

CHAPTER 267.

GARNISHMENT.

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267.01 Garnishment, definitions, conditions, exceptions. (1) Any creditor may proceed against any person (except a municipal corporation) who shall be indebted to or have any property in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace a judgment creditor, and the term defendant a judgment debtor.

(2) Except as otherwise provided in this chapter, the procedure in garnishee actions shall be the same as in ordinary civil actions.

(3) At any time after the summons is issued in an action for damages, founded upon contract, or an action mentioned in section 266.03 or an action upon a judgment, or when an execution against property has issued or is issuable, the plaintiff may commence a garnishee action.

(5) No garnishee action shall be brought to recover the price or value of spirituous, malt, ardent or intoxicating liquors sold at retail. [1935 c. 541 s. 93, 94; 1939 c. 513 s. 51; Supreme Court Order, effective Jan. 1, 1940]

Cross Reference: See 66.11 (3), providing that no person shall be liable as garnishee of a public corporation.

Revisor's Note, 1935: The revision of chapter 267 is to make it in form, which it is in fact, i.e. an action. (3) is from 267.03 (1). (Bill No. 50 S, s. 93)

Where the proceeds of fire insurance policies under the terms of a trust deed are security for the restoration of mortgaged buildings and the mortgage debt, restoration of the buildings by the mortgagor at his own expense does not subject such proceeds to the claims of creditors. *Connors v. Aaron*, 207 W 115, 240 NW 821.

The amount payable to the widow under an insurance policy on her deceased husband's life is subject to garnishment for her debts; especially in view of 6.015 granting to women same rights and privileges as men in the making of contracts. (*Ellison v. Straw*, 116 W 207, 92 NW 1094, distinguished, and language in the opinion therein in seeming conflict herewith withdrawn.) *First Wisconsin Nat. Bank v. Strelitz*, 209 W 335, 245 NW 74.

The mortgagor's sale and delivery of the mortgaged crop to the canning company, with the understanding that he should turn over the proceeds to the mortgagee, did not substitute the mortgagor's personal promise for the mortgage security or waive the mortgage lien, but operated as an equitable assignment of the proceeds of the sale, and title to the proceeds to the extent of the amount secured by mortgage was in the mortgagee; hence such proceeds were not subject to garnishment by the mortgagor's

creditors. *Middleton L. & F. Co. v. Kosanke*, 216 W 90, 256 NW 633.

This section exempts a municipal corporation only from being proceeded against as a garnishee, and is construed not to exempt a municipal corporation, which is a debtor, from being the defendant against whom garnishment proceedings can be maintained in aid of an execution issued under 66.09 for the collection of a judgment against the municipality. *State Bank of Florence v. School District*, 233 W 307, 289 NW 612.

For liability as garnishee, see note to 241.10, citing *Kramer v. Buriage*, 234 W 538, 291 NW 766.

Where a wife conveyed all of her separate property to discharge a debt of her husband for which she was in no way liable, and the wife was thereby rendered unable to pay her own existing debts, the conveyance was not for a "fair consideration," and she was thereby rendered "insolvent," so that the conveyance was fraudulent as to her creditors without regard to whether there was fraudulent intent in making the conveyance. Her creditors could reach the property by garnishment. *Neumeyer v. Weinberger*, 236 W 534, 295 NW 775.

An executor or administrator, with respect to money or property in his hands in his representative capacity, is not subject to garnishment in an action by a creditor against an heir or legatee, at least not before a final order for the distribution of the estate. The rule stated was not abrogated by any changes made in the garnishment statutes by ch. 541, laws of 1935. *Olson v. Gilbertson*, 239 W 241, 300 NW 918.

267.02 Garnishee summons. A garnishee action shall be commenced by the service of a summons and verified complaint, which summons shall be substantially in the following form:

..... Court, County.

A. B., plaintiff, }
vs.
C. D., defendant, }
E. F., garnishee. }

The State of Wisconsin, To said garnishee:

You are hereby summoned, as garnishee of the defendant, C. D., and required, within twenty days after the service of this summons and the annexed complaint upon you, exclusive of the day of service, to answer, whether you are indebted to or have in your possession or under your control any property belonging to such defendant, and to serve a copy of your answer on the undersigned at, in the county of; and in case of your failure so to do judgment will be rendered against you for the amount of the plaintiff's judgment against said defendant, and costs. Of which the said defendant will also take notice.

.....
Plaintiff's attorney (or plaintiff)
P. O. address,, county, Wis.

[1935 c. 541 s. 94, 95]

267.03 Complaint; several garnishees. (1) The garnishee complaint must allege the existence of one of the grounds for garnishment mentioned in section 267.01, the amount of the plaintiff's claim against the defendant, above all offsets, and that plaintiff believes that the named garnishee is indebted to or has property in his possession or under his control belonging to the defendant (naming him) and that such indebtedness or property is, to the best of plaintiff's knowledge and belief, not exempt from execution.

(2) Any number of garnishees may be embraced in the same garnishment; but if a joint liability be claimed it shall be so stated in the complaint, otherwise the several garnishees shall be deemed severally proceeded against. At any time before trial the complaint may be amended to include any facts existing at the time the garnishee action was commenced. When the complaint uses a partnership name the presumption shall be that the names of the partners are unknown. [1935 c. 541 s. 96]

Revisor's Note, 1935: Proceedings against a partnership whose members are unknown is covered by 260.21. (Bill No. 50 S, s. 96) Action on mortgage note held "action to recover damages on contract." Cavadini v. Larson, 211 W 200, 248 NW 209.

267.04 Garnishee fees, costs. A garnishee shall be entitled to three dollars as garnishee fee, and shall not be required to answer unless such fee be first paid. When a corporation is garnished such fee shall be paid to the person upon whom the garnishee summons and complaint is served. Such fee shall be taxed as costs in the action the same as witness fees are taxed. [1935 c. 541 s. 95, 97]

267.05 [Repealed by 1935 c. 541 s. 98]

267.06 Service on garnishee and defendant. The garnishee summons and complaint shall be served on the garnishee in the manner provided in sections 262.07, 262.08 and 262.09 for service of a summons; and, except where service of the summons in the main action is made without the state or by publication, also on the defendant therein, in like manner, not later than ten days after service on a garnishee. When the defendant shall have appeared in the main action by an attorney service may be made upon such attorney or upon the defendant. Unless the garnishee summons and complaint be so served on the defendant or his attorney or the proof of service on the garnishee shows that, after due diligence, such service cannot be made within the state, the service on the garnishee shall become void. [1935 c. 541 s. 99]

Note: Where the return of a sheriff who had served a summons on the garnishee made no reference to the service of a garnishee summons on the defendant, and did not certify that such service could not be made within the state, such defect in the return operated to deprive the court of jurisdiction; and the facts required by the statute to be shown by the proof of service on the garnishee could not be made to appear otherwise, as by a subsequent affidavit of the sheriff that he had used due diligence to find the defendant. As against a depositor, a garnishee bank was not protected by the payment of a deposit into court pursuant to a judgment rendered for garnishment plaintiffs, nor by a judgment rendered against the deposit in a subsequent action by the same plaintiffs, where the court had no jurisdiction in either action. Riley v. State Bank of De Pere, 223 W 16, 269 NW 722.

267.07 Subsequent garnishments. The plaintiff may, in like manner, subsequently proceed against other garnishees or against the same garnishees if he shall have reason to believe they have subsequently become liable; and he may summon garnishees resident in other counties than that in which the principal action is pending or in which judgment therein was entered. [1935 c. 541 s. 100]

Revisor's Note, 1935: Garnishment is an action and the venue should be determined by the general rules of chapter 261. (Bill No. 50 S, s. 100)

267.08 Garnishee answer. (1) Within twenty days from service of the garnishee summons and complaint upon him the garnishee may, if the truth warrant, serve upon the plaintiff his answer in the following form, substantially:

.... Court, County.

A. B., plaintiff
vs.
C. D., defendant,
E. F., garnishee } Garnishee answer.

E. F., the garnishee above named for answer, says that on the day of, A. D. 19.., he was served with a garnishee summons and complaint in the above entitled action; that he was then in no manner and upon no account whatever indebted or under liability to the defendant (naming him), and that he then had in his possession or under his control no real estate and no personal property belonging to said defendant or in which he has any interest; and is in no manner liable as garnishee in this action.

(Signature and verification)

(2) When the state or a division thereof is the garnishee its secretary or clerk shall certify to the court the facts as to its liability as garnishee, and need make no other answer. [1935 c. 541 s. 101]

Revisor's Note, 1935: The amendment provides for a verified answer according to the general practice (ch. 263). The matter of answering is left optional with the garnishee, (as in ordinary actions), the penalty for not answering being judgment as provided by the summons. This garnishment attaches when the summons is served on the garnishee. And the answer should be confined to that time. If the garnishee subsequently became indebted another action is the way to reach that debt. The answer should meet the complaint but do no more. (Bill No. 50 S, s. 101)

267.09 Garnishee answer; submission of question to court. Unless the garnishee answers as provided in section 267.08 he shall, within twenty days from the service of the garnishee summons and complaint, serve in like manner a verified answer in which he shall state:

(1) Whether he was, at the time of the service of the garnishee summons indebted or under any liability to the defendant, naming him, in any manner or upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability, and the facts necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness he may set forth the facts concerning the same.

(2) Whether he held at the time aforesaid the title or possession of or any interest in land or of any personal property or any instruments or papers relating to any such belonging to the defendant or in which he is interested. And if he shall admit any such or be in doubt respecting the same he shall set forth a description of such property and the facts concerning the same, and the title, interest or claim of the defendant in or to the same.

(3) If he claims any set-off or defense to any debt or liability or any lien or claim to such property he shall allege the facts.

(4) He may state any claim of exemption from execution on the part of the defendant or other objection, known to him, against the right of the plaintiff to apply upon his demand the debt or property disclosed.

(5) If he discloses any debt or the possession of any property to which the defendant and other persons make claim he may allege the names and residences of such other claimants and, so far as known, the nature of their claims. [1935 c. 541 s. 102]

Note: The interest of a pledgor or mortgagor over and above the amount necessary to pay a debt secured may be reached by garnishment in advance of sale. The fact that the indebtedness of the pledgee to the pledgor is contingent on the production of a surplus through a sale of the collateral does not preclude a creditor of the pledgor from proceeding in garnishment. Kiel Wooden Ware Co. v. Raeder, 242 W 62, 7 NW (2d) 414.

267.10 Judgment against garnishee, on failure to answer. If any garnishee who is duly summoned, shall fail to serve his answer as required in this chapter the court may render judgment against him for the amount of the plaintiff's judgment against the defendant, together with the costs of such garnishee action. [1935 c. 541 s. 103]

267.11 Garnishee pay to clerk; levy. (1) In case the answer shows a due debt to the defendant the garnishee shall pay the same or sufficient thereof to cover the claim of the plaintiff, as stated in the garnishee complaint, with interest and costs, to the clerk of the court, and take his receipt therefor, and it shall discharge him of all liability for the amount so paid.

(2) In case the debt disclosed is not due the garnishee shall pay the amount as aforesaid to the clerk, when due, with like effect, and in default of such payment, in either case, the plaintiff shall be entitled to judgment against the garnishee for the amount disclosed, when due, either before or after judgment in the original action and may collect the same

by execution; but in case no judgment has been rendered in the principal action the execution against the garnishee shall require the sheriff to pay the money collected into court to abide the event of the principal action. Moneys so paid into court shall be paid to the plaintiff when final judgment shall be rendered in his favor, and to the extent of satisfying the same, upon order of the court, and any balance to the party entitled thereto.

(3) In case judgment shall be against the plaintiff such moneys shall be paid to the defendant. If the answer disclose other property in the possession or under the control of the garnishee the officer having a writ of attachment or an execution may levy upon the interest of the defendant in the same; otherwise the garnishee shall hold the same until the order of the court thereon. [1935 c. 541 s. 104]

Revisor's Note, 1935: The execution itself should command the sheriff to pay the money into court. Plaintiff's attorney might neglect to make an indorsement to that effect. (3) is intended to cover everything except debts due the defendant, 60 W 296. (Bill No. 50 S, s. 104)

267.12 Answer conclusive if not traversed. The answer of the garnishee shall be taken as true unless the plaintiff shall, within twenty days, serve upon the garnishee a reply. [1935 c. 541 s. 105]

Note: Whether neither the plaintiff nor the defendant denied allegations in the garnishee answer as to the existence of a lien in favor of the defendant's attorneys, the answer was conclusive on the existence of such lien. *Liberty v. Liberty*, 226 W 136, 276 NW 121. Where the plaintiff failed seasonably to take issue with the answer of the garnishee defendant, granting an extension of time to file a reply related to practice and was within the discretion of the court. *Schmidt v. Blankschien*, 235 W 586, 294 NW 49.

267.13 [Repealed by 1935 c. 541 s. 106]

267.14 Defendant or garnishee may defend both actions. (1) The defendant may, within twenty days from the service of the garnishee summons and complaint on him, answer the garnishee complaint and defend the garnishee action upon any ground upon which a garnishee might defend, and may participate in the trial of any issue between the plaintiff and garnishee. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not defend.

(2) When any garnishee shall defend the principal action, he shall thereby become a party defendant in said action and shall be so entered of record by the clerk, but shall be liable only for the costs in said action. [1935 c. 541 s. 107]

Note: A principal defendant in garnishment proceedings though in default may participate in the trial of issues between the plaintiff and garnishee for the protection of his interests. Under 267.18 the maker of a negotiable note cannot be held liable in garnishment although the note is past due and the principal defendant is the original payee therein. *Graham v. Zellers*, 205 W 547, 238 NW 387.

267.15 Principal action tried first; judgment. (1) No trial shall be had of the garnishee action until the plaintiff shall have judgment in the principal action and if the defendant have judgment the garnishee action shall be dismissed with costs.

(2) The court may adjudge the recovery of any debt, the conveyance, transfer or delivery to the sheriff or any officer appointed by the judgment of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein or by its order direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid or delivered to the clerk or officer. The judgment against a garnishee shall discharge him from all demands by the defendant for all property paid, delivered or accounted for by the garnishee, by force of such judgment. [1935 c. 541 s. 108]

Cross Reference: For sale of perishable property, see 266.14.

267.16 Interpleader. When the answer of the garnishee discloses that any third person claims the debt or property in his hands and the name and residence of such claimant the court may order that such claimant be interpleaded as a defendant in the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order and answer be served upon him, and that after such service is made the garnishee may pay or deliver to the officer or the clerk such debt or property and have a receipt therefor, which shall be a complete discharge from all liability for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons. Upon such service being made such claimant shall be deemed a defendant in the garnishee action, and within twenty days shall answer setting forth his claim or any defense which the garnishee might have made. [1935 c. 541 s. 109]

267.17 Liability of garnishee. From the time of the service of the summons and complaint upon the garnishee he shall stand liable to the plaintiff for the property then in his possession or under his control belonging to the defendant or in which he is interested to the extent of his right or interest therein and for all his debts due or to become due to the defendant, except such as are exempt from execution, but not in excess of the amount of the plaintiff's claims as disclosed by his garnishee complaint. [1935 c. 541 s. 110]

Note: Where the defendant's attorneys had a lien on the fund which the plaintiff sought to reach in garnishment proceedings, the plaintiff's rights were subordinate to the lien and he was entitled only to the balance, but the attorneys not having been made parties to the action could not recover in the garnishment proceedings. *Liberty v. Liberty*, 226 W 136, 276 NW 121.
See note to 262.12, citing *Frawley v. Chalkos*, 36 F (2d) 373.

267.18 Nonliability as garnishee; judgment when rendered. No person shall be liable as garnishee:

(1) By reason of his having drawn, accepted, made, indorsed or guaranteed any negotiable instrument; or

(2) By reason of any thing received or collected by him by execution or other process; or

(3) By reason of any money in his hands as a public officer; or

(4) By reason of any thing owing by him upon a contingency.

(5) A debt owing by the owner of property subject to a mechanic's lien, pursuant to section 289.01, shall not be deemed absolutely due until the claims of subcontractors and employes under section 289.02 shall have matured or expired. Except as above provided judgment may be given for any thing owing, although it has not become due in which case the garnishee shall not be required to pay or deliver it before the time appointed by the contract. [1935 c. 541 s. 111]

Revisor's Note, 1935: Garnishee summons is of no effect if served while the obligation is contingent. See Annotations, 74 W 571, 86 W 305, 89 W 96, 95 W 185. (Bill No. 50 S, s. 111) The maker of a past due negotiable note is not liable in garnishment. *Graham v. Zellers*, 205 W 547, 238 NW 387.

267.19 Action by defendant against garnishee stayed. Except upon the order of a judge no action shall be commenced by the defendant or his assignee against a garnishee upon any garnished claim or demand or to recover any property garnished, or execution be issued upon a judgment in favor of defendant against such garnishee, until the termination of the garnishee action; and if an action shall have been commenced or an execution issued it shall be stayed by the court or a judge thereof as to the garnishee upon his application. [1935 c. 541 s. 112]

267.20 Release of garnishment; bond. (1) The defendant may file with the clerk of the court a bond, executed by at least two sureties, resident freeholders of the state, to the effect that they will on demand pay to the plaintiff the amount of the judgment that may be recovered against such defendant not exceeding a sum specified, which shall be double the amount of the debt specified in the garnishee complaint or in such less sum as the court shall direct. If the plaintiff fails to take issue with the garnishee answer the bond shall be conditioned to pay to the plaintiff the amount of the debt admitted or of the value of the property held by the garnishee.

(2) The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this state, above all his liabilities and exclusive of property exempt from execution, the aggregate of which sums shall be double the amount specified in the bond. The defendant shall serve on the plaintiff a copy of such bond with a notice of where the same was filed. Within three days after the receipt thereof the plaintiff may notify the defendant that he excepts to the sufficiency of the sureties, otherwise he waives all objections to them. When the plaintiff excepts, the sureties shall justify in like manner as bail on arrest, and the provisions of sections 264.17, 264.18 and 264.19 shall be applicable thereto. Thereafter the garnishee shall be discharged and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action if he recovers. [1935 c. 541 s. 113]

Note: A plaintiff who unsuccessfully determines the sufficiency of the sureties on defendants' undertaking to release a garnishment is not entitled to tax the costs of determining the sufficiency against the defendants. *Schwade v. Van Bree*, 214 W 250, 252 NW 702.

267.21 Costs. In case of a trial of an issue between the plaintiff and any garnishee the plaintiff shall recover costs against the garnishee if the plaintiff recover more than the garnishee admitted by his answer; and if he do not, the garnishee shall recover costs. In all other cases the court may award costs in favor of or against any party. When there is no issue and liability on the part of the garnishee is disclosed the costs of the garnishment proceedings shall be taxed for the plaintiff, if he recovers, in the principal action. [1935 c. 541 s. 114]

Note: Where the garnishee made a full and truthful answer against him was improper. *Liberty v. Liberty*, 226 W 136, 276 NW 121.

267.22 [Renumbered section 267.04 by 1935 c. 541 s. 97]