

4-1939

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Recommended Citation

Levin, Charles (1939) "An Outline of Proceedings Supplementary," *Indiana Law Journal*: Vol. 14 : Iss. 4 , Article 3.

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AN OUTLINE OF PROCEEDINGS SUPPLEMENTARY

By CHARLES LEVIN*

By act of the legislature of 1937, the statutes on proceedings supplementary to execution were amended with an intent to create a more effective proceeding for the enforcement of executions after judgment.

The statute pertaining to the proceedings had been in force since 1881, and prior to the last amendment was essentially divided into three parts.

The first was in the nature of an inquiry patterned somewhat on the old bill of discovery. Under this part, the debtor could be required to appear and answer concerning his assets or property.

The second portion was an action also against the debtor requiring him to apply specific property for the satisfaction of the judgment.

The third portion was an action implicating a third person alleged to hold property belonging to the debtor. The purpose of the action was to require the third party to apply such property as he held to the satisfaction of the judgment.

Under the first part, the action was commenced after the return of the execution unsatisfied. Under the second part, the action could be commenced at any time after issuing the execution. Under the third part, the action could be commenced either after the issuing or before the return of the execution.

This law has now been changed into four parts by the Acts of the 1937 Legislature.¹ Under the first portion the proceedings are practically the same, that is, an action requiring debtor to appear and answer concerning his assets or property. The section has been amended to include municipal

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¹ Burns' Statutes, Section 2-4401, 2-4406.

courts, city courts and justices of the peace, as courts of original jurisdiction in such matters.

The second section is also very similar to the old law merely adding references to cities and townships, enabling courts of those respective jurisdictions to hear matters of this kind.

The third section adds political subdivisions to the classification of third parties, but otherwise, is very similar.

The fourth section provides that a court may order any property not exempt from execution to be applied to the satisfaction of the judgment, and that the judgment or execution shall be a continuing lien upon the income and profits of the judgment debtor to the extent of ten per-cent.

For the purpose of obtaining an understanding of the nature of the proceedings, an analysis is herewith submitted.

(1) *Property that can be Reached.* Everything in which there may be ownership and which may be available for the payment of judgments, can be reached by proceedings supplementary.² Thus, money in the hands of the debtor³ or money on deposit in a bank⁴ or negotiable notes⁵ or funds of any kind including those in the hands of administrators or executors⁶ or United States bonds⁷ may be reached.

All property that is subject to execution can likewise be subjected to proceedings supplementary.⁸ Intangible or equitable interests that are not regularly subject to execution are, however, subject to proceedings supplementary. Thus, an equitable interest in real estate⁹ or an interest in an insurance policy¹⁰ or a seat on a stock exchange¹¹ or proceeds of parti-

² Baker v. State ex rel., 109 Ind. 47.

³ Fowler v. Griffin, 83 Ind. 297.

⁴ O'Brien v. Flanders, 58 Ind. 22.

⁵ McKnight v. Knisley, 25 Ind. 336.

⁶ Fowler v. Griffin, 83 Ind. 297; Murphy v. Busick, 22 Ind. App. 247.

⁷ Kelley v. Bell, 72 Ind. 590.

⁸ Wallace v. Lawyer, 54 Ind. 501; Mercer v. Coomler, 32 Ind. App. 533.

⁹ Figg v. Snook, 9 Ind. 202; Jeffries v. Sherburn, 21 Ind. 112; Burt v. Hoettinger, 28 Ind. 214.

¹⁰ Rodwell v. Johnson, 152 Ind. 525.

¹¹ Habenicht v. Lissak (Cal.), 20 Pac. 874; Eliot v. Merchant's Exchange, 14 Mo. App. 234; Roome v. Swan, 2 N. Y. S. 614; Leggett v. Waller, 80 N. Y. S. 13. See note: Wagner v. Farmer's Co-Operative Exchange, 14 A. L. R. 279.

tion in the hands of a commissioner,¹² have all been held as forms of intangibles or property that can be reached by the proceedings. Intangible property in the form of an indebtedness not evidenced by an instrument in writing, can also be reached.¹³ It is this authority that is the main basis for proceedings being directed against wages of an employee and upon which a continuing lien is attached to the extent of ten per-cent of such employee's earnings.

Property that has been transferred to defraud creditors is also subject to proceedings supplementary.¹⁴ This type of a proceeding justifies an action to set aside the fraudulent conveyance to be included in the proceedings supplementary. Nor is execution creditor bound to levy on property claimed by another as a condition precedent to supplementary proceedings.¹⁵

The proceedings cannot be invoked to collect delinquent taxes for which a judgment has been obtained¹⁶ and will not reach special deposits for special purposes.¹⁷

In general, therefore it is seen that proceedings supplementary can be used to reach most forms of property, both tangible and intangible, in which an ownership of the judgment debtor is disclosed. The property sought, however, must be subject to execution as a general rule, excepting, of course, that if the form of the property is intangible and by such reason is not subject to execution, proceedings supplementary seem to be the proper course.

(2) *When Proceeding May Be Instituted.* From an analysis of the statute, proceedings supplementary may be instituted either before or after the issuance of execution. Of course, the nature of the property sought to be recovered,

¹² *Sherman v. Carvill*, 73 Ind. 126.

¹³ *Fowler v. Griffin*, 33 Ind. 297; *Baker v. State ex rel.*, 109 Ind. 47; *Hobbs v. Town of Eaton*, 33 Ind. App. 628.

¹⁴ *Corbin v. Goddar*, 94 Ind. 419; *Kelley v. Bell*, 172 Ind. 590; *Harris v. Howe*, 2 Ind. App. 419; *Balz v. Benninghof*, 5 Ind. App. 522.

¹⁵ *D. L. Adams Co. v. Federal Glass Co.*, 180 Ind. 576.

¹⁶ *West v. State ex rel., Benedict*, 168 Ind. 77.

¹⁷ *Terry v. Deitz*, 49 Ind. 293; *Brookville National Bank v. Deitz*, 49 Ind. 598.

determines the section under which the proceedings are brought.

If a general discovery is desired, proceedings are brought after the return of the execution "nulla bona".¹⁸ Proceedings to reach specific property in the hands of the debtor may be brought after the issuance of the execution and before its return.¹⁹ This would include bank accounts and similar intangibles; any equitable interest that the debtor may own; or any other property belonging to the debtor that is not regularly subject to execution and levy. Property in the hands of third persons may be subjected to proceedings either before or after the return of an execution. The statute does not indicate that the routine of the issuance and return of an execution must take place before supplemental proceedings can be instituted.

(3) *Where the Proceedings Must Be Instituted.* Under the new law, proceedings can be instituted in any court of original jurisdiction. This includes city courts, municipal courts, and justices of the peace, all formerly excluded. They may be instituted in a court different from the one in which the judgment was rendered and from which an execution issued.²⁰ Thus, a judgment may be rendered before a justice of the peace, and proceedings brought in a superior court or circuit court.

There are limitations as to the place where the actions may be commenced. First, if the judgment debtor is a resident, they must be brought in the county where the debtor resides.²¹ If the debtor is a non-resident, they must be brought in the county where the judgment was rendered.²² It appears that proceedings can be brought against a non-resident debtor to secure property belonging to him in the county where the judgment was rendered. Or if the property be in another

¹⁸ *Dandested v. Kronanberger*, 39 Ind. 405, 406. See also: *Watson's Work's Practice and Forms*, Vol. 2, Sec. 2337.

¹⁹ *Watson's Work's Practice and Forms*, Vol. 2, Sec. 2337.

²⁰ *Coolie v. Ross*, 22 Ind. 157, 159; *Kelley v. Bell*, 172 Ind. 590, 593; *Harper v. Behogg*, 14 Ind. App. 427, 429; *Murphy v. Busick*, 22 Ind. App. 247, 248.

²¹ *Burns' Statutes*, Sec. 2-4401.

²² *Burns' Statutes*, Sec. 2-4401.

county, the court may order that the property be applied. This provided, the debtor is served with notice in the manner provided by statute.

(4) *Parties.* In all cases, the execution defendant is a necessary party.²³ If the action is brought for the purpose of discovery or for the application of specific property, the execution defendant is the only necessary party. If, however, the action seeks property in the hands of third persons, they must be made parties defendant.²⁴ This includes administrators or executors.²⁵ If the property in the hands of a third person is claimed by another party, they may be brought in on a question of title and their rights determined.²⁶

Formerly a body politic or corporate could not be made a defendant.²⁷ But since the amendment of 1937 all state and local governments and their political subdivisions may be made defendant subject to the order of court or its findings.²⁸

(5) *Complaint.* Proceedings may be commenced by a motion showing that judgment was recovered and execution issued or returned unsatisfied. This must be verified.²⁹ A formal complaint may be filed although the statute does not provide for it.³⁰ If the statement is in the nature of a complaint and is verified, it is sufficient.³¹

²³ Wall v. Whisler, 14 Ind. 228, 229; Chandler v. Caldwell, 17 Ind. 256, 258; Hundley v. Caywood, 40 Ind. 239, 242; O'Brien v. Flanders, 41 Ind. 486, 487; Falson v. Clark, 48 Ind. 414, 415; Earl v. Shiles 93 Ind. 128; Cushman v. Gephart, 97 Ind. 46; Mitchell v. Bray, 106 Ind. 265.

²⁴ Eden v. Everson, 65 Ind. 113; Fowler v. Griffin, 83 Ind. 297; Baker v. State ex rel., 109 Ind. 47; Hobbs v. Town of Eaton, 38 Ind. App. 628.

²⁵ Fowler v. Griffin, 83 Ind. 297; Murphy v. Busick, 22 Ind. App. 247.

²⁶ Toledo, etc. R. R. Co. v. Hauus, 68 Ind. 458; Fowler v. Griffin, 83 Ind. 297; Burkett v. Bowen, 118 Ind. 379; American Bronze Co. v. Clark, 123 Ind. 230; Harris v. Howe, 2 Ind. App. 419; Harper v. Behogg, 14 Ind. App. 427.

²⁷ Wallace v. Lawyer, 54 Ind. 501.

²⁸ Burns' Statutes, Sec. 2-4403.

²⁹ Bantz v. Buchles, 68 Ind. 49; Abell v. Riddle, 75 Ind. 345; Dellman v. Dellman, 90 Ind. 585; Cushman v. Gephart, 97 Ind. 46; Pander v. Tate, 111 Ind. 148; Adams Co. v. Federal Glass, 180 Ind. 576; Harper v. Behogg, 14 Ind. App. 427; Beckman Supply v. Newell, 68 Ind. App. 679.

³⁰ See Watson's Works, Practice and Forms, Vol. II, Sec. 2341.

³¹ Carpenter v. Wanscoten, 28 Ind. 50.

The complaint must allege that the plaintiff obtained a judgment against the defendant stating the amount; that the judgment debtor is a resident of the county in which the complaint is filed, or that the judgment was taken in the county; that an execution has been issued to the sheriff of the county in which the debtor resides, or that execution has been returned unsatisfied;³² that the judgment is still unpaid; and that the defendant has property which may be applied to the satisfaction of the judgment, stating of what the property may consist.³³

To sustain proceedings against third parties, the complaint must show that the execution has been returned "nulla bona" or that the execution defendant has no other property upon which a levy could be made to satisfy the judgment.³⁴ The allegations of residence should also be included.³⁵

The proper method to test the sufficiency of the affidavit or complaint is by demurrer³⁶ and not by motion to quash;³⁷ any further pleadings are unnecessary.³⁸ Where pleadings other than those authorized by the statute are filed, they may be disregarded.³⁹

The proceedings are auxiliary to and part of the original action in the sense that it takes the same number on the docket, but it is essentially a new and independent action in the sense that it involves the determination of new and different issues, all of which are foreign to those involved in the original case.⁴⁰ They are regarded as much a means of enforcing the judgment as the execution itself, and while they

³² Ponder v. Tate, 111 Ind. 148; McKinney v. Snider, 116 Ind. 160.

³³ Lewis v. Hanneman, 88 Ind. App. 430.

³⁴ Cushman v. Gephart, 97 Ind. 46; Vordermark v. Wilkinson, 147 Ind. 56; Balz v. Benninghof, 5 Ind. App. 522.

³⁵ For necessary allegations see: Cushman v. Gephart, 97 Ind. 46. Also: Lewis v. Hanneman, 88 Ind. App. 430.

³⁶ Bantz v. Buckles, 68 Ind. 49; Pander v. Tate, 111 Ind. 148.

³⁷ Hutchinson v. Trauerman, 112 Ind. 21.

³⁸ Wallace v. Lawyer, 91 Ind. 128; Pander v. Tate, 111 Ind. 148; First National Bank v. Stanley, 4 Ind. App. 213.

³⁹ Wallace v. Lawyer, 91 Ind. 128.

⁴⁰ Hammond v. District Court, 228 Pac. 758.

may be considered as new suits, they are more properly regarded as proceedings in the original action.⁴¹

However, they are independent actions⁴² and new process must issue⁴³ even though the affidavit is filed under the same cause number, although it has been held in another state under a statute similar to ours, that new summons was unnecessary.⁴⁴

The complaint may include an action to set aside a fraudulent conveyance.⁴⁵

(6) *Practice.* The proceedings are considered as a civil action and all the rules of practice in ordinary civil action govern.⁴⁶ Thus, there may be a change of venue⁴⁷ either from the county or judge.⁴⁸ The complaint or affidavit may be amended as in other civil actions⁴⁹ or any other of the rules of practice invoked.⁵⁰

(7) *Trial.* The proceedings are always summary.⁵¹ Trial is upon oral examination of parties and witnesses.⁵² The execution defendant may be required to appear and answer under oath, and the answers may be used as evidence.⁵³ Great latitude is allowed in the examination of the debtor,

⁴¹ *Hammond v. District Court*, 228 Pac. 758. See also note: 39 A. L. R. 1490.

⁴² *Harper v. Behogg*, 14 Ind. App. 427.

⁴³ *Kissell v. Anderson*, 73 Ind. 485.

⁴⁴ *Weiller v. Lawrence*, 81 N. C. 65; *Aff'd Hinsdale v. Underwood*, 21 S. E. 401.

⁴⁵ *Corbin v. Goddar*, 94 Ind. 419.

⁴⁶ *Burkett v. Holman*, 119 Ind. 141; *Burkett v. Bowman*, 104 Ind. 184; *Baker v. State ex rel.*, 109 Ind. 47; *Hutchison v. Trauerman*, 112 Ind. 21; *Chicago, etc. R. R. Co. v. Summer*, 113 Ind. 10; *Balz v. Benninghof*, 5 Ind. App. 522; *Harper v. Behogg*, 14 Ind. App. 427; *Beckman Supply Co. v. Newell*, 68 Ind. App. 179.

⁴⁷ *Burkett v. Holman*, 119 Ind. 141; *Burkett v. Bowan*, 104 Ind. 184.

⁴⁸ *Joseph v. Schnepfner*, 1 Ind. App. 154; *Harper v. Behogg*, 14 Ind. App. 427.

⁴⁹ *Hutchinson v. Trauerman*, 112 Ind. 21; *Burkett v. Bowen*, 118 Ind. 379.

⁵⁰ *Balz v. Benninghof*, 5 Ind. App. 522; *Harper v. Behogg*, 14 Ind. App. 427.

⁵¹ *Burkett v. Holman*, 119 Ind. 141; *Harper v. Behogg*, 14 Ind. App. 427; *Bipus v. Deer*, 106 Ind. 135.

⁵² *Burns' Statute*, Sec. 2-4406.

⁵³ *Coffin v. McClure*, 23 Ind. 356.

and the examiner is not limited by the strict rules for examination of ordinary witnesses.⁵⁴

The debtor may be required to answer as to the disposition of money received.⁵⁵ In no case are the answers of the debtor conclusive,⁵⁶ and the plaintiff may controvert the evidence.⁵⁷

Any evidence competent in ordinary civil actions is competent in proceedings supplementary. Thus, an answer filed under oath by third parties as a part of the pleadings may be used as evidence. It has been held that assessment lists are competent evidence⁵⁸ and it is presumed that any similar document could also be used for the same purpose.

Trial may be held by the court during term,⁵⁹ or during vacation.⁶⁰ There is no right for separate trials when several are defendants.⁶¹ Nor, is there any right to trial by jury except when third persons are made parties and an issue of fact is found between them or between a third person and the plaintiff, or the execution is found between them or between a third person and the plaintiff, or the execution debtor,⁶² in that the statute provides that the matters shall be heard by the court.⁶³

(8) *Findings and Orders of Court.* The first order of court is usually entered upon the filing of the affidavit, for the appearance of the execution debtor forthwith at a time fixed by the court.⁶⁴ Following the evidence the court may then order any property belonging to the debtor, not exempt from execution, to be applied to the payment of the judg-

⁵⁴ Comstock v. Grindle, 121 Ind. 459; McCray v. Whitney, 56 Ind. App. 94.

⁵⁵ McCray v. Whitney, 56 Ind. App. 94.

⁵⁶ Toledo, W. & W. Ry. Co. v. Howes, 68 Ind. 458; Comstock v. Grindle, 121 Ind. 459.

⁵⁷ Toledo, W. & W. Ry. Co. v. Howes, 68 Ind. 458.

⁵⁸ Towns v. Smith, 115 Ind. 480; Comstock v. Grindle, 121 Ind. 459.

⁵⁹ Burns' Statutes, Sec. 2-4402.

⁶⁰ Hutchinson v. Trauerman, 112 Ind. 21; Balz v. Benninghof, 5 Ind. App. 522; Harper v. Behogg, 14 Ind. App. 427; Beckman Supply Co. v. Newell, 68 Ind. App. 179.

⁶¹ Hale v. Miller, 131 Ind. 80.

⁶² See Watson's Works, Practice and Forms, Vol. II, Sec. 2349.

⁶³ Burns' Statutes, Sec. 2-4402.

⁶⁴ Burns' Statutes, Sec. 2-4402.

ment.⁶⁵ Money belonging to the debtor,⁶⁶ or in his possession, if subject to execution⁶⁷ may be ordered paid. Persons indebted to the debtor may be ordered to pay such indebtedness into court to be applied on the judgment.⁶⁸

Property in the hands of the debtor, free from claims of third parties may be ordered sold by the sheriff.⁶⁹ However, the debtor may be entitled to a statutory exemption, and it must be remembered that the order of court can only go to property not exempt from execution.⁷⁰

Choses in action are not subject to execution and so cannot be reached by order.⁷¹ However, the court as in cases of other claims not due or liquidated, may enjoin the transfer prior to liquidation or maturity.⁷² Under the new amendment, the court may forbid the transfer of any property or chose in action, and it has long been within the power of court to set aside a transfer of property made with intent to defraud creditors.⁷³

Neither party has the right to require the trial court to make a special finding of facts, and state its conclusions of law.⁷⁴ And where special findings of fact has been made, it will be treated as a general finding only.⁷⁵

(9) *Enforcing the Orders of Court.* Enforcement is by attachment or otherwise.⁷⁶ By "otherwise" is meant a proceeding for contempt of court.⁷⁷ Attachment may be

⁶⁵ Burns' Statutes, sec. 2-4406.

⁶⁶ D. L. Adams Co. v. Federal Glass, 180 Ind. 576.

⁶⁷ Baker v. State ex rel., 109 Ind. 47.

⁶⁸ Brisco v. Askey, 12 Ind. 666; Chandler v. Caldwell, 17 Ind. 256; Devan v. Ellis, 29 Ind. 72; Dunning v. Rogers, 69 Ind. 272; Fowler v. Griffin, 83 Ind. 297; Eiter v. Crull, 112 Ind. 318; American White Bronze Co. v. Clark, 123 Ind. 230.

⁶⁹ Watson Work's, Practice and Forms, Vol. II, Sec. 2350.

⁷⁰ Burns' Statutes, Sec. 2-4406.

⁷¹ Brisco v. Ashley, 12 Ind. 666; Baker v. State ex rel., 109 Ind. 47; Beckman Supply Co. v. Newell, 68 Ind. App. 679.

⁷² Pursell v. Dappenheimer, 11 Ind. 327.

⁷³ Corbin v. Goddard, 94 Ind. 419; Kelly v. Bell, 172 Ind. 590.

⁷⁴ Beckman Supply v. Newell, 68 Ind. App. 679.

⁷⁵ Beckman Supply v. Newell, 68 Ind. App. 679.

⁷⁶ 1933 Burns' Statute, Sec. 2-4406; Baker v. State ex rel., 109 Ind. 47.

⁷⁷ Bostivik v. Bryant, 113 Ind. 448; Joyce v. Everson, 161 Ind. 440.

used against the property, while contempt is against the person.⁷⁸

Pending the proceedings, the plaintiff may procure an order of arrest for the defendant by filing his affidavit, or that of his attorney, that the defendant is leaving the state, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply, with intent to defraud creditors.⁷⁹ After the sheriff has taken the defendant into custody, he, (the defendant) must enter into an undertaking, with surety approved by the sheriff, that he will attend before the court as required, and will comply with the orders of court, and in the meantime, will not dispose of any property. In default of bail, the defendant must be committed to jail.⁸⁰

If the defendant breaches his bond, the plaintiff may recover the value of the property unlawfully withheld or disposed of not exceeding the amount of judgment and costs.⁸¹

Females are subject to imprisonment for failure to comply with any order of court the same as anyone else.⁸²

(10) *Lien.* A lien attaches to the property sought to be charged at the time of the first order requiring the debtor to appear.⁸³ In the case of a debt due the execution debtor, the lien attaches at the time the debtor of the defendant is first served with process.⁸⁴ If, however, an assignment of the property is made before an order is served on the defendant, the assignment will be good.⁸⁵

The statute provides that the court may order a continuing lien of 10% to be deducted from the debts, wages and earn-

⁷⁸ Watson's Works, Practice and Forms, Vol. II, Sec. 2354.

⁷⁹ Burns' Statutes, Sec. 3-301 et seq. See also: Watson's Works, Practice and Forms, Vol. II, Sec. 2354.

⁸⁰ Burns' Statute, Sec. 3-305. See also: Watson's Works, Practice and Forms, Vol. II, Sec. 2354.

⁸¹ Burn's Statute, Sec. 3-308.

⁸² Joyce v. Everson, 161 Ind. 440.

⁸³ Cook v. Ross, 22 Ind. 157; Jondley v. Caywood, 40 Ind. 239; Ponder v. Tate, 132 Ind. 327.

⁸⁴ Routh v. Spencer, 38 Ind. 393.

⁸⁵ Hondley v. Caywood, 40 Ind. 239.

ing of the defendant.⁸⁶ This may be subject to a statutory exemption in accordance with the provisions of the statute.

It has been held that where a valid lien against wages has been secured more than four months prior to bankruptcy, proceedings to enforce the same do not conflict with the bankruptcy law, and may be instituted and prosecuted to the end.⁸⁷ It would seem, therefore, that where a court has made such an order of 10% of the debtor's earnings, etc., and such order remained in force more than four months prior to bankruptcy, it would continue without interruption. This would apply to orders of court on other property.

In the same field, although on a different type of order of execution, the federal court has held that where a judgment creditor has taken a garnishee execution against a bankrupt's salary prior to bankruptcy, the bankruptcy court will stay payment over to the creditor pending discharge, but will not stay employer from making required deductions from employee's salary, so that a fund accumulates in the employer's hands to be paid to the creditor if the discharge is denied, and to the bankrupt, if the discharge is granted.⁸⁸ But this was an order on a garnishee execution and not on proceedings supplementary. To the same effect, however, was a decision involving a 10% wage execution under the New York garnishee law.⁸⁹

In this state, it has been uniformly held that liens created four months prior to commencement of proceedings in bankruptcy, are not released, and may be enforced after the bankrupt's discharge.⁹⁰

(11) *Appeal.* A judgment in proceedings supplementary is a final judgment which is appealable.⁹¹ Appeals may be

⁸⁶ Burns' Statute, Sec. 2-4406.

⁸⁷ *In re Koslowski*, 153 Fed. 823; *In re McAusland*, 235 Fed. 173; *Spradlin v. Kramer*, 91 S. E. 409; *In re Berlaw*, 7 Fed. (2nd) 898.

⁸⁸ *In re Biecker*, 19 F. Supp. 283.

⁸⁹ *In re Van Buren*, 164 Fed. 883.

⁹⁰ *Truitt v. Truitt*, 38 Ind. 61; *Pauley v. Cauthorn*, 101 Ind. 91; *New Union Lumber v. Good*, 82 Ind. App. 492.

⁹¹ *Pounds v. Chatham*, 96 Ind. 342.

taken as in other civil actions either from an interlocutory order⁹² or from a judgment.⁹³ All errors must be saved and presented in the record as in other cases.⁹⁴

On a joint judgment, the appealing party must make the other parties defendants as is usual in other civil cases. In fact all proceedings on appeal must be in conformity with the requirements of statutes in regular civil matters.⁹⁵

⁹² McKnight v. Knisely, 25 Ind. 336.

⁹³ Harper v. Behogg, 14 Ind. App. 427.

⁹⁴ Kissell v. Anderson, 73 Ind. 485.

⁹⁵ Hale v. Miller, 131 Ind. 80.

INDIANA LAW JOURNAL

Published Bi-Monthly October to August, inclusive, by the
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