

CHAPTER 273.

REMEDIES SUPPLEMENTARY TO EXECUTION.

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273.01 [Renumbered section 272.04 (2) by 1935 c. 541 s. 266]

273.02 [Repealed by 1935 c. 541 s. 267]

273.03 Debtor may be compelled to answer as to property. (1) When an execution against property has, within 5 years, been returned unsatisfied in whole or in part or the officer holding the execution certifies that he is unable to levy upon property sufficient to satisfy the judgment or the judgment creditor by affidavit satisfies the court or judge that the judgment debtor, whether an individual, firm, corporation or other association, has property which he unlawfully refuses to apply towards the satisfaction of the judgment, the court or a judge of the county to which the execution was issued shall, upon motion of the judgment creditor, order such judgment debtor, whether an individual, firm, corporation or other association, to appear before him and answer concerning his property at a time and place specified in the order, within said county.

(2) The fact that garnishee proceedings have been commenced in aid of or that property has been levied on under a second execution shall not bar proceedings under this section; but if it appears to the satisfaction of the court or judge before whom such proceedings are pending that the property levied on or garnished will be sufficient to satisfy such judgment with costs, then the proceedings herein provided for may be dismissed or adjourned to a time after the sale under such execution or the termination of such garnishee proceedings. [1935 c. 541 s. 268; 1943 c. 256]

Revisor's Note, 1935: The amendment extends 273.03 to embrace what is covered by 273.04; i. e. refusal of the debtor to apply property towards the execution, and also to cover a case where the sheriff has levied on property but it is obviously not sufficient to satisfy the judgment. (Bill No. 50 S. s. 268)

This case does not interpret the provisions of this chapter but it affords a very good concrete illustration of proper procedure under this chapter. *Alexander v. Wald*, 231 W 550, 286 NW 6.

273.04 Appointment of receiver. A receiver may be appointed but before appointing a receiver the court or judge shall ascertain, if practicable, whether any other supplementary proceedings are pending against the judgment debtor, and if there be any, the plaintiff therein shall have notice to appear and shall have notice of all subsequent proceedings in relation to such receivership. There shall be but one receivership at any time. [1935 c. 541 s. 269, 274; *Supreme Court Order effective Jan. 1, 1938*]

273.05 Warrant against debtor. Upon satisfactory proof by affidavit that there is danger of the judgment debtor's leaving the state or concealing himself and that there is reason to believe that he has property which he unjustly refuses to apply to such judgment, the court or judge may issue a warrant requiring the sheriff to arrest him and bring him before such court or judge to answer concerning his property. [1935 c. 541 s. 270]

Revisor's Note, 1935: 273.05 is amended to apply even though the usual order to answer has been made and may be obtained even after the order has issued. (Bill No. 50 S. s. 270)

arrest commanded, expressly set a date in the future on which the sheriff is to bring the debtor before the judge, discloses on its face that it is not in conformance with the statute. *Rubin v. Schrank*, 207 W 375, 241 NW 370.

273.06 Examination of debtor and witnesses. At the hearing upon such order or warrant such judgment debtor may be examined on oath and testimony on the part of either party may be offered. [1935 c. 541 s. 271]

273.07 Bond; commitment. If it shall appear upon or pending any such examination that there is danger of the debtor leaving the state and that he has property which he has unjustly refused to apply to such judgment he may be ordered to give a bond with one or more sureties, that he will from time to time attend before the court or judge, as he shall direct, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of such bond he may be committed to prison as for a contempt. [1935 c. 541 s. 272]

273.08 Property to be applied to judgment. The court or judge may order any property of the judgment debtor or due to the judgment debtor, not exempt from execu-

tion, to be applied toward the satisfaction of the judgment; but if it appear that any person alleged to have property of the judgment debtor or to be indebted to him claims an adverse interest in the property or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; and a transfer or other disposition of such property or interest may be restrained till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered. [1935 c. 541 s. 273]

Note: A receiver, appointed in supplementary proceedings, may maintain an action against the judgment debtor to compel him, as beneficiary under a will, to transfer to the receiver title to any property, in the custody of the executors and which the debtor has power to transfer, in satisfaction of the judgment. "It is competent for a court of equity, acting upon the debtor personally, to compel him to make such transfer, or, in lieu thereof, to effectuate that result by its decree. Such transfer can be as complete and of as full effect as any the debtor could make, to vest in the assignee complete ownership and right to demand payment from the trustees, and to hold them to liability in case they disregard his rights after proper notification and demand." *Williams v. Smith*, 117 W 142, 148-9, 93 NW 464.

In supplementary proceedings, title to property may not be adjudicated where there is substantial dispute; remedy being suit by receiver to determine title. Where claim of person in property adverse to judgment debtor is substantial, court commissioner may only preserve status quo. *Paradise v. Ridenour*, 211 W 42, 247 NW 472.

In an action for the discovery of property belonging to a judgment debtor of the plaintiff in the hands of the defendant, a judgment against the defendant for the amount of the judgment against the debtor required affirmance, in the absence of a bill of exceptions, in view of findings that the defendant had money owing to the debtor when served with an order requiring the defendant to hold such money, and that the defendant thereafter paid money over to the debtor in an amount exceeding the judgment against the debtor. *Joachim v. Madison D. Clinic*, 216 W 261, 257 NW 143.

See note to 231.19, citing *Meyer v. Rief*, 217 W 11, 258 NW 391.

Although a court commissioner could appoint a receiver in supplementary proceedings, he could not direct the receiver to continue the operation of the business of the judgment debtor, that being foreign to the scope and purposes of supplementary pro-

ceedings, but, the commissioner could direct the receiver to take possession and sell any "property" of the debtor, not exempt from execution, in order to obtain proceeds to apply to the satisfaction of the judgment; and such "property" included the leasehold rights of the debtor in land on which he conducted his business. A receiver's sale of leasehold rights of a judgment debtor in supplementary proceedings could be ordered and made without reserving an equity of redemption in the debtor; 272.39, requiring provisions for redemption in the case of execution sales, as well as 281.26, relating only to judgments in actions for ejectment or unlawful detainer, being inapplicable, and no other statute making provision for redemption in the case of a receiver's sale in supplementary proceedings. The debtor, having participated and acquiesced in all the proceedings prior to the sale, was estopped from asserting after the sale that no title ever vested in the receiver and that none could be conveyed by him because the order in question did not expressly mention the leasehold and there was no order expressly divesting the debtor of title or vesting title in the receiver or directing the debtor to convey to the receiver. *U. S. Rubber Products, Inc. v. Twin Highway Tire Co.* 233 W 234, 288 NW 179.

When, in supplementary proceedings, property claimed to belong to a judgment debtor is in the possession of another person claiming an adverse interest therein, such interest is recoverable only in an action against such person by the receiver, although a transfer or other disposition of such property may be restrained until a sufficient opportunity is given to the receiver to commence the action and prosecute the same to judgment. A receiver stands in the shoes of the debtor and acquires at the time of appointment such rights of title and possession as the debtor may have in property, and the receiver is obliged only to act to protect and secure the debtor's interest in the property. *Nick v. Holtz*, 237 W 407, 297 NW 387.

273.09 [Renumbered section 273.04 by 1935 c. 541 s. 274]

273.10 [Repealed by 1935 c. 541 s. 275]

273.11 **Costs, fees.** The court or judge may allow to the judgment creditor or to any party so examined, whether a party to the action or not, witness' fees and disbursements and a fixed sum, in addition, not exceeding twenty-five dollars, as costs, and require their payment by order. [1935 c. 541 s. 276; 1939 c. 476]