

No. 30, S.]

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CHAPTER 301.

AN ACT to repeal 276.04; to repeal and recreate 271.01; to revise 271.03; to consolidate, revise and renumber 260.22 and 260.24 (1) to be 260.22, and 260.23, 260.24 (2) and (3) and 260.25 to be 260.23; to amend 269.02, 269.04, 274.05, 296.08 (1) (a), 310.06 (last sentence), 316.17 (2) and 326.12 (3); and to create 268.025, 268.026, 271.035, 271.036 and 331.346 of the statutes, relating to pleading, practice and procedure in civil actions and special proceedings and to promote the speedy administration of justice.

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

SECTION 1. 260.22 and 260.24 (1) are consolidated, renumbered and revised to read: 260.22 APPEARANCE BY GUARDIAN AD LITEM. When a party to an action or proceeding is a minor he must appear by guardian ad litem, appointed by the court or by a judge thereof. When the court or judge has reason to believe that any party to an action or proceeding is mentally incompetent to have charge of his affairs, the court or judge shall appoint a guardian ad litem to represent him.

SECTION 2. 260.23, 260.24 (2) and (3) and 260.25 are consolidated, renumbered and revised to read:

260.23 GUARDIAN AD LITEM. (1) APPOINTMENT. The guardian ad litem shall be appointed as provided by this section.

(2) FOR PLAINTIFF. When the plaintiff is a minor 14 years of age, upon his application; or if the plaintiff is under that age or is mentally incompetent, upon application of his guardian or of a relative or friend. If made by a relative or friend, notice thereof

must first be given to his guardian if he has one in this state; if he has none, then to the person with whom the minor or mentally incompetent resides or who has him in custody.

(3) **FOR DEFENDANT.** When the defendant is a minor 14 year of age, upon his application made within 20 days after the service of the summons or other original process; if the defendant is under that age or neglects to so apply or is mentally incompetent, then upon the court's own motion or upon the application of any other party or any relative or friend or his guardian upon such notice of the application as the court or judge directs or approves.

(4) **COMPROMISE OR SETTLEMENT.** A compromise or settlement of an action or proceeding to which a minor or mentally incompetent person is a party may be made by his guardian ad litem with the approval of the court in which such action or proceeding is pending.

(5) **COMPROMISE OR SETTLEMENT WITHOUT ACTION.** A cause of action in favor of or against a minor or mentally incompetent person may, with the approval of any court of record, be settled by a guardian ad litem without the commencement of an action thereon; and for such purpose, the court may appoint a guardian ad litem upon application made as provided in subsection (2). An order approving a settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court.

(6) **VOLUNTARY APPEARANCE OR WAIVER; LIMITATION.** No guardian ad litem for any party to any action or special proceeding may enter a voluntary appearance for his ward or waive the service of any process or notice required by law to obtain jurisdiction of such party.

SECTION 3. 268.025 is created to read:

268.025 **EX PARTE RESTRAINING ORDERS.** (1) No court commissioner shall issue any injunction or order suspending or restraining the enforcement or execution of any statute of the state or of any order of an administrative officer, board, department, commission or other state agency purporting to be made pursuant to the statutes of the state. If so issued such injunction or order shall be void.

(2) The application for such an injunction or restraining order made to a court shall not be heard except upon notice to the attorney-general and to such other persons as may be defendants in the action; but if the court is of the opinion that irreparable loss or damage will result to the applicant unless a temporary restraining order is granted, the court may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction. However, such temporary restraining order shall be effective only for 5 days unless extended after notice and hearing thereon, or upon written consent of the parties or their attorneys, and in no event shall such temporary restraining order remain in force beyond the time of the determination of the application for an interlocutory injunction.

SECTION 4. 268.026 is created to read:

268.026 **REMEDY AGAINST HEIRS AND LEGATEES; TEMPORARY INJUNCTION; RECEIVERSHIP; JUDGMENT.** In an action, in a court of record, for damages founded upon contract or upon a judgment, when it appears that the defendant is interested, as heir, legatee or devisee, in the estate of a decedent and that the defendant's property liable to execution is probably insufficient to satisfy the plaintiff's claim for damages, the defendant may be enjoined by the court, pending the action, from assigning or otherwise disposing of his interest in such estate; and a receiver therefor may be appointed. The judgment may compel the defendant to transfer sufficient of his interest to satisfy the judgment or may adjudge such transfer. The remedy given by this section is in addition to that given by section 318.08 and by proceedings supplementary to execution under chapter 273. If a receiver is appointed, he shall give prompt notice thereof to the administrator or executor.

SECTION 5. 269.02 is amended by adding at the end thereof the following: "If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, he shall not recover costs but the defendant shall have full costs computed on the demand of the complaint."

SECTION 6. 269.04 is amended to read:

269.04 **OFFER OF DAMAGES NOT ACCEPTED.** If the plaintiff * * * *does* not accept the offer *made under 269.03* he shall not be permitted to give it in evidence, and if the damages assessed in his favor * * * *do* not exceed the * * * *damages* offered, the defendant shall recover his expenses incurred in consequence of any necessary preparations or defense in respect to the question of damages; such expenses shall be determined by the presiding judge and carried into the judgment.

SECTION 7. 271.01 is repealed and recreated to read:

271.01 COSTS ALLOWED TO PLAINTIFF. (1) Except as otherwise provided in this chapter, costs shall be allowed of course to the plaintiff upon a recovery.

(2) In an action which the complaint shows is within justice court jurisdiction, when the recovery is less than \$100, the plaintiff shall recover only such costs as the court allows.

(3) In an action for assault and battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than \$50 damages he shall recover no more costs than damages.

SECTION 8. 271.03 is revised to read:

271.03 COSTS TO DEFENDANT. (1) If the plaintiff is not entitled to costs under 271.01 (1) or (3) or is denied costs under 271.01 (2), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint.

(2) Where there are several defendants who are not united in interest and who make separate defenses by separate answers, if the plaintiff recovers against some but not all of such defendants, the court may award costs to any defendant who has judgment in his favor.

SECTION 9. 271.035 is created to read:

271.035 COSTS UPON COUNTERCLAIMS AND CROSS COMPLAINTS. (1) Except as otherwise provided in this section, costs shall be allowed on counterclaims and cross complaints as if separate actions had been brought thereon.

(2) When the causes of action stated in the complaint and counterclaim and cross complaint arose out of the same transaction or occurrence, costs in favor of the successful party upon the complaint and counterclaim and cross complaint so arising shall be in the discretion of the court.

(3) Costs recovered by opposing parties shall be offset.

SECTION 10. 271.036 is created to read:

271.036 OMNIBUS COSTS PROVISION. If a situation arises in which the allowance of costs is not covered by sections 271.01 to 271.035, the allowance shall be in the discretion of the court.

SECTION 11. 274.05 is amended by adding at the end thereof the following: "But no writ of error shall issue or appeal lie to review an order or judgment on habeas corpus remanding to custody a prisoner committed for trial pursuant to section 361.18 unless allowed by one of the justices of the supreme court upon a finding that the writ or appeal is not sought for dilatory purposes, after reasonable notice of application for the writ or for leave to appeal and opportunity to be heard to the attorney-general and the district attorney of the county involved.

SECTION 12. 276.04 is repealed.

SECTION 13. 296.08 (1) (a) is amended to read:

296.08 (1) (a) When such application is made on behalf of a minor or incompetent, who has no general guardian, the court or presiding judge must appoint some suitable person special guardian of such minor in the proceeding; such special guardian shall give a bond to the judge of the court, to be filed in the county court or with the clerk of the circuit court, in such sum, with such sureties, and in such form as the county or circuit court or judge shall direct, conditioned for the faithful performance of the trust reposed, for paying over, investing, or accounting for all moneys that shall be received by such guardian, according to law and for observance of the directions of the court in relation to the said trust.

SECTION 14. The last sentence of 310.06 is amended to read:

310.06 (last sentence) If * * * *no competent* subscribing * * * *witness resides* in this state at the time fixed for proving the will or if none of them, after due diligence used, can be found in this state, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will and may admit proof of his handwriting and that of the subscribing witnesses.

SECTION 15. 316.17 (2) is amended to read:

316.17 (2) If the court * * * authorizes a private sale, the executor or administrator shall attempt such a sale and may enter into a contract of sale subject to the approval of the court; and the court may * * * *approve* a land contract made in advance of the order authorizing the sale, if he * * * concludes that the contract is for the best interests of the estate. Upon * * * *approval* of the contract * * * the executor or administrator shall execute and deliver a deed of the real estate sold, as directed by the order * * *.

SECTION 16. 326.12 (3) is amended to read:

326.12 (3) TIME, PLACE, NOTICE; OFFICERS EMPOWERED TO TAKE. Such examination

* * * shall be taken before * * * *any officer authorized to take depositions by the laws of the state where the deposition is taken* on previous notice to all adverse parties or their respective attorneys of at least 5 days. If the person to be examined is a non-resident * * * party to the action or proceeding, or is a nonresident president, secretary, treasurer or managing agent of a * * * corporation that is a party * * *, the court may upon just terms fix the time and place of such examination, * * * and * * * *he* shall attend at such time and place and submit to the examination, and, if required, attend for the reading and signing of such deposition, without service of subpoenas. Such examination shall not be compelled in any county other than that in which the * * * *person* examined resides, * * * except that any nonresident subject to examination may be examined in any county of this state in which he is personally served with notice and subpoena * * *. The court may fix another place for such an examination in the case of a * * * *person* who is physically unable to attend the examination in the county of his residence. When a party has instituted suit in any county of this state, he shall be subject to adverse examination in such county whether he resides in such county or not provided a subpoena is served upon him within such county.

SECTION 17. 331.346 is created to read:

.331.346 BAIL, DEPOSIT IN LIEU OF BOND. When any bond or undertaking is authorized in any civil or criminal action or proceeding, the would-be obligor may, in lieu thereof and with like legal effect, deposit with the proper court or officer cash or certified bank checks or United States bonds in an amount at least equal to the required security; and the receiver thereof shall give a receipt therefor. Section 274.14 shall govern the procedure so far as applicable.

Approved June 17, 1949.
