

CHAPTER 652
GARNISHMENT

Section

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As to procedural statutes superseded by the rules of court, see note preceding Title 32.

Rules of Court

See HRCF rules 64, 69; DCRCP rules 64, 69. Service, see HRCF rule 4; DCRCP rule 4.

Case Notes

Validity of prejudgment replevin provisions authorizing taking of property without affording prior opportunity to be heard. 407 U.S. 67 (1972).

Pledgor's interest in pledged stock, though subject to bank's security interest, was garnishable under this chapter. 92 H. 347, 992 P.2d 42 (2000).

" **§652-1 Garnishee process; "garnishee fund".** (a) Before judgment. When any goods or effects of a debtor are in the possession of an attorney, agent, factor, or trustee (in this chapter jointly and severally included in the term "garnishee"), or when any debt is due from any person (also included under the term "garnishee") to a debtor, or when any person has in the person's possession for safekeeping any moneys of the debtor, any creditor may bring the creditor's action against the debtor and in the creditor's petition for process, or by amendments of the complaint at any time before judgment, after meeting the requirements of section 652-1.5, may request the court to insert in the process a direction that service of a true and attested copy thereof be made upon the garnishee[,] in any of the manners described under section 652-2.5[,] and to summon the garnishee to appear personally upon the day or term appointed in the process for hearing the action or at any other time appointed by the court and then and there on oath to answer all of the following inquiries, herein inclusively referred to as the "disclosure":

- (1) Whether at the time the copy was served on the garnishee, the garnishee had any of the goods or effects of the defendant in the garnishee's hands and, if so, the nature, amount and value thereof;
- (2) Whether at the time of service, the garnishee was indebted to the defendant and, if so, the nature and amount of the debt; or
- (3) Whether at the time of service on the garnishee, the garnishee had any moneys of the defendant in the

garnishee's possession for safekeeping and, if so, the amount thereof.

The summons and direction shall be signed and issued as is usual in other civil process after proceedings under section 652-1.5. The summons shall specify an amount or value of money, debt or goods or effects to be garnished which shall not exceed one hundred twenty per cent of the amount of the plaintiff's claim, including cost and interest. The summons shall be served upon the garnishee in any of the manners described under section 652-2.5. From the time of service, the garnishee shall secure in the garnishee's hands to pay such judgment as the plaintiff shall recover in the action, such of the following property or choses then in the garnishee's possession or owing to the defendant as shall equal the amount or value specified in the summons, except what the court has expressly found to be exempt from execution pursuant to section 652-1.5(d) or (f):

- (1) The goods and effects of the defendant then in the hands of the garnishee;
- (2) Any debt then owing from the garnishee to the defendant;
- (3) Moneys of the defendant then in the possession of the garnishee for safekeeping; and
- (4) A portion of the defendant's wages, salary, stipend, commissions, annuity, or net income under a trust (in this chapter included under the term "wages"), remaining after the deduction of any amounts required by law to be withheld by withholding the amount to be determined as follows: five per cent of the first \$100 per month, ten per cent of the next \$100 per month, and twenty per cent of all sums in excess of \$200 per month, or an equivalent portion of the above amount per week, whether then or thereafter to become owing.

The property or choses described in (1), (2), (3), and (4) of this paragraph are included under the term "garnishee fund" (in this chapter). The cumulative total value of the fund, in advance of final judgment, shall be no more than the amount specified in the summons.

Except as provided in section 652-1.5, the summons and direction shall be sufficient notice to the defendant to enable the plaintiff to bring the plaintiff's action to trial, unless the defendant is an inhabitant of the State or has some time resided therein, in which case a like copy shall be served personally upon the defendant or left at the defendant's last and usual place of abode.

The court shall order the garnishee fund released at the hearing provided in section 652-1.5 or thereafter upon the

filing by the debtor with the court of a bond or bonds issued by a surety or sureties licensed to do business as such in the State, in an amount sufficient to pay the claim of the creditor together with costs and interest, and conditioned upon judgment rendered in favor of the creditor and to the extent the claim or any portion thereof, together with costs and interests, if any, is awarded.

(b) After judgment. Wages may be garnisheed after judgment at the rate specified in subsection (a). In any action brought by a creditor against a debtor, the creditor may, after judgment rendered in the creditor's favor, request the court to summon any garnishee to appear personally, upon a day appointed in the summons for hearing the cause as against the garnishee, and make full disclosure; or in any action brought in the district court by a creditor against a debtor, the creditor may, ten days after judgment rendered in the creditor's favor, file a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on account of the judgment with the employer of the judgment debtor and the employer shall thereupon either file a disclosure within one week or shall withhold from the wages of the judgment debtor the amounts as provided herein and pay the same to the judgment creditor.

Alias summons shall also be issued and served upon the garnishee in any of the manners described under section 652-2.5. At the time of service, any and every element of any garnishee fund then in the hands of the garnishee shall be there secured to pay the judgment already recovered and may not otherwise be disposed of by the garnishee.

(c) Return by garnishee. Any garnishee summoned, whether before or after judgment, may file in the court issuing the summons, on or before the return day thereof, a return under oath containing a full disclosure. A copy of the return shall be served on the plaintiff or the plaintiff's attorney on or before the return day. The filing of the return shall be deemed prima facie a compliance with the summons; provided that either party to the action may, upon written notice served upon the garnishee, require the garnishee to appear and be examined under oath as to such disclosure or as to the garnishee's liability as garnishee.

(d) Garnishee fund excessive. At any time after service of summons, the court, upon the consent of the plaintiff or upon motion of the defendant or of the garnishee and notice to the plaintiff, shall determine whether the garnishee fund is excessive in amount in comparison with subsection (a) of this section or with the judgment rendered and may thereupon release the remainder thereof from being so secured.

(e) If any party named in the process as garnishee is a corporation, firm, or person having places of business in more than one judicial circuit or district in the State, the service of process upon the garnishee upon service in any one circuit or district shall operate to secure the garnishee fund in each place of business in the State.

(f) No employer shall be liable to anyone for deductions and payments to judgment creditors from wages of judgment debtor employees, as herein provided, when the employer in good faith believes, or has reason to believe, that service of the certified copy of the judgment and affidavit of the judgment creditor as provided in [subsection] (b) herein affects the same. [L 1876, c 35, §1; am L 1917, c 124, §1; am L 1919, c 157, §1; am L 1921, c 66, §1; RL 1925, §2826; am L 1925, c 262, §1; am L 1927, c 96, §1; am L 1931, c 68, §1; am L 1933, c 172, §1; RL 1935, §4270; am L 1939, c 212, §1; RL 1945, §10301; RL 1955, §237-1; am L 1959, c 65, §1; am L 1961, c 167, §§2, 3; am L 1965, c 89, §§1, 2; HRS §652-1; am L 1970, c 86, §2; am L 1975, c 155, §1(2); am L 1977, c 33, §2; am L 1978, c 247, §1; gen ch 1985; am L 1992, c 82, §2; am L 1997, c 56, §1]

Cross References

Federal restrictions on garnishment, see Pub L 90-321, Title III (15 U.S.C. §1671 et seq.).

Law Journals and Reviews

Funds in joint bank account; presumption as to ownership of the funds by the debtor. Haw Supp, 6 HBJ, no. 1, at 25 (1969).

Case Notes

Where general contractor denied being "indebted" to subcontractor in general contractor's garnishee disclosure, general contractor was indebted to subcontractor for the purposes of this section. 179 F.3d 829 (1999).

Claim for unliquidated damages for breach of contract does not constitute debt, and garnishment is not available. 308 F. Supp. 59 (1969).

Notwithstanding *Sniadach v. Family Finance Corp.* (395 U.S. 337 (1969)), provisions on garnishment of corporation's checking account, payroll account and payments due on completed contracts are not violative of due process. 317 F. Supp. 150 (1970).

Issuance of ex parte writs of garnishment to be served on personal checking accounts which may contain AFDC (assistance) grants held unconstitutional. 431 F. Supp. 1369 (1977).

Affidavit method of post-judgment garnishment of wages does not contravene constitutional requirements of procedural due process. 467 F. Supp. 544 (1979).

Assignment. 5 H. 589 (1886); 30 H. 158 (1927).

Petition in writing, must contain specific request for garnishee process. 5 H. 664 (1886).

Service on corporation, 6 H. 259 (1879); on attorney-in-fact of garnishee, 6 H. 659 (1887); of defective copy on garnishee, 14 H. 627 (1903). "Last and usual place of abode". 20 H. 132 (1910), aff'd 233 U.S. 70 (1914). Service required by this section is due process of law. 20 H. 132 (1910), aff'd 233 U.S. 70 (1914). Defective service waived by general appearance of garnishee. 18 H. 593 (1908). See, generally, 5 H. 489 (1885); 6 H. 153 (1875); 7 H. 72 (1887); 10 H. 325 (1896); 22 H. 321 (1914); 27 H. 655 (1923); 28 H. 528 (1925). Service on garnishee is sufficient notice to non-resident defendant. 22 H. 321 (1914). Garnishee may appear and orally disclose. 15 H. 645 (1904). Substitute process. 34 H. 328 (1937). Interpleader. 33 H. 557 (1935).

Garnishee process does not authorize attachment of money or goods but only debts owing to judgment debtor. 6 H. 623 (1886).

As to priority of claim where garnishment and mechanic's lien are involved. 9 H. 23 (1893).

Rights between "foreign receiver" and domestic creditors. 10 H. 325 (1896); 10 H. 327 (1896).

When trustee under private trust may be held as garnishee. 11 H. 466 (1898); 32 H. 78 (1931). Trustee in bankruptcy. 33 H. 337 (1935). Assignee in bankruptcy. 5 H. 445 (1885). Debt owing partnership cannot be garnisheed in action against one of the partners. 14 H. 300 (1902); and see 6 H. 153 (1875); 6 H. 157 (1875). Money with clerk, still subject to judicial action, is not subject to garnishment. 10 H. 499 (1896). Debt subject to contingency and not due or to become due by mere lapse of time, is not subject to garnishment. 11 H. 202 (1897); 27 H. 297 (1923). Unliquidated claim for damages for breach of contract is not subject to garnishment. 20 H. 702 (1911). "Debts" do not include those controverted by garnishee. 27 H. 651 (1923). Liability under implied promise to pay reasonable attorney's fee is subject to garnishment. 47 H. 252, 386 P.2d 886 (1963).

"Effects", embraces what. 16 H. 106 (1904); 35 H. 772 (1941). Garnishee set-off. 19 H. 83 (1908).

Examination before district magistrate. 19 H. 625 (1909).

Both debtor and garnishee summoned on same order. 22 H. 229 (1914).

Examination before "judge at chambers". 22 H. 229 (1914).

Sufficiency of request for issuance of process. 22 H. 723 (1915).

"Any person" includes municipal corporation. 23 H. 564 (1916).

Judgment concludes "trial" and discharges garnishee. 27 H. 749 (1924).

Rights accrue at time of service. 28 H. 528, 533 (1925).
Annuity. 31 H. 418, 427 (1930).

Garnishee's denial of liability is not conclusive. 48 H. 68, 395 P.2d 691 (1964).

Garnishee summons does not take precedence over a garnishment of a new employer under §652-5, priority of each being determined according to time of receipt by garnishee. 50 H. 223, 437 P.2d 95 (1968).

As applied to bank accounts, statute is violative of due process clause. 54 H. 656, 513 P.2d 1390 (1973).

Garnishor has a right to examine garnishee under oath when garnishee denies indebtedness. 71 H. 392, 793 P.2d 170 (1990).

Pledgor's interest in pledged stock, though subject to bank's security interest, was garnishable under this chapter. 92 H. 347, 992 P.2d 42 (2000).

" **§652-1.5 Prejudgment garnishment; procedures.** (a)

[Repeal and reenactment of subsection on June 30, 2020. L 2015, c 101, §4.] Except as provided in subsection (e), any creditor desiring to secure a garnishment process before judgment shall attach the creditor's petition for process, summons, and direction to the following documents:

- (1) An application, directed to the court to which such action is made returnable, for garnishee process to issue under section 652-1(a);
- (2) An affidavit sworn to by the creditor or some competent affiant setting forth a statement of facts sufficient to show that probable validity exists to sustain the validity of the creditor's claim;
- (3) An order that a hearing be held before the court or a judge thereof to determine whether or not the garnishee process should be granted and that notice of such hearing be given to the defendant debtor; and
- (4) A summons directed to the sheriff, deputy sheriff, a police officer, or an independent civil process server from the department of public safety's list under section 353C-10 commanding the sheriff, deputy sheriff, police officer, or independent civil process server to serve upon the debtor at least four days prior to the date of the hearing, pursuant to chapter 634, the application, a true and attested copy of the

petition, summons, and direction, the affidavit, and the order and notice of hearing.

(b) The clerk upon receipt of all such documents in duplicate, if the clerk finds them to be in proper form, shall fix a date for the hearing on the application and sign the order of hearing and notice; except that if the application includes a request for a temporary restraining order, the court or a judge of the court shall act on the application for the temporary restraining order, fix a date for the hearing on the garnishee process and sign the order of hearing and notice.

(c) The clerk shall deliver to the creditor's attorney the original documents for service. Service having been made, the original documents shall be returned to the court with the endorsement by the officer of service.

(d) The defendant debtor shall have the right to appear and be heard at the hearing. The hearing shall be limited to a determination of whether probable validity exists to sustain the validity of the creditor's claim and whether any of the property or choses in the possession of the garnishee is, to the same degree of certainty, exempt from execution. If the court, upon consideration of the facts before it, finds that the creditor has sustained the validity of the creditor's claim, then the garnishee process under section 652-1(a) applied for shall be granted as requested or modified by the court except to the extent the defendant debtor has shown all or a portion of the property or choses in the possession of the garnishee to be exempt from execution. The clerk shall deliver to the creditor's attorney the petition, summons, and direction for service of process. If the court denies the application, only a summons and complaint shall be served. In either event, the creditor may alter the return day of the petition, summons, and direction, or the summons and complaint, as the case may be.

(e) The court or a judge of the court may allow the garnishment process to be issued by an attorney without hearing as provided in subsections (a) to (d) upon verification by oath of the creditor or of some competent affiant, that there is reasonable likelihood that the defendant debtor:

- (1) Neither resides in nor maintains an office or place of business in this State and may depart from the State within six months from the date of filing under this section;
- (2) Has hidden or will hide oneself so that process cannot be served on the defendant debtor;
- (3) Is about to remove oneself or one's property from this State;
- (4) Is about to fraudulently dispose of or has fraudulently disposed of any of the defendant debtor's

property with intent to hinder, delay, or defraud the defendant debtor's creditors; or

- (5) Has fraudulently hidden or withheld money, property, or effects which should be liable to the satisfaction of the defendant debtor's debts.

(f) The defendant debtor in an action in which garnishee process was allowed under subsection (e) may move to dissolve or modify the garnishee process in which event the court shall proceed to hear and determine the motion expeditiously. If the court determines at the hearing requested by the debtor that probable validity exists to sustain the validity of the creditor's claim, then the garnishee process granted shall remain in effect, except as modified pursuant to a finding that all or a portion of the property or choses in action in the possession of the garnishee is exempt from execution. If the court determines there is no such probable validity, the garnishee process shall be dissolved. An order shall be issued by the court setting forth the action it has taken.

(g) The court's determinations under this section shall have no effect on the determination of any issues in the action other than the issues relevant to proceedings under this section nor shall they affect the rights of the defendant debtor in any other action arising out of the same claim. The court's determinations under this section shall not be given in evidence nor referred to in the trial of such action. [L 1975, c 155, §1(1); am L 1977, c 33, §3; gen ch 1985; am L 2013, c 116, §§13, 25(12)]

" **§652-2 Garnishee, rights, duties; collection by sheriff, deputy sheriff, police officer, or independent civil process server.** [*Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.*] The garnishee shall, when summoned before judgment rendered against the garnishee's principal, if the garnishee desires, be admitted to defend the garnishee's principal in the action.

If judgment is rendered in favor of the plaintiff, and likewise in all cases in which the garnishee is summoned after judgment, the garnishee fund, or such part thereof as may be sufficient for that purpose, shall be liable to pay the same. The plaintiff on praying out execution shall be entitled to have included in the execution an order directing the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 serving the same to make demand of the garnishee for the goods and effects of the defendant secured in the garnishee's hands, whose duty it will be to expose the same to be taken on execution, and also to make demand of the garnishee for the debt

or wages secured in the garnishee's hands or the moneys held by the garnishee for safekeeping, or such part thereof as may satisfy the judgment. It shall be the duty of the garnishee to pay the same. If the garnishee has in any manner disposed of the goods and effects or does not expose and subject the same to be taken on execution, or if the garnishee does not pay to the sheriff, deputy sheriff, police officer, or independent civil process server when demanded, the debt or wages or moneys held for safekeeping, the garnishee shall be liable to satisfy the judgment out of the garnishee's own estate, as the garnishee's own proper debt, if the goods or effects or debt or wages or moneys held for safekeeping, be of sufficient value or amount and, if not, then to the value of the same; provided that every garnishee, whether summoned before or after judgment, shall be allowed to retain or deduct from the goods, effects, and credits of the defendant in the garnishee's hands at the time of service all demands against the defendant of which the garnishee could have availed the garnishee's self if the garnishee had not been garnished, whether the same are at the time due or not, and whether by setoff on a trial or by setoff of judgments or executions between the garnishee and the defendant, and shall be liable only for the balance after adjustment of all mutual demands between the garnishee and the defendant; provided that in such adjustment no demands for unliquidated damages for wrongs or injuries shall be included, and that the judgment shall show the amount of any setoff.

No garnishee shall be liable to anyone for the nonpayment of any sum or for the nondelivery of any goods or effects when the garnishee in good faith believes, or has reason to believe, that garnishment or other process affects the same, though such be not the case, but this paragraph shall not supersede section 652-9 where the same are applicable. [L 1876, c 35, §2; am L 1919, c 157, §2; am L 1921, c 66, §1; RL 1925, §2827; am L 1925, c 262, §2; am L 1927, c 96, §2; RL 1935, §4271; am L 1935, c 155, §1; RL 1945, §10302; RL 1955, §237-2; am L 1959, c 65, §2; HRS §652-2; am L 2013, c 116, §§14, 25(13)]

Case Notes

Garnishee defending principal upheld. 10 H. 327 (1896).

A debt owing by garnishee to defendant cannot be held if it accrued after service of garnishee process. 14 H. 295, 298 (1902).

Garnishment of seamen's wages. 17 H. 416 (1906); 21 H. 661 (1913); 22 H. 160 (1914).

Set-off by garnishee. 19 H. 83 (1908).

Garnishee's liability to pay interest on debt due, when stopped by garnishment. 48 H. 349, 402 P.2d 683 (1965).

Garnishee who claims set-off against indebtedness owed the defendant has burden of proof to establish the claim. 54 H. 141, 504 P.2d 872 (1972).

The plain language of this section states that a garnishee may offset effects in its hands at the time of garnishment, regardless of whether the effects are due at the time; thus, trial court erred by denying bank its right to offset the deposits in debtor-depositor's accounts. 117 H. 44 (App.), 175 P.3d 154 (2008).

Cited: 131 F. Supp. 866, 868 (1955); 28 H. 528, 534 (1925).

" **§652-2.5 Service on garnishee.** *[Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]* Service of the copy upon the garnishee may be made in any of the manners here described, namely:

- (1) If the garnishee lives or has an office in the district in which process is issued, by the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 handing a copy to the garnishee in person or leaving it in the garnishee's office in charge of some deputy or clerk or other employees or attache of the office; or
- (2) If the garnishee lives in a district other than that in which the process was issued, by the sheriff, deputy sheriff, police officer, or independent civil process server handing a copy to the garnishee in person, or by mailing it in a sealed envelope, registered or certified, postage prepaid, return receipt requested, and addressed to the garnishee's last known home or business address. [L 1992, c 82, pt of §1; am L 2013, c 116, §§15, 25(14)]

" **§652-2.6 Effect of service.** (a) *[Repeal and reenactment of subsection on June 30, 2020. L 2015, c 101, §4.]* In case of service upon the garnishee, the certificate of service or, if by mail, a copy of the return receipt provided by the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 shall be prima facie proof of the service.

(b) For purposes of this chapter, service is effective from the time when the summons is handed to or left in the office of the garnishee, or reaches the garnishee or the garnishee's office by mail. [L 1992, c 82, pt of §1; am L 2013, c 116, §§16, 25(15)]

" **§652-3 Amount withheld.** For the purposes of garnishment, if it appears in any cause wherein service has been made as provided by law, whether before or after judgment, upon any garnishee from whom the defendant is in receipt of any wages, the court shall order and direct the garnishee not to withhold more than a portion of the wages of the defendant to be determined as provided for in the third paragraph of subsection (a) of section 652-1. The garnishee shall continue such withholding from the wages of the defendant until the action against the defendant has been finally determined and the final judgment obtained against the defendant, if any, has been fully paid with legal interest thereon. However, no more of the wages shall be withheld from the defendant in advance of final judgment than shall be sufficient to meet the demand of the plaintiff, together with cost and legal interest. [L 1907, c 99, §1; am L 1921, c 66, §1; RL 1925, §2828; am L 1925, c 262, §3; am L 1927, c 96, §3; am L 1933, c 172, §1; RL 1935, §4272; am L 1939, c 212, §2; RL 1945, §10303; RL 1955, §237-3; am L 1959, c 65, §3; HRS §652-3; gen ch 1985]

Case Notes

Adjustment of set-off to period before and after judgment. 19 H. 83 (1908).

" **§652-4 Satisfying judgment.** In case there is certified to any garnishee a judgment for the plaintiff, from or to which no appeal or execution at the time of its rendition, has been noted the garnishee shall pay to the plaintiff such sums as theretofore have been sequestered and not drawn against in pursuance of the action if the judgment equals or exceeds such sums. If the amount sequestered and not drawn against does not suffice to extinguish the judgment, then such sequestration and delivery to the plaintiff by the garnishee of a sum equal to the percentage of wages required to be withheld by section 652-1 shall continue from week to week, or from month to month, until the judgment, with legal interest thereon, is fully paid, or until the defendant quits the service of and dissolves the defendant's relation to the garnishee upon which sequestration is founded. [L 1907, c 99, §2; am L 1921, c 66, §1; RL 1925, §2829; am L 1927, c 96, §4; am L 1933, c 172, §1; RL 1935, §4273; RL 1945, §10304; RL 1955, §237-4; HRS §652-4; gen ch 1985]

" **§652-5 Successive sequestration of wages, upon change of employment.** Whenever any judgment debtor has left the employ of

any garnishee, against whom an order has been duly issued, before the full amount of the judgment has been paid, and has entered the employment of some other person, or of the State, or any political subdivision thereof, then the judgment creditor may sequester any wages due the judgment debtor from the new employer by filing with such person, or the respective government comptroller or other officer a certified copy of the judgment and an affidavit of the judgment creditor, showing the amount remaining due and unpaid on account of the judgment.

Thereafter, the new garnishee shall proceed to pay the same percentages of wages as required in an original garnishment, on the balance of the judgment, from week to week or month to month, until the balance due, with legal interest, is fully paid; or until such employment of the judgment debtor ceases. [L 1915, c 64, §1; am L 1919, c 161, §1; am imp L 1921, c 66, §1 and am c 202, §1; RL 1925, §2830; am L 1927, c 96, §5; am L 1933, c 172, §1; RL 1935, §4274; RL 1945, §10305; RL 1955, §237-5; am L Sp 1959 2d, c 1, §12; HRS §652-5]

Case Notes

A garnishment under this section has equal legal standing with an original garnishee summons; priority being determined according to time of receipt by garnishee. 50 H. 223, 437 P.2d 95 (1968).

" **§652-6 Same.** Section 652-5 shall extend to successive persons and to the State or any political or municipal subdivision thereof, other than the original garnishee, employing the judgment debtor, until the judgment debt has been fully discharged. [L 1915, c 64, §2; am L 1919, c 161, §2; am L 1921, c 66, §1; RL 1925, §2831; am L 1927, c 96, §6; am L 1933, c 171, §3; RL 1935, §4275; RL 1945, §10306; RL 1955, §237-6; HRS §652-6]

" **§652-7 Successive actions; procedure.** In case of successive actions being brought wherein the same garnishee and the same defendant are named, precedence shall be given by the garnishee to the demand made in the action wherein service is first made on the garnishee, and if two or more such processes are served simultaneously, they shall be entitled to precedence in the order of the priority of their issue from the courts from which they were issued. This order of precedence shall not be disturbed by the fact of a later action being carried to final judgment sooner than the action earlier in time of service upon the garnishee, but in such case the garnishee shall pay or cause to be paid on account of the earlier judgment, only such sums as

shall be payable upon the judgment from the amounts which shall thereafter become due and payable to the judgment debtor. All amounts withheld on account of the earlier action shall be held to await the final result thereof, when, if final judgment is entered against the defendant, the amount withheld shall be applied in payment of the judgment. In case such amounts are not sufficient to satisfy the judgment, then all judgments obtained in later actions shall be again postponed to that in the earlier action until it is satisfied. [L 1907, c 99, §3; RL 1925, §2832; RL 1935, §4276; RL 1945, §10307; RL 1955, §237-7; HRS §652-7]

" **§652-8 Execution, when.** If the garnishee fails to appear upon the day and hour of hearing named in the summons or writ above mentioned, or if having appeared, the garnishee refuses to disclose upon oath whether the garnishee has goods or effects of the defendant debtor in the garnishee's hands, and their nature and value, or whether a debt is due from the garnishee to the defendant debtor and its amount, or whether the garnishee has any moneys of the defendant debtor in the garnishee's possession for safekeeping, and the amount thereof, the case shall proceed to trial. If the plaintiff recovers a judgment, execution shall issue at the plaintiff's request, against the estate of the contumacious garnishee for the amount of judgment as the garnishee's own proper debt, and the lawful costs; provided that if it appears that the goods and effects are of less value, the debt of less amount and the moneys in safekeeping of less amount than the judgment recovered against the defendant debtor, judgment shall be rendered against the garnishee to the value of the goods or the amount of the debt or the amount of the moneys in safekeeping, and if it appears that the garnishee has no goods or effects of the defendant debtor in the garnishee's hands, or is not indebted to the defendant debtor, or has no moneys in the garnishee's possession for safekeeping, then the garnishee shall recover the garnishee's lawful costs. However, if the garnishee appears and on oath discloses fully whether the garnishee has in the garnishee's hands the goods or effects of the defendant debtor, or is indebted to the defendant debtor or has in the garnishee's possession moneys of the defendant debtor for safekeeping, and it appears to the court that the garnishee has no goods or effects of the defendant debtor, or is not so indebted, or has no moneys of the defendant debtor for safekeeping, then judgment shall be given for the garnishee, and the garnishee shall recover the garnishee's lawful costs. [L 1876, c 35, §3; RL 1925, §2833; am L 1925, c 262, §4; RL 1935, §4277; RL 1945, §10308; RL 1955, §237-8; am L 1959, c 65, §4; HRS §652-8; am L 2016, c 55, §33]

Case Notes

One who is served with garnishee process, fails to appear to discharge oneself acts at one's peril. 7 H. 72 (1887).

Garnishee is not required to make written answer and may appear at trial or any time before trial. 15 H. 645, 646 (1904).

Garnishee entitled to notice of subsequent proceeding affecting garnishee's rights. 22 H. 723, 729 (1915).

Status not affected by failure to tender fees and expenses. 22 H. 723, 727 (1915).

After entry of judgment, plaintiff cannot require garnishee to appear and be examined as to written disclosures filed prior to trial. 27 H. 749 (1924).

Cited: 131 F. Supp. 866, 870 (1955); 14 H. 295, 299 (1902); 19 H. 83, 87 (1908); 22 H. 321, 326 (1914).

" §652-9 Garnishee may be heard on notice to plaintiff.

Whenever any person summoned as a garnishee may be desirous of so doing, the person may apply to the district judge or any judge of the court from which the summons may have issued, and the judge having caused reasonable notice to be given to the plaintiff in the action, shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the date appointed for hearing the cause, and the person summoned as garnishee, shall be taken to have obeyed the summons. If it appears that there are conflicting claims to any moneys held for safekeeping, debt, goods, or effects in the garnishee's hands, any time after the summons is served the garnishee may be permitted upon order of the judge to pay into the court any moneys held for safekeeping, debts, goods, or effects in the garnishee's hands, less any reasonable costs and attorney's fees allowed by the judge and the garnishee will thereupon be discharged. With or without payment into court, any garnishee may, where there are conflicting claims to any moneys held for safekeeping, debt, goods, or effects in the garnishee's hands of any amount, make application for an interpleader order and the judge shall thereupon make all orders as appear to be just and reasonable. [L 1876, c 35, §11; RL 1925, §2839; am L 1933, c 106, §1; RL 1935, §4278; RL 1945, §10309; RL 1955, §237-9; am L 1959, c 65, §5; HRS §652-9; am L 1970, c 188, §39; am L 1980, c 232, §33; gen ch 1985]

Cross References

Deposit in court, see chapter 655.

Rules of Court

Deposit in court, see HRCF rule 67.

Interpleader, see HRCF rule 22.

Case Notes

This section must be printed on every summons issuing out of any court as required by §652-11. 5 H. 664 (1886).

Garnishee could not be held as to debts accruing after hearing. 14 H. 295, 299 (1902).

Where prior to entry of judgment against garnishee, defendant in action is adjudged a bankrupt, judgment against garnishee is void as to trustee in bankruptcy. 33 H. 337 (1935).

Garnishee may resort to interpleader to adjudicate conflicting claims to fund in garnishee's hands. 33 H. 557 (1935).

Doctrine of judicial estoppel applied to garnishee's right of appeal. 42 H. 324, 330 (1958).

Payment into court not the only method of stopping interest on debt. 48 H. 349, 402 P.2d 683 (1965).

Cited: 14 H. 295, 299 (1902); 15 H. 645, 646 (1904); 48 H. 68, 72, 395 P.2d 691 (1964).

" **§652-10 Debts payable in future.** If upon disclosure made on oath by the debtor it appears that the garnishee is indebted to the defendant, but that the debt is not payable and will not become due until some future time, then such judgment as the plaintiff may recover shall constitute a lien upon the debt until and at the time it becomes due and payable. [L 1876, c 35, §12; RL 1925, §2840; RL 1935, §4279; RL 1945, §10310; RL 1955, §237-10; HRS §652-10]

Case Notes

Section held inapplicable under the circumstances. 10 H. 499, 504 (1896).

Cited: 48 H. 68, 76, 395 P.2d 691 (1964).

" **§652-11 Section 652-9 to appear on summons.** Section 652-9 shall be printed or written conspicuously on every summons issuing out of any court of the State which is intended to be served on any alleged attorney, factor, trustee, or debtor of a defendant in any action. [L 1876, c 35, §14; RL 1925, §2841; RL 1935, §4280; RL 1945, §10311; RL 1955, §237-11; HRS §652-11]

" **§652-12 Payment by garnishee, effect.** The taking of any goods or effects of any debtor, or the payment of any debt due the debtor as aforesaid, or payment made by, or execution levied upon the garnishee upon any such proceeding as aforesaid, shall be a valid discharge to the garnishee as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment may be reversed. [L 1876, c 35, §9; RL 1925, §2842; RL 1935, §4281; RL 1945, §10312; RL 1955, §237-12; HRS §652-12; gen ch 1985]

Case Notes

Cited: 48 H. 349, 365, 402 P.2d 683 (1965).

" **§652-13 REPEALED.** L 2001, c 5, §1.

" **§652-14 REPEALED.** L 2006, c 50, §1.

" **§652-15 Law applicable to all courts.** This chapter and the powers conferred therein shall extend to all the common-law courts of the State, according to their jurisdiction. [L 1876, c 35, §13; RL 1925, §2844; RL 1935, §4283; RL 1945, §10315; RL 1955, §237-15; HRS §652-15]

Case Notes

"Common law courts" are those in contradistinction to courts of equity; district court has jurisdiction in proper cases. 19 H. 625 (1909). See also 22 H. 229 (1914).