

CHAPTER 575

PROCEEDINGS SUPPLEMENTARY TO EXECUTION

575.01 PERSON INDEBTED MAY PAY SHERIFF.

HISTORY. R.S. 1851 c. 71 s. 124; P.S. 1858 c. 61 s. 125; G.S. 1866 c. 66 s. 301; G.S. 1878 c. 66 s. 339; G.S. 1894 s. 5488; R.L. 1905 s. 4319; G.S. 1913 s. 7953; G.S. 1923 s. 9449; M.S. 1927 s. 9449.

The appointment of a receiver for a judgment debtor's nonexempt property in proceedings supplementary to execution is discretionary with the court. *Ginsburg v Davis*, 191 M 14, 252 NW 669.

As an aid to execution. 14 MLR 568.

575.02 ORDER FOR EXAMINATION OF DEBTOR.

HISTORY. R.S. 1851 c. 71 s. 121; P.S. 1858 c. 61 s. 122; G.S. 1866 c. 66 s. 299; G.S. 1878 c. 66 s. 337; 1889 c. 106 s. 1; 1891 c. 120 s. 1; G.S. 1894 s. 5486; R.L. 1905 s. 4320; G.S. 1913 s. 7954; G.S. 1923 s. 9450; M.S. 1927 s. 9450.

1. Scope and purpose
2. Matter of right; showing
3. Based on judgment
4. Equitable lien
5. Conclusiveness of return
6. As to non-resident

1. Scope and purpose

Supplementary proceedings are intended to furnish a speedy, inexpensive and adequate remedy for discovering and reaching all equitable interests of debtor not liable to seizure and sale or execution; and also all property so liable which an officer holding such process has been unable to find, and to compel the application of the same towards the satisfaction of the judgment. They not only perform the office of a creditor's bill, but have an enlarged scope and purpose. *Kay v Vischers*, 9 M 270 (254); *Flint v Webb*, 25 M 263.

A receiver may be appointed, though the only property disclosed is an interest in real estate, situate in another state, and the debtor may be required to convey such interest to the receiver. *Towne v Campbell*, 35 M 231, 28 NW 254.

Where a judgment creditor's demand is secured by mortgage, a receiver of the judgment creditor's property may, in the judicial discretion of the court, be appointed in supplementary proceedings, although the creditor has not exhausted his mortgage security. *Bean v Heron*, 65 M 64, 67 NW 805.

The remedy is in the nature of an equitable execution. *Bean v Heron*, 65 M 64, 67 NW 805.

It is against the general policy of the law to appoint a receiver where the creditor has other adequate remedies for collection of his judgment. The appointment rests in the judicial discretion of the court guided by circumstances. *Poppetz v Rognes*, 76 M 109, 78 NW 964; *Bradley v Burk*, 81 M 368, 84 NW 123.

As there was no showing that the judgment debtor had money in his possession, or concealed, an order directing him to pay the plaintiff a specified sum was erroneous. *Hansen v Hayes*, 161 M 251, 201 NW 603.

A judgment creditor without proceeding under section 575.02, or after such proceeding, and without the appointment of a receiver or other action by the court, may bring an action to set aside the conveyance as fraudulent, or may proceed by execution. *Healy v Montevideo Elevator*, 170 M 290, 212 NW 455.

An order for judgment made in proceedings supplementary to execution is an appealable order. *Freeman v Larson*, 199 M 446, 272 NW 155; *Northern National v McLaughlin*, 203 M 253, 280 NW 852.

Judgment for payment of money only in federal equitable proceedings could be enforced by writ of execution and supplemental writ of garnishment, where such was state practice. *Commonwealth v Collins*, 10 F. Supp. 462.

Collection of taxes from a receiver in supplementary proceedings. 23 MLR 861.

2. Matter of right; showing

Without any showing that the judgment debtor has property subject to execution, the judgment creditor is entitled as a matter of right to an order upon compliance with the provisions of this section. *Kay v Vischers*, 9 M 270 (254); *Flint v Webb*, 25 M 263.

It is customary to make the facts appear by an affidavit which need not state the relief sought. *Knight v Nash*, 22 M 453.

A judgment creditor is entitled on the return of an execution unsatisfied to an order for examination of the debtor and to an order forbidding any transfer of his property; and the fact that a voluntary assignment has been made by the judgment debtor subsequent to the order in supplementary proceedings is no bar to the appointment of a receiver. *Tomlinson v Shatto*, 34 F 380.

3. Based on judgment

Any action in the nature of a creditor's bill may operate at any time during the ten-year statutory life of the judgment. The proceeding supplementary to the judgment does not operate to extend the life of the judgment. If the period expires during the pendency of the proceedings, the judgment having ceased to exist, the supplementary remedy dies with it. *Newell v Dart*, 28 M 248, 9 NW 732.

Creditor's bill; necessity of judgment at law and return of execution thereon or condition precedent. 15 MLR 592.

4. Equitable lien

The judgment creditor has a lien on debtor's equitable assets disclosed, and can obtain the appointment of a receiver, the proceedings supplementary to execution being regarded in the light of a creditor's bill. *Wolf v McKinley*, 65 M 156, 68 NW 2; *Billson v Linderberg*, 66 M 66, 68 NW 771; *Tomlinson v Shatto*, 34 F 380.

Generally the lien is dissolved by an assignment for the benefit of creditors. *Wolf v McKinley*, 65 M 156, 68 NW 2; *Billson v Lardner*, 67 M 35, 69 NW 477.

The judgment creditor reached no property of the judgment debtor other than a disputed claim against the state highway department, and that the judgment creditor released upon being paid \$2,500. Upon such payment and release, the proceedings supplementary ended. There was no priority of rights as between creditors, and the money should be distributed in some proceedings other than in the proceedings supplementary. *Northern National v McLaughlin*, 203 M 259, 280 NW 852.

5. Conclusiveness of return

Upon the examination or proceedings had under an order, the truth or falsity of the sheriff's return cannot be inquired into, nor whether the plaintiff wrongfully procured the making of the return when there was property on which to levy. *Flint v Webb*, 25 M 263; *Spooner v Bay St. Louis*, 44 M 401, 46 NW 848.

Under Laws 1862, Chapter 27, a sheriff's return on an execution merely that the same was "unsatisfied", had not the effect of a return that no property could be found. *Sherburne v Rippe*, 35 M 540, 29 NW 322.

The reason of the rule making conclusive an officer's return on a writ extends only to cases where it is collaterally attacked for the purpose of invalidating the officer's proceedings or defeating the writ or some right acquired thereby. It should not be applied to a case where some statement in the return (as that of the date of the levy) is involved collaterally or incidentally only in the issue to

be tried in the case wherein the writ issued. *Grossman v Lockedell*, 184 M 448, 238 NW 893.

6. As to non-resident

The judgment debtor, a resident of this state, was absent therefrom so personal service could not be obtained. The judgment creditor in one affidavit and order commenced proceedings in proceedings supplementary under General Statutes 1894, Section 5486 (section 575.02), and against a third person under General Statutes 1894, Section 5496 (section 575.07). Service was had on the third person who disclosed and a receiver was appointed under section 575.02. Six months thereafter, assets in the hands of a fourth party were levied upon by another creditor of judgment debtor. Held, there being no personal service on the judgment debtor, no general lien was acquired; a lien was acquired on the assets seized from the third party, but not on those of the fourth party. Supplementary proceedings are analogous to proceedings under a creditor's bill. *Billson v Linderberg*, 66 M 66, 68 NW 771.

575.03 WARRANT AGAINST DEBTOR.

HISTORY. R.S. 1851 c. 71 s. 123; P.S. 1858 c. 61 s. 124; G.S. 1866 c. 66 s. 300; G.S. 1878 c. 66 s. 338; G.S. 1894 s. 5487; R.L. 1905 s. 4321; G.S. 1913 s. 7955; G.S. 1923 s. 9451; M.S. 1927 s. 9451.

575.04 EXAMINATION.

HISTORY. R.S. 1851 c. 71 ss. 126, 127; P.S. 1858 c. 61 ss. 127, 128; G.S. 1866 c. 66 ss. 302, 303, 308; G.S. 1878 c. 66 ss. 340, 341, 346; 1889 c. 106 s. 2; 1894 ss. 5489, 5490, 5495; R.L. 1905 s. 4322; G.S. 1913 s. 7956; G.S. 1923 s. 9452; M.S. 1927 s. 9452.

The examination should be strictly limited to discovery of property, and should not be permitted to uncover private family affairs needlessly. *Bradley v Burk*, 81 M 368, 84 NW 123.

A judgment creditor may use supplementary proceedings for the purpose of getting information, and then bring suit to avoid conveyances, or he may proceed upon execution. He need not ask for a receiver, or may ask and be denied one, and then proceed with every remedy he has. *Healy v Montevideo Elevator*, 170 M 290, 212 NW 455.

A defendant who refuses to testify or answer proper questions asked of him is guilty of constructive contempt. Repeated evasions and untrue answers to material and proper questions amount to the same as a refusal to answer. The limited amount of the fine which may be imposed, does not prevent the court from ordering reasonable imprisonment. *Minneapolis Willys-Knight v Bergan*, 178 M 158, 226 NW 188.

Action in damages for maliciously and without probable cause instituting an action against the plaintiff upon the charge of making a false statement to obtain credit. The disclosure in proceedings supplementary to execution cannot be used in a criminal proceeding against the judgment debtor; but a fact shown in it may be considered in determining probable cause. *Krienke v Citizens National*, 182 M 554, 235 NW 24.

While the court may by order compel the debtor to turn property owned and possessed by him over to the receiver, it cannot summarily adjudicate as to the rights of property not in the possession of the judgment debtor at the date of the receiver's appointment. *Northern National v McLaughlin*, 203 M 259, 280 NW 852.

No statute which leaves the party or witness subject to prosecution, after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the fifth amendment to the federal constitution; and to be valid a statutory enactment must afford absolute immunity against future prosecution for the offense to which the question relates. The witness, having been committed for refusal to answer, is discharged on habeas corpus. *Counselman v Hitchcock*, 142 US 547.

575.05 PROPERTY APPLIED TO JUDGMENT; RECEIVER.

HISTORY. R.S. 1851 c. 71 ss. 128, 129; P.S. 1858 c. 61 ss. 129, 130; G.S. 1866 c. 66 ss. 304, 305; G.S. 1878 c. 66 ss. 342, 343; 1889 c. 106 s. 3; G.S. 1894 ss. 5491; 5492; R.L. 1905 s. 4323; G.S. 1913 s. 7957; G.S. 1923 s. 9453; M.S. 1927 s. 9453.

1. Order for application of property
2. Appointment of receiver

1. Order for application of property

Where, on examination, property is disclosed which may be reached by execution, an order is discretionary. The court is not required to make an order for its application to the judgment. Ordinarily the creditor should be left to his simple remedy of another execution. *Kay v Vischers*, 9 M 270 (254).

In 1872, in a case since overruled by statute and order directing judgment debtor to turn over his watch was sustained. *Rothschild v Boelter*, 18 M 361 (331).

He may be ordered to assign to the receiver a claim against a municipal corporation, although the latter denies the indebtedness. *Knight v Nash*, 22 M 452.

Judgment debtor owns a three-story building, occupies the second floor, and rents the balance of the building. The entire building being exempt, a receiver cannot be appointed to collect the rents for the purpose of applying them on the judgment. *Umland v Holcombe*, 26 M 286, 3 NW 341.

The salary of an officer of a municipal corporation cannot be reached by proceedings supplementary by the creditors of the officer. Distinguishing *Knight v Nash*, 22 M 452. *Roeller v Ames*, 33 M 132, 22 NW 177.

Judgment debtor may be ordered to convey to the receiver his interest in real property, though situated in another state. *Towne v Campbell*, 35 M 231, 28 NW 254; *Tomlinson v Shatto*, 34 F 380.

The judgment creditor cannot be ordered to pay over a specific sum of money received by him after the service of the order for examination, but paid out by him before the disclosure. *Christensen v Tostevin*, 51 M 230, 53 NW 461.

An oral order of the court restraining a person named as witness from disposing of certain personal property was not in the instant case held operative. *Benbow v Kellom*, 52 M 433, 54 NW 482.

The creditors of a fireman cannot, by proceedings supplementary to execution, reach the wages of a fireman due him from the municipality. *Sandwich v Krake*, 66 M 110, 68 NW 606.

To justify an order under this section, the evidence must be direct, clear, and convincing. *Bradley v Burk*, 81 M 368, 84 NW 123.

Failure to comply with the order after the judgment affirming it had been remitted to the lower court constituted contempt. *Wilkins v Corey*, 172 M 103, 214 NW 776.

The evidence is insufficient to support a finding that there was a violation of a restraining order in supplementary proceedings, or that the disclosure therein was not truthful. *Ryan v Colburn*, 185 M 347, 241 NW 388.

2. Appointment of receiver

The appointment of a receiver is a matter of discretion with the trial court to be cautiously exercised. *Knight v Nash*, 22 M 452; *Flint v Webb*, 25 M 263; *Holcombe v Johnson*, 27 M 353, 7 NW 364; *Dunham v Burnes*, 36 M 106, 30 NW 402; *Benbow v Kellom*, 52 M 433, 54 NW 482; *Bean v Heron*, 65 M 64, 67 NW 805; *Billson v Linderberg*, 66 M 66, 68 NW 771; *Flint v Zimmerman*, 70 M 346, 73 NW 175; *Poppitz v Rognes*, 76 M 109, 78 NW 964; *Healy v Montevideo Elevator Co.* 170 M 290, 212 NW 455; *Ginsberg v Davis*, 191 M 12, 252 NW 669.

A receiver may be appointed immediately after granting the order for the examination of debtor. *Flint v Webb*, 25 M 263.

A receiver may be appointed, although the only property disclosed is, an interest in real estate situated in another state, and the debtor may be required to convey such interest to the receiver. *Towne v Campbell*, 35 M 231, 28 NW 254.

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A receiver may maintain an action to avoid a fraudulent conveyance of real estate by the judgment debtor, even though there has been no transfer of the title to the receiver. *Farmers' Loan v Minneapolis Engine*, 35 M 543, 29 NW 349; *Dunham v Byrnes*, 36 M 106, 30 NW 402.

In bringing an action, the receiver must allege his appointment with sufficient fullness to show he has authority. *Walsh v Byrnes*, 39 M 527, 40 NW 831; *Tvedt v Mackel*, 67 M 24, 69 NW 475; *Rossman v Mitchell*, 73 M 198, 75 NW 1053.

A receiver should not be appointed where the creditor has a mortgage amply sufficient to satisfy the whole debt. *Bean v Heron*, 65 M 64, 67 NW 805.

A judgment in favor of defendant in an action by receiver is binding on the creditor at whose instance he was appointed. *Dohs v Holbert*, 103 M 283, 114 NW 961.

There is no power in the district court to appoint a receiver to collect unearned salary of the debtor. *Knott v Hawley*, 166 M 363, 207 NW 736.

Whether a receiver be appointed, rests in the judicial discretion of the trial court. The supreme court interferes only to correct an abuse of discretion. *Wilkins v Corey*, 168 M 102, 209 NW 754.

575.06 ADVERSE CLAIMANTS.

HISTORY. R.S. 1851 c. 71 s. 130; P.S. 1858 c. 61 s. 131; G.S. 1866 c. 66 s. 306; G.S. 1878 c. 66 s. 344; G.S. 1894 s. 5493; R.L. 1905 s. 4324; G.S. 1913 s. 7958; G.S. 1923 s. 9454; M.S. 1927 s. 9454.

That other parties claim some interest in the moneys due to Nash from the city is immaterial, since it is only Nash's claim or interest that is covered by the order. *Knight v Nash*, 22 M 455.

Where a levy is made on an alleged debt to a judgment debtor, and the debt is denied, recovery against the debtor of the judgment debtor may be had only in an action, and the district court may not order a judgment against the debtor on the evidence taken at an examination in supplementary proceedings. *Freeman v Larson*, 199 M 449, 272 NW 155.

575.07 PERSON INDEBTED MAY BE EXAMINED.

HISTORY. 1867 c. 61 s. 1; G.S. 1878 c. 66 s. 347; G.S. 1894 s. 5496; R.L. 1905 s. 4325; G.S. 1913 s. 7959; G.S. 1923 s. 9455; M.S. 1927 s. 9455.

After an examination of the judgment debtor, the trial judge issued an order requiring Minnie Lustfield to appear and answer under oath. She failed to appear, and after certain preliminaries was fined for contempt and committed to jail on non-payment. The appellate court affirmed. *Menage v Lustfield*, 30 M 487, 16 NW 398.

Proceedings begun under sections 575.02 and 575.07 and not being able to obtain service on the judgment debtor service was had on a third person who appeared and disclosed. A receiver was properly appointed under section 575.02, and an order properly made under section 575.07, requiring the third person to turn over to the receiver the amount said third person was owing to the judgment debtor. *Billson v Linderberg*, 66 M 66, 68 NW 771.