

amount paid to the state treasurer which is refunded to the taxpayer shall bear interest at the rate of * * * 5 per cent per annum during the time that the funds were in the hands of the state treasurer.

SECTION 5. 71.11 (1) of the statutes is amended to read:

71.11 (1) Whenever in the judgment of the department of taxation or assessor of incomes it is deemed advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department of taxation or assessor of incomes may direct any return to be so verified. *In any case in which a reasonable showing is made in writing to the department of taxation that because of merger, consolidation, reorganization, or sale of an entire business, the extension provided for in section 71.115 (6) will result in undue burden to the taxpayer, the department shall conduct a field audit in the matter with the least possible delay, giving such audit preferential treatment, and in no event shall such audit be delayed beyond 3 years from the filing of such request.*

Approved July 10, 1945.

No. 193, S.]

[Published July 20, 1945.

CHAPTER 441.

AN ACT to revise chapters 300 to 307 (Title XXVIII) of the statutes, relating to courts of justices of the peace and proceedings therein in civil actions.

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

CHAPTER 300

COURTS OF JUSTICES OF THE PEACE AND PROCEEDINGS THEREIN IN CIVIL ACTIONS

SECTION 1. 300.001 of the statutes is created to read:

300.001 DEFINITIONS. In Title XXVIII, unless the context plainly indicates otherwise:

- (1) Justice means justice of the peace;
- (2) Town includes village and city;
- (3) Town clerk includes municipal clerk.

SECTION 2. 300.01 is amended to read:

300.01 TERRITORIAL JURISDICTION OF JUSTICES. The *terri-*

torial jurisdiction of * * * a justice * * * is coextensive with * * * the county in which * * * he is elected, * * * except when otherwise * * * provided * * *

SECTION 3. 300.02 is amended to read:

300.02 OFFICE, WHERE KEPT. (1) *Except as otherwise provided by law, every justice * * * shall keep his office and hold court only in the town for which he * * * was elected, * * * but he may issue process at any place in the county.*

(2) *No justice shall keep his office or hold court in any room in which intoxicating liquors are sold or in any room connecting therewith. For any violation of this subsection the justice shall forfeit \$25; but no judgment shall be void in consequence of such violation.*

SECTION 4. 300.03 is amended to read:

300.03 WHO MAY OFFICE WITH OR PRACTICE BEFORE JUSTICE. No justice * * * shall hold court or keep his office * * * with a practicing attorney unless * * * the attorney * * * is his law partner, and * * * such partner shall not * * * act as attorney * * * before such justice. * * *

SECTION 5. 300.04 is amended to read:

300.04 POWER OF JUSTICES FOLLOWS CIRCUIT COURT PRACTICE. * * * Where no special provision is otherwise made, * * * justices are vested with all * * * necessary powers which are possessed by courts of record; and all laws of a general nature * * * apply to * * * justice's courts so far as * * * applicable. The place of trial * * * shall not be changed * * * to any other town * * * except as * * * provided in sections 301.24 and 301.26.

SECTION 6. 300.05 is amended to read:

300.05 JURISDICTION. Every * * * justice * * * has jurisdiction over * * * :

(1) Actions arising * * * out of contract * * * wherein the * * * amount claimed * * * does not exceed \$200;

* * *

(3) Actions on instalments as they * * * become due * * * on any * * * written instrument * * * when the * * * amount claimed does not exceed \$200 * * *

* * *

(5) Actions on any surety bond or undertaking taken by

* * * *a justice*, though the penalty or amount claimed exceeds \$200;

(6) Actions on any official bond when the damages claimed * * * *do not exceed* \$200;

(7) Actions for injuries to persons or to * * * property wherein the damages claimed * * * *do not exceed* \$200;

(8) Actions to recover the possession of personal property, with damages for the unlawful taking or detention thereof, wherein the value of the property claimed * * * *does not exceed* \$200;

(9) Actions for forcible entry and *unlawful* detainer;

(10) Actions for a penalty or forfeiture, not exceeding \$200, given by * * * statute * * *;

* * *

(12) Actions to enforce a lien upon personal property where the * * * *amount* claimed does not exceed \$200.

SECTION 7. 300.06 is amended to read:

300.06 DENIAL OF JURISDICTION. No justice shall have * * * *jurisdiction* of * * * *an* action:

(1) Against an executor or administrator for any debt or demand due from the * * * *decedent*;

(2) * * * For libel, slander, malicious prosecution * * * or false imprisonment;

(3) * * * Where * * * title to real property * * * comes in question; *or*

(4) * * * For or against * * * *the* town in which the justice is elected, except as provided in section 301.06.

SECTION 8. 300.07 is amended to read:

300.07 DOCKET ENTRIES. Every justice * * * shall keep a docket in which he shall enter, in * * * *actions* to which they relate:

(1) The title of * * * *every action* commenced before him;

(2) The *process issued*, time * * * *it* issued * * * , when returnable, and * * * the return of the officer;

(3) The time * * * the parties appeared before him, either without process or upon the return of process;

(4) Where * * * pleadings are written a brief statement of their nature and reference to the pleadings filed; and where * * * pleadings are * * * oral * * * a * * * *brief* statement of the complaint * * * , the answer * * *

and any further pleadings * * * ;

(5) Every adjournment, stating at whose request and to what time and place; and if no place be named the place where the adjournment is ordered shall be taken as the place to which the * * * action is adjourned;

(6) The issuing of a venire, stating at whose request and the time and place of its return; and if a jury is chosen by agreement, a minute of the agreement;

(7) The time when * * * trial was had, the names of * * * jurors * * * summoned who did not appear, * * * the fine * * * imposed on * * * each, if any, and the names of * * * jurors * * * sworn;

(8) The names of witnesses sworn * * *, stating at whose request; * * *

(9) The verdict of the jury and when received;

(10) The judgment rendered by the justice, and the time of rendering the same, and the amount of the debt, damages, costs and fees due to each person separately;

(10a) The entry required by section 300.13 in contempt convictions;

(11) The time of * * * ordering any stay of execution and the name of the surety;

(12) The time of issuing execution and the name of the officer to whom delivered;

(13) The return of every execution and when made and every renewal of an execution * * *, with the date * * * thereof;

(14) The * * * time of * * * giving a transcript of * * * judgment * * * ;

(15) The * * * time of service of a certiorari * * * brought on any judgment * * * ;

(16) The * * * time of an appeal * * * made from the judgment * * * ;

(17) * * * All motions made in * * * the action, and his decision thereon, * * * and all other proceedings * * * in the * * * action which he may think useful.

(18) Failure of a justice to properly keep his docket shall not oust him of jurisdiction or render the judgment void.

SECTION 9. 300.08 is amended to read:

300.08 CONTEMPTS. In the following cases, and no others, a justice * * * may punish for contempt:

(1) Persons guilty of disorderly, contemptuous and insolent behavior towards * * * *him, while* engaged in * * * any judicial proceeding, or *other conduct*, which tends to interrupt such proceeding * * * or * * * impair the respect due * * * his authority;

* * *

(2) * * * Persons guilty of resistance or disobedience to any lawful order or process made or issued by him.

SECTION 10. 300.09 is renumbered 307.025 and amended to read:

307.025 COSTS IN TRESPASS BY HUNTING OR FISHING. * * * Taxable costs in an * * * action * * * for trespass by hunting or fishing * * * *on wild and uninclosed lands* shall * * * *not* exceed the damages awarded * * * for the actual injury caused by * * * *the* trespass.

SECTION 11. 300.10 is amended to read:

300.10 CONTEMPT, PENALTY. Punishment for contempts may be by fine not exceeding \$20 or by imprisonment * * * not exceeding 2 days * * *

SECTION 12. 300.11 is amended to read:

300.11 ACCUSED TO BE HEARD. No person shall be punished for contempt before a justice * * * until an opportunity * * * *has* been given him to be heard in his defense, and for that purpose the justice may, *if the offender is not present*, issue his warrant to bring the offender before him. * * *

SECTION 13. 300.12 is amended to read:

300.12 FORM OF WARRANT FOR CONTEMPT. The warrant for contempt may be in *substantially* the following form:

State of Wisconsin,	}	<i>In Justice Court</i> * * *
. County.	}	<i>Before, Justice of the Peace</i> * * *

The State of Wisconsin, to the sheriff or any constable of said county:

You are hereby commanded to apprehend A. B. and bring him before * * * *me*, at * * * *my* office * * * at (*location of office*), to show cause why he * * * should not be convicted of a criminal contempt alleged to have been committed on the day of * * * 19. . . , before * * * *me* while engaged as a justice of the peace in judicial proceedings.

Dated * * *, * * * 19....
* * * Justice of the Peace.

SECTION 14. 300.13 is amended to read:

300.13 RECORD OF CONTEMPT CONVICTION. Upon the conviction of any person for contempt the justice shall make * * * a record of the proceedings * * *, stating the particular circumstances of the offense and the judgment rendered * * *, and shall file * * * *such record* in the office of the clerk of the circuit court and shall also enter * * * *it* in his docket * * *.

SECTION 15. 300.14 is amended to read:

300.14 FORM OF RECORD. The record of conviction may be in *substantially* the following * * * form:

State of Wisconsin, } *In Justice Court*
 } * * *
..... County. } *Before....., Justice of the Peace*
* * *

Whereas, on the..... day of, * * * 19.., while the undersigned * * * justice * * * of the peace * * * in said county, was engaged in the trial of * * * *an action*, A. B. * * * interrupted the * * * proceedings and impaired the respect due to the authority of the undersigned by (here describe the cause particularly); [or whereas, the undersigned * * * justice * * * of the peace * * * in said county, * * * issued a lawful process (or * * * *made a lawful order*) in a certain * * * *action*, * * * requiring (here set forth the substance of the process or order), and whereas, A. B. was guilty of disobedience to said process (or order), (or was guilty of resistance to said process or order) by (here set forth the means of disobedience or resistance)]; and whereas, * * * said A. B. was thereupon required by the undersigned to answer for said contempt and show cause why he should not be convicted thereof; and whereas, * * * *he* did not show any cause against the said charge; * * * therefore * * * said A. B. is adjudged * * * guilty and is convicted of the criminal contempt aforesaid, before the undersigned, and is adjudged * * * to pay a fine of \$..... (or to be imprisoned in the * * * county *jail* for * * * days or until he be discharged * * * according to law).

Dated * * *, 19.....
* * * Justice of the Peace.

SECTION 16. 300.15 is amended to read:

300.15 COMMITMENT FOR CONTEMPT. The * * * commitment for * * * contempt shall set forth the * * * circumstances of the offense and may be in *substantially* the following * * * form:

State of Wisconsin, } *In Justice Court*
 * * * }
County. } *Before....., Justice of the Peace*
 * * * }

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, A. B. * * * was duly convicted by the undersigned * * * justice of the peace * * *, of a criminal contempt, as appears by the record of * * * conviction, * * * (* * * a copy of * * * *which* record * * * *is hereto attached and made part hereof*), * * * you are commanded to take * * * A. B. * * * to the keeper of the * * * county jail, who is hereby commanded to receive and keep * * * *him* in * * * jail until the * * * sum of \$..... and all legal expenses * * * *are* paid * * * (or, if judgment * * * *is* that he be imprisoned, for * * * days), or until he * * * *is* discharged therefrom by due course of law.

* * * *Dated*....., * * * 19..

.....
 * * * Justice of the Peace.

SECTION 17. 300.16 is amended to read:

300.16 DISOBEDIENT WITNESS. When any witness * * * before a justice * * * in any * * * *action* refuses to be sworn * * * or to answer any * * * proper question * * * *the* justice may by order commit * * * *him* to the * * * county jail. * * * *The* order shall specify the * * * *reason* for which * * * *it* is issued, and if it * * * *is* for refusing to answer any question, * * * *the* question shall be specified * * * ; and * * * *the* witness shall be closely confined * * * until he * * * *consents* to be sworn or to answer * * * .

SECTION 18. 300.17 is amended to read:

300.17 SAME; ADJOURNMENT. The justice shall thereupon adjourn * * * *the* action, at the request of the party *desiring*

*the testimony, for * * * a reasonable time or until * * * the witness shall testify * * *.*

SECTION 19. 300.18 is amended to read:

300.18 JUSTICE'S LIABILITY FOR MONEYS COLLECTED. Every justice * * * and his sureties shall be liable on his official bond to * * * every person for whom * * * he collects money * * * *which he neglects to pay * * *;* and * * * any person to whom * * * *the justice * * * is so liable, * * * may sue him and his sureties therefor; and on proof that * * * the justice has neglected * * * to pay any * * * money by him collected, * * * judgment shall be given against the * * * defendants * * * for the money so collected, * * * with interest * * * and costs according to the condition of * * * the bond.*

SECTION 20. 300.19 is amended to read:

300.19 PAPERS, HOW KEPT. Every justice shall * * * file and keep together all * * * papers * * * in any * * * action, separate from all other papers.

SECTION 21. 300.20 is amended to read:

300.20 DELIVERY OF DOCKET TO ANOTHER JUSTICE. If any justice * * * is to be absent from the county for 3 days or more or * * * is unable from sickness to attend to business, * * * *and any action is pending before him * * *, he may call in some other justice of * * * his town or he may deliver his docket and all * * * papers relating to such * * * action, with a minute of his proceedings therein, to * * * the nearest available justice of the * * * county who may thereupon proceed to * * * try * * * the action in the same manner as if * * * it had been commenced before him and with like effect; but the parties * * *, their agents or attorneys shall be notified of * * * the transfer previous to * * * trial * * *;* and the justice * * * may, * * * *while the docket remains in his possession, * * * issue execution upon or give a certified transcript of any unsatisfied judgment appearing therein * * *.*

SECTION 22. 300.21 and 300.22 are consolidated, renumbered and revised to read:

300.22 DELIVERY OF BOOKS TO TOWN CLERK. When the office of a justice becomes vacant, the books and papers belonging to his office shall be delivered, within 10 days after the vacancy

happens, to the town clerk, by the person who is in possession thereof.

SECTION 23. 300.23 is revised to read:

300.23 BOOKS DEMANDED BY TOWN CLERK. If any books or papers which should be delivered to the town clerk pursuant to section 300.22 are not delivered within the time there specified, the town clerk shall demand their delivery to him and may by action compel such delivery.

SECTION 24. 300.24 is amended to read:

300.24 DUTY OF CLERK ON RECEIPT OF BOOKS. When * * * any town clerk * * * receives the books or any papers of any justice * * * he shall, within 10 days after receiving * * * them, deliver them * * * to some * * * justice of the * * * town * * * or, if there is no justice in the town, then to some justice in the county. The town clerk shall publish a notice in a newspaper published in the county, specifying the name of the justice whose books and papers have been so delivered and to what justice and when the same were delivered.

SECTION 25. 300.25 is amended to read:

300.25 PENDING ACTIONS TRIABLE BY JUSTICE WHO RECEIVES BOOKS. When * * * any action is pending before any justice * * * at the time his office becomes vacant * * * and * * * his books and papers * * * have been delivered * * * to any other justice pursuant to law, * * * the last-named justice * * * may try * * * such * * * action and * * * enter judgment and issue execution thereon, as though the action had been begun before him. * * * He may * * * issue execution and transcripts upon any judgment appearing upon said books * * *

SECTION 26. 300.26 is amended to read:

300.26 CONTINUANCE ON VACANCY; NOTICE OF TRIAL. All actions * * * before any justice * * * undetermined when his office * * * becomes vacant * * * are continued * * * until the expiration of 10 days from the time when * * * his books and papers * * * were delivered * * * to another justice * * *; of which time the justice to whom * * * the books and papers * * * were delivered shall * * * give at least 3 days' notice * * * to the parties to * * * the action * * * who are within the county.

SECTION 27. 300.30 of the statutes is created to read:

300.30 MISTAKEN REMEDY OR COURT; TRANSFER TO PROPER

COURT. When an action which is outside the jurisdiction of a justice has been tried and judgment entered in justice court and the action has been appealed, the appeal operates as a transfer of the action to the appellate court and that court shall proceed as though the action had been commenced therein.

CHAPTER 301
COMMENCEMENT OF ACTIONS, PLEADINGS
AND PROCEEDINGS

SECTION 29. 301.01 is amended to read:

301.01 ACTION, HOW COMMENCED. Actions may be instituted before a justice * * * either by the voluntary appearance of the parties or by * * * *service* of summons * * * or * * * warrant * * *.

SECTION 30. 301.02 is amended to read:

301.02 JUSTICE COURT PROCESS; SUMMONS IN BLANK, FILING.
(1) All process issued by a justice * * * or by an attorney shall run in the name of the "State of Wisconsin," be dated on the day it is issued, be signed by the justice * * * or by * * * *the* attorney, * * * and shall be directed to the sheriff or any constable of the * * * county. * * * *The* process shall contain the names of the * * * plaintiff and defendant, the name of the * * * *justice* and the county where * * * *he* resides, *the place where returnable* and * * * *the return date and hour* * * *.

(2) Justices * * * may sign * * * any summons *in blank* and deliver * * * *it* to any *licensed* attorney * * *, to be issued by * * * *the* attorney * * *, and upon the filing of such summons * * * with the justice * * * *who signed it*, the justice shall forthwith docket the case and his docket entries shall have the same * * * effect as if made at the time of issuing * * * *the* summons. * * * No summons so issued * * * shall be valid unless * * * *the* attorney * * * indorses thereon his name or the name of * * * *his* firm * * * in *substantially* the following form:
Issued by A. B., plaintiff's attorney.

(3) * * * *A* summons * * * signed in blank by the justice and * * * issued by the attorney * * *, or * * * issued and signed by an attorney, * * * shall be filed with the justice before whom returnable at least * * * 24 hours before the *return* time specified therein * * *. In case the summons

is issued and signed by an attorney * * * subsection (2) * * * shall * * * apply to filing, docketing and * * * effect of such summons.

SECTION 31. 301.03 is amended to read:

301.03 SUMMONS FIRST PROCESS. * * * *Except in actions begun by warrant*, the first process in actions shall be * * * a summons * * * in the form provided by section 301.17, returnable not less than 6 nor more than 15 days from * * * its date * * *.

SECTION 32. 301.04 is repealed.

SECTION 33. 301.05 is amended to read:

301.05 SUMMONS RETURNABLE IN THREE DAYS. A justice * * * shall issue a summons returnable in 3 days * * * where he is satisfied from the * * * affidavit of the plaintiff or other competent * * * person that the plaintiff has a * * * cause of action upon * * * contract * * * against the defendant and that * * * he is a nonresident of the county or * * * is about to remove from the county with intent not to return thereto to reside, or * * * is about * * * to remove, convey or dispose of his property *fraudulently* so that the plaintiff will be in danger of losing his * * * demand unless * * * the summons be granted. * * * No attorney shall * * * issue a summons * * * under this section.

SECTION 34. 301.06 is amended to read:

301.06 ACTION BY OR AGAINST TOWN. * * * An action * * * by or against any town or town officer in his official capacity * * * shall be commenced * * * in some other town in the county, except that in towns located in counties having a population of 500,000 or more the action may be commenced by a town for violation of a town ordinance before a justice * * * in such town.

SECTION 35. 301.07 is amended to read:

301.07 FICTITIOUS AND PARTNERSHIP NAMES OF DEFENDANTS. When the name of any defendant is not known to the plaintiff, an action may be commenced * * * against him by a fictitious name * * *; but the justice may amend the proceedings according to the truth of the matter and shall thereafter proceed * * * as if the defendant had been sued by his right name. In an action against a partnership, when the names of the * * * partners are not known to the plaintiff or the person

who makes * * * affidavit on his behalf, * * * *the* action may be commenced * * * in the partnership name and all proceedings therein shall be in * * * *that* name until the names of the * * * partners are known, when they may be * * * *substituted for the partnership name* * * *

SECTION 36. 301.08 is reenacted.

SECTION 37. 301.09 is amended to read:

301.09 SERVICE ON CORPORATIONS. *Unless otherwise provided by law*, actions * * * against * * * corporations shall be commenced by summons, * * * which shall be served *within the county* by leaving a copy thereof with any officer, * * * agent or person upon whom * * * *a circuit court* summons * * * against such corporation * * * *may* be served, at least 6 days before the return day thereof * * *; and * * * such service * * * shall * * * have the same effect as * * * personal service upon a natural person * * *

SECTION 38. 301.10 is amended to read:

301.10 WARRANT, WHEN TO ISSUE. The plaintiff * * * is entitled to a warrant to arrest the body of the defendant upon filing with the justice an affidavit, made by him or * * * in his behalf, showing to the satisfaction of the justice either:

(1) That the plaintiff has a demand against the defendant for money collected by him as a public officer;

(2) That the plaintiff has a demand against the defendant for damages arising from the misconduct or neglect of the defendant in any professional employment or public office;

(3) That the defendant has committed a trespass or other wrong, specifying the nature thereof, to the damage of the plaintiff; or

(4) That the defendant has incurred a penalty or forfeiture by the violation of some law, specifying the same, for which the plaintiff * * * has a right to prosecute * * * *The* affidavit * * * shall state the facts * * * within the knowledge of the * * * *affiant*, constituting the grounds * * * *for a* warrant.

SECTION 39. 301.11 is amended to read:

301.11 CONTENTS OF WARRANT. * * * *The* warrant * * * shall command the sheriff or constable to take the body of the defendant and bring him forthwith before * * * *the* justice

found within this county, to appear before * * * a justice * * * of the peace in * * * said county, at * * * his office * * * at.... * * * (location of office) on the day of, * * * 19.., at o'clock in thenoon, to answer to C. D., plaintiff, to his damage \$200 or under. * * *

* * * Dated, 19.....
* * *, Justice of the Peace.
(or * * * Attorney at Law, with office at.....)

SECTION 45. 301.18 is repealed.

SECTION 46. 301.19 is amended to read:

301.19 CIVIL WARRANT. A warrant may be in substantially the following form:

State of Wisconsin, } In Justice Court
..... County. } * * *
} Before , Justice of the Peace
* * *

The State of Wisconsin, to the sheriff or any constable of said county:

You are hereby commanded to take the body of A. B., if * * * found within your county, and * * * bring him forthwith before the undersigned, * * * justice * * * of the peace in * * * said county, at * * * his office * * * at (location of office), to answer * * * to C. D., plaintiff, to his damage \$200 or under; and you are commanded to give due notice thereof to the plaintiff. * * *

* * * Dated, 19.....
.....
* * * Justice of the Peace.

SECTION 47. 301.20 is amended to read:

301.20 APPEARANCE OF PARTIES. Sections 260.13 to 260.17 * * * apply to actions in justice * * * court. Any * * * party, except * * * a minor, may appear by an attorney * * * or in person and conduct or defend any action. * * *

SECTION 48. 301.21 is amended to read:

301.21 MINOR TO SUE BY NEXT FRIEND. * * * An action * * * instituted by * * * a minor shall be dismissed (on motion of the defendant) unless a next friend for * * * him

is appointed * * * Whenever requested the justice shall appoint some suitable person, * * * *consenting thereto* in writing, * * * named by * * * *the* plaintiff to act as his next friend in * * * *the* action. * * * *The appointee* shall be responsible for the costs therein.

SECTION 49. 301.22 is amended to read:

301.22 GUARDIAN FOR MINOR DEFENDANT. After the service and return of civil process against any * * * *minor* the action shall not be further prosecuted until a guardian for * * * *him* has been appointed. Upon the request of a defendant the justice shall appoint some person, * * * *consenting thereto* in writing, to be guardian of the defendant in * * * *the* action; and if the defendant * * * *does not* appear on the return day of the process or if he neglects or refuses to nominate such guardian the justice may, at the request of the plaintiff, appoint any * * * *suitable* person as * * * guardian * * * *The guardian* shall not be liable for * * * costs * * *

SECTION 50. 301.23 is amended to read:

301.23 CONSENT OF NEXT FRIEND AND OF GUARDIAN. *Substantially* the following forms may be used under sections 301.21 and 301.22:

..... County * * *

I hereby consent to be the next friend of A. B., * * * *a* *minor*, in an action against C. D., and hereby * * * *promise* * * * to pay * * * *C. D.* such costs as he * * * *re-* covers against * * * *A. B.* * * * in said action.

(signed) John Styles.

* * *

* * * John Styles is accordingly appointed.

.....
* * * Justice of the Peace.

* * *

* * * } *In Justice Court*
* * * *A. B.* }
* * * *v.* } Before * * * Justice of the Peace
* * * *C. D.* }
* * * County * * *

I consent to be guardian of C. D., * * * *a* *minor*, the defendant in the above entitled * * * *action.*

(signed) John Styles.

* * *

* * * John Styles is accordingly appointed.

* * * Justice of the Peace.

Dated * * *, 19...

SECTION 51. 301.24 is amended to read:

301.24 REMOVAL FOR PREJUDICE OF JUSTICE. * * * If the defendant * * *, on the return day of the process and before any proceedings are had on his part, makes oath that, from prejudice * * *, he believes * * * *the justice will not decide impartially in the * * * action* and * * * pays to the justice 75 cents for making a copy of his docket and transmitting the papers * * *, then * * * *the justice shall immediately transmit all the papers in the * * * action to the nearest justice * * * in the same county * * * who can be found * * *, who shall proceed * * * in the action as * * * if the said action * * * had been commenced * * * before him.* In cities of the first class * * * *the justice * * * shall immediately transmit all the papers in the case to * * * the municipal court of * * * the county, which shall proceed * * * the same * * * as if * * * the action had been commenced in said court. * * * This section shall not extend to * * * a second removal.*

SECTION 52. 301.25 is amended to read:

301.25 EFFECT OF TRIAL AFTER CHANGE OF VENUE. After the parties have * * * tried the * * * *action* upon the merits, before any justice to whom the papers have been transmitted, the judgment * * * therein shall not be * * * invalid for any * * * irregularity in the proceedings for removal.

SECTION 53. 301.26 is amended to read:

301.26 IF JUSTICE MATERIAL WITNESS OR OF KIN TO PARTY. If, previous to joining issue in any action, either party, his agent or attorney * * * makes affidavit that the justice before whom the * * * *action* is pending is a material witness * * *, without whose testimony he cannot safely proceed to trial, or if it * * * appears that the justice is near of kin to either party, * * * the * * * justice shall transmit * * * *the action and all papers * * * therein to some other justice of the * * * county, who * * * shall thereupon proceed * * * as if the * * * action * * * had been commenced * * * before him.*

SECTION 54. 301.27 is revised to read:

301.27 ORIGINAL AND GARNISHEE ACTIONS STAY TOGETHER. A garnishment action and the original action are always in the same court. If the venue of either is changed, the other action (by operation of law) is also changed and all the papers go with it. The justice to whom the actions are moved shall proceed as though the actions had been commenced before him.

SECTION 55. 301.28 is amended to read:

301.28 PROCEEDINGS IF TITLE TO LAND IS IN QUESTION. * * * The defendant * * * may in his *verified* answer * * * allege facts showing that the title to lands will come in question * * *

SECTION 56. 301.29 is repealed.

SECTION 57. 301.30 is amended to read:

301.30 CAUSE TO BE REMOVED TO CIRCUIT COURT. Upon filing * * * *such verified* answer * * * the justice shall immediately make an entry thereof in his docket and cease * * * further proceedings in the * * * *action*; he shall collect from the plaintiff \$1 for state *suit* tax * * * and \$2 *clerk's fees* and certify and return to the circuit court * * * a transcript of * * * his docket relating to the action, * * * *and* all process and other papers therein, and pay to the clerk of said court said state tax * * * *and clerk's fees*.

SECTION 58. 301.31 is amended to read:

301.31 JURISDICTION OF CIRCUIT COURT. Upon filing the proceedings and papers in the office of the clerk of the court, the circuit court shall * * * proceed therein to * * * judgment and execution the same as if * * * *the* action had been originally commenced therein * * *.

SECTION 59. 301.32 is amended to read:

301.32 JUSTICE'S OFFICE TO BE OPEN, WHEN. At the hour named for the return thereof, in any process issued by a justice * * *, or issued and signed by an attorney, and at the hour to which any * * * *action* is adjourned, * * * *the* justice shall be present and have his office open * * *. * * *. The justice shall call the * * * *action* for trial at the hour specified in * * * *the* process or by * * * *the* adjournment * * *. *A party who does not appear when the action is called is in default.*

SECTION 60. 301.33 is amended to read:

301.33 PROCESS RETURNABLE ON SATURDAY, CONTINUANCE. When * * * a process * * * against * * * a defendant who habitually observes * * * *Saturday* instead of * * * *Sunday* as a day of rest, * * * is returnable on *Saturday*, * * * he shall be entitled to have the * * * action continued to the Monday following at the same hour, upon filing with * * * the justice, at or before the return of the process, an affidavit * * * stating that he habitually * * * observes * * * *Saturday* instead of * * * *Sunday* as a day of rest; and * * * he shall be entitled to all his rights on * * * the adjournment day * * * the same as if it were the return day of * * * the process.

SECTION 61. 301.34 is amended to read:

301.34 JOIN ISSUE BEFORE ADJOURNMENT. The parties shall * * * plead before an * * * adjournment shall be granted * * * unless they consent to an adjournment without * * * joining issue * * *, except as provided in sections 301.33 and 301.38.

SECTION 62. 301.35 is amended to read:

301.35 RULES OF PLEADING AND PROCEDURE. The following rules of pleading and * * * procedure shall be observed in * * * justice court * * *:

(1) The pleadings * * * are * * * the plaintiff's complaint * * * and the * * * defendant's answer.

(2) The pleadings may be oral or * * * written; if oral, the substance shall be entered by the justice in his docket; if * * * written, they shall be filed by him and a reference to them made in the docket.

(3) The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

(4) The answer may contain a denial of the complaint or of any part thereof and also * * * state, in a plain and direct manner, * * * facts constituting a defense or counterclaim. The counterclaim must * * * be a claim which is within the jurisdiction of a justice court. The pendency of an action commenced by an ordinary summons shall not be pleaded in abatement of an action commenced by summons returnable in 3 days or by warrant.

(5) Pleadings * * * must be such as to enable a person of common understanding to know what is intended.

(6) Either party may demur to a pleading * * * or any

part thereof where it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defense although it be taken as true.

(7) If the * * * justice deems the objection well founded * * * he shall order the pleading to be amended, and if the party refuses to amend, the defective pleading or part thereof shall be disregarded.

* * *

(9) In an action or defense founded upon an account or instrument for the payment of money only, it shall be sufficient for a party to deliver the account or instrument to the * * * justice and to state that there is due * * * from the adverse party a specified sum which he claims to recover or set off.

(10) A variance between the proof on the trial and the allegation in a pleading shall be disregarded * * * unless the * * * justice is satisfied that the adverse party has been misled to his prejudice thereby.

(11) The pleadings may be amended at any time before * * * or during the trial when * * * such amendment will promote * * * justice * * *. A * * * defendant who * * * fails to appear on the return day of the process * * * may be permitted to answer on * * * the adjourned day * * * before trial. If an amendment * * * is made after * * * joining * * * issue or an answer put in after adjournment and it * * * appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of * * * the amendment or answer, an adjournment shall be granted. The * * * justice may also * * * require, as a condition of an amendment, the payment of costs to the adverse party, to be * * * taxed by the * * * justice; but no amendment shall be allowed over objection after a witness is sworn on a trial * * * if an adjournment thereby will be made necessary.

(12) The * * * justice may, at the joining of issue, require either party, at the request of the other, at that or some other specified time, to exhibit his account or demand or state the nature thereof so far as may be in his power, and in case of his default preclude him from giving evidence of such parts thereof as * * * have not been so exhibited or stated.

(13) * * * When the defendant * * * is * * * served with the summons other than by publication or * * * ap-

pears, * * * *and* the plaintiff * * * files a written complaint claiming * * * upon account, *and* verified * * * as prescribed for verification of pleadings in a court of record, * * * that the defendant is indebted to the plaintiff upon the account alleged in the complaint, in a specified amount, when the same became due, what set-offs should be allowed, and what payments have been made and when made, if any, and the true balance due, with a copy of the account affixed, shall be * * * evidence of the facts therein stated. * * *

SECTION 63. 301.36 is amended to read:

301.36 OFFER OF JUDGMENT; TRIAL AGAINST CODEFENDANTS. At * * * *any time* * * * *before trial*, any defendant may offer in writing to permit the plaintiff to take judgment against him for the sum, damages or things stated in said offer, with costs * * *. *Before trial* the plaintiff *may* accept * * * the offer * * * in writing * * *. *The offer and acceptance* shall be filed with the justice and thereupon * * * he shall enter judgment accordingly. The entry of * * * judgment shall not prejudice the right of the plaintiff to proceed to trial and judgment against any other defendant * * *.

SECTION 64. 301.37 is amended to read:

301.37 PROCEEDINGS IF OFFER OF JUDGMENT REFUSED. If the plaintiff * * * *does not* accept * * * the offer of judgment it shall * * * not be considered * * * upon the trial; but if the plaintiff fails to recover a more favorable judgment than he would have done by accepting the offer he shall not recover costs made after the * * * offer, but shall pay costs * * * thereafter made * * *.

SECTION 65. 301.38 is amended to read:

301.38 ADJOURNMENT, DEFENDANT NOT APPEARING. * * * At the time of the return * * * if the defendant does not appear, the justice shall, upon the application of the plaintiff, * * * adjourn the * * * action for such time as * * * he requests, not exceeding * * * 90 days.

SECTION 66. 301.39 is amended to read:

301.39 FIRST ADJOURNMENT WHEN PARTIES APPEAR. At the time of the return of * * * the process or of joining issue without process the justice may * * * adjourn the * * * action not exceeding 3 days and shall, upon application of either party, * * * adjourn it for such time as may be * * *

requested, not exceeding one week; but if sufficient cause * * * is shown on oath by either party the justice shall grant an adjournment for a longer time, but not exceeding 90 days. No adjournment of an action commenced by summons or warrant of attachment returnable in 3 days, when the defendant appears, shall be granted * * * on motion of the plaintiff unless he * * * shows cause therefor as provided in section 301.40.

SECTION 67. 301.40 is reenacted.

SECTION 68. 301.41 is amended to read:

301.41 ADJOURNMENT, RETURN FOR WHAT TIME; EFFECT OF, LEGAL HOLIDAY. Every adjournment *for cause* shall be for such reasonable time, not exceeding in all 90 days (unless by consent of parties a longer time * * * is agreed upon) from the * * * return *day* of the process as will enable the party to procure such testimony or witness and shall be at the cost of the *moving* party * * *, unless otherwise ordered by the justice * * *; and the justice shall tax the fees of all witnesses who are in attendance for the adverse party, except as provided in * * * section 307.02 (2). If any process * * * is returnable on or any adjournment * * * is made to * * * a legal holiday the cause shall stand adjourned until the next * * * secular day, when it shall be proceeded with as if the return or adjournment had been made to * * * *that* day.

SECTION 69. 301.42 is amended to read:

301.42 ADJOURNMENT IF DEFENDANT UNDER ARREST. If * * * *an action* commenced by warrant * * * for arrest * * * is adjourned by the consent of both parties or on the application of the plaintiff, the defendant shall be discharged * * *; but if * * * *the action* is adjourned upon the application of the defendant he shall continue during the time of * * * *the* adjournment in the custody of the officer unless he * * * *gives an undertaking* * * * *executed in his behalf by a surety approved by the justice* * * * to secure the plaintiff's demand and costs, conditioned that if judgment * * * is given against him * * * and execution * * * is issued against his person he will render himself up on such execution before the return day thereof or in default thereof that he or his * * * *surety* will pay the judgment * * * *but not exceeding \$200.*

SECTION 70. 301.43 is repealed.

SECTION 71. 301.44 is amended to read:

301.44 ACTION ON UNDERTAKING. In any action brought upon

such * * * *undertaking* the plaintiff shall not * * * recover unless he shows *that* an execution upon the judgment * * * issued within 6 days after * * * *its entry* against the person of the defendant, and * * * *that the return* * * * *shows he could not be found.*

CHAPTER 302 TRIALS AND JUDGMENTS

SECTION 72. 302.01 is repealed.

SECTION 73. 302.03 is amended to read:

302.03 MINUTES OF EVIDENCE; ATTENDANCE OF CONSTABLE. The justice shall take full minutes of all evidence given * * * on the trial * * * and file * * * *them* in the * * * *action, unless the taking of such minutes is waived by the parties.* He may * * * command any constable to attend * * * the trial * * * and shall make an entry thereof in his docket.

SECTION 74. 302.04 is amended to read:

302.04 DEMAND FOR JURY; WAIVER. After issue joined * * * and before the commencement of the trial * * *, either party, on * * * paying to the justice * * * \$12 to *apply on jury fees* * * * may demand * * * a jury * * * *trial; and a neglect to make such demand* * * * *is a waiver of the right to trial by jury.* The money so advanced shall be paid to the jurors * * * *after they* * * * have rendered their verdict.

SECTION 75. 302.05 is amended to read:

302.05 OFFICER TO WRITE NAMES. Upon * * * demand * * * *for a jury* the justice shall direct the sheriff or any constable of the county * * * present to write * * * the names of 18 persons of the county, * * * *eligible* as jurors in courts of record * * * *and not of kin to* * * * *any party or interested in the action.*

SECTION 76. 302.06 is reenacted.

SECTION 77. 302.07 is amended to read:

302.07 JURORS, HOW CHOSEN. From * * * *the names listed* each party, commencing with the party demanding * * * a jury, may strike * * * alternately 6 names; and in case of the * * * *failure* of either party * * * to strike * * *, the justice shall * * * strike out 6 names.

SECTION 78. 302.08 is amended to read:

302.08 VENIRE TO ISSUE. The justice shall issue a venire requiring the officer to summon the 6 persons whose names remain upon the * * * list * * * to appear at * * * a time and place mentioned therein to make a jury for the trial of the action * * *

SECTION 79. 302.09 is amended to read:

302.09 AGREED JURY. The parties may agree upon 6 or any less number of jurors to try the * * * action, and in such case the justice shall direct, in the venire, the summoning of the persons agreed upon, who * * * shall compose the jury. * * *

SECTION 80. 302.10 is amended to read:

302.10 TALESMEN. If any * * * juror * * * fails to attend at the time * * * he is summoned to appear or * * * if legal objections are raised to any * * * who * * * appear the justice * * * shall order the officer to summon * * * talesmen to supply the deficiency.

SECTION 81. 302.11 is amended to read:

302.11 FORM OF VENIRE. Substantially the following form of a venire may be used:

State of Wisconsin, } In Justice Court
 } * * * Before, Justice of the
 } * * * County. Peace
* * *

The State of Wisconsin, to the sheriff or any constable of said county:

You are hereby commanded to summon [here insert names of jurors] to * * * appear before the undersigned, * * * justice * * * of the peace * * *, on the day of, at o'clock in the noon * * *, at my office * * * at, to make a jury for the trial of an action between, plaintiff, and, defendant.

* * *

* * * Dated, 19

* * * Justice of the Peace.

SECTION 82. 302.12 is reenacted.

SECTION 83. 302.13 is amended to read:

302.13 FAILURE TO APPEAR CONTEMPT; PENALTY; PROCEED-

INGS. Every person * * * duly summoned as a juror * * * who fails to appear or who * * * refuses to serve * * * is guilty of * * * contempt; and * * * the justice * * * shall fine * * * him not less than \$5 nor more than \$10 and * * * commit him to the * * * county jail until * * * the fine * * * is paid; and * * * if any person so duly summoned * * * refuses to appear, the justice shall issue an attachment * * *, directed to the sheriff or any constable of his county, requiring * * * the officer to * * * arrest the person so summoned and to bring him before * * * the justice to serve as a juror. The fees for issuing and executing * * * the attachment shall be the same as * * * for a civil warrant and they shall * * * be paid by the person attached. * * * If any person summoned as a juror * * * appears * * * and shows good cause therefor the justice may excuse him from * * * serving.

SECTION 84. 302.14 is amended to read:

302.14 CHALLENGES FOR CAUSE. Either party may challenge any juror * * * for cause and may have him sworn to answer * * * concerning * * * the challenge and may prove * * * the cause by other evidence. * * * The justice shall decide the challenge.

SECTION 85. 302.15 is revised to read:

302.15 OATH TO JURORS. The jurors selected shall be sworn by the justice as provided in section 331.39.

SECTION 86. 302.16 is amended to read:

302.16 JURY TO HEAR THE PARTIES IN PUBLIC. * * * The jurors shall sit together and hear the proofs and allegations of the parties * * *. The trial shall be public.

SECTION 87. 302.18 is amended to read:

302.18 RETURN OF VERDICT; JUDGMENT ACCORDINGLY. When the jurors have agreed upon their verdict they shall deliver * * * it to the justice publicly * * * and he shall enter * * * it in his docket and enter judgment according to * * * the verdict. A verdict is valid if agreed to by 5 jurors * * *.

SECTION 88. 302.19 is amended to read:

302.19 JURY UNABLE TO AGREE, DISCHARGE OF JURY; NEW TRIAL. When * * * a justice * * * is satisfied that a jury * * *, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new

venire, unless the parties consent that the justice * * * render judgment on the evidence * * * before him or that a new trial be had before * * * him.

SECTION 89. 302.20 is amended to read:

302.20 TRIAL WITHOUT JURY. When * * * *an action* has been submitted to a justice for his decision he shall not * * * receive or consider further evidence * * * or * * * any communication * * * about it, except * * * on due notice * * * to the * * * parties, until he has rendered judgment.

SECTION 90. 302.21 is amended to read:

302.21 RULES IN COURTS OF RECORD TO APPLY. The rules * * * of evidence shall be the same in actions * * * before justices * * * as in courts of record * * *.

SECTION 91. 302.22 is repealed.

SECTION 92. 302.23 is amended to read:

302.23 DEFAULT JUDGMENT. If the defendant * * * fails to appear * * * at the time specified for the return of process duly served or * * * at the hour of adjournment the justice shall proceed to hear the proofs of the plaintiff and render judgment thereon * * *.

SECTION 93. 302.24 is amended to read:

302.24 NONSUIT. (1) Judgment of nonsuit shall be rendered against the plaintiff * * * if he discontinues * * * his action * * * before the argument to the jury has been concluded or waived; or * * * if he fails to appear * * * at the return hour * * *; or at the hour of * * * adjournment * * *.

(2) * * * A compulsory nonsuit shall not be ordered * * * after evidence has been submitted to the jury.

SECTION 94. 302.245 is reenacted.

SECTION 95. 302.25 is revised to read:

302.25 JUDGMENTS GENERALLY. (1) Judgment shall be for the plaintiff for the amount of damages found by the jury or the justice, less any offset established by the defendant.

(2) Judgment shall be for the defendant if the justice or jury finds that the plaintiff has no cause of action or that the defendant's counterclaim exceeds the plaintiff's damages.

SECTION 96. 302.26 is amended to read:

302.26 COSTS. * * * Unless herein otherwise provided,

* * * *judgment shall be with costs of the action.*

SECTION 97. 302.27 is revised to read:

302.27 JUDGMENT, WHEN RENDERED. If the plaintiff is nonsuited or a verdict is rendered or the defendant is in custody, the justice shall forthwith render judgment; otherwise he may adjourn the action not more than 72 hours and at the adjourned hour shall enter judgment.

SECTION 98. 302.28 is repealed.

SECTION 99. 302.29 is amended to read:

302.29 RELEASE OF SUM IN EXCESS OF JURISDICTION. If any sum * * * found in favor of a party * * * exceeds the sum for which a justice is authorized to give judgment such party may remit or release the excess and take judgment for the residue.

SECTION 100. 302.30 is repealed.

SECTION 101. 302.31 is amended to read:

302.31 NEW TRIAL. A new trial may be granted a defendant at any time within one year from the rendition of * * * judgment * * * upon a publication of notice * * * where no service has been had and the defendant did not appear * * *. *But if notice of entry of judgment is personally served on such defendant his time to move for a new trial is limited to 20 days.*

SECTION 102. 302.32 is amended to read:

302.32 APPLICATION FOR NEW TRIAL; PROCEDURE. Such new trial shall be granted upon a petition, subscribed and sworn to by the defendant * * * or his attorney, addressed to the justice * * * who rendered the judgment, or the justice to whom or the court into which the * * * action has been removed, and setting forth a valid defense, in whole or in part, to the * * * complaint; and if the court * * * is satisfied that * * * the petition sets forth a valid defense, in whole or in part, * * * it shall make an order setting * * * the time and place and the court before which a new trial will take place. A copy of * * * the petition and order shall be served on the plaintiff at least 10 days previous to the time fixed for the new trial. * * * The petition shall stand as the answer to the complaint * * *; and thereafter the same proceedings shall be had as in other trials.

SECTION 103. 302.33 is amended to read:

302.33 ACTION ON JUDGMENT, LIMITATION. No action on a

judgment rendered by a justice * * * shall be brought in the same county within 5 years after its rendition, except in case of his * * * incapacity to act * * *, or * * * in case the process was not personally served on * * * some defendant * * *, or in case of the death of some * * * party, or * * * in case the docket or record of such judgment * * * has been lost or destroyed.

SECTION 104. 302.34 is amended to read:

302.34 TRANSCRIPT OF JUDGMENT. (1) Every justice, on demand of any person in whose favor a judgment * * * has been rendered, either by * * * him or * * * his predecessor in * * * office whose dockets are in his custody, shall give to such person a certified transcript of * * * the judgment. * * * The transcript may be in substantially the following form:

* * * *In Justice Court*
A. B. }
v. } .. County * * * Before , Justice of the Peace
C. D. }
Date of judgment * * * 19....
Judgment for the plaintiff for the sum of \$....., damages.
Costs \$..... Total \$.....
Costs of copy * * * 25 cents.
Name of attorney for judgment creditor, if any
.....
Name, abode and vocation of judgment debtor

I certify the above to be a true copy of a judgment rendered before me (or before * * *, justice of the peace), in the above entitled * * * action, as appears from my (or his) docket now in my custody.

Dated * * *, * * * 19....
.....
* * * Justice of the Peace.

(2) When the execution upon any judgment has been stayed * * * the justice * * * shall state in the transcript that execution was stayed and give the name of the person who entered into the * * * undertaking for that purpose.

SECTION 105. 302.35 is amended to read:

302.35 INDEX TO JUDGMENTS. Every justice shall keep an al-

phabetical index *under the names of the judgment debtors* of all judgments entered in his docket * * * *by him* * * *. *The index shall give the names of the parties* * * * and the page of his docket where * * * *each judgment is entered.*

SECTION 106. 302.36 is reenacted.

SECTION 107. 302.37 is reenacted.

SECTION 108. 302.38 is amended to read:

302.38 SETTING OFF JUDGMENTS. * * * *In setting off judgments* * * * *the justice shall make an entry thereof in his docket* * * *. *If a justice* * * * *allows a* * * * *judgment rendered by another justice to be set off he shall file* * * * *the* transcript among the papers relating to the judgment in which it is allowed in set-off. *If he* * * * **refuses** * * * *the set-off he shall so certify on the transcript and return* * * * *it to the party who offered it.*

CHAPTER 303 EXECUTIONS

SECTION 109. 303.01 is revised to read:

303.01 EXECUTION; STAY. (1) *If the undertaking mentioned in section 303.02 is given, execution upon the judgment shall be stayed for 60 days calculated from its date but a longer period may be agreed upon.*

(2) *Except upon appeal, execution shall not be stayed upon a judgment against a corporation, or for manual labor performed by the creditor; nor upon a judgment under sections 303.25 and 303.26.*

SECTION 110. 303.02 is amended to read:

303.02 UNDERTAKING TO BE GIVEN. *To* * * * *obtain such stay of execution some responsible person,* * * * *approved by the justice and not* * * * *a party to the judgment, must, within 5 days after* * * * *judgment is rendered,* * * * *execute an undertaking before the justice* * * * *as provided in section 303.03.*

SECTION 111. 303.03 is amended to read:

303.03 FORM OF UNDERTAKING. * * * *The undertaking must be signed by the* * * * *surety and may be in substantial-*
ly the following form:

* * * *Whereas, obtained judgment before, a justice of the peace* * * * *at, * * * county of, on the*

day of, 19.., against, * * *
*I agree that if such judgment, costs and interest * * * are not paid * * * before the expiration of * * * 60 days from * * * said date, execution may issue against me as provided by section 303.05, Wisconsin Statutes.*

(Signed) A. B.

A. B. is approved as surety.

.....
Justice of the Peace.

SECTION 112. 303.04 is amended to read:

303.04 EXECUTION REVOKED. If a judgment * * * is stayed * * * after an execution has * * * issued * * * the justice shall revoke * * * the execution * * * and, if the defendant has been committed, *the justice shall order him * * * discharged * * **

SECTION 113. 303.05 is amended to read:

303.05 ISSUE OF EXECUTION AFTER STAY EXPIRED. * * *
 At the expiration of * * * the stay, *if the judgment * * * has not been paid, * * * execution * * * may issue against both the * * * debtor and * * * the surety; if the * * * debtor * * * does not satisfy the execution and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the * * * surety, and in his return shall state what amount * * * was collected * * * from the * * * surety and the time * * * it was received.*

SECTION 114. 303.06 is amended to read:

303.06 RIGHTS OF SURETY AGAINST PRINCIPAL. * * * *Upon the return of * * * the execution the * * * surety may, on notice and motion, * * * have judgment against the debtor before the justice for the amount collected from him * * * by execution, with interest thereon * * * and costs. No such motion shall be made after 3 months from the return of the execution.*

SECTION 115. 303.07 is amended to read:

303.07 EXECUTION WITHIN 5 YEARS. Upon every *justice court* judgment * * *, except when stayed * * *, execution shall be issued by * * * the justice lawfully having custody of the *judgment docket* * * * at any time, upon demand, within 5 years from * * * its rendition * * *.

SECTION 116. 303.08 is amended to read:

303.08 EXECUTION AGAINST THE BODY. An execution may * * * issue against the person of the defendant when the action * * * is founded on tort or is for a *statutory* penalty or forfeiture * * *; but no *body* execution shall issue against * * * a female * * * person.

SECTION 117. 303.09 is amended to read:

303.09 EXECUTION, WHAT TO DIRECT. The execution shall command the officer to collect the * * * judgment, * * * and interest thereon, * * * out of the *personal property* of the judgment debtor not exempt by law from execution * * *, and to pay the money within 30 days from its date to the justice who issued the execution * * *; and if * * * imprisonment is authorized * * *, it shall command the * * * officer that if no * * * *personal property* can be found * * * sufficient to satisfy * * * the execution, then to * * * arrest the judgment debtor and convey him to * * * the county jail, there to remain until * * * the execution * * * is satisfied * * * or he * * * is otherwise discharged according to law.

SECTION 118. 303.10 is amended to read:

303.10 FORMS. Executions may be in *substantially* the following form:

EXECUTION AGAINST GOODS

State of Wisconsin, County. * * *	}	In Justice Court * * * Before, Justice of the Peace
---	---	---

The State of Wisconsin, to the Sheriff or any constable of said county:

Whereas, judgment against for the sum of \$....., * * * was recovered the day of, * * * 19..., before me * * * by..... * * *, you are commanded to seize * * * and sell sufficient of the *personal property* of * * * said (excepting such as the law exempts) * * * to satisfy the judgment with interest * * *, together with 25 cents for this execution, and * * * return the same to me within 30 days, to be rendered to * * * said for his judgment and costs.

* * * Dated, * * * 19....

* * * Justice of the Peace.

EXECUTION AGAINST GOODS AND THE BODY

<i>State of Wisconsin,</i> County. } * * *	<i>In Justice Court</i>
	<i>Before... .., Justice of the Peace</i>

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, judgment against for the sum of \$....., * * * was recovered the day of, * * * 19....., before me * * * by..... * * *, you are commanded to seize * * * and sell sufficient of the personal property of said (excepting such as the law exempts). * * * to satisfy the judgment with interest * * *, together with 25 cents for this execution, and return the same * * * to me within 30 days, to be rendered to * * * said for his * * * judgment and costs; and, for want of such * * * property, arrest said and * * * deliver him * * * to the keeper of the * * * county jail, who is hereby commanded to receive and keep * * * him in * * * said jail until the aforesaid sums, with interest * * * and all legal expenses, * * * are * * * paid or until he * * * is, discharged * * * by due course of law. * * *

* * * Dated, * * * 19.....

* * * Justice of the Peace.

EXECUTION AGAINST THE GOODS OF PRINCIPAL AND SURETY

<i>State of Wisconsin,</i> County. } * * *	<i>In Justice Court</i>
	<i>Before... .., Justice of the Peace</i>

The State of Wisconsin, to the sheriff or constable of said county:

Whereas, judgment against for the sum of \$..... * * * was recovered the day of, * * * 19....., before me * * * by..... * * *; and became * * * surety to pay the * * * judgment, with interest * * *, within * * * 60

days from * * * said date; * * * and said * * * debtor and * * * surety have failed to make payment; * * * you are commanded to seize * * * and sell sufficient of the personal property of said and (excepting such as the law exempts) * * * to * * * satisfy the judgment with interest * * *, together with 25 cents for this execution, and return the same * * * to me within 30 days, to be rendered to * * * said for his * * * judgment and costs. * * *

* * * Dated, * * * 19

* * * Justice of the Peace.

SECTION 119. 303.11 is amended to read:

303.11 INDORSEMENT ON EXECUTION. * * * The officer receiving * * * the execution shall indorse thereon the time * * * he received it.

SECTION 120. 303.12 is amended to read:

303.12 RENEWAL OF EXECUTION. If an execution * * * is not satisfied it may be renewed at the request of the * * * judgment creditor from time to time, either before or after the return day thereof, by the justice issuing the same, by an indorsement to that effect, signed by him, * * * dated when the same * * * is made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every * * * indorsement shall renew the execution in full force * * * for 30 days * * *.

SECTION 121. 303.13 is amended to read:

303.13 ADDITIONAL EXECUTIONS. If * * * an execution * * * is returned unsatisfied in whole or in part * * * a further execution for the amount remaining due may be issued.

SECTION 122. 303.14 is repealed.

SECTION 123. 303.15 is amended to read:

303.15 WHEN OFFICER NOT TO ACT. An officer shall not * * * do any * * * act by virtue of any execution or renewal thereof after the time limited therein for its return * * *

SECTION 124. 303.16 is amended to read:

303.16 RECEIPT FOR PAYMENT AND INDORSEMENT. The officer who * * * holds any execution shall receive all money tendered in payment thereof and shall indorse the same on the execu-

tion and give the * * * *payor* a receipt therefor, * * * *specifying, if demanded, on what account the same was paid* * * *

SECTION 125. 303.17 is amended to read:

303.17 **INDORSEMENT OF SEIZURE.** The officer, after * * * *seizing property* by virtue of an execution, shall indorse * * * *on the execution* the time of * * * *seizure* and a description * * * of the property * * *

SECTION 126. 303.18 is revised to read:

303.18 **NOTICE OF SALE.** The officer, without delay, shall prepare and sign a notice stating the time and place of sale of the described property and at least 10 days before the day of sale he shall post the notice at 3 public places in the town where the property is to be sold.

SECTION 127. 303.19 is amended to read:

303.19 **SALE TO HIGHEST BIDDER.** At the time and place so appointed or at such * * * time as the sale may be adjourned to, within the life of the execution, the * * * *property* being present and pointed out to the inspection and examination of the bidders, the officer shall * * * *sell it* to the highest bidder.

SECTION 128. 303.20 is amended to read:

303.20 **OFFICER NOT TO PURCHASE.** No * * * *officer* shall *purchase*, directly or indirectly, * * * any * * * *property* upon any sale made by him upon execution; and every such purchase shall be * * * void.

SECTION 129. 303.21 is amended to read:

303.21 **RETURN OF EXECUTION; SURPLUS.** The officer shall return the execution and, *after deducting the expense of sale*, pay the * * * *judgment* and costs collected to the justice * * * having custody of * * * *the docket*, returning the surplus, if any, to the * * * *judgment debtor*.

SECTION 130. 303.22 is amended to read:

303.22 **BODY, WHEN TAKEN.** For want of * * * *property* to satisfy the execution the officer shall, if the execution requires it, take the body of * * * the execution *debtor* * * * and convey him to the * * * county *jail*; and the keeper thereof * * * shall keep * * * *him* in jail until the debt * * * and costs * * * *are paid* or he * * * *is discharged* * * *

SECTION 131. 303.23 is amended to read:

303.23 PROCEEDINGS AFTER OFFICER'S TERM. Every constable to whom any execution * * * *has* been delivered and whose term of office * * * expires before the time within which the return * * * of * * * *the* execution is required * * * shall proceed thereon * * * the same * * * as if his term of office had not expired; and * * * *he* and his sureties shall be liable for any neglect of duty and for moneys collected upon * * * *the* execution, * * * the same * * * as if * * * *his* term of office * * * had not expired.

SECTION 132. 303.24 is amended to read:

303.24 PROPERTY OF PRINCIPAL DEBTOR FIRST TAKEN. Every officer having an execution * * * for collection, upon * * * being served * * * *with an affidavit*, made by any codefendant in * * * *the* execution, * * * or *his* attorney, showing the principal debtor therein, shall first exhaust all the personal * * * *property* of * * * *the* principal debtor * * * before selling the property of any * * * defendant who * * * is surety in the demand upon which judgment was rendered.

SECTION 133. 303.25 is amended to read:

303.25 NEGLECT TO RETURN EXECUTION. If an officer neglects to return an execution within 5 days after the return day * * * or * * * neglects to serve * * * *it*, the party in whose favor * * * *it* was issued may maintain an action against * * * *the* officer, and shall recover * * * the amount of the execution, with interest from the * * * *date* of the judgment * * *.

SECTION 134. 303.26 is amended to read:

303.26 ACTION FOR NOT PAYING MONEY. If * * * *money* collected by * * * *an officer* upon an execution * * * is not paid over by him according to law, an action may be maintained by the party entitled to * * * *the* money, *in his own name*, upon the * * * *officer's bond*, and in such action the amount * * * collected with interest from the time of collection, shall be recovered.

SECTION 135. 303.27, as amended by Supreme Court Order, dated November 14, 1944, effective July 1, 1945, is repealed.

CHAPTER 304

ATTACHMENT AND GARNISHMENT

SECTION 136. 304.01 is amended to read:

304.01 ATTACHMENT; LIQUOR DEBTS. * * * An action by

warrant of attachment * * * *may be commenced* against the property of * * * a debtor * * * as provided by this chapter. No *such* warrant * * * shall issue * * * to recover * * * for malt * * * or intoxicating liquors sold at retail.

SECTION 137. 304.02 is amended to read:

304.02 AFFIDAVIT FOR ATTACHMENT; AMENDMENT; TRAVERSE.

(1) Before a warrant of attachment * * * *issues* the plaintiff or some person in his behalf shall * * * file with the justice an affidavit stating that the defendant * * * is indebted to the plaintiff in a *specified* sum exceeding \$5 * * * above all legal set-offs; and that the same is due upon contract * * * or upon a judgment * * *; and * * * that the deponent knows or has good reason to believe either *that the defendant*:

(a) * * * Is a foreign corporation or, if * * * *domestic*, that all * * * *its* * * * officers, * * * on whom to serve a summons do not exist, are nonresidents of the state or cannot be found; *or*

(b) * * * Is not a resident of this state; *or*

(c) * * * Has absconded or is about to abscond from this state; *or*

(d) * * * Has removed or is about to remove * * * property out of this state with intent to defraud his creditors; *or*

(e) * * * Resides * * * more than 100 miles from the residence of the justice; *or*

(f) * * * Contracted the debt under fraudulent representations; *or*

(g) * * * So conceals himself that * * * summons cannot be served upon him; *or*

(h) * * * Has fraudulently conveyed or disposed of or is about fraudulently to convey or dispose of * * * property * * * so as to hinder or delay his creditors; *or*

(i) * * * Is * * * the *principal* defendant * * * *in an action* upon * * * *his* official bond to recover money due to the state or some county or other municipality therein.

(2) *A warrant may issue on a like affidavit* showing that a cause of action sounding in tort exists in favor of the plaintiff against the defendant * * *; that the damages sustained and claimed * * * *are a specified sum exceeding \$5*; and * * * that the defendant is not a resident of this state or that his residence is unknown and cannot, with due diligence, be ascertained

or * * * is a foreign corporation.

(3) * * * *The affidavit may be amended at any time before trial by the substitution therefor of a new affidavit containing allegations of facts existing at the time of making the former affidavit * * * and if the new affidavit is traversed or denied trial shall be had thereon as in other cases.*

SECTION 138. 304.03 is amended to read:

304.03 WHEN RETURNABLE. * * * The warrant of attachment * * * shall be returnable as an ordinary summons.

SECTION 139. 304.04 is amended to read:

304.04 FORM OF WARRANT. The warrant of attachment may be in *substantially* the following form:

State of Wisconsin, County.	}	<i>In Justice Court</i> * * * <i>Before, Justice of the Peace</i>
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The State of Wisconsin, to the sheriff or any constable of said county:

You are commanded to attach the * * * *personal property* of, or so much thereof as * * * *is* sufficient to satisfy the sum of \$, * * *, in whosoever hands or possession the same * * * *is* found in your county, and so provide that the * * * *property* so attached may be subject to further proceedings thereon as the law requires; and also to summon * * * said, if * * * found, to * * * appear before me at my office * * * *at*, on the day of, * * * 19, at o'clock in the . . . noon, to answer to, to his damage \$200 or under.

* * * *Dated*, * * * 19

.....
* * * Justice of the Peace.

SECTION 140. 304.05 is amended to read:

304.05 WARRANT, HOW EXECUTED. The officer shall execute a warrant * * * by serving * * * *it* upon the defendant in the * * * manner that a summons returnable within * * * like time * * * is required to be served and by attaching * * * *personal property* of the defendant, not exempt by law, and make due return of his doings thereon.

SECTION 141. 304.06 is amended to read:

304.06 PLEADINGS AND PROCEEDINGS. Like pleadings * * * and like proceedings shall be had in actions commenced by warrant * * * as in actions * * * commenced by summons.

SECTION 142. 304.07 is amended to read:

304.07 RELEASE OF ATTACHED PROPERTY. When * * * property of the defendant * * * is attached, he or any * * * person for him or the person in whose possession * * * it is found may obtain possession * * * by giving * * * an undertaking executed on his part by a surety approved by the officer executing the warrant, * * * conditioned that the * * * property shall be forthcoming when and where the justice * * * directs and shall abide the judgment of the justice.

SECTION 143. 304.08 is amended to read:

304.08 DISSOLUTION OF ATTACHMENT; UNDERTAKING. The attachment * * * may be dissolved on motion * * * of the defendant at any time before final judgment if * * * he appears and pleads to the action and gives * * * an undertaking to the plaintiff * * * executed by a surety, * * * approved by the justice, * * * conditioned that if judgment * * * is rendered against * * * the defendant in such action he will pay the * * * judgment, but not exceeding \$400.

SECTION 144. 304.09 is reenacted.

SECTION 145. 304.10 is amended to read:

304.10 SALE OF PERISHABLE PROPERTY. When attached property * * * is likely to perish or depreciate in value before the * * * end of the action or the keeping of * * * such property would be attended with much loss or expense, the justice may order * * * it sold by the officer in the same manner and upon the same notice as goods are * * * sold on execution; * * * and if it * * * appears to the * * * justice that * * * the property is likely to perish before the expiration of the time * * * for notice of such sale he may * * * order * * * sale * * * made upon * * * giving * * * not less than * * * 24 hours' notice. The proceeds of * * * sale shall remain in the hands of the officer, * * * to be disposed of as if the property * * * were money.

SECTION 146. 304.11 is revised to read:

304.11 OFFICER'S COMPENSATION. The justice shall allow the

officer his necessary, just and reasonable expenses in attaching and preserving property.

SECTION 147. 304.12 is amended to read:

304.12 PUBLICATION AFTER ATTACHMENT. When the defendant cannot be * * * served and his property * * * is attached * * * and he does not appear in the action at the return of the warrant * * *, the justice shall enter an order on his docket requiring the plaintiff to publish *once* in a newspaper, if there * * * is one printed in the county, and if there * * * is none, to post up in 3 * * * public places therein a notice to the defendant * * * in the form prescribed by section 304.13; and the justice shall continue the * * * action to the time and place mentioned in said order, *which time shall be not less than 20 nor more than 30 days from the date of the order.*

SECTION 148. 304.13 is amended to read:

304.13 FORM OF NOTICE OF ATTACHMENT. The notice may be in *substantially* the following form:

State of Wisconsin, } In Justice * * * Court
..... County. } * * *
* * *, * } Before . . . , Justice of the Peace

A. B., Plaintiff,

v.

C. D., Defendant.

To * * * C. D.:

You are hereby notified that a warrant of attachment has been issued against you and your property attached to satisfy the demand of * * * A. B., amounting to \$.....; now unless you * * * appear before * * *, a justice of the peace in * * * said county, at his office * * * at, on the day of, * * * 19..., at o'clock in the noon, judgment will be rendered against you and your property sold to pay the debt.

Dated * * *, * * * 19...

....., Plaintiff,

P. O. Address

SECTION 149. 304.14 is amended to read:

304.14 NOTICE, POSTING, PUBLICATION. Such notice shall be * * * posted or published at least 15 days before * * * the time at which the party is required to appear * * *.

Posting may be proved either by the return of the officer, upon a copy of the notice, or by the affidavit of * * * the person who * * * posted it. *Publication* may be proved by an affidavit as provided by section 328.19.

SECTION 150. 304.15 is amended to read:

304.15 PROCEEDINGS AFTER PUBLICATION. When the defendant * * * is so notified * * * and * * * does not appear * * * that fact shall be entered * * * in * * * the docket and the plaintiff may proceed * * * to * * * judgment as in actions commenced by summons; but no execution shall * * * issue on * * * the judgment, either against the defendant or the garnishee, or money be paid to the justice thereon until the plaintiff * * * gives to the defendant * * * an undertaking executed in his behalf by a surety, limited to \$400, approved by the justice, conditioned that if the defendant * * *, within one year from the rendition of * * * the judgment, appears and disproves the * * * damages adjudged against him or any part thereof the plaintiff will refund the whole or such part thereof as may be found not justly due on a review of the * * * action.

SECTION 151. 304.16 is amended to read:

304.16 TRAVERSE OF ATTACHMENT. In * * * an attachment action * * * the defendant may, whether he * * * answers the complaint or not, by special verified answer, * * * filed with the justice at or before the time * * * the warrant * * * is returnable, deny the existence at the time of making the attachment affidavit * * * of any * * * material fact * * * stated therein, except the alleged liability and the amount thereof. The issue so raised shall be tried by the justice and the affirmative * * * shall be upon the plaintiff * * *. In determining * * * the issue the justice shall follow the * * * rules * * * of courts of record * * *. If an issue * * * is made as to the defendant's liability * * *, the trial upon * * * the traverse shall be had * * * with the trial of * * * the action, but * * * the justice shall make and file * * * his finding upon the traverse separately from the verdict or finding in the action.

SECTION 152. 304.17 is revised to read:

304.17 PROCEEDINGS AND COSTS ON TRIAL OF TRAVERSE. (1)
If the justice finds for the defendant on the traverse he shall tax

his costs on the trial thereof and assess his damages caused by the taking and detention of the property and any injury thereto, and shall order the property returned to the defendant. If the defendant succeeds in the action, judgment shall be rendered for him for such damages and the costs of the traverse and of the action.

(2) If the plaintiff recovers in the action and the defendant on the traverse, the costs and damages taxed and assessed in favor of the defendant shall be offset against the plaintiff's recovery and the plaintiff shall get no costs on account of the attachment. If the defendant's costs and damages exceed the plaintiff's recovery and taxable costs, judgment shall be for the defendant for the excess.

(3) If on the trial of such traverse the justice finds for the plaintiff he shall tax his costs on such trial, and the amount so taxed shall, if he recovers in the action, be added to his other costs; but if the defendant recovers judgment the amount so taxed shall be applied toward payment thereof.

SECTION 153. 304.18 is revised to read:

304.18 APPEAL ON FINDING OF TRAVERSE. The aggrieved party may appeal from the finding upon the traverse the same as from the judgment, but the appeal must be separate from an appeal from the judgment. The issue raised by the traverse shall be tried the same as though the action had been commenced in the appellate court.

SECTION 154. 304.19 is amended to read:

304.19 UNDERTAKING TO STAY PROCEEDINGS. No * * * appeal from the finding on the traverse shall stay * * * the sale of the attached property * * * or the delivery thereof to the defendant * * * unless the * * * *appellant* files with the justice, at the time of taking the appeal, a written undertaking * * * *executed in his behalf by a surety* approved by the appellate court or the judge thereof or by the justice * * * (if the defendant * * * is appellant) that, if the finding appealed from * * * is affirmed or judgment * * * is rendered upon * * * the appeal against the appellant, he will pay the * * * judgment * * *, with interest * * * and costs, or, at the option of the appellant, * * * that he will pay the plaintiff the value of the property returned to him, * * * as determined by the court, with interest thereon, the costs of the action and of the traverse; and (if the plaintiff

* * * is appellant) that if the finding * * * is affirmed or judgment * * * is rendered against him he will pay the defendant the value of the property attached, as determined by the court, with interest thereon and all damages assessed and costs taxed against him by reason of the attachment.

SECTION 155. 304.20 is amended to read:

304.20 GARNISHMENT AFFIDAVIT. * * * If the plaintiff or some one in his behalf * * * makes and delivers to the officer having * * * the summons or *warrant* of attachment an affidavit stating that the affiant has good reason to believe that some person (naming him) is indebted to the defendant or has personal property in his possession or under his control belonging to the defendant or, when there is more than one defendant, to any * * * of them, not by law exempt from * * * execution, and demands that he * * * summon such person as garnishee, * * * the officer shall summon * * * him to appear before the justice, on the return day of * * * the summons or * * * *warrant*, to answer * * * as garnishee. * * * The affidavit may be amended * * * as * * * provided in section 304.02. Any number of garnishees may be embraced in the same affidavit and garnishee summons but if a joint liability * * * is claimed * * * it shall be * * * stated in * * * the affidavit and the garnishees named as jointly liable shall be deemed jointly proceeded against, otherwise the * * * garnishees shall be deemed severally proceeded against.

SECTION 156. 304.21 is reenacted.

SECTION 157. 304.22 is amended to read:

304.22 GARNISHMENT; LIQUOR DEBTS. No garnishee * * * action shall be commenced * * * to recover * * * for malt * * * or intoxicating liquors sold at retail. * * *

SECTION 158. 304.23 is amended to read:

304.23 FORM OF GARNISHEE SUMMONS. The *garnishee* summons * * * may be substantially in the following form:

State of Wisconsin, County.	}	In Justice Court * * * Before, Justice of the Peace
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The State of Wisconsin to, garnishee:

Whereas, a summons (or warrant of attachment) has been issued by * * * (or a summons has been

signed and issued by * * *, an attorney at law of returnable before * * *) a justice of the peace of said county, returnable on the day of, * * * 19..., in favor of, plaintiff, and against, defendant; and whereas the plaintiff (or * * * in his behalf) has made oath that you have property in your possession or under your control belonging to the defendant (or are indebted to him):

* * * You are hereby summoned to * * * appear before * * * said justice at his office * * * at, on the return day of said summons (or warrant of attachment) at o'clock in the noon of said day, then and there to answer under oath touching your liability as garnishee.

* * * Dated, 19....

....., Constable or Sheriff,

SECTION 159. 304.24 is amended to read:

304.24 GARNISHEE SUMMONS, HOW SERVED; NOTICE TO DEFENDANT. The officer shall serve * * * the garnishee summons on the garnishee personally, and return * * * it, with the affidavit, stating the date of service, to the justice * * * when he * * * makes return of the summons or warrant * * *. A copy of * * * the garnishee summons shall be served on the defendant * * * in the same manner prescribed for service of summons in the original action. If the defendant cannot be * * * so served or is not a resident of the state, * * * service of notice may be made * * * as provided in sections 304.12 and 304.14. * * * The * * * notice to the defendant may be substantially in the following form:

State of Wisconsin, } In Justice * * * Court
..... County. } * * *
* * * Before, Justice of the Peace

To..... defendants:

You are hereby notified that a summons and garnishee has been issued against you and your property garnished to satisfy the demand of, amounting to \$.....; now unless you * * * appear before * * *, a justice of the peace in * * * said county, at his office * * * at on the day of, * * * 19..., at o'clock in the noon, judgment will be rendered against you and your property sold to pay the debt.

Dated * * *, * * * 19. Plaintiff

SECTION 160. 304.25 is amended to read:

304.25 LIABILITY OF GARNISHEE. (1) The garnishee, from the time of * * * service of * * * *the garnishee summons upon him*, shall stand liable to the plaintiff to the amount of the personal property, money * * * in his hands belonging to the defendant and the amount of his * * * *debt* to the defendant * * *, and not by law exempt from * * * execution.

(2) *Section 267.18, exempting specified property from garnishment, is applicable to garnishment in justice court.*

SECTION 161. 304.26 is amended to read:

304.26 EFFECT OF SERVICE. (1) The service of the garnishee summons * * * *commences* an action against * * * *the garnishee*; and upon the return of the * * * *officer* that such summons has been duly served the justice shall enter an action in his docket in which the plaintiff in the original action * * * *is* plaintiff and the garnishee *is* defendant.

(2) At any time after service of the garnishee * * * *summons* upon the garnishee defendant, the defendant in the principal action may file with the justice a request in writing for an immediate trial of the garnishee action. * * * *Thereupon* the justice * * * *shall* issue an order at once, requiring the plaintiff and garnishee defendant to appear before him at a *stated* time * * *, not to exceed 3 days from date of * * * *the* order, * * * *for trial* of the garnishee action. Said order shall be served upon * * * *the parties* * * * *as a garnishee summons is served*, at least 48 hours before such * * * *trial*. Upon return of said process showing * * * *that the order has been duly served*, the justice may proceed to * * * *try* the action with the same * * * effect as though it were the return day of the principal action, but may, * * * where justice requires it, continue the matter to such time as may be necessary but not beyond the time of return in the principal action. Any further adjournment shall be * * * *only for cause or by agreement of the parties.*

SECTION 162. 304.27 is amended to read:

304.27 GARNISHEE TO BE EXAMINED. * * * The *garnishment* affidavit * * * shall be * * * *the* complaint in the action; and the garnishee may answer the matters alleged in the affidavit either orally or by *verified* written answer, * * * and if the answer is oral it shall be reduced to writing by the

justice and * * * filed. The action may be adjourned by the garnishee as in case of a second adjournment * * *.

SECTION 163. 304.28 is revised to read:

304.28 UNDERTAKING TO DISCHARGE GARNISHEE. The defendant in the main action may obtain a discharge of the garnishee and a dismissal of the garnishee action by filing in the main action an undertaking executed in his behalf by a surety approved by the justice, conditioned that any final judgment which may be obtained by the plaintiff in the main action shall be entered against the defendant and the surety jointly (including costs in the garnishee action). If the judgment is for the plaintiff it shall be entered against the defendant and his surety jointly, but it shall not be collected from the surety if the officer can find property of the defendant to satisfy the same, and the execution shall so direct. In no event shall the surety be liable for more than \$400.

SECTION 164. 304.29 is amended to read:

304.29 TRIAL IF GARNISHEE ANSWER UNSATISFACTORY; APPEAL. If the plaintiff * * * is not * * * satisfied with the garnishee's answer * * * or if either party * * * desires a trial the justice shall enter that fact on his docket and * * * proceed forthwith * * * to try the action upon the issue formed by the affidavit and answer, * * * and if upon the trial * * * nonexempt property * * * is found in the hands of the garnishee or * * * he is found * * * indebted to the defendant and that such indebtedness * * * is not exempt, the justice or jury shall assess the value thereof and the garnishee shall hold the same subject to the further order of the justice; but if, upon such trial, it * * * is found that the property * * * in the hands of the garnishee or his indebtedness to the defendant is exempt, the justice shall forthwith enter * * * judgment discharging the garnishee; and if it * * * is found that * * * part of such property * * * or such indebtedness is exempt he shall enter * * * judgment discharging the garnishee * * * as to the exempt property or * * * indebtedness * * *. Either party may appeal from * * * such judgment.

SECTION 165. 304.30 is amended to read:

304.30 DEFENDANT'S DEFENSE; GARNISHEE MAY PLEAD EXEMPTION. The defendant * * * may * * * defend

* * * *in the garnishee action upon the ground that the indebtedness of the garnishee or any property held by him is exempt from execution against such defendant or * * * is not liable to garnishment, or upon any ground upon which a garnishee might defend * * **, and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests. * * * The garnishee may * * * defend the principal action for the defendant, if the latter does not appear * * *; but * * * *the defense by a garnishee shall not preclude the defendant from * * * a new trial * * * under * * * sections 302.31 and 302.32. * * ** The garnishee, if he has property * * * under his control belonging to the defendant, may * * *, *but he is not obliged to, answer that said property is exempt from execution * * **.

SECTION 166. 304.31 is amended to read:

304.31 STAY IF OTHER ACTION PENDING AGAINST GARNISHEE. If the answer of the garnishee * * * discloses that he has * * * property * * * in his possession or under his control belonging to the defendant or is indebted to him * * * but that said * * * property, * * * or indebtedness * * * is held * * * subject to a garnishee proceeding * * * or * * * attachment issued by * * * a state or federal court * * *, and * * * requests a stay of proceedings for a definite period, not exceeding one year, until such * * * proceedings are disposed of, the justice shall enter * * * a stay order * * * and shall adjourn the garnishee action until the day to which such proceedings are stayed. The plaintiff may, * * * on not less than 6 days' written notice to the garnishee, apply to the justice to have * * * the stay * * * vacated, and on making satisfactory proof to the justice that the proceedings on account of which the stay was granted have been disposed of, * * * the justice may vacate the * * * stay and proceed * * * as in other cases.

SECTION 167. 304.32 is amended to read:

304.32 PAYMENT INTO COURT OR DEPOSIT OF PROPERTY; ADJOURNMENT; COSTS; NOTICE; UNDERTAKING. (1) If the answer of the garnishee * * * discloses that he is indebted to or has * * * property * * * belonging to the defendant * * * not exempt from execution and * * * the same is claimed by some named person * * * not a party to the action, giving his * * * post-office address, if possible, and that he is in doubt as

to whom said * * * property * * * should be delivered or such debt paid, the justice may order him to pay the money or debt into court or deliver * * * the property * * * to the court or some *designated* officer * * *, and give * * * the garnishee a receipt therefor which shall * * * discharge * * * the garnishee and bind the plaintiff and the claimant. The justice shall thereupon cause a notice setting forth the facts stated in * * * the answer to be served upon the person * * * mentioned therein as claiming said debt * * * or property * * * which notice shall be served upon him * * * as a garnishee summons *is served*, and which shall direct said person * * * to appear before the justice * * * and defend his * * * rights thereto. * * * The justice shall * * * adjourn * * * the action to such time, not exceeding 90 days in all, as * * * seems to him fit, and shall make * * * the notice returnable at the time and place to which he has * * * adjourned. If * * * the person so summoned * * * appears and claims the * * * property but fails to establish his right thereto, costs shall be awarded against him * * * .

(2) If * * * the claimant cannot be found or * * * is a nonresident of the state, the justice shall enter an order on his docket requiring the plaintiff to publish such notice for 2 successive weeks in a newspaper printed in the county, if there be one, and if not to post up * * * the notice in 3 * * * public places in the town, city or village at least 4 weeks before rendering judgment. * * * The notice may be substantially in the following form:

State of Wisconsin, } In Justice * * * Court
 County. }
 * * * } Before , Justice of the Peace
 To..... :

You are hereby notified that in an action of garnishment in said court, between , plaintiff, and , garnishee, the * * * garnishee * * * answers that you claim from him certain * * * property * * * in question in said action, and that he is in doubt as to whom the same belongs. Unless you appear in said court at on the day of, 19...., at o'clock in the noon and prove your claim * * * , the * * * court will

proceed to judgment * * * *in the action.*

.....
Plaintiff.

(3) * * * *The publication may be proved by the affidavit of the publisher or foreman of the newspaper * * * and the posting proved by the * * * affidavit of any person who * * * posted the notice. * * * If the claimant does not appear, the * * * debt or property shall not be paid or delivered to the plaintiff, * * * unless * * * an undertaking * * * is entered upon the docket, signed by a surety * * * approved by the justice, substantially in the following form:*

State of Wisconsin, } In Justice * * * Court
..... County: }
* * * } *Before*, Justice of the Peace

In an action of garnishment of, plaintiff, against, garnishee, the garnishee having answered that claims the property * * * in question, and said * * * claimant having been notified thereof, and not having appeared and the court having decided that said property belongs to the defendant, and should be paid to the plaintiff;

Now I * * * undertake * * * that the * * * plaintiff will pay all damages * * * which the said * * * claimant may sustain by reason of said judgment, *but not exceeding \$200.*

Dated, 19...

.....
Surety.

(4) * * * *The claimant may bring an action on * * * the undertaking; and if he * * * establishes his title to the property he shall * * * recover thereon; provided * * * such action * * * is brought * * * within one year from the date of the judgment * * **

SECTION 168. 304.33 is amended to read:

304.33 COSTS TO GARNISHEE. * * * In the * * * garnishee action, if the plaintiff * * * is nonsuited * * * or if upon the * * * trial of the issue between the plaintiff and garnishee no property * * * is found in * * * his hands * * * or nothing * * * is found due from * * * him to the defendant, or if * * * the plaintiff * * * is nonsuited * * * or * * * nothing * * * is found due from the

defendant to the plaintiff, then * * * the garnishee shall recover costs against the plaintiff * * *.

SECTION 169. 304.34 is amended to read:

304.34 PROCEEDINGS WHEN GARNISHEE LIABLE; HIS COSTS.

(1) If the plaintiff recovers * * * in the original action and the * * * garnishee at the time of the service of the summons had property in his possession belonging to the defendant or * * * was indebted to him, the justice shall enter an order in his docket requiring the garnishee, within 10 days, to * * * deliver to the justice * * * the property or the amount of * * * the indebtedness, or so much thereof as * * * is necessary to satisfy * * * the judgment, * * * and the costs of the garnishee proceedings; or if it appears * * * that the garnishee is to pay or deliver to the defendant any money or property in any other manner or at any other time than immediately and at the time of the service of the summons (the same belonging to the defendant) then the order of the justice shall be that * * * payment or delivery be * * * made *accordingly* to the justice for the benefit of the plaintiff.

(2) If * * * the garnishee * * * pays * * * the indebtedness and delivers * * * the property as directed by * * * the order, the costs of the garnishee shall be paid out of the money or property received by the justice, unless the garnishee upon an issue joined with him by the plaintiff * * * has been held liable in a greater amount of property or indebtedness than was disclosed in his answer, in which case he shall * * * be liable for costs; and all property * * *, except money, delivered to the justice shall be by him ordered to be sold on the execution against the defendant.

SECTION 170. 304.35 is amended to read:

304.35 JUDGMENT IF GARNISHEE FAILS TO DELIVER PROPERTY;

STAY OF PROCEEDINGS; APPEAL. (1) If the garnishee * * * does not deliver * * * the property or pay the money due or found in his *possession* * * * and belonging to defendant * * * judgment shall * * * be given against him * * * for the value of * * * such property * * *, as found by the justice or jury, * * * but in no case for a sum greater than the judgment against the principal defendant * * *.

* * *

(2) The plaintiff * * *, instead of taking judgment * * *

against the garnishee, may enforce the delivery of the property * * * by proceedings as for a contempt in case of the garnishee's refusal to deliver the property * * * pursuant to the order of the justice * * *. An appeal may be taken from * * * *the order* * * * directing the delivery of the property * * * in the garnishee's possession * * *. Proceedings under said order may be stayed during the pendency of the appeal by * * * the defendant * * * *executing* an undertaking, with * * * *a surety* approved by the justice, * * * that if the order appealed from * * * *is* affirmed or the appeal dismissed, the appellant will pay to the plaintiff the value of the property * * *, with interest, and the costs of the plaintiff on the appeal or, that, in either such event, he will deliver such property to the plaintiff and pay interest on the value thereof and *on* such cost * * *.

(3) When * * * an appeal * * * *is* taken by * * * *the* defendant from a judgment * * * against him * * * in the principal * * * *action*, and execution on such judgment * * * *is* stayed * * *, all proceedings in * * * *the* garnishee * * * *action* are thereby * * * stayed until the final determination of * * * *the* principal * * * *action*. Further proceedings in * * * *the* garnishee action may be had upon filing a certified copy of the judgment in the original action with the justice * * * and 3 days' notice to the opposite party.

SECTION 171. 304.36 is amended to read:

304.36 JUDGMENT AGAINST GARNISHEE, EXCEPTION. No final judgment shall be rendered against the garnishee until final judgment * * * *is* rendered against the defendant in the original action * * *.

SECTION 172. 304.37 is amended to read:

304.37 MONEY PAID INTO COURT BY GARNISHEE. * * * Where a judgment * * * *is* rendered against the garnishee in * * * *any* court * * *, the garnishee may pay into * * * *that* court * * * the amount of * * * *the* judgment, and take a receipt from the clerk * * *, *if* a court of record, or * * * from the judge or justice * * *, *if* a court not of record, * * * which shall be a full discharge and satisfaction of the liability of * * * *the* garnishee on * * * *the* judgment; and on * * * *such* payment * * * the liability of * * * *the* garnishee shall cease, except as to such greater

sum as may be found due * * * the plaintiff upon an appeal or a retrial of the action.

SECTION 173. 304.38 is amended to read:

304.38 PROCEEDINGS ON DEFAULT OF GARNISHEE. When a garnishee * * * fails to appear or, appearing, * * * fails to make full answer touching his liability, the justice shall enter * * * *that fact* in his docket and * * * shall * * * *adjudge the garnishee* indebted to the defendant; and if judgment * * * is rendered in favor of the plaintiff * * * *the judgment* shall be entered against * * * *the garnishee* and shall include all costs in the garnishee proceedings, and no such costs shall be paid by the defendant; or, on demand of the plaintiff, * * * a warrant for the arrest of the garnishee * * * *may issue and* be served * * * as *are* warrants issued by justices * * * in civil actions founded on tort, and the garnishee shall be held thereon until he * * * makes full and direct answers touching his liability; and the justice may continue the cause * * *, if necessary, for further proceedings.

SECTION 174. 304.39 is amended to read:

304.39 APPEARANCE BEFORE JUDGMENT. If the garnishee * * * *fails* to appear at the proper time he may afterward appear and answer at any time before final judgment against him if he * * * first pays all costs in the garnishee * * * *action* which have accrued up to that time; and when he * * * so appears the justice shall cause the plaintiff to be notified thereof, so that he may be present at the making of such answer.

SECTION 175. 304.40 is revised to read:

304.40 JUDGMENT A BAR. The order or judgment in the garnishee action shall be conclusive between the parties and those claiming under them.

SECTION 175a. A section is created to be numbered 304.41 and to read:

304.41 GARNISHMENT BASED ON JUDGMENT. When an execution on a justice court judgment has issued or is issuable, the judgment creditor may commence a garnishee action against the debtor before the justice who has legal custody of the judgment docket, by filing with the justice an affidavit made by him or in his behalf, stating that he has good reason to believe that a named person is indebted to the judgment debtor or has unexempt property of such debtor in his possession; and demanding that

the named person be summoned as garnishee. Thereupon a garnishee summons shall be issued by the justice; and the subsequent proceedings shall be as in other garnishee actions.

CHAPTER 305
REPLEVIN

SECTION 176. 305.01 is amended to read:

305.01 REPLEVIN; HOW COMMENCED; WARRANT. Actions of replevin * * * shall be commenced by warrant, * * * returnable * * * not less than 6 days nor more than 15 days after * * * issue, * * * substantially in the following form:

WARRANT OF REPLEVIN

State of Wisconsin, } In Justice Court
..... County. } * * *
* * * } Before . . . , Justice of the Peace

The State of Wisconsin, to the sheriff or any constable of said county:

Whereas, complains that..... * * * unjustly detains * * * (here particularly describe the * * * property) * * *, you are * * * commanded to seize * * * said * * * property and * * * hold * * * it subject to * * * further order * * *; and also * * * to summon * * * said to * * * appear before me, * * * a justice * * * of the peace in * * * said county, at my office * * * at on the day of, * * * 19....., at o'clock in the noon, to answer the complaint * * *
* * * Dated, * * * 19...

.....
* * * Justice of the Peace

SECTION 177. 305.02 is amended to read:

305.02 REPLEVIN, WHEN NOT MAINTAINABLE. * * * No replevin action shall * * * be maintained for * * * property taken by virtue of * * * a warrant for the collection of * * * a tax in pursuance of * * * statute * * *; nor * * * to recover nonexempt * * * property seized on * * * execution or attachment * * *; nor * * * at the suit of any person unless he * * * has at the time * * * the right to * * * possession.

SECTION 178. 305.03 is amended to read:

305.03 AFFIDAVIT FOR WARRANT. No * * * warrant *in replevin* shall * * * issue * * * until an affidavit * * *, made by the plaintiff or some one in his behalf, is filed with the justice stating that * * * the plaintiff is * * * lawfully entitled to the possession of * * * personal property (giving a particular description thereof, and * * * the value thereof) and that the same * * * is unjustly detained * * * by the defendant (naming him) and that the same has not been taken for any tax levied * * * under any law of this state nor seized under * * * an execution or attachment against the * * * property of * * * the plaintiff * * *. Such affidavit may be amended * * * as * * * provided in section 304.02.

SECTION 179. 305.04 is amended to read:

305.04 WARRANT, HOW SERVED. The warrant shall be served on the defendant by delivering a copy to him personally, if he can be found * * *; if he cannot be found it may be served by leaving * * * a copy at his usual place of abode, with * * * some * * * member of his family of proper age * * *, at least 2 days before the return day * * *.

SECTION 180. 305.05 is amended to read:

305.05 CONCEALED PROPERTY, HOW TAKEN. If any part of the property to be seized * * * is in any * * * building or inclosure, the officer shall publicly demand * * * delivery thereof and if * * * it is not delivered * * * he shall * * * break into such * * * place and * * * seize * * * the property according to the warrant * * *.

SECTION 181. 305.06 is amended to read:

305.06 WARRANT, WHEN RETURNED. The officer shall return the warrant immediately after * * * service * * *, stating fully * * * how he * * * served and executed * * * it; and shall keep the * * * seized property in his possession until the * * * action is decided * * *.

SECTION 182. 305.07 is amended to read:

305.07 CONSTABLE WHEN TO EXECUTE WARRANT. When * * * a replevin action * * * is * * * by or against the sheriff of * * * the county the warrant * * * shall be * * * served and executed by * * * a constable of the county.

SECTION 183. 305.08 is amended to read:

305.08 PROCEEDINGS IF PROPERTY NOT SEIZED. If the * * * *property* specified in the warrant * * * is not * * * seized * * * the plaintiff may proceed in the action for * * * *its* recovery * * * or * * * *its* value * * *.

SECTION 184. 305.09 is amended to read:

305.09 PLEADINGS. The affidavit * * * is the complaint in the action * * *. The defendant may answer * * * as in other cases.

SECTION 185. 305.10 is amended to read:

305.10 GENERAL RULES APPLY; ADJOURNMENT; UNDERTAKING FOR COSTS. The action shall be subject to the same * * * rules * * * as other * * * *actions* * * *, as far as * * * applicable, but no adjournment shall be allowed * * * *except for cause* and * * * *on condition that the applicant gives to the opposite party * * * an undertaking as provided in section 305.11, conditioned that * * * the applicant will pay all costs and damages which shall be adjudged against * * * him on * * * the trial * * **.

SECTION 186. 305.11 is amended to read:

305.11 UNDERTAKING. The * * * *undertaking* may be entered on the docket * * * in *substantially* the following form:

I * * * hereby agree to pay all costs and damages which shall be adjudged against in this action, *but not exceeding \$200.*

(signed)

I hereby approve the * * * *surety*, he having justified (or been accepted by * * *).

* * * Justice.

SECTION 187. 305.12 is amended to read:

305.12 COMPLAINT PROVED; JUDGMENT; EXECUTION. (1) * * * The plaintiff, * * * *to recover*, must prove all the *material* allegations of his complaint; and on such proof * * * *the finding* shall * * * *be* as follows:

(a) That the plaintiff is entitled to the possession of the * * * *property* specified in the complaint or some part thereof, specifying the same;

(b) That the defendant unjustly took or unlawfully detained the same;

(c) The value thereof;
 (d) The damages which * * * *the plaintiff* sustained by
 the * * * *defendant's acts*.

(2) * * * The justice shall immediately enter * * *
judgment requiring the officer to deliver the * * * *property*
 to the plaintiff and * * * that he recover * * * *the dam-*
ages and the costs of the action * * *.

SECTION 188. 305.13 is amended to read:

305.13 JUDGMENT ON FAILURE TO RECOVER OR LACK OF JURIS-
 DICTION. If the plaintiff * * * fails to prosecute his action
 to final judgment, or if * * * the justice or jury * * *
 finds for the defendant, or * * * finds the * * * *property*
 to be of a greater value than * * * \$200, then * * * the
 justice or jury shall assess * * * *the damages* for the * * *
seizing and detention of the * * * *property* * * *; and
 the justice shall immediately enter * * * *judgment* that the
 officer deliver the * * * *property* to the defendant and
 * * * that he recover * * * *his damages and costs* * * *.

SECTION 189. 305.14 is amended to read:

305.14 RECOVERY OF PART OF PROPERTY; JUDGMENT. If the
 justice or the jury * * * finds that the plaintiff is entitled to
 * * * possession of * * * part of the * * * *property*
 seized and that the defendant is * * * entitled to the res-
 idue, * * * the value of the portions belonging to * * *
each party and * * * the damages sustained by * * *
him by the unjust taking or detention thereof by the other *shall*
be separately found and assessed; and the justice shall imme-
 diately enter * * * *judgment* requiring the officer to deliver
 to * * * *each party* the property to which * * * *he is*
 entitled * * *; and in favor of the party whom the great-
 est amount of damages * * * *was* assessed for the excess of
 * * * *his damages* above the amount assessed to the other
 party; or upon the demand of the defendant the justice may
 * * * *enter judgment* that all the property *be* delivered to the
 plaintiff; and * * * for the defendant for the value of his
 portion of the property seized * * * *and interest* * * *
thereon from time of * * * seizure, and deducting therefrom
 the amount of *the plaintiff's damages* * * *. Costs * * *
 shall * * * be awarded in the discretion of the justice.

SECTION 190. 305.15 is amended to read:

305.15 PROCEEDINGS IF LIEN ON PROPERTY. * * * Upon the

trial, if it * * * appears that one party has a lien * * * upon the property seized or a part thereof, to a part of its value only, and the right of possession, and that the * * * *title to the property* * * *, subject to such lien * * *, is in the other party, * * * the amount of such lien * * * *shall be found*; and upon demand of the * * * *lienor, he shall* * * * *have judgment* * * * for the amount thereof with interest and costs, and * * * the property (subject to such lien) * * * *shall be ordered* delivered to the other party; otherwise *judgment shall be for* * * * delivery of the property to the * * * *lienor and for his damages and costs* * * * unless the lien * * * is forthwith discharged and the costs of the action paid by the other party.

SECTION 191. 305.16 is amended to read:

305.16 NOTICE WHEN DEFENDANT DOES NOT APPEAR. If the officer returns on the warrant that the defendant has not been * * * summoned in either of the modes * * * prescribed and that he has seized the * * * *property* mentioned in the warrant then, if the defendant * * * *does not appear* * * * at the return of the warrant, the justice shall enter an order in his docket requiring the plaintiff to give notice to the defendant as * * * *provided in sections 304.12 to 304.14*; such notice shall contain a * * * description of the * * * *property* seized, and its publication may be proved * * * *by an affidavit as provided by section 328.19*; and the cause shall be continued to the time and place mentioned in the order.

SECTION 192. 305.17 is amended to read:

305.17 PROCEEDINGS ON DEFAULT. When the defendant has been notified as * * * *provided in section 305.16* and * * * *does not answer*, * * * *those facts* shall be entered * * * in the docket and the plaintiff may proceed * * * to * * * judgment as if * * * *the defendant* had been duly summoned; but no execution shall issue * * * nor shall any order be made for the delivery of * * * *the property* to the plaintiff until * * * *a surety, approved by the justice, executes* * * *, *on behalf of the plaintiff, an undertaking* to the defendant * * *, conditioned that if the defendant * * *, within one year from the rendition of * * * *the judgment*, appears and disproves the same the plaintiff will * * * return * * * *said property*, if return * * * is adjudged, or will pay the value thereof and all costs and damages which may

be adjudged against him on a new trial * * *, *but not exceeding \$400.*

SECTION 193. 305.18 is amended to read:

305.18 JUDGMENT FOR PLAINTIFF WHERE GOODS NOT SEIZED. If the * * * *property* specified in the affidavit * * * *is not seized* * * * *the* plaintiff, in case he * * * recovers judgment * * *, shall be entitled, in addition to * * * judgment for *his* damages and costs, to * * * judgment that such * * * *property* be seized and delivered to him without further delay; or in default thereof that * * * *the* plaintiff * * * recover from the defendant the value of * * * *the property* as * * * assessed by the jury or justice on the trial * * *.

SECTION 194. 305.19 is amended to read:

305.19 EXECUTION. The execution * * * upon * * * *the* judgment shall command the officer to levy the plaintiff's damages and costs of the * * * *personal property* of the defendant, as in other executions against property, and also to seize the * * * *personal property* described in the complaint, which shall also be * * * *described* in the execution, and * * * deliver * * *, *it* to the plaintiff, if * * * *it* can be found within his county; and if * * * *it* cannot be so found, then that he levy the value * * * *thereof*, specifying the same, together with the * * * said damages and costs, of the * * * *property* of the defendant * * *.

SECTION 195. 305.20 is reenacted.

SECTION 196. 305.21 is amended to read:

305.21 EXECUTION OF JUDGMENT FOR DELIVERY. When * * * *judgment* is entered * * * in * * * *a replevin* action * * * for the delivery of property to either party, * * * *it* shall not be delivered * * * until * * * 24 hours after the entry * * * *thereof*.

SECTION 197. 305.22 is amended to read:

305.22 COMPENSATION OF OFFICER. When property is seized * * * the justice may allow the officer * * * *reasonable* compensation for * * * keeping and maintaining the same * * *; and when the officer * * * keeps * * * *the* property pending an appeal the appellate court may * * * allow such compensation * * *. *Such compensation* may be taxed as disbursements against the losing party.

CHAPTER 306

APPEALS

SECTION 198. 306.01 is amended to read:

306.01 APPEALS IN JUSTICE COURT. Any party to a * * * judgment * * * in justice * * * court, and, when a judgment * * * is against a garnishee, the defendant in the original action, may appeal therefrom * * * as provided by this chapter.

SECTION 199. 306.02 is amended to read:

306.02 NOTICE AND AFFIDAVIT ON APPEAL; FEES AND SUIT TAX.
 (1) * * * The appellant * * * must, within 20 days after being served with written notice * * * of entry of judgment * * *, but not more than 90 days after such entry, present to the justice * * * having custody of the docket * * *, a notice of appeal, * * * and an affidavit that the appeal is made in good faith and not for the purpose of delay; and * * * he must * * * pay him his fees in the action, * * * and * * * \$1.50 for his return and \$1 for state tax and \$2 for clerk's fees * * * * *

(2) * * * Service of * * * notice * * * of entry of judgment * * * may be made * * * either upon the party or his attorney in the manner provided in section 269.34 * * *; otherwise service * * * shall be * * * by registered mail. * * * The notice * * * must state the title of the action, the name of the justice * * * rendering the judgment, the * * * date of * * * entry of the judgment, the amount * * * thereof and the names of the * * * judgment creditor and debtor.

SECTION 200. 306.03 is amended to read:

306.03 NOTICE, WHERE FILED, JUSTICE NOT FOUND. When * * * the notice of appeal and affidavit cannot be presented to * * * the justice they may be filed with the clerk of the court to which the appeal is taken * * *.

SECTION 201. 306.04 is amended to read:

306.04 STAY OF EXECUTION ON APPEAL. * * * The appellant * * * may stay * * * execution of the judgment (except in actions of replevin) * * * by an undertaking * * * executed * * *, in his behalf by * * * a surety approved by the judge of the appellate court or by the justice, * * * that if the appeal * * * is dismissed or if judgment * * * is rendered against the appellant and execution on the

judgment * * * is returned unsatisfied in whole or in part the * * * surety will pay the amount unsatisfied.

SECTION 202. 306.05 is amended to read:

306.05 STAY ON CERTIORARI. In proceedings on certiorari to a justice * * * the relator * * * may stay * * * execution of the judgment * * * by an undertaking * * * executed * * * in his * * * behalf by a surety, approved by the judge of the court issuing the writ or by the justice, * * * that if the writ * * * is quashed or superseded, or if the judgment * * * is affirmed and execution * * * is returned unsatisfied in whole or in part, the * * * surety will pay the amount unsatisfied.

SECTION 203. 306.06 is amended to read:

306.06 UNDERTAKING, EFFECT OF. The delivery of the undertaking to the * * * justice shall stay * * * execution. * * * If * * * execution has issued, * * * service of a copy of the undertaking, certified by the * * * justice, upon the officer holding the execution shall stay further proceedings thereon.

SECTION 204. 306.07 is amended to read:

306.07 FILING UNDERTAKING ON APPEAL. When * * * the undertaking * * * cannot be delivered to * * * the justice it shall be filed with the clerk of the appellate court and notice thereof given to the respondent, or his attorney * * *; and * * * the undertakings required to be filed to prevent or secure the delivery of property after judgment in actions of replevin may be filed with the clerk, who may make the orders which the justice * * * should have made.

SECTION 205. 306.08 is amended to read:

306.08 AFFIDAVIT AND UNDERTAKING FOR STAY IN REPLEVIN. If * * * a party to an action of replevin * * *, within 24 hours after entry of * * * an order therein requiring the officer to deliver the property seized or any part thereof to the opposite party, * * * files with the justice an affidavit stating that he intends to appeal * * * the property shall not be so delivered unless the opposite party * * *, before the time for * * * appeal expires, * * * files with the justice an undertaking * * * executed * * * in his * * * behalf by a surety, approved by the justice, to the effect that if, on such appeal * * *, the judgment * * * is reversed * * * as

to any part of * * * *the* property ordered to be delivered to him he will return * * * *the* property or so much thereof as * * * *is* adjudged to be returned to the appellant and pay any judgment * * * rendered against him on * * * *the* appeal, and abide any * * * order or judgment of the appellate court. Upon * * * filing such undertaking the property shall be * * * delivered according to the order of the justice * * *

SECTION 206. 306.09 is amended to read:

306.09 UNDERTAKING BY APPELLANT IN REPLEVIN. If * * * *an appeal is perfected* and * * * *the* undertaking required by section 306.08 *has not been given*, within the time therein prescribed, the appellant may, within 5 days after the * * * *appeal is perfected*, * * * *file with the justice* an undertaking * * * *executed* * * * *in his* * * * *behalf by a surety approved by the justice*, to the effect that if the judgment * * * *is affirmed* * * * *as to any part of* * * * *the* property ordered to be delivered to the opposite party or if the appeal * * * *is dismissed* he will return * * * *the* property or as much thereof as * * * *is* adjudged to be returned, and pay all costs and damages awarded against him * * *, and abide any * * * order or judgment of the appellate court. * * * The justice shall *thereupon* enter an order in his docket requiring the officer who has the * * * property to deliver * * * *it* to the appellant * * * *and*, upon being served with a copy of * * * *the* order, *he* shall deliver * * * *it* accordingly. * * * Filing * * * *the* undertaking with the justice shall stay * * * execution * * *; or if it has * * * issued, * * * service of a copy of * * * *the* undertaking, certified by the * * * *justice*, upon the officer holding the execution shall stay further proceedings thereon.

SECTION 207. 306.10 is amended to read:

306.10 CUSTODY OF PROPERTY; STAY OF EXECUTION. If the appellant * * * *has* filed his affidavit as required by section 306.08 and * * * *has duly* perfected his appeal * * *, and neither party * * * *has* filed an undertaking as * * * required, * * * *the* property shall remain in the custody of the officer * * * pending the appeal, subject, * * * to the order of the appellate court. * * * Where the appellant * * * *has not* * * * filed the undertaking prescribed in section 306.09 * * * *he* may stay the execution as to dam-

ages and costs by giving the undertaking required in section 306.04 at any time within 5 days after * * * the appeal is perfected.

SECTION 208. 306.11 is repealed.

SECTION 209. 306.12 is amended to read:

306.12 RETURN ON APPEAL; CERTIORARI; AMENDED RETURN; LEAVE TO ANSWER. (1) Within 10 days after any appeal * * * is perfected, the justice shall make a return to the appellate court of the testimony, proceedings and judgment and pay to the clerk the state tax and the \$2 clerk's fees. If any return * * * is defective the appellate court may * * * order a further or amended return * * *.

(2) Motions to amend a return of any appeal or to any writ of certiorari or for leave to answer shall be served and filed within 10 days after service of notice of trial and a copy of the proposed answer must accompany the notice of motion for leave to answer. The court may order an immediate hearing of the motion.

SECTION 210. 306.13 is amended to read:

306.13 RETURN WHEN JUSTICE NOT IN OFFICE. * * * If the justice * * * who rendered the judgment appealed from * * * is out of office * * * after the notice of appeal was filed with him but before return * * * is made he shall nevertheless make return, and may be compelled to do so. * * * the same * * * as if he were still in office.

SECTION 211. 306.14 is amended to read:

306.14 APPEAL, HOW DETERMINED WITHOUT RETURN. If a justice * * * whose judgment is appealed from * * * dies, becomes insane or removes from the state and fails to make a return or makes a defective return on appeal the appellate court may examine witnesses * * * as to the facts and circumstances of the trial or judgment and determine the appeal as if the facts had been returned by the justice.

SECTION 212. 306.15 is amended to read:

306.15 APPEALS FROM JUSTICE COURTS; AFFIRMATION, IF BOTH PARTIES NEGLECT HEARING. If neither party * * * brings the appeal to * * * trial before the * * * third term after filing the return of the justice * * *, the appellate court shall, unless * * * the action is continued * * * for * * * cause * * *, affirm the judgment * * * with costs.

SECTION 213. 306.16 is repealed.

SECTION 214. 306.17 is revised to read:

306.17 TRIAL ON APPEAL. The appeal shall be tried in the appellate court as an action originally brought there.

SECTION 215. 306.18 is repealed.

SECTION 216. 306.19 is revised to read:

306.19 PROCEEDINGS WHEN APPEAL IS DISMISSED. (1) In case an appeal from justice court is dismissed, if the execution of the justice court judgment was not stayed on the appeal, the appeal record need not be remitted.

(2) If the justice court judgment was stayed pending the appeal, the clerk of the appellate court shall retain the record 60 days following the entry of the order or judgment of dismissal. During said 60 days the appellant may apply for and the court may grant a stay of the remittitur pending an appeal to the supreme court from the order or judgment of dismissal. Such stay order may be conditioned upon a prompt appeal to the supreme court. At the expiration of said 60 days the clerk shall remit the appeal record to the justice unless a stay thereof has been ordered. If an appeal to the supreme court is taken, the return of the record shall await the outcome thereof. When the appeal record is returned to the justice, proceedings may be had as though no appeal had been attempted.

SECTION 217. 306.20 is amended to read:

306.20 JUDGMENT AGAINST APPELLANT ALSO AGAINST SURETIES. (1) * * * *If the judgment is against * * * an appellant who * * * gave an undertaking to stay execution * * *, such judgment shall be entered against the appellant and his * * * surety jointly; but it shall not be collected of the * * * surety if the officer * * * can find sufficient property of the principal to satisfy the same; and the * * * justice issuing the execution shall indorse a direction thereon to that effect.*

(2) * * * *Where the * * * appellant has given an undertaking * * * to stay execution * * *, and * * * subsequently, by amendment, supplemental pleading or otherwise, sets forth and proves a discharge in bankruptcy obtained after * * * giving * * * the undertaking, the appellate court shall * * * determine all the issues of * * * the action, and if * * * it finds that judgment would have been*

rendered against the appellant, except for * * * *the* defense of a discharge in bankruptcy obtained subsequently to * * * giving * * * *the* undertaking, the * * * court shall give judgment against the appellant and his surety * * * jointly, with a perpetual stay of execution of said judgment against the appellant, and that execution as to him be returned wholly unsatisfied.

SECTION 218. 306.21 is reenacted.

SECTION 219. 306.22 is amended to read:

306.22 FEES ON CERTIORARI. At the time of serving a writ of certiorari upon a justice * * * *the* costs or fees * * * *of* the justice * * * *and* for a return to * * * *the* writ *need not be paid.* * * * *The* justice * * * shall file * * * *the* writ and his return thereto with the clerk of the court issuing the * * * *writ* within 10 days after service thereof * * *. If the return * * * is defective the court may * * * *order* a further or amended return. * * * * *

CHAPTER 307 COSTS AND FEES

SECTION 220. 307.01 is revised to read:

307.01 FEES OF JUSTICES. Justices are entitled to the following fees and may tax the same as costs in all actions when applicable.

Acknowledgement of deed and certifying for each grantor, 25 cents.

Adjournment, 25 cents.

Appeal, approving undertaking, making return, including travel, \$1.50.

Bond taken and approved, 25 cents.

Certificate of conviction, 50 cents.

Commitment to jail, 50 cents.

Copy of proceedings or any paper, 10 cents per folio.

Deposition, taking, 12 cents per folio.

Discharging prisoner on motion, 12 cents.

Docketing, 50 cents.

Drawing affidavit in attachment, replevin or garnishee, 50 cents.

Drawing paper for which no other allowance is made, 12 cents per folio.

Entering action without process, 12 cents.

Entering return to process, 12 cents.

Entering verdict, 50 cents.

Execution, 25 cents.

Filing paper, 5 cents.

Judgment, entering, 50 cents.

Judgment, entering satisfaction, 12 cents.

Marrying and making return, \$1.50 and such other sum as may be donated.

Notice to take depositions, 25 cents.

Oath to witness, administering, 6 cents.

Oaths, all other, administering, certifying, 12 cents.

Opening judgment for rehearing, 25 cents.

Order to bring up prisoner, 25 cents.

Order to discharge prisoner from jail, 25 cents.

Recognizance of bail, taking, 50 cents.

Returning papers after preliminary examination, \$1.50.

Security taken and approved, 25 cents.

Subpoena, 50 cents.

Summons, 50 cents.

Taking deposition, examination, testimony or for any writing done in an action, 12 cents per folio whether transcribed by the justice at request of party or done by some other person.

Taxing costs, 25 cents.

Transcript of judgment, 25 cents.

Travel in going and returning to perform any service when not otherwise provided for and such travel is necessary, 5 cents per mile. No compensation is allowed for travel to file certificate of conviction, but such certificate may be mailed to the clerk of the circuit court and the registry fee and postage shall be recoverable.

Undertaking taken and approved, 25 cents.

Unlawful defamer, inquisition, \$1.00.

Venire for jury, 50 cents.

Warrant, 50 cents.

Writ not herein enumerated, 25 cents.

SECTION 221. 307.02 is amended to read:

307.02 COSTS, PREVAILING PARTY TO RECOVER. The justice shall also tax *the following* as costs in favor of the party recovering judgment * * *:

(1) Witness fees for travel and attendance, not exceeding * * * \$15 * * *, unless the justice * * *, by an order entered in his docket, directs that a larger sum (*not exceeding*

\$25) be taxed * * *, in which case he shall state in * * * his order the reasons for making * * * it, and fees of jurors at the rate of \$2 per day and 5 cents for each mile * * * necessarily traveled to attend * * * the trial, both coming and going, for each juror in attendance, less the amount advanced by the opposite party when the jury * * * was demanded by him * * *. Juror's fees, when collected, shall be paid by the justice to the jurors * * *.

(2) Fees for serving subpoenas and travel in serving * * * them. But no * * * witness * * * fees or fees for serving subpoenas * * * shall be taxed for travel or attendance on the return day except in * * * actions where either party is entitled to proceed to trial on such * * * day, unless an adjournment * * * is had for cause * * * or the trial * * * is had on * * * the return day.

(3) All other lawful fees and charges of any * * * officer for services rendered in the action pursuant to law.

(4) An attorney's fee as follows, except when the amount thereof is otherwise specially provided for * * *: On * * * a judgment * * * for * * * \$50 or less, * * * 10 per cent of the judgment; on * * * a judgment * * * over \$50 and less than \$100, \$5; on * * * a judgment * * * for \$100 or over, \$10. In an action * * * of replevin the value of the property recovered shall govern the * * * attorney's fees * * *. When judgment is for the defendant the amount claimed in the * * * complaint shall govern the * * * attorney's fee * * *. * * * No attorney's fee shall be taxed * * * in behalf of a party * * * unless he appeared * * * by * * * attorney * * *. But no attorney's fee shall be taxed for the plaintiff unless the defendant * * * put in an answer or demurrer.

(5) In actions for work and labor an attorney's fee of not less than \$5 nor more than \$20, in the discretion of the justice, * * * when the plaintiff appears by an attorney * * *, whether or not the defendant * * * appeared * * *.

SECTION 222. 307.03 is amended to read:

307.03 TAXATION OF COSTS. At the time of entering judgment the justice may * * * without notice tax the costs * * *.

SECTION 223. 307.04 is amended to read:

307.04 FEES, TO BE PROVED; NONE FOR SERVING PROCESS, WHEN. * * * No fees for * * * travel of a witness or

interpreter *shall be allowed* unless * * * proved by the oath of some person having knowledge of the fact, nor for travel in serving a subpoena unless * * * charged by * * * an officer or * * * proved by the oath of * * * the person who served * * * it; and no fees shall be allowed to a party for serving or travel in serving a subpoena in his own * * * action.

SECTION 224. 307.05 is amended to read:

307.05 FEES FOR WITNESSES, COPIES, ETC. The attendance of not more than 5 witnesses to each particular fact shall be taxed * * *; and if any witness * * * attends upon 2 or more * * * actions in the same day before the same justice * * * his fees shall be equally apportioned among the parties who * * * summoned him. No fees for copies of documents or papers or for depositions shall be allowed unless such copies or depositions were used upon the trial.

SECTION 225. 307.06 is amended to read:

307.06 DISBURSEMENTS TO BE PROVED. No disbursements * * * shall be allowed unless the items are * * * specified and proved to the justice and * * * were in his opinion necessary and reasonable * * *; and the justice may hear * * * evidence * * * offered to prove or *disprove* any charge * * *.

SECTION 226. 307.07 is amended to read:

307.07 COSTS IN GARNISHMENT. * * * A garnishee * * * is entitled to * * * the same fees for travel and attendance as a witness, and he * * * is not bound to appear or answer unless his fees for travel and one day's attendance * * * are first paid; and such fees shall be taxed as costs in the action as witness' fees are taxed. When a corporation is garnished the fee for the attendance of some officer to answer * * * shall be paid to the person upon whom the garnishee summons is served.

SECTION 227. 307.08 is amended to read:

307.08 SECURITY FOR COSTS. * * * Except as * * * otherwise provided * * * the justice shall require the plaintiff, if a nonresident of the county, to give security for costs in an amount up to \$100 and may * * * require * * * like security of all other plaintiffs. Unless * * * security for costs is asked for or ordered on or before the return day, the

* * * *right to security* * * * *is waived.* * * * If the plaintiff refuses or neglects to give * * * security, when required, the action shall be dismissed * * * *except if* the plaintiff * * * files an affidavit * * * that he has a valid claim against the defendant for work or labor * * * and is unable * * * to give security for costs, * * * *then it need not be given.*

SECTION 228. 307.09 is amended to read:

307.09 SURETY TO SIGN MEMORANDUM; EXECUTION THEREON. The person becoming security * * * shall sign the following memorandum on the docket: I, A. B., agree to become security for the costs in this action in a sum not to exceed \$100 * * * If judgment * * * *is rendered* * * * against the plaintiff, execution for costs may issue against the plaintiff and the surety; or * * * *the defendant* may maintain an action upon * * * *the* memorandum against the security for the recovery of the * * * *costs.*

SECTION 229. 307.10 is amended to read:

307.10 SURETY COMPANY BOND AUTHORIZED. * * * Any bond, undertaking or recognizance * * * permitted or required by law or by order of the * * * *justice* may be executed by any surety company authorized to do business in this state, using the usual forms for that purpose; and when * * * security is required to be entered in the docket as provided by section 305.11 or 307.09, * * * *the* company may furnish such security by filing an undertaking in substantially the following form:

Whereas an action has been commenced (or is about to be commenced) in * * * justice court in the county of * * * *by* * * * plaintiff * * * *against* * * * defendant; * * * therefore, the company, a surety company duly authorized * * * to do business in * * * Wisconsin, undertakes * * * to become surety for costs * * * in * * * *such* action * * * (or, agrees to pay all costs and damages which shall be adjudged against in * * * *the* action, as the case may require).

Dated, 19. Company By

The undertaking * * * shall be accompanied with the certificate of the commissioner of insurance, * * * mentioned

in sections 204.02 to 204.04 * * *. The cost of * * * the * * * undertaking, not to exceed \$5, * * * is a taxable disbursement in the action.

SECTION 230. This act shall take effect January 1, 1946.

Approved July 10, 1945.

No. 215, S.]

[Published July 13, 1945.]

CHAPTER 442.

AN ACT to amend 85.01 (4) (f) of the statutes, relating to the registration of tractors, and providing a penalty.

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

85.01 (4) (f) of the statutes is amended to read:

85.01 (4) (f) *For the registration of all tractors not otherwise expressly exempted from registration, the fees prescribed in subsection (c) for trucks of the same gross weight. This amendment (1945) shall be effective July 1, 1945.* Tractors used exclusively in agricultural operations, including threshing, or used exclusively to provide power to drive other machinery, or to transport from job to job machinery driven by such tractor, or tractors used exclusively for construction operations need not be registered.

Approved July 10, 1945.

No. 321, S.]

[Published July 16, 1945.]

CHAPTER 443.

AN ACT to revise chapter 126 of the statutes, relating to the grain and warehouse commission.

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

SECTION 1. The revision of chapter 126 of the statutes does not change the law. It changes the language but does not change the meaning.

SECTION 2. 126.01 is revised to read:

126.01 GRAIN AND WAREHOUSE COMMISSION; DEFINITIONS. The grain and warehouse commission of Wisconsin