

COMPENSATORY AND COLLECTION REMEDIES

CHAPTER 570

ATTACHMENT

570.01 WHEN AND IN WHAT CASES ATTACHMENT ALLOWED.

Money in hands of a county official is subject to attachment; but where the probate court directs money be delivered to the county treasurer, the court must determine if subject to attachment in accordance with facts submitted. OAG Dec. 11, 1946 (361-A).

Relation between renter of safe-deposit box and the safe-deposit company. 11 MLR 449.

May plaintiff summon himself as garnishee and attach property and credits in his own hands. 11 MLR 470.

Attachment in an action for slander of title. 14 MLR 78.

What constitutes issuance of a summons. 16 MLR 442.

Property taken from prisoners. 21 MLR 326.

Garnishment and bankruptcy. 27 MLR 1.

Creditor's remedies relating to choses in action and corporate stock. 30 MLR 616.

570.02 CONTENTS OF AFFIDAVIT.

Uniform fraudulent conveyance act; procedure. 7 MLR 530, 545.

Relation between renter of safe-deposit box and the safe-deposit company. 11 MLR 440, 449.

Comparative survey of Minnesota decisions, and the restatement of the law, as to conflict of laws relating to domicile. 15 MLR 668, 673.

Chattel mortgages; retention of possession of non-filing. 24 MLR 838.

570.03 CONDITIONS OF BOND.

Upon the affidavit of plaintiff, for a sum certain due for services rendered defendant, a nonresident of the state, and a surety bond filed May 22, 1936, a writ of attachment was directed to issue. There is no record that it did issue. January 21, 1939, another affidavit, identical with the first, except as to date of jurat, and the same bond were presented to the court, who approved the bond and endorsed on affidavit an order directing the writ to issue. It was issued and levy made upon property of defendant and summons duly served on him January 23. Defendant moved to vacate the writ and levy, giving no ground. The court erred in so doing without giving plaintiff opportunity to file another bond nunc pro tunc, since the irregularity in the use of stale bond was due in part to the court's act in approving it. *Ingbretson v Montague*, 206 M 336, 288 NW 577.

Attachment bond; release of security. 5 MLR 305.

Effect of discharge in bankruptcy of the principal debtor on surety's liability on an attachment bond. 9 MLR 486.

570.04 ISSUANCE, CONTENTS, AND SCOPE OF WRIT.

While in the course of administration the property of a decedent is not subject to attachment. *Griggs v Nadeau*, 221 F. 381.

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Attachment of seat on stock exchange. 5 MLR 222.

Is the interest of a conditionable buyer of personal property attachable. 13 MLR 247.

Creditor's attachment of debtor-beneficiary's equitable interest. 15 MLR 841.

570.05 EXECUTION OF WRIT.

Agister's lien lost by attachment of property subject to such lien. 6 MLR 598.

Wrongful levy of attachment without disturbance of possession as constituting conversion. 12 MLR 406.

Situs of corporate stocks under the uniform stock transfer act for purposes of attachment. 23 MLR 381.

Bankruptcy; lien by legal proceedings; preferential transfer. 25 MLR 102.

Creditor's remedies relating to choses in action and corporate stock. 30 MLR 616.

570.08 JUDGMENT FOR PLAINTIFF, HOW SATISFIED.

Execution sale of stock was properly conducted pursuant to sections 570.05 and 550.14, and physical possession of the certificates by the sheriff at time of sale was not necessary. That the price received upon execution sale was less than its actual value did not, standing alone, invalidate the sale. *Brennan v Friedell*, 215 M 499, 10 NW(2d) 355.

570.09 MOTION TO VACATE.

Upon the affidavit of plaintiff, for a sum certain due for services rendered defendant, a nonresident of the state, and a surety bond filed May 22, 1936, a writ of attachment was directed to issue. There is no record that it did issue. January 21, 1939, another affidavit, identical with the first, except as to date of jurat, and the same bond were presented to the court, who approved the bond and endorsed on affidavit an order directing the writ to issue. It was issued and levy made upon property of defendant and summons duly served on him January 23. Defendant moved to vacate the writ and levy, giving no ground. The court erred in so doing without giving plaintiff opportunity to file another bond nunc pro tunc, since the irregularity in the use of stale bond was due in part to the court's act in approving it. *Ingebretson v Montague*, 206 M 336, 288 NW 577.

570.12 SATISFACTION AND DISCHARGE; PERSONAL PROPERTY.

Where a vendor has received the entire purchase price and has executed and delivered a deed under which the purchaser has taken possession of the property, but which is inoperative because the name of the grantee has not been inserted therein, the vendor retains no attachable interest in the property, but merely holds the bare legal title as trustee for the purchaser, and a creditor who has notice of the rights of the purchaser cannot acquire a lien on the property under a writ of attachment against the vendor. Where a creditor files a complaint and causes an attachment to be issued and levied on the real estate of a nonresident, but fails to serve the summons or take any further steps in the action, and a year and nine months later commences a new action against the same nonresident, on the same cause of action, and levies a new attachment on the same real estate, and prosecutes this action to judgment, he is deemed to have abandoned his first action and to have waived any lien under his first attachment. *Union Investment Co. v Abell*, 148 M 229, 181 NW 353.