

fore, declared that an emergency exists, and that this act shall take effect and be in force from and after the approval by the governor.

Approved March 8, 1893.

CHAPTER LVI.

[H. B. No. 114.]

RELATIVE TO GARNISHMENTS.

AN ACT in relation to garnishments.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The clerks of the superior courts in the various counties in the state may issue writs of garnishment returnable to their respective courts in the following cases:

1. Where an original attachment has been issued in accordance with the statutes in relation to attachments.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued.

SEC. 2. In the case mentioned in subdivision two of the Bond. preceding section the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment.

SEC. 3. Before the issuance of the writ of garnishment the plaintiff or some one in his behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, Affidavit.

and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his possession, or under his control, personal property or effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

SEC. 4. When the foregoing requisites have been complied with the clerk shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant, and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court from which it is issued within twenty days after the service of the writ upon him, if the same be served upon him within the county in which the same is issued, or within thirty days if served in any other county in this state, and to answer on oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what personal property or effects, if any, of the defendant he has in his possession or under his control, or had when such writ was served.

Joint stock
company.

SEC. 5. Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served.

SEC. 6. Said writ may be substantially in the following form:

STATE OF WASHINGTON.

To A B, greeting:

Form of writ of
garnishment.

Whereas, in the superior court of the State of Washington, in and for county, in a certain cause wherein C D is plaintiff and E F is defendant, the plaintiff claiming an indebtedness against the said E F of dollars, besides interest and cost of suit, has applied for a writ of garnishment against you:

Now, therefore, you are hereby commanded to be and appear before the said court within twenty days after the

service upon you of this writ, if served within county, and within thirty days after the service of this writ upon you if served in any other county of this state, then and there to answer upon oath what, if anything, you are indebted to the said E F, and were when this writ was served upon you, and what effects, if any, of the said E F you have in your possession or under your control, and had when this writ was served (and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, then the writ shall proceed; and further, to answer what number of shares, if any, the said E F owns in such company, and owned when this writ was served upon you).

SEC. 7. The writ of garnishment shall be dated and tested in like manner as the writ of attachment, and the name and office address of the plaintiff's attorney shall be indorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon, and may be delivered to the sheriff by the clerk who issues it, or he may deliver it to the plaintiff, or his agent or attorney for that purpose.

SEC. 8. The sheriff, on receiving the writ of garnishment, shall immediately proceed to serve the same on the garnishee, in like manner as summons is served, and shall make return thereof in like manner as a return of summons is made. Service of writ.

SEC. 9. From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee if an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, effects, shares, or interest as may be necessary to satisfy the plaintiff's demand. Sale or transfer by garnishee.

SEC. 10. The answer of the garnishee shall be under oath in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of

Service of
answer.

garnishment, and shall be served upon the plaintiff or his attorney and filed with the clerk of the superior court.

SEC. 11. Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession or under his control any personal property or effects of the defendant, and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of shares of stock or interested therein, if it shall further appear from such answer that the defendant is not, and was not when the writ was served, the owner of any of such shares or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, and within the time hereinafter provided, the court shall enter judgment discharging the garnishee.

Judgment
by default.

SEC. 12. Should the garnishee fail to make answer to the writ within the time prescribed therein, it shall be lawful for the court, and on or after the time to answer such writ has expired, to render judgment by default against such garnishee for the full amount claimed by plaintiff against the defendant, or in case plaintiff has a judgment against defendant, for the full amount of such judgment with all accruing interest and costs.

SEC. 13. Should it appear from the answer of the garnishee or should it be otherwise made to appear, as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount of plaintiff's claim or demand against the defendant with interest and costs, in which case it shall be for the amount of such claim or demand, interest and costs: *Provided, however,* If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for, that the garnishee is indebted to the principal defendant in any sum, but that such

indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in like manner as other judgments provided for in this act: *Provided further*, That if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be entered against him.

Enforcement
of judgment.

SEC. 14. Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the clerk of the superior court from which such execution was issued; and in cases where judgment has been rendered against the defendant the amount made on the execution shall be applied to the satisfaction of the judgment, interest and costs against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on said execution shall be paid to the clerk of the court from which such execution issued who shall retain the same until judgment be rendered in the action between the plaintiff and defendant. In case judgment be rendered therein in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment and the surplus, if any there be, shall be paid to the defendant. In case judgment be rendered in such action in favor of the

Execution.

defendant, the amount made on said execution against the garnishee shall be paid to the defendant.

Personal effects.

SEC. 15. Should it appear from the garnishee's answer or otherwise that the garnishee has in his possession or under his control, or had when the writ was served, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff on demand such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in like manner as any other property is sold upon an execution issued on said judgment. In cases where judgment has not been

Sheriff to retain personal effects, when.

rendered in the principal action, the sheriff shall retain said personal property or effects in his possession until the rendition of judgment therein, and in case judgment is rendered in said principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy such judgment, may be sold in like manner as other property is sold on execution, by virtue of an execution issuing on said judgment. In case judgment shall be rendered in said action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the sheriff returned to the defendant: *Provided, however,* That in cases where such effects or personal property are of a perishable nature, or the interests of the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff in like manner as sales upon execution are made, and the proceeds of such sale shall be paid to the clerk of the superior court, and like disposition shall be made of such proceeds at the termination of the action as would have been made of such personal property or effects under the provisions of this section, in case such sale had not been made.

Sale of personal effects.

SEC. 16. Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control as provided in the preceding article, fail or refuse to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure

or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects.

SEC. 17. Where the garnishee is an incorporated or joint stock company, and it appears by the answer or otherwise that the defendant is or was, when the writ of garnishment was served, the owner of any shares of stock in such company or any interest therein, the court shall render a decree ordering the sale under execution in favor of the plaintiff, against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.

SEC. 18. The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff making such sale shall execute a transfer of such shares or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

SEC. 19. Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself.

SEC. 20. If the plaintiff should not be satisfied with the answer of the garnishee he may controvert the same by affidavit in writing signed by him, stating that he has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars he believes the same is incorrect.

SEC. 21. The defendant may also in like manner controvert the answer of the garnishee.

SEC. 22. If the answer of the garnishee is controverted, as provided in the two preceding sections, an issue shall be formed, under the direction of the court, and tried as other

cases: *Provided, however,* No pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court.

SEC. 23. No current wages or salary for personal services rendered by any person having a family dependent on him for support within sixty days next preceding the service of the writ shall be subject to garnishment, and where it appears upon the trial or by the answer of the garnishee, when not controverted as hereinbefore provided, that the garnishee is indebted to such defendant for such current wages or salary, the garnishee shall be discharged as to such indebtedness.

Costs.

SEC. 24. Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee for attorneys' fees, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon such costs shall be taxed against the defendant and included in the judgment. Where the answer is controverted the costs shall abide the issue of such contest.

SEC. 25. It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects, or where the garnishee is an incorporated or joint stock company, in which the defendant was the owner of shares of stock or other interest therein for the garnishee to show that such indebtedness was paid or such effects delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this act.

Justices of
the peace.

SEC. 26. The provisions of this act shall not apply to actions and proceedings before justices of the peace, but garnishments shall be made in such actions and proceedings in the manner now provided by existing laws.

SEC. 27. All acts and parts of acts in conflict with this act be and the same hereby are repealed.

Approved March 8, 1893.