

TITLE 8
PROVISIONAL REMEDIES IN CIVIL ACTIONS

CHAPTER 5
ATTACHMENTS

8-501. ATTACHMENT -- WHEN APPLIED FOR. The plaintiff at the time of the issuing of summons, or at any time afterwards may make application to have the property of the defendant attached in accordance with the procedures provided for in this chapter, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment as in this chapter provided in the following cases.

1. In an action upon a judgment, or upon contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage, deed of trust, security interest or lien upon real or personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a judgment, or upon contract, express or implied, or for the collection of any penalty provided by any statute of this state, against a defendant not residing in this state.

[(8-501) C.C.P. 1881, sec. 318; R.S. & R.C., sec. 4302; am. 1913, ch. 51, sec. 1, p. 160; reen. C.L., sec. 4302; C.S., sec. 6779; I.C.A., sec. 6-501; am. 1974, ch. 307, sec. 2, p. 1793.]

8-502. APPLICATION -- COURT EXAMINATION -- ORDER TO SHOW CAUSE -- NOTICE -- HEARING -- TEMPORARY RESTRAINING ORDER. (a) A plaintiff desiring the issuance of a writ of attachment shall file with the court an application therefor supported by an affidavit made by or on behalf of plaintiff setting forth:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal setoffs or counterclaims) and whether upon a judgment or upon a contract for the direct payment of money, and that the payment of the same has not been secured by any mortgage, deed of trust, security interest or lien upon real or personal property, or if originally secured, that such security has, without an act of the plaintiff, or the person to whom the security was given, become valueless.

2. When the defendant is a nonresident of this state, that such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal setoffs or counterclaims), and that defendant is a nonresident of the state.

3. That the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant.

(b) The court shall, without delay, examine the complaint and affidavit, and if satisfied that they meet the requirements of subdivision (a), it shall issue an order directed to the defendant to show cause why a writ of attachment should not issue. Such order shall fix the date and time for the hearing thereon, which shall be no sooner than five (5) days from the issuance thereof, and shall direct the time within which service thereof shall be made upon the defendant. Such order shall inform the defendant he may file affidavit on his behalf with the court and may appear and present testimony on his behalf at the time of such hearing, or he may, at or prior to

such hearing, file with the court a written undertaking to stay the issuance of the writ of attachment in accordance with the provisions of section [8-506C](#), Idaho Code, and that if he fails to appear plaintiff will apply to the court for a writ of attachment without further notice to defendant. If the attachment has issued prior to the hearing, the defendant may apply to the court to have the hearing set at an earlier date. Such order shall fix the manner in which service thereof, together with a copy of the complaint and affidavit, shall be made, which shall be by personal service, or in such manner as the judge may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit. The plaintiff shall cause proof of service to be filed with the court prior to the hearing.

(c) Upon examination of the complaint and affidavit and such other evidence or testimony as the judge may, thereupon, require, a writ of attachment may be issued prior to hearing, if probable cause appears that any of the following exist:

(1) The jurisdiction of the court is predicated upon attachment of the defendant's property within this state;

(2) The property specifically sought to be attached consists of one (1) or more negotiable instruments. In such case the writ shall by its terms restrict the levy by the sheriff thereunder, to such negotiable instruments;

(3) By reason of specific facts shown, the property specifically sought to be attached is a bank account subject to the threat of imminent withdrawal, or is perishable, and will perish before any noticed hearing can be had, or is in immediate danger of destruction, serious harm, concealment, or removal from this state, or of sale to an innocent purchaser, and the holder of such property threatens to destroy, harm, conceal, remove it from the state, or sell it to an innocent purchaser. In such case the writ shall by its terms limit the levy by the sheriff thereunder to such specific property.

Where a writ of attachment has been issued prior to hearing under the provisions of this section, the defendant or other person from whom possession of such property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause, and the court may, upon such application, shorten the time for such hearing, and direct that the matter be heard on not less than forty-eight (48) hours' notice to the plaintiff.

(d) Under any of the circumstances described in subsection (a), or paragraph (1) of subsection (c) of this section, or in lieu of the immediate issuance of a writ of attachment under any of the circumstances described in paragraphs (2) and (3) of subsection (c) of this section, the judge may, in addition to the issuance of an order to show cause, issue such temporary restraining orders, directed to the defendant, prohibiting such acts with respect to the property, as may appear to be necessary for the preservation of rights of the parties and the status of the property.

(e) Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination of whether there is a reasonable probability that the plaintiff will prevail in its claim. If the court makes this determination favorably to the plaintiff, it shall, upon examination of the evidence or testimony submitted and such other evidence or testimony as the judge may thereupon(,) require, determine the proper amount to be specified in the under-

taking required by section [8-503](#), Idaho Code, and if requested, the value of any property sought to be retained by or returned to defendant and the proper amount to be specified in any undertaking which may be or has been filed by defendant pursuant to section [8-506C](#), Idaho Code. If the court determines that the action is one in which a writ of attachment should issue, it shall direct the issuance of such writ. The court may direct the order in which the writ shall be levied upon different assets of the defendant, if, in the aggregate, they exceed in value an amount clearly adequate to secure any judgment which may be recovered by the plaintiff.

[(8-502) C.C.P. 1881, sec. 319; R.S., & R.C., sec. 4303; am. 1913, ch. 51, sec. 2, p. 160; reen. C.L., sec. 4303; C.S., sec. 6780; I.C.A., sec. 6-502; am. 1974, ch. 307, sec. 3, p. 1793.]

8-503. UNDERTAKING -- NOTICE OF ATTACHMENT -- INTERVENING CREDITORS. (a) No writ of attachment shall issue except upon the filing with the court of a written undertaking on the part of the plaintiff in such amount as determined to be proper by the court pursuant to subsection (e) of section [8-502](#), Idaho Code, to the effect that, if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment not exceeding the sum specified in the undertaking; and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under section [8-501](#), Idaho Code, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. No such security shall be required of the state or of any political subdivision, or of an officer or agency thereof.

(b) Within two (2) days after issuing such writ and delivering it to the proper officer, the clerk must post at the front door of the courthouse and cause to be published in some newspaper published in the county, if there be one, or otherwise in a newspaper of general circulation in the county, a notice, setting out the title of the cause and the fact that an attachment has been issued against the property of the defendant. Such notice shall be kept posted at least ten (10) days and shall be published, if in a weekly paper, in three (3) issues thereof, and if any other than a weekly paper, in at least six (6) issues. Any creditor of the defendant, who, within thirty (30) days after the first posting and publication of such notice, shall commence and thereafter diligently prosecute to final judgment his action for his claim against the defendant shall share pro rata with the attaching creditor in the proceeds of defendant's property where there is not sufficient to pay all judgments in full against him.

[(8-503) C.C.P. 1881, sec. 320; R.S., sec. 4304; am. 1895, p. 75, sec. 1; reen. 1889, p. 250, sec. 1; reen. R.C., & C.L., sec. 4304; C.S., sec. 6781; am. 1921, ch. 206, sec. 1, p. 416; I.C.A., sec. 6-503; am. 1974, ch. 307, sec. 4, p. 1793.]

8-504. FORM OF WRIT. The writ of attachment shall be directed to the sheriff of any county in which property of such defendant may be located, and must require him to attach and safely keep all the property of such defendant, within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demands, the amount of which must be stated in conformity with the complaint. If issued prior to hearing under

paragraph (2) or (3) of subsection (c), section [8-503 \[8-502\]](#), Idaho Code, the writ shall describe the specific property to be levied upon. If the court has directed the order in which the writ shall be levied upon different assets of the defendant under subsection (e), section [8-502](#), Idaho Code, the writ shall set forth such directions. There shall be attached to the writ a copy of the written undertaking filed by the plaintiff, and such writ shall inform the defendant that he has the right to except to the sureties upon such undertaking or to file a written undertaking for the redelivery of such property, as provided in section [8-506C](#), Idaho Code. Several writs may be issued at the same time to the sheriffs of different counties, and the plaintiff may have other writs of attachment as often as he may require at any time before judgment, without further notice to the defendant.

[(8-504) C.C.P. 1881, sec. 321; R.S., R.C., & C.L., sec. 4305; C.S., sec. 6782; I.C.A., sec. 6-504; am. 1974, ch. 307, sec. 5, p. 1793.]

8-505. PROPERTY SUBJECT TO ATTACHMENT -- SALE UNDER EXECUTION. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon and all debts due such defendant, and all other property in this state of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

[(8-505) C.C.P. 1181, sec. 322; R.S., R.C., & C.L., sec. 4306; C.S., sec. 6783; I.C.A., sec. 6-505.]

8-506. EXECUTION OF WRIT. The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section [8-506C](#), Idaho Code, be not given, as follows:

1. Real property standing upon the records of the county in the name of the defendant must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property attached and a notice that it is attached.

2. Real property or an interest therein belonging to the defendant and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The recorder must index such attachment, when filed, in the names of both, of the defendant and of the person by whom the property is held or in whose name it stands on the records.

3. Personal property capable of manual delivery must be attached by taking it into custody.

4. Stock or shares, or interest in stock or shares, of any corporation or company must be attached by leaving with the president or other head of the same, or the secretary, cashier or other managing agent thereof, a copy of the writ and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ; provided, that securities as defined in section [28-8-102](#), Idaho Code, must be attached as provided in section [28-8-112](#), Idaho Code.

5. Debts and credits and other personal property not capable of manual delivery must be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other per-

sonal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, belonging to the defendants, are attached in pursuance of such writ.

[(8-506) C.C.P. 1881, sec. 323; R.S., & R.C., sec. 4307; am. 1911, ch. 162, sec. 1, p. 559; reen. C.L., sec. 4307; C.S., sec. 6784; I.C.A., sec. 6-506; am. 1974, ch. 307, sec. 6, p. 1793; am. 1998, ch. 243, sec. 1, p. 802.]

8-506A. ATTACHMENT OF A DEBTOR'S INTEREST IN PERSONAL PROPERTY SUBJECT TO SECURITY AGREEMENT -- ATTACHMENT OF DEFENDANT'S INTEREST IN MORTGAGE OR TRUST DEED -- ATTACHMENT OF DEFENDANT'S INTEREST IN SECURITY AGREEMENT. Personal property subject to a security interest, a defendant's equity of redemption in personal property and a defendant's interest in a real estate mortgage or deed of trust or as secured party under a security agreement may be attached by the following methods, and no other:

(a) Personal property capable of manual delivery may be attached by taking possession, provided all secured parties with a perfected security interest therein under the Idaho uniform commercial code consent thereto in writing, and the attachment shall be subject to the rights of any secured party under a perfected security agreement, but otherwise would be to the same effect and in the same manner as if the property were not subject to the security agreement.

(b) If any secured party with a perfected security interest does not consent in writing that the sheriff take possession of the personal property, the attaching creditor must pay or tender to the secured party the amount due on the security agreement before the officer may take the property into possession. The attaching creditor upon so redeeming shall be subrogated to the rights of the secured party under the security agreement, and the secured party shall, upon payment or tender assign the security agreement, note or notes so paid, and any filed financing statements to the attaching creditor. Upon any sale by judicial proceedings, any amounts owing to the attaching creditor on the security agreement so redeemed, with lawful interest thereon, shall first be paid to the attaching creditor.

(c) If the attaching creditor so elects and instructs the sheriff, the equity of redemption of the defendant in the personal property subject to a perfected security agreement shall be attached. Such attachment is made by serving upon the secured party, upon the defendant, and upon the person in possession of the property, if other than the defendant or secured party, if said parties can be found within the county where the property is situated, a copy of the writ of attachment, together with a notice signed by the sheriff, describing the property attached, giving the name of the secured party, and stating the interest of the defendant in the property attached, and by causing the notice to be filed in the office where a security agreement or financing statement on said property should be filed to perfect the security according to the Idaho uniform commercial code or other applicable law. The sheriff shall make the filing by mail if in an office outside his county, and shall also file with the notice in any office where a financing statement should be filed for the property, a financing statement describing the property attached, the prior security agreement, and signed by the attaching creditor or his agent as secured party and for the defendant as debtor by the sheriff. The filing officer shall receive and file the financing statement and index the same pursuant to part 5, [chapter 9, title 28](#), Idaho Code.

Service and filing as above provided shall operate as an attachment of the property described in the notice, subject to the prior rights of the secured party under the security agreement; possession of the property shall not be taken by the sheriff. Compliance with the foregoing is constructive notice to the world of the attachment. Provided, however, that this section shall not be constructive notice to a bona fide purchaser for value of any motor vehicle who has actual or constructive possession of the vehicle and who has relied on the certificate of title for determination by said purchaser as to secured parties shown thereon; nothing in this section shall relieve any person from complying with section 49-504, Idaho Code.

When the sale of such property attached under this subsection (c) is made on writ of execution obtained by such creditor, the proceeds must be applied as in the case of any other execution sale. The purchaser at any such sale acquires all title and rights of the judgment debtor in the property sold, as of the time the attachment was levied, subject to the perfected security agreement including all liens if any thereunder, securing obligations to be created after the security agreement was made in cases where such obligations have actually been created, and are by law entitled to priority over attaching creditors, and is entitled to the possession of such property subject, however, to the rights of the secured party.

Any transfer of encumbrance of the attached interest of the debtor-defendant is void as against the attaching creditor, but this provision shall not be construed as forbidding or invalidating any transfer or disposition of the property lawfully made pursuant to the prior security agreement, or any other right exercised or acquired thereunder.

(d) Any interest of the defendant as mortgagee of a real estate mortgage or beneficiary of a trust deed on real estate whether held directly or as an assignee, may be attached. The sheriff must record with the county recorder where the real property is located a copy of the writ along with a notice in writing, naming the defendant, describing the real property, and identifying the recording information on the real estate mortgage or trust deed, and stating that the defendant's interest therein is attached, and by serving copies of the notice and writ upon the defendant and upon the mortgagor of the mortgage or trustor of the trust deed if they can be located within the county where the property is located. The recorder shall index the same as an assignment of the defendant's interest in the mortgage or deed of trust, and it shall be constructive notice to the world of the attachment. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the mortgage or trust deed, whether acquired before or after the attachment.

(e) Any interest of the defendant as secured party of a security agreement, whether held directly or as an assignee, shall be attached by the sheriff filing with the filing office where the security agreement or financing statement pursuant thereto is or should by law be filed, a copy of the writ along with a notice in writing, naming the defendant, describing the property listed in the financing statement or filed security statement, identifying the parties to the security agreement, and stating that the defendant's interest therein is attached. The sheriff shall serve a copy of the notice and writ upon the defendant and upon the debtor under the security agreement, if they can be located within the county where the property is located. The sheriff may file the copy of the writ or notice by mail if the filing officer is outside the county. The filing officer shall index the same as an assignment of the defendant's interest in the security agreements, and it

shall be constructive notice to the world. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the security agreement, whether acquired before or after the attachment.

[I.C., sec. 8-506A, as added by 1969, ch. 461, sec. 1, p. 1294; am. 1975, ch. 171, sec. 1, p. 463; am. 1988, ch. 265, sec. 560, p. 855; am. 2001, ch. 208, sec. 26, p. 825.]

8-506B. SERVICE OF WRIT. The sheriff shall, without delay serve upon the defendant a copy of the writ of attachment and written undertaking by delivering the same to him personally, if he can be found, or to his agent from whom possession of the property is taken; or, if neither can be found, by leaving them at the issued place of abode of either with some person of suitable age and discretion; or, if neither have a place of abode, by mailing them to their last known address.

[I.C., sec. 8-506B, as added by 1974, ch. 307, sec. 7, p. 1793.]

8-506C. DEFENDANT'S UNDERTAKING -- RETURN OF PROPERTY. At any time the defendant may retain or require the return of all or any portion of the property upon filing with the court a written undertaking executed by two (2) or more sufficient sureties, to the effect that they are bound in an amount sufficient to satisfy the plaintiff's claims, besides costs, or in an amount equal to the value of the specific property sought to be retained or returned which has been or is about to be attached. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or his attorney a notice of filing such undertaking, to which a copy of such undertaking shall be attached; and shall cause proof of service thereof to be filed with the court.

If such undertaking is in an amount sufficient to satisfy the plaintiff's claims, besides costs, proceedings thereunder shall terminate, unless exception is taken to such sureties. If, at the time of filing of such undertaking in an amount sufficient to satisfy the plaintiff's claims, plus costs, the property shall be in the custody of the sheriff, such property, together with all proceeds of the sales thereof, shall be returned to the defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney, unless exception is taken to such sureties.

If such undertaking is filed in an amount equal to the value of the specific property sought to be retained or returned and the court has previously determined the proper sum to be specified in such undertaking as provided in subsection (e), section [8-502](#), Idaho Code, the sheriff shall not execute the writ as to the specific property covered by such undertaking. If the property shall be in the custody of the sheriff, the property shall be returned to defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney unless exception is taken to such sureties. If such undertaking filed in an amount equal to the value of the property sought to be returned and the court has not previously determined the proper amount to be specified in the undertaking pursuant to subsection (e), section [8-502](#), Idaho Code, the plaintiff may within four (4) days after service of the notice of filing give written notice to the court, the defendant, and the sheriff, if such property shall then be in the custody of the sheriff, that he objects to the amount of the undertaking. If he fails to do so, he is deemed to have waived all objections thereto and the sheriff shall not execute the writ as to the specific property covered by such undertaking, or if such property shall then be in the custody of the sheriff, it shall be

returned to the defendant five (5) days after service of the notice of filing such undertaking upon plaintiff or his attorney. If the plaintiff objects to the amount of such undertaking, the court shall set the matter for hearing and upon examination of the evidence and testimony submitted and such other evidence or testimony as the judge may thereupon require, the court shall determine the proper amount to be specified in such undertaking. If the amount of the undertaking filed be found sufficient, or if the defendant file a new undertaking in such amount as fixed by the court, the property shall be returned to the defendant, unless exception is taken to such sureties on any new undertaking filed by defendant.

[I.C., sec. 8-506C, as added by 1974, ch. 307, sec. 8, p. 1793.]

8-506D. SUFFICIENCY OF SURETIES. The qualification of sureties under any written undertaking referred to in this chapter shall be such as prescribed by the code in respect to bail upon an order of civil arrest. Either party may, within two (2) days after service of an undertaking or notice of filing an undertaking under the provisions of this chapter, give written notice to the court, the other party and the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When a party excepts, the other party's sureties shall justify on notice within not less than two (2), nor more than five (5) days, in like manner as upon bail upon civil arrest. If any of the defendant's property be in the custody of the sheriff, he shall retain custody thereof until the justification is completed or waived or fails. If the sureties for the plaintiff's undertaking, filed pursuant to section [8-503](#), Idaho Code, fail to justify, the writ of attachment must be vacated and the sheriff shall return the property to the defendant. If the sureties for the defendant's undertaking, filed pursuant to section [8-506C](#), Idaho Code, fail to justify, the sheriff shall proceed as if no such undertaking had been filed. If the sureties justify or the exception is waived, the sheriff shall proceed as if no such exception had been filed.

[I.C., sec. 8-506D, as added by 1974, ch. 307, sec. 9, p. 1793.]

8-507. APPLICABILITY. To the extent that the provisions of [chapter 7, title 11](#), Idaho Code, are not inconsistent with the provisions of this chapter, such provisions shall apply to the attachment process.

[8-507, added 2017, ch. 303, sec. 3, p. 800.]

8-524. INVENTORY AND MEMORANDUM OF ATTACHED PROPERTY. The sheriff must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to the debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

[(8-524) C.C.P. 1881, sec. 327; R.S., R.C., & C.L., sec. 4311; C.S., sec. 6802; I.C.A., sec. 6-524.]

8-525. SALE OF PERISHABLE PROPERTY -- COLLECTION OF DEBTS. If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing of the attachment. Debts and credits attached may be collected by him if the same can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

[(8-525) C.C.P. 1881, sec. 328; R.S., R.C., & C.L., sec. 4312; C.S., sec. 6803; I.C.A., sec. 6-525.]

8-526. ORDER FOR SALE OF PROPERTY IN INTEREST OF PARTIES. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactory to the court, or a judge thereof, that the interests of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such an order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

[(8-526) C.C.P. 1881, sec. 329; R.S., R.C., & C.L., sec. 4313; C.S., sec. 6804; I.C.A., sec. 6-526.]

8-527. CLAIM OF PROPERTY BY THIRD PERSON OR AS EXEMPT. If any personal property attached, garnished or executed upon be claimed by a third person as his property, or by the defendant as exempt property, the same rules shall prevail as to the contents and making of said claim, and as to the holding of said property, as in the case of a claim after levy upon execution, as provided in section [11-203](#), Idaho Code.

[(8-527) C.C.P. 1881, sec. 330; R.S. & R.C., sec. 4314; am. 1913, ch. 109, sec. 11, p. 430; reen. C.L., sec. 4314; C.S., sec. 6805; I.C.A., sec. 6-527; am. 1939, ch. 12, sec. 1, p. 28; am. 1991, ch. 165, sec. 7, p. 403.]

8-528. SALE OF ATTACHED PROPERTY TO SATISFY JUDGMENT. If judgment be recovered by the plaintiff, the sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell, under the execution, so much of the property, real or personal as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sale must be given, and the sales conducted as in other cases of sales on execution.

[(8-528) C.C.P. 1881, sec. 331; R.S., R.C., & C.L., sec. 4315; C.S., sec. 6806; I.C.A., sec. 6-528.]

8-529. COLLECTION OF DEFICIENCY AFTER SALE -- DELIVERY OF SURPLUS TO DEFENDANT. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

[(8-529) C.C.P. 1881, sec. 332; R.S., R.C., & C.L., sec. 4316; C.S., sec. 6807; I.C.A., sec. 6-529.]

8-530. ACTION ON ATTACHMENT BOND. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section [8-506C](#), Idaho Code, or he may proceed as in other cases upon the return of an execution.

[(8-530) C.C.P. 1881, sec. 333; R.S., R.C., & C.L., sec. 4317; C.S., sec. 6808; I.C.A., sec. 6-530; am. 1974, ch. 307, sec. 10, p. 1793.]

8-531. DISCHARGE ON JUDGMENT FOR DEFENDANT. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, must be delivered to the defendant or his agent. The order of attachment shall be discharged, and the property released therefrom.

[(8-531) C.C.P., 1881, sec. 334; R.S., R.C., & C.L., sec. 4318; C.S., sec. 6809; I.C.A., sec. 6-531.]

8-534. VACATION OF IRREGULAR ATTACHMENT. The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

[(8-534) C.C.P. 1881, sec. 337; R.S., R.C., & C.L., sec. 4321; C.S., sec. 6812; I.C.A., sec. 6-534.]

8-535. MOTION UPON AFFIDAVIT -- HOW OPPOSED. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

[(8-535) C.C.P. 1881, sec. 338; R.S., R.C., & C.L., sec. 4322; C.S., sec. 6813; I.C.A., sec. 6-535.]

8-536. DISCHARGE -- AMENDMENTS AUTHORIZED. If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged; provided that such attachment shall not be discharged if at or before the hearing of such application, the writ of

attachment, or the affidavit, or undertaking upon which such attachment was based, shall be amended or made to conform to the provisions of this chapter.

[(8-536) R.S., R.C., & C.L., sec. 4323; C.S., sec. 6814; am. 1921, ch. 160, sec. 1, p. 354; I.C.A., sec. 6-536.]

8-537. RETURN OF WRIT. The sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise within twenty (20) days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

[(8-537) C.C.P. 1881, sec. 340; R.S., R.C., & C.L., sec. 4324; C.S., sec. 6815; I.C.A., sec. 6-537.]

8-538. DISCHARGE OF LIEN ON REAL ESTATE. Whenever in any action, real estate has been levied upon under writs, either of attachment or execution, and the lien of the writ has in any manner been lost or destroyed, the court out of which the writ issued or the judge thereof, may, on application by any person interested, make an order discharging said lien, and the order or a certified copy thereof may be filed in the office of the county recorder in which the notice of the levy has been filed, and indexed in like manner as said notice.

[(8-538) 1895, p. 14, sec. 1; reen. 1899, p. 233, sec. 1; reen. R.C. & C.L., sec. 4325; C.S., sec. 6816; I.C.A., sec. 6-538.]

8-539. LIEN ON REAL ESTATE -- TIME EFFECTIVE -- DURATION -- TERMINATION -- EXTENSION. Whenever in any action, real estate has been levied upon under writs, either of attachment or execution, such levy shall be a lien upon all real property for a period of two (2) years after the date of levy unless sooner released or discharged in accordance with law, or by dismissal of the action or by the recording with the recorder of an abstract of judgment in the action. At the expiration of two (2) years, the lien shall cease and any proceeding or proceedings against the property under the lien shall be barred; provided, that upon motion of a party to the action, made not less than five (5) nor more than sixty (60) days before the expiration of said period of two (2) years, the court in which the action is pending may extend the time of said lien for a period not exceeding two (2) years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the recording before the expiration of the existing lien, of a certified copy of the order with the recorder of the county in which the real property attached is situated. The lien may be extended from time to time in the manner herein prescribed.

[I.C., sec. 8-539, as added by 1965, ch. 93, sec. 1, p. 171.]

8-540. EARLY SETTING. In all proceedings brought under this chapter, all courts in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except action to which special precedence is otherwise given by law, in the matter of setting the same for hearing or trial, or in hearing or trial

thereof, to the end that all such actions shall be quickly heard and determined; provided, however, that hearing upon a motion to contest a claim of exemption or third party claim as provided in section [11-203](#), Idaho Code, shall be set for a date within not less than five (5) nor more than twelve (12) days after the filing of the motion and such hearing may be continued only at the request of the defendant.

[I.C., sec. 8-540, as added by 1974, ch. 307, sec. 13, p. 1793; am. 1991, ch. 165, sec. 8, p. 403.]