

them as the party may desire to use with such affidavits.

SECTION 2. If the moving party desires to base his motion upon the evidence, or part of it, taken on the former trial, the record or some part of it in the case, and upon affidavits, it shall be sufficient for a hearing of the motion to specify in the notice of motion served, with copies of the affidavits, that the motion is made upon such evidence and such record and such affidavits; *provided*, that the record and a copy of the evidence be present for examination at such hearing.

When motion based on evidence in former trial.

SECTION 3. If the judge in either of the cases above provided for, upon the bringing on of the motion, shall order that a case therein shall be made and settled for the hearing of the motion; he shall continue the motion until the same is heard upon the case, within such time as may be by him limited.

When motion to be continued.

SECTION 4. This act shall be in force and take effect from and after its passage.

Approved March 7, 1876.

CHAPTER 151.

[Published March 16, 1876.]

AN ACT relating to actions on undertakings given on appeals to supreme court.

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

SECTION 1. In all appeals taken or hereafter to be taken from a judgment directing the payment of money, to the supreme court, and where the execution was stayed by a written undertaking, in pursuance of section twenty-two (22), chapter two hundred and sixty-four (264) of the general laws of 1860, and the said appeal shall have been dismissed for want of prosecution by the appellant, the respondent may, after having issued an execution against the appellant and the same having been returned unsatisfied, either in whole or in part, commence an action on the undertaking so executed against the appellant, and the sureties therein, in the same manner and with the same effect as if the said judgment so appealed from had been affirmed.

Appeals from judgment.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 7, 1876.

CHAPTER 152.

[Published March 18, 1876.]

AN ACT relating to actions for the foreclosure of mortgages.

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

Plaintiff may
amend sum-
mons, etc.

SECTION 1. The plaintiff in any action for the foreclosure of a mortgage, heretofore or hereafter commenced, may amend the summons, complaint and proceedings in said action, after judgment and before sale, by making any person a defendant in said action who is a necessary or proper party to the same, and who shall not have been made a party before judgment, in the manner hereinafter prescribed.

Plaintiff to
make affidavit.

SECTION 2. The plaintiff desiring such amendment, or his attorney, shall make an affidavit stating that the person sought to be made a defendant is a necessary or proper party to said action; that such person has, or claims to have, as the affiant believes, some interest in or claim upon the mortgaged premises, which interest or claim, if any, is subject to or subsequent to the mortgage in the complaint described. Upon such affidavit the court in which such action is brought, or a judge thereof, county judge or court commissioner of the proper county, shall, on motion of the plaintiff, make an order that the person named in such affidavit be made a defendant in said action and that the summons and complaint be amended accordingly, and such order shall direct that the summons and complaint, as amended, be served on such defendant, together with a copy of such order, and that proceedings on such judgment be stayed until the further order of the court, and that unless the said defendant so brought in, answer said complaint as required by the summons, the judgment in said action be amended so as to bar such defendant in the same manner and with the same effect as if he had originally been made defendant therein and failed to answer the complaint.

Court shall
make order.