

## CHAPTER 305.

## REPLEVIN.

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**305.01 Action, how commenced; form of warrant.** Actions of replevin for the recovery of the possession of goods and chattels in justices' courts shall be commenced by warrant, which shall be made returnable on the third day after it shall issue, Sundays and legal holidays excepted, and shall be substantially in the following form:

.... County, }  
Town of .... } ss.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

Whereas, .... complains that .... has taken and does unjustly detain (or does unjustly detain, as the case may be) (here particularly describe the goods mentioned in the affidavit of the complainant); therefore, you are hereby commanded to seize the said goods and chattels without delay and to hold the same subject to the further order of the court; and also that you summon the said .... to be and appear before me, one of the justices of the peace in and for said county, at my office in said town, on the ... day of ..., A. D. 19.., at ... o'clock in the ... noon, to answer the complaint of the said ...

Given under my hand this ... day of ....., A. D. 19...

J. P., Justice of the Peace.

**305.02 Action not maintainable.** Such action shall not be maintained for any property taken by virtue of any warrant for the collection of any tax in pursuance of any statute of this state; nor shall it be maintained by any defendant in any execution or attachment to recover goods and chattels seized on such execution or attachment unless such goods and chattels are exempt by law from seizure and sale thereon; nor shall it be maintained at the suit of any person unless he shall at the time have a right to reduce the goods and chattels to possession.

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

**305.04 Warrant, how served.** The warrant shall be served on the defendant by delivering to him personally, if he can be found, a copy of the same; if he cannot be found it may be served by leaving the same at his usual place of abode, with his wife or with some person of proper age belonging to his family, at least two days before the return day thereof.

**305.05 Concealed property, how taken.** If the property to be seized or any part thereof be secreted or concealed in any dwelling house or other building or inclosure the officer shall publicly demand deliverance thereof, and if the same be not delivered by the defendant or some other person he shall cause such house, building or inclosure to be broken open and shall seize such property according to the warrant; and if necessary he shall take to his assistance the power of his county.

**305.06 Warrant, when returned.** The officer shall return the warrant immediately after the service thereof and state in his return fully in what manner he has served and executed the same, and shall keep the goods and chattels in his possession until the cause is decided by the justice.

**305.07 Constable when to execute warrant.** Whenever such action shall be brought by or against the sheriff of any county the warrant and all process in the cause shall be awarded to and executed by any constable of the county.

**305.08 Proceedings if property not seized.** If the goods and chattels specified in the warrant have not been seized thereon the plaintiff may proceed in the action for the recovery thereof or of the value thereof.

**305.09 Pleadings.** The affidavit shall be deemed the complaint in the action and the defendant may answer thereto as in other cases.

**305.10 Rules governing other actions apply; adjournment; bond for costs.** The action shall be subject to the same usages, rules and regulations as other cases before a justice's court, as far as the same are applicable, but no adjournment shall be allowed to either party unless such party shall satisfy the justice in the same manner as in case of an application for a second adjournment in other cases; and such party shall also enter into a bond to the opposite party, with a sufficient security, to be approved by the justice, conditioned that such applicant will pay all costs and damages which shall be adjudged against such applicant on a trial of the cause.

**305.11 Security.** The security in section 305.10 mentioned may be entered on the docket of the justice in the following form:

I do hereby agree to pay all costs and damages which shall be adjudged against . . . .  
 . . . . in this action.

I hereby approve the security, the said A. B. having justified (or been accepted by the  
 . . . . .).

J. P., Justice.

**305.12 Complaint to be proved; judgment.** (1) In such action it shall be necessary for the plaintiff, whether the defendant be present or not, to prove all the allegations of his complaint; and on such proof, if the justice or jury shall find in favor of the plaintiff, they shall find as follows:

(a) That the plaintiff is entitled to the possession of the goods and chattels 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 he has sustained by the unjust taking or detention thereof.

(2) And the justice shall immediately enter an order in his docket requiring the officer to deliver the same goods and chattels to the plaintiff and adjudge that he recover such damages and the costs of the action and shall issue execution therefor.

**305.13 Judgment on failure to recover or lack of jurisdiction.** If the plaintiff shall discontinue his action, become nonsuited or shall otherwise fail to prosecute his action to final judgment, or if on trial of the issue joined the justice or jury shall find for the defendant, or if on such trial the justice or jury shall find the goods and chattels to be of a greater value than the amount over which a justice has jurisdiction then, in each of these cases, the justice or jury shall assess adequate damages for the caption and detention of the goods and chattels seized; and the justice shall immediately enter an order in his docket that the officer deliver the said goods and chattels to the defendant and adjudge that he recover such damages and costs, and shall issue execution therefor.

**305.14 Recovery of part of property.** If the justice or the jury shall find that the plaintiff is entitled to the possession of a part of the goods and chattels seized and that the defendant is so entitled to the residue they shall find separately the value of the portions belonging to the plaintiff and the defendant and separately assess the damages sustained by each party by the unjust taking or detention thereof by the other; and the justice shall immediately enter an order in his docket requiring the officer to deliver to the respective parties the property to which they are entitled according to such finding; he shall set off the damages assessed to the respective parties and render judgment in favor of the party to whom the greatest amount of damages were assessed for the excess of such damages above the amount assessed to the other party; or upon the demand of the defendant the justice may, in his discretion, order all the property delivered to the plaintiff and render judgment for the defendant for the value of his portion of the property seized, adding interest thereto from time of the seizure, and deducting therefrom the amount of damages assessed in favor of the plaintiff; and the costs of such action shall in either case be awarded in the discretion of the justice.

**305.15 Proceedings if lien on property.** Whenever, upon the trial, it shall appear that one party has a lien or claim upon the property seized or a part thereof, to a part of its value only, and the right of possession, and that the right of property in the same, subject to such lien or claim, is in the other party, the justice or jury shall also find the amount of such lien or claim; and upon demand of the party having such lien or claim the justice shall render a judgment in his favor for the amount thereof with interest and costs, and order the property subject to such lien to be delivered to the other party; otherwise for a

delivery of the property to the party establishing the lien, with judgment for his damages and costs as in other cases unless the lien be forthwith discharged and the costs of the action paid by the other.

**305.16 Notice by publication.** If the officer return on the warrant that the defendant has not been duly summoned in either of the modes hereinbefore prescribed and that he has seized the goods and chattels mentioned in the warrant then, if the defendant do not appear to the action 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 in case of a defendant not summoned, whose goods have been attached; such notice shall contain a full description of the goods and chattels seized, and its publication may be proved in the manner in which a notice in attachment is proved; and the cause shall be continued to the time and place mentioned in the order.

**305.17 Proceedings on default.** When the defendant has been notified as aforesaid and shall not appear and answer to the action the fact shall be entered by the justice in his docket and the plaintiff may proceed thereon to final judgment as if he had been duly summoned; but no execution shall issue on such judgment for costs and damages nor shall any order be made for the delivery of goods and chattels to the plaintiff until such plaintiff or some person in his behalf shall execute a bond to the defendant in double the value of the property, with security to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the same the plaintiff will make return of said property, if return be adjudged, or will pay the value thereof and all costs and damages which may be adjudged against him on a new trial of the case.

**305.18 Judgment for plaintiff where goods not seized.** If the goods and chattels specified in the affidavit shall not have been seized such plaintiff, in case he shall recover judgment upon the hearing of the case, shall be entitled, in addition to his judgment for damages and costs, to a further judgment that such goods and chattels be seized and delivered to him without further delay; or in default thereof that such plaintiff do recover from the defendant the value of such goods and chattels as the same shall have been assessed by the jury or justice on the trial or upon the hearing.

**305.19 Execution.** The execution to be issued upon such judgment shall command the officer to levy the plaintiff's damages and costs of the goods and chattels of the defendant, as in other executions against property, and also to seize the goods and chattels described in the complaint, which shall also be specified in the execution, and to deliver them to the plaintiff, if they can be found within his county; and if the same cannot be so found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs, of the goods and chattels of the defendant as above provided.

**305.20 Duty of officer.** The officer shall proceed in the same manner to collect any moneys directed to be collected upon such execution as upon executions against property in personal actions, and he shall possess the same powers in respect to the seizing of the property described therein as are herein provided upon the execution of warrants to seize property. If the goods and chattels described in the execution are seized and delivered to the plaintiff they shall not be liable to seizure in an action by the defendant to recover the possession thereof.

**305.21 Execution of order for delivery.** Whenever an order shall be entered by a justice, in an action for the recovery of the possession of personal property, for the delivery of property to either party, the property shall not be delivered to the party in whose favor the same is entered until the expiration of twenty-four hours after the entry of such order.

**305.22 Compensation of officer.** When property is seized on the warrant the justice may allow the officer having charge of the same such compensation for his trouble and expenses in keeping and maintaining the same as shall be reasonable and just; and when the officer shall keep such property pending an appeal the appellate court may fix and allow such compensation; and the same, in either case, may be taxed as disbursements against the losing party.