

Part 6. Procedure after Judgment.

§ 1-440.45. When defendant prevails in principal action.

(a) If the defendant prevails in the principal action, or if the order of attachment is for any reason dissolved, dismissed or set aside, or if service is not had on the defendant as provided by G.S. 1-440.7,

- (1) The defendant shall be entitled to have delivered to him
 - a. All bonds taken for his benefit whether filed in the proceedings or taken by an officer, and
 - b. The proceeds of any sales and all money collected, and
 - c. All attached property remaining in the officer's hands, and
- (2) Any garnishee shall be entitled to have vacated any judgment theretofore taken against him.

(b) Either the clerk or the judge shall have authority, upon motion of the defendant or any garnishee, to make any such order as may be necessary or proper to carry out the provisions of subsection (a) of this section.

(c) Upon judgment in his favor in the principal action, the defendant may thereafter, by motion in the cause, recover on any bond taken for his benefit therein, or he may maintain an independent action thereon. (1947, c. 693, s. 1; 1951, c. 837, s. 8.)