

ATTACHMENT

639.1 Method.

The plaintiff in a civil action may cause the property of the defendant not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed.

[C51, § 1846; R60, § 3172; C73, § 2949; C97, § 3876; C24, 27, 31, 35, 39, § **12078**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.1]

639.2 Proceedings auxiliary.

If it be subsequent to the commencement of the action, a separate petition or an amendment to the petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto.

[C51, § 1847; R60, § 3173; C73, § 2950; C97, § 3877; C24, 27, 31, 35, 39, § **12079**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.2]

639.3 Grounds.

The petition or amendment to petition which asks an attachment, must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such.
2. That the defendant is a nonresident of the state.
3. That the defendant is about to remove the defendant's property out of the state without leaving sufficient remaining for the payment of the defendant's debts.
4. That the defendant has disposed of the defendant's property, in whole or in part, with intent to defraud the defendant's creditors.
5. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.
6. That the defendant has absconded, so that the ordinary process cannot be served upon the defendant.
7. That the defendant is about to remove permanently out of the county, and has property therein not exempt from execution, and that the defendant refuses to pay or secure the plaintiff.
8. That the defendant is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.
9. That the defendant is about to remove the defendant's property or a part thereof out of the county with intent to defraud the defendant's creditors.
10. That the defendant is about to convert the defendant's property or a part thereof into money for the purpose of placing it beyond the reach of the defendant's creditors.
11. That the defendant has property or rights in action which the defendant conceals.

12. That the debt is due for property obtained under false pretenses.

13. That the defendant is about to dispose of property belonging to the plaintiff.

14. That the defendant is about to convert the plaintiff's property or a part thereof into money for the purpose of placing it beyond the reach of the plaintiff.

15. That the defendant is about to move permanently out of state, and refuses to return property belonging to the plaintiff.

[C51, § 1848; R60, § 3174; C73, § 2951; C97, § 3878; C24, 27, 31, 35, 39, § **12080**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.3]

87 Acts, ch 80, §25

639.4 Alternative statement of grounds.

The causes for the attachment shall not be stated in the alternative.

[R60, § 3242; C73, § 3021; C97, § 3878; C24, 27, 31, 35, 39, § **12081**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.4]

639.5 Issued on Sunday.

Where the petition states, in addition to the other facts required, that the plaintiff will lose the plaintiff's claim unless the attachment issues and is served on Sunday, it may be issued and served on that day.

[C73, § 2952; C97, § 3879; C24, 27, 31, 35, 39, § **12082**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.5]

Footnotes

Analogous or related provisions, § 602.1602, 626.6, 643.3, and 667.3

639.6 On contract amount due.

If the plaintiff's demand is founded on contract, the petition must state that something is due, and, as nearly as practicable, the amount, which must be more than five dollars in order to authorize an attachment.

[C51, § 1849; R60, § 3175; C73, § 2953; C97, § 3880; C24, 27, 31, 35, 39, § **12083**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.6]

639.7 Value of property attached.

The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in value than that amount.

[C51, § 1850; R60, § 3176; C73, § 2954; C97, § 3881; C24, 27, 31, 35, 39, § **12084**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.7]

639.8 Allowance of value in other cases.

If the demand is not founded on contract, the original petition must be presented to some judge of the supreme or district court, or the judge of the court from which the issuance of a writ of attachment is sought, who shall make an allowance thereon of the amount in value of the property that may be attached.

[C51, § 1851; R60, § 3177; C73, § 2955; C97, § 3882; C24, 27, 31, 35, 39, § **12085**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.8]

639.9 For debts not due grounds.

The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states one or more of the following grounds:

1. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.
2. That the defendant is about to remove or has removed from the state, and refuses to secure the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time the debt was contracted.
3. That the defendant has disposed of the defendant's property in whole or in part with intent to defraud the defendant's creditors.
4. That the debt was incurred for property obtained under false pretenses.

[C51, § 1852; R60, § 3178; C73, § 2956; C97, § 3883; C24, 27, 31, 35, 39, § **12086**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.9]

639.10 Appearance judgment perishable property.

If, at the time of the service of the attachment, the claim upon which suit is brought is not due, the defendant need not appear in the action until the maturity of the demand, unless the defendant elects to plead, in which event the cause shall stand for trial when it is reached in its regular order, and no final judgment shall be rendered therein before the maturity of the debt unless such election is made, but if perishable property is levied upon, it may be sold as in other attachment cases.

[R60, § 3179, 3180; C73, § 2957, 2958; C97, § 3884; C24, 27, 31, 35, 39, § **12087**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.10]

639.11 Bond.

In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case less than two hundred fifty dollars conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

[C51, § 1853; R60, § 3181; C73, § 2959; C97, § 3885; C24, 27, 31, 35, 39, § **12088**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.11]

639.12 Bond for levy on real property only.

In any case where only real property is sought to be attached, the plaintiff shall file such bond in a penalty to

be fixed by the court or the clerk, and in such cases, the clerk shall issue a writ thereunder and shall direct therein that real property only shall be attached.

[C31, 35, § 12088-d1; C39, § **12088.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.12]

639.13 Additional security.

The defendant may, at any time before judgment, move the court for additional security on the part of the plaintiff, and if, on such motion, the court is satisfied that the surety on the plaintiff's bond has removed from the state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time, to be fixed by the court, security is given by the plaintiff.

[R60, § 3182; C73, § 2960; C97, § 3886; C24, 27, 31, 35, 39, § **12089**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.13]

639.14 Action on bond.

In an action on such bond, the plaintiff therein may recover, if the plaintiff shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorney's fees to be fixed by the court; and if it be shown such attachment was sued out maliciously, the plaintiff may recover exemplary damages, nor need the plaintiff wait until the principal suit is determined before suing on the bond.

[C51, § 1854; R60, § 3183; C73, § 2961; C97, § 3887; C24, 27, 31, 35, 39, § **12090**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.14]

639.15 Remedy for falsely suing out counterclaim.

The fact stated as a cause of attachment shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but the defendant may in the defendant's discretion sue thereon by way of counterclaim, and in such case shall recover damages as in an original action on such bond.

[R60, § 3238; C73, § 3017; C97, § 3888; C24, 27, 31, 35, 39, § **12091**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.15]

639.16 Writ to sheriff.

The clerk shall issue a writ of attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated.

[C51, § 1856; R60, § 3185; C73, § 2962; C97, § 3889; C24, 27, 31, 35, 39, § **12092**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.16]

639.17 Several writs to different counties.

Attachments may be issued from the district court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court.

[C51, § 1855, 1858; R60, § 3184; C73, § 2963; C97, § 3890; C24, 27, 31, 35, 39, § **12093**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.17]

639.18 Surplus levy.

If more property is attached in the aggregate than the plaintiff is entitled to, the surplus must be abandoned, and the plaintiff pay all costs incurred in relation to such surplus.

[C51, § 1858; R60, § 3184; C73, § 2963; C97, § 3890; C24, 27, 31, 35, 39, § **12094**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.18]

639.19 Property attached.

The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in the sheriff's county, giving that in which the defendant has a legal and unquestionable title a preference over that in which the defendant's title is doubtful or only equitable.

[C51, § 1857; R60, § 3186; C73, § 2964; C97, § 3891; C24, 27, 31, 35, 39, § **12095**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.19]

639.20 Several attachments.

Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff.

[R60, § 3187; C73, § 2965; C97, § 3892; C24, 27, 31, 35, 39, § **12096**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.20]

639.21 Following property.

If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal.

[R60, § 3188; C73, § 2966; C97, § 3893; C24, 27, 31, 35, 39, § **12097**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.21]

Footnotes

Analogous provisions, § 643.8, 643.9

639.22 Repealed by 65 Acts, ch 413, § 10102.

639.23 Judgments money things in action.

Judgments, money, bank bills, and other things in action may be levied upon by the officer under an attachment in the same manner as levies are made under execution, except that notice of such levy shall be given as in levies by attachment, and after judgment such property shall be sold, appropriated, or transferred as provided for in the chapter on executions.

[C51, § 1859, 1860; R60, § 3194; C73, § 2967; C97, § 3895; C24, 27, 31, 35, 39, § **12099**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.23]

Footnotes

Executions, chapter 626

Levy on judgments, moneys, etc., § 626.21, 626.22

639.24 Property in possession of another.

Property of defendant in possession of another, and of which defendant is entitled to the immediate possession, may be seized under attachment by taking possession thereof, in the same manner as though found in the defendant's possession.

[C51, § 1859, 1860; R60, § 3194; C73, § 2967; C97, § 3896; C24, 27, 31, 35, 39, § **12100**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.24]

639.25 Garnishment.

Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided.

[C51, § 1859, 1860; R60, § 3194; C73, § 2967; C97, § 3897; C24, 27, 31, 35, 39, § **12101**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.25]

Footnotes

Garnishment, chapter 642

639.26 When property bound.

Property capable of manual delivery, and attached otherwise than by garnishment, is bound thereby from the time manual custody thereof is taken by the officer under the attachment.

[C51, § 1859, 1860, 1874; R60, § 3194, 3215; C73, § 2967, 2969; C97, § 3898; C24, 27, 31, 35, 39, § **12102**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.26]

639.27 Real estate.

Real estate or equitable interests therein may be attached.

[R60, § 3243; C73, § 3022; C97, § 3899; C24, 27, 31, 35, 39, § **12103**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.27]

639.28 Lien.

The levy shall be a lien thereon from the time of an entry made and signed by the officer making the same upon the encumbrance book in the office of the clerk of the county in which the land is situated, showing the levy, the date thereof, name of the county from which the attachment issued, title of the action, and a description of the land levied on.

[R60, § 3243; C73, § 3022; C97, § 3899; C24, 27, 31, 35, 39, § **12104**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.28]

Footnotes

Analogous provision, § 626.20

639.29 Levy on equitable interest.

In case of a levy upon any equitable interest in real estate, such entry shall show, in addition to the foregoing matters, the name of the person holding the legal title, and the owner of the alleged equitable interest, where known.

[C97, § 3899; C24, 27, 31, 35, 39, § **12105**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.29]

639.30 Lands fraudulently conveyed.

The grantor of real estate conveyed in fraud of creditors shall, as to such creditors, be deemed the equitable owner thereof, and such interest may be attached as above provided, when the petition alleges such fraudulent conveyance and the holder of the legal title is made a party to the action.

[C97, § 3899; C24, 27, 31, 35, 39, § **12106**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.30]

Footnotes

Conveyances annulled in auxiliary proceedings, § 630.16

639.31 Notice to defendant return.

When any property is attached, the officer making the levy shall at once give written notice thereof to the defendant, if found within the county in which the levy is made, and the fact of the giving of such notice, or that the defendant is not found within the county, shall be shown by the officer's return.

[C51, § 1859, 1860; R60, § 3194; C73, § 2967; C97, § 3900; C24, 27, 31, 35, 39, § **12107**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.31]

639.32 Notice to party in possession.

A like notice shall be given to the party in possession of the property attached.

[C51, § 1860; R60, § 3194; C73, § 2967; C97, § 3900; C24, 27, 31, 35, 39, § **12108**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.32]

639.33 Service when party absent.

If the party required to be notified is not found at the party's usual place of business or residence, such notice may be served upon a member of the party's family over fourteen years of age at such place.

[C97, § 3900; C24, 27, 31, 35, 39, § **12109**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.33]

639.34 Examination of defendant.

Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court by affidavit that the defendant has property within the state not exempt, the defendant may be required to attend before the court in which the action is pending, or a commissioner appointed for that purpose, and give information on oath respecting the defendant's property.

[R60, § 3189; C73, § 2968; C97, § 3901; C24, 27, 31, 35, 39, § **12110**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.34]

639.35 Money paid clerk.

Money attached by the sheriff, or coming into the sheriff's hands by virtue of the attachment, shall be paid, less the sheriff's costs, to the clerk. The clerk shall retain the money until directed otherwise by the court.

[C51, § 1875, 1882; R60, § 3217; C73, § 2971; C97, § 3902; C24, 27, 31, 35, 39, § **12111**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.35]

92 Acts, ch 1044, § 2

Footnotes

For duties of officer pertaining to execution, see R.C.P. 1.1018

639.36 Other property.

The sheriff shall make such disposition of other attached property as may be directed by the court, and, where there is no direction upon the subject, the sheriff shall safely keep the property subject to the order of the court.

[R60, § 3218; C73, § 2972; C97, § 3903; C24, 27, 31, 35, 39, § **12112**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.36]

639.37 Common or joint property.

In executing an attachment against a person who owns property jointly or in common with another, the officer may take possession of such property so owned jointly or in common, sufficiently to enable the officer to inventory and appraise the same, and for that purpose shall call to the officer's assistance three disinterested persons; which inventory and appraisal shall be returned by the officer with the attachment, and such return shall state who claims to own such property.

[R60, § 3190; C73, § 2973; C97, § 3904; C24, 27, 31, 35, 39, § **12113**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.37]

Footnotes

Analogous provision, § 626.32

639.38 Lien acquired action to determine interest.

The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after the plaintiff obtains judgment in the action in which the attachment issued, commence action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien.

[C73, § 2974; C97, § 3904; C24, 27, 31, 35, 39, § **12114**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.38]

639.39 Receiver.

If deemed necessary or proper, the court may appoint a receiver under the circumstances and conditions provided in chapter 680.

[C73, § 2974; C97, § 3904; C24, 27, 31, 35, 39, § **12115**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.39]

639.40 Personal property subject to security interest.

Personal property subject to a security interest may be levied on under attachment in the method provided for levying execution thereon.

[C97, § 3905; C24, 27, 31, 35, 39, § **12116**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.40]

Footnotes

Manner of
levying, § 626.34 et seq.

639.41 Indemnifying bond.

The provisions as to notice of ownership and indemnifying bond to be given in cases of levies under execution shall in all respects be applicable to levies made under writs of attachment.

[C97, § 3906; C24, 27, 31, 35, 39, § **12117**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.41]

Footnotes

Indemnifying bond, § 626.54 et seq.

Notice of ownership, § 626.50 et seq.

639.42 Bond to discharge.

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that the defendant will perform the judgment of the court, the attachment shall be discharged, and restitution made of property taken or proceeds thereof.

[R60, § 3191; C73, § 2994; C97, § 3907; C24, 27, 31, 35, 39, § **12118**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.42]

Footnotes

Similar provisions, § 639.45, 643.12, 667.7

639.43 Automatic appearance.

The execution of such bond shall be deemed an appearance of such defendant to the action.

[R60, § 3192; C73, § 2994; C97, § 3907; C24, 27, 31, 35, 39, § **12119**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.43]

639.44 Judgment on bond.

Such bond shall be part of the record. If judgment go against the defendant, the same shall be entered against the defendant and sureties.

[R60, § 3193; C73, § 2995; C97, § 3908; C24, 27, 31, 35, 39, § **12120**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.44]

639.45 Delivery bond.

The defendant, or any person in whose possession any attached property is found, or any person making affidavit that the person has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, or after the return of the writ, by the clerk, in a penalty at least double the value of the property sought to be released, but if that sum would exceed double the amount of the claim for which an attachment is sued out, then in such sum as equals double the amount of such claim, conditioned that such property or its appraised value shall be delivered to the sheriff, to satisfy any judgment which may be obtained against the defendant in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court.

[C51, § 1876; R60, § 3219; C73, § 2996; C97, § 3909; C24, 27, 31, 35, 39, § **12121**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.45]

Footnotes

Similar provisions, § 639.42, 643.12, 667.7

639.46 Appraisement.

To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by the sheriff to make the appraisement faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them.

[C51, § 1877, 1878; R60, § 3220; C73, § 2997; C97, § 3910; C24, 27, 31, 35, 39, § **12122**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.46]

639.47 Defense in action on delivery bond.

In an action brought upon such bond, it shall be a sufficient defense that the property for the delivery of which the bond was given did not, at the time of the levy, belong to the defendant against whom the attachment was issued, or was exempt from seizure under such attachment.

[C51, § 1879; R60, § 3221; C73, § 2998; C97, § 3911; C24, 27, 31, 35, 39, § **12123**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.47]

639.48 Perishable property examination.

When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualifications of jurors to examine the same.

[C51, § 1881; R60, § 3222; C73, § 2999; C97, § 3912; S13, § 3912-a; C24, 27, 31, 35, 39, § **12124**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.48]

639.49 Notice.

The sheriff shall give the defendant, if within the county, three days' notice of such hearing, and the defendant may appear before such jury and have a personal hearing.

[C51, § 1881; R60, § 3222; C73, § 2999; C97, § 3912; S13, § 3912-a; C24, 27, 31, 35, 39, § **12125**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.49]

639.50 Determination and sale.

If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, the sheriff shall thereupon give the same notice as for sale of goods on execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives written consent, such sale may be made without such finding.

[C51, § 1881; R60, § 3222; C73, § 2999; C97, § 3912; S13, § 3912-a; C24, 27, 31, 35, 39, § **12126**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.50]

Footnotes

Notice of sale, § 626.74 et seq.

639.51 Sheriff's return.

The sheriff shall return upon every attachment what the sheriff has done under it, which must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisalment above contemplated when such has been made.

[R60, § 3224; C73, § 3010; C97, § 3923; C24, 27, 31, 35, 39, § **12127**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.51]

639.52 Garnishment.

When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of the sheriff's return.

[R60, § 3224; C73, § 3010; C97, § 3923; C24, 27, 31, 35, 39, § **12128**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.52]

639.53 Description of real estate.

Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where the sheriff can do so, by a reference to the document reference number where the deed under which the defendant holds is recorded.

[R60, § 3224; C73, § 3010; C97, § 3923; C24, 27, 31, 35, 39, § **12129**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.53]

2001 Acts, ch 44, §29

639.54 Bonds, notices and moneys.

The sheriff shall return with the writ all bonds taken under it, any notice of claim to such property by another

than the defendant, any indemnifying bond given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to the sheriff thereunder.

[R60, § 3224; C73, § 3010; C97, § 3923; C24, 27, 31, 35, 39, § **12130**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.54]

639.55 Time of return.

Such return must be made immediately after the sheriff has attached sufficient property, or all that the sheriff can find.

[R60, § 3224; C73, § 3010; C97, § 3923; C24, 27, 31, 35, 39, § **12131**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.55]

639.56 Judgment satisfaction special execution.

If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by the sheriff delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under the sheriff's control.

[R60, § 3232; C73, § 3011; C97, § 3924; C24, 27, 31, 35, 39, § **12132**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.56]

639.57 Court may control property.

The court may from time to time make and enforce proper orders respecting the property, sales, and application of the money collected.

[R60, § 3233; C73, § 3012; C97, § 3925; C24, 27, 31, 35, 39, § **12133**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.57]

639.58 Expenses for keeping.

The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs.

[R60, § 3234; C73, § 3013; C97, § 3926; C24, 27, 31, 35, 39, § **12134**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.58]

639.59 Surplus.

Any surplus of the attached property and its proceeds shall be returned to the defendant.

[R60, § 3235; C73, § 3014; C97, § 3927; C24, 27, 31, 35, 39, § **12135**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.59]

639.60 Intervention petition.

Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or any attached debt, present a petition verified by oath to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in or lien

on it, under any other attachment or otherwise, and setting forth the facts upon which the claim is founded.

[R60, § 3237; C73, § 3016; C97, § 3928; C24, 27, 31, 35, 39, § **12136**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.60]

Footnotes

Intervention generally, R.C.P. 1.407

639.61 Hearing and orders.

The petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may impanel a jury to inquire into the facts. If it is found that the petitioner has a title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect the petitioner's rights.

[R60, § 3237; C73, § 3016; C97, § 3928; C24, 27, 31, 35, 39, § **12137**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.61]

639.62 Costs.

The costs of such proceedings shall be paid by either party at the discretion of the court.

[R60, § 3237; C73, § 3016; C97, § 3928; C24, 27, 31, 35, 39, § **12138**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.62]

639.63 Discharge on motion.

A motion may be made to discharge the attachment or any part thereof, at any time before trial, for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held.

[R60, § 3239; C73, § 3018; C97, § 3929; C24, 27, 31, 35, 39, § **12139**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.63]

639.64 Automatic discharge canceling entry on encumbrance book.

If the judgment is rendered in the action for the defendant, or, if the action is dismissed by the court, by the plaintiff, or, by agreement of the parties, or, if judgment has been entered for the plaintiff and has been satisfied of record, the attachment shall, subject to the right of appeal, automatically be discharged and the property attached, or its proceeds, shall be returned to the defendant. If the attachment has been entered on the encumbrance book, it shall be the duty of the clerk to cancel such attachment, and in the entry of cancellation, the clerk shall refer to the entry in the case showing the clerk's authority to cancel said attachment.

[R60, § 3236; C73, § 3015; C97, § 3930; C24, 27, 31, 35, 39, § **12140**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.64]

639.65 Perfecting appeal from order of discharge.

When an attachment has been discharged, if the plaintiff then announces the plaintiff's purpose to appeal from such order of discharge, the plaintiff shall have two days in which to perfect an appeal, and during that time such discharge shall not operate to divest any lien or claim under the attachment, nor shall the property

be returned, and the appeal, if so perfected, shall operate as a supersedeas thereof.

[R60, § 3240; C73, § 3019; C97, § 3931; C24, 27, 31, 35, 39, § **12141**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.65]

639.66 Appeal from judgment against plaintiff.

If a judgment in the action be also given against the plaintiff, the plaintiff must, within the same time, take an appeal thereon, or such discharge shall be final.

[R60, § 3241; C73, § 3020; C97, § 3932; C24, 27, 31, 35, 39, § **12142**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.66]

639.67 Liberal construction amendments.

This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings.

[R60, § 3242; C73, § 3021; C97, § 3933; C24, 27, 31, 35, 39, § **12143**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.67]

Footnotes

Amendments generally, R.C.P. 1.402(4), (5) and 1.1009

639.68 Sheriff or officer.

The word "*sheriff*", or "*officer*", as used in this chapter is meant to apply to the like officer of any other court.

[C51, § 1883; R60, § 3244; C73, § 3023; C97, § 3934; C24, 27, 31, 35, 39, § **12144**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.68]

639.69 Certificate of release.

When real estate or an equitable interest therein is attached in any county other than that in which the action is commenced, or is pending, and the action is dismissed, or the attachment is dissolved and discharged or satisfied, the clerk of the court of the county wherein such action is pending must issue a certificate directed to the clerk of the court in which the land is situated giving date of release and setting forth a true copy of the order or release and the clerk shall be allowed as compensation for such service the sum of fifty cents, to be taxed as a part of the costs in the case.

[S13, § 3934-a; C24, 27, 31, 35, 39, § **12145**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.69]

639.70 Filing and recording.

The clerk of the court receiving such certificate shall file and record the same upon the margin of the encumbrance book at place where the original entry of attachment is found.

[S13, § 3934-b; C24, 27, 31, 35, 39, § **12146**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 639.70]