

POST-JUDGMENT ACTIONS – SELECTED STATUTES

Current as of 7/1/16

JUDGMENTS - (Selected Statutes)	§§ 11-7-189 through 11-7-199 .	P 02
JUSTICE COURT PROCEDURE	§§ 11-9-101 through 11-9-147 .	P 04
GARNISHMENT	§§ 11-35-1 through 11-35-61 ..	P 09
EXAMINATION OF JUDGMENT DEBTOR	§§ 13-1-261 through 13-1-271 .	P 17
PROCESS, NOTICE AND PUBLICATION	§§ 13-3-101 through 13-3-189 .	P 18
LIMITATIONS OF ACTIONS	§§ 15-1-1 through 15-1-81	P 35
PREVENTION OF FRAUDS	§§ 15-3-1 through 15-3-15	P 47
LIABILITY OF SHERIFF	§ 19-25-49	P 48
EXEMPT PROPERTY	§§ 85-3-1 through 85-3-52	P 49
REFUSING OR FAILING TO POINT OUT PROPERTY .	§ 97-9-71	P 57
RESISTING SERVICE OF PROCESS	§ 97-9-75	P 57

JUDGMENTS
(Selected Statutes)
§§ 11-7-189 through 11-7-199

§ 11-7-189. Enrollment of judgments; satisfaction

- (1) The clerk of the circuit court shall procure and keep in his office one or more books to be styled "The Judgment Roll," which book or books shall be appropriately divided under the several letters of the alphabet, and on each page shall be placed the following captions:

Defendant's Name and Name of Defendant's Attorney County Social and Post and Security Office
Amount of Court or Tax Address of Judgment Date of in Which Identification Each or Decree
Rendition Rendered Number Plaintiff's Name, Plaintiff's Date, Hour Attorney, When and and Minute
of and Post Office How Enrollment Address of Each Satisfied Remarks

The clerk shall, within twenty (20) days after the adjournment of each term of court, enroll all final judgments rendered at that term in the order in which they were entered on the minutes by entering on The Judgment Roll, under the proper letter or letters of the alphabet, the name of each and every defendant to such judgment, the post office address of each defendant, and the social security or tax identification number of each defendant if such information is known or readily ascertainable, and if such defendant or defendants have an attorney at law in such case the name and post office address of such attorney or firm of attorneys if such post office address is known or readily ascertainable; the amount of such judgment; date of rendition; county and court in which rendered; the date, hour and minute of enrollment; and the name of the plaintiff or plaintiffs and the post office address of each plaintiff if readily ascertainable, and if represented by an attorney at law or a firm of attorneys then the name and post office address of such attorney or firm of attorneys if the post office address is known or readily ascertainable. The name of the attorney or firm of attorneys and post office addresses of the parties may be subsequently inserted by the clerk at any time.

Notwithstanding the foregoing, the failure to list a social security number on a judgment shall not invalidate said judgment nor shall it make the party failing to list said judgment liable for such failure to list or the recording official liable for such failure.

- (2) Any attorney of record representing a plaintiff or plaintiffs in the case may, for and on behalf of his client or clients, satisfy in whole or in part a judgment on such Judgment Roll by endorsing thereon the extent of such satisfaction and signing an entry so showing, and when so satisfied the clerk shall attest and subscribe such endorsement under the proper heading therein. When any judgment shall otherwise be satisfied, the clerk shall so enter under proper heading and subscribe the entry.
- (3) The Judgment Roll may be kept on computer as provided in Section 9-7-171. In such case the plaintiff or attorney representing such plaintiff shall present to the clerk a sworn affidavit directing the clerk to cancel or otherwise show as satisfied the judgment recorded under this section.

Source: Codes, Hutchinson's 1848, ch. 61, art. 16 (12); 1857, ch. 61, art. 260; 1871, § 829; 1880, § 1736; 1892, § 756; 1906, § 818; Hemingway's 1917, § 606; 1930, § 610; 1942, § 1554; Laws, 1946, ch. 437; Laws, 1960, ch. 233, §§ 1, 2; Laws, 1994, ch. 521, § 27; Laws, 1994, ch. 458, § 8; Laws, 1997, ch. 342, § 1, eff. 7/1/1997.

§ 11-7-191. Enrolled judgment as lien

A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after the rendition of the judgment. A judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled. In counties having two (2) judicial districts, a judgment shall operate as a lien only in the district or districts in which it is enrolled. Any judgment for the purpose described in Section 85-3-52 shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state, and shall not be enforced or satisfied against any such property.

Source: Codes, Hutchinson's 1848, ch. 61, art. 14 (1); 1857, ch. 61, art. 261; 1871, § 830; 1880, § 1737; 1892, § 757; 1906, § 819; Hemingway's 1917, § 607; 1930, § 611; 1942, § 1555; Laws, 1995, ch. 565, § 3, eff. 7/1/1995.

§ 11-7-193. How priority of lien forfeited

A junior judgment creditor may give written notice to any senior judgment creditor requiring him to execute his judgment; and if the senior judgment creditor, being so notified, shall fail, neglect or refuse to have execution issued, and levied within ten days from said notice for the satisfaction of his judgment, he shall lose his priority, and the junior judgment creditor may cause execution to issue on his judgment and to be levied on any of the property of the defendant, and the proceeds of a sale thereof shall be applied to the junior judgments so levied.

Source: Codes, 1857, ch. 61, art. 261; 1871, § 830; 1880, § 1737; 1892, § 758; 1906, § 820; Hemingway's 1917, § 608; 1930, § 612; 1942, § 1556.

§ 11-7-195. Judgment not a lien out of county unless enrolled

A judgment or decree rendered in any court of the United States or of this state shall not be a lien upon or bind any property of the defendant situated out of the county in which the judgment or decree was rendered until the plaintiff shall file in the office of the clerk of the circuit court of the county in which such property is situated an abstract of such judgment or decree which has been certified by the clerk of the court in which the same was rendered containing the names of all the parties to such judgment or decree, its amount, the social security or tax identification number of the defendant if such information is known or readily ascertainable, the date of the rendition, and the amount appearing to have been paid thereon, if any. It shall be the duty of the clerk of the circuit court on receiving such abstract and on payment of the fees allowed by law for filing and enrolling the same, to file and forthwith enroll the same on The Judgment Roll, as in other cases. Such judgment or decree shall, from the date of its enrollment, be a lien upon and bind the property of the defendant within the county where it shall be so enrolled. If a foreign judgment has been filed in any county of this state pursuant to Sections 11-7-301 through 11-7-309 and such judgment may be enforced in such county, then, for purposes of this section, such judgment shall be treated as if it had been rendered in such county and may be enrolled on The Judgment Roll in other counties pursuant to the provisions of this section. Any judgment for the purpose described in Section 85-3-52 shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state and shall not be enforced or satisfied against any such property.

Source: Codes, Hutchinson's 1848, ch. 61, art. 14 (3); 1857, ch. 61, art. 262; 1871, § 833; 1880, § 1738; 1892, § 759; 1906, § 821; Hemingway's 1917, § 609; 1930, § 613; 1942, § 1557; Laws, 1991, ch. 416, § 1; Laws, 1995, ch. 565, § 4; Laws, 1997, ch. 342, § 2, eff. 7/1/1997.

§ 11-7-197. Judgment not a lien in county until enrolled

Judgments and decrees, at law or in equity, rendered in any court of the United States held within this state, or in the Supreme Court or the court of chancery of this state, shall not be a lien upon or bind the property of the defendant within the county in which such judgments or decrees may be rendered, until an abstract thereof shall be filed in the office of the clerk of the circuit court of the county and enrolled on the judgment roll, in the manner and on the terms hereinbefore provided in Section 11-7-195. Such judgments and decrees shall bind the property of the defendants from the date of such enrollment, in like manner as judgments and decrees rendered in a different county and so enrolled.

Source: Codes, 1857, ch. 61, art. 263; 1871, § 834; 1880, § 1739; 1892, § 760; 1906, § 822; Hemingway's 1917, § 610; 1930, § 614; 1942, § 1558.

§ 11-7-199. Growing crop not subject to judgment lien

A growing crop shall not be subject to the lien of a judgment.

Source: Codes, 1880, § 1764; 1892, § 761; 1906, § 823; Hemingway's 1917, § 611; 1930, § 615; 1942, § 1559.

JUSTICE COURT PROCEDURE

§§ 11-9-101 through 11-9-147

§ 11-9-101. Where suits to be brought

- (1) The jurisdiction of the justice court shall be coextensive with its county, and any process may be issued in matters within its jurisdiction, to be executed in any part of the county. Every defendant may be sued only in the county in which he resides or where the cause of action arose and if a defendant does not reside in the State of Mississippi or has no fixed place of residence, he shall be sued in the county where the cause of action arose. Whenever by reason of interest, relationship to one of the parties, or other like cause, any justice court judge shall be disqualified to preside in any case before him, the same shall be transferred to a justice court judge in the county, free from such objection, who shall hear and determine the same. Nothing herein contained shall be construed as authorizing or empowering the clerk of the justice court or any justice court judge to perform any official act outside of the territorial boundaries of their county.
- (2) The provisions of this section shall not apply to any cause of action commenced before January 1, 1984; and any such action shall be concluded in accordance with state law as it was constituted before that date.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (10); 1857, ch. 58, art. 8; 1871, §§ 1303, 1340; 1880, §§ 2191, 2231; 1892, § 2395; 1906, § 2724; Hemingway's 1917, § 2223; 1930, § 2072; 1942, § 1806; Laws, 1955 Ex. ch. 40; Laws, 1960, ch. 238; Laws, 1981, ch. 471, § 1; Laws, 1982, ch. 423, § 1; Laws, 1992, ch. 389 § 1, eff. 4/27/1992.

§ 11-9-103. If two or more defendants, where brought

In suits or proceedings against two (2) or more defendants, jointly or jointly and severally liable, it shall be lawful to bring the suit in the justice court of the county wherein either of the defendants reside or where the cause of action arose; and such justice court shall have power to issue a summons or other process to bring in all codefendants from any other county.

Source: Codes, 1871, § 1320; 1880, § 2192; 1892, § 2396; 1906, § 2725; Hemingway's 1917, § 2224; 1930, § 2073; 1942, § 1807; Laws, 1981, ch. 471, § 24; Laws, 1982, ch. 423, § 28; Laws, 1992, ch. 389 § 2, eff. 4/27/1992.

§ 11-9-105. How suit begun in civil cases

Anyone desiring to sue in the justice court shall lodge with the clerk of the justice court the evidence of debt, statement of account, or other written statement of the cause of action. The clerk shall record all filings and shall, as far as practicable, assign the cases to each justice court judge in the county on a rotating basis to insure equal distribution of the cases among the judges of the county; however, in all counties in which the courtrooms provided by the county for use of the justice court judges are located in more than one (1) place in the county, the clerk, in addition to assigning cases to the judges on a rotating basis, may also assign a courtroom for each case, such assignment may be made based upon the proximity of the courtroom to the defendant's residence or place of business. The clerk shall issue a summons for the defendant, returnable to the next term of the court of the justice court judge to which the case is assigned, which shall be executed five (5) days before the return day; but if the process be executed less than five (5) days before the return day, the service shall be good to require the appearance of the defendant at the term next succeeding the one to which it is returnable. Any summons issued within five (5) days before a term of the court shall be made returnable to the next succeeding term, unless a shorter day be named, in pursuance of the provision for a trial without delay in the case of nonresident or transient defendants. When the case has been recorded and assigned and process issued, the clerk shall, within two (2) working days, forward certified copies of all documents pertaining to the case to the justice court judge to which the case is assigned for further processing.

Source: Code, Hutchinson's 1848, ch. 50, art. 2 (9); 1857, ch. 58, arts. 7, 10; 1871, §§ 1305, 1310; 1880, §§ 2196, 2197; 1892, § 2401; 1906, § 2730; Hemingway's 1917, § 2229; 1930, § 2078; 1942, § 1812; Laws, 1981, ch. 471, § 13; Laws, 1982, ch. 423, § 10; Laws, 1991, ch. 551, § 1, eff. 10/1/1991.

§ 11-9-107. Service of process by sheriff or constable

When any process has not been returned by a constable within ten (10) working days after issuance by the clerk of the justice court, the clerk shall direct the sheriff of his county and his deputies to execute any such process of the justice court; and the sheriff and his deputies shall execute any process so directed to him by any clerk of the justice court.

Source: Codes, 1857, ch. 58, art. 11; 1871, § 1311; 1880, § 2198; 1892, § 2402; 1906, § 2731; Hemingway's 1917, § 2230; 1930, § 2079; 1942, § 1813; Laws, 1981, ch. 471, § 25; Laws, 1982, ch. 423, § 28; Laws, 1995, ch. 464, § 2, eff. 10/1/1995.

§ 11-9-109. Person appointed to execute process

In cases of emergency, and where a constable or sheriff or deputy sheriff cannot be had in time, the clerk of the justice court may appoint some reputable person to execute any process, the clerk to be liable on his bond for all damage which may result to a party to the cause or other person from his appointment of an insolvent or incompetent person.

Source: Codes, 1857, ch. 58, art. 11; 1871, § 1311; 1880, § 2199; 1892, § 2403; 1906, § 2732; Hemingway's 1917, § 2231; 1930, § 2080; 1942, § 1814; Laws, 1981, ch. 471, § 26; Laws, 1982, ch. 423, § 28, made eff. 1/1/1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27.

§ 11-9-111. Property and process delivered to office

Property seized in execution of any process by one appointed by the clerk of the justice court to execute it shall be immediately delivered, with the process, to the sheriff of the county; and the person from whom the property was taken shall be at once informed who has it. Such property shall be considered and dealt with as if it had been seized by the officer to whom it was delivered at the time of its delivery to him.

Source: Codes, 1880, § 2200; 1892, § 2404; 1906, § 2733; Hemingway's 1917, § 2232; 1930, § 2081; 1942, § 1815; Laws, 1981, ch. 471, § 27; Laws, 1982, ch. 423, § 28; Laws, 1991, ch. 324, § 1, eff. 7/1/1991.

§ 11-9-113. Process returned by sheriff or constable

The process so delivered to the sheriff or constable shall be returned by him to the clerk of the justice court, according to its command.

Source: Codes, 1880, § 2201; 1892, § 2405; 1906, § 2734; Hemingway's 1917, § 2233; 1930, § 2082; 1942, § 1816; Laws, 1981, ch. 471, § 28; Laws, 1982, ch. 423, § 15, eff. 1/1/1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).

§ 11-9-115. Witnesses to be subpoenaed

The justice court judge before whom any cause is pending shall direct the clerk of the justice court to issue all subpoenas for witnesses which either of the parties may require, and such subpoenas shall be returnable on a day certain, giving reasonable time for attendance. If any witness, duly subpoenaed, shall fail to appear in pursuance of the subpoena, he shall forfeit the sum of ten dollars (\$10,00), for the use of the party in whose behalf he was subpoenaed, for which the justice court judge may enter judgment nisi, which shall be made final in case the witness, on being duly subpoenaed to appear and show cause, shall fail to appear and show cause for such default. The justice court may issue an attachment for such witness, as a circuit court may do in like case.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (13); 1857, ch. 58, art. 16; 1871, § 1313; 1880, § 2202; 1892, § 2406; 1906, § 2735; Hemingway's 1917, § 2234; 1930, § 2083; 1942, § 1817; Laws, 1981, ch. 471, § 29; Laws, 1982, ch. 423, § 28, made eff. 1/1/1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).

§ 11-9-117. Form of entry on default of witness

The judgment nisi against a defaulting witness, may be in the following form, viz.: " , being subpoenaed to appear this day as a witness for , the, in the case of v. , No. , and having made default, judgment is given against said , the defaulting witness, for ten dollars, in favor of , to be made final unless said , the witness, shall show cause against it according to law."

Source: Codes, 1871, § 1313; 1880, § 2248; 1892, § 2407; 1906, § 2736; Hemingway's 1917, § 2235; 1930, § 2084; 1942, § 1818.

§ 11-9-119. Form of scire facias for witness

The scire facias to be issued by the justice for a defaulting witness may be as follows, viz.:

"The State of Mississippi.

"To any lawful officer of County:

"This is to command you to make known to that a judgment in favor of for ten dollars has been given against him by me, a justice of the peace of County, for his default in not appearing before me, at , on the day of A. D. , to testify as a witness for in the case of against , No. as he has been subpoenaed to do; and unless, on the day of , A. D. , before me at , at , o'clock, , he shall show cause to the contrary, the said judgment will be made final; and have there then this writ. "Witness my hand this the day of , A. D. J.P."

Source: Codes, 1880, § 2249; 1892, § 2408; 1906, § 2737; Hemingway's 1917, § 2236; 1930, § 2085; 1942, § 1819.

§ 11-9-121. Form of an attachment for a witness

An attachment for a witness may be in the following form, viz.:

"The State of Mississippi.

"To any lawful officer of County:

"We command you to take the body of , and have him before the undersigned justice of the peace of County, at , on the day of , A. D. at o'clock , to testify for the in the case of against , No. . (But if the said shall furnish bail, with sureties, to be approved by you, in the sum of one hundred dollars, for his appearance at said time and place, you will discharge him.) And have there then this writ.

"Witness my hand, the day of , A. D. "

The part in brackets should be omitted, if it be not intended that the witness shall be discharged on bail, but shall be brought before the court by the officer. An attachment and scire facias for a defaulting witness may be combined in one writ, and when the witness is before the justice of the peace in pursuance of such process, the judgment nisi shall be made final, if good cause to the contrary be not shown.

Source: Codes, 1880, §§ 2250, 2251; 1892, § 2409; 1906, § 2738; Hemingway's 1917, § 2237; 1930, § 2086; 1942, § 1820.

§ 11-9-123. Form of entry of judgment in such case

The entry of final judgment in such case may be in the following form, viz.: " being duly summoned to appear and show cause against the judgment nisi for ten dollars entered against him in favor of , as a defaulting witness in the case of v. No. on the day of A. D. , and having failed to show cause for such default, the said judgment nisi for ten dollars is now made final, as well as judgment for costs in said matter, this the day of A. D. ."

Source: Codes, 1880, § 2252; 1892, § 2410; 1906, § 2739; Hemingway's 1917, § 2238; 1930, § 2087; 1942, § 1821.

§ 11-9-125. Setoff filed on return day before trial

The defendant in any action shall, on or before the return day of the summons, and before the trial of the case, file with the justice court judge to whom the case is assigned the evidence of debt, statement of account, or other written statement of the claim, if any, which he may desire to and which lawfully may be set off against the demand of the plaintiff, and, in default thereof, he shall not be permitted to use it on the trial.

Source: Codes, 1871, § 1306; 1880, § 2204; 1892, § 2411; 1906, § 2740; Hemingway's 1917, § 2239; 1930, § 2088; 1942, § 1822; Laws, 1981, ch. 471, § 30; Laws, 1982, ch. 423, § 28, made eff. 1/1/1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).

§ 11-9-127. Trial and judgment; execution

On the return day of the summons, unless continued, the justice court judge shall hear and determine the cause if both parties appear; give judgment by default if the defendant fails to appear and contest plaintiff's demand, or judgment of nonsuit against the plaintiff if he fails to appear and prosecute his claim; enter judgment in favor of the defendant where, in case of setoff, it shall appear that there is a balance due him, for the amount of such balance, and, when requested, issue execution against the goods and chattels, lands and

tenements, of the party against whom judgment is rendered, for the amount of the judgment and costs, or costs alone, as the case may require, returnable to a day more than twenty (20) days after the rendition of the judgment, and not more than six (6) months after the issuance of the execution; and the execution may be directed to the proper officer of any county in this state.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (9); 1857, ch. 58, art. 7; 1871, § 1307; 1880, § 2205; 1892, § 2412; 1906, § 2741; Hemingway's 1917, § 2240; 1930, § 2089; 1942, § 1823; Laws, 1991, ch. 453, § 1, eff. 7/1/1991.

§ 11-9-129. Judgment operates as a lien if enrolled

Judgments rendered by justices of the peace shall operate as a lien upon the property, real or personal, of the defendant or defendants therein, found or situated in the county where rendered, or in any other county where the same may be, which is not exempt by law from execution, if an abstract of the judgment be filed with the clerk of the circuit court of the county wherein the property is situated, and entered upon the judgment roll, as in other cases of enrolled judgments. The lien shall commence from the date of enrollment, and the judgment may be enrolled and have the force and effect of a lien in all cases where an appeal is taken, as well as in other cases. And in the event of a reversal of the judgment of the justice's court, the clerk of the circuit court shall enter a memorandum to that effect on the judgment roll.

Source: Codes, Hutchinson's 1848, ch. 50, art. 10 (13); 1857, ch. 58, art. 20; 1871, § 1318; 1880, § 2206; 1892, § 2413; 1906, § 2742; Hemingway's 1917, § 2241; 1930, § 2090; 1942, § 1824.

§ 11-9-131. Execution not to be issued within ten days

An execution shall not issue on any judgment of a justice of the peace until ten days after its rendition, unless the party recovering therein shall make and file an affidavit that he believes he will be in danger of losing his debt or demand by such delay, in which case execution shall issue immediately; but the opposite party shall not be deprived of his right of appeal within the time prescribed.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (17); 1857, ch. 58, art. 21; 1871, § 1317; 1880, § 2207; 1892, § 2414; 1906, § 2743; Hemingway's 1917, § 2242; 1930, § 2091; 1942, § 1825.

§ 11-9-133. Form of an execution

An execution may be in the following form, viz.:

"The State of Mississippi.

"To any lawful officer of county:

"We command you that of the real and personal estate of you cause to be made dollars, adjudged by the undersigned, justice of the peace of the county of in said state, on the day of A. D. , to , also interest at per centum on said sum until you shall make said money, and costs to amount of dollars, as taxed, and costs to accrue under this execution, to be taxed by you; and have said money before me on the day of , A. D. , and have there then this writ.

"Witness my hand the day of A. D. J. P."

Detailed statement of costs, giving each item separately and specifying the law for it, the section and paragraph thereof, viz.; "Issuing summons, \$, serving summons \$," etc.

Source: Codes, 1880, § 2253; 1892, § 2415; 1906, § 2744; Hemingway's 1917, § 2243; 1930, § 2092; 1942, § 1826.

§ 11-9-135. Proceedings in replevin, attachment, liens

Proceedings in replevin, attachment, trial of a claim to property levied on, and for the enforcement of statutory liens before justices of the peace, shall be, as far as practicable, according to those in the circuit courts, in all like cases.

Source: Codes, 1871, § 1321; 1880, § 2212; 1892, § 2416; 1906, § 2745; Hemingway's 1917, § 2244; 1930, § 2093; 1942, § 1827.

§ 11-9-137. Judgment on merits res adjudicata

When any suit brought before a justice of the peace shall be finally decided on its merits by the justice, it shall be a bar to a recovery for the same cause of action or setoff in any other suit.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (15); 1857, ch. 58, art. 19; 1871, § 1316; 1880, § 2213; 1892, § 2417; 1906, § 2746; Hemingway's 1917, § 2245; 1930, § 2094; 1942, § 1828.

§ 11-9-139. Execution of judgment may be stayed

If the party against whom judgment is given, shall, within ten days thereafter, procure some responsible person to appear before the justice, and in writing, to be entered on the docket of the justice and signed by such person, consent to become surety therefor, the justice shall grant a stay of execution for thirty days from the date of the judgment on all sums not exceeding fifty dollars and for sixty days on all sums over fifty dollars. In case the money be not paid at the expiration of such stay, execution shall issue against the principal and sureties, or either of them, for the principal, interest, and costs.

Source: Codes, Hutchinson's 1848, ch. 50, art. 2 (16); 1857, ch. 58, art. 22; 1871, § 1343; 1880, § 2214; 1892, § 2418; 1906, § 2747; Hemingway's 1917, § 2246; 1930, § 2095; 1942, § 1829.

§ 11-9-141. Effect of stay

A party obtaining a stay of execution shall thereby waive all errors in the judgment and abandon the right of appeal and certiorari.

Source: Codes, 1871, § 1344; 1880, § 2215; 1892, § 2419; 1906, § 2748; Hemingway's 1917, § 2247; 1930, § 2096; 1942, § 1830.

§ 11-9-143. Trial by jury

On or before the return day of the process either party may demand a trial by jury, and thereupon the justice of the peace shall order the proper officer to summon six persons, competent to serve as jurors in the circuit court, to appear immediately, or at such early day as he may appoint, whether at a regular term or not, who shall be sworn to try the case; but each party shall be entitled to challenge peremptorily two jurors, and as many more as he can show sufficient cause for. If a sufficient number of jurors shall not appear, others may be summoned until a jury is made up, to consist of six, against whom legal objections shall not exist. If the jury fail to agree, it may be discharged and another jury summoned, and so on until a verdict is obtained, and judgment shall be entered by the justice on the verdict.

Source: Codes, Hutchinson's 1848, ch. 50, art. 10 (5); 1857, ch. 58, art. 26; 1871, § 1326; 1880, § 2222; 1892, § 2425; 1906, § 2754; Hemingway's 1917, §§ 2253; 1930, § 2102; 1942, § 1836.

§ 11-9-145. Multiple cases tried by same jury

If a justice have more jury cases than one on the same day, he shall use the same jury for the trial of each, subject to the right of challenge by either party and like proceedings in all respects as in other cases. If more cases than one be tried by the same jury, the justice shall apportion the cost of the jury among the several cases and tax it in accordance with justice.

Source: Codes, 1871, § 1328; 1880, § 2224; 1892, § 2426; 1906, § 2755; Hemingway's 1917, § 2254; 1930, § 2103; 1942, § 1837.

§ 11-9-147. Trial by jury; fining of delinquent jurors

The justice of the peace may fine any person summoned as a juror failing to attend in any sum not exceeding ten dollars; and if such person, when summoned to show cause why the fine should not be made final, shall not appear and show cause, execution shall issue for the fine and costs.

Source: Codes, Hutchinson's 1848, ch. 50, art. 10 (7); 1857, ch. 58, art. 27; 1871, § 1329; 1880, § 2225; 1892, § 2427; 1906, § 2756; Hemingway's 1917, § 2255; 1930, § 2104; 1942, § 1838.

GARNISHMENT

§§ 11-35-1 through 11-35-61

§ 11-35-1. When issued on judgment or decree

On the suggestion in writing by the plaintiff in a judgment or decree in any court upon which an execution may be issued, that any person, either natural or artificial, including the state, any county, municipality, school district, board or other political subdivision thereof, is indebted to the defendant therein, or has effects or property of the defendant in his, her or its possession, or knows of some other person who is indebted to the defendant, or who has effects or property of the defendant in his, her or its possession, it shall be the duty of the clerk of such court to issue a writ of garnishment, directed to the sheriff or proper officer, commanding him to summon such person, the state, county, municipality, school district, board or other political subdivision thereof, as the case may be, as garnishee to appear at the term of court to which the writs of garnishment may be returnable, to answer accordingly.

Source: Codes, Hutchinson's 1848, ch. 62, art. 7 (1); 1857, ch. 61, art. 313; 1871, § 874; 1880, § 1738; 1892, § 2130; 1906, § 2337; Hemingway's 1917, § 1932; 1930, § 1838; 1942, § 2783; Laws, 1936, ch. 321; Laws, 1990, ch. 378, § 1, eff. 7/1/1990.

§ 11-35-3. When issued on suing out attachment

If, at the time of issuing a writ of attachment, or thereafter before the attachment issue has been tried, the attaching creditor shall suggest that any person is indebted to the debtor, or has property of the debtor in his hands, or knows of any other person so indebted or who has effects or property of the debtor in his hands, the officer issuing the writ of attachment shall insert therein a command to summon such person to appear on the return day of the attachment, to answer accordingly.

Source: Codes, Hutchinson's 1848, ch. 56, art. 4 (6); 1857, ch. 52, art. 4; 1871, § 1430; 1880, § 2422; 1892, § 2131; 1906, § 2338; Hemingway's 1917, § 1933; 1930, § 1839; 1942, § 2784.

§ 11-35-5. Form for writ of garnishment on judgment or decree

The writ of garnishment, when issued on a judgment or decree, may be in the following form, to wit:

"THE STATE OF MISSISSIPPI.

"To any lawful officer of county:

"Whereas, recovered a judgment in court of county, on the day , A. D. , for the sum of dollars and costs, against , and the judgment has not been satisfied, and said having made the proper suggestion for a writ of garnishment against :

"We therefore command you to summon said to appear in said court, at , on the day of , A. D. , then and there to answer, on oath in writing, whether (here copy in full every particular that a garnishee is required to answer). And have you then and there this writ, with your proceedings indorsed thereon.

"Witness my signature (and if by a clerk, add an official seal), this day of , A. D. ."

The writ must be signed by the officer who issues it, and his official character should be written after his name.

Source: Codes, 1892, § 2132; 1906, § 2339; Hemingway's 1917, § 1934; 1930, § 1840; 1942, § 2785.

§ 11-35-7. Form of the writ of garnishment-when issued by the sheriff

When the sheriff issues a writ of garnishment in executing an attachment, it may be in the following form:

"THE STATE OF MISSISSIPPI.

"To , garnishee:

"Whereas, the undersigned holds an attachment writ against , as defendant at the suit of , as plaintiff, and it appearing that you should be summoned as garnishee:

"We therefore command you to appear in the court, at , on the day of , A. D. , being the return day of said attachment, then and there in said attachment suit to answer (here copy in full every particular that a garnishee is required to answer). Herein fail not, under penalty of having judgment rendered against you for the whole amount of plaintiff's demand.

"Witness my signature, this day of , A. D. . " "

The original must be returned to the court properly indorsed with the mode of service and the defendant served, as in other cases.

Source: Codes, 1892, § 2133; 1906, § 2340; Hemingway's 1917, § 1935; 1930, § 1841; 1942, § 2786.

§ 11-35-9. Service

A writ of garnishment, whether issued in a case of attachment or on a judgment or decree, shall be served as a summons is required by law to be executed; but if the garnishee be not personally served, and make default, judgment nisi shall be rendered against him, and a scire facias awarded, returnable to the next term, unless the court be satisfied that the garnishee can be personally served at once, in which case it may be returnable instanter.

Source: Codes, 1892, § 2134; 1906, § 2341; Hemingway's 1917, § 1936; 1930, § 1842; 1942, § 2787.

§ 11-35-11. Service of writs of garnishment on government employees

Service of writs of garnishment upon judgments against any officer or employee of the state, a county, a municipality, any state institution, board, commission or authority shall be effected as follows:

- (1) In a case of garnishment against any employee of a state department, agency, board, commission, institution or other authority, the writ shall be served upon the department head, president of the institution or chairman or other presiding officer thereof. In case of a garnishment against a state officer, departmental head, president of an institution, director of a board or other head of any other agency or commission of the state government, the writ shall be served upon the state auditor. In case of a garnishment against the state auditor, the writ shall be served upon the state treasurer, this being the only case in which the state treasurer is served with a writ of garnishment except where a garnishment is against an employee of the state treasurer.
- (2) In case of a garnishment against any person who is now or may hereafter be a salaried officer or employee of a county, the writ shall be served upon the clerk of the chancery court of the county, except that in case of garnishment upon a judgment against such clerk the writ shall be served upon the sheriff of the county.
- (3) In case of a garnishment against any person who is now or may hereafter be a salaried officer or employee of a county school district or a municipal separate school district, the writ shall be served upon the superintendent of the respective school district, except in the event the garnishment be against such superintendent the writ shall be served upon the president of the board of education or the board of trustees.
- (4) In case of a garnishment against an officer or employee of a municipality, the writ shall be served upon the city, town or village clerk.

Source: Codes, 1942, § 2789; Laws, 1936, ch. 321; Laws, 1952, ch. 264; Laws, 1973, ch. 422, § 1, eff. March 29, 1973.

§ 11-35-13. Garnishment against public officer or employee; default judgment against state prohibited

In no case shall judgment be rendered against the state, a county, a municipality or any state institution, board, commission or authority for default in failing to make answer to a writ served hereunder.

Source: Codes, 1942, § 2790; Laws, 1936, ch. 321.

§ 11-35-15. Garnishment against state public officer or employee; fee for service of writ

Any person suggesting and obtaining a writ of garnishment upon a judgment against any person who is an officer or employee of the state shall advance and pay the sum of two dollars which shall be paid by the officer serving the writ of garnishment to the state officer upon whom such writ is directed to be served and such payment shall be retained by such officer as compensation for the additional duty imposed upon him by Sections 11-35-1 and 11-35-11 through 11-35-21, in the capacity of such officer as special agent of the state for service of garnishment writs.

§ 11-35-17. Garnishment against county, municipal or other public officer or employee; fee for service of writ

Any person suggesting and obtaining a writ of garnishment to issue against any officer or employee of a county, municipality or any state institution, board, commission or authority shall advance and pay the sum of one dollar which shall be paid to the officer upon whom such writ is directed to be served at the time of service of the writ and such sum shall be retained by such officer as compensation for answering the writ of garnishment.

Source: Codes, 1942, § 2792; Laws, 1936, ch. 321.

§ 11-35-19. Garnishment against public officer or employee; failure to answer writ; penalty

Any person upon whom, in his representative capacity as above set out in Section 11-35-11, there shall be served a writ of garnishment under the provisions of Sections 11-35-1 and 11-35-11 through 11-35-21 shall, if he shall fail or refuse to answer such writ as provided by law in other cases of writs of garnishment and answers thereto forfeit and pay to the plaintiff in the judgment upon which the writ has issued the sum of twenty-five dollars, the same to be recovered in any court of competent jurisdiction.

Source: Codes, 1942, § 2793; Laws, 1936, ch. 321.

§ 11-35-21. Garnishment against public officer or employee; effect of writ

Service of writ of garnishment as provided for in Section 11-35-11 shall be effective to bind funds in the hands of the garnishee as in other cases and upon judgment rendered upon the garnishment issue in any court the funds bound, or so much thereof as shall be necessary to pay the judgment upon which garnishment issued and all cost accrued, shall be paid over to the court in which such judgment was rendered and for such payment a properly certified copy of the said judgment in the garnishment proceeding and a certified copy of the bill of costs in such proceedings shall be sufficient warrant and any payment so made shall be charged against the salary or wages of the judgment debtor in the judgment on which writ of garnishment issued.

Source: Codes, 1942, § 2794; Laws, 1936, ch. 321.

§ 11-35-23. Nature and effects of garnishment; property affected

- (1) Except for wages, salary or other compensation, all property in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall be bound by and subject to the lien of the judgment, decree or attachment on which the writ shall have been issued. If the garnishee shall surrender such property to the sheriff or other officer serving the writ, the officer shall receive the same and, in case the garnishment issued on a judgment or decree, shall make sale thereof as if levied on by virtue of an execution, and return the money arising therefrom to satisfy the judgment; and if the garnishment issued on an attachment, the officer shall dispose of the property as if it were levied upon by a writ of attachment. And any indebtedness of the garnishee to the defendant, except for wages, salary or other compensation, shall be bound from the time of the service of the writ of garnishment, and be appropriable to the satisfaction of the judgment or decree, or liable to be condemned in the attachment.
- (2) The court issuing any writ of garnishment shall show thereon the amount of the claim of the plaintiff and the court costs in the proceedings and should at any time during the pendency of said proceedings in the court a judgment be rendered for a different amount, then the court shall notify the garnishee of the correct amount due by the defendant under said writ.
- (3) (a) Except for judgments, liens, attachments, fees or charges owed to the state or its political subdivisions; wages, salary or other compensation in the hands of the garnishee belonging to the defendant at the time of the service of the writ of garnishment shall not be bound by nor subject to the lien of the judgment, decree or attachment on which the writ shall have been issued when the writ of garnishment is issued on a judgment based upon a claim or debt that is less than One Hundred Dollars (\$100.00), excluding court costs.

- (b) If the garnishee be indebted or shall become indebted to the defendant for wages, salary or other compensation during the first thirty (30) days after service of a proper writ of garnishment, the garnishee shall pay over to the employee all of such indebtedness, and thereafter, the garnishee shall retain and the writ shall bind the nonexempt percentage of disposable earnings, as provided by Section 85-3-4, for such period of time as is necessary to accumulate a sum equal to the amount shown on the writ as due, even if such period of time extends beyond the return day of the writ. Unless the court otherwise authorizes the garnishee to make earlier payments or releases and except as otherwise provided in this section, the garnishee shall retain all sums collected pursuant to the writ and make only one (1) payment into court at such time as the total amount shown due on the writ has been accumulated, provided that, at least one (1) payment per year shall be made to the court of the amount that has been withheld during the preceding year. Should the employment of the defendant for any reason be terminated with the garnishee, then the garnishee shall not later than fifteen (15) days after the termination of such employment, report such termination to the court and pay into the court all sums as have been withheld from the defendant's disposable earnings. If the plaintiff in garnishment contest the answer of the garnishee, as now provided by law in such cases, and proves to the court the deficiency or untruth of the garnishee's answer, then the court shall render judgment against the garnishee for such amount as would have been subject to the writ had the said sum not been released to the defendant; provided, however, any garnishee who files a timely and complete answer shall not be liable for any error made in good faith in determining or withholding the amount of wages, salary or other compensation of a defendant which are subject to the writ.
- (4) Wages, salaries or other compensation as used in this section shall mean wages, salaries, commissions, bonuses or other compensation paid for employment purposes only.
- (5) The circuit clerk may, in his or her discretion, spread on the minutes of the county or circuit court, as the case may be, an instruction that all garnishment defendants shall send all garnishment monies to the attorney of record or in the case where there is more than one (1) attorney of record, then to the first-named attorney of record, and not to the clerk. The payment schedule shall be the same as subsection (3)(b) of this section.
- (6) All payments made pursuant to a garnishment issued out of the justice court shall be made directly to the plaintiff or to the plaintiff's attorney as indicated by the plaintiff in his or her suggestion for writ of garnishment. The employer shall notify the court and the plaintiff or the plaintiff's attorney when a judgment is satisfied or when the employee is no longer employed by the employer.
- (7) If the plaintiff in a garnishment is the Department of Employment Security, the garnishee shall make monthly payments to the department until such time as the total amount shown due on the writ has been accumulated.

Source: Codes, Hutchinson's 1848, ch. 62, art. 7 (8); 1857, ch. 61, art. 314; 1871, § 875; 1880, § 1784; 1892, § 2136; 1906, § 2343; Hemingway's 1917, § 1938; 1930, § 1844; 1942, § 2796; Laws, 1981, ch. 469, § 1; Laws, 1997, ch. 533, § 1; Laws, 2000, ch. 497, § 1; Laws, 2004, ch. 475, § 1; Laws, 2007, ch. 606, § 18, eff. 7/1/2007.

§ 11-35-24. Multiple garnishments

- (1) Where more than one garnishment has been issued against an employee of a garnishee, such garnishee shall comply with the garnishment with which he was first served. In the event more than one (1) garnishment on an employee is received on the same day, the writ of garnishment which is the smallest amount shall be satisfied first. However, in every case, garnishments issued pursuant to court ordered child support shall have first priority, even if previous garnishments are in effect or pending.
- (2) Any such conflicting or subsequent garnishments on an employee of the garnishee shall be returned to the court issuing such writ of garnishment with a statement by the garnishee that a previous garnishment is in effect. Such statement shall operate as a stay of the subsequent garnishment until satisfaction of any prior garnishments has been made.
- (3) Upon satisfaction of the writ of garnishment in progress, the garnishee shall immediately begin collection

of such writ of garnishment with next priority.

- (4) Good faith compliance with this section shall release the garnishee from any liability for failure of compliance with this section.

Source: Laws, 1981, ch. 469, § 5, eff. 4/7/1981.

§ 11-35-25. Answer of the garnishee

- (1) Every person duly summoned as a garnishee shall answer on oath as to the following particulars, viz.:
- (a) Whether he be indebted to the defendant or were so indebted at the time of the service of the writ on him, or have at any time since been so indebted; and, if so indebted, in what sum, whether due or not, and when due or to become due, and how the debt is evidenced, and what interest it bears;
 - (b) What effects of the defendant he has or had at the time of the service of the writ on him, or has had since, in his possession or under his control;
 - (c) Whether he knows or believes that any other person is indebted to the defendant; and, if so, whom, and in what amount, and where he resides; and
 - (d) Whether he knows or believes that any other person has effects of the defendant in his possession or under his control; and, if so, whom, and where he resides.
- (2) In addition to answering as to the particulars in subsection (1) of this section, each person duly summoned as a garnishee in any case in which he be indebted to the defendant for wages, salary or other compensation shall answer on oath as to whether the defendant is an employee of the garnishee and, if so, the time interval between pay periods of the defendant including any specific day of a week or month on which such defendant is regularly paid.

Source: Codes, Hutchinson's 1848, ch. 56, art. 4 (6), ch. 62, art. 7 (1); 1857, ch. 52, art. 4, ch. 61, art. 313; 1871, §§ 874, 1430; 1880, §§ 1783, 2422; 1892, § 2135; 1906, § 2342; Hemingway's 1917, § 1937; 1930, § 1843; 1942, § 2788; Laws, 1981, ch. 469, § 2, eff. 4/7/1981.

§ 11-35-27. Garnishee's answer; time

Garnishees shall, in all cases in the circuit or chancery court, answer on the first day of the return term, and, in the courts of justices of the peace, they shall answer by noon on the return day of the writ, unless the court, for cause shown, shall grant further time; and, if upon the answer of any garnishee, it appear that there is any estate of the defendant in the hands of any person not summoned, an alias writ may at once be issued, to be levied on the property in the hands of such person, or he may be summoned as garnishee.

Source: Codes, 1857, ch. 52, art. 26; 1871, § 1443; 1880, § 2444; 1892, § 2140; 1906, § 2347; Hemingway's 1917, § 1942; 1930, § 1848; 1942, § 2800.

§ 11-35-29. Judgment on answer

If the garnishee admits indebtedness to or the possession of effects of the defendant, and he have not paid or delivered the same to the sheriff, judgment may be rendered against him in favor of the plaintiff for the amount of the debt admitted, or for the property, or the value thereof (to be assessed if necessary), admitted to be in his possession; but the judgment shall not be for a greater sum than the plaintiff's demand.

Source: Codes, 1892, § 2137; 1906, § 2344; Hemingway's 1917, § 1939; 1930, § 1845; 1942, § 2797.

§ 11-35-31. Garnishee's failure to answer

If a garnishee, personally summoned, shall fail to answer as required by law, or if a scire facias on a judgment nisi be executed on him, and he fail to show cause for vacating it, the court shall enter a judgment against him for the amount of plaintiff's demand; and execution shall issue thereon, provided, however, that the garnishee may suspend the execution by filing a sworn declaration in said court showing the property and effects in his possession belonging to the debtor, and his indebtedness to the debtor, if any, or showing that there be none, if that be true; and by such act and upon a hearing thereon, the garnishee shall limit his liability to the extent of such property and effects in his hands, and such indebtedness due by him to the debtor, plus court costs and reasonable attorney's fees of the judgment creditor in said garnishment action.

Source: Codes, Hutchinson's 1848, ch. 56, art. 4 (19), ch. 62, art. 7 (2); 1857, ch. 52, art. 25; 1871, § 1442; 1880, § 2446; 1892, § 2138; 1906, § 2345; Hemingway's 1917, § 1940; 1930, § 1846; 1942, § 2798; Laws, 1966, ch. 364, § 1, eff. 5/20/1966.

§ 11-35-33. Garnishee may claim exemptions

Any garnishee who answers admitting an indebtedness, or the possession of property due or belonging to the defendant, may show by his answer that he is advised and believes that the defendant does or will claim the debt or property, or some part thereof, as exempt from garnishment, levy, or sale. Upon the filing of such answer, the clerk or justice of the peace shall issue a summons or make publication, if defendant be shown by oath to be absent from the state, for the defendant, notifying him of the garnishment and the answer, and requiring him to assert his right to the exemption. Proceedings against the garnishee shall be stayed until the question of the debtor's right to the exemption be determined. If the defendant fail to appear, judgment by default may be taken against him, adjudging that he is not entitled to the property or debt as exempt; but if he appear, the court shall, on his motion, cause an issue to be made up and tried between him and the plaintiff.

Source: Codes, 1892, § 2139; 1906, § 2346; Hemingway's 1917, § 1941; 1930, § 1847; 1942, § 2799.

§ 11-35-35. Stay if debt not yet due; delivery of goods or chattels to sheriff

If a garnishee admit an indebtedness not then due, execution shall be stayed until its maturity; and if he admit the possession of goods or chattels of the defendant, such goods or chattels shall be delivered to the sheriff; but, in attachment cases, the garnishee may replevy the property by giving a bond for the same, as the defendant in attachment may do, and subject to the same proceedings and liabilities.

Source: Codes, 1857, ch. 52, art. 27; 1871, § 1444; 1880, § 2445; 1892, § 2141; 1906, § 2348; Hemingway's 1917, § 1943; 1930, § 1849; 1942, § 2801.

§ 11-35-37. Garnishee protected in certain cases

If a garnishee shall pay over or deliver, in pursuance of the judgment or process of the court, any money or property belonging to the defendant, before notice of sale, assignment, or transfer thereof by the defendant to any other person, such garnishee shall not thereafter be liable for the debt or property to the vendee or assignee thereof.

Source: Codes, Hutchinson's 1848, ch. 62, art. 7 (5); 1857, ch. 52, art. 36; 1871, § 1453; 1880, § 2447; 1892, § 2142; 1906, § 2349; Hemingway's 1917, § 1944; 1930, § 1850; 1942, § 2802.

§ 11-35-39. Garnishee may plead that judgment is void

The garnishee may plead that the judgment under which the writ of garnishment was issued is void, and if his plea be sustained, no judgment shall be rendered against him.

Source: Codes, 1906, § 2350; Hemingway's 1917, § 1945; 1930, § 1851; 1942, § 2803.

§ 11-35-41. Garnishee may compel interpleader

When a garnishee, by his answer or by affidavit at any time before final judgment against him, or after such judgment if he had no such notice before the judgment was rendered, shall show that he has been notified that another person claims title to or an interest in the debt or property, which has been admitted by him, or found on a trial to be due or to be in his possession, the court shall suspend all further proceedings, and cause a summons to issue or publication to be made for the person so claiming to appear and contest with the plaintiff the right to such money, debt, or property. In such case, if the answer admit an indebtedness, and the garnishee pay the money into court, he shall thereupon be discharged from liability to either party for the sum so paid. And whenever such garnishee shall by said answer or affidavit show that he has been notified that another person claims title to or interest in such debt or property, it shall be lawful for such third person of his own motion to come in and claim the debt or property, and the claim shall be tried as other claimant's issues are tried whether summons or publication has been made to bring him in or not.

Source: Codes, 1857, ch. 52, art. 34; 1871, § 1451; 1880, § 2449; 1892, § 2143; 1906, § 2351; Hemingway's 1917, § 1946; 1930, § 1852; 1942, § 2804.

§ 11-35-43. Claim of third person tried

If the claimant, being duly summoned, fail to appear, the court shall adjudge the money, debt, or property to the plaintiff. If he appear, he shall propound his claim to the money, debt, or property in writing under oath; and the plaintiff may take issue thereon, and the same shall be tried and determined as other issues. If the issue be found in favor of the plaintiff, judgment shall be rendered for him against the garnishee, and also for the costs of the interpleader against the claimant; but if the issue be found for the claimant, judgment shall be rendered in his favor against the garnishee, and against the plaintiff for the costs. Where the garnishee has paid money into court, the judgment shall direct its payment to the party entitled thereto, and a judgment therefor shall not go against the garnishee.

Source: Codes, 1857, ch. 52, art. 35; 1871, § 1452; 1880, § 2450; 1892, § 2144; 1906, § 2352; Hemingway's 1917, § 1947; 1930, § 1853; 1942, § 2805.

§ 11-35-45. Contest of garnishee's answer by plaintiff

If the plaintiff believe that the answer of the garnishee is untrue, or that it is not a full discovery as to the debt due by the garnishee, or as to the property in his possession belonging to the defendant, he shall, at the term when the answer is filed, unless the court grant further time, contest the same, in writing, specifying in what particular he believes the answer to be incorrect. Thereupon, the court shall try the issue at once, unless cause be shown for a continuance, as to the truth of the answer, and shall render judgment upon the facts found, when in plaintiff's favor, as if they had been admitted by the answer, but if the answer be found correct, the garnishee shall have judgment for costs against the plaintiff.

Source: Codes, Hutchinson's 1848, ch. 56, art. 4 (21), ch. 62, art. 7 (4); 1857, ch. 52, art. 28; 1871, § 1445; 1880, § 2451; 1892, § 2145; 1906, § 2353; Hemingway's 1917, § 1948; 1930, § 1854; 1942, § 2806.

§ 11-35-47. Contest of garnishee's answer by defendant

The defendant may contest, in writing, the answer of the garnishee, and may allege that the garnishee is indebted to him in a larger sum than he has admitted, or that he holds property of his not admitted by the answer, and shall specify in what particular the answer is untrue or defective. Thereupon an issue shall be made up and tried; but the plaintiff may take judgment for the sum admitted by the garnishee, or for the condemnation of the property admitted to be in his hands, notwithstanding the contest.

Source: Codes, 1857, ch. 52, art. 32; 1871, § 1449; 1880, § 2452; 1892, § 2146; 1906, § 2354; Hemingway's 1917, § 1949; 1930, § 1855; 1942, § 2807.

§ 11-35-49. Transfer to other county; change of venue

Writs of garnishment, in all cases, may be issued to any county; but if the garnishee whose answer is contested, shall not be a resident of the county, then, upon an issue being made upon his answer, the venue of the trial of the issue may be changed, on his application, to the county of his residence. The court in which the issue is tried shall cause the facts found to be certified and returned with the issue to the court from which the writ issued, and judgment shall be entered thereupon as if the issue had there been tried.

Source: Codes, Hutchinson's 1848, ch. 56, art. 4 (27), art. 13 (4); 1857, ch. 52, art. 29; 1871, § 1446; 1880, § 2453; 1892, § 2147; 1906, § 2355; Hemingway's 1917, § 1950; 1930, § 1856; 1942, § 2808.

§ 11-35-51. Judgment on issue against garnishee

If the issue in any case be found against the garnishee, judgment shall be rendered against him for the amount of the debt or money or property in his hands, which judgment shall be in favor of the plaintiff, if necessary to satisfy his judgment or claim against the defendant, or in favor of the defendant, if the judgment of the plaintiff have been satisfied, or for so much thereof as may remain after satisfying said judgment.

Source: Codes, 1857, ch. 52, art. 33; 1871, § 1450; 1880, § 2454; 1892, § 2148; 1906, § 2356; Hemingway's 1917, § 1951; 1930, § 1857; 1942, § 2809.

§ 11-35-53. Valuation and discharge of judgment

If the personal property levied on under an attachment, or any part thereof, shall have been left in the hands of the garnishee on his giving bond as prescribed, the court or jury trying the issue between the plaintiff and garnishee, if it find for the plaintiff, shall assess the value of the property left in the hands of the garnishee. If the value of the property equal or exceed the amount due the plaintiff, judgment shall be entered against the garnishee and his sureties on his replevin bond for the sum due the plaintiff. If the value of the property be less than the amount due the plaintiff, judgment shall be entered against the garnishee and his sureties for the value of the property so replevied or left in his hands. If judgment by default shall be rendered against the garnishee, the value of the property so replevied or left in his hands shall be assessed, and judgment shall be entered as above provided. In all cases the judgment against the garnishee and his sureties shall be satisfied and discharged by the delivery to the sheriff of the property replevied or left in his hands within ten days after execution on the judgment shall have come to the hands of the sheriff, and he shall sell the property so delivered to him, and apply the proceeds to the payment of the execution.

Source: Codes, 1857, ch. 52, art. 9; 1871, § 1448; 1880, § 2455; 1892, § 2149; 1906, § 2357; Hemingway's 1917, § 1952; 1930, § 1858; 1942, § 2810.

§ 11-35-55. No final judgment in certain cases

Final judgment upon a garnishment shall not go against a surety or accommodation indorser until judgment be rendered against the principal and the cosureties or prior indorsers who may be liable to judgment, if they be residents of the state.

Source: Codes, Hutchinson's 1848, ch. 56, art. 13 (1); 1857, ch. 52, art. 30; 1871, § 1447; 1880, § 2456; 1892, § 2150; 1906, § 2358; Hemingway's 1917, § 1953; 1930, § 1859; 1942, § 2811.

§ 11-35-57. Executors and administrators may be garnished

Executors and administrators may be garnished for a debt due by their testator or intestate to the defendant; but judgment shall not be entered in such case against an executor or administrator until the lapse of six months after the grant of letters; and they may be garnished as having effects due to legatees or distributees; but judgment shall not be rendered against them in such case, except with their consent, until after a final settlement of the estate.

Source: Codes, 1857, ch. 52, art. 24; 1871, § 1485; 1880, § 2457; 1892, § 2151; 1906, § 2359; Hemingway's 1917, § 1954; 1930, § 1860; 1942, § 2812.

§ 11-35-59. Proceedings if garnishee dies

If the garnishee dies, like proceedings may be had as provided for in case of the death of a party to an action.

Source: Codes, 1880, § 2458; 1892, § 2152; 1906, § 2360; Hemingway's 1917, § 1955; 1930, § 1861; 1942, § 2813.

§ 11-35-61. Garnishee compensation; conditions

The garnishee shall be allowed for his attendance, out of the debts or effects in his possession, or against the plaintiff in attachment, judgment, or decree in case there be no debts or effects in his possession, provided he shall put in his answer within the time prescribed by law, the pay and mileage of a juror, and, in exceptional cases rendering it proper, the court may allow the garnishee reasonable compensation additional to the foregoing and to be obtained in the same way.

Source: Codes, Hutchinson's 1848, ch. 62, art. 7 (6); 1857, ch. 52, art. 37; 1871, § 1454; 1880, § 2448; 1892, § 2153; 1906, § 2361; Hemingway's 1917, § 1956; 1930, § 1862; 1942, § 2814.

EXAMINATION OF JUDGMENT DEBTOR

§§ 13-1-261 through 13-1-271

§ 13-1-261. Judgment creditor's right to examination of judgment debtor

- (1) To aid in the satisfaction of a judgment of more than One Hundred Dollars (\$100.00), the judgment creditor may examine the judgment debtor, his books, papers or documents, upon any matter relating to his property as provided in Sections 13-1-261 through 13-1-271 ; except that no single judgment creditor may cause a judgment debtor to submit to examination under this section more than once in a period of six (6) months.
- (2) In addition to the method of examination prescribed in subsection (1), the judgment creditor may, in the alternative, utilize the discovery procedures set forth in the Mississippi Rules of Civil Procedure for the purpose of examining the judgment debtor.

Source: Laws, 1976, ch. 381, § 1; Laws, 1977, ch. 407; Laws, 1991, ch. 573, § 91, eff. 7/1/1991.

§ 13-1-263. Venue for filing motion for examination and for conducting examination

- (1) Except as provided in subsection (2) of this section, the written motion for the examination of a judgment debtor shall be filed, and the proceedings conducted, in the court which rendered the judgment.
- (2) If the judgment debtor is an individual who is domiciled in the state but not in the county where the judgment was rendered, or who has changed his domicile to another county after the institution of the suit, the written motion for his examination shall be filed, and the examination conducted, in a court of competent jurisdiction in the county of his then domicile. If the judgment debtor is a nonresident, the petition for his examination shall be filed, and the examination conducted, in a court of competent jurisdiction in any county where he may be found. In any case mentioned in this paragraph, a certified copy of the judgment shall be attached to the written motion for examination.

Source: Laws, 1976, ch. 381, § 2, eff. 4/26/1976.

§ 13-1-265. Order to appear for examination; effect of satisfaction of judgment

On ex parte written motion of the judgment creditor, personally or through his attorney, the court shall order the judgment debtor to appear in court for examination at a time fixed by the court, not less than five (5) days from the date of service on him of the motion and order, and to produce any books, papers, and other documents relating to his property described in the motion; provided, however, that satisfaction of the judgment shall discharge the judgment debtor from his responsibility to appear for the examination as ordered by the court.

Source: Laws, 1976, ch. 381, § 3, eff. 4/26/1976.

§ 13-1-267. Swearing of judgment debtor; use of testimony of judgment debtor in criminal proceeding

- (1) The debtor shall be sworn to tell the truth in the same manner as a witness in a civil action.
- (2) No testimony given by a debtor shall be used in any criminal proceeding against him, except for perjury committed at such examination.

Source: Laws, 1976, ch. 381, § 4, eff. 4/26/1976.

§ 13-1-269. Court costs

Court costs in connection with the examination shall be taxed against the judgment debtor, except that if the court determines that the creditor invoked the remedy needlessly, the court may tax the costs against the creditor.

Source: Laws, 1976, ch. 381, § 5, eff. 4/26/1976.

§ 13-1-271. Contempt

If the motion and order have been served personally on the judgment debtor, and he refuses to appear for the examination or to produce his books, papers, or other documents when ordered to do so, or if he refuses to answer any question held pertinent by the court, he may be punished for contempt.

Source: Laws, 1976, ch. 381, § 6, eff. 4/26/1976.

PROCESS, NOTICE AND PUBLICATION

§§ 13-3-101 through 13-3-189

§ 13-3-1. Provisions of chapter applicable to all courts

The law of process as declared in this chapter, except where its provisions are provided for by the Mississippi Rules of Civil Procedure or by the nature of the subject matter, shall govern in all courts.

Source: Codes, 1892, § 3501; 1906, § 3999; Hemingway's 1917, § 3006; 1930, § 3052; 1942, § 1940; Laws, 1991, ch. 573, § 92, eff. 7/1/1991.

§ 13-3-3. Style and date of process

The style of all process shall be, "The State of Mississippi." It shall not be necessary that any process bear teste in the name of any judge or of any term of the court, but all process, except where otherwise provided, shall be issued and signed by the clerk of the court, with the seal of his office affixed, and shall bear date of the day on which the process shall be issued.

Source: Codes, Hutchinson's 1848, ch. 58, art. 1 (20); 1857, ch. 61, art. 60, ch. 62, art. 26; 1871, §§ 689, 1002; 1880, § 2284; 1892, § 3413; 1906, § 3912; Hemingway's 1917, § 2919; 1930, § 2964; 1942, § 1844.

§ 13-3-5. The summons

- (1) The process to bring in defendants in all civil actions in all courts except justice court shall be a summons, the form, issuance, service, waiver, return, amendment and time limits of which shall be governed by the Mississippi Rules of Civil Procedure.
- (2) The process to bring in defendants in all civil actions in justice court shall be a summons which shall be served in one of the following modes:
 - First. Upon the defendant personally, if to be found in the county, by handing him a true copy of the process.
 - Second. If the defendant cannot himself be found in the county, then by leaving a true copy of the process at his usual place of abode, with his wife or some other person of his family above the age of sixteen (16) years, and willing to receive such copy.
 - Third. If the defendant cannot himself be found, and if no person of his family aged sixteen (16) years can be found at his usual place of abode who is willing to receive such copy, then by posting a true copy on a door of the defendant's usual place of abode; provided, however, that if this mode is used when the defendant's usual place of abode is a multi-family dwelling, a copy of the summons shall be mailed to the defendant by the clerk of the court upon return of service.

Source: Codes, 1871, §§ 693, 1001; 1880, §§ 1523, 1848; 1892, § 3414; 1906, § 3913; Hemingway's 1917, § 2920; 1930, § 2965; 1942, § 1845; Laws, 1991, ch. 573, § 93; Laws, 1992, ch. 427 § 1, eff. 5/4/1992.

§§ 13-3-7 through 13-3-13. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-15. Separate or additional summons; attachment against estate of defendant

Upon the request of the plaintiff, separate or additional summons shall issue against any defendants. When the defendant shall not be found, the plaintiff may have an attachment against the estate of the defendant. If, upon such attachment, the sheriff shall seize or attach any property of the defendant, the same proceedings shall thereafter be had as if the suit had been originally commenced by attachment.

Source: Codes, Hutchinson's 1848, ch. 58, art. 1 (40); 1857, ch. 61, art. 67; 1871, § 718; 1880, §§ 1534, 1851; 1892, § 3419; 1906, § 3918; Hemingway's 1917, § 2925; 1930, § 2970; 1942, § 1850; Laws, 1991, ch. 573, § 94, eff. 7/1/1991.

§ 13-3-17. Substitution of parties in case of death of party

Substitution of parties in case of death of a party shall be governed by the Mississippi Rules of Civil Procedure.

Source: [Codes, 1857, ch. 62, art. 32; 1871, § 1072; 1880, § 1852; 1892, § 3420; 1906, § 3919; Hemingway's 1917, § 2926; 1930, § 2971; 1942, § 1851.]; Laws, 1991, ch. 573, § 95, eff. 7/1/1991.

§§ 13-3-19 through 13-3-23. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-25. Summons by publication for unknown heirs and unknown defendants

When unknown heirs are made parties defendant in any proceeding in the chancery court, upon affidavit that the names of such heirs are unknown, the complainant may have publication of summons for them and such proceedings shall be had thereupon in all respects as are authorized in the case of a nonresident defendant. When the parties in interest are unknown, and affidavit of that fact be filed, they may be made parties by publication to them as unknown parties in interest.

Source: Codes, 1857, ch. 62, art. 35; 1871, § 1069; 1880, § 1858; 1892, § 3424; 1906, § 3923; Hemingway's 1917, § 2930; 1930, § 2975; 1942, § 1855.

§ 13-3-27. Publication of summons

Publication of summons in all cases and in every court, when authorized by law, shall be made as prescribed in the Mississippi Rules of Civil Procedure.

Source: Codes, 1892, § 3425; 1906, § 3924; Hemingway's 1917, § 2931; 1930, § 2976; 1942, § 1856; Laws, 1991, ch. 573, § 96, eff. 7/1/1991.

§ 13-3-29. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-31. Publication; requirements and procedures

- (1) Whenever it is required by law that any summons, order, citation, advertisement or other legal notice shall be published in a newspaper in this state, it shall mean, in addition to any other requirements imposed by law, publication in some newspaper which:
 - (a) Maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required. The term "general circulation" means numerically substantial, geographically widespread, demographically diversified circulation to bona fide paying subscribers. In no event shall the term "general circulation" be interpreted to require that legal notices be published in a newspaper having the greatest circulation. The term "bona fide paying subscribers" means persons who have subscribed at a subscription rate which is not nominal, whether by mail subscriptions, purchases through dealers and carriers, street vendors and counter sellers, or any combination thereof, but shall not include free circulation, sales at a token or nominal subscription price and sales in bulk for purposes other than for resale for individual subscribers.
 - (b) Maintains a legitimate list of its bona fide paying subscribers by the following categories where applicable:
 - (i) Mail subscribers;
 - (ii) Dealers and carriers; and
 - (iii) Street vendors and counter sellers.
 - (c) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (1/2) of its issues during the period of twelve (12) months next prior to the first publication of any legal notice therein, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues.
 - (d) Has been established and published continuously for at least twelve (12) months next prior to the first publication of such matter to be published, is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided,

however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not disqualify a paper otherwise qualified.

- (e) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the newspaper's printing presses are physically located. A newspaper shall be deemed to be "published" at the place where its known office of publication is located.
 - (f) Is formed of printed sheets. However, the word "printed" does not include reproduction by the stencil, mimeograph or hectograph process.
 - (g) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.
 - (h) Is not designed primarily for free circulation or for circulation at nominal rates.
- (2) "Newspaper," as used in this section, shall not include a newspaper, publication, or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted in whole or in part to any particular sect, denomination, labor or fraternal organization or other special group or class of citizens, or which primarily contains information of a specialized nature rather than information of varied, broad and general interest to the general public, or which is directed to any particular geographical portion of any given political subdivision within which publication of such legal notice is required, rather than to such political subdivision as a whole. No newspaper otherwise qualified under this section shall be disqualified from publishing legal notices for the sole reason that such newspaper does not have as great a circulation as some other newspaper publishing in the same political subdivision.
- (3) In the event of the discontinuance of the publication of all newspapers in any county qualified under this section to publish legal notices, any other such newspaper published in the same county, regardless of the length of time it has been published, shall be deemed qualified to publish such legal notices, provided such newspaper meets all requirements of this section other than the requirements of subsection (1) (d) of this section.
- (4) A newspaper otherwise qualified under this section which is published in a municipality whose corporate limits encompass territory in more than one (1) county shall be qualified to publish legal notices, including foreclosure sale notices as described in Section 89-1-55, for any county a portion of whose territory is included within the municipality, irrespective of the actual physical location within the municipality of the principal public business office of the newspaper.

Source: Codes, 1942, § 1858; Laws, 1936, ch. 313; Laws, 1948, ch. 427; Laws, 1976, ch. 479, § 1; Laws, 1984, ch. 400; Laws, 2004, ch. 453, § 1, eff. 4/28/2004.

§ 13-3-32. Publication-in what newspaper-presumption of continued qualification

All newspapers which were qualified to publish legal notices and which were publishing legal notices prior to July 1, 1976, shall be presumed to qualify under Section 13-3-31 unless and until a determination has been made by competent authority that such newspaper fails to meet the requirements and provisions of Section 13-3-31.

Source: Laws, 1976, ch. 479, § 2, eff. 7/1/1976.

§§ 13-3-33 through 13-3-35. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-37. Sheriff to mark and return process

The sheriff shall mark on all process the day of the receipt thereof by him, and he shall return the same promptly and in any event within the time during which the person served must respond to the process, with a written statement of his proceedings thereon, and of his fees, for serving it. For failing to note the time of the

receipt of process, or for failing to return the same, the sheriff shall forfeit to the party aggrieved the sum of One Hundred Dollars (\$100.00), and shall be liable for all damages, and the court may enforce return of the process by fine and imprisonment for contempt. Whenever a sheriff of any county shall receive from another county any writ or other process directed to him, he shall not be liable for a failure to return the same to the county from which the same was issued if he shall show to the court that he mailed the same in the post office, directed to the clerk of the court by whom the same was issued, at least two (2) days before the sitting of the court to which the same was returnable.

Source: Codes, 1857, ch. 61, art. 63; 1871, § 700; 1880, § 1526; 1892, § 3429; 1906, § 3928; Hemingway's 1917, § 2935; 1930, § 2981; 1942, § 1862; Laws, 1991, ch. 573, § 97, eff. 7/1/1991.

§ 13-3-39. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-41. Service on one carrying on business in state by or through trustee or attorney in fact

All persons, firms, copartnerships or corporations carrying on business in the State of Mississippi, by or through trustees or attorneys in fact, may be served with process in all suits or proceedings in any court, by serving a copy of such process upon an agent of such trustees or attorneys in fact, in the same manner as is now provided for service of process upon foreign corporations.

Source: Codes, 1930, § 2979; 1942, § 1860; Laws, 1924, ch. 185.

§§ 13-3-43 through 13-3-47. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-49. Service when defendant is a corporation

If the defendant in any suit or legal proceeding be a corporation, process may be served on the president or other head of the corporation, upon the cashier, secretary, treasurer, clerk, or agent of the corporation, or upon any one of the directors of such corporation. If the defendant corporation be a sleeping-car company, process may be served upon any conductor thereof. If the defendant corporation be a steamboat company, process may be served upon the captain or other officer of a boat thereof. If no such person or persons be found in the county, then it shall be sufficient to post a true copy of the process on the door of the office or principal place of business of the corporation. In suits against railroads, sleeping-car, telegraph, telephone, express, steamboat, and insurance companies or corporations, or in suits against a receiver or receivers in charge of the property of any such companies or corporations, the process may be served on any agent of the defendant or sent to any county in which the office or principal place of business may be located, and there served as herein directed and authorized, or process may be served on any one of the foregoing officers of such corporation or company, and upon the secretary, cashier, treasurer, clerk, depot agent, attorney or any other officer or agent of such receiver or receivers, or upon them in person. When any writ or process against such corporation, company, receiver or receivers has been returned executed, the defendant or defendants shall be considered in court, and the action shall proceed as actions against natural persons. All process and notices to be served upon such companies, corporations, or receivers may be served as herein directed.

Source: Codes, Hutchinson's 1848, ch. 15, art. 3 (1); 1857, ch. 61, art. 64; 1871, § 703; 1880, §§ 1035, 1529; 1892, § 3433; 1906, § 3932; Hemingway's 1917, § 2939; 1930, § 2985; 1942, § 1866; Laws, 1894, ch. 61.

§ 13-3-51. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-53. Service on one of several executors or administrators

If there be two or more executors or administrators of the same estate, if process cannot be served on all of them in suits against them, service on one shall be sufficient to authorize a judgment against all.

Source: Codes, 1857, ch. 60, art. 134; 1871, § 1192; 1880, § 1513; 1892, § 3435; 1906, § 3934; Hemingway's 1917, § 2941; 1930, § 2987; 1942, § 1868.

§ 13-3-55. Suits by or against partnerships; service on one of several partners

A partnership may sue or be sued in the partnership name, or in the names of the individuals composing the partnership, or both and service of process on any partner shall be sufficient to maintain the suit against all the partners so as to bind the assets of the partnership and of the individual summoned.

Source: Codes, 1880, § 1519; 1892, § 3436; 1906, § 3935; Hemingway's 1917, § 2942; 1930, § 2988; 1942, § 1869; Laws, 1977, ch. 405, eff. 4/1/1977.

§ 13-3-57. Service on nonresident business not qualified to do business in state; survival of cause of action in case of death or inability to act; service on nonresident executor, administrator, etc

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the event of death or inability to act for itself or himself, shall survive against the executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident. Service of process or summons may be had or made upon such nonresident executor, administrator, receiver, trustee or any other selected or appointed representative of such nonresident as is provided by the Mississippi Rules of Civil Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action or proceeding is commenced against him even though said person was a resident at the time any action or proceeding accrued against him.

Source: Codes, 1942, §§ 1437, 1438; Laws, 1940, ch. 246; Laws, 1958, ch. 245, § 1; Laws, 1964, ch. 320, § 1; Laws, 1968, ch. 330, § 1; Laws, 1971, ch. 431, § 1; Laws, 1978, ch. 378, § 1; Laws, 1980, ch. 437; Laws, 1991, ch. 573, § 98, eff. 7/1/1991.

§§ 13-3-59 through 13-3-61. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-63. Service when defendant is nonresident motorist; appointment of secretary of state as agent

The acceptance by a nonresident of the rights and privileges conferred by the provisions of this section, as evidenced by his operating, either in person or by agent or employee, a motor vehicle upon any public street, road or highway of this state, or elsewhere in this state, or the operation by a nonresident of a motor vehicle on any public street, road or highway of this state, or elsewhere in this state, other than under this section, shall be deemed equivalent to an appointment by such nonresident of the Secretary of State of the State of Mississippi to be his true and lawful attorney, upon whom may be served all lawful processes or summonses in any action or proceeding against him, growing out of any accident or collision in which said nonresident may be involved while operating a motor vehicle on such street, road or highway, or elsewhere in this state, and said acceptance or operation shall be a signification of his agreement that any such process or summons against him which is so served shall be of the same legal force and validity as if served on him personally. Service of such process or summons shall be made by the sheriff of Hinds County, upon prepayment of the fees to which he is entitled by law, by serving two (2) copies of the process or summons for each nonresident defendant, with a fee of Fifteen

Dollars (\$15.00) for each such defendant on the Secretary of State or by leaving two (2) copies of said process or summons with the fee in the office of the Secretary of State, and such service shall be service upon said nonresident defendant with the same force and effect as if such nonresident had been personally served with such process or summons within the State of Mississippi. One (1) of the copies of such process or summons shall be preserved by the Secretary of State as a record of his office. Notice of such service, together with a copy of the process or summons, shall be mailed forthwith as certified or registered mail, restricted for delivery to addressee only and with postage prepaid, by the Secretary of State to each such nonresident defendant at his last known address, which address shall be written on the process or summons upon the issuance thereof by the clerk of the court wherein the action is pending, or notice of such service and copy of process or summons actually shall be delivered to the said defendant. The defendant's return receipt or evidence of defendant's refusal to accept delivery of such certified or registered mail, in case such notice and copy of process or summons are sent by certified or registered mail, or affidavit of the person delivering such notice and copy of process or summons, in case such notice and copy of process or summons actually are delivered, shall be filed in the court wherein such action is pending before judgment can be entered against such nonresident defendant. The Secretary of State, upon receipt of such return receipt or evidence of the refusal of such defendant to accept delivery of such certified or registered mail, shall promptly return same to the clerk of the court wherein such action is pending, and the said clerk of the court shall promptly file and preserve same among the records of such action or proceeding. The court in which the action is pending may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action.

Any cause of action arising out of such accident or collision against any such nonresident, in case of the death of such nonresident, shall survive against his administrator, executor or other personal representative of his estate, and service of all necessary and lawful process or summons, when had or obtained upon any such nonresident owner, nonresident operator or agent or employee, or upon the executor, administrator or other legal representative of the estate of such nonresident owner or nonresident operator, in the manner as hereinbefore provided, for the service of all lawful processes or summonses, herein, shall be deemed sufficient service of process or summons to give any court of this state, in which such action may be filed in accordance with the statutes of the State of Mississippi, jurisdiction over the cause of action and over the nonresident owner, nonresident operator or agent or employee, or the nonresident executor, or administrator of such nonresident owner or nonresident operator, defendant or defendants, and shall warrant and authorize personal judgment against such nonresident owner, nonresident operator, agent, employee, executor or administrator or other legal representative of the estate of such nonresident owner or nonresident operator, defendant or defendants, in the event the plaintiff in such cause of action shall prevail.

The agency or relationship created under the provisions of this section by and between the nonresident owner or nonresident operator of a motor vehicle operating upon the public road, street or highway of this state, or elsewhere in this state, as hereinbefore set forth, in the event of the death of such nonresident owner or nonresident operator of such motor vehicle, shall survive and continue and extend to his executor, administrator or other legal representative of his estate, and the Secretary of State of the State of Mississippi shall be in the same position and relationship with respect to the executor, administrator or other legal representative of the estate of such nonresident owner or nonresident operator of such motor vehicle, as he was in or would have been in with the nonresident owner or nonresident operator of said motor vehicle, had such nonresident owner or nonresident operator survived, and in any action arising or growing out of such accident or collision in which such nonresident owner or nonresident operator of a motor vehicle may be involved while operating a motor vehicle on such street, road or highway or elsewhere in this state, where the nonresident owner or nonresident operator of such motor vehicle has died prior to the commencement of an action against him because of or growing out of such accident or collision, service of process or summons may be had or made upon the nonresident executor, administrator or other legal representative of the estate of such nonresident owner or operator of the motor vehicle involved in such accident or collision, in the same manner and upon the same notice as hereinbefore provided in the case of process or summons upon the nonresident owner or nonresident operator of such motor vehicle. When such process or summons is served, made or had against the nonresident

executor or administrator or such nonresident owner or such nonresident operator of such motor vehicle involved in such accident or collision, it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi, jurisdiction over the cause of action and over such nonresident executor or administrator of such nonresident owner or operator of such motor vehicle insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action or proceeding is commenced against him, even though said person was a resident at the time any action or proceeding accrued against him.

Source: Codes, 1942, § 9352-61; Laws, 1938, chs. 148, 345; Laws, 1946, ch. 266, § 61; Laws, 1952, ch. 265, § 1; Laws, 1954, ch. 299, §§ 1, 2; Laws, 1958, ch. 262; Laws, 1964, ch. 376, §§ 1-4; Laws, 1978, ch. 378, § 2; Laws, 1991, ch. 443, § 1, eff. 7/1/1991.

§§ 13-3-65 through 13-3-67. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-69. Process not void for certain defects

If any matter required to be inserted in or indorsed on any process be omitted, such process shall not on that account be void, but it may be set aside as irregular, or amended on such terms as the court shall deem proper. The amendment may be made upon an application to set aside or quash the writ.

Source: Codes, 1857, ch. 61, art. 70; 1871, § 712; 1880, § 2286; 1892, § 3439; 1906, § 3938; Hemingway's 1917, § 2945; 1930, § 2991; 1942, § 1873.

§ 13-3-71. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-73. Plaintiff's options when sheriff kept off by force

When the sheriff shall return, on any process, that he has been kept off by force, the plaintiff may issue an alias or pluries, as the case may be, or he may proceed in the action against the defendant as if the process had been returned executed.

Source: Codes, Hutchinson's 1848, ch. 58, art. 1 (41); 1857, ch. 61, art. 71; 1871, § 713; 1880, § 2287; 1892, § 3440; Laws, 1906, § 3939; Hemingway's 1917, § 2946; Laws, 1930, § 2992; Laws, 1942, § 1874.

§ 13-3-75. Return of alias where first writ served

If any process be executed, and for want of a return thereof other process be issued, the sheriff or other officer shall not execute the subsequent process, but shall return the first process by him executed, if it be in his possession, and, if it be not in his possession, he shall return the subsequent process, with an indorsement of the execution of the first process, and how it was executed, on which there shall be the same proceedings as if the said first process had been duly returned.

Source: Codes, Hutchinson's 1848, ch. 58, art. 1 (42); 1857, ch. 61, art. 72; 1871, § 714; 1880, § 2288; 1892, § 3441; 1906, § 3940; Hemingway's 1917, § 2947; 1930, § 2993; 1942, § 1875.

§ 13-3-77. Process may be executed by an officer out of his county

The sheriff or other proper officer of a county may execute process out of his county, in case the person to be served or property to be seized was in the officer's county when the writ was received, but had removed or been carried into another county before its execution. In such case the officer shall state the facts in his return, and the writ and return shall have the same effect as if the process had been returned not executed and a testatum or duplicate writ had been issued to and executed and returned by an officer of the county where served.

Source: Codes, 1892, § 3500; 1906, § 3998; Hemingway's 1917, § 3005; 1930, § 3051; 1942, § 1939.

§ 13-3-79. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-81. When justice court judge may execute process

If there be no sheriff in any county, or if good cause of exception exists against him, by reason of his being a party to or interested in the suit, or otherwise, the process may be directed to any justice court judge of the county, who shall be bound to execute the same, and to do all things which the sheriff would be bound to do if no exception existed against him. In case of any neglect or breach of such duty, the justice court judge shall be liable to the same penalties and subject to the same actions and remedies as sheriffs are subject to in like cases.

Source: Codes, 1857, ch. 61, art. 75; 1871, § 699; 1880, § 2290; 1892, § 3445; 1906, § 3944; Hemingway's 1917, § 2951; 1930, § 2997; 1942, § 1879; Laws, 1986, ch. 459, § 27, eff. 7/1/1986.

§ 13-3-83. Service of notices, summonses, subpoenas, orders, pleadings, motions, etc

All notices provided for by law appertaining to actions, suits or proceedings of any kind in any court shall be served and returned by the sheriff or any constable of the county, or the marshal of any city, town or village therein in which such notices are to be served, to whom such notices may be delivered for that purpose.

However, service of summonses and subpoenas in all courts except justice court shall be governed by the Mississippi Rules of Civil Procedure and in every instance, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper shall be served and filed in accordance with the provisions of the Mississippi Rules of Civil Procedure.

Source: Codes, 1880, § 2289; 1892, § 3442; 1906, § 3941; Hemingway's 1917, § 2948; 1930, § 2994; 1942, § 1876; Laws, 1971, ch. 353, § 1; Laws, 1991, ch. 573, § 99; Laws, 1992, ch. 427 § 2, eff. 5/4/1992.

§ 13-3-85. Notice by summons of motions against officers for neglect of duty

In all cases where motions are made against officers, or officers and their sureties, for neglect of official duty under any law, five days' notice shall be given by summons, to be served as in other cases, and this shall apply to motions against the personal representative of a deceased officer.

Source: Codes, 1892, § 3444; 1906, § 3943; Hemingway's 1917, § 2950; 1930, § 2996; 1942, § 1878.

§ 13-3-87. Return of officer may be questioned by parties

The return of the officer serving any process may, in the same action, be shown to be untrue by either of the parties, but the officer himself shall not be permitted to question its truth.

Source: Codes, 1857, ch. 61, art. 65; 1871, § 707; 1880, § 1533; 1892, § 3446; 1906, § 3945; Hemingway's 1917, § 2952; 1930, § 2998; 1942, § 1880.

§ 13-3-89. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-91. Reversal, on appeal by defendant, for want of service or defective service as an appearance

Where a judgment or decree is reversed on appeal taken by defendant for the want of service, or because of defective service of process, a new summons or citation need not be issued or served, but the defendant shall, without such process or service, be presumed to have entered his appearance to the cause in the court from which the appeal was taken when the mandate shall be filed therein.

Source: Codes, 1892, § 3448; 1906, § 3947; Hemingway's 1917, § 2954; 1930, § 3000; 1942, § 1882.

§ 13-3-93. Subpoenas for witnesses

The first process, in all civil actions, and in all courts, to compel the attendance of a witness, shall be a subpoena, the procedural aspects of which shall be governed by the Mississippi Rules of Civil Procedure.

Source: Codes, Hutchinson's 1848, ch. 60, art. 1 (102); 1857, ch. 61, art. 194; 1871, § 761; 1880, § 1586; 1892, § 3449; 1906, § 3948; Hemingway's 1917, § 2955; 1930, § 3001; 1942, § 1883; Laws, 1991, ch. 573, § 100, eff. 7/1/1991.

§§ 13-3-95 through 13-3-101. Repealed

History. Repealed by Laws of 1991, ch. 573, § 141, eff. 7/1/1991.

§ 13-3-103. Attachment for non-appearing subpoenaed witness

If any person subpoenaed as a witness shall fail to appear and attend as required, an attachment shall be issued by order of the court or other authority before which he was subpoenaed to appear, returnable at such time as the court or authority may appoint. The court or authority shall, on ordering the attachment, direct whether the witness shall enter into bond for his appearance, and in what sum, and whether with or without sureties, which bond the sheriff, or other officer by whom the attachment is executed, is authorized to take, payable to the state. In case the witness shall appear in answer to the attachment, the court may discharge him therefrom, on good cause shown, or may require him to enter into recognizance or bond for his appearance until discharged, to testify in the cause. In case the witness shall not appear, in pursuance of his recognizance or bond, the same proceedings shall be had as upon the forfeiture of a recognizance in a criminal case.

Source: Codes, Hutchinson's 1848, ch. 60, art. 1 (121); 1857, ch. 61, art. 197; 1871, § 765; 1880, § 1589; 1892, § 3454; 1906, § 3935; Hemingway's 1917, § 2960; 1930, § 3006; 1942, § 1888.

§ 13-3-105. Subpoenaed witness to attend until discharged; scire facias for defaulters

Every witness subpoenaed in any case, civil or criminal, shall attend, from day to day, and from term to term without further notice, until discharged by the court or by the party at whose instance he was subpoenaed, and in default thereof he shall be fined by the court not more than Five Hundred Dollars (\$500.00), and a scire facias shall issue thereon, requiring him to appear at the next term of the court, to show cause why the fine should not be made absolute. If cause be not then shown, the fine shall be made final. In criminal cases, the court may cause the witnesses on either side to be bound by bond or recognizance to appear and testify until discharged.

Source: Codes, Hutchinson's 1848, ch. 60, art. 1 (103, 105); 1857, ch. 61, arts. 196, 198; 1871, § 766; 1880, §§ 1590, 1591, 1592; 1892, § 3455; 1906, § 3954; Hemingway's 1917, § 2961; 1930, § 3007; 1942, § 1889.

§ 13-3-107. Settlement of certain civil suits; notice to be given to subpoenaed witnesses and effect of failure to do so

If a civil suit shall be settled in vacation, notice thereof shall be given to the witnesses subpoenaed to appear. If such notice is not given, they shall be entitled to the same compensation for their subsequent attendance in pursuance of the subpoena as if the suit had not been settled.

Source: Codes, 1857, ch. 61, art. 196; 1871, § 764; 1880, § 1588; 1892, § 3453; 1906, § 3952; Hemingway's 1917, § 2959; 1930, § 3005; 1942, § 1887.

§ 13-3-109. Issuance of process by supreme court and its return

The Clerk of the Supreme Court shall issue all process which may be ordered to issue by the court or any judge thereof. All process issuing from said court or on the order of any judge thereof, or which may be returnable therein, shall be under the seal of the court, and be signed by the clerk thereof, and may be directed to the sheriff or other proper officer of any county, who shall execute and return the same according to the command thereof. Whenever any such process shall not be executed or not returned, an alias may be issued by the clerk on the application of the person who sued out the former process.

Source: Codes, 1857, ch. 63, art. 28; 1871, § 430; 1880, § 1448; 1892, § 3458; 1906, § 3957; Hemingway's 1917, § 2964; 1930, § 3010; 1942, § 1898; Laws, 1991, ch. 573, § 101, eff. 7/1/1991.

§ 13-3-111. Time when executions shall be issued

The clerks of all courts of law or equity, after the adjournment of the court for the term shall, at the request and cost of the owner of the judgment or decree or his attorney, issue executions on all judgments and decrees rendered therein, and place the same in the hands of the sheriff of the county. The sheriff shall effectuate any execution on a judgment. If requested by such owner, they shall issue executions directed to the sheriff of any other county, and shall deliver the same to the owner or his attorney.

Source: Codes, Hutchinson's 1848, ch. 59, art. 9 (4); 1857, ch. 61, art. 265; 1871, § 837; 1880, § 1742; 1892, § 3459; 1906, § 3958; Hemingway's 1917, § 2965; 1930, § 3011; 1942, § 1899; Laws, 1976, ch. 331; Laws, 1990, ch. 408, § 1, eff. 7/1/1990.

§ 13-3-113. Issuance, execution, and return of executions

Writs of execution shall bear date and be issued in the same manner as original process, and shall be made returnable on the first day of the next term of the court in which the judgment or decree was rendered, if there be fifteen days between the issuance and return thereof, and, if not, on the first day of the term next thereafter. Such execution may be directed to the sheriff or other proper officer of any county, who shall serve and execute the same, and make return thereof to the court in which the judgment or decree was rendered.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (7); 1857, ch. 61, art. 267; 1871, § 839; 1880, § 1743; 1892, § 3460; 1906, § 3959; Hemingway's 1917, § 2966; 1930, § 3012; 1942, § 1900.

§ 13-3-115. Issuance of subsequent execution

If a first writ of execution shall not have been returned and shall not have been executed, the clerk may issue another execution at the cost of any party in whose favor the execution was issued, if such party shall desire to take out another execution.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

§ 13-3-117. Issuance of execution against several defendants

When one judgment has been recovered against several defendants, execution shall issue thereon against all the defendants, and not otherwise.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

§ 13-3-119. Effect of death of one or more of several defendants before issuance of execution

If one or more of several defendants have died before the issuance of a writ of execution, and a revivor shall not have been had, the fact of the death shall be noted on the writ, and the property of the survivors only shall be liable to the execution in such case.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (3); 1857, ch. 61, art. 269; 1871, § 840; 1880, § 1774; 1892, § 3461; 1906, § 3960; Hemingway's 1917, § 2967; 1930, § 3013; 1942, § 1901.

§ 13-3-121. Execution for costs of Supreme Court

In cases decided in the Supreme Court, or dismissed or otherwise disposed of, the clerk of the court may issue executions for costs accrued in the Supreme Court, in excess of the filing fee, in the same manner that the clerks of the circuit courts are authorized to issue executions against any party liable therefor. Such executions may be directed to the sheriff of any county, and shall be returned in the same manner and under like penalties as in case of executions returnable to the circuit court.

Source: Codes, 1857, ch. 63, art. 31; 1871, § 433; 1880, § 1449; 1892, § 3462; 1906, § 3961; Hemingway's 1917, § 2968; 1930, § 3014; 1942, § 1902; Laws, 1978, ch. 335, § 34, eff. 7/1/1978.

§ 13-3-123. Levy of writs of execution and attachments-on land

In case of a levy of an attachment on real estate in the occupancy of any person, the officer shall go to the house or upon the land of the defendant, and there declare that he attaches the same at the suit of the plaintiff, but if the land be unoccupied, or if the process be an execution, he may attach or levy upon the same by returning that he has attached or levied upon the land, describing it by numbers or otherwise properly, and, if the process be an attachment, stating that the land is unoccupied; and in all cases the return of the officer shall be conclusive of the facts stated therein, except on timely motion to quash.

Source: Codes, 1892, § 3464; 1906, § 3963; Hemingway's 1917, § 2970; 1930, § 3016; 1942, § 1904.

§ 13-3-125. Levy of writs of execution and attachments - on personalty

If the levy be upon personal property the officer shall take the same into his possession and dispose of it according to law.

Source: Codes, 1892, § 3465; 1906, § 3964; Hemingway's 1917, § 2971; 1930, § 3017; 1942, § 1905.

§ 13-3-127. Levy of writs of execution and attachments - on choses in action

In case an attachment be levied on rights, credits, and choses in action, the officer shall take into his possession the books of accounts and other evidences of debt belonging to the defendant, and if the plaintiff so direct, he shall summon all persons appearing to be indebted to the defendant, or to have effects of his in their hands, as garnishees, in the manner prescribed by law.

Source: Codes, 1892, § 3466; 1906, § 3965; Hemingway's 1917, § 2972; 1930, § 3018; 1942, § 1906.

§ 13-3-129. Levy of writs of execution and attachments - on corporate stock and the like

In case of the levy of an execution or attachment on the stock, shares, or interest of the defendant in any corporation or joint stock company, the officer shall go to the office or principal place of business of the corporation or company, and there declare that he attaches or levies upon the stock, shares, or interest of the defendant therein at the suit of the plaintiff. The officer shall demand of any officer, agent, or clerk of such corporation or company there present, and who is not the defendant, a statement in writing, under oath, of the amount of the defendant's stock, the number of his shares, or extent of his interest in such corporation or company, and shall leave with the officer, agent, or clerk, a copy of the writ. If no such officer, agent, or clerk be present, the officer shall post conspicuously at such office or place of business a copy of the writ, with a statement therewith that he has attached or levied upon the stock, shares, or interest of the defendant at the suit of the plaintiff, and that he demands of the corporation or company the statement, under oath, of the defendant's stock, share, or interest therein. The stock, shares, and interest of the defendant in the corporation or company, including all dividends that may accrue after such levy, shall be bound by the lien of the execution or attachment. The corporation or company shall, within a reasonable time, not longer than ten days after the levy, deliver to the officer a statement in writing, under oath, of the particulars demanded by the officer, and of the value of the defendant's stock, shares, or interest, and in case the corporation or company shall neglect or refuse to do so, or shall wilfully make any false statement thereof, such corporation or company shall be liable to the plaintiff for the full amount of the judgment or decree, or of such judgment as the plaintiff shall recover if the process be an attachment. The failure of the corporation or company to make such statement shall not affect the right of the officer to sell the stock, shares, or interest of the defendant.

Source: Codes, 1892, § 3467; 1906, § 3966; Hemingway's 1917, § 2973; 1930, § 3019; 1942, § 1907.

§ 13-3-131. Levy of writs of execution and attachments - on interest of partners or co-owners

When a defendant in execution shall own or be entitled to an undivided interest in any property not exclusively in his own possession, such interest may be levied on and sold by the sheriff without taking the property into actual possession, and such sale shall vest in the purchaser all the interest of the defendant in such property.

Source: Codes, 1892, § 3468; 1906, § 3967; Hemingway's 1917, § 2974; 1930, § 3020; 1942, § 1908.

§ 13-3-133. Money, banknotes, judgments and the like may be levied on; endorsement and negotiation of seized instruments; proceeds to be applied against judgment debtor's obligations

- (1) Money, banknotes, bills, evidences of debt circulating as money, and any judgment or decree belonging to the defendant, may be taken under an execution or attachment and sold or disposed of according to law, or applied to the payment of the execution or in satisfaction of the judgment in attachment.
- (2) The officer serving a writ may endorse all warrants, checks or drafts seized under execution or attachment. The officer serving the writ shall endorse on the warrant, check or draft the day and date it was received, shall take into possession, as they shall become due to the judgment debtor, monies, checks, drafts, warrants, vouchers or other evidences of indebtedness, and shall issue a receipt to the paying,

disbursing or auditing officer therefor, and shall endorse, in the name of the judgment debtor, any and all checks, drafts, warrants, vouchers or other evidences of indebtedness delivered under the writ. The seized instruments may be negotiated and the proceeds thereof, or so much thereof as necessary, shall be applied to the payment of the execution or in satisfaction of the judgment in attachment in order of priority.

Source: Codes, 1857, ch. 61, art. 285; 1871, § 849; 1880, § 1765; 1892, § 3470; 1906, § 3968; Hemingway's 1917, § 2975; 1930, § 3021; 1942, § 1909; Laws, 2008, ch. 324, § 1, eff. 7/1/2008.

§ 13-3-135. Purchaser's title to certain interests of defendant sold under execution or attachment

The purchaser of any chose in action, stock, share, interest, judgment, or decree of the defendant, sold under execution or attachment, shall become the owner thereof, in the same manner as if it had been regularly assigned to him by the defendant.

Source: Codes, 1857, ch. 61, art. 285; 1880, § 1765; 1892, § 3471; 1906, § 3969; Hemingway's 1917, § 2976; 1930, § 3022; 1942, § 1910.

§ 13-3-137. Growing crop shall not be levied upon

An execution shall nor be levied upon a growing crop, nor shall the same be seized under an attachment.

Source: Codes, 1880, § 1764; 1892, § 3472; 1906, § 3970; Hemingway's 1917, § 2977; 1930, § 3023; 1942, § 1911.

§ 13-3-139. Lien of executions, and priority thereof

Writs of executions, where there is no judgment lien, shall bind the property of defendant only from the time of the levy thereof. If two or more writs shall be delivered to the officer for execution against the same person, that which was first delivered shall be the first levied and satisfied. It shall be the duty of the sheriff or other officer, on receipt of an execution, to indorse thereon the day of the month and the year and the hour when he received the same. For a failure to make such indorsement, the sheriff or other officer shall be liable to a penalty of One Hundred Dollars (\$100.00), to the use of the plaintiff, recoverable by motion before the court from which the execution issued, and the sheriff or other officer shall, moreover, be liable for all damages sustained by any party aggrieved.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (8); 1857, ch. 61, art. 270; 1871, § 841; 1892, § 3473; 1906, § 3971; Hemingway's 1917, § 2978; 1930, § 3024; 1942, § 1912.

§ 13-3-141. Officer to care for property and allowed expenses

When a sheriff or other officer shall levy an execution on livestock, he shall provide for its sustenance until sold or otherwise legally discharged from the execution. Upon the return of the execution, the court, in cases where the compensation is not fixed by law, shall settle and adjust what the officer shall be allowed for his expenses incurred by providing for the stock, and also reasonable expenses of keeping personal property levied on by him, and the same shall be taxed as costs. The officer may retain the same out of the money arising from the sale of the property.

Source: Codes, 1857, ch. 61, art. 274; 1871, § 843; 1880, § 1746; 1892, § 3474; 1906, § 3972; Hemingway's 1917, § 2979; 1930, § 3025; 1942, § 1913.

§ 13-3-143. Manner by which personal representative or successor thereof of plaintiff may have execution

When the executor or administrator of a plaintiff who dies before satisfaction of his judgment shall file with the clerk a copy of his letters testamentary or of administration, duly certified, execution may be issued on the judgment as if such death had not occurred, and the clerk shall indorse on the execution the fact of the death of the plaintiff, and that the execution is at the instance of his executor or administrator, stating the name of the executor or administrator. When an administrator, guardian, trustee, or other person acting in a fiduciary or official capacity, who recovered a judgment, shall die, resign, or be removed without having obtained satisfaction thereof, his successor may have execution of the judgment in the same manner, without revival of the judgment by scire facias.

Source: Codes, 1880, § 1747; 1892, § 3475; 1906, § 3973; Hemingway's 1917, § 2980; 1930, § 3026; 1942, § 1914.

§ 13-3-145. Effect of death of one or more of several plaintiffs before issuance of execution

The death of one or more of several plaintiffs in a judgment shall not prevent the issuance of execution in favor of the survivors.

Source: Codes, 1880, § 1748; 1892, § 3476; 1906, § 3974; Hemingway's 1917, § 2981; 1930, § 3027; 1942, § 1915.

§ 13-3-147. Assignee of a judgment may have execution

The assignee of a judgment, where the plaintiff has died, may have execution thereof for his use as if such death had not occurred, upon filing with the clerk his affidavit of the death of the plaintiff and the assignment, and, where the plaintiff has not died, the assignee of a judgment may have an execution for his use in the same manner.

Source: Codes, 1880, § 1749; 1892, § 3477; 1906, § 3975; Hemingway's 1917, § 2982; 1930, § 3028; 1942, § 1916.

§ 13-3-149. Effect of death of party after execution issued

The death of any plaintiff or defendant after the issuance or the levy of an execution on personal or real estate, shall not affect the duty of the officer making the levy to proceed and sell as if such death had not occurred.

Source: Codes, 1880, § 1750; 1892, § 3478; 1906, § 3976; Hemingway's 1917, § 2983; 1930, § 3029; 1942, § 1917.

§ 13-3-151. Execution issued against dead defendant

After one year from the death of any defendant in a judgment for money, execution thereof may be had by leave of the court rendering the judgment, or of the judge thereof in vacation, upon cause shown, against any property on which such judgment was a lien at the time of the death of the defendant, and a sale of such property may be made in the same manner and with the same effect as if the defendant were living. In case of the death of the defendant in a judgment for the recovery of real or personal property, execution may be had without revival, in the same manner as if the defendant had not died.

Source: Codes, 1880, § 1751; 1892, § 3479; 1906, § 3977; Hemingway's 1917, § 2984; 1930, § 3030; 1942, § 1918.

§ 13-3-153. Motion to revive judgment

Those provisions of the Mississippi Code of 1972 relating to the execution of judgments without revival shall not prevent a revival in any case by a motion to revive judgment.

Source: Codes, 1880, § 1752; 1892, § 3480; 1906, § 3978; Hemingway's 1917, § 2985; 1930, § 3031; 1942, § 1919; Laws, 1991, ch. 573, § 102, eff. 7/1/1991.

§ 13-3-155. Execution and garnishment on certain judgments and decrees of other courts may be issued by clerk

The clerk of the circuit court in whose office any judgment or decree shall be enrolled, may issue execution and writs of garnishment thereon, directed to the sheriff of his county, returnable before the court which rendered the judgment or decree.

Source: Codes, 1880, § 1738; 1892, § 3481; 1906, § 3979; Hemingway's 1917, § 2986; 1930, § 3032; 1942, § 1920; Laws, 1890, p. 66; Laws, 1990, ch. 408, § 2, eff. 7/1/1990.

§ 13-3-157. When a bond of indemnity shall be required

If the sheriff shall levy an execution, attachment, or writ of seizure for the purchase-money on any personal property, and a doubt shall arise whether the right to the property be in the defendant or not, the sheriff may demand of the plaintiff a bond with sufficient sureties, payable to the officer, in a penalty equal to double the value of the property, conditioned that the obligors therein will indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and will pay to and satisfy any person claiming title to the property all damages which such person may sustain in consequence of the seizure or sale. If such bond be not given on or before the day of the sale or the return day of the attachment, the sheriff shall be justified in releasing the levy and delivering the property to the party from whose possession it was taken; but the plaintiff or his agent or attorney shall have reasonable notice, in writing, before the day of sale or return day of the writ, that the bond is required.

However, in instances where a warrant is issued by the Chairman of the State Tax Commission, as the commissioner, under the authority of any statute by which such commissioner is authorized to issue such warrants, and where the officer to whom such warrant is directed shall demand of the commissioner an indemnifying bond under the circumstances and conditions hereinbefore provided, the commissioner is hereby authorized to execute such indemnifying bond demanded and pay all obligations which may accrue by reason of the execution of such bond out of the funds appropriated by the Legislature to defray the expenses of the State Tax Commission.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (12); 1857, ch. 61, art. 275; 1871, § 844; 1880, § 1754; 1892, § 3482; 1906, § 3980; Hemingway's 1917, § 2987; 1930, § 3033; 1942, § 1921; Laws, 1952, ch. 404; Laws, 1956, ch. 409; Laws, 1990, ch. 408, § 3, eff. 7/1/1990.

§ 13-3-159. Remedy on bond of indemnity

If the bond and security required under Section 13-3-157 be given, it shall be returned with the writ, and the person claiming the property levied on may prosecute a suit upon the bond, with the name of the payee or his representatives, for the use of the claimant, and recover such damages as he may sustain by the seizure or sale of the property or levy of process; and the claimant shall, after the due execution of the bond, be barred of any action against the officer levying the process, unless the obligors in the bond shall be or become insolvent, or the bond be otherwise invalid.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (12); 1857, ch. 61, art. 276; 1871, § 845; 1880, § 1755; 1892, § 3483; 1906, § 3981; Hemingway's 1917, § 2988; 1930, § 3034; 1942, § 1922.

§ 13-3-161. Where sales under execution or other process are to be made

All sales by any sheriff by virtue of an execution or other process, when not issued by a justice court, shall be made at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. However, personal property too cumbersome to be removed, may be sold at the place where the same may be, or at any convenient place. Cattle, sheep, or stock, other than horses and mules, may be sold at any public place in the neighborhood of the defendant's residence.

Sales of personal property under execution or other process from a justice court may be made at any convenient point in the county where it is found, or at the courthouse of the county. The sheriff shall effectuate any execution on a judgment. The sale of lands under executions or other process from such courts shall be made as under execution from the circuit courts.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, §§ 846, 1345; 1880, §§ 1757, 2208; 1892, §§ 3484, 3485; 1906, §§ 3982, 3983; Hemingway's 1917, §§ 2989, 2990; 1930, §§ 3035, 3036; 1942, §§ 1923, 1924; Laws, 1981, ch. 471, § 42; Laws, 1982, ch. 423, § 28; Laws, 1990, ch. 408, § 4; brought forward without change, Laws, 2011, ch. 418, §5, eff. 7/1/2011.

§ 13-3-163. When sales of land may be made; advertising of sale

- (1) Sales of land may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff in a newspaper published in the county, once in each week for three (3) successive weeks, or, if no newspaper is so published, in some newspaper having a general circulation therein once in each week for three (3) successive weeks.
- (2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing notice for the sale of land pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3486; 1906, § 3984; Hemingway's 1917, § 2991; 1930, § 3037; 1942, § 1925; Laws, 1960, ch. 239; Laws, 1978, ch. 398, § 1; Laws, 1989, ch. 405, § 1, eff. 7/1/1989.

§ 13-3-165. When sales of personalty may be made; advertising of sale

- (1) Sales of personalty may be made on any day except Sunday and any legal holiday as defined by Section 3-3-7, Mississippi Code of 1972, and shall be advertised by the plaintiff ten (10) days before the day of sale by posting notices of the time, terms and place of sale in three (3) public places in the county, one (1) of which shall be at the courthouse.
- (2) In addition to effectuating the advertisement, any expense or cost incurred by advertising and providing

notice for the sale of personalty pursuant to subsection (1) of this section in justice court shall be paid by the plaintiff, and said expenses shall be taxed as costs.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3487; 1906, § 3984; Hemingway's 1917, § 2992; 1930, § 3038; 1942, § 1926; Laws, 1978, ch. 398, § 2; Laws, 1989, ch. 405, § 2; brought forward without change, Laws, 2011, ch. 418, §6, eff. 7/1/2011.

§ 13-3-167. Sale of perishable goods

When goods and chattels are levied on, which by their nature are perishable and in danger of immediate waste or decay, the officer levying shall sell them at such time, and on such notice, and at such place as a sound discretion may warrant.

Source: Codes, 1871, §§ 1466-1469; 1880, § 1758; 1892, § 3488; 1906, § 3986; Hemingway's 1917, § 2993; 1930, § 3039; 1942, § 1927; brought forward without change, Laws, 2011, ch. 418, §7, eff. 7/1/2011.

§ 13-3-169. Hours and mode of sale

- (1) Except as otherwise provided in this section, sales under execution shall not commence sooner than eleven o'clock in the forenoon, nor continue later than four o'clock in the afternoon. All such sales shall be by auction, to the highest bidder for cash, and only so much of the property levied on shall be sold as will satisfy the execution and costs.
- (2) Sales under execution conducted by a special agent of the State Tax Commission pursuant to a warrant, jeopardy warrant or alias warrant issued by the Chairman of the State Tax Commission, shall commence and be conducted at the times specified by the Chairman of the State Tax Commission or his duly authorized agent. All such sales shall be by auction to the highest bidder for cash or for cash equivalent deemed acceptable by the Chairman of the State Tax Commission. Only so much of the property levied on shall be sold as will satisfy the execution and costs.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 277; 1871, § 846; 1880, § 1759; 1892, § 3489; 1906, § 3987; Hemingway's 1917, § 2994; 1930, § 3040; 1942, § 1928; Laws, 2005, ch. 382, § 1; brought forward without change, Laws, 2011, ch. 418, §8, eff. 7/1/2011.

§ 13-3-171. Lands to be sold to be offered in subdivisions and as an entirety

All lands comprising a single tract, sold under execution, shall be first offered in subdivisions not exceeding one hundred and sixty (160) acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions.

Source: Codes, 1892, § 3491; 1906, § 3989; Hemingway's 1917, § 2996; 1930, § 3042; 1942, § 1930; brought forward without change, Laws, 2011, ch. 418, §9, eff. 7/1/2011.

§ 13-3-173. Sale may be adjourned or continued from day to day

Whenever, from a defect of bidders, caused by inclement weather or otherwise, the property shall not be likely to command a reasonable price, the officer may adjourn the sale and readvertise the same for a subsequent day. Whenever a sale advertised for a particular day shall not be completed on that day, the same may be continued from day to day.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (21); 1857, ch. 61, art. 278; 1871, § 847; 1880, § 1760; 1892, § 3490; 1906, § 3988; Hemingway's 1917, § 2995; 1930, § 3041; 1942, § 1929; brought forward without change, Laws, 2011, ch. 418, §10, eff. 7/1/2011.

§ 13-3-175. Venditioni exponas

If any property taken in execution shall remain in the hands of the officer unsold, he shall so return on the execution, and thereupon a writ of venditioni exponas shall issue, directed to the officer, upon which the like proceedings shall be had as might and ought to have been had on the first execution. And if property sold on a venditioni exponas shall not bring enough to satisfy the judgment, the officer shall forthwith return the same, and thereupon another proper execution for the balance remaining unpaid may be issued.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (18); 1857, ch. 61, art. 279; 1871, § 848; 1880, § 1761; 1892, § 3492; 1906, § 3990; Hemingway's 1917, § 2997; 1930, § 3043; 1942, § 1931.

§ 13-3-177. Venditioni exponas to issue when officer taking property dies

When the officer taking property under execution shall die before the sale thereof, a writ of venditioni exponas shall issue, directed to the proper officer of the county in which the property was taken, and such officer shall, under the writ of venditioni exponas, receive the property from the representatives of the former sheriff, or other officer, who are required to deliver the same to the officer having the venditioni exponas, on his producing the same and executing a receipt for the property, and the officer shall proceed to sell the same as in other cases.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (52); 1847, ch. 61, art. 292; 1871, § 856; 1880, § 1771; 1892, § 3493; 1906, § 3991; Hemingway's 1917, § 2998; 1930, § 3044; 1942, § 1932.

§ 13-3-179. Procedure to be followed where property is not delivered by representatives of deceased officer taking property

If the representatives of the deceased officer shall refuse or neglect to deliver the property on demand, or if there shall not be an executor or administrator of his estate, the officer having the writ of venditioni exponas may seize the property taken by the former officer wherever it may be found, and sell the same as in other cases, or the plaintiff may move in the court from which the execution issued against the representatives of the deceased officer and his sureties, and thereupon a judgment shall be entered against the representatives of the deceased officer and his sureties for the amount of the execution which came to the hands of such deceased officer, with interest and costs.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (52); 1857, ch. 61, art. 293; 1871, § 857; 1880, § 1772; 1892, § 3494; 1906, § 3992; Hemingway's 1917, § 2999; 1930, § 3045; 1942, § 1933.

§ 13-3-181. Duty of officer to examine judgment-roll; priority of liens

After the sale of any property by the sheriff or other officer on execution, before the money is paid over by him, he shall examine the judgment-roll to ascertain if there be any elder judgment or judgments, decree or decrees, enrolled against the defendant or defendants in execution, having a priority of lien. If there be, he shall apply the proceeds of the sale to the judgment or decree having the priority of lien, and return such application upon the execution. Should there be any dispute as to which judgment or decree has the priority of lien, the officer shall make a statement of the fact of the dispute, and return the same, with the execution and the money raised thereon, into the court to which the same is returnable, and the court shall, on motion and examination of the facts, determine to whom the money so raised on execution shall be paid.

Source: Codes, 1880, § 1762; 1892, § 3495; 1906, § 3993; Hemingway's 1917, § 3000; 1930, § 3046; 1942, § 1934.

§ 13-3-183. Officer to restore money on injunction of execution

When an officer shall receive under execution the whole or any part of the money for which the same was issued, and the defendant, before payment thereof to the plaintiff, obtain an injunction against the execution, the officer shall pay over to the defendant the money received, or such part thereof as may be enjoined. If an officer shall, when required, fail to pay over the money so received and enjoined to the person having a right to demand the same, such officer and his sureties shall be liable to the same remedies as are given by law to the plaintiff for the nonpayment of money levied on execution.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (16); 1857, ch. 61, art. 286; 1871, § 850; 1880, § 1766; 1892, § 3496; 1906, § 3994; Hemingway's 1917, § 3001; 1930, § 3047; 1942, § 1935.

§ 13-3-185. How purchaser takes property sold at execution sale

The purchaser of any property sold at execution sale by the sheriff or other officer shall take the same discharge of all liens of judgments and decrees, whether the same be sold under an execution issued upon the elder or junior judgment or decree.

Source: Codes, 1880, § 1763; 1892, § 3497; 1906, § 3995; Hemingway's 1917, § 3002; 1930, § 3048; 1942, § 1936.

§ 13-3-187. Conveyance of land sold under execution or other process

When lands are sold by virtue of any writ of execution or other process, the officer making the sale shall,

on payment of the purchase-money, execute to the purchaser a conveyance which shall vest in the purchaser all the right, title and interest which the defendant had in and to such lands, and which, by law, could be sold under such execution or other process.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (55); 1857, ch. 61, art. 290; 1871, § 854; 1880, § 1769; 1892, § 3498; 1906, § 3996; Hemingway's 1917, § 3003; 1930, § 3049; 1942, § 1937.

§ 13-3-189. Completion of title under justice's execution

The title to land sold under execution issued by a justice of the peace shall not be complete in the purchaser until he shall have obtained from the justice a certified transcript of the proceedings had before him in the suit, including a copy of the execution and the officer's return on it, which shall be filed with the conveyance made by the officer in the chancery clerk's office and recorded with the conveyance. Upon filing such transcript and conveyance for record in the chancery clerk's office of the county where the land lies, the title of the purchaser shall be as full and complete as if the sale had been under a judgment and execution from a circuit court.

Source: Codes, 1880, § 2211; 1892, § 3499; 1906, § 3997; Hemingway's 1917, § 3004; 1930, § 3050; 1942, § 1938.

LIMITATIONS OF ACTIONS

§§ 15-1-1 through 15-1-81

§ 15-1-1. Application of chapter

The provisions of this chapter shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed in this chapter, and such suit shall be brought within the time that may be limited by such statute.

Source: Codes, 1857, ch. 57, art. 24; 1871, § 2168; 1880, § 2689; 1892, § 2763a; 1906, § 3126; Hemingway's 1917, § 2490; 1930, § 2293; 1942, § 723.

§ 15-1-3. Completion of limitation extinguishes right; partial payment

- (1) The completion of the period of limitation prescribed to bar any action, shall defeat and extinguish the right as well as the remedy. However, the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon.
- (2) In any case founded on a debt, when any part of the debt shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, the statute of limitations not having run, an action may be brought in such case within the period prescribed for the same, with the said period to begin after such payment, acknowledgment or promise.

Source: Codes, 1880, § 2685; 1892, § 2755; 1906, § 3115; Hemingway's 1917, § 2479; 1930, § 2313; 1942, § 743; Laws, 2005, ch. 417, § 1, eff. 7/1/2005.

§ 15-1-5. Period of limitations shall not be changed by contract

The limitations prescribed in this chapter shall not be changed in any way whatsoever by contract between parties, and any change in such limitations made by any contracts stipulation whatsoever shall be absolutely null and void, the object of this section being to make the period of limitations for the various causes of action the same for all litigants.

Source: Codes, 1906, § 3127; Hemingway's 1917, § 2491; 1930, § 2294; 1942, § 724.

§ 15-1-7. Limitations applicable to actions to recover land

A person may not make an entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or to bring the action shall have first accrued to some person through whom he claims, or, if the right shall not have accrued to any person through whom he claims, then except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued to the person making or bringing the same. However, if, at the time at which the right of any person to make an entry or to bring an action to recover land shall have first accrued, such person shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover the land at any time within ten years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed, by reason of the disability of any other person, to make an entry or to bring an action to recover the land beyond the period of ten years next after the time at which such person shall have died.

Source: Codes, Hutchinson's 1848, ch. 57, arts. 1 (1), 6 (1); 1857, ch. 57, art. 1; 1871, § 2147; 1880, § 2664; 1892, § 2730; 1906, § 3090; Hemingway's 1917, § 2454; 1930, § 2285; 1942, § 709.

§ 15-1-9. Limitations applicable to suits in equity to recover land

A person claiming land in equity may not bring suit to recover the same except within the period during which, by virtue of Section 15-1-7, he might have made an entry or brought an action to recover the same, if he

had been entitled at law to such an estate, interest, or right in or to the same as he shall claim therein in equity. However, in every case of a concealed fraud, the right of any person to bring suit in equity for the recovery of land, of which he or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which the fraud shall, or, with reasonable diligence might, have been first known or discovered.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (2); 1857, ch. 57, art. 2; 1871, § 2148; 1880, § 2665; 1892, § 2731; 1906, § 3091; Hemingway's 1917, § 2455; 1930, § 2286; 1942, § 710.

§ 15-1-11. Limitations applicable to actions to recover land for defect in instrument

Any person who has a right of action for the recovery of land because of any one or more of the following enumerated defects in any instrument, shall institute his suit therefor not later than 10 years next after the date when such instrument has been actually recorded in the office of the clerk of the chancery court of the county in which such real estate is situated and not afterwards:

- (1) where it has not been signed by the proper officer of any corporation;
- (2) where the corporate seal of the corporation has not been impressed on such instrument;
- (3) where the record does not show such corporate seal;
- (4) because the record does not show authority therefor by the board of directors and stockholders (or either of them) of a corporation;
- (5) where such instrument was executed and delivered by a corporation which had been dissolved or whose charter had expired, or whose corporate franchise had been cancelled, withdrawn or forfeited;
- (6) where the executor, administrator, guardian, assignee, receiver, master in chancery, agent or trustee, or other agency making such instrument, signed or acknowledged the same individually instead of in his representative or official capacity;
- (7) where such instrument is executed by a trustee without record of judicial or other ascertainment of the authority of such trustee or of the verity of the facts therein recited;
- (8) where the officer taking the acknowledgment of such instrument having an official seal did not affix the same to the certificate of acknowledgment;
- (9) where the notarial seal is not shown of record;
- (10) where the wording of the consideration may or might create an implied lien in favor of the grantor (by this is not meant an express vendor's lien retained).

If, at the time at which the right of any person to bring an action for the recovery of land because of any such defects, shall have first accrued, such persons shall have been under the disability of infancy or unsoundness of mind, then such person or the person claiming through him, may, notwithstanding that the period of limitations hereinbefore provided for shall have expired, bring an action to recover the land at any time within the period of limitations provided herein next after the time at which the person to whom the right shall have first accrued shall have ceased to be under either disability, or shall have died, whichever shall have first happened. However, when any person who shall be under either of the disabilities mentioned, at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability no time to bring an action to recover the land beyond the period of limitations provided herein next after the time at which such persons shall have died, shall be allowed by reason of the disability of any other person. Moreover, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

This section shall not, however, apply to forged instruments.

Source: Codes, 1942, §§ 712, 714; Laws, 1942, ch. 300.

§ 15-1-13. Ten years' adverse possession gives title; exceptions

- (1) Ten (10) years' actual adverse possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for ten (10) years by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor

of such land a full and complete title, saving to persons under the disability of minority or unsoundness of mind the right to sue within ten (10) years after the removal of such disability, as provided in Section 15-1-7. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one (31) years.

- (2) For claims of adverse possession not matured as of July 1, 1998, the provisions of subsection (1) shall not apply to a landowner upon whose property a fence or driveway has been built who files with the chancery clerk within the ten (10) years required by this section a written notice that such fence or driveway is built without the permission of the landowner. Failure to file such notice shall not create any inference that property has been adversely possessed. The notice shall be filed in the land records by the chancery clerk and shall describe the property where said fence or driveway is constructed.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (3); 1857, ch. 57, art. 3; 1871, § 2149; 1880, § 2668; 1892, § 2734; 1906, § 3094; Hemingway's 1917, § 2458; 1930, § 2287; 1942, § 711; Laws, 1998, ch. 504, § 1, eff. 7/1/1998, and shall apply to claims arising on or after 7/1/1998.

§ 15-1-15. Three years' actual occupation under a tax title bars suit

Actual occupation for three years, after two years from the day of sale of land held under a conveyance by a tax collector in pursuance of a sale for taxes, shall bar any suit to recover such land or assail such title because of any defect in the sale of the land for taxes, or in any precedent step to the sale, saving to minors and persons of unsound mind the right to bring suit within such time, after the removal of their disabilities, and upon the same terms as is provided for the redemption of land by such persons.

Source: Codes, 1871, § 1709; 1880, § 539; 1892, § 2735; 1906, § 3095; Hemingway's 1917, § 2459; 1930, § 2288; 1942, § 716; Laws, 1912, ch. 233.

§ 15-1-17. Limitations applicable to actions or suits to cancel tax titles

The owner, mortgagee or other person interested in any land which has been sold or forfeited to the state for delinquent taxes may bring a suit or action to cancel the title of the state, or its patentees, or to recover said land from the state, or its patentees, on account of any defect, irregularity or illegality in the assessment, levy or sale of such land for delinquent taxes within two years after the period of redemption shall have expired, and not thereafter. However, the limitations herein fixed shall not apply when the taxes on such land had been paid prior to the time it was sold for taxes.

If any person entitled to bring any such suit or action shall, at the time at which the cause of action accrues, be under the disability of infancy, or unsoundness of mind, he may bring the suit or action within the time in this section respectively limited after his disability shall be removed but the saving of persons under disability shall never extend longer than twenty-one years.

The completion of the limitation herein prescribed to bar any action shall defeat and extinguish all the right, title and interest, including the right of possession in and to such land, of any and all persons whatsoever, except the State of Mississippi and its patentees, and it shall vest in the state, and its patentees, a fee simple title to such lands.

Source: Codes, 1942, § 717; Laws, 1934, ch. 196.

§ 15-1-19. Limitations applicable to suits to redeem mortgage or deed of trust

When a mortgagee, after condition broken, shall obtain the actual possession or receipt of the profits or rent of land embraced in his mortgage, the mortgagor, or any person claiming through him, may not bring a suit to redeem the mortgage except within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, shall have been given in writing, signed by the mortgagee, or the person claiming through him. In such case a suit may not be brought except within ten years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. Such acknowledgment shall be effectual only as against, and to the extent of the interest of the party signing it.

Source: Codes, 1857, ch. 57, art. 3; 1871, § 2149; 1880, § 2666; 1892, § 2732; 1906, § 3092; Hemingway's 1917, § 2456; 1930, § 2289; 1942, § 718.

§ 15-1-21. Actions on mortgages, deeds of trust, and statutory liens to be brought within time allowed for action upon writing in which debt is specified

When a mortgage or deed of trust shall be given on real or personal estate, or when a lien shall be given by law, to secure the payment of a sum of money specified in any writing, an action or suit or other proceedings shall not be brought or had upon such lien, mortgage, or deed of trust to recover the sum of money so secured except within the time that may be allowed for the commencement of an action at law upon the writing in which the sum of money secured by such lien, mortgage, or deed of trust may be specified. In all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.

Source: Codes, 1857, ch. 57, art. 4; 1871, § 2150; 1880, § 2667; 1892, § 2733; 1906, § 3093; Hemingway's 1917, § 2457; 1930, § 2290; 1942, § 719.

§ 15-1-23. Limitations applicable to suits or actions on installment notes following foreclosure or sale of property pledged as security therefor

In all cases, no suit or action shall hereafter be commenced or brought upon any installment note, or series of notes of three or more, whether due or not, where said note or notes are secured by mortgage, deed of trust, or otherwise, upon any property, real or personal, unless the same is commenced or brought within one year from the date of the foreclosure or sale of the property pledged as security for said note or notes.

Source: Codes, 1942, § 720; Laws, 1934, ch. 251.

§ 15-1-25. Limitations applicable to action or scire facias against executor or administrator

An action or scire facias may not be brought against any executor or administrator upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such executor or administrator.

Source: Codes, Hutchinson's 1848, ch. 57, art 6 (12); 1857, ch. 57, art. 11; 1871, § 2155; 1880, § 2676; 1892, § 2745; 1906, § 3105; Hemingway's 1917, § 2469; 1930, § 2295; 1942, § 725.

§ 15-1-27. Limitations applicable to action by ward against guardian or surety

All actions against a guardian and the sureties on his bond, or either of them, by the ward, shall be commenced within five years next after the ward shall have arrived at the age of twenty-one years, and not after.

Source: Codes, 1892, § 2738; 1906, § 3098; Hemingway's 1917, § 2462; 1930, § 2296; 1942, § 726.

§ 15-1-29. Limitations applicable to actions on accounts and unwritten contracts

Except as otherwise provided in the Uniform Commercial Code, actions on an open account or account stated not acknowledged in writing, signed by the debtor, and on any unwritten contract, express or implied, shall be commenced within three (3) years next after the cause of such action accrued, and not after, except that an action based on an unwritten contract of employment shall be commenced within one (1) year next after the cause of such action accrued, and not after.

Source: Codes, Hutchinson's 1848, ch. 57, art 6 (10); 1857, ch. 57, art. 5; 1871, § 2151; 1880, § 2670; 1892 § 2739; 1906, § 3099; Hemingway's 1917, § 2463; 1930, § 2299; 1942, § 729; Laws, 1964, ch. 299; Laws, 1966, ch. 316, § 10-105; Laws, 1976, ch. 488, § 1, eff. 7/1/1976.

§ 15-1-31. When statute commences to run on open accounts

In all actions brought to recover the balance due upon a mutual and open current account, where both parties are merchants or traders, the cause of action shall be deemed to have accrued at the time of the true date of the last item proved in such account. In all other actions upon open accounts, the period of limitation shall commence to run against the several items thereof from the dates at which the same respectively became due and payable.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (10); 1857, ch. 57, art. 20; 1871, § 2164; 1880, § 2671; 1892, § 2740; 1906, § 3100; Hemingway's 1917, § 2464; 1930, § 2300; 1942, § 730.

§ 15-1-33. Limitations applicable to actions and suits for penalty or forfeiture

All actions and suits for any penalty or forfeiture on any penal statute, brought by any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within one year next after the offense was committed, and not after.

Source: Codes, 1857, ch. 57, art. 23; 1871, § 2167; 1880, § 2672; 1892, § 2741; 1906, § 3101; Hemingway's 1917, § 2465; 1930, § 2301; 1942, § 731.

§ 15-1-35. Limitations applicable to actions for certain torts

All actions for assault, assault and battery, maiming, false imprisonment, malicious arrest, or menace, and all actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one (1) year next after the cause of such action accrued, and not after.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (6); 1857, ch. 57, art. 7; 1871, § 2152; 1880, § 2673; 1892, § 2742; 1906, § 3102; Hemingway's 1917, § 2466; 1930, § 2302; 1942, § 732; Laws, 1983, ch. 394, eff. 7/1/1983.

§ 15-1-36. Limitations applicable to malpractice action arising from medical, surgical or other professional services

- (1) For any claim accruing on or before June 30, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered.
- (2) For any claim accruing on or after July 1, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered, and, except as described in paragraphs (a) and (b) of this subsection, in no event more than seven (7) years after the alleged act, omission or neglect occurred:
 - (a) In the event a foreign object introduced during a surgical or medical procedure has been left in a patient's body, the cause of action shall be deemed to have first accrued at, and not before, the time at which the foreign object is, or with reasonable diligence should have been, first known or discovered to be in the patient's body.
 - (b) In the event the cause of action shall have been fraudulently concealed from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence should have been, first known or discovered.
- (3) Except as otherwise provided in subsection (4) of this section, if at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be six (6) years of age or younger, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have reached his sixth birthday, or shall have died, whichever shall have first occurred.
- (4) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be a minor without a parent or legal guardian, then such minor or the person claiming through such minor may, notwithstanding that the period of time limited pursuant to subsections (1) and (2) of this section shall have expired, commence action on such claim at any time within two (2) years next after the time at which the minor shall have a parent or legal guardian or shall have died, whichever shall have first occurred; provided, however, that in no event

shall the period of limitation begin to run prior to such minor's sixth birthday unless such minor shall have died.

- (5) If at the time at which the cause of action shall or with reasonable diligence might have been first known or discovered, the person to whom such claim has accrued shall be under the disability of unsoundness of mind, then such person or the person claiming through him may, notwithstanding that the period of time hereinbefore limited shall have expired, commence action on such claim at any time within two (2) years next after the time at which the person to whom the right shall have first accrued shall have ceased to be under the disability, or shall have died, whichever shall have first occurred.
- (6) When any person who shall be under the disabilities mentioned in subsections (3), (4) and (5) of this section at the time at which his right shall have first accrued, shall depart this life without having ceased to be under such disability, no time shall be allowed by reason of the disability of such person to commence action on the claim of such person beyond the period prescribed under Section 15-1-55, Mississippi Code of 1972.
- (7) For the purposes of subsection (3) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has reached his sixth birthday.
- (8) For the purposes of subsection (4) of this section, and only for the purposes of such subsection, the disability of infancy or minority shall be removed from and after a person has reached his sixth birthday or from and after such person shall have a parent or legal guardian, whichever occurs later, unless such disability is otherwise removed by law.
- (9) The limitation established by this section as to a licensed physician, osteopath, dentist, hospital or nurse shall apply only to actions the cause of which accrued on or after July 1, 1976.
- (10) The limitation established by this section as to pharmacists shall apply only to actions the cause of which accrued on or after July 1, 1978.
- (11) The limitation established by this section as to podiatrists shall apply only to actions the cause of which accrued on or after July 1, 1979.
- (12) The limitation established by this section as to optometrists and chiropractors shall apply only to actions the cause of which accrued on or after July 1, 1983.
- (13) The limitation established by this section as to actions commenced on behalf of minors shall apply only to actions the cause of which accrued on or after July 1, 1989.
- (14) The limitation established by this section as to institutions for the aged or infirm shall apply only to actions the cause of which occurred on or after January 1, 2003.
- (15) No action based upon the health care provider's professional negligence may be begun unless the defendant has been given at least sixty (60) days' prior written notice of the intention to begin the action. No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered. If the notice is served within sixty (60) days prior to the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended sixty (60) days from the service of the notice for said health care providers and others. This subsection shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

Source: Laws, 1976, ch. 473; Laws, 1978, ch. 464, § 1; Laws, 1979, ch. 347; Laws, 1983, ch. 482, § 1; Laws, 1989, ch. 311, § 2; Laws, 1998, ch. 573, § 1; Laws, 2002, 3rd Ex Sess, ch. 2, § 5, eff. 1/1/2003.

§ 15-1-37. Limitations applicable to actions to recover property sold by order of chancery court or pursuant to decree of partition

An action shall not be brought to recover any property (a) sold by order of a chancery court, where the sale is in good faith and the purchase money paid, or (b) partited in kind or sold for partition where the purchase money is paid, unless such action is brought within two years after possession is taken by the purchaser under the sale of the property or by the taker under the decree of partition.

§ 15-1-39. Limitations applicable to actions involving certain trusts

Bills for relief, in case of the existence of a trust not cognizable by the courts of common law and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue and not after, saving, however, to all persons under disability of infancy or unsoundness of mind, the like period of time after such disability shall be removed. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than thirty-one years.

Source: Codes, 1857, ch. 57, art. 31; 1871, § 2175; 1880, § 2696; 1892, § 2763; 1906, § 3125; Hemingway's 1917, § 2489; 1930, § 2316; 1942, § 746.

§ 15-1-41. Limitations applicable to actions arising from deficiencies in constructions, or improvements to real property

No action may be brought to recover damages for injury to property, real or personal, or for an injury to the person, arising out of any deficiency in the design, planning, supervision or observation of construction, or construction of an improvement to real property, and no action may be brought for contribution or indemnity for damages sustained on account of such injury except by prior written agreement providing for such contribution or indemnity, against any person, firm or corporation performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property more than six (6) years after the written acceptance or actual occupancy or use, whichever occurs first, of such improvement by the owner thereof. This limitation shall apply to actions against persons, firms and corporations performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property for the State of Mississippi or any agency, department, institution or political subdivision thereof as well as for any private or nongovernmental entity.

This limitation shall not apply to any person, firm or corporation in actual possession and control as owner, tenant or otherwise of the improvement at the time the defective and unsafe condition of such improvement causes injury.

This limitation shall not apply to actions for wrongful death.

The provisions of this section shall only apply to causes of action accruing from and after January 1, 1986; and any cause of action accruing prior to January 1, 1986, shall be governed by Chapter 350, Laws of 1972.

Source: Codes, 1942, § 720.5; Laws, 1966, ch. 397, § 1; Laws, 1972, ch. 350, §§ 1, 2; Laws, 1985, ch. 332; Laws, 1985, ch. 505, § 5; Laws, 1994, ch. 626, § 3, eff. 7/1/1994.

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal

All actions founded on any judgment or decree rendered by any court of record in this state, shall be brought within seven (7) years next after the rendition of such judgment or decree, or last renewal of judgment or decree, whichever is later.

A judgment or decree can be renewed only if, at the time of renewal, the existing judgment or decree has not expired. A judgment or decree may be renewed by the filing with the clerk of the court that rendered such judgment or decree a Notice of Renewal of Judgment or Decree substantially in the following form:

NOTICE OF RENEWAL OF JUDGMENT OR DECREE

- (a) Notice is given of renewal of judgment that was rendered and filed in this action as follows:
- (i) Date that judgment was filed;
 - (ii) Case number of such judgment;
 - (iii) Judgment was taken against;
 - (iv) Judgment was taken in favor of;
 - (v) Current holder of such judgment;
 - (vi) Current amount owing of such judgment; and

- (vii) Certification that at the time of the filing of the notice the judgment remains valid and has not been satisfied or barred.
- (b) If applicable, that a Notice of Renewal of Judgment or Decree has been previously filed with the clerk of the court that rendered such judgment on:
The renewal of such judgment is effective as of the date of the filing of the Notice of Renewal with the clerk of the court that rendered such judgment. The renewal of judgment shall be treated in the same manner as the previously rendered judgment. The circuit clerk shall enroll the Notice of Renewal showing the date of the filing of the Notice of Renewal, and the lien of the renewal of such judgment continues from the date of the enrollment of the existing judgment. The right to renew a judgment in any other manner allowed by law instead of using the above Notice of Renewal remains unimpaired.

At the time of the filing of the Notice of Renewal of Judgment, the judgment creditor or his attorney shall make and file with the clerk of the court that rendered the judgment an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor. Promptly upon the filing of the Notice of Renewal of Judgment, the clerk shall mail notice of the filing of the Notice of Renewal of Judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the Notice of Renewal of Judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the validity of the renewal of judgment if proof of mailing by the judgment creditor has been filed.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (13); 1857, ch. 57, art. 8; 1871, § 2153; 1880, § 2674; 1892, § 2743; 1906, § 3103; Hemingway's 1917, § 2467; 1930, § 2303; 1942, § 733; Laws, 2010, ch. 352, §1; Laws, 2011, ch. 539, §1, eff. 7/1/2011.

§ 15-1-45. Limitations applicable to actions founded on foreign judgments or decrees

All actions founded on any judgment or decree rendered by any court of record without this state shall be brought within seven years after the rendition of such judgment or decree, and not after. However, if the person against whom such judgment or decree was or shall be rendered, was, or shall be at the time of the institution of the action, a resident of this state, such action, founded on such judgment or decree, shall be commenced within three years next after the rendition thereof, and not after.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (14); 1857, ch. 57, art. 9; 1871, § 2154; 1880, § 2675; 1892, § 2744; 1906, § 3104; Hemingway's 1917, § 2468; 1930, § 2304; 1942, § 734.

§ 15-1-47. Lien of judgments limited

A judgment or decree rendered in any court held in this state shall not be a lien on the property of the defendant therein for a longer period than seven years from the rendition thereof, unless an action be brought thereon before the expiration of such time. However, the time during which the execution of a judgment or decree shall be stayed or enjoined by supersedeas, injunction or other process, shall not be computed as any part of the period of seven years.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (13); 1857, ch. 57, art. 15; 1871, § 2159; 1880, § 2680; 1892, § 2750; 1906, § 3110; Hemingway's 1917, § 2474; 1930, § 2305; 1942, § 735.

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for

- (1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.
- (2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.
- (3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.

Source: Codes, 1880, § 2669; 1892, § 2737; 1906, § 3097; Hemingway's 1917, § 2461; 1930, § 2292; 1942, § 722; Laws, 1989, ch. 311, § 3; Laws, 1990, ch. 348, § 1, eff. 3/12/1990.

§ 15-1-51. Limitations of suits by and against the state, counties and municipal corporations

Statutes of limitation in civil cases shall not run against the state, or any subdivision or municipal corporation thereof, except that any judgment or decree rendered in favor of the state, or any subdivision or municipal corporation thereof, shall not be a lien on the property of the defendant therein for a longer period than seven (7) years from the date of filing notice of the lien, unless an action is brought before the expiration of such time or unless the state or such subdivision or municipal corporation refiles notice of the lien. There shall be no limit upon the number of times that the state, or any subdivision or municipal corporation thereof, may refile such notices of lien.

The statutes of limitation shall run in favor of the state, the counties, and municipal corporations beginning at the time when the plaintiff first had the right to demand payment of the officer or board authorized to allow or disallow the claim sued upon. The provisions of this section shall apply to all pending and subsequently filed notices of liens.

Source: Codes, 1892, § 2736; 1906, § 3096; Hemingway's 1917, § 2460; 1930, § 2291; 1942, § 721; Laws, 1991, ch. 503, § 1, eff. 4/3/1991.

§ 15-1-53. Effect of running of statute of limitations against executor, administrator, guardian, or other trustee, as against beneficiary

When the legal title to property or a right in action is in an executor, administrator, guardian, or other trustee, the time during which any statute of limitations runs against such trustee shall be computed against the person beneficially interested in such property or right in action, although such person may be under disability and within the saving of any statute of limitations; and may be availed of in any suit or actions by such person.

Source: Codes, 1880, § 2694; 1892, § 2761; 1906, § 3123; Hemingway's 1917, § 2487; 1930, § 2297; 1942, § 727.

§ 15-1-55. Effect of death of party before bar is complete

If a person entitled to bring any of the personal actions herein mentioned, or liable to any such action, shall die before the expiration of the time herein limited therefor, such action may be commenced by or against the executor or administrator of the deceased person, after the expiration of said time, and within one year after the death of such person.

Source: Codes, 1857, ch. 57, art. 18; 1871, § 2162; 1880, § 2683; 1892, § 2753; 1906, § 3113; Hemingway's 1917, § 2477; 1930, § 2298; 1942, § 728.

§ 15-1-57. Statute of limitations not to run when person prohibited to sue

When any person shall be prohibited by law, or restrained or enjoined by the order, decree, or process of any court in this state from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, enjoined or restrained, shall not be computed as any part of the period of time limited by this chapter for the commencement of such action.

Source: Codes, 1857, ch. 57, art. 26; 1871, § 2170; 1880, § 2691; 1892, § 2758a; 1906, § 3120; Hemingway's 1917, § 2484; 1930, § 2307; 1942, § 737.

§ 15-1-59. Saving in favor of persons under disabilities

If any person entitled to bring any of the personal actions mentioned shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

Source: Codes, Hutchinson's 1848, ch. 57, art. 1 (7); 1857, ch. 57, art. 12; 1871, § 2156; 1880, § 2677; 1892, § 2746; 1906, § 3106; Hemingway's 1917, § 2470; 1930, § 2308; 1942, § 738; Laws, 1983, ch. 482, § 2, eff. 7/1/1983.

§ 15-1-61. Repealed

History. Repealed by Laws of 1975, ch. 402, eff. 7/1/1975.

§ 15-1-63. Effect of absence from the state

If, after any cause of action has accrued in this state, the person against whom it has accrued be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action, after he shall return.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (11); 1857, ch. 57, art. 13; 1871, § 2157; 1880, § 2678; 1892, § 2748; 1906, § 3108; Hemingway's 1917, § 2472; 1930, § 2310; 1942, § 740.

§ 15-1-65. Action barred in another jurisdiction barred here

When a cause of action has accrued outside of this state, and by the laws of the place outside this state where such cause of action accrued, an action thereon cannot be maintained by reason of lapse of time, then no action thereon shall be maintained in this state; provided, however, that where such a cause of action has accrued in favor of a resident of this state, this state's law on the period of limitation shall apply.

Source: Codes, 1880, § 2684; 1892, § 2754; 1906, § 3114; Hemingway's 1917, § 2478; 1930, § 2311; 1942, § 741; Laws, 1989, ch. 311, § 4, eff. 7/1/1989.

§ 15-1-67. Effect of fraudulent concealment of cause of action

If a person liable to any personal action shall fraudulently conceal the cause of action from the knowledge of the person entitled thereto, the cause of action shall be deemed to have first accrued at, and not before, the time at which such fraud shall be, or with reasonable diligence might have been, first known or discovered.

Source: Codes, 1857, ch. 57, art. 14; 1871, § 2158; 1880, § 2679; 1892, § 2749; 1906, § 3109; Hemingway's 1917, § 2473; 1930, § 2312; 1942, § 742.

§ 15-1-69. Commencement of new action subsequent to abatement or defeat of original action

If in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on appeal, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in case of the plaintiff's death, commence such new action, within the said one year.

Source: Codes, Hutchinson's 1848, ch. 57, art. 1 (16); 1857, ch. 57, art. 19; 1871, § 2163; 1880, § 2686; 1892, § 2756; 1906, § 3116; Hemingway's 1917, § 2480; 1930, § 2314; 1942, § 744.

§ 15-1-71. Limitation of setoff

All the provisions of this chapter shall apply to the case of any debt or demand on the contract, alleged by way of setoff on the part of a defendant. The time of limitation of such debt or demand shall be computed in like manner as if an action had been commenced therefor at the time when the plaintiff's action was commenced. The fact that a setoff is barred shall not preclude the defendant from using it as such if he held it against the debt sued on before it was barred.

Source: Codes, 1857, ch. 57, art. 22; 1871, § 2166; 1880, § 2687; 1892, § 2756a; 1906, § 3117; Hemingway's 1917, § 2481; 1930, § 2317; 1942, § 747.

§ 15-1-73. New promise to be in writing; effect of new promise by one or more joint contractors as against non-promisors

In actions founded upon any contract, an acknowledgment or promise shall not be evidence of a new or continuing contract whereby to take any case out of the operation of the provisions of this chapter or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing signed by the party chargeable thereby. Where there shall be two or more joint contractors, one or more of them shall not lose the benefit of the provisions of this chapter so as to be chargeable, by reason only of an

acknowledgment or promise made or signed by any other or others of them. In actions against joint contractors, if the plaintiff be barred as to one or more of the defendants but be entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover, and for the other defendants against the plaintiff.

Source: Codes, Hutchinson's 1848, ch. 57, art. 6 (16); 1857, ch. 57, art. 21; 1871, § 2165; 1880, § 2688; 1892, § 2757; 1906, § 3118; Hemingway's 1917, § 2482; 1930, § 2318; 1942, § 748.

§ 15-1-75. Bar of statute of limitations against one does not affect another jointly interested

In all cases where the interests are joint, one shall not be barred because another jointly interested is, and the statute of limitations provided in this chapter shall be severally applied, and not jointly, to the right of actions, in whatever cause, pertaining to each of all the parties, though jointly interested.

Source: Codes, 1906, § 3128; Hemingway's 1917, § 2492; 1930, § 2320; 1942, § 750.

§ 15-1-77. Effect upon limitations of concurrent jurisdiction in courts of common law and of equity

Whenever there be a concurrent jurisdiction in the courts of common law and in the courts of equity of any cause of action, the provisions of this chapter limiting a time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits to be brought for the same cause in a court of chancery.

Source: Codes, 1857, ch. 57, art. 30; 1871, § 2174; 1880, § 2695; 1892, § 2762; 1906, § 3124; Hemingway's 1917, § 2488; 1930, § 2321; 1942, § 751.

§ 15-1-79. Limitations inapplicable to suits on certain obligations of banks and moneyed corporations

None of the provisions of this chapter shall apply to suits brought to enforce payment of notes, bills, or evidences of debt issued by any bank or moneyed corporation.

Source: Codes, 1857, ch. 57, art. 27; 1871, § 2171; 1880, § 2690; 1892, § 2758; 1906, § 3119; Hemingway's 1917, § 2483; 1930, § 2319; 1942, § 749.

§ 15-1-81. [For effective date and applicability, see subsection (6)] Actions on nonnegotiable promissory notes

- (1) An action to enforce the obligations of a party to pay a nonnegotiable promissory note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the promissory note, or if a due date is accelerated, within six (6) years after the accelerated date.
- (2) If demand for payment is made to the maker of a nonnegotiable promissory note payable on demand, an action to enforce the obligation of a party to pay the promissory note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the promissory note is barred if neither principal nor interest on the promissory note has been paid for a continuous period of ten (10) years.
- (3) For purposes of this section, a "nonnegotiable promissory note" is an unconditional written undertaking to pay absolutely and in any event a fixed amount of money signed by the person undertaking to pay the money that is not an "instrument" under Section 75-3-104(b). Nonnegotiable promissory notes for purposes of this section include, but are not limited to, promissory notes that:
 - (a) bear a variable rate of interest or provide for interest by reference to information not contained in the promissory note;
 - (b) provide for interest after default;
 - (c) are nonrecourse to the person undertaking to pay the money; or
 - (d) qualify as "instruments" under Section 75-9-102(a)(47).
- (4) This section shall not apply to negotiable promissory notes, drafts, checks, certificates of deposit or any other instrument or item for which Section 75-3-118 provides the applicable statute of limitations. Neither a lease nor a security agreement is a promissory note for purposes of this section. A promissory

note is not investment property as defined in Section 75-9-102(a)(49), a letter of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. It is the intention of this section that a "note," as defined in Section 75-3-104(e), and nonnegotiable promissory notes, as defined in this section, shall have the same statutes of limitations.

- (5) This section shall not apply to obligations arising from retail installment contracts. For purposes of this section, a "retail installment contract" is a contract for the sale of goods under which the buyer makes periodic payments and the seller retains a security interest in the goods. For the purposes of this section, "goods" have the same meaning as the definition of "goods" in Section 75-9-102(a)(44).
- (6) This section takes effect on July 1, 2012, and shall apply to all nonnegotiable promissory notes for which the statute of limitations in effect immediately prior to that date has not run. This section shall have no application to promissory notes for which the statute of limitations has run prior to July 1, 2012.

Source: Laws, 2010, ch. 506, §2, eff. 7/1/2010. Note: For effective date and applicability, see subsection (6).

PREVENTION OF FRAUDS

§§ 15-3-1 through 15-3-15

§ 15-3-1. Certain contracts to be in writing

An action shall not be brought whereby to charge a defendant or other party:

- (a) upon any special promise to answer for the debt or default or miscarriage of another person;
- (b) upon any agreement made upon consideration of marriage, mutual promises to marry excepted;
- (c) upon any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer term than one year;
- (d) upon any agreement which is not to be performed within the space of fifteen months from the making thereof; or
- (e) upon any special promise by an executor or administrator to answer any debt or damage out of his own estate; unless, in each of said cases, the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing.

Source: Codes, Hutchinson's 1848, ch. 47, art. 1 (1); 1857, ch. 44, art. 1; 1871, § 2892; 1880, § 1292; 1892, § 4225; 1906, § 4775; Hemingway's 1917, § 3119; 1930, § 3343; 1942, § 264; Laws, 1926, ch. 152.

§ 15-3-3. Repealed

History. Repealed by Laws of 2006, ch. 371, §13, eff. 7/1/2006.

§ 15-3-5. Fraudulent conveyances, judgments, loans and the like; exceptions

Section 15-3-3 shall not extend to any estate or interest in any lands, goods or chattels, or any rents, common, or profit out of the same, which shall be upon good consideration and bona fide lawfully conveyed or assured to any person or persons, bodies-politic or corporate, nor shall it in any case extend to creditors whose debts were contracted after such fraudulent act, unless made with intent to defraud them, and though a conveyance or contract be decreed void as to prior creditors, it shall not, on that account, be void as to subsequent creditors or purchasers.

Source: Codes, Hutchinson's 1848, ch. 47, art. 1 (3); 1857, ch. 44, art. 3; 1871, § 2894; 1880, § 1294; 1892, § 4228; 1906, § 4778; Hemingway's 1917, § 3122; 1930, § 3346; 1942, § 267.

§ 15-3-7. Property of improperly disclosed principal or partner to be treated as property of one ostensibly transacting business

If a person shall transact business as a trader or otherwise, with the addition of the words "agent," "factor," "and company," or "& Co.," or like words, and fail to disclose the name of his principal or partner by a sign in letters easy to be read, placed conspicuously at the house where such business is transacted, or if a person shall transact business in his own name without any such addition, all the property, stock, money and choses in action used or acquired in such business shall, as to the creditors of such person, be liable for his debts, and be in all respects treated in favor of his creditors as his property. However, the provisions of this section shall not apply to a refrigerated box, vending machine or other container when placed by a person, firm, or corporation in a store, mercantile establishment, or other place of business to be used therein, where said refrigerated box, vending machine, or other container is plainly marked with a sign, painted on or attached to and prominently displayed on such property, showing said property to be the property of the person, firm, or corporation, placing the same therein.

Source: Codes, 1880, § 1300; 1892, § 4234; 1906, § 4784; Hemingway's 1917, § 3128; 1930, § 3352; 1942, § 273; Laws, 1956, ch. 208.

§ 15-3-9. Creditors to be notified of destruction of insured stock of merchandise by fire

In case of the destruction of a stock of merchandise by fire upon which there is insurance against such loss, the holder of such insurance policies shall within five days after such loss notify his creditors to whom he

is indebted for merchandise, of his loss and the amount of insurance carried, and no such policy or policies of insurance shall be transferred or assigned for ten days after such notice, and no such insurance shall be paid for fifteen days next after the occurrence of any such fire.

Source: Codes, Hemingway's 1917, § 3130; 1930, § 3354; 1942, § 276; Laws, 1908, ch. 100.

§ 15-3-11. Actions on contracts made during infancy

An action shall not be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or contract made during infancy, unless such promise or ratification shall be made by some writing, signed by the person to be charged therewith.

Source: Codes, 1857, ch. 44, art. 8; 1871, § 2898; 1880, § 1298; 1892, § 4232; 1906, § 4782; Hemingway's 1917, § 3126; 1930, § 3350; 1942, § 271.

§ 15-3-13. Chapter is not applicable to official sales

Nothing in this article shall apply to official sales by sheriffs, constables, executors, administrators, guardians, receivers, commissioners, trustees in bankruptcy, or any public officer.

Source: Codes, Hemingway's 1917, § 3131; 1930, § 3355; 1942, § 277; Laws, 1908, ch. 100.

§ 15-3-15. Effect of chapter on rules of evidence or presumptions of law

Except as especially provided, nothing contained in this article, nor any act thereunder, shall change or affect the present rules of evidence or the present presumptions of law.

Source: Codes, Hemingway's 1917, § 3132; 1930, § 3356; 1942, § 278; Laws, 1908, ch. 100.

LIABILITY OF SHERIFF

§ 19-25-49

§ 19-25-49. Liability of sheriff for not returning money advanced for executing process in case of its non-execution

If any sheriff fails to execute any process for the execution of which his fees have been paid in advance, and does not return with the writ the money so advanced, he shall be liable on his bond, if the process issued from the circuit or chancery court, for Three Hundred Dollars (\$300.00), and if from a court of a justice of the peace, for Two Hundred Dollars (\$200.00), which sum may be recovered on the motion of the party at whose instance the process issued, in the court from which it issued, on five days' notice to the officer and his sureties.

Source: Codes, 1892, § 4122; 1906, § 4674; Hemingway's 1917, § 3091; 1930, § 3321; 1942, § 4246.

EXEMPT PROPERTY

§§ 85-3-1 through 85-3-52

§ 85-3-1. Property exempt from seizure under execution or attachment

There shall be exempt from seizure under execution or attachment:

- (a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars (\$10,000.00) in cumulative value:
 - (i) Household goods, wearing apparel, books, animals or crops;
 - (ii) Motor vehicles;
 - (iii) Implements, professional books or tools of the trade;
 - (iv) Cash on hand;
 - (v) Professionally prescribed health aids;
 - (vi) Any items of tangible personal property worth less than Two Hundred Dollars (\$200.00) each.

Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawn mower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

- (b)
 - (i) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property.
 - (ii) Income from disability insurance.
- (c) All property in this state, real, personal and mixed, for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan. As used in this paragraph (c), "pension or other retirement plan" includes:
 - (i) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;
 - (ii) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and
 - (iii) An individual retirement account.
- (d) One (1) mobile home, trailer, manufactured housing, or similar type dwelling owned and occupied as the primary residence by the debtor, not exceeding a value of Thirty Thousand Dollars (\$30,000.00); in determining this value, existing encumbrances on the dwelling, including taxes and all other liens, shall first be deducted from the actual value of the dwelling. A debtor is not entitled to the exemption of a mobile home as personal property who claims a homestead exemption under Section 85-3-21, and the exemption shall not apply to collection of delinquent taxes under Sections 27-41-101 through 27-41-109.
- (e) Assets held in, or monies payable to the participant or beneficiary from, whether vested or not,
 - (i) a pension, profit-sharing, stock bonus or similar plan or contract established to provide retirement benefits for the participant or beneficiary and qualified under Section 401(a), 403(a), or 403(b) of the Internal Revenue Code (or corresponding provisions of any successor law), including a retirement plan for self-employed individuals qualified under one (1) of such enumerated sections,
 - (ii) an eligible deferred compensation plan described in Section 457(b) of the Internal

- Revenue Code (or corresponding provisions of any successor law), or
- (iii) an individual retirement account or an individual retirement annuity within the meaning of Section 408 of the Internal Revenue Code (or corresponding provisions of any successor law), including a simplified employee pension plan.
 - (f) Monies paid into or, to the extent payments out are applied to tuition or other qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, monies paid out of the assets of and the income from any validly existing qualified tuition program authorized under Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, including, but not limited to, the Mississippi Prepaid Affordable College Tuition (MPACT) Program established under Sections 37-155-1 through 37-155-27 and the Mississippi Affordable College Savings (MACS) Program established under Sections 37-155-101 through 37-155-125.
 - (g) The assets of a health savings account, including any interest accrued thereon, established pursuant to a health savings account program as provided in the Health Savings Accounts Act (Sections 83-62-1 through 83-62-9).
 - (h) In addition to all other exemptions listed in this section, there shall be an additional exemption of property having a value of Fifty Thousand Dollars (\$50,000.00) of whatever type, whether real, personal or mixed, tangible or intangible, including deposits of money, available to any Mississippi resident who is seventy (70) years of age or older.
 - (i) An amount not to exceed Five Thousand Dollars (\$5,000.00) of earned income tax credit proceeds.
 - (j) An amount not to exceed Five Thousand Dollars (\$5,000.00) of federal tax refund proceeds.
 - (k) An amount not to exceed Five Thousand Dollars (\$5,000.00) of state tax refund proceeds.
 - (l) Subject to the provisions of Section 27-7-1003(2), the assets of a catastrophe savings account, including any interest accrued thereon, established under Sections 27-7-1001 through 27-7-1007.
 - (m) Nothing in this section shall in any way affect the rights or remedies of the holder or owner of a statutory lien or voluntary security interest.

Source: Codes, Hutchinson's 1848, ch. 62, art. 1 (23); 1857, ch. 61, art. 280; 1871, § 2131; 1880, § 1244; 1892, § 1963; 1906, § 2139; Hemingway's 1917, § 1812; 1930, § 1755; 1942, § 307; Laws, 1932, ch. 138; Laws, 1948, ch. 232, § 1; Laws, 1962, 1st Ex Sess. ch. 7; Laws, 1966, ch. 318, § 1; Laws, 1980, ch. 540, § 1; Laws, 1981, ch. 469, § 3; Laws, 1987, ch. 473; Laws, 1991, ch. 479, § 7; Laws, 1995, ch. 565, § 1; Laws, 2002, ch. 594, § 1; Laws, 2006, ch. 595, § 1; Laws, 2008, ch. 557, § 1, eff. 7/1/2008. History. Amended by Laws, 2015, ch. 457, HB 1134, 6, eff. 1/1/2015.

§ 85-3-2. Certain federal exemptions prohibited

In accordance with the provisions of Section 522(b) of the Bankruptcy Reform Act of 1978, as amended (11 U.S.C.S. 522(b)), residents of the State of Mississippi shall not be entitled to the federal exemptions provided in Section 522(d) of the Bankruptcy Reform Act of 1978, as amended (11 U.S.C.S. 522(d)). Nothing in this section shall affect the exemptions given to individuals of Mississippi by the Constitution and statutes of the State of Mississippi.

Source: Laws, 1991, ch. 614, § 1, eff. 7/1/1991.

§ 85-3-3. Execution or attachment of personal property; selection of exempt property

Where an officer shall be about to levy an execution or attachment on personal property, some of which shall be claimed as exempt, he shall demand of the defendant that he make selection of such property as is exempt to him and in reference to which he has the right of selection; and the defendant shall then and there make his selection, or, failing to do so, the officer shall make it for him, and any selection so made shall be conclusive on the defendant.

Source: Codes, 1892, § 1966; 1906, § 2142; Hemingway's 1917, § 1817; 1930, § 1761; 1942, § 313.

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations

- (1) The wages, salaries or other compensation of laborers or employees, residents of this state, shall be exempt from seizure under attachment, execution or garnishment for a period of thirty (30) days from the date of service of any writ of attachment, execution or garnishment.
- (2) After the passage of the period of thirty (30) days described in subsection (1) of this section, the maximum part of the aggregate disposable earnings (as defined by Section 1672(b) of Title 15, United States Code Annotated) of an individual that may be levied by attachment, execution or garnishment shall be:
 - (a) In the case of earnings for any workweek, the lesser amount of either,
 - (i) Twenty-five percent (25%) of his disposable earnings for that week, or
 - (ii) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage (prescribed by section 206 (a)(1) of Title 29, United States Code Annotated) in effect at the time the earnings are payable; or
 - (b) In the case of earnings for any period other than a week, the amount by which his disposable earnings exceed the following "multiple" of the federal minimum hourly wage which is equivalent in effect to that set forth in subparagraph (a)(ii) of this subsection (2): The number of workweeks, or fractions thereof multiplied by thirty (30) multiplied by the applicable federal minimum wage.
- (3) (a) The restrictions of subsection (1) and (2) of this section do not apply in the case of:
 - (i) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.
 - (ii) Any debt due for any state or local tax.
- (b) Except as provided in subparagraph (b)(iii) of this subsection (3), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:
 - (i) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and
 - (ii) Where such individual is not supporting such a spouse or dependent child described in subparagraph (b)(i) of this subsection (3), sixty percent (60%) of such individual's disposable earnings for that week;
 - (iii) With respect to the disposable earnings of any individual for that workweek, the fifty percent (50%) specified in subparagraph (b)(i) of this subsection (3) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subparagraph (b)(ii) of this subsection (3) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the period of twelve (12) weeks which ends with the beginning of such workweek.

Source: Laws, 1980, ch. 540, § 2; Laws, 1981, ch. 469, § 4, eff. 4/7/1981.

§ 85-3-5. Execution or attachment of personal property; plaintiff's indemnity bond; liability of officer

If any sheriff or other officer shall levy or be about to levy an execution or attachment on any personal property claimed as exempt, and a doubt shall arise as to the liability of the property to be sold, he may demand of the plaintiff a bond, with sufficient sureties, payable to such officer, in a sufficient penalty, conditioned to indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and to pay the defendant all damages which he may sustain in consequence of the seizure or sale; and if such bond be not given, after reasonable notice, in writing, from the officer to the plaintiff, his agent or attorney, that it is required, the officer may refuse to levy, or, having levied, may dismiss the levy; but if the required bond be given, the officer shall seize and sell or dispose of the property according

to the command of the process in his hands, and shall return the bond with the execution or attachment. If an officer shall seize personal property exempt from execution, he shall be liable to an action at the suit of the owner for all damages sustained thereby, unless he have taken an indemnifying bond.

Source: Codes, 1857, ch. 61, art. 280 (8); 1871, §§ 2132, 2134; 1880, §§ 1245, 1247; 1892, §§ 1967, 1969; 1906, §§ 2143, 2145; Hemingway's 1917, §§ 1818, 1820; 1930, §§ 1762, 1764; 1942, §§ 314, 316.

§ 85-3-7. Execution or attachment of personal property; defendant may sue on plaintiff's indemnity bond

After the execution of such bond, the defendant in the execution or attachment shall be barred of any claim against the officer so seizing or selling the property, unless the obligors in the bond be or become insolvent, or the bond be otherwise invalid; and the defendant in execution or attachment may sue on the bond in the name of the payee, for his use, and recover double damages for the loss he has sustained by the seizure or sale of the property.

Source: Codes, 1871, § 2133; 1880, § 1246; 1892, § 1968; 1906, § 2144; Hemingway's 1917, § 1819; 1930, § 1763; 1942, § 315.

§ 85-3-9. Execution or attachment of personal property; replevy by defendant

Any defendant whose exempt property is seized may replevy the same by giving bond with sureties, to be approved by the officer seizing it, in double the value of the property, payable to the plaintiff in the execution or attachment, and conditioned to have the property forthcoming, to abide the event of an issue to be made up at the return term of the process; and in such case the officer shall deliver the property to the defendant, and return the bond with the process; and at the return term an issue shall be made up under the direction of the court, and tried, as in case of the trial of the right of property levied upon and claimed by a third person, and if found for defendant he shall recover costs, damages, and a penalty of Twenty Dollars (\$20.00) of the plaintiff and his sureties on the bond of indemnity, if any have been given; but if found for plaintiff, he shall have judgment against the obligors in the replevy bond for the value of the property and costs of suit.

Source: Codes, 1857, ch. 61, art. 280 (8); 1871, § 2134; 1880, § 1247; 1892, § 1969; 1906, § 2145; Hemingway's 1917, § 1820; 1930, § 1764; 1942, § 316.

§ 85-3-11. Proceeds of life insurance policy; named beneficiaries; certain proceeds of policies exempt from liability for debts of person insured

- (1) Except as provided in subsection (2), all proceeds of a life insurance policy including cash surrender and loan values, shall inure to the party or parties named as the beneficiaries thereof, free from all liability for the debts of the person whose life was insured, even though such person paid the premium thereon. In addition, all proceeds, including cash surrender and loan values, of a policy of life insurance owned by or assigned to another, shall inure to the beneficiary or beneficiaries named therein, subject to terms of any assignment, free from all liability for debts of the person whose life was insured.
- (2)
 - (a) The exemption authorized in subsection (1) shall not apply to that portion of the cash surrender value or loan value of any life insurance policy which exceeds the sum of Fifty Thousand Dollars (\$50,000.00) as a result of premiums paid or premium deposits or other payments made within twelve (12) months of issuance of a writ of seizure, attachment, garnishment or other process or the filing of a voluntary or involuntary bankruptcy proceeding under the United States Code.
 - (b) The amount of any premiums for the insurance paid with intent to defraud creditors, with interest thereon, shall inure to the benefit of such creditors from the proceeds of the policy; but the insurer issuing the policy shall be discharged of all liabilities thereon by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have written notice, by or on behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specification of the amount claimed.
 - (c) Notwithstanding any other provision to the contrary, a creditor possessing a valid assignment from the policy owner may recover from either the cash surrender value or the proceeds of the life insurance policy the amount secured by the assignment with interest.

Source: Codes, 1880, § 1261; 1892, § 1964; 1906, § 2140; Hemingway's 1917, § 1813; 1930, § 1756; 1942, § 308; Laws, 1966, ch. 519, § 1;

§ 85-3-13. Proceeds of life insurance policy; payable to executor; limits

The proceeds of a life insurance policy not exceeding Fifty Thousand Dollars (\$50,000.00) payable to the executor, or administrator, of the insured, shall inure to the heirs or legatees, freed from all liability for the debts of the decedent, except premiums paid on the policy by any one other than the insured, for debts due for expenses of last illness and for burial; but if the life of the deceased be otherwise insured for the benefit of his heirs or legatees at the time of his death, and they shall collect the same, the sum collected shall be deducted from the Fifty Thousand Dollars (\$50,000.00) and the excess of the latter only shall be exempt. No fee shall be paid or allowed by the court to the executor or administrator for handling same.

Source: Codes, 1892, § 1965; 1906, § 2141; Hemingway's 1917, § 1814; 1930, § 1757; 1942, § 309; Laws, 1908, ch. 175; Laws, 1922, ch. 186; Laws, 1994, ch. 621, § 2, eff. 7/1/1994.

§ 85-3-15. Proceeds of life insurance policy; unassigned policies

The proceeds of all unassigned life insurance policies payable to the executor or administrator of the insured, upon the death of the insured, shall, whether exempt or not, be paid by such insurance company, to the executor or administrator of such insured deceased, and the receipt of such executor or administrator shall constitute a full and complete acquittance to such insurance company as against the claims of any and all persons claiming any rights under such policy of insurance.

Source: Codes, 1930, § 1758; 1942, § 310; Laws, 1922, ch. 186.

§ 85-3-17. Judgment for personal injury

The proceeds of any judgment not exceeding Ten Thousand Dollars (\$10,000.00) recovered by any person on account of personal injuries sustained, shall inure to the party or parties in whose favor such judgment may be rendered, free from all liabilities for the debts of the person injured.

Source: Codes, Hemingway's 1917, § 1815; 1930, § 1759; 1942, § 311; Laws, 1914, ch. 146.

§ 85-3-19. Beneficiaries of deceased plaintiff take damages free from debts

Whenever suit was begun in the name of the party injured, and such party shall die while said suit is pending in any court, and said suit shall be revived in the name of the administrator, any sum finally recovered in any such suit, if such deceased left surviving a husband or wife, or children or father or mother, to whom such judgment shall be distributed, as may be provided by law, such wife or children, or father or mother, or husband who may be entitled to recover or receive such moneys shall take same free from all liabilities for the debts of the deceased, and also free from all liabilities for the debts of the person or persons, as above entitled to receive them.

Source: Codes, Hemingway's 1917, § 1816; 1930, § 1760; 1942, § 312; Laws, 1914, ch. 146.

§ 85-3-21. Homestead exemption; land and buildings

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale, under execution or attachment, the land and buildings owned and occupied as a residence by him, or her, but the quantity of land shall not exceed one hundred sixty (160) acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of Seventy-five Thousand Dollars (\$75,000.00); provided, however, that in determining this value, existing encumbrances on such land and buildings, including taxes and all other liens, shall first be deducted from the actual value of such land and buildings. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

Source: Codes, Hutchinson's 1848, ch. 62, art. 17(1); 1857, ch. 61, art. 281; 1871, § 2135; 1880, § 1248; 1892, § 1970; 1906, § 2146; Hemingway's 1917, § 1821; 1930, § 1765; 1942, § 317; Laws, 1938, ch. 125; Laws, 1950, ch. 360; Laws, 1970, ch. 323, § 1; Laws, 1979, ch. 447, § 1; Laws, 1991, ch. 479, § 1, eff. 7/1/1991.

§ 85-3-23. Homestead exemption; land and buildings; insurance proceeds; personal property

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale under execution or attachment the land and buildings owned and occupied as a residence by such person, also the proceeds of any insurance, fire or otherwise, on any such buildings destroyed or damaged by fire, tornado or otherwise, not to exceed in value, save as hereinafter provided, Seventy-five Thousand Dollars (\$75,000.00), and personal property to be selected by him or her not to exceed in value Two Hundred Fifty Dollars (\$250.00) or the articles specified as exempt to the head of a family; provided, however, that no sum or amount due, or to become due such person, nor any part thereof, for or on account of wages, salaries or commissions, shall in any proceedings be selected or claimed as exempt under this section. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

Source: Codes, 1871, § 2140; 1880, § 1249; 1892, § 1971; 1906, § 2147; Hemingway's 1917, § 1822; 1930, § 1766; 1942, § 318, Laws, 1926, ch. 159; Laws, 1931, ch. 18; Laws, 1970, ch. 323, § 2; Laws, 1979, ch. 447, § 2; Laws, 1991, ch. 479, § 2, eff. 7/1/1991.

§ 85-3-25. Homestead declaration; form; deposit with clerk of chancery court

Any citizen entitled to a homestead and desiring to select the same and obtain the advantages of such selection, may make a declaration thereof to the following effect, namely:

"The State of Mississippi, Homestead declaration.

County of

"I, John Doe [or Nancy Roe], a citizen of said state and county, do declare that I am entitled to a homestead in said county, and that I have selected the same as follows: [Here describe the land and premises. Append plat if desired.]

"Witness my signature, this day of, A. D. " "

The declaration shall be acknowledged or proved as a deed is required to be, and deposited in the office of the clerk of the chancery court for record, in a book to be kept for that purpose, and styled "Homestead Record."

Source: Codes, 1892, § 1972; 1906, § 2148; Hemingway's 1917, § 1823; 1930, § 1767; 1942, § 319.

§ 85-3-27. Homestead declaration; effect

The declaration, for not more than one hundred sixty (160) acres, and not exceeding in value Seventy-five Thousand Dollars (\$75,000.00); or, if the homestead be in a city, town or village, not exceeding in value Seventy-five Thousand Dollars (\$75,000.00) after being filed for record, shall be notice to all persons to be affected thereby; and shall bind the exemptionist, the spouse of the exemptionist if the exemptionist be married, and the creditors of the exemptionist until the exemptionist shall execute and file a new declaration which shall nullify the preceding one, and otherwise have like effect; and shall moreover entitle the exemptionist thereafter to hold the same as exempt to the extent of such value; but subject to contest and legal designation or allotment, if the exemptionist had declared for too much, or has insufficiently or improperly described the premises; and to contest by creditors on the ground that the exemptionist was not entitled to a homestead, and by the spouse of the exemptionist on the ground that it was intended to defraud or circumvent such spouse.

Source: Codes, 1892, § 1973; 1906, § 2149; Hemingway's 1917, § 1824; 1930, § 1768; 1942, § 320; Laws, 1966, ch. 622, § 1; Laws, 1970, ch. 323, § 3; Laws, 1979, ch. 447, § 3; Laws, 1991, ch. 479, § 3; eff. 7/1/1991.

§ 85-3-29. Homestead declaration; recording

The clerk shall file, certify, record, and alphabetically index the declaration, in the same manner as deeds are required to be, and with like effect in all respects, and under like penalties.

Source: Codes, 1892, § 1974; 1906, § 2150; Hemingway's 1917, § 1825; 1930, § 1769; 1942, § 321.

§ 85-3-31. Homestead designated by law when not selected

The homestead of every citizen entitled to such an exemption who shall not select or who has improperly selected his homestead by declaration, shall be, namely: A tract of land in the form of, first, a square, or second,

a parallelogram, if practicable, and composed, if practicable, of contiguous parcels, and including the dwelling house, and, if practicable, the other principal buildings, and not to exceed one hundred sixty (160) acres in area, nor Seventy-five Thousand Dollars (\$75,000.00) in value. And in all cases where the homestead may be composed of detached parcels of land, it shall be made up of those nearest the forty (40) acre or other less tract containing the dwelling house.

Source: Codes, 1892, § 1975; 1906, § 2151; Hemingway's 1917, § 1826; 1930, § 1770; 1942, § 322; Laws, 1970, ch. 323, § 4; Laws, 1979, ch. 447, § 4; Laws, 1991, ch. 479, § 4; eff. 7/1/1991.

§ 85-3-33. Heirs may designate homestead

In all cases where a deceased person has left a widow or husband, as the case may be, or other heirs at law, then such widow or husband or other heirs at law, or both, who may be entitled by law to inherit from the deceased person, shall be entitled to have the homestead exempt, whether selected, designated or declared for by said decedent in his lifetime or not, and such person or persons so entitled to inherit by law may select, designate or declare for such homestead on or any of the real property of which said decedent died seized and possessed, and have the same set apart to them, or either of them, as the homestead of the decedent.

Source: Codes, 1892, § 1975; 1906, § 2151; Hemingway's 1917, § 1826; 1930, § 1770; 1942, § 322; Laws, 1970, ch. 323, § 4, eff. 7/1/1970.

§ 85-3-35. Allotment of homestead; selection of householders or freeholders to set off portion of land

If the land on which the person claiming the exemption resides exceeds one hundred sixty (160) acres in quantity or Seventy-five Thousand Dollars (\$75,000.00) in value, inclusive of improvements, and a proper selection of a homestead has not been made and filed for record, the officer holding an execution against such persons, and not finding other property to satisfy the same, shall levy the execution on the whole land, and shall notify the defendant, if to be found, and the plaintiff or his attorney, if in his county, each to select one (1) householder or freeholder; and each party may select one (1), and inform the officer of his selection, and the officer shall select a third; or, if defendant or plaintiff or his attorney be absent from the county, or if he shall not make a selection, or if the person selected will not act, the officer shall select the three (3) householders or freeholders, who, on oath to be administered by him, shall set off to such person a portion of the land, embracing the dwelling house and outhouses and not exceeding one hundred sixty (160) acres in quantity nor Seventy-five Thousand Dollars (\$75,000.00) in value, and the allotment, distinctly indicated by metes and bounds or other sufficient description, shall be returned with the execution; and the levy of the execution shall be dismissed as to the part so allotted; and the officer may advertise and sell the remainder of the land. In making such allotment, the homestead shall be laid off as designated by law in case of the debtor's failure to select his homestead and file his declaration thereof for record.

Source: Codes, 1857, ch. 61, art. 282; 1871, § 2136; 1880, § 1251; 1892, § 1976; 1906, § 2152; Hemingway's 1917, § 1827; 1930, § 1771; 1942, § 323; Laws, 1970, ch. 323, § 5; Laws, 1979, ch. 447, § 5; Laws, 1991, ch. 479, § 5, eff. 7/1/1991.

§ 85-3-37. Allotment of homestead; premises not capable of division

If the premises be not capable of being so divided as to set off the debtor a part, including the dwelling house and not exceeding Seventy-five Thousand Dollars (\$75,000.00) in value, inclusive of improvements, or if the debtor has made a valid homestead declaration, and the homestead exceeds Seventy-five Thousand Dollars (\$75,000.00) in value, the householders or freeholders shall value the land, inclusive of the dwelling house and buildings; and if the surplus of the valuation, over and above the exempt value, shall, within sixty (60) days, be paid by the execution-debtor, the premises shall not be sold; but if the surplus be not paid within sixty (60) days after the valuation, the officer may advertise and sell the premises, if the same shall bring a greater sum than the exempt value; and out of the proceeds of the sale he shall pay to the execution-debtor the sum of Seventy-five Thousand Dollars (\$75,000.00).

Source: Codes, 1857, ch. 61, art. 283; 1871, § 2137; 1880, § 1252; 1892, § 1977; 1906, § 2153; Hemingway's 1917, § 1828; 1930, § 1772; 1942, § 324; Laws, 1970, ch. 323, § 6; Laws, 1979, ch. 447, § 6; Laws, 1991, ch. 479, § 6, eff. 7/1/1991.

§ 85-3-39. Allotment of homestead; how contested by plaintiff

If, before or after the return of the execution, the plaintiff shall file in the clerk's office from which the execution issued, or before the justice of the peace who issued it, as the case may be, an affidavit that he verily believes the allotment made to the debtor by the freeholders or householders to be incorrect, and the land so allotted by them, or some part of it, to be liable to sale under his execution, a summons shall be issued by the clerk or justice of the peace for the defendant, returnable to the next term of the court, requiring him to appear; and, on return of the summons executed, an issue shall be made up under the direction of the court and tried, as to whether the allotment were correctly and fairly made or not, and, if not, what part of the land ought to be sold under the execution; and, if it be found that any part of the land is subject to be sold, a venditioni exponas shall be issued for the sale of such part, and the plaintiff shall have judgment for costs; but if the issue be found for the defendant, he shall recover costs of the plaintiff.

Source: Codes, 1871, § 2138; 1880, § 1253; 1892, § 1978; 1906, § 2154; Hemingway's 1917, § 1829; 1930, § 1773; 1942, § 325.

§ 85-3-41. Allotment of homestead; how contested by defendant

If a defendant be dissatisfied with the allotment, he may make affidavit before the sale, which affidavit may be made before the officer having the execution, that he verily believes it to be incorrect, specifying wherein he believes it so, and the officer shall suspend the sale of so much as the defendant so claims, and return the affidavit with the execution to the court to which it is returnable; and a summons shall issue for plaintiff, or, if he be a non-resident of this state, for his attorney of record in the case, if he have one; and if he be non-resident, and have no attorney in this state, publication may be made as in other cases; and when the process shall have been returned executed, or publication made, an issue shall be made up, and like proceeding had as when the plaintiff had filed an affidavit of dissatisfaction; and if the issue, in whole or in part, be found in favor of defendant, judgment shall be entered accordingly, and execution may go according to the judgment.

Source: Codes, 1871, § 2139; 1880, § 1254; 1892, § 1979; 1906, § 2155; Hemingway's 1917, § 1830; 1930, § 1774; 1942, § 326.

§ 85-3-43. Homestead liable to debts when debtor ceases to reside thereon

Whenever the debtor shall cease to reside on his homestead, it shall be liable to his debts, unless his removal be temporary, by reason of some casualty or necessity, and with the purpose of speedily reoccupying it as soon as the cause of his absence can be removed.

Source: Codes, 1871, § 2144; 1880, § 1256; 1892, § 1981; 1906, § 2157; Hemingway's 1917, § 1832; 1930, § 1776; 1942, § 328.

§ 85-3-45. Repealed

History. Repealed by Laws, 1979, ch. 447, § 7, eff. 7/1/1979.

§ 85-3-47. Property not exempt from execution

Property shall not be exempt from execution when the purchase-money thereof forms, in whole or in part, the debt on which the judgment is founded; but if the judgment be not in whole for purchase-money, and the execution be levied on property exempt but for the provisions hereof, and the exemptionist pay or tender the amount of purchase-money included in the judgment before sale, the property shall be released; nor shall any property be exempt from sale for nonpayment of taxes or assessments, or for any labor done thereon, or materials furnished therefor, or when the judgment is for labor performed or upon a forfeited recognizance or bail bond.

Source: Codes, 1857, ch. 61, art. 284; 1871, § 2142; 1880, § 1255; 1892, § 1980; 1906, § 2156; Hemingway's 1917, § 1831; 1930, § 1775; 1942, § 327.

§ 85-3-49. Exempt property may be disposed of

The exempt property, real or personal, disposed of by the owner, shall not by disposal become liable to the debts of the owner; and any debtor leaving this state may take with him his personal property which is exempt from execution.

Source: Codes, 1871, § 2143; 1880, § 1257; 1892, § 1982; 1906, § 2158; Hemingway's 1917, § 1833; 1930, § 1777; 1942, § 329.

§ 85-3-51. Exemptions allowed to residents only

The exemptions in this chapter shall be allowed in favor of residents of this state only.

Source: Codes, 1892, § 1986; 1906, § 2162; Hemingway's 1917, § 1838; 1930, § 1781; 1942, § 333.

§ 85-3-52. Judgment or claim of another state or political subdivision for failure to pay income tax on pension or retirement benefits

- (1) A judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state.
- (2) As used in this section, "pension or other retirement plan" includes:
 - (a) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;
 - (b) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and
 - (c) An individual retirement account.

Source: Laws, 1995, ch. 565, § 2, eff. 7/1/1995.

REFUSING OR FAILING TO POINT OUT PROPERTY

§ 97-9-71

§ 97-9-71. Property subject to seizure; refusing or failing to point out to officers

If any person shall have in his possession or under his control personal property of any kind subject to seizure by virtue of any legal process in the hands of any state or federal law enforcement officer, as the property of another or as subject to such process, and shall refuse or omit to point out such property to such officer on his demanding it, and to permit him to take possession of it, he shall, upon conviction, be subject to a fine of not less than the value of such property, nor more than double such value, or to imprisonment in the county jail not less than one (1) month nor more than six (6) months, or to both such fine and imprisonment.

Source: Codes, 1880, § 2981; 1892, § 1223; 1906, § 1299; Hemingway's 1917, § 1032; 1930, § 1063; 1942, § 2295; Laws, 1993, ch. 547, § 3, eff. 4/15/1993.

RESISTING SERVICE OF PROCESS

§ 97-9-75

§ 97-9-75. Resisting service of process

Any person who knowingly and wilfully opposes or resists any officer or other authorized person in serving or attempting to serve or execute any legal writ or process, shall be guilty of a misdemeanor.

Source: Codes, 1880, § 2975; 1892, § 1221; 1906, § 1297; Hemingway's 1917, § 1030; 1930, § 1061; 1942, § 2293.