

Article 31.

Supplemental Proceedings.

§ 1-352. Execution unsatisfied, debtor ordered to answer.

When an execution against property of a judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or if he does not reside in the State, to the sheriff of the county where a judgment roll or a transcript of a judgment is filed, is returned wholly or partially unsatisfied, the judgment creditor at any time after the return, and within three years from the time of issuing the execution, is entitled to an order from the court to which the execution is returned or from the judge thereof, requiring such debtor to appear and answer concerning his property before such court or judge, at a time and place specified in the order, within the county to which the execution was issued. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 1; Rev., s. 667; C.S., s. 711; 1971, c. 268, s. 21.)

§ 1-352.1. Interrogatories to discover assets.

As an additional method of discovering assets of a judgment debtor, the judgment creditor may prepare and serve on the judgment debtor written interrogatories concerning his property, at any time the judgment remains unsatisfied, and within three years from the time of issuing an execution. Such written interrogatories shall be fully answered under oath by the judgment debtor within 30 days of service on the judgment debtor, and the answer shall be filed by the judgment debtor with the clerk of the superior court wherein the original judgment is docketed. Copy of said answer shall be served upon the party submitting said written interrogatories, in the manner provided by the Rules of Civil Procedure.

Interrogatories may relate to any matters which can be inquired into under G.S. 1-352, and the debtor may object to any interrogatories that are deemed improper, but the making of objections shall not delay the answering of interrogatories to which objection is not made. If the objections are overruled, the court shall fix the time for answering the interrogatories. The number of interrogatories or sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment or oppression.

Upon failure of the judgment debtor to answer fully the written interrogatories, the judgment creditor may petition the court for an order requiring the judgment debtor to answer fully, which order shall be served upon the judgment debtor in the same manner as a summons is served pursuant to the Rules of Civil Procedure, fixing the time within which the judgment debtor can answer the interrogatives. In addition, the order shall provide, as an alternative, that the judgment debtor may mail the judgment creditor, by certified mail, within five days of the date of service of the order, a specific request for a hearing before a court or judge to answer oral questions concerning his property rather than answering the written interrogatories. Upon timely receipt of this request, the judgment creditor shall request the court to calendar the hearing.

Any person who disobeys an order of the court may be punished by the judge as for a contempt under the provisions of G.S. 1-368. (1971, c. 529, s. 1; 1979, c. 648.)

§ 1-352.2. Additional method of discovering assets.

In addition to the other provisions of this Article and as an additional method of discovering assets of a judgment debtor the clerk of the court or a judge of the court in the county wherein the original judgment is docketed, at any time the judgment remains unsatisfied, and within three years

from the time of issuing an execution, upon motion of the judgment creditor showing good cause therefor, may:

- (1) Order the judgment debtor, his agent or anyone having possession or control of property or records of or pertaining to the judgment debtor, to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, all tax records, letters, objects or tangible things, not privileged, constituting property, or being evidence of property, of the judgment debtor and which are in his possession and custody, or subject to his control; or
- (2) Order the judgment debtor or anyone acting for or on his behalf to permit entry upon designated land or other property, real or personal, in his possession or control or subject to his control for the purpose of inspecting, measuring, surveying, appraising, copying, or photographing the property of the judgment debtor.
- (3) Prior notice of the motion, together with a copy thereof, shall be served on the judgment debtor as provided by the Rules of Civil Procedure. Upon the hearing, the order entered shall specify the time, place, and manner for compliance therewith and may prescribe such terms and conditions as are just.
- (4) Any person who shall fail to comply with an order entered pursuant to this section may be punished as for a contempt under the provisions of G.S. 1-368. (1971, c. 711, s. 1.)

§ 1-353. Property withheld from execution; proceedings.

After the issuing of an execution against property, and upon proof by affidavit of a party, his agent or attorney, to the satisfaction of the court or a judge thereof, that any judgment debtor residing in the district court district as defined in G.S. 7A-133 or superior court district as defined in G.S. 7A-41.1, as the case may be, where such judge or sheriff resides has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as provided upon the return of an execution, and the judgment creditor is entitled to the order of examination under this section and G.S. 1-352 although the judgment debtor has an equitable estate in land subject to the lien of the judgment, or choses in action, or other things of value unaffected by the lien of the judgment and incapable of levy. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 2; Rev., s. 688; C.S., s. 712; 1987 (Reg. Sess., 1988), c. 1037, s. 39.)

§ 1-354. Proceedings against joint debtors.

Proceedings supplemental to execution may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to the like effect. These provisions apply to all proceedings and actions pending and to those terminated by

final decree or judgment. (C.C.P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; Code, s. 490; Rev., s. 669; C.S., s. 713.)

§ 1-355. Debtor leaving State, or concealing himself, arrested; bond.

Instead of the order requiring the attendance of the judgment debtor, the court or judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor leaving the State or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor is to arrest him and bring him before the court or judge. Upon being brought before the court or judge, the debtor may be examined on oath, and, if it appears that there is danger of his leaving the State, and that he has property which he has unjustly refused to apply to the judgment, he shall be ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as directed, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the court or judge, as for contempt. (1868-9, c. 148, s. 4; c. 277, s. 8; Code, s. 488, subsec. 4; Rev., s. 671; C.S., s. 714.)

§ 1-356. Examination of parties and witnesses.

On examination under this Article either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness; and the party or witnesses may be required to appear before the court or judge, or a referee appointed by either, and testify on any proceedings under this Article in the same manner as upon the trial of an issue. If before a referee, the examination shall be taken by the referee, and certified to the court or judge. All examinations and answers before a court or judge or referee under this Article must be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof. (C.C.P., ss. 264, 267, 268; 1868-9, c. 95, s. 2; 1871-2, c. 245; Code, ss. 488 [subsec. 2], 491, 492; Rev., ss. 670, 676; C.S., s. 715.)

§ 1-357. Incriminating answers not privileged; not used in criminal proceedings.

No person, on examination pursuant to this Article, is excused from answering any question on the ground that it will tend to convict him of the commission of a crime or that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 5; Rev., s. 672; C.S., s. 716.)

§ 1-358. Disposition of property forbidden.

The court or judge may, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, ss. 488 [subsec. 6], 494; Rev., s. 673; C.S., s. 717.)

§ 1-359. Debtors of judgment debtor may satisfy execution.

(a) After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

(b) When the Division of Employment Security of the Department of Commerce (Division) prevails in a civil action against an employer to collect unpaid employment taxes under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or other third-party payments in payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the amount paid by a credit card company, clearinghouse, or third-party payment processor. (C.C.P., s. 265; Code, s. 489; Rev., s. 674; C.S., s. 718; 2015-238, s. 2.5(a).)

§ 1-360. Debtors of judgment debtor may be summoned.

Upon the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars (\$10.00), the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same; provided, however, that such inquiries may, in the discretion of the court, be answered by such person or corporation, or any officers or members thereof, by verified answers to interrogatories. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper. (C.C.P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; Code, s. 490; Rev., s. 675; C.S., s. 719; 1989, c. 683; 1991, c. 426, s. 1; 1995, c. 257, s. 1.)

§ 1-360.1. Execution on the property of debtors of judgment debtor.

After the clerk of superior court determines to the clerk's satisfaction that the debtor of the judgment debtor acknowledged at a proceeding conducted pursuant to G.S. 1-360 that he is in possession of unencumbered property of such judgment debtor or is indebted to him in an amount exceeding ten dollars (\$10.00), an execution shall issue against the property or debt of the judgment debtor that the debtor of the judgment debtor acknowledged he holds. (1991, c. 426, s. 2; 1995, c. 257, s. 2.)

§ 1-361. Where proceedings instituted and defendant examined.

Proceedings supplemental to execution must be instituted in the county in which the judgment was entered; but the place designated where the defendant must appear and answer must be within the county where he resides. (Rev., s. 677; C.S., s. 720; 2010-96, s. 24(c).)

§ 1-362. Debtor's property ordered sold.

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards

the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor. (C.C.P., s. 269; 1870-1, c. 245; Code, s. 493; Rev., s. 678; C.S., s. 721.)

§ 1-363. Receiver appointed.

The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this Article of the property of the judgment debtor, whether subject or not to be sold under execution, except the homestead and personal property exemptions. But before the appointment of the receiver, the court or judge shall ascertain if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if so, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings in relation to the receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The title of the receiver relates back to the service of the restraining order, herein provided for. (C.C.P., s. 270; 1870-1, c. 245; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; Code, s. 494; Rev., s. 679; C.S., s. 722.)

§ 1-364. Filing and record of appointment; property vests in receiver.

When the court or a judge grants an order for the appointment of a receiver of the property of the judgment debtor, it shall be filed in the office of the clerk of the superior court of the county where the judgment roll in the action or transcript of judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called Book of Orders Appointing Receivers of Judgment Debtors, and shall note the time of its filing therein. A certified copy of the order shall be delivered to the receiver named therein, and he is vested with the property and effects of the judgment debtor from the time of the service of the restraining order, if such restraining order has been made, and if not, from the time of the filing and recording of the order for the appointment of a receiver. The receiver of the judgment debtor is subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. (C.C.P., s. 270; 1870-1, c. 245; Code, s. 495; Rev., s. 680; C.S., s. 723; 1971, c. 268, s. 22.)

§ 1-365. Where order of appointment recorded.

Before the receiver is vested with any real property of the judgment debtor, a certified copy of the order of appointment must be filed and recorded on the execution docket, in the office of the clerk of the superior court of the county in which any real estate of the judgment debtor is situated, and also in the office of the clerk of the superior court of the county in which the debtor resides. (C.C.P., s. 270; Code, s. 496; Rev., s. 681; C.S., s. 724.)

§ 1-366. Receiver to sue debtors of judgment debtor.

If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation by the receiver; but the

court or judge may, by order, forbid a transfer or other disposition of such property or interest till a sufficient opportunity is given to the receiver to commence and prosecute the action to judgment and execution, but such order may at any time be modified or dissolved by the court or judge having jurisdiction on such security as he directs. (C.C.P., s. 271; 1870-1, c. 245; Code, s. 497; Rev., s. 682; C.S., s. 725.)

§ 1-367. Reference.

The court or judge may, in his discretion, order a reference to the referee agreed upon by the parties, or appointed by him, to report the evidence or the facts. The appointment of the referee may be made in the first order or at any time. (C.C.P., s. 272; Code, s. 498; Rev., s. 683; C.S., s. 726.)

§ 1-368. Disobedience of orders punished as for contempt.

Any person, party or witness, who disobeys an order of the court or judge or referee, duly served, may be punished by the judge as for a contempt. In all cases of commitment under this Article the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the judge committing him, or the judge having jurisdiction, on such terms as are just. (C.C.P., s. 274; 1869-70, c. 79, s. 3; Code, s. 500; Rev., s. 684; C.S., s. 727.)