



CHAPTER 1

ARTICLE 35 - ATTACHMENT

N.C.G.S. § 1-440.28.

Admission by garnishee; setoff; lien.

SOURCE	LAST AMENDMENT IN THIS TEXT	RETRIEVED	SOURCE FINGERPRINT
General Statutes of North Carolina, as published by the General Assembly	c. 693, s. 1 — first act in the lineage	21 September 2026, 02:13 UTC	e82ead131573394aa063195b - ddb24722727dc73bb83ea1a0 - 197934da4d3e38c4

§ 1-440.28(a)

When a garnishee admits in his answer that he is indebted to the defendant, or was indebted to the defendant at the time of service of garnishment process upon him or at some date subsequent thereto, the clerk of the court shall enter judgment against the garnishee for the smaller of the two following amounts:

- (1) The amount which the garnishee admits that he owes the defendant or has owed the defendant at any time from the date of the service of the garnishment process to the date of answer by the garnishee, or
- (2) The full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs.

§ 1-440.28(b)

When a garnishee admits in his answer that he has in his possession personal property belonging to the defendant, with respect to which the garnishee does not claim a lien or other interest, the clerk of the court shall enter judgment against the garnishee requiring him to deliver such property to the sheriff, and upon such delivery the garnishee shall be exonerated as to the property so delivered.

§ 1-440.28(c)

When a garnishee admits in his answer that, at or subsequent to the date of the service of the garnishment process upon him, he had in his possession property belonging to the defendant, with respect to which the garnishee does not claim a lien or other interest, but that he does not have such property at the time of his answer, the clerk of the court shall at a hearing for that purpose determine, upon affidavit filed, the value of such property, unless the plaintiff, the defendant and the garnishee agree as to the

value thereof, or unless, prior to the hearing, a jury trial thereon is demanded by one of the parties. The clerk shall give the parties such notice of the hearing as he may deem reasonable and by such means as he may deem best.

§ 1-440.28(d)

When the value of the property has been determined as provided in subsection (c) of this section the court shall enter judgment against the garnishee for the smaller of the two following amounts:

- (1) An amount equal to the value of the property in question, or
- (2) The full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs.

§ 1-440.28(e)

When a garnishee alleges in his answer that the debt or the personal property due to be delivered by him to the defendant will become payable or deliverable at a future date, and the plaintiff, within 20 days thereafter, files a reply denying such allegation, the issue thereby raised shall be submitted to and determined by a jury. If it is not denied that the debt owed or the personal property due to be delivered to the defendant will become payable or deliverable at a future date, or if is so found upon the trial, judgment shall be given against the garnishee which shall require the garnishee at the due date of the indebtedness to pay the plaintiff such an amount as is specified in subsection (a) of this section, or at the deliverable date of the personal property to deliver such property to the sheriff in order that it may be sold to satisfy the plaintiff's claim.

§ 1-440.28(f)

In answer to a summons to garnishee, a garnishee may assert any right of setoff which he may have with respect to the defendant in the principal action.

§ 1-440.28(g)

With respect to any property of the defendant which the garnishee has in his possession, a garnishee, in answer to a summons to garnishee, may assert any lien or other valid claim amounting to an interest therein. No garnishee shall be compelled to surrender the possession of any property of the defendant upon which the garnishee establishes a lien or other valid claim amounting to an interest therein, which lien or interest attached or was acquired prior to service of the summons to garnishee, and such property only may be sold subject to the garnishee's lien or interest.

1 ACT

Amendment lineage

The State prints this history as a single parenthetical at the foot of the section. It is reproduced verbatim in the colophon and unpacked below in order of enactment.

				1948
1947				
TICK HEIGHT = ACTS IN THAT YEAR DASHED = RECODIFICATION, NOT AMENDMENT				
Nº	YEAR	ACT	CHARACTER	
01	1947	c. 693, s. 1	ENACTED	

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 1-440.28 (1947).

PINPOINT

N.C. Gen. Stat. § 1-440.28(a) (1947).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

COLOPHON

Provenance

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HISTORY PARENTHETICAL, AS PRINTED BY THE STATE
(1947, c. 693, s. 1.)

SET IN SPECTRAL AND ARCHIVO
NORTH CAROLINA LAW — STATUTE EXPORT, FORMAT V1

