

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

court, and proceed thereupon to appoint a receiver; but its power is limited to a review of the orders of the inferior officer. *Clark v. Bergenthal*, 52 W 103, 8 NW 865.

The making of an order appointing a receiver in supplementary proceedings is a sufficient adjudication that the defendant has property or effects which he refuses to apply to the payment of his debts. *Holton v. Burton*, 78 W 321, 47 NW 624.

Rents and profits collected by the receiver may be applied on the mortgage indebtedness, though not pledged as security for the mortgage debt by the terms of the contract. *Grether v. Nick*, 193 W 503, 215 NW 571.

A receiver appointed in proceedings supplementary to execution stands in the shoes of the debtor, and he is obliged only to act to protect and secure the debtor's interest in the property involved. Although the receiver also represents creditors and may recover property to which the creditors have a right even though the debtor himself may have lost or parted with his right, the receiver is bound by the legal acts of the debtor, and it is only those which are illegal that the receiver can impeach. *Conrad v. Evans*, 269 W 387, 69 NW (2d) 478.

Appointment of a receiver in supplementary proceedings. *Moss*, 23 MLR 49.

273.05 History: 1856 c. 120 s. 202; R. S. 1858 c. 134 s. 88; 1860 c. 44; 1861 c. 99; R. S. 1878 s. 3032; Stats. 1898 s. 3032; 1925 c. 4; Stats. 1925 s. 273.05; 1935 c. 541 s. 270.

Revisor's Note, 1935: 273.05 is amended to apply even though the usual order to answer has been made and may be obtained even after the order has issued. [Bill 50-S, s. 270]

Sec. 91, ch. 134, R. S. 1858, is not applicable to the case where the judgment debtor is a corporation. *Ballston Spa Bank v. Marine Bank*, 18 W 490.

A warrant which, in advance of the arrest, expressly set a date in the future on which the sheriff is to bring the debtor before the judge, discloses on its face that it is not in conformance with the statute. *Rubin v. Schrank*, 207 W 375, 241 NW 370.

273.06 History: 1856 c. 120 s. 202, 206, 207; R. S. 1858 c. 134 s. 88, 89, 92, 93; 1860 c. 44; R. S. 1878 s. 3033; Stats. 1898 s. 3033; 1925 c. 4; Stats. 1925 s. 273.06; 1935 c. 541 s. 271.

Under sec. 93, ch. 134, R. S. 1858, a referee may be appointed. *Gould v. Dodge*, 30 W 621.

Where different proceedings are pending at the same time the plaintiff in the junior proceeding should be allowed to proceed under sec. 3033, R. S. 1878, without regard to priorities. *Kellogg v. Collier*, 47 W 649, 3 NW 433.

The order and scope of the examination of a debtor are largely in the discretion of the officer before whom it is being taken. The supreme court will not interfere with such discretion unless it appears very clearly that it has been abused. *Heilbronner v. Levy*, 64 W 636, 26 NW 113.

The jurisdiction of a court commissioner to proceed with the examination is not lost by his neglect to make a formal entry of the adjournment of the proceedings to a day and hour, if before he proceeds he gives sufficient notice of the time when and place at which

he will resume proceedings. *Holton v. Burton*, 78 W 321, 47 NW 624.

273.07 History: 1856 c. 120 s. 203; R. S. 1858 c. 134 s. 89; 1860 c. 44; R. S. 1878 s. 3034; Stats. 1898 s. 3034; 1925 c. 4; Stats. 1925 s. 273.07; 1935 c. 541 s. 272.

Editor's Note: Sec. 3037, R. S. 1878, authorized the imprisonment, as for a contempt, of a judgment debtor who disobeyed an order for the payment or delivery of money or property made in proceedings supplementary to execution. It was construed in *In re Milburn*, 59 W 24, 17 NW 965. It became sec. 3037, Stats. 1898, and sec. 274.10, Stats. 1925. The section was repealed by sec. 275, ch. 541, Laws 1935.

An undertaking the condition of which was "that the defendant shall appear before the county judge * * * to answer as a witness" differs radically from one required by sec. 3034, Stats. 1898, and is to be deemed a common-law bond. *Straw v. Kromer*, 114 W 91, 89 NW 821.

273.08 History: 1856 c. 120 s. 208, 210; R. S. 1858 c. 134 s. 94, 96; 1860 c. 44; R. S. 1878 s. 3035; Stats. 1898 s. 3035; 1925 c. 4; Stats. 1925 s. 273.08; 1935 c. 541 s. 273.

A receiver may maintain an action to set aside fraudulent conveyances made by the judgment debtor and may make all fraudulent grantees parties thereto. *Hamlin v. Wright*, 23 W 491.

Property of the debtor in the hands of another person can be ordered to be applied towards the satisfaction of the judgment only when there is no dispute as to the ownership and amount of it. *Blabon v. Gilchrist*, 67 W 38, 29 NW 220.

If the only property in which the debtor is claimed to be interested is claimed by others, a judgment which holds that it is subject to the payment of plaintiff's judgment will not bind third parties. *Holton v. Burton*, 78 W 321, 47 NW 624.

A personal judgment against a debtor and his fraudulent grantee cannot be rendered for the amount of the original judgment in an action by a receiver to set aside a conveyance of land made to defraud creditors. *Van Blarcom v. Isaac*, 92 W 541, 66 NW 617.

It is unnecessary for a receiver to obtain authority in the court to bring an action to set aside fraudulent conveyances. *Wisconsin T. Co. v. Jenkins*, 110 W 531, 86 NW 153.

The proceedings authorized by sec. 3035, Stats. 1898, cannot be maintained against executors so as to exercise any control over moneys of the estate in their hands. *Williams v. Smith*, 117 W 142, 93 NW 464.

A receiver, appointed in supplementary proceedings, may maintain an action against the judgment debtor to compel him, as beneficiary under a will, to transfer to the receiver title to any property, in the custody of the executors and which the debtor has power to transfer, in satisfaction of the judgment. *Williams v. Smith*, 117 W 142, 93 NW 464.

In supplementary proceedings, title to property may not be adjudicated where there is substantial dispute the remedy being suit by the receiver to determine title. Where claim of person in property adverse to the judgment

debtor is substantial, the court commissioner may only preserve the status quo. *Paradise v. Ridenour*, 211 W 42, 247 NW 472.

See note to 231.19, citing *Meyer v. Rief*, 217 W 11, 258 NW 391.

A court commissioner could not direct the receiver to continue the operation of the business of the judgment debtor, that being foreign to the scope and purposes of supplementary proceedings, but the commissioner could direct the receiver to take possession and sell any "property" of the debtor not exempt from execution, to obtain proceeds to apply to the satisfaction of the judgment. A receiver's sale of leasehold rights of a judgment debtor in supplementary proceedings could be ordered and made without reserving an equity of redemption in the debtor. The debtor, having participated and acquiesced in all the proceedings prior to the sale, was estopped from asserting after the sale that no title ever vested in the receiver and that none could be conveyed by him because the order in question did not expressly mention the leasehold and there was no order expressly divesting the debtor of title or vesting title in the receiver or directing the debtor to convey to the receiver. *U. S. Rubber Products, Inc. v. Twin Highway Tire Co.* 233 W 234, 288 NW 179.

When, in supplementary proceedings, property claimed to belong to a judgment debtor is in the possession of another person claiming an adverse interest therein, such interest is recoverable only in an action by the receiver. A transfer or other disposition of such property may be restrained until a sufficient opportunity is given to the receiver to commence the action. A receiver stands in the shoes of the debtor and acquires at the time of appointment such rights of title and possession as the debtor may have in property. *Nick v. Holtz*, 237 W 407, 297 NW 387.

273.11 History: 1856 c. 120 s. 213; R. S. 1858 c. 134 s. 198; R. S. 1878 s. 3038; Stats. 1898 s. 3038; 1925 c. 4; Stats. 1925 s. 273.11; 1935 c. 541 s. 276; 1939 c. 476.

Where it was shown that a debtor was secreting property and refusing to apply it to the judgment, costs could be charged against him. *Enders v. Smith*, 122 W 640, 100 NW 1061.

CHAPTER 274.

Writs of Error and Appeals.

274.01 History: 1850 c. 193 s. 1, 2; 1858 c. 61 s. 2; R. S. 1858 c. 139 s. 31, 32; 1860 c. 264 s. 9; R. S. 1878 s. 3039; Stats. 1898 s. 3039; 1913 c. 400; 1925 c. 4; Stats. 1925 s. 274.01; 1935 c. 541 s. 277; 1943 c. 261, 505; 1943 c. 553 s. 37; 1951 c. 342; Sup. Ct. Order, 17 W (2d) xviii; 1969 c. 339 s. 27.

Comment of Judicial Council, 1963: The time for appeal from both judgments and appealable orders is 6 months, but the time may be reduced to 3 months in either case, by service of notice of entry of judgment. [Re Order effective Jan. 1, 1964.]

The time for appealing may be lessened as to judgments already rendered, if reasonable time be left for appeal; otherwise, such an

act has no effect on the limitation. *Smith v. Packard*, 12 W 371.

An appeal in the name of town supervisors may be dismissed by virtue of a resolution by the electors at a special town meeting. *State ex rel. Mitchell v. Supervisors*, 58 W 291, 17 NW 20.

Unless the record shows that an appeal was perfected within the time limited and in the manner prescribed the court cannot entertain it. The time cannot be extended. *Munk v. Anderson*, 94 W 27, 68 NW 407.

An appeal by a guardian ad litem of minor defendants will not be dismissed because not perfected within the time limited, nor will leave to perfect it be denied because not applied for within such time. *Tyson v. Tyson*, 94 W 225, 68 NW 1015.

An appeal taken too late will be dismissed. *Pereles v. Leiser*, 123 W 233, 101 NW 413.

Where the evidence as to the time within which an appeal was taken is conflicting, the doubt will be resolved in favor of the validity of the appeal. *In re Clark*, 135 W 437, 115 NW 387.

Failure to object to an appeal, or even express consent of all parties that an appeal may be taken, will not confer jurisdiction on an appellate court if, in fact, there is no right to appeal. A judgment annulling a marriage is a judgment in a civil action, and a right to such appeal is given by sec. 3039, Stats. 1919. *Hempel v. Hempel*, 174 W 332, 181 NW 749, 183 NW 258.

The remedy for an erroneous dismissal of an action by the guardian of an infant was an appeal by the infant; and where the dismissal was on the merits because a previous judgment for the same cause had been obtained in a justice's court, the infant was barred from bringing a new action after reaching his majority to set aside the justice's judgment as fraudulent even though the justice's judgment was fraudulent. *Zastrow v. Milwaukee E. R. & L. Co.* 183 W 436, 198 NW 275.

An appeal cannot be taken until a judgment is perfected by the taxation of costs, but the time within which an appeal may be taken commences at the time the judgment is entered. *Netherton v. Frank Holton & Co.* 189 W 461, 207 NW 953.

In the absence of a statutory provision, an appeal itself operates as a supersedeas. *David Adler & Sons Co. v. Maglio*, 198 W 24, 223 NW 89.

Prior to the creation of 274.01 (2) by ch. 261, Laws 1943, the death of a party adverse to the appellant did not extend the time for appeal and the supreme court could not extend the time. *Stevens v. Jacobs*, 226 W 198, 275 NW 555, 276 NW 638.

A pronouncement by the trial court, in a decision on an appeal from the civil court of Milwaukee county, that the judgment of the civil court be reversed and that judgment be entered dismissing the plaintiff's complaint, and again embodied in a formal instrument signed and entered the following day, constituted a final determination of the rights of the parties and thereby the judicial act was completed, and hence was a "judgment," not an