it appears by affidavit or other proof that the property is about to be sold, concealed or removed from the State, or that there is reasonable cause so to believe. This remedy is also available for a plaintiff who has a future estate or interest (31.301), for a vendor of property fraudulently purchased (31.302), for purchase money when property is in vendee's possession (34.2302).

Pleadings.—An order of attachment may be made by the clerk of court in which the action is brought where there is filed in his office a complaint, duly sworn to, showing the nature, amount and justness of

the claim and any one of the grounds of attachment above enumerated. (31.105). Amendments may be permitted so as to embrace any grounds of attachment which may exist up to final judgment. (31.107).

Attachment Bond.—An order of attachment may not be issued by the clerk until there has been executed, by one or more sufficient sureties of plaintiff, a bond that plaintiff shall pay defendant all damages sustained by reason of the attachment (31.108).

Sureties on an attachment bond are liable for actual damages. (31.152).

Issuance of Writ.—Writs are issued by the clerk or justice returnable to the court having jurisdiction. Orders of attachment may be issued to sheriffs of other counties, and several writs may, at the option of the plaintiff, be issued at the same time or in succession. (31.113).

Execution of Writ.—A levy on real estate is made by the officer leaving with the occupant, or if there is no occupant, in a conspicuous place, a copy of the order. (31.114). On personal property capable of manual delivery it is made by taking the same into his custody. (31.114). Plaintiff has a lien from the time of delivery of the order to the officer. (31.122). The court may make proper orders for the preservation and use of property, and may direct a sale of perishable property. (31.133). A receiver may be appointed to take charge of, collect and account for all choses in action. (31.134).

Indemnity.—There is no statutory authority for officer to demand indemnity before levying.

Priorities between attachments are according to dates of delivery of writs to sheriff. (56 Ark. 292. 19 S.W. 921).

Release of Property.—Defendant may retain possession of the property attached by furnishing a forthcoming bond. (31.124).

Sale.—If judgment is rendered for plaintiff, attached personal property is sold first, then realty, at public sale, as ordered by and subject to the confirmation of the court. (31.155).

Third Party Claims.—Any person claiming an interest in the property attached may file a verified petition before delivery of the property or proceeds thereof to plaintiff and without other pleading the court may hear proof, refer to a commissioner or impanel a jury to inquire into the facts. A nonresident claimant is required to give security for costs. (31.157).

Vacation or Modification.—Defendant may discharge the attachment, at any time before judgment, by furnishing a bond to the effect that he will perform the judgment of the court. (31.136).

California Law Digest

Attachment

Attachment is purely statutory and provisions are strictly construed. A writ may be issued at or after issuance of summons. (C. C. P. 537).

Actions in Which Allowed.—Actions where total sum claimed, exclusive of interest, attorneys' fees and costs, is \$500 or more and which is either: (1) Action against domestic or foreign corporation or partnership, or individuals engaged in a trade or business, for a liquidated sum of money based upon money loaned, negotiable instrument, sale or lease or licensed use of real or personal property, or services rendered if claim is not secured; or (2) action for recovery of money against

nonresident person (including nonqualified foreign corporations and foreign partnerships who have not filed a designation) or any person who cannot be found after due diligence or who conceals himself to avoid service of summons. (C. C. P. 537.1-537.2).

Fact that interest, attorneys' fees and costs are claimed does not make a claim "unliquidated." (C. C. P. 537.1).

In Whose Favor Writ May Issue.—Any claimant or moving party, whether plaintiff or defendant, including nonresident or foreign corporation, may attach property of opposing party in proper case. (98 Cal. App. 580, 277 Pac. 337).

Proceedings to Obtain.—Plaintiff may request clerk in writing at time of filing of complaint not to make public filing of complaint or issuance of attachment until after filing and return of service of notice and temporary restraining order. (C. C. P. 537.5).

Plaintiff must file with court application supported by affidavit based on personal knowledge showing writ is proper in specific action, indebtedness claimed is justly due and owing, attachment is not sought and action is not prosecuted to defraud creditors, and plaintiff has no information or belief that defendant has filed bankruptcy proceedings. If claim is against nonresident, nonqualified foreign corporation, or partnership not filing designation, or person who cannot be found after due diligence, then plaintiff also must show amount and validity of claim. (C. C. P. 538).

If court satisfied affidavits establish prima facie case and that attachment properly issuable, it will issue temporary restraining order and notice of hearing on question of whether writ of attachment should issue. (C.C.P. 538.1). Hearing held 7 business days after service of notice and temporary restraining order on defendant. (C. C. P. 538.2). Temporary restraining order prohibits transfer of any of defendant's property in State subject to levy prior to hearing otherwise than in ordinary course of business, issuance of checks in excess of aggregate of \$1,000 against any bank accounts in State to withdraw sums subject to levy which reduce account to less than plaintiff's claims, and opening of new bank accounts. Checks can be issued despite \$1,000 limitation to meet payroll, pay C.O.D. charges on delivered goods, pay taxes, and pay legal fees to defend action. (C. C. P. 538.3). Notice to and service upon bank are both ineffective to require bank to observe order. (C. C. P. 538.1). Temporary restraining order expires unless writ issued and levied within 30 days after service of order or if defendant gives undertaking pursuant to C. C. P. 555 in amount of plaintiff's claim. Temporary restraining order may be vacated ex parte if court satisfied that sufficient property will be available and subject to writ of attachment if one directed. (C. C. P. 538.3).

If defendant does not appear at hearing, court must order clerk to issue writ of attachment. At hearing, oral evidence and affidavits may be introduced. Defendant must make himself or an officer with knowledge of the transaction available for oral examination unless court excuses requirement. Court decides on basis of evidence whether writ of attachment properly issuable, probable validity of plaintiff's claim, and probability of defendant asserting successful defense. Thereafter it either orders clerk to issue writ of attachment or dissolves temporary restraining order. (C. C. P. 538.4).

Court may direct issuance of writ of attachment without notice of hearing upon application of plaintiff under one or more of following conditions: (1) Where bulk sales notice posted under Com'l Code 6101 or escrow opened under Bus. & Prof. Code 24074; (2) where there is substantial evidence that defendant will transfer, remove or conceal property sought to be attached; (3) where notice and order cannot be served on defendant within 10 days of issuance and court satisfied defendant departed from jurisdiction or concealing self; (4) defendant is a person not residing in State (including foreign corporation not qualified to do business in State and foreign partnership which has not filed designation) or cannot be found after due diligence, or is concealing self to avoid service of summons. In latter instance, defendant may request hearing upon 7 days' notice at any time after levy. (C. C. P. 538.5).

Courts.—Writ may issue from any trial court where action filed, except small claims court. (C. C. P. 117ha).

Bond.—Before notice of hearing and temporary restraining order issued, plaintiff must file with clerk or judge written undertaking with two or more sufficient sureties in amount of one-half of principal for which writ is to be served, excluding attorneys' fees. Sureties must be resident householders or freeholders or authorized surety company. (C. C. P. 539, 1057).

Issuance of Writ.—Writ of attachment may be issued to any county in State, or to several counties at once, and may be telegraphed. (C. C. P. 540, 1017).

Property Subject to Attachment.—With respect to domestic and foreign corporations and partnerships, all corporate and partnership property are subject to attachment. With respect to individuals engaged in a trade or business, following property may be attached: (1) Inventory; (2) accounts, contract rights, chattel paper, and general intangibles consisting of any right to payment of money exceeding \$150; (3) bank accounts and other deposit accounts except first \$1,000 in any single bank or branch bank; (4) securities; (5) equipment; (6) real estate. All of property of nonresident persons (including non-qualified foreign corporations and foreign partnerships which have not filed a designation) and persons who cannot be located is subject to attachment. (C. C. P. 537.3). Earnings of defendant for his personal services are exempt from attachment. (C. C. P. 543; C. C. P. 690.6). Other exempt property is designated in C. C. P. 690 et seq.

Prevention or Dissolution of Attachment.—Attachment may be defeated by homestead declaration before judgment becomes lien (58 Cal. 1), and is dissolved by death (29 Cal. 359), except where defendant transfers property before death (94 Cal. App. 31, 270 Pac. 458).

Release of Property of Single Defendant.—When property is or is about to be attached, defendant may secure its release by giving undertaking of at least two sufficient sureties, or by deposit of sum of money sufficient to satisfy demand plus costs actually incurred to time of undertaking or 25% of plaintiff's demand, not to exceed \$1,000, or by deposit of sum of money equal to value of property to be attached. Such undertaking must be approved by court issuing writ, or if writ is from another county, then by court of similar jurisdiction in county where levy made. (C. C. P. 540).

Release of Property of One of Several Defendants.—In event action is against more than one defendant, any defendant whose property has been or is about to be attached in such action may give undertaking which must first be approved, as above, or may deposit such sums of money, and such undertaking or such deposit shall not subject such defendant to or be answerable for any demand against any other defendant nor shall officer thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant; provided, however, that such defendant, at time of giving such undertaking, or depositing such sum of money, shall file with officer statement, duly verified under oath, averring and declaring that other defendant or defendants in action has or have not any interest or claim of any nature whatsoever in or to said property. Such statement must further contain character of such defendant's title and manner in which he acquired title to such attached property. Such undertaking, before release of property, must be approved in same manner as for release of property of single defendant. (C. C. P. 540).

Levy.—Personal property capable of manual delivery, if levied on, must be taken into custody of officer. When levy made on personal property, other than money, or vehicle required to be registered under Vehicle Code, belonging to going business concern, officer must, if defendant consents, place keeper in charge at plaintiff's expense for at least 2 days, after which officer shall take property into custody, unless other disposition is made by court or parties. (C. C. P. 542). In case of growing crops copy of writ, description of property and notice of attachment must be recorded as in case of real property. Real property is attached by recording with recorder of county where situated copy of writ with description of property attached, and notice of attachment, and leaving similar copy of writ, description and notice with occupant, or in his absence with employee, agent or family member, if such person be of suitable age and discretion, or, if no occupant, by posting same in conspicuous place on said property. If record title to property in name of person other than defendant, notice must state that property and interest of defendant therein is attached, and must be given to such person or left at his residence, if known and within county. Notice must also be served on occupant, or if none, posted as above. Attachment of investment securities (including shares of stock in corporation) is governed by Uniform Commercial Code. (Com'l. C. §317). Debts, credits, judgments and other personal property not capable of manual delivery are attached by leaving with person owing such debt, or with person having such credit or other property under his control, copy of writ, along with notice that debts or property attached in pursuance of writ.

There are special provisions relating to attachment of debts owing by certain financial institutions, including banks, savings and loan associations, and title companies, and to attachment of checks, drafts, and money orders which are in possession of defendant and payable on demand. (C. C. P. 542).

Indemnity.—If property levied on is claimed by third person by verified claim served upon levying officer, such officer must release property, unless plaintiff, within 5 days after written demand by officer made by registered or certified mail, gives officer undertaking

by two sufficient sureties; in a sum equal to twice value of property levied upon; and officer is not liable for damages to third persons, unless such claim is made. (C. C. P. 689).

Priorities.—All attachments are to be satisfied according to their priority in time. (13 Cal. 335).

Lien of attachment upon real property attaches upon recording of copy, description and notice with recorder of required county, but expires in 15 days unless officer completes execution of writ within that time. Such lien is merged in lien of judgment recovered by plaintiff. If judgment is not recovered within 3 years, lien of attachment will expire unless renewed by motion made not less than 5 nor more than 60 days before expiration of said 3-year period. Certified copy of order so extending such lien must be recorded before expiration of existing lien with recorder of county where attached real property is situated. Such extension may be for not longer than 2 years (C. C. P. 542a).

Life of Attachment of Personalty.—Attachment of personal property ceases to be effective and property must be released 1 year after date of levy of writ unless notice of readiness for trial is filed or judgment is entered against defendant within that period. One year period may be extended by court upon motion for such additional periods as court may direct. (C. C. P. 542[c]).

Sale of Property.—If property attached is perishable, or if court is satisfied that sale thereof will be for interest of all parties, property may be sold as if under execution and proceeds held by sheriff or deposited in court to await result of action. (C. C. P. 547-48). Specific provision relating to cultivating, caring for, harvesting, packing and selling attached growing crops is contained in C. C. P. 542.

Discharge and Release.—After levy of attachment any defendant who has appeared in action may, by order of court, have same discharged, upon executing undertaking that in case plaintiff recovers judgment against such defendant, he will redeliver to officer property attached, or, in default thereof, pay its full value to plaintiff, not exceeding amount of such judgment. (C. C. P. 554-55). On appeal, stay of enforcement, accompanied by sufficient bond will entitle defendant to release, which may be recorded. (C. C. P. 553.5, 560). Return of writ and recording of discharge or release are provided for in C. C. P. 559.

Third party claims to personal property attached may be made in same manner as is provided for third party claims to property after levy under execution. (C. C. P. 549). (See also Executions). Nonresident who claims property attached must make written claim verified by his oath, setting out his title thereto, his right to possession thereof, and stating grounds of such title, which claim should be forwarded here and served on officer holding goods. (C. C. P. 689).

Colorado Law Digest

Attachment

Actions in Which Allowed.—In courts of record attachments are allowed in actions on contract, express or implied, or in tort actions if the tort is committed by a nonresident against a resident. (Rule 102).

Courts Which May Issue Writ.—District or county court (Rule 102; 77-5-2) may issue writs of attachment.

Against Whom Writ May Issue.—In a court of record a writ may issue against: (1) A nonresident; (2) a foreign corporation; (3) a domestic corporation whose chief office is out of the State; (4) a defendant who conceals himself or has been absent from the State for 4 months, on condition that the indebtedness or claim for damages has been due during said period; (5) a defendant who is about to remove his property from the State with intent to delay creditors; (6) a defendant who has fraudulently conveyed a property to delay creditors; (7) a defendant who has fraudulently concealed property to delay creditors; (8) a defendant who is about fraudulently to convey property to delay creditors; (9) a defendant who has departed or is about to depart from the State with intention of moving property from the state; (10) a defendant who has refused to pay the price of an article delivered which he should have paid for upon delivery; (11) a defendant who has failed to pay for work done which should have been paid at completion of said work; and (12) a defendant who has fraudulently contracted the debt or fraudulently procured money or property. (Rule 102-b).

Claims on Which a Writ May Issue.—In a court of record, except in the case of a nonresident, a foreign corporation and a domestic corporation whose office is out of the State, a writ may issue upon debts or liabilities not yet due, provided that upon obtaining judgment the defendant shall receive interest due from the time of judgment until the time the debt or liability would become due. (Rule 102-o).

Grounds.—See supra, subhead Against Whom Writ May Issue.

Proceedings to Obtain.—In a court of record, in order to obtain a writ of attachment, the plaintiff must file an affidavit stating the cause of action, that it is an action in which attachment is allowed, and that the defendant is a person against whom a writ of attachment may issue. (Rule 102-b). The writ of attachment must be served as provided by the rules for service of process, except that if personal service be made in Colorado it must be made by the sheriff. (Rule 102-f). Within 20 days after service the defendant, by affidavit, may traverse the plaintiff's affidavit, and if the plaintiff shall substantiate one of the causes alleged in the affidavit, attachment shall issue (Rule 102-p); if the traverse affidavit shows that the evidence does not prove a cause alleged in the plaintiff's affidavit, but another cause, then on motion the plaintiff's affidavit may be conformed to proof (Rule 102-q).

Attachment Bond.—In a court of record, the plaintiff must give bond for double the amount claimed conditioned that, if the court finds the plaintiff not entitled to attachment, the plaintiff will pay costs awarded the defendant and damages sustained by the wrongful attachment. (102-c). Whenever it shall appear to the court that the bond is insufficient, the court may order another one and if the plaintiff fails to comply within 20 days, the writ of attachment must be dismissed. (Rule 102-z).

Levy.—In court of record the sheriff to whom the writ is directed must execute upon real estate by filing a copy of the writ together with a description of the property attached with the recorder of the county, and upon personal property by taking it into custody. (Rule 102-g).

Lien.—Attachment liens on real estate continue for 6 years unless the judgment be sooner satisfied (77-5-3), and a certificate that levy

has been made upon real estate must be filed in the office of the recorder in the county where the land is situated (77-5-1).

Release of Property.—In a court of record a writ of attachment will not issue if the defendant gives sufficient security to pay the judgment (Rule 102-a); after the writ of attachment has been levied the defendant may post a bond in sums fixed by the sheriff, not less than the value of the property attached, and upon posting this bond the property subject to the attachment must be released (Rule 102-x).

Sale.—Where perishable property is attached, any party to the action may apply to the court for a sale thereof, and upon sale the proceeds must be deposited with the clerk of the court. (Rule 102-s).

Third Party Claims.—In a court of record no final judgment may be rendered until after 30 days after the attachment has been made, and any creditor within the 30 days may file an affidavit setting forth his claim against the defendant, and must then be made a party plaintiff with the same remedies as the original plaintiff (Rule 102-j[1]), and a judgment creditor may, upon motion without filing an affidavit, be made a party plaintiff having like remedies as the original plaintiff (Rule 102-j[2]). When an additional creditor is made a party, a dismissal by the first attaching creditor of his cause of action does not operate as a dismissal as to any other creditor. (Rule 102-k). Upon final judgment each creditor takes pro rata from the money realized from the attachment proceedings, provided that when the property is attached while the defendant is removing the same or secreting the same for the purpose of defrauding creditors, the court may allow the creditors whose diligence procured the property a priority over other attachments or judgment creditors. (Rule 102-l). Any third person claiming property attached may intervene and, in case judgment is in his favor, may recover damages by reason of attachment. (Rule 102-r).

Connecticut Law Digest

Attachment

Actions in Which Allowed.—Upon the original writ in any action for recovery of money, but no attachment may be made in an action for slander, libel, or invasion of privacy except upon a court order. (52-279).

In Whose Favor Writ May Issue.—There is no distinction in favor of local creditors.

The court may, in its discretion and upon posting of a bond with surety, permit a defendant filing a set-off or counterclaim to procure attachment of the plaintiffs goods (52-282).

Against Whom Writ May Issue.—Writ may issue against either resident or nonresident defendant.

Claims on Which Writ May Issue.—It is not necessary that the claim sued on should be insured or payable within the State.

Grounds.—Attaching party at hearing must show probable cause that his claim will be sustained. (Public Act 73-431, § 4).

Proceedings to Obtain.—Plaintiff must apply for prejudgment remedy, submit affidavit and serve defendant with application at least 4 days prior to required hearing. Temporary restraining order may be obtained. Hearing's sole purpose is to ascertain whether probable cause exists to sustain plaintiff's claim. Attachment may issue without

hearing where defendant is: (a) Nonresident; (b) avoiding service of process; (c) about to leave State; (d) fraudulently concealing or disposing of his property; (e) insolvent by his own statement. Procedure not applicable to commercial transactions; as distinguished from consumer transactions, if waiver previously secured. (Public Act 73-431: 73-616, § 65). Defendant has a right to appear and be heard at hearing. If application is granted, documents are returned to plaintiff's attorney, who then signs writ, attaches property pursuant to court's order, serves writ upon defendant and returns it to court. If plaintiff does not serve writ, entry fee may be returned. (Public Act 73-431, § 4).

Attachments secured prior to May 30, 1973, shall retain their effectiveness by filing a motion for a hearing. (Public Act 73-431, §§ 4, 7).

Forms.—Following forms are to be used:

Forms

Application for Prejudgment Remedy.—

To the _____ Court of _____

The undersigned represents:

1. That * * * is about to commence an action against _____ of _____ (give name and address of defendant) pursuant to the attached proposed unsigned Writ, Summons, Complaint and Affidavit.

2. That there is probable cause that a judgment will be rendered in such matter in favor of the applicant and to secure such judgment the applicant seeks an order from this court directing that the following prejudgment remedy be issued to secure the sum of \$_____:

a. To attach the following described real property of the defendant located in the Town of _____: (Description)

b. To garnishee _____ as he is the agent, trustee, debtor of said defendant and has concealed in his hands the goods, effects and estate of said defendant and is indebted to him.

c. (Other Type of Prejudgment Remedy Requested.)

Name of Applicant

By _____

His Attorney

Order.—

The above application having been presented to the court, it is hereby ordered, that a hearing be held thereon on _____ at _____ a.m. and that the plaintiff give notice to the defendant of the pendency of said application and of the time when it will be heard by causing a true and attested copy of the application, such proposed unsigned writ, summons, complaint, affidavit and of this order to be served upon the defendant by some proper officer or indifferent person on or before _____ and that due return of such service be made to this court.

Dated at _____ this _____ day of _____, 19__.

Clerk of the Court

Summons.—

To the Sheriff of the County of _____, his deputy, or either constable of the Town of _____, in said County,

Greeting:

By authority of the State of Connecticut, you are hereby commanded to serve a true and attested copy of the above application, such unsigned proposed writ, summons, complaint, affidavit and order upon _____, of _____, by leaving the same in his hands or at his usual place of abode on or before _____.

Hereof fail not but due service and return make.

Dated at _____ this _____ day of _____, 19__.

Commissioner of the Superior Court

Attachment bond is not required, except in case of defendant filing set-off or counterclaim (52-282), although cost bond (see Costs) may be required in a proper case.

Times for Issuance of Writs.—Attachment may issue on commencement of action only upon court order or pursuant to temporary restraining order. (Public Act 73-431, § 2). See subhead Proceedings to Obtain, supra. It may also be made subsequent to the commencement of action by order of the court in which the action is brought, which order must be served and returned in the same manner as an original writ of attachment. (52-281).

When the court cites in a new party to an action pending before it, it may include in such citation an order for a supplemental attachment against the property of such new party (52-103).

Upon amendment of defective process, if court after notice and hearing finds that parties had notice of pendency of action and have not been prejudiced by the defect, attachment made by original process is preserved as though proper from date of service of original process. (52-72).

Property Subject to Attachment.—Attachment may be levied on any estate of the defendant not exempt. (52-279; 52-280). No garnishment in excess of \$5,000 on any checking account is effective except upon court order. (52-289a). As to exempt property, see topic Exemptions.

Equitable interests (114 Conn. 79, 157 Atl. 638), future interests (71 Conn. 149, 41 Atl. 284), and partial interests in land (68 Conn. 1, 35 Atl. 804) are subject to attachment if sufficiently definite to be capable of appraisal; but security interests such as interest of vendor or mortgagee may be reached only by garnishing debt secured and filing certificate of garnishment for record with town clerk for town where the land is situated (52-346; 81 Conn. 419, 71 Atl. 509). Income from trust fund, if available to defendant by the terms of the trust (see Trusts), may be availed of by equitable decree requiring trustee to pay income to the creditor. (52-321). Interest of partner in partnership property may be attached, but any party to action or partner may, by bill in equity, cause dissolution of attachment and division of partnership property on equitable principles. (52-299).

Motor vehicle or railroad car may not be attached on mesne process, except upon order of a judge. (52-288).

Fixtures of telephone, telegraph, light or power companies are attachable in manner and effect the same as real estate by lodging a certificate of attachment with the secretary of state. (52-287).

Public Servants.—No attachments of property of municipal officials, policemen, or members, teachers, or employees of board of education or members of any other municipal board or commission, in action involving official conduct, except on court order, or, in case of policeman, on dismissal. (52-279).

Excessive attachments may be reduced. (52-302).

Levy.—Attachment is made under order of court after hearing or in special circumstances by authority subscribing writ directed to sheriff or constable. (52-59; 52-90, am'd PA 183, § 82; Public Acts 73-431). Sheriff or constable makes attachment by serving writ of attachment on defendant, and, in case of personal property by seizing and removing property where practicable (52-280; 107 Conn. 300), and, in case of real estate (52-285) or leaseholds (52-286) by lodging in office of town clerk in town where real estate is located a certificate that he has made such attachment and a true and attested copy of process authorizing same. (52-285).

Estate of nonresident defendant is attached as above described, a copy of the process being left with the agent or attorney of the defendant within the state, or in the absence of such agent or attorney, with the person in charge or possession of the estate attached; if there is no person in charge or possession of the estate attached, the court may order reasonable notice to be given to the defendant, and such notice, having been given and proved, is deemed sufficient service of process, and such attachment thereupon becomes effective. (52-284). Not applicable to garnishments. (79 Conn. 17; 52-88).

Shares of stock in a corporation, together with the dividends due thereon, may be attached by the officer leaving attested copies of the process and complaint at the office of the corporation, and the officer in charge thereof must issue to him a certificate of the amount of stock owned, the incumbrances thereon and the dividends due; but no such attachment shall be valid until the stock certificate be seized by the officer, or be surrendered to the corporation. (52-289).

Attachments of certain cumbersome articles not moveable without manifest injury may be effectual without removal thereof if properly filed within 48 hours in town clerk's office in town where property situated and with secretary of state. In some cases, posting on building containing property required. (52-283).

Lien.—The attachment constitutes a lien on the property attached to secure payment of attaching creditor's claim, and priority of levy of attachment gives priority of lien. (36 Conn. 578). A real estate attachment is not a lien after 15 years unless reduced to judgment and a judgment lien filed. (52-327).

Attachment holds until the execution is levied, provided the levy is made within 60 days after final judgment when personal estate is attached, and within 4 months when real estate is attached. (52-328).

Sale.—Upon order of court, perishable property or property difficult or expensive to care for and preserve levied on under attachment may be sold (52-293), provided the plaintiff gives bond with surety in double the value of such property, conditioned on prosecution to effect and payment of damages sustained by sale at less than appraised value (52-294). The proceeds of such sale are paid into court and are there subject to attachment by other creditors. (52-297). Defendant may

take the proceeds at any time during suit upon giving bond with surety conditioned on refund in the event of adverse judgment. (52-298).

Priorities.—Where several attachments of the same property are made, the debt and costs of suit of the first attaching creditor must first be fully satisfied, and subsequent attaching creditors are paid in the order of their several attachments. (85 Conn. 573, 84 Atl. 119; 36 Conn. 578).

Property of Nonresidents.—The property of a nonresident defendant may be attached in the same manner as other property is attached except that the writ and complaint is served by leaving a copy with the defendant's agent or attorney in State, if known and by giving such notice to said defendant as court, on application made to it, shall require. (52-284).

Release of Property.—Defendant may secure release of attached property and dissolution of attachment lien upon substitution of surety bond or lien on other property which has equal or greater net equity value than amount secured by attachment (52-304); all persons interested may be heard in relation to amount and sufficiency of bond or substitute lien, and amount must equal value of estate which process directed to be attached, except in tort action for unliquidated damages in which case reasonable bond or substitute lien is sufficient (52-307). Lien on real estate of surety on bond may be obtained by filing in office of town clerk. (49-86).

Dissolution.—When attachment of record is for any reason of no effect, any person interested in estate may require plaintiff (52-322) or clerk of court (52-324) to file certificate of dissolution with town clerk. If plaintiff fails to execute and deliver a release within 30 days after demand, he is liable to person aggrieved at \$50 per week, up to \$1,000. (49-8; 49-13).

When the attachment is dissolved, the defendant must file a certificate of dissolution signed by the plaintiff or the plaintiff's attorney with the town clerk if real estate was attached, with the served officer of the corporation if corporate stock was attached, or with the garnishee in case of goods or effects in hands of garnishee, before the corporation or garnishee can be held liable for refusing to transfer stock, pay debts or return goods and effects. (52-310).

Bond.—By application to court defendant may secure dissolution of attachment lien upon substitution of a surety bond or lien on other property which has equal or greater net equity value than amount secured by attachment. (52-304). Amount and sufficiency of bond or substitute lien are subject to hearing, but amount must equal value of estate which process directed to be attached, except in action or tort for recovery of unliquidated damages where court may take bond or substitute lien for amount deemed reasonable. (52-307).

Delaware Law Digest

Attachment

Actions in Which Allowed.—In both foreign and domestic attachment actions the writ will issue on contract or in tort.

Courts Which May Issue Writ.—In foreign and domestic attachment, superior court has jurisdiction in any amount exceeding \$50

(10-3501) and justices of peace up to \$1,500 (10-9590). Common pleas court has jurisdiction in foreign attachment not exceeding \$1,000. (10-1371).

In Whose Favor Writ May Issue.—Any plaintiff may secure an attachment where proper grounds therefor are shown; there is no discrimination in this respect against nonresidents or foreign corporations. Provision is made for the attachment of shares of corporate stock or any interest therein (8-324).

Against Whom Writ May Issue.—Writs of attachment are known as domestic and foreign. Domestic writs are those issued against residents of the State or domestic corporations. Foreign writs are those issued against nonresidents or foreign corporations. Banks, savings institutions and loan associations doing business in the State are exempt. Insurance companies are liable only as to amounts claimed or payable under policy. (10-3502).

An unincorporated association including a partnership is liable to attachment in any action in its common name. (10-3504).

Claims on Which Writ May Not Issue.—Property title to which has not yet passed to judgment debtor not subject to attachment. (10-3505).

Grounds.—Writs of both domestic attachment against a resident or a domestic corporation and writs of foreign attachment against a nonresident may issue by order of court, on proof satisfactory to court. An affidavit is satisfactory for this purpose. (Super. Ct. Rule 4).

Domestic writs may issue against a resident or domestic corporation upon proof satisfactory to court that defendant cannot be found or that defendant is justly indebted to plaintiff in an amount over \$50, and that he has absconded, is about to leave the State, or left the State, with intent to defraud creditors or elude process, as is believed (10-3501).

Foreign writs may issue against a nonresident upon proof satisfactory to court that defendant cannot be found, that plaintiff has good cause of action against defendant in amount exceeding \$50, and that defendant resides out of State (10-3506). Foreign writs may issue against foreign corporation upon proof satisfactory to court that defendant is a corporation not created by, or existing under laws of Delaware, and that plaintiff has a good cause of action against defendant in an amount exceeding \$50 (10-3507).

Procedure to Obtain.—Affidavit filed in Superior Court with complaint setting forth statutory grounds and other facts required by court rules. (Sup. Ct. Rule 4).

Attachment Bond.—No mesne writ of attachment will be issued until plaintiff gives bond conditioned that if suit is not prosecuted with effect, or if judgment rendered therein is in favor of defendant, plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding amount of the bond, which a defendant in the suit may have sustained by reason of such attachment. Amount and surety discretionary with superior court. (Super. Ct. Rule 4).

Levy is to cover both real and personal property. (10-3508).

Indemnity.—Statute gives superior court rule power over indemnity (10-3512). See subhead Attachment Bond above.

Lien.—Writ is a lien on goods and chattels actually levied on from time of levy.

Priorities.—Writs of attachments are to be executed by sheriff in order in which received by him.

Release of Property.—The writ may be discharged by furnishing security to the amount of the value of the attached property or the amount claimed in the suit, whichever is the lesser. If a nonresident enters general appearance and moves to release property, court must so order unless plaintiff shows other circumstances which threaten satisfaction of any judgment obtained and unless plaintiff gives bond in amount at least equal to current value of property. (Super. Ct. Rule 4).

Sale.—If attached property is perishable court may order attaching officer to sell same. No sale without court order. (Super. Ct. Rule 4).

Third Party Claim.—Statutory provision made for auditors in domestic attachment cases. (10-3521-22).

Vacation or Modification.—Nonresident may generally get property released on general appearance, property in any event will be released on furnishing security. (Super. Ct. Rule 4).

District of Columbia Law Digest

Attachment

Attachments may be levied on the lands and tenements and personal chattels of defendant not exempt by law, whether in defendant's or a third person's possession, whether defendant's title is legal or equitable, and upon his credits in hands of third person whether due or not, and upon his undivided interest in a partnership. (§ 16-507).

While attachment may be issued upon a judgment in aid of execution (§ 16-542), the following pertains to attachment before judgment:

Actions in Which Allowed.—In any action for the recovery of specific personal property, or a debt, or damages for the breach of a contract, express or implied. (§ 16-501).

Courts Which May Issue Writ.—District and superior courts (§§ 16-501, 533).

In Whose Favor Writ May Issue.—Any plaintiff.

Against Whom Writ May Issue.—Any defendant.

Claims on Which Writ May Issue.—On matured claims (§ 16-501) or claims where debt is not due and payable (§ 16-503).

Grounds for attachment are that defendant (1) Is a foreign corporation or a nonresident; (2) has been absent from District for at least 6 months; (3) evades service of process; (4) has removed, or is about to remove, some or all of his property from District so as to defeat just demands against him; (5) has assigned or secreted his property, or is about to do so, in fraud of creditors; or (6) fraudulently contracted the debt or incurred the obligation. (§ 16-501).

Proceedings to Obtain.—An affidavit must be filed by plaintiff showing grounds for attachment, details of his claim, his right to recover, and if action is to recover specific personal property, value of such property and probable amount of damages; and, if action is for a debt, amount thereof; and, if action is for damages on contract, showing in detail the breach of contract and actual damage. (§ 16-501).

If the debt is not yet due the affidavit of the plaintiff must be substantiated by testimony of one or more witnesses in relation to the amount and justice of the claim, time it will become due, and must also

show either that defendant has removed, is removing or that he intends to remove a material part of his property from District to defraud creditors. Judgment may not be entered before debt matures. (§ 16-503).

Attachment Bond.—Plaintiff must file a bond with surety approved by clerk of court with penalty of twice amount of his claim or value of specified property to be levied upon, whichever lower. (§ 16-501). Officer who serves writ, U.S. marshal, will require a bond for protection of himself against making a false levy where a seizure of personal property is to be made.

Levy.—An attachment is sufficiently levied on real estate by said real estate being described by the marshal in an endorsement on the writ of attachment to the following effect:

Levied on the following estate of the defendant A. B., to-wit: (here described property) this ----- day of -----

C. D. Marshal.

and by serving a copy of the writ bearing such endorsement and a notice to the defendant to appear, upon the person, if any, in possession of the property. (§ 16-508).

An attachment is levied on personal chattels by the marshal taking the same into his possession and custody unless the defendant or person in possession gives an undertaking, in which event attachment is sufficiently levied by the taking of the undertaking. (§ 16-509).

An attachment is levied on credits of defendant in hands of garnishee or upon undivided interest in partnership by serving garnishee or partner with copy of writ and interrogatories and a notice that any property or credits in his possession are attached. (§ 16-511).

Indemnity.—The officer who serves the writ, the United States marshal, will require a bond for protection of himself against making a false levy where a seizure of personal property is to be made.

Lien.—Attachment is a lien on property from the date of delivery of the writ to the marshal. (§ 16-507).

Priorities are according to the dates when the attachments were delivered to the marshal. (§ 16-507).

Release of property or credits may be secured by defendant or person who had possession of property or credits, by furnishing an undertaking with security to be approved by the court to pay any judgment recovered against him. (§ 16-510).

Sale.—After judgment of condemnation, specific property may be sold under writ of fieri facias to satisfy demand of plaintiff. (§ 16-525). Prior to final decision the court may order a sale of property if perishable or if for other reasons a sale appears expedient. (§ 16-518).

Third Party Claims.—A third party may file a petition in the cause claiming the personalty attached, and the matter must be tried to determine the ownership (§ 16-523).

Vacation or Modification.—Defendant (§ 16-506), as well as a garnishee where attachment is based on fraudulent conveyance (§ 16-529), may contest right of plaintiff to writ by filing affidavits traversing facts set forth in plaintiff's affidavits. Motion to quash writ may be heard on 3 days' notice (§ 16-506). Also, defendant or any garnishee may plead to attachment, and raise issue to be tried by court (§ 16-520).

Interrogatories.—Garnishee may be required to answer interrogatories under oath concerning defendant's property in his possession or his indebtedness to defendant. (§ 16-521). Plaintiff may traverse such answers and have issue tried by court. (§ 16-522).

Judgment.—If defendant has been served with process, final judgment may not be entered against garnishee until action against defendant is determined. (§ 16-524). Where plaintiff recovers judgment against defendant, plaintiff may have judgment of condemnation of property attached or of proceeds from sale of property (§§ 16-524, 525) or judgment of condemnation against garnishee for amount of defendant's credits in his hands or where undertaking has been provided judgment of condemnation of property and against garnishee and his sureties (§§ 16-526, 527).

Payment of salary or earnings before due for the purpose of preventing or avoiding an attachment or garnishment against them is void as to an attaching creditor. After the service of a writ of attachment or garnishment on a judgment against an employer, any advance payment of salary or earnings made within a period of 6 months after the service of the writ or before an earlier satisfaction of the judgment is, as to an attaching creditor, presumed to be for the purpose of avoiding the attachment. (§ 16-513).

Florida Law Digest

Attachment

Actions in Which Allowed.—Attachment lies before or after judgment in actions ex contractu in nature. (76.04 et seq.). Attachment not available in tort actions except those arising from operation of boats, vessels, etc. (76.32). Foregoing not affected by commercial code.

Courts That May Issue Writ.—Attachments are required to issue from court which has jurisdiction of amount claimed by creditor, unless property to be attached is being actually removed from State and creditor is unable to obtain process from proper court in time to prevent such removal, in which case any judge may issue writ, making same returnable to circuit or county court having jurisdiction of amount claimed. (76.03).

In Whose Favor and Against Whom Writ May Issue.—Any creditor may have an attachment against goods, lands and tenements of his debtor in a proper case. (76.01). No restrictions on foreign corporations or nonresidents.

Claims on Which Writ May Issue.—See subhead, Actions in Which Allowed, supra.

Grounds.—Attachment may be procured upon filing a motion therefor, which shall not be verified or negative attachment debtor's exemptions. (76.08). When debt is due, motion shall state amount of debt that is actually due, and that movant has reason to believe that defendant will fraudulently part with his property before judgment, is actually removing his property out of State of Florida, is about to remove his property, resides beyond limits of State, is actually moving himself beyond limits of State, is about to move himself out of State, is absconding, concealing himself, or secreting or fraudulently disposing of his property, is actually removing himself beyond limits of judicial circuit in which he resides, or is about to so remove himself out of limits of such judicial circuit (76.09, .04).

When Debt Not Due.—Motion shall state amount of debt or demand; that it is actually an existing debt; and shall state specifically such special ground or grounds: that debtor is actually removing his property beyond limits of State, that he is fraudulently disposing of his property for purpose of avoiding payment of his just debts or demands or that he is fraudulently secreting his property for such purpose. In addition, plaintiff must produce before officer granting attachment proof, by affidavit (other than his own) or otherwise, satisfactory to such officer, of existence of such special ground. (76.05, .10).

When Attachment in Aid of Chattel Mortgage Foreclosure.—Motion shall describe property on which mortgage exists, and state that complaint has been filed to foreclose mortgage, amount of debt secured by mortgage, that it is actually due, and that movant has reason to believe that property or part of same: (1) Will be concealed or disposed of so that it will not be forthcoming to answer judgment or decree of foreclosure; (2) will be removed beyond jurisdiction of court; (3) is perishable and is being used and consumed; or (4) has been disposed of without consent of holder and owner of mortgage, stating who has property, if known, or that affiant does not know who has same. (76.11, .07). Where attachment is on ground (4) and holder of property is unknown, attachment bond must be payable to State. (76.12).

Proceedings to Obtain.—Practice in suits commenced by attachments are same as other suits at law. See R. C. P. 1.010.

Attachment Bond.—No attachment may issue until person applying for same, his agent or attorney, has entered into bond, with two sureties, payable to defendant, in at least double the debt or sum demanded, conditioned to pay all costs and damages which he may sustain in consequence of improperly suing out attachment. (76.12). See subhead *When Attachment in Aid of Chattel Mortgage Foreclosure*, supra, regarding need for bond payable to State in certain foreclosure circumstances. (76.12).

Levy, Lien, Priorities.—Levy of a writ of attachment does not operate to dispossess tenant of any lands or tenements, but levy upon real or personal property binds property attached, except against pre-existing liens. Levies upon same property under successive attachments have precedence as liens in order in which they are made. Levy binds real estate as against subsequent creditors or purchasers only from time of record by clerk of circuit court in lien book of a notice of levy and a description of property levied upon. (76.14).

Upon statement in motion that defendant has property in a county other than that in which suit is instituted, a writ of attachment may issue directed to sheriff or other proper officer of county where said property is, and said officer must execute writ and hold and dispose of property as in other cases. (76.16).

Release of Property.—Property attached may be restored to defendant upon his giving a bond to officer levying attachment, payable to plaintiff, with two sureties, in double value of property levied upon, or double amount of claim if value exceeds claim, value to be fixed by officer levying attachment, where such value exceeds claim. (76.18).

Vacation or Modification.—Court to which attachment is returnable is always open for purpose of entertaining motions to dissolve such attachment, and if any allegation in plaintiff's affidavit which is

denied under oath in writing by defendant is not sustained and proved to be true, such court will dissolve attachment. Issue joined upon such denial may be tried by a jury, upon demand of either party. (76.24).

Third Party Claims.—Attached property claimed by third persons may be replevied, or a claim interposed therefor by filing with officer levying attachment an affidavit made by claimant, his agent or attorney, that property claimed by him is his property, and by giving of a bond, payable to plaintiff, with two good and sufficient sureties to be approved by such officer in double value of goods claimed. (76.21; 56.16).

Georgia Law Digest

Attachment

Actions in Which Allowed.—Attachment may issue in all cases of money demands, whether ex contractu or ex delicto if statutory grounds exist. (8-102).

In Whose Favor Writ May Issue.—Attachment may issue on behalf of any plaintiff, including a nonresident or foreign corporation. A surety may have an attachment against his principal, but if surety has not paid obligation, money raised on attachment must be paid to obligee. (8-107).

Against Whom Writ May Issue.—Attachment may issue against a foreign corporation doing business in the State (8-108); joint contractors and partners (8-106); administrator or executor of an estate (8-105); or against any person or corporation if statutory grounds exist (8-102).

Claims on Which Writ May Issue.—Attachment may issue for money not yet due, but execution is stayed until maturity of the debt (8-103).

Time for Issuance.—An attachment may issue at any time prior to or during the pendency of suit (8-104) on any day of week including Sunday (8-115).

Grounds.—General grounds are that debtor: (1) Is a nonresident, (2) is removing or about to remove without county, (3) absconds, (4) conceals himself, (5) resists legal arrest, or (6) is causing his property to be removed without State (8-101). These grounds do not result in unreasonable seizure. (231 Ga. 157, 200 S.E.2d 703). Attachment may issue against debtor who has sold, conveyed or concealed property liable for his debts or threatened or prepared to do so, or made a fraudulent lien on his property (8-401, 402). Real or personal property may be attached for purchase price thereof (8-301, 302).

Proceedings to Obtain.—Creditor, his agent or attorney, or one of joint creditors (8-110), must make affidavit before any superior, county or city court judge, magistrate, justice of peace, or clerk of any court of record showing ground for attachment and amount of debt claimed (8-109).

Attachment Bond.—Creditor must file bond in not less than double amount of debt conditioned to pay damages and costs if attachment not successful. (8-111). Bond need not exceed \$20,000 (8-111) but may be increased by levying officer after hearing (8-113). Agent or attorney making affidavit may sign bond for his principal. (8-111). Attorney cannot be surety, nor can nonresident unless he owns real estate in county. (8-112).

Levy.—Attachment may be levied on real or personal property of defendant anywhere in State (8-114) including investment securities where actually seized (109A-8-317); goods covered by a negotiable document of title where document is not outstanding (109A-7-602) and debtor's rights in collateral (109A-9-311). See topic Commercial Code. If property found in county other than that in which writ issued, officer must make and certify copy and deliver same to officer of county where property is and latter officer levies and makes return to court issuing attachment. (8-210). Levy on real estate must be entered on general execution docket within 5 days of levy to bind third parties. (8-906).

Indemnity.—No statutory provision.

Lien.—Attaching creditor has lien created by the levy. (8-905).

Priorities.—Among attachments, first levied is first satisfied. As between attachment and ordinary judgment, judgment rather than levy fixes lien except where attachment has been levied prior to filing of suit resulting in ordinary judgment. (8-904, 905).

Return.—If debt exceeds \$200, and in any case where defendant is nonresident, attachment returnable to superior court of defendant's last residence as to residents of Georgia, and to any appropriate superior court as to nonresidents. If debt does not exceed \$200, attachment returnable to next justice's court of district where debtor resides or last resided, which sits not less than 10 days after issuance thereof. Attachments returnable to superior, city and county courts governed by same rules of procedure and practice governing all civil actions. (8-117).

Release of Property.—Defendant may replevy property attached by giving bond with security payable to plaintiff for not less than double amount claimed or value of property. (8-701).

Third party claims may be asserted before or after judgment in attachment suit. (8-806). Officer must return claim to court issuing attachment except that claim involving land always returnable to superior court. (8-801). Claimant may replevy property by giving forthcoming bond to levying officer. (8-803). If claimant unsuccessful and property does not bring enough to satisfy judgment, plaintiff may sue claimant on bond for use and hire of property and deterioration in value, but may not recover more than enough to satisfy the unpaid portion of the debt. (8-805).

Vacation.—Judgment may be set aside for fraud or want of consideration. (8-902).

Proceedings After Attachment.—Where attachment returnable to superior, city or county court appearance day of such declaration to be 30 days after filing thereof. (8-117). See also topic Pleadings. Plaintiff may by written notice served personally on defendant at least 10 days before final judgment on attachment, bind defendant personally and after service of notice, even though attachment be dismissed, plaintiff entitled to judgment on declaration filed on merits of the case. (8-602). Should defendant replevy attached property or appear and plead to merits, judgment will bind defendant personally though no notice given. (8-602). Any defendant against whom an attachment may issue, for recovery of demand which is not due, may plead a set-off even if it is not due or is more than plaintiff's claim and recover judg-

ment. (8-604). Unless plaintiff gives notice, defendant replevies or pleads to merits, a judgment in rem against attached property may be had.

Hawaii Law Digest

Attachment

Actions in Which Allowed.—Attachment of either real or personal property not exempt from execution may issue in any action on an express or implied contract, including actions by nonresident or foreign corporation. (651-2).

Courts Which May Issue Writ.—Circuit and district courts may issue writ, except that district magistrate may not have his writ served in circuit outside one in which his district is situated nor may he issue writ for attachment of real property. (651-1).

In Whose Favor Writ May Issue.—Plaintiff in action, including nonresident or foreign corporation, may have property attached (651-2).

Against Whom Writ May Issue.—Property of defendant, or any one or more of several defendants, may be attached, but not that of State or political subdivision. (651-1).

Claims on Which Writ May Issue.—Before writ will issue, plaintiff, or someone in his behalf, must file affidavit with clerk that defendant is indebted to plaintiff, specifying amount of debt over and above just credits and offsets, and that action is not prosecuted to defraud, hinder, or delay any of defendant's creditors. (651-3). No statute or case in Hawaii as to whether creditor may attach on unmatured or contingent claim.

Grounds.—No statutory restriction.

Proceedings to Obtain.—At time of commencing action or afterward before judgment, plaintiff may have attachment by applying to clerk of court in which action pending (district magistrate in district courts [651-1]) (651-3), upon filing required affidavit (see subhead Claims on Which Writ May Issue supra), filing bond and additional security as required (see subhead Attachment Bond infra) (651-4, 5), and upon approval of court (651-7). Writ is directed to any police officer. (Ibid.)

Attachment Bond.—Plaintiff must file bond in double amount of claim, but not less than \$50 in district court or \$300 in circuit court, together with affidavit of sureties (see topic Bonds). Bond is not required of State, municipalities, their officers or agents (651-4). Court may, on plaintiff's motion reduce bond to one and one half times amount of claim more than \$50,000 or on defendant's motion require additional security. (651-4, 5).

Levy.—Police officer is to levy on sufficient property, giving preference to clearer title (651-7, 8), 20% greater in value than plaintiff's claim (651-8).

Real property is attached by filing in bureau of conveyances true copy of writ with officer's certificate that he has attached real estate or defendant's interest in it, and describing land with convenient certainty. (651-9[1]).

Personal property capable of manual delivery is attached by taking it into custody. (651-9[2]).

A security (see topic Commercial Code) is attached by actual seizure thereof. (651-9[3]).

Court may allow compensation to police officer. (651-8). Court may appoint receiver (compensation to be out of that of police officer). (651-14).

Indemnity.—Police officer may require indemnification (651-10).

Lien.—No statutory provision.

Priorities.—Several attachments are executed in order received by police officer. (651-11). Leases, mortgages, sales, devices, etc. after attachment are void in law as against plaintiff in such cases. (634-66; 51 Haw. 164, 454 P.2d 116).

Release of Property.—Writ is discharged if action is discontinued, dismissed, or if judgment is for defendant (651-16), by defendant filing a bond approved by officer having attachment or by clerk after return (651-17), or upon defendant's motion if writ improperly issued (651-18). Order of discharge on real property is to be recorded in same manner as writ and expenses of attachment must be paid by plaintiff (651-18).

Return.—Return is to be within same time as is allowed for return of summons. Return is to be accompanied with full inventory of property attached and certificate of proceedings indorsed on writ (651-15).

Examination.—If on plaintiff's affidavit or on return of writ it appears that attachable property cannot be found, court may require attendance of defendant to give relevant information on oath (651-12).

Sale.—Police officer may sell perishable property. If in interest of parties, court may, after hearing, order sale of property. Sales are in same manner as execution (651-13).

Third Party Claims.—No statutory provision.

Vacation or Modification.—See subhead Release of Property.

Idaho Law Digest

Attachment

Attachment is ancillary to action and in accord with statute. (8-501, amend 1974, c. 307).

Actions in Which Allowed.—Attachment can issue only in action on judgment or express or implied contract for direct payment of money not secured by mortgage, deed of trust, lien, or security interest. (8-501).

Courts Which May Issue Writ.—All district courts.

Claims on Which Writ May Issue.—Debt must be due, but it need not be payable in this State (8-501).

In Whose Favor Writ May Issue.—In proper case, any plaintiff, including nonresident or foreign corporation may obtain attachment.

Grounds for attachment are: (1) That contract or debt sued for arose on contract, express or implied, for direct payment of money, and has not been secured by mortgage, deed of trust, security interest, or lien, on real or personal property; or if so secured, that such security has become valueless, without any act of plaintiff or person to whom such security was originally given; or (2) that defendant is a nonresident. (8-501). Foreign corporation is nonresident within the latter provision. (26 Ida. 703, 146 Pac. 101).

Proceedings to Obtain.—Plaintiff shall file application for writ supported by affidavit. (8-502: 1974, c. 307). Court shall issue order to show cause why writ should not issue and for hearing date, no

sooner than 5 days, and direct time within which service on defendant be made, (8-502[b]; 1973, c. 266).

Prior to hearing, court may, nevertheless, issue writ if (1) jurisdiction depends on attachment of defendant's property in State; (2) property is a negotiable instrument; (3) property is bank account subject to threat of immediate withdrawal, property is perishable, in danger of destruction, concealment or removal from State, or sale to innocent third person. (8-502[c]; 1974, c. 307).

On order to show cause hearing court makes preliminary determination, and if a reasonable probability that plaintiff's claim would prevail, requires undertaking for value of property and may issue writ which may be levied upon in amount adequate to secure judgment which may be obtained. (8-502[e]; 1974, c. 307).

If writ issued prior to hearing, defendant may request shortened time, with notice to plaintiff, of not less than 48 hours. (8-502[c]; 1974, c. 307).

If no appearance by defendant after service, writ may issue.

Court may, in addition, issue temporary restraining order, in lieu of writ of attachment. (8-502[d]; 1974, c. 307).

Affidavit for Attachment.—Plaintiff, or his agent or attorney must make and file an affidavit stating ground of attachment, that debt is due, amount due, and that attachment is not sought, or the action prosecuted, to hinder, delay, or defraud any creditor of defendant. (8-502, 16-601).

Attachment Bond.—No writ shall issue except by filing a written undertaking by plaintiff in amount set by court. (8-503[a]).

Notice of Attachment.—Two days after issuing writ clerk of court must post at door of courthouse for 10 days, and cause to be published in a newspaper (if a weekly, in three issues; if any other, six issues) a notice setting out title of case and fact of attachment. (8-503[b]). Not applicable to justice courts.

Levy made on real property by filing notice of attachment describing property and copy of writ with county recorder; personal property incapable of manual delivery, by serving similar notice and copy of writ on party in possession; other personal property, by taking into custody. (8-506). Securities must be attached by actual seizing by officer making levy and pursuant to § 28-8-317. See topic Replevin.

Indemnity.—Officer may not demand indemnity bond before making levy, but may do so after, if defendant claims exemption or third party claims property. (11-203).

Lien of attachment merges in judgment for plaintiff when obtained. (8-528). See subhead Vacation or Modification, *infra*.

Priorities.—Attaching creditor has priority over subsequent attachments and judgments, except that other creditors who file suit within 30 days after first publication and posting of notice of attachment and diligently pursue to judgment, are entitled to prorate. (8-503[b]).

Sale after judgment is made as in case of execution, but perishable property may be sold before judgment and other property may also be sold before judgment under court order. (8-525-6, 528).

Release of Property.—Attachment may be discharged by judgment for defendant in action, by defendant giving bond in an amount fixed by court for redelivery or payment of value, or may be vacated for irregularity on motion. (8-531-8).

Claims of third persons to ownership of property levied on, or of debtor that such property is exempt, are governed by same rules as in case of execution. (8-527). Third party claim by way of security interest must set forth dollar amount of claim. (11-203). See topic Executions.

Vacation or Modification.—Where lien on real estate has in any manner been lost or destroyed, issuing court, on application, may discharge lien. (8-539). Levy is lien on real property for 2 years, unless sooner released, discharged, or discharged by dismissal of the action. Lien ceases after 2 years, unless on motion made not less than 5 or more than 60 days before expiration, court extends time, not to exceed 2 years. Lien may be so extended from time to time. (8-539).

Mortgaged personal property may be attached as follows: (1) if property could be attached by taking possession thereof except for the mortgage, and mortgagee consents in writing, by taking it into possession subject to rights of mortgagee; (2) by paying amount of the mortgage; (3) the equity of redemption of the debtor may be attached without taking possession by serving and filing a copy of the writ and notice. (45-1108).

Debtor's Personal Property.—Attachment by possession (1) if parties with UCC perfected security interest consent in writing, then subject to their rights; (2) payment of perfected security interest holder, and obtaining possession by payment is subrogated to interest of such perfected security holder; (3) attachment of defendant's equity of redemption without possession, by sheriff serving and filing writ and notice.

Mortgage and Trust Deed.—Interest of mortgagee and beneficiary to trust deed may be attached by sheriff recording and serving copy of writ and notice.

Defendant's Security Interest.—Attached by sheriff filing and serving copy of writ and notice. (8-506A).

Illinois Law Digest

Attachment

Actions in Which Allowed.—May be used in all actions whether contract or tort. (11-1). But re prejudgment attachment, see 407 U.S. 67.

Courts Which May Issue Writ.—Any court of competent jurisdiction may issue a writ. (11-1). See Court Calendar in part V.

In Whose Favor Writ May Issue.—Any person, including a non-resident or foreign corporation, may obtain an attachment.

Against Whom Writ May Issue.—Writ may issue against resident or nonresident. (11-1).

Claims on Which Writ May Issue.—An attachment may issue on any money claim exceeding \$20, whether liquidated or unliquidated. (11-1).

Property Subject to Attachment.—Attachment may issue against both real and personal property. For property exempt from attachment, see Exemptions.

Water Craft, Etc.—Special provision is made for attachment of water craft used in State or having home port therein to enforce certain liens or claims, and also for attachment to enforce lien for freight on goods shipped by water craft. (12-1 to 29a, 12-47).

Time for Issuing Attachment.—Attachment may issue either at time of instituting suit or thereafter. (11-1). Writ may issue prior to filing of complaint upon affidavit of creditor described below, provided that complaint shall be filed 10 days before return day of writ, in which event defendant is required to appear or answer on or before return day. If complaint is not so filed, defendant is not required to appear or to answer until 15 days after return day; and if complaint is not filed 5 days after return day, defendant may, at court's discretion, have suit dismissed. (11-25).

Attachment may issue in aid of a pending case. Notice of pendency of suit and of issue and levy of writ is given as in cases of original attachments, unless defendant has previously been served with process in original cause. (11-33).

Grounds.—Attachment may issue where: (1) debtor is a nonresident; (2) debtor conceals himself or defies officer so that process cannot be served on him; (3) debtor has departed or (4) is about to depart from State with intention of having his effects removed therefrom; (5) debtor is about to remove his property from State to injury of creditor; (6) debtor has within 2 years preceding filing of affidavit, fraudulently conveyed or assigned all or part of his effects, or (7) fraudulently concealed or disposed of his property so as to hinder or delay his creditors; (8) debtor is fraudulently about to conceal, assign or otherwise dispose of his property or effects so as to hinder or delay creditors; and (9) debt was fraudulently contracted by debtor, provided fraudulent statement was in writing and debtor's signature attached thereto by himself, his agent or attorney. (11-1). Provisions for attachment are to be construed in most liberal manner for detection of fraud. (11-41).

Affidavit must be filed by creditor, his agent or attorney, with clerk of court, stating nature and amount of indebtedness, after allowing all just credits and set-offs, and any one or more of the above causes, also place of residence of defendant or that on diligent inquiry affiant has been unable to ascertain same. (11-2). Judgment will be set aside if affiant has not complied with requirement of diligent inquiry to ascertain address of defendant. (13 Ill. App.2d 76. 141 N.E.2d 63). In addition, written statement executed by creditor's attorney or attorneys, showing whether or not action sounds in tort, together with designation of return day for summons to be issued, must be filed. Where action sounds in tort, plaintiff, his agent or attorney must apply to a judge and be examined under oath concerning cause of action. Such judge endorses on affidavit amount of damages for which writ shall issue and no greater amount may be claimed. (11-2).

Form of affidavit may be substantially as follows (11-2a) :

Form

STATE OF ILLINOIS,
----- County, ss,

A B, being duly sworn, says: That (here state if affiant is agent or attorney of the creditor; if suit is by an individual or corporation, the name of such individual or corporation, and if the suit is by a firm, the name of the partners) has a just demand against (name of debtor), on account of (here make short statement of the nature and amount of

the claim), and the affiant believes (the name of the creditor) is entitled to recover of said (name of debtor), after allowing all just credits and set-offs _____ dollars and _____ cents, which is now due, and that he has good reason to believe and does believe that (name of debtor) (here state some one or more of the causes which authorize an attachment) the said (name of debtor) (here state the residence of the debtor if known, or if not, that the affiant has made diligent inquiry and cannot ascertain his place of residence).

Subscribed and sworn to before me on this _____ day of _____, _____, A.D.

My commission expires _____, _____, A.D.
(If action sounds in tort here include the endorsement of judge as to amount of damages for which writ shall issue.)

Bond must be taken by clerk with sufficient security, payable to the People of the State of Illinois, for use of person interested in property attached, in double sum sworn to be due, conditioned for satisfying all costs awarded to defendant or any others interested in proceedings, and all damages and costs recovered against plaintiff for wrongfully suing out the attachment. All attachments issued without bond and affidavit taken (except where State is plaintiff) are void. (11-4a). Court may, on ex parte motion, without notice, supported by affidavit of plaintiff describing specific property to be attached and value thereof, fix bond at double value of property to be attached instead of double sum sworn to be due. (11-4b).

If no property found or a designated garnishee is not served, and where property seized is of insufficient value, alias and pluries writs may issue without additional bond, except where additional specific property is desired to be attached, in which case an additional bond at least double value of additional property is furnished as stated above. (11-10a).

Form of writ is substantially as follows (11-6) :

Form

The People of the State of Illinois to the Sheriff of _____ County: or for the purpose only of service as summons; to any person authorized to serve writs of summons:—Greeting:

Whereas A B (or agent or attorney of A B, as the case may be,) hath complained that C D is justly indebted to the said A B to the amount of _____ and that (here state the cause set out in the affidavit) and the said _____ having given bond and security, according to law: We therefore command you that you attach so much of the estate, real or personal, of the said C D, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the affidavit, but in case any specific property of the said C D, found in your county, shall be described in this writ, then you shall

attach said described property only, and no other property, the said specified property to be so attached, being described as follows:

and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law; and that you summon C D to appear and answer the complaint of said A B, before the ----- Court of ----- at ----- in the county of ----- on the ----- day of ----- next; and that you also summon ----- and such other persons as you shall be required by the said A B, as garnishees, to be and appear before the said court on the said ----- day of ----- next, then and there to answer to what may be objected against them. When and where you shall make known to the said court how you have executed this writ, and have you then and there this writ.

Witness ----- clerk of the said court, this ----- day of ----- in the year of our Lord, etc.

Writ of attachment is directed to sheriff and is signed by clerk, and seal of court is affixed thereto. (11-6).

If debtor is actually absconding or concealed, or stands in defiance of an officer, or has left the State with intention of having his effects removed, or intends to depart with such intention, writ may issue and be served on Sunday. (11-12).

Writs may issue to other counties in State. (11-13).

Execution of Writ.—In case of joint debtors writ issues against property of those brought within act; and others are summoned to answer action. (11-7). Writ may be executed on lands or tenements in which debtor has equitable interest or title. (11-8).

Indemnity.—In practice, officer executing writ demands indemnity bond in double the amount alleged due where personal property is seized. (11-4a).

Sale of perishable property is provided for. (11-20). Provision also made for sale of livestock. (11-39a).

Lien.—Attachment becomes lien on real estate after officer making levy files a certificate of said fact with recorder (11-9) unless land is registered under Torrens system, in which event attachment becomes lien on real estate only upon (a) filing of certificate with registrar of titles and (b) entry in registry of a memorial thereof (30-123).

Priorities.—Judgments in attachments against same defendant returnable on same day, and judgments in suits by summons, capias or attachment against such defendant recovered within 30 days from day when judgment in first attachment on which judgment is recovered is rendered, share pro rata in proceeds of attached property. Court may allow priority to creditors through whose diligence property being removed was secured. (11-37).

Proceedings in Action.—Where defendant is a nonresident, or has left State, or cannot be found, or is concealed so process cannot be served, and where property has been attached or garnishees summoned, clerk must give notice by publication, and by mailing copy of such notice to defendant, if his place of residence is stated. (11-22). If defendant is personally served or appears, judgment is of same force

as in suit commenced by summons (11-34). Where defendant is notified by publication but not served and does not appear, judgment is in rem against property attached and special execution issues. (11-35). Defendant may traverse facts stated in affidavit by verified answer. If, on trial, that issue is found for plaintiff, defendant may answer or move as in other cases; if found for defendant, attachment is quashed. Where personal jurisdiction of defendant has been obtained, suit proceeds to final judgment as if commenced by summons. (11-27). Any party, intervenor, or sheriff who may feel aggrieved by final order or judgment, may appeal in accordance with procedure applicable to civil cases. (11-40). Any defendant may file any counterclaim pleadable by laws of Illinois. (11-30). Original affidavit or attachment bond may be amended by filing a legally sufficient affidavit or bond; and writ itself may also be amended, in such time and manner as court may direct. (11-28). Civil Practice Act governs except as provided in Chapter 11. (110-1).

Third Party Claims.—Person other than defendant may intervene by verified petition, without giving bond, but property is not thereby replevied. Jury is impaneled to inquire into right of property. If jury finds for claimant, he is given judgment for his costs, and if it further finds he is then entitled to possession of property, it is ordered delivered to him. If jury finds for plaintiff, he is given judgment against claimant for his costs. Nonresident claimant must file security for costs as in case of nonresident plaintiffs. (11-29).

Release of Property.—Person from whose possession property is taken may obtain same by entering into bond to officer, approved by him, in double value of property, conditioned that property will be forthcoming to answer judgment. (11-14). In lieu of said bond defendant desiring return of attached property may give like bond and security in sum sufficient to cover debt and damages sworn to, with interest, damages and costs, conditioned that defendant will pay plaintiff amount of judgment and costs rendered on final trial within 90 days after judgment, or a recognizance in same substance may be taken in open court, entered of record, and approved by court; on forfeiture of which judgment may be rendered and execution issued. In either case attachment is dissolved, property restored, and cause proceeds as if commenced by summons. (11-15).

Amendment of pleadings may be permitted on motion to pleadings or summary judgment or at trial, if wrong remedy sought, court to consider effect on defendant as well. (11-44).

Indiana Law Digest

Attachment

New Rules of Civil Procedure extend prior remedies of attachment. (3-501; IC34-1-11-1; Rule TR 64[B]).

Actions in Which Allowed.—Attachment is allowed upon any claim of creditor if plaintiff's complaint is for money or to determine rights in property or obligation attached. (3-501; IC34-1-11-1; Rule TR 64[B]). See subhead Grounds, *infra*.

Courts Which May Issue Writ.—Any court of first instance having civil jurisdiction and any justice of the peace when the principal claim is within his jurisdiction. (3-544; IC34-1-11-4).

In Whose Favor Writ May Issue.—Any plaintiff, whether resident or nonresident.

Claims on Which Writ May Issue.—Attachment may issue on a claim which is not payable in the State. (96 Ind. App. 325, 183 N.E. 699). As to unmatured claims, see *infra*, subhead Grounds.

Time for Issuance.—Attachment may issue any time, or during pendency of action after filing of complaint, even though summons has not been served (183 N.E. 699), and on Sundays in emergencies (3-511; IC34-1-11-8).

Grounds.—An attachment may be issued when defendant is a foreign corporation or a nonresident, or being a resident, if he secretes himself so that summons may not be served upon him, or is secretly about to leave State, or has departed therefrom, or is removing his property therefrom or has sold or is about to sell or to dispose of his property subject to execution with intent to defraud or delay his creditors, or is a person whose residence and whereabouts are unknown and cannot be determined after reasonable investigation before commencement of action. (3-501, 502; IC34-1-11-1, 2; Rule TR 64[B]).

Unmatured Claims.—Attachment may not issue on unmatured claim, except on ground that defendant is removing or has removed his person, has sold or is about to sell or convey his property with intent to defraud or is removing or about to remove property subject to execution leaving an insufficient excess subject to execution. (3-501; IC34-1-11-1).

Proceedings to Obtain.—Plaintiff must file an affidavit showing the nature and amount of his claim and existence of one or more of the statutory grounds for attachment. (3-507; IC34-1-11-41). Writ of attachment against defendant's real estate or his interest is effectively served by recordation of action in appropriate *lis pendens* record, and, unless vacant, by serving writ of attachment or notice thereof upon person in possession of land. (Rule TR 64[B])[6]).

Attachment Bond.—Any plaintiff, except the State, must file a written undertaking with security to the approval of the county clerk conditioned that plaintiff will prosecute the attachment (3-508, 543; IC34-1-11-5, 39) and pay defendant all damages he may sustain if proceedings prove to be wrongful or oppressive (3-542; IC34-1-11-38).

Levy and Lien.—Attachment must be levied first on personalty and may be levied on realty if sufficient personalty is not found. (3-515; IC34-1-11-11).

Indemnity.—There is no statutory authority for the officer to demand indemnity before making a levy.

Lein attaches from time of delivery of property to sheriff. (3-513; IC34-1-11-10).

Release of Property.—Defendant or any other person having had possession may secure release of property by giving bond for the appraised value of the goods attached or for payment of any judgment which plaintiff may secure. (3-516; IC34-1-11-13).

Sale.—Perishable goods held under attachment may be ordered sold at public auction by the court upon reasonable notice. (3-520; IC34-1-11-18).

Third Party Claims.—Where personal property is in the possession of an officer by virtue of a writ of attachment and a third person brings

an action to replevy the same, such officer may demand of the attachment plaintiff an indemnifying bond against loss for attorney's fees or judgment for damages and costs, and after five days in default thereof may deliver the property to replevin plaintiff. (3-517; IC34-2-4-1).

Consigned goods are attached subject to lien of consignee. (3-514; IC34-1-11-16).

Adverse claimants to attached property may be examined under oath. (3-518; IC34-1-11-15).

Intervention of Other Creditors.—Any other creditors of defendant may enter complaint and file their affidavits and bonds and prove their claims as parties to the original action at any time before final judgment. The money realized from sale and garnishees after paying costs and expenses is shared pro rata on the amount of all claims filed. The original attaching creditor has no preference. (3-534, 540; IC34-1-11-31, 37).

Dismissal by original creditor does not affect intervening creditors (3-535; IC34-1-11-32).

Appeals.—After judgment for the defendant, attached property is released unless plaintiff files notice of appeal within 72 hours. (3-537; IC34-1-11-34).

Iowa Law Digest

Attachment

(c. 639).

Attachment may be obtained in any civil action, by any plaintiff, including nonresident or foreign corporation, provided one or more of the necessary grounds exists. It may issue on a claim not payable in the State.

Grounds for attachment are that defendant is: (1) A foreign corporation or acting as such; or (2) a nonresident; (3) is about to remove property from the State without leaving sufficient to pay debts; (4) has disposed; or (5) is about to dispose of property with intent to defraud creditors; (6) has absconded so that ordinary process cannot be served on him; (7) is about to remove permanently out of the county and has property therein not exempt; or (8) is about to remove permanently out of the State, and refuses to pay or secure plaintiff's debt; (9) is about to remove property out of county with intent to defraud creditors; (10) is about to convert property into money in order to place it beyond reach of creditors; or (11) has property or rights in action which he conceals; or (12) that debt is due for property obtained under false pretenses. Attachment may be had before debt due on grounds 4, 5, and 12, or where defendant has removed or is about to remove from State and refuses to secure payment of debt, if plaintiff did not know of removal or contemplated removal when debt contracted.

Proceedings.—Plaintiff must file petition sworn to by him, or his agent or attorney (knowing the facts) setting out the claim and one or more grounds for attachment.

Bond.—Plaintiff must give bond with resident surety approved by clerk of court in penalty double value of property sought to be attached. In no event less than \$250 in district court or \$50 in justice court. Where only real property is attached, bond must be in penalty fixed by court or clerk.

Levy.—The sheriff must, as nearly as the circumstances of the case will permit, levy upon property 50% greater in value than the amount of the claim. Any property not exempt from execution may be attached.

Indemnity.—There is no statute authorizing the officer to demand indemnity before levying.

Priorities.—In case of two or more attachments, the attaching creditors do not share pro rata, but the attachments have priority in the order of their levy.

A valid attachment levied before a general assignment for the benefit of creditors is not affected thereby.

Release.—The defendant, or any person in possession of any attached property, or any person making affidavit that he has an interest in same, may, at any time before judgment, discharge the property attached by giving bond with security to be approved by the sheriff, or after return of the writ, by the clerk, in a penalty at least double value of property. Bond must be filed with clerk of court, (639.45).

Sale.—Where the property attached is perishable, the sheriff may summon three persons having the qualification of jurors to examine it. Defendant, if within country, must have 3 days notice of the hearing. If it is the opinion of those who examine the property that it should be disposed of, they must specify in writing a day beyond which the property should not be kept. If this day occurs before trial, the property must be sold as goods are sold on execution. An earlier sale may be made if the condition of the goods warrants it. Sale may be made on written consent of defendant without such finding. (639.48.50).

Third Party Claims.—Any third party may, before sale of attached property or before payment to plaintiff of the proceeds thereof or any attached debt, present his verified petition to the court disputing the validity of the attachment or stating a claim to the attached property and setting forth the facts upon which the claim is founded. (639.60).

Uniform Commercial Code enacted, effective July 4, 1966. See topic Commercial Code.

Kansas Law Digest

Attachment

Actions in Which Allowed.—At or after commencement of any civil action. (60-701).

Court Which May Issue Writ.—District court (60-701) and some lower courts in which cases procedure and grounds are substantially same but governed by Code of Civil Procedure for courts of limited jurisdiction (61-1601 et seq.) with exceptions.

In Whose Favor Writ May Issue.—Any plaintiff, resident or non-resident.

Against Whom Writ May Issue.—Any defendant or defendants, resident or nonresident.

Claims Upon Which Writ May Issue.—An action may be commenced and attachment issued on a demand not yet due in any of cases mentioned under subhead Grounds (infra), except those in clauses (1) and (2), but no judgment may be rendered until maturity of the demand. (60-702). No order of attachment shall be issued before judgment where defendant's property is in possession of third party and is in form of earnings due and owing. (60-703).

Grounds.—When the defendant whose property is to be attached (1) is a nonresident or a foreign corporation; (2) has absconded or concealed himself so that summons cannot be served upon him, or is about to move out of State with intent of changing his domicile; (3) is about to remove his property or effects out of this State; (4) is about to convert his property into money for purpose of placing it beyond the reach of his creditors; (5) has concealed, removed, assigned, conveyed or otherwise disposed of his property so as to hinder or delay his creditors or is about to do so; (6) fraudulently contracted the debt or incurred the liability; (7) is liable for damages for injuries arising out of the commission of some felony or misdemeanor, or the seduction of a female; (8) has failed to pay the price or value of any article or thing delivered which by contract he was bound to pay upon delivery. (60-701).

Proceedings to Obtain.—By filing an affidavit stating that the plaintiff has a just claim, the amount thereof, and that plaintiff has good reason to believe and does believe in the existence of one or more grounds for attachment. (60-603, 4).

Attachment Bond.—Required except in actions instituted on behalf of State of Kansas or a county thereof, or where defendant is a nonresident or foreign corporation not qualified to do business in this State and is not a common carrier or public utility, (60-703). Bond is executed by plaintiff with sufficient sureties, in a sum double amount of plaintiff's claim, or such lesser amount as may be approved by court order. (60-705).

Levy.—Order commands officer to attach the property of defendant, real or personal, tangible or intangible, or so much thereof as will satisfy plaintiff's claim, or such specific property as plaintiff directs, and to summon as garnishees all persons in whose possession any personal property or money of the defendant may be. (60-706).

Indemnity.—No statutory authority for levying officers to require.

Priorities.—Orders of attachment are levied on in the same order in which they were received by levying officers. If several attachments issue out of different courts, all questions arising must be determined by court out of which was issued first attachment served, with preference given to a court of general jurisdiction over one of limited jurisdiction regardless of time of service. (60-713).

Release of Property.—Defendant or any other person in whose hands property of defendant is found may retain or regain possession at any time before final judgment or sale of such property under court order by giving bond with sufficient sureties in an amount which is either, at option of party giving the bond, (1) double amount of plaintiff's claim, or (2) double appraisal of the property, conditioned that such property or value thereof shall be available to apply on any judgment rendered. (60-707).

Third Party Claims.—Any person claiming an interest in any property attached and, in discretion of the judge, any creditor of a party if creditor's claim is liquidated in amount will be permitted to intervene and court will adjudicate their respective rights. (60-713).

Sale.—When property seized is likely to perish or materially depreciate in value before probable termination of the suit, or keeping of which would be attended with unreasonable loss or expense, the property may be ordered sold. (60-710). See topic Executions.

Vacation or Modification.—Any interested person may file a motion to dissolve attachment, verified by affidavit, putting in issue sufficiency of proceedings or truth of the facts alleged in attachment affidavit. Court may permit amendments to the petition or affidavit. (60-712).

Discharge of attachment and restitution of property is possible at any time before judgment if defendant or person in his behalf executes an undertaking, with sureties, in double amount of plaintiff's claim to effect that defendant will perform judgment of court. (60-707).

Receiver.—Receiver may be appointed in aid of attachment. (60-711).

Kentucky Law Digest

Attachment

Actions in Which Allowed.—A general attachment may be had, where grounds therefor exist, in any action for recovery of money. (KRS 425.185). Specific provisions authorize attachment in suit to enforce mortgage or other lien or interest in personal property or in suit to void fraudulent sale of property (KRS 425.430) and in action by landlord for rent due from original tenant (KRS 383.020).

Courts Which May Issue Writ.—Writs may be issued from circuit court, county or quarterly courts and police or justice's courts if court has jurisdiction over subject matter of claim for money, property, rent due, etc. (KRS 425.435; 383.030), except that returns for over \$200 for rent due must be before circuit court (KRS 383.030).

In Whose Favor Writ May Issue.—Remedy by attachment is available to any plaintiff, including nonresident and foreign corporation.

Against Whom Writ May Issue.—Property of any defendant in civil action is subject to attachment, unless exempted by statute. Writ may issue against any person holding property of defendant otherwise than as security; as, for example, to attach funds in court (KRS 425.245), joint property (KRS 425.250), and funds due governmental employees (KRS 427.130).

Claims on Which Writ May Issue.—Claim must be for recovery of money. It is not necessary that claim sued on should have accrued or become payable in Kentucky, if otherwise the court has jurisdiction.

Before a debt or liability on contract becomes due, an equitable action may be brought for indemnity, and an attachment against defendant's property or order of arrest obtained by order of court on grounds similar to those hereinafter stated and after bond given. (KRS 425.375 (1), 425.425).

By special statute (KRS 383.030) claim for rent may be collected by attachment issued by a justice of the peace, police judge or judge of quarterly court of the county, on affidavit filed by landlord or his agent, showing that rent is owing and will probably be lost unless attachment is issued.

An attachment may also be issued in an action for recovery of money due on contract, judgment or award, if defendant therein has no property in this State subject to execution or not enough thereof to satisfy plaintiff's demand and collection of such demand will be endangered by delay in obtaining judgment and return of no property found.

Likewise an attachment may be obtained in an action to recover possession of personal property which has been ordered to be delivered to plaintiff, where such property or part thereof has been disposed of, concealed or removed so that sheriff cannot execute order for its delivery. (KRS 425.185). In this case value of property thus done away with is measure of relief by attachment.

Limitations Upon Right to Attach.—Attention is called to limitations imposed by the following laws, upon right to attach goods covered by negotiable documents unless such documents are impounded by the court: (a) Uniform Commercial Code (KRS 355.7-602); (b) United States Code, title 49, § 103, affecting order bills of lading issued in interstate commerce.

Grounds of attachment, other than as heretofore stated, are that the defendant, or one or more of several defendants: (1) Is a foreign corporation or a nonresident of the State; (2) has been absent from the State for 4 months; (3) has departed from the State with intent to defraud his creditors; (4) has left the county of his residence to avoid the service of summons; (5) so conceals himself that a summons cannot be served upon him; (6) is about to remove or has removed his property, or a material part thereof out of this State, not leaving enough therein to satisfy plaintiff's claim, or the claims of the said defendant's creditors; (7) has sold, conveyed, or otherwise disposed of his property, or suffered or permitted it to be sold, with the fraudulent intent to cheat, hinder or delay his creditors; or (8) is about to sell, convey, or otherwise dispose of his property with such intent. But an attachment may not be granted on the sole ground that the defendant is a foreign corporation or a nonresident of this State except in action on a debt or demand arising on contract. (KRS 425.185; 154 Ky. 162, 156 S.W. 1079).

Exemptions.—As to exempt property, see topic Exemptions.

Proceedings to Obtain.—To obtain an attachment before judgment and return of "No property found" on execution, the plaintiff must file an affidavit, showing: (1) Nature of plaintiff's claim; (2) that it is just; (3) the amount which the affiant believes the plaintiff ought to recover; and (4) the existence of some one of the grounds above enumerated. (KRS 425.195).

Attachment Bond.—In order to procure attachment, plaintiff must give bond, not exceeding double the amount of his claim, with probable costs, conditioned to pay defendant all damages which he may sustain by reason of the attachment if it prove wrongful (KRS 425.205), except where the attachment issues after return of "no property found" on execution (see Executions, subhead Supplementary Proceedings) or where the attachment is issued in a divorce proceeding, for maintenance or alimony, against the husband's property when it appears that the husband is about to remove himself or his property, or a material part thereof, out of the State or that there is reason to suspect that he will fraudulently sell, convey or conceal his property (KRS 403.080; 100 Ky. 696, 39 S.W. 244). One surety on the bond is sufficient, provided he has property in the State, subject to execution, in double the amount of the bond.

Lery.—Attachments are levied in the following manner (KRS 425.225): (1) Upon real property, by leaving a copy of the order with

the occupant thereof, or, if no occupant, by posting such copy in a conspicuous place thereon; (2) upon tangible personal property, by taking it into custody and holding it subject to order of court, unless it is already in custody of another officer; (3) upon intangible personal property, as in cases of garnishment (q.v.).

Indemnity.—If officer required to levy on personal property doubts whether it is subject to attachment, he may demand an indemnity bond from plaintiff. (KRS 425.265).

Lien and Priorities.—An attaching creditor has a lien on the property to which the order is directed. (KRS 425.270). Several orders of attachment against the same defendant rank according to the times of their delivery to the sheriff (KRS 425.220), except that all attachments executed on the same day on a fund held in court share ratably in such fund (KRS 425.245).

Notice Required to Preserve Lien of Attachment.—In order to preserve lien of attachments upon real estate of defendants affected thereby, a memorandum giving the style and nature of the case, the amount of the attachment, the names of the parties, and a description of the real estate attached, must be filed in the clerk's office of the county in which the land is located.

This applies also to attachments issued by United States district court. (KRS 382.440–382.470).

Release of Property.—Sheriff may deliver attached property to person in whose possession it was found, upon such person's execution of bond to plaintiff, with surety, binding obligors in double the value of the property, that defendant will perform the judgment of the court, or that the property or its value will be forthcoming. (KRS 425.280–1). Or, before judgment, defendant may execute bond, with surety, to plaintiff, to effect that defendant shall perform judgment of the court. Upon execution of such bond, attachment will be dissolved and restitution of the property made. (KRS 425.035). Or, of course, the property may be recovered upon judgment for defendant. (KRS 425.330).

Sale.—Attached property may be sold by order of court during pendency of action if, by reason of its perishable nature or cost of keeping it, a sale would be beneficial to the parties. (KRS 425.290).

Third Party Claims.—Sheriff may not take possession of property owned by defendant jointly or in common with another person, until plaintiff executes bond, with surety, to such other person, that plaintiff shall pay such damages as other person may sustain through wrongful suing out of order, not exceeding double amount of plaintiff's claim. (KRS 425.250).

Vacation or Modification.—Defendant may, before judgment, after notice to plaintiff, move court for additional security on part of plaintiff and court may thereupon vacate the order of attachment, unless sufficient security is given by plaintiff within a reasonable time fixed by the court. (KRS 425.370).

Louisiana Law Digest

In case of an unmatured claim, attachment may issue on any of the aforementioned grounds or on the ground that the debtor is about to remove his property out of the State before the debt becomes due. (C.C.P. 3543).

In case of a money demand against a nonresident, attachment lies regardless of nature or origin of claim, liquidated or unliquidated character or certainty or uncertainty of amount demanded. (C.C.P. 3542).

Attachment on ground of nonresidence lies against a foreign corporation which has not qualified in the State, but not against one which has qualified. (152 La. 1075, 95 So. 227).

Property Subject to Seizure.—A creditor may obtain a seizure against all property belonging to the debtor, whether same be in debtor's possession or in that of third person. (C.C.P. 3503, 2411).

Proceedings.—Attachment issues upon filing of petition showing grounds for writ, with verification or affidavit by creditor, his counsel or agent. (C.C.P. 3501). *Caveat*: *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972), held notice and an opportunity to a hearing prior to seizure of property constitutionally essential under due process clause.

Attachment may be obtained by leave of court on affidavit and giving bond, provided the usual petition is filed on the next day. (C.C.P. 3502).

Bond.—Creditor must file bond equal to debt, exclusive of interest and costs; except that bond need not exceed \$250, unless court orders otherwise, where nonresidence is sole ground of attachment. (C.C.P. 3544).

Issuance of Writ.—Writ may issue on legal holiday (C.C.P. 288), and whether or not debt is liquidated or has matured. (C.C.P. 3542, 3543).

Levy on personal property is made by sheriff taking physical possession of same; on real property by placing keeper on property or, by service of notice of seizure upon owner, filing of notice with recorder of mortgages for parish and entry of data regarding the filing with recorder of mortgages and description of property in sheriff's seizure book. (T. 13, §§ 3851-3861, as am'd Act 32 of 1960).

Release.—Defendant may secure release of attachment by filing bond in amount exceeding by one-fourth the value of property attached or the amount of the claim, whichever is less. (C.C.P. 3507, 3508).

Sale.—Property attached, except perishables, may be sold only under execution after judgment. (C.C.P. 3510).

Preferences between attachments are in order of dates of service of writs.

Dissolution.—Attachment may be dissolved on rule to show cause. (C.C.P. 3506).

Third Party Claims.—Third person may intervene to protect interest in property attached. If such person claims ownership of property, sale may be enjoined; if he claims a prior lien, sale is not enjoined but rights of parties are referred to proceeds of sale. (C.C.P. 1092, 1094, 1098, 2592, 2643).

Vacation or Modification.—If value of property seized under attachment exceeds what is reasonably necessary to satisfy plaintiff's claim, defendant may secure release of excess.

Attachment

Actions in Which Allowed.—Attachment is a conservatory writ and may be obtained in any action for a money judgment. (C.C.P. 3542).

In Whose Favor Writ May Issue.—Attachment may be obtained by any plaintiff, including a nonresident or foreign corporation.

Against Whom Writ May Issue.—Attachment may issue against resident or nonresident.

Claims on Which Writ May Issue.—Attachment may issue on an unmatured claim or a claim which is not payable in the State.

Grounds.—Attachment may be granted on ground that debtor: (1) Has departed from State permanently, or is about to do so before judgment can be obtained and executed against him; (2) is nonresident who has no agent for service of process within State; (3) conceals himself with intention to avoid citation; (4) with intent to defraud creditors, or to give unfair preference to some of them, has mortgaged, assigned or otherwise disposed of his property, or part thereof, or is about to do so; (5) has converted his property into money or other evidences of debt, with intent to place it out of reach of creditors, or is about to do so. (C.C.P. 3541).

Maine Law Digest

Attachment

Actions in Which Allowed.—All actions.

Courts Which May Issue Writ.—Personal property may be attached on writs from district court. (T. 14, § 4151). Real property may be attached on writ from district court having jurisdiction. (T. 14, § 4451). Real and/or personal property may be attached on writ issued by superior court.

In Whose Favor Writ May Issue.—May issue in favor of resident, nonresident or foreign corporation.

Against Whom Writ May Issue.—Against any resident of the State or against any nonresident having property in the State.

Claims on Which Writ May Issue.—No attachment may be made until debt is due.

Proceedings to Obtain.—No property, including real estate, may be attached unless such attachment is for specified amount approved by court. Such order may be entered only after notice to defendant, hearing and finding by court of reasonable likelihood that plaintiff will recover judgment, including interest and costs, equal to or greater than amount of attachment over any liability insurance. Attachment of property must be within 30 days of order approving attachment. (M.R.C.P. 4A[c]).

Order approving attachment may be entered ex parte only where plaintiff shows either (1) Defendant not subject to personal jurisdiction, or (2) clear danger that defendant will remove property from State, or (3) immediate danger that defendant will damage or destroy property. Certificate by plaintiff's attorney of amount of liability insurance of defendant required. Motion for ex parte order shall be supported by affidavit. (M.R.C.P. Rule 4A[f]). Affidavit shall be upon affiant's own knowledge, information or belief. (M.R.C.P. 4A[h]). Attachment must be recorded.

Levy.—If on real estate then within 5 days after attachment officer must file in registry of deeds in county where some part of estate lies an attested copy of his return relative to such attachment with value of property he is commanded to attach. (T. 14, §§ 4451-4457, 4601-4613).

If attachment is of personal property, officer must take possession of it either by removing the property or putting in a keeper. (T. 14, § 4152).

Bulky Goods.—Officer may file attested copy of his return in town clerk's office where attachment made within 5 days thereafter. This has the same effect as if the property had remained in his possession. (T. 14, § 4154).

Indemnity.—Officer may require indemnity before levying.

Attachment Bond.—Any attachment made on an original writ, against an absent defendant, continues for 1 year and 60 days after judgment is rendered, when no bond is given; and when bond is given it continues for 60 days after such bond is filed with the clerk of the court. The bond must be deposited with the clerk of the court, who decides upon the sufficiency of its sureties, subject to appeal. (T. 14, § 4701).

Priorities.—Creditor first attaching may exhaust the amount covered by his attachment; but subsequent creditors may petition court for permission to defend prior suits. (T. 14, § 201).

Sale.—Personal property may be sold by consent of debtor and creditor, proceeding as if it were a sale on execution. (T. 14, § 4351).

Perishable goods may be sold without consent of debtor before or after entry of actions. Procedure for sale set forth in the statutes. (T. 14, §§ 4158; 4352-4355).

Release of Property.—Attachments are dissolved: (1) By an assignment in insolvency, of defendant, on proceedings begun within 4 months; (2) by death of the defendant, and commission of insolvency before levy; but the attachment of personal property continues in force after death of debtor as if living, unless, before a sale thereof on execution, his estate is decreed insolvent; (3) by judgment for defendant; (4) by lapse of 60 days, or, in case of absent defendant, 1 year and 60 days, without levy after judgment; (5) by reference of the suit and all demands between the parties thereto; (6) by increasing the demand for relief of the complaint, and judgment for the plaintiff thereon, unless only claims originally stated were allowed plaintiff; (7) by delivery to the office of a bond to plaintiff in a penal sum not exceeding the ad damnum of the writ, with approved sureties, conditioned that within 60 days after judgment, or after adjournment, the defendant will pay the plaintiff or his attorney the amount of the judgment, with costs, such bond to be approved as to penal sum and sureties by plaintiff or the court; (8) if made within 4 months before the filing of a complaint wherein a receiver is appointed. (T. 14, §§ 4451-4457, 4601-4613). Ex parte attachment may be dissolved or modified without submitting to personal jurisdiction upon motion by defendant on 2 days notice; plaintiff has burden of justifying any finding which defendant has challenged by affidavit. (M.R.C.P. 4A[g]). Fee for discharging attachment is \$3. (T. 33, § 751).

Third Party Claims.—Where personal property attached or seized on execution is claimed by virtue of a mortgage, pledge or other lien, claimant must give attaching officer at least 48 hours written notice of his claim. Thereupon the officer or attaching creditor may restore the property or pay the claim or attaching creditor may summon claimant to answer as to his claim. If claimant establishes validity of his

claim court may direct attaching creditor to pay same or suffer attachment to be vacated; if claimant fails to establish his claim he cannot hold property. If attaching creditor pays claim, security must be assigned to him. (T. 14, §§ 4251-4252). Attachment may be made by party bringing counterclaim, crossclaim, or third-party complaint in same manner as upon original claim. (M.R.C.P. 4A[d]).

Maryland Law Digest

Attachment

Actions in Which Allowed.—Attachment may issue against property or credits, matured or unmatured, of nonresident or absconding debtor in action ex contractu, whether damages are liquidated or unliquidated, or in an action ex delicto. Attachment may issue against property or credits of resident defendant returned twice non est, of debtor about to conceal or transfer property with intent to defraud and of an adult nonresident heir or devisee only in an action ex contractu for liquidated damages. (courts art. §§ 3-304, 3-305; R. P. G41).

Courts Which May Issue Writ.—Writ may be issued by court of record. (courts art. § 3-301). Judges of district court have jurisdiction to issue writ to extent of their jurisdiction, as to which, see topic Courts. (M.D.R., c. 1100).

In Whose Favor Writ May Issue.—Any plaintiff, including a nonresident or foreign corporation, may obtain an attachment. (courts art. § 3-302).

Against Whom Writ May Issue.—Attachment may issue against any defendant as to whom sufficient grounds (see infra) are shown to exist. The writ may issue against a married woman.

Claims on Which Writ May Issue.—It is not necessary that claim sued on be matured or payable within State. Attachment may issue on claim prior to maturity. (courts art. § 3-305; R. P. G41).

Grounds.—Attachment may issue:

(1) On a judgment or decree. (courts art. § 3-301; R. P. 623; F1-F5).

(2) On original process (a) when debtor is a nonresident; or if a corporation, when it has no resident agent or when two unsuccessful attempts to serve process have been made on different business days; (b) when two summonses against resident defendant have been returned non est; (c) when debtor absconds or is about to abscond from this State; (d) when debtor is about to or has assigned, disposed of or concealed his property or some part thereof with intent to defraud his creditors; (e) when debtor has fraudulently contracted debt or incurred obligation respecting which action is brought; (f) when debtor is about to or has removed his property or some part thereof out of this State with intent to defraud creditors; (g) when an adult nonresident is entitled by descent or devise to land of debtor lying within State. (R. P. G40; courts art. § 3-303; art. 23, § 96).

Proceedings to Obtain.—(1) On a judgment or decree, an attachment will be issued by the clerk of the court in lieu of other execution without any formality being required other than a written application on a printed form (R. P. 623); (2) on original process, the clerk of the court will issue an attachment upon the plaintiff filing (i) a declara-

tion stating plaintiff's claim, (ii) an affidavit by plaintiff that defendant is indebted in the amount claimed (or verifying the facts where unliquidated damages are claimed) and stating facts which constitute grounds for an attachment on original process, (iii) original or true copies of documentary evidence of the claim, such as note, invoice, etc., (iv) instructions to sheriff as to description and location of property to be attached and (v) in attachment on grounds of fraud, or in actions ex contractu for unliquidated damages or ex delicto, a bond must be filed in the amount alleged due. (R. P. G42). Writ of attachment may be served by posting copy on real or leasehold property or by seizing tangible personalty. In addition, clerk must issue writ of summons to defendant. Where defendant cannot be served, plaintiff must make reasonable efforts to notify defendant of the attachment. Plaintiff must also notify person having custody of the property attached. (R. P. G46, 48). Writ of attachment by way of garnishment may be served upon person having property or credits belonging to defendant. (R. P. G47).

Amendment of proceedings is liberally allowed. (R. P. 320).

Successive writs of attachment may issue on original affidavit and proof. (R. P. G49).

Attachment Bond.—No bond is required when attachment is issued on judgment or decree. No bond is required in attachment on original process when contract claim is liquidated or when resident debtor has twice been returned non est. In actions for unliquidated damages, or fraud or in actions ex delicto against a nonresident or absconding debtor, bond must be given for amount claimed conditioned on paying costs and damages suffered by defendant or others interested. (R. P. G42). Additional bond may be ordered upon application of defendant, garnishee or other person interested. (R. P. G53, G58). Property may not be condemned or sold without giving bond. (R. P. G59).

Levy and Property Subject.—All property of defendant of all kinds and wherever situated, including credits not due and property or credits of defendant in hands of another and including debt due defendant upon a judgment or decree, may be attached (courts art. § 3-305; R. P. G45); except that proceeds of life insurance and annuity contracts and fraternal order benefits are not subject to attachment (art. 48A, §§ 328, 385), benefits under Workmen's Compensation Law are not subject to attachment prior to delivery of voucher (art. 101, § 50) wages or hire of laborer or employee not yet due and the greater of \$120 per week or 75% of a week's wages or hire earned and due cannot be attached, which exemption cannot be waived (except that in Caroline, Kent, Queen Anne's and Worcester Counties, greater of 75% of wages due or 30 times Federal minimum hourly wage then in effect is exempt) (art. 9, § 31), and salaries of National, State or municipal officers or employees and money, property or credits in hands of National, State or municipal governments or in custody of law are exempt (8 Md. 95; 142 Md. 52, 120 Atl. 235; 168 Md. 440, 178 Atl. 108).

No levy can be made against any property of an estate, although security interests may be enforced in appropriate proceedings. (est. and tr. art. § 3-114).

Wages of nonresidents are attachable on judgment, warrant or two non ests in same manner and to same extent as if residents. (art. 9, § 32).

Securities may be attached if actually seized or if surrendered to issuer. (art. 23, §§ 112, 113; art. 95B, § 8-317).

Under Uniform Commercial Code, effective Feb. 1, 1964, defendant's rights in collateral may be attached. (art. 95B, § 9-311).

Creditors of husband may attach money or restrain by injunction payment of money deposited to wife's credit if in fraud of their rights. (art. 45, §§ 1, 2).

Indemnity.—Sheriff may demand indemnity bond if he has reasonable doubt as to ownership of property on which he is directed to levy.

Lien and Priorities.—Attachments are liens and have priority in order in which levied. Attaching creditors first levying upon personalty take to exclusion of those whose levy is subsequent or those not levying, even though latter be judgment creditors.

Release of Property.—Attachment may be dissolved at any time on appearance of every defendant and filing of approved bond in value of goods attached or double plaintiff's claim, whichever is less, conditioned to satisfy judgment for plaintiff, and may be quashed at any time for matters apparent on or dehors the record. (R. P. F1, G51, G57).

Sale.—Attached property may be sold if court deems this expedient (R. P. G60), but in practice this is usually limited to perishable property. After judgment of condemnation the plaintiff is entitled to execution thereof and to have any property that has been condemned sold. (R. P. F1, F4, G59, G60). For procedure in sale see topic Executions.

Third Party Claims.—Claimants of property attached may intervene by petition, and on their giving bond the property may be discharged from the levy. (R. P. F1, G58).

Vacation or Modification.—Where a defect is apparent on the face of the proceedings, an attachment may be quashed on motion by the defendant or by a third person claiming interest in the property attached. (2 Md. 334; 182 Md. 601, 35 A.2d 641).

Massachusetts Law Digest

Attachment

Caveat.—Massachusetts prejudgment attachment of personal property statute, c. 214, § 7, declared unconstitutional. See 349 F. Supp. 741 (D. Mass. 1972). Statute governing prejudgment attachment of real property, c. 223, §§ 42, 62-66, declared unconstitutional. See 365 F. Supp. 1299 (D. Mass. 1973). This case nullifies attachments of real property made after Aug. 7, 1973. Attachments prior to Aug. 7, 1973, are still valid. See, however, supplement for anticipated decision confirming or rejecting prior attachment validity. Constables and sheriffs will not serve prejudgment attachments unless issued pursuant to new procedure. Mass. R. Civ. P., Rule 4.1, effective July 1, 1974, provides revised attachment procedure, requiring notice and hearing, except on showing of limited exigent circumstances, applicable to goods, chattels and other property, as well as real estate. Supreme Judicial Court (SJC) Rule 3:27 sets forth equivalent procedure applicable to district courts. There is a case pending in Mass. Federal district court with respect to constitutionality of repossession of automobiles without prior notice or hearing. See Boland v. Essex County Bank and Trust Co., Civil Action No. 723299 G. Note: Prac-

tice in those courts governed by Mass. R. Civ. P. (see topic Actions, catchline Caveat) is digested under catchline superior court. Practice in district court and Boston municipal court is digested under catchline district court. Practice common to both superior and district court is digested without separate designation.

Actions in Which Allowed.—In all personal civil actions in which a debt or damages are recoverable, property may be attached upon original writ and held as security to satisfy such judgment or decree as plaintiff may recover, but no attachment of real estate may be made on a writ returnable before a district court unless damages demanded (determined by ad damnum of writ) exceed \$20 (c. 223, § 42, am'd 1973, c. 1114, § 24) and, in action or suit for an amount which is liquidated or ascertainable by calculation, no attachment by trustee process or otherwise may be made for larger sum than amount of claim and amount reasonably necessary to include interest and costs (c. 223, § 42A).

Courts Which May Issue Writ.—All courts may issue writ of attachment.

In Whose Favor Writ May Issue.—Attachments may be made in suits by or against nonresidents as well as in suits by or against residents. (c. 227, § 1).

Against Whom Writ May Issue.—See subhead In Whose Favor Writ May Issue.

Claims on Which Writ May Issue.—There is no statutory requirement that the claim sued on should be payable within the State. No direct attachment will lie to secure a claim not yet due.

In actions or claims against the estate of a deceased person there can be no attachment other than a “chip” (nominal) attachment (282 Mass. 45, 184 N.E. 677), except by permission of the probate court where the executor or administrator was appointed (c. 230, § 7).

Attachment may issue in action for divorce (c. 208, § 33) or separate support.

Grounds.—Plaintiff must show that there is a reasonable likelihood that he will recover judgment, including interest and costs, in an amount equal to or greater than amount of attachment over and above any liability insurance shown by defendant to be available to satisfy judgment. If plaintiff seeks a writ of attachment, ex parte, plaintiff must show in addition to above, either: (1) That person of defendant is not subject to jurisdiction of court in action; (2) that there is a clear danger that defendant if notified in advance of attachment of property will convey it, remove it from State or will conceal it; or (3) there is immediate danger that defendant will damage or destroy property to be attached. (Rule 4.1, Mass. R. Civ. P.; see also SJC Rule 3:27).

Proceedings To Obtain.—Plaintiff must file a motion for approval of attachment along with complaint (declaration in district court; see topic Actions) and affidavit in support of motion. Copies of motion, complaint, affidavit and notice of hearing must be served on defendant. Notice of hearing must inform defendant that by appearing to be heard on motion for approval of an attachment he will not thereby submit himself to jurisdiction of court nor waive service of complaint and summons upon him in manner provided by law. Minor procedural variations exist depending on whether attachment is

sought in superior court (Rule 4.1, Mass. R. Civ. P.) or in district court. (SJC Rule 3:27).

Attachment Bond.—No bond is required to obtain attachment, but attaching officer may require sufficient security if there is reasonable doubt as to ownership of personal property either before or after attachment (c. 223, § 45A) except in trustee process (c. 246, § 1, am'd 1973, c. 1114, § 259).

There are certain restrictions on right to attach railroad cars and engines and steamboats in use making regular passages (c. 223, § 43), ships and vessels (c. 223, § 44, am'd 1973 c. 1114, § 96), personal property used in printing and publishing a newspaper (c. 223, § 45, am'd 1973, c. 1114, § 98) and motor vehicles (see *infra* this topic).

Levy of Attachment on Real Estate.—Every original writ for the attachment of real estate shall contain the name and last known residence of each defendant. Original writ for attachment of personal estate does not require address of defendant. Officer's return on writ that attachment has been made constitutes valid attachment as between parties of defendant's right, title and interest in unregistered real estate not exempt by law. No special description of land attached is required. To be effective against subsequent creditors or bona fide purchasers, attachment must be recorded at registry of deeds of district where land lies. Such attachment holds all unregistered real estate, record title to which is then in defendant's name, including property conveyed by a deed not recorded before attachment is recorded. (c. 223, § 62-66, am'd 1973, c. 1114, § 104). Attachment of registered land must be filed and registered in office of assistant recorder for registry district where land lies. (c. 185, § 78).

Attachment made after Aug. 23, 1945, expires 6 years from recording date unless renewed for subsequent periods of 6 years. (c. 223, § 114A).

If an encumbrance is removed after the attachment is made, it inures to the benefit of the attaching creditor. (c. 223, § 70).

Real estate fraudulently conveyed, or which is held in trust for debtor, whereby he is entitled to a present conveyance, or which was acquired by debtor by a deed describing him as trustee, regardless of validity of trust or legal effect of designation as trustee, may be attached specially as property of debtor, but must be described with sufficient accuracy for identification. (c. 223, § 67).

Levy of Attachment on Personal Property.—A perfected security interest in personal property, which from its bulk or other cause cannot be immediately removed, may be obtained by filing within 3 days after attachment a certified copy of writ and return of attachment in office of clerk of city or town in which property is situated. (c. 223, § 50, am'd 1973, c. 1114, § 100). Wages may in certain actions be attached by trustee process (c. 246, § 276), but \$125 thereof is exempt. See generally topic Garnishment.

Other personal property must be kept in possession of the officer, who may put a keeper over it on authorization of court therefor. Such property must be removed upon the written request of the defendant, without unreasonable delay. (c. 223, § 48). In order to have a keeper appointed, plaintiff must file affidavit with court stating facts which require such appointment and court must endorse its assent to appointment upon writ. (§ 48). Unless such request is made by defendant, or

by owner or occupant of premises, property may be kept where found. (§ 49). If defendant requires property to be left on premises it cannot be removed, until he has had reasonable opportunity to dissolve attachment by giving bond. (Ibid.). Live animals and personal property liable to perish, or that cannot be kept without disproportionate expense, may be sold, and proceeds held subject to attachment. (§§ 88-101).

Motor vehicle registered in the Commonwealth may not be attached on mesne process in an action of contract except on consent in writing of a justice of the court where suit is commenced. (§§ 42, 44A, am'd 1973, c. 1114, §§ 96-97).

There can be no attachment of goods for which a negotiable document of title is outstanding, unless the document be first surrendered to the person issuing it or its negotiation enjoined. (§ 72).

Personal property subject to a mortgage, pledge, or lien or sold under a conditional sale contract of which notice is not recordable may be attached as if unincumbered, if the creditor pays or tenders to the mortgagee, pledgee, lienor, conditional vendor, or his assigns, the amount for which it is so liable within 10 days after demand. If attaching creditor denies validity of any such incumbrance, incumbrancer or his assigns may be summoned as trustee and validity of encumbrance and amount due determined. If validity is upheld, attachment becomes void unless amount due is paid as ordered by court. (§§ 74-83).

Personal property owned by several jointly may, it seems, be attached on a writ against one of them, but on appraisal and giving of a bond by the others must be surrendered to them. (§§ 102-105). This does not, however, apply to trustee process nor to personal property belonging to a partnership (interest of a partner in property of partnership can be reached only in equity).

Indemnity.—See subhead Attachment Bond.

Lien.—A lien exists so long as a valid attachment remains in effect.

Priorities.—Successive attachments may be made in different suits upon the same property, and take priority according to time. In case of real property, priority is in the order of recording at the Registry. Any person claiming an interest in property attached, by reason of a subsequent attachment or otherwise, may by proper proceeding be admitted to contest the validity of the prior attachment on the ground that the amount demanded in the first action was not justly due or was not payable when it was commenced. (c. 223, §§ 106-113).

Judgment creditors who have not attached have no rights in the debtor's property as against attaching creditors.

Release of Property.—An attachment may be dissolved by depositing with attaching officer a sum equal to ad damnum in complaint or writ, or by giving bond with sureties or an authorized surety company satisfactory to plaintiff, or approved by a magistrate upon examination, with condition to pay amount plaintiff may recover within 30 days after final judgment and/or to pay amount of any special judgment within 30 days after entry thereof. (c. 223, §§ 120-129, am'd 1973, c. 1114, §§ 119-121). Attachment may be dissolved as to particular property by giving bond as above to pay value of such property, which is fixed by appraisal. (c. 223, § 125, am'd 1973, c. 1114, § 120). Attach-

ment is dissolved by proceedings in insolvency or bankruptcy begun within 4 months, by appointment of a receiver on a complaint filed within 4 months (c. 223, § 130, am'd 1973, c. 1114, § 122), and by a final judgment in favor of defendant after time for appeal has expired. (In district court, judgment in favor of defendant dissolves attachment forthwith). If an appeal has been duly claimed in appeals court or SJC, any attachment or other security as by bond shall stand until entry of final judgment (c. 223, § 115, am'd 1973 c. 1114, § 116). Attachment is also dissolved, except as to property alienated by him before death, by death of defendant, if administration is granted on his estate upon application made within 1 year after death. (c. 223, § 116). Also if real property is attached and no service is made upon defendant, attachment is dissolved unless record shows that notice has been given to defendant within 60 days or such further time as court may allow after entry of case. (c. 223, § 115A). Attachment of real or personal property is dissolved if case brought in district court is not entered in court within 35 days after return day of writ or process. (c. 223, § 115B, am'd 1973, c. 1114, § 116A). In district court, attachment remains in force, unless dissolved, until 30 days after final judgment for plaintiff. In superior court property remains subject to attachment for 30 days after expiration of time to appeal from judgment so that it may be taken on execution, unless attachment is sooner dissolved. If an appeal is claimed, attachment remains in force during appeal and if judgment is affirmed, for 30 days from entry of order of appeals court. (For property attached or judgment rendered in Nantucket County above periods are extended to 60 days). (c. 223, § 59, am'd 1973, c. 1114, § 102).

Any bond may be executed by another person in behalf of party to suit, if it appears to magistrate approving it that there is a good cause why it is not executed by such party. (c. 223, § 133). Sureties on a bond to dissolve attachment are released by principal's discharge in insolvency in proceedings within 4 months after attachment, if original claim if proved in insolvency would have been barred by a discharge of defendant (c. 223, § 124).

Sale.—Animals and perishable goods which have been attached may be sold after appraisal proceedings. (c. 223, § 87–101, am'd 1973, c. 1114, §§ 110–113). Proceeds of such a sale are held pending final judgment and are then distributed by court.

Third Party Claims

Superior Court.—Attachment may be made by a party bringing a counterclaim, cross-claim or third party complaint in same manner as upon an original claim. (Rule 4.1[d], Mass. R. Civ. P.).

District Court.—Usual method of asserting third party claim is through suit for conversion.

Vacation or Modification

Ex Parte Attachments.—On 2 days notice to plaintiff, or on such notice as court prescribes, a defendant may move, without submitting his person to jurisdiction of court for dissolution or modification of an ex parte attachment. At such hearing plaintiff shall have burden of justifying any finding in ex parte order which defendant has challenged by affidavit. (Rule 4.1[g] Mass. R. Civ. P. and SJC Rule 3:27[6]).

Other Attachments.—On application to a justice of court to which process is returnable, an attachment found upon summary hearing of parties to be excessive or unreasonable may be ordered to be reduced or discharged, or a part of property may be ordered to be released. (c. 223, § 114, am'd 1973, c. 1114, § 115).

Liability of Attaching Officer.—The attaching officer becomes liable to the creditor for the goods attached. He may deliver them to a person receiving to him therefor, who thereby becomes liable to him, but this does not discharge the officer's liability to the creditor.

Property Liable to Attachment.—With limited exceptions (see *infra* this topic and topic Exemptions), all real and personal estate liable to be taken on execution, except such personal estate as is considered from its nature or situation exempt according to principles of common law or which is by statute exempt, is liable to attachment. (c. 223, § 42, am'd 1973, c. 1114, § 94).

Time of Making Attachment

Superior Court.—Attachment may be made within 30 days after order allowing attachment or, upon order of court, subsequent to expiration of 30-day period. (Rule 4.1[E], Mass. Rules Civ. Procedure).

District Court.—No attachment of property can be made on an original writ after personal service upon defendant (c. 223, § 30, am'd 1973, c. 1114, § 90), except that on a trustee writ, after service on both defendant and trustee, a second service may be made on trustee, to be followed by second service on defendant within time allowed for original service on him (c. 246, § 8, am'd 1973, c. 1114, § 264). At any time during the pendency of action in district court, upon commencement of which an attachment is authorized by law, court for cause may, on motion *ex parte*, order such attachment of defendant's property to secure judgment or decree which plaintiff may obtain in said action. (c. 223, § 85, am'd 1973, c. 1114, § 108).

Equitable Attachment.—In actions brought in superior court and SJC and in certain proceedings before probate court, equitable attachment by injunction may be had on usual principles governing injunctive relief. (c. 214, § 3[6]–[9], am'd 1973, c. 1114, § 62). Shares in domestic and foreign corporations cannot be attached in a civil action in which only money damages are sought (c. 223, § 71, am'd 1973, c. 1114, § 62), but may be reached and applied to satisfaction of claims (c. 214, § 3[7], am'd 1973, c. 1114, § 62). Choses in action and any property, right, title or interest, legal or equitable, within or without State, which cannot be taken on execution, may, without other ground of equitable jurisdiction, be reached and applied for satisfaction of a debt. (c. 214, § 3[6], am'd 1973, c. 1114, § 62). A civil action to reach and apply should not be confused with judgment creditors' bills to reach property that cannot be taken on execution. (215 Mass. 415, 102 N.E. 646).

Michigan Law Digest

Attachment

Actions in Which Allowed.—Attachment is available in both contract and tort actions. (MCLA § 600.4001; MSA § 27A.4001; Rule 835). Justice court is proper forum for claims under \$100 and is permissible forum for claims up to \$300. (MCLA § 600.6001; MSA § 27A.-

6001; Rule 735). In cities where justice court has concurrent jurisdiction in contract actions up to \$500 such court has concurrent jurisdiction in attachment actions wherein value of property involved does not exceed \$500. (MCLA § 600.6661; MSA § 27A.6661). Common pleas court (at present only in Detroit) has exclusive jurisdiction up to \$500 and concurrent jurisdiction with circuit court up to \$3,000. (MCLA § 728.1; MSA § 27.3651).

Courts Which May Issue Writ.—Circuit court (MCLA § 600.4001; MSA § 27A.4001; Rule 735), justice court (MCLA § 600.7401; MSA § 27A.7401), and common pleas court (MCLA § 728.1; MSA § 27.3651). For rules as to attachment in justice court and common pleas court differing from those applicable to circuit court, see *infra*, sub-head In Justice Court and Common Pleas Court.

In Whose Favor Writ May Issue.—Any person, including non-resident or foreign corporation. (Rule 735).

Against Whom Writ May Issue.—Circuit courts have power to issue attachments with respect to any interest in things which are subject to judicial jurisdiction of State and belonging to person against whom claim is asserted whether or not person himself is subject to judicial jurisdiction of State. (MCLA § 600.4001; MSA § 27A.4001).

Claims on Which Writ May Issue.—All claims, matured or unmatured. (Rule 735).

Grounds.—(1) Defendant has absconded or is about to abscond from State or is concealed therein to injury of his creditors; (2) defendant has assigned, disposed of or concealed any of his property with intent to defraud his creditors or is about to do so; (3) defendant has removed or is about to remove any of his property from State with intent to defraud his creditors; (4) defendant fraudulently contracted the debt or obligation sued upon; (5) defendant is not resident of State and has not resided therein for 3 months immediately preceding; (6) defendant is a foreign corporation. (MCLA § 600.4001; MSA § 27A.4001).

Proceedings to Obtain.—After contract action has been commenced on matured obligation, plaintiff files affidavit or verified complaint made within 5 days by plaintiff or some person in his behalf that at time of oath or affirmation defendant is indebted to plaintiff in stated amount upon a contract or judgment over and above all legal setoffs, and that deponent reasonably believes in the existence of one or more of the statutory grounds. (Rule 735).

Where action has been commenced on obligation not yet due, affidavit must also state when indebtedness will become due and facts justifying immediate issuance of writ, circuit judge must authorize writ, and no judgment can be taken until indebtedness becomes due. If obligation is paid at or before maturity, plaintiff is liable for defendant's costs and reasonable attorney fees and any actual loss occasioned by the attachment. (Rule 735).

After tort action has been commenced, plaintiff files affidavit or verified complaint made within 5 days by plaintiff or some person in his behalf that deponent in good faith believes defendant is liable to plaintiff in stated amount over and above all setoffs, and that deponent reasonably believes in the existence of one or more of the statutory grounds. Circuit judge must enter order authorizing writ,

fixing bond conditioned on diligent prosecution of action and payment of any damages and costs awarded defendant in the case or for wrongful attachment, and specifying amount or value of property to be attached, and bond with sureties approved by court must be filed. (Rule 735).

Attachment Bond.—Plaintiff is not required to furnish bond except in tort actions. (See supra, subhead Proceedings to Obtain).

Levy.—Sheriff attaches so much of defendant's lands, tenements, goods, chattels, money and effects not exempt from execution, wherever found within county, as will satisfy plaintiff's demand and costs. Where property seized within county is not sufficient, officer seizes other property anywhere within State. Realty and interests therein are seized by officer's deposit of certified copy of writ including description of realty with register of deeds for county in which realty located. Shares of stock or interest of a stockholder in a domestic corporation are seized in manner provided for seizure of such property on execution. (See topic Executions). (Rule 735).

Indemnity.—No provision for levying officer to require indemnity.

Lien.—Attachment binds goods and chattels from time they were attached. Attachment of realty constitutes lien from time when certified copy of attachment including description of realty is deposited in office of register of deeds in county where realty is situated. (MCLA § 600.4035; MSA § 27A.4035).

Priorities.—Where one or more attachments or executions are issued against same debtor or his property, attachment or execution first delivered to officer has preference, except that if there has been levy and sale of goods or chattels before a levy under first attachment or execution, levy on such goods or chattels under first attachment or execution is not permitted. (MCLA § 600.6007; MSA § 27A.6007).

Unrecorded land mortgage has priority over subsequent attachment levy though attaching creditor had no notice of such mortgage when attachment was commenced. (130 Mich. 127, 89 N.W. 720).

Release of Property.—Attached property remains in officer's hands unless defendant or other person in whose possession it was found delivers to officer bond with plaintiff as obligee signed by corporate surety or two citizens of State who satisfy officer of their financial responsibility to extent of bond. Penalty of bond is lower of double the inventory value or double the amount stated in affidavit where sureties are individuals, lower of one and one-quarter of amount stated in affidavit or one and one-quarter of inventory value where surety is corporate, unless judge or circuit court commissioner for good cause orders lesser bond. In no event is bondsman liable for amount in excess of penalty of bond, inventory value of property, or amount claimed in affidavit, whichever is lower. Bond is conditioned on payment of any judgment against defendant within 60 days after entry. Upon delivery of bond to officer, he delivers property to defendant or person in whose possession it was found, but suit is not affected by such delivery. (Rule 735).

Sale.—Where attached property consists of animals or is perishable, court may order sale and proceeds are brought into court to abide court's order. (Rule 735).

Third Party Claims.—See subhead Vacation or Modification, infra.

Vacation or Modification.—Any person whose property is attached

or who is in possession of or has an interest in property attached may apply to circuit judge or circuit court commissioner of county where writ issued for dissolution of the attachment. Plaintiff is notified and hearing is held. If attachment found invalid, it is dissolved and property is returned to defendant. Defendant may be required to submit himself to personal jurisdiction of court prior to granting of dissolution order. Any dissolution order of circuit court commissioner is not final for 5 days and if appealed has no force to release property until affirmed by circuit judge, who hears matter de novo. (Rule 735).

In Justice Court and Common Pleas Court.—No express provision for attachment for debts not due, and plaintiff must always give bond in a penalty double his demand (minimum penalty \$200). (MCLA § 600.7401; MSA § 27A.7401). Attachment reaches only goods, chattels, moneys and effects within county in which justice resides. (MCLA §§ 600.7405–7409; MSA §§ 27A.7405–7409). Grounds are substantially same as in circuit court, except that removal of property with intent to defraud creditors refers to removal from county where application is made or where defendant resides, removal of defendant or his property from county is additional ground without reference to intent when coupled with refusal to pay debt or damages, fact that defendant is about to abscond from State is not a ground, and nonresidence in State need only have existed for 1 month. (MCLA § 600.7401; MSA § 27A.7401). Different attachments of same property have priority in order in which served. (MCLA § 600.7423; MSA § 27A.7423). Where defendant is not personally served and does not appear on return day, justice must continue cause for 30 to 90 days. (MCLA § 600.7419; MSA § 27A.7419). Defendant or any other person may procure release of property by furnishing proper bond. (MCLA §§ 600.7411, .7413, .7431; MSA §§ 27A.7411, .7413, .7431).

When action is commenced by attachment against foreign corporation and garnishment proceedings are commenced in same action, if return of attachment writ shows that copy thereof and also copies of all garnishee summons have been personally served on officer, member, clerk or agent of foreign corporation within State, proceedings may be had against foreign corporation in same manner as upon return of summons personally served in actions against natural persons. (MCLA § 600.7437; MSA § 27A.7437).

See also topics Process; Venue.

Minnesota Law Digest

Attachment

All property not exempt from execution under judgment demanded in action (see topic Exemptions) is subject to attachment therein. (570.04).

Actions in Which Allowed.—Writ is obtainable in district court in any action for recovery of money except for libel, slander, seduction, breach of promise, false imprisonment, malicious prosecution, or assault and battery (570.01); in justice court, in any contract action or action on judgment or decree of a court (532.25).

In Whose Favor Writ May Issue.—Any plaintiff, including nonresident or foreign corporation, may obtain attachment.

Claims on Which Writ May Issue.—Not necessary that claim sued on be payable in the State.

Commencement of Action on Claim.—In justice court, action must be commenced at or before issuance of writ; in district court, within 60 days after its issuance. (570.01).

Grounds.—Attachment is allowed in district court when: (1) Debt was fraudulently contracted; (2) defendant is foreign corporation or nonresident; (3) defendant has departed from the State, as affiant verily believes, with intent to defraud or delay creditors, or to avoid service of summons, or keeps himself concealed therein with like intent; or (4) defendant has assigned, secreted, or disposed of property or is about to do so with intent to delay or defraud creditors. (570.02). In justice court an additional ground is that defendant resides in another county and more than 100 miles from residence of justice. (532.25).

Proceedings to Obtain.—In district court, plaintiff must file with clerk bond for at least \$250, with sufficient sureties justifying in aggregate double amount of bond, together with affidavit by plaintiff, his agent or attorney, stating that "a cause of action" exists against defendant and specifying amount of claim, and one or more grounds of attachment. (570.02, 03).

In justice court, plaintiff or someone in his behalf, must make and file with justice an affidavit stating that debt is over \$5, amount and nature of claim, and grounds for attachment. Bond is required before writ is issued, with sufficient surety in double amount of claim for damages, not exceeding \$100. (532.25, 27).

Issuance.—In district court, judge or court commissioner approves bond and allows writ and clerk issues same. (570.01, 04). In justice court this is done by the justice. (532.27).

Levy is made by an officer as in case of execution. In case of real estate, certified copy of writ is filed with register of deeds where land situated, and copy served on defendant. This creates lien on real estate at time of filing. (570.05). Perishable property must be sold. (570.07; 532.32).

Priorities between successive attachments are according to times of actual levies thereunder.

Release of Property.—Defendant may make motion to vacate attachment at any time before trial. (570.09). At any time before entry of judgment, defendant may secure release of attachment by giving bond approved by judge or commissioner, or justice if in justice court, in at least double amount of complaint, or if attached property is of less value than amount of complaint, for double its value. (570.093).

An attachment of real estate filed with register of deeds is released by filing certified copy of order vacating attachment, or of judgment for defendant or of satisfaction of judgment for plaintiff; certificate of satisfaction or discharge of attachment executed and acknowledged by plaintiff or his attorney; or deed of release of attached premises. May also be released by entry in margin of record signed by plaintiff or his attorney acknowledging release. (570.11).

Third Party Claims.—Any person other than defendant or his agent claiming property levied upon may make and serve on sheriff affidavit of his title or right to possession of such property and sheriff may release such levy unless plaintiff, on demand, will indemnify him

by bond in at least double value of property as alleged in affidavit. (565.10).

Mississippi Law Digest

Attachment

Actions in Which Allowed.—Attachment at law lies in all actions founded on any indebtedness, breach of contract or penal statute. (11-33-1). Exemptions are allowed for trust funds set up by employer for pension, disability, death-benefits or profit-sharing plans. (71-1-43).

In Whose Favor Writ May Issue.—Nonresidents, as well as citizens, can obtain writs of attachment.

Claims on Which Writ May Issue.—It is not necessary, in order to warrant an attachment, that the claim sued on should be payable in this State. In some cases an attachment may issue on an unmatured claim. See *infra*, subhead Grounds for Attachment.

Grounds for attachment are that defendant: (1) Is a foreign corporation or a nonresident of the State; (2) has removed or is about to remove himself or property out of the State; (3) so absconds or conceals himself that he cannot be served with a summons; (4) contracted the debt or incurred the obligation in conducting the business of a water craft in some navigable waters of the State; (5) has property or rights in actions which he conceals and unjustly refuses to apply to the payment of his debts; (6) has assigned or disposed of, or is about to assign or dispose of his property or rights in action, or some part thereof with intent to defraud his creditors; (7) has converted or is about to convert his property into money or evidences of debt with intent to place it beyond the reach of his creditors; (8) fraudulently contracted the debt or incurred the obligations for which suit has been or is about to be brought; (9) is buying, selling or dealing in futures, directly or indirectly, or has done so within 6 months; (10) is in default as principal for public money, due the State, county or municipality; (11) is a banker, banking company, or corporation, and received deposits, knowing at the time that he or it was insolvent, or has made false or fraudulent statements as to his or its financial condition. (11-33-9).

Attachment will lie on ground that defendant is a foreign corporation, even though it be domesticated in Mississippi. (181 Miss. 223, 177 So. 653).

The creditor may obtain an attachment for a debt not due by making an affidavit to any of the last six of the aforementioned eleven grounds of attachment, or that he has just cause to suspect, and verily believes that his debtor will remove himself or his effects out of the State before the debt will become payable, with intent to hinder, delay or defraud his creditors, or has done so with such intent, leaving property in this state. (11-33-35).

Proceedings to Obtain.—In order to obtain an attachment, the creditor or his agent must make affidavit to the amount of his demand and to one or more of the aforementioned grounds of attachment. (11-33-9).

Bond.—The creditor must also give bond in double the amount sued for with good surety, to be approved by the officer issuing the attachment, payable to the defendant and conditioned to pay all damages

adjudged against him, if the attachment is proven to be wrongfully sued out. (11-33-11). See, however, *infra*, subhead Chancery Courts.

Issuance of Writ.—The writ issues on filing of the necessary affidavit and bond. (11-33-17).

Levy.—An attachment is levied on all unexempt property of the defendant. The books of account of defendant are also seized and all persons owning him are summoned as garnishees. (11-33-23).

Indemnity.—If the officer who is required to levy an attachment is in doubt as to the ownership of property to be levied on, he may require an indemnity bond in double the value of such property.

Absent Defendants.—Defendants who are absent from the State are brought in by a 3 weeks publication (11-33-37), but publication is not necessary if writ be served on nonresident defendant and proof of such service be made as provided for in case of nonresident defendants in chancery. (11-33-39).

In attachments before justices of the peace nonresident defendants are brought into court by the posting notices and mailing a copy of same to their post office address if known.

Lien and Priorities.—Attachments constitute liens on all property in the order in which they are levied, and those first levied must be first satisfied.

Release of Property.—Defendant may replevy personal property levied on by giving bond, with good sureties, payable to plaintiff, in double the value of property. (11-33-45).

Discharge of Attachment.—To sustain the attachment is sufficient to prove the truth of a single one of the eleven grounds of attachment, but if the plaintiff fails to do this, the attachment is discharged and the defendant is allowed all actual damages sustained, costs of the suit, and a reasonable attorney's fee, but judgment against the sureties in an attachment bond may not exceed its penalty. (11-33-85).

Defendant may discharge an attachment by giving bond in double the amount claimed by plaintiff. (11-33-59).

Chancery courts have jurisdiction in attachment suits based upon either a legal or equitable indebtedness, or for breach of contract, or arising *ex delicto* against any nonresident, absent or absconding debtor who has lands in this state, or against a person in this state who has in his hands effects of or is indebted to such nonresident, absent or absconding debtor. (11-31-1). A bond is not necessary in an attachment in chancery unless proceeding is by sequestration.

Missouri Law Digest

Attachment

An attachment may be had in any civil action in circuit or magistrate's court.

In Whose Favor Writ May Issue.—Any plaintiff, including a nonresident or foreign corporation, may obtain an attachment. (See 3 Mo. 606; 7 Mo. 281).

Claims on Which Writ May Issue.—It is not necessary that the claim sued on be payable within the State.

As to claims not due see *infra*, subhead Grounds.

Grounds for attachment are that defendant: (1) Is not a resident of this State; (2) is a corporation whose chief office or place of business is

out of this State; (3) conceals himself so that the ordinary process of law cannot be served upon him; (4) has absconded or absented himself from his usual place of abode in this State so that ordinary process of law cannot be served upon him; (5) is about to remove his property or effects out of State, with intent to defraud, hinder or delay creditors; (6) is about to remove out of State with intent to change his domicile; (7) has fraudulently conveyed or assigned his property or effects so as to hinder or delay his creditors; (8) has fraudulently concealed, removed or disposed of his property or effects so as to hinder or delay his creditors; (9) is about fraudulently to convey or assign his property or effects so as to hinder or delay his creditors; (10) is about fraudulently to conceal, remove or dispose of his property or effects so as to hinder or delay his creditors; or (11) that the cause of action accrued out of this State, and defendant has absconded or secretly removed his property or effects into this State; or (12) that the damages for which the action is brought arose from the commission of some felony or misdemeanor or the seduction of a female; or (13) that defendant has failed to pay the price or value of an article or thing delivered which by contract he was bound to pay upon delivery; or (14) that the debt sued for was fraudulently contracted on the part of defendant. Attachment may also be brought for rent due within 1 year in certain cases. Attachments may issue upon a demand not due in any of the cases above mentioned, except the first, second, third and fourth; but final judgment will not be rendered against the defendant until the demand matures. (C.R. 85.01-.02).

Affidavit and Bond.—Plaintiff, or some one in his behalf, must make affidavit that plaintiff has a just demand against defendant, that amount which affiant believes plaintiff ought to recover, after allowing all just claims and setoffs, is . . . dollars, and that affiant has good reason to believe and does believe that one or more of the grounds for attachment exists, specifying the grounds upon which he intends to rely in the language set forth above. Bond must be given in double amount of debt, by plaintiff or some responsible person as principal and one or more securities, resident householders or county in which action is brought, except in suits instituted by the State or a county in its own behalf, and except where defendant is a nonresident, in which cases no bond is required, but in the latter case the attachment is dissolved, on motion, upon defendant entering his appearance and filing his answer to the merits unless plaintiff files bond within a time fixed by court, not exceeding 10 days. If attachment is set aside or dismissed, attaching creditor is liable on his bond for such damages as resulted from his levy and proceedings thereunder. (C.R. 85.04-.06).

Levy.—Officer may seize, as attachable property evidences of debt of the defendant, as well as other property real, personal and mixed and also judgment debts; but no property or wages exempt from execution may be attached, except in case of nonresident or one who is about to move out of State. (521.240). In cases before a magistrate, the attachment cannot be levied on real property. (521.660).

Indemnity.—There is no statutory authority for the officer to require indemnity before levying.

Priorities.—Where the same property is attached in different actions by different plaintiffs, the court may determine all controversies and

priorities; if the writs issue out of different courts of coordinate jurisdiction, that court out of which the first attachment issues shall determine all controversies; courts of general jurisdiction shall determine controversies and priorities between an attachment issued therefrom and one issued out of a court of limited jurisdiction. In general, priorities date from the time of the levy. (C.R. 85.48).

An attaching creditor is not a bona fide purchaser for value, but obtains only such rights as the debtor had in the property at the time and is postponed to other liens or claims on the property which became effective before the attachment. (112 Mo. 599, 20 S.W. 686).

Release of Property.—Defendant may retain or regain possession of property levied on by giving forthcoming bond in double the value of such property. (C.R. 85.22).

Sale.—Perishable property may be sold by order of court prior to termination of the suit. (C.R. 85.25).

Claims of Third Persons.—Any person claiming property attached, may interplead in the cause, verifying the interplea by affidavit, and issues may be made upon such interplea, and tried as like issues between plaintiff and defendant. (C.R. 85.50).

Dissolution.—Attachments may be dissolved on motion of the defendant at any time before final judgment in the following cases: (1) When the affidavit is adjudged by the court insufficient, unless the plaintiff files a sufficient affidavit to be approved by the court in such time as the court directs. (2) When the defendant appears and pleads to the action and gives bond to the plaintiff with sufficient security approved by the court in double the amount of the property attached, conditioned that such property shall be forthcoming and abide the judgment which shall be rendered, when and where the court shall direct. (3) When the defendant appears and pleads to the action and gives bond and security in a sum sufficient to satisfy the amount sworn to in behalf of plaintiff with interest and costs, conditioned that the defendant shall pay to plaintiff the amount which may be adjudged in favor of the plaintiff, interest and costs, within 30 days after the judgment shall be rendered. When an attachment is dissolved all proceedings touching the property attached and the garnishee summoned, are vacated and the suit proceeds, as if it had been commenced by summons only. (C.R. 85.46-47).

See also topics Executions; Exemptions.

Montana Law Digest

Attachment

Actions in Which Allowed.—Any action upon a contract express or implied for the direct payment of money, where contract is not secured by mortgage or lien on real property, or if originally secured, where security has without act of plaintiff become valueless; also in action based upon statutory stockholders' liability. (93-4301).

Courts Which May Issue Writ.—Both justice and district courts. (93-4301, 6908).

In Whose Favor Writ May Issue.—Any plaintiff (93-4301); no provision discriminating against nonresident plaintiffs.

Claims on Which Writ May Issue.—On unmaturing claims, if it appears from plaintiff's affidavit that (1) defendant is about to leave the

State with his property to defraud his creditors, or (2) that defendant is disposing of, or about to dispose of, property subject to execution to defraud his creditors. (93-4303).

Grounds.—See supra, subhead Actions in Which Allowed.

Proceedings to Obtain.—Writ is issued by clerk of court (93-4302) or by justice of peace (93-6908) at or after issuance of summons, upon plaintiff's filing an affidavit that defendant is indebted in a specified amount, over and above counterclaims, on a contract such as that described above, and that attachment is not sought to hinder, delay or defraud any creditor of defendant (93-4302).

Attachment bond in double the amount claimed if amount is \$1,000 or less, or equal to amount claimed if in excess of \$1,000, but in no case in excess of \$20,000, must be filed before writ issues. Within 30 days after summons served defendant may except to sufficiency of sureties. Failure so to do is waiver of defects. (93-4304). In justice court, bond must be for not less than \$50, nor more than \$300. (93-6909).

Levy may be made on any property of defendant not exempt from execution (93-4306) but chose in action for personal injuries cannot be attached (100 Mont. 496, 50 P.2d 249).

Real property is attached by filing a copy of writ and notice of attachment with county clerk; personal property capable of manual delivery, by taking into custody, except where in possession of third person (93-4307); investment securities may be attached only by seizure (87A-8-317, 93-4307); corporate stocks or shares other than investment securities may be attached either by seizure or by leaving with president, secretary, cashier or managing agent of corporation, copy of writ and notice of attachment (93-4307); debts or credits and personal property in possession of third person, by leaving copy of writ and notice of attachment with person owing debt or in possession or control of property; judgments by leaving with clerk of district court copy of writ and notice of attachment; interest in personal property belonging to estate of decedent, by serving personal representative with copy of writ and notice of attachment and filing copy with clerk of court in which estate is being administered (93-4307).

Indemnity.—Attachment bond required. (93-4337). In event of third party claim, sheriff may require bond. (93-4320).

Lien accrues at time of attachment and in order of levies. (93-4335).

Priorities.—Levying officer must execute writs against same defendant in order in which he receives them. (93-4335).

Sale of property may be had prior to judgment on order of court, proceeds to be deposited in court. (93-4318).

Release.—After appearance defendant may obtain release of attachment upon filing undertaking in amount to be fixed by court. (93-4327, 4328). If no proceedings have been taken for 5 years in action in which attachment was issued, defendant or record owner may apply to clerk of court for release. (93-4331.1).

Discharge.—If it appears writ was improperly or illegally issued, it must be discharged. (93-4331).

Vacation or Modification.—If motion based on papers supporting writ, no notice required; otherwise notice required. Motion may be made by defendant or any person acquiring an interest in the property after attachment. (93-4333).

Third Party Claims.—If third party claims personal property by filing affidavit with sheriff, sheriff must deliver property to claimant unless plaintiff gives indemnity bond within 10 days after notice. (93-1320).

Nebraska Law Digest

Attachment

Actions in Which Allowed.—Attachment may be allowed in any civil action for the recovery of money only.

Courts Which May Issue Writ.—All courts having jurisdiction of civil cases.

Time for Issuance.—Attachment may issue at or after the commencement of an action.

In Whose Favor Writ May Issue.—Any plaintiff, including a non-resident or foreign corporation, may obtain an attachment, except that in an action on a claim not based on contract, judgment or decree only a bona fide resident for at least 6 months prior to filing of petition may obtain attachment on ground that defendant is a nonresident or foreign corporation. (25-1001).

Claims on Which Writ May Issue.—Attachment may issue on either matured or unmatured claim. There is no requirement that the claim sued on should be payable within this State.

Grounds of attachment in action on matured claim are that defendant, or one of several defendants: (1) is a foreign corporation or a nonresident of State; (2) has absconded with intent to defraud creditors; (3) has left county of his residence to avoid service of summons; (4) so conceals himself that summons cannot be served upon him; (5) is about to remove his property or a part thereof out of jurisdiction of court with intent to defraud creditors; (6) is about to convert his property or a part thereof into money for purpose of placing it beyond reach of creditors; (7) has property or rights in action which he conceals; (8) has assigned, removed or disposed of or is about to dispose of property with intent to defraud creditors; (9) fraudulently contracted debt or incurred obligation for which suit is about to be or has been brought. (25-1001).

On claims not due grounds of attachment are that debtor: (1) Has sold or conveyed or otherwise disposed of property with fraudulent intent to cheat or defraud, hinder or delay creditors; (2) is about to make such sale, disposition or conveyance of his property with such fraudulent intent; (3) is about to remove property with intent or effect of cheating, defrauding, hindering or delaying creditors. (25-1049).

Proceedings to Obtain.—In order to obtain an attachment plaintiff must file an affidavit showing: (1) Nature of plaintiff's claim; (2) that it is just; (3) amount affiant believes plaintiff ought to recover; (4) existence of some one of grounds for attachment. (25-1002).

If demand is not founded on contract, original petition must be presented to some judge of Supreme, district or county court who must make allowance thereon of amount in value of property that may be attached and amount of bond, if any, to be given by plaintiff. (25-1002).

If claim sued on is not due an order is required from court in which action is brought or from judge thereof or county judge, and before attachment is allowed plaintiff, his agent or attorney, must make oath

in writing, showing nature and amount of claim, that it is just when it will become due and at least one of the grounds of attachment on such a claim. (25-1050).

Bond.—When ground of attachment is (1) That defendant is a foreign corporation, (2) nonresident, (3) is about to remove his property, or part thereof, out of jurisdiction of court, with intent to defraud his creditors, or (4) has assigned, removed or disposed of, or is about to dispose of his property with intent to defraud his creditors, order of attachment may issue without undertaking; under grounds (3) and (4) a bond shall be filed within 3 days after attachment is issued. In all other cases, plaintiff must give bond not exceeding amount of his claim, or in amount fixed by judge allowing attachment, conditioned to pay damages sustained by defendant if attachment wrongfully obtained. (25-1003, 1053; 27-402).

Issuance of Writ.—The writ is issued from the office of the clerk of the court in which the action was brought and directed to the sheriff.

Levy, Inventory and Appraisement.—Sheriff must make levy in presence of two residents of county and, with such residents, make and return an inventory and appraisement of property attached. Where real property is attached, sheriff must leave with occupant thereof, or if there is no occupant, in a conspicuous place thereon, a copy of the order. Accessible personal property is taken into sheriff's custody and held subject to order of court. (25-1004 to 1008).

Indemnity.—As a practical matter, the officer will refuse to levy unless indemnified if he fears that he may incur personal liability by levying, but there is no statutory authority for demanding indemnity.

Lien.—Order of attachment binds property attached from time of service. (25-1017).

Priorities.—If same officer has several attachments against same defendants he must serve them in order received, and each attachment is subject to all prior attachments. (25-1007).

Release or Discharge.—Defendant may obtain release or property attached by giving surty bond in double appraised value thereof conditioned that such value and money shall be forthcoming to answer judgment (25-1009); or may obtain discharge of attachment by giving bond in double amount of plaintiff's claim conditioned for performance of judgment rendered in the action (25-1024).

Sale of property is by order of court as on execution. (25-1033).

Claims of Third Persons.—If personal property be claimed by any other person than defendant officer must have validity of claim tried. (25-1036).

Vacation or Modification.—Defendant may at any time before judgment upon reasonable notice to plaintiff move to discharge an attachment as to whole or part of property. (25-1040). If attachment discharged by order, any party affected and excepting may appeal within time fixed by court or judge, on giving surety bond, conditioned for payment of all damage in consequence of appeal if attachment finally discharged. (25-1047).

In inferior courts rules for attachments are same as in district courts. For statutory provisions for municipal courts see 26-141-167. In attachments in municipal courts where only real estate is found, at re-

quest of plaintiff proceedings are immediately certified to district court of proper county and action proceeds as though it originated in that court. (27-426, 26-167).

Nevada Law Digest

Attachment

Actions in Which Allowed and Grounds.—With Notice and Hearing: (1) Action upon a judgment or contract, for direct payment of money which is not secured by mortgage, lien or pledge upon real or personal property situated in this State, or if so secured, when such security has been rendered valueless or insufficient without act of plaintiff or person to whom security was given. If security has depreciated without such act, attachment lies for excess of debt over value of security; (2) action in which one or more of grounds with or without notice exists; (3) action where court finds that extraordinary circumstances exist making it improbable for plaintiff to reach property of defendant by execution after judgment.

Without notice to defendant, in following actions only: (1) Against a defendant not residing in this State. Domestic and foreign corporations qualified to do business in this State are deemed residents; (2) upon a foreign judgment for direct payment of money; (3) for recovery of value of personal property which has been taken or converted by defendant without consent of owner; (4) where defendant is about to remove his money or property from this State and defendant's remaining property will be insufficient to satisfy plaintiff's claim; (5) where defendant is about to give, assign, hypothecate, pledge, dispose of or conceal his money or property, or any part, if that remaining is insufficient to satisfy plaintiff's claim; (6) for recovery of money or property obtained through embezzlement, forgery, larceny or extortion; (7) one brought under Uniform Fraudulent Conveyances Act; (8) one by State, or a political subdivision, brought under Uniform Reciprocal Enforcement of Support Act; (9) one where jurisdiction can be obtained only by attachment of defendant's property. (31.010).

Courts Which May Issue Writ.—District court and justice court. (31.010, 71,090).

Time for Issuance of Writ.—The plaintiff at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment. (31.010).

In Whose Favor Writ May Issue.—There is no provision excluding nonresidents or foreign corporations from the right to obtain attachment.

Claims on Which Writ May Issue.—There is no provision requiring that the contract or obligation sued on should be made or payable within this State. Neither is there any provision which authorizes issuance of the writ on an unmatured claim. A writ may issue for a foreign judgment for direct payment of money. (1973, c. 655).

Proceedings to Obtain.—Application for writ of attachment must be accompanied by affidavit by or on behalf of plaintiff showing nature of claim and that same is valid; stating amount which affiant believes

plaintiff is entitled to recover; describing in reasonable and clear detail all facts which show existence of grounds for attachment without notice or with notice and hearing; describing in reasonable detail money or property sought to be attached, its location, value, and any exemption from execution; naming all third persons upon whom writ of garnishment will be served; and including copy of any foreign judgment.

Court will order clerk to issue writ of attachment without notice to defendant if plaintiff's affidavit and any additional evidence meet these elements and it determines that ground for attachment without notice exists.

If application seeks a writ of attachment after notice and hearing and affidavit sets forth items required, court will issue an order to defendant to show cause why order for attachment should not be issued. Upon hearing held by court without jury, writ of attachment will be issued if court determines from all evidence that plaintiff's claim is probably valid or defendant fails to appear. (31.020).

Attachment Bond.—Plaintiff must give a written undertaking with two or more sureties in a sum not less than amount claimed by plaintiff or value of property to be attached, whichever is less, for payment of costs and damages, including attorney's fees, should defendant recover judgment or attachment be discharged. Defendant may except to sufficiency of sureties, and if they fail to justify, writ must be vacated (31.030).

The sureties to the undertaking must be residents and householders or freeholders within the State, and worth double the amount specified in the undertaking, over and above all debts and liabilities, exclusive of property exempt from execution. (31.030). The undertaking may also be made by a surety company authorized to do business in this State. Surety company bonds must be approved by the judge, clerk, or deputy clerk. The plaintiff may also deposit cash in lieu of a bond. (20.030).

Examination as to Property or Debts. The defendant, or any person owing him, may be cited to appear before the court, judge, or justice of the peace and be examined on oath as to property of defendant or debts owing to him. (31.100).

Levy.—Stocks, debts and any property not exempt from execution may be attached: (1) Real property by filing copy of writ with county recorder, with a description of property attached, and by leaving copy of writ with occupant, or if not occupied by posting a copy conspicuously on premises; (2) personal property by taking it into custody or by placing a keeper in charge of going business where such property is located, during which period defendant may continue to operate business if all sales are for cash and proceeds given to keeper; (3) debts, credits and other personal property in possession or under control of persons other than defendant by service of writ of garnishment. (31.050–31.060).

Indemnity.—Sheriff or constable may demand indemnity if third party claim is made. (31.070). Plaintiff must deposit with sheriff amount sufficient to pay expenses of taking and keeping personal property for 30 days. (31.065).

Lien of attachment on real property is conclusively presumed discharged after 10 years. (108.250).

Release of Property.—Where amount sought to be released is less than demand of writ, court or judge, upon application of defendant and notice to plaintiff, may discharge attachment in whole or in part, upon defendant giving bond in amount sought to be released. Where amount sought equals or exceeds demand of writ, defendant may discharge attachment by giving bond in amount of judgment which may be recovered in favor of plaintiff, or demand of writ, whichever is less. On like application writ may be discharged if improperly or improvidently issued, if property levied on is exempt from execution or necessary and required by defendant for support and maintenance of himself and family, or if levy excessive. Property may also be released upon written stipulation by plaintiff and defendant. (31.180–31.220).

Sale.—Perishable property may be sold by officer on reasonable posted notice and attached debts and credits collected if possible without suit. (31.120). Court or judge may order attached property sold as under execution if beneficial to parties. (31.130). If plaintiff recovers judgment attached property is sold under execution. (31.140).

Third Party Claims.—If verified third party claim is filed with attaching officer, he must release property unless, within 7 days after written demand, plaintiff gives undertaking in double value of property. Plaintiff or third party claimant is entitled to trial of title before court within 10 days after filing of claim, on 7 days notice to claimant. (31.070).

Mortgaged personal property may be attached, at the suit of a creditor or the mortgagor. The amount of the debt plus interest must be tendered, and if the mortgagee refuses to accept it or to disclose the amount due, proceedings may be had as in the case of unencumbered property. (103.140).

New Hampshire Law Digest

Attachment

Prejudgment attachments may be had in all actions at law, upon notice to defendant, and if defendant objects, a showing by plaintiff that there is a reasonable likelihood that he will recover judgment including interest and costs on an amount equal to or greater than amount of attachment and that unless attachment is allowed, there is a reasonable likelihood that defendant's assets will be insufficient to satisfy a judgment or decree. Court may order a prejudgment attachment without prior hearing if plaintiff shows probable cause of his right to recover and amount thereof, and: (1) There is substantial danger property will be damaged, destroyed, concealed, or removed from State; or (2) an attachment is necessary to vest quasi-in-rem jurisdiction; or (3) in cases for specific performance where there is imminent danger of transfer to a bona fide third party; or (4) notice period under a bulk sale is about to expire and absolute vesting of title is imminent; or (5) attachment is necessary to secure an important governmental or general public interest. (c. 511–A).

In Whose Favor Writ May Issue.—There is no discrimination against nonresidents or foreign corporations, except that all writs brought by nonresidents, corporate or otherwise, must be endorsed by some responsible resident, who thereby becomes liable for costs. (c. 509, § 8).

Claims on Which Writ May Issue.—There is no requirement that the claim sued on be payable in the State and no provision as to issuance of attachment on unmatured claims.

Grounds.—No special grounds are necessary; mere bringing of the action is sufficient.

Bonds.—Plaintiff is not required to furnish any bond in order to obtain attachment.

Excessive Attachments.—If an excessive or unreasonable attachment of any kind has been made on mesne process, the defendant may apply to the superior court to have the amount of the attachment reduced or to have it discharged. Upon such application the party making the attachment shall have the burden of proof to show that the attachment is not excessive or unreasonable. If, upon hearing, the court finds that the attachment is excessive or unreasonable under all the circumstances, it shall order the reduction or discharge of the attachment as justice may require. (c. 511, § 53).

Levy.—Real estate may be attached by the officer leaving an attested copy of the writ and of his return of the attachment thereon at the office or dwelling house of the register of deeds of the county in which the real estate is situate. (c. 511, §3). Personal property is taken possession of by the officer making the attachment. After taking possession of livestock or articles which are incapable of being conveniently taken into actual possession, including motor vehicles, trucks, trailers and tractors, the attaching officer may, within 48 hours thereafter, leave an attested copy of the writ, and of his return of such taking possession or such attachment thereof, at the home or office of the town clerk, and such levy is effective although actual possession is not taken. (c. 511, § 23). The officer, upon completion of such bulky article attachment is under no duty to care for or preserve the attached property unless requested by the attaching creditor, who is responsible for all reasonable costs and expenses incurred by the officer, including his reasonable fees, in complying with such request. (c. 511, § 23).

Indemnity.—Although there is no statutory authority therefor, attaching officer who fears liability for wrongful levy requires indemnity bond for value of property to be attached plus anticipated costs.

Encumbered Property.—A creditor or officer attaching encumbered personal property must pay or tender to the owner of the encumbrance the amount of his lien. (c. 511, § 26). Encumbrance on real estate may be discharged by payment of tender of amount of encumbrance to owner thereof. (c. 511, §§ 10, 11).

Priority.—Attaching creditors acquire liens in the order in which their attachments are made, and do not share pro rata. (c. 511, § 56).

Release of Property.—A defendant whose real estate has been attached may obtain its release upon application to superior court by giving bond to plaintiff with sufficient sureties in a penal sum equal to *ad damnum* or writ or value of real estate attached. (c. 511, §§ 48, 59).

Duration of Lien.—Attachment lien continues for 6 years after judgment on real estate and 60 days after judgment on personal property. (c. 511 § 55).

Release on Bond of Defendant.—The debtor can, by giving suitable bond, secure the restoration of the property attached whether it be real (c. 511, § 48) or personal (c. 511, §§ 35–37).

Sale of Attached Property.—Personal property attached must be sold by the officer before judgment, if the parties consent thereto in writing. (c. 511, § 30). Appraisers will be appointed and attached property will be sold when it consists of living animals, or goods liable to perish or waste, or to be greatly reduced in value by keeping, or which cannot be kept without great expense. (c. 511, §§ 31-34).

New Jersey Law Digest

Attachment

Courts Which May Issue Writ.—Attachment may issue out of superior court, county courts and county district courts. (Tit. 2A, c. 26, § 2; c. 18, § 62). Attachment in county district courts is limited to personal property and plaintiff's claim may not exceed \$1,000 except in negligence actions where claim may not exceed \$3,000; proceedings are same as in other courts. (Tit. 2A, c. 18, § 62; Tit. 2A, c. 6, § 34; Rule 6:8). For property exempt from attachment, see topic Exemptions.

In Whose Favor Writ May Issue.—Writ may issue on application of any plaintiff, whether resident or nonresident. (Tit. 2A, c. 26, § 2; Rule 6:9-1).

Against Whom Writ May Issue.—Attachment may issue against real and personal property of any defendant, including females, corporations and heirs, devisees, executors, administrators or trustees of decedents, where grounds for attachment exist. (Tit. 2A, c. 26, § 2). A legacy or distributive share of an estate in hands of executor, administrator or trustee may be attached in action against legatee or next of kin. (Tit. 2A, c. 26, § 6).

Grounds.—(1) Same as would entitle plaintiff to order of arrest before judgment in a civil action. In such cases attachment may issue against property of female, or of corporation in same manner as though it were liable to arrest in civil action, except that in action founded on tort, attachment cannot issue against corporation on which summons can be served in New Jersey. (2) Defendant absconds or is nonresident and summons cannot be served on him in New Jersey; but attachment cannot issue on this ground against rolling stock of common carrier of another State or goods of nonresident in transit in custody of common carrier of New Jersey or another State. (3) Cause of action existed against a decedent which survives against his heirs, devisees or personal representatives who (or some of whom) are unknown or nonresident and cannot be served with summons in New Jersey, and there is property in New Jersey which by law is subject to plaintiff's claim. (4) Plaintiff has claim of equitable nature as to which money judgment is demanded, and defendant absconds or is nonresident and summons cannot be served on him in New Jersey. (5) Defendant is a corporation created by laws of another State but authorized to do business in New Jersey and such other State authorizes attachments against New Jersey corporations authorized to do business in that State. (Tit. 2A, c. 26, § 2).

Proceedings to Obtain.—Action in attachment commenced by filing a complaint. Venue governed by same rules applicable to issuance of summons (except if no rule applicable, venue laid in any county in which any property to be attached is situated). No writ of attachment

may issue except upon order of court based upon prima facie proof by affidavit of the cause of action alleged and grounds for issuance of writ. Writ may be sole or additional process in an action. Court order must fix the amount or value of property to be attached. Notification of defendant or his attorney of application for writ is discretionary with court. On filing with court complaint, affidavits, order and bond (if required), clerk issues writ in duplicate addressed to sheriffs in counties in which property to be attached is situated. (Rule 4:60-6). In action for attachment in county district court, writ is directed to an officer of such court, rather than to sheriff. (Tit. 2A, c. 18, § 64). Further writs may be issued prior to judgment, on further affidavit and order. (Rule 4:60-6).

Attachment Bond.—Court, in its discretion, may direct plaintiff to give bond, with sufficient sureties, to indemnify defendant for all damages resulting from attachment and taxed costs of action if it is dismissed or judgment given for defendant. (Tit. 2A, c. 26, § 7; Rule 4:60-5[d]). See topic Bonds.

Levy must be made within 30 days from date of writ as follows: (1) On real property by endorsing upon writ a description of property and serving a certified copy of writ upon any person in possession of same, (2) on tangible personal property in possession of a bailee for which a negotiable document of title is outstanding, by complying with the provisions of Tit. 12A, c. 7, § 602 and serving a certified copy of writ upon bailee, (3) on all other tangible personal property by taking the same into custody or by serving a certified copy of writ upon person holding same, (4) on choses in action evidenced by negotiable commercial paper, by taking said paper into custody, or by serving a certified copy of writ upon person owing same and also serving upon person in possession of said paper an order of the court enjoining its negotiation, (5) on negotiable investment securities, by complying with provisions of Tit. 12A, c. 8, § 317, (6) on all other choses in action by serving a certified copy of writ upon person owing the same. (7) on legacies or distributive shares in a decedent's estate or a beneficial interest in a trust, by serving a certified copy of the writ upon the fiduciary. (Rule 4:60-7). Sheriff, or court officer in case of county district court, makes true inventory of all property attached and appraisal of all personal property attached, endorses upon writ and duplicate thereof each levy made and the date thereof, annexes thereto a copy of the inventory and appraisal files same with court and mails notice of levy and copy of inventory and appraisal to plaintiff or his attorney within 5 days after levy. (Rule 4:60-8; Tit. 2A, c. 18, § 64).

Consolidation of Actions.—Whenever two or more plaintiffs in separate actions obtain attachment writs against same defendant and levy on same property, the actions may be consolidated to determine disposition of attached property. Plaintiff whose attachment writ became first lien on the property is plaintiff in consolidated action, other plaintiffs become applying claimants. (Rule 4:60-16).

Lien.—Attachment binds attached goods and chattels, rights and credits, moneys and effects of defendant from time of its execution, and attached property, unless released, remains during pendency of action as security for any judgment which may be entered therein. (Tit. 2A,

c. 26, § 8). Attachment from time of its issue is lien on real estate of defendant throughout State if issued out of superior court and throughout county if issued out of county court, even though officer fails to especially attach same or any part thereof. Attachment is also lien on all real estate acquired by defendant in State or county, as case may be, after its issue and before final judgment. Lien continues until plaintiff's claim is satisfied, attachment is discharged or judgment is given against plaintiff (Tit. 2A, c. 26, § 9), and any conveyance of attached real estate prior to release of attachment is void as against plaintiff (Tit. 2A, c. 26, § 10). Judgment in the action is lien on defendant's real estate acquired either before or after entry thereof. (Tit. 2A, c. 26, § 11).

Attack on writ or levy must be made by motion. Such motion does not constitute general appearance. Upon such motion, proof may be presented by affidavits, depositions or orally before the court. Burden of proof on plaintiff. Court may vacate writ, or discharge or correct levy. (Rule 4:60-11).

Release of attached property from lien of attachment, and return thereof, may be obtained by defendant, or any person who had possession or control thereof at time of levy, at any time during course of action, by filing with clerk of court bond in amount and form and with sureties approved by court, after notice to plaintiff and any applying claimants. Filing of bond does not constitute general appearance. (Rule 4:60-13).

Third Party Claims.—Any person claiming property attached may proceed in the action on order to show cause. (Rule 4:60-14).

Procedure after Levy and Return.—Plaintiff must serve on defendant notice of the attachment and copy of complaint (if not previously served), and copy of order and accompanying affidavits within 2 weeks after filing of return, or within such time as court fixes. (Rule 4:60-9). Service of the notice is to be in accordance with Rule 1:5-2 if the defendant has previously appeared in the action, or in accordance with Rule 4:4-4 or 4:4-5 if the defendant has not previously appeared, or as the court may order. See topic Process. Where notice is served by publication, plaintiff must furnish defendant with a copy within 5 days after written request therefor. (Rule 4:60-9). Where the defendant has not been served with summons, he must file his answer or move against the complaint within 20 days after service of the notice of attachment, if service made in New Jersey, or within 35 days if service made outside New Jersey, by registered or certified mail, or within 35 days after last publication if service made by publication alone, or within such time as court may fix. Where the defendant has been served with summons but has not appeared, he has 20 days to move against the attachment and levy after notice of same has been served on him or after publication, if service by publication alone. (Rule 4:60-10).

Applying Claimants.—At any time before defendant enters appearance, any person having a liquidated or unliquidated claim against defendant, due or not, may apply to court to be admitted as applying claimant. Application must be by verified complaint, upon notice to plaintiff and claimants previously admitted, and will be admitted upon prima facie proof of the cause of action alleged by claimant. Within 10 days after order of admission or such time as court designates,

claimant must serve notice on defendant of admission order and, if possible, a copy of verified complaint, in same manner as plaintiff must serve notice of attachment on defendant. Defendant has same time after service to move or answer as is allowed for answering plaintiff's complaint. Any applying claimant may defend against the claim of plaintiff and any other applying claimant by serving and filing notice of contest of such claim at least 10 days prior to time fixed for trial or proof thereof. Proceedings on claims of applying claimants do not suspend or affect course of plaintiff's action against defendant. (Rule 4:60-15).

Appearance.—Defendant may enter his appearance at any time before final judgment. Thereafter no applying claimants may intervene, lien of attachment continues in favor of plaintiff and applying claimants, proceedings with respect to attached property may be had as if no appearance had been entered, and any judgment in favor of plaintiff and applying claimants is general. If defendant has not legally been served with summons or does not appear, judgment is special against attached property only. (Rule 4:60-12).

Auxiliary Proceedings.—Court may order attaching officer to prosecute actions to obtain attached property in hands of third persons, including collection of choses in action, trust income or corpus and legacies and distributive shares of a decedent's estate, and may make any orders necessary to preserve attached property, including orders to attaching officer to deliver property to court appointed receiver who may be empowered to collect attached assets and apply as court directs. (Rule 4:60-17; Tit. 2A, c. 26, § 13).

Sale of Attached Property.—Execution sale of attached property by sheriff or other officer and conveyance pursuant thereto convey all title held by defendant at time attachment became a lien or acquired by him thereafter. (Tit. 2A, c. 26, § 15). Court may order sale of personal property before judgment. (Rule 4:60-17). Sale of attached personal property pursuant to statute or court order has same effect as if made by defendant at time when attachment became lien. (Tit. 2A, c. 26, § 14). For effect of landlord's lien for rent on sale of attached personalty taken on leased premises, see Tit. 2A, c. 42, § 2.

Distribution of Proceeds.—Proceeds of attached property, after payment of any costs and charges directed by court to be paid therefrom, are applied, first, to payment of plaintiff's judgment and costs and, second, among the applying claimants in proportion to, but not in excess of, their judgments and costs. (Rules 4:60-17, 4:60-15[e]).

New Mexico Law Digest

Attachment

Actions in Which Allowed.—Attachment may be issued in any action, whether on contract or in tort. (26-1-2).

Courts Which May Issue Writ.—A writ of attachment may be secured in district court or magistrate court. (26-1-1, 36-11-1).

In Whose Favor Writ May Issue.—The remedy is available to any plaintiff including a nonresident or foreign corporation.

Against Whom Writ May Issue.—May issue against any person in both contract and tort actions. (26-1-2, 36-11-1).

Claims on Which Writ May Issue.—An attachment may issue on a demand not yet due as upon demands already due. (26-1-1). It may also issue on a claim which is not payable within the State.

Grounds of attachment are that the debtor: (1) Is a nonresident; (2) has concealed himself, absconded or absented himself from his usual place of abode in State so that ordinary process of law cannot be served on him; (3) is about to remove his property or effects out of State or has fraudulently concealed or disposed of his property so as to defraud, hinder, or delay creditors; (4) is about fraudulently to convey, or assign, conceal, or dispose of his property so as to defraud, hinder, or delay creditors; (5) has absconded or secretly removed his property into State with intent to defraud, hinder, or delay creditors, when debt was contracted out of State; (6) is a corporation having its principal place of business out of State, with no designated agent in State on whom process may be served; (7) fraudulently contracted debt or incurred obligation sued on or obtained credit by false pretenses; (8) requested plaintiff or his assignor to render work, labor, or services, constituting subject-matter of debt; (9) contracted the debt for necessities of life. Foreign corporation doing business in State without complying with requirements therefore is regarded as nonresident. (26-1-1, 36-11-1).

Proceedings to Obtain.—Plaintiff must file an affidavit showing the existence of one or more, of the aforementioned grounds of attachment.

Attachment Bond.—A plaintiff in attachment must give bond for double the amount of claim involved, unless, in district court attachment, court fixes a lesser amount. (26-1-7, 36-11-1).

Property Subject to Attachment.—All property of debtor, of whatsoever nature, may be attached, except property specifically exempted from execution (see Exemptions) and interest of beneficiary of spendthrift trust. (26-1-4). For purpose of attachment, situs of debts and obligations is at domicile of obligor and situs of intangible interests in property is where such property is located. (26-1-3).

Levy.—Writ is directed to the sheriff, who is commanded to attach the lands and tenements, goods, moneys, effects and credits of defendant, and is served as an ordinary summons. When lands or tenements are attached, the officer must briefly describe the same in his return, and state that he attached all the right, title and interest of the defendant to the same, and must give notice to the actual tenants. (26-1-17, 36-11-2). Officer must also file in office of country clerk a notice of levy, describing real estate levied on and showing title and number of case and amount of debt or judgment, and when debt is satisfied, officer must file a release. (24-1-4 et seq.). When goods and chattels, moneys, effects or evidences of debt are to be attached, officer must seize same and keep them in his custody, if accessible, and if not accessible, must summons person in whose hands they may be as garnishee. When intangible interest in personal property in possession of someone other than defendant is attached, officer endorses his levy, describing property, on copy of writ and serves it on person or corporation in possession. (26-1-17, 36-11-2). Practice of officer requiring indemnity bond before levying has fallen into disuse.

Indemnity.—Statute does not give levying officer right to require indemnity bond.

Lien.—Lien may be released by giving of forthcoming bond. (26-1-20).

Priorities between successive attachments are according to dates of levies. Attachment which has been levied has priority over judgment as to personalty not levied on under execution and as to real property in county in which no transcript of the judgment has been filed in office of county clerk.

Sale.—Interest in realty must be sold by special master. (26-1-36). Sale of personalty same as under ordinary execution. (26-1-37).

Release of Property.—Property attached may be retained by the defendant on giving forthcoming bond in double the value of the property. (26-1-20).

Third Party Claims.—Any person claiming any property, or a lien on any property which has been attached in any proceedings to which he is not a party, may intervene therein at any time before trial, by filing a petition under oath, setting up his right. (26-1-29).

Vacation or Modification.—Suit not abated by release of attachment. (26-1-32).

New York Law Digest

Attachment

Actions in Which Permitted.—Attachment may be granted upon application of plaintiff in any action, except a matrimonial action, where plaintiff has demanded and would be entitled, in whole or part, or in the alternative, to a money judgment against one or more defendants, on the grounds specified below. See subhead Grounds and Procedure. (C. P. L. R. § 6201).

Property Subject.—Any debt or property against which a money judgment may be enforced as provided in C. P. L. R. § 5201 (See topics Executions; also Exemptions) in subject to attachment. (C. P. L. R. § 6202).

Granting of Order.—Order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment. Order must specify amount of plaintiff's demand, be indorsed with name and address of plaintiff's attorney, and directed to sheriff of any county or of the city of New York where any property in which defendant has an interest is located or where a garnishee may be served. Order must direct sheriff to levy within his jurisdiction, before final judgment, upon such subject property and debts as will satisfy plaintiff's demand together with probable interest, costs, and sheriff's fees and expenses. (C.P.L.R. § 6211).

Courts Which May Issue Order.—An order of attachment, being one which may be granted without notice in supreme court or county court in any county of State (C.P.L.R. §§ 2212, 2213, 6211), may be granted upon motion at a motion term or by a justice out of court.

In Whose Favor.—Except as noted hereafter (see subhead Grounds and Procedure) there are no restrictions on the right of a nonresident or foreign corporation to obtain an attachment.

Defendant setting up counterclaim or cross-claim against co-defendant has same right to attachment of plaintiff's or co-defendant's property as if he had brought action against plaintiff or co-defendant on his claim. (C. P. L. R. § 6001).

Publication.—Seizure of property under order of attachment is one ground for an order of service of summons by publication, where

service cannot be made by another prescribed method with due diligence. (C. P. L. R. §§ 314, 315).

Grounds and Procedure.—To procure order of attachment plaintiff must show that cause of action exists, that action against defendant is not a matrimonial action, that plaintiff has demanded and would be entitled, in whole or part, or in the alternative, to a money judgment against one or more defendants, and that: (1) Defendant is a foreign corporation or not a resident or domiciliary of State; or (2) defendant resides or is domiciled in State and cannot be personally served despite diligent efforts; or (3) defendant, with intent to defraud creditors or to avoid service of summons, has departed or is about to depart from State, or keeps himself concealed therein; or (4) defendant, with intent to defraud creditors, has assigned, disposed of or secreted property, or removed it from State or is about to do any of these acts; or (5) defendant, in an action upon a contract, express or implied, has been guilty of a fraud in contracting or incurring the liability; or (6) action is based upon wrongful receipt, conversion or retention, or aiding or abetting thereof, of any property held or owned by any governmental agency, including a municipal or public corporation, or officer thereof; or (7) cause of action is based on a judgment of a U.S. court, or other judgment entitled to full faith and credit or qualified for recognition; or (8) there is a cause of action to recover damages for conversion of personal property, or for fraud or deceit. (C. P. L. R. § 6201). Plaintiff also must show amount demanded from defendant above all counterclaims known to plaintiff. (C. P. L. R. Rule 6212[a]).

Within 10 days after granting of order of attachment, plaintiff must file it, with affidavit, other papers upon which granted, and summons and complaint, or, unless time for filing is extended, order is invalid. Provision exists for demand by defendant that all supporting papers be served upon him. (C. P. L. R. Rule 6212[c], [d]).

Attachment Bond.—Plaintiff must, before granting of order, give undertaking which must be at least \$250, a specified part thereof conditioned that if defendant recovers judgment or it is finally determined that plaintiff was not entitled to attachment, plaintiff will pay all legal costs and damages which defendant may sustain by reason of attachment, and balance conditioned that plaintiff will pay all sheriff's fees. Plaintiff's attorney not liable to sheriff for sheriff's fees. (C. P. L. R. Rule 6212[b]).

Service of Summons.—Order of attachment granted before action is commenced is valid only if, within 60 days after order is granted, a summons is served upon defendant, or service by publication is commenced (and subsequently completed). If defendant dies within 60 days after granting of order and before summons served upon him or publication completed, summons must be served on his executor or administrator within 60 days after issuance of letters. Upon such terms as may be just and upon good cause shown, court may extend time, not exceeding 60 days, within which summons must be served or publication commenced provided application for extension is made before expiration of time fixed. (C. P. L. R. § 6213).

Levy.—Sheriff must levy upon any interest of defendant in personal property, or upon any debt owed to defendant, by serving a copy of order of attachment upon garnishee, or upon defendant if property

to be levied upon is in defendant's possession or custody, in same manner as a summons, with minor exceptions. Levy by service of order of attachment upon a person other than defendant is effective only if, at time of service, he owes debt to defendant or is in possession or custody of property in which he knows or has reason to believe defendant has an interest, or if plaintiff has stated in a notice which is served with order that a specified debt is owed by person served to defendant or that defendant has an interest in specified property in possession or custody of person served. All property in which defendant is known or believed to have an interest then in and thereafter coming into possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to defendant, are subject to levy. Person served with order must immediately transfer or deliver all such property, and pay all such debts upon maturity, to sheriff and execute any document necessary to effect payment, transfer or delivery. After such payment, transfer or delivery, property coming into possession or custody of garnishee, or debt incurred by him, are not subject to the levy. Until such payment, transfer or delivery is made, or until expiration of 90 days after service of order of attachment upon him, or of such further time as is provided by subsequent order of court served upon him, garnishee is forbidden to make or allow any sale, assignment or transfer of, or any interference with any such property, or pay over or otherwise dispose of any such debt to any person other than sheriff, except upon direction of sheriff or pursuant to court order. Garnishee, however, may collect or redeem an instrument received by him for such purpose and he may sell or transfer in good faith property held as collateral or otherwise pursuant to pledge thereof or at direction of any person other than defendant authorized to direct sale or transfer, provided that proceeds in which defendant has an interest be retained subject to the levy. Plaintiff who has specified personal property or debt to be levied upon in a notice served with an order of attachment is liable to owner of property or person to whom debt is owed, if other than defendant, for any damages sustained by reason of the levy. Where property or debts have been levied upon by service of order of attachment, sheriff must take into his actual custody all such property capable of delivery and must collect and receive all such debts. Plaintiff may commence a special proceeding against garnishee served with order to compel payment, delivery or transfer to sheriff of such property or debts, or to secure a judgment against garnishee. Notice of petition must also be served upon sheriff. Garnishee may interpose any defense or counterclaim which he might have interposed against defendant. Court may permit any adverse claimant to intervene. At expiration of 90 days after levy is made by service of order of attachment, or of such further time as court, upon motion of plaintiff, has provided, levy is void except as to property or debts which sheriff has taken into his actual custody, collected or received or as to which a proceeding has been commenced by plaintiff as aforementioned. (C.P.L.R. § 6214).

If plaintiff so directs and furnishes sheriff indemnity satisfactory to him or fixed by court, sheriff must levy upon property capable of delivery by taking property into his actual custody and forthwith serve copy of order of attachment upon person from whom property taken.

(C. P. L. R. § 6215). Subject to due process requirements of U.S. Constitution, court upon presentation of affidavit and undertaking shall grant order directing sheriff of county where chattel is found to seize it, and court may direct that if chattel is not delivered to sheriff he may enter and search place where chattel may be. In alternative, court may grant restraining order that chattel not be removed, disposed of, or allowed to become subject to security interest or lien. (C. P. L. R. § 7102).

Sheriff levies upon interest of defendant in real property by filing with clerk of county in which property is located a notice of attachment indorsed with name and address of plaintiff's attorney and stating names of parties to the action, amount of plaintiff's claim and a description of property levied upon. Clerk records and indexes notice in same books, in same manner and with same effect, as a notice of pendency of action. (C. P. L. R. § 6216).

Priorities among two or more orders of attachment against same defendant are in order in which they were delivered to officer who levied upon property or debt. Same rule applies as between executions and orders of attachment delivered to same enforcement officer. Where two or more executions or orders of attachment against same defendant are delivered to different enforcement officers for levy, and personal property or debts of defendant are levied upon within jurisdiction of all such officers, proceeds are applied first to execution or attachment delivered to levying officer, and thereafter applied to executions and attachments delivered to other officers, if such officers make a demand upon levying officer prior to distribution of proceeds in order of demand. An execution or attachment returned by an officer before a levy, or delivered to him after proceeds of levy have been distributed, cannot be satisfied out of such proceeds. (C. P. L. R. §§ 6226, 6234).

Sale or other Disposition.—If urgency of case requires, court may direct sale or other disposition of property, specifying manner and terms thereof, with or without notice. (C. P. L. R. § 6218[a]).

Attaching Creditor's Rights.—Where plaintiff has delivered order of attachment to sheriff, plaintiff's rights in debt owed defendant or in interest of defendant in personal property not exempt from attachment are superior, to amount of attachment, to rights of any transferee, except: (a) transferee who acquired same before levy for fair consideration or without knowledge of order of attachment, or (b) transferee who acquired same for fair consideration after levy without knowledge thereof, while it was not in possession of sheriff. (C. P. L. R. § 6203).

Vacation or Modification.—Prior to application of property or debt to satisfaction of judgment, defendant, garnishee, or any person having an interest in property or debt attached, may move, on notice to each party and sheriff, for order vacating or modifying order of attachment. Court must give plaintiff reasonable opportunity to correct any defect. If, after defendant has appeared in action, court determines attachment is not necessary to security of plaintiff, it must vacate attachment. Such motion is not, of itself, appearance in action. (C. P. L. R. § 6223).

Discharge, Annulment and Cancellation.—Defendant whose property or debt has been levied upon may move, upon notice to plaintiff and sheriff, for order discharging attachment as to all or a part of

property or debt upon payment of sheriff's fees and expenses. On such motion, defendant must give an undertaking, in an amount equal to value of property or debt sought to be discharged, that defendant will pay to plaintiff amount of any judgment which may be recovered in the action against him, not exceeding amount of undertaking. Making a motion or giving an undertaking under this section does not of itself constitute an appearance in the action. (C.P.L.R. § 6222).

Order of attachment is annulled when action in which it was granted abates or is discontinued, or a judgment entered in favor of plaintiff is fully satisfied, or judgment is entered in favor of defendant. In latter case a stay of proceedings suspends effect of the annulment, and a reversal of vacating judgment revives order of attachment. (C.P.L.R. § 6224).

Upon motion of any interested person, on notice to sheriff and each party, court may direct clerk of any county to cancel a notice of attachment and may direct sheriff to dispose of, account for, assign, return or release any property or debt, or proceeds thereof, or any undertaking, or to file additional inventories or returns, subject to the payment of sheriff's fees and expenses. Court must direct that notice of motion be given to plaintiffs in other orders of attachment, if any, and to judgment creditors of executions, if any, affecting any property or debt, or proceeds thereof, sought to be returned or released. (C.P.L.R. § 6225).

Claims of Third Persons.—Prior to application of property or debt to satisfaction of a judgment, any interested person may commence a special proceeding against plaintiff to determine rights of adverse claimants to the property or debt, by serving a notice of petition upon sheriff and upon each party in same manner as a notice of motion. The proceeding may be commenced in county where property was levied upon, or in county where order of attachment is filed. Court may vacate or discharge the attachment, void the levy, direct disposition of the property or debt, direct that undertakings be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, court must order a separate trial, indicating person who shall have possession of the property pending a decision and undertaking, if any, which such person shall give. If court determines that adverse claim was fraudulent, it may require claimant to pay plaintiff reasonable expenses incurred in the proceeding, including reasonable attorney's fees, and any other damages suffered by reason of the claim. (C.P.L.R. § 6221).

North Carolina Law Digest

Attachment

Attachment and garnishment is governed by G.S. §§ 1-440.1 through 1-440.46.

Actions in Which Allowed.—Attachment may be had in any action, the purpose of which, in whole or in part, is to secure judgment for money, or in any action by wife for alimony or for maintenance and support, or for custody and support of children, but not in any other action. (1-440.2).

Courts Which May Issue Writ.—Clerk or judge of appropriate trial division in county in which action has been or is being commenced may issue order of attachment. (1-440.5).

In Whose Favor Writ May Issue.—No discrimination against non-residents or foreign corporations with respect to obtaining attachments.

Against Whom Writ May Issue.—Attachment may issue against any defendant as to whom the necessary grounds (see *infra*) are shown to exist.

Claims on Which Writ May Issue.—Writ may issue only on one or more grounds specified by G.S. 1-440.3 and grounds must appear by affidavit. (1-440.11; 229 N.C. 327, 49 S.E. 2d 627).

Grounds.—Order for attachment may be issued when defendant: (1) Is nonresident, foreign corporation or domestic corporation whose president, vice-president, secretary or treasurer cannot be found in State after due diligence; or (2) is resident of State who, with intent to defraud his creditors or to avoid service of summons, (a) has departed or is about to depart from State or (b) keeps himself concealed therein; or (3) person or domestic corporation who or which, with intent to defraud his or its creditors, (a) has removed or is about to remove property from State or (b) has assigned, disposed of or secreted or is about to assign, dispose of or secrete property. (1-440.3).

Proceedings to Obtain.—Plaintiff, or his agent or attorney, must file affidavit that plaintiff has commenced or is about to commence action, purpose of which in whole or in part is to secure judgment for money and amount thereof. Affidavit must also state nature of such action and ground or grounds for attachment. If action is based on breach of contract, affidavit must state that plaintiff is entitled to recover amount for which judgment is sought over and above all counterclaims known to him; and if it is alleged as ground for attachment that defendant has done or is about to do any act with intent to defraud his creditors, affidavit must state facts and circumstances supporting such allegations. Verified complaint may be used as affidavit. (1-440.11).

Attachment Bond.—Plaintiff must furnish bond in such amount as court deems necessary to afford reasonable protection to defendant, in no case to be less than \$200. (1-440.10).

Order of Attachment.—Upon giving of proper bond and filing of affidavit, court will issue order of attachment directing sheriff to attach and safely keep all property of defendant within sheriff's county which is subject to attachment, or so much thereof as is sufficient to satisfy plaintiff's demands, plus costs and expenses. (1-440.12). Additional orders of attachment may be then or later issued, directed to sheriff of any other county in which defendant may have property. (1-440.13).

Levy.—Provision is made for levy on real property (1-440.17), levy on tangible personal property in defendant's possession by seizure thereof (1-440.18), levy on stock in corporations (1-440.19), and levy on goods in warehouses (1-440.20). Levy on other tangible personal property not in defendant's possession is made as provided by 1-440.25 relating to garnishment. Sheriff is not required to levy upon personal property before levying upon real property. (1-440.15).

Exemption.—Payments constituting aid to blind award not subject to levy under execution, attachment or garnishment. (111-18).

Lien.—Upon securing order of attachment, plaintiff may cause notice of issuance of order to be filed with clerk of court in any county in which plaintiff believes defendant has real property. Clerk must file this notice on *lis pendens* docket. Where levy is made on real prop-

erty, lien attaches and relates back to time of filing of notice of lis pendens. If no entry of issuance of order of attachment is made on lis pendens docket of county in which land lies prior to levy, lien attaches only from time of docketing of certificate of levy. A levy on tangible personal property in hands of a garnishee creates lien from time of such levy. (1-440.33).

Priorities.—Priority of attachment liens is same as order in which attachments were levied, subject to aforementioned provisions relating to time when lien of attachment begins with respect to real property. Simultaneous levies create simultaneous liens, and in such case proceeds are prorated among attaching creditors. (1-440.33).

Release of Property.—Defendant may move court to discharge attachment upon his giving bond for property attached. Such motion constitutes general appearance if no prior general appearance has been made by defendant. Amount of bond must be double amount claimed by plaintiff or double value of property attached, whichever is less. Upon filing of satisfactory bond, court will issue order discharging attachment in accordance with defendant's motion. (1-440.39).

Sale.—Before judgment, sheriff may apply to court for authority to sell property seized pursuant to order of attachment (1) if property is perishable or (2) if property is not perishable but (a) will materially deteriorate in value pending litigation or (b) will likely cost more than one-fifth of its value to keep pending final determination of the action. (1-440.44).

Third Party Claims.—Any person other than defendant who claims property which has been attached, or any person who has acquired lien upon or interest in such property, whether acquired prior to or subsequent to attachment, may (1) apply to court to have attachment order dissolved or modified, or to have bond increased, upon same conditions and by same methods as are available to defendant, or (2) intervene and secure possession of property in same manner and under same conditions as provided for intervention in claim and delivery proceedings. (1-440.43).

Vacation or Modification.—At any time before judgment in principal action, defendant whose property has been attached may specially or generally appear and move court to dissolve order of attachment. When defect alleged as ground for motion appears upon face of record, motion is heard and determined upon record. When defect does not appear upon face of record, motion is heard and determined upon affidavits filed by plaintiff and defendant, unless prior to hearing jury trial demanded in writing by plaintiff or defendant. If jury trial demanded, issues are determined at trial of principal action unless judge orders earlier or separate trial. (1-440.36). At any time before judgment in principal action, defendant may apply to court for order modifying order of attachment and motion is heard upon affidavits. (1-440.37).

North Dakota Law Digest

Attachment

Actions in Which Allowed.—Remedy of attachment may be used in action on contract or judgment for recovery of money only, for the wrongful conversion of personal property, or for damages, whether arising out of contract or otherwise. (32-08-01).

Courts Which May Issue Writ.—Warrant of attachment may be issued by district court (32-08-01), county court of increased jurisdiction (27-08-20) or justice court. (33-05-01).

Against Whom Writ May Issue.—Writ may issue against any individual or corporate defendant, provided grounds exist, but property of banks is exempt from attachment. (6-08-06).

Claims on Which Writ May Issue.—Writ may issue in any action for recovery of money only, whether or not due and payable within this State: attachment may issue on a claim before it is due if grounds for attachment number 3, 4, 6 or 7 exist. (32-08-02).

Grounds.—The grounds for attachment are that the defendant: (1) Is not a resident of the State, or is a foreign corporation; (2) has absconded or concealed himself; (3) has removed or is about to remove his property, or a material part thereof from this State, not leaving enough therein for the payment of his debts; (4) has sold, assigned, transferred, secreted, or otherwise disposed of, or is about to sell, assign, transfer, secrete; or otherwise dispose of his property with intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; (5) is about to remove his residence from the county where he resides, with the intention of permanently changing the same, and fails or neglects, on demand, to give security for the debt on which the action is commenced; (6) incurred the debt upon which the action is commenced for property obtained under false pretenses; (7) is about to remove his property or a material part thereof, from the State, with the intention or effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts; and (8) that the action is to recover purchase money for personal property sold to the defendant.

In action against owner of motor vehicle for damage alleged to be caused by negligence of owner or agent, the motor vehicle alleged to have caused the accident may be attached. (32-08-01).

Proceedings to Obtain.—Warrant of attachment may be issued upon filing with the court a verified complaint, an affidavit setting forth one or more of the grounds of attachment in the language of the statute, and the attachment bond. (32-08-05).

Bond.—Plaintiff is required to give an undertaking with sufficient sureties, in amount in discretion of court and in no case less than \$500 (32-08-06), except in justice court, bond must be not less than \$50 (33-05-02).

Issuance.—Warrant of attachment is issued by clerk of court in which action is commenced, and is attested in name of presiding judge, and sealed with seal of court (32-08-04) or if in a justice court, by justice (33-05-01).

Levy of a warrant is made as follows: (1) Upon real property by the sheriff filing with the register of deeds of the county in which the property is situated, notice of attachment, subscribed by him, stating the names of the parties to the action, the amount of the plaintiff's claim as stated in the warrant and a description of the property levied upon, which notice must be recorded and indexed by the register of deeds in his office (2) upon personal property which by reason of its bulk or other cause cannot be immediately removed, and range cattle and horses between Nov. 1 and May 15, by the sheriff filing with the register of deeds a notice of the same kind as in case of real property;

(3) upon personal property capable of manual delivery, including bonds, promissory notes or other instruments for the payment of money, by taking the same into the sheriff's actual custody, and delivering a copy of the warrant to the person from whose custody such property is taken; (4) upon other personal property by leaving a copy of the warrant and a notice showing the property attached with the person holding the same, or, if it consists of a demand other than as above specified, with the person against whom it exists, or if it consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier or managing agent thereof. (32-08-10).

In cases (1) and (2) above the sheriff must, within 30 days after the levy, serve the warrant of attachment together with a notice of levy, describing the particular property levied on, in the manner provided for the service of a summons, as follows: (1) If the levy is made upon real property, upon the occupant thereof, if any; (2) if upon personal property, upon the person in whose custody the same may be. The failure of the sheriff to serve such warrant or notice does not invalidate the levy, but the sheriff is liable to the person whose property is attached for any damages which he may sustain by reason of such default. (32-08-12).

Lien of attachment is valid from time of levy. (32-08-10).

Priorities.—Attachments rank in order of times of levies. Lien of attaching creditor is superior to claims of subsequent purchasers or incumbrancers and, as to land, superior to unrecorded conveyance or lien. (47-19-41).

Discharge.—The defendant may at any time after he has appeared in the action and before final judgment apply to the clerk who issued the attachment or to the court to discharge the attachment as to the whole or any part of the property attached. (32-08-18). On such application defendant must give an undertaking with sufficient surety to the effect that the attached property shall be forthcoming in substantially as good condition as it is at the time of the application to answer any judgment which plaintiff may recover against him in the action. The undertaking must be in an amount equal to the value of the property according to the sheriff's inventory; or the defendant may at his election give an undertaking with sufficient surety to the effect that he will on demand pay to the plaintiff the amount of any judgment which may be recovered in the action against him not exceeding a sum specified in the undertaking, with interest. The sum so specified must be at least equal to the amount of the plaintiff's demand as specified in the warrant of attachment; or, at the option of the defendant, equal to the appraised value of the property attached according to the sheriff's inventory, or, if the application is to discharge the attachment as to a part only of the property attached, equal to the appraised value of that part. (32-08-19).

Sale.—Perishable property may be sold by order of court by sheriff at public auction with or without notice as urgency of case may require; if attached property is liable greatly to depreciate in value during the pendency of the action, or consists of live animals, sale may be ordered by court on notice. (32-08-17).

In case plaintiff recovers judgment, sheriff shall satisfy same out of property attached by selling attached property under execution. (32-08-27).

Third Party Claims.—If a third person makes affidavit of title, or right to possession of attached property, stating value and ground of title or right, sheriff may release levy unless plaintiff on demand indemnifies sheriff against such claim by an undertaking, with sufficient surety: no claim exists against sheriff as such unless third party claim is filed. (32-08-13).

Vacation or Modification.—Defendant at any time after appearance and before final judgment may apply to court for discharge of attachment in whole or in part. (32-08-18).

Similar application may be made by any person who has acquired a lien or interest in the property after it is attached. (32-08-24).

Grounds for attachment may be challenged and heard by court on affidavit or other proof, and if appears attachment was irregularly issued, or that affidavit on which it was issued was untrue, attachment must be discharged (32-08-24), thereupon sheriff must surrender property to defendant (32-08-25).

Ohio Law Digest

Attachment

Actions in Which Allowed.—Any civil action for the recovery of money.

Courts Which May Issue Writ.—Court of common pleas, county or municipal court.

When Writ May Issue.—At or after commencement of action.

In Whose Favor Writ May Issue.—Any plaintiff, including non-resident or foreign corporation.

Claims on Which Writ May Issue.—No requirement that claim sued on be payable in State. See also infra, subhead Attachment before Debt Due.

Grounds for attachment against property other than personal earnings in court of common pleas are that defendant or one of several defendants: (1) Is foreign corporation which has not qualified to do business in State; (2) is not resident of State; (3) has absconded with intent to defraud creditors; (4) has left county of residence to avoid service of summons; (5) so conceals himself that summons cannot be served; (6) is about to remove his property or part thereof, out of jurisdiction of court, with intent to defraud creditors; (7) is about to convert his property, or part thereof, into money for purpose of placing it beyond reach of creditors; (8) has property or rights in action which he conceals; (9) has assigned, removed or disposed of, or is about to dispose of, property or part thereof with intent to defraud creditors; (10) has fraudulently or criminally contracted debt, or incurred obligation for which suit is about to be or has been brought; (11) that claim is for work, labor or necessaries; or (12) has not complied with provisions of bulk transfers law. (2715.01).

Attachment will not be granted on grounds (1) or (2) unless claim is for debt or demand arising on contract, judgment, or decree, or for causing damage to property or death or personal injury by negligent or wrongful act. (2715.01).

Attachment through garnishment granted against personal earnings only after judgment obtained by plaintiff. (2715.01).

County court attachment may issue in civil action for recovery of money, before or after its commencement, on any of grounds (3) to

(11) available in court of common pleas, or if claim arises on contract, judgment or decree, on ground that defendant is corporation with no officer to serve or no place of business in county. (1911.21).

Affidavit must be filed by plaintiff, his agent or attorney showing: (1) Nature of his claim; (2) that it is just; (3) amount which affiant believes plaintiff ought to recover; and (4) existence of any of foregoing grounds. (2715.03).

If action is before county court judge, affidavit must also state that property sought to be attached is not exempt from execution, attachment or sale to satisfy judgment or order. (1911.21).

Statutory demand must be served upon debtor after judgment obtained before order for attachment of personal earnings is granted. (2715.02). See topic Garnishment.

Orders to Different Counties.—Orders of attachment may issue to sheriffs of different counties.

Bond in double amount of plaintiff's claim must be given unless ground of attachment is that defendant is nonresident or foreign corporation. In case before county court no bond required on claim for work. Plaintiff may, in lieu of bond, deposit currency or negotiable government bonds in amount double amount of claim. (1911.22, 2715.04). Upon defendant's motion, if plaintiff's surety moved from State or is not sufficient, order of attachment may be vacated unless additional security given. (2715.43).

Attachment Before Debt Due.—Before claim is due, creditor may sue and attach debtor's property when debtor, with intent to hinder, delay or defraud creditors: (1) Has sold, conveyed or otherwise disposed of property; (2) is about to make such sale, conveyance, or disposition of property; or (3) is about to remove property, or material part thereof. (1911.58, 2715.50). Before such action is brought, or such attachment granted, plaintiff, his agent or attorney, must make oath in writing showing nature and amount of plaintiff's claim, that it is just, when due, and existence of one of aforementioned grounds. (1911.59, 2715.51).

If attachment is refused action is dismissed without prejudice to future action. (1911.60, 2715.52). Bond is required as in cases of attachment after debt is due. (1911.62, 2715.54). Attachment proceedings are conducted without delay, but no judgment is entered on claim before debt becomes due. (1911.63, 2715.55).

Exemptions.—See topic Exemptions.

Levy.—Sheriff must go to place where defendant's property is and in presence of two freeholders of county declare that by virtue of order he attaches property at suit. True inventory and appraisement must be signed by officer and freeholders and returned with order. When real property is attached, officer must leave with occupant thereof, or if there is no occupant, in conspicuous place thereon, copy of order. When personal property is attached, officer must take it into custody and hold it subject to order of court. (2715.09).

In county court cases levy is made by constable in substantially same manner (1911.25), except that he cannot levy on real property (1911.56).

Indemnity.—No statute authorizing officer to demand indemnity before levying.

Priorities.—Attachments against same defendant must be executed in order received by officer (1911.25, 2715.08) and attachment liens have priority in order of levies (1911.29, 2715.19).

Discharge.—Attachment must be discharged if judgment in action in attachment is for defendant (1911.47, 2715.36) and may be discharged on motion (1911.27, 2715.44) on ground that affidavit is insufficient (79 O.S. 328, 71 N.E. 712), that facts stated are not true (29 O.S. 538), that attachment was obtained by illegal means or fraud (S.C.C. 674) or, in common pleas court, that plaintiff has failed to give additional security as ordered by court (2715.43).

Attachment must be discharged on giving of bond in double amount of plaintiff's claim that defendant will perform judgment of court. In lieu of bond defendant may deposit currency or negotiable government bonds in double amount of plaintiff's claim. (1911.55, 2715.26). Except in claim for causing death or personal injury by negligent or wrongful act court sets bond (2715.27). Officer making levy must return property to person in whose possession it was found, on giving such bond in double appraised value of property. (1911.26, 2715.10).

After order issues, if defendant dies or defendant corporation loses charter, proceedings continue. (2715.42).

Disposition of Property.—In cases in common pleas court receiver may be appointed to collect evidences of debt and may bring suit. (2715.20-21). On notice of appointment defendant's debtors become liable to plaintiff and must account to receiver. (2715.22). If no receiver is appointed attaching officer has powers and duties of receiver. (2715.24).

Sale.—Attached property may be sold while suit is pending when, because of perishable nature (1911.32, 2715.25) or in common pleas court, cost of keeping it (2715.25), sale would benefit parties. If judgment is entered for plaintiff property is sold as if taken on execution. (1911.49, 2715.37).

Claims of third persons are tried as in case of property taken on execution and claimed by third person. (1911.51, 2715.40).

Oklahoma Law Digest

Attachment

Actions in Which Allowed.—An attachment may issue in any action for the recovery of money. (12-1151).

Courts Which May Issue Attachment.—District court has jurisdiction.

When Attachment May Issue.—An attachment may be issued at or after commencement of the action. (12-1151).

In Whose Favor Attachment May Issue.—Any plaintiff, including a nonresident or foreign corporation, may obtain an attachment.

Claims on Which Attachment May Issue.—Attachment may issue where the claim is not yet due, although in such case the grounds differ somewhat from those in case of matured claim. (See *infra*, subhead Grounds).

Property Liable.—Nonexempt real estate and personal property including shares or rights of defendant in any domestic or foreign corporation licensed in State, are subject to attachment. (12-891-6). Mortgaged chattels may be attached provided plaintiff pays or tenders amount of mortgaged debt or deposits amount with county treasurer.

Plaintiff is subrogated to rights of mortgagee in event attachment is discharged.

Grounds are that defendant, or one of several defendants: (1) Is a foreign corporation or a nonresident of the State; (2) has absconded with intent to defraud creditors; (3) has left county of his residence to avoid service of summons; (4) so conceals himself that service cannot be had upon him; (5) is about to remove property out of jurisdiction of the court with intent to defraud creditors; (6) is about to convert property into money for purpose of placing it beyond reach of creditors; (7) has property or rights in action which he conceals; (8) has assigned, removed, or disposed of, or is about to dispose of property with intent to hinder, delay, or defraud creditors; (9) fraudulently contracted debt, liability, or obligation, for which suit has been or is about to be brought; or (10) where action is for injuries arising from commission of a felony or misdemeanor, or for seduction of a female; or (11) when debtor has failed to pay price or value of an article or thing delivered which he was bound to pay for on delivery. Attachment may not issue on first ground stated above for any claim other than demand arising on contract, judgment or decree, unless cause of action arose wholly within the State. (12-1151).

Where the claim is not yet due, plaintiff may have an attachment if the debtor has sold, conveyed or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or delay them in the collection of their debts, or is about to make such disposition of his property with such intent, or is about to remove his property or a material part thereof with such intent. (12-1243).

Affidavit for Attachment.—The plaintiff or his agent or attorney must file an affidavit showing the nature and amount of plaintiff's claim, that it is just, and the existence of one or more of the grounds of attachment hereinbefore stated. (12-1152).

Where the claim is not yet due the affidavit must show also when it will become due and must set out one of the grounds for attachment on such a claim. In such case the attachment may be conducted without delay but no judgment may be issued until the claim is due. (12-1244).

Bond is not required when all defendants are nonresidents, in cases against a foreign corporation or where State of Oklahoma is party plaintiff. Otherwise, an undertaking in not less than double amount of plaintiff's claim, with one or more sureties to be approved by the clerk, is required, which must be conditioned that plaintiff will pay to defendant all damages he may sustain by reason of attachment including a reasonable attorney's fee. (12-1153-3).

Order of attachment is issued by the clerk of the court in which the action is brought or is pending.

Several orders may, at option of plaintiff, be issued at same time or in succession and to different counties. (12-1155). A separate petition should be filed in main action as in other cases.

Levy.—Order of attachment is executed by sheriff, who must make inventory and appraisal of all property attached. (12-1158). When real property is attached a copy of the order must be left with occupant. Personal property is taken into his custody where sheriff can get possession. (12-1159).

Indemnity.—There is no statutory provision authorizing a levying officer to require indemnity.

Lien.—Valid attachment proceedings give rise to a lien subsisting until discharged or satisfied. (14 Okl. 115, 77 Pac. 36).

Priorities.—Attachments have priority in order in which they are delivered to the sheriff. (12-1157).

Where several attachments are executed on the same property, court may determine the amounts and priorities thereof.

Release of Property.—Sheriff must redeliver attached property to person in whose possession it was found upon execution by such person of undertaking to plaintiff, with sufficient sureties, in double the appraised value of the property, that the property or its appraised value will be forthcoming to answer the judgment of the court. (12-1160).

Discharge of Attachment.—Bond for release of property (see *supra*) does not discharge attachment. (299 Fed. 816). Attachment is discharged and restitution of property is made if defendant, before judgment, executes an undertaking to plaintiff, with sufficient sureties, in double the amount of plaintiff's claim, that he will perform the judgment of the court. (12-1230).

Vacation or Modification of Attachment.—Defendant may, at any time before judgment, upon reasonable notice to plaintiff, move to discharge all or any part of the property attached. (12-1241).

Sale.—Court may direct sale of property during pendency of suit, where, because of perishable nature or cost of keeping it, a sale would benefit the parties. (12-1229).

Third Party Claims.—Third party claiming attached property may intervene in action. (12-1241).

Disposition of Property or Proceeds Thereof.—If judgment is rendered for defendant, attached property, or its proceeds, are returned to him. (12-1234). If judgment is rendered for plaintiff, it is satisfied by applying proceeds of sale of perishable property, and so much of remaining attached property as may be necessary is sold by order of court under same regulations and restrictions as if levied on by execution. (12-1235).

Oregon Law Digest

Attachment

Actions in Which Allowed.—A writ of attachment may be had in an action upon contract, express or implied, for the direct payment of money, not secured by mortgage, lien or pledge, upon real estate or personal property, or if so secured, when such security has been rendered nugatory by act of the defendant, or in action upon contract, express or implied, against a defendant not residing in this State, or in an action against a defendant not residing in this State to recover a sum of money as damages, arising from a breach of any contract, whether made in this State or elsewhere, express or implied, other than a contract of marriage, or in an action against nonresident for damages arising from injury to real or personal property in this State (29.110), except that no writ may be had to effect attachment of a consumer good or any property for claim based on a consumer transaction unless quasi in rem jurisdiction is sought and court finds that defendant neither resides nor maintains a place of business within State or that in personam jurisdiction cannot be effected (29.030; 29.040).

Courts Which May Issue Writ.—Court in which action pending issues writ. (29.120).

Against Whom Writ May Issue.—No attachment may issue against a State bank before final judgment. (711.610).

Claims on Which Writ May Issue.—An attachment may be had on a claim which is not payable within the State, but cannot be had upon a claim which is not due. (153 Or. 248, 56 P.2d 336).

Time For Issuance of Writ.—Attachment may be had at time of issuance of summons or after such time. (29.110).

Grounds.—See supra, subhead Actions in Which Allowed, and subhead Proceedings to Obtain, infra.

Proceedings to Obtain.—Upon plaintiff's affidavit meeting detailed requirements, court shall issue order for defendant and persons in possession of property to appear, 3 to 7 days after service, to show cause why provisional process to take possession or restrain disposition or use of property shall not issue. Court shall issue provisional process if after hearing it finds probable cause for sustaining plaintiff's claim. Order may issue without hearing if court finds defendant voluntarily, intelligently and knowingly made written waiver meeting statutory requirements, and no reason to believe waiver invalid. Upon certain findings where plaintiff meets requirements for injunction, court may, in its discretion and without hearing, issue temporary order restraining injury or removal of property, and requiring defendant to show cause why order should not continue during pendency of proceedings. If court finds that before hearing defendant has or is about to harm, remove or similarly threaten property, or defendant would not comply with a temporary restraining order, it may issue provisional process. (29.025-.075). *Caveat.*—Oregon attachment statute (29.110-.120) was held unconstitutional and its use enjoined in Multnomah County (Portland), insofar as it provided for prejudgment attachment without notice and opportunity for prior hearing, as required by due process of law. (Conaway v. Green, Multnomah Cir. Ct. No. 375655, Dec. 7, 1972; see 407 U.S. 67). It is unclear how 29.025-.075, which establishes a hearing procedure prior to issuance of attachment, replevin and garnishment, affects other procedures relating to issuance of these types of provisional process.

Attachment Bond.—Plaintiff must file with clerk undertaking with one or more sureties in a sum not less than \$100 and equal to amount for which he demands judgment. (29.130). Sureties on an attachment bond must be householders or freeholders in State (29.130; 29.610) or a qualified surety company (743.732).

Property Subject to Attachment.—The rights or shares which defendant may have in the stock of any association or corporation, together with the interest or profits thereon, and all other property, other than consumer goods (29.030), in this State of defendant not exempt from execution are subject to attachment. (29.140). See also topic Garnishment, subhead Wages.

Levy may be on real or personal property in circuit or county court; but only on personalty in district or justice court. (52.210, .250; 46.090). Sheriff levies on personal property not in possession of a third person by taking it into his possession, on real property by filing a certificate with county clerk. If personal property is in possession of third person, sheriff leaves certified copy of writ and notice specifying property attached with said person; but if debt, with debtor; if stock, or if wage or salary claim against corporate debtor, with registered agent or

designated corporate official; if bank, with bank official. (29.170). Levy on security (78.3170) or debt evidenced by negotiable instrument (242 Cr. 162, 408 P.2d 925) only by possession.

Lien continues until discharged by order of court or judgment for defendant or until officer holding personal property gives up possession. (29.400).

Priorities.—Attaching creditors do not share pro rata, but are paid in the order of their levy. (40 Cr. 412, 67 P. 299).

Release of Property.—Property attached may be returned to the defendant upon his giving a counter undertaking to redeliver or pay the demand. (29.220).

Sale.—Levying officer may sell perishable property or livestock and retain proceeds in its place. (29.200).

Third party claims may be tried by sheriff's jury or by court in a summary manner. (29.210).

See also topics Executions; Garnishment.

Pennsylvania Law Digest

Attachment

The various forms of attachment herein discussed are available to proper plaintiffs including nonresidents and foreign corporations.

Foreign attachment is a means of commencing an action by attaching property located in Pennsylvania belonging to a nonresident defendant. Except as otherwise provided by the Rules of Civil Procedure relating to foreign attachment, procedure is in accordance with the rules relating to the appropriate action at law or in equity. (R. C. P. 1251).

Actions in Which Allowed.—Writ of foreign attachment may be issued to attach property of defendant not exempt from execution, upon any cause of action at law or in equity (other than an action ex delicto arising from acts committed outside Commonwealth which is not required to be joined with an action in assumpsit under R. C. P. 1020[d][1]), in which relief sought includes a judgment or decree for payment of money when: (1) defendant is an individual nonresident of Pennsylvania, even though he is present in State; (2) defendant is a partnership or unincorporated association without a regular place of business in Pennsylvania and action is against defendant in its firm or association name, even though one or more members are present in or residents of State; (3) defendant is a foreign corporation or similar entity, which is not registered in Pennsylvania. (R. C. P. 1252).

A foreign attachment may be issued in a pending action if at time of issue a foreign attachment could have been used to commence the action.

Courts which may issue writ are the courts of common pleas of the various counties. Foreign attachment is not available in courts of justices of the peace. (R. C. P. J. P. 325[3]).

Foreign attachment against personal property of the defendant may be issued: (1) against personal property only in a county in which the property is located or a garnishee may be served; (2) against real property of the defendant only in a county where all or any part of the property is located. (R. C. P. 1254).

Any person may be made a garnishee and is deemed to have possession of property of defendant if he owes a debt to defendant, has prop-

erty of defendant in his custody, possession or control, holds as a fiduciary property in which defendant has an interest or legal title to property of defendant whether or not in fraud of creditors. (R. C. P. 1253). Investment securities which are outstanding can be attached only by manual seizure by sheriff of the securities themselves, but a security surrendered to the issuer may be attached at the source. (12A-8 [317]). Unless document was originally issued upon delivery of goods by a person with no power to dispose of them, if a negotiable document of title such as a bill of lading or warehouse receipt is outstanding with respect to goods, the goods cannot be attached unless document first be surrendered or its issuance enjoined. (12A-7 [602]).

In Whose Favor Writ May Issue.—There is no provision discriminating against nonresident or foreign corporation plaintiffs. For requirements pertaining to plaintiffs generally, see Actions, subhead Parties.

Against Whom Writ May Issue.—See supra, Actions in Which Allowed and Courts Which May Issue Writ.

Claims on Which Writ May Issue.—Writ may issue only where plaintiff has a cause of action as stated above under this subhead. Since there must be a cause of action, the writ normally may not be issued upon an unmaturing claim.

Proceedings to Obtain.—Attachment is commenced by filing with prothonotary a praecipe for a writ directing sheriff to attach such specific items of defendant's property as are set forth in the praecipe and all other property of defendant. The praecipe must state amount of plaintiff's claim. (R.C.P. 1255). Writ is served in same manner as writ in assumpsit (see Process) upon named garnishee and upon any person not named as garnishee who is found in possession of property of defendant. (R.C.P. 1257). Plaintiff must file complaint when he files the praecipe or within 5 days thereafter. If complaint is not so filed, defendant or any garnishee may order prothonotary to enter judgment of non pros. Complaint when filed is served on garnishee in same manner as complaint in assumpsit. Defendant may be served with writ or complaint, but failure to do so does not affect validity of the attachment. If defendant is served, appears or files a bond or security, the action proceeds as if commenced by personal service of a summons or complaint. See Actions; also Process.

Defendant may appear specially and, without subjecting himself to the jurisdiction of the court, raise the defenses of immunity or exemption of the property from attachment, or that no property of defendant was in garnishee's possession when attachment was served. These defenses are raised by preliminary objection under R. C. P. 1017(b) (1) (see Actions) or by a petition to open judgment filed any time before garnishee files his answer to interrogatories. (R. C. P. 1271). After expiration of 45 days after execution of writ, plaintiff may take default judgment against any defendant who has not been served, has not appeared and has not filed bond or security, provided that a complaint has been filed at least 20 days prior to the judgment and no preliminary objections are pending.

Attachment Bond.—No bond or security is required of plaintiff in connection with issuance of writ.

Levy and Lien.—Service of writ upon garnishee attaches all personal property of defendant in garnishee's possession at time of service

and, if garnishee had any such property in his possession at time of service, writ also attaches all personal property which thereafter comes into garnishee's possession until judgment is entered against garnishee. If no one is in possession, sheriff attaches property by manual seizure. (R.C.P. 1258). Service of writ upon garnishee enjoins him from opening or permitting opening of a safe deposit box except as directed by court.

Service of writ upon the person in actual possession attaches real property (R. C. P. 1260) and binds the same as against purchasers and mortgagees (12-2942). If no one is in possession, sheriff posts copy of the writ upon the land and sends defendant a copy by registered mail to last known address; if no address is known, notice is published pursuant to general rule or special order of court. A mortgage, judgment lien or incorporeal hereditament owned by defendant may be attached by serving as garnishee the owner of the real property subject thereto. Service of writ upon tenant attaches rent due and to become due until judgment is entered against him.

Upon giving bond, plaintiff may require sheriff to take manual possession of any tangible personal property of defendant.

Indemnity.—Bond or security may be required of plaintiff (1) by sheriff for the actual or estimated cost of retaining possession of tangible personal property manually seized by sheriff or (2) by court to indemnify garnishee against loss caused by forcible opening of safe deposit box.

Priorities.—Writ of foreign attachment, when issued and indexed by the prothonotary, attaches real property at time writ is served upon person in possession of the property, and takes priority as of time writ issued. (R. C. P. 1255, 1260: 12-2942). As to personalty, priority of attachment gives priority of lien.

Release of Property.—Attachment is not dissolved by service of writ on defendant, or by his appearance, or by death or dissolution of a defendant or garnishee. Attachment is dissolved when any person or party (1) files a bond, with security approved by the prothonotary, in double amount of plaintiff's claim, or in such lesser sum as court may direct, naming Commonwealth of Pennsylvania as obligee, conditioned to pay plaintiff amount to which he is entitled upon final judgment, with interest and costs or (2) deposits with prothonotary or sheriff security in legal tender in an amount equal to plaintiff's claim, with probable interest and costs. (R. C. P. 1272a-c). Specific property may similarly be released. If plaintiff fails to proceed in time against garnishee, latter may cause attachment to be dissolved as to him.

Sale.—Perishable property attached may be preserved, sold or disposed of as court may order. (R. C. P. 1258).

Procedure as to Garnishee.—Within 20 days after service of writ upon him, garnishee must file a report under oath setting forth in detail all property of defendant in his possession, or stating that property is immune or exempt. Garnishee must promptly forward to defendant a copy of writ, complaint and garnishee's report, by delivering copy to defendant by a competent adult within or without Pennsylvania in the manner prescribed for serving a writ of summons in action of assumpsit or by sending copy by registered mail to defendant's last known address. If garnishee forwards copies as required, he is under no duty to resist the attachment or defend the action. The

garnishee may, but need not, file preliminary objections raising the defense of immunity or exemption of the property from attachment and the defense that no property of defendant was in garnishee's possession at time writ was served.

After entry of judgment against defendant, plaintiff may file interrogatories directed to garnishee, in statutory form (R.C.P. 1356), endorsed with notice to answer in 20 days, respecting the property in garnishee's possession. Garnishee answers in manner provided for answering complaints in assumpsit. See Actions. Under "new matter," answer may include the defense of the immunity or exemption of property, the defense that no property of defendant was in garnishee's possession at time writ was served, or any defense or counterclaim which garnishee could assert against defendant if sued by him, but may not assert any defenses on behalf of defendant against the plaintiff or otherwise attack the validity of the attachment.

If garnishee fails to file report or answer the interrogatories, plaintiff may take default judgment against the garnishee. Judgment against the garnishee may also be entered upon the pleadings or after trial. Execution may be had upon such judgment as against property of defendant in possession of garnishee, or debt owed by defendant to garnishee. See Executions.

Fraudulent debtor's attachment may be issued as an original writ or may be issued in a pending action if at time of issue a fraudulent debtor's attachment could have been used to commence the action. Except as otherwise provided by the Rules of Civil Procedure relating to fraudulent debtor's attachment, procedure is in accordance with the Rules relating to foreign attachment, *supra*. (R. C. P. 1285).

Actions in Which Allowed.—A fraudulent debtor's attachment may be issued to attach personal property of the defendant not exempt from execution, upon any cause of action at law or in equity in which relief sought includes a judgment or decree for payment of money, when defendant with intent to defraud plaintiff has removed or is about to remove property from jurisdiction of the court, has concealed or is about to conceal property, has transferred or is about to transfer property, or has concealed himself within, absconded or absented himself from Pennsylvania. (R. C. P. 1286).

Courts which may issue writ are courts of common pleas. Foreign attachment is not available in courts of justices of the peace. (R. C. P. J. P. 325[3]).

As to service upon garnishees, see *supra*, subhead Foreign Attachment.

In Whose Favor Writ May Issue.—There is no provision discriminating against nonresident or foreign corporation plaintiffs.

Against Whom Writ May Issue.—See *supra*, Actions in Which Allowed and Courts Which May Issue Writ.

Claims on Which Writ May Issue.—Writ may issue only where plaintiff has a cause of action as stated above under Actions in Which Allowed. Since there must be a cause of action, the writ normally may not be issued upon an unmatured claim.

Proceedings to Obtain.—Fraudulent debtor's attachment is commenced by filing with the prothonotary (1) a praecipe for a writ directing sheriff to attach such specific items of defendant's personal property as are set forth in the praecipe, and all other personal prop-

erty of the defendant, (2) bond or security and (3) a complaint. The complaint must set forth the cause of action, the ground for attachment, a general statement of the fraud on which the attachment is based and, if plaintiff elects to file a bond in double the estimated value of the property, a statement of its value.

The writ and complaint are served by the sheriff in the same manner as in an action in assumpsit, but inability to serve the defendant does not affect validity of the attachment. If defendant is served, appears, or files a bond or security, action continues as if commenced by personal service of a summons or complaint.

Attachment Bond.—Plaintiff must give bond in either double the amount claimed or double the estimated value of the property to be attached, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee, conditioned that plaintiff shall pay defendant and any garnishee all legal costs, fees and damages sustained by reason of the attachment if it is adjudged that either the cause of action or the ground for attachment set forth in the complaint is not established. In lieu of bond plaintiff may deposit with the prothonotary security in the form of legal tender in an amount equal to one-half the amount which would have been required if bond were filed.

Levy under writ of fraudulent debtor's attachment can be made only upon personal property. (R. C. P. 1286).

Indemnity.—Bond or security may be required of plaintiff (1) by sheriff for actual or estimated cost of retaining possession of tangible personal property manually seized by sheriff and (2) by court to indemnify garnishee against loss caused by forcible opening of safe deposit box. (R. C. P. 1285, 1259-1262).

Priorities.—Successive fraudulent debtor's attachments have priority of lien in the order in which they come into the hands of the sheriff. (12-2715).

Release of Property.—Within such time as not to delay trial the defendant may raise defense of absence of grounds for the attachment by petition to dissolve attachment. Such a petition does not of itself subject defendant to the jurisdiction of the court. An attachment is dissolved when any person or party (1) files a bond with security approved by the prothonotary in same amount as the attachment bond theretofore filed with plaintiff's complaint, naming the Commonwealth of Pennsylvania as obligee, conditioned to pay plaintiff if final judgment is entered in his favor amount to which plaintiff is entitled or value of property attached, whichever is less or (2) deposits with the prothonotary or with the sheriff for the prothonotary security in the form of legal tender in an amount equal to one-half of amount of the bond theretofore filed with plaintiff's complaint.

Sale.—Perishable property may be preserved, sold or disposed of as the court may order. (R. C. P. 1285, 1258).

Procedure as to garnishees is the same as in foreign attachments, supra.

Rhode Island Law Digest

Attachment

Actions in Which Allowed.—Generally only allowed in action based upon a contract under which damages are susceptible of estimation and

determination. (24 R.I. 23, 51 Atl. 1044). Allowed in tort actions where defendant a nonresident. (10.5.6). See subhead Courts Which May Issue Writ.

Courts Which May Issue Writ.—Superior court and district court. Superior court, in civil action of an equitable character, may allow attachment by special order. (10.5.5).

In Whose Favor Writ May Issue.—Attachment may issue in favor of a nonresident or a foreign corporation.

Exemptions.—See topic Exemptions.

Claims on Which Writ May Issue.—Attachment may issue on a debt that is due and on unmatured debt absolutely payable at a certain date. (19 R.I. 220).

Proceedings to Obtain.—At time of commencement of action, or at any time thereafter prior to judgment plaintiff must file a motion for authority to attach defendant's assets, including real and personal property. Notice of motion must be served on defendant at least 5 days prior to hearing date. Motion will be granted only upon plaintiff's showing that he will probably prevail and that there is a need for furnishing plaintiff security in amount sought for satisfaction of judgment, plus interest and costs. In actions where plaintiff's claim against defendant has been reduced to judgment, defendant's assets may be attached without further hearing or notice. (10.5.2; R.C.P. and D.C.R. 4[j]).

Attachment Bond.—May be required. (R.C.P. and D.C.R. 4[j]).

Levy.—Real estate is attachable by the sheriff by filing a copy of the writ, containing a description of the real estate to be attached, with the recorder of deeds or town clerk in the city or town where the real estate is located. (10.5.9). Personal property is attachable to value commanded in writ and is kept by officer making attachment in his custody as security until he sells property or it is withdrawn from his custody. (10.5.10, 12).

Indemnity.—Levying officer has no right to require.

Priorities.—Rights of actual creditors are determined by time when sheriff actually serves trustee or takes possession of personal property or in case of realty, when copy of writ is filed in records of land evidence. (9.26.30).

Release of Property.—Personal property attached may be released within 48 hours after such attachment, exclusive of Sundays and legal holidays, by the defendant or some one in his behalf giving bond to the sheriff with satisfactory surety or sureties to pay judgment. (10.5.13). If no bond is given within that time, the attached goods are appraised and thereafter the attachment may be released at any time before final judgment by the defendant or some one in his behalf giving like bond to return the goods or pay double their appraised value or pay judgment. (10.5.16).

Real estate may be released by defendant giving surety company bond in amount of damages in writ or depositing such amount in cash with registry of court. (10.5.17).

Dissolution of Attachments.—Attachment dissolved if complaint in action is not filed within 30 days after such attachment. (10.5.45). Real estate attachment lien dissolved whenever the cause remains without action for a period of 6 years as shown by court docket. (10.5.44). See topic Executions.

Sale.—Animals, perishable goods and goods which cannot be kept without great and disproportionate expense may be sold after reasonable notice by order of court and proceeds paid into registry of court to be held as security to satisfy judgment or decree. (10.5.35-36).

Third Party Claims.—Interested persons may intervene and contest validity of attachment. (10.17.19).

Modification.—Defendant may move to reduce demand for judgment and amount of property attached or to release property from attachment. (10.5.18).

Wages.—Wage attachments permitted. See subhead Proceedings to Obtain, supra. See also Consumer Credit Protection Act. Title III (15 U.S.C.A. §§ 1671 et seq.).

South Carolina Law Digest

Attachment

Actions in Which Allowed.—Attachment will lie in any action for the recovery of money, whether on contract or in tort.

Courts Which May Issue Warrant.—Warrant of attachment must be obtained from the judge, clerk of court, or magistrate in which or before whom the action is brought or from the circuit judge. (10-904).

In Whose Favor Warrant May Issue.—Attachment may be obtained by any plaintiff, including a nonresident or foreign corporation.

Against Whom Warrant May Issue.—Attachment may issue against any defendant as to whom the necessary grounds (see infra) may be shown, whether or not a resident of the State.

Claims on Which Warrant May Issue.—It is not necessary that the claim sued on should be due when the warrant is issued. (10-903).

When Warrant May Issue.—Property of defendant may be attached at time of issuing summons or at any time thereafter during pendency of the action.

Grounds for attachment are that the defendant is a foreign corporation, or not a resident of the State, or that defendant has departed from the State with intent to defraud his or its creditors, or to avoid service of a summons, or keeps himself concealed within the State with like intent, or that defendant has removed or is about to remove property from this State with intent to defraud his creditors, or has assigned, disposed of or secreted, or is about to assign, dispose of or secrete property with like intent. (10-901).

Where debt is not due attachment will lie when it appears by affidavit that the debtor has departed from the State with intent to defraud creditors or to avoid service of summons, or keeps himself concealed in the State with like intent, or has removed or is about to remove property from the State with intent to defraud creditors, or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property with like intent. Judgment cannot be had until maturity of the debt and plaintiff must pay costs if the debt is paid on or before maturity. (10-903).

Purchase Money Claims.—Real or personal property may be attached in an action for unpaid purchase money thereof, even though none of the general grounds for attachment exist. (10-951).

Proceedings to Obtain.—In order to obtain an attachment it is necessary to file an affidavit showing that a cause of action exists against the defendant, specifying the amount and grounds of plain-

tiff's claim, and showing the existence of one or more of the grounds for attachment. (See *supra*).

Attachment Bond.—Before a warrant of attachment issues, plaintiff must give a bond for not less than \$250, except in a magistrate's court, not less than \$25. (10-908). The bond must be signed by plaintiff or duly authorized agent before the warrant is issued. (31 S.C. 360, 9 S.E. 1028; 55 S.C. 547, 33 S.E. 581).

Warrant of attachment is addressed to any sheriff or constable of any county where property of defendant may be and requires him to attach and keep property of defendant in his county sufficient to satisfy plaintiff's demand and costs. Several warrants may be issued at the same time to sheriffs or constables of different counties. (10-911).

Service of Summons in Action.—Personal service of summons must be made or publication thereof commenced within 30 days after attachment. (10-901).

Levy and Lien.—Attaching officer must attach real and personal property, unless exempt, including money, and takes into custody books of account, vouchers and papers relating to property. Attested copy of attachment of real estate must be served on owner and lodged in office of clerk of court of county in which property situated. If service is impossible copy and officer's return must be lodged in office of clerk of court. Record of attachments is kept by clerk. Lien attaches when warrant is lodged and attachments lodged the same day rank equally. Attachment lien is subject to all prior liens. (10-923 to 924).

Indemnity.—There is no statutory authority for the officer demanding an indemnity bond before levy.

Appraisal.—All property attached must be appraised. (10-927).

Release of Property.—Defendant or any person establishing a right to property may have the property released from attachment by giving bond in double the amount claimed by plaintiff. (10-930 to 932.1).

Third Party Claims.—If property be claimed by a party other than defendant, or by defendant or the person in possession, in the right of some third person, an issue is made up by the judge and trial had. If the party in possession or third person resides in a different county from the plaintiff the issue is tried in the county where the party in possession resides. (10-929).

Vacating.—An attachment may be vacated for irregularities or for failure to strictly follow the statute. (31 S.C. 360, 375, 9 S.E. 1028; 38 S.C. 228, 16 S.E. 774; 43 S.C. 443, 21 S.E. 331; see also 58 S.C. 398, 36 S.E. 744; 159 S.C. 378, 157 S.E. 72).

Uniform Commercial Code governs attachment of goods covered by negotiable documents, bulk transfers of goods and investment securities.

South Dakota Law Digest

Attachment

Caveat.—Lake Arrowhead Estates, Inc. v. Cummings, USDC Me., June 25, 1973, 42 LW 2035, where court held prejudgment attachment without prior notice and hearing violated Due Process Clause of Fourteenth Amendment.

Actions in Which Allowed.—If requisite grounds exist, resort may be had to attachment in any action. (21-17-2).

Courts Which May Issue Writ.—Writ may be issued in any court having jurisdiction of action. (21-17-2).

In Whose Favor Writ May Issue.—Any plaintiff, including foreign corporation authorized to do business in the State, may obtain an attachment. (21-17-2).

Against Whom Writ May Issue.—There are no statutory exemptions from the writ, so far as concern private individuals and private corporations.

Claims on Which Writ May Issue.—The writ may issue on any claim on which action may be maintained, and a creditor may bring action on a claim before it is due, and have attachment if defendant has removed, or is about to remove, property from South Dakota with intent to defraud or delay creditors; or has secreted, incumbered, transferred, or otherwise disposed of property, or is about so to do, with like intent; or if debt was incurred for property obtained under false pretenses, no judgment, however, to be rendered until claim is due and payable. (21-17-1).

Grounds.—Attachment may issue in any of the following cases: (1) When defendant is a corporation and has no officer, agent or attorney upon whom summons can be served within this State; (2) when defendant is not a resident of this State; (3) when defendant has departed from this State with intent to defraud or delay his creditors or to avoid service of summons or keeps himself concealed therein with like intent; (4) when defendant, either person or corporation, has removed or is about to remove any of his or its property from this State, with intent to defraud or delay his or its creditors; (5) when defendant, either person or corporation, has secreted, incumbered, transferred or otherwise disposed of, or is about to secrete, incumber, transfer or otherwise dispose of, any of his or its property with like intent; (6) when defendant has fraudulently contracted the debt or incurred the obligation for which the suit is, or has been brought; (7) in an action to recover purchase money, for personal property sold to defendant, an attachment may be issued and levied upon such property. (21-17-2).

Proceedings to Obtain.—To obtain an attachment, affidavit must be made by plaintiff or his agent or attorney, setting forth grounds of cause of action against defendant, and amount of claim, and alleging existence of one or more of the grounds of attachment as above indicated; and if attachment is to be limited to specific property of defendant, definite description thereof and declaration of its fair market value. (21-17-3).

Attachment Bond.—Plaintiff must give bond, with sufficient surety (or cash deposit) of at least twice amount claimed, or if amount claimed exceeds \$1,000, then in such amount claimed, but in no case exceeding \$10,000, to the effect that if defendant recovers judgment, or if court finally decides plaintiff was not entitled to attachment, plaintiff will pay all costs awarded defendant and all damages defendant sustains by the attachment, not exceeding the sum specified in the undertaking; except that if affidavit for attachment describes specific property to be attached and states fair market value thereof and limits attachment thereto, undertaking shall be amount of such declared value, but not less than \$250. (21-17-4, 5).

Levy.—Warrant of attachment may be levied on any or all property, real or personal, of defendant, liable to execution, including property held for him in the hands of third persons, and debts due and

owing to him, sheriff taking into possession books of account, and evidences of indebtedness. (15-18-20 to 27; 21-17-8, 9).

Indemnity.—There is no statutory authority for sheriff to demand indemnity before making a levy.

Lien of attachment effective from time of levy. (21-17-12).

Priorities between successive attachments are according to dates of actual levies.

Release of Property.—Defendant upon appearing may file with sheriff undertaking executed by corporate surety or two resident freeholders of the State, approved by sheriff, conditioned to pay on demand amount of any judgment which plaintiff may recover, with interest and costs. (21-17-25 to 30). Thereupon, sheriff gives written notice thereof to plaintiff's attorney, and within 3 days thereafter plaintiff may give written notice to sheriff of exception to sufficiency of sureties, in which case sheriff notifies defendant thereof, and sureties may justify in same manner as sureties under statutes relating to civil arrest. If no such exceptions are taken, or if sureties justify following such exceptions, warrant of attachment is dismissed, and any levy released. (21-17-25 to 30).

Dissolution.—Defendant or any person having a lien subsequent to attachment lien may move to dissolve attachment. (21-17-22, 23, 24, 31).

Sale.—If property seized is perishable, it may be sold by sheriff at public auction, this under order of the court, sheriff paying net proceeds of sale into court. (21-17-20).

Third party claims must be made to sheriff, who calls six jurors and gives plaintiff notice of trial of claim. If verdict is for claimant, sheriff will relinquish levy unless plaintiff gives indemnity. (15-18-31; 21-17-21).

Tennessee Law Digest

Attachment

Actions in Which Allowed.—Attachments lie in all civil actions, whether in contract or in tort (23-601-06), without limitation as to amount in controversy in proper cases.

Courts Which May Issue Writ.—Writ lies in court of law or equity or before justice of the peace. (19-405, 23-606).

In Whose Favor Writ May Issue.—Any person is entitled to issuance of writ, whether resident or nonresident (23-601; 190 Tenn. 1, 227 S.W. 2d 35), without restriction as to foreign corporation (42 Tenn. 153). Where both creditor and debtor are residents of same foreign state, the creditor must make oath that property of debtor has been fraudulently removed to this State to evade process in State of residence. (23-609).

Grounds.—The writ lies against property of: (1) Nonresident (will not lie against foreign corporation domesticated in Tennessee unless it has no agent on whom process may be served); (2) one who is about to remove or has removed himself or property from the State; (3) one who has removed, or is removing himself out of the county privately; (4) one who conceals himself so that ordinary processes of the law cannot be served upon him; (5) one who absconds or is absconding or concealing himself or his property; (6) one who has fraudulently disposed of, or is about to fraudulently dispose of, his property; (7)

decendent resident outside of State liable for debt leaving property in State. (23-601).

Claims on Which Writ May Issue.—Writ may be sued out upon debts or demands not due upon above grounds except the first, nonresidence of defendant. (23-602). If any other ground exist, it may issue against a nonresident. An accommodation endorser may sue out writ as a security for his liability. (23-603). No final judgment will be rendered until the debt matures. (23-604).

Proceedings to Obtain.—To obtain attachment, the plaintiff his agent or attorney, must make oath in writing stating the nature and amount of the debt, claim or demand, and that it is a just claim, and also that one or more of the grounds for attachment exist (23-613); a substantially accurate description of the property sought to be attached and its approximate value must be set forth in the affidavit or the bill, which must be sworn to (23-617).

Attachment Bond.—Bond conditioned to prosecute attachment with effect, or, in case of failure, to pay defendant all costs and such damages as he may sustain by reason of the wrongful suing out of the writ, must be filed by plaintiff, his agent or attorney. (23-615). The amount of the bond must be: (1) Where the amount of the claim is less than the value of the property to be attached, equal to the asserted claim plus an additional sum estimated to cover probable costs and damages; (2) where the amount of the claim is greater than the value of the property to be attached, be equal to the estimated value of the property plus estimated costs and damages; (3) where claim is for unliquidated damages, be equal to the value of the personal property to be attached plus estimated costs and damages; (4) where real property is attached, sufficient to cover all costs and damages only. (23-616).

Levy.—The writ is levied by the officer upon any real or personal property, whether interest therein is legal or equitable, debts and choses in action, whether due or not due. (23-632). Personalty must be exhausted before levy on real estate. (23-633).

Indemnity.—No provision is made for the officer to require indemnity.

Priorities between different attachments of same property are according to times of levies.

Release of Property.—The attachment may be discharged if the defendant give bond and security approved by the court, in term time, or its clerk in vacation, to indemnify the plaintiff. (23-605).

Sale.—No property levied upon, except it be perishable property, will be sold before final judgment or decree. (23-604).

Vacation or Modification.—Attachments issued without prescribed affidavit and bond may be abated by plea of defendant. (23-632).

Texas Law Digest

Attachment

Actions in Which Allowed.—Attachment may issue only after suit has been filed, but may be issued either at commencement or at any time during progress of litigation. (277). Attachment may be issued on every demand founded on breach of express or implied contract where damages are capable of definite ascertainment. Generally attachment does not lie in actions founded on tort, but in cases in which

personal service cannot be obtained in State, attachment may lawfully issue whether amount claimed is in tort or contract. (281).

Courts Which May Issue Writ.—Attachment must issue out of court where suit is filed. Clerk issues writ.

In Whose Favor Writ May Issue.—No limitation is imposed on issuance of the writ on account of residence or citizenship of plaintiff.

Against Whom Writ May Issue.—Attachment available against all persons who are indebted to plaintiff in main action whether they are artificial or natural persons, residents or corporations.

Claims on Which Writ May Issue.—Attachment may only issue upon a certain or liquidated demand, unless the suit out of which it issues is against parties upon whom personal service cannot be obtained within the State, in which case it may issue upon an unliquidated demand. (281). It may issue, however, upon a debt not yet due. (278). It is not necessary that the claim be payable in Texas.

Grounds for attachment are that defendant: (1) is a nonresident or a foreign corporation, or is acting as such; (2) is about to remove permanently out of State, and has refused to pay or secure debt due to plaintiff; (3) secretes himself so that ordinary process cannot be served; (4) has secreted his property to defraud his creditors; (5) is about to secrete his property to defraud his creditors; (6) is about to remove his property from State, without leaving sufficient remaining for payment of debts; (7) is about to remove his property or part thereof, from county, to defraud creditors; (8) has disposed of all or part of his property to defraud creditors; (9) is about to dispose of his property to defraud creditors; (10) is about to convert all or part of his property into money, to place it beyond reach of creditors; (11) obtained property for which debt is due by false pretenses. (275).

Proceedings to Obtain.—Before a writ of attachment may issue, the plaintiff or his representative must file a bond and an affidavit showing that the defendant is justly indebted to the plaintiff in an amount which must be stated, except in the case of an unliquidated claim against a defendant who cannot be served in the State; and also showing that one or more grounds for attachment exist, that the writ is not sued out to injure or harass defendant, and that unless the writ issues, plaintiff will probably lose his claim. (276).

Attachment bond must be filed by plaintiff before a writ of attachment will issue, which is payable to defendant, in an amount to be fixed by judge or justice of the peace issuing attachment, conditioned to pay all costs and damages for wrongfully suing out writ. (279). Where defendant resides beyond State and demand is unliquidated judge or clerk of court, or justice of peace, fixes amount of bond.

Levy.—The officer serving a writ of attachment may levy on any property subject to execution, in the same manner as levy is made under execution.

Indemnity.—Levying officer may require indemnity bond to protect him. (287).

Lien.—Levy creates a lien on the property levied upon from the date thereof. Personal property is taken by the officer and possession retained until final judgment unless defendant, or a third party replevies, or the property is ordered sold by the court. Should plaintiff recover judgment attachment, lien is foreclosed like any other lien. (Rule 598).

Priorities among attaching creditors are governed by dates of levies.

Release of Property.—A defendant in attachment may recover possession of attached property, by filing a replevy bond, amount of which, at his option, may be either twice claim of plaintiff, or twice value of property attached. (Rule 599).

Sale.—If property attached is perishable, court may order it sold and proceeds held to secure debt, or may make such other order for its preservation or use as it may deem for best interests of parties. (Rules 600-603).

Third Party Claims.—Any third person claiming property levied upon, may file an affidavit showing his claim, and a bond, and secure a trial of the right of property. (291). The procedure is as in cases of executions. See Executions.

Vacation or Modification.—Attachment may be vacated by motion to quash if objection is based on intrinsic defect discernible on face of paper. If objection is based on extrinsic defect, plea in abatement should be used.

Utah Law Digest

Attachment

(R. C. P. 64C).

The plaintiff, at any time after filing complaint, may have the property of the defendant, not exempt from execution, attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay said judgment.

Actions in Which Allowed.—Attachment may be obtained in an action upon a judgment or upon a contract, express or implied, or to recover damages for any tort committed by nonresident against person or property of resident.

Grounds.—Writ will issue against a defendant who: (1) Is not residing in this State; or (2) is a foreign corporation not qualified to do business in this State; or (3) stands in defiance of an officer, or conceals himself so that process cannot be served upon him; or (4) has assigned, disposed of or concealed, or is about to assign, dispose of or conceal, any of his property, with intent to defraud his creditors; or (5) has departed or is about to depart from the State to the injury of his creditors; or (6) fraudulently contracted the debt, or incurred the obligation respecting which the action is brought; or (7) where plaintiff alleges facts showing probable cause for being, and that he is justly apprehensive of loss of his claim unless attachment issues.

In Whose Favor Writ May Issue.—In a proper case, attachment may be had by any plaintiff, including a nonresident or a foreign corporation which has the right to sue in the State courts.

Against Whom Writ May Issue.—See subhead Grounds, supra.

Claims on Which Writ May Issue.—Attachment may issue in an action on a claim which is not payable in the State, provided the court has jurisdiction of the action.

Unmatured Claims.—A creditor may bring an action on his claim before it is due and have an attachment against the property of the debtor in the cases mentioned in subdivisions three, four, five and six of subhead Grounds, supra, and such property or its proceeds may be held subject to the judgment thereafter to be rendered, but no judgment may be rendered thereon until such obligation becomes due.

Proceedings to Obtain.—The clerk of the court must issue the writ upon receiving an affidavit by or on behalf of the plaintiff, which must be filed, setting forth: (1) That the defendant is indebted to the plaintiff, specifying the amount, as near as may be, over and above all legal setoffs and the nature of the indebtedness; (2) that the payment of the same has not been secured by mortgage, lien, or pledge of personal property situated in this State, or, if originally so secured, that such security has, without any act of the plaintiff or the person to whom the security was given, become impaired; (3) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant; and also (4) alleging, but not in the alternative, one or more of the causes hereinbefore set forth as the grounds of attachment.

Attachment Bond.—Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with sufficient sureties, in a sum not less than double the amount claimed by the plaintiff, but in no case exceeding \$10,000, or less than \$50. The conditions of such undertaking must be that, if the defendant recover judgment, or if the attachment is wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Indemnity.—See subhead Attachment Bond, supra.

Issuance of Writ.—Several writs may be issued at the same time to the sheriffs of different counties; and plaintiff may have other writs as often as he may require at any time before judgment.

At time of issuance of writ, or at any time thereafter, writ of garnishment may issue in aid thereof. See topic Garnishment.

Property Subject to Attachment.—The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this State, of such defendant, not exempt from execution, may be attached, and, if judgment be recovered, be sold to satisfy the judgment.

Levy.—Writ is executed: (a) in case of real property in defendant's name, or growing crops on such property, by filing with the county recorder a copy of the writ including description of the property attached and notice that it is attached, and leaving like copy of writ, description and notice with occupant of property, if there be one, otherwise posting same on the property; (b) in case of real property in the name of another or growing crops on such real property same as (a) above except that notice must name person in whose name property is recorded and notice must be given to that person and recorder must index under his name as well; (c) in case of personal property capable of manual delivery, by taking it into custody except that range stock, between November 1 and May 15 may be attached by filing with county recorder copy of writ and notice, together with statement of number with marks and brands, if any, or may be taken into custody by direction of plaintiff; (d) in case of shares of stock or an interest therein, by leaving with the president, secretary or other managing agent copy of writ and notice stating that the stock, or defendant's interest therein, is attached and taking the certificate into custody; (e) in case of debts and credits and other personal property not capable of manual delivery, by leaving with the person owing the debt or

having possession or control of credits or other personal property, a copy of the writ and a notice that the debts or credits or other personal property are attached in pursuance of the writ.

Sale.—If interest of parties is subserved thereby, property may be sold and proceeds deposited in court to abide judgment; or after judgment, to satisfy same—all as in case of execution.

Priorities.—Several attachments against the same defendant must be executed in the order in which they were received by the officer. Dates of levies control priorities.

Release of Property.—Defendant may obtain release of property by giving notice and bond with sufficient sureties to effect that if plaintiff recover defendant will deliver property to officer or full value to plaintiff; or defendant may obtain discharge of attachment by giving bond in double the amount claimed by plaintiff.

Vacation.—Upon reasonable notice to plaintiff, defendant may apply for discharge of writ if improperly or irregularly issued.

Lien.—No statutory provision.

Vermont Law Digest

Attachment

In any civil action, along with summons and complaint, except for malicious prosecution, libel, slander, or alienation of affection. (VRCP 4.1).

In Whose Favor Writ May Issue.—Not necessary that plaintiff be a resident of the State.

Grounds.—Where for attachment of personalty, only upon hearing showing probable grounds for complaint, and that amount of attachment is reasonable. Writ may be filed as if a financing statement under 9A-9-401 to secure chattel. (12-3251).

Possessory attachments require a motion, supporting affidavits, 5 days notice of hearing and finding by court of reasonable likelihood of recovery. (VRCP 4.1).

Dissolution and Modification.—Any time prior to final judgment, defendant may move for dissolution or modification on basis of lack of probable basis for plaintiff's complaint. (VRCP 4.1).

Attachment Bond.—Plaintiff must give defendant sufficient security by recognizance by some person other than plaintiff. (12-657).

Indemnity.—The officer to whom the writ is delivered may demand from plaintiff sufficient security to indemnify him before making a levy. (12-2741).

Sale.—Attached property is generally held and sold on execution at auction by the sheriff, but it may be sold before judgment on agreement of parties, and the money held to protect both parties in a declining market. (12-3401). The sheriff may sell perishable personal property or property which cannot be kept without great expense, or would be greatly reduced in value by keeping, upon the request of either party. (12-3403).

Proceeds of sale are held by the officer or by the court to be disposed of as the property would have been disposed of under final judgment. (12-3410).

Release of Property.—Debtor may release his property from attachment by filing a bond. A part of the property may be released by order

of the court when it appears that the value of the property attached is greatly in excess of the claim. (12-3221).

Filing.—Where attachment is of real estate, in office where deed recorded. (12-3291).

Virginia Law Digest

Attachment

Actions in Which Allowed.—Writ may be had on legal or equitable claim to any specific personal property or on claim on contract or for damages in tort. (8-519).

Courts Which May Issue Writ.—Jurisdiction is in circuit courts. (8-521). Where amount in controversy, exclusive of interest, does not exceed \$20, jurisdiction is before a district court judge (8-564) who may also try attachments not exceeding \$3,000. (16.1-77).

In Whose Favor Writ May Issue.—Writ may issue in favor of any person or corporation. (8-519).

Against Whom Writ May Issue.—Writ may issue against any person or corporation. (8-520, 525).

Claims on Which Writ May Issue.—Writ may issue on claim to specific property, or to any debt, or to damages for breach of contract, or to damages for a tort exceeding \$20 exclusive of interest. If claim is for a debt not due attachment will not lie where only ground for the writ is that the defendant or one of them is a foreign corporation or nonresident having estate or debts owing to him within the State, but will lie on any other ground. (8-519). As to attachment of ships, boats and other vessels of more than 20 tons, see § 8-524.1.

Grounds are that the principal defendant or one of the principal defendants: (1) Is a foreign corporation or nonresident and has estate or has debts owing to such defendant or that such defendant being a nonresident is entitled to the benefit of any liens, legal or equitable on real or personal property; (2) is about to remove from State with intent to change domicile; (3) intends to remove, is removing or has removed specific property claimed, or his own property, or proceeds thereof, or a material part thereof, from State, endangering satisfaction of judgment when recovered; (4) is converting, is about to convert or has converted his property or some part thereof into money, securities or evidences of debt with intent to hinder, delay or defraud creditors; (5) has assigned or disposed of his estate or some part thereof with intent to hinder, delay or defraud creditors, or is about to do so; (6) has absconded or is about to abscond, or has concealed himself to injury of creditors, or is a fugitive from justice. (8-520). Attachment for rent will lie if lessee intends to remove, is removing or has within 30 days removed his effects. (8-566).

Proceedings to Obtain.—Proceeding is commenced by filing a verified petition for writ stating particulars of claim, a sum certain which at least should be recovered, when claim will be due if not due, and one of more grounds therefor. (8-524). Defendant may answer or demur. Defendant or any party joined as co-defendant may file grounds of defense in writing, verified. No other pleadings are required. (8-523). Any amendment conducive to justice is permitted. No writ will be dismissed for formal defects. (8-532). Cases involving under \$20 are tried by general district court judge, on petition, without formal pleadings or jury. (8-564).

Issuance.—Writs are issued by the clerk, returnable to court having jurisdiction. (8-526). Other attachments may issue on same peti-

tion. (8-530). If defendant not served, further attachments or summons may issue until service, or an order of publication may be made against a nonresident. (8-531).

Attachment Bond.—No bond is required in order to sue out an attachment, but if plaintiff desires officer to take possession of any property of defendant, he must give bond, with surety, for at least double fair value of property on which attachment is levied, conditioned to pay all costs and damages which may be awarded against him, or sustained by any person, by reason of his suing out attachment. (8-535). In absence of such bond, if defendant or his agent or attorney files an affidavit of substantial defense, attachment will stand dismissed unless, within 10 days, plaintiff files bond, with security, for at least double amount of claim sworn to or sued for, conditioned that plaintiff will prosecute his attachment with diligence, and that obligors will pay all costs and damages which may be awarded against plaintiff, or sustained by defendant or any other person, by reason of suing out attachment. (8-539). Action continues though attachment be dismissed if defendant served or appeared generally and court would otherwise have jurisdiction. (8-557).

Release of Property.—Defendant may secure release and return of any property by forthcoming bond. (8-540).

Transfer of Cause.—If real estate is involved in attachment issued out of general district court, suit is transferred to circuit court. (16.1-105).

Levy.—Officer makes levy or if bond is filed, seizes property. (8-537-538). Plaintiff has lien from time of levy. (8-545). Perishable property or property expensive to keep may be sold by order of court. (8-549). Restraining orders may be made or a receiver appointed to secure property. (8-536).

Land may be levied upon. (8-533 to 535, 537, 559).

Safe.—Property levied on which is perishable or expensive to keep may be sold before judgment. (8-549). No real estate may be sold until other property is exhausted. (8-559).

Notice of attachment on real property should be recorded as protection against subsequent bona fide purchasers for value without notice. (8-142, 143).

Priorities between successive attachments of the same property are according to time of levies thereon or from time of service upon co-defendant having property in his possession. (8-545).

Third-Party Claims.—Any person claiming interest in property attached may file petition before delivery of property or proceeds thereof to plaintiff, giving security for costs, and without other pleading, court holds inquiry, with jury if requested. (8-560).

Rehearing.—A defendant served by publication, and not having appeared, may petition for rehearing within 1 year after being personally served with copy of judgment, otherwise within 5 years from entry thereof, on giving security for costs. (8-562).

Washington Law Digest

Attachment

In view of recent decisions by U.S. Supreme Court (e.g., 395 U.S. 337; 407 U.S. 67) and Washington appellate courts (e.g., 6 Wn. App. 971, 497 P. 2d 250; 7 Wn. App. 219, 499 P. 2d 92), constitutional status

of attachment, garnishment, and replevin statutes is in doubt. Trend of recent decisions is to require, at a minimum, notice and a show cause hearing before a writ of attachment, garnishment or replevin will be issued.

Actions in Which Allowed.—Attachment may issue in any action at any time before judgment. (7.12.010).

Courts Which May Issue Writ.—Attachments are issued by court in which action is pending. (7.12.020). Justices of the peace may issue writs of attachment when account is less than \$1,000 but may not issue writs upon real property or any interest therein. (3.20.020; 7.12.330).

In Whose Favor Writ May Issue.—There is no statutory provision against issuance of a writ of attachment on behalf of a nonresident or a foreign corporation.

Against Whom Writ May Issue.—See subhead Grounds, infra.

Claims on Which Writ May Issue.—Statute authorizing attachment to issue on debt which is not due if only time is wanting to fix absolute indebtedness declared unconstitutional. (7.12.030; 363 F. Supp. 725). There is no statutory provision against issuance of a writ of attachment where claim sued on is not payable within State.

Grounds for attachment are: (1) Defendant is a foreign corporation; (2) defendant is nonresident; (3) defendant conceals himself or has absconded or absented himself from usual abode so that ordinary process cannot be served on him; (4) defendant has removed or is about to remove property from State or has assigned, secreted or disposed of property, or is about to do so, with intent to delay or defraud creditors; (5) defendant is about to convert property into money to place it beyond reach of creditors; (6) defendant was fraudulent in contracting debt which is basis of action; (7) damages for which action is brought are for injuries arising from commission of felony; (8) action is one for recovery of a contract. (7.12.020).

Proceedings to Obtain.—Plaintiff or someone in his behalf must file affidavit showing that defendant is indebted to plaintiff in a specified amount over and above all just credits and offsets, that attachment is not sought and action is not prosecuted to hinder, delay or defraud any creditor of defendant, and that statutory ground for attachment exists. (7.12.020).

Attachment Bond.—Plaintiff must give bond for double amount of his demand; but in no case less than \$300 in superior court or \$50 in the justice court. (7.12.060). Upon proper showing, court may reduce amount of bond. (4.44.470).

When it is desired to attach real estate only, and such fact is stated in the affidavit for attachment, and the ground of attachment is that the defendant is a foreign corporation, or is not a resident of the State, or conceals himself so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him, the writ of attachment may issue without bond by the plaintiff. (7.12.060).

Levy.—The writ is directed to the sheriff of any county where property of the defendant may be, requiring him to attach and keep property of the defendant to the amount stated in the affidavit, and the sheriff, wherever possible, will levy on property 50 percent greater in valuation than the amount so stated. (7.12.090).

Real property is attached by filing a copy of the writ, together with a description of the property, with the county auditor of the county in which it is situated. Personal property, capable of manual delivery, is attached by the sheriff's taking it into custody. Stocks or shares, or interests therein of any corporation, are attached by leaving with president, secretary, cashier or managing agent thereof a copy of writ and a notice stating that stock or interest of defendant is attached in pursuance of such writ. (7.12.130).

Indemnity.—Sheriff, before executing a writ of attachment, may require indemnity bond in addition to attachment bond. (36.28.040).

Lien of attachment arises at moment of levy and continues until property is sold in satisfaction of judgment. (7.12.210; 23 Wash. 693, 63 P. 555).

Priorities.—Attachments against same defendant must be executed in order in which they were received by sheriff. (7.12.110). Priority between attachments upon same property is awarded according to order of their levy. (7.12.210; 12 Wash. 71, 40 P. 623).

Release of Property.—Property may be released upon bond executed by defendant to plaintiff, and approved by officer having attachment, to effect that defendant will perform judgment of court. (7.12.250).

Sale.—If property is perishable or subject to immediate and serious waste or decay, sheriff may sell it. Court may order sale of attached property before judgment if it appears that interests of parties will be served thereby, but only after notice to adverse party. (7.12.160).

Third Party Claims.—If a person other than defendant claims attached property, he has right to demand and receive it from attaching officer on making affidavit that property is his or that he has right to immediate possession, and posting bond in twice value of property conditioned on his appearance in court within 10 days to make good his title. (6.20.010).

Vacation or Modification.—Attachment may be discharged upon motion if shown to have been irregularly or improperly issued. (7.12.270).

See provision of U.C.C. § 7-602.

West Virginia Law Digest

Attachment

Actions in Which Allowed.—Attachment may issue in any action or proceeding at law or suit in equity for the recovery of any claim in contract or tort. (c. 38, art. 7, § 1; c. 50, art. 9, § 1).

Courts Which May Issue Writ.—No restrictions.

Time for Issuance.—Attachment may issue when action or suit is begun or at any time before judgment. (c. 38, art. 7, § 1; c. 50, art. 9, § 1).

Property Against Which Writ May Issue.—Attachment may issue against all kinds of property, except that in justice court it may issue only against personal property. (c. 33, art. 7, §§ 1, 7; c. 50, art. 9, § 1).

In Whose Favor Writ May Issue.—Any plaintiff, resident or nonresident.

Claims on Which Writ May Issue.—Statute does not require that the claim sued on be payable within the State. Except in certain cases and provided a certain showing be made (see *infra*, subhead Grounds) attachment may issue on an unmaturing claim.

Grounds.—The grounds for attachment are that the defendant, or one of the defendants: (1) is a foreign corporation, or a nonresident of the State; (2) has left, or is about to leave, the State with intent to defraud his creditors; (3) so conceals himself that a summons cannot be served upon him; (4) is removing or is about to remove his property, or the proceeds of the sale of his property, or a material part of such property or proceeds, out of the State, so that process of execution on a judgment or decree in such action or suit, when it is obtained, will be unavailing; (5) is converting, or is about to convert, his property or a material part thereof into money or securities, with intent to defraud his creditors; (6) has assigned or disposed of his property or a material part thereof, or is about to do so, with intent to defraud his creditors; (7) has property or rights in action which he conceals; (8) fraudulently contracted the debt or incurred the liability for which the action or suit is about to be or is brought. (c. 38, art. 7, § 2; c. 50, art. 9, § 1).

The attachment may be sued out for a debt or claim, whether the same is due or not, upon any of the grounds aforesaid, but if the debt or claim is not due, the affidavit must show when it will become due; provided, that an attachment for a debt not due, may not issue in case of a foreign corporation upon ground of nonresidence alone, or in case of nonresident, unless the affidavit shows that defendant was a resident of the State when the debt was contracted, and plaintiff believed he would remain a resident of the State at the time he gave defendant credit. (c. 38, art. 7, § 5; c. 50, art. 9, § 4).

Proceedings to Obtain.—Proceeding is commenced by filing in clerk's office or before justice an affidavit of plaintiff or of some credible person, stating nature of claim, amount which affiant believes plaintiff is entitled to recover, and that affiant believes that one or more grounds for attachment exists. (c. 38, art. 7, § 1; c. 50, art. 9, § 1).

Attachment Bond.—Plaintiff is not required to give bond as a condition of the issuance and levy of a writ of attachment from a court of record; but officer cannot take possession of personal property until plaintiff gives bond for at least twice the estimated value thereof, and not less than \$500. (c. 38, art. 7, § 8). In justice court, attachment cannot issue until plaintiff gives bond in a penalty of double the amount of his claim. (c. 50, art. 9, § 2).

Bond may be attached if insufficient or improper. (c. 38, art. 7, § 11).

Vacation or Modification.—Right to sue out attachment may be contested and attachment quashed if court deems affidavit insufficient. Defendant may controvert existence of grounds for attachment and of facts relied upon to show existence of such grounds by plea in bar of attachment, except grounds only may be controverted before justice of peace. Upon issue so raised trial is held by jury unless waived. (c. 38, art. 7, §§ 32–33, c. 50, art. 9, § 10). Defendant, or any party to attachment or forthcoming bond or party whose rights are affected or officer who may be liable to plaintiff by reason of such bond being adjudged bad, may make defense to attachment (c. 38, art. 7, § 31).

Issuance and Execution of Writ.—Writs are issued by the clerk or justice, returnable to the court having jurisdiction. Justices try the attachment if they have jurisdiction of the action to which it is ancillary. (c. 38, art. 7, § 4; c. 50, art. 3, § 3, art. 9, § 1). An attachment may be

issued or executed on Sunday if oath is made that defendant is actually removing his effects on that day. (c. 38, art. 7, § 18; c. 50, art. 9, § 1). Except before justice of the peace, process commencing action must be served upon attachment debtor in any manner provided for serving process commencing other suits. (c. 38, art. 7, § 30). Before justices, if defendant is not served, a second summons is issued to be served or posted, whereupon trial proceeds whether served or not. (c. 50, art. 9, § 10).

Levy.—Real or personal estate may be levied on (c. 38, art. 7, § 7) and if bond be given property is seized. (c. 38, art. 7, § 12; c. 50, art. 9, § 6).

Indemnity.—Except as hereinbefore indicated (see supra, subhead Attachment Bond), officer executing writ has no right to demand indemnity before making a levy. (c. 38, art. 7, §§ 8–9; c. 50, art. 9, § 2).

Lien on realty exists from issuance of writ if *lis pendens* is filed. Lien on personalty dates from levy or service on garnishee but if no seizure is made lien does not attach to personalty sold for valuable consideration. (c. 38, art. 7, § 19).

Sale.—Perishable property or property expensive to keep may be sold by order of court or judge in vacation. (c. 38, art. 7, § 23; c. 50, art. 9, § 21).

Priorities between attachments are determined according to dates of levies. (c. 38, art. 7, § 19; c. 50 art. 9, § 20). Prior attachment is entitled to prior satisfaction and subsequent attachments do not prorate.

Release of Property.—Defendant may secure release of property levied on by giving forthcoming bond in amount of the claim and costs. (c. 38, art. 7, § 20; c. 50, art. 9, § 8). Plaintiff, within 30 days after return thereof, may file exceptions to forthcoming bond given by defendant to attaching officer. If exceptions are sustained, court directs officer to file good bond. If officer fails to do so, plaintiff has remedy against attaching officer on official bond. (c. 38, art. 7, § 21).

Third Party Claims.—Any person claiming an interest in property attached may file petition before sale of property or (except before justice of the peace) within 1 year from sale and before delivery of proceeds to plaintiff, and, on giving security for costs, may without other pleading have jury trial of his claim. (c. 38, art. 7, § 41; c. 50, art. 10, § 1). In justice's court, property is delivered to claimant furnishing bond in double value thereof. (c. 50, art. 10, § 1).

Attachment for rent will issue on complaint under oath that tenant intends to remove, or is removing, or has within 30 days removed, his effects from the leased premises and stating rent reserved, time when payable, and that it will be payable within 1 year, and that there will be left on the premises property liable to distress sufficient to satisfy the rent so to become payable. (c. 37, art. 6, § 17; c. 50, art. 9, § 5).

Wisconsin Law Digest

Attachment

Actions in Which Allowed.—An attachment may be had in actions based on contract, judgment or tort where the amount of indebtedness exceeds \$50 (266.03), except no writ shall issue against a municipal corporation nor in any action for the price of liquor sold at retail (266.01).

Courts Which May Issue Writ.—Courts of record.

Property Subject to Attachment.—All property in the State not exempt from execution is subject to attachment. (266.12).

In Whose Favor Writ May Issue.—Any creditor-plaintiff may obtain an attachment in a proper case. (266.01).

Against Whom Writ May Issue.—Writ may issue against any debtor except municipal corporation. (266.01).

Claims on Which Writ May Issue.—An attachment on certain specified grounds may issue on an unmatured debt. (266.03[3]).

Grounds.—*In actions on contract or judgment*, attachment is permitted where the defendant: (1) Is absent from, or concealed within, the State; (2) is a domestic corporation no officer of which can be found; (3) has disposed of or concealed his property or some part thereof, or is about to do so, with intent to defraud his creditors; (4) has removed some of his property out of the State, or is about to do so, with like intent; (5) fraudulently incurred the obligation sued on; (6) is a nonresident; (7) is a foreign corporation; or (8) has defaulted as a public officer or as principal on official bond. Attachment may issue on an unmatured debt on any of first four grounds aforementioned. (266.03).

In tort actions, attachment is permitted where the defendant: (1) Is a nonresident or of unknown residence; or (2) is a foreign corporation. (266.03).

Proceedings to Obtain.—Writ may issue at any time before final judgment and after a summons is issued and shown to clerk (266.02); it must be based on an affidavit of plaintiff or some one in his behalf, alleging positively indebtedness or liability in tort, and specifying precise amount claimed above all setoffs (which must exceed \$50), and affirming affiant's knowledge or belief of existence of one or more of grounds for attachment above specified (266.03, 304.02).

Attachment Bond.—Affidavit must be accompanied by an undertaking, in not less than \$250, to pay defendant's damages by attachment, and his costs, in case he recovers judgment; and a larger undertaking can be required by court afterwards, on motion. (266.06-07). Where action is on unmatured claim, bond must be for three times amount demanded. (266.03).

Attack by Defendant.—The defendant may within 10 days, or the time to answer the complaint, deny the allegations in plaintiff's affidavit, except the alleged liability and the amount thereof. If defendant has made assignment for benefit of creditors, his assignee may traverse and defend. A preliminary trial will then be held with plaintiff having the affirmative. If plaintiff fails to prove his allegations, the property is returned and defendant may recover, as an offset, his costs and damages, and judgment for the excess, if any. (266.19-20).

Levy.—Personal property is attached as upon an execution (266.12) and the attaching officer causes an appraisal to be made (266.10). To attach real estate the officer files with the register of deeds a copy of the writ with a certificate that he has attached such real estate. (266.11).

Indemnity.—Levying officer may demand sufficient surety to indemnify him for attaching such property. (266.13).

Priorities.—Priorities between attachments are according to time of placement in the executing officer's hands. (18 Wis. 406).

Release of Property.—At any time before judgment defendant may deliver to attaching officer a bond double amount of complaint, or double appraisal value, or for real estate a sum fixed by court; plaintiff may except to sureties, but if sureties justify to officer's satisfaction, property is returned. (266.16-17).

Sale.—Depreciable property, or property entailing expense in its keeping, may be sold on a court order. (266.14).

Third Party Claims.—Any person not a party whose property is attached may be made a party and summary relief may be granted him. (266.26).

Vacation or Modification.—Court may vacate or modify writ. (266.18).

Consumer Transactions.—No attachment of property purchased in a consumer transaction until after entry of judgment. (425.111).

Wyoming Law Digest

Attachment

Actions in Which Allowed.—Attachment may issue in civil action for recovery of money, either at or after commencement thereof. (1-571; 1-226).

Courts Which May Issue Writ.—District courts (1-226); justices of the peace (1-571).

In Whose Favor Writ May Issue.—Any plaintiff may obtain an attachment (1-226; 1-571); no provision discriminating against non-resident plaintiffs.

Against Whom Writ May Issue.—No statutory restriction.

Claims on Which Writ May Issue.—Attachment may issue upon claims not yet due. (1-269).

Grounds for attachment generally are that defendant, or one of several defendants: (1) Is a foreign corporation or is, or is about to become, a nonresident; (2) has absconded with intent to defraud creditors; (3) has left county of his residence to avoid service of summons; (4) so conceals himself that summons cannot be served on him; (5) is about to remove property from jurisdiction with intent to defraud creditors; (6) is about to convert property into money for purpose of placing it beyond reach of creditors; (7) has property or rights in action which he conceals; (8) has assigned, removed or disposed of property with intent to defraud creditors or is about to do so; (9) fraudulently or criminally contracted debt or incurred obligation on which action brought; or (10) that action is on contract, express or implied, for direct payment of not exceeding \$1,500, which is unsecured or security for which has become inadequate. (1-226).

In justice's court, grounds of attachment are substantially the same, except that the limit in ground (10) is \$200. (1-571).

Where plaintiff's claim is not due, the grounds for attachment are: That the debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; that he is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent; that he is about to remove his property, or a material part thereof, with the intent, or to the effect, of cheating or defrauding

his creditors, or of hindering or delaying them in the collection of their debts; that he is about to become a nonresident of the State. (1-269).

Proceedings to Obtain.—To obtain the writ of attachment affidavit of plaintiff, his agent or attorney, must be filed, showing one or more of the above grounds and the nature of the claim, that it is just and the amount which affiant believes plaintiff ought to recover. (1-227).

Attachment Bond.—Plaintiff, before obtaining the writ, must also execute an undertaking to defendant with one or more sufficient sureties in an amount equal to double plaintiff's claim (not less than \$50 in justice court), to the effect that plaintiff will pay defendant all damages which he may sustain by reason of the attachment if the order be wrongfully obtained. (1-228; 1-572).

Levy.—Personal property in debtor's possession is attached by taking possession; real property by delivering a certificate containing title of the cause, names of parties, and description of property to the county clerk of the county. If order of attachment is issued at commencement of action an endorsement must be made on summons to effect that defendant's real estate has been or will be attached. If order of attachment is issued after commencement of action a copy of notice filed in clerk's office must be mailed to defendant by registered mail at his last known post-office address by plaintiff, his agent, or attorney, and proof thereof must be made by affidavit and filed in office of clerk of court before attached real estate may be ordered sold. (1-233).

Personal property is levied upon in similar manner before justice of the peace. (1-575).

Indemnity.—No statutory provision.

Lien attaches at time of service. (1-243).

Priorities.—In district court, orders of attachment bind the property from time of service. (1-243). Several orders are executed in the order received by Sheriff. (1-232). In justice court, all creditors attaching before judgment share pro rata in proceeds of attached property. (1-599).

Release of property attached may be obtained by defendant at any time before judgment by giving bond in double amount of claim stated in plaintiff's affidavit. (1-250).

Sale.—Perishable property may be sold pending suit, in the manner directed by district court (1-249), and as upon execution in justice court (1-586).

Third Party Claims.—Attaching officer under district court or justice court writ must have such claims tried. (1-263, 587).

Vacation or Modification.—Defendant may move to discharge attachment at any time before judgment and upon reasonable notice. Motion may be heard upon affidavits. (1-267-3).

III. ASSIGNMENT OF WAGES

.....

.....

.....

Assignment of Wages

CONTENTS

	Page
General Statement-----	193
Alabama-----	194
Alaska-----	194
Arizona-----	194
Arkansas-----	195
California-----	195
Colorado-----	195
Connecticut-----	196
Delaware-----	196
District of Columbia-----	196
Florida-----	196
Georgia-----	196
Hawaii-----	196
Idaho-----	196
Illinois-----	197
Indiana-----	197
Iowa-----	198
Kansas-----	198
Kentucky-----	198
Louisiana-----	199
Maine-----	199
Maryland-----	199
Massachusetts-----	199
Michigan-----	201
Minnesota-----	201
Mississippi-----	201
Missouri-----	202
Montana-----	202
Nebraska-----	202
Nevada-----	202
New Hampshire-----	202
New Jersey-----	203
New Mexico-----	203
New York-----	203
North Carolina-----	205
North Dakota-----	205
Ohio-----	205
Oklahoma-----	205
Oregon-----	206
Pennsylvania-----	206
Puerto Rico-----	206

	Page
Rhode Island -----	206
South Carolina -----	207
South Dakota -----	207
Tennessee -----	207
Texas -----	208
Utah -----	208
Vermont -----	208
Virginia -----	209
Washington -----	209
West Virginia -----	209
Wisconsin -----	210
Wyoming -----	210