

pending, a written undertaking in double the amount of indebtedness stated in the affidavit for attachment, when an attachment has been issued, or in double the amount of indebtedness stated in the complaint duly verified, when such complaint has been served on the defendant with at least two sureties, who are freeholders and residents of this state, who shall justify that they are worth in the aggregate double the amount specified in such undertaking, over and above all debts, liabilities, and property exempt by law from execution, conditioned to pay the plaintiff the amount of the judgment, if any, which the plaintiff may recover in the action against the defendant, and serve a copy thereof with the justification of such sureties, and notice of the time of filing the same, and of the residence of such sureties, upon the plaintiff or his attorney; *provided, however*, that the plaintiff may except to the sufficiency of the sureties, within the same time, and in like manner as upon bail or arrest, and a failure so to except shall be deemed an acceptance of the undertaking and a discharge of the garnishee.

Proviso.

Repealed.

SECTION 2. Sections 1 and 5 of said chapter 53, of the general laws of 1869, are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 8, 1877.

[Published March 23, 1877.]

CHAPTER 238.

AN ACT relating to evidence and amendatory of section 2, of chapter 134, of the general laws of 1858.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Amended.

SECTION 1. Section 2, of chapter 134, of the general laws of 1858, entitled "Of evidence," is amended so as to read as follows: A party to any civil action or special proceeding in any and all courts and before any and all tribunals and before any and all officers acting judicially may be examined as a witness in his own behalf or in behalf of any other party in the same manner and subject to the same rules of examination as any other witness; *provided*, that the assignor of a thing in action shall not be examined on behalf of said

When party may be heard as witness in his own behalf.

Proviso.

party, nor shall a party to an action be examined in his own behalf in respect to any transaction or communication had personally by said assignor or said party respectively with a deceased person against parties who are the executors, administrators, devisees, heirs at law, next of kin or assignees of such deceased person where they have acquired title to the cause of action from or through such deceased person, or have been sued as such by the executors, administrators, devisees, next of kin or assignees, but when such executors, administrators, devisees, heirs at law, next of kin or assignees shall be examined on their own behalf in regard to conversations or transactions had between the deceased person or said assignor or said party respectively, and where the cause of action or defense arose out of transactions with an agent of the deceased, and not with the deceased personally, and such agent be living and a witness, then the said assignor, or the said party may be examined in regard to such conversation or transaction, but not in regard to any other matter; *and be it further provided, that* Proviso. whenever in any action brought by or against any executor, administrator, devisee, next of kin heirs at law or assignee of any deceased person, a witness shall be called to establish any declaration, conversation, admission or transaction between such witness and the party prosecuting or defending in his own right, then and in all such cases such party so sought to be charged may be examined in his own behalf touching such declaration, conversation, admission or transaction the same as he might have been had the opposite party brought or defended the action in his own right and not in a representative capacity, but not in regard to any new matter; but if the testimony of a party to the action or proceeding has been taken, and shall afterwards die, and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, devisees, heirs at law, next of kin or assignees, the other party or the assignor of a thing in action shall be a competent witness as to any and all matters to which the testimony so taken relates, notwithstanding any thing in this section to contrary therefore.

SECTION 2. Chapter 176, of the general laws of 1868, *Repealed.* is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

Approved March 8, 1877.