

271.29 History: 1927 c. 84; Stats. 1927 s. 271.29; 1935 c. 541 s. 205; 1967 c. 285.

Revisor's Note, 1935: 271.29 is amended to express the court's construction. State ex rel. Firemen's Fund Ins. Co. v. Hoppmann, 207 W 481. Perjury and false swearing are defined and punished by general criminal provisions. Old (2) seems unnecessary. (1) covers defenses. [Bill 50-S, s. 205]

271.33 History: R. S. 1849 c. 92 s. 7; R. S. 1858 c. 133 s. 91; R. S. 1878 s. 2947; Stats. 1898 s. 2947; 1925 c. 4; Stats. 1925 s. 271.33; 1935 c. 504 s. 206; Sup. Ct. Order, 245 W x.

271.34 History: R. S. 1849 c. 92 s. 8, 9; R. S. 1858 c. 133 s. 92, 93; 1859 c. 91 s. 4; R. S. 1878 s. 2948; Stats. 1898 s. 2948; 1925 c. 4; Stats. 1925 s. 271.34; 1935 c. 541 s. 207; Sup. Ct. Order, 245 W x.

Sec. 2948, R. S. 1878, raises an implied contract by a plaintiff's attorney that on failure to give the undertaking mentioned in it he will become liable for the costs. His liability is that of a principal debtor, not as surety merely, and the claim against him is assignable. Knowles v. Frawley, 84 W 119, 54 NW 107.

271.46 History: R. S. 1849 c. 130 s. 43; R. S. 1858 c. 133 s. 72; R. S. 1878 s. 2960; Stats. 1898 s. 2960; 1925 c. 4; Stats. 1925 s. 271.46.

271.47 History: R. S. 1849 c. 130 s. 44; R. S. 1858 c. 133 s. 73; R. S. 1878 s. 2961; Stats. 1898 s. 2961; 1925 c. 4; Stats. 1925 s. 271.47.

271.48 History: R. S. 1849 c. 130 s. 46; R. S. 1858 c. 133 s. 82; R. S. 1878 s. 2962; Stats. 1898 s. 2962; 1925 c. 4; Stats. 1925 s. 271.48; 1935 c. 541 s. 216.

CHAPTER 272.

Executions.

272.01 History: 1856 c. 120 s. 193; R. S. 1858 c. 134 s. 1; 1861 c. 140 s. 1; 1862 c. 27 s. 1; R. S. 1878 s. 2965; 1897 c. 217; Stats. 1898 s. 2965; 1925 c. 4; Stats. 1925 s. 272.01; 1935 c. 541 s. 218.

Editor's Note: In Collins v. Smith, 75 W 392, 44 NW 510, decided prior to the amendment of 1897, the supreme court observed that there was no statutory provision authorizing the assignee of a judgment, or his attorney, to issue execution thereof in his own name, or requiring the fact of the assignment to be stated in the execution, that the authority to enforce a judgment by execution was conferred by statute only upon the party in whose favor the judgment was given, and that the execution must be signed by him or his attorney.

272.02 History: 1856 c. 120 s. 195; R. S. 1858 c. 134 s. 3; R. S. 1878 s. 2966; Stats. 1898 s. 2966; 1925 c. 4; Stats. 1925 s. 272.02; 1935 c. 541 s. 219.

In the absence of a statute declaring otherwise the franchises and rights of a quasi-public corporation, owing important duties to the public, and the property vested in it and necessary for the accomplishment of its purposes,

are an entirety and cannot be sold on execution, or for mechanics' liens, or on tax process. Chicago & Northwestern R. Co. v. Forest County, 95 W 80, 70 NW 77.

In a proceeding to enforce a judgment requiring the performance of an act other than the payment of money or delivery of property, the court may properly examine the pleadings and agreements referred to therein for the purpose of ascertaining its meaning and effect. Gimbel v. Wehr, 165 W 1, 160 NW 1080.

A provision in a money judgment that execution shall issue is surplusage as an execution follows as a matter of course. Sharpe v. First Nat. Bank of Antigo, 220 W 506, 264 NW 245.

272.03 History: 1856 c. 120 s. 196; R. S. 1858 c. 134 s. 4; R. S. 1878 s. 2967; Stats. 1898 s. 2967; 1925 c. 4; Stats. 1925 s. 272.03; 1935 c. 541 s. 220.

A judgment in foreclosure which provides that on defendant's default to make payment and refusal to deliver possession the sheriff shall be authorized, upon a certified copy of the judgment, to remove defendant from the premises and put plaintiff in possession is erroneous if it does not provide that an application should be made to the court for the issuing of a writ of assistance to place plaintiff in possession. Landon v. Burke, 36 W 378.

The issuing of a general writ of execution for the purpose of enforcing a judgment in alimony does not release a specific lien created by that judgment. Schultz v. Schultz, 133 W 125, 113 NW 445.

272.04 History: 1856 c. 120 s. 197, 204; R. S. 1858 c. 134 s. 90; 1866 c. 14 s. 1; 1868 c. 11 s. 1; R. S. 1878 s. 2968, 3028; Stats. 1898 s. 2968, 3028; 1899 c. 351 s. 36; 1925 c. 4; Stats. 1925 s. 272.04, 273.01; 1935 c. 541 s. 221, 266; Stats. 1935 s. 272.04; 1951 c. 638; 1953 c. 365; 1965 c. 252.

Execution issued upon a dormant judgment without leave is not void, but voidable, and a sale thereunder is valid. Jones v. Davis, 22 W 421, 24 W 229.

Averment in pleading that execution was duly issued is sufficient without showing that leave was granted. Jones v. Davis, 22 W 421.

An execution is not levied on lands, but the seizure proceeds from the docketing previously made. Hammel v. Queen's Ins. Co. 54 W 72, 11 NW 349.

Execution upon a judgment enforcing a lien upon a pledge should issue only upon order of the court for a deficiency after sale. Wilson v. Johnson, 74 W 337, 43 NW 148.

If the original execution is for the whole amount of the judgment and the plaintiff indorses on it a direction not to levy and collect a part thereof, an alias may issue for the amount uncollected by order of the court. Bank of Sheboygan v. Trilling, 75 W 163, 43 NW 830.

Real estate may be sold on an execution issued within 20 years, if personal property cannot be found, notwithstanding sec. 2902, R. S. 1878, limits the lien of a judgment upon realty to 10 years. Collins v. Smith, 75 W 392, 44 NW 510.

A promise by a debtor to pay a judgment

which will be barred by his discharge in bankruptcy proceedings then pending does not authorize the creditor to issue execution and sell the debtor's land without first proceeding to remove the bar of such discharge and revive the judgment. *Graham v. Dreutzer*, 75 W 558, 44 NW 776.

Sec. 3028, R. S. 1878, does not authorize an officer against whom judgment has been rendered for the conversion of exempt property to discharge it by paying the amount thereof to another officer who holds an execution against the plaintiff's property. The whole judgment, including the costs, is exempt, and it is immaterial that the plaintiff is the owner of other exempt property to the amount allowed by law. *Below v. Robbins*, 76 W 600, 45 NW 416.

The right to claim the exemption is not waived by bringing on action of trover instead of replevin. *Below v. Robbins*, 76 W 600, 45 NW 416.

It seems that docketing is a prerequisite to the issue of execution. It was so held in New York under the code before its adoption here. *Staples v. Staples*, 87 W 592, 58 NW 1036.

An execution partly executed by levying upon property within 20 years from the entry of a judgment does not expire at the end of the 20-year period but remains valid and effective, so that the property levied upon may be sold and applied to satisfy the writ. *Brown v. Hopkins*, 101 W 498, 77 NW 899 and 1118.

Sec. 2968, Stats. 1898, is not in conflict with sec. 2900 and both should be enforced. *McCormick v. Ryan*, 106 W 209, 82 NW 137.

The statute does not provide any method for levying upon real estate under execution. It is sufficient in making such a levy if the sheriff who holds the execution does any overt act by which he unequivocally shows an intention to appropriate the property, so far as is necessary to satisfy the writ. *Hyman v. Landry*, 135 W 598, 116 NW 236.

Sec. 2968 does not limit the time, within which a sale may be had under a foreclosure judgment. *Fish v. Collins*, 164 W 457, 160 NW 163.

Where the owner turned over to the sheriff the purchaser's check for the cattle levied on, payable to the sheriff, without stating that the proceeds were to pay the chattel mortgage rather than to satisfy executions, the sheriff was authorized to accept the check and apply the same on executions then held by him. *Porter v. Burtis*, 197 W 227, 221 NW 741.

272.04 applies regardless of the residence or presence of the judgment debtor within this state, and the provision in 330.30, tolling limitations for beginning an action in case of absence of the debtor from the state, does not apply; hence, so far as 330.30 is concerned, an unsatisfied judgment and the debt are extinguished on the expiration of the 20-year period of limitation prescribed by 272.04, and no action can be brought thereafter on the judgment, even though the judgment debtor was a nonresident absent from the state when the judgment was entered and during such 20-year period. A lien, which the judgment creditor secured under 318.08, on an inheritance that was to become the property of the nonresident judgment debtor on the death of his

mother, depended on the continued existence of the judgment, so that where the owner of the unsatisfied judgment did nothing further in support of or on account of the judgment or the lien until after the 20-year limitation of 272.04 on proceedings on judgments had expired, the lien fell with the judgment. *Stanley C. Hanks Co. v. Scherer*, 259 W 148, 47 NW (2d) 905.

272.05 History: R. S. 1849 c. 102 s. 42, 49, 64; 1856 c. 120 s. 199, 200; R. S. 1858 c. 130 s. 59; R. S. 1858 c. 134 s. 8, 9, 14, 36; R. S. 1858 c. 140 s. 15; R. S. 1878 s. 2969; 1879 c. 194 s. 2 sub. 25; 1883 c. 25; Ann. Stats. 1889 s. 2969, 2969a; Stats. 1898 s. 2969; 1925 c. 4; Stats. 1925 s. 272.05; 1935 c. 541 s. 222; 1955 c. 159; 1967 c. 276 s. 39; 1969 c. 87.

Revisor's Note, 1935: The execution should be signed by the clerk of the court, not "subscribed by the party." The execution is a "court process" (272.03, see 256.35, blank process) and like other writs should issue from and by the court. It does in most states. (6) The direction to first exhaust the property of the "principal" should be on the face not the back of the execution. [Bill 50-S, s. 222]

Legislative Council Note, 1969: Sub. (6) is amended to remove references to the municipal justice, since action against sureties will be in a court of record. (Bill 9-A)

Execution upon a judgment under mechanic's lien law must order land sold as in ordinary cases and direct sale of defendant's interest at time the lien accrued. *Bailey v. Hull*, 11 W 289.

A writ issued without seal may be amended after sale under it. Sale will be upheld though a deed issued before the defect was cured. *Corwith v. State Bank*, 18 W 560.

Mistake of one day in recital of time of docketing judgment is immaterial error and curable by amendment. *Swift v. Agnes*, 33 W 228.

Sec. 8, ch. 134, and secs. 54, 59, ch. 130, R. S. 1858, were in pari materia and should be construed together. Under them a judgment creditor had an option, when property of debtor had been attached, to issue a special or limited execution. Under the former none but attached property could be sold; under the latter there might be a levy upon property not attached if that attached was insufficient. *Swift v. Agnes*, 33 W 228.

Where land was attached and execution issued commanding the satisfaction of the judgment out of the real property in the county belonging to defendant, and there was added a direction to levy the execution on the land attached, the effect was to order the sheriff to sell that attached, and the writ was valid. *Swift v. Agnes*, 33 W 228.

A direction to sell the interest debtor had at or after the docketing of the judgment, instead of at and after the date of attachment, operated as a remitter of plaintiff's rights, if debtor had disposed of any interest between such periods, and did not invalidate the writ. *Swift v. Agnes*, 33 W 228.

Under sec. 8, ch. 134, R. S. 1858, practice required that an execution should be indorsed by the party issuing it or his attorney, and, in the absence of a motion to amend, the sale might be set aside. *Allen v. Clark*, 36 W 101.

Execution issued by a court of one county to the sheriff of another is invalid unless it recites that judgment is docketed in the latter county. *Kentzler v. Chicago, M. & St. P. R. Co.* 47 W 641, 3 NW 369.

An execution directed to the sheriff or a constable and commanding a levy in the name of the state of Wisconsin in the body thereof, but not in the caption, is sufficient in form. *Bean v. Loftus*, 48 W 371, 4 NW 334.

The clerk of court may act as agent of the party or attorney who applies for execution in filling blanks, etc. and, so acting, execution will be deemed issued when delivered to the sheriff. *Chase v. Ostrom*, 50 W 640, 7 NW 667.

A warrant of attorney to confess judgment may authorize the attorney to consent to the immediate issuance of execution for the part of the debt not due, but unless such consent is given in the answer or otherwise execution for that part of the debt is unauthorized and will be set aside. *Sloane v. Anderson*, 57 W 123, 13 NW 684, 15 NW 21.

No such process as a special execution against attached personalty is known. Hence an execution against such property covers all rights secured by an attachment. *First Nat. Bank v. Greenwood*, 79 W 269, 45 NW 810, 48 NW 421.

Executions can be rendered only for such instalments upon a note as are actually due, even though such note contains a warrant of attorney to confess judgment whether due or not. *Reeves v. Kroll*, 133 W 196, 113 NW 440.

Under secs. 2969 and 2971, Stats. 1898, where the judgment of the circuit court for one county is docketed in another county an execution to the sheriff of the latter county should be issued from the circuit court for the former county. If issued from the circuit court of the latter county it is an irregularity. *Kissinger v. Zieger*, 138 W 368, 120 NW 249.

A contract for working a farm, under which among other things, the landowner furnished cattle and the parties were to divide all produce and stock when sold, and the landowner was to determine which cattle should be sold, constituted a cropper's contract, not a lease; and grain grown on the farm was therefore not subject to levy by judgment creditor of cropper before division. *Atwood v. Freund*, 219 W 358, 263 NW 180.

In general, judgments bear interest at the statutory rate under 115.04 from the date of their entry. In re *Oconto County State Bank*, 241 W 369, 6 NW (2d) 353.

272.06 History: 1856 c. 120 s. 200; R. S. 1858 c. 134 s. 9; R. S. 1878 s. 2970; Stats. 1898 s. 2970; 1925 c. 4; Stats. 1925 s. 272.06; 1935 c. 541 s. 223.

If no return is made and no motion to permit an amendment the sale will be set aside. *Allen v. Clark*, 36 W 101.

A valid return of "unsatisfied" may be made of an execution after the expiration of 60 days so as to sustain a creditor's suit. *Le Saulnier v. Krueger*, 85 W 214, 54 NW 774.

An order allowing amendment to a return is not open to attack in an action on a note

given as collateral to the note upon which the execution issued, if the order was made and the judgment rendered by a court having jurisdiction. *Ashland Nat. Bank v. Gregory*, 94 W 455, 69 NW 168.

If the officer feels confident the defendant has no property subject to execution he may return it unsatisfied before the return day. *Davelaar v. Blue Mound Inv. Co.* 110 W 470, 86 NW 185.

Liability of sheriff to judgment creditor on failure to levy execution. 21 MLR 150.

272.07 History: 1856 c. 120 s. 197; R. S. 1858 c. 134 s. 5; R. S. 1878 s. 2971; Stats. 1898 s. 2971; 1925 c. 4; Stats. 1925 s. 272.07.

It is irregular to issue execution to the sheriff of a county other than that in which the judgment was rendered until it is docketed in such other county. But as to persons who claim the property levied upon by virtue of a conveyance from the execution defendant, made after such docketing, the premature levy is cured. *Rogers v. Cherrier*, 75 W 54, 43 NW 838.

Where the levy was upon property in the hands of a third person who claimed title thereto under a transfer from the judgment debtor, an execution issued to a county other than that in which the judgment was rendered and before it had been docketed in such other county was unauthorized. *Bugbee v. Lomberd*, 88 W 271, 60 NW 414.

272.08 History: R. S. 1849 c. 162 s. 43; R. S. 1858 c. 134 s. 15; R. S. 1878 s. 2972; Stats. 1898 s. 2972; 1925 c. 4; Stats. 1925 s. 272.08.

The object of this statute is that the officer shall proceed to levy executions in the precise order of time in which they are received and to confer upon an execution plaintiff a priority of right to such levy. *Ohlson v. Pierce*, 55 W 205, 12 NW 429.

272.09 History: R. S. 1849 c. 102 s. 31; 1856 c. 120 s. 198; R. S. 1858 c. 134 s. 7, 10; R. S. 1878 s. 2973; Stats. 1898 s. 2973; 1925 c. 4; Stats. 1925 s. 272.09; 1931 c. 89.

Revisor's Note, 1931: "Any county within the jurisdiction of the court" where applied to either a circuit court or to a justice court means simply that the general rule which limits the territorial scope of an execution applies here. One who has been "surrendered" by his bailor is in jail usually, and that situation is covered by the preceding phrase. Execution can issue only "in the cases allowed by law." That is implied. [Bill 128-S, s. 1]

An action of ejectment is an action *ex delicto* and on judgment for damages therein execution against the person may issue. *Howland v. Needham*, 10 W 495.

Execution against the person may issue upon judgment for damages for conversion, upon return of execution against property unsatisfied. In re *Mowry*, 12 W 52.

If the sheriff is of opinion that the property of an execution defendant will not sell for enough to pay the expenses of the sale he may, at his peril, refuse to levy upon it and, stating the facts, return the execution unsatisfied. A return so made is *prima facie* sufficient to authorize an execution against the person. In re *Mowry*, 12 W 52.

Sec. 2973, R. S. 1878, does not apply to the supreme court. *Medcraft v. Dartt*, 67 W 115, 30 NW 223, 31 NW 476.

This section does not authorize body execution in action to enforce judgment for fine or forfeiture for violation of county ordinance under ch. 288 but execution against property may issue as provided in ch. 272. 32 Atty. Gen. 228.

272.10 History: R. S. 1849 c. 102 s. 33, 34; R. S. 1858 c. 134 s. 11; R. S. 1878 s. 2974; Stats. 1898 s. 2974; 1925 c. 4; Stats. 1925 s. 272.10; 1931 c. 89.

Revisor's Note, 1931: The "cases specially provided by law" are thought to be those which fall within 336.10. Hence the amendment to make specific reference. As the statutes now read it is very difficult to know for certain what the law is. You are never absolutely sure that you have found all the "cases specially provided by law." The law is not changed. [Bill 128-S, s. 2]

272.11 History: Sup. Ct. Order, 239 W viii; Stats. 1943 s. 272.11.

Comment of Advisory Committee: 272.11 is the last sentence of Federal Rule 70, verbatim, except the words "of property real or personal"—which do not change the meaning, but make it more obvious. Perhaps 272.05 (6), execution "for the delivery of property," is in legal effect a writ of assistance. But no case has been found in which 272.05 (6) was applied to lands; and some lawyers think it applies only to personal property. In view of the situation, 272.11 seems advisable. [Re Order effective July 1, 1942]

272.12 History: R. S. 1849 c. 102 s. 67 to 69; R. S. 1858 c. 134 s. 39 to 41; R. S. 1878 s. 2976; Stats. 1898 s. 2976; 1925 c. 4; Stats. 1925 s. 272.12; 1935 c. 541 s. 225.

272.13 History: R. S. 1849 c. 102 s. 44, 45; R. S. 1858 c. 134 s. 16, 17; R. S. 1878 s. 2977; Stats. 1898 s. 2977; 1925 c. 4; Stats. 1925 s. 272.13; 1935 c. 541 s. 226.

272.14 History: R. S. 1849 c. 102 s. 66; R. S. 1858 c. 134 s. 38; R. S. 1858 c. 140 s. 2; 1860 c. 171 s. 1; R. S. 1878 s. 2978; Stats. 1898 s. 2978; 1925 c. 4; Stats. 1925 s. 272.14; 1935 c. 541 s. 227; 1945 c. 33.

A deed made by an insane person not under guardianship is voidable only. It passes title so that a judgment thereafter docketed will not be a specific lien on the property conveyed until the conveyance be actually avoided; and if before that occur the insane person die, the judgment creditor cannot by levy under sec. 2978, Stats. 1898, obtain a lien upon such property which equity will aid by removing the cloud created by the conveyance. *French L. Co. v. Theriault*, 107 W 627, 83 NW 927.

Where a case existed for the issuance of an execution under 272.14, the circuit court was without authority to impose a condition that the execution issue against certain property only and that the full amount of the judgment be bid for such property in case the owner of the judgment should bid. *State ex rel. Rasmussen v. Circuit Court*, 222 W 628, 269 NW 265.

Docketing a judgment against a joint tenant did not effect severance of his interest, and where execution was not issued until after his death the surviving tenant became the sole owner. *Musa v. Segelke & Kohlhaus Co.* 224 W 432, 272 NW 657.

272.15 History: 1852 c. 109 s. 1, 2; 1858 c. 62 s. 1, 2; R. S. 1858 c. 140 s. 3; R. S. 1878 s. 2979, 2980; Stats. 1898 s. 2979, 2980; 1925 c. 4; Stats. 1925 s. 272.15, 272.16; 1935 c. 541 s. 228; Stats. 1935 s. 272.15; Sup. Ct. Order, 275 W viii.

272.17 History: R. S. 1849 c. 102 s. 104, 105; R. S. 1858 c. 134 s. 74, 75; R. S. 1878 s. 2981; Stats. 1898 s. 2981; 1925 c. 4; Stats. 1925 s. 272.17; 1935 c. 541 s. 229.

Where nonresident defendants, served only by publication in an action to foreclose a mortgage, indicated by their affidavits and by a statement of their counsel that they appeared specially to object to the jurisdiction of the court to enter a deficiency judgment, but that they appeared also for the purpose of objecting to the receiver's report, to the fact that the wrong party plaintiff had been named, and to certain expenses and fees credited to himself by the receiver, it was a full submission to the jurisdiction of the court and was a general appearance. The trial court was right in denying the defendants' motion, after appearance, for leave to withdraw the affidavits filed, they having become a part of the record. (*Stonach v. Glessner*, 4 W 288, cited.) *Rock County S. & T. Co. v. Hamilton*, 257 W 116, 42 NW (2d) 447.

272.18 History: R. S. 1849 c. 102 s. 58; 1852 c. 370 s. 1; 1857 c. 28 s. 1; 1858 c. 89 s. 1; 1858 c. 148 s. 1; R. S. 1858 c. 51 s. 15; R. S. 1858 c. 134 s. 31 sub. 1 to 10; 1860 c. 192 s. 1; 1860 c. 366 s. 1; 1861 c. 280 s. 1; 1862 c. 11 s. 1; 1862 c. 76 s. 1; 1862 c. 182 s. 4; 1862 c. 250 s. 1; 1863 c. 242 s. 41; 1867 c. 91 s. 1; 1870 c. 97 s. 1; 1870 c. 145 s. 1; 1871 c. 59; 1872 c. 4 s. 1; 1872 c. 37 s. 1; 1872 c. 114 s. 1; R. S. 1878 s. 2982; 1879 c. 63; 1881 c. 56; 1882 c. 117, 317; 1883 c. 141; 1885 c. 336; 1887 c. 536; Ann. Stats. 1889 s. 2982; 1891 c. 287 s. 15; 1891 c. 427 s. 1; 1893 c. 93, 292; 1895 c. 175 s. 11; Stats. 1898 s. 2982; 1909 c. 221; 1913 c. 187; 1917 c. 209; 1919 c. 286; 1923 c. 12; 1925 c. 4; Stats. 1925 s. 272.18; 1927 c. 380; 1929 c. 262 s. 21; 1931 c. 257; 1931 c. 425 s. 2; 1933 c. 69; 1935 c. 146, 385, 492; 1937 c. 398; 1939 c. 331; 1943 c. 87, 366; 1947 c. 137, 553, 598; 1947 c. 411 s. 6 (215.30 (5)); 1947 c. 612 s. 1; 1951 c. 497, 563; 1955 c. 490; 1957 c. 407; 1959 c. 304; 1963 c. 269, 396, 517; 1965 c. 27, 507; 1969 c. 276 s. 615; 1969 c. 392 s. 84.

On exemption of property of debtors see notes to sec. 17, art. I.

1. General.
2. Library.
3. Wearing apparel, household goods and firearms.
4. Livestock, farm implements and automobiles.
5. Tools for trade.
6. Supplies for abstracts.
7. Income.
8. Life insurance.
9. Cemetery lots.

10. War pension.
11. Limitations on exemptions.

1. General.

The owner of exempt property may sell or give it away, and after title has passed the property is not subject to execution for debts of the former owner. *Carhart v. Harshaw*, 45 W 340.

Demanding return for the reason that the property was his and he wanted it to support his family shows a claim thereof as exempt. *Pick v. Mulholland*, 48 W 413, 4 NW 346.

Exemption laws must have a liberal construction, so as to secure their full benefit to the debtor. *Below v. Robbins*, 76 W 600, 45 NW 416.

The franchises and rights of a quasi-public corporation, owing important duties to the public, and the property vested in it necessary for their use and enjoyment and the accomplishment of the purposes for which it was created, constitute an entirety, and, in the absence of special statutory authority, are not subject to be seized and sold on execution, or for mechanics' liens, or on tax process. *Chicago & N. R. Co. v. Forest County*, 95 W 80, 70 NW 77.

Garnishment is "provisional final process of court" within 272.18, Stats. 1931. *Cavadini v. Larson*, 211 W 200, 248 NW 209.

An amendment to the statute increasing a debtor's exemptions does not apply in favor of a debtor whose obligations were incurred prior to the amendment. *Campbell v. Mickelson*, 227 W 429, 279 NW 73.

The proceeds of exempt property resulting from a voluntary sale are not exempt in the absence of a statute providing for such exemption. *Gillett State Bank v. Knaack*, 229 W 179, 281 NW 913.

A husband is not entitled to an exemption against a judgment recovered by his wife for alimony or for support and maintenance of herself and children. *Courtney v. Courtney*, 251 W 443, 29 NW (2d) 759.

A federal court is not required nor permitted to read into the statute a type of property (contract motor carrier license) not mentioned. *Barutha v. Prentice*, 189 F (2d) 29.

Effect of bankruptcy on rights of creditors to whom exemption statute does not apply. 1938 WLR 510.

2. Library.

The lawbooks constituting the library of an attorney, who had executed a chattel mortgage covering the same, were exempt under 272.18 (3); hence, where the chattel mortgage was not a purchase-money mortgage nor signed by the mortgagor's wife, such mortgage, by operation of 241.08, was invalid and unenforceable as to the books. *Opitz v. Brawley*, 10 W (2d) 93, 102 NW (2d) 117.

3. Wearing Apparel, Household Goods and Firearms.

Beds, bedding, etc., which, when levied upon, were kept for and actually used by the debtor were exempt, notwithstanding he had other beds, it not appearing that the number was in excess of the needs or convenience of his family. *Heath v. Keyes*, 35 W 668.

A debtor does not waive anything or estop himself by receipting for exempt articles levied upon. *Heath v. Keyes*, 35 W 668.

In 272.18 (5) the words "all wearing apparel" include a wrist watch, an engagement ring, and a wedding ring, of the aggregate value of \$90, at least where such articles of the modest value stated are not unsuitable to the circumstances of the debtor, and where no inference that the debtor was attempting to conceal her assets by investing in wearing apparel can be drawn. *Milwaukee A. Schools of Beauty Culture v. Patti*, 237 W 277, 296 NW 616.

4. Livestock, Farm Implements and Automobiles.

Food for support of the animals enumerated cannot be claimed as exempt if the debtor does not own and has no immediate purpose to obtain them. *Cowan v. Main*, 24 W 569.

The share of a tenant in common of property (grain) naturally severable, if not exempt, may be severed and seized. *Newton v. Howe*, 29 W 551.

All that a person entitled to the privilege of the statute may earn within the fixed time by the aid of his exempt team, wagon or dray and tackle is included. *Kuntz v. Kinney*, 33 W 510.

The articles exempted by sec. 31, ch. 134, R. S. 1858, may be claimed by any judgment debtor. *Humphrey v. Taylor*, 45 W 251.

A mower owned by one not a farmer and who did not appear to own any other farming utensils is exempt. *Humphrey v. Taylor*, 45 W 251.

Animals which are exempted by sec. 2982, R. S. 1878, from seizure and sale under judicial process may be taken up, impounded and sold under municipal ordinances. *Wilcox v. Hemming*, 58 W 144, 15 NW 435.

5. Tools for Trade.

If a judgment debtor removes his stock in trade from his usual place of business to an auction store to be sold his exemption ceases. *Kennedy v. Baker*, 3 Pin. 295.

The term "other person" does not include a farmer. *Bevitt v. Crandall*, 19 W 581.

Stock in trade of one engaged in an unlawful business (selling liquors without a license) is not exempt. *Walsch v. Call*, 32 W 159.

The stock of goods on sale by a merchant is "stock in trade". *Wicker v. Comstock*, 52 W 315, 9 NW 25.

The term "other person" includes a merchant. *Wicker v. Comstock*, 52 W 315, 9 NW 25.

The exemption allowed by subd. (8) must be claimed and the article selected at time of or soon after the levy or it is waived. *Wicker v. Comstock*, 52 W 315, 9 NW 25.

One partner, with consent of his copartners, may claim a separate exemption out of partnership property seized for a firm debt. Consent of partners that each should have an exemption is a severance of joint property; and demand by each for exemption is consent that other partners may have it. *O'Gorman v. Fink*, 57 W 649, 15 NW 771.

Where partnership property is seized it is sufficient to inform the officer that exemption

was claimed by all the partners and ask to be permitted to make the selection. *O'Gorman v. Fink*, 57 W 649, 15 NW 771.

There is no exemption in favor of partners jointly. *First Natl. Bank v. Hackett*, 61 W 335, 21 NW 280; *Goll v. Hubbell*, 61 W 293, 20 NW 674, 21 NW 288. See also *Russell v. Lennon*, 39 W 570.

A partnership assignment of goods covered all the firm property "except such as are exempt from levy and sale under execution." The inventory included the whole stock in trade and it was delivered to the assignee, and no selection or claim of any specific property as exempt was made until more than 10 weeks after the assignment was completed. This delay waived the right to claim exemptions. *Bong v. Parmentier*, 87 W 129, 58 NW 243.

A delay of 17 days in claiming exemptions in firm property seized on attachment, no transfer of the title having occurred, is not, as matter of law, unreasonable. A waiver does not result as against a partner because he failed to claim exemption as against a firm chattel mortgage when an attachment is levied on the property, nor because the attachment has been traversed by the firm. *Ladwig v. Williams*, 87 W 615, 58 NW 1103.

A delay of nearly a month was a waiver of the right to claim exemption in partnership property which had been delivered to the assignee and upon which he had expended labor and money. *Lamont v. Wootton*, 88 W 107, 59 NW 456.

A merchant may claim as his exemptions show cases, safe, cash register, stove, and other articles of like character. *Cunningham v. Britton*, 101 W 378, 77 NW 740.

A writ of attachment may be levied upon a stock of goods subject to the exemptions and retained for a reasonable length of time to enable the making of an inventory and the selection of the exemptions, but the officer becomes a trespasser if he refuses defendant an opportunity to make such exemptions. *Stern v. Riches*, 111 W 591, 87 NW 555.

The exemption of stock in trade of the value of \$200 does not extend to liquors owned by a former saloon keeper who has quit business and is selling his stock in bulk. *Hettinger v. Wells*, 161 W 640, 155 NW 126.

Office equipment of a practicing attorney, although mortgaged by him, was exempt up to \$200 because the mortgage was not signed by his wife. Specific items up to a value of \$200 should have been awarded him; an order for the payment to him of \$200 is not proper. *Opitz v. Brawley*, 10 W (2d) 93, 102 NW (2d) 117.

Under the uniform partnership act (ch. 358, Laws 1915) a partner no longer has the right to an exemption out of the partnership stock in trade in case of its seizure on execution or attachment or other process, the verb "attach" having a broad meaning and indicating any seizure of property for the purpose of bringing it within the jurisdiction of the court. In re *Safady Brothers*, 228 F 538.

6. Supplies for Abstracts.

The exemption of abstract books is to the debtor alone and not to his family, and where the owner of such books is a fugitive from

justice and has abandoned his home and business they are not exempt from attachment. *Spence v. Rambusch*, 99 W 676, 75 NW 950.

7. Income.

The statutory exemption applies to all who support their families by the labor of their hands, regardless of the grade or character of such labor. *Brown v. Hebard*, 20 W 326.

An adult son who takes charge of the dependent ones is the head of a family. *Connaughton v. Sands*, 32 W 387.

If a person begins an action to recover his earnings immediately after the right to do so accrued it seems that an equitable set-off thereto would not be allowed. But if such action is not brought within 3 months after the earnings became due such set-off will be allowed. *Seligmann v. Heller B. C. Co.* 69 W 410, 34 NW 232.

Earnings cease to be exempt at the end of 3 months after they are earned, although within that time they are placed with the wife of the person who has earned them. *Bloodgood v. Meissner*, 84 W 452, 54 NW 772.

If money which was exempt has been collected in another state in disobedience of a preliminary injunction the court may order that it be restored. *Griggs v. Doctor*, 89 W 161, 61 NW 761.

While property or money is in custodia legis, the officer's possession is the possession of the court and it is not subject to levy either in attachment or on execution. *Guardianship of Kohl*, 221 W 385, 266 NW 800.

A person who supports 3 of his grandchildren is entitled to exemption for them as his dependents. 20 Atty. Gen. 749.

Exemption under 272.18 (15) cannot be claimed by 2 debtors on account of the same dependents. 21 Atty. Gen. 831.

272.18 (15) does not contemplate moneys received for rent. 24 Atty. Gen. 574.

Fees of justice of peace are "earnings" within meaning of 272.18 (15) and may be exempt. 26 Atty. Gen. 238.

8. Life Insurance.

For exemption on life insurances under 272.18 (19), Stats. 1929, see *Cannon v. Lincoln Nat. Life Ins. Co.* 208 W 452, 243 NW 320.

9. Cemetery Lots.

272.18 (20) does not apply to a prearranged funeral agreement, since that contemplates services in addition to the articles named. *Grant County Service Bureau v. Treweek*, 19 W (2d) 548, 120 NW (2d) 634.

10. War Pension.

Money received by a pensioner in payment of his pension and remaining in his possession is exempt. *Folschow v. Werner*, 51 W 85, 7 NW 911.

The exemption of military pensions does not render a veteran's benefit payments in the hands of a guardian exempt from a claim of the state for reimbursement for support furnished to the veteran in a state mental institution, when considered in the light of the provision "except as otherwise specially provided in the statutes," and 46.10 (2), making

any patient in a charitable or curative institution of the state "and his property and estate, including his homestead," liable for the maintenance of such patient. The state is not, however, entitled to have that part of its herein claim, which accrued prior to the appointment of a guardian, paid out of funds in the hands of the guardian realized from the incompetent veteran's benefit payments. Guardianship of Bemowski, 3 W (2d) 133, 88 NW (2d) 22.

Under sec. 618, Title 38 USC, proceeds of veterans' adjusted compensation certificate, while in form of money, are exempt from claims of creditors. 28 Atty. Gen. 92.

11. Limitations on Exemptions.

Exemptions could not be claimed (under ch. 280, Laws 1861) where neither the debtor nor his family resided in this state. Commercial Nat. Bank v. Chicago, M. & St. P. R. Co. 45 W 172.

In connection with the provision governing any case in which a debtor has procured, concealed or transferred assets with the intention of defrauding his creditors, added by sec. 2 of ch. 598, Laws 1947, see Comstock v. Bechtel, 63 W 656, 24 NW 465.

272.19 History: R. S. 1849 c. 102 s. 46; R. S. 1858 c. 134 s. 8; R. S. 1878 s. 2985; 1883 c. 69; Ann. Stats. 1889 s. 2982a, 2985; 1891 c. 427 s. 2; Stats. 1898 s. 2982a, 2985; 1919 c. 89; 1925 c. 4; Stats. 1925 s. 272.19, 272.23; 1935 c. 541 s. 231; Stats. 1935 s. 272.19; 1951 c. 45; 1961 c. 221.

A valid levy cannot be made upon personal property unless the officer has it in his view and under his control. Brown v. Pratt, 4 W 513.

A levy may be sufficient though the officer does not remove the property (mining timbers) from the place at which found, if he forbids the defendant to use it and visits such place nearly every day and hinders the defendant from removing it. Johnson v. Iron B. M. Co. 78 W 159, 47 NW 363.

If an officer holding an attachment unreasonably deprives the defendant of an opportunity to make selection of exempt property or refuses to recognize his right thereto upon the particular articles being designated and demanded, he becomes a trespasser ab initio. Stern v. Riches, 111 W 591, 87 NW 555.

Corporate stock can be impounded in only 3 ways, namely, by actual seizure, by surrender of the certificate to the corporation or by injunction against its transfer by the holder. Unless so impounded an attachment of stock is invalid. Corporate stock must be attached, if at all, where found. The uniform transfer act makes the method of transferring shares therein provided for effective regardless of transfer on the books of the corporation. Bloch-Daneman Co. v. J. Mandelker & Son, 205 W 641, 238 NW 831.

Where, after foreclosure sale of mortgaged chattels, the mortgagee purchaser had a deficiency judgment entered and execution levied on the same chattels which were subsequently within the 5-day period redeemed by the mortgagor who assigned to plaintiffs, the sheriff was without power to sell under the execution. Whalen v. Finn, 207 W 254, 240 NW 188.

Where the trustee in bankruptcy sold the bankrupt's automobile free and clear of incumbrances as against an unrecorded chattel mortgage, as he had a right to do, and paid \$400 of the proceeds to the bankrupt as the latter's exemption share pursuant to 272.19 (2), the \$400 was thereby substituted for such exemption, and the holder of such mortgage, whose lien on the bankrupt's exempt interest was valid as against the bankrupt, could proceed in the state court to enforce his lien against such exempt interest as represented by the exempt proceeds of sale paid to the bankrupt. Charnesky v. Urban, 245 W 268, 14 NW (2d) 161.

272.20 History: R. S. 1849 c. 102 s. 51, 52, 56, 57; 1850 c. 198 s. 1; 1856 c. 120 s. 184; 1858 c. 137 s. 1; R. S. 1858 c. 134 s. 23, 24, 28 to 30; 1859 c. 79; 1867 c. 172 s. 1; R. S. 1878 s. 2983; 1882 c. 317 s. 2; 1883 c. 141; Ann. Stats. 1889 s. 2983; Stats. 1898 s. 2983; 1901 c. 269 s. 1; Supl. 1906 s. 2983; 1925 c. 4; Stats. 1925 s. 272.20; 1931 c. 345; 1935 c. 541 s. 232; 1949 c. 245; 1957 c. 301; 1959 c. 248.

On exemption of property of debtors see notes to sec. 17, art. I.

A purchaser of land under a school land certificate who uses it for agricultural purposes and occupies it as a homestead may hold it as exempt though a patent has not issued. McCabe v. Mazzuchelli, 13 W 478.

The chief characteristic or attribute of the homestead is that it is the land where is situated the dwelling of the owner and family. Bunker v. Loecke, 15 W 635.

Stores and offices erected on a lot and rented by the debtor, with portions of the lot on which they are situated, are not exempt. Caselman v. Packard, 16 W 114.

Defendant will not lose his exemption because, by the literal meaning of the language used by him to the officer, the tract named did not include the entire site of his dwelling. Herrick v. Graves, 16 W 157.

Where part of the premises sold on execution are exempt the sale will not be annulled in toto, but the purchaser may have a deed for that which is not exempt. Bennett v. Childs, 19 W 362.

Where a mortgage covering the homestead and other lands is executed by husband and wife, but not acknowledged by her, it cannot be enforced as to the homestead, but may as against the husband's interest in the other lands. Hait v. Houle, 19 W 472.

Unmarried men are entitled to the benefits of the homestead act. Myers v. Ford, 22 W 139.

Sale of a homestead by an administrator was void as against heirs where there was no affirmative adjudication that it was not a homestead. Howe v. McGivern, 25 W 525.

Mere determination to change, or assertion by the party that he had changed, is insufficient, without actual removal, where all the indicia and circumstances of continued residence existed. Carter v. Sommermeyer, 27 W 665.

A wife's homestead rights are not affected by reason of her being obliged to leave home on account of her husband's cruelty. Barker v. Dayton, 28 W 367.

Materials designed to be used in repairing a

homestead dwelling and placed on the premises are exempt. *Krueger v. Pierce*, 37 W 269.

The removal or absence which does not destroy the exemption is one for a temporary purpose with the certain and abiding intention of returning. *Jarvais v. Moe*, 38 W 440.

It is the only actual home of the debtor which is exempt. *Jarvais v. Moe*, 38 W 440.

Moneys due a judgment debtor from the sale of his homestead and which he designs in good faith to use in the purchase of another homestead are exempt from garnishment. *Watkins v. Blatschinski*, 40 W 347.

If the owner disposes of his homestead by will the devisee takes it free from all judgments and claims against the testator, and if he dies intestate it descends to his widow or heirs. *Johnson v. Harrison*, 41 W 381.

Devising part of 40 acres, including the dwelling house, does not divest the remainder of the character of a homestead. *Johnson v. Harrison*, 41 W 381.

A building occupied as a homestead and used by the owner as a hotel is exempt. *Harriman v. Queen's Ins. Co.* 49 W 71, 5 NW 12.

It is not required that the debtor shall continue to reside in this state during the 2 years nor that he shall intend to procure another homestead here. *Hewitt v. Allen*, 54 W 583, 12 NW 45.

The provision subjecting the homestead to purchase-money liens embraces cases where the money is furnished and paid as the consideration for the homestead by a third person in such way that he can be said to have procured it for the purchaser. *Carey v. Boyle*, 53 W 574, 11 NW 47 and 56 W 145, 14 NW 32.

The homestead must consist of but one tract or body in a compact form; but separation by a stream, highway or railroad will not defeat an owner's claim. *Hornby v. Sikes*, 56 W 382, 14 NW 278.

Upon the sale of land occupied as a homestead the lien of a judgment against vendor will not attach thereto if it does not appear that the sale was made for the purpose of enabling the judgment debtor to have the advantage of another homestead while the former one was held for his benefit by the grantee. *Carver v. Lassallete*, 57 W 232, 15 NW 162.

The debtor cannot select a quarter of an acre in such a way as to include, besides the building occupied by himself, other buildings leased to tenants, unless they are occupied by servants employed in his family. *Schoffen v. Landauer*, 60 W 334, 19 NW 95.

One who owns a building situated upon land which he occupies under a lease providing that the land shall be used and occupied exclusively as a site for a hotel, and who resides in such building with his family under the tacit consent of his lessor, has no homestead therein. *Green v. Pierce*, 60 W 372, 19 NW 427.

The exemption extends to materials upon the ground and designed for use in the construction of a dwelling house, well or other essential of a homestead. *Scofield v. Hopkins*, 61 W 370, 21 NW 259.

Where the judgment creditor purchases property at an execution sale the presumption is that he knew that it was the debtor's intention to make the land his homestead and, if

such intention is manifest, notice that he claims it as a homestead is not necessary to prevent a waiver. *Scofield v. Hopkins*, 61 W 370, 21 NW 259.

Under sec. 2983, R. S. 1878, the homestead of a debtor, which he owns and occupies with a specified quantity of land appurtenant thereto, is exempt without regard to the uses such land is put or the business he pursues upon it. All that is required is that it be his homestead; the statute was intended to protect the owner in the enjoyment of it. *Binzel v. Grogan*, 67 W 147, 29 NW 895.

If a debtor sells his homestead with personality for a gross sum the exemption extends to such portion of the proceeds as represents the value of the homestead, if held with the intention of procuring another homestead. *Binzel v. Grogan*, 67 W 147, 29 NW 895.

The fact that a public alley crosses a tract of land used as a homestead, cutting off a small portion on which the barn stands, does not defeat the homestead right to that portion. *Binzel v. Grogan*, 67 W 147, 29 NW 895.

Removal from a homestead to enable children to attend school, the intention being to re-occupy it, does not impair the exemption. *Phillips v. Root*, 68 W 128, 31 NW 712.

Securities received for the payment of the purchase price of a homestead are not liable to be seized on execution within 2 years if they are held with the intent to use them in completing or improving a new homestead. *Bailey v. Steve*, 70 W 316, 35 NW 735.

A judgment of divorce in favor of the wife, declaring that she recover a certain sum of money merely, is a money judgment and an execution cannot issue thereon against defendant's homestead. *Stanley v. Sullivan*, 71 W 585, 37 NW 801.

On removing from a building on account of her children and the surroundings the owner left some furniture in it, and intended to return and live there. The premises were rented during her absence. About 7 years after removal she executed a deed of the premises as security. Her homestead right was unimpaired. *McDermott v. Kernan*, 72 W 268, 39 NW 537.

A mortgage given for the purchase of an undivided half of the premises, with an agreement that the mortgagee should procure the fee simple title to the whole as a consideration for the mortgage, is a purchase-money mortgage. *Cornish v. Frees*, 74 W 490, 43 NW 507.

A homestead may exist in land held under a contract for its purchase, subject only to liability to pay to one to whom the legal title has been transferred to secure advances made by him for the purpose of paying the purchase price and taxes. *Chopin v. Runte*, 75 W 361, 44 NW 258.

The use of a homestead for unlawful purposes does not render it subject to execution. *Prince v. Hake*, 75 W 638, 44 NW 825.

If no selection of a homestead is made until after an execution sale has been had the owner must be confined to a legal subdivision of the 40 acres, which will include his dwelling house or residence and appurtenances. *Martin v. Aultman*, 80 W 150, 49 NW 749.

The owner of an incumbered homestead may

remove therefrom and into a building the first and third floors of which are used for business purposes, the second floor having previously been used as a residence and being adapted to that use. *Palmer v. Hawes*, 80 W 474, 50 NW 341.

Where a homestead is exchanged for other property which is leased for 3 years for business purposes, the upper story of the building being adapted for a residence, the homestead right attaches thereto although the lessees are not disturbed in their possession and the purchaser does not occupy the property for 2 years, it being his intention to make a homestead of it. *Hoppe v. Goldberg*, 82 W 660, 53 NW 17.

A judgment docketed against the owner of land while he is occupying it as a homestead does not become a lien upon it because he thereafter contracts to sell it, and afterwards assigns the contract and conveys his interest in the land to another person. *Smith v. Zimmerman*, 85 W 542, 55 NW 956.

A judgment against the owner of a homestead becomes a lien upon it, when the legal title is in him, from the time of his abandonment of the property as a homestead. *Moore v. Smead*, 89 W 558, 62 NW 426.

A conveyance of the homestead of an insolvent debtor is not fraudulent as to creditors. *Bank of Commerce v. Fowler*, 93 W 241, 67 NW 423.

The bona fide intention to acquire a certain parcel of land for a homestead, evidenced by overt acts preparing it for such purpose and followed in a reasonable time by actual occupancy, renders it exempt from the time it was purchased with such intent. *Shaw v. Kirby*, 93 W 379, 67 NW 700.

If the homestead and other land are mortgaged and on a sale of both the latter brings less than the debt, the surplus remaining after such debt is paid is proceeds of the homestead. *Clancey v. Alme*, 98 W 229, 73 NW 1014.

Surplus on foreclosure sale of the homestead is exempt. *Clancey v. Alme*, 98 W 229, 73 NW 1014.

The owner of a legal subdivision equal to a homestead right, whose dwelling is thereon and who has made no different selection, will be presumed to have selected such subdivision for his homestead although he owns adjoining lands. *Kent v. Lasley*, 48 W 257, 4 NW 23. See also *Darling v. Neumeister*, 99 W 426, 75 NW 175.

Where a house is occupied under a 5-year lease it constitutes the homestead of the occupant. *Beranek v. Beranek*, 113 W 272, 89 NW 146.

A will devising to the widow all real and personal property which should remain after the payment of debts and funeral expenses only charges with the payment of debts such real estate as is in excess of the homestead of one-fourth of an acre. *Pym v. Pym*, 118 W 662, 96 NW 429.

The use of the words "express or implied" in sec. 2983, Stats. 1898, was for the purpose of obviating the necessity of proof of consent given directly. *Bartle v. Bartle*, 132 W 392, 112 NW 471.

Where money is loaned upon a promissory note, the fact that it was understood that it

should be used and had in fact been used in the construction of buildings upon real estate gives the creditor no lien upon such real estate superior to the homestead right. *Bartle v. Bartle*, 132 W 392, 112 NW 471.

The right of the owner to have his homestead exempted from liability in any form for his debts is superior to the equity of a creditor to have it applied to the payment of the debt. *Elsner v. Dorn*, 136 W 73, 116 NW 768.

The homestead which is exempt and the homestead which descends are defined by sec. 2983, Stats. 1913. *Lands of Sydow*, 161 W 325, 154 NW 371.

When a tract of village land occupied by a man as his homestead contains more than a quarter of an acre he may select that part of the entire tract containing the buildings thereon which shall thereafter be regarded as his homestead; and the wife need not join in an instrument making such selection. *Behrend v. Buchanan*, 169 W 242, 171 NW 958.

To make land exempt as a homestead from a lien, there must have existed on the part of the owner an intention to occupy the premises as a homestead prior to the time when the claimed lien attached. *State Bank of Waupun v. Storm*, 169 W 295, 172 NW 151.

Where a wife to the knowledge of her husband received moneys under such circumstances as to become a constructive trustee for the real owner, the use of the same, either to acquire a homestead or to improve an existing one, constituted a wrongful act, and the real owner of the moneys may have a lien adjudged upon the homestead. *Warsco v. Oshkosh S. & T. Co.* 190 W 87, 208 NW 886.

The equity in mortgaged property must be considered in determining whether homestead rights exceed the statutory limitations. *Northwestern S. Co. v. Nelson*, 191 W 580, 211 NW 798.

The fact that the homestead was subjected by voluntary acts of the owners to incumbrances did not lessen their rights to assert as against other creditors their homestead exemption. *Wisconsin M. & S. Co. v. Kriesel*, 191 W 602, 211 NW 795.

The proceeds of a note, which was given to the husband and wife on sale of their homestead, are not exempt from the claim of the assignee of the husband's interest, voluntarily disposed of. *Aaby v. Citizens Nat. Bank*, 197 W 56, 221 NW 417.

In selecting a homestead outside a city, one-half of the area of abutting highways and all of the area of traversing highways must be figured as part of the 40 acres selected. An owner may select a 40-acre homestead out of different but contiguous governmental subdivisions, even though separated by a highway. That part of the land purchased was leased, thereby preventing occupancy pending the expiration of the lease, did not prevent the purchaser from selecting the leased land as part of the homestead. *Eaton Center Co-op. C. Co. v. Kalkofen*, 209 W 170, 244 NW 620.

Insurance money on burned homestead property is garnishable in an action on a mortgage note and for foreclosure purchase money mortgage. *Cavadini v. Larson*, 211 W 200, 248 NW 209.

Absence in a sister state from a homestead

over a long period of years, and a contemplated continued absence for an indefinite period which must necessarily consume the greater part of a lifetime, coupled with the exercise of the right of suffrage in such state, is not a "temporary removal" notwithstanding an expressed intention of ultimate return to the homestead, and the right of exemption is extinguished. *Pedersen v. Nielsen*, 212 W 608, 250 NW 400.

Premises may be held as a homestead by a person although he rents them to another, if he boards and lodges with the tenant. *Estate of Fish*, 214 W 464, 253 NW 387.

Where an owner who had lived in a city residence with her husband lived elsewhere for several years, intending to return if her husband obtained work in the city, her removal was not a temporary removal with the intention to reoccupy the property and the property ceased to be her homestead. *Hauser v. Schauer*, 215 W 75, 254 NW 343.

Something more than a mere hope or vague intention to use property as a homestead at some future time is necessary to exempt the property from the lien of judgments. *Petition of Robers*, 220 W 547, 265 NW 578.

Rural premises consisting of 3 acres of land, of which about one-half acre was occupied by a family garden and on which were located 16 cottages, in one of which the homestead claimant and family lived, and the remainder of which were rented out during the summer season to tourists and persons on vacation, constituted a "homestead," where the business of renting the cottages was conducted for the purpose of maintaining a home. *Roche v. Du Bois*, 223 W 438, 271 NW 84.

During the life of the life tenant, a remainderman cannot acquire a homestead right in the land by occupying it with or subject to the life tenant. *Qualley v. Zimmerman*, 231 W 341, 285 NW 735.

In 272.20 (1), Stats. 1933, permitting the selection of a homestead consisting, when not included in any city or "village," of land not exceeding 40 acres, used for agricultural purposes, the word "village" meant an "incorporated village." Hence a homestead in an unincorporated village was not limited to one-fourth of an acre. A compact body of land, situated in an unincorporated village and not exceeding the statutory limits as to area or value, consisting of 2 adjoining lots, both formerly occupied by a decedent, on one of which he had his dwelling and on the other of which he personally conducted a tavern, could constitute his homestead. Hence the decedent's widow, proceeding under 314.05, could select the land in question as the homestead to be assigned to her. *Estate of McKenzie*, 232 W 425, 287 NW 695.

A conveyance of a homestead is not fraudulent to creditors even if a fraudulent intent exists. *Kopf v. Engelke*, 240 W 10, 1 NW (2d) 760, 2 NW (2d) 846.

While the statutory provisions for homestead exemption should be liberally construed, there must be a showing of some overt act indicating a then present intention to set aside the particular property as a homestead, in addition to a showing of a mental attitude to that purpose, in order to establish the neces-

sary occupancy of the premises claimed as a homestead. *Sheldon v. Johnston*, 242 W 442, 8 NW (2d) 269.

The bona fide intention of acquiring premises for a homestead, evidenced by overt acts in fitting them to become such, and followed by actual occupancy within a reasonable time, give to the premises the character of a homestead; and the homestead exemption thus secured relates back to the time of purchase with such intent to make the premises a homestead, and covers the land and the materials used thereon for the building of a home. *Schwitzke v. American Nat. Bank*, 242 W 521, 8 NW (2d) 303.

The homestead-exemption statute is liberally construed. *Leitz v. Bogumill*, 251 W 199, 28 NW (2d) 320.

Where a man leaves home, but does not establish another for his family, and his wife continues to live there, his homestead exemption continues. If the wife pays off a mortgage to prevent foreclosure, not as a gift to her husband, she is entitled to a lien to this amount in addition to his homestead exemption. *Eloff v. Riesch*, 14 W (2d) 519, 111 NW (2d) 578.

The determination by a referee in bankruptcy that a judgment is not a lien on real estate claimed exempt may not be collaterally attacked. *Ohio Cas. Ins. Co. v. Holz & Holz, Inc.* 24 W (2d) 587, 129 NW (2d) 330.

A tenant by curtesy is entitled to a homestead exemption. *In re Kaufmann*, 142 F 898.

A bankrupt, who owned a homestead in one Wisconsin city, sold his business there and removed to another town to engage in manufacturing. Less than a year after his removal to the second town, his factory burned, and he lost his investment. Thereupon he removed to a third town, where he engaged in business and voted. The bankrupt's intention to return, perhaps at some future time, and reoccupy his homestead, did not preserve his rights therein. *Peterson v. Wasserman*, 246 F 88.

Occupancy of property as a homestead determines whether it is exempt as such; and the fact that the bankrupt may have moved into it to create a homestead is immaterial. *In re Chakos*, 24 F (2d) 482.

The appointment and qualification of a trustee in bankruptcy of the estate of one joint tenant gives the trustee title to the bankrupt's nonexempt portion of the homestead, thus severing the joint tenancy and giving the trustee the right to partition. A bankrupt joint tenant is entitled to the full exemption for himself, and not to only one-half of it. *In re Blodgett*, 115 F Supp. 33.

The homestead exemption in Wisconsin. *Schoetz*, 2 MLR 19.

Character and extent of homestead exemption. *Crow*, 20 MLR 1.

272.21 History: R. S. 1849 c. 102 s. 53 to 55; R. S. 1858 c. 134 s. 25 to 27; R. S. 1878 s. 2984; Stats. 1898 s. 2984; 1901 c. 269 s. 2; Supl. 1906 s. 2984; 1925 c. 4; Stats. 1925 s. 272.21; 1935 c. 541 s. 233; 1949 c. 245; 1959 c. 248.

Where a levy was made on a tract of 100 acres and the debtor claimed 40 acres off of the west side of the south half of the tract as

exempt, his house being mostly if not wholly on the north half of the 40-acre tract, the situation of the dwelling was immaterial, the presumption being that he intended to so select as to embrace the dwelling and its appurtenances, and not to claim by any particular subdivision. *Herrick v. Graves*, 16 W 157.

Sale of premises claimed to be exempt cannot be sustained by showing that they exceeded the quantity allowed. In such case the creditor must cause a survey to be made. *Myers v. Ford*, 22 W 139.

272.24 History: R. S. 1849 c. 102 s. 37; R. S. 1858 c. 134 s. 13; R. S. 1878 s. 2986; Stats. 1898 s. 2986; 1925 c. 4; Stats. 1925 s. 272.24; 1935 c. 541 s. 235.

272.25 History: R. S. 1849 c. 102 s. 47, 48; R. S. 1858 c. 134 s. 19, 20; R. S. 1878 s. 2987; Stats. 1898 s. 2987; 1925 c. 4; Stats. 1925 s. 272.25; 1935 c. 541 s. 236.

Upon the dissolution of an attachment the money realized thereon and in the hands of a sheriff is not to be regarded in the custody of the law in such a sense as to preclude the sheriff from applying it upon an execution against the property of the same defendants issued to and received by the same officer after the receipt of such money. *Evans v. Virgin*, 72 W 423, 39 NW 864.

272.26 History: R. S. 1849 c. 102 s. 49; R. S. 1858 c. 134 s. 21; 1860 c. 283 s. 1; R. S. 1878 s. 2988; Stats. 1898 s. 2988; 1925 c. 4; Stats. 1925 s. 272.26; 1935 c. 541 s. 237; 1965 c. 51.

Sale of all interest in mortgaged property is illegal and action may be maintained by the mortgagee without demand; and where the mortgage authorizes the mortgagee to take possession at any time action may be maintained though the debt is not due. *Frisbee v. Langworthy*, 11 W 375.

A purchaser of pledged property is entitled to possession upon complying with conditions of the pledge. *Selleck v. Phelps*, 11 W 380.

A second mortgagee has the same rights as the first mortgagee subject only to the rights of the latter. *Newman v. Tymeson*, 13 W 172.

A pledgee cannot be dispossessed by execution against the pledgor, but the latter's interest may be levied upon. *Hass v. Prescott*, 38 W 146.

The interest of an assignor in a transfer as collateral security is subject to execution. *Haring v. Hamilton*, 107 W 112, 82 NW 698.

A mortgagee of chattel property holds the legal title thereto but, until default and actual possession in himself, his interest, as against the mortgagor or any person claiming under him, is special and limited to the amount of the mortgage indebtedness and, the general property and the equitable title being in the mortgagor or those claiming under him, the mortgagor may sell the mortgaged property and convey a good title thereto subject to the mortgage. *Buelow v. Lovell*, 249 W 610, 26 NW (2d) 290.

See note to 409.311, citing *First Nat. Bank v. Sheriff of Milwaukee County*, 34 W (2d) 535, 149 NW (2d) 548.

272.29 History: R. S. 1849 c. 102 s. 50, 59; R. S. 1858 c. 134 s. 45; R. S. 1878 s. 2991; Stats.

1898 s. 2991; 1925 c. 4; Stats. 1925 s. 272.29; 1933 c. 77, 86; 1935 c. 541 s. 240; 1965 c. 334.

If the time is not given the sale is void. *Blodgett v. Hitt*, 29 W 169.

The omission of the place of sale from the notice destroys its value, and a sale made pursuant to such a notice is the same as a sale made without notice. *Blodgett v. Hitt*, 29 W 169.

If a sale is made under several judgments the fact that some of them are absolutely void will not prevent a transfer of the title to the property sold if one of the judgments is valid. *Johnson v. Iron B. M. Co.* 78 W 159, 47 NW 363.

A purchaser of mortgaged cattle is bound to know as a matter of law that he could not obtain good title to the cattle from the sheriff other than by the procedure specified in the statute. *Porter v. Burtis*, 197 W 227, 221 NW 741.

272.30 History: R. S. 1849 c. 102 s. 65; R. S. 1858 c. 134 s. 37; R. S. 1878 s. 2992; Stats. 1898 s. 2992; 1925 c. 4; Stats. 1925 s. 272.30; 1935 c. 541 s. 241; 1953 c. 532; 1969 c. 283.

Sec. 2992, R. S. 1878, applies to the case of a trust in personal property where the trustee holds a naked title for the use of another. *Arzbacher v. Mayer*, 53 W 380, 10 NW 440.

272.31 History: R. S. 1849 c. 102 s. 73 to 75; R. S. 1858 c. 134 s. 42 to 45; R. S. 1878 s. 2993, 2994; Stats. 1898 s. 2993, 2994; 1905 c. 100 s. 1; Supl. 1906 s. 2993; 1925 c. 4; Stats. 1925 s. 272.31, 272.32; 1935 c. 541 s. 242; Stats. 1935 s. 272.31; 1947 c. 506; 1955 c. 366.

Sale may be made on 2 executions at the same time, and the purchaser's title will be sustained though one of them was void. *Herrick v. Graves*, 16 W 157.

Where the execution plaintiff becomes the purchaser it is presumed that he has notice of all defects; he is not protected as a bona fide purchaser would be. *Collins v. Smith*, 57 W 284, 15 NW 192.

The first publication must be full 6 weeks before sale. *Collins v. Smith*, 57 W 284, 15 NW 192. See also *Fletcher v. La Crosse County*, 165 W 446, 162 NW 484.

On sales after the lien has expired the property is bound only from time of levy. *Collins v. Smith*, 75 W 392, 44 NW 510.

The statute makes judgments a lien on lands of the debtor, and no levy or seizure by the sheriff is necessary; in practice there is no such thing as a levy of execution upon real estate. All that is necessary to make a regular sale upon execution issued upon a judgment is to publish the notice of sale as required by the statute, and make the sale at the time mentioned in the public notice. *Smith v. Zimmerman*, 85 W 542, 55 NW 956.

272.33 History: R. S. 1849 c. 102 s. 77; R. S. 1858 c. 134 s. 47; R. S. 1878 s. 2995; Stats. 1898 s. 2995; 1925 c. 4; Stats. 1925 s. 272.33; 1935 c. 541 s. 243.

The provision for sale in parcels is for the benefit of the debtor and may be waived. *Vilas v. Reynolds*, 6 W 214.

If land is sold as one parcel when it should have been offered in separate parcels the sale is voidable at the suit of the party aggrieved. *Raymond v. Pauli*, 21 W 531.

Objection that land was not sold in parcels cannot be taken after expiration of the time for redemption. *Raymond v. Holborn*, 23 W 57.

272.34 History: R. S. 1849 c. 102 s. 76; R. S. 1858 c. 134 s. 46; R. S. 1878 s. 2996; Stats. 1898 s. 2996; 1925 c. 4; Stats. 1925 s. 272.34; 1935 c. 541 s. 244.

272.35 History: R. S. 1849 c. 102 s. 78; R. S. 1858 c. 134 s. 48; R. S. 1878 s. 2997; Stats. 1898 s. 2997; 1925 c. 4; Stats. 1925 s. 272.35; 1935 c. 541 s. 245.

272.36 History: R. S. 1849 c. 102 s. 79; R. S. 1858 c. 134 s. 49; R. S. 1878 s. 2998; Stats. 1898 s. 2998; 1925 c. 4; Stats. 1925 s. 272.36; 1935 c. 541 s. 246.

272.37 History: R. S. 1849 c. 102 s. 80; R. S. 1858 c. 134 s. 50; R. S. 1878 s. 2999; Stats. 1898 s. 2999; 1925 c. 4; Stats. 1925 s. 272.37; 1935 c. 541 s. 247.

272.38 History: R. S. 1849 c. 102 s. 81, 82; R. S. 1858 c. 134 s. 51, 52; R. S. 1878 s. 3000; Stats. 1898 s. 3000; 1925 c. 4; Stats. 1925 s. 272.38; 1935 c. 541 s. 248.

This statute was not intended to supersede other existing means of evidence. The copy filed with the register of deeds and certified by the latter is competent evidence to prove the sale of the lands, though not acknowledged by the sheriff. *Knowlton v. Ray*, 4 W 288.

272.39 History: R. S. 1849 c. 102 s. 84; R. S. 1858 c. 134 s. 54; R. S. 1878 s. 3001; Stats. 1898 s. 3001; 1925 c. 4; Stats. 1925 s. 272.39; 1935 c. 541 s. 249.

A party seeking to avail himself of the right to redeem must comply with conditions imposed by the statute. Where the purchase has been made by parties for their joint benefit a tender of the proper sum to one of them is sufficient. *Prescott v. Everts*, 4 W 314.

By accepting part of the purchase money the purchaser waives his right to enforce a forfeiture of the equity of redemption and converts the certificate and his interest under it into security for the balance of the purchase money. *Ott v. Rape*, 24 W 336.

If the sheriff, refusing the tendered payment under valid redemption procedure, executed a sheriff's deed to the purchaser who conveyed to alleged innocent purchasers, the remedy of the original owner was an action in equity to quiet the title and, alternatively, to recover money damages from the sheriff in case the title has been lost and the sheriff's deed cannot be canceled. *Williams v. Thrall*, 167 W 410, 167 NW 825.

Where an application to set aside a sale of real estate on execution is made after expiration of the period of redemption, it is to be denied unless the applicant shows fraud or mistake, amounting to a reasonable excuse for delay. Although one of the elements of the defense of laches in a court of equity is that the granting of relief would, by reason of the delay, prejudice the party asserting laches, the burden in a proceeding such as the instant case is upon the late applicant to excuse delay, and not upon the opponent to establish all the elements of laches. *Sensen-*

brenner v. Keppler, 24 W (2d) 679, 130 NW (2d) 177.

272.40 History: R. S. 1849 c. 102 s. 85 to 87; R. S. 1858 c. 134 s. 55 to 57; R. S. 1878 s. 3002 to 3004; Stats. 1898 s. 3002 to 3004; 1925 c. 4; Stats. 1925 s. 272.40 to 272.42; 1935 c. 541 s. 250; Stats. 1935 s. 272.40.

A debtor's absolute conveyance of land (fraudulent as to his creditors) before judgment is recovered against him vests the right to redeem from a subsequent execution sale solely in the grantee. *Wiedner v. Parsons*, 206 W 438, 240 NW 367.

272.43 History: R. S. 1849 c. 102 s. 88; R. S. 1858 c. 134 s. 58; R. S. 1878 s. 3005; Stats. 1898 s. 3005; 1925 c. 4; Stats. 1925 s. 272.43; 1935 c. 541 s. 251.

272.44 History: R. S. 1849 c. 102 s. 89 to 93, 115; R. S. 1858 c. 134 s. 59 to 63, 85; R. S. 1878 s. 3006 to 3009; Stats. 1898 s. 3006 to 3009; 1907 c. 181; 1925 c. 4; Stats. 1925 s. 272.44 to 272.47; 1935 c. 541 s. 252; Stats. 1935 s. 272.44.

One who becomes a creditor after the execution sale and before the expiration of one year thereafter may redeem. *Falbe v. Caves*, 151 W 54, 138 NW 87.

272.44 (2) is construed to limit the right of redemption of land from execution sale to a creditor of the person against whom the execution issued. Hence a creditor was not entitled to redeem where he did not hold as security a mortgage from the judgment debtor pledging a mortgageable interest, as the security referred to in the statute must be one which has proceeded from the judgment debtor or as an incident to the debt. *Wiedner v. Parsons*, 206 W 438, 240 NW 367.

272.48 History: R. S. 1849 c. 102 s. 94 to 97; R. S. 1858 c. 134 s. 64 to 67; R. S. 1878 s. 3010 to 3013; Stats. 1898 s. 3010 to 3013; 1907 c. 181; 1925 c. 4; Stats. 1925 s. 272.48 to 272.51; 1935 c. 541 s. 253; Stats. 1935 s. 272.48.

272.52 History: R. S. 1849 c. 102 s. 98; R. S. 1858 c. 134 s. 68; R. S. 1878 s. 3014; Stats. 1898 s. 3014; 1925 c. 4; Stats. 1935 s. 272.52; 1935 c. 541 s. 254.

272.53 History: R. S. 1849 c. 102 s. 99, 116; R. S. 1858 c. 134 s. 69, 86; R. S. 1878 s. 3015; Stats. 1898 s. 3015; 1925 c. 4; Stats. 1925 s. 272.53; 1935 c. 541 s. 255.

The tender of a sufficient amount of money by one entitled to redeem, accompanied by all other prerequisites, completes the redemption whether or not the money be accepted; and his failure to file the evidence of his right in the office of the register of deeds does not affect such redemption, that provision being for protection of third persons. *Falbe v. Caves*, 151 W 54, 138 NW 87.

272.54 History: R. S. 1849 c. 102 s. 100; R. S. 1858 c. 134 s. 70; R. S. 1878 s. 3016; Stats. 1898 s. 3016; 1925 c. 4; Stats. 1925 s. 272.54; 1935 c. 541 s. 256.

272.55 History: R. S. 1849 c. 102 s. 101, 117; R. S. 1858 c. 134 s. 71, 87; 1863 c. 270 s. 1, 2; R. S. 1878 s. 3017; Stats. 1898 s. 3017; 1925 c. 4; Stats. 1925 s. 272.55; 1935 c. 541 s. 257.

A creditor who buys land at an execution pursuant to a judgment in his favor obtains only the actual interest of his debtor therein, regardless of the title which the records show in him. *Main v. Bosworth*, 77 W 660, 46 NW 1043.

Gross inadequacy of price, lack of actual notice or knowledge of the sale, and some irregularities were sufficient to justify the court in setting aside the sale and the sheriff's deed. *Kissinger v. Zieger*, 138 W 368, 120 NW 249.

272.56 History: R. S. 1849 c. 102, 103; R. S. 1858 c. 134 s. 72, 73; R. S. 1878 s. 3018; Stats. 1898 s. 3018; 1925 c. 4; Stats. 1925 s. 272.56; 1935 c. 541 s. 258.

272.57 History: R. S. 1849 c. 102 s. 107; R. S. 1858 c. 134 s. 77; R. S. 1878 s. 3019; Stats. 1898 s. 3019; 1925 c. 4; Stats. 1925 s. 272.57; 1935 c. 541 s. 259.

272.58 History: R. S. 1849 c. 102 s. 108; R. S. 1858 c. 134 s. 78; R. S. 1878 s. 3020; Stats. 1898 s. 3020; 1925 c. 4; Stats. 1925 s. 272.58; 1935 c. 541 s. 260.

272.59 History: R. S. 1849 c. 102 s. 109, 110; R. S. 1858 c. 134 s. 79, 80; R. S. 1878 s. 3021, 3022; Stats. 1898 s. 3021, 3022; 1909 c. 201; 1925 c. 4; Stats. 1925 s. 272.59, 272.60; 1935 c. 541 s. 261; Stats. 1935 s. 272.59.

272.61 History: R. S. 1849 c. 102 s. 111; R. S. 1858 c. 134 s. 81; 1867 c. 38 s. 1; R. S. 1878 s. 3023; Stats. 1898 s. 3023; 1925 c. 4; Stats. 1925 s. 272.61; 1935 c. 541 s. 262.

272.62 History: R. S. 1849 c. 102 s. 112 to 114; R. S. 1858 c. 134 s. 82 to 84; R. S. 1878 s. 3024; Stats. 1898 s. 3024; 1925 c. 4; Stats. 1925 s. 272.62; 1935 c. 541 s. 263.

Secs. 3021-3024, R. S. 1878, assume the continuance of the lien at law for at least 20 days after payment without anything being done, and then provide a way for preserving such a lien by filing an affidavit. But such remedy is cumulative and does not take away the right of enforcing the same as between parties by proceedings in equity. *German-American S. Bank v. Fritz*, 68 W 390, 32 NW 123.

If some of the sureties on an official bond pay the judgment thereon and in due time file the affidavit required by sec. 3024, R. S. 1878, to preserve their right of subrogation to the lien of plaintiff, their affidavits inure to the benefit of another surety who afterwards pays them his share of such judgment, and it is not necessary for him to file an affidavit. *Mason v. Pierron*, 69 W 585, 34 NW 921.

272.63 History: R. S. 1878 s. 3025; Stats. 1898 s. 3025; 1925 c. 4; Stats. 1925 s. 272.63; 1935 c. 541 s. 264.

Revisers' Note, 1878: New section. To provide a more convenient and summary remedy for a purchaser to obtain possession. The only present remedy is by ejectment, which is not interfered with by this section, but affords no better means, than is provided by this section, to the party to the judgment for disputing the sufficiency of the proceedings to pass his title.

The statute extends the power to issue the

writ to cases not coming within the common-law rule, but there was no intent that the power should be exercised in a case where there was a bona fide contest as to the right of the purchaser at the execution sale to the possession of the lands under such sale. The statute was not intended to compel the court to issue the writ in favor of the purchaser of an exempted homestead upon an execution against the owner in possession at the time of its issue and sale and at the time the writ was applied for. *Stanley v. Sullivan*, 71 W 585, 37 NW 801.

272.64 History: R. S. 1878 s. 3026; Stats. 1898 s. 3026; 1925 c. 4; Stats. 1925 s. 272.64; 1935 c. 541 s. 265.

CHAPTER 273.

Remedies Supplementary to Execution.

273.03 History: 1856 c. 120 s. 202; R. S. 1858 c. 134 s. 88; 1860 c. 44; 1861 c. 99; R. S. 1878 s. 3030; 1891 c. 408; Stats. 1898 s. 3030; 1899 c. 351 s. 37; 1925 c. 4; Stats. 1925 s. 273.03; 1935 c. 541 s. 268; 1943 c. 256.

A bona fide attempt to serve a debtor with a copy of the order to appear is equivalent to actual service in respect to priority of right. *Kellogg v. Collier*, 47 W 649, 3 NW 433.

A court commissioner has no power to require any other person than the debtor to appear before him and answer concerning his property; and there is no power to make an order before the hearing, restraining any person except the defendant from disposing of or transferring property in his hands belonging to the defendant. *Blabon v. Gilchrist*, 67 W 38, 29 NW 220.

A concrete illustration of proper procedure under this chapter may be found in *Alexander v. Wald*, 231 W 550, 286 NW 6.

273.035 History: 1957 c. 258; Stats. 1957 s. 273.035; 1967 c. 275; 1969 c. 18.

273.04 History: 1856 c. 120 s. 209; R. S. 1858 c. 134 s. 95; 1860 c. 44; R. S. 1878 s. 3036; Stats. 1898 s. 3036; 1925 c. 4; Stats. 1925 s. 273.09; 1935 c. 541 s. 274; Stats. 1935 s. 273.04; Sup. Ct. Order, 225 W v.

Where it appears, upon supplementary proceedings, that the judgment debtor has property liable to execution sufficient to satisfy the judgment, the court has no authority to appoint a receiver. *Second Ward Bank v. Diedrich*, 12 W 499.

Sec. 3036, R. S. 1878, contemplates that different proceedings may be pending at the same time, the only restriction upon a junior proceeding being that creditors prosecuting prior proceedings shall be notified and that but one receiver shall be appointed. *Kellogg v. Collier*, 47 W 649, 3 NW 433.

If the supplementary proceeding against a judgment debtor, after execution returned unsatisfied, is commenced before a county judge or court commissioner, the latter has power, in a proper case, to appoint a receiver; and the circuit court in which the judgment was rendered cannot by order transfer the supplementary proceeding pending before such officer, or the papers therein, to that