

the mortgaged property, subsequent to the filing of the lis pendens in the foreclosure action, are bound and concluded by the proceedings and judgment therein, whether taken or entered before or after they acquired title, to the same extent and in the same manner as if they had been joined and served as parties thereto. *J. & S. Corp. v. Mortgage Associates, Inc.* 41 W (2d) 418, 164 NW (2d) 221.

**281.04 History:** 1881 c. 319; 1885 c. 237; Ann. Stats. 1889 s. 927a; Stats. 1898 s. 3187a; 1899 c. 351 s. 38; 1901 c. 121 s. 1; 1905 c. 227 s. 1; Supl. 1906 s. 3187a; 1925 c. 4; Stats. 1925 s. 281.04.

The requirement that the resolution be recorded means that it must be recorded in the office of the register of deeds of the county in which the land was situated. *Svennes v. West Salem*, 114 W 650, 91 NW 121.

Sec. 3187a, Stats. 1898, does not apply to applications to supervisors under ch. 54, Stats. 1898, for laying out of drains, as the supervisors in such case are acting as public or governmental officers and not as a town board. *Rude v. Ste. Marie*, 121 W 634, 99 NW 460.

The recording of a resolution of the common council carrying necessity for widening the street is not a sufficient compliance with sec. 3187a, Stats. 1898. *Roehl v. Milwaukee*, 141 W 341, 124 NW 400.

Failure to file notice of pendency of an application to condemn land to widen a street did not render condemnation proceeding void against owners appearing and consenting thereto. The lis pendens doctrine does not apply to parties to action. *Pennefeather v. Kenosha*, 210 W 695, 247 NW 440.

**281.06 History:** 1856 c. 120 s. 197; R. S. 1858 c. 134 s. 6; R. S. 1878 s. 3188; Stats. 1898 s. 3188; 1925 c. 4; Stats. 1925 s. 281.06.

The language "shall be effectual to pass the rights and interest of the parties in the property adjudged to be sold," when applied to the deed executed upon a foreclosure sale, must be understood as referring to such rights and interest as were or might properly have been litigated in the foreclosure action. *Pelton v. Farmin*, 18 W 222.

**281.07 History:** 1863 c. 300 s. 1, 2; 1873 c. 57; R. S. 1878 s. 3189; 1882 c. 307; Ann. Stats. 1889 s. 3189; Stats. 1898 s. 3189; 1925 c. 4; Stats. 1925 s. 281.07; 1935 c. 541 s. 384.

**281.09 History:** R. S. 1849 c. 111 s. 5; R. S. 1858 c. 146 s. 5; R. S. 1878 s. 3191; Stats. 1898 s. 3191; 1925 c. 4; Stats. 1925 s. 281.09; 1935 c. 541 s. 386.

**281.11 History:** R. S. 1849 c. 111 s. 11 to 13; R. S. 1858 c. 146 s. 11 to 13; R. S. 1878 s. 3193; Stats. 1898 s. 3193; 1925 c. 4; Stats. 1925 s. 281.11.

**281.12 History:** R. S. 1849 c. 111 s. 15; R. S. 1858 c. 146 s. 15; R. S. 1878 s. 3194; Stats. 1898 s. 3194; 1925 c. 4; Stats. 1925 s. 281.12.

**281.28 History:** Sup. Ct. Order, 239 W viii; Stats. 1943 s. 281.28.

**Comment of Advisory Committee:** 281.28 is a companion to 272.11. It rounds out the procedure for foreclosure of land contracts. [Re Order effective July 1, 1942]

**281.30 History:** 1953 c. 545; Stats. 1953 s. 281.30; 1955 c. 10 s. 160; 1961 c. 495; 1965 c. 252.

See note to sec. 12, art. I, on impairment of contracts, citing 48 Atty. Gen. 77.

## CHAPTER 285.

### Actions Against State.

**285.01 History:** 1850 c. 249 s. 1, 2; R. S. 1858 c. 157 s. 1, 2; R. S. 1878 s. 3200; Stats. 1898 s. 3200; 1925 c. 4; Stats. 1925 s. 285.01; 1935 c. 483 s. 2; 1969 c. 276.

On suits against the state see notes to sec. 27, art. IV; and on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03.

A contract between an individual and the state is to be construed and the liabilities of the parties under it are to be determined by the same rules as govern contracts between individuals. *Sholes v. State*, 2 Pin. 499.

Paying a claim on condition that acceptance of the sum allowed should be a bar to all unsettled claims, etc., did not make acceptance a bar to a claim which had previously been settled by the legislature. *Baxter v. State*, 9 W 38.

The state may plead the statute of limitations. *Baxter v. State*, 10 W 398, 15 W 541, 17 W 588.

The acceptance by a creditor of the state of a sum appropriated in full payment of a demand is a bar to a further prosecution of the claim on account of such demand where there is no fraud, accident or mistake in matter of fact. *Massing v. State*, 14 W 502.

A denial that the state has ever refused to pay plaintiff his just claim, if any, does not traverse an averment of a presentation of the claim to the legislature and a refusal to allow it. *Shipman v. State*, 43 W 381.

The supreme court has no jurisdiction to render a judgment for costs against the state in a criminal action. A judgment for costs in such an action, rendered by the supreme court of the United States, does not constitute a claim against the state within the meaning of this statute. *Noyes v. State*, 46 W 250, 1 NW 1.

Money voluntarily paid to the state for peddlers' licenses under a void statute cannot be recovered; but the rule is otherwise if payment was made under duress or menace by public officers. Prima facie the right to recover is in the peddler who made the payment; and the duress which renders the payment involuntary must be of such person. *Noyes v. State*, 46 W 250, 1 NW 1.

No action can be maintained against the state in any court thereof unless it is authorized by statute. *Chicago, M. & St. P. R. Co. v. State*, 53 W 509, 10 NW 560.

Sec. 3200, R. S. 1878, does not extend to a demand based upon the unlawful and tortious acts of officers or agents of the state, as for killing animals alleged to be affected by a contagious or infectious disease when they are not so affected. *Houston v. State*, 98 W 481, 74 NW 111.

The state may waive its immunity from action in torts committed by its officers as well as on contracts. *Apfelbacher v. State*, 160 W 565, 152 NW 144.

The state has not consented to the prosecution against it of equitable actions. *Petition of Wausau I. Co.* 163 W 283, 158 NW 81.

Where a claim presented to the legislature, for a recovery by a life insurance company of license fees alleged to have been collected pursuant to an unconstitutional law, alleged further that even if the law were to be held constitutional, portions of the amount collected were illegal and should be refunded, this was sufficient to give the supreme court jurisdiction of that part of the claim. *Northwestern Mut. Life Ins. Co. v. State*, 163 W 484, 155 NW 609, 158 NW 328.

Neither interest on claims against the state, as for salary and expenses of a state humane agent, nor costs, are recoverable by a claimant, in the absence of statute or contract. *Frederick v. State*, 198 W 399, 224 NW 110.

In actions against the state, failure to file the statutory bond is jurisdictional. *State v. Reis*, 230 W 683, 284 NW 580.

285.01, Stats. 1939, permitting the bringing of an action against the state on the refusal of the legislature to allow a "claim", applies only as to claims rendering the state a debtor and not to equitable claims or to tort claims, and does not authorize an action against the state for personal injuries. *Holzworth v. State*, 238 W 63, 298 NW 163.

Where plaintiffs had filed with the legislature a claim based only on asserted rights as assignees of the original contracting parties, and the legislature had disallowed the claim solely on the ground that, under provisions of the contract, the plaintiffs as such assignees had no right under the contract, a subsequent suit on the theory that they were the owners of the claim by operation of law as successors to the original partnership and corporation which were parties to the contract, must be dismissed because the claim was not properly filed before the legislature. *Sehlin v. State*, 256 W 495, 41 NW (2d) 596.

A county's action against the state, for the recovery of county funds wrongfully used by the county clerk in remitting to the state for hunting and fishing licenses issued by him, was not one to recover on an "equitable claim" but was one to recover on an obligation implied in law, for the recovery of money had and received, and was one at law on a claim rendering the state a debtor, so that it was within 285.01, authorizing the commencement of an action against the state on the refusal of the legislature to allow a "claim" against the state. *Trempealeau County v. State*, 260 W 602, 51 NW (2d) 499.

Costs are recoverable by the plaintiff if successful in obtaining judgment against the state. *Holton & Hunkel G. Co. v. State*, 274 W 337, 80 NW (2d) 371.

In view of the abrogation of the rule granting governmental immunity in tort, the question of the applicability of 285.01 to tort claims is reserved for later determination. *Holytz v. Milwaukee*, 17 W (2d) 26, 115 NW (2d) 618.

285.01, Stats. 1963, is more than a procedural statute, constituting a consent to be sued, limited in construction to what was considered by the legislature at the time of the initial statute (enacted in 1850) as the practical liability of the state. *Townsend v.*

*Wisconsin Desert Horse Asso.* 42 W (2d) 414, 167 NW (2d) 425.

That suit may be brought pursuant to 285.01, Stats. 1967, when the legislature has failed to act upon or has denied a claim arising out of damages caused by the negligent operation of a state-owned aircraft or state-owned vehicle, could not avail the plaintiffs, for the governing statutes (114.065 and 345.05) specifically provide that 285.01 is to be utilized if the legislature fails to act or denies claims arising out of negligent operation of state-owned and operated apparatus. *Chart v. Gutmann*, 44 W (2d) 421, 171 NW (2d) 331.

Disallowance of a claim presented to the legislature under provisions of sec. 3200, Stats. 1921, need not be by bill; any action rejecting it is sufficient. 12 Atty. Gen. 197.

Sec. 3200, Stats. 1923, says "claim", and it has been held that "it only authorizes suits to be brought against the state on claims which, if allowed, would render the state a debtor to the claimant, and that it does not include a demand or liability based on an unlawful or tortious act of a public officer or agent of the state". 13 Atty. Gen. 387, 388.

When the legislature fails to make an appropriation for an officer during his term of office, he is entitled to his salary, but the right to collect it can be enforced only under provisions of sec. 3200, Stats. 1923. 14 Atty. Gen. 387.

On the liability of the state in various "moral obligation" situations see 40 Atty. Gen. 178.

**285.04 History:** 1850 c. 249 s. 5; R. S. 1858 c. 157 s. 5; 1860 c. 326 s. 1, 2; R. S. 1878 s. 3203; Stats. 1898 s. 3203; 1925 c. 4; Stats. 1925 s. 285.04; 1947 c. 9; 1959 c. 228 s. 66.

**Revisers' Note, 1878:** Sections 1 and 2, chapter 326, Laws 1860, and part of section 5, chapter 157, R. S. 1858, so written as to authorize the payment by the state treasurer, under the provisions of these statutes without the appropriation clause. See section 172 of these statutes.

285.04, Stats. 1927, warrants imposition of costs against the state in state humane agent's action for salary and expenses. *Frederick v. State*, 198 W 399, 224 NW 110.

**285.05 History:** 1913 c. 189; 1913 c. 772 s. 16; Stats. 1913 s. 3203a; 1917 c. 14 s. 25; 1925 c. 4; Stats. 1925 s. 285.05; 1927 c. 191; 1935 c. 483 s. 5; 1941 c. 301; 1943 c. 375 s. 94; 1969 c. 276 ss. 565, 582 (9); 1969 c. 366 s. 117 (3) (d).

Where the commission finds that "it is not clear beyond a reasonable doubt" that a petitioner for compensation as an innocent convict was innocent of the crime for which he suffered imprisonment, the denial of compensation cannot be set aside in the absence of proof in the record of the proceedings before the commission that compels the conclusion that the commission erred as a matter of law in making such finding. The burden of convincing the commission by proof beyond a reasonable doubt that he was innocent is on the petitioner. The remedy provided for by 285.05 (5), on the commission's denial of compensation to a petitioner, is exclusive. *LeFevre v. Goodland*, 247 W 512, 19 NW (2d) 884.

One whose term of imprisonment has been shortened by other means than a pardon is

not entitled to compensation. The "term of imprisonment," as used in sec. 3203a, Stats. 1921, means the term fixed by the court or such term as shortened by pardon. 11 Atty. Gen. 872.

**285.06 History:** 1953 c. 621; Stats. 1953 s. 285.06; 1959 c. 299; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 ss. 566, 582 (9); 1969 c. 366 s. 117 (3) (a).

**285.10 History:** 1866 c. 92; R. S. 1878 s. 2638; Stats. 1898 s. 2638; 1921 c. 474; 1925 c. 4; Stats. 1925 s. 262.10; 1927 c. 473 s. 47; 1959 c. 226 s. 14; Stats. 1959 s. 285.10.

262.10, Stats. 1929, was enacted pursuant to the power conferred by sec. 27, art. IV. *Fulton v. State A. and I. Board*, 204 W 355, 236 NW 120.

The state annuity and investment board holding a mortgage on the military company's premises was a proper party defendant in a suit to foreclose a mechanic's lien for construction of the armory thereon. *Fulton v. State A. and I. Board*, 204 W 355, 236 NW 120.

In an action to set aside a sale of land by the university regents, the state was not a necessary party since it had no interest in the land, and the action will be dismissed as to it. *Glendale Development, Inc. v. Board of Regents*, 12 W (2d) 120, 106 NW (2d) 430.

285.10, Stats. 1967, is construed as consenting to any equitable action involving land where no judgment for the recovery of money or personal property is sought against the state, thus permitting the state to be made a defendant when declaratory judgment, injunctive relief, or specific performance is sought because the state claims, or is alleged to claim, an interest in land adverse to the plaintiff. *Herro v. Wisconsin F.S.P.D. Corp.* 42 W (2d) 87, 166 NW (2d) 433.

Joinder of state in quiet-title and foreclosure proceedings. *Reynolds*, 33 WBB, No. 6.

**285.11 History:** 1965 c. 413; Stats. 1965 s. 285.11; 1969 c. 276 s. 582 (9).

## CHAPTER 286.

### Actions Against Corporations.

**286.03 History:** R. S. 1849 c. 113 s. 7; R. S. 1858 c. 148 s. 5; R. S. 1878 s. 3206; Stats. 1898 s. 3206; 1925 c. 4; Stats. 1925 s. 286.03; 1935 c. 483 s. 9.

**286.12 History:** R. S. 1849 c. 114 s. 9; R. S. 1858 c. 148 s. 21; R. S. 1878 s. 3218; Stats. 1898 s. 3218; 1925 c. 4; Stats. 1925 s. 286.12; 1935 c. 483 s. 17; 1967 c. 89.

**Editor's Note:** Secs. 3218 and 3219, R. S. 1878, had application to "any corporation having banking powers, or having the power to make loans or pledges or deposits, or authorized by law to make insurance \* \* \*"

Under secs. 3218 and 3219, R. S. 1878, a creditor or a stockholder of an insolvent insurance company may have the exercise of its corporate rights restrained, secure the appointment of a receiver and have the corporate business closed up. The attorney general may become a party to such an action and therein obtain a decree for the dissolution of the corporation; but he cannot, after a receiver has been appointed and an injunction

granted, proceed for that purpose under sec. 1968. In re *Oshkosh Mut. Fire Ins. Co.* 77 W 366, 46 NW 441.

An insolvent corporation of either of the classes mentioned may be restrained by injunction from prolonging its existence, or embarrassing the receiver and court in closing its affairs, by exercising any corporate franchise; but the insolvent corporation shall remain inert while the receiver closes its affairs under the direction of the court. *Milwaukee Mut. Fire Ins. Co. v. Sentinel Co.* 81 W 207, 51 NW 440.

Sec. 3218, R. S. 1878, and the following sections require the forfeiture of the charter and immediate suspension of all business by a bank as soon as application can be made and its insolvency proven. In re *Koetting*, 90 W 166, 62 NW 622.

Granting an injunction against and appointing a receiver for a mutual insurance company cancels all its existing policies, and renders all its premium notes, so far as the premiums for which they were given were unearned, void. *Davis v. Shearer*, 90 W 250, 62 NW 1050.

When an action is brought under secs. 3218 and 3219, R. S. 1878, it is the exclusive action in which not only the assets of the corporation are to be administered but also the liabilities of officers and stockholders are to be ascertained and enforced. *Gager v. Bank of Edgerton*, 101 W 593, 598, 77 NW 922.

Any creditor or stockholder may bring an action as provided in secs. 3218 and 3219, Stats. 1898. *Bergh v. Security S. Bank*, 122 W 514, 100 NW 831.

Sec. 3218, Stats. 1898, supplements but does not do away with the common law regarding creditor's bills. A creditor's bill may be brought against a foreign corporation. *Lehr v. Murphy*, 136 W 92, 116 NW 893.

In an action based upon a judgment and execution returned unsatisfied, it is an irregularity to enter a new judgment against the corporation but the other defendants are not prejudiced thereby. *McGovern v. Milwaukee M. Co.* 141 W 309, 124 NW 269.

**286.13 History:** R. S. 1849 c. 114 s. 10 to 12; R. S. 1858 c. 148 s. 22 to 24; R. S. 1878 s. 3219; Stats. 1898 s. 3219; 1901 c. 175 s. 1; Supl. 1906 s. 3219; 1925 c. 4; Stats. 1925 s. 286.13; 1935 c. 483 s. 19.

A creditor of an insolvent banking corporation may bring an action in behalf of all creditors to close up the business of the bank and enforce the liabilities of the officers and stockholders. *Hurlbut v. Marshall*, 62 W 590, 22 NW 852.

The mere fact that a libel of an insurance company has resulted in pecuniary injury to it does not make the cause of action one for an injury to its property which passes to the receiver. *Milwaukee Mut. Fire Ins. Co. v. Sentinel Co.* 81 W 207, 51 NW 440.

A receiver's appointment cannot be attacked collaterally in an action brought by him after he has qualified, where the court appointing him had jurisdiction of the subject matter, notwithstanding the application for his appointment was insufficient. *Davis v. Shearer*, 90 W 250, 62 NW 1050.

**286.15 History:** R. S. 1849 c. 114 s. 10; R. S.