

126.67 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—69; 1923 c. 291 s. 3; Stats. 1923 s. 126.67; 1945 c. 443; 1969 c. 111 s. 25.

126.68 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—70; 1923 c. 291 s. 3; Stats. 1923 s. 126.68; 1945 c. 443.

126.71 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—73; 1923 c. 291 s. 3; Stats. 1923 s. s. 126.71; 1945 c. 443.

126.72 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—79; 1923 c. 291 s. 3; Stats. 1923 s. 126.72; 1945 c. 443.

CHAPTER 128.

Creditor's Actions.

128.01 History: 1937 c. 431; Stats. 1937 s. 128.01; 1969 c. 392.

On limitations imposed by the supremacy clause see notes to sec. 1, art. IV.

The insolvency laws of the state (128.01 to 128.29, Stats. 1925) are completely superseded by the federal bankruptcy act as to all matters comprehended within that legislation. During the existence of the federal bankruptcy act, state statutes afford the courts no power or authority to discharge debtors from their debts. While the discharge of a bankrupt from his debts constitutes the very essence of a bankruptcy law and the distribution of the property of the bankrupt pro rata among his creditors a necessary incident, the discharge of a debtor is no part of an assignment law, and the provisions of the statutes relating to voluntary assignments do not contravene the federal bankruptcy act. In re Voluntary Assignment of Tarnowski, 191 W 279, 210 NW 836.

The provisions of ch. 128, Stats. 1931, relating to assignments for the benefit of creditors are separate and distinct and therefore severed from those relating to the discharge of insolvent debtors. *Pobreslo v. Joseph M. Boyd Co.* 210 W20, 242 NW 725, affirmed *Pobreslo v. Joseph M. Boyd Co.* 287 US 518.

Where a receivership of a corporation is carried out under ch. 128, even though instituted by voluntary assignment rather than by a judgment creditor whose execution has been returned unsatisfied, the scope of the proceeding is broad enough so that stockholders can properly be made parties and their liabilities for unpaid wages, under 180.40 (6), Stats. 1953, determined and adjudicated therein. In re Supreme T. & M. Co. 3 W (2d) 554, 89 NW (2d) 292.

The circuit court will in most cases have jurisdiction to determine the validity of the assignments for the benefit of creditors, to determine whether or not certain property is exempt from the claim of title by the receiver or assignee and whether claimed liens are valid. *Premke v. Pan American Motel, Inc.* 35 W (2d) 258, 151 NW (2d) 122.

The involuntary provisions of ch. 128, Stats. 1951, are suspended by the national bankruptcy act, but the voluntary provisions are not so suspended. (In re Wisconsin Builders Supply Co. 136 F Supp. 439, reversed.) In re Wisconsin Builders Supply Co. 239 F (2d) 649.

A debtor who executed an assignment and had a receiver appointed under the Wisconsin statute committed an act of bankruptcy, but after the passage of 4 months the district court had no jurisdiction to entertain a petition in bankruptcy. In re Supreme T. & M. Co. 147 F Supp. 158.

A challenge to the validity of certain sections of chapter 128. *Bertz*, 45 MLR 403.

Colorable transfers, fraudulent conveyances and preferences in state and federal liquidation proceedings. *Heller*, 1939 WLR 360.

Wisconsin insolvency law declared suspended as tantamount to bankruptcy. 1956 WLR 682.

128.02 History: 1937 c. 431; Stats. 1937 s. 128.02; 1939 c. 308.

128.03 History: 1937 c. 431; Stats. 1937 s. 128.03.

128.04 History: 1937 c. 431; Stats. 1937 s. 128.04.

128.05 History: 1937 c. 431; Stats. 1937 s. 128.05; 1939 c. 308; 1957 c. 274, 672.

128.06 History: 1937 c. 431; Stats. 1937 s. 128.06; 1939 c. 308; 1957 c. 274.

128.07 History: 1937 c. 431; Stats. 1937 s. 128.07; 1969 c. 289.

Legislative Council Note, 1969: These subsections [(3) and (4)] give s. 128.07 a modern definition of the word "transfer" and correct the point at issue noted in *In re Bossell* (1966) 30 Wis. 2d 20, 139 N.W.2d 639. Sub. (4) enables the assignee to invalidate secret liens and better insure equal treatment of creditors. (Bill 8-A)

128.08 History: 1957 c. 274; Stats. 1957 s. 128.08.

Any judgment creditor, including one whose judgment was obtained in a federal court in this state, who has exhausted his remedy at law against an insolvent corporation by the return of an execution wholly unsatisfied, may bring an action to sequester all of the property and assets of such corporation, restrain all other creditors from pursuing their own remedies, and compel them to come into the action and submit to an equal distribution among all the creditors. *Ballin v. Loeb*, 78 W 404, 47 NW 516; *Garden C. B. & T. Co. v. Geilfuss*, 86 W 612, 624, 57 NW 349.

If a sheriff has money in his hands realized upon executions against an insolvent corporation, the executions having been issued because of fraudulent conduct on the part of the plaintiff therein and the directors of the defendant for the purpose of giving the creditor an illegal preference over other creditors, such money may be sequestered as a part of the corporate assets. *Ford v. Plankinton Bank*, 87 W 363, 58 NW 766.

The filing of a complaint in an action for the sequestration of the property of an insolvent corporation and the appointment of a receiver, followed by an order of court, regularly served, requiring defendant to show cause why a receiver should not be appointed, and forbidding interference with its property pending the motion, is equivalent to an equitable levy upon such property, and gives the

court exclusive jurisdiction and control over it, though no manual seizure of it was made. *Northwestern I. Co. v. Land & R. I. Co.* 92 W 487, 66 NW 515.

A judgment creditor may proceed under sec. 2970, Stats. 1898, against a corporation, although his legal remedy is not exhausted against other defendants. *Davelaar v. Blue Mound I. Co.* 110 W 470, 86 NW 185.

But one winding-up suit to settle the affairs of a corporation is proper and in such suit all the rights and all liabilities of creditors, officers and stockholders are to be worked out. *Gager v. Marsden*, 101 W 598, 77 NW 922; *Boyd v. Mutual F. Asso.* 116 W 155, 90 NW 1086, 94 NW 171.

The landlord of a corporate debtor which was in receivership did not have preference over the chattel mortgagee of such debtor, to the proceeds of the sale of the mortgaged property, for rent accrued after the date of receivership. The only benefit to the mortgagee in such proceeding is the mortgage foreclosure, and the only preference over the mortgagee's claim is a reasonable attorney fee in connection with such foreclosure. *Wilson-Hurd Mfg. Co. v. Karr Machine Corp.* 256 W 533, 41 NW (2d) 601.

Sequestration of assets for the benefit of creditors. *Rieselbach*, 23 MLR 59.

128.09 History: 1937 c. 431; Stats. 1937 s. 128.09.

128.10 History: 1937 c. 431; Stats. 1937 s. 128.10.

128.11 History: 1937 c. 431; Stats. 1937 s. 128.11.

128.12 History: 1937 c. 431; Stats. 1937 s. 128.12.

Without the authority of the court a creditor cannot sue in a representative capacity in place of the receiver to recover assets for the benefit of creditors nor appeal from a judgment adverse to the receiver. *Miller v. Lighter*, 21 W (2d) 401, 124 NW (2d) 460.

128.13 History: 1937 c. 431; Stats. 1937 s. 128.13.

128.14 History: 1937 c. 431; Stats. 1937 s. 128.14; 1965 c. 143, 252, 433; 1969 c. 276 s. 590 (1).

128.15 History: 1937 c. 431; Stats. 1937 s. 128.15.

A proceeding wherein the circuit court declared the corporation insolvent, appointed a receiver, and permitted all creditors to become parties, was a proceeding under ch. 128, Stats. 1939, so that the time for taking an appeal from an order entered therein, denying a creditor's claim to the possession of certain trucks was governed by the 30-day limitation. *Industrial Comm. v. Sanitary Baking Co.* 242 W 115, 7 NW (2d) 603.

128.16 History: 1937 c. 431; Stats. 1937 s. 128.16.

128.17 History: 1937 c. 431; Stats. 1937 s. 128.17; 1939 c. 308; 1957 c. 274.

A city is entitled to priority over general

creditors for its claim which represents interest and penalties accruing as a result of delinquency in the payment of taxes, the interest and penalties being part of the tax. *Munkwitz Realty & Inv. Co. v. Diedrich Schaefer Co.* 231 W 504, 286 NW 30.

Where taxes assessed on certain land were returned to the county treasurer as delinquent, and the owner subsequently deeded the land to a mortgagee, and subsequent to that made an assignment for the benefit of creditors, which properly did not include such land, the county, holding the tax certificates, was not entitled to priority in the distribution of the assets of the assignor, as provided for by 128.17 (1) (d), Stats. 1941, since such real estate taxes were neither "debts" of the assignor nor liens on real estate which came to the assignee and were not "due" and owing to the county in the statutory sense. *Calumet County v. Baumann*, 243 W 317, 10 NW (2d) 190.

A member of a partnership, who in his individual capacity was appointed as and did the work of sales manager of the debtor corporation, was entitled to priority for commissions due him as such sales manager, although he was also a member of a partnership which was sales representative for the corporation but not its employe, and although he was also an officer and director of the debtor corporation. Commissions or compensation based on piecework are "wages" within the meaning of the statute. *Knaak v. Schmidt*, 256 W 463, 41 NW (2d) 625.

128.18 History: 1937 c. 431; Stats. 1937 s. 128.18; 1939 c. 308.

128.19 History: 1937 c. 431; Stats. 1937 s. 128.19.

As to goods consigned for purposes of leasing, where filing requirements were not complied with, 128.18 (1) and 128.19 (1) (b), Stats. 1961, have the effect of putting the receiver in the position of a creditor who has obtained a lien by judicial process, so that the receiver was entitled to the consigned articles as against the manufacturer-consignor. *In re Adams Machinery, Inc.* 20 W (2d) 607, 123 NW (2d) 558.

Although a personal injury claim is assignable, it is not "property" which is subject to the federal bankruptcy law. *In re Buda*, 323 F (2d) 748.

128.20 History: 1937 c. 431; Stats. 1937 s. 128.20; 1939 c. 308.

128.21 History: 1937 c. 431; Stats. 1937 s. 128.21; 1939 c. 308; 1955 c. 72; 1959 c. 91; 1965 c. 13; 1969 c. 289.

Filing fees provided by 59.42, Stats. 1953, have no application to petitions for amortization of debts of wage earners for which the filing fee is provided by 128.21 (1). 43 Atty. Gen. 212.

Preparation and presentation of petitions and orders in circuit court proceedings under 128.21, Stats. 1955, constitutes the practice of law, and such services may not be lawfully performed under 218.02. 44 Atty. Gen. 236.

Wisconsin's personal receivership law. *Garrison*, 1938 WLR 201.

Wisconsin's personal receivership statute--evaluation and recommendations. Davey, 1968 WLR 210.

128.25 History: 1941 c. 282; Stats. 1941 s. 128.25; 1951 c. 261 s. 10.

Editor's Notes: (1) This section takes effect Jan. 1, 1942, "but shall not apply to contracts and transactions already existing upon that date". See ch. 282, sec. 2, Laws 1941.

(2) For foreign decisions construing the "Uniform Secured Creditor's Dividends in Liquidation Proceedings Act" consult Uniform Laws, Annotated.

CHAPTER 130.

Auctions and Auctioneers.

130.06 History: 1856 c. 124 s. 1, 2; R. S. 1858 c. 54 s. 8; 1869 c. 170; R. S. 1878 s. 1590; 1883 c. 160; 1885 c. 291 s. 6; 1887 c. 334 s. 2; Ann. Stats. 1889 s. 1590; 1897 c. 20; Stats. 1898 s. 1590; 1923 c. 27; 1923 c. 291 s. 3; Stats. 1923 s. 130.06; 1943 c. 110; 1961 c. 164; 1969 c. 241.

130.065 History: 1953 c. 509; Stats. 1953 s. 130.065; 1955 c. 247 ss. 3 to 8; 1969 c. 336 s. 176.

130.07 History: 1931 c. 264; Stats. 1931 s. 130.07; 1939 c. 281; 1951 c. 261 s. 10.

See note to sec. 1, art. I, on exercises of police power, citing *Doering v. Swoboda*, 214 W 481, 253 NW 657.

130.08 History: 1931 c. 264; Stats. 1931 s. 130.08; 1933 c. 135; 1943 c. 317.

CHAPTER 132.

Trade-Marks, Badges and Labeled Products.

132.01 History: 1891 c. 280; 1893 c. 14, 104; 1895 c. 151 s. 1, 3; Stats. 1898 s. 1747a; 1909 c. 127; 1917 c. 495 s. 1; 1923 c. 288; 1923 c. 291 s. 3; Stats. 1923 s. 132.01; 1945 c. 259; 1947 c. 358; 1965 c. 163; 1969 c. 154.

The trade-marks law does not authorize the registration of plans or systems of doing business. 1908 Atty. Gen. 997.

Words in common use, when used for advertising purposes, cannot be registered as a label or trade-mark. 1912 Atty. Gen. 993.

To entitle trade-marks, trade-names, etc., to registration, there must be strict compliance with the law. 1912 Atty. Gen. 997.

A trade-mark which may be appropriated by others in the same business with equal truth cannot be registered as a trade-mark. 3 Atty. Gen. 898.

The secretary of state has no authority to record an assignment of a trade-mark. 4 Atty. Gen. 482.

A foreign corporation, not licensed to do business in this state, cannot file a trade-mark. 5 Atty. Gen. 522.

A trade-mark can be registered but once, and such registration will protect the assignee or vendor thereof as well as the original owner. 5 Atty. Gen. 588.

A trade-mark cannot be used to designate the person or corporation transacting the business. 7 Atty. Gen. 141.

The name "Lincoln," being a fanciful or historical name, may be registered as a trade-mark. 7 Atty. Gen. 338.

Whether a trade-mark may be registered is to be determined from the application to register it. 9 Atty. Gen. 108.

The secretary of state may reject only such proposed trade-mark as is likely to be mistaken for a mark previously registered, upon goods of the same descriptive properties; phonograph records are not of the same descriptive properties as phonographs. 11 Atty. Gen. 173.

Trade-marks may be registered by trustees of common-law trusts resident in another state, being persons as designated in sec. 1747a, Stats. 1921. Such a trust is not required to be licensed to do business in Wisconsin. 11 Atty. Gen. 839.

"The Eastsider" may be registered as a trade-name for protection of a magazine. 17 Atty. Gen. 334.

The secretary of state cannot refuse to file a trade-mark consisting of crescent and star if necessary papers are filed and necessary fees are paid; he cannot thereafter revoke such filing upon the theory that it violated federal statutes. 17 Atty. Gen. 639.

A company registering the words "Checker and the checkered band extending around the top of the body of the vehicle" as a trade-mark is protected in its use throughout the state; protection is not limited to Kenosha, where the company was located at the time of registration. 18 Atty. Gen. 500.

The secretary of state in considering an application for registration of a trade-mark may deny the same if made by an officer of an unlicensed foreign corporation for the benefit of such corporation. 19 Atty. Gen. 390.

The word "Co-op" cannot be registered as a trade-mark in face of 185.22, Stats. 1933, which expressly regulates the use of that word. 22 Atty. Gen. 660.

The secretary of state must accept all applications for registration of labels, etc., irrespective of whether they are identical or similar to others previously filed. In case of conflict the remedy is that provided in 132.01 (8), Stats. 1945. A firm name may be registered under 132.01 (1) as amended by ch. 259, Laws 1945. The secretary of state may not require as a condition of registration of a firm name that the applicant furnish proof of compliance with 343.722. A sworn statement or application for registration under ch. 132 may be made by an agent or attorney. The secretary of state is entitled to demand proof of the agent's or attorney's appointment and authority before filing such sworn statement or application. The secretary of state has no authority to set up classes of commodities as to which trade marks may be registered and require separate applications for each class of commodity. 34 Atty. Gen. 198.

A trade-mark, in which is included a reproduction of the official seal of a state, registered in the office of the secretary of state in 1897, may be renewed as provided by 132.01 (6), Stats. 1945, if application for renewal is timely made and necessary fees are paid. 132.01 (5) does not apply where application is made to renew a trade-mark registered before the ef-