SENATE, No. 99

(*Comp. Stat., p.* 2243)

(*Laws* 1929, *Chap.* 125, *p.* 214)

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1933

By Mr. BARBOUR

Referred to Committee on Judiciary

AN ACT to amend an act entitled "An act respecting any executions," approved March twenty-first, one thousand eight hundred seventy-four (Revision 1874),

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section twenty-three of the act of which this is amendatory is hereby amended so as to read as follows:

23. When [an execution against the property of any debtor, individual, corporation, unincorporated company or voluntary association, upon a judgment] a judgment has been recovered or docketed in the supreme court or in the circuit court or in the court of common pleas, in and for any county in this State, or from any of the district courts in any of the cities of this State, [shall be returned by the officer to whom it is delivered, unsatisfied, in whole or in part,] it shall be lawful for any judge of the court [out of which said execution issued] in which said judgment has been recovered or docketed, in term or vacation, on application by the judgment creditor, his executor, administrator or assignee, in manner hereinafter provided, to make order requiring the judgment debtor to appear and make discovery on oath, concerning his, its or their, property and things in action, before such judge

or supreme court commissioner or master in chancery of this state, to be designated in said order, at a time and place in said order specified.

2. Section twenty-four of the act of which this is amendatory is hereby amended so as to read as follows:

24. The judgment creditor, his executor, administrator or assignee, before he shall be granted such orders, shall present to said judge a petition, verified by the oath of such creditor, his executor, administrator or assignee, or the agent or attorney of such creditor, his executor, administrator or assignee, in which he shall state the amount due on said [execution] judgment [the return made thereon by the officer to whom it was issued], and his belief that said judgment debtor hath property or money or things in action due to him, or held in trust for him, where the trust has been created by, or the fund held in trust has proceeded from himself, over and above such property as is or may be reserved by law, on presentation whereof said order shall be made; and the said judge shall further, on allegation in said petition, or in one supplementary thereto and proof by the oath of the party or of any other person, of fact and circumstances, showing that any person owes the said debtor, or holds money or property in possession or action in trust for him, or for his use as aforesaid, make order forbidding the payment of such debt, or the transfer of said property or money by or to the said debtor, or any third person, until further order to be by him made; affidavits verifying said petitions may be taken before any officer authorized by law to administer oaths, and if any person, in any affidavit or examination taken under this act shall wilfully and corruptly swear falsely, he shall be deemed guilty of perjury. Should it be disclosed upon the examination of any judgment debtor, and under the proceedings provided for in this act, that the said judgment debtor is entitled to, and is in receipt of, an income or any property or money or things in action, held in trust for the debtor, except such trust funds as are now exempt by law, then it shall be lawful for the judge granting said order for discovery, upon the return of such discovery and examination, to direct the judgment debtor to make payments at stated periods in

installments, and upon such terms and conditions as the said judge may direct, out of such income, on account of said unsatisfied judgment; application may be made at any time upon behalf of the judgment creditor, his executor, administrator or assignee, or judgment debtor, to modify the terms of such order, and said judge shall have power to do so.

3. Section twenty-six of the act of which this is amendatory is hereby amended so as to read as follows:

26. When such examination of a judgment debtor or of witnesses shall be taken by a commissioner, it shall be certified to the judge making said order under the hand of said commissioner and thereupon, after considering the evidence of said party and witnesses, taken before said commissioner, or by himself it shall be lawful for said judge to make order appointing a receiver of the property and things in action belonging or due to or held in trust for such debtor as aforesaid, at the time of the [issuing said execution] recover of said judgment, or at any time afterwards, who thereby shall receive authority to possess, receive, and if need be, in his own name as such receiver, sue for such property or things in action; and it shall be the duty of such receiver to apply the same in payment of the said judgment, and the costs of the proceedings thereon and the reasonable compensation of said receiver to be taxed by the judge, and to pay the rest into said court wherein said judgment was recovered or docketed, to be there disposed of according to law; and such judge shall order said judgment debtor to convey and deliver to such receiver all such property and rights in action and the evidence thereof; and said receiver shall be subject to the authority and orders of said court from time to time to be given, and shall on the fulfillment of his duties, or at other times when called upon, make report in writing to said court of his doings in the premises.

4. Section twenty-nine of the act of which this is amendatory is hereby amended so as to read as follows:

29. The petitions, orders, examinations and reports, made and taken as above provided, shall be filed with the clerk of the court [whence the unsatis-

fied executions issued] wherein the judgment was recovered; and whenever a certiorari shall be brought to remove any of the proceedings, the court out of which the certiorari issued may amend the proceedings in matters of form, and shall give such judgment and make such order as the judge before whom the proceedings were had ought to have given or made.

5. This act shall take effect immediately.

STATEMENT

The purpose of these amendments is to do away with the present requirement that an execution issue before an order for discovery is granted by the court.

This is an unnecessary expense, for as a matter of practice, the order for discovery is procured for the very purpose of ascertaining what assets the dedefendant has so that an execution may issue and levy be made upon the assets discovered in such proceedings.

In the present practice is is necessary to apply for two executions, one before the order of discovery and one after the order has been obtained.