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Maine
REVISED STATUTES
1964

*Prepared Under the Supervision
of the
Committee on Revision of Statutes*

Being the Tenth Revision of the
Revised Statutes of the State
of Maine, 1964

Volume 3
Titles 14 to 20



Boston, Mass.
Boston Law Book Co.

Orford, N. H.
Equity Publishing Corporation

St. Paul, Minn.
West Publishing Co.

Text of Revised Statutes
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ARTICLE 1. GENERAL PROVISIONS

§ 2601. Actions in which trustee process used

In connection with the commencement of any personal action, except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking, or for assault and battery, trustee process may be used in the Superior Court or in the District Court.

R.S.1954, c. 114, § 1; 1959, c. 317, § 207; 1963, c. 402, § 183.

§ 2602. Persons not to be adjudged trustees

No person shall be adjudged trustee:

1. Negotiable instruments. By reason of any negotiable bill, draft, note or other security drawn, accepted, made or indorsed by him, except in the cases provided in section 2629;

2. Collections by legal process. By reason of any money or other thing received or collected by him as an officer, by

force of a legal process in favor of the principal defendant in the trustee process, although it has been previously demanded of him by the defendant;

3. Money held by officer, accountable to defendant. By reason of any money in his hands as a public officer for which he is accountable to the principal defendant;

4. Debts due defendant. By reason of any money or other thing due from him to the principal defendant unless, at the time of the service of the summons upon him, it is due absolutely and not on any contingency;

1959, c. 317, § 229.

5. Debt due on a judgment. By reason of any debt due from him on a judgment while he is liable to an execution thereon;

6. Wages. By reason of any amount due from him to the principal defendant as wages for his personal labor or that of his wife or minor children, for a time not exceeding one month next preceding the service of the process and not exceeding \$30 of the amount due and payable to him as wages for his personal labor, and \$10 shall be exempt in all cases. Moreover, wages of minor children and of women are not, in any case, subject to trustee process on account of any debt of parent or husband. If, after wages for personal labor or services have been attached and before the trustee's disclosure under oath is required to be served, the defendant tenders to the plaintiff or to his attorney the whole amount due and recoverable in the action and the fees of the officer for serving the summons, the plaintiff shall recover no costs except the fees of the officer. If the defendant is defaulted without an appearance or if he files an offer of judgment before his disclosure under oath is required to be filed and the plaintiff accepts such offer or fails to secure more than the amount thereof and of the interest thereon from its date, the plaintiff shall recover no costs except the entry fee and the officers' fees. The trustee shall pay to the defendant the amount exempt from attachment at the same time and in the same manner as if no process had been served;

1959, c. 317, § 229.

7. Debt paid. Where service was made on him by leaving a copy or a summons and before actual notice of such service or reasonable ground of belief that it was made, he paid the debt due to the principal defendant or gave his negotiable security therefor;

8. Board furnished Legislator. By reason of any amount due for board furnished a member of the Legislature while in attendance thereon;

9. Safe deposit box. By reason of the renting as a national bank, trust company, savings bank or safe deposit company of any safe deposit box or on account of the contents thereof.

R.S.1954, c. 114, § 55; 1959, c. 317, § 229.

§ 2603. Effect of service on trustee; service on partnership

Service on the trustee binds all goods, effects or credits of the principal defendant entrusted to and deposited in his possession, to respond to the final judgment in the action, as when attached by ordinary process. When a partnership is made a trustee on trustee process, service upon one member of the firm shall be a sufficient attachment of the property of the principal defendant in the possession of the firm, provided such service be made at any place of business of the firm or, if such service is made elsewhere, that legal service be afterward made upon the other members of the firm.

R.S.1954, c. 114, § 4; 1961, c. 317, § 391.

§ 2604. County where action brought; divorce; bank as trustee; counterclaim

If all the trustees live in the same county, the action shall be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation, its residence shall be deemed to be in the county in which it has its established or usual place of business, held its last annual meeting or usually holds its meetings; except that an action in which a railroad corporation is named and alleged as trustee may be brought in any county in which said railroad corporation runs and operates its road; and except that an action in which a banking institution is named and alleged as trustee may be brought in any county in which said banking institution maintains a place of business. Service may be made on the manager of such banking institution in the county having jurisdiction over the parties named in the action.

When trustee process is used in connection with the commencement of an action for divorce, the action must be brought in the county in which the court has jurisdiction over the parties named in the action, and the alleged trustee, although residing in another county, may be summoned to appear in the county

in which said court has jurisdiction over the parties named in the action and must answer and make disclosure in such county. The court sitting therein shall have full power and authority to award from the funds found to be held by the alleged trustee and belonging to the defendant such sum or sums as it may deem proper as an award for alimony or in lieu thereof.

When trustee process is used in connection with a counterclaim arising out of the transaction or occurrence that is the subject matter of the opposing party's claim, the alleged trustee may be summoned to appear in the county in which the action is pending, even though he does not reside or maintain a usual place of business in that county.

R.S.1954, c. 114, § 5; 1959, c. 317, § 209; c. 378, § 73.

§ 2605. Definitions relating to venue

In determining where an action commenced by trustee process shall be brought in the District Court under this chapter the word "county" shall mean "division" and the word "counties" shall mean "divisions."

1961, c. 395, § 47.

§ 2606. Additional trustees

After service of the summons and complaint upon the principal defendant, the court, on motion without notice, may for cause shown order an additional attachment on trustee process against the same or an additional trustee, except for wages or salary due the defendant.

R.S.1954, c. 114, § 6; 1959, c. 317, § 210.

§ 2607. When trustees may appear for principal

When the principal is out of the State at the time of service and has no agent therein and does not appear in his own person or by attorney, any one or more of the trustees having goods, effects or credits in their hands, and being adjudged trustees, may appear in his behalf and in his name plead and defend the cause.

R.S.1954, c. 114, § 7; 1959, c. 317, § 211.

§ 2608. Corporation as trustee; answer and disclosure

All domestic corporations and all foreign or alien companies or corporations established by the laws of any other state

or country and having a place of business or doing business within this State may be summoned as trustees, and trustee summonses may be served on them as other process is served on such companies or corporations. They may answer by attorney or agent and make disclosures, which shall be signed and sworn to by such attorney or agent or such other person upon whom legal service of the summons may be made. The same proceedings shall thereupon be had throughout except necessary changes in form, as in other cases of foreign attachment.

R.S.1954, c. 114, § 8; 1959, c. 317, § 212.

§ 2609. Taxes due corporation from defendant exempt

Any corporation summoned as trustee of a defendant may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process the amount due from the defendant to the trustee for taxes.

R.S.1954, c. 114, § 9.

§ 2610. Nonresident adjudged trustee

A person summoned as trustee may be adjudged trustee by the court although he was not then and never had been an inhabitant of the State. The action may be brought in the county in which either the plaintiff or principal defendant resides.

R.S.1954, c. 114, § 13; 1959, c. 317, § 215.

§ 2611. Discharge of trustees; effect on principal

If all the persons summoned as trustees are discharged or the action against them is discontinued, the plaintiff shall not proceed against the principal defendant unless there was sufficient personal service of the summons on him; but he may assume the defense of the action.

R.S.1954, c. 114, § 17; 1959, c. 317, § 217.

§ 2612. Trustee out of county may appear by attorney

A person summoned as trustee, and not then living in the county where the summons is returnable, need not appear in person in the original action or on motion after judgment; but he may appear by attorney and declare whether he had any goods or effects of the principal in his hands when the summons was served, and thereupon offer to submit himself to examination on oath.

R.S.1954, c. 114, § 24; 1959, c. 317, § 222.

§ 2613. Complaint considered true

If the plaintiff proceeds no further, the complaint shall be considered true.

R.S.1954, c. 114, § 25; 1963, c. 414, § 130.

§ 2614. Trustee not appearing defaulted

When a person summoned as trustee neglects to appear and answer to the action, he shall be defaulted and adjudged trustee as alleged.

R.S.1954, c. 114, § 28; 1961, c. 317, § 392.

§ 2615. Questions of fact for court or jury

Any question of fact arising upon such additional allegations may, by consent, be decided by the court or submitted to a jury in such manner as the court directs.

R.S.1954, c. 114, § 31.

§ 2616. Disclosure of assignment of principal's claim

When it appears by the answers of a trustee that any goods, effects or credits in his hands are claimed by a 3rd person by virtue of an assignment from the principal debtor or in some other way, the court may permit such claimant to appear, if he sees cause. If he does not appear voluntarily, notice may be issued and served on him as the court directs. If he appears, he may be admitted as a party to the action so far as respects his title to the goods, effects or credits in question, and he may allege and prove any facts not stated or denied in the disclosure of the trustee. If he does not appear in person or by attorney, the assignment shall have no effect to defeat plaintiff's attachment.

R.S.1954, c. 114, § 32; 1961, c. 317, § 393.

§ 2617. Principal defendant may testify

On the trial between the attaching creditor and such claimant, the principal defendant may be examined as a witness for either party if there is no other objection to his competency except his being a party to the original action.

R.S.1954, c. 114, § 33; 1961, c. 317, § 394.

§ 2618. Form of judgment against principal and trustee

When the plaintiff recovers judgment against the principal and there is any supposed trustee who has not appeared and been discharged by disclosure or discontinuance of the action against him, the court shall award judgment and execution against the goods, effects and credits in his hands, as well as against the principal, in the usual form.

R.S.1954, c. 114, § 34; 1961, c. 317, § 395.

§ 2619. Executor or administrator liable as trustee; stockholders

Any debt or legacy due from an executor or administrator and any goods, effects and credits in his hands, as such, may be attached by trustee process. The amount which a stockholder of a corporation is liable to pay to a judgment creditor thereof may be attached by a creditor of such judgment creditor by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

R.S.1954, c. 114, § 36.

§ 2620. Settling value as between principal and trustee

When, by the terms of the contract between the trustee and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer is pointed out, the officer shall, on application of the trustee, notify the principal debtor previous to the delivery that the value may be thus ascertained so far as it may affect the performance of the contract. In other cases the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of 3 disinterested men chosen, one by the trustee, one by the officer and one by the principal if he sees cause; and if he neglects or refuses, by the officer. They shall all be duly sworn to appraise the same and the officer, justice and appraisers shall certify their doings on the execution.

R.S.1954, c. 114, § 46.

§ 2621. Part of goods taken; delivery of residue

When a part of such goods and articles is taken on execution, the trustee may deliver the residue to the principal or

tender it to him within 30 days after satisfaction of the execution, as he might have delivered the whole.

R.S.1954, c. 114, § 47.

§ 2622. Disposal of surplus

Any surplus money remaining in the hands of the officer after satisfying the execution and fees shall be paid to the principal, if within his precinct; if not, to the trustee.

R.S.1954, c. 114, § 48.

§ 2623. Trustee process after commitment of debtor

When a judgment creditor has caused the debtor to be committed on execution and afterwards discovers goods, effects or credits of the debtor not attachable by ordinary process of law, he may have the benefit of the trustee process like any other creditor if, within 7 days after service of the process, he discharges the debtor from prison by a written direction to the jailer stating the reason therefor, but such discharge shall not annul or affect the judgment.

R.S.1954, c. 114, § 49.

§ 2624. Defendant summoned as trustee of plaintiff

When an action is brought for the recovery of a demand and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee unless the court otherwise orders, and if the defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor.

R.S.1954, c. 114, § 56.

§ 2625. Defendant in pending action summoned as trustee of plaintiff

If, during the pendency of an action, the defendant is summoned as trustee of the plaintiff, the first action may nevertheless proceed so far as to ascertain by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee action, continue it for judgment until the termination of the trustee action, or until the attachment therein is dissolved by the discharge of the trustee or satisfaction of the judgment otherwise.

R.S.1954, c. 114, § 58; 1961, c. 317, § 401.

§ 2626. Defendant not judged trustee after judgment in first action

If the first action is not continued and judgment is rendered therein, the defendant shall not afterwards be adjudged a trustee on account of the demand thus recovered against him while he is liable to an execution thereon.

R.S.1954, c. 114, § 59; 1961, c. 317, § 402.

§ 2627. Before final judgment, defendant judged trustee in other action

If, before final judgment is rendered in the first action, the defendant in that action is adjudged trustee in the other and pays thereon the money demanded in the first action or any part of it, the fact shall be stated on the record of the first action and judgment therein shall be rendered for the costs due to the plaintiff and for such part of the debt or damages, if any, as remains due and unpaid.

R.S.1954, c. 114, § 60; 1961, c. 317, § 403.

§ 2628. Money or thing trusteed before it is payable

Any money or other thing due absolutely to the principal defendant may be attached before it has become payable, but the trustee is not required to pay or deliver it before the time appointed therefor by the contract.

R.S.1954, c. 114, § 61.

§ 2629. Goods fraudulently conveyed, trusteed

If an alleged trustee has in his possession goods, effects or credits of the principal defendant which he holds under a conveyance fraudulent and void as to the defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him.

R.S.1954, c. 114, § 63.

§ 2630. Retention of pay due trustee; unliquidated damages excepted

Every trustee may retain or deduct out of the goods, effects and credits in his hands all his demands against the principal defendant, of which he could have availed himself if he had not

been summoned as trustee, by way of counterclaim on trial or by a setoff of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries. He is liable for the balance only, after their mutual demands are adjusted.

R.S.1954, c. 114, § 64; 1961, c. 317, § 404.

§ 2631. Amount chargeable to trustee

When a person is adjudged trustee on disclosure in the original action, the amount for which he is chargeable shall be fixed by the court, subject to appeal, and be conclusive in proceedings after judgment unless, for cause shown, an additional disclosure is allowed. On default, the amount need not be expressed in the judgment. In all proceedings after judgment, if he is adjudged trustee, the amount for which he is chargeable shall be set forth.

R.S.1954, c. 114, § 65; 1959, c. 317, § 230.

§ 2632. Discharge no bar to principal's claim

If an alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

R.S.1954, c. 114, § 66.

ARTICLE 2. EXAMINATION AND DISCLOSURE

§ 2701. Liability of trustee for failure to disclose

If a person resident in the county in which the action is commenced is summoned and neglects to serve a disclosure under oath submitting to examination within the time required therefor, without reasonable excuse, he is liable for all costs afterwards arising in the action, to be paid out of his own goods or estate if judgment is rendered for the plaintiff, unless paid out of the goods or effects in his hands belonging to the principal.

R.S.1954, c. 114, § 19; 1959, c. 317, § 219.

§ 2702. False disclosure

Whoever, summoned as trustee, upon his examination willfully and knowingly answers falsely, shall be deemed guilty of perjury, and shall pay to the plaintiff in the action so much of the judgment recovered against the principal defendant as re-

mains unsatisfied, with interest and costs, to be recovered in a civil action.

R.S.1954, c. 114, § 77; 1961, c. 317, § 405.

§ 2703. Commissioner to take disclosure

The court in which the action is pending may appoint a commissioner to take the trustee's examination and disclosure when any reasonable cause appears and may prescribe the notice to be given to the plaintiff of the time and place thereof. Upon return of such service, the examination and disclosure shall be taken and sworn to before the commissioner, and being certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.

R.S.1954, c. 114, § 11; 1959, c. 317, § 214.

§ 2704. Trustee leaving State discloses before justice

When a person summoned as trustee is about to depart from the State or go on a voyage and not return before his disclosure under oath is required to be served, he may apply to a justice of the peace of the county where he resides for a notice to the plaintiff to appear before said justice at a place and time appointed for taking his disclosure. On service made and returned according to the order of the justice, the examination and disclosure shall be taken and sworn to before him; and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court.

R.S.1954, c. 114, § 10; 1959, c. 317, § 213.

§ 2705. Trustee may disclose by consent

The examination and disclosure of any person summoned as trustee may be taken, as provided in section 2704, when the plaintiff and trustee consent thereto.

R.S.1954, c. 114, § 12.

§ 2706. Disclosure sworn to

The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court or before some justice of the peace.

R.S.1954, c. 114, § 15.

§ 2707. Examination of trustee

If the plaintiff thinks proper to examine such supposed trustee on oath, the answers may be taken in the county in which the trustee resides before a Justice of the Superior Court or a justice of the peace.

R.S.1954, c. 114, § 26.

§ 2708. Disclosure under oath

When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a justice of the court or a justice of the peace, and being filed in court, shall have the same effect as if sworn to in open court.

R.S.1954, c. 114, § 27.

§ 2709. Trustee may submit statement of facts

If a person summoned admits that he has in his hands goods, effects or credits of the principal or wishes to refer that question to the court upon the facts, he may make a declaration of such facts as he deems material and submit himself thereupon to a further examination on oath. Such declaration and further examination, if any, shall be sworn to as before provided for in this chapter.

R.S.1954, c. 114, § 29.

§ 2710. Disclosure deemed true

The answers and statements sworn to by a trustee shall be deemed true in deciding how far he is chargeable until the contrary is proved, but the plaintiff, defendant and trustee may allege and prove any facts material in deciding that question.

R.S.1954, c. 114, § 30.

§ 2711. Time extended for trustee to disclose

The plaintiff and supposed trustee may by agreement entered on the docket extend the time within which the supposed trustee may make disclosure, preserving all the advantages that he would have on appearing and disclosing within the time required.

R.S.1954, c. 114, § 35; 1959, c. 317, § 223.

§ 2712. Disclosure of property mortgaged to trustee

When a trustee states in his disclosure that he had, at the time when the process was served on him, in his possession property not exempted by law from attachment, mortgaged, pledged or delivered to him by the principal defendant to secure the payment of money due to him and that the principal defendant has an existing right to redeem it by payment thereof, the court before which the action is pending shall order that on payment or tender of such money by the plaintiff to said trustee within such time as the court orders and while the right of redemption exists, he shall deliver the property to the officer serving the process, to be held and disposed of as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor. This order shall be entered on the records of the court.

R.S.1954, c. 114, § 50; 1963, c. 414, § 131.

§ 2713. Excess determined by court or jury

If it appears that the plaintiff has complied with the order of the court and that the trustee has refused or neglected to comply therewith, the court shall enter up judgment against him for the amount due and returned unsatisfied on the execution if there appears to be in his hands such an amount of the property mortgaged over and above the sum due him; but if not, then for the amount of said property exceeding that sum, if any. The amount of this excess shall be determined by the court or jury.

R.S.1954, c. 114, § 51; 1959, c. 317, § 228; 1963, c. 414, § 132.

§ 2714. On disclosure trustee delivers property to officer

If, by the disclosure, it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability or to secure the performance of any contract or condition and that the principal defendant has an existing right to redeem it, the court may order that, upon the discharge of such liability or the performance of such contract or condition by the plaintiff, within such time as the court orders and while the right of redeeming exists, such trustee shall deliver the property to the officer, to be by him held and disposed of as if it had been attached.

R.S.1954, c. 114, § 52; 1963, c. 414, § 133.

ARTICLE 3. INTEREST SUBJECT TO REDEMPTION

§ 2751. Demands assigned as security trustee and redeemed

When it appears that a person summoned as trustee is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security and the principal defendant has a subsisting right to redeem it, the court may order that on fulfillment of such conditions by the plaintiff within the time fixed by the court and while the right to redeem exists, the trustee shall be held for the full amount of such demand. When the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

R.S.1954, c. 114, § 86.

§ 2752. Plaintiff's rights in case of redemption

The officer making demand on the trustee upon the execution shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest and shall apply the balance on the execution. If the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.

R.S.1954, c. 114, § 87.

ARTICLE 4. SALE ON EXECUTION

§ 2801. Trustee's articles delivered to officer for sale

When a person summoned as trustee is bound to deliver to the principal defendant any specific articles, he shall deliver them or so much thereof as may be necessary, to the officer holding the execution. They shall be sold by the officer and the proceeds applied and accounted for as if they had been taken on execution in common form.

R.S.1954, c. 114, § 44.

§ 2802. Remedy where trustee refuses to deliver

If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on motion as provided in sections 2951 to 2955 and section 3001; and the debtor has his remedy for an overplus belonging to him as at common law.

R.S.1954, c. 114, § 45; 1959, c. 317, § 227.

§ 2803. Disposal of proceeds

The officer, having sold on execution any personal property delivered to him by virtue of this chapter, after deducting the fees and charges of sale, shall pay to the plaintiff the sum by him paid or tendered to the trustee or applied in the performance of such contract or condition or discharge of such liability and the interest from the time of such payment, tender or application to the time of sale. So much of the residue as is required therefor, he shall apply in satisfaction of the plaintiff's judgment and pay the balance, if any, to the debtor, first paying the trustee his costs accruing as provided in section 2902.

R.S.1954, c. 114, § 53; 1961, c. 317, § 400.

§ 2804. Trustee may sell mortgaged property

Nothing contained in this chapter shall prevent the trustee from selling the goods in his hands for the payment of the sum for which they were mortgaged, pledged or otherwise liable, at any time before the amount due to him is paid or tendered, if the sale would have been authorized by the terms of the contract between him and the principal defendant.

R.S.1954, c. 114, § 54.

ARTICLE 5. DEATH OF TRUSTEE

§ 2851. Goods held by administrator

If a person summoned as a trustee in his own right dies before the judgment recovered by the plaintiff is satisfied, the goods, effects and credits in his hands at the time of attachment remain bound thereby, and his executors or administrators are liable therefor as if the summons had been originally served on them.

R.S.1954, c. 114, § 37; 1959, c. 317, § 224.

§ 2852. Before judgment; administrator cited

If he dies before judgment in the original action, his executor or administrator may appear voluntarily or may be cited to appear as in case of the death of a defendant in an ordinary action. Further proceedings shall then be conducted as if the executor or administrator had been originally summoned as trustee; except that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

R.S.1954, c. 114, § 38; 1961, c. 317, § 396.

§ 2853. Failure of administrator to appear; judgment rendered

If in such case the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the deceased, may take judgment against him by default or otherwise, as if he were living. The executor or administrator shall pay, on the execution, the amount which he would have been liable to pay to the principal defendant. He shall be thereby discharged from all demands on the part of the principal defendant in the action for the amount so paid, as if he had himself been adjudged trustee.

R.S.1954, c. 114, § 39; 1961, c. 317, § 397.

§ 2854. Failure of executor or administrator to pay; plaintiff proceeds on motion

If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed on motion as if the judgment in the first action had been against him as trustee, but if he is discharged, he may recover costs or not at the discretion of the court.

R.S.1954, c. 114, § 40; 1959, c. 317, § 225.

§ 2855. Death of trustee within 30 days after judgment; procedure to preserve attachment

If any person against whom execution issues as trustee is not living at the expiration of 30 days after final judgment in the action, the demand, to be made by force of the execution for continuing the attachment as provided in section 2956, may be made on his executor or administrator at any time within 30 days after

his appointment with the same effect as if made within 30 days after the judgment.

R.S.1954, c. 114, § 41; 1961, c. 317, § 398.

§ 2856. Execution where administrator judged trustee

When an executor or administrator is adjudged trustee on account of goods, effects or credits in his hands or possession merely as executor or administrator in an action originally commenced against him as a trustee, or against the deceased, the execution shall not be served on his own goods or estate or on his person; but he is liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.

R.S.1954, c. 114, § 42; 1959, c. 317, § 226.

§ 2857. Remedy on bond where executor or administrator fails to pay

If after final judgment against an executor or administrator for any certain sum due from him as trustee he neglects to pay it, the original plaintiff in the foreign attachment has the same remedy for recovering the amount, either upon a suggestion of waste or by an action on the administration bond, as the principal defendant in the foreign attachment would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

R.S.1954, c. 114, § 43; 1961, c. 317, § 399.

ARTICLE 6. COSTS AND EXPENSES

§ 2901. Discontinuance of action

When a trustee action is discontinued or settled by the principal parties thereto, the trustee shall be entitled to no costs, provided the plaintiff or his attorney shall, at least 7 days before the trustee's disclosure under oath is required to be served, notify the trustee in writing that the action has been discontinued.

R.S.1954, c. 114, § 6; 1959, c. 317, § 210.

§ 2902. Trustee entitled to costs; payment

If any supposed trustee serves within the time required therefor a disclosure under oath declaring that at the time of the

service of the trustee process upon him he had no goods, effects or credits of the principal in his possession and submitting himself to an examination, on oath, he is entitled to his costs as in civil actions where issue is joined for trial. If adjudged a trustee, he may deduct his costs from the goods, effects and credits in his hands and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.

R.S.1954, c. 114, § 14; 1959, c. 317, § 216.

§ 2903. Lien for costs on articles at hand; payment by officer

Where any person is adjudged trustee for specific articles in his hands, he has a lien thereon for his costs. The officer who disposes thereof on execution shall pay the trustee the amount due him for costs and deduct it from the amount of sale and account to the creditor for the balance. The amount of such fees shall be indorsed on the execution by the clerk and be evidence of the lien.

R.S.1954, c. 114, § 16.

§ 2904. Compensation when trustee in another county

When the trustee, at the time when the summons was served on him, did not live in the county where the summons is returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses in appearing and defending.

R.S.1954, c. 114, § 18; 1959, c. 317, § 218.

§ 2905. Trustees jointly liable for costs

When several trustees, resident in the county where the action is pending, are summoned and neglect to appear, the judgment for costs shall be rendered against them jointly.

R.S.1954, c. 114, § 20.

§ 2906. Costs when trustees out of county or reside out of State

Persons summoned as trustees, residing out of the county where the action is pending, are not liable for any costs arising

on the original process. If the person summoned as trustee is out of the State at the time the summons is served on him and appears within 20 days after his return, he shall be allowed his costs and charges as if he had appeared at the time otherwise required therefor.

R.S.1954, c. 114, § 21; 1959, c. 317, § 220.

§ 2907. Action fails, costs for defendant and trustee

When the plaintiff does not support his action, the court shall award costs against him in favor of the principal and in favor of the persons summoned as trustees severally who appeared and submitted to examination on oath, and several executions shall issue accordingly.

R.S.1954, c. 114, § 22.

§ 2908. No costs for trustee unless he appears

When a person, summoned as trustee, does not come into court and declare that he had no property or credits of the principal in his hands when the summons was served and submit himself to examination on oath, the court shall not award costs in his favor although the action is voluntarily dismissed.

R.S.1954, c. 114, § 23; 1959, c. 317, § 221.

§ 2909. Trustee's liability for costs

If the amount disclosed is as large as the sum recovered in the action, the trustee is liable to no costs after service of the trustee process upon him; otherwise, he is liable to legal costs.

R.S.1954, c. 114, § 57.

§ 2910. Trustee's failure to pay costs when liable

If the person summoned as trustee and liable for costs as provided in section 2701 does not voluntarily pay them when demanded by the officer serving the execution, the officer shall state the fact in his return thereon. If it appears thereby that the costs have not been paid by anyone, the court shall award execution against such trustee for the amount thereof.

R.S.1954, c. 114, § 62.

SUBCHAPTER II

PROCEDURE AFTER JUDGMENT

ARTICLE 1. GENERAL PROVISIONS

Sec.

- 2951. Motion by plaintiff against trustee.
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ARTICLE 1. GENERAL PROVISIONS

§ 2951. Motion by plaintiff against trustee

When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution, pay over and deliver to him the goods, effects and credits in his hands and the execution is returned unsatisfied, the plaintiff may on motion in the original action require the trustee to show cause why judgment and execution should not be awarded against him and his own goods and estate for the sum remaining due on the judgment against the principal defendant. A trustee who has not appeared shall be given such notice as the court may direct.

R.S.1954, c. 114, § 67; 1959, c. 317, § 231.

§ 2952. Judgment against trustee where no examination

After notice of such motion has been served on him, if he neglects to appear and answer thereto, he shall be defaulted. If

he was not examined in the original action, judgment shall be rendered against him for the whole sum remaining due on the judgment against the principal defendant.

R.S.1954, c. 114, § 68; 1959, c. 317, § 232.

§ 2953. Judgment when all trustees default

When all the trustees are defaulted in proceedings after judgment, not having been examined in the original action, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.

R.S.1954, c. 114, § 69; 1959, c. 317, § 233.

§ 2954. Default on proceedings after judgment

If a trustee defaulted on proceedings after judgment was examined in the original action, judgment shall be rendered on the facts stated in his disclosure or proved at the trial, for such part of the goods, effects and credits for which he is chargeable as trustee as remain in his hands, if any, or so much thereof as is then due and unsatisfied on the judgment against the principal defendant. If it appears that such person paid and delivered the whole amount thereof on the execution issued on the original judgment, he is not liable for costs on the proceedings after judgment.

R.S.1954, c. 114, § 70; 1959, c. 317, § 234.

§ 2955. Trustee may be examined again though examined in original action

If he had been examined in the original action, the court may permit or require him to be examined anew in the proceedings after judgment. He may then prove any matter proper for his defense. The court may enter such judgment as law and justice require, upon the whole matter appearing on such examination and trial.

R.S.1954, c. 114, § 72; 1959, c. 317, § 236.

§ 2956. Goods not demanded in 30 days are liable to other attachment

When a person is adjudged trustee, if the goods, effects and credits in his hands are not demanded of him by virtue of the execution within 30 days after final judgment, their attachment

by the original process is dissolved and they are liable to another attachment as though the prior attachment had not been made; but when the debt due from the trustee to the principal defendant is payable at a future day or specific property is in his hands which he is bound to deliver at a future day, the attachment continues until the expiration of 30 days after such debt is payable in money or the property is demanded of the trustee.

R.S.1954, c. 114, § 73.

§ 2957. Principal may recover where no 2nd attachment

If there is no 2nd attachment, the principal defendant may recover the goods, effects and credits, if not so demanded, as if they had not been attached.

R.S.1954, c. 114, § 74.

§ 2958. Demand where trustee out of State or lacks dwelling in State

When the officer holding an execution cannot find the trustee in the State, a copy of the execution may be left at his dwelling house or last and usual place of abode, with notice to the trustee indorsed thereon and signed by the officer, signifying that he is required to pay and deliver, towards satisfying such execution, the goods, effects and credits for which he is liable. When such trustee has no dwelling house or place of abode in the State, such copy and notice may be left at his dwelling house or place of abode without the State or be delivered to him personally by the officer or other person by his direction. Such notice in either case is a sufficient demand for the purposes mentioned in sections 2956 and 2957.

R.S.1954, c. 114, § 75.

§ 2959. Effect of judgment against trustee

A judgment against any person as trustee discharges him from all demands by the principal defendant or his executors or administrators for all goods, effects and credits paid, delivered or accounted for by the trustee thereon. If he is afterwards sued for the same by the defendant or his executors or administrators, such judgments and disposal of the goods, effects and credits, being proved, shall be a bar to the action for the amount so paid or delivered by him. Such payment, delivery or accounting for may be made either to the officer holding the execution or to the plain-

tiff or his attorney of record, and may be proved by the officer's return upon the execution, by indorsement made thereon by the plaintiff or his attorney of record or by any other competent evidence.

R.S.1954, c. 114, § 76.

§ 2960. Trustee process on judgment dismissed; costs

When trustee process is used in connection with an action on a judgment on which execution might legally issue and it appears to the court that, at the time of bringing it, the defendant openly had visible property liable to attachment sufficient to satisfy such judgment, or that it was brought for the purpose of vexation or to accumulate costs, it shall at any time on motion be dismissed, with costs to the defendant.

R.S.1954, c. 114, § 85; 1959, c. 317, § 243; 1963, c. 402, § 187.

ARTICLE 2. COSTS AND EXPENSES**§ 3001. Liability for costs if discharged in proceedings after judgment**

If the trustee appears and answers in the proceedings after judgment and was not examined in the original action, he may be examined as he might have been in the original action. If, on such examination, he appears not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not pay or recover costs.

R.S.1954, c. 114, § 71; 1959, c. 317, § 235.

§ 3002. Trustee exempt from costs in proceedings after judgment

If a person summoned as trustee is prevented from appearing in the original action by absence from the State or any other reason deemed sufficient by the court and a default is entered against him, he is not liable for costs in the proceedings after judgment; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered as if he had appeared in the original action.

R.S.1954, c. 114, § 78; 1959, c. 317, § 237.

ARTICLE 3. APPEALS

§ 3051. On appeal whole case re-examined by law court

Whenever objections are made to the ruling and decision of a justice as to the liability of a trustee, the whole case may be re-examined and determined by the law court on appeal and remanded for further disclosure or other proceedings, as justice requires.

R.S.1954, c. 114, § 79; 1959, c. 317, § 238.

SUBCHAPTER III

DISTRICT COURTS

Sec.

- 3101. Form and service of trustee summons.
- 3102. Default for nonappearance; costs.
- 3103. Subsequent proceedings; discharge if judgment less than \$5 except counterclaim.
- 3104. Execution where principal or trustee moves.
- 3105. Discharge of trustee in another county.

§ 3101. Form and service of trustee summons

When a trustee process is issued by a District Court, the summons shall be substantially in the form used in the Superior Court, and be served 7 days before the return day in the same manner as in the Superior Court; and shall be brought in the division where either of the supposed trustees resides. If not so brought, it shall be dismissed and the trustees shall recover their costs.

R.S.1954, c. 114, § 80; 1959, c. 317, § 239; 1963, c. 402, § 184.

§ 3102. Default for nonappearance; costs

When the person summoned does not appear and answer to the action, he shall be defaulted, adjudged trustee and be liable to costs. If he appears at the return day and submits to an examination on oath and is discharged, he shall be allowed his legal costs. If he is charged, he may retain the amount of his costs. When the plaintiff dismisses his action against him or the principal, the trustee shall be allowed his costs.

R.S.1954, c. 114, § 81; 1959, c. 317, § 240.

§ 3103. Subsequent proceedings; discharge if judgment less than \$5 except counterclaim

All subsequent proceedings in such actions shall be the same as in the Superior Court, varying the forms as circumstances require. When, in a trustee action before such District Court, the debt recovered against the principal is less than \$5, the trustee shall be discharged unless the judgment is so reduced by means of a counterclaim filed.

R.S.1954, c. 114, § 82; 1959, c. 317, § 241; 1963, c. 402, § 185.

§ 3104. Execution where principal or trustee moves

If, after a judgment is rendered in such trustee process, the principal defendant or trustee removes from the county in which it was rendered, such court may issue execution against either, directed to the proper officer of any other county where he is supposed to reside.

R.S.1954, c. 114, § 83; 1963, c. 402, § 186.

§ 3105. Discharge of trustee in another county

When an action is brought against a trustee in a county where he resides but where neither the plaintiff nor defendant resides, and the trustee is discharged or the action is dismissed as to him, the action shall still proceed if there was legal service on the principal defendant, unless it is set forth by motion or answer and established on hearing that the trustee was collusively included in the action for the purpose of giving the court in such county jurisdiction.

R.S.1954, c. 114, § 84; 1959, c. 317, § 242.