# Chapter 23

## 1959 REPLACEMENT PART

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## IN GENERAL

**23.010 Application to suits.** The provisions of ORS 23.030 to 23.100, 23.160, 23.170 to 23.190, 23.220, 23.320 to 23.350, 23.410 to 23.600, and 23.710 to 23.750 shall apply to the enforcement of decrees, so far as the nature of the decree may require or admit of it; but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in a suit.

**23.020 Decree requiring performance deemed equivalent thereto; enforcement by contempt proceedings.** (1) A decree requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply therewith, be deemed to be equivalent thereto.

(2) The court or judge thereof may enforce an order or decree in a suit by punishing the party refusing or neglecting to comply therewith, as for a contempt.

(3) Subsection (2) of this section does not apply to an order or decree for the payment of money, except orders and decrees for the payment of suit money, alimony and money for support, maintenance, nurture, education or attorney's fees pendente lite, or by final decree, in:

(a) Suits for dissolution of marriages.

(b) Suits for separation from bed and board.

(c) Proceedings under ORS 108.110 and 108.120. [Amended by 1955 c.648 §3]

**23.030 When party entitled to writ of execution.** The party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof, and so long as the judgment remains a lien, have a writ of execution issued for its enforcement.

**23.040 Kinds of execution.** There are three kinds of executions: (1) Against the property of the judgment debtor.

(2) Against his person.

(3) For the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

**23.050 Issuance of writ; contents.** The writ of execution shall be issued by the clerk and directed to the sheriff. It shall contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, and if it is for money, shall state the amount actually due thereon, and shall require the sheriff substantially as follows:

(1) If it is against the property of the judgment debtor, and the judgment directs particular property to be sold, it shall require the sheriff to sell such particular property and apply the proceeds as directed by the judgment; otherwise, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter.

(2) If it is issued after the death of the judgment debtor, and is against real or personal property, it shall require the sheriff to satisfy the judgment, with interest, out of any property in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such.

(3) If it is against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pays the judgment, with interest, or is discharged according to law.

(4) If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in subsection (1) of this section, and in that respect it is to be deemed an execution against property.

**23.060 Indorsement of writ; time for return.** The sheriff shall indorse upon a writ of execution, the time when he received it, and the execution shall be returnable, within 60 days after its receipt by the sheriff, to the clerk's office from whence it issued.

**23.070 Counties to which writ may issue.** When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this state. When it requires delivery of real or personal property, it shall be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

**23.080 Execution against person of debtor.** (1) If the action is one in which the defendant might have been arrested, as provided in ORS 29.520, an execution against the person of the judgment debtor may be issued to any county within the state after the return of the execution against his property, unsatisfied in whole or in part, as follows:

(a) When it appears from the record that the cause of action is also a cause of arrest, as prescribed in ORS 29.520, the execution may issue of course.

(b) When no such cause of arrest appears from the record, the execution may issue for any of the causes prescribed in ORS 29.520 that exist at the time of the application therefor, upon leave of the court or judge thereof.

(c) When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either case the order has not been vacated, the execution may issue of course.

(2) When execution is issued against the person of the defendant by leave of the court, it shall be applied for and allowed in the manner provided in ORS 29.530 for allowing a writ of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in ORS 29.540 and 29.550.

**23.090 Detention of debtor; liability for expense.** A person arrested on execution shall be imprisoned in the county jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the

plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same manner and to the same extent as prescribed in ORS 29.730 and 29.740.

**23.100 Issuance after death of judgment debtor.** Notwithstanding the death of a party after judgment, execution thereon against his property, or for the delivery of real or personal property, may be issued and executed in the same manner, and with the same effect, as if he were still living; but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party, without leave of the court having probate jurisdiction or judge thereof.

**23.110 to 23.150** [Reserved for expansion]

## EXEMPTIONS

**23.160 Leviable property generally; selectable exemptions.** All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, the following property, except as provided in ORS 23.220, shall be exempt from execution:

(1) Books, pictures and musical instruments owned by any person to the value of $75.

(2) Necessary wearing apparel, owned by any person, to the value of $100, and, if such person is a householder, for each member of his family to the value of $50.

(3) The tools, implements, apparatus, team, vehicle, harness or library, necessary to enable any person to carry on the trade, occupation or profession by which he habitually earns his living, to the value of $400. Also sufficient quantity of food to support such team, if any, for 60 days. The word "team" in this paragraph does not include more than one yoke of oxen, or a span of horses or mules. The word "vehicle" includes an automobile, truck, trailer, truck and trailer, or other motor vehicle.

(4) Poultry and other domestic fowls, kept for family use, or kept for the purpose of raising them for the livelihood of any person, to the value of $50.

(5) If owned by a householder, and in actual use, or kept for use by and for his family or when being removed from one habitation to another on a change of residence: Ten sheep, with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; food sufficient to support such animals, if any, for three months; household goods, furniture, radio, television sets and utensils all to the total value of $300; provisions actually provided for family use and necessary for the support of such householder and family for six months; also three cords of firewood or one ton of coal.

(6) The seat or pew occupied by a householder or his family in a place of public worship.

(7) All property of the state or any county, incorporated city, town or village therein, or of any other public or municipal corporation of like character. [Amended by 1957 c.687 §1]

**23.164 Exemption of mobile home.** (1) A mobile home that is the actual abode of and occupied by the owner, his spouse, parent or child, when such mobile home is occupied as their sole residence and no other homestead exemption is claimed, shall be exempt from execution and from liability in any form for the debts of the owner to the value of $3,000, except as otherwise provided by law.

(2) The exemption provided for in subsection (1) of this section shall not be impaired by temporary removal or absence with the intention to reoccupy the mobile property as a home, nor by the sale thereof, but shall extend to the proceeds derived from such sale up to $3,000 while held, with the intention to procure another mobile home or other homestead therewith, for a period not exceeding one year.

(3) The owner of a mobile home, or the owner's spouse, parent, child, agent or attorney may notify the officer making the levy at any time before the sale that the property is claimed exempt as a home. Upon demand by the plaintiff, after such notice, the levying officer may proceed to advertise and sell the premises and out of the proceeds pay the home claimant the sum of $3,000 and apply the balance of the proceeds on the execution; provided, however, that no sale shall be made where the mobile property is claim-

ed as a home unless the sum bid for such property is in excess of $3,000; if no bid in excess of $3,000 is received, the expense of the advertising and preparation for sale shall be borne by the plaintiff.

(4) The judgment debtor's claim of exemption for a mobile home shall, upon application of either the plaintiff or the judgment debtor, be adjudicated as provided in ORS 23.168.

(5) The provisions of subsections (1), (2), (3) and (4) of this section do not apply to mechanics' liens for work, labor or material done or furnished exclusively for the improvement of the mobile home, or to purchase money liens and mortgages lawfully executed, or to executions issued on a judgment recovered for the purchase price. [1957 c.687 §2]

**23.168 Adjudication of judgment debtor's claim of exemption.** The judgment debtor's claim of exemption under ORS 23.160 or 23.164 shall, upon application of either plaintiff or judgment debtor, be adjudicated in a summary manner in the court out of which the execution issued, by affidavit, by oral testimony in open court, or otherwise as the court may determine. [1957 c.687 §3]

**23.170 Pensions exempted without necessity for claim.** All pensions granted to any person in recognition by reason of a period of employment by or service for the government of the United States, or any state, or political subdivision of any state, or any municipality, person, partnership, association or corporation, shall be exempt from execution and all other process, mesne or final. Such exemption shall be effective without necessity of claim thereof by the pensioner.

**23.180 Exemption of wages.** The earnings of any debtor for personal services performed by him at any time within 30 days next preceding service of an execution or other process, which, together with the other earnings of the debtor for personal services performed within said 30 days, amount to the sum of $175 or less, shall be exempt from the effect of such process when it is made to appear to the satisfaction of the court, by the affidavit of the debtor or otherwise, that such earnings are necessary for the use of the family supported wholly or partly by the labor of said debtor; except that when the debt is incurred for family expenses 50 percent of such earnings shall be subject to such execution or other process. However, no earnings of any debtor shall be exempt against an execution or other process issued upon a debt or demand incurred for property or money obtained by fraud or under false pretenses. [Amended by 1957 c.550 §1]

**23.190 Public officers and agencies garnishable.** Any salary, wages, credits, or other personal property in the possession or under the control of the state or of any county, city, school district or other political subdivision therein, or any board, institution, commission, or officer of the same, belonging or owed to any person, firm or corporation, shall be subject to execution in the same manner and with the same effect as property in the possession of individuals is subject to execution; however, process in such proceedings may be served only on the board, department, institution, commission, agency, or officer charged with the duty of approving a voucher or claim for such salary, wages, credits, or other property. No clerk or officer of any court shall be required to answer as garnishee as to any moneys or property in his possession in the custody of the law. [Amended by 1959 c.671 §1]

**23.200 Exemption of firearms.** Every white male citizen of this state above the age of 16 years shall be entitled to have, hold and keep, for his own use and defense, the following firearms: Either a rifle, shotgun (double or single barrel), yager, or musket, and one revolving pistol. The same shall be exempt from execution in all cases.

**23.210 Firearms not to be demanded except where services of owner are required.** No officer, civil or military, or other person, shall take from or demand of the owner any firearms mentioned in ORS 23.200, except where the services of the owner are also required to keep the peace or defend the state.

**23.220 Property not exempt from execution for purchase price; no exemption against claim for advancement or labor for business purposes.** (1) No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price.

(2) In all cases where advances of goods,

wares, merchandise or money are made to, or labor performed for, any person, to enable or assist him to carry on any undertaking, trade, business, avocation, occupation or pursuit in which he is engaged, or which shall be used or employed for such purpose, no article of personal property, tool, implement or apparatus used or employed by such person in such undertaking, trade, business, avocation, occupation or pursuit, or money due such person growing out of, or incident thereto, shall be exempt from execution on a judgment recovered for such advances or for such labor performed.

**23.230 Proceeds of casualty and indemnity insurance attachable on execution.** Whenever a judgment debtor has a policy of insurance covering liability, or indemnity for any injury or damage to person or property, which injury or damage constituted the cause of action in which the judgment was rendered, the amount covered by the policy of insurance shall be subject to attachment upon the execution issued upon the judgment.

**23.240 Exemption of homestead or proceeds thereof.** A homestead shall be exempt from sale on execution from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of $7,500, except as otherwise provided by law. The homestead must be the actual abode of and occupied by the owner, his spouse, parent or child, but such exemption shall not be impaired by temporary removal or absence with the intention to reoccupy the same as a homestead, nor by the sale thereof, but shall extend to the proceeds derived from such sale to an amount not exceeding $7,500, while held, with the intention to procure another homestead therewith, for a period not exceeding one year. [Amended by 1959 c.561 §1]

**23.250 Limitation as to quantity of land.** The homestead mentioned in ORS 23.240 shall consist, when not located in any town or city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located in any such town or city, of any quantity of land not exceeding one block, provided such homestead shall not exceed in value the sum of $7,500. [Amended by 1959 c.561 §2]

**23.260 Exemption inapplicable to mechanics' and purchase-money liens and mortgages.** ORS 23.240 to 23.270, 116.590 and 116.595 do not apply to mechanics' liens for work, labor or material done or furnished exclusively for the improvement of the property claimed as a homestead, and to purchase money liens and mortgages lawfully executed.

**23.270 Claim and setting off of homestead; sale; return of execution.** (1) Whenever a levy is made upon a homestead, the owner thereof, or the owner's spouse, parent or child, agent or attorney, may notify the officer making the levy, at any time before the sale, that he claims a homestead in such lands, giving a description of the quantity of land claimed as a homestead and an estimate of the value thereof, and the remainder alone shall be subject to sale under such levy, unless the plaintiff in the execution shall deny the right to such homestead, or be dissatisfied with the quantity or estimate of the value of the land so claimed. If the plaintiff is so dissatisfied, he may direct the officer making the levy to select three disinterested freeholders of the county who shall examine and appraise, under oath, the lands and improvements, and if the appraised value exceeds $7,500, said freeholders may cause to be surveyed and shall set off in compact form, including the dwelling house and appurtenances, so much of the land claimed as a homestead to the amount in value of $7,500, and the remainder alone shall be subject to sale under such levy. After the lands are surveyed and set off, if, in the opinion of the plaintiff in the execution, the same are of greater value than $7,500, the officer may proceed to advertise and sell the premises so set off, and out of the proceeds pay the homestead claimant the sum of $7,500, and apply the balance of the proceeds on the execution; provided, however, that no sale shall be made in the case last mentioned unless a greater sum than $7,500 is bid for said premises. When the freeholders are of the opinion that the property claimed as a homestead is worth more than $7,500, and that because of its shape and quantity it cannot be set off without destroying the intrinsic value or use thereof, then they shall so certify to the officer making the levy and he shall proceed to advertise and sell the same, as in the case last mentioned. The expense of such appraisement, survey and sale shall be collected on the execution, if it appears that the owner claimed as his homestead a greater quantity of land or land of greater value than he

was entitled to; otherwise such expenses shall be borne by the person directing the same.

(2) Whenever a judgment is recovered against a homestead owner, he may make and file for record in the proper registry of deeds of the county in which the homestead is situated, a statement executed with the same formality required for the execution of deeds of real property, giving the description and the quantity of land claimed by him as a homestead, an estimate of the value thereof, and his name and postoffice address, with a declaration that he claims the property as his homestead; and the making and filing of such statement shall have the same effect as the giving of the notice above provided for.

(3) The officer, when making return of the execution upon such levy and sale, shall return and file therewith the claim of the homesteader, the objections, if any, of the plaintiff in the execution, the oath of the freeholders and their appraisement, survey and a description of the homestead as set off by them, and also such other matters and proceedings as may be had in the premises. [Amended by 1959 c.561 §3]

**23.280 to 23.300** [Reserved for expansion]

## INDEMNIFICATION FOR WRONGFUL LEVY; ADVERSE CLAIMS TO PROPERTY

**23.310 Indemnity to sheriff or constable.** Whenever a writ of attachment or execution is delivered into the hands of any sheriff or constable, under which the personal property of any person, firm or corporation is to be held or sold for the satisfaction of any judgment or costs of action or suit, if the sheriff or constable has actual notice of any third-party claim to the personal property, or is in doubt as to ownership of the property, or of encumbrances thereon, or damage to the property held that may result by reason of its perishable character, such sheriff or constable may require the plaintiff or judgment creditor to file with the sheriff or constable a good and sufficient bond, having the same qualifications as a bail bond, indemnifying the sheriff or constable and his bondsmen against any loss or damage by reason of the illegality of any such holding or sale on execution, or by reason of damage to any personal property held under attachment or execution, which bond shall be in double the amount of the claim or judgment by which the personal property is either held or to be sold.

**23.320 Notice of adverse claim; mode of trial.** When personal property is seized by virtue of any execution, and any person other than the defendant claims such property, or any part thereof, and gives notice thereof in writing, the sheriff may summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim, giving five days' notice of the time and place of the trial to the plaintiff in the execution or his attorney; or the adverse claimant may, at his option, have his claim adjudicated in a summary manner in the court out of which the execution issued, by affidavit, by oral testimony in open court or otherwise, as the court may determine.

**23.330 Proceedings on trial; effect of verdict.** The sheriff, at the request of either party, shall subpena witnesses, and compel them to attend and give testimony, and he shall administer the necessary oaths to the jurors and witnesses. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses, and the verdict of such jury being rendered in writing, and signed by the foreman, shall be a full indemnity to the sheriff, proceeding in accordance therewith, but shall not preclude the claimant from maintaining an action at law for the recovery of the possession of such property, or for damages for taking the same.

**23.340 Withdrawal of claim; discharge of property from levy; costs of trial.** (1) The claimant, at any time before the jury retires, may withdraw his claim, or the plaintiff in the writ may, within the same time, direct the sheriff to discharge the property from the execution or attachment, and thereupon the trial shall proceed no further. The costs and disbursements of the trial shall be paid by the party against whom the verdict is given, or, if no verdict is given, as in this section provided, then by the party who withdrew his claim, or directed the property to be discharged, as the case may be. The sheriff shall collect all such costs and disbursements, if not paid immediately, by levying on the property of the party liable for them as on execution, and pay the same to the jurors, witnesses and others entitled to receive them.

(2) When the jury is summoned, the sheriff or constable, as the case may be,

shall require both the claimant and plaintiff in the writ to deposit with him the fees allowed by law to the jurors, which fee shall be the same as allowed to jurors serving on a jury of inquest, and at the hearing shall pay the jurors from the deposit of the party failing to prevail in such proceeding, and shall return to the prevailing party the moneys so deposited. If the claimant fails to so deposit the fees, the officer holding the writ of execution or attachment shall be relieved of all liability to the claimant in all respects as though the jury after hearing had returned a verdict against the claimant or his claim; if the plaintiff in the writ fails to deposit the fees, the property claimed and held under the writ shall be in all respects released from the lien of the execution or attachment under which it is held.

**23.350 Sale notwithstanding verdict for claimant; indemnity to sheriff.** Notwithstanding the verdict of the jury is for the claimant, the sheriff shall proceed to sell the property seized in satisfaction of the execution, if the plaintiff tenders to him a written undertaking, executed by two or more good and sufficient sureties, residents of the state, and householders or freeholders therein, in double the value of the property, to the effect that he will indemnify the sheriff against all damages and costs which he may sustain in consequence of the seizure and sale of such property, and moreover, that he will pay to the claimant of such property all damages which he may sustain in consequence of such seizure and sale. If such undertaking is given, it shall be returned by the sheriff with the execution.

**23.360 to 23.400** [Reserved for expansion]

## EXECUTION PROCEDURE; SALE; REDEMPTION

**23.410 Manner of executing writ of execution; disposition of proceeds.** When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff, as follows:

(1) If the property has been attached, he shall indorse on the execution, and pay to the clerk forthwith the amount, if any, of the proceeds of sales of perishable property or debts due the defendant received by him, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same or sufficient thereof to satisfy the judgment.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment.

(4) Property shall be levied on in like manner and with like effect as similar property is attached.

(5) Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day which the writ is returnable.

(6) When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor, without delay. If, after satisfying the judgment, any property or the proceeds thereof remain in the custody of the sheriff, he shall deliver the same to the judgment debtor.

**23.420 Proceedings in case of property in possession of or owing from garnishee.** In the case of property in the possession of or owing from any garnishee mentioned in ORS 29.280, the sheriff shall proceed as follows:

(1) If it appears from the certificate of the garnishee that he owes a debt to the judgment debtor, which is then due, if such debt is not paid by the garnishee to the sheriff on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution were against the property of the garnishee. But if such debt is not then due, the sheriff shall sell the same according to the certificate, as other property.

(2) If, in like manner, it appears that the judgment debtor has rights or shares in the stock of the garnishee as provided in ORS 29.280, the sheriff shall sell the same according to the certificate, as other property.

(3) If, in like manner, it appears that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same is delivered to the sheriff on demand, he shall levy upon the same wherever

he may find it. If such property is in the possession of such garnishee upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

**23.430 Proceedings where garnisheed property is not delivered; delivery, payment or transfer to sheriff; release.** When the sheriff with an execution levies upon any of the personal property mentioned in subsection (3) of ORS 29.170, and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnishes him the certificate required in ORS 29.280, he shall proceed thereafter in reference to such property as provided in ORS 23.420. Such property, or sufficient thereof to satisfy the execution, may be delivered, paid, or transferred to the sheriff at the time of levy, and the sheriff's receipt to the garnishee shall be a sufficient discharge thereof; provided, however, that such property, and also the garnishee having possession thereof, may, upon written request of the attorney of record or the judgment creditor if there is no attorney of record, be released and discharged in whole or in part by the clerk of the court by whom the writ of execution was issued, in the same manner and with like effect as is provided in ORS 29.400 for the issuance of releases of garnishments based upon writs of attachment.

**23.440 Debtor may retain property on giving bond.** When the sheriff levies upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written undertaking to the sheriff, with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale; and for nondelivery thereof an action may be maintained upon such undertaking by the sheriff or the plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

**23.450 Notice of sale.** Before the sale of property on execution, notice thereof shall be given as follows:

(1) In case of personal property, by posting written or printed notice of the time and place of sale in three public places of the county where the sale is to take place, not less than 10 days successively, and by sending, forthwith upon such posting, a copy of such notice by registered mail to the judgment debtor at his last-known postoffice address or place of residence; provided, that in the sale of perishable property the notice shall be posted for not less than 48 hours.

(2) In case of real property, by publishing a similar notice, particularly describing the property, once a week for four successive weeks, making four publishings in all, with the last publication at least one week prior to the day of sale, in a newspaper of the county, if there is one, or if there is none, in a newspaper published nearest to the place of sale, and by sending forthwith upon the making of the first of such publishings, a copy of such notice by registered mail to the judgment debtor at his last-known postoffice address or place of residence.

**23.460 Time, place and manner of sale.** All sales of property upon execution shall be made by auction, between 9 a.m. and 4 p.m. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price. When the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sale of real property shall be made at the courthouse door.

**23.470 Adjournment of sale.** If, at the time appointed for the sale, the sheriff is prevented from attending at the place appointed, or being present deems it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week, next after the day appointed, and so from time to time for like cause, giving notice of every adjournment by public proclamation, made at the same time. The sheriff for like cause may also adjourn

the sale from time to time, not exceeding 30 days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ.

**23.480 Delivery of personal property to purchaser; bill of sale.** When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired, shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with like acknowledgment.

**23.490 Proceedings after sale of realty; confirmation.** Whenever real property is sold on execution, the provisions of this section shall apply to the subsequent proceedings, as follows:

(1) The plaintiff in the writ of execution is entitled, on motion therefor, to have an order confirming the sale at any time after the expiration of 10 days from the date of filing the return of sale, unless the judgment debtor, or in case of his death, his representative, files with the clerk within 10 days after the return of the execution, his objections thereto.

(2) If such objections are filed, the court or judge thereof shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it satisfactorily appears that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court or judge shall disallow the motion, and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date.

(3) Upon the return of the execution, the sheriff shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale is afterwards made, and the property sells for a greater amount to any person, other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid, out of the proceeds of the latter sale. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount.

(4) An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action, suit or proceeding.

(5) If, after the satisfaction of the judgment, there are any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor or his representative, at any time before the order is made upon the motion to confirm the sale, provided such party files with the clerk a waiver of all objections to the proceedings concerning the sale. If the sale is confirmed, such proceeds shall be paid to such party, of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of. [Amended by 1959 c.638 §8]

**23.500 Evicted purchaser may recover price.** If the purchaser of real property sold on execution, or his successor in interest, is evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

**23.510 Sheriff's certificate of sale.** At the time of sale, the sheriff shall give to the purchaser a certificate of the sale containing a particular description of the property sold, the price bid for each distinct lot or parcel, the whole price paid, and, when subject to redemption, a statement of that fact. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

**23.520 When realty sales are absolute; when redeemable.** Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as provided in ORS 23.530 to 23.600.

**23.530 Who may redeem.** Property sold subject to redemption, as provided in ORS 23.520, or any part thereof separately sold, may be redeemed by the following persons:

(1) The mortgagor or judgment debtor whose right and title were sold, or his heir, devisee or grantee, who has acquired, by inheritance, devise, deed, sale, or by virtue of any execution or by any other means, the legal title to the whole or any part of the

property separately sold; provided, that in the event redemption is made by anyone acquiring the legal title after attachment, or after a judgment becomes a lien on the property, such person shall acquire no greater or better right thereby to the property so redeemed than the holder of the legal title at the time of such attachment or judgment.

(2) A creditor having a lien by judgment, decree or mortgage on any portion of the property, or any portion of any part thereof separately sold, subsequent in time to that on which the property was sold. Such creditors, after having redeemed the property, are to be termed redemptioners.

**23.540 Redemption by lien creditor.** A lien creditor may redeem the property within 60 days from the date of the sale by paying the amount of the purchase money, with interest at the rate of 10 percent per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and any other sum which the judgment debtor might be required to pay for redemption, with like interest, and if the purchaser is also a creditor having a lien prior to that of the redemptioner, the amount of such lien, with interest; provided, that if objections to any sale are filed, a lien creditor may redeem within 60 days from the date of the order confirming the sale.

**23.550 Redemption from redemptioner.** If the property is redeemed under ORS 23.540, any other lien creditor may, within 60 days from the last redemption, again redeem it, on paying the sum paid on the last redemption, with interest at the rate of 10 percent per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon, and, unless his lien is prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within 60 days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of 10 percent per annum thereon, from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest.

**23.560 Redemption by mortgagor, judgment debtor or successors; lien of purchaser.** (1) The mortgagor or judgment debtor whose right and title were sold, or his heir, devisee or grantee, who has acquired by inheritance, devise, deed, sale, or by virtue of any execution or by any other means, the legal title to the property sold, may, at any time within one year after the date of sale, redeem the property; provided that a transfer of the judgment debtor's interest in the property, either before or after sale, shall preclude him from the right to redeem unless the proceeds from the sale are insufficient to satisfy the judgment, in which event the judgment debtor shall have the right to redeem at any time within 10 days after the year herein allowed for redemption, and not otherwise.

(2) Redemption shall be made by paying the amount of the purchase money, with interest thereon at the rate of six percent per annum from the date of sale, together with the amount of any taxes the purchaser may have been required to pay thereon, and any sums necessarily expended by him to prevent waste, and also all sums that the purchaser may have been required to pay on prior liens, with interest upon every such payment made by the purchaser at the rate of six percent per annum from the date of payment thereof; subject to the set-off provided for in subsection (3) of this section.

(3) The mortgagor or judgment debtor, his heir, devisee or grantee shall be entitled to a set-off, against the amount necessary to be paid to redeem any property subject to redemption, for all rents, issues and profits accruing from the property sought to be redeemed while the same was in the possession of the purchaser, upon his giving to the purchaser or his successors in interest at least 10 days' written notice to render an accounting for all rents, issues and profits accruing from the property sought to be redeemed. If the property sold is farm land, the purchaser shall have a lien on the first crops sown or grown thereon after the sale, for all sums reasonably expended by him in plowing, cultivating or seeding the premises in the usual husbandlike manner, which lien shall be superior to all other liens except the liens of laborers for work in cultivating said lands or harvesting the crops grown

thereon, as now provided by law. If the premises are other than farm lands, the purchaser shall have a lien on the profits thereof arising during the period of redemption for sums necessarily expended by him to prevent waste.

(4) Within 10 days after the notice provided for in subsection (3) of this section is given, the purchaser or his successors in interest shall file with the sheriff of the county wherein the property sought to be redeemed is situate a verified account of all rents, issues and profits accruing from, and of all sums for which he claims a lien upon the property sought to be redeemed while the same was in the possession of the purchaser or his successors in interest. At any time within five days thereafter the judgment debtor or mortgagor shall file any objection which he may have to said account with the sheriff, who forthwith shall transmit all papers in his possession touching upon said foreclosure, sale and redemption to the circuit court having jurisdiction, or to the judge thereof. The sums, if any, due the mortgagor or judgment debtor, or claimed by the purchaser under his lien, shall thereafter be determined by the circuit court or the judge thereof at chambers in a summary manner at the time of redemption, and, upon such determination, the judge shall immediately return the files in the case, together with his findings, to the sheriff of such county. Either party may appeal to the Supreme Court from such determination and decision by the circuit court. An appeal by the redemptioner shall not extend the time for redemption unless the redemptioner shall, in addition to the undertaking otherwise required by law upon appeal, and within the time allowed for filing an undertaking upon appeal, give an undertaking with one or more sureties, who shall justify in like manner as bail upon arrest, that the redemptioner will fully consummate the redemption and pay such sums as shall finally be determined to be the amounts required for the redemption.

(5) As used in this section, "purchaser" or "purchaser or his successors in interest" means the original purchaser or his assigns, or his successors in interest or those holding after him or under him.

**23.570 Mode of redeeming.** The mode of redeeming shall be as provided in this section:

(1) The person seeking to redeem shall give the purchaser or redemptioner not less than 2 days' nor more than 30 days' notice of his intention to apply to the sheriff for that purpose; if with reasonable diligence personal service of such notice can not be made within the state, then proof thereof by affidavit filed with the sheriff shall be equivalent to such personal service. At the time and place specified in the notice, which place shall be the office of the sheriff at the courthouse, such person may redeem by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate, as in the case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof. The redemptioner shall file the certificate of redemption with the clerk of the court out of which execution issued. The clerk shall record it in the book of executions, under the same heading as the original execution, and shall index the same in like manner with the additional words "redemption certificate," and when the certificate is so recorded, shall place it with the execution and judgment roll.

(2) A party seeking to redeem shall submit to the sheriff the evidence of his right thereto as follows:

(a) Proof that the notice required by this section was given to the purchaser or redemptioner or waived.

(b) If he is a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified to by the clerk of the court where such judgment or decree is docketed, or if he seeks to redeem upon a mortgage, the certificate of the record thereof.

(c) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent; an affidavit by himself or agent showing the amount then actually due on the judgment, decree or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the like evidence thereof and of the amount due thereon, or the same may be disregarded.

(4) When two or more persons apply to the sheriff to redeem at the same time,

he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attends at the redemption; or if not, at any time thereafter when demanded. When a sheriff wrongfully refuses to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon submission of the evidence and the tender of the money to the sheriff as provided in this section he may be required by order of the court or judge thereof to allow such redemption.

**23.580 Court may restrain waste; what use permitted.** Until the expiration of the time allowed for redemption, the court, or judge thereof, may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon; or to use wood or timber on the property for the repair of fences or for fuel for his family while he occupies the property.

**23.590 Possession after sale; right to rents or value of use.** The purchaser, from the day of sale until a resale or a redemption, and a redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same is in the possession of a tenant holding under an unexpired lease, and in such case, shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

**23.600 Conveyance to purchaser or redemptioner; effect of redemption by judgment debtor.** If redemption is not made as prescribed in ORS 23.520 to 23.590, or when redemption is made and a period of 60 days has elapsed without any other redemption, the purchaser or redemptioner shall be entitled to a conveyance from the sheriff. If the judgment debtor redeems at any time before the time for redemption expires, the effect of the sale shall terminate and he shall be restored to his estate. If, at any time prior to the expiration of the statutory period of redemption, it is made to appear to the satisfaction of the court, that the purchaser or redemptioner has acquired the rights of all persons entitled to redeem, the court may direct the sheriff to execute a deed of conveyance to such purchaser or redemptioner forthwith, and upon the execution thereof the title of such purchaser or redemptioner shall become absolute.

**23.610 to 23.700** [Reserved for expansion]

## SUPPLEMENTARY PROCEEDINGS IN AID OF EXECUTION

**23.710 Proceedings to require debtor to appear and make disclosure.** After the issuing of an execution against property, and upon the filing by the plaintiff, or someone on his behalf, of an affidavit stating in general terms that the plaintiff believes the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment, the court or judge may, in its discretion, by an order, require the judgment debtor to appear and answer under oath concerning any property or interest in property that he may have or claim, before the court or judge, or before a referee appointed by the court or judge, at a time and place specified in the order. It shall not be necessary to specify any particular property in the affidavit, but a general averment shall be sufficient. No judgment debtor may be required to attend before a judge or referee out of the county in which he resides or may be found, at the time of the service of the order requiring his appearance, unless the place where the judgment debtor is to appear is not more than 20 miles from his residence.

**23.720 Examination of judgment debtor; order subjecting property.** On the appearance of the judgment debtor, he may be examined on oath concerning his property. His examination, if required by the plaintiff in the writ, shall be reduced to writing, and filed with the clerk by whom the execution was issued. Either party may examine witnesses in his behalf, and if by such examination it appears that the judgment debtor has any property liable to execution, the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an

order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or both, as may seem most likely to effect the object of the proceeding.

**23.730 Restraining disposal of property.** At the time of allowing the order prescribed in ORS 23.710, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any of his property liable to execution, pending the proceeding.

**23.740 Arrest of judgment debtor; undertaking.** Instead of the order requiring the attendance of the judgment debtor, as provided in ORS 23.720 and 23.730, the court or judge may, upon proof by affidavit of a party, or otherwise to his satisfaction, that there is danger of the debtor leaving the state, or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor may be to arrest him and bring him before the court or judge. Upon being brought before the court or judge, he may be examined on oath, and if it then appears that there is danger of the debtor leaving the state, and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking, with one or more sureties, that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge.

**23.750 Garnishment on execution.** Whenever the sheriff, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subsection (3) of ORS 29.170, for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the sheriff a certificate in the manner prescribed in ORS 29.280. If such person or officer refuses to do so, or if the certificate is unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in ORS 29.280 against such person or officer. Thereafter the proceeding upon such order shall be conducted in the manner prescribed in ORS 29.180, 29.270, and 29.290 to 29.370.

**23.760 to 23.800** [Reserved for expansion]

## DISCHARGE OF PERSON CONFINED ON EXECUTION

**23.810 When judgment debtor may be discharged.** Every person confined in jail on an execution issued on a judgment recovered in an action wherein the defendant is liable to arrest may be discharged therefrom at the end of 10 days from his first confinement, upon the conditions specified in ORS 23.810 to 23.930.

**23.820 Notice of application for discharge.** Such a person shall cause notice in writing to be given to the plaintiff, his agent or attorney, that on a certain day and hour, and at a certain place, he will apply to a named judge of the circuit court, or two named justices of the peace of the county where the person is committed, for the purpose of obtaining a discharge from his imprisonment.

**23.830 Service of notice.** Such notice shall be served by copy on the plaintiff, his agent or attorney, 24 hours before the hour of hearing the application, in cases where the plaintiff, his agent or attorney lives within 20 miles of the place of hearing, and 24 hours shall be added to the time for every 20 additional miles the plaintiff, his agent or attorney shall reside from that place.

**23.840 Examination of applicant.** At the time and place specified in the notice, such prisoner shall be taken, under the custody of the sheriff or jailer, before the judge or justices, who shall examine him on oath concerning his estate and effects and the disposal thereof, and his ability to pay the judgment for which he is committed; and he or they shall also hear any other legal or pertinent evidence produced by the plaintiff or defendant.

**23.850 Interrogatories by plaintiff; sworn answers.** The plaintiff in the action may upon such examination propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by the plaintiff, be answered in writing, and the

answers shall be signed and sworn to by the prisoner.

**23.860 Oath of prisoner.** If the judge or justices upon such examination are satisfied that the prisoner has not any real or personal property conveyed, concealed, or in any way disposed of with a design to secure the same to his own use, or to defraud his creditors, he or they shall administer to him the following oath, to wit:

"I, C. D., do solemnly swear that I have not any estate, real or personal, to the amount of $20, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use or to defraud my creditors. So help me God."

**23.870 Certificate of discharge.** After administering the oath, the judge or justices shall make a certificate, as follows:

"The undersigned, a judge of the circuit court (or two justices, as the case may be), hereby certifies that C. D., confined in your jail upon an execution at the suit of A. B., is entitled to be discharged from imprisonment if he be imprisoned for no other cause."

**23.880 Discharge on certificate.** The jailer, upon receiving such certificate, shall forthwith discharge the prisoner if he is detained for no other cause.

**23.890 Renewal of application for discharge.** If the judge or justices do not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every 10 succeeding days, in the same manner as provided in ORS 23.810 to 23.880, and the same proceedings shall thereupon be had.

**23.900 Rearrest for same debt.** The prisoner, after being so discharged, shall be forever exempt from arrest or imprisonment for the same debt, unless he is convicted of having willfully sworn falsely upon his examination before the judge or justices, or in taking the oath prescribed in ORS 23.860.

**23.910 Judgment to remain in force.** The judgment against any prisoner who is so discharged shall remain in full force against any estate which may then or any time afterwards belong to him, and the plaintiff in the action may take out a new execution against the goods and estate of the defendant in like manner as if he had never been committed on the execution.

**23.920 Satisfaction of execution.** If the defendant shall undertake to satisfy the execution, he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

**23.930 Discharge on order of plaintiff.** The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action, but the judgment against such prisoner shall remain in full force against any estate which may then or afterwards belong to him.

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel