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STATUTORY INSTRUMENTS

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**1981 No. 1687**

**The County Court Rules 1981**

**ORDER 30**

**GARNISHEE PROCEEDINGS**

**Attachment of debt due to judgment debtor**

1.—(1) Where a person (in this Order called “the judgment creditor”) has obtained in a county court a judgment or order for the payment of money by some other person (“the judgment debtor”) and any person within England and Wales (“the garnishee”) is indebted to the judgment debtor, that court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due from the garnishee to the judgment debtor or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the place and time for the further consideration of the matter (in this Order called “the return day”) and in the meantime attaching the debt due or accruing due from the garnishee or so much thereof as is sufficient for the purpose aforesaid.

(3) Among the conditions mentioned in section 143(1) of the Act (which enables any sum standing to the credit of a person in a deposit account in a bank to be attached notwithstanding that certain conditions applicable to the account have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(4) An order may be made under this rule notwithstanding that the debt due or accruing due from the garnishee to the judgment debtor exceeds the sum for the time being specified in section 39 of the Act.

**Application for order**

2. An application for an order under rule 1 may be made ex parte by filing an affidavit—
- (a) stating that, to the best of the information or belief of the deponent, the garnishee (giving his name and address) is indebted to the judgment debtor, and
  - (b) where the garnishee is a bank having more than one place of business, giving the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information is unknown to the deponent.

**Preparation, service and effect of order to show cause**

3.—(1) An order under rule 1 to show cause shall be drawn up by the proper officer with sufficient copies for service under this rule.

- (2) At least 7 days before the return day a copy of the order shall be served—
- (a) on the garnishee in the same manner as a fixed date summons, and thereafter

- (b) unless the court otherwise directs, on the judgment debtor in accordance with Order 7, rule 1,

and as from such service on the garnishee the order shall bind in his hands any debt due or accruing due from the garnishee to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor, and the costs entered on the order to show cause.

#### **Payment into court by garnishee**

4.—(1) The garnishee may, at any time before the return day, pay into court—

- (a) the amount required to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor and the costs entered on the order to show cause, or  
(b) such lesser sum as he admits to be owing by him to the judgment debtor,

and thereupon, subject to rule 8, the proceedings against the garnishee shall be stayed.

(2) Where a payment into court is made under paragraph (1), the proper officer shall, if time permits, send notice of the payment to the judgment creditor and the judgment debtor.

#### **Notice by bank denying indebtedness**

5. Where the garnishee being a bank alleges that it does not hold any money to the credit of the judgment debtor, the garnishee may, at any time before the return day, give notice to that effect to the proper officer and to the judgment creditor and thereupon, subject to rule 8, the proceedings against the garnishee shall be stayed.

#### **Order where money paid in by garnishee**

6. If the garnishee makes a payment into court under rule 4, then, subject to rule 8, the court may on the return day, after hearing the judgment creditor and the judgment debtor if they appear, order the payment out of the money to the judgment creditor or make such other order in the proceedings as may be just.

#### **Order where no payment into court etc**

7.—(1) Where the garnishee—

- (a) does not make a payment into court under rule 4 or give notice under rule 5, and  
(b) does not on the return day appear or dispute the debt due or claimed to be due from him to the judgment debtor,

then, if the judgment debtor does not appear or show cause to the contrary, the court may, if it thinks fit, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 may be enforced in the same manner as any other order for the payment of money.

#### **Directions where dispute as to part payment or notice under rule 5**

8. Where the garnishee—

- (a) pays into court under rule 4(1)(b) a sum which the judgment creditor contends is less than the amount owing by the garnishee to the judgment debtor, or  
(b) makes in a notice given under rule 5 an allegation which the judgment creditor disputes,

the court shall on the return day give directions for the determination of the question at issue.

### **Determination of liability in other cases**

9. Where in a case in which no payment into court has been made under rule 4 and no notice has been given under rule 5 the garnishee on the return day disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

### **Transfer of proceedings**

10. A garnishee who does not reside or carry on business within the district of the court in which the garnishee proceedings have been commenced and who desires to dispute liability for the debt due or claimed to be due from him to the judgment debtor may apply ex parte in writing to that court for an order transferring the action in which the judgment or order sought to be enforced was obtained to the court for the district in which the garnishee resides or carries on business, and the court applied to may, if it thinks fit, grant the application after considering any representations which it may give the judgment creditor and the judgment debtor an opportunity of making.

### **Discharge of garnishee**

11. Any payment made by a garnishee either under rule 4 or in compliance with an order absolute in garnishee proceedings, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied (otherwise than in respect of any costs ordered to be paid by the garnishee personally), notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arise is reversed.

### **Money in court**

12.—(1) Where money is standing to the credit of the judgment debtor in any county court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of the money but may apply to the court on notice for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On receipt of notice of an application under paragraph (1) the proper officer shall retain the money in court until the application has been determined.

(3) The court hearing on application under paragraph (1) may make such order with respect to the money in court as it thinks just.

### **Costs of judgment creditor**

13. Any costs allowed to the judgment creditor on an application for an order under rule 1 or 12 which in the former case are not ordered to be paid by the garnishee personally shall, unless the court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order in priority to the amount due under the judgment or order obtained by him against the judgment debtor.

### **Attachment of debt owed by firm**

14.—(1) An order may be made under rule 1 in relation to a debt due or accruing due from a firm carrying on business within England and Wales, notwithstanding that one or more members of the firm may be resident out of England and Wales.

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(2) An order to show cause under rule 1 relating to such a debt shall be served on a member of the firm within England and Wales or on some other person having the control or management of the partnership business.

#### **Powers of registrar**

**15.** The powers conferred on the court by any provision of this Order may be exercised by the judge or registrar.