

CHAPTER CXXXIII.

[H. B. No. 76.]

PROCEEDINGS SUPPLEMENTAL TO EXECUTION.

AN ACT relating to proceedings supplemental to execution.

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

SECTION 1. At any time within five years after entry of a judgment for the sum of \$25 or over that amount, and after the issuing of an execution against property, and upon proof by the affidavit of a party or otherwise to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under this act may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney, that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such a bond, he may be committed to prison, there to remain until the close of the examination; except that the judge may direct the sheriff to produce him from time to time, as required in the course of the proceedings.

SEC. 2. A warrant issued as prescribed in the last section may be vacated or modified by the judge making the same, or by the court out of which the execution was issued, upon giving three days' notice to the opposite party.

Warrant may
be vacated or
modified.

Judge may order examination into amount of personal property subject to execution.

SEC. 3. Upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued as prescribed by section one of this act, and also that any person or corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebted to him in said amount, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

SEC. 4. An order requiring a person to attend and be examined, made pursuant to any provision of this article, must require him so to attend and be examined either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he must certify to the judge to whom the order is returnable all of the evidence and other proceedings taken before him.

During examination party to be under oath.

SEC. 5. Upon an examination made under this act, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this act, from time to time, as he thinks proper.

Referee's oath.

SEC. 6. Unless the parties expressly waive the referee's oath, a referee appointed as prescribed in this act must, before entering upon an examination or taking testimony, subscribe and take an oath that he will faithfully and fairly discharge his duty upon the reference, and make a just and true report according to the best of his understanding. The oath must be returned to the judge with the report of the testimony.

SEC. 7. At any time after the commencement of a special proceeding authorized by this act, and before the appointment of a receiver therein, or the extension of a receivership thereto, the judge by whom the order or war-

rant was granted or to whom it is made returnable, may in his discretion upon proof by affidavit to his satisfaction that a person or corporation is indebted to the judgment debtor, and upon such notice given to such person or corporation as he deems just, or without notice make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made.

SEC. 8. Where it appears from the examination or testimony taken in the special proceedings authorized by this act that the judgment debtor has in his possession or under his control money or other personal property belonging to him, or that one or more articles of personal property capable of manual delivery, his right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his discretion, and upon such notice given to such persons as he deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver.

Judge may order money or property to be delivered to sheriff or receiver.

SEC. 9. If the sheriff to whom money is paid or other property is delivered, pursuant to an order made as prescribed in the last section of this act, does not then hold an execution upon the judgment against the property of the judgment debtor, he has the same rights and power, and is subject to the same duties and liabilities with respect to the money or property, as if the money had been collected or the property had been levied upon by him by virtue of such an execution, except as provided in the next section.

Sheriff, rights, powers, duties, etc.

Receiver.

SEC. 10. After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact, direct the sheriff to apply the money so paid, or the proceeds of the property so delivered, upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff.

SEC. 11. Where money is paid or property is delivered as prescribed in the last four sections and afterwards the special proceeding is discontinued or dismissed, or the judgment is satisfied without resorting to the money or property, or a balance of the money or of the proceeds of the property, or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding, the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his hands to the debtor, or to such other person as appears to be entitled thereto, upon payment of his fees and all other sums legally chargeable against the same.

Return of
property or
money to
debtor.

Injunction.

SEC. 12. The judge by whom the order or warrant was granted or to whom it is returnable may make an injunction order restraining any person or corporation, whether a party or not a party to the special proceeding, from making or suffering any transfer or other disposition of or interference with the property of the judgment debtor or the property or debt concerning which any person is required to attend and be examined, until further direction in the premises. Such an injunction may be made simultaneously with the order or warrant by which the special proceeding is instituted, and upon the same papers or afterwards, upon an affidavit showing sufficient grounds therefor. The judge or court may, as a condition of granting an application to vacate or modify the injunction order

require the applicant to give security in such sum and in such manner as justice requires.

SEC. 13. An injunction order or an order requiring a person to attend and be examined made as prescribed in this act must be served—(1) By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made. (2) Service upon a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where a summons is personally served upon a corporation, unless the officer to be served is specially designated in the order, the order may be served by any person who can serve a summons in an action.

Service of
injunction or
an order
requiring
attendance.

SEC. 14. The sheriff, when he arrests a judgment debtor by virtue of a warrant issued as prescribed in this act, must deliver to him a copy of the warrant and of the affidavit upon which it was granted.

SEC. 15. A special proceeding instituted as prescribed in this act may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that his judgment has been satisfied, his proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or of a judgment creditor who has instituted either of the special proceeding[s] authorized by this act. Where an order appointing a receiver or extending a receivership has been made in the course of the special proceeding, notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained.

Discontinu-
ance of special
proceedings.

SEC. 16. The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars, and directing the payment thereof out of any money

Costs.

which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order.

Same.

SEC. 17. Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him a like sum as costs, and directing the payment thereof within a time specified in the order by the judgment creditor.

Contempt of court.

SEC. 18. A person who refuses, or without sufficient excuse neglects, to obey an order of a judge or referee made pursuant to any of the provisions of this act, and duly served upon him, or an oral direction given directly to him by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpœna duly served upon him, may be punished by the judge of the court out of which the execution issued, as for contempt.

Judgment debtor may not be compelled to attend outside of his own county.

SEC. 19. A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this act at a place without the county where his residence or place of business is situated. Where the judgment debtor to be examined under this [act] is a corporation the court may cause such corporation to appear and be examined by making like order or orders as are prescribed in this act, directed to any officer or officers thereof.

Witness not excused from answering on ground of convicting himself, etc.

SEC. 20. A party or witness examined in a special proceeding authorized by this act is not excused from answering a question on the ground that his examination will tend to convict him of a commission of a fraud, or to prove that he has been a party to or privy to or knowing of a conveyance, assignment, transfer or other disposition of property for any purpose; or that he or another person claims to be entitled as against the judgment creditor or receiver appointed or to be appointed in the special proceeding to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person

in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding. Answer not to be used as evidence against witness.

SEC. 21. When, in proceedings under this act, personal service of the summons in the action was not made on all of the defendants, a debt due to, or other personal property owned by, one or more of the defendants not summoned jointly with the defendants summoned, or with any of them, may be reached by proceedings under this act.

SEC. 22. A special proceeding under this act instituted before one judge may be continued from time to time before another judge of the same court with like effect as if it had been instituted or commenced before the judge who last heard the same. Continuance.

SEC. 23. This act shall apply to judgments recovered in justice court upon which a transcript has been issued and filed with the clerk of the superior court.

SEC. 24. Proceedings under this act may be instituted before the superior courts of this state or before any judge of said superior courts.

SEC. 25. This act does not authorize the seizure of, or other interference with, any property which is expressly exempt by law from levy and sale by virtue of an execution, or any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor; or the earnings of the judgment debtor for his personal services rendered within sixty days next before the institution of the special proceeding, where it is made to appear by his oath or otherwise that those earnings are necessary for the use of a family wholly or partly supported by his labor. Property exempt by law.

SEC. 26. Proceedings under this act are special proceedings, and shall be heard by the judge or referee before whom the same are returnable without a jury.

SEC. 27. The fees of referees appointed in proceedings under this act shall be five dollars per day. Fees.

SEC. 28. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this

Appointment
of receiver.

act, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor. At least two days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor, unless the judge or court is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with the notice, or may direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined or the warrant has been served upon the judgment debtor, a receiver may be appointed upon the return day thereof, or at the close of the examination, without further notice to him.

Notice of
application.

SEC. 29. The judge must ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether any other special proceeding authorized by this act is pending against the judgment debtor, or if a receiver has been appointed or application has been made for the appointment of a receiver of the property of the judgment debtor in any other action by a judgment creditor. If either is pending, and a receiver has not been appointed therein, notice of the application for the appointment of a receiver, and of all of the subsequent proceedings respecting the receivership, must be given in such manner as the judge directs to the judgment creditor prosecuting it.

Receivers.

SEC. 30. Only one receiver of the property of the judgment debtor shall be appointed. Where a receiver thereof has already been appointed the judge, instead of making the order prescribed in the last section, must make an order extending the receivership to the special proceedings before him. Such an order gives to the judgment creditor the same rights as if a receiver was appointed upon his application, including the right to apply to the court to control, direct or remove the receiver, or to subordinate the proceedings in or by which the receiver was appointed to those taken under his judgment.

Order appoint-
ing receiver to
be filed with
county clerk.

SEC. 31. An order appointing a receiver or extending a receivership must be filed in the office of the county clerk wherein the judgment roll in the action is filed; or if the

special proceeding is founded upon an execution issued out of a court other than that in which the judgment was rendered, in the office of the clerk of the county wherein the transcript of the judgment is filed.

SEC. 32. The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:

1. Real property is vested in the receiver only from the Exceptions. time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated.

2. When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of the county where he resides.

SEC. 33. Where the receiver's title to personal property has become vested, as prescribed in the last section, it also extends back by relation, for the benefit of the judgment creditor, in whose behalf the special proceeding was instituted as follows: Receiver's title extends back for benefit of judgment creditor.

1. When an order requiring the judgment debtor to attend and be examined, or a warrant requiring the sheriff to arrest him and bring him before the judge, has been served, before the appointment of the receiver, or the extension of the receivership, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or warrant.

2. Where an order or warrant has not been served as specified in the foregoing subdivision, but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor, which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order, and to a debt then due to him from that person or corporation.

3. In every other case where notice of application for the appointment of a receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements or an order prescribing a substitute for personal service.

4. Where the case is within two or more of the foregoing subdivisions of this section, the rule most favorable to the judgment creditor must be adopted. But this section does not affect the title of a purchaser in good faith without notice, and for a valuable consideration; or the payment of a debt in good faith and without notice.

County clerk
to keep record.

SEC. 34. Each county clerk must keep in his office a book indexed to the names of the judgment debtors, styled "book of orders appointing receivers of judgment debtors." A county clerk in whose office an order or a certified copy of an order is filed, as prescribed in this act, must immediately note thereupon the time of filing it, and as soon as practicable, must record it in the book so kept by him. He must also, upon request, furnish forthwith to any party or person interested, one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission.

SEC. 35. All acts and laws in conflict with the provisions of this act are hereby repealed.

Approved March 15, 1893.