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Rudolph E. George

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COLLECTING MONEY JUDGMENTS IN WYOMING

E. George Rudolph

Stated most generally the problem of the judgment creditor is first to determine, either with or without judicial assistance, the assets of the judgment debtor which are available for satisfaction of the judgment, and then to employ the proper remedy to have the particular type of property discovered applied for that purpose. Any such procedure must provide some mechanics for appropriating the property to the satisfaction of the judgment and for converting it into money, and it must also provide some standard by which conflicting claims to that property may be determined. Such conflicting claims may be of two types. In the first place someone may claim a better right under the judgment debtor, either as a prior creditor or purchaser. On the other hand a third party may deny the debtor's title altogether and claim that he in fact is the true owner. The first type of situation involves a question of substantive law as to when the judgment creditor perfects an interest in the particular property, as well as the procedural question of how the third party is to assert his claim.

None of these problems would seem to present any great difficulty, but the subject is none-the-less filled with complications and doubts, due chiefly to the many variations in the nature of assets. Thus a particular debtor's wealth may consist of either lands or chattels. Or, particularly in the case of land, it may consist of some interest less than complete ownership. Moreover, with our modern economy, the principal assets of any debtor are apt to be intangibles such as corporate stocks, mortgage notes or accounts receivable, and furthermore there may be significant variations among these since some will be represented by so-called indispensable documents and others will not. Going still further, many debtors have no substantial assets of any sort which are available to their creditors, but only earned income which is spent more or less concurrently with its earning. These variations in kind require some differences in the proceedings by which the various types of assets are applied to the satisfaction of judgments, but there are still further differences that can be explained only by reference to history.

I. EXECUTION

A. PROPERTY SUBJECT TO LEVY

The creditors' basic remedy is execution since, originally at least, that was the legal remedy and the others were equitable. However, in many cases execution will be unsatisfactory since it provides no method for dis-

* Associate Professor, College of Law, University of Wyoming.
covering assets, and it is rather severely limited as to the type of assets that can be reached. The Wyoming statute provides that execution can be levied on "Lands and tenements including vested interests therein, and permanent leasehold estates, renewable forever, and goods and chattels, not exempt by law." As would be expected from the wording the chief questions arising under this section have to do with various types of interest in land.

As an original proposition there would seem to be little question that the mortgagor's interest in mortgaged realty should be subject to execution, especially under the lien theory of mortgages which is founded on the proposition that legal title to the mortgaged premises remains in the mortgagor. However, like a number of others, this question is complicated by a group of Ohio cases decided before Wyoming adopted the Ohio Code of Civil Procedure. From the outset apparently the Ohio courts conceded that, at least before default, the mortgagor had an interest subject to execution since he was considered the owner of the mortgaged premises as against everyone but the mortgagee. Ohio at this time was apparently following a theory of mortgages somewhere between title and lien because it was held that, after default on the mortgage debt, the mortgaged premises could no longer be taken on execution against the mortgagor since he no longer had the right of possession. Since this decision was based on a substantive rule of mortgage law not followed in Wyoming it may be disregarded.

However, in the case of Baird v. Kirtland the court rendered the process of execution completely ineffective so far as mortgaged realty is concerned on an entirely different ground. The statute at that time provided that real estate could not be sold on execution for less than two-thirds the appraised value of the land, and the court held this to mean the value of the land itself and not merely of the mortgagor's equity of redemption. Obviously no purchaser would be willing to pay the full value, or even two-thirds the full value, of such land and rely on the mortgagor to take care of the mortgage debt, especially since this mortgagor has already proved to be unable or unwilling to pay his debts. The court fully realized the significance of its decision and suggested that if a creditor wished to subject only the mortgagor's equity of redemption he should proceed by creditors' bill. The present Wyoming statute differs from the original Ohio statute under which this case was decided in that, instead of providing for an appraisal of the "lands so levied on," it now says the "property so levied on," and it is arguable that the term "property" is broad enough to include the mortgagor's equity of redemption. On the other hand there are two

4. 8 Ohio 21 (1837).
sections of the statute providing for taking the equity of redemption by supplementary proceedings in aid of execution,\(^6\) possibly indicating a legislative opinion that it cannot be reached by execution. In Ohio this problem has now been taken care of by an express provision allowing the sale on execution of property subject to a prior lien for two-thirds of the difference between the appraised value of the land and the amount of the prior lien.\(^7\) The only conclusion possible in Wyoming is that the question is still shrouded by uncertainty.

When the judgment debtor has previously executed an absolute deed for purposes of security, the Ohio cases are uniform to the effect that, for this purpose at least, the judgment debtor's interest in the property is equitable and therefore not subject to execution, but can be taken only by creditors' bill or the statutory equivalent.\(^8\) It should be noted that there is an important difference in this respect between property subject to a regular mortgage and that conveyed by absolute deed for security purposes. In the latter situation there is no interest subject to execution and therefore the judgment does not attach as a lien,\(^9\) whereas in the case of a conventional mortgage a judgment against the mortgagor will attach as a lien since technically the property is subject to execution, regardless of how unsatisfactory that may be as a practical matter.

From what has been said above concerning equitable interests it would seem clear that the buyer's interest under an executory contract for the sale of land could not be taken on execution. The Ohio court so held in 1855 in a case where the buyer was not in possession but indicated that, if the buyer were in possession, such possession itself might be a sufficient legal estate to support a levy.\(^10\) At the time of this decision the statute provided for levy of execution on "lands and tenements." In 1880 the statute was amended to include "lands and tenements, including vested interest therein," and the court thereafter held that the buyer's interest under an executory land contract was a vested interest subject to execution under the amended statute.\(^11\) This result apparently did not meet with the approval of the Ohio legislature because the statute was again amended, this time to read, "lands and tenements including legal vested interests therein." As would be expected the court on the next occasion held that the buyer's interest under a land contract was no longer subject to execution.\(^12\) Furthermore, since the buyer was in possession in this case, the court at the same time decided the question left open by the original opinion in 1855.

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\(^6\) Wyo. Comp. Stat., 1945, secs. 3-4701 and 3-4716.
\(^7\) Baldwin's Ohio Code, 1936, sec. 11675.
\(^8\) Hegler v. Grove, 63 Ohio St. 404, 59 N.E. 162 (1900). Mattocks v. Humphreys, 17 Ohio 336 (1848).
\(^10\) Haynes v. Baker, 5 Ohio St. 254 (1855).
\(^12\) Culp v. Jacobs, 123 Ohio St. 109, 174 N.E. 242 (1930).
Wyoming adopted the statute in its intermediate form providing for "lands and tenements including vested interests therein." Depending, therefore, on the Wyoming court’s readiness to follow the Ohio interpretation of this provision, it seems that the buyer’s interest under an executory land contract can be subject to execution in this state. Of course this conclusion may be somewhat academic because of the possible requirement that the property must be sold for two-thirds of the appraised value of the land, as discussed above in connection with mortgaged realty. Even so the rule making such interests subject to execution is of significance in giving the creditor a lien from the date of judgment.

Turning now to similar questions with respect to chattels we find, by the latest expression of an Ohio court, that mortgaged chattels are subject to execution prior to default on the mortgage debt and while the mortgagor is in possession. However, after default and after the mortgagor has taken possession the mortgagor’s right to redeem is only an equity and not subject to execution. Since this proposition is based largely on the substantive law of chattel mortgages it is difficult to determine its significance so far as the Wyoming rule is concerned. This is especially true since the Wyoming cases do not clearly establish the mortgagee’s right to possession after default in absence of a provision for it in the mortgage.

No particular problems are presented by chattels in possession of the debtor as buyer under a conditional sales contract since the statute expressly provides for the levy of execution on such chattels, and takes care of the seller’s superior interest by requiring the levying creditor to pay the unpaid balance owing on the contract before the execution sale. After repossession under the conditional sales contract the buyer, as a general proposition, no longer has any interest in the chattel at all, so this situation presents no problem either.

B. Priorities.

Aside from questions concerning the types of property that may be reached, the most difficult problems presented by the process of execution concern conflicts between two or more creditors or between a creditor and a purchaser from the debtor. So far as real estate is concerned the solution to these problems is found in the statutes providing for the judgment lien.

14. Thus in both First National Bank v. Logue, supra note 10, and Culp v. Jacobs, supra note 11, the question was whether the creditor's judgment constituted a lien on the property.
15. Hauiesen v. Szalay, 33 Ohio App. 350, 169 N.E. 602 (1929). To the effect that this is the prevailing rule see 33 C.J.S. Executions sec. 45.
16. See Cone v. Ivinson, 4 Wyo. 203, 33 Pac. 31, 35 Pac. 935 (1894), Finance Corporation of Wyoming v. Commercial Credit Co., 41 Wyo. 198, 283 Pac. 1100 (1929), Casper Nat‘l. Bank v. Woodin, ——Wyo. —— 232 P. (2d) 706 (1951). In Carroll v. Anderson, 30 Wyo. 217, 218 Pac. 1038 (1929) the court upheld a replevin suit by the mortgagee against the sheriff who levied an attachment on behalf of creditors of the mortgagor while the property was in possession of the mortgagor. However, the attachment was levied in hostility to the mortgage and not subject to it.
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At the outset the Wyoming statute is subject to criticism in dating the lien from the first day of the term in which the judgment is entered.\(^\text{18}\) The objection to this is obvious. The judgment lien by such relation back will obtain priority over a conveyance made before the judgment is entered but after the beginning of the term of court. This has been the result in cases decided in other states under similar statutes.\(^\text{19}\) Therefore, if a purchaser is to be completely safe he must assure himself that there are no personal actions pending against his grantor within the county where the land is situated that were begun before the current term of court and may result in a judgment before it closes.\(^\text{20}\)

In the case of land located in a county other than that in which the judgment was entered a lien attaches from the time of filing a transcript of the judgment with the clerk of court in the county in which the land is situated,\(^\text{21}\) or from the levy of execution.\(^\text{22}\) A lien created by the latter method is apt to be more or less secret, since the statute requires no particular formalities for such a levy and contains no provision for making such a levy a matter of public record.\(^\text{23}\)

Some difficulty with respect to the duration of judgment liens is occasioned by seemingly conflicting statutes concerning dormant judgments. Thus section 3-4244\(^\text{24}\) provides that a judgment ceases to operate as a lien "to the prejudice of any other bona fide judgment creditor" if execution is not issued and levied within one year. Under this section the Ohio court held that an earlier judgment on which execution was not issued within one year should be postponed to a later judgment even though execution was actually levied under the earlier judgment first.\(^\text{25}\) This interpretation seems logical enough so long as it is confined to situations where the second judgment is entered before execution is levied under the first.\(^\text{26}\) Otherwise it would seem that a lien should arise upon levy of the execution issued under the first judgment even though this occurs more than one year from the date of judgment. The before mentioned conflict occurs between section 3-4244, discussed above, and section 3-4212 which provides that a

\(^{18}\) Wyo. Comp. Stat., 1945, sec. 3-4202. The statute makes two exceptions to this general rule: (1) Where the judgment is by confession; and (2) where the judgment is entered in the same term that the action was begun.

\(^{19}\) Davis v. Messenger, 17 Ohio St. 231 (1867). The Ohio statute has since been changed. Baldwin's Ohio Code 1936 sec. 11656. Norfolk State Bank v. Murphy, 40 Neb. 735, 59 N.W. 706 (1894).

\(^{20}\) The writer has examined several Wyoming abstractors' certificates, and none appear adequate in this respect. The references concerning pending actions seem limited to those directly affecting the title to property so as to operate as *lis pendens*.

\(^{21}\) Wyo. Comp. Stat., 1945, sec. 3-4204.

\(^{22}\) Wyo. Comp. Stat., 1945, sec. 3-4204.


\(^{24}\) Throughout the paper references to statutory sections, unless otherwise noted, are to Wyoming Compiled Statutes, 1945.

\(^{25}\) Patton v. Sheriff of Pickaway County, 2 Ohio 396 (1826); Waymire v. Staley, 3 Ohio 366 (1828).

\(^{26}\) Shuee v. Ferguson, 3 Ohio 136 (1827).
judgment becomes dormant and ceases to operate as a lien if execution is
not sued out within five years. Since the judgment ceases to operate as a
lien against other judgment creditors after one year the effect of this latter
section, so far as liens are concerned, would seem to be confined to later
purchasers.\textsuperscript{27}

The judgment lien does not suffice to answer all questions concerning
the judgment creditor's position of priority with respect to his debtor's
realty. In some situations the levy of execution is of significance. The
most obvious illustration of this, as already noted, is realty situated in a
county other than that in which the judgment is entered. However, it is
possible to attribute too great a significance to the levy for this purpose
under the terms of section 3-4214 concerning the order in which several
writs of execution against the same debtor are to be levied. In general,
this section provides that the writs are to be levied by the sheriff in the
order received, with two exceptions to be discussed later. The Ohio courts
decided at an early date that this section did not apply to executions levied
on land where one or more of the judgments involved constituted a lien.\textsuperscript{28}
The last clause of the section is apparently designed to insure this result,
but as the clause is now codified in the Wyoming Statutes it is not very
satisfactory for that purpose. The Wyoming Statute reads, "... but noth-
ing herein contained shall so construed as to affect any preferable lien
which a judgment on execution issued has on the lands of the judgment
debtor." The phrase, "judgment on execution issued," would seem to
qualify or define the word "lien." But this does not make sense because
either the judgment is a lien without more or no lien arises until execution
is levied. As originally enacted in Ohio the provision read, "... but noth-
ing herein contained shall be so construed as to effect any preferable lien
which one or more of the judgments on which such executions issued may
have on the lands of the judgment debtor."\textsuperscript{29} In that form it is clear that
the only purpose of the reference to "execution issued" is to identify the
judgment or judgments which constitute a lien with the executions dealt
with in the first part of the section.

Turning to similar questions of priority with respect to chattels of
the judgment debtor we begin with the provision of section 3-4202 that
such chattels are bound from the time of levy, or in other words, that the
judgment creditor has a lien from such time. But this is considerably
modified by the before mentioned section 3-4214, which provides that
writs of execution shall be levied in the order they are received by the
sheriff, except that in two situations they shall be levied simultaneously
and the judgment creditors share pro rata in the proceeds of the sale. The

\textsuperscript{27} Norton v. Beaver, 5 Ohio 178 (1831); Bank of Canton v. Commercial National
Bank, 10 Ohio 71 (1840).

\textsuperscript{28} Patton v. Sheriff of Pickaway County, 2 Ohio 396 (1826); Wilcox v. May, 19 Ohio
408 (1850).

\textsuperscript{29} Wilcox v. May, 19 Ohio 408 (1850).
first of these is where the writs are delivered to the sheriff on the same day, and the second is where the writs are issued during the same term of court or within ten days thereafter and the judgments have been entered in that term. It would be possible to construe this section as merely declaratory of the sheriff’s duty, and leave the rights of the creditors in the property to be determined by actual order of levy under section 3-1402.30 The Ohio court has held otherwise, however, so that a creditor obtaining judgment and delivering execution late in a term is entitled to share pro rata in the proceeds of a sale already completed under an execution issued on an earlier judgment entered in the same term.31 This decision is of considerable significance to sheriffs since it obligates them to hold the proceeds of such execution sales until ten days after the expiration of the term on penalty of being liable to later creditors if they distribute the proceeds before then. In addition the case is authority for the broader proposition that the rights of competing creditors in their common debtor’s chattels are to be determined by section 3-4214 which, generally speaking, means that the time of delivering the writ to the sheriff rather than the time of levy is the significant one.

It may, in view of the above, be concluded that the lien arising from the levy under section 3-4202 is of significance only when the question arises between an execution creditor and a purchaser from the debtor. New York, incidentally, gets the same result by dating the creditor’s lien from the time the writ is delivered to the sheriff and making an exception in favor of a bona fide purchaser from the debtor between that date and the date of levy.32

C. Critical Summary

The foregoing discussion indicates a number of particulars in which the Wyoming Statutes on execution might be improved without seriously affecting the basic scheme. First of all it should be made clear that mortgaged realty is subject to execution on a judgment against the mortgagor and that in such a case the appraisal is to be of the mortgagor’s equity of redemption rather than of the land itself.33 Secondly, the statute should be explicit as to whether or not the debtor’s interest as a buyer under an executory land contract can be taken by execution. The writer, frankly, has no feeling one way or the other on this question except that it needs a clear and positive answer, and the same is true with respect to land subject to a so-called equitable mortgage. On the other hand it would probably be desirable to prohibit execution on mortgaged chattels after default regardless of whether the mortgagee then has the right of possession or not.

There is likewise considerable room for improvement in the provisions

30. See Albrecht v. Long, 25 Minn. 163 (1878).
31. Doll v. Barr, 58 Ohio St. 115, 50 N.E. 434 (1898).
32. New York Civil Practice Act, Sections 679 and 683.
33. See the present Ohio statute on this cited in note 7 supra.
governing questions of priority. In the first place, the judgment lien on land should date from the entry of the judgment rather than relating back to the first day of the term of court. In the interest of uniformity, and also for ease of administration, the provision of section 3-4214 requiring equal treatment for all executions issued on judgments entered in the same term should be eliminated. While much can probably be said in favor of equality among creditors it cannot be achieved in any substantial sense by regulating execution or any other remedy available to a single creditor acting solely in his own interest. Secondly, section 3-4214 should be clarified so as to leave no doubt that the provisions concerning the order in which executions are to be levied do not affect the priority of judgment liens on land. And lastly, there seems to be no good reason for continuing the judgment lien for a period of five years against purchasers from the judgment debtor when it loses its priority over later judgment creditors after one year.

II. PROCEEDINGS IN AID OF EXECUTION

A. ORDERS ON THE JUDGMENT CREDITOR AND RECEIVERSHIPS

Even though, as suggested before, execution is in a sense the creditor’s basic remedy, it proves inadequate in quite a large number of cases, chiefly because it cannot reach equitable interests or intangibles. But that does not mean that these types of property are beyond the reach of creditors. To apply such assets to the satisfaction of judgments, and also to afford the creditor a method for discovering assets, equity devised the judgment creditor’s bill, and the legislatures have provided for supplementary proceedings in aid of execution. However, since these remedies are equitable, at least in origin, they may be resorted to only after the legal remedy, execution, has proved inadequate. More will be said of the significance of this later, but it is first necessary to consider in detail the Wyoming Statute on Proceedings in Aid of Execution and its construction by the Wyoming and Ohio courts.

First of all it should be noted that three distinct types of proceedings are provided for under this heading, although this is by no means obvious on a casual reading. Section 3-4701 provides for reaching equitable interests and intangibles by action. This section stands alone and actually provides a statutory substitute for the equitable judgment creditor’s bill, which is not summary in nature. Therefore, if a judgment creditor desires to institute proceedings under one of the latter sections he should ignore the first. These latter sections provide two basic types of supple-

34. For a case involving an equitable interest in realty see Womack v. Eversman, 67 Ohio App. 287, 37 N.E. (2d) 678 (1941).
36. In Ball v. Towle Mfg. Co., 67 Ohio St. 306, 65 N.E. 1015 (1902) the plaintiff, a judgment creditor, instituted an action under the Ohio statute corresponding to
mentary proceedings. The first is concerned entirely with the judgment debtor, and assets within his control, whereas the second involves third persons believed to have possession of assets of the judgment debtor or to be indebted to him.

The first type of proceedings is begun by an order of the court, after execution has been returned unsatisfied, directing the judgment debtor to appear and answer concerning his property. The court may order the judgment debtor to turn over for the satisfaction of the judgment any property disclosed by this examination, and such order is binding on the debtor and may be enforced by contempt proceedings. Since these orders operate in personam it would seem theoretically possible to reach by this means any non-exempt property which the debtor could voluntarily assign. The cases are not adequate to demonstrate the validity of this conclusion as a statement of law although Wilson v. Columbia Casualty Co. goes pretty far in that direction. There the judgment debtor had delivered money into the custody of his brother residing outside the state and the court upheld a contempt citation against the judgment debtor for failure to comply with an order to pay over this money for satisfaction of the judgment. In Iowa Methodist Hospital v. Long the Iowa court quoted with apparent approval the following statement from the findings of the lower court:

"It is the opinion of the court that the defendant could not place his property in any form so that it could not be reached by judicial process, or judicial order to the end that it could not be applied upon a defendant's debts."

On the other hand at least one limitation seems to have been imposed on the scope of this remedy which is not consistent with the broad proposition suggested above. As previously noted supplementary proceedings have as one of their principal functions the subjecting of intangibles. When, in the course of supplementary proceedings, instituted by an order on the judgment debtor, it is disclosed that he is in possession of a negotiable instrument payable to his order, or to bearer, the court may order him to

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3-4701, naming the judgment debtor and a corporation as defendants. He then got an order for a third party examination of the corporation under the section corresponding to 3-4705, which disclosed that the judgment debtor owned stock in the corporation. Thereafter the debtor pledged this stock to another, and subsequently the creditor brought the present suit to foreclose his prior lien which resulted from the original proceedings. The court granted the relief prayed and did not suggest that there was anything irregular about the procedure, but it would seem that there were at least three separate proceedings and that either the first or the last and possibly both were unnecessary. See the discussion of third party proceedings in the latter part of this paper.

40. This, in general, is the test provided by the Bankruptcy Act section 70a (5) for determining the property which passes to the trustee in bankruptcy.
41. Note 37, supra.
42. 234 Iowa 849, 12 N.W. (2d) 171 (1944).
collect the proceeds and pay them over to the judgment creditor.\textsuperscript{43} Such an order would seem equally proper when the debt owing to the judgment debtor is not represented by a negotiable instrument, but the rule seems to be otherwise because, for some reason, it is felt that the creditor in that situation should proceed directly against the debtor of the judgment debtor.\textsuperscript{44} Any conclusion on the merits of this latter rule must be postponed to the discussion of third party proceedings.

The propositions stated in the preceding paragraph have reference only to situations in which the debt owing to the judgment debtor, whether embodied in a negotiable instrument or not, is due and payable at the time of the proceedings. Obviously if the debt is not due it cannot be collected for application on the judgment.\textsuperscript{45} Futhermore, in the case of a negotiable instrument where the creditor is proceeding directly against the person liable on it, there is the additional difficulty presented by a possible future negotiation to a holder in due course.\textsuperscript{46} Something further then is necessary if the creditor is to satisfy his judgment out of debts of this sort. At the outset it appears that this involves a substantive question as to whether such choses in action are to be converted into cash by collection or discount. No generalization is possible since the answer should depend on such practical considerations as the remoteness of the maturity date and the marketability of the particular obligation.\textsuperscript{47} But regardless of the answer to this in a particular situation, the most desirable procedure for the creditor would seem to be a receivership as authorized by section 3-4714, since a receiver could take over the obligations not yet due and either wait for them to mature or sell them if that were practical.\textsuperscript{48} The receivership will, likewise be of advantage over third party proceedings in situations where the judgment debtor has many debtors from whom the creditor must collect to obtain full satisfaction, as in the case of accounts receivable.

The receivership device will, of course, be useful in applying other types of assets such as equitable interests in real estate under section 3-4716 and, according to the same section, the equity of redemption in mortgaged

\textsuperscript{43} Medical Finance Assn. v. Short, 36 Cal. App.(2d) 745, 92 P.(2d) 961 (1939) (check); Iowa Methodist Hospital v. Long, supra n. 40 (Government Defense Bonds). While the statutes involved in these cases are not identical with the Wyoming statute they are similar enough so that the cases seem meaningful.

\textsuperscript{44} Medical Finance Assn. v. Karnes, 32 Cal. App.(2d) 767, 84 P.(2d) 1076 (1938).

\textsuperscript{45} See Wyo. Comp. Stat., 1945, sec. 3-4713.

\textsuperscript{46} Stone v. Elliott, 11 Ohio St. 252 (1860); see also Berard v. Blais, 56 R.I. 431, 186 A. 475 (1936). Compare the provision of the Uniform Stock Transfer Act discussed herein, infra.

\textsuperscript{47} The writer does not know of any cases considering this problem in a creditor's proceedings but it has received considerable attention in connection with the pledgee's right to realize on pledged negotiable paper. See Queen v. Fryer, 292 App. Div. 222, 249 N.Y. Supp. 651 (1931).

\textsuperscript{48} The use of a receiver for such purpose is illustrated by Fry v. Smith, 61 Ohio St. 276, 55 N.E. 826 (1899). See also In re Downey, 31 Mont. 441, 78 Pac. 772 (1904) to the effect that a receivership is the proper remedy in this sort of situation under the Montana statute on supplementary proceedings.
realty, if that in fact cannot be taken on execution. The wording of section 3-4714 may cause some difficulty on this as it appears that a receiver appointed under it is to take over and administer all of the property of the judgment debtor. That, of course, is entirely proper.\textsuperscript{49} However, other statutory provisions indicate that a receiver may also be appointed on the application of a judgment creditor to administer a particular asset or assets,\textsuperscript{50} and section 3-4714 was probably not designed to prevent this. In situations of the latter sort the receiver's function is simply to take over the asset and convert it into cash, much as the sheriff does in the case of property seized under a writ of execution. Such a receiver does not have the broad powers often exercised by the receiver for an insolvent corporation appointed on a general creditor's bill. The Wyoming court in \textit{First National Bank v. Cook}\textsuperscript{51} described a receivership under section 3-4714 as follows:

"From the very nature of the proceedings the scope of the receivership is very narrow. . . . The statute under and by virtue of which the appointment is made, provides a summary method of discovering property subject to the plaintiffs' execution and applying it to that purpose when discovered. No other purpose is discoverable in its terms, and the taking over and conducting of the defendant's business, the marshalling of liens and the settlement of disputed claims are foreign to the proceedings."

Returning to the matter of reaching assets in a supplementary proceedings by an order on the judgment debtor, with or without the complications of a receiver, a further somewhat troublesome but not too important problem should be mentioned. As already observed supplementary proceedings are available only after execution has been returned unsatisfied. Because of this it has sometimes been held that, when property subject to execution is disclosed by the examination of the debtor, the supplementary proceedings should be discontinued and the property taken by levy of execution.\textsuperscript{52} However, this does not seem to be the rule in Ohio, since a recent case held that an order should have been granted on the plaintiff's motion in a supplementary proceedings directing the debtor to deliver his automobile to the sheriff.\textsuperscript{53}

It is not clear from either the statute or the cases whether the service of an order on the debtor in supplementary proceedings has the effect of creating a lien in favor of the creditor on the assets which may be sub-

\textsuperscript{49} Both of the Wyoming cases under section 3-4714 involved receiverships of this sort. First National Bank v. Cook, 12 Wyo. 492, 78 Pac. 1083 (1904); State ex rel. Avenius v. Tidball, 35 Wyo. 496, 252 Pac. 499 (1926).

\textsuperscript{50} Wyo. Comp. Stat., 1945, sec. 3-7301.

\textsuperscript{51} Supra note 47.

\textsuperscript{52} Walker v. Staley, 89 Colo. 292, 1 P. (2d) 924 (1931). In re Downey, 31 Mont. 441, 78 Pac. 772 (1904).

\textsuperscript{53} Wilder v. Martin, 83 Ohio App. 209, 81 N.E. (2d) 630 (1948). See also Stern v. Columbus Mutual Life Ins. Co., 39 Ohio App. 498, 177 N.E. 923 (1931) holding that supplementary proceedings are not be dismissed on the debtor's showing that he in fact has property subject to execution.
jected in this manner. Clearly the filing of a judgment creditor's bill in equity, or, perhaps, the service of summons in such a suit, has that effect. However, the statute provides for both the judgment creditor's bill and supplementary proceedings, so it is not entirely accurate to say that supplementary proceedings are simply a statutory substitute for the equitable remedy. It has been held under the very similar New York statute that the institution of supplementary proceedings has no such effect, and the creditor is protected by a lien only from the time of the appointment of a receiver.

B. Third Party Orders

Supplementary proceedings based on orders directed to third parties have already been mentioned in connection with the problem of reaching intangibles. But this brief consideration was only for the purpose of comparison with orders on the debtor and leaves a number of difficult problems to be considered in connection with third party orders.

Section 3-4705 provides that a summary order may be served on a third party (one other than the judgment creditor or the judgment debtor) requiring him to submit to an examination concerning property of the judgment debtor in his possession, or concerning his indebtedness to the judgment debtor. And further, according to section 3-4713, the court may order any such property or money, disclosed by the examination, applied to the satisfaction of the judgment. Actually, however, this order is not what it appears to be since, if the third party asserts a claim to the property adverse to the judgment debtor, or denies indebtedness to him, the order to pay over for the benefit of the judgment creditor cannot be enforced by contempt proceedings, even though an order on the judgment debtor under the same section could be as we have seen. The obstacle to trying the third party's adverse claim in the supplementary proceedings apparently lies in the fact that he is not technically a party to those proceedings, never having been served with a formal process. Therefore, the courts have concluded that the order on the third party operates merely as an assignment of the judgment debtor's claim to the judgment creditor and the latter, or a receiver for him, may bring suit to enforce it against the third party. Actually then, nothing is accomplished in the third party proceeding which cannot be accomplished just as well by an order on the debtor.

It may be that this difficulty has been overcome in Wyoming by the enactment of an additional statute providing for garnishment in aid of execution. Whether it has or not is questionable, but there can be no

54. Miers and Coulson v. The Zanesville and Maysville Turnpike Company, 13 Ohio 197 (1844).
question that this statute has made the subject extremely complicated. It provides that the sheriff holding an execution which is unsatisfied shall, on demand by the judgment creditor, "summon in writing as garnishee" the person named by the judgment creditor to appear in court and answer concerning his liability as garnishee. The statute then provides that "... like proceedings shall be had thereon to final judgment and execution as upon suits instituted by attachment." To understand this it is necessary to make a rather extended excursion into the statutes on garnishment in aid of attachment.

As these statutes were originally formulated in Ohio the order against the garnishee in an attachment proceeding was no more binding than similar orders against third parties in supplementary proceedings in aid of execution, and could not, therefore, be enforced either by execution or contempt proceedings. Evidence of this original situation can still be found in section 3-5031 of the Wyoming statute which provides for an independent suit by the plaintiff against the garnishee in case the garnishee's answer is unsatisfactory or in case he fails to comply with the order of court to pay over.

This set-up was departed from, to some degree at least, by an amendment to the Ohio statute adopted in 1856 and providing,

"In all cases in which the garnishee shall admit an indebtedness to the defendant and the court shall order payment of the same, or any part thereof, to the plaintiff if the garnishee shall not pay the same according to such order, execution may issue thereon as upon judgments for the payment of money." 60

The courts of Ohio have never interpreted this provision in any reported case other than to note its existence and criticize it in principle in Rice v. Whitney. 61 This case, however, merely holds that the section is not applicable to attachment proceedings before a Justice of the Peace. This provision was carried over into the Nebraska code and the Supreme Court of that state has held that execution under the section is available only when the garnishee has admitted a particular amount to be owing, but not when he denies indebtedness or when there is a dispute as to the amount. 62 A dictum in a recent Wyoming decision is to the same effect. 63 This is a perfectly logical and even obvious interpretation of the language of the statute.

However, the problem has been still further complicated in Wyoming by an amendment to section 3-5027, adopted in 1927, providing that the

59. Rice v. Whitney, 12 Ohio St. 358 (1861); Secor v. Witter, 39 Ohio St. 218 (1883).
60. 53 Laws of Ohio, 23, 24 (1856). This provision is now found in the latter part of Section 3-5013 Wyo. Comp. Stat., 1945.
61. 12 Ohio St. 358 (1861).
plaintiff may traverse the answer of the garnishee and "any issues raised by such answer and the traverse thereof shall be tried in such cause as other civil cases are tried." The statute is silent as to whether such a trial is to result in a judgment on which execution may issue although that would seem to be the logical inference. The amendment has never received judicial construction, either in a garnishment in aid of attachment or one in aid of execution.

Until now nothing has been said, with reference to any of the creditor's remedies, concerning the problems that arise when an outsider seeks to assert against the creditor a right in the property adverse to the judgment debtor. In third party proceedings the Wyoming court has treated this problem as a part of the larger subject, discussed above, of the enforceability of third party orders. Thus in Schloredt v. Boyden the judgment creditor instituted third party proceedings under the proceedings in aid statute to reach a debt allegedly owed by the third party to the judgment debtor. The trial court allowed another party to intervene for the purpose of claiming that the debt was really owing to him rather than to the judgment debtor. On appeal the Supreme Court held that this was error because no binding order could be entered against the third party (garnishee) in such a proceedings anyway. In a later case, raising the same problem in a garnishment in aid of attachment, the court said the proper procedure would be for the garnishee to answer "no funds." Then the plaintiff could sue the garnishee under section 3-5031 and the adverse claimant could properly intervene in that action. This last case was decided before the amendment to the attachment statute in 1927 allowing the plaintiff to contest the answer of the garnishee and providing for the trial of the issue thus raised. This amendment would seem to be of some significance on this question, both in attachment cases and in garnishments in aid of execution under section 3-4801, since it apparently provides for an enforceable judgment against the garnishee, thus removing the basis for the holding of Schloredt v. Boyden. However, in Thex v. Shreve, decided one year after the enactment of the amendment, the court reaffirmed the rule of Schloredt v. Boyden, although the case is probably not conclusive since the issue was not raised squarely and the court did not consider the possible effect of the amendment.

64. In the case of chattels taken on execution the Wyoming statutes originally provided a summary method for the trial of adverse claims asserted by third persons. See Sections 4766 to 4768 Wyo. Comp. Stat., 1910. These provisions were repealed by Session Laws, 1915, ch. 111 and such adverse claimant must now proceed by replevin or an action to recover damages for conversion brought against either the sheriff, the purchaser at the execution sale, or possibly the judgment creditor.

65. 9 Wyo. 392, 64 Pac. 225 (1900).
67. 38 Wyo. 285, 267 Pac. 92 (1928).
68. The same rule has been followed in Wyoming where a third party seeks to intervene to assert an adverse claim to chattels taken under a writ of attachment. In Steffy v. Teton Truck Line Co., 44 Wyo. 345, 11 P.(2d) 1082 (1932) the court indicated that in a proper case it might abandon the rule and allow such intervention since the statute no longer covered the question expressly. The statute provided that such adverse claims should be tried in the same way as like claims to
All the foregoing complications are unnecessary in the sense that they are not inherent in the subject and serve no useful purpose. But at least the situation is susceptible to a rather simple summary. The Wyoming statutes provide for two distinct third party proceedings. Under the one authorized by section 3-4705, and designated as a proceeding in aid of execution, no binding order or judgment may be entered against the third party, and therefore, in the event he proves unwilling to pay, a new and independent lawsuit is necessary. But if the judgment creditor institutes a proceeding under section 3-4801, designated as a garnishment in aid of execution, then it seems that a final judgment, enforceable as other judgments, can be entered in such proceedings against the garnishee. Also, it would seem to follow, almost as a matter of necessity, that the adverse claim of another person to the debt or property in issue could be tried by intervention in these proceedings, or perhaps by the garnishee interpleading such other party. To refuse this leaves the garnishee subject to a possible double liability. But this last conclusion is not supported by either the statute or the cases, and indeed what authority there is points the other way.

Whatever doubts there may be as to enforceability of the third party order against the third party, such an order is undoubtedly conclusive against the judgment debtor, even under the proceedings in aid section. Thus the Ohio court has held that such an order is final and may be appealed from by the judgment debtor in a case where wages owed to the judgment debtor by the garnishee were ordered paid to the judgment creditor over the debtor's objection that they were exempt. In view of this it would seem necessary that the judgment debtor be given notice of the proceedings and an opportunity to be heard. But the statutes make no provision for this.

These statutes are likewise free from doubt on a further point. From the wording of section 3-4705 it is clear that a lien in favor of the creditor on the property or debt arises from the service of the original order to appear for examination on the third party. This same rule undoubtedly applies to garnishments under section 3-4801 although not expressly provided for in that section, since a similar rule is established for garnishments in aid of attachment by section 3-5018.

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69. Duffy v. Reardon, 70 Ohio St. 328, 71 N.E. 712 (1904).

70. In Devou v. Devou, 65 Ohio App. 508, 31 N.E. (2d) 159 (1939), the court dismissed a suit in the nature of a creditor's bill, brought under the Ohio equivalent to Section 3-4701, because of the failure to join the judgment debtor as a party defendant. He apparently resided outside the state and the court indicated that constructive service would be sufficient. This seems proper since the purpose for serving him would be to conclusively determine his rights in a res located in Ohio, the debt owed by an Ohio debtor.

In addition to the general problems considered above, more limited problems, confined to particular types of assets, are also raised by the proceedings in aid statutes. Foremost among these is the problem of satisfying a judgment from the wages of the judgment debtor.

In New York the code provisions for proceedings in aid proved completely inadequate for this purpose, because they were limited to debts due and payable at the time of the service of the order. Thus it would not often be possible to reach wages by this means since they are generally paid immediately upon becoming due. Although the Ohio, and therefore the Wyoming, statutes would seem vulnerable to the same interpretation, the question does not seem to have been raised in any Ohio case, and apparently wages can be reached either by an action in the nature of a creditor's bill, under the Ohio section corresponding to 3-4701, or by a third party proceeding under the Ohio section equivalent to 3-4705. That the legislature intended the use of supplementary proceedings under the latter section to reach wages is indicated by the provision in 3-4713 exempting fifty per cent of the debtor's wages under certain circumstances. It is doubtful if garnishments in aid of execution under section 3-4801 differ materially in this respect from third party proceedings under the proceedings in aid statute.

While either procedure will probably be effective in reaching wages earned but unpaid at the time of service of the writ or order, both are equally inadequate in not subjecting wages earned thereafter. This means, in the case of a substantial judgment, that a number of successive proceedings will be necessary to obtain complete satisfaction, especially in view of the liberal exemption provisions. In some states this difficulty has been taken care of by special statutes. Thus, New York has a statute providing for a sort of continuing garnishment under which, by order of court, an officer is to collect ten per cent of the debtor’s wages as they become due until the judgment is completely satisfied. In addition a further statute provides for an order directly against the judgment debtor requiring him to pay to a second judgment creditor such portion of his

72. Gray v. Ashley, 55 N.Y. Supp. 587 (City Court of New York, 1898).
74. See the discussion of applying choses in action generally included in the consideration of orders on the judgment debtor, herein ante.
75. Palumbo v. Industrial Commission, 140 Ohio St. 54, 42 N.E. (2d) 766 (1942).
76. Riley v. Hitler, 49 Ohio St. 651, 32 N.E. 753 (1892).
77. Parenthetically this provision, as it stands in Wyoming, may be criticized in not providing the judgment debtor with any opportunity to claim the exemption, since there is no requirement for giving him notice of the third party examination.
78. This conclusion is based chiefly on the language of Section 3-5018 concerning garnishments in aid of attachment which provides that the order of attachment shall bind, among other things, “all assets due and then owing to the defendant.” The doubt is occasioned by Section 3-5027 which in effect requires the garnishee to answer both for debts due and those to become due.
80. New York Civil Practice Act, sec. 684.
income as is not necessary for the support of his family or to pay the first creditor pursuant to a prior order issued under the first provision.81

Corporate shares illustrate a different sort of problem resulting from the fact that, even though by nature such shares are intangibles, at the same time they are represented by a negotiable document that is vested with some of the characteristics of a chattel. Sections 3-4401 to 3-4408, enacted before the adoption of the code, provide a method for levy of execution on corporate shares which in substance amounts to a third party proceedings against the corporation very similar to those provided for by the proceedings in aid statute. However, this procedure has at least been considerably modified by the provision of the Uniform Stock Transfer Act to the effect that no attachment or levy upon shares shall be valid unless the officer obtains possession of the certificate or its transfer is enjoined.82 In view of this it would seem that the simplest procedure for satisfying a judgment from corporate shares would be an order against the judgment debtor in a proceedings in aid requiring him to deliver the certificate, indorsed in blank, to a receiver for sale.83 The same problem is presented by goods represented by negotiable warehouse receipts, and the same solution would seem appropriate even though technically the property involved consists of chattels.84

**CONCLUSION**

If any conclusion is to be drawn from the above discussion it must be that there are at least two major faults with our present system for the collection of judgments. In the first place there seems to be an unnecessarily large number of different remedies. To the extent that this multiplicity is the result of historic differences between law and equity it is certainly unjustified in view of the attempts to eliminate this distinction for other procedural purposes. Secondly, this same distinction results in an order of priority for applying various types of property that is almost the exact opposite of that indicated by the economic realities of the situation. Generally speaking the various types of intangibles, such as promissory notes, corporate stocks, bonds, accounts receivable and wages, can be converted into cash much more readily, and with less sacrifice of actual value, than land or tangible property. Therefore, they would seem to be the most appropriate assets to take for the satisfaction of judgments. However, under our present system with execution as the basic remedy, the

81. New York Civil Practice Act, sec. 793.
83. See the discussion, ante, on the use of this type of order in the case of negotiable instruments. The Uniform Stock Transfer Act (Wyo. Comp. Stat., 1945, sec. 44-514) provides:

   "A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction . . . in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process."

first sources to which the judgment creditor must resort for satisfaction are the lands and chattels of the debtor. If one were able to make a completely fresh start in formulating a procedure for the collection of judgments he would need to keep only one basic distinction in mind. That would be the distinction between what could be done by jurisdiction over the person of the defendant and what could be done with jurisdiction of particular property only. Of the two the first seems much superior for the collection of judgments since it gives a method of discovery and also provides a ready means for the application of intangibles, and for the application of lands and chattels too where that is necessary. The problem of the judgment debtor's debtor is merely an extension of this and can be handled either by a receivership or, perhaps more economically, by extending the original proceedings so as to make this person a party. This sort of proceedings then, it is submitted, should be the creditor's basic remedy, and the in rem proceeding, such as our present execution, should be available only where personal jurisdiction of the defendant cannot be obtained.

85. The writer confesses that he is not the first person to get into print with the ideas expressed in this paragraph. See Conard, "An Appraisal of Illinois Law on the Enforcement of Judgments," 1951 Illinois Law Form 96.