265.09 History: 1856 c. 120 s. 122; R. S. 1858 c. 128 s. 9; R. S. 1878 s. 2725; Stats. 1898 s. 2725; 1925 c. 4; Stats. 1925 s. 265.09; 1935 c. 541 s. 68.

265.10 History: 1856 c. 120 s. 123; R. S. 1858 c. 128 s. 10; R. S. 1878 s. 2726; Stats. 1898 s. 2726; 1925 c. 4; Stats. 1925 s. 265.10; 1935 c. 541 s. 69.

265.11 History: 1856 c. 120 s. 124; R. S. 1858 c. 128 s. 11; R. S. 1878 s. 2727; Stats. 1898 s. 2727; 1925 c. 4; Stats. 1925 s. 265.11; 1935 c. 541 s. 70.

There is no statute authorizing a person not a party to the replevin suit to acquire the property by giving an undertaking under sec. 2727, R. S. 1878. The undertaking was given by an assignee for the benefit of creditors, conditioned that if the property was adjudged to be delivered to the plaintiff, a mortgagee, such delivery should be made or any judgment in his favor paid to an amount not exceeding the sum which the assignee might receive from the sale of the property. The assignee's liability to the plaintiff was discharged by payment of the proceeds of the sale of the property, amounting to more than the mortgage debt and interest, notwithstanding the amount of the plaintiff's special interest was not found by the verdict nor fixed by the judgment. Gage v. Allen, 84 W 323, 54 NW 627.

265.12 History: 1856 c. 120 s. 125, 326; R. S. 1858 c. 128 s. 12; R. S. 1858 c. 140 s. 49; R. S. 1878 s. 2728; 1883 c. 6; Ann. Stats. 1889 s. 2728; Stats. 1898 s. 2728; 1925 c. 4; Stats. 1925 s. 265.12; 1935 c. 541 s. 71.

The failure of the sheriff to file plaintiff's papers in a replevin action within 20 days after taking possession of the property as required by sec. 2728, Stats. 1919, is not ground for dismissal where the defendant was not injured by delay, such delay not impairing the court's jurisdiction. Behling v. Posorske, 172 W 608, 179 NW 738.

265.13 History: Sup. Ct. Order, 212 W xvii; Stats. 1933 s. 265.13.

In replevin by the holder of notes secured by a chattel mortgage on hotel property, which did not cover after-acquired property, the trial court erred in allowing judgment for all the personal property located in the hotel as shown by an inventory taken on the day before the trial, where the mortgage had been executed more than 3 years before and there was no sufficient proof that the inventory covered the same identical articles as did the mortgage. Muldowney v. McCoy Hotel Co. 223 W 62, 269 NW 655.

In the absence of exceptional circumstances, in actions for the tortious taking or conversion of goods, the plaintiff is entitled to recover as damages the value of the chattels at the time and place of the wrongful taking or conversion, with interest to the time of trial. Topzant v. Koshe, 242 W 585, 9 NW (2d) 136.

CHAPTER 266.

Attachment.

266.01 History: R. S. 1849 c. 112 s. 1; R. S. 1858 c. 130 s. 1; R. S. 1878 s. 2729; Stats. 1898 s. 2729; 1925 c. 4; Stats. 1925 s. 266.01; 1935 c. 541 s. 72.

Revisers' Note, 1878: Section 1, chapter 130, R. S. 1858, amended by inserting after debtor, words which show unequivocally a corporation may be so proceeded against; section 1, chapter 130, R. S. 1858, being otherwise substantially embraced in the next section. Also forbids expressly an attachment against a municipal corporation.

Revisor's Note, 1935: Title XXV (chapters 260 to 274) relate to actions in courts of record. 260.01. The proper county is determined by chapter 261. The addition of "as defined in 67.01" is to cover towns, counties and school districts. That is now the law, we believe. (Bill 50-S, s. 72)

The statute must be substantially, if not strictly and exactly, complied with. Whitney v. Brunette, 15 W 61.

Attachment is an ancillary or provisional remedy in or dependent upon the principal action. Cummings v. Tabor, 61 W 185, 21 NW 72; Evans v. Virgin, 69 W 153, 33 NW 569.

A trading corporation, so long at least as it deals with others in its ordinary course of business, is subject to the remedy by attachment; and a lien acquired will not be affected by sequestration proceedings subsequently instituted. Ballin v. Merchants' Ex. Bank, 89 W 278, 61 NW 1118.

No fraud being shown by the vendee, the vendor who has accepted his notes and assigned them cannot maintain attachment against their maker. Landauer v. Espenhain, 95 W 169, 70 NW 287.

See note to sec. 12, art. I, on impairment of contracts, citing Second Ward Savings Bank v. Schranck, 97 W 250, 73 NW 31, and other cases.

An attachment reaches only the interest which the debtor has in the property attached. An attachment is inferior to a prior conveyance although such conveyance is not recorded. Karger v. Steele-Wedeles Co. 103 W 286, 79 NW 216.

An attachment lien on real estate may be lost by laches. The lien will be deemed waived in case of neglect to seasonably obtain full jurisdiction of the subject of the levy by service of the summons upon the defendant. Barth v. Loeffelholtz, 108 W 562, 84 NW 846.

While property or money is in custodia legis, the officer holding it is the mere hand of the court and his possession is the possession of the court and it is not subject to levy either in attachment or by way of execution. Guardianship of Kohl, 221 W 385, 266 NW 800.

266.02 History: 1856 c. 120 s. 139; R. S. 1858 c. 130 s. 4; 1859 c. 101 s. 3; 1864 c. 393 s. 2; R. S. 1878 s. 2730; Stats. 1898 s. 2730; 1925 c. 4; Stats. 1925 s. 266.02; 1935 c. 541 s. 73; 1957 c. 181.

Revisers' Note, 1878: Section 3, chapter 101, Laws 1859, as amended by section 2, chapter 393, Laws 1864, and section 4, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, combined and amended to direct the writ to run in the name of the state.

The writ of attachment can only be issued at or after the commencement of the action. Jarvis v. Barrett, 14 W 591.

The writ may be served before the summons if the latter issued previously and has been placed in proper hands with a bona fide intent that it shall be served. Bell v. Olmsted, 18 W 69.

Pendency of a petition in insolvency does not prevent creditors of the insolvent debtor from using attachment process. Mowry v. White, 21 W 417.

In an action against a nonresident or absconding defendant the writ may issue before the publication of the summons. Cummings v. Tabor, 61 W 185, 21 NW 72.

The fact that an attachment is issued at the instance of the debtor, in the absence of fraud, if its issuance is ratified by the creditors either before or after the writ is levied, does not invalidate it. First Nat. Bank v. Greenwood, 79 W 269, 45 NW 810, 48 NW 421.

Where the attachment upon a demand note was issued and levied on the day the note was given, but by mistake the papers and the note were dated as of the following day, the attachment was not void as to subsequent attaching creditors. The mistake in the writ was curable by amendment. Shakman v. Schwartz, 89 W 72, 61 NW 309.

By moving in the state court to set aside a levy on property under an unsealed writ, on other grounds than the absence of the seal, and by failing to raise an objection on that account prior to the release of the property upon filing a bond given pursuant to secs. 2742-2744, R. S. 1878, the right to claim that the writ is void is waived. Wolf v. Cook, 40 F 432.

266.03 History: R. S. 1849 c. 112 s. 2, 3; R. S. 1858 c. 130 s. 2, 3, 61; 1859 c. 101 s. 2; 1868 c. 29 s. 2; R. S. 1878 s. 2731; 1880 c. 233, 256; 1885 c. 39; Ann. Stats. 1889 s. 2731; Stats. 1898 s. 2731; 1925 c. 4; Stats. 1925 s. 266.03; 1935 c. 541 s. 74; 1955 c. 366.

Revisers' Note, 1878: Sections 2, 3 and 61, chapter 130, R. S. 1858, as amended by section 2, chapter 101, Laws 1859, and section 2, chapter 29, Laws 1868, combined and amended. Subdivision one is amended to embrace the more specific case of a concealment to avoid service; subdivision two is amended to embrace subdivisions two and seven of section 2, chapter 130, R. S. 1858; subdivision six is amended to embrace all of section 61, chapter 130, R. S. 1858, not included in other subdivisions, and the preceding section, conforming the language to that of the section on service of the summons; subdivision seven is new, to cover the case of prosecutions on official bonds for the public; and a concluding clause is made to embrace the provisions for an attachment against a nonresident or a foreign corporation, omitting the requirement for an allowance and order, as not more necessary in such case than any other, and contrary to the general practice. The facility with which attached property may be released on giving security, or the bond on the part of the plaintiff increased, leaves no injustice likely to follow, but the provisions altogether can no more than oblige the nonresident defendant to leave his property amenable to the process of the court, or secure the plaintiff in the ultimate payment of his judgment. It is to be remembered, too, that all such proceedings are under control of the court, which can readily relieve against any abuse of its process.

The sixth cause of attachment under the statutes of 1839 was "that such debtor is about fraudulently to remove, convey or dispose of his property or effects so as to hinder or delay his creditor"; and thereunder it was held to be proper to use the word "remove," "convey" or "dispose" in the disjunctive, and also the word "property" or "effects"; but 2 or more of the 6 causes could not be stated in the disjunctive. Morrison v. Fake, 1 Pin. 133.

An affidavit alleging that defendant was making secret preparations to leave, without disclosing the nature or character of such preparations or that he was making them with intent to abscond, is insufficient. Lorraine v. Higgins, 2 Pin. 454.

Service of a writ of attachment is unauthorized unless the affidavit is attached to it. McCarty v. Gage, 3 W 404.

If the affidavit shows that the affiant is the plaintiff's attorney it is sufficient. Blaikie v. Griswold, 10 W 293.

An affidavit by the attorney of a nonresident plaintiff is sufficient if the statement of the amount was made "upon information and belief derived from and founded upon the written admissions of the defendant, then in the attorney's possession." Howell v. Kingsbury, 15 W 272.

The interest of a nonresident joint owner may be attached, though no cause exists for attaching that of the other owner. Bank of the Northwest v. Taylor, 16 W 609.

Where cause for granting a writ is shown only as against one or more of several defendants it ought not to be granted unless the others are insolvent or beyond the jurisdiction of the court. Bank of the Northwest v. Taylor, 16 W 609.

The affidavit is sufficient if it alleges the cause in the language of the statute. Klenk v. Schwalm, 19 W 111.

After recovering judgment in garnishment against A as purchaser of certain goods from B, the creditor of B cannot attach the goods on the ground that the sale to A was fraudulent. Carter v. Smith, 23 W 497.

An attachment is not authorized because a debtor has made a deposit for safekeeping of securities for the payment of money to him, no attempt being made to secretly transfer them so that he might obtain their proceeds free from the claims of creditors. Couldren v. Caughey, 29 W 317.

An affidavit is insufficient unless perjury can be assigned upon it. Miller v. Munson, 34 W 579.

An affidavit that plaintiff "knows or has good reason to believe" that defendant has absconded is sufficient. Mairet v. Marriner, 34 W 582.

An allegation that indebtedness is for work, labor and service done and performed, etc., is a sufficient averment that it is due upon contract. Ruthe v. Green Bay & M. R. Co. 37 W 344.

"Is indebted" in an affidavit implies that a debt is due. Trowbridge v. Sickler, 42 W 417.

If an affidavit is made according to the statute the right to the writ is absolute. Davidson v. Hackett, 49 W 186, 5 NW 459.

If the affidavit be not made by the plaintiff and fails to show that the affiant is his agent or attorney, or, if a corporation, that he is an officer thereof, and also fails to show that he makes it in behalf of plaintiff it is insufficient. Wiley v. Aultman Co. 53 W 560, 11 NW 32.

Wilfully misrepresenting the amount one owes is a fraud sufficient to authorize the issuance of a writ. Rosenthal v. Wehe, 58 W 621, 17 NW 318.

An averment that defendant has assigned, disposed of or concealed or is about to assign, dispose of or conceal any of his property is insufficient. Goodyear R. Co. v. Knapp, 61 W 103, 20 NW 651.

If the affidavit is insufficient the writ is void and the proceedings thereon may be vacated at any time. Goodyear R. Co. v. Knapp, 61 W 103, 20 NW 651.

An appearance cures defects in an affidavit. Bull v. Christenson, 61 W 576, 21 NW 521.

An affidavit need only allege that the defendant has absconded from this state. Hawes v. Clement, 64 W 152, 25 NW 21.

An averment that it is a certain sum, "as near as may be," is good. But "as near as this plaintiff is able to determine" is bad. The amount must be stated; and if the action be of such a character that plaintiff cannot know the amount attachment cannot be executed. Hawes v. Clement, 64 W 152, 25 NW 21.

Giving a chattel mortgage with an understanding that the mortgagor shall go on selling the property in the usual course of trade and apply the proceeds to his own use affords ground for an attachment. Anderson v. Patterson, 64 W 557, 25 NW 541.

When the affidavit is made by the attorney or agent of plaintiff and the amount due is positively stated the means of affiant's knowledge need not be stated. Anderson v. Wehe, 58 W 615, 17 NW 426; Rice v. Morner, 64 W 599, 25 NW 668.

The execution by an insolvent debtor to one of his creditors of a mortgage to secure a sum greater than he owes to such creditor, the mortgage not disclosing that it was given to secure future advances, sustains a finding that the debtor's intent was to defraud his creditors. Rice v. Morner, 64 W 599, 25 NW 668.

If a partnership assumes the indebtedness of one of its members attachment proceedings against the firm property will be sustained. Rice v. Wolff, 65 W 1, 26 NW 181.

If a partner in an insolvent firm appropriates its money to the payment of his individual debts his act is ground for an attachment. Keith v. Armstrong, 65 W 225, 26 NW 445.

Where it is alleged that the defendant has disposed of, or is about to dispose of, some of his property with intent to defraud his creditors, the intent of the persons who have received the property is immaterial. Miller v. McNair, 65 W 452, 27 NW 333.

Making an invalid assignment for the benefit of creditors is not of itself evidence which tends to prove that the debtor has assigned, etc., with intent to defraud his creditors. First Nat. Bank v. Rosenfeld, 66 W 292, 28 NW 370.

One who fraudulently represents himself to be solvent and thereby obtains a surrender of his overdue notes and induces his creditor to take new notes for identical amounts payable in the future subjects his property to attachment in an action on the notes last given. Wachter v. Famachon, 62 W 117, 22 NW 160; First Nat. Bank v. Rosenfeld, 66 W 292, 28 NW 370.

On the attachment of property for a demand not due judgment may be entered for the whole sum due when the entry is made. Rollins v. Kahn, 66 W 658, 29 NW 640.

Where plaintiff sold property to defendant and was to receive as payment a mortgage of land, payment of which the latter was to guarantee, and he was induced to accept the mortgage by defendant's false representations as to the value of the land, the defendant's financial responsibility and the mortgagor's ability to pay, the debt was fraudulently contracted. Littlejohn v. Jacobs, 66 W 600, 29 NW 545.

Cattle were sold for a certain sum, payment therefor to be made by the transfer of a real estate mortgage which defendant was to guarantee. The indebtedness was due upon express contract. Littlejohn v. Jacobs, 66 W 600, 29 NW 545.

The words "someone in behalf" mean that the affidavit is made by someone acting in good faith and authorized to institute the proceedings or one who does so by the request of such person. The authority of the person who makes the affidavit is not put in issue by a traverse thereof. Eureka S. H. Co. v. Sloteman, 67 W 118, 30 NW 241.

In an action against a firm for a partnership debt the firm is the defendant. To justify the seizure on attachment of partnership property cause therefor must exist against the firm or all the partners. But though upon the traverse of the affidavit against a firm the facts set up are not established against it or all its members, yet, if the affidavit also alleges that one of the defendants "has conveyed and disposed of some of his property with intent to defraud his creditors," and that allegation is sustained, his individual property may be taken and held on the writ against the firm. Evans v. Virgin, 69 W 153, 33 NW 569.

Where a creditor whose debt is not due has attached, such attachment is not a ground for intervention by another attaching creditor to have his lien made a prior one. Espenhain v. Meyer, 74 W 379, 43 NW 157.

An action cannot be maintained upon a demand not due unless there is a valid attachment. Streissguth v. Reigelman, 75 W 212, 43 NW 1116.

The indebtedness of the defendant must be positively stated by one who has knowledge of the facts. Streissguth v. Reigelman, 75 W 212, 43 NW 1116; Trautman v. Schwalm, 80 W 275, 50 NW 99.

In the absence of a fraudulent purpose an insolvent debtor may change his homestead, and add to the amount of incumbrance on the former one for the purpose of satisfying liens on the new and more valuable homestead. Palmer v. Hawes, 80 W 474, 50 NW 341.

After the dissolution of a firm one of its members who has purchased the interest of his copartners in the firm property may convey the same to pay or secure his personal debt unless such conveyance is fraudulent as to firm creditors. Harris v. Meyer, 84 W 145, 53 NW 1127.

If the affidavit states that the debt is to become due and is attached to the writ when both are served, an unnecessary statement in the latter that "it further appears from said affidavit that the whole amount due," etc., is not material to the validity of the writ. Spitz v. Mohr, 86 W 387, 57 NW 41.

If the body of the affidavit names only the defendants and their names appear therein before the words "that the parties aforesaid have assigned," the use of that language instead of the words of the statute, "that the defendants have assigned," etc., will be construed to refer to the defendants. Spitz v. Mohr, 86 W 387, 57 NW 41.

Notice of the existence of a mortgage which has not been filed and the property covered has not changed possession will not prevent a creditor from attaching, though such notice had come to him before he gave the credit. Ryan D. Co. v. Hvambsahl, 89 W 61, 61 NW 299.

If the plaintiff joins a fraudulent claim with a bona fide one the fraud destroys the whole. Sommermeyer v. Schwartz, 89 W 66, 61 NW 311.

The fact that the debt is not yet due is not ground for intervention to obtain priority for a subsequent attachment. It can only be taken advantage of by the debtor; his failure to take advantage of it does no wrong to a subsequently attaching creditor. Shakman v. Schwartz, 89 W 72, 61 NW 309.

In proceedings to sequestrate property of an insolvent corporation it was alleged that collusive attachments had been made by other creditors, who were defendants in such proceedings. Some of said defendants made substantially the same allegations in their answers as to the attachments of their co-defendants which were prior to their own. They did not plead the facts as a counterclaim nor serve their answer upon such other defendants, and on the trial abandoned such claim. As between the defendants the bona fides of the attachment could not be tried because those who alleged the fraud should have raised the question by a cross complaint. Ballin v. Merchants' Ex. Bank, 89 W 278, 61 NW 1118.

A firm's property is subject to attachment when the sole managing partner withdraws the partnership funds and uses them for personal purposes, knowing that the firm is insolvent. Winner v. Kuehn, 97 W 394, 72 NW 227.

An objection that the affidavit is in the disjunctive, the words of the statute being used, is not good if the affidavit is limited to one paragraph. Winner v. Kuehn, 97 W 394, 72 NW 227.

A copy of an attachment found on file in a register of deeds' office does not show that an attachment has been issued with the necessary affidavit and undertaking attached so as to authorize it to be executed. Stanhilber v. Graves, 97 W 515, 73 NW 48.

Where the ground for the attachment is that the debt was fraudulently contracted, it may be sustained as to a portion of such debt and not as to the remainder. Teweles v. Lins, 98 W 453, 74 NW 122.

Where an action was brought against a nonresident and the affidavit of attachment stated that defendant was indebted upon an implied contract and was not a resident of the state, and the affidavit did not state that the debt was to become due, it was insufficient. Lederer v. Rosenthal, 99 W 235, 74 NW 971.

Where money is wrongfully appropriated tort may be waived and suit brought on the implied contract and an attachment had. Barth v. Graf, 101 W 27, 76 NW 1100.

As against a purchaser of attached property equity will not permit the enlargement of the amount of the attaching creditor's lien by the inclusion of claims in the judgment which were not in existence at the inception of such lien; and where such claims are so included the attachment is discharged. Oconto County v. Esson, 112 W 89, 87 NW 855.

The right to have the writ executed is dependent upon having attached thereto the affidavit required by the statute. Gallun v. Weil, 116 W 236, 92 NW 1091.

A judgment obtained by default on a demand not yet due, accompanied by an attachment without first giving an undertaking for 3 times the amount demanded, should be set aside and the attachment vacated. I. L. Lamm Co. v. Peaks, 162 W 289, 156 NW 194.

Traverse of an attachment based on fraud should have been sustained where the facts showed that plaintiff had no right to rely on defendant's claim that a third party would back him financially, where plaintiff knew defendant had no money himself and could easily have inquired of third party. W. H. Hobbs Supply Co. v. Ernst, 270 W 166, 70 NW (2d) 615.

266.04 History: 1883 c. 249 s. 4; Ann. Stats. 1889 s. 2731a; Stats. 1898 s. 2731a; 1925 c. 4; Stats. 1925 s. 266.04; 1935 c. 541 s. 75.

266.06 History: 1856 c. 120 s. 138; R. S. 1858 c. 130 s. 5; 1859 c. 101; R. S. 1878 s. 2732; 1895 c. 9; Stats. 1898 s. 2732; 1925 c. 4; Stats. 1925 s. 266.06; 1935 c. 541 s. 77.

Parties who sign an undertaking for the discharge of property seized by virtue of an attachment are estopped in an action thereon to deny the regularity of the attachment. Billingsley v. Harris, 79 W 103, 48 NW 108.

The undertaking is valid though the attachment is void. Zechman v. Haak, 85 W 656, 56 NW 158.

The plaintiff is not a necessary party to the undertaking; the statute is satisfied if that instrument is signed by sufficient surety and delivered to the officer. L. A. Shakman & Co. v. Koch, 93 W 595, 67 NW 925.

266.07 History: R. S. 1858 c. 130 s. 6; R. S. 1878 s. 2733; Stats. 1898 s. 2733; 1925 c. 4; Stats. 1925 s. 266.07; 1935 c. 541 s. 78.

266.08 History: R. S. 1858 c. 130 s. 8; 1859 c. 101; R. S. 1878 s. 2734; Stats. 1898 s. 2734; 1925 c. 4; Stats. 1925 s. 266.08; 1935 c. 541 s. 79.

If sec. 2734, R. S. 1878, is complied with by the sheriff the court acquires jurisdiction over the attached property. Thomas v. Richards, 69 W 671, 35 NW 42.

If a settlement of the cause of action is made after a writ has been placed in an officer's hands and before he has actually taken pos-

session of any property under it or served papers on anyone, and he is directed not to proceed further, the defendant's motion to require him to make a return of the writ will be denied. Atwell v. Wigderson, 80 W 424, 50 NW 347.

266.09 History: R. S. 1858 c. 130 s. 15; 1859 c. 101 s. 1; R. S. 1878 s. 2735; Stats. 1898 s. 2735; 1925 c. 4; Stats. 1925 s. 266.09; 1935 c. 541 s. 80.

266.10 History: R. S. 1849 c. 112 s. 5; R. S. 1858 c. 130 s. 9; 1859 c. 101; 1868 c. 29 s. 3; R. S. 1878 s. 2736; 1883 c. 249 s. 1; 1885 c. 259; Ann. Stats. 1889 s. 2736, 2736a; Stats. 1898 s. 2736; 1925 c. 4; Stats. 1925 s. 266.10; 1935 c. 541 s. 81.

Revisers' Note, 1878: Section 9, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, amended to relieve from appraising real estate as entirely useless and generally a perfunctory proceeding, also adding a sentence requiring service on the agent of a nonresident, if any be known to the sheriff. Idea of section 3, chapter 29, Laws 1868. This will be sufficient to protect the want of such a service from being held a jurisdictional defect and leave the statute directory.

If the writ of attachment has not been personally served the defendant is not concluded by the judgment and no property can be sold under it that was not actually attached. Glover v. Rawson, 3 Pin. 226.

If the appraisers are not sworn the appraisement is not competent evidence to prove the value of the property. Watkins v. Page, 2 W 92.

Books of account are not such evidence of debt that their seizure constitutes an attachment of the debts mentioned in them. Brower v. Smith, 17 W 410.

Sec. 9, ch. 130, R. S. 1858, is mandatory, but the omission may be remedied by amendment on application to the court in which the proceedings were had. Hopkins v. Langton, 30 W 379.

A levy upon the land of the mortgagor as the separate property of the mortgagee is not an attachment of the notes and mortgage for which the land was security. Evans v.Virgin, 69 W 148, 33 NW 585.

Where the summons and complaint have been duly served the subsequent failure to serve copies of the writ of attachment, affidavit and undertaking by leaving them at the last usual place of abode of the defendant is excused if it appears that he was a mere boarder at the house where service was made and had, between the time of the service of the summons and the writ, etc., absconded to parts unknown. By absconding he waived service. Thomas v. Richards, 69 W 671, 35 NW 42.

A return which is defective in that it does not state that the sheriff indorsed on the copies of the writ last served on the defendants a notice to them, respectively, that the property seized is the same as was seized, inventoried and appraised by virtue of a previous attachment, is fatal to the continuance of the lien of the later attachment, unless the defect is waived. First Nat. Bank v. Greenwood, 79 W 269, 45 NW 810, 48 NW 421.

One who prevents the complete service of a writ of attachment by relevying the property against a sheriff, and by traversing the affidavit for the attachment, is estopped from claiming that the writ was not completely served. S. C. Herbst I. Co. v. Burnham, 81 W 408, 51 NW 262.

There is such a change of possession by legal process of insured property by a seizure of it under a regularly issued writ of attachment and the taking of such possession as will enable the seizing officer to maintain trespass or replevin against a trespasser as avoids an insurance policy forbidding a change in the title or possession of the insured property by legal process. Although only part of the insured property was seized the policy became void as to all of it. Carey v. German American Ins. Co. 84 W 80, 54 NW 18; Burr v. German Ins. Co. 84 W 76, 54 NW 22.

In order to effect a levy which shall be valid as against subsequently attaching creditors the officer must seize the property. He may put it into the possession of a receiptor but not of plaintiff nor defendant. Mahon v. Kennedy, 87 W 50, 57 NW 1108.

A writ of attachment issued generally against the property of the defendant not exempt from execution may be executed by seizing any such property wherever found in the county of the officer having the writ. Gallun v. Weil, 116 W 236, 92 NW 1091.

Failure to make proper service of the attachment papers only goes to the validity of the attachment and not the validity of the writ. Such failure does not affect the service of the summons because seizure of property under a writ of attachment is not necessary to the jurisdiction of the court. It is sufficient for him to prove by the complaint or affidavit or order of publication that the defendant has property in this state which can be reached by proceedings to enforce the judgment in case one is rendered. Gallun v. Weil, 116 W 236, 92 NW 1091.

Defendant in attachment cannot maintain replevin for property in the possession of a receiptor taken under a lawful writ of attachment. Irey v. Gorman, 118 W 8, 94 NW 658.

266.11 History: R. S. 1849 c. 112 s. 7, 9; R. S. 1858 c. 130 s. 16, 18; 1859 c. 101; R. S. 1878 s. 2737; Stats. 1898 s. 2737; 1925 c. 4; Stats. 1925 s. 266.11; 1935 c. 541 s. 82.

Revisers' Note, 1878: Sections 16 and 18, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, combined and amended so as to define more particularly the officer's certificate and to provide that the attachment shall be a lien only from filing the certificate. The constructive lien of three days is unnecessary to a diligent party because no view is necessary to attach, and the attachment may be perfected as soon as a description of the lands is known. Constructive liens are necessarily unjust against intervening innocent parties, and ought not to be granted to private parties, except in cases when otherwise injustice may be suffered. Section 19, chapter 130, R. S. 1858, is embraced in section 761 of the Revision, and section 20, in sections 731 and 764 of the Revision.

Under ch. 112, R. S. 1849, it was the filing of an affidavit, the issue of the writ and the actual attachment of the property, rather than

the officer's return, which conferred jurisdiction. From the time the land was actually attached it was subject to the lien. Where there were 2 or more defendants the intendment was that all the interest of either was attached. Robertson v. Kinkhead, 26 W 560.

266.12 History: R. S. 1849 c. 112 s. 8; 1856 c. 120 s. 142 to 144; R. S. 1858 c. 130 s. 12, 17; 1859 c. 101; R. S. 1878 s. 2738; Stats. 1898 s. 2738; 1925 c. 4; Stats. 1925 s. 266.12; 1935 c. 541 s. 83.

Revisers' Note, 1878: Embraces section 17, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, section 12, chapter 130, R. S. 1858, and by reference, sections 13 and 14, as amended by chapter 101, Laws 1859, the provisions of which are embraced in the chapter on executions. And the section is extended so as to direct the seizure of property on attachment to be made in the same way as by execution.

Revisor's Note, 1935: The law as to shares of stock is in chapter 183. They are negotiable, 183.01; and cannot be attached as formerly. (Bill 50-S, s. 83)

Property which has been assigned may be attached if the assignment is void. Haines v. Campbell, 8 W 187.

The actual interest of the debtor in trust property is subject to attachment. Carney v. Emmons, 9 W 114.

Mortgaged chattels, the mortgages on which have been filed and the mortgagees not having notice of or assented to or accepted the mortgages, may be attached. Welch v. Sackett, 12 W 243.

Moneys in the hands of a sheriff, collected by him on an execution, may not be seized under an attachment in favor of a creditor of the execution plaintiff. Hill v. La Crosse & M. R. Co. 14 W 291.

Books of account are not such evidence of debt that their seizure by an officer or their delivery to him will constitute an attachment of the debt mentioned in them or enable him to maintain an action therefor. Brower v. Smith, 17 W 410; Brower v. Haight, 18 W 102.

After recovering judgment in garnishment against A, as purchaser of certain goods from B the creditor of B cannot attach the goods on the ground that the sale to A was fraudulent. Carter v. Smith, 23 W 497.

Land conveyed by a deed absolute on its face, but in fact intended as security for money, may be attached in a suit against the grantor as mortgaged property. A creditor who secures a valid attachment thereon acquires a lien which entitles him to maintain an action to test the validity of the mortgage. Evans v. Laughton, 69 W 138, 33 NW 573.

The attachment lien is not waived by issuing an execution in the usual form upon the judgment in the attachment suit. First Nat. Bank v. Greenwood, 79 W 269, 45 NW 810, 48 NW 421.

Ships and vessels may be seized under an attachment. The remedy given in sec. 3348, Stats. 1898, is not exclusive. Phillips v. Eggert, 133 W 318, 113 NW 686.

County warrants or orders although nonnegotiable, given a public improvements contractor, are subject to attachment under ch. 266, Stats. 1931, as the property of such contractor, not exempt from execution; 272.25, relating to execution and sale thereunder of negotiable instruments, not applying to attachment, and the reference in 266.12 to the chapter relating to executions being not to determine what may be attached, but to prescribe the manner in which property may be attached and applied on the judgment. Danischefsky v. Klein-Watson Co. 209 W 210, 244 NW 772.

266.13 History: R. S. 1858 c. 130 s. 58; 1859 c. 101; R. S. 1878 s. 2739; Stats. 1898 s. 2739; 1925 c. 4; Stats. 1925 s. 266.13; 1935 c. 541 s. 84.

The sheriff may require indemnity if there is reasonable doubt as to the liability of the property to attachment; but the plaintiff will not be in default for not making indemnity until demand made. Halpin v. Hall, 42 W 176.

Where an indemnity bond in attachment recited the occasion for executing it to be the existence of reasonable doubt as to ownership, but its language went much further, reaching indemnity for all suits, costs, etc., concerning the property, the scope of the bond was limited by such recital and the covenantor was not liable for the costs of an action for rent for a building in which the property was kept. Sanger v. Baumberger, 51 W 592, 8 NW 421.

266.14 History: R. S. 1849 c. 112 s. 25; R. S. 1858 c. 130 s. 11; 1859 c. 101; 1863 c. 71; R. S. 1878 s. 2740; Stats. 1898 s. 2740; 1925 c. 4; Stats. 1925 s. 266.14; 1935 c. 541 s. 85.

An order of sale made upon affidavits will not be set aside because of their falsity upon a motion made long after defendant knew of the order and after proceedings under it were practically concluded. L. A. Shakman & Co. v. Koch, 93 W 595, 67 NW 925.

The order of sale protects the sheriff, but does not affect the legality of the seizure. Maguire v. Bolen, 94 W 48, 68 NW 408.

266.15 History: R. S. 1858 c. 130 s. 10; R. S. 1878 s. 2741; Stats. 1898 s. 2741; 1925 c. 4; Stats. 1925 s. 266.15.

266.16 History: R. S. 1849 c. 112 s. 12, 13; R. S. 1858 c. 130 s. 21; 1859 c. 101; 1863 c. 151; R. S. 1878 s. 2742; 1881 c. 329; Stats. 1898 s. 2742; 1925 c. 4; Stats. 1925 s. 266.16; 1935 c. 541 s. 86.

Revisers' Note, 1878: Section 21, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, and chapter 151, Laws 1863, amended to provide that the defendant may retake the property by giving bond in a sum double the appraised value. This will often enable the restoration of the property when of much less value than the amount demanded, and will be no injury to the plaintiff; oftentimes, possibly, to his advantage, as the cost of keeping is saved.

After defendant has obtained possession of the property a traverse of the affidavit may be stricken from the record. Dierolf v. Winterfield, 24 W 143.

Where an attachment has in fact been issued, though it is irregular, and a party has given an undertaking for the value of the

property seized thereon, and delivery of it has been made to the defendant in the attachment, the person executing the undertaking cannot question the regularity of the writ or the validity of the seizure under it. Billingsley v. Harris, 79 W 103, 48 NW 108.

The conditions of a bond given to prevent an attachment are enforceable, although broader than required by the statute. The subsequent bankruptcy of the debtor in the attachment will not invalidate a bond given to prevent the levy which is conditioned on the payment of the judgment, as the bankruptcy does not discharge the judgment but only affects the lien of the judgment on the assets of the debtor. Automatic S. M. P. Co. v. Continental Cas. Co. 186 W 425, 202 NW 681.

Under the statute permitting the defendant in attachment proceedings to deny the allegations of the affidavit, the bond is merely a substitute for the attached property and does not bar a determination that the attachment is invalid. The discharge of the attachment terminates any obligations on the undertaking. Thompson v. Royal Ind. Co. 197 W 43, 221 NW 415.

Recovery on an undertaking to release attachment is defeated by facts defeating recovery on attachment. An attachment lien, obtained when a debtor was insolvent within 4 months before filing of a bankruptcy petition, is dissolved when he is adjudged bankrupt. An answer alleging that a corporation, sued on an undertaking to dissolve an attachment, was adjudged bankrupt within 4 months after the attachment, without alleging its insolvency when the attachment was levied, stated no defense. Neugent G. Co. v. United States F. & G. Co. 202 W 93, 230 NW 69.

266.17 History: R. S. 1849 c. 112 s. 14; R. S. 1858 c. 130 s. 22, 31; 1859 c. 101; R. S. 1878 s. 2743; Stats. 1898 s. 2743; 1925 c. 4; Stats. 1925 s. 266.17; 1935 c. 541 s. 87.

Revisers' Note, 1878: Section 22, chapter 130, R. S. 1858, as amended by chapter 101, Laws 1859, and section 31, chapter 130, R. S. 1858, combined and amended to provide an opportunity to the plaintiff to except to the sufficiency of the sureties, and adopted from the practice in replevin. The statute at present leaves it to the officer to accept the bond and impose it on the plaintiff without responsibility. It manifestly ought to correspond to the similar case in an action of replevin. Provision is also made for the discharge of real estate.

A statutory redelivery bond, not delivered to the officer holding attached property, never became effective. Consideration for the redelivery bond failed, so as to preclude recovery thereon, where the attachment plaintiff's attorney prevented return of the attached automobile to defendant by the sheriff. Rodenfels v. Fidelity & D. Co. 211 W 536, 248 NW 442.

The right to object to a writ of attachment on the ground that it is unsealed is waived by giving a bond under secs. 2742-2744, R. S. 1878, and so is the right to object that the property was not subject to the writ. Wolf v. Cook, 40 F 432.

266.18 History: 1859 c. 101 s. 5; 1860 c. 264 s. 20; R. S. 1878 s. 2744; Stats. 1898 s. 2744; 1925 c. 4; Stats. 1925 s. 266.18.

Revisers' Note, 1878: Section 5, Chapter 101, Laws 1859, condensed and amended to allow a motion to vacate, or to modify, upon any sufficient grounds, irregularity or otherwise and also to allow the motion to be united with a motion to increase the security. Power limited to the court or presiding judge, according to section 20, chapter 264, Laws 1860.

Defendant's property had been attached in several actions pending at the same time. It had been sold, and the proceeds were in the hands of the sheriff. Judgments were rendered and executions issued. A motion on behalf of several judgment creditors to vacate the attachment was in the form of an action against the debtor by the first attaching creditor. This was sufficient. Hawes v. Clement, 64 W 152, 25 NW 21.

266.19 History: R. S. 1858 c. 130 s. 23 to 25; 1859 c. 101; R. S. 1878 s. 2745; Stats. 1898 s. 2745; 1925 c. 4; Stats. 1925 s. 266.19; 1935 c. 541 s. 88; 1957 c. 181.

Appearance of the defendant to traverse an affidavit is a waiver of defects in the summons. Williams v. Stewart, 3 W 773.

A general denial of plaintiff's affidavit for the writ of attachment is sufficient. Armstrong v. Blodgett, 33 W 284.

The traverse does not suspend the power of the attachment to vest in the sheriff the right to the possession of the property attached; at most it only suspends the right to a judgment. Main v. Bell, 33 W 544.

Upon the traverse of an affidavit which averred that plaintiff had good reason to believe, etc., the issue is whether the alleged fact of fraud or nonresidence existed. Davidson v. Hackett, 49 W 186, 5 NW 459.

The attaching creditor has the burden of showing that the facts alleged in his affidavit existed, and cannot sustain the issue by showing that there was good cause to believe they did exist. Lord v. Devendorf, 54 W 491, 12 NW 57.

The issue raised by the traverse of the affidavit must be disposed of before trial of the main issue, and if the traverse is sustained the action must be dismissed. Gowan v. Hanson, 55 W 341, 15 NW 238.

If the proceedings are regular on their face and there is no fraud or collusion, statements in the affidavits cannot be traversed by other creditors who filed a bill in equity several months after attachment proceedings were instituted. Rice v. Wolff, 65 W 1, 26 NW 181.

The defendant's right to traverse is not lost because he has assigned his property for the benefit of creditors. Keith v. Armstrong, 65 W 225, 26 NW 445.

The words "except the alleged liability and the amount thereof" make the issue a special one, confined to the other facts stated in the affidavit. The only questions to be tried by the court without a jury are, had the defendant done the act or was he about to do the act charged with intent to defraud his creditors generally. Miller v. McNair, 65 W 452, 27 NW 333.

Upon the traverse neither the alleged liability of the defendant nor the amount thereof

can be denied. Littlejohn v. Jacobs, 66 W 600, 29 NW 545.

If in an action against an assignor he and his assignee join in a traverse the plaintiff is not prejudiced by an order making such assignee a party defendant and authorizing him to traverse the affidavit. Eureka S. H. Co. v. Sloteman, 67 W 118, 30 NW 241.

If the answer admits that part of the amount claimed by plaintiff is on contract and is just, his right to judgment for such part is not affected by the traverse. Eureka S. H. Co. v. Sloteman, 67 W 118, 30 NW 241.

Upon the traverse the authority of the person who made the affidavit for the writ is not put in issue by a traverse of the affidavit. Eureka S. H. Co. v. Sloteman, 67 W 118, 30 NW 241.

It need not be alleged in the special answer that defendant's property has been seized under the writ. Braunsdorf v. Fellner, 69 W 334, 34 NW 121.

Intervening creditors have not the right to traverse an affidavit. Landauer v. Vietor, 69 W 434, 34 NW 229.

The existence of the alleged grounds for an attachment can be controverted by the debtors; it is competent for them to abstain from doing so or to waive their traverse after it has been interposed. First Nat. Bank v. Greenwood, 79 W 269, 45 NW 810, 48 NW 421.

Notwithstanding the traverse of an attachment is withdrawn without authority the court has jurisdiction to proceed to judgment and sale. A motion to set these aside is addressed to the equity powers of the court, and its refusal will not be interfered with unless a strong and affirmative case is made. Smith v. Wilson, 87 W 14, 57 NW 1115.

A finding in defendant's favor will not be reversed unless there is a clear preponderance of evidence against it. Curtis Brothers & Co. v. Hoxie, 88 W 41, 59 NW 581.

A traverse of the allegations as to the amount of debt and whether it was due is not authorized, and does not raise a material issue. Ryan D. Co. v. Hvambsahl, 89 W 61, 61 NW 299.

Upon the traverse of an affidavit for attachment neither the alleged liability nor the amount thereof can be denied. Teweles v. Lins, 98 W 453, 74 NW 122.

If the facts alleged in the affidavit for a writ of attachment do not exist the remedy is not by action to dismiss the writ but by traverse of the affidavit and trial of the issues. Gallun v. Weil, 116 W 236, 92 NW 1091.

266.20 History: R. S. 1858 c. 130 s. 26; R. S. 1878 s. 2746; Stats. 1898 s. 2746; 1925 c. 4; Stats. 1925 s. 266.20; 1935 c. 541 s. 89.

Revisers' Note, 1878: Section 26, chapter 130, R. S. 1858, amended verbally, and so as to provide for the case of a trial of an attachment issue after verdict in the action; a case not likely, but quite possible to occur.

On dissolution of attachment a motion for a new trial is not necessary to enable the supreme court to review the decision of the trial court. Noonan v. Pomeroy, 14 W 568.

If the attachment is dissolved the court must order the property delivered to the defendant. Keith v. Armstrong, 65 W 225, 26 NW 445.

If the officer has been relieved of possession by replevin instituted by defendant's assignee for the benefit of his creditors, the possession of the assignee relieves the officer from liability to the defendant. Clark v. Lamoreux, 70 W 508, 36 NW 393.

The provision concerning an order for the delivery of the property is imperative and must be complied with though the order will be inoperative. If the direction is that it be delivered to the defendant's assignee the order will be reversed even though, in a proceeding to which the defendant was not a party, the assignment has been held valid as between him and the assignee. Morawitz v. Wolf, 70 W 515, 36 NW 392.

After sustaining a traverse the court ordered that the property be delivered to the defendant. The property was perishable and had been sold, and the proceeds, in the hands of the officer, had been levied on under an execution against the defendant and in favor of plaintiff, and the money had been paid the latter. Such payment was a full compliance with the order for the delivery of the property. (Morawitz v. Wolf, 70 W 515, 36 NW 392, distinguished.) Evans v. Virgin, 72 W 423, 39 NW 864.

A judgment creditor who petitions a circuit court and claims the proceeds of attached property by virtue of an execution levied upon it subsequent to the attachment thereby commences an equitable action or proceeding and does not occupy the position of an intervener in the attachment suit, and is liable to the successful party for costs. First Nat. Bank v. Greenwood, 79 W 269, 45 NW 810, 48 NW 421.

The burden of proof is upon the plaintiff to support the averments of his affidavit, and the issue is not whether the creditor has reasonable cause for believing that grounds for an attachment existed, but whether such grounds did in fact exist. Saint Louis C. P. Co. v. Christopher, 152 W 603, 140 NW 351.

A purchaser for value and without notice of any defect in the title of the debtor's daughter, which purchaser intervened in the attachment proceedings for the purpose of seeking a release of the land from the writ of attachment, was properly allowed damages against the judgment creditor who had wrongfully attached the land. Dorrington v. Jacobs, 213 W 521, 252 NW 307.

In the absence of exceptional circumstances, in actions for the tortious taking or conversion of goods, the plaintiff is entitled to recover as damages the value of the chattels at the time and place of the wrongful taking or conversion with interest to the time of trial. Topzant v. Koshe, 242 W 585, 9 NW (2d) 136.

266.21 History: R. S. 1858 c. 130 s. 27, 28; R. S. 1878 s. 2747; 1885 c. 343; Ann. Stats. 1889 s. 2747; Stats. 1898 s. 2747; 1925 c. 4; Stats. 1925 s. 266.21; 1935 c. 541 s. 90.

If an action is dismissed and the defendant requests that a jury be impaneled to assess his damages the court should grant such request. Harrison M. Works v. Hosig, 73 W 184, 41 NW 70.

The intention of secs. 2746 and 2747, R. S. 1878, is that, upon successful traverse, the defendant shall have his property returned and be fully indemnified for all loss occasioned by

its taking and detention. Hence, if a traverse is sustained, and the attached property has been destroyed, the plaintiff is liable for its full value. Stanley v. Carey, 89 W 410, 62 NW 188.

A formal pleading on the claim for damages for the property attached is not required. The procedure is left to the sound discretion of the trial court, but the better practice is to try the main issue first and then if the defendant succeeds to try the claim for damages. Union Nat. Bank v. Cross, 100 W 174, 75 NW 992.

Where a sheriff has attached property in his possession and the possession thereof is lost through any cause it is his duty to exercise reasonable care and diligence to repossess himself of it. Phillips v. Eggert, 145 W 43, 129 NW 654.

266.22 History: R. S. 1849 c. 112 s. 27; R. S. 1858 c. 130 s. 30, 31, 56; 1859 c. 101; R. S. 1878 s. 2748; 1881 c. 157; Ann. Stats. 1889 s. 2748; Stats. 1898 s. 2748; 1925 c. 4; Stats. 1925 s. 266.22; 1935 c. 541 s. 91.

Sec. 2748, R. S. 1878, as amended, is wholly irreconcilable with the notion that the lien of an attachment on real estate, where judgment has been rendered against plaintiff on the merits, continues during the time allowed for an appeal from the judgment, without any supersedeas bond or undertaking of any sort being given and without any order of the court made thereupon continuing the attachment. Meloy v. Orton, 42 F 513.

If the defendant in the attachment proceedings obtains judgment on the merits the continuance of the lien, pending an appeal, is not affected by the failure of the clerk of the court to perform the duty imposed by the statute. Meloy v. Orton, 42 F 513.

266.23 History: 1856 c. 120 s. 145; R. S. 1858 c. 130 s. 54; 1859 c. 101; R. S. 1878 s. 2749; Stats. 1898 s. 2749; 1925 c. 4; Stats. 1925 s. 266.23.

266.24 History: R. S. 1858 c. 130 s. 55; R. S. 1878 s. 2750; Stats. 1898 s. 2750; 1925 c. 4; Stats. 1925 s. 266.24.

266.25 History: R. S. 1858 c. 130 s. 60; R. S. 1878 s. 2751; Stats. 1898 s. 2751; 1925 c. 4; Stats. 1925 s. 266.25; 1935 c. 541 s. 92.

266.26 History: Stats. 1898 s. 2751a; 1925 c. 4; Stats. 1925 s. 266.26.

CHAPTER 267.

Garnishment.

Revisers' Note, 1878: This chapter is new. The practice in garnishment is expensive, inconvenient and variable. It is desirable that it should be cheap, easy and certain. The effort is made to prescribe a practice which it is hoped will afford the desired ends.

The statute in this state originally provided garnishment as a remedy in aid of attachment only. It is a sort of attachment in itself. Then it was extended to aid an execution, and subsequently it was provided as an auxiliary to an action independently of an attachment; thus making it a mere provisional remedy. It has been thought best to treat garnishment before execution issued as a provisional remedy, distinct from attachment. So provided it may be taken out either with or without a writ of attachment, and if such a writ be also issued, it no further affects the garnishment than that the officer having the writ may take any property discovered while he has the writ. This renders entirely unnecesssary any provision for garnishment on attachment.

Provisions for garnishment on an execution are combined with this chapter because with very slight modification the same practice can be applied to both, and the advantages of presenting the subject in one chapter outweigh the slight disturbance in analysis.

In providing the practice it is believed the system of no particular state is followed; but the recommendation made is of a system combined from the different systems.

Garnishment is not only an attachment of a debt due; it becomes also an action in which the plaintiff vicariously prosecutes the garnishee upon a demand of his defendant against the garnishee, and therefore must have the capacity of a civil action, and, as a result, all parties ought to be bound by the judgment and be brought in as parties competent to act.

The idea upon which the chapter proceeds combines the motion of attaching a debt with that of collecting a debt, and throws the notice of warning to the debtor whose debt is attached into a form equally adapted to the purpose of an adversary action against him, after the fashion of the New England trustee process, in part. At the same time it must be preceded by an affidavit according to the present condition of our law, and the summons is not the same as that by which the principal action is commenced, and the proceeding takes the form of a provisional remedy in the beginning. Should the plaintiff be dissatisfied and an issue be formed, the proceeding readily becomes an action in which the defendant may be said to be compelled to prosecute the garnishee for the use of the plaintiff, and the judgment may completely dispose of the controversy between them. Further explanation is made with the sections.

267.01 History: R. S. 1878 s. 2752; Stats. 1898 s. 2752; 1909 c. 276; Stats. 1911 s. 2752, 2752m; 1925 c. 4; Stats. 1925 s. 267.01, 267.02; 1935 c. 541 s. 93, 94; Stats. 1935 s. 267.01; 1939 c. 513 s. 51; Sup. Ct. Order, 232 W v; 1965 c. 507; 1969 c. 127.

Revisor's Note, 1935: The revision of chapter 267 is to make it in form, which it is in fact, i. e. an action. (3) is from 267.03 (1). (Bill 50-S, s. 93)

Legislative Council Note, 1969: Section 1 [as to (5), (6) and (7)] incorporates the federal definition for "earnings" and "disposable earnings" into Wisconsin law from P.L. 90-321. For the purposes of garnishment actions, employer contributions to pension, welfare or vacation trust funds required to be paid pursuant to the terms of an employment contract are not "disposable earnings". If a trust fund provides that its funds are not subject to garnishment, no right of garnishment is created by this section. Sub. (7) defines the "federal minimum hourly wage" for this statute. (Bill 72-A, which was identical to Bill 315-S)