

§ 6. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

§ 7. EMERGENCY.] *Whereas* the present laws of the State of North Dakota do not make proper provision for the stocking of the waters of this State with fish, nor for their protection, and it being important that the same should be at once furnished, *Therefore*, this act shall take effect and be force from and after its approval.

Approved, March 20, 1895.

## GARNISHMENT.

### CHAPTER 65.

[H. B. No. 145.]

#### ESTABLISHING A GARNISHMENT LAW.

AN ACT Entitled an Act to Establish a Garnishment Law For the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. CREDITORS MAY PROCEED.] Any creditor shall be entitled to proceed by garnishment, in any court having jurisdiction of the subject of the action, against any person (except a public corporation) who shall be indebted to, or have any property whatever, real or personal, in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace every judgment creditor, and the term defendant a judgment debtor.

§ 2. METHOD OF PROCEDURE.] Either at the time of the issuing of a summons, or at any time thereafter before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing, in any case, of an execution against property, and before the time when it is returnable, the plaintiff, or some person in his behalf, may make an affidavit stating that he verily believes that some person, naming him, is indebted to, or has property, real or personal, in his possession, or under his control, belonging to the defendant, or either or any of the defendants, in the action or execution, naming him, and that such defendant has not property in this State liable to execution, sufficient to satisfy the plaintiff's demand, and that the indebtedness or property mentioned in such affidavit is to the best of the knowledge and belief of the person making such affidavit, not by law exempt

from seizure or sale upon execution. Any number of garnishees may be embraced in the same affidavit, but if a joint liability be claimed against any, it shall be so stated, and the garnishees named as jointly liable shall be deemed jointly proceeded against; otherwise the several garnishees shall be deemed severally proceeded against.

§ 3. SUMMONS.] The plaintiff shall annex or subjoin to such affidavit a garnishee summons, which shall be substantially in the following form:

.....Court,.....County.

A. B., Plaintiff,

vs.

C. D., Defendant,

E. F., Garnishee.

The State of North Dakota to the said garnishee:

You are hereby summoned, pursuant to the annexed affidavit, as a garnishee of the defendant, C. D., and required within thirty days after the service of this summons upon you, exclusive of the day of service, to answer, according to law, whether you are indebted to, or have in your possession or under your control, any property, real or personal, belonging to such defendant, and to serve a copy of your answer on the undersigned at..... in the county of.....; and in case of your failure so to do, you will be liable to further proceedings, according to law; of which the said defendant will also take notice.

L. M., Plaintiff's Attorney.

P. O. Address.....County, N. D..

§ 4. SERVED BY SHERIFF.] Such garnishee summons and affidavit may be served by the sheriff of the county, where any garnishee or defendant may be found, or by any other person not a party to the action. The service shall be made and the same returned, with proof of the service, to the person whose name is subscribed thereto, with reasonable diligence. The person subscribing such garnishee summons, may, at his option, by an endorsement thereon, fix a time for the service thereof, and the service shall then be made accordingly.

§ 5. GARNISHEE SERVICE—WHEN VOID.] The garnishee summons and annexed affidavit shall be served on each of the several garnishees named, in the manner provided for service of a summons in an action; and, except where service of the summons in the action is made without the State, or by publication, also on the defendant to the action, in like manner, either before, or within ten days after service on a garnishee. When the defendant shall have appeared in the action by an attorney, such service may be made upon such attorney or upon the defendant. Unless the garnishee summons be so served on the defendant or his attorney, in accordance with the provisions of this section, the service on the garnishee shall become void and of no effect from the beginning.

§ 6. SUBSEQUENT PROCEEDINGS. The plaintiff may in like manner subsequently proceed within the period limited, against other garnishees, or against the same garnishee after they shall have once been discharged, upon a new affidavit, if he shall have reason to believe they have subsequently become liable; and he may summon garnishees resident in other counties than that in which the action is pending; but if an issue for trial shall be joined between the plaintiff and such garnishee, the court may, on motion, change the place of trial of such issue to the county of the garnishee's residence.

§ 7. GARNISHEE DISMISSED—WHEN.] If the plaintiff shall not within ten days after demand for a copy of the complaint serve upon the garnishee or his attorney, except in case of garnishment upon execution, a copy of the complaint showing the amount of the indebtedness of the defendant in the action to the plaintiff, the proceeding against the garnishee shall be dismissed, on motion of the garnishee, with costs, unless the court, or judge, shall in discretion, and upon terms, permit the same to stand.

§ 8. GARNISHEE'S AFFIDAVIT.] Within thirty days from the service of such garnishee summons, the garnishee may, if the truth warrants, file with the clerk of the court in which the action is pending, and serve a copy thereof upon the plaintiff, his affidavit in the following form substantially:

.....Court.....County.

A. B., Plaintiff,

vs.

C. D., Defendant,

and E. F. Garnishee.

.....County, ss.

E. F., being first duly sworn, says that on the.....day of .....A. D. 18.., he was served with a garnishee summons in the above entitled action; that he was then and is now in no manner, and upon no account whatever, indebted or under liability to the defendant (naming him) and that he then had and now has in his possession, or under his control, no real estate and no personal property, effects or credits, of any description whatever, belonging to said defendant, or in which he has any interest; and is in no manner liable as garnishee in this action.

Subscribed and sworn to before me

this....day of....., A. D. 18..

Thereby the proceeding against such garnishee shall be deemed discontinued, and the plaintiff shall pay the garnishee one dollar for his costs, unless within thirty days thereafter the plaintiff serve notice on such garnishee, that he elects to take issue on his answer to the garnishee summons and will maintain him to be liable as garnishee. In which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff

shall be deemed the complaint, and the garnishee's affidavit the answer thereto.

§ 9. SUBSTANCE OF AFFIDAVIT.] Unless the garnishee shall make the affidavit provided for in the preceding section, he shall, within thirty days from the service of the garnishee summons, file and serve in like manner, an affidavit, in which he shall state:

1. Whether he was at the time of service of the garnishee summons, or has since become indebted, or under any liability to the defendant named in the garnishee summons, in any manner upon any account specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability, and all the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, he may set forth all the facts and circumstances concerning the same, and submit the question to the court.

2. Whether he held at the time aforesaid, or now holds, the title or possession of any real estate, or any interest in land of any description, or of any personal property, effects or credits, or any instruments or papers relating to such, belonging to the defendant, or in which he is in any wise interested. And if he shall admit any such, or be in any doubt respecting the same, he shall set forth the description of such property, and all the facts and circumstances concerning the same, and the title, interest or claim, of the defendant, in or to the same.

3. If he shall claim any setoff, or defense, to any indebtedness or liability, or any lien or claim to said property, he shall set forth the facts and circumstances thereof fully.

4. He may state any claim of exemption from execution, on the part of the defendant, or other objections, known to him, against the right of the plaintiff to apply upon his demands, the indebtedness or property disclosed.

5. If he shall disclose any indebtedness, or the possession of any property to which the defendant, and any other person as well, make claim, he may set forth the names and residences of such other claimants, and so far as known, the nature of their claims.

§ 10. JUDGMENT RENDERED—WHEN.] If any garnishee, having been duly summoned, shall fail to serve his affidavit, as required in the preceding section, the court may render judgment against him for the amount of the judgment which the plaintiff shall recover against the defendant in the action for damages and costs, together with the cost of such garnishee action. Such garnishee may also be proceeded against, as for a contempt, according to the provisions of Chapter 33 of the Code of Civil Procedure.

§ 11. WHEN LEVY CAN BE MADE.] In case the answer of the garnishee shall show indebtedness to the defendant, he may pay the amount thereof, less three dollars for his costs, to the officer

having a warrant of attachment in the action, if any, or otherwise to the clerk of the court; or, if the garnishment is in aid of an execution, to the sheriff having the execution; and the officer to whom such payment is made shall give him a receipt, specifying the facts, and such receipt shall be a complete discharge of all liability to any party for the amount so paid. If the answer disclose any money, credits or other property, real or personal, in the possession, or under the control of the garnishee, the officer having a writ of attachment, or an execution, if any, may levy upon the interest of the defendant in the same; otherwise the garnishee shall hold the same until the order of the court thereon.

§ 12. IN CASE ISSUE IS TAKEN.] The answer of the garnishee shall, in all cases, be conclusive of the truth of the facts therein stated, unless the plaintiff shall, within thirty days, serve upon the garnishee a notice, in writing, that he elects to take issue on his answer; in which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff shall be deemed a complaint and the garnishee's affidavit the answer thereto. The plaintiff may in all cases move the court, upon the answer of the garnishee, and of the defendant, if he shall also answer, for such judgment as he shall be entitled to thereon, but any such judgment shall be no bar beyond the facts stated in such answers.

§ 13. AGENT OR ATTORNEY.] The answer of a corporation summoned as a garnishee, may be made by any officer thereof; and of any other garnishee, by any agent or attorney, in his behalf, who shall be acquainted with the facts.

§ 14. WHEN PROPERTY IS EXEMPT FROM EXECUTION.] The defendant may, in all cases, by answer, duly verified, to be served within thirty days from the service of the garnishee summons on him defend the proceeding against the garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment; or, upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. And the garnishee may, at his option, defend the principal action for the defendant, if the latter does not, but shall be under no obligations so to do.

§ 15. JUDGMENTS.] The proceedings against a garnishee shall be deemed an action by the plaintiff against the garnishee and defendant as parties defendant, and all provisions of law relating to proceedings in civil actions at issue, including examinations of the parties, amendments and relief from default or proceedings taken and appeals and all provisions for enforcing judgments, shall be applicable thereto; but when the garnishment is not in aid of an execution no trial shall be had of the garnishee action, until the plaintiff shall have judgment in the principal action,

but the garnishment action may be noticed for trial at the same term if issue therein is joined in time; and if the defendant have judgment, the garnishee action shall be dismissed with costs. The court shall render such judgments in all cases as shall be just to all the parties, and properly protect their respective interests, and may adjudge the recovery of an indebtedness, the conveyance, transfer, or delivery to the sheriff, or any officer appointed by the judgment, of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand; or by the judgment pass the title thereto; and may therein, or by its order, when proper, direct the manner of making sale, and of disposing of the proceeds thereof, or of any money or other thing paid over or delivered to the clerk or officer. The judgment against a garnishee shall acquit and discharge him from all demands, by the defendant, or his representative, for all money, goods, effects or credits, paid, delivered or accounted for, by the garnishee, by force of such judgment.

§ 16. WHEN CLAIMANT MAY BE INTERPLEADED.] When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may, on motion, order that such claimant be interpleaded as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court shall direct, be served upon him, and that after such service shall have been made, the garnishee may pay or deliver to the officer or clerk such indebtedness, or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid, or property delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the State or by publication thereof, if the order shall so direct. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action, and within thirty days, shall answer, setting forth his claim, or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

§ 17. GARNISHEE'S LIABILITY.] From the time of the service of the summons upon the garnishee, he shall stand liable to the plaintiff to the amount of the property, moneys, credits, and effects in his possession, or under his control, belonging to the defendant, or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due, to the defendant, except such as may be, by law, exempt from execution. Any property, moneys, credits and effects held by a conveyance, or title, void as to the creditors of the defendant, shall be embraced in such liability.

§ 18. WHEN JUDGMENTS SHALL NOT BE RENDERED.] No judg-

ment shall be rendered upon a liability of the garnishee arising either.

1. By reason of his having drawn, accepted, made, indorsed or guaranteed any negotiable bill, draft, note or other security.

2. By reason of any money, or other thing, received or collected by him as sheriff, or other officer, by force of an execution, or other legal process, in favor of the defendant.

3. By reason of any money in his hands, as a public officer, and for which he is accountable to the defendant merely as such officer.

4. By reason of any money, or other thing, owing from him to the defendant, unless before judgment against the defendant, it shall have become due absolutely and without depending on any future contingency; but judgment may be given for any money or other thing owing after it shall have become due absolutely and without depending on any contingency.

§ 19. JUDGE MAY PERMIT ACTION—WHEN.] No action shall be commenced by the defendant, or his assignee, against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon a judgment in favor of the defendant against such garnishee, subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and, if an action shall have been commenced or an execution issued, it shall be stayed by the court or a judge thereof upon the garnishee's application; except that upon cause shown, the court or judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed.

§ 20. UNDERTAKING FILED.] The defendant may, at any time after the complaint is filed, and before judgment, file with the clerk of the court an undertaking, executed by at least two sureties resident freeholders of the State, to the effect that they will, on demand, pay to the plaintiff the amount of the judgment, with all costs that may be recovered against such defendant in the action, not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint, or in such less sum as the court shall, upon application, direct. The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this State, over and above all debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve a copy of such undertaking, with a notice where and when the same was filed, on the plaintiff. Within three days after the receipt thereof, the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them. When the plaintiff excepts, the sureties shall justify in a like manner as bail upon an arrest. Thereafter all the garnishees shall be discharged,

and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer, shall be surrendered to the person entitled thereto, and the costs shall be taxable as disbursements of the plaintiff in the action, if he recovers.

§ 21. COSTS—DISCRETION OF COURT.] In case of the trial of an issue between the plaintiff and any garnishee, costs shall be awarded to the plaintiff, and against the garnishee, in addition to his liability, if the plaintiff recovers more than the garnishee admitted by his answer; and if he does not, the garnishee shall recover costs of the plaintiff. In all other cases, under this chapter, not expressly provided for, the court may award costs in favor of or against any party, in its discretion. When there is no issue for trial, and any liability on the part of the garnishee is disclosed, the costs of the garnishment proceedings shall be taxed for the plaintiff, if he recovers, as disbursements in the principal action.

§ 22. REPEAL.] All acts or parts of acts in conflict with this act are hereby repealed.

Approved, March 11, 1895.

## GEOLOGICAL SURVEY.

### CHAPTER 66.

[S. B. No. 44.]

#### GEOLOGICAL SURVEY OF NORTH DAKOTA.

AN ACT To Provide for a Geological and Natural History Survey of the State of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DUTY OF TRUSTEES OF UNIVERSITY.] It shall be the duty of the board of trustees of the university of North Dakota to cause to be begun as soon as may be practicable, and to carry on a thorough geological and natural history survey of the State.

§ 2. EXTENT OF THE SURVEY.] The geological survey shall be carried on with a view to a complete account of the mineral kingdom; as represented in the State, including the number, order, dip and magnitude of the several geological strata, their richness in ores, coals, clays, peats, salines and mineral waters, marls, cements, building stones and other useful materials, the value of said substance for economical purposes, and their accessibility; also an accurate chemical analysis of the various rocks, soils, ores, clays, peats, marls and other mineral substances; of which complete and exact record shall be made.